

THE EFFECTIVENESS OF LOCAL GOVERNMENT REGULATION
OF THE TAXI TRADE

By

ANDREW WILLIAM NOBLE

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ABSTRACT

Taxis are a widely used and heavily regulated area of public transport in England and Wales, but one which has been neglected by law academics and researchers. The original contribution to knowledge provided by this study is the finding that effectiveness of regulation of the trade relies upon local authority regulators creating and implementing their own system of 'law' outside the legislative framework and the trade acquiescing in that regime. Taking a qualitative-based empirical approach, this study critically assesses the taxi licensing regime through the views, attitudes and beliefs of those involved in the day-to-day application of the law. Many aspects of taxi regulation involve the exercise of local authority discretion, but the current system grants discretion in areas which ought to be confined by rules and often that discretion is exercised improperly. Whilst some degree of local administration of the system is desirable, many elements of taxi regulation would benefit from national standards to ensure consistency and uniformity. Although the study found a number of important exceptions to these general conclusions, on the whole the most effective methods of regulation were found to be those which operated beyond the legal framework and in which the trade acquiesced.

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The Effectiveness of Local Government Regulation of the Taxi Trade

CHAPTER 1: LEGISLATIVE FRAMEWORK AND RESEARCH

QUESTIONS

1) Introduction and background

According to the Department for Transport, some 700 million journeys are made by taxi and private hire vehicle annually throughout England and Wales;¹ the equivalent of almost one journey every month for every man, woman and child in the country. Most members of the public are at least occasional users of taxi services. People who use taxis are drawn from all social groups, with low-income young women being one of the largest user groups.²

Taxis form a vital part of the public transport system, although this is not universally acknowledged to be the case. Much of the existing literature and research on public transport in the United Kingdom tends either to exclude taxis from its consideration altogether³ or, whilst acknowledging that taxis do form part of public transport, overlooks them to focus solely on buses and trains.⁴ Yet taxis should be

¹ Department for Transport, 'Transport for you' <<http://www.dft.gov.uk/transportforyou/access/taxis/backgroundinformation>> accessed 18 October 2010. This represents an increase of some 7.7 per cent from the 650 million in 2006.

² Department for Transport, 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (London, October 2010) [6].

³ For example, K Button, 'Privatisation and Deregulation: Its Implications for Negative Transport Externalities' (1994) 28(1) *Annals of Regional Science* 125; Department for Transport, 'Policy Guidance and Research on Local Transport Act 2008' (9th February 2009).

⁴ For example, R Balcombe (ed), *The Demand for Public Transport: A Practical Guide* (TRL Ltd, Rep No 593, London 2004).

considered an integral part of the public transport system. Indeed, taxis are the longest surviving form of transport available to the public. The origins of carriages available for hire by the public can be traced back to the early years of the 17th Century, when they stood in stables or yards of the principal inns,⁵ thereby predating other forms of public transport by at least 200 years. However, the classification of taxis as public transport is not just historical. The Transport Act 1985 defines ‘public passenger transport services’ as, ‘all those services on which members of the public rely on getting from place to place, when not relying on private facilities of their own’.⁶ Many members of the public, particularly those who are vulnerable by reason of age, gender, disability or inebriation, rely on taxis for their transport needs.⁷

Concerns about the need to regulate the taxi trade surface only occasionally, and they are usually in response to some notorious incident or particularly tragic event involving taxi vehicles or drivers. Examples of such occurrences include the imprisonment of John Worboys, a London taxi driver convicted of a series of sexual assaults on female passengers,⁸ and, more recently, the case of Christopher Halliwell, a Swindon taxi driver convicted of the murder of a female passenger.⁹ Although such incidents are rare, when they happen they often lead to calls for stricter regulation of taxi services, such as those to limit drivers’ working hours following the death of Gary Glymond¹⁰ or for modifications to vehicles after the death of Razan Begum in

⁵ HC Moore, *Omnibuses and Cabs: Their Origin and History* (Chapman & Hall, London 1902).

⁶ Transport Act 1985, s 63(10)(a).

⁷ IBIS World, ‘Taxi Operation in the UK’ (Industry Report Number H49.320, January 2012) 12.

⁸ BBC News, ‘Cab driver jailed for sex attacks’ (21st April 2009) <<http://news.bbc.co.uk/news/uk-england-london-7931975>> accessed 22nd April 2009.

⁹ S Morris, ‘Taxi Driver Jailed for Sian O’Callaghan Murder’ *Guardian* (London 20 October 2012) 6.

¹⁰ BBC News, ‘Call to limit taxi drivers’ hours’ (16th August 2009) <<http://news.bbc.co.uk/news/uk-england-london-8203775>> accessed 1st September 2009. Gary Glymond died from injuries sustained after being hit by a taxi, the driver of which had been driving for more than 13 hours prior to the accident.

Birmingham in 2009.¹¹ Perennial stories in both national and local press concerning assaults on passengers,¹² the problems of unlicensed taxis,¹³ or taxis being removed from the roads because they are unroadworthy,¹⁴ add to the general impression that lack of effective regulation undermines the safety of the taxi using public.

And yet taxis and those who drive them are very strictly regulated, far more so than their counterparts in the bus and train industries. Regulation of the taxi trade is almost as old as the trade itself and encompasses all aspects of the service provided by taxis. Taxis are different from the other modes of public transport because they have always operated as independent private business enterprises; regulated by the state, but never state owned or subsidized.

Despite their widespread use and importance to the public transport industry, the regulation of taxis has generally been overlooked. The literature on the taxi trade has largely been limited to historical accounts of the development of the industry¹⁵ and analysis of certain aspects of the trade from personal memoirs and observations of former drivers.¹⁶ There is a significant body of work relating to economic regulation of the trade, but this is written by economists and focuses on the economic effects of what is termed the 'de-regulation' of the industry, primarily in the United States'

¹¹ Birmingham Mail, 'Birmingham Coroner Calls for New Taxi Restraints for Wheelchairs' (Birmingham 8 July 2009). Razan Begum died from injuries sustained when the wheelchair in which she was seated, and which had not been properly secured, moved during a taxi journey.

¹² Lancaster Guardian, 'Taxi driver found guilty of rape' (Lancaster 26 November 2010) 5.

¹³ T Kirk, 'Warning after sexual attacks by unlicensed taxi drivers double in a year' *Enfield Independent* (London 27 September 2010).

¹⁴ J Davenport, 'Raid on illegal minicabs ends in 25 arrests' *London Evening Standard* (London 23 February 2009).

¹⁵ G Gilbert and RE Samuels, *The Taxicab: An Urban Transportation Survivor* (University of North Carolina Press, Chapel Hill 1982).

¹⁶ JV Maresca, *My Flag Is Down* (EP Dutton, New York 1945); F Davis, 'The Cabdriver and His Fare: Facets of a Fleeting Relationship' (1959) 65(2) *American Journal of Sociology* 158.

market.¹⁷ Although some of these existing studies are empirically based, the approach taken is largely quantitative, with no qualitative analysis of the wider regulation of the market. Beyond this literature, there are no empirical research findings showing how or why the taxi trade is regulated or what regulation achieves. According to Toner, the lack of formal empirical work is due to the required evidence not being readily available.¹⁸ The evidence may not be easy to access, but it is available. As part of this study, I obtain and analyse some of the empirical data as an original contribution to knowledge in this under-researched area.

In this thesis, I consider the following questions. First, how are taxis regulated? In this first chapter, I describe the historical development of regulation of the taxi trade and the current legislative framework upon which it is based. I then consider the criticisms and limitations of this framework, from which I identify the research questions to be addressed in the rest of the thesis. Second, what is regulation trying to achieve? This involves an analysis of what is meant by regulation, and why is it necessary to regulate the taxi trade? This, in turn, enables me to examine the specific aims of taxi regulation, which forms part of the discussion in Chapter 2. In the rest of Chapter 2, I examine the theoretical bases underpinning the research questions. Third, how are the statutory framework and the theoretical models of regulation applied in practice? As a prelude to answering this question, in Chapter 3 I outline the methodology of the study. In chapters 4 to 7, I analyse the empirical findings of the research on the different aspects of regulation and how these connect to the legislative

¹⁷ Classic articles include PR Verkuil, 'The Economic Regulation of Taxicabs' (1970) 24 Rutgers Law Review 672; RD Eckert, 'The Los Angeles Taxi Monopoly: An Economic Inquiry' (1970) 43 South California Law Review 407; EW Kitch et al, 'The Regulation of Taxicabs in Chicago' (1971) 14 Journal of Law and Economics 285. The leading literature and the issues surrounding 'de-regulation' are reviewed in Chapter 2.

¹⁸ JP Toner, 'The Welfare Effects of Taxicab Regulation in English Towns' (2010) 40(3) Economic Analysis and Policy 299, 300.

and theoretical models outlined in earlier chapters. Finally, in chapter 8, I consider whether regulation of the trade achieves what it sets out to achieve. In this concluding chapter, I also reflect on the practical implications of the study and some suggested areas for further research.

2) Scope of the Research

In this research, I focus on the taxi, formally more correct hackney carriage, trade. Although the terms ‘taxi’, ‘hackney carriage’, ‘cab’, ‘mini-cab’, and ‘black-cab’ are used interchangeably in common parlance to mean a vehicle which can be hired by the public, so far as the law is concerned there are only three types of such vehicle: hackney carriages, London cabs and private hire vehicles.

Hackney carriages are defined as:

Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street...and every carriage standing upon any street...having thereon any numbered plate required...to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid.¹⁹

These vehicles operate from a rank or stand, may be ‘hailed’ in the street, and require no prior booking. The essence of a hackney carriage is its ability to stand or ply for hire in the street, regardless of the form or appearance of the vehicle. The phrase ‘plying for hire’ has acquired something of a technical meaning, but essentially refers to being actively available for immediate hire by the public.²⁰ London cabs are

¹⁹ Town Police Clauses Act 1847, s 38.

²⁰ *Eldridge v British Airports Authority* [1970] 2 QB 387, 396 (Donaldson J).

a specialized form of hackney carriage which operate within the metropolitan police district and City of London only.²¹ Private hire vehicles are defined by a process of elimination as being neither of the other forms of transport, but

...a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers.²²

Such a vehicle must be booked by the hirer through a licensed operator.²³

I have focussed on the hackney carriage trade for four main reasons. Hackney carriages are the original form of public transport, they have a longstanding legislative history, they have their own self-contained regulatory regime, and they are, so far as the law is concerned, the only true form of 'taxi'. Although most members of the public do not distinguish between hackney carriages and private hire vehicles, technically private hire vehicles are not taxis and do not form part of the public transport system.²⁴

Hackney carriages are regulated in all aspects of their operation, including entry into the market, qualitative regulation of both vehicles and drivers, and fares. Private hire vehicles are subject to qualitative regulation of the vehicles, drivers and operators only. There is, therefore, greater scope for investigating the nature of regulation of the taxi trade by concentrating on hackney carriages. Furthermore, the inclusion of private hire vehicles may lead to duplication of work and confusion. Whilst I

²¹ Metropolitan Public Carriage Act 1869, s 2 and s 4

²² Local Government (Miscellaneous Provisions) Act 1976, s 80(1).

²³ Local Government (Miscellaneous Provisions) Act 1976, s 46, s 55 and s 80(1).

²⁴ Transport Act 1980, s 64(3).

acknowledge that there are many areas of qualitative regulation which are common to both types of vehicle, focussing on hackney carriages will reduce the work necessary to explore the issues of regulation. This will enable areas of similarity or difference to be highlighted where this will be instructive, rather than to repeat provisions which are similar and then point out the areas of difference.

In addition, the research focuses on the regulation of hackney carriages in England and Wales outside London. Historically the regulation of hackney carriages began in London, and the capital has always had its own regulatory regime detached from the rest of the country. That regime is currently set out in the Metropolitan Public Carriage Act 1869 and applies to London cabs only. Because London was the first city to regulate taxi services, and has always had the largest concentration of both taxis and taxi users, it has always been regarded as something of a ‘special case’ deserving of its own regulatory regime.²⁵ The regulation of taxis had been in existence for many years, and had undergone many changes, before any form of regulation was introduced in the provinces. However, the number of licensed hackney carriages in the remainder of England and Wales is numerically greater than in London (52,000 compared with 21,800)²⁶ and the regulatory regime covers a wider geographical area, involving a total of 315 local authorities.²⁷ For this reason, I focus the research on the

²⁵ Law Commission, *Reforming the Law of Taxi and Private Hire Services* (Law Com CP No 203, 2012) [2.5] and [14.5]. The Law Commission, whilst acknowledging that there are strong arguments for keeping London as a separate regime, have invited views on whether a reformed regulatory framework for the rest of the country should be applied to the capital also. The arguments raised by this issue are beyond the scope of this research.

²⁶ Department for Transport, ‘Transport Statistics Great Britain 2009’ (London 2009). These figures represent the position as at April 2008.

²⁷ Office for National Statistics, ‘Geography of Local Authorities in Great Britain’ <<http://www.statistics.gov.uk/geography/counties>> accessed 18th October 2010. This total represents metropolitan district councils, unitary authorities, non-metropolitan district councils and Welsh councils.

remainder of England and Wales,²⁸ in order to produce a wider divergence of views on how the regulatory powers are, and ought to be, used. I acknowledge that there are overlapping themes and issues, and I refer to other regimes where this would be instructive.

3) Historical Background and Legislative Framework

Hackney carriages first became available for hire in a public street in 1634, when one Captain Baily set four hackney coaches to stand for public hire at the Maypole in the Strand in London.²⁹ The service proved so lucrative that within a year the King found it necessary to issue a Royal Proclamation forbidding the ‘multitude and promiscuous use of coaches’ within London and Westminster.³⁰ This first attempt to regulate the use of hackney carriages was prompted by complaints that they caused congestion and damage in the streets, and by petitions from the Company of Watermen, the incumbent suppliers of publicly hired transport, who feared the new mode of travel would deprive them of their livelihoods.³¹ However, the absence of a police force or any other official regulator meant that this edict was impossible to enforce.³² A system of licensing for hackney carriages was first introduced in 1654, when Parliament imposed a limit of 400 on the number of carriages in London.

²⁸ The City of Plymouth has had its own regulatory regime for both hackney carriages and private hire vehicles by virtue of private Acts, the Plymouth City Council Acts 1975 and 1987, but the hackney carriage regime is essentially the same as for the rest of England and Wales. Plymouth is therefore included within the scope of the research.

²⁹ Moore (n 5) 36; WT Jackman, *The Development of Transportation in Modern England* (2nd edn, F Cass and Co, London 1962) 112.

³⁰ ‘A Proclamation for the Restraint of Excessive Carriages to the Destruction of the High Wayes’ (1st November 1635) *Proclamations, II Chronological Series, Charles II [1625-1649]*. Hired carriages were permitted so long as they were to travel at least three miles out of London, Westminster, ‘or the suburbs thereof’.

³¹ AE Pratt, *A History of Inland Transport and Communication in England* (Kegan Paul, Trench, Trübner and Co, London 1912).

³² *Gilbert and Samuels* (n 15) 14-15.

Responsibility for the granting and regulation of licences was placed in the hands of the Court of Aldermen.³³ These legislative provisions, however, were limited in their geographical scope in that they only applied to hackney carriages operating within the City of London. In the rest of England and Wales, the taxi trade remained unregulated for almost another 200 years. Nonetheless, the issues raised by these early attempts at regulation, as will be seen, still resonate across the whole country today.

The current regulatory framework for England and Wales is based on two main statutory provisions; the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The modern system of taxi regulation only began in 1985 with two major amendments to the main Acts, introduced by the Transport Act 1985.

The 1847 Act was the first attempt to regulate the hackney carriage trade outside the City of London. The Act is modelled on the London regulatory regime, in that control of the taxi trade is to be achieved by a system of licences. The licensing authority is provided with the power to grant licences in respect of the hackney carriage itself³⁴ (the vehicle licence) and a separate licence for the driver³⁵ (the driver's licence). In order to operate legitimately both licences must be held simultaneously at the time the vehicle is standing or plying for hire or is being driven, whether hired or not.³⁶ The statutory framework also employs a separate, but linked, regulatory technique in respect of fares by fixing a maximum price. I consider the use of this mechanism in its

³³ 'An Ordinance for the Regulation of Hackney Coachmen in London and the places adjacent' in CH Frith and RS Rait (eds), *Acts and Ordinances of the Interregnum 1642-1660* (HMSO, London 1911) 922-924.

³⁴ Town Police Clauses Act 1847, s 37.

³⁵ *ibid* s 46.

³⁶ *Hawkins v Edwards* [1901] 2KB 169; *Yates v Gates* [1970] 1 All ER 754.

context of fare regulation. In common with all licensing regimes, regulation of the taxi trade operates as what has been termed a ‘command and control’ type system,³⁷ with the licensing requirements enforced by criminal sanctions for operating without the relevant licences.³⁸

The legislation structures control over the trade in the following ways: by delegating responsibility for regulation to an identified regulator; controlling entry to the trade; imposing post-entry controls over the quality of service; fare regulation; and the granting of enforcement powers. I consider how each of these is used in turn.

a) Identity of the regulator

The licensing authority responsible for the application and enforcement of the regulatory regime is the local unitary, district or borough council in England, or its equivalent in Wales. The 1847 Act originally placed responsibility for the regulation of hackney carriages in the hands of local improvement commissioners. Such a step was not unusual at the time, and should be seen in its historical context. The Act was passed only 12 years after the creation of local councils in their recognizable modern form under the Municipal Corporations Act 1835. Prior to this date, local municipal functions were frequently performed by special ad hoc bodies, such as commissioners or local boards.³⁹ The corporations which existed before 1835 were viewed as being beset by twin evils of corruption and inefficiency,⁴⁰ and even after the 1835 Act, ‘it was impossible by the stroke of a pen to get rid of the deep rooted mistrust of

³⁷ AI Ogus, *Regulation: Legal Form and Economic Theory* (Clarendon Press, Oxford 1994) 79.

³⁸ Town Police Clauses Act 1847, s 45 and s 47.

³⁹ J Redlich and FW Hirst, *The History of Local Government in England* (B Keith-Lucas (ed), Macmillan, London 1958) 125.

⁴⁰ PP Craig, *Administrative Law* (6th edn Sweet & Maxwell, London 2008) 62.

municipal authorities'.⁴¹ This mistrust continued for many years, leaving many administrative functions still in the hands of local commissioners. This situation changed with the passing of the Public Health Act 1875, which brought the provisions of the 1847 Act under the responsibility of the urban district councils, in their capacity as the newly formed 'sanitary authorities'.⁴² The inclusion of taxi licensing would appear to have been almost coincidental, as it clearly has little to do with public health as such. The Public Health Act 1875 removed the commissioners' role altogether. From this point onwards, taxi regulation was the responsibility of the local authority.

However, initial control over the trade was weak, largely because the regime operated on an 'opt-in' basis. Local councils which wished to regulate taxi services in their area had either to pass a local 'Special' Act to apply the 1847 Act or, more commonly, pass a resolution to adopt the provisions of the legislative scheme of both Acts.⁴³ This was an important consideration, as there was no 'default' position of central government control. If the local council did not adopt the regulatory powers, there was no control at all over the conduct or standards of taxi drivers or their vehicles. Prior to 1985, out of the 360 district councils which then existed, 70 controlled taxis in only part of their area and a further 60 councils did not licence taxis at all.⁴⁴

This difficulty was remedied by the coming into force of section 15 of the Transport Act 1985. This section made responsibility for taxi licensing compulsory for all local authorities with effect from the 1st January 1987. This was a radical change to the

⁴¹ *Redlich and Hirst* (n 39) 137.

⁴² Public Health Act 1875, s 171(4)

⁴³ Town Police Clauses Act 1847, s 2; Local Government (Miscellaneous Provisions) Act 1976, s 45.

