JamesButton&Co SOLICITORS

7 Devonshire Drive
Rowsley
Matlock
Derbyshire DE4 2HB

T 01629 735566
F 01629 735528
E james@jamesbutton.co.uk
www.jamesbutton.co.uk

Our Ref:Vehicle Safety Letter 1.doc
Your Ref:

09 May 2008

Mr Geoff Hardy
Principal Lawyer - Litigation
Legal and Democratic Services
Corporate and Customer Services Directorate
County of Herefordshire District Council
Brockington
35 Hafod Rd
Hereford
HR1 1SH

Dear Geoff

Vehicle Specifications and Suitability

Thank you for your letter dated 28th February together with enclosures. In accordance with our telephone conversation on 29th February, I will provide this advice for 4th March.

In your letter of instruction you raise four specific questions, which I will attempt to answer in turn. I shall not restate the facts save as is necessary to allow my answer is to be placed in context.

1. The first [question] is does the Council have a point in relation to vehicles that are converted firstly from vans to mini-buses (MI use class) and secondly from mini-buses, vans, London taxis and MPV's to be wheelchair accessible (for which no prescribed use standard exists)?

As a local authority (District Council) responsible for Hackney carriage and private hire vehicle licensing you have a power to inspect licensed vehicles under both sections 50 and 68 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"). Section 50 limits the number of inspections to three in any 12 month period, and this is usually used for regular inspections to assess the continued suitability and safety of a licensed a vehicle. Section 68 allows spot inspections and testing at "all reasonable times", and can therefore be used flexibly to allow for inspections of vehicles that may give rise to concern.

Section 60 of the 1976 Act allows a district Council to suspend, revoke, or refuse to renew a Hackney carriage or private hire vehicle licence for any of the following reasons:

> "(a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
> (b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or
> (c) any other reasonable cause."

In recent months you have become concerned about vehicles that have been converted from vans to carry passengers, and which have been licensed by your Council as both private hire vehicles and Hackney carriages. This has extended to concerns about the suitability of vehicle conversions to allow the carriage of passengers who wish to remain seated within their wheelchair for the journey in both the converted vehicles mentioned above, and purpose-built wheelchair carrying vehicles.

Your inquiries have led you to conclude that there is no European standard for restraint mechanisms for wheelchair users in such vehicles. In addition, the conversion of vans to passenger carrying vehicles may in many cases invalidate the type approval certificate initially granted to the vehicle. Inquiries with the Department for Transport suggest that in many cases following conversion a Single Vehicle Approval ("SVA") should be obtained for the vehicle, although even this does not appear to address some legitimate concerns relating to the carriage of wheelchair-bound passengers.

As a consequence of your inquiries you felt sufficiently concerned to take action and require all such vehicles to demonstrate that they have either passed a compliance test carried out by a DVLA registration testing station or have passed an SVA test carried out by VOSA.

This appears to be the approach taken by the Public Carriage Office in London in respect of both Hackney carriages and private hire vehicles.

The question that you have asked is whether I think that you have a justification in being concerned. My view is that you do. The purpose of Hackney carriage and private hire licensing is to ensure (so far as reasonably practicable) the safety of the public, not only those using the vehicles to be transported, but also those who may be affected by the use of that vehicle including other road users, pedestrians etc. It is clear from the legislation (section 48(1) of the 1976 Act) that the local authority cannot grant private hire vehicle licence unless it is satisfied that the vehicle is (amongst other things) in a suitable mechanical condition, safe, and comfortable. It is generally accepted that the combination of section 47 of the 1976 Act and sections 37 and 40 of the Town Police Clauses Act 1847 allows the local authority to take a similar approach in relation to Hackney carriages.

I do not feel that the absence of action by other local authorities means that your actions are automatically unreasonable. Ultimately it is you as the authority responsible for granting and maintaining Hackney carriage and private hire vehicle licences for your area who must be satisfied that the vehicles are safe and suitable for that purpose.

2. On the assumption that the answer to one above is in the affirmative, have the actions of the Council in seek[ing] proof of safety by means of the test required for other material to be furnished by the converters reasonable in all the circumstances and with the timescales set?

Once you as a district Council became concerned about the safety of these vehicles, it is obvious that action would have to be taken. It would be completely unacceptable to simply turn a blind eye to such significant concerns.

Your question is whether the documentation evidencing the various tests is reasonable and whether the timescales you have set are also reasonable.

In terms of the documentation that you are requiring (evidence of SVA type approval or compliance test, based upon the information that you have obtained from the Department for Transport and the approach taken by the Public Carriage Office) does appear to be reasonable as a means of demonstrating the safety and suitability of the vehicle.

