

Appendix

7

AGE POLICIES

A VIEW - AND ALTERNATIVE SUGGESTIONS by THE NATIONAL PRIVATE HIRE ASSOCIATION

BACKGROUND

The National Private Hire Association has spent some considerable time over the last fifteen years addressing and, on occasion, opposing the imposition of age policies by local authorities, both in the Council Chamber and in courts.

In preparing evidence to present to Councillors and the courts we have discovered that, very often, the perception of the licensing authority that the age of the vehicle alone should be the fundamental and controlling factor in imposing a vehicle licensing regime is flawed.

Close examination of the vehicle testing records of various councils has clearly shown that although a case can be made that vehicles are indeed affected by age and/or high mileage, there are disturbing statistics to be shown for younger and "acceptable" vehicles.

Evidence can be shown that licensed vehicles do indeed have a "shelf life", and as maintenance problems increase the average driver will indeed replace his vehicle. Common sense indicates that diminishing returns in income are a far more telling cause for vehicle replacement than conditions of licence.

Many examples exist of vehicles, purchased as being acceptable to the licensing authority, having to be replaced within the first year of service because they proved, in service, to have serious defects. Conversely in those areas that do impose age policies, Council Committees and the courts spend many hours hearing appeals from drivers who believe that their vehicles, regardless of age, are fit to continue in service. Quite a lot of these appeals are upheld.

It follows that the questions arising from "vehicle fault statistics" (VFS), acquired both from enforcement exercises and annual routine vehicle test sheets, need careful analysis. We have found that VFS's raise one fundamental question that often begs a considered reply and that is: - What is it exactly that the Council trying to achieve? Very often the initial report to the licensing Sub Committee fails to highlight the full nature of the problem, which in turn can lead to costly appeals to the courts and possible overturning of the initial decision.

The experience gained by the Association has led it to formulate a new philosophy in addressing those problems which councils perceive might be resolved by the adoption of such a policy.

What are those problems?

PROBLEMS

- That the local vehicle stock is of poor quality, and generally aged.
- That there is evidence of lack of maintenance as evidenced by VOSA/Council exercises.
- Poor returns from the testing station and local enforcement exercises generally
- Public complaints

Faced with some or all of the evidence above, many local authorities take steps to rectify their particular perceived situation and many have reacted by introducing age policies and/or stricter or more numerous testing regimes.

Having said that, it has become apparent that many local authorities, having adopted a more rigorous regime, find that many of the problems persist and they are left with the inevitable questions: [1] Why is there little or no improvement? and, [2] Where do we go from here?

WHAT CAUSES THE PROBLEMS AND WHY THEY PERSIST

Of course, many drivers do not see that there is a problem in the first place, and they are the first to voice concerns about rules that are more draconian. That is because they are, for the most part, representative of that section of the trade who look after their vehicles and ensure that, when they are presented for inspection, those vehicles are prepared for that inspection.

Amazing as it may seem, in all the many reports to Licensing Committees we have seen, there has never been a section which analysed the statistics of the better side of the trade to see if lessons could be learned from those who obviously comply with the law, and to act as a benchmark for Licensing Committees in setting new conditions. In short, only one side of the picture is given.

All the reports we have seen address that segment of the trade who never appear to worry about maintenance or vehicle condition generally. They are the ones who regularly fall foul of enforcement exercises. Furthermore, when their vehicle is due for inspection they, perversely, seem to seize upon that very inspection as merely an opportunity to find out what is wrong with the vehicle, so that they can then have those points attended to.

Of course, the introduction of an age policy or a stricter or more regular testing regime does not impact upon this section of the trade. They will always have faulty vehicles regardless of the vehicle's age.

We find that the good driver with high standards will always search for a really sound or brand new vehicle which is going to stand the test imposed upon it by our trade; and, having acquired that vehicle, he/she will maintain it properly and regularly, and will, year after year, turn up at the vehicle testing station with a fully prepared car.