⁴⁴ HC Deb 21st May 1985, vol 79 col 946 (Michael Spicer MP, Transport Minister).

system, and may be seen as the introduction of the modern system of regulation of the taxi trade. All local councils are now compelled to take responsibility for the licensing of taxis throughout their area.

b) Control of entry to the trade

The provisions introduced by the 1847 legislation impose only loose control over both vehicles and drivers. Market entry is controlled merely by the need to obtain a licence. The Act does not fix upper limits on the number of licences which can be issued. Historically, such quantitative restrictions were placed on the numbers of vehicles, drivers and horses.⁴⁵ Although the maximum number of licences was gradually increased over the years, all such restrictions were removed from the London regime in 1831,⁴⁶ never to be reinstated. Outside London, the original section 37 of the 1847 Act provided that the licensing authority could licence 'such number of hackney coaches or carriages...as they think fit'. This meant that regulators could exercise a discretion to limit market entry by imposing an upper limit on the number of vehicle licences that they would grant for their area. The 1976 Act left the position on quantitative regulation unchanged. This traditional position was changed by section 16 of the Transport Act 1985, thereby creating one of the most divisive and enduring controversies within the taxi trade today.

Section 16 amends Section 37 of the 1847 Act, but it is both the manner and effect of the amendment which are the causes of confusion and controversy. The amended version of section 37 now reads:

⁴⁵ *Frith & Rait* (n 33) 922. The initial limits imposed under the 1654 Ordinance were 200 coachmen, 400 coaches and 600 horses.

⁴⁶ London Hackney Carriage Act 1831, s 2.

The commissioners may from time to time licence to ply for hire...hackney coaches or carriages...provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licences are granted, if, but only if, the person authorised to grant licences is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet.

Much criticism has been made about the wording of the new Section 37, particularly its use of double negatives. This makes the provision difficult to understand even by judges and legislators. The provision was variously described in the committee stage of the House of Lords as ‘quite incomprehensible’, ‘virtually unintelligible’, and both ‘a masterpiece of obscurity’ and ‘awful claptrap’.⁴⁷

The introduction of the amended version of section 37 has created a situation in which it is very difficult for local authorities to limit the number of taxi licences they grant.⁴⁸ The discretion previously vested in licensing authorities to determine the number of hackney carriage licences is removed, except in the very limited circumstances prescribed by the legislation. In order to restrict numbers, local authorities have to be able to demonstrate that there is no significant unmet demand for hackney carriage services in their area. According to some interpretations of the statutory provisions, in the absence of evidence that there is no significant unmet demand, the local authority has no discretion at all; a licence has to be granted.⁴⁹ The decision whether significant unmet demand exists is left to local authorities to interpret. Initially, councils were provided with only the vaguest of guidelines on what

⁴⁷ HL Deb 16th July 1985, vol 466, cols 618-679 (Lord Renton col 628; Lord Denning col 629; Lord Peyton of Yeovil cols 630-631 respectively).

⁴⁸ C Walker and I Cram, ‘Taxi Deregulation and the Courts’ (1991) 20 *Anglo-American Law Review* 482.

⁴⁹ *R v Reading Borough Council ex p Egan* [1990] RTR 399.

significant unmet demand meant,⁵⁰ but it is now widely accepted that it has to be established on the basis of an expert survey.⁵¹ Central government has endorsed this position and indicated that councils can only base their assessment of significant unmet demand on such a survey carried out every three years.⁵²

The 1847 Act gives no express power to control entry to the market on the basis of the quality of vehicles or drivers. The open wording of section 37 and section 46 of the Act suggests that any one who requests a vehicle or driver's licence has to be granted one. So far as vehicle licences are concerned, this is in contrast to the position for private hire vehicles, which must be considered suitable, safe and comfortable for use as such a vehicle before a licence may be granted.⁵³ It has been argued that, since the amendment to section 37 of the 1847 Act, local authorities do not have the power to control vehicle entry on the grounds of quality. This results in the possibility that an unroadworthy vehicle could be licensed as a hackney carriage. In *R v Reading BC ex p Egan*,⁵⁴ Nolan J held that the effect of section 16 of the Transport Act 1985 was that councils had no discretion other than to grant a licence if there was no significant unmet demand.⁵⁵ However, in *Ghafoor v Wakefield MBC*,⁵⁶ Webster J held that the words 'for the purpose of limiting the number of hackney carriages' contained in section 37 indicated that local authorities still retain discretion to refuse to grant a licence so long as the purpose of doing so is something other than limiting numbers. The practical effect of restricting entry by reference to quality standards is to limit the

⁵⁰ Department for Transport Circular 3/85.

⁵¹ *R(North Devon HCOA) v North Devon District Council* [1999] EWHC 503 (Admin).

⁵² *Department for Transport, 'Best Practice Guidance'* (n 2) [49].

⁵³ Local Government (Miscellaneous Provisions) Act 1976, s 48(1).

⁵⁴ [1990] RTR 399.

⁵⁵ Transport Act 1985, s 16.

⁵⁶ [1990] RTR 389.

numbers of hackney carriages ‘by the back door’.⁵⁷ There can only be a finite number of vehicles that are able to meet the quality standards.⁵⁸ The obvious conflict between these authorities remains unresolved.

Historically, the power to grant a licence to a driver was unqualified and open-ended,⁵⁹ and there is no express power to limit numbers of drivers in any circumstances. The wording of the London regime suggests that an applicant has a right to a licence unless a specific disqualification applies,⁶⁰ but the provisions of the 1847 Act are worded differently and are simply left open. Some licensing authorities took the view that to be granted a licence was a personal privilege not a right, and so believed they had unqualified discretion to grant or refuse a licence.⁶¹ It was never made clear upon what basis this discretion was to be exercised.

The 1976 Act introduced, for the first time, quality pre-conditions for the grant of a driver’s licence. Entry to the market is now limited to only those applicants who can satisfy the licensing authority that he or she is both a ‘fit and proper person’ to hold a licence and has held an ordinary driving licence for a minimum period of twelve months.⁶² Local authorities are directed to refuse an application for a driver’s licence ‘unless they are satisfied’⁶³ that the applicant meets these two conditions. This position may be contrasted with that of private hire drivers, where an application must

⁵⁷ *Walker and Cram* (n 48) 488.

⁵⁸ As was successfully argued in *R v Cambridge City Council ex p Buckshall* (Cambridge Crown Court, January 1987), where the Crown Court struck down a requirement that all new applications for vehicle licenses had to be from wheelchair accessible vehicles as it was an attempt to cut down the numbers of new applicants.

⁵⁹ Town Police Clauses Act 1847, s 46.

⁶⁰ *R v Metropolitan Police Commissioner ex p Holloway* [1911] 2 KB 1131.

⁶¹ *Banton v Davis* (1891) 66 LT 192.

⁶² Local Government (Miscellaneous Provisions) Act 1976, s 59.

⁶³ *ibid* s 59(1)(a)

be granted to those applicants who meet the same statutory standard.⁶⁴ There is no explanation why the power to grant a hackney carriage driver's licence remains discretionary.

There is no statutory definition of the phrase 'fit and proper person'. The only assistance available to councils in interpreting this requirement comes from the courts, and even that is of limited benefit. Lord Bingham described 'fit and proper person' as,

a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used.⁶⁵

More specifically in the context of taxi licensing, the same judge had said in an earlier case that applicants had to be

safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest and not persons that would take advantage of their employment to abuse or assault passengers.⁶⁶

Strictly speaking this was an *obiter* observation, since *McCool* concerned an application for a private hire driver's licence and the court was not attempting to define a 'fit and proper person'. Nonetheless, the principle has come to be applied by licensing authorities in both hackney and private hire cases when it comes to making their assessment of whether applicants have satisfied this requirement.

⁶⁴ Local Government (Miscellaneous Provisions) Act 1976, s 51(1).

⁶⁵ *R(RBNB) v Warrington Crown Court* [2002] UKHL 24; [2002] 1 WLR 1954 [9]. This case concerned the meaning of 'fit and proper person' under the provisions of Licensing Act 1964, s 3(1), now repealed.

⁶⁶ *McCool v Rushcliffe BC* [1998] 3 All ER 889, 891f (Lord Bingham CJ).

c) Post-Entry Regulation

After licences have been granted, local authorities have powers to impose quality standards on both vehicles and drivers. Under the 1847 Act, these powers are weak and restricted, but much wider controls are provided for in the 1976 Act.

The 1847 Act attempts to regulate certain aspects of vehicle and driver quality by the creation of specific criminal offences. So, in the case of vehicles, there is an offence of failing to display a hackney plate.⁶⁷ Offences which relate directly to driver misconduct include refusal to drive a passenger,⁶⁸ driving whilst intoxicated, furious driving or ‘other wilful misconduct’ endangering life, limb or property.⁶⁹ These somewhat crude efforts to impose quality standards through the criminal law are the only particular offences about the state of vehicles or the conduct of drivers provided by the 1847 Act.

However, under the 1847 Act, the licensing authority also has the power to regulate vehicles through local byelaws.⁷⁰ Byelaws are a form of delegated legislation and, if validly promulgated, have the ‘force of law within the sphere of [their] legitimate operation.’⁷¹ The scope of any byelaws in relation to taxi vehicles is, however, limited by the statute to the manner of display of the vehicle’s licence number, regulation of

⁶⁷ Town Police Clauses Act 1847, s 52. ‘Plate’ refers to the wooden, metal or, more commonly nowadays, plastic sign issued to taxi owners to be affixed externally to the vehicle as a visible display that the vehicle is a licensed hackney carriage.

⁶⁸ Town Police Clauses Act 1847, s 53. The Act provides that the offence is committed only if the refusal is ‘without reasonable excuse’. There is no authoritative guidance on what might be considered such an excuse, nor is it clear where the burden of proof lies to establish or disprove its existence. The only reported case on the section is *Shepherd v Hack* (1917) 117 LT 154, where opinion was divided on these points, which were *obiter* to the main issue in the case in any event.

⁶⁹ Town Police Clauses Act 1847, s 61.

⁷⁰ Town Police Clauses Act 1847, s 68.

⁷¹ *Kruse v Johnson* [1898] 2QB 91, 96 (Lord Russell CJ).

the numbers of persons to be carried, and the manner in which the vehicle is furnished.⁷² Quality standards relating to, for example, the structural and mechanical condition of the vehicle are not included within the range of the byelaws. The same legislative provision also includes powers to regulate ‘the conduct of proprietors and drivers’.⁷³ There is nothing further specified in the legislation about how, or indeed why, the conduct of the proprietor, that is the legal owner or registered keeper of the vehicle,⁷⁴ needs to be controlled. In the case of drivers, byelaws may stipulate how they are to conduct themselves generally, as well as making specific rules regarding the wearing of badges, drivers’ times of work, and the safe custody and return of customers’ property.⁷⁵ As in the case of the specific offences, byelaws rely on the threat of criminal sanctions in the event of a breach.

The 1976 Act introduced, for the first time, an express power for local authorities to impose conditions upon any hackney vehicle licence granted by them. The only qualification to this provision is that the conditions must be considered ‘reasonably necessary’.⁷⁶ The statutory wording begs the question ‘reasonably necessary for what?’, but the legislation does not answer this. There is specific provision that conditions may include a requirement that hackney carriages be of such design or appearance or bear such distinguishing marks as to clearly identify them as hackney carriages.⁷⁷ However, this is a discretionary rather than a mandatory power. The ability to subject licence holders to conditions enables local authorities to regulate the quality of vehicles licensed as taxis. This represents a different approach to regulation

⁷² Town Police Clauses Act 1847, s 68.

⁷³ *ibid* s 68.

⁷⁴ Local Government (Miscellaneous Provisions) Act 1976, s 80(1).

⁷⁵ Town Police Clauses Act 1847, s 68.

⁷⁶ Local Government (Miscellaneous Provisions) Act 1976, s 47(1).

⁷⁷ Local Government (Miscellaneous Provisions) Act 1976, s 47(2).

than simply relying upon the criminal law. No specific penalty is set for breach of a licence condition, but the licence holder may be exposed to administrative sanctions.⁷⁸

Beyond the criminal and breach of byelaw offences mentioned above, there are no specified means of regulating the quality of service provided by a driver. In particular, there is no express power to attach conditions to the grant of a hackney carriage driver's licence. In *Wathan v Neath and Port Talbot CBC*,⁷⁹ the Court held that there is no implied power to do so either, and consequently any control that councils wish to exercise over the behaviour of taxi drivers can only be exercised under byelaws promulgated under the provisions of section 68 of the 1847 Act.⁸⁰

d) Fixing of fares

The 1847 Act permitted byelaws to be made in respect of the fixing and calculation of fares or rates of fares,⁸¹ but this power is superseded by a specific statutory scheme introduced by the 1976 Act.⁸² Control of fares has two stages; fare setting, which is carried out under the statutory powers, and the regulation of that set fare.

The first stage is not strictly part of the licensing regime in itself, but is a form of price fixing, a separate method of regulation on its own.⁸³ The statutory scheme provides a mechanism for the setting of fares involving publication and the opportunity for public consultation before the fare rates are fixed. There are no

⁷⁸ I describe the enforcement powers available to local authorities in section 3e) of this chapter.

⁷⁹ [2002] EWHC 1634 (Admin)

⁸⁰ *ibid* [25] (Sir Edwin Jowett).

⁸¹ Town Police Clauses Act 1847, s 68.

⁸² Local Government (Miscellaneous Provisions) Act 1976, s 65.

⁸³ *Ogus* (n 37) 295.

guidelines on the precise amount of the fares that can be set, and this is left to local authorities to determine. The fare set is a maximum fare, and the local authority has no control over the actual fare charged within that upper limit.

Once set, however, fares are regulated by the same instruments as other forms of post-entry regulation, namely criminal offences, byelaws or conditions attached to the vehicle licence. Specific offences relating to fares created by the 1847 Act include: charging more than the ‘legal’ fare;⁸⁴ demanding payment above the ‘legal’ fare;⁸⁵ demanding more than the agreed fare (even if this is less than the ‘legal’ fare);⁸⁶ and travelling a lesser distance for an agreed sum than would have been permitted by the ‘legal’ fare.⁸⁷ The 1976 Act added new criminal offences of overcharging for journeys travelling outside the licensed area,⁸⁸ or when the hackney carriage is used to fulfil a private hire booking.⁸⁹ A new offence of unnecessarily prolonging a journey by time or distance is also created by the 1976 Act.⁹⁰ In all these offences, regulation of the fare depends upon the local authority having first fixed a ‘legal’ fare. Before the Transport Act 1985 introduced compulsory regulation of the trade, many authorities failed either to adopt the legislation or set a fare, and so the regulation of fares was largely weak and difficult to enforce. All councils are now responsible for setting fares throughout their area.

⁸⁴ Town Police Clauses Act 1847, s 58. The ‘legal’ fare for these purposes being that set by the local authority under byelaws or, after 1976, the statutory scheme.

⁸⁵ Town Police Clauses Act 1847, s 55.

⁸⁶ *ibid* s 54.

⁸⁷ *ibid* s 56.

⁸⁸ Local Government (Miscellaneous Provisions) Act 1976, s 66.

⁸⁹ *ibid* s 67.

⁹⁰ *ibid* s 69.

Regulation of fares is now inextricably linked with the licensing system. Local authority byelaws or vehicle licence conditions commonly require taxis to be fitted with taximeters in order to record accurately the ‘legal’ fare, although there is no statutory requirement for taxis to be equipped with meters.⁹¹ The courts have ruled that the real effect of a licence condition that all vehicles be fitted with taximeters is ‘to impose a condition as to the fares that [can] be charged.’⁹²

e) Enforcement powers

Local authorities may prosecute for any contraventions of the taxi licensing regime which constitute a criminal offence.⁹³ So a licence holder who commits any of the offences relating to vehicle standards, conduct of drivers or fare regulation mentioned in the preceding sub-sections, may face prosecution. Alternatively, or additionally, councils have the power to remove a licence administratively, either temporarily by way of suspension or permanently by revocation or refusal to renew.⁹⁴

Once a licence is granted, there are only very limited powers under the 1847 Act to remove them. Licences for vehicles expire by effluxion of time. Vehicle licences are granted for just one year.⁹⁵ There is no time limit on a driver’s licence under the 1847 Act, but a statutory maximum limit of three years is created by the 1976 legislation.⁹⁶

⁹¹ The enforced use of taximeters by byelaw or licence condition is discussed further in chapter 5 section 4.

⁹² *Parsons v South Kesteven District Council* (Lincoln Crown Court, November 1996) [17] (Judge Pollard).

⁹³ Local Government Act 1972, s 222. This is the general power that local authorities possess to prosecute offences ‘for the promotion or protection of the interests of inhabitants of their area’.

⁹⁴ Local Government (Miscellaneous Provisions) Act 1976, s 60 (vehicle licences) and s 61 (driver’s licences).

⁹⁵ Town Police Clauses Act 1847, s 43.

⁹⁶ Local Government (Miscellaneous Provisions) Act 1976, s 53(1)(b). The local authority may specify a lesser period than the three year maximum.

Licence holders have to apply to renew on expiry of the licence, subject to the statutory criteria for renewal.

The only ground upon which a vehicle or driver's licence may be suspended or revoked under the 1847 Act is if the respective licence holder is convicted of two hackney carriage regulatory offences.⁹⁷ This can be any two relevant offences, not necessarily the same offence twice.⁹⁸ This power to withdraw a licence is directly linked to offences connected to the taxi trade rather than misconduct by the proprietor or driver away from the regulated activity. The power to remove a licence under the 1847 Act is broadened by powers to suspend, revoke or refuse to renew a licence introduced by the 1976 Act. Under the later Act, the local authority may suspend or revoke or refuse to renew a vehicle licence where the vehicle is unfit for use as a hackney carriage or the driver is convicted of a taxi regulatory offence or the 'catch all' provision of 'any other reasonable cause'.⁹⁹ The driver conviction ground is difficult to justify, as it appears to overlook the fact that the vehicle licence is a separate licence and is issued to the vehicle, not the driver.¹⁰⁰ So far as the 'any other reasonable cause' ground is concerned, there is no guidance in the Act on the meaning of this phrase. It is interpreted very widely by the courts to 'cover anything and everything which might be regarded as a reasonable reason for depriving an operator of his vehicle licence.'¹⁰¹ The provision has been held to cover a proprietor charged

⁹⁷ Town Police Clauses Act 1847, s 50.

⁹⁸ *Bowers v Gloucester Corporation* [1963] 1 All ER 437.

⁹⁹ Local Government (Miscellaneous Provisions) Act 1976, s 60(1).

¹⁰⁰ *R. v Weymouth Corporation, ex p Teletax (Weymouth) Ltd* [1947] KB 583

¹⁰¹ *Norwich City Council v Thurtle and Watcham* (DC, 21st May 1981, Comyn J). This case involved a private hire vehicle proprietor convicted of handling stolen car seats, at least one of which was fitted in one of his licensed vehicles.

with, but not convicted of, a taxi related public order offence.¹⁰² Beyond this specific example, interpretation of this ground is left entirely to the local authority.

In the case of drivers, the 1976 Act empowers councils to suspend, revoke or refuse to renew a licence, where the driver is convicted of a single offence under the regulatory regime or for an offence involving violence, dishonesty or indecency. As with vehicle licences, there is also an ‘any other reasonable cause’ ground for removing a driver’s licence.¹⁰³ There is no indication what this phrase means in the case of drivers either, but has been interpreted by the courts to cover a multitude of activities judged unacceptable in the eyes of the local authority. Specific examples of the application of this ground in the case of drivers include non-disclosure of penalty points on a driving licence,¹⁰⁴ non-disclosure of a police caution,¹⁰⁵ and being charged with a non-taxi related offence which, if proved, would call into question the suitability of the driver to hold a licence.¹⁰⁶ This ground provides local authorities with very broad powers to remove a licence.

The local authority’s powers were strengthened further in 2007, when an amendment permitted revocation or suspension of a driver’s licence with immediate effect rather than the normal period of 21 days after service of the notice of revocation or suspension.¹⁰⁷ This power may only be exercised where ‘it appears that the

¹⁰² *Leeds City Council v Hussain* [2002] EWHC 1145; [2003] RTR 13.

¹⁰³ Local Government (Miscellaneous Provisions) Act 1976, s 61(1).

¹⁰⁴ *Melton v Uttlesford District Council* [2009] EWHC 2845.

¹⁰⁵ *Stockton-on-Tees Borough Council v Latif* [2009] EWHC 228.

¹⁰⁶ *Milton Keynes District Council v Edwards* [2004] EWHC 267. The charge in this case was an offence under the Public Order Act 1986 following what was described as a ‘vociferous and public’ argument between the licence holder and a councillor with whom he had a dispute. The licence holder was acquitted of the criminal charge at trial, but the High Court held that the decision to suspend his licence on the ‘any other reasonable cause’ ground was lawful.