This is a significant departure from your previous approach, and as such is bound to have a significant impact upon the Hackney carriage and private hire trades. As a consequence a reasonable time for compliance must be given.

As I understand it, a period of two months was given to allow existing proprietors of the vehicles identified (those which are converted from some form of van, together with purpose-built "London" Hackney carriages) to provide the requisite documentation, although this appears to have been extended to three months.

It is very difficult to give any kind of accurate timescale when asked to comment on the "reasonableness" of a particular course of action. Reference to other timescales may be of assistance. For example, when Manchester City Council adopted a policy that all its Hackney carriages would need to be wheelchair accessible (which necessitated either a conversion of the existing vehicle or purchase of a new vehicle - all purpose-built "London" taxis) a period of three years for compliance was not found to be unreasonable by the High Court. By way of contrast, the government takes the view that a period of 12 weeks is a reasonable time for consultation on proposed changes to both legislation and policy.

In the first example, significant expenditure and/or engineering was required to achieve compliance, whereas in the second, consideration of proposals and formulation of the response is all that is required.

It seems likely that a court might take the view that the provision of suitable certificates for these vehicles (where such certificates may not exist, and tests may need to be undertaken) is a process which could reasonably be expected to take more than the initial two months allowed. Although it is impossible to say the two-month period was unreasonable, my feeling is that period of between three and six months would have been more likely to escape successful challenge.

In the council's favour is the fact that this action was precipitated by a very real and immediate concern for public safety. Whether there is any evidence to support the view that such vehicles are not safe is a matter you may wish to consider. Certainly the absence of any such evidence may not be supportive of your stance.

On balance overall, I feel that a minimum period of three months would have been more reasonable in these circumstances.

In relation to the converted vans, you have actually extended the period for compliance to three months, but this appears to have been as a consequence of discovering that there were concerns with purpose-built "London" taxis and your desire to bring them within the same compliance regime. Provided all vehicles have been given at least three months to comply with your requirements, I think that it is arguable that you have provided a reasonable timescale for compliance. You must be prepared to face a challenge on the grounds that there was not an initial three months compliance period declared, but the three months developed as the matter progressed.

3. Whether Section 60 or Section 68 should be invoked at the end of March for vehicles that have failed to demonstrate safety?

Once the Hackney carriage or private hire vehicle licence has been granted, the local authority can take action against that licence under either section 60 or section 68 as outlined above.

In order to test the vehicles, section 68 would need to be used. As I understand it, to date you have not tested these vehicles but you have identified them as being deficient in terms of documentation and given them a period of time to demonstrate compliance.

In terms of your actions in relation to vehicles that have not demonstrated compliance once the deadline has been passed, I feel that section 60 is the more suitable power to use.

The vehicle licence can only be suspended under section 68 if the authorised officer is "not satisfied as to the fitness of the Hackney carriage or private hire vehicle", where is under section 60 in addition to the ground that the vehicle is "unfit for use as a Hackney carriage or private hire vehicle" (which is extremely similar to section 68) there is another ground of "any other reasonable cause".

In the absence of direct evidence to show that converted vehicles that have not be able to demonstrate the required type approval compliance are dangerous, there seems to be argument to rely on "any other reasonable cause" under section 60. This may be more likely to find acceptance with the magistrates on appeal.

The right of appeal is another reason for using section 60. Whilst the absence of a right of appeal against suspension of the vehicle licence under section 68 might appear attractive from your perspective, if you were to use section 60 it would allow this matter to be aired in the magistrates Court at a reasonable cost to all parties. As this is clearly a matter of considerable importance to both the trade and the Council this might be advantageous, and could be justified as a means of enabling the matter to be considered judicially as soon as possible. If you are seen to be deliberately adopting an approach which will require the delay and expense incurred with judicial review as the only means of challenge, you may find yourself subject to additional criticism.

4. This question concerns enclosure 15 in the bundle. My enclosure 15 is the same as enclosure 14 and I am not certain whether I have the correct point.

Assuming that I have got the correct matter, you will need to consider whether or not there is any discretion applicable in relation to pass or fail for the vehicle test. If there is, what is that discretion and who applies it?

If the failure is a consequence of displaying the council issued plate, you clearly have a problem. However unprotected wires may bring into question the wider matters of public safety.

I trust that this is of assistance. If you have any further queries, please do not hesitate to contact me. I should be available for most of Tuesday 4th March, and although I am out of the office, you can always leave a message on my mobile phone on Wednesday 5th March. My mobile telephone number is 07793 111608.

I have enclosed my client care letter with this letter. I will not render my account until you let me know that this matter is resolved to your satisfaction and that no further legal advice is required. However it may assist you to learn that to date I have spent four hours on this matter.

Yours sincerely

James T. H. Button