The other side of the trade, of course, has a different philosophy. Instead of searching for a really sound vehicle which is going to stand the test imposed upon it by our trade, they will go into the market to look for the cheapest possible vehicle that will do the job and pass the council's set criteria.

These drivers' maintenance schedules will not improve, and it is certain that their attitude to presenting vehicles for test will continue.

In any event it is never the car itself that is guilty of failing to maintain itself; it is always the vehicle proprietor.

At this point we have to insert a parameter which we have never observed in any report to Licensing Committees, and that is the financial ability of the drivers to purchase sound vehicles in the first place, let alone any of the proposed new/newer vehicles.

One problem is that the many suppliers of new vehicles to the trade, and who commonly advertise in the trade press, report that a high proportion (as high as 61% - Nissan Finance) are refused finance to purchase vehicles in the first place. These drivers are then forced to shop around for less attractive terms to enter or continue in the trade, and can pay very high APR rates (29% to 32% is not uncommon).

However most of those drivers will then, having learned lessons from experience, ensure that their credit history is improved by meeting all repayment dates and will ensure that the vehicle is well maintained in order to protect their income, but obviously at a very high price.

A local authority cannot in all conscience restrict its policies on the basis of those who will always maintain a bad credit record.

A glance at our trade newspaper will quickly show that from £30 to £100 brand new vehicles are available from Skoda's at the cheap end to Mercedes at the top end. So, either at entry into the trade or while working in it most drivers will sort out the credit history and be able to afford even brand new vehicles.

So, of those who run less acceptable vehicles, a percentage will do so out of circumstance rather than choice. But that does not mean that those drivers will all fail to maintain their vehicles.

Statistics from the testing station can easily separate the conscientious driver of the older car from the "couldn't care less" driver. The first will maintain the vehicle, which will often pass the vehicle test first time; the latter will not maintain and consequently provides the worst VFS's, which in turn will attract the attention of licensing and enforcement officers and councillors.

A more telling statistic will show that a percentage of those who can purchase new/newer vehicles also appear on the VFS sheets, will fall foul of enforcement exercises and be found wanting on a daily check basis.

Unfortunately, it is true to say that the "couldn't care less" attitude is not only hard to correct but, if the wrong level of enforcement is employed, it can be catching. It is hard to combat the "If he can get away with it, so can I" frame of mind.

We do not need to ask any particular licensing or enforcement officer whether he knows drivers of both categories. We are certain that all officers could probably list many of them without reference to his or her files.

Councils who have VFS problems which affect public safety must react, and age policies often appear to be an attractive solution. This seems to be the case regardless of the fact that most councils have been licensing these vehicles for over 25 years and that despite their best efforts, including age policies and more regular testing, these vehicle defect problems still remain and are still caused by the very same drivers whose lack of respect for the law led to the imposition of the policy in the first place.

It often follows that the imposition of an age policy very often places the greatest burden on those who are used to buying new/newer vehicles and cossetting those vehicles to get maximum usage from them. What stands out to this Association is the fact that most licensing authorities would wish to support these better drivers as examples of what they would like to see as the norm in their area.

In the normal course of events a standard vehicle may last three, four, five years or longer; prestige vehicles will normally last much longer. As we have said, it is important to note that very often these better vehicles have to be purchased on finance, which again may be over three or four years. Age policies with narrow parameters (i.e. no older than three years at first licence and off at six or seven years old) can often mean that the better driver is locked in to the "hire purchase /APR trap" and paying that APR to work for the rest of their time in the trade.

We always ask councils to remember that it is only the periods between borrowings on finance agreements which give drivers APR-free incomes. If someone is used to maintaining a vehicle for six, seven, eight years or more, the APR-free period may well be essential to secure his deposit or payment for his next vehicle.

Conversely, and in the meantime, the couldn't-care-less driver may go through two or even three bangers purchased at rock bottom price to give maximum return in the short run; and besides, who cares about conditions of licence?

TIME FOR CHANGE?