¹⁰⁷ Road Traffic Act 2006, s 52(2) which added Local Government (Miscellaneous Provisions) Act 1976, s 61(2A) and s 61(2B).

interests of public safety require' the immediate removal of the licence.¹⁰⁸ The parameters of this provision, such as what might constitute 'the interests of public safety' or by what standard a threat to public safety is to be judged, have not yet been tested before the courts.

4) The Research Questions

There are six criticisms that can be made of the current legislative framework for taxi regulation. Because of the lack of research in this area, the disapproval is mostly derived by analogy with other areas of regulation or comes from judicial opinions in case law or from regulators themselves. The legislation is criticized on the grounds of lack of clear legislative aim; excessive discretionary power; local control; lack of clear beneficiary; ineffective enforcement powers; and that it is too old. I discuss these criticisms and use them as the basis of the research questions.

a) Lack of clear legislative aim

The aim of the legislation is by no means clear. There is nothing in the statutes which expressly states the legislative aim or objectives. This position can be contrasted with that under, for example, the Licensing Act 2003, where the statutory objectives are clearly set out in the Act.¹⁰⁹ Of course, the taxi regulatory system is not alone in having no stated legislative aims. This is quite common in many areas of regulation. It is suggested that the absence of such a statement is not necessarily a disadvantage. Rowan-Robinson et al believe that an explicit statement of objectives

¹⁰⁸ Local Government (Miscellaneous Provisions) Act 1976, s 61(2B).

¹⁰⁹ Licensing Act 2003, s 4(2) sets out the statutory objectives as: the prevention of crime and disorder; public safety; prevention of public nuisance; and protection of children from harm.

might precipitate conflict by providing a measure against which to judge performance, and the lack of specific legislative goals may be made good by the issuing of policy guidance by central government.¹¹⁰ However, surely the whole point of having a clearly stated objective is to measure performance of the statute in achieving its aim. How can the effectiveness or otherwise of legislation be gauged without knowing what it is trying to achieve? In the area of taxi regulation, central government policy guidance has been largely conspicuous by its absence.¹¹¹

The absence of such a statement appears not to give rise to much difficulty in practice. The courts consider that the general objective of an Act is often implicit in the legislation.¹¹² However, inferring a clear legislative aim from the statutes is problematic in the case of taxis. There has never been an Act aimed solely at the taxi business. The 1847 Act is, as its name suggests, a ‘Clauses’ Act. Bailey points out that such acts were common in the middle of the nineteenth century in order to produce a ready made set of laws to prevent the passing of multiple local acts.¹¹³ Clauses acts were designed to serve local efficiency rather than to regulate particular activities.¹¹⁴ The 1976 Act, whilst introducing some important provisions relating to hackney carriages, is directed mainly at the regulation of private hire vehicles, which until then had been completely unregulated. Both the 1847 and 1976 Acts cover other

¹¹⁰ J Rowan-Robinson, P Watchman and C Barker, *Crime and Regulation: A Study of the Enforcement of Regulatory Codes* (T and T Clark, Edinburgh 1990) 289.

¹¹¹ The only notable exception being the Department for Transport’s ‘Taxi and Private Hire Vehicle Licensing: Best Practice Guidance’ first issued in March 2006 and updated in October 2010 (n 2). This document emphasises that it is just guidance and decisions on taxi licensing policy are for local authorities to make themselves (n 2) [2].

¹¹² *Mixnam’s Properties Ltd v Chertsey UDC* [1965] AC 735; *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997.

¹¹³ SH Bailey, *Cross on Principles of Local Government Law* (2nd edn, Sweet and Maxwell, London 1997) [3-05].

¹¹⁴ *Redlich and Hirst* (n 39) 144.

aspects of local authority regulation besides taxis.¹¹⁵ The 1985 amendments are contained within a statute designed to liberalize the bus market.¹¹⁶

The lack of a clear legislative aim means that a number of different goals can be presented as the true aim of regulation. So, the first research question is ‘what is the aim of taxi regulation?’ I attempt to answer this question in Chapter 2.

b) Excessive discretionary power

The framework created by the legislation is couched in very broad discretionary terms, in that local authority regulators are able to make a choice about whether and how to exercise their statutory powers.¹¹⁷ The legislation uses the word ‘may’ in relation to the grant and removal of licences, and leaves vaguely worded judgments, such as ‘reasonably necessary’ or ‘fit and proper person’ in the context of quality standards, open to the interpretation of local authorities. There is little authoritative guidance for the regulators or the trade on how these provisions are to be interpreted or applied.

Whilst discretionary powers are said to have the advantage of flexibility, responsiveness to change and allow for the incremental formation of guidance, their use is criticised for failing to provide certainty, predictability and uniformity.¹¹⁸ It is

¹¹⁵ Other areas of regulation covered by the 1847 Act include: police constables, obstructions and nuisances in the street, fires, places of public resort, bathing machines, general finance, and recovery of penalties and damages. The 1976 Act also regulates highways, housing, heating, land, baths and bathing, places of entertainment, dangerous trees, and excavations.

¹¹⁶ Transport Act 1985; R Knowles (ed), *Implications of the 1985 Transport Bill* (Transport Geography Study Group, Salford 1985).

¹¹⁷ KC Davis, *Discretionary Justice: a Preliminary Inquiry* (Louisiana State University Press, Baton Rouge 1969) 4.

¹¹⁸ J Jowell, ‘The Legal Control of Administrative Discretion’ [1973] PL 178.

also said that those exercising public powers assume that discretion authorizes them to depart from legal rules for reasons of justice, practical necessity or expediency.¹¹⁹ At a pragmatic level, in the specific context of the taxi trade, the courts have stated that the exercise of the local authority's discretion in such matters is, if used in good faith, 'largely unfettered and difficult to challenge.'¹²⁰

And so the second research question is whether the exercise of discretionary powers by the local authority is used appropriately to achieve the regulatory aim. I try to answer this question in Chapters 4 and 5.

c) Local control

The regime by which taxis are regulated is undeniably a 'local' system. Each local authority is made solely responsible for licensing taxis and controlling fares in its area. Loughlin suggests that the grant of broad discretionary power to local authorities can be viewed in one of two ways; either to enable councils to adapt centrally formulated services to specific local conditions and needs or for local representatives themselves to determine service levels, policies and priorities.¹²¹ In the case of taxi regulation, the latter view is clearly the correct one. In *Stockton-on-Tees Borough Council v Fidler*,¹²² Langstaff J said

¹¹⁹ DJ Galligan, *Discretionary Powers: A Legal Study of Official Discretion* (Clarendon Press, Oxford 1986) 46.

¹²⁰ *R v Great Yarmouth Borough Council ex p Sawyer* [1989] RTR 297, 298(Woolf LJ).

¹²¹ M Loughlin, *Local Government in the Modern State* (Sweet & Maxwell, London 1986) 4.

¹²² [2010] EWHC 2430 (Admin); [2011] RTR 23

the scheme is not one of national regulation, merely administered locally. If it were, there would be no room for different councils to adopt differing requirements of applicants for the relevant licences.¹²³

Because the system is locally based, this produces ‘localism’ in the sense of local decision making being prioritized over other forms of governance.¹²⁴ It has been said that localism is ‘inherent in the exercise of regulation in the taxi trade.’¹²⁵ The advantage of local control over regulation by a central body is said to be that local councils are in a better position to judge local needs and make choices that meet local circumstances or fulfil local purposes than national government.¹²⁶ However, local authority regulation creates concerns about the opportunity for political bias and influence in decision making and the lack of expertise of those taking decisions, particularly amongst the elected representatives.¹²⁷

So the third research question is whether taxi regulation should remain under local authority control, or is there a case for a centralized national system. I try to answer this question also in Chapters 4 and 5.

d) Lack of clear beneficiary

This point is connected to the three previous questions. As a result of the lack of legislative aim, the grant of discretionary power and the local nature of regulation, it is not clear who benefits from the regulatory system. Some writers suggest that all

¹²³ *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin); [2011] RTR 23 [70].

¹²⁴ J Coles, Y Cooper and N Raynsford, *Making Sense of Localism* (Smith Institute, London 2004).

¹²⁵ *Newcastle CC v Blue Line Taxis Ltd* [2012] EWHC 2599 (Admin); [2013] RTR 8 [80] (Hickinbottom J).

¹²⁶ JD Stewart, *Local Government: the Conditions of Local Choice* (Allen & Unwin, London 1983) 3

¹²⁷ BM Hutter, *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (Clarendon Press, Oxford 1988) 171-2.

regulation in general is for the benefit of the public.¹²⁸ Others portray regulation of any industry as protecting the position of established firms against competition.¹²⁹ Another view is that regulators pursue their own interests in order to gain ascendancy over the regulated population.¹³⁰ In relation to taxi regulation, it has been suggested that local authorities regard licensing as a ‘cash cow’¹³¹ and thereby seek to benefit financially from the regulatory scheme.

So the fourth research question is who benefits from regulation and what are the implications of this for achieving the regulatory aims? I look at these issues in Chapter 6.

e) Limited enforcement powers.

The enforcement powers provided by the legislation still rely in a large part on the command and control style of regulation. Such systems have been criticized since the 1980s as being deficient, because they are considered ineffective in comparison with other regulatory approaches, such as administrative action.¹³² Although the taxi legislation also provides for administrative enforcement through the power to remove licences, this method still relies to some extent on the power to coerce, through either actual or threatened withdrawal of a licence-holder’s livelihood.

¹²⁸ RA Musgrave, ‘The Public Interest: Efficiency in the Creation and Maintenance of Material Welfare’ in Friedrich CJ (ed), *Nomos V: The Public Interest* (Atherton, New York 1962) 108.

¹²⁹ R Nozick, *Anarchy, State and Utopia* (Blackwell, Oxford 1974) 274.

¹³⁰ M Clarke, *Regulation: The Social Control of Business Between Law and Politics* (Macmillan, Basingstoke 2000) 117.

¹³¹ Law Commission Advisory Group on Taxi and PHV Regulation, ‘Minutes of Meeting’ 22nd November 2011 [7] (J Button).

¹³² S Breyer, *Regulation and Its Reform* (Harvard University Press, Cambridge Mass 1982); R Baldwin, M Cave and M Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press, Oxford 2010) 8-9.

Enforcement of the legislation produces the fifth research question, which is whether the enforcement powers provided to regulators are used appropriately and are sufficient to achieve the regulatory aims? I attempt to answer this question in Chapter 7.

f) Legislation is too old

It has not gone unnoticed in governmental and judicial circles that the main statute governing taxis is now over 160 years old and entered the statute book in the days when hackney carriages were pulled by horses. As long ago as 1962, questions were raised in Parliament about whether the government intended to repeal the 1847 Act on the grounds that it was specifically aimed at horse drawn hackney carriages.¹³³ At that time the government declined, stating that the provisions applied to all wheeled carriages irrespective of their means of propulsion.¹³⁴ There have been a number of adverse comments by the judiciary about the system being an old regime and unsuited to modern practices. This too is not a recent phenomenon. Over 50 years ago it was commented that the advent of private hire businesses rendered the legislation out of touch with reality.¹³⁵ More recently, in *North Tyneside DC v Shanks*, Latham LJ commented that the Act may look too restrictive in the light of modern communication systems.¹³⁶ Other judges have commented that the trade has not kept pace with the demands of modern business practice.¹³⁷

¹³³ HC Deb 26th July 1962, vol 663, col 177 (Sir Barnett Janner).

¹³⁴ *ibid* 26th July 1962, vol 663, col 177W (Henry Brooke, Home Secretary).

¹³⁵ *Cogley v Sherwood* [1959] 2 QB 311, 328 (Donovan J).

¹³⁶ [2001] EWHC Admin 533 (DC) [9].

¹³⁷ For example, Mitting J in *Key Cabs Ltd (t/a Taxifast) v Plymouth City Council* [2007] EWHC 2837 Admin; [2008] RTR 11 [30].

However, some members of the judiciary still view the legislation with some fondness. In *R(Shanks) v Northumberland County Council*, Foskett J said,

I should be disappointed not to be able to record in one judgment during my judicial career the terms of an Act passed 165 years before the judgment is formulated that still has a relevance to contemporary everyday life.¹³⁸

The main source of criticism about the age of the legislation is from those who are responsible for applying it on a day to day basis - the local authority licensing officers. During the course of the interviews that formed part of this study, the one common theme to emerge, in fact the only one upon which all the respondents agreed, was that the legislation was 'too old', 'outdated' and 'in need of updating'.

It is certainly true that the draftsmen of the 1847 Act could not have envisaged the sort of wheeled vehicle regulated by their Act today. What worked well for horse drawn vehicles may not necessarily work as effectively in the current climate of digital technology and instant communication. On the other hand, I think it is quite remarkable that there has been so little litigation challenging the regulatory powers of the local authorities over the years. It could be argued that for a piece of legislation to survive so long, relatively unscathed, it must be working reasonably well. As the findings of this research indicate, any deficiencies that exist with the regulatory system are as a result of the way in which the legislation is interpreted and applied, not as a result of its age as such. Nonetheless, I consider the question whether modernizing the law to reflect current lifestyles and business practice, as suggested by

¹³⁸ *R(Shanks) v Northumberland County Council* [2012] EWHC 1539 (Admin); [2012] RTR 36 [27].

the Law Commission in their recent consultation paper,¹³⁹ will make regulation more effective. I address this question in Chapter 8.

In this chapter, I have outlined the current legislative framework within which the taxi trade is regulated. The statutory scheme is undoubtedly old and in need of some modernization. How extensive any transformation of the existing system needs to be forms an important element of this study. I draw some conclusions on this point in the final chapter. The contemporary regime is subjected to a number of other criticisms of its efficacy, and I have discussed these in this chapter. These criticisms have formed the basis of the research questions which I endeavour to answer in subsequent chapters supported by the findings of the empirical part of the study. Ultimately, the measure of any regulatory regime is its effectiveness; does it achieve what it set out to achieve? The answer to this question in the context of local authority regulation of the taxi trade is the key ambition of this research. The first step in this undertaking, however, is to consider the nature of ‘regulation’.

¹³⁹ *Law Commission* (n 25).

CHAPTER 2: REGULATION - ITS THEORETICAL BASIS

There is a wide and diverse literature on the subject of regulation, and in this chapter I review some of the literature in order to gain an insight into the theoretical concept and nature of regulation. An understanding of the notion of regulation will help a clearer picture to emerge of the ideas which support the legislative framework outlined in Chapter 1. It is necessary to understand the theoretical underpinning of regulation as this sets the context of the study and provides a framework within which to measure the later empirical part of the research in subsequent chapters. Abstract conceptions of what regulation seeks to achieve and the methods by which it looks to do so will enable the findings of the study to be analysed to discover where theory and reality converge or diverge. This will then allow conclusions to be drawn on the effectiveness of the regulatory regime through an assessment of how real life measures up to the theoretical construct.

The chapter comprises six main sections. In the first section, I attempt to define 'regulation' and explore the justifications offered for its existence. As 'regulation' is crucial to the whole study, it is important to understand the sense in which the word is used and why the concept is considered necessary. However, as the purpose of the research is not to define regulation, this section merely considers the concept in the abstract sufficiently to understand the discussion which follows. In section two, I explore how theoretical models of regulation relate specifically to the taxi trade. The main purpose of this section is to identify the aim or aims of taxi regulation, thereby answering the first research question. In the third section, I consider the question of the exercise of discretion. The section contains a review of some of the main views

about discretion and its exercise from the literature. This will form the background to subsequent chapters in which I analyse the use of discretion and in particular the questions about whether licensing officials should have discretionary powers at all and how they exercise them when they do have them. In section four, I discuss the arguments about localism. These arguments will later be used to examine the issue whether local regulation is more appropriate to the taxi trade than national or regional control. In section five, I consider some of the academic debates about the beneficiaries of regulation generally. This analysis will provide a model against which to gauge who benefits from taxi regulation. Finally, in section six, I examine the issue of enforcement of regulation. Without enforcement no amount of regulation will be effective. The theories of enforcement reviewed in section six, particularly notions of different styles of enforcement and effectiveness of enforcement methods, will be mapped onto the styles and measures used by local authorities to assess whether enforcement is effective in achieving the aim of regulation.

1) What is 'regulation' and why is it needed?

Most people have a vague notion of what regulation is and what it entails, although producing a clear definition of 'regulation' is problematic. The word 'regulation' is said to carry a 'bewildering variety of meanings'¹ depending upon the context in which it is used, although it is generally agreed that 'regulation' involves an ongoing dynamic process rather than a static single outcome.² The purpose of this section is to reach an appropriate definition of 'regulation', in the sense of the regulatory process

¹ AI Ogus, *Regulation: Legal Form and Economic Theory* (Clarendon Law Series, Clarendon Press, Oxford 1994) 3.

² M Feintuck, *'The Public Interest' in Regulation* (Oxford UP, Oxford 2004) 8.

rather than a set of legal rules, which will be of value in understanding that term in the context of the taxi trade.

There have been many attempts to define ‘regulation’,³ but the most widely acknowledged definition is that provided by Selznick, who defined ‘regulation’ as, ‘a sustained and focused control exercised by a public agency over activities that are valued by a community.’⁴ Although this widely cited definition has its limitations,⁵ it identifies the essential factors of regulation in the context of this research. A taxi service is an activity valued by the community at large, that service is subject to continued monitoring and control through a licensing system, and that control is exercised by a public agency, namely the local council. For the purposes of this thesis, therefore, ‘regulation’ can be taken to mean ‘the ongoing process of control exercised by a public authority over activities valued by the general public’.

Having established this working definition of the term ‘regulation’, the next question is why regulation is considered necessary. At its most fundamental, according to Tombs, regulation exists because its absence historically resulted in the wide scale production of ‘death, injury and illness, destruction and despoliation, not to mention systematic cheating, lying and stealing.’⁶ Although this is a somewhat apocalyptic view of a world without regulation, it does serve to illustrate that the question ‘why regulate at all?’ is an important one.

³ BM Mitnick, *The Political Economy of Regulation: Creating, Designing and Removing Regulatory Forms* (Columbia UP, New York 1980) 4-7.

⁴ P Selznick, ‘Focusing Organization Research on Regulation’ in R Noll (ed), *Regulatory Policy and the Social Sciences* (University of California Press, Berkeley CA 1985) 363.

⁵ C Graham, ‘Self Regulation’ in G Richardson and H Genn (eds) *Administrative Law and Government Action: the Courts and Alternative Mechanisms of Review* (Clarendon Press, Oxford 1994).

⁶ S Tombs, ‘Understanding Regulation?’ (2002) 11 *Social and Legal Studies* 113

According to Breyer, the justification for any regulatory intervention is an alleged inability of the market place to deal with particular structural problems.⁷ Much of the literature on this subject draws a distinction between economic and social regulation, with a greater concentration upon the economic. This distinction is attributed to Stigler, for whom regulation was largely a political process reflecting a shifting power relationship between a mixture of diverse interest groups. On this view, larger economic interests, such as multi-national companies, seek state regulation of their sphere of economic activity in order to protect their own market position.⁸ By the same token, where industries tend towards monopoly because the costs of production are prohibitive to more than one supplier, then economic regulation provides a substitute for competition.⁹ This type of regulation focuses on regulation of financial markets, prices and profits.¹⁰

On the other hand, social regulation centers on perceived market failures in respect of lack of information to consumers or ‘externalities’ adversely effecting individuals outside the market relationship. Indeed, one suggestion for the origins of state regulation of industry is that it arose from piecemeal attempts to grapple with individual social problems as they came up.¹¹ This type of regulation tends to appear in the form of rules on health and safety, or environmental or consumer protection.¹²

⁷ S Breyer, *Regulation and its Reform* (Harvard UP, Cambridge Mass 1982).

⁸ G Stigler, ‘The Theory of Economic Regulation’ (1971) 2(1) *Bell Journal of Economics and Management* 3, 3-4.

⁹ *Ogus* (n 1) 29.

¹⁰ BM Hutter, *Compliance, Regulation and Environment* (Clarendon Press, Oxford 1997) 6.

¹¹ G Rhodes, *Inspectorates in Great Britain: Law Enforcement and Standards of Efficiency* (Allen and Unwin, London 1981) 2.

¹² *Ogus* (n 1) 4.

However, the distinction between economic and social regulation is not a clear-cut one. Economic regulatory techniques, such as price controls, affect social well-being in terms of the cost of goods and services, and attempts at social regulation, such as health and safety rules, affect market relations.¹³ When applied to the taxi trade, the line between economic and social regulation becomes similarly blurred. For example, quality standards can both regulate entry to the market and improve safety for the travelling public. Fixing maximum fares is an economic instrument, as it controls prices and potential profits, but can be seen as protection for the public against excessive or unreasonable charges. It is also suggested that economic regulation is the dominant form and will always overcome social regulation. Some writers, in the context of other forms of public transport, argue that regulation was initially introduced for social reasons, often linked to safety, but the systems subsequently became dominated by economic regulation, which ensured mainly benefit to the suppliers.¹⁴

It may not be necessary to consider regulation as divided along economic and social lines. Cranston, for example, argues that the distinction may be unnecessary, because both forms of regulation involve the use of similar coercive techniques.¹⁵ Other commentators consider that both economic and social justifications for regulation can be subsumed into one overarching justification of 'the public interest'.¹⁶ Although this concept is difficult to define, it has become influential in shaping regulation generally

¹³ PC Yeager, *The Limits of the Law: The Public Regulation of Private Pollution* (Cambridge University Press, Cambridge 1991) 24.

¹⁴ J Carbajo (ed), *Regulatory Reform in Transport: Some Recent Experiences* (World Bank, Washington DC 1993).

¹⁵ R Cranston, 'Regulation and Deregulation: General Issues' (1982) 5 *University of New South Wales Law Journal* 1, 3.

¹⁶ *Feintuck* (n 2) 3.

in recent years.¹⁷ However, for some commentators the idea that regulation serves the public interest is itself contentious.¹⁸ Regulation is described as an honest but functionally unsuccessful attempt to promote the public interest.¹⁹

Although ‘regulation’ is an elusive concept, it has been possible to reach at least a general working definition of regulation upon which to build the remainder of this study. Whilst the distinction between economic and social regulation and the notion of ‘the public interest’ are useful tools for analysis, they are somewhat general and abstract, and of limited assistance in determining the justification for regulating the taxi trade. In the next section, I consider how far such general theories can assist understanding of regulation of the taxi trade.

2) Why regulate the taxi trade?

Seeking justification for regulating the taxi trade provides an insight into what it is that the regulators are trying to achieve by regulating. The absence of an explicit statement of aims confers very considerable discretion upon those responsible for enforcing regulation in interpreting the goals of the legislation. As a result a number of propositions are advanced for the aim of regulation. These ideas are drawn from the literature on the subject and from judicial or central government pronouncements, as well as from the local authorities themselves. In this sub-section, I examine five such possible aims by reference to the main areas of regulation; quantitative,

¹⁷ T Prosser, *Law and the Regulators* (Clarendon Press, Oxford 1997) 15.

¹⁸ J Froud and AI Ogus, ‘“Rational” Social Regulation and Compliance Cost Assessment’ (1996) 74 *Public Administration* 221.

¹⁹ RA Posner, ‘Theories of Economic Regulation’ (1974) 5 *Bell Journal of Economics and Management* 335, 336.

qualitative and fare. These aims are: congestion management; protection of the public; protect and promote the trade; increase competition; and provide effective means of control.

a) Congestion management

From a historical perspective, the prevention of congestion and public disorder was seen as the initial aim of hackney carriage regulation. At the time of Charles I's Royal Proclamation of 1635,²⁰ the aim of regulation was said to be to prevent congestion of the streets by excessive numbers of hackney carriages. The introduction of the licensing system 19 years later was aimed at addressing the 'many inconveniences [that] do daily arise by reason of the late increase and great irregularity of hackney coaches'.²¹ A number of sources suggest that these 'many inconveniences' were as a result of having too many hackney carriages available for hire in the streets, resulting in traffic congestion and public order concerns as drivers competed with each other for business.²²

This was not a difficulty that was confined to London. There are some accounts relating that in the period leading up to the 1847 Act there were problems of overcrowding of the roads and misbehaviour by drivers in the provinces. There are historical reports of wheeled carts and hackney carriages crowding the highways, as

²⁰ Described in Chapter 1 section 3.

²¹ 'An Ordinance for the Regulation of Hackney Coachmen in London and the Places Adjacent' in CH Frith and RS Rait (eds), *Acts and Ordinances of the Interregnum 1642-1660* (HMSO, London 1911) 922.

²² WT Jackman, *The Development of Transportation in Modern England* (2nd edn, F Cass and Co, London 1962) 131; JP Toner, 'English Experience of Deregulation of the Taxi Industry' (1996) 16(1) *Transport Reviews* 79, 80; London Vintage Taxi Association, 'History' <<http://www.lvta.co.uk/history.htm>> accessed 3 October 2010.

well as reports of incivility of drivers, in the South-West of England.²³ It would appear that this may have been due, in part, to the licensing of hackney carriages in London. Proprietors and drivers who were not granted licences in London, or who objected to being regulated, moved their businesses to the surrounding towns, or even to the larger cities, to continue their trade free from the constraints of licensing.²⁴ There is evidence that by the 1830s all the larger provincial towns and cities had a substantial quota of hackney carriages.²⁵

When the 1847 Act was passed, regulation was seen as a public order issue. So far as the courts were concerned, this was Parliament's original intention and this remained the case for many years. In *R v Weymouth BC ex p Teletax (Weymouth) Ltd*, Lord Goddard CJ said

it also seems reasonably clear that what Parliament had in mind was that it was desirable that the commissioners should be able to control the number of carriages which plied for hire in a given area.²⁶

As the findings of my research show, there is some support amongst the regulators and the trade for the idea that prevention of congestion should still be the principal aim of regulation. However, in the view of some commentators, crowd control arguments are now seen as part of the debate surrounding economic regulation.²⁷

²³ G Sheldon, *From Trackways to Turnpike* (Oxford University Press, London 1928).

²⁴ HJ Dyos and DH Aldcroft, *British Transport: An Economic Survey from the Seventeenth Century to the Twentieth* (Leicester University Press, Leicester 1971) 35.

²⁵ TC Barker, 'Urban Transport' in MJ Freeman and DH Aldcroft (eds), *Transport in Victorian Britain* (Manchester University Press, Manchester 1988).

²⁶ [1947] KB 583, 589.

²⁷ G Gilbert and RE Samuels, *The Taxicab: An Urban Transportation Survivor* (University of North Carolina Press, Chapel Hill 1982) 15; Toner *op cit* 81.

b) Protection of the public

Button emphasises the point that the rationale behind the whole licensing regime is to provide the public with a service which is both accessible and safe, with public safety being paramount.²⁸ Unlicensed and unregulated taxis pose problems for public safety because either the vehicle or the driver, or both, may be unsuitable and unsafe. This has been highlighted in studies from other countries²⁹ but researched very little in the United Kingdom. However, the words ‘public safety’ only appear once in any relevant statute, and that was as recently as 2006.³⁰ The notion that regulation of the trade is aimed at protection of the public derives largely from judicial interpretation of the legislation. This is particularly well illustrated in a series of cases which effectively imposed vicarious liability upon the owner of a hackney carriage for the tortious acts of the driver, even though in reality no relationship of master and servant existed between them.³¹

In *Venables v Smith*,³² Lord Cockburn CJ said:

I think that the provisions of the Acts of Parliament alter what would otherwise be the relation of the proprietor and the driver, and for the protection of the public produced the result that...the relation of master and servant exists so far as to render the proprietor responsible for the acts of the driver.³³

²⁸ JTH Button, *Button on Taxis: Licensing Law and Practice* (3rd edn Tottel, Haywards Heath 2009) 1

²⁹ For example, Suzuki’s study of the unregulated, or so called ‘gypsy’, taxicabs which operate in New York City – P Suzuki, ‘Unregulated Taxicabs’ (1995) 49(1) *Transportation Quarterly* 129.

³⁰ Road Safety Act 2006, s 52(2), which amends the 1976 Act to permit immediate suspension or revocation of a driver’s licence where such a course of action ‘appears in the interests of public safety’.

³¹ *Powles v Hider* (1856) 6 E & B 207; *Venables v Smith* (1877) 2 QB 279; *Kemp v Elisha* [1918] 1 KB 228.

³² (1877) 2 QB 279.

³³ *ibid* 283.

What is interesting to note from this and other cases is that the courts consistently attribute the imposition of such liability to the statutory provisions themselves. There is no such express statement in the relevant Acts. The early cases were based on the Acts relating to London cabs, but an identical interpretation was placed on the relevant provisions of the 1847 Act in *Bygraves v Dicker*.³⁴ Although section 63 of the 1847 Act gives magistrates the power to order the proprietor to pay compensation for damage done by the driver, the decision in *Bygraves v Dicker* went beyond this statutory provision by holding that sections 45 to 63 of the Act, read as a whole, created a relationship of master and servant. This protected the public, as it allowed an injured person to maintain an action in negligence against the proprietor.³⁵ Similarly it was said in *Hawkins v Edwards*³⁶ that ‘the general purview of the byelaw is to protect the public’,³⁷ even where the strict interpretation of the provision might cause hardship to the owner of the carriage. The byelaw in question in this case was one promulgated under section 68 of the 1847 Act, prohibiting the obscuring of the licence plate whilst a hackney carriage was in use.

Although these cases demonstrate a wide and purposive judicial interpretation of the aim of the legislation, they do not specify precisely what the public is to be protected from. The rationale behind these decisions appears to be to enable members of the public, whether travelling passengers or third parties, to have some sort of redress in the event of their suffering injury, loss or damage as a result of the tortious actions of a hackney carriage driver. At the time these decisions were made, this would have

³⁴ [1923] 2 KB 585.

³⁵ An injured party is unlikely to bring an action based on section 63 alone, as the section fixes the maximum amount of compensation that can be ordered by magistrates at five pounds. Someone injured by the negligence of a driver is more likely to rely on the wider principle of vicarious liability to bring an action for damages in the civil courts.

³⁶ [1901] 2 KB 169.

³⁷ *Hawkins v Edwards op cit* 172 (Lord Alverstone CJ).

been an important safeguard, as the owner of the carriage was more likely to be a man of substance, and therefore able to meet any financial liability, than the driver, who was generally likely to be a 'man of straw'. This protection is now less important in the days of compulsory insurance for owners and drivers.³⁸ However, the cases illustrate that, in the view of the courts at least, the aim of the regulation is to provide some degree of protection against injury or loss caused by the operation of taxi businesses.

Some of the justifications offered for quantitative regulation of taxis are based on the argument that such restrictions improve the safety of passengers. It is contended that it is necessary to keep numbers of taxis within manageable limits; otherwise there is an increased likelihood that unroadworthy vehicles and unsuitable drivers will be more difficult to detect, and falling incomes will result in drivers working longer hours.³⁹ It is also suggested that increased competition between vehicles as a result of removal of quantitative restrictions will lead to a decline in income for taxi drivers and proprietors resulting in dangerous driving practices and decreased vehicle maintenance.⁴⁰ Opponents of quantitative restriction claim that allowing the market to determine the number of taxis available leads to increased supply. This means that vulnerable passengers will not be waiting for long periods at night for taxis to arrive, and so safety of the taxi using public will increase.⁴¹ Whilst they may take opposite views on the merits of quantitative regulation, at least the authors of these works agree on the aim of regulation. On the other hand, some commentators, such as

³⁸ Road Traffic Act 1988, Part VI.

³⁹ Transport Committee, 'The Regulation of Taxis and Private Hire Vehicle Services in the UK' HC (2003-04) 251-I.

⁴⁰ C Walker and I Cram, 'Taxi Deregulation and the Courts' (1991) 20 *Anglo-American Law Review* 482, 483

⁴¹ Office of Fair Trading, 'The Regulation of Licensed Taxi and PHV Services in the UK' (OFT 676, 2003).

Siebert, consider that quantitative restrictions are nothing to do with public safety at all, and are only concerned with the economic effects of maintaining a limited supply.⁴²

Whether quantitative regulation protects the public interest or not, there is agreement that quality standards which subject suppliers of goods and services to behavioural controls have always been the dominant form of social regulation.⁴³ Qualitative regulation is imposed upon both vehicles and drivers on the grounds that it protects the public. The justification for qualitative regulation is that in an unregulated market consumers would have no way of knowing, prior to hiring the taxi, which vehicles and drivers were safe, which could result in potential attacks upon customers and increased traffic accidents.⁴⁴

However, if the aim of qualitative regulation is the protection of the public, then quality standards need go no further than ensuring that the driver did not assault or defraud the customer or that the vehicle survived the journey intact. As Richardson et al point out, once regulation through quality standards is established, in practice regulators attempt to improve upon those standards by extending their scope beyond mere safety requirements.⁴⁵ As I illustrate in this study, it is common for taxi regulators to impose standards which are not directly related to public safety. For example, some councils require drivers to be polite, of smart appearance,

⁴² C Seibert, 'Finding a Cab: a Better Deal for Taxi Customers' (2006) 22 Policy 2. The economic effects of limited supply are considered in sub-section 2c) of this chapter below.

⁴³ Ogas (n 1) 150.

⁴⁴ MJ Beesley, 'Regulation of Taxis' (1973) 329 The Economic Journal 150.

⁴⁵ G Richardson with A Ogas and P Burrows, *Policing Pollution: A Study of Regulation and Enforcement* (Clarendon Press, Oxford 1982) 35-40.

knowledgeable, and drive responsibly. Similarly, vehicles are expected to be clean, comfortable and suitable for the customer's needs.⁴⁶

The main rationale for regulating fares is said to be to protect the public against unscrupulous drivers taking financial advantage of the customers' relative ignorance of the price of the service.⁴⁷ The nature of the hackney carriage trade is such that potential customers at taxi ranks or in the street do not have the opportunity to 'price shop' for a cheaper fare. It is suggested that new technology may undermine the case for fare regulation even in the hackney carriage market,⁴⁸ although this argument is based on a model which is essentially that of the private hire trade and so is of limited relevance to rank or street hail services. Gallick and Sisk point out that although price fixing can protect customers from dishonest and unscrupulous drivers, it also creates two incentives for drivers which could operate to the detriment of customers.⁴⁹ One is that drivers will reject short unprofitable journeys in favour of longer more profitable ones; the other is to try to increase profits by using older, poorly maintained vehicles, or driving recklessly. So fare regulation only protects the public when combined with other forms of regulation relating to quality of service.

The notion of the aim of regulation being to protect the public was only taken up by central government as recently as 2006.⁵⁰ However, as will become apparent from the findings of this study, protection of the public is the aim which councils claim they

⁴⁶ These quality standards are examined further in chapter 5.

⁴⁷ KM Gwilliam, 'Regulation of Taxi Markets in Developing Countries: Issues and Options' (World Bank, Transport Note Number TRN-3, 2005) 2, 5.

⁴⁸ *Siebert* (n 42).

⁴⁹ EC Gallick and DE Sisk, 'Reconsideration of Taxi Regulation' (1987) 3 *Journal of Law Economics and Organization* 117, 120.

⁵⁰ Department for Transport, 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (London, October 2006) [8]. This view has been repeated in the updated version of this document issued in March 2010.

are attempting to achieve by regulating taxis. Whether that, or a different aim, is what they achieve in reality will be considered and explained in this study.

c) Protect and promote the trade

Legislation and its enforcement are claimed to be in the interests of reputable businesses in any industry, as they provide legal protection against unfair competition and their absence creates opportunities for the unscrupulous.⁵¹ Some writers take the view that regulation is justified by the benefits it confers on the interests of the taxi trade itself. Stigler, for example, suggests that where forms of economic regulation are beneficial to business, then they will be actively sought by the incumbent firms. In particular, the taxi trade as a whole is likely to welcome regulation that relates to control over entry to the market and price fixing.⁵² This view is supported by some early studies of the taxi trade in other jurisdictions. Papillon reports that the greatest demand for regulation came from taxicab owners, who saw government backed cartelization of the industry as to their advantage.⁵³ In USA, Teal and Berglund report that the main supporters of economic regulation are, and historically always were, the established taxicab owners.⁵⁴

In England and Wales, although the precise rationale for the 1976 Act is never clearly articulated, there is evidence that it was motivated by growing concern about the rapidly increasing numbers and activities of private hire vehicles. Before 1976

⁵¹ R Cranston, *Regulating Business: Law and Consumer Agencies* (Macmillan, London 1979) 34.

⁵² *Stigler* (n 8).

⁵³ B-M Papillon, 'The Taxicab Industry and its Regulation in Canada' (1982) Economic Council of Canada, Ottawa, Working Paper No. 30, 18.

⁵⁴ R Teal and M Berglund, 'The Impacts of Taxi Deregulation in the USA' (1987) 21 *Journal of Transport, Economics and Policy* 37, 37.

such vehicles were completely unregulated. During the early stages of the Bill which was to become the 1976 Act, the MP for South Shields spoke of

the great difficulties in the North East and many other areas whose strong objection has been expressed to the way in which some private hire vehicles have been allowed to operate to the detriment of hackney carriages.⁵⁵

Therefore, despite the obvious public safety implications of unlicensed and unregulated vehicles and drivers transporting fare paying passengers, the main concern was the detrimental effect of private hire vehicles on the economic well-being of the hackney carriage trade. Koehler makes the point that, because quantitative regulation in its current form focuses on demand for taxi services,⁵⁶ where it is imposed it can only serve to promote the interests of incumbents.⁵⁷ Both qualitative and fare regulation can be seen to protect existing members of the trade from being undercut by suppliers offering an inferior, but cheaper, service using sub-standard vehicles and drivers. Existing studies directly link fare regulation with the other facets of regulation. The prevailing opinion is that retention of fare and quality controls benefits both the trade and consumers, even if all entry controls were eliminated.⁵⁸

d) Increase competition

This suggested aim of taxi regulation can be seen as the antithesis of the aim discussed above. In this case, the argument is that regulation is imposed only to the extent that it is necessary to open up the regulated trade to market forces. On the face

⁵⁵ HC Deb 23rd February 1976, vol 906, col 52 (Arthur Blenkinsop MP).

⁵⁶ This is given statutory embodiment in the provisions of section 16 of the Transport Act 1985, discussed previously.

⁵⁷ B Koehler, 'Licence Values in Taxi Markets' (2005) 25 *Economic Affairs* 52, 54.

⁵⁸ *Teal and Berglund* (n 54) 51; *Toner* (n 22) 92.

of it there does not appear to be anything intrinsically monopolistic or otherwise peculiar about the market for taxi services that would require prices and entry to be fixed by the government.⁵⁹ Indeed, Beesley takes the view that in the absence of intervention the taxi industry would approximate the characteristics of a perfectly competitive market.⁶⁰ On this analysis there can be no justification for regulation of the taxi industry to promote competition in the market. A different view is taken by Ogus who considers that a driver responding to a person who hails a taxi in the street has a *de facto* monopoly position, as that potential customer would be unable to compare prices and other terms of carriage with those offered by other taxi drivers.⁶¹ Dempsey takes a similar view of taxis operating from stands on the basis that there is a lack of readily available information and opportunity for the customer to indulge in ‘cab shopping’ for a more favourable arrangement.⁶²

I think this argument is essentially an economic one about the removal of quantitative regulation, referred to, somewhat misleadingly, in the literature as ‘de-regulation’. Opponents of this form of regulation claim that it creates an unfavourable barrier to entry into the market, and thereby unfairly limits competition, reduces the availability of taxis and increases fares. Proponents justify the use of entry controls as necessary to ensure taxi cab owners a satisfactory income, reduce traffic congestion, and avoid destructive competition amongst taxi proprietors and drivers.⁶³

⁵⁹ *Posner* (n 19) 336.

⁶⁰ *Beesley* (n 44) 150.

⁶¹ *Ogus* (n 1) 225.

⁶² PS Dempsey, ‘Taxi Industry Regulation, De-regulation and Re-regulation: the Paradox of Market Failure’ (1996) 24 *Transportation Law Journal* 73, 92

⁶³ *ibid* 100-101.