In conversation with licensing officers, we readily discover that there are always numbers of operators, proprietors and drivers who cause the council and the travelling public no problem whatsoever. The licensing officer's problem is how to deal with the cowboy element without imposing such a bevy of rules that it affects the good guys. Simple: the answer is to chase the bad guys.

But surely that is what the enforcement role of the council is supposed to encompass?

Conditions of licence are set to ensure that rules are followed in order that the public is protected. All councils set conditions, so why do so many have to revisit those conditions so often to fine tune or correct perceived problems?

We believe strongly that for those who follow and observe the rules, it is only the lawbreakers who spoil what otherwise would be a relatively simple occupation. As stated

above, the fact that councils chase the lawbreakers with added conditions always impacts on the good faction of the trade, not the cowboys. Consequently we find considerable support amongst the conscientious drivers for a fine tuned and targeted enforcement role, i.e. "Don't come after us - go after the cowboys."

As an alternative to continuing to implement the council's existing age policy or testing period, we suggest the introduction of what will become a self-disciplinary regime: in simple terms, the age policy guidelines should be set aside, but the council should impose three tests per year after clearly defined age limits are reached.

AGE LIMITS (TESTING PARAMETERS)

Whilst we believe that it is not sound policy to set a vehicle age limit in the hope that this will "cure" VSF problems, we do accept that there is clear evidence that older vehicles need a higher level of maintenance to keep them safe for the road.

We suggest that councils should set testing parameters based on the vehicle's age, and not just set age limits on what they will consider for licence. For example:

- Vehicle up to three years old – test once a year
- Vehicle between three and six years old -- test twice a year
- Vehicle over six years old -- test three times a year

Many councils may retort, "We have tried that before but it did not work"; to which we reply "Ah, but then you brought in an age policy and that policy is also under constant attack either by those who are financially burdened or by those who still fail to maintain their vehicles."

We believe that any testing regimes or age policies are not, in themselves, enough to identify and eradicate that problem element within the trade which needs correction. It is the attitude of the bad driver which must be changed; therefore we suggest that the council should introduce a "three-strikes-and-out" rule.

A search through council files will show that the worst examples of failure certificates involve major Construction and Use problems: brakes, steering, tyres etc. These are the vehicle defects which will cause a vehicle's immediate suspension, either on routine test or on enforcement exercises.

These defects are the one easily identifiable constant in all vehicle testing procedures and disciplines and therefore should, we suggest, form the basis of new conditions.

CHANGE THE CONSEQUENCES

If any vehicle fails the test on, say, three or four Construction and Use items – and here we must make sure we are not being frivolous by clarifying that three cigarette burns and a scratch on the paintwork do not amount to Construction and Use problems – then the council should on the first occasion issue a warning in writing to the effect that:

"We note that your vehicle was presented for licensing in such a condition that gives us concern that the vehicle may not be being properly maintained. You are

warned that on a second such failure, you will be required to go before Committee to explain yourself. A copy of this letter will be attached to your file."

If the council has a "one or two tests a year policy" then that negligent proprietor should also be advised in the same letter that:

"In view of the serious nature of the faults found on your vehicle you will now be required to present your vehicle for testing three times a year.

In taking such action the council puts clear pressure on the driver to mend his ways "or else".

On the second serious test failure, the driver should be brought before Committee and should be given a formal warning and perhaps a penalty suspension, and should be issued with a letter which in effect says, "The next such failure will lead to the revocation of the vehicle licence."

The council may also wish to consider adding to that warning, "consideration will also be given to the revocation of your proprietor's/driver's licence as being not fit and proper to hold such a licence, in that maintenance of your vehicle should have been paramount to you, especially after having had two clear written warnings."

On the third occasion the vehicle should not be allowed back for re-inspection, and a vehicle and/or driver licence refusal/revocation should be issued.

Certainly the driver has a right of appeal, but the council has more than enough evidence to show that on the three-warnings-and-out basis there are significant doubts about, on the one hand the vehicle's roadworthiness (it has a high, demonstrably non-maintained, mileage); and also demonstrably, the driver's attitude to authority is patently lacking (a point that magistrates often pick up on).