The issues surrounding deregulation of the taxi market have been actively debated since the 1970s. The early literature was based upon purely theoretical economic models. The majority view amongst the economic theorists is that it is inefficient and unjust in terms of competition to limit entry to the taxi market by quantitative restrictions.⁶⁴ On this basis, writers such as Williams⁶⁵ and, more recently, Harris⁶⁶ argue in favour of complete deregulation of all aspects of the industry. However, others, such as Verkuil⁶⁷ and Beesley,⁶⁸ suggest that entry to the market should be deregulated whilst retaining regulated fares. On the other hand, some economists and legal academics favour retention of quantitative limits on market entry.⁶⁹ In Shreiber's view, for example, an unregulated taxi market will produce a large number of cabs, short waiting times for customers and high fares. He therefore advocates both entry and price regulation in order to achieve satisfactory competition.⁷⁰

There does not appear to have been any attempt to test these theories empirically until Teal and Berglund's study of the deregulated taxi market in a number of cities in the USA in the late 1980s. This study concluded that,

Taxicab deregulation cannot be demonstrated to have produced in most cases the benefits its proponents expected. Prices do not usually fall, improvement in service is difficult to detect and...there is little evidence that either consumers or producers are better off.⁷¹

⁶⁴ AT Moore and T Balaker, 'Do Economists Reach a Conclusion on Taxi Deregulation?' (2006) 3(1) *Econ Journal Watch* 109.

⁶⁵ DJ Williams, 'The Economic Reasons for Price and Entry Regulation of Taxicabs: a Comment' (1980) 14 *Journal of Transport, Economics and Policy* 105.

⁶⁶ LA Harris, 'Taxicab Economics: The Freedom to Contract for a Ride' (2002) 1 *Georgetown Journal of Law and Public Policy* 195.

⁶⁷ PR Verkuil, 'The Economic Regulation of Taxicabs' (1970) 24 *Rutgers Law Review* 672.

⁶⁸ *Beesley* (n 44).

⁶⁹ *Gilbert and Samuels* (n 27).

⁷⁰ C Shreiber, 'The Economic Reasons for Price and Entry Regulation of Taxicabs (1975) 9 *Journal of Transport, Economics and Policy* 268; C Shreiber, 'The Economic Reasons for Price and Entry Regulation of Taxicabs: a Rejoinder' (1981) 15 *Journal of Transport, Economics and Policy* 81

⁷¹ *Teal and Berglund* (n 54) 54.

Dempsey's study in the mid 1990s, also conducted in the USA, concluded that of the 21 cities that deregulated prior to 1993, the experience with deregulation was so profoundly unsatisfactory that only four of the smallest cities within the group retained a fully unregulated system. This movement from regulation to deregulation and then a return to re-regulation is seen as firm evidence supporting the retention of quantitative regulation in the taxi trade.⁷² Although these studies present critical assessments of deregulation in the United States, other countries are reported to have had more positive experiences of deregulation. In Ireland, for example, removal of entry restrictions was said to have substantially increased the numbers of taxis on the streets of the main cities and towns, producing an improved service for customers.⁷³ New Zealand similarly experienced greater availability of service, at least in urban areas, following relaxation of both entry and fare restrictions in 1989.⁷⁴ However, experiences in other European countries, such as the Netherlands, Norway and Sweden, are portrayed in mixed terms.⁷⁵

In England and Wales, the Transport Act 1985 is said to have been part of a general overall design to apply free market principles to the road passenger industry, and to deregulate the passenger transport system as a whole.⁷⁶ Although this Act was directed primarily at liberalization of the bus market,⁷⁷ section 16 effectively removed quantitative regulation of the taxi market, except in very restricted circumstances. The

⁷² Dempsey (n 62) 115.

⁷³ SD Barrett, 'The Sustained Impacts of Taxi Deregulation' (2010) 30(1) *Economic Affairs* 61.

⁷⁴ PS Morrison, 'Restructuring Effects of Deregulation: The Case of the New Zealand Taxi Industry' (1997) 29(5) *Environmental and Planning A* 913.

⁷⁵ Organization for Economic Co-operation and Development Competition Committee, *Taxi Services Regulation and Competition: Roundtable on Taxi Services Regulation and Competition Held in October 2007* (OECD, Paris 2008).

⁷⁶ P Bagwell and P Lyth, *Transport in Britain: From Canal Lock to Gridlock* (Hambleton & London, London 2002) 101

⁷⁷ M Loughlin, *Local Government in the Modern State* (Sweet and Maxwell, London 1986).

courts took the view that the aim of section 16 was to ‘remove restraints and allow market forces to take their course in a way which did not exist before section 16 came into effect.’⁷⁸ In the same case, Bingham LJ said, ‘the new Act substituted a free market policy into the taxi trade.’⁷⁹ Keene LJ, giving the lead judgment in *R(Maud) v Castle Point BC*, emphasized that the purpose of section 16 was ‘to allow market forces to play a larger role in the taxi business’.⁸⁰

Whilst Parliament’s intention in passing section 16 may well have been to increase competition within the taxi trade, the imposition of qualitative regulation removes any notion of a freely open market for taxi services. As Beesley points out, customers who would prefer cheaper but less safe taxis cannot have them, and a customer with good knowledge of a town cannot have a cheaper but topographically ignorant taxi driver.⁸¹ So the suggestion of regulation increasing competition can only apply, on this view, to quantitative regulation.

Fare regulation also is incompatible with an entirely competitive market, where theoretically the economic forces of supply and demand ensure that fares do not significantly exceed the marginal costs of supply. As Ogus points out, this presupposes that the customer has adequate information on the prices charged by all suppliers to the market and that the customer is not the victim of oppressive conduct as a result of the supplier’s monopoly position.⁸² Whilst price fixing may standardize fares within an area, this has little impact on competition within the trade. Gaunt, in a study in New Zealand, found that removal of fare regulation was of no consequence

⁷⁸ *R v Great Yarmouth Borough Council ex p Sawyer* [1989] RTR 297, 298 (Lord Woolf LJ).

⁷⁹ *ibid* 303.

⁸⁰ [2002] EWCA Civ 1526; [2003] RTR 7 [4].

⁸¹ Beesley (n44) 152.

⁸² Ogus (n 1) 224.

for competition except in areas of large population, and even there the impact was minimal.⁸³

The view that regulation improves competition overlooks three characteristics of the taxi market. First, in the absence of regulation, there is likely to be a plentiful supply of taxis, with supply of vehicles and drivers being at its highest in times of recession.⁸⁴ This means that there will be more taxis available if the customer is willing to wait for one. Second, in the absence of regulation, the terms of hiring are a matter for negotiation and contract between the driver and the potential passenger. Most taxi customers will be regular users of taxis and will be familiar with the prevailing pricing structures. The third characteristic is that the taxi market relies on repeat custom and this, rather than regulation, is what prevents abuse of the operator's superior knowledge of the market.⁸⁵ However, it is accepted that strangers to an area or infrequent users of taxis may still be vulnerable to unscrupulous drivers.

e) Provide effective means of control

Toner suggests that the initial attempts to regulate the taxi business were aimed at control of the trade as an end in itself.⁸⁶ This view finds some support in judicial opinion in certain cases, although these observations must be regarded as obiter. For example, in *Newcastle City Council v Blue Line Taxis (Newcastle) Ltd*, the court held that the statutory power to impose qualitative regulation by way of licence conditions

⁸³ C Gaunt, 'The Impact of Taxi Deregulation in Small Urban Areas: Some New Zealand Evidence' (1996) 2(4) *Transport Policy* 257, 262.

⁸⁴ *Dempsey* (n 62) 98.

⁸⁵ M Rothschild, 'Models of Market Organization with Imperfect Information: A Survey' (1979) 81 *Journal of Political Economics* 1283.

⁸⁶ *Toner* (n 22) 80.

pursued a legitimate aim of better control over the licence holder's operation.⁸⁷ However, such a view indicates that the purpose of regulation is to 'control' what would otherwise be an independent business enterprise. I think it unlikely that Parliament intended local authorities to take direct charge of the taxi trade rather than simply to monitor its activities.

Within the literature, there are some suggestions that the aim of regulation is to make the regulator's task of controlling the trade easier and more readily achievable. This is particularly so in the area of quantity restrictions. Frankena and Pautler, for example, imply that restricting the number of taxis would make the regulator's workload more manageable and reduce enforcement costs.⁸⁸ Similarly, Eckert argues that limits upon taxi numbers in Los Angeles arose because they made it easier for regulators to regulate the industry.⁸⁹ Although these are valid arguments, they are limited to quantitative regulation and do not explain how the imposition of quality or fare regulations might be said to improve or make easier the regulator's control over the industry.

There is, however, another sense in which it could be said that the aim of regulation is to provide a more effective control of the trade. One of the criticisms of the legislation was that it was felt to rely too heavily on the traditional command and control style of regulation.⁹⁰ According to the literature, prosecutors have experienced

⁸⁷ [2012] EWHC 2599 (Admin); [2013] RTR 8 [67] (Hickinbottom J).

⁸⁸ M Frankena and P Pautler, *An Economic Analysis of Taxicab Regulation* (Federal Trade Commission, Washington DC 1986) 65.

⁸⁹ RD Eckert, 'The Los Angeles Taxi Monopoly: An Economic Inquiry' (1970) 43 *South California Law Review* 407, 441-53.

⁹⁰ A point discussed in Chapter 1 section 4*e*).

problems in persuading magistrates to take regulatory offences seriously.⁹¹ As most taxi offences impose strict liability, in common with many other such offences, the courts have shown a reluctance to treat these offences as ‘criminal offences in the full sense of the word’.⁹² Even where there is a successful prosecution, sanctions imposed by the courts are regarded as derisory by the regulators,⁹³ and as weak and ineffective in achieving the aims of regulation.⁹⁴ In the light of these comments, it might be argued that the purpose of regulation is, or ought to be, to provide the local authority regulator with effective means of enforcement over the trade.

f) Conclusions on the aim of regulation

A number of theories can be posited about what the aim of taxi regulation is. All of these theories have some support in the relevant literature and governmental or judicial pronouncements. There is greater academic support for some theories than for others. I think that the multiple aims for regulation are used interchangeably by central government, the courts and local authority regulators to support particular decisions or points of view. In this way, a controversial action or unpopular policy can be justified on the grounds that it is ‘in the public interest’ or helps to promote competition within the industry or whichever of the other suggested aims suits a particular argument.

Certain hypothesized aims are more convincing than others, but I think that the primary aim of taxi regulation ought to be the protection of the public. This aim has

⁹¹ *Jackson* (n 22).

⁹² *Provincial Motor Cab Co Ltd v Dunning* [1909] 2 KB 599, 602 (Lord Alverstone CJ).

⁹³ K Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Clarendon Press, Oxford 1984) 122.

⁹⁴ N Gunningham, *Pollution, Social Interest and the Law* (Martin Robertson, London 1974) 81

the most convincing theoretical support in my view and is the one aim which can be linked persuasively to all three areas of regulation; quantitative regulation, quality controls and fares. As this study shows, protection of the public is also the aim which local authorities claim they are trying to achieve in practice, and so it is the one against which their regulatory activities ought to be measured.⁹⁵

3) Discretionary Powers

The legislative framework grants wide discretionary powers to local authorities. This enables councils to decide when their powers may be used, how their powers are to be applied, and what methods are to be used to carry out their different regulatory functions.⁹⁶ In this section, I consider some of the theories concerning the use and effect of discretionary powers and how those theories might apply to regulation of the taxi trade.

The exercise of discretionary power by both government and non-governmental agencies has been the subject of much academic debate. As long ago as 1944, Hayek observed an increasing tendency to qualify legal provisions by reference to what is ‘fair’ or ‘reasonable’. For Hayek such qualifications placed more and more discretion in the hands of judges or administrative authorities, and this resulted in increased arbitrariness and uncertainty.⁹⁷ Hayek later developed these views to conclude that discretion undermines the requirement that authority be exercised according to

⁹⁵ However, as will be seen from the research findings, there is a difference between what councils claim they are aiming for and what they actually achieve.

⁹⁶ Some of the issues about the exercise of discretionary powers were raised in Chapter 1.

⁹⁷ FA Hayek, *The Road to Serfdom* (Routledge and Kegan Paul, London 1944) 58.

general rules.⁹⁸ Later writers accept that some measure of discretion in administering the law is inevitable. Davis, for example, generally views the widespread exercise of discretion as desirable, so long as that discretion is properly confined, structured and checked.⁹⁹ In other words, discretion should be exercised for certain purposes and within certain limits to avoid it being used in an arbitrary way. Similarly, Galligan suggests that the prime legal strategy is to keep discretion to a minimum and work towards its regulation by fixed and certain rules.¹⁰⁰ On the other hand, Baldwin and Hawkins, using their famous toothpaste tube analogy, point out that attempting to confine discretion by fixed rules in one area simply produces discretion in another part of the system.¹⁰¹

Dworkin, in an attempt to bring some precision to the concept of discretion, famously compares it to the hole in a doughnut; it ‘does not exist except as an area left open by a surrounding belt of restriction.’¹⁰² Dworkin goes on to identify what he describes as ‘weak discretion’ and ‘strong discretion’.¹⁰³ The essential difference is that exercise of weak discretion involves the interpretation of a given standard in order to apply it; strong discretion involves the decision maker in creating his or her own standards outside the bounds set by the authority which granted the discretion. This means that the exercise of strong discretion is not settled by applying established legal principles but is effectively beyond the law. Galligan, however, takes issue on this latter point, arguing that matters of weak and strong discretion are not easy to

⁹⁸ FA Hayek, *The Constitution of Liberty* (Routledge & Kegan Paul, London 1960).

⁹⁹ KC Davis, *Discretionary Justice: A Preliminary Inquiry* (Louisiana State University Press, Baton Rouge 1969) Ch 2.

¹⁰⁰ DJ Galligan, *Discretionary Powers: A Legal Study of Official Discretion* (Clarendon Press, Oxford 1986) 6.

¹⁰¹ R Baldwin and K Hawkins, ‘Discretionary Justice: Davis Reconsidered’ [1984] PL 570, 576

¹⁰² R Dworkin, *Taking Rights Seriously* (Duckworth, London 1977) 31.

¹⁰³ *ibid* 31-35.

distinguish in practice and that any exercise of official power should be capable of being explained in terms of its purposes and within a framework of constraining principles.¹⁰⁴

There are unresolved arguments on both sides of the debate about where the line is to be drawn between broad, open textured discretion and structuring of the exercise of discretion by specific rules. The advantages and disadvantages of both are considered in some detail by Jowell, who argues that the main merits of rules are considered to be that they adhere to the rule of law and can be used to conserve official resources. The main disadvantage of rules is that they may lead to rigidity and legalism, whereas discretion provides flexibility and adaptability at the cost of predictability and certainty.¹⁰⁵ Galligan considers that there is a strong case to be made for the use of discretion if its use facilitates and enhances the realization of social goals.¹⁰⁶

In England and Wales, councils have been given a broad discretion which enables them to tailor activities or services to local needs.¹⁰⁷ This means that the regulatory regime for taxis is heavily weighted towards broad, open textured discretion, with very little structure. It was as recently as October 2006 that the Department for Transport issued its 'Best Practice Guidance'¹⁰⁸ for the taxi and private hire trades. The legal status of this document is somewhat uncertain, as are its impact and effect.¹⁰⁹ The guidance emphasizes that it offers only general guidance, with no

¹⁰⁴ *Galligan* (n 100) 20.

¹⁰⁵ J Jowell, 'The Legal Control of Administrative Discretion' [1973] PL 178

¹⁰⁶ *Galligan* (n 100) 217.

¹⁰⁷ M Loughlin, *Legality and Locality: The Role of Law in Central-Local Government Relations* (Clarendon Press, Oxford 1996).

¹⁰⁸ *Department for Transport* (n 50).

¹⁰⁹ *Button* (n 28) viii.

specific information that could assist local authorities in the exercise of their discretion.

Such an approach does not find favour in other common law jurisdictions, however. The Government of South Australia, for example, in 2009 introduced a comprehensive code in an effort to regulate all aspects of the taxi trade, including such matters as applications for licences, vehicle specifications, conduct and appearance of drivers, suspension and revocation of licences.¹¹⁰ A similar system was introduced in Ireland under powers contained in the Taxi Regulation Act 2003, which Act provides a framework for regulating all aspects of the taxi trade. Specific provisions are made for the granting, suspension or revocation of licences, the conduct of drivers and passengers, taximeters, fares and dealing with complaints against taxi drivers or operators. The statutory regime creates powers to promulgate detailed regulations dealing primarily with qualitative standards in each of these areas.¹¹¹

In regulatory areas other than taxi licensing, it is difficult to discern clearly whether officials who have the task of enforcing the regulations would prefer to have clearer rules or more discretionary powers. Preference appears to vary between the regulators of different industries. Baldwin's research into the aviation industry, for example, showed on the whole that enforcers prefer more specific rules.¹¹² On the other hand, the environmental health officers studied by Hutter were more equivocal.¹¹³ Davis also identifies increased levels of what he calls unauthorized discretion, in the sense

¹¹⁰ Passenger Transport Regulations 2009 No. 215 of 2009 (South Australia).

¹¹¹ Taxi Regulation Act 2003, Pt 3 (Ireland).

¹¹² R Baldwin, *Regulating the Airlines* (Clarendon Press, Oxford 1985).

¹¹³ BM Hutter *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (Clarendon Press, Oxford 1988).

that officials assume to themselves the power to depart from, change or selectively enforce legal standards.¹¹⁴

It must be borne in mind that the use of local authority discretion does not happen in isolation. Council officials exercise discretion within the cultural background and influence of their particular organization. It is said that the existence of discretion may result in decisions being shaped by professional ideologies, personal attitudes, beliefs and assumptions of individual officers, and attitudes of officials. Local authority departmental guidelines designed to structure discretion may also be an important influence in how decisions are taken.¹¹⁵ Although all of these elements are likely to vary from one council to another, and will also be influenced by local considerations, it has been suggested that all local authorities display basically similar cultural characteristics.¹¹⁶ It will be an important part of this study to examine how far the cultures and attitudes of local authorities vary and how this influences the exercise of discretion.

From the above discussion, it can be seen that the use of discretionary powers in relation to taxi licensing raises five issues. The first is whether local authorities ought to have discretion at all in some aspects of regulation or whether that discretion should be replaced by specific rules. The second question is, assuming the use of discretion is unavoidable, how that discretion is exercised in practice. How is the discretion confined, structured and checked? What factors do licensing officials

¹¹⁴ Davis (n 99). A similar phenomenon is noted by Galligan (n 100) 46, mentioned in Chapter 1 section 4b).

¹¹⁵ BA Webster, 'The Distributional Effects of Local Government Services' in S Leach and JD Stewart (eds), *Approaches to Public Policy* (Allen and Unwin, London 1982) 73-78.

¹¹⁶ RJ Haynes, *Organisation Theory and Local Government* (New Local Government Series No 19, Allen and Unwin, London 1980) 194-95.

consider when required to exercise discretion? Finally, there is the issue of whether taxi licensing officials assume for themselves powers which are not provided to them by the legislative framework and what is the effect of them doing so. I consider all of these questions in the light of the empirical data in subsequent chapters.

4) Localism

Many of the central government's regulatory functions have been delegated either to local government authorities or to some form of public body exercising ostensibly independent regulation of a particular industry or sector. In the case of the taxi trade, responsibility for regulation has been placed firmly in the hands of the local council for each borough or district in England and Wales.¹¹⁷ This means that each local council has the duty and the power to regulate all taxi services operating within its geographical boundaries. Whilst regulation of the taxi trade is undoubtedly a locally decided and operated system, no real thought has been given to why localism is to be preferred to other scales of government. The literature suggests that there is a common assumption that locals know best and care most about their locality.¹¹⁸ However, this assumption is criticised in the literature, as 'local' is not necessarily the best and other scales of governance may be more effective in achieving a desired outcome.¹¹⁹ In this section, I discuss two issues. The first is whether local control is more appropriate to regulation of the taxi trade. The second is the source of the council's 'authority' to regulate the industry.

¹¹⁷ Transport Act 1985, s 15. The imposition of mandatory regulation by local authorities was discussed in Chapter 1.

¹¹⁸ A Layard, 'The Localism Act 2011: What is "Local" and how do we (legally) construct it?' (2012) 14 Environmental Law Review 134, 144.

¹¹⁹ M Purcell 'Urban Democracy and the Local Trap' (2006) 43 Urban Studies 1921, 1927.

a) *Local or national regulation*

With each new area for which the state assumes responsibility for regulation, the question arises whether enforcement of the legislation should be a function of central or local government. Rhodes says that this question has always been answered in a piecemeal fashion without regard to the overall effect on the responsible local authority department.¹²⁰ Delegation of regulatory functions to local government appears to take its rationale from the need to spread the responsibilities of central government and for appropriate services to be directed by local knowledge. John Stuart Mill stated in 1861 that ‘it is but a small portion of the public business of a country, which can be well done, or safely attempted, by the central authorities’.¹²¹ Mill went on to identify three spheres of duty of local authorities; purely local business, matters of national interest placed under local management subject to central supervision, and matters of interest which could only be managed locally. It was this last sphere of duty in which arose the difficult question of how far the local authority should be entrusted with discretionary power free from central control.¹²² Regulation of the taxi trade appears to fall within this third sphere.

There is a substantial body of literature that considers the role of local government as the provider of services, but very little as regulator of private sector business and commercial activities. There is some consideration of local government as regulator in

¹²⁰ Rhodes (n 11) 20.

¹²¹ JS Mill, *Considerations on Representative Government* (Peoples’ edition, Longmans Green & Co, London 1894) 111.

¹²² *ibid* 116-117.

relation to the licensing of sex shops¹²³ and in relation to land use and resource planning, and environmental health.¹²⁴ Other studies have focused on the difficulties of local authority regulators in relation to their enforcement functions.¹²⁵ However, very little of the literature considers why regulation is carried out by the local authority rather than central government or a specifically created regulatory agency.

One notable exception is Hutter's study of environmental health officers; local authority employees who enforce the regulation of such matters as food hygiene, health and safety at work, and social housing.¹²⁶ However, even Hutter's study is essentially of an enforcement agency only. Environmental health departments, at least at the time of Hutter's study in the mid to late 1980s, were primarily enforcement agencies operating under the auspices of the local council. They were not responsible for 'cradle to grave' regulation of an industry by way of granting licences, controlling entry to the market or regulating prices.¹²⁷

Local authority control is said to have the advantages of easier access to information about local defaults, and councils are better acquainted with the conditions of local trade, can respond more swiftly to local problems and they are a body with which local customers are accustomed to dealing. Local authorities are, however, felt to suffer from a lack of consistency and uniformity.¹²⁸ All of these claimed advantages

¹²³ C Manchester, *Sex Shops and the Law* (Gower, Aldershot 1986).

¹²⁴ J Painter, 'Regulation Theory and Local Government' (1991) 17(6) *Local Government Studies* 23.

¹²⁵ BM Dickens, 'Discretion and Local Authority Prosecutions' [1970] *CLR* 618; R Jackson, 'Planning and Environmental Law Offences' (1994) 158(48) *Justice of the Peace and Local Government Law* 784

¹²⁶ *Hutter* (n 113).

¹²⁷ The situation is now slightly different with the introduction of the compulsory registration of fast food outlets – Food Premises (Registration) Regulations 1991, now superseded by Council Regulation (EC) 582/2004 of 29th April 2004 on food hygiene [2004] *OJ* L139.

¹²⁸ J Rowan-Robinson, P Watchman and C Barker, *Crime and Regulation: A Study of the Enforcement of Regulatory Codes* (T and T Clark, Edinburgh 1990) 78.

and disadvantages can be seen in regulation of the taxi trade. Specifically in relation to vehicle entry to the market regulation, Schaller concludes that the differences between areas mean that policies need to be adapted to each area's unique characteristics and needs.¹²⁹ However, in other areas of regulation, particularly quality standards which impact on safety, the variation between local authorities produces a lack of uniformity which is difficult to justify. Notions of what constitutes a 'safe' vehicle and a 'safe' driver should be universal. Granting local authorities powers to interpret the legislation as they see fit produces a variety of measures of 'suitability' across the country.

Given the benefits and drawbacks of local authority regulation, is it possible to find an alternative approach? Other areas of regulation combine central agency responsibility for licensing provisions with local authority enforcement.¹³⁰ A feature of the Labour administration of the late 1990s and early 2000s was the so called 'third way politics' which attempted to steer a mid-course between total local and total national control. Influenced by the writings of Giddens, this model attempted to utilize the discipline of the market to the public interest. It involved a balance between regulation and deregulation.¹³¹ In practice it meant that central government provided a framework of basic general principles which local authorities used as a model to exercise local control. It was this approach which was heavily influential in the framing of the Licensing Act 2003 which introduced radical changes to the liquor-licensing regime. A similar approach was taken to the gambling industry.¹³² This model was not applied in other areas of regulatory control, and the taxi trade in

¹²⁹ B Schaller, 'Entry Controls in Taxi Regulation: Implications of US and Canadian Experience for Taxi Regulation and Deregulation' (2007) 14 *Transport Policy* 490, 503.

¹³⁰ For example, the regulation of consumer credit under Consumer Credit Act 1974.

¹³¹ A Giddens, *The Third Way: The Renewal of Social Democracy* (Polity, Cambridge 1998) 99

¹³² Gambling Act 2005

particular was overlooked. This may have been as a result of the taxi industry having undergone recent radical changes brought about by the Transport Act 1985, whereas alcohol licensing was still based upon legislation from the 1960s.¹³³ It may also be the case that the hospitality industry presents a more unified and powerful interest group, able to lobby the government of the day for change in that industry's favour.

Could an approach along these lines be used as a model for the regulation of the taxi trade? And would it be beneficial to do so? It is questionable whether such an approach would resolve the underlying tension between local and national government in regulating the trade. Hunt and Manchester argue, in respect of the Licensing Act, that the appearance of devolution of power and influence to a network of stakeholders in conjunction with licensing authorities may be illusory. In their view, central government still exerts considerable influence over licensing decision making by the use of statutory guidance.¹³⁴ As will be seen, the findings of my research indicate that, even under the current regime, central government exerts substantial influence over councils. This issue is of particular significance to the taxi trade, however, because the Law Commission has proposed a system of national standards for vehicles and drivers, with enforcement powers to remain with local authorities. The proposals also include a residual power for councils to add their own local standards.¹³⁵ The merits of such a scheme will be discussed in the light of the empirical findings of the study.

¹³³ Licensing Act 1964.

¹³⁴ A Hunt and C Manchester, 'The Licensing Act and its Implementation: Nanny Knows the "Third Way" is Best' [2007] 1 Web Journal of Current Legal Issues.

¹³⁵ Law Commission, *Reforming the Law Of Taxi and Private Hire Services* (Law Comm CP No 203, 2012) [16.21].

b) *The 'authority' of local authorities*

At the heart of regulation lies the government's power to coerce individuals and groups. Stigler points out that the one resource which a state has and which is not available to its citizens is the power to coerce.¹³⁶ Some writers argue that the power to coerce should only be used in very limited circumstances. Hayek, for example, believes that coercion should be resorted to as little as possible, and instead regulation ought to be left to the spontaneous forces of society (by which he meant market forces).¹³⁷ Nozick also contends that coercive power should be limited to the narrow functions of protection against force, theft, fraud, and enforcement of contracts only, and in particular that any use of coercion to prohibit activities to people for their own good or protection would violate their individual rights.¹³⁸ Such a view is seen as extreme or unrealistic in a modern context, given the wide range of managerial roles that modern government has taken on or is called upon to deal with.¹³⁹ Nonetheless, government should still use regulatory powers in accordance with some recognizable principles of justification, at heart of which is the notion of legitimate authority.¹⁴⁰ Such authority has to be recognized as legitimate both by the citizens upon whose behalf the regulation is exercised and by the members of the trade who are regulated.

¹³⁶ Stigler (n 8) 4.

¹³⁷ Hayek, *Road To Serfdom* (n 97) 13.

¹³⁸ R Nozick, *Anarchy, State and Utopia* (Blackwell, Oxford 1974) 9.

¹³⁹ Davis (n 99) 19.

¹⁴⁰ G Richardson, 'The Legal Regulation of Process' in G Richardson and H Genn (eds) *Administrative Law and Government Action: the Courts and Alternative Mechanisms of Review* (Clarendon Press, Oxford 1994) 126

Local authorities performing their regulatory functions are doing so in accordance with the Weberian idea of ‘legal authority’ as the main pure type of legitimate authority. This form of authority rests on the belief in the legality of patterns of normative rules and the right of those elected to authority under such rules to issue commands.¹⁴¹ In England and Wales the local councils derive their authority to regulate the taxi trade under the specific statutory powers to do so granted by the 1847 and 1976 Acts.

The local council may have authority to act, but is that authority accepted as legitimate? And why is it important that it is so? According to Baldwin, legitimacy of regulatory action appears to be based on the existence of one or more of five key criteria: legislative mandate; accountability of the body performing the regulatory action; the existence of democratic, open, fair procedures for determining questions of policy and individual decision making; the expertise of the regulatory body; and whether the action is effective.¹⁴² There are problems with all of these criteria. Much legislative authority is couched in broad discretionary terms allowing regulators considerable leeway in their approach to regulatory activity. There are also difficulties defining notions of effectiveness. Nonetheless, Baldwin concludes that the greatest claim to legitimacy for regulatory bodies appears to be in respect of its expertise. However, it must be borne in mind that Baldwin is writing about ostensibly autonomous regulatory agencies which are generally not directly accountable to the public or the electorate in the same way that local authorities are.

¹⁴¹ M Weber, *The Theory of Social and Economic Organization* (AM Henderson and T Parsons (trs), Free Press, New York 1947) 328

¹⁴² R Baldwin, *Rules and Government* (Clarendon Press, Oxford 1995) 300

How helpful are Baldwin's five criteria in assessing the legitimacy of a local authority regulator? In practice, the claim to legitimacy on the grounds of expertise appears to be the weakest one when applied to local authorities. Although licensing officials within local authorities are undoubtedly experts in the field of licensing, very few councils have the luxury of being able to employ officials whose expertise is in taxi licensing alone. Most licensing officers are also responsible for other areas of local authority licensing and registration, such as public houses, dog-breeding establishments and take-away food outlets. Stronger support for the legitimacy of local authority control would appear to stem from the other criteria, in particular the facts that the local authority possesses a legislative mandate to regulate, albeit one couched in very broad discretionary terms, and the local authority is accountable to the electorate.

In general terms, Hoque considers that the legitimacy of local authorities stems from adopting and reflecting the will of its citizens.¹⁴³ The expression of local norms comes from the ballot box at local elections to elected representatives. This is a difficult position to support in practice, given that local election campaigns are often dominated by national, not local, issues,¹⁴⁴ and the traditionally low rates of participation in the local electoral process.¹⁴⁵ However, Orford et al make the point that, although voters in local elections take their cue from national issues, it is how those issues impinge upon their local services that affects electors' voting

¹⁴³ Z Hoque, 'Securing Institutional Legitimacy or Organizational Effectiveness?: a Case Examining the Impact of Public Sector Reform Initiatives in an Australian Local Authority' (2005) 18(4/5) *International Journal of Public Sector Management* 367

¹⁴⁴ A Alexander, 'Structure, Centralization and the Position of Local Government' in M Loughlin, MD Gelfand and K Young (eds), *Half a Century of Municipal Decline 1935-1985* (Allen & Unwin, London 1985) 72

¹⁴⁵ *ibid* 72; Turn out in local authority elections is reported to be as low as 39.1% on average in the UK – Politics, *Electoral Reforms and Voting Systems* June 2009) <www.politics.co.uk> accessed 28th April 2011

behaviour.¹⁴⁶ The provision of neighbourhood taxi services may not necessarily be a burning issue, unless some incident has raised the profile of the taxi trade in the local media. However, local authority activity to ensure a taxi service that is safe, reliable and inexpensive, whilst still allowing those who work in the industry to make a reasonable living should be seen as possessing legitimacy by all concerned.

c) Conclusions on localism

The issue of localism is likely to remain influential in the regulation of the taxi trade. The present Coalition Government has expressed a clear preference for local over national regulation. This expression finds statutory form in the Localism Act 2011. Heavily influenced by Barber's notion of 'strong democracy' concentrating local control in the hands of local people,¹⁴⁷ the Act establishes central government's choice for neighbourhood issues to be addressed and regulated by the communities directly affected. Although the Act does not specifically relate to taxi services, it does give an indication of the government's preference for local services to be administered locally, with minimal intervention from national government.¹⁴⁸

The key area of research that arises from this discussion is whether the identity of the regulator is significant in achieving the regulatory aims. Does effective regulation of the taxi trade require a degree of local knowledge and choice or could a national

¹⁴⁶ S Orford et al, 'Investigating Differences in Electoral Turnout: the Influence of Ward Level Context on Participation in Local and Parliamentary Elections in Britain' (2008) 40 *Environment and Planning* 1250

¹⁴⁷ B Barber, *Strong Democracy: Participatory Politics for a New Age* (University of California Press, Berkeley 1984)

¹⁴⁸ HM Government, 'The Coalition: Our Programme for Government' (May 2010) 11.

regulatory body better achieve the objectives of the legislation? I answer these questions from the empirical findings of the study in the chapters which follow.

5) Who benefits from regulation?

Although this question has some overlap with the aims of regulation, in this section I look at the possible effects of regulation, and the methods used, rather than its specific aims. The question is whether regulation of the taxi trade in its current form furthers the public interest, specifically the interests of taxi customers and other road users or protects existing members of the trade from increased competition. Is it the regulator itself which benefits most from its regulatory powers? In considering this issue, however, I bear in mind that the competing interests seeking to benefit from regulation need not be mutually exclusive. A well-regulated taxi market should be capable of benefiting the public, the trade and the regulators.

Moore found that there is some truth in the view that the effect of licensing is to protect the public from ‘quacks, shysters and inexperienced persons.’¹⁴⁹ On this view, regulation through a system of licensing is clearly designed to protect the user of licensed services against being injured or taken advantage of. Although he questions what public interest is served by licensing particular occupations, Gelhorn agrees that licensing has some real benefits for the public.¹⁵⁰ Indeed, the rationale for using licensing as a regulatory form rather than other methods, such as registration or

¹⁴⁹ TG Moore, ‘The Purpose of Licensing’ (1961) 4 *Journal of Law and Economics* 93, 117.

¹⁵⁰ W Gelhorn, *Individual Freedom and Governmental Restraints* (Louisiana State University Press, Baton Rouge 1956).

certification,¹⁵¹ is that this best serves the public interest. According to Ogus, licensing is more effective in protecting the public because the prospective licence holder is subjected to *ex ante* scrutiny rather than *ex post* investigation and sanctions where something has gone badly wrong.¹⁵²

However, some commentators take a different view, concluding that most regulatory policies are pursued only if they prove acceptable to the interests of the regulated group.¹⁵³ Writers have offered a ‘life cycle’ theory of regulation whereby the regulator’s initial enthusiasm and vigour is lost and regulatory functions eventually become subordinated to the interests of the regulated industry.¹⁵⁴ Such a process has been dubbed ‘regulatory capture’, and is said to benefit the business involved because it enables the trade to manipulate performance of the regulator’s tasks in a way which is favourable to the regulated population.¹⁵⁵ Although the notion of ‘regulatory capture’ is still influential in regulatory theory, it has been criticised as lacking both a theoretical basis and empirical support.¹⁵⁶ Notwithstanding these criticisms, however, in the case of taxi regulation there are certain aspects of the licensing regime, particularly in relation to quantitative regulation and fares, which display some elements of regulatory capture. An important part of the study will be to examine how far the suggestion of regulatory capture in these areas is accurate.

¹⁵¹ These forms of regulation usually require compliance with recognised quality standards, but are not normally subject to criminal sanctions for performing the activity whilst not registered or certified.

¹⁵² Ogus (n 1) 228.

¹⁵³ EP Herring, *Public Administration and the Public Interest* (McGraw-Hill, New York 1936) 213; M Bernstein, *Regulating Business by Independent Commission* (Princeton University Press, Princeton 1955) Ch 3.

¹⁵⁴ ES Redford, *Administration of National Economic Control* (Macmillan, New York 1952) 385-6; Bernstein (n 153) Ch 3.

¹⁵⁵ Yeager (n 13) 38-39.

¹⁵⁶ Posner (n 19) 336; PJ Freitag, ‘The Myth of Corporate Capture: Regulatory Commissions in the United States’ (1983) 30 *Social Problems* 480.

Specifically on the licensing of occupations, Stigler believes that this is a use of the political process to improve the economic circumstances of the group.¹⁵⁷ On this view, the pressure for licensing emanates from the members of the occupation itself. Friedman's objection to occupational licensing is that it involves control of a profession by members of the same occupation.¹⁵⁸ Although this is not the case in taxi licensing, it is arguable that the taxi trade still enjoys the economic benefits of licensing, even though it has no direct control over administration of the system. Indeed, the greatest opposition to licensing in the literature comes from economists who argue that it produces monopoly rents in the form of high monetary values on the vehicle licence.¹⁵⁹ Toner observes that in restricted markets a substantial and increasing licence premium is enjoyed by licence holders.¹⁶⁰ However, Cairns and Liston-Heyes believe that such premiums are not evidence that regulation is inefficient, nor evidence that regulation is instituted because of rent seeking by the industry. Instead, they consider that such premiums may be justified on the basis that the 'medallion' (the USA equivalent of the vehicle licence in the UK) acts as a bond for appropriate performance of the taxi service.¹⁶¹ On this view, the imposition of quantitative regulation actually benefits the public through improved quality of service.

However, Toner's study of deregulation of the taxi market concludes that entry deregulation had only limited success in achieving its purported objectives of increased vehicle numbers and lower fares. Indeed, deregulation appeared to result in

¹⁵⁷ *Stigler* (n 8) 13.

¹⁵⁸ M Friedman, *Capitalism and Freedom* (University of Chicago Press, Chicago 1962) 140.

¹⁵⁹ *Seibert* (n 42); *Barrett* (n 73).

¹⁶⁰ *Toner* (n 22) 83.

¹⁶¹ RD Cairns and C Liston-Heyes, 'Competition and Regulation in the Taxi Industry' (1996) 59 *Journal of Public Economics* 1

lower standards of quality enforcement, measured by the age limits imposed upon vehicles and the frequency of routine testing.¹⁶² This is evidence that removal of quantitative regulation acts to the detriment of the public in terms of lower standards of service. On the other hand, it does not appear to demonstrate any great benefit to the trade either.

Although there is a statutory scheme for the setting of fares,¹⁶³ this only provides for consultation with local citizens and the trade whenever the local authority contemplates a revision of the fare rates. An Office of Fair Trading report in 2003 recommended that local authorities take steps to make customers aware that set fares were a maximum and could be negotiated subject to this upper limit.¹⁶⁴ There is no evidence that local authorities have followed this advice. Beyond this, there are no other views on the effects of fare regulation or who is supposed to benefit. Anecdotally, members of the public regard taxi fares as expensive and drivers see them as too low, but there is no empirical support for either view.

Although this is not mentioned in any of the literature, it might be argued that local authorities themselves benefit from licensing, if only because licensing fees generate income for the council. However, local authorities are required to fix fees at a rate to cover operating and administrative costs only, and are not supposed to produce excess income for the council.¹⁶⁵ Aquilina's recent study suggested that deregulation may be of benefit to those local authorities that fail to regulate the market properly, but

¹⁶² *Toner* (n 22) 91.

¹⁶³ Local Government (Miscellaneous Provisions) Act 1976, s 65.

¹⁶⁴ *Office of Fair Trading* (n 41).

¹⁶⁵ *R v Manchester City Council ex p King* (1991) 89 LGR 696 – A case involving street trading licences; *R(Hemming t/a Simply Pleasure Ltd) v Westminster City Council* [2013]EWCA Civ 591; [2013] BLGR 593 – A recent Court of Appeal decision involving sex shop licences.

quantity restrictions ought to be retained by those authorities that manage the taxi market in their area well.¹⁶⁶ However, the results of this study should, as the author himself acknowledges, be interpreted with caution as they are based on a small sample of local authorities.

To conclude, there are competing claims in the literature as to who benefits from regulation. Moore concluded that legislatures licence those occupations which are most in need of regulation in the public interest and, in so doing, establish certain regulations which benefit practitioners.¹⁶⁷ So it is possible that all actors in the system could benefit from regulation, even if different parties may benefit from different types of regulation. I shall consider the question of who gains most from regulation in relation to the empirical materials.