Most importantly the council will have a clear audit trail to show the court in the event of an appeal.

But what about the Operator? The private hire operators are very often either unaware or, in some cases, not prepared to accept that in taking a contract for the hire of a vehicle, they are vicariously liable for ensuring that the vehicle and its driver are fit for purpose.

We are aware that amongst the better operators, they have some parameters in force which ensure that the vehicles they operate are up to scratch. Unfortunately most operators do not. The VSF statistics gathered in the course of testing and enforcement exercises give a local authority clear evidence as to whether an operator is bothering to maintain a fleet fit for purpose.

In dealing with the driver in the manner suggested above, it seems only logical to us that a copy of that warning letter, together with a letter warning the operator about their responsibilities, should also be sent; and as in the progression with the drivers, once sufficient evidence has been collated, then that operator should also be brought before the Committee to explain why he or she is running a business with so little control.

The hackney carriage industry for the most part consists of independent drivers, but there are clear examples of some proprietors owning several vehicles which they rent out, and obviously the same parameters should be applied to those multiple vehicle proprietors as to the private hire operators.

CONSULTATION AND TRADE APPROVAL

We have found that, on consultation, the majority of the responsible trade in any area who do maintain their vehicles properly will readily vote for such a testing regime as an alternative to age policies.

The one statistic that a local authority will have to consider is what percentage of the entire fleet of vehicle owners could be regarded as "responsible." We unfortunately have to note that the VFS records in some areas show that the "responsible" section is a smaller rather than larger percentage of the whole.

Our reaction to such a problem has to be "all the more reason to bring in a three strikes and out policy"

The trade will readily grasp the fact that a licensable five year old Mercedes would be a much sounder investment - and that passengers might well prefer to travel in such a vehicle -than a three or four year old standard saloon.

It is also true to say that both the trade and the licensing officers may well look forward to the removal of those who year in and year out, regardless of vehicle age, bring the trade into disrepute.

CONCLUSION

We ask all who read this document to carefully consider: "What is it that any policy set by a local authority is trying to achieve?" We suggest that public protection is and must be the only answer. If the present policy ensures that the imposed financial burden does not in fact eradicate faulty vehicles, then we advocate that the above suggestions may be a more exacting and corrective regime.

In addition, the council is reminded that to impose an absolute age policy fetters their discretion, and this will be easily overturned in court. Neither unfortunately can they introduce a mileage policy, as this has already been tested in the case of Sharpe -v- Nottingham City Council.

Finally, due consideration should be given to the fare structure in any area, thereby determining whether the trade can in fact afford to maintain their vehicles in the first place, irrespective of their age. This applies to both hackney carriage drivers, whose fares are set by the council, and private hire drivers, whose fares whilst not regulated by local authorities, are more often than not pitched similarly or just below the hackney tariff.