6) Enforcement

Regulation is of precious little use if it cannot be effectively enforced. The main reason cited for regulatory failure is ineffective enforcement,¹⁶⁸ although the reasons for such ineffectiveness can vary. Enforcement may be ineffective as a result of the objectives of the regulation being unclear or poorly defined¹⁶⁹ or lack of agency resources¹⁷⁰ or agency capture, as discussed above. Enforcement carries with it the idea of compulsion in that people are unwilling to carry out their obligations unless

¹⁶⁶ M Aquilina, 'Quantity De-restriction in the Taxi Market: Results from English Case Studies' (2011) 45 *Journal of Transport, Economics and Policy* 179. The study was based on rank observations and public attitude surveys in ten local authorities, three of which had recently deregulated their taxi markets, the other seven retained quantity restrictions.

¹⁶⁷ Moore (n 149) 117.

¹⁶⁸ Gunningham (n 94).

¹⁶⁹ R Baldwin and C McCrudden, *Regulation and Public Law* (Law in Context, Weidenfield and Nicholson, London 1987) 56-63

¹⁷⁰ Richardson (n 45) 105-106

pressure of some kind is put on them.¹⁷¹ In this section, I analyse how far that element is still essential and whether the legislative framework provides appropriate means to secure effective enforcement.

When it comes to enforcement, it is said that the function of the regulator is principally one of securing compliance with legislative goals encapsulated in statutory rules or standards.¹⁷² The effectiveness of enforcement depends upon the extent to which regulators can secure present and future compliance.¹⁷³ Although this sounds simple, the meaning of ‘effectiveness’ and ‘compliance,’ and how they might be measured, is not clear. Hopkins makes the point that the crucial question in seeking how best to ensure compliance is to ask what it is that the regulated are required to comply with. The answer to this question will often dictate how regulators go about their task.¹⁷⁴

Local authority regulators face the task of deciding how best to achieve effective enforcement, although how such effectiveness is to be assessed is a difficult question.¹⁷⁵ Galligan reminds us that effectiveness is of vital importance in the exercise of discretionary power,¹⁷⁶ and as such is a key issue in this research. Unfortunately, the literature reveals opposing views of how to measure effectiveness of enforcement. For some writers, the number of prosecutions is seen as an indication of work undertaken and a sign of success.¹⁷⁷ Advocates of this approach suggest that

¹⁷¹ Rhodes (n 11) 174.

¹⁷² Rhodes (n 11) 28.

¹⁷³ Hutter (n 113) 3.

¹⁷⁴ A Hopkins, ‘Compliance With What?: The Fundamental Regulatory Question’ (1996) 34 *British Journal of Criminology* 431, 431.

¹⁷⁵ Baldwin and McCrudden (n 169) 54, 330.

¹⁷⁶ Galligan (n 100) 74.

¹⁷⁷ Gunningham (n 94); Tombs (n 6) 128.

more regular detection and prosecution of offences are the only ways to ensure that safety is taken seriously and any other strategy leads to endless prevarication on the part of the regulated.¹⁷⁸ However, other commentators argue that measuring success by numbers of prosecutions can lead to regulators prosecuting trivial cases in order to give a false impression of effectiveness.¹⁷⁹ A better measure is how far enforcement activities achieve compliance with the regulatory aims without resort to formal legal procedures.¹⁸⁰ Such a basis, however, is not without its difficulties, as it involves a ‘complex process of defining responses to mandates that are often ambiguous.’¹⁸¹

Although regulatory regimes are generally underpinned by the criminal law, enforcement does not necessarily mean resorting to criminal prosecution. The literature identifies two major systems or strategies of enforcement - compliance and deterrence.¹⁸² The former is a conciliatory style designed to be remedial, whilst the latter is a penal style and designed to punish violators. The literature suggests that most regulators prefer a compliance approach.¹⁸³ Hutter considers that these contrasting approaches should be treated as analytical models only, with regulators in reality using a combination of both styles.¹⁸⁴ Indeed, Ayres and Braithwaite point out that in reality the regulatory agencies which succeed best at achieving their goals are the ones that strike a balance between the two models.¹⁸⁵ I will use the terms ‘conciliatory’ and ‘deterrence’ to describe these two models in order to avoid

¹⁷⁸ JV Rees, *Reforming the Workplace: A Study in Self-regulation of Occupational Safety* (University of Pennsylvania Press, Philadelphia 1988) 256.

¹⁷⁹ Cranston, *Regulating Business* (n 51) 99.

¹⁸⁰ Hawkins (n 93) 126.

¹⁸¹ L Edelman, S Petterson, E Champliss and SE Howard, ‘Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers Dilemma’ (1991) 13(1) *Law and Policy* 73.

¹⁸² AJ Reiss, ‘Consequences of Compliance and Deterrence Models of Law Enforcement for the Exercise of Police Discretion’ (1984) 47(4) *Law and Contemporary Problems* 83.

¹⁸³ Hawkins (n 93) 3.

¹⁸⁴ Hutter, *Compliance Regulation and Environment* (n 10) 14.

¹⁸⁵ I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, New York 1992) 21.

confusion about the use of the word ‘compliance’, which has an ordinary meaning, as already used in the preceding paragraphs, as well as this technical meaning.

Advocates of a conciliatory approach argue that rigid prosecution of every ‘petty’ violation is counterproductive because it puts the employer on the defensive and destroys any possibility of co-operation or open communication about compliance problems which an employer might have.¹⁸⁶ On the other hand, it is said that the conciliatory approach involves an unjustifiable tendency to see things from the employer’s point of view and leads to the ‘capture’ of regulatory agencies by those they are supposed to regulate.¹⁸⁷ A conciliatory approach depends on the regulators and the regulated being able to maintain a reasonable working relationship. It has been said that the role of enforcement officers should be as the ‘handmaidens of business – helping them to comply – rather than the local branch of the Gestapo’.¹⁸⁸ This comment was no doubt tailored for its audience and is grossly unfair to local authority officials, but it illustrates a preference, at least on the part of central government, for a conciliatory approach to enforcement.

Hawkins considers that those who are subject to regulation have good economic reasons not to comply.¹⁸⁹ So why do the regulated comply with the regulators? Some taxi drivers may accept the authority and legitimacy of the licensing authority and obey its instructions because they consider that they are binding upon them. Other drivers may simply comply out of respect for the legitimacy of the local authority to

¹⁸⁶ Hopkins (n 174) 432.

¹⁸⁷ E Bardach and RA Kagan, *Going By the Book: The Problem of Regulatory Unreasonableness* (Temple University Press, Philadelphia 1982) 324.

¹⁸⁸ Deregulation Minister (Neil Hamilton MP) address to Conservative Party Conference 1994, cited in C Andrews, *The Enforcement of Regulatory Offences* (Sweet and Maxwell, London 1998) 21.

¹⁸⁹ Hawkins (n 93) 15.

regulate their activities, whether in the public interest or otherwise. Raz, however, considers that acceptance of the legitimate authority of the government is a less important reason for compliance than more prudential and practical reasons. Even people who believe they are not subject to the authority of the law may still obey the rules because disobedience will do more harm than good.¹⁹⁰ This raises the question whether, in reality, members of the taxi trade comply with regulators because it is in their interests to do so or because they want to avoid the financial and stigmatizing consequences of non-compliance.

It is suggested in the literature that compliance is most likely to be achieved when a regulator adopts what Ayres and Braithwaite call an ‘explicit enforcement pyramid’.¹⁹¹ In this model, most enforcement action occurs at the base of the pyramid where attempts are initially made to coax compliance by persuasion. Enforcement activities then escalate up the pyramid to a warning letter, civil monetary penalties, criminal prosecution, temporary suspension of a licence to operate, to finally permanent revocation of a licence to operate. This critique of command and control style regulation demonstrates that the least amount of enforcement activity occurs at the apex of the pyramid where the most serious sanctions occur.

The alternative to a conciliatory approach is to adopt a deterrence strategy. Despite endeavours at persuasion, there will always be certain members of the regulated who are unable or unwilling to comply. No amount of accommodation, urging or insistence will make them comply, and so the regulator will in such circumstances have to resort to a deterrence strategy. This does not necessarily involve the use of

¹⁹⁰ J Raz, *The Morality of Freedom* (Clarendon Press, Oxford 1986) 102.

¹⁹¹ *Ayres and Braithwaite* (n 185) 35.

prosecution as its main weapon to enforce the regulations, although prosecution is seen by some as the ultimate sanction, if only in symbolic and instrumental terms.¹⁹²

Administrative sanctions in the form of suspension, revocation or refusal to renew a licence are likely to have more impact on the regulated than low financial or other penal sanctions imposed by the courts.¹⁹³ This is reflected in the activity at the apex of Ayres and Braithwaite's pyramid. The threat of such administrative sanction is in itself likely to induce a recalcitrant licence holder into compliance. Removal of the licence has the advantage for regulators of an instant final disposal of the matter unless the licensee takes the initiative to appeal or seek judicial review.¹⁹⁴ In either case the burden of proof falls on the licence holder to demonstrate that the regulator's decision was wrong.¹⁹⁵ The courts do not have the power to order removal of a licence holder's licence, even upon conviction. Removal is an administrative action of the licensing authority in accordance with the statutory provisions.¹⁹⁶ However, the statutory grounds do not necessarily require a conviction, and a licence can also be suspended or revoked by the licensing authority for some 'other reasonable cause'.¹⁹⁷

An important part of my research is to find out how local authority licensing officers go about their task of enforcement of taxi regulation, whether councils adopt a conciliatory or deterrence strategy, and whether enforcement activity is effective in achieving the regulatory aims.

¹⁹² K Hawkins, *Law as Last Resort: Prosecution Decision-making in a Regulatory Agency* (Oxford University Press, New York 2002) 417.

¹⁹³ *Rowan-Robinson et al* (n 128) 245.

¹⁹⁴ *Dickens* (n 125) 632.

¹⁹⁵ *R(Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31; [2011] 3 All ER 579. This is a case involving an exercise of statutory discretion to remove a licence under provisions of the Licensing Act 2003.

¹⁹⁶ Local Government (Miscellaneous Provisions) Act, s 61

¹⁹⁷ The power to remove a licence administratively on these grounds is described in Chapter 1.

7) Conclusions

In this chapter, I have reviewed some of the theoretical arguments underpinning regulation, both in general and more specifically in relation to regulation of the taxi trade. The prime objective of this chapter was to discover the aim of taxi regulation. A number of possible aims are suggested, but there is not one predominant aim articulated as such by either the literature, by Parliament or by the courts. Indeed, the aim of regulation appears to be a malleable concept, which can be prayed in aid of whatever point of view central or local government or the courts wish to advance. As will be seen, local authority regulators claim that all of their endeavours are to further the aim of the protection of the public. However, as will also be seen, what they achieve in practice is often something other than that aim.

Looked at from a historical perspective, regulation of the taxi trade appears to follow a regulatory pattern identified in other forms of public transport, such as buses and trains. Regulation introduced initially for social reasons, usually connected to public safety, is later taken over by mainly economic regulation, in terms of control of entry to the market and price fixing.¹⁹⁸ In the case of taxis, regulation was initially introduced to prevent congestion of the streets and internecine battles between drivers competing for business. Notwithstanding arguments that control of congestion should still be the primary aim of regulation, the focus has moved to economic debates about whether the purpose of regulation is to benefit the trade or the regulator. In this thesis, I argue that it is largely the local authorities themselves which have gained most from

¹⁹⁸ *Carbajo* (n 14).

regulation. Any benefit that is derived from the licensing regime is not that of the travelling public.

A number of theoretical issues have been raised during the course of this chapter, although not all of these will be pursued in subsequent parts of this thesis. The underlying theories considered in this chapter will be taken as models against which the reality of regulation of the taxi industry will be gauged. The theoretical models which will be mapped onto the empirical findings of the study will be those which most closely relate to the research questions, in particular those which relate to when discretionary powers should be used or when they should be displaced by rules, how discretion is exercised, whether local or national control is appropriate, who benefits from regulation, and how best to achieve effective enforcement. Essentially, I consider how accurately the abstract concepts discussed in this chapter reflect what is happening in real life. This will enable conclusions to be drawn on the extent to which either the theory or practice is in need of revision.

The themes of the exercise of discretion and localism run through this thesis, and Chapter 4 will focus largely on those concepts. In Chapter 4, I will analyse why and how vehicle entry to the market is regulated through the exercise of both limited and open-ended discretion, and the influence which localism plays in decisions to restrict entry. This analysis is underpinned by the issues of whether discretion is appropriate, what factors influence the exercise of discretion and whether local or national control is more effective. The findings of the empirical part of the study will be used to assess the validity of the views set out in the literature. I will return to these points in Chapter 4, before which I will outline how the study was carried out.

CHAPTER 3: METHODOLOGY

In this chapter, I describe and explain the methodology adopted in the research which was broken down into four stages. The first stage was a review of the existing literature on regulation both in general and in relation to taxis in particular. Much of this literature focussed on economic regulation. The second stage involved a survey, mostly conducted online, to obtain as much information as possible direct from all the local authorities throughout the country on their approaches to taxi regulation. This information was then used to select a sample of councils from which to obtain and analyse more detailed documentary evidence as the third stage. Finally, based on the contents of the documentary evidence, semi-structured interviews were arranged with various actors involved in taxi licensing from half of the third stage sample councils.

One point that was clear from the early stages of the research was the lack of empirical evidence on regulation of the taxi trade. In view of the absence of empirical information, I wanted to undertake an empirical study in order to put some flesh on the bare bones of the theoretical models of taxi regulation. As a former licensed hackney carriage driver, I had some experience of the regulatory system in action, but I wanted to see things from the point of view of those who were responsible for the day to day running of the system, as well as those directly affected by the regulatory regime. As was pointed out by Blumer, ‘an alert and observant actor in the setting is bound to know more than the researcher ever will about the realities under

investigation.’¹ I sought to capture data on the perceptions of those involved in taxi licensing ‘from the inside’.²

I decided to take a qualitative approach to the research for two reasons. First, because a qualitative methodology is particularly suitable for studying the way in which ‘different people experience, interpret and structure their lives.’³ I was interested in the thoughts, opinions and beliefs of those involved in the day-to-day practice of the taxi trade either as regulators or as a member of the regulated occupation. A qualitative approach provided a more appropriate way of doing this. The second reason is because of the large number of licensing authorities in England and Wales. This made it necessary to reduce the number of councils participating in the study to a smaller sample in order to explore the issues in more depth. I concentrated on a sample of 32 councils, representing approximately ten per cent of the total, in order to examine the issues in greater detail.

a) First Stage: Literature review

The first phase of the research started with a review of the available literature both on regulation generally and in relation to taxi licensing more specifically. This review enabled me to adopt a model of what regulation is seeking to achieve and how the regulator goes about this task. I was able to identify some broad general themes, issues and theoretical models from the literature. Although Hutter suggests that the literature review should be used to ‘identify language and phrases that might be

¹ H Blumer, *Symbolic Interactionism: Perspective and Method* (Prentice-Hall, Engelwood Cliffs 1969) 127.

² M Miles and A Huberman, *Qualitative Data Analysis* (Sage, Thousand Oaks CA 1994) 6.

³ RG Burgess, *In the Field* (Routledge, London 1984) 3.

meaningful to those involved in the trade',⁴ this was not necessary for me, as I was already familiar with the jargon of the actors involved. The review did, however, provide me with useful insight into the sort of data I would need to look for during the course of the study.

b) Second Stage: General survey

In the second stage, I carried out a full review of the information readily available to the public on vehicle and driver licensing to get an extensive picture of what local authorities are doing and how they go about their task and exercise their powers. This stage of the research was carried out predominantly by searches on each local authority's website, although some searches had to be followed up by email or telephone call to obtain further documentation or clarification of the authority's procedures. I anticipated that this would be a relatively quick way of gathering preliminary information on the different approaches to regulation of trade by each authority, and so it proved to be.

There are 315 local authorities in England and Wales with responsibility for taxi licensing. These comprise 35 Metropolitan District Councils, governing the major conurbations in England, 27 Unitary Authorities, 22 Welsh Councils and 231 city, borough or district councils for each area. From these 315, I was able to obtain some information from 275 councils (87.3 percent) in total, including where the website search was supplemented by telephone or email enquiry. In the case of nine councils, it was not possible to obtain any information at all due to technical difficulties with

⁴ BM Hutter *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (Clarendon Press, Oxford 1988) 19.

either the website or in making contact; for the other 31 councils information was only available on written application.

From the results of this initial survey, I was able to identify some common themes and characteristics of taxi regulation which could be coded for the purposes of analysis. I was also able to identify some less common, but nonetheless popular, elements used by local authorities, as well as some unusual features which were seen in only a few councils. These latter features would be considered ‘outliers’ in research terms, but are still useful as they add an extra dimension to the study and they can also be useful as a check to test the strength of the basic findings.⁵ Examples of this type of characteristic include drug testing, additional driving requirements, literacy and numeracy testing, and formal qualifications. The results of this initial survey are displayed in Table 1 below.

Percentage figures in Table 1 are calculated as a percentage of all 315 councils. The mathematically astute reader will observe that the total number of councils from each of the categories above is more than 315 and the percentages total more than 100. This is because all councils exhibited more than one of the above features in combination, with some local authorities having several such elements as part of their regulatory regime. The different characteristics identified in Table 1 call for further elucidation. A total of 84 licensing authorities (26.7 percent) retain quantitative regulations upon their taxi fleets throughout the whole or part of their area, despite the barrier to such a form of regulation created by section 16 of the Transport Act 1985.

⁵ *Miles and Huberman* (n 2) 269

Table 1: Features of Regulation from Initial Survey

<u>Characteristic</u>		<u>Number of Councils</u>	<u>Percentage of Total</u>
No Information available		40	12.7
Quantitative Regulation		84	26.7
Vehicle Requirements 257 (81.5)	Vehicle Specifications	225	71.4
	Approved Types	89	28.3
	Age Restrictions	109	34.6
	Livery	38	12.0
	WAV only	45	14.3
Driver Requirements 263 (83.4)	Medical Form	243	77.0
	Knowledge Test	180	57.0
	Driving Test	116	36.8
	Additional Driving Experience	38	12.0
	References	75	23.8
	Literacy/numeracy Test	27	8.6
	Formal qualifications	35	11.1
	Mandatory Drugs Test	6	1.9

A full list of these councils is attached as Appendix A to the thesis.⁶ As part of the study, I examined why so many local authorities still impose quantitative restrictions, despite central government discouragement.

257 councils provided information relating to vehicle requirements. The demands of these councils varied considerably, even within the various characteristics identified. So, for example, the general vehicle specifications set by 225 local authorities cover different combinations of stipulations relating to the external appearance of the vehicle, the internal dimensions of the passenger compartment, the construction of the vehicle, safety features, and the provision and use of taximeters. Many specifications also include technical requirements, such as the minimum cubic capacity of the engine or the external dimensions of the vehicle. Of the councils which operate approved lists of vehicles, some are very restrictive, requiring that vehicles be only the 'London Cab style' of vehicle, while others approve longer lists list of acceptable makes and models of vehicle.⁷ Maximum age limits at first licensing varies widely between councils from brand new up to ten years old. Similarly, age restrictions beyond which current licensed vehicles would no longer be considered suitable vary between five and 20 years.⁸

'Livery' refers to the requirement that all hackney carriages in an area are the same colour or follow the same colour scheme. Colours vary from all black, white, red, yellow or green to combinations involving distinctively coloured bonnets and boots

⁶ This list is accurate as at April 2011. During the course of this study, four councils have removed quantitative regulation of their fleets and six have reintroduced such restrictions.

⁷ These lists vary in length from three or four particular makes and models of vehicle to some which extend to more than 20 approved vehicles.

⁸ Some councils did not enforce maximum age limits for vehicles considered to be in 'exceptional condition', as defined by the council concerned. Different age limits often apply for purpose built 'London Cab style' taxis.

on the vehicle, or coloured stripes down the side of the taxi. 'WAV' is a commonly used acronym to denote a wheelchair accessible vehicle, and 45 councils will licence only such vehicles either at first licensing or upon replacement of existing licensed vehicles. However, there is no universally accepted definition of what constitutes a WAV.

Of the 263 councils which provided information on driver requirements, 243 had a specific stipulation that an applicant be certified 'medically fit' in a medical report completed by the driver's own GP or by a local authority nominated doctor following medical examination. Although medical forms varied in content, detail and format, all were designed to elicit information on any physical or psychological conditions that might affect an applicant's ability to drive safely.

'Knowledge tests' are a popular, but not universal, feature of taxi driver regulation. These devices are designed to gauge an applicant's suitability as a driver, but vary widely in content, method of assessment, and degree of difficulty between local authorities. Tests can examine geographical knowledge of an area only, whilst others also include knowledge of the taxi legislation, conditions of licences or the Highway Code. Tests may be oral, written or a combination of both, and different pass marks apply.⁹

The requirement of 116 councils that applicants undergo a further driving test, either under the auspices of the Driver Standards Agency or the council's own driving assessor, is surprising given that, in obtaining an ordinary driving licence, an

⁹ Pass marks varied between 100 percent on a short, ten question test and 60 percent on a lengthier, more detailed examination.

applicant will already have passed what is widely regarded as a stringent test of his or her driving ability. A similar point can be made about the 38 councils which require applicants to have held an ordinary licence for more than the statutory minimum of one year.¹⁰

All 263 councils required driver applicants to obtain a Criminal Records Bureau (CRB)¹¹ certificate as evidence of his or her good character, and most were content to accept that as conclusive. However, 75 councils additionally required character references. This is also surprising, as references are normally associated with applications for employment. Applicants are seeking authority to carry on a trade, often as self-employed entrepreneurs. The local authority is not their employer.

The requirement of 27 councils that applicants satisfy basic communication, literacy and numeracy standards is also somewhat surprising, as those skills are normally associated with the needs of employers too, and the same can be said about formal qualifications. The power to carry out mandatory drug tests claimed by six councils seems to be a gross invasion of an applicant's privacy, particularly as it requires no proof, or even reasonable suspicion, that the applicant uses drugs.

The initial survey enabled me to obtain the fare tariffs set by each council, although some of these looked somewhat out of date. There was little information available on this survey about enforcement of regulation. Some websites contained vague general

¹⁰ Of the 38 councils which specified driving experience of more than one year before an application for grant of a driver's licence would be considered, 21 required an applicant to have held a full licence for two years, 16 for three years, and one, Tendring District Council, for four years.

¹¹ The functions performed by the CRB have now been taken over by the Disclosure and Barring Service (DBS) with effect from 1st December 2012 – Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 SI 2012/3006. The study refers to the CRB throughout, as this was the relevant body at the time the study was undertaken.

comments that the council was responsible for enforcement of the taxi legislation, but nothing specific about how enforcement was carried out.

Two things were clear from this initial survey. One was that councils employed a variety of approaches to the task of taxi regulation. Even where the same regulatory characteristics were present, the way in which they were used varied from one council to another. The second point of note is that none of the elements of regulation set out above are statutory requirements; they are all the creations of local authorities.¹²

c) Third Stage: Sampling and documentary analysis

Due to the numbers of local authorities involved in the second stage of the research, it was clear that a more in-depth analysis would require selection of a smaller number of councils to act as a sample.¹³ So far as the appropriate number of authorities for the sample was concerned, Hoinville and Jowell suggest that,

the complexity of the competing factors of resources and accuracy means that the decision on a sample size tends to be based on experience and good judgement rather than relying on a strict mathematical formula.¹⁴

From the sample frame of all 315 councils, I selected a sample of 32 local authorities, for two main reasons. First, this number was large enough to obtain a reasonable geographical spread of councils across the whole of England and Wales

¹² There is a statutory power to request that an applicant undergoes medical examination, although this power is a discretionary one - Local Government (Miscellaneous Provisions) Act 1976 s 57(2)(a).

¹³ M Denscombe, *The Good Research Guide* (2nd edn, Open University Press, Maidenhead 2003) 27.

¹⁴ G Hoinville, R Jowell and Associates, *Survey Research Practice* (Heinemann, London 1978) 61.

with a mix of urban and rural locations. Second, 32 councils represent approximately one in every ten local authorities and 32 is an easily divisible number to work out appropriate proportions. By using 32 councils as a sample, I was able to use what is referred to in the research literature as proportionate stratification.¹⁵ This means that the number of councils selected as examples displaying the main characteristics identified in stage two correspond proportionally to the number of councils exhibiting such features across the country. The sample of 32 councils was selected on the basis of geographical location, nature of the local topography, and main regulatory features. By using these characteristics as the main bases for selection, I was able to obtain a sample set spread around the country which was approximately in a representative proportion to the occurrence of the selection criteria throughout the country as a whole. For example, roughly 25 per cent of councils in England and Wales retain quantitative regulation, so eight councils (25 per cent of 32) were chosen for the fact that they imposed limits on the number of taxi licenses issued. This pattern was followed for the other selection criteria. The results of this sampling exercise are set out in Table 2 below.

I devised topographic categories to divide the councils between those which govern large cities and other centres of high population density (Urban), smaller cities or larger towns combined with surrounding areas of low population (Mixed urban/rural), and mostly rural areas based around a medium sized market town (Mainly Rural). The term ‘assessment’ in the regulatory feature column is a generic term for all forms of additional ‘testing’, such as driving tests, literacy or numeracy tests and formal qualifications. Although each council’s main regulatory characteristic is listed, some

¹⁵ *ibid* 62.

Table 2: The Sample of 32 Councils

<u>Council</u>	<u>Location</u>	<u>Topography</u>	<u>Main Feature</u>
Amber Valley	West Midlands	Mixed urban/rural	Knowledge test
Bath & North East Somerset	South West	Mixed urban/rural	Quantitative Regulation
Birmingham	West Midlands	Urban	Quantitative Regulation
Bristol	South West	Urban	Knowledge test
Canterbury	South/South-East	Mixed urban/rural	No information
Carlisle	North	Mixed urban/rural	Knowledge test
Cherwell	West Midlands	Mainly Rural	Knowledge test
Copeland	North	Mainly Rural	Age limits
Cornwall	South West	Mixed urban/rural	Quantitative Regulation
Fenland	East Midlands	Mainly Rural	Assessment
Flintshire	Wales	Mainly Rural	No information
Gloucester	South West	Urban	Assessment

Great Yarmouth	East Midlands	Mainly Rural	Knowledge test
Horsham	South/South-East	Mainly Rural	Age limits
Kings Lynn & West Norfolk	East Midlands	Mainly Rural	Age limits
Lancaster	North	Mainly Rural	Quantitative Regulation
Lichfield	West Midlands	Mainly Rural	Age limits
Mid-Devon	South West	Mainly Rural	Assessment
Mid-Sussex	South/South-East	Mainly Rural	Quantitative Regulation
Newcastle upon Tyne	North	Urban	Quantitative Regulation
North East Lincolnshire	East Midlands	Mixed urban/rural	Quantitative Regulation
Northampton	East Midlands	Urban	Knowledge test
Oadby & Wigston	East Midlands	Mainly Rural	Assessment
Rhondda Cynon Taf	Wales	Mixed urban/rural	Age limits
Sandwell	West Midlands	Urban	Assessment

Solihull	West Midlands	Mixed urban/rural	Knowledge test
Southend-on-Sea	South/South-East	Mixed urban/rural	Quantitative Regulation
Tendring	South/South-East	Mainly Rural	Assessment
Uttlesford	East Midlands	Mainly Rural	Age limits
West Dorset	South/South-East	Mainly Rural	Knowledge test
Winchester	South/South-East	Mixed urban/rural	Knowledge test
Worcester	West Midlands	Mixed urban/rural	Age limits

fulfil more than one criterion. No council satisfied only one characteristic. Some overlap of categories is unavoidable, but this does help to maintain a proportionate balance. For example, 17 of the councils in the sample use a knowledge test, even though this only appears as the main feature for nine councils in the table.

From this sample of 32 councils, I undertook a more detailed examination of all publicly available documents from each of these local authorities. Documents are a valuable source of information because they are intrinsic subjective accounts of the actor's world,¹⁶ they offer access to routine behaviour that is unaffected by the research process,¹⁷ and they are readily available.¹⁸ The documents analysed in my research included general information issued to licence holders, such as handbooks,

¹⁶ Burgess (n 3)123.

¹⁷ L Kidder and C Judd with ER Smith, *Research Methods in Social Relations* (5th edn, CBS Publishing, New York 1986) 311.

¹⁸ YS Lincoln and EG Guba, *Naturalistic Inquiry* (Sage, Beverley Hills 1985) 278.

administrative forms, licence conditions, policy statements, and enforcement guidelines. I also examined minutes of licensing committee and sub-committee meetings, reports of officers to committees, reports of disciplinary proceedings and similar documents for the one year period between 1st April 2010 and 31st March 2011. Most of these papers were easily accessible through each council's website, but some of the information had to be requested by email or telephone call. Whilst reading through these documents, I was conscious of Hutter's observation that 'councils vary with regard to the amount and type of information they record.'¹⁹ This was certainly true in respect of the documents obtained from the councils in the sample. There was considerable variation in the amount and depth of data available. Some councils kept copious and detailed records, others were brief and lacking in specifics. Whilst I have no reason to doubt the accuracy of any of the documentary records, as I was to discover during the next stage of the study, some of the information was not as full as it might have been.

The documentary data was coded in line with their relevance to the main areas of regulation; quantitative, qualitative, fares and enforcement. From this information, I was able to identify a number of common themes and points of divergence in each area. These public documents provided insights into some of the policies and practices employed by the 32 local authorities, the methods used and the exercises of discretion to carry out the task of taxi regulation. The documents also provided evidence of the justifications, motivations and thought processes behind council decision-making. However, the documentary evidence did not provide a full picture of the regulatory process, and so it was necessary to investigate the issues in more

¹⁹ *Hutter* (n 4) 19.

depth. From the documents I was able to formulate some further lines of enquiry which could be pursued at the next stage of the study - semi-structured interviews with some of the stakeholders in taxi regulation. I decided to use interviews as this appeared to be the best way of discovering the thoughts, beliefs and motivations of those involved in the day-to-day operation of taxi licensing. Interviews are more effective in obtaining this sort of information than alternatives, such as questionnaires.²⁰ I also believed that respondents would be more likely to co-operate and provide richer data if they were interviewed in their normal environment. In addition, I saw the next stage of the research as an opportunity to probe some of the areas where the documentary data was lacking in detail.

d) Fourth Stage: Semi-structured interviews

In the fourth stage, I reduced the number of councils involved in the study from 32 to 16 to make the numbers of interviews more manageable, whilst still obtaining sufficient data from which to analyse the research questions and to maintain a proportionate balance between the characteristics of regulation, location and geographical spread. I selected 16 councils from the original 32 based on the same criteria identified at stage two and retaining the same proportionate balance between the features set out in Table 2. I then devised an interview schedule from the documentary information obtained in stages two and three of the study. The interview schedule was designed to provide a guideline for the points to be discussed in the interviews and to extract information, ideas and attitudes on the subject of taxi

²⁰ AN Oppenheim, *Questionnaire Design, Interviewing, and Attitude Measurement* (Pinter, London 1992) 67.

regulation with a minimum of distortion.²¹ This schedule was intended to provide a series of questions with which to start off a conversation with the respondent on a particular topic, and also served as a checklist to ensure that all the salient points were covered during the course of the interview. The schedule was not designed to be a series of questions fired by way of interrogation of the respondent. The purpose of the questions was to guide the respondent to talk about a particular area of regulation whilst allowing the respondent to lead the conversation in any direction he or she chose within the broad confines of that topic. Supplementary questions could then be used to maintain the flow of the conversation, depending upon any points raised by the respondent. The final version of the interview schedule is at appendix B.

I wanted to interview respondents from one of four groups of actors in the regulatory process. One group comprised licensing committee chairs as policy makers and elected representatives. Another group was composed of full time senior licensing officers, the officials with day to day responsibility for supervising the system. One group was to be selected from enforcement officers, the field operatives on the ground responsible for monitoring and enforcing the regime. The final group was taxi representatives, those on the receiving end of regulation. These categories of respondent were selected as each had a particular role to play within the regulatory regime, whether as policy maker, responsibility for implementation of the legislation and policy decisions, enforcer of the regulatory regime, and as a member of the regulated industry expected to comply with the rules of the system. The intention was to interview one member of each group from all 16 councils, although this proved

²¹ *ibid* 121.

unachievable and impractical in reality. This arrangement was designed to elicit the widest range of views from all stakeholders involved in regulation of the trade.

The next step, of course, was to gain access to the respondents. I had anticipated that this may be the most difficult aspect of the interview process. As Lincoln and Guba point out, obtaining approved access from those in overall charge does not guarantee other persons involved will co-operate.²² Even obtaining formal permission may have proved problematic. As it turned out, such concerns were unfounded. On the whole the response from the stakeholders approached was excellent, gaining access was not a problem, and the respondents were very co-operative throughout. I was able to carry out 51 recorded interviews with a mixture of respondents from each of the groups across all 16 councils. This represents a response rate of 79.7 per cent (51 out of a possible 64 respondents). The interviews took place with twelve licensing committee chairs, 14 senior licensing officers, nine enforcement officers, and 16 taxi representatives.

It is said that an interview is a conversation with a purpose.²³ The purpose of the interviews in this case was to obtain as much information as possible that would verify, amend, refute, explain or expand upon the data already obtained from the literature and documentary sources. I wanted to obtain material from a range of different viewpoints on how the regulatory system for taxis operated in real life, and the thoughts, feelings and beliefs of those most closely associated with the operation of the licensing regime. This, I hoped, would build up a picture of how those who had to implement, apply and work within the legislative framework viewed some of the

²² Lincoln and Guba (n18) 252.

²³ LA Dexter, *Elite and Specialized Interviewing* (Northwestern University Press, Evanston 1970) 6.

issues which commonly arose, such as quantitative regulation or various controversial enforcement methods, for example test purchasing. The interviews produced a considerable amount of relevant data. I was surprised by the variety of views expressed by the respondents. Although there were many areas of commonality, each respondent had his or her own ideas on particular issues. This helped to produce a rich set of materials from which to draw conclusions.

The interviews were carried out in a variety of locations. In general, interviews with all the senior licensing and enforcement officers and some of the committee chairs were carried out in offices on council premises. The nature of the offices varied, however, from formal interview or meeting rooms in the council's administrative centre, usually the city or town hall, to pre-fabricated offices located within council testing depots. Some interviews with committee chairs took place in the very formal setting of the council chamber. Other interviews were carried out in much less formal locations away from the council's premises, usually a nearby café or similar establishment. Meetings with taxi representatives tended to take place either in taxi booking offices, for those representatives who were affiliated to a radio operator, in vehicles or outdoors by the side of taxi ranks. In 32 of the interviews, other persons were present, but were some distance from the location of the interview and did not participate. Whether the location of the interview was formal or informal, interviews were all carried out in a space which the respondent would regard as his or her 'own' or at least represented neutral territory. This helped to put the respondent more at his or her ease and made for a more conducive atmosphere than if the location had been chosen by me.

All the interviews were conducted in a cordial and convivial atmosphere. The respondents were all content to discuss the issues which arose and to provide their views on the topics raised in the interview schedule. The schedule questions provided useful starting points with which to commence conversations and generally thereafter respondents spoke at length on the indicated topic. Further questions only became necessary where either the conversation on one point dried up or the respondent raised an interesting point which required expansion, explanation or clarification. This meant that some of the schedule questions had to be asked in a different order to the one in which they appear in the schedule, particularly where respondents raised an issue themselves at an early stage in the proceedings. On the whole, respondents gave their views around the broad scope of the interview questions, although some occasionally went off at a tangent. In such cases, I allowed them to continue before bringing them gently back to the main point under discussion. Naturally, some respondents were more loquacious than others and required very little prompting; others needed more encouragement to share their thoughts and beliefs. On the whole, however, all respondents were very cooperative and provided a rich source of data.

The interviews lasted between 38 minutes and one hour and 15 minutes, with a mean average length of 51 minutes. Respondents were asked about the issues raised by the literature review and documentary analysis as set out in the interview schedule. Some of the questions were suitable only for particular groups of respondents, such as the taxi representatives, and so were only asked to that group. Other respondents felt that their position and responsibilities within the council meant that they were not able to answer certain questions and that a member of another group of respondents may be in a more authoritative position to answer that question. However, all respondents

were able to provide detailed responses to all of the questions which they felt were within their competence. Interviews were conducted under the recognised research convention that researchers are free to use the information provided, but neither the identity nor the affiliation of the source of the information may be revealed. This encourages openness and the sharing of information, and makes the respondent more at his or her ease and able to provide honest views. Because of this convention, the anonymity of the respondents has to be preserved, and for this reason I have not revealed the names of the 16 councils involved in the interview phase of the research.

With the exception of two interviews, all the conversations were digitally recorded as they took place, with the express consent of the respondent. This made for a more natural atmosphere within which to conduct the interview, and meant that I could listen to what the respondent was saying without having to write notes. All 49 interviews were then transcribed shortly after they took place. In the case of the two exceptions, neither respondent felt able to consent to tape recording of the interview, but had no objection to the taking of notes. These interviews were conducted and recorded by the use of contemporaneous handwritten notes. These notes were transcribed immediately after interview whilst the events were still fresh in my mind and the notes still relatively legible. Whilst transcribing the recorded interviews or notes, the information was manually coded and subjected to thematic analysis in respect of its relevance to the main areas of regulation to elicit findings. So data relating to market entry was extrapolated from the remaining material, and the same exercise was conducted with material concerning post-entry controls and enforcement. The extrapolated material was then subjected to further coding in accordance with its relevance to particular issues within these broader categories of

regulation. The combined findings from the research are reported in Chapters 4 to 7 of the thesis.

e) Some notes of caution

There are some notes of caution that ought to be sounded about the methodology for this research. By its very nature such a survey is subject to certain methodological limitations. The study was carried out over a period of 28 months between April 2010 and August 2012, during which time I analysed the documentary evidence and carried out the semi-structured interviews. It is therefore a study of what was happening during that period. Some of the findings of the research are time dependent, such as the statistics used in relation to numbers of enforcement actions discussed in Chapter 7. Other material is not so time critical and is of general application for the whole period of the study. It must be borne in mind, however, that situations may change, and may be changing as the results are being written. Although the nature of qualitative research is to obtain evidence on attitudes, opinions and beliefs rather than simple facts, even these are subject to change over time.

As the sample size was quite small in relation to the population of the group studied, the findings cannot be claimed as representative of all councils in the country. The results of the study present a picture of the approaches and views of those councils which took part, but it cannot be assumed that this reflects the views of all the other local authorities. However, as I have explained and used the technique of proportionate stratification, the councils selected were chosen to be as representative a sample as possible in an attempt to gain a picture of what is happening across the

country as a whole. This practice may still have some limitations, however, and the results should be viewed with this in mind.

My prior knowledge of the subject might be a possible source of bias.²⁴ On the other hand, other writers have indicated that some prior involvement may be beneficial.²⁵ I found that my previous experience as a taxi driver was invaluable in the interviews, particularly as this enabled me to establish an instant rapport with my respondents,²⁶ and it helped the conversation to flow without interruption to seek clarification of any technical language that was used. Whilst I was aware of the warnings with regard to interview data from the literature,²⁷ I found all my respondents to be open and co-operative. I had no reason to doubt that what I was being told was their honest opinion or belief.

Finally, the stages of the study did not follow as linear a progression as this account might suggest. Documentary evidence was still being obtained and analysed during the early interviews. Additional documents were kindly volunteered by interview respondents. New or unexpected information which emerged from the documents or interviews led to further searches of the academic literature.

In this chapter, I have explained the methodology used in the study and some of the limitations of that method. In the four chapters which follow, I analyse the theoretical models and research questions in the light of the empirical findings of the study.

²⁴ JP Spradley, *The Ethnographic Interview* (Holt, Rinehart and Winston, New York 1979) 29.

²⁵ *Lincoln and Guba* (n 18) 251.

²⁶ *Burgess* (n 3) 101.

²⁷ *Oppenheim* (n 20) 65-66.

CHAPTER 4: PRE-ENTRY VEHICLE CONTROLS

1) Introduction

The need to obtain a licence in itself creates a barrier to entry in any occupation¹ and so some restriction on entry to the taxi market is inevitable under such a regime. The local licensing authorities' position is encapsulated by one respondent who said,

You can't have any old Tom, Dick or Harry driving around in some death-trap on wheels, especially where the safety of the public is concerned, can you? Not every vehicle can be a taxi and not everyone who wants to can become a taxi driver. *Interview 40, Chair of Licensing Committee.*

In this chapter, I consider why and how vehicle entry to the market is regulated through the exercise