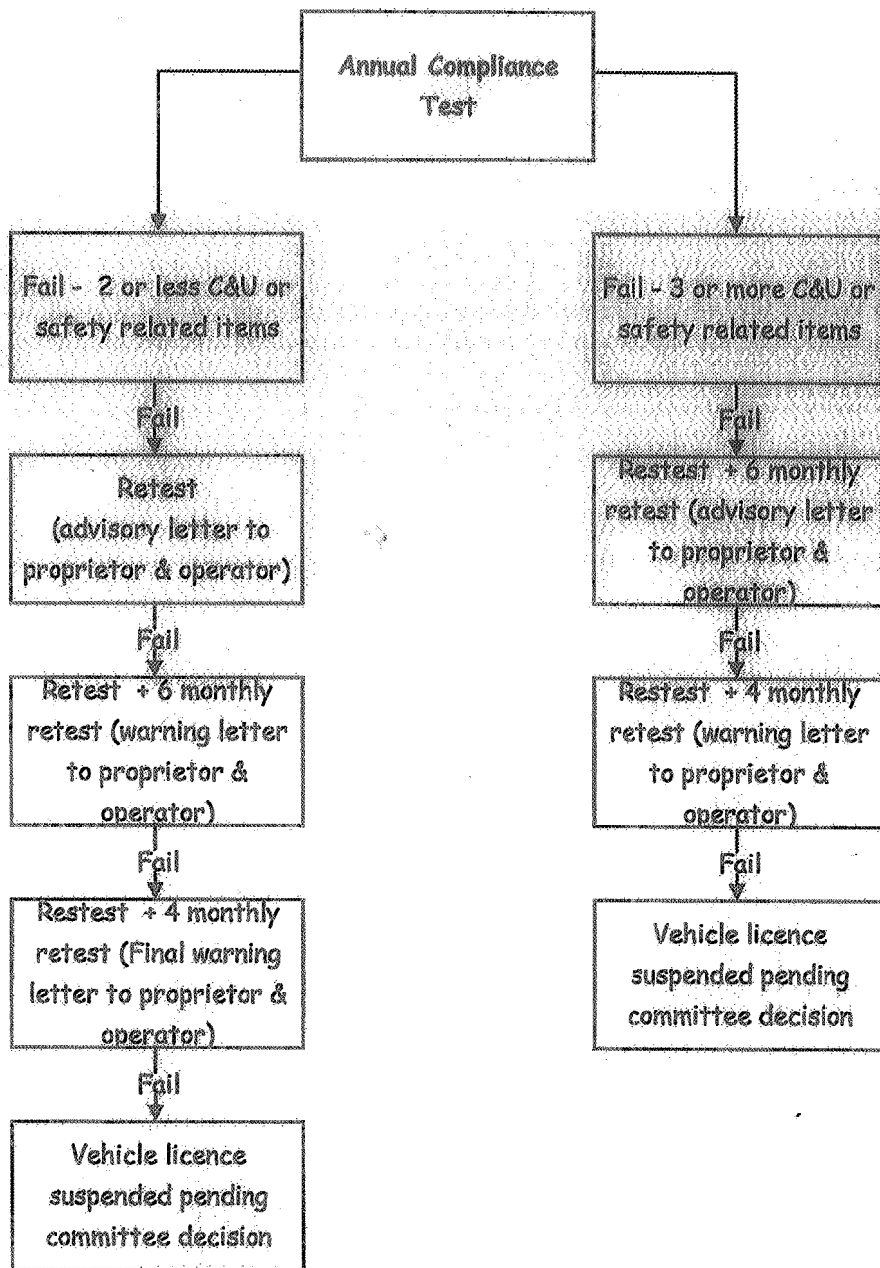
Once again we have found that, when examined as an issue in the witness box, lack of affordability very frequently overturns a vehicle age policy if the local authority has not approved a taxi fare increase for any length of time.

It is also a provable fact that if drivers are working greatly extended hours – 60 to 80 hours being not uncommon – in order to make a living, then paying for vehicle maintenance decreases in importance not only financially, but in time and periodicity. If a driver is working 80 hours a week, the rest of the time he will probably be asleep. Taking a day off to get a vehicle serviced may result in the driver having to put in another ten hours on the other shifts he works that week.

To illustrate, a 20-pence increase on the flagfall or initial charge in areas where drivers average 25 jobs per day over the year, will give them an increase of £1,800 per year. Due consideration should be given under Best Value to comparing existing levels of fares with local and national averages. The cost of a vehicle, and its maintenance, will not differ dramatically anywhere in the UK. Clearly incomes, and the ability to allow for the time off, are crucial factors in the maintenance of vehicles.

A simple example: We asked a number of drivers why they had been caught with bald tyres; the answer was always financial. Although some maintain that they had forgotten, when pressed, they affirmed that if they had had the cash available they would not have delayed.

Just such delay, and subsequent lapse in public safety, can be prevented by a re-examination of council policy as outlined in this document.



C&U = Construction and Use (MOT) or safety related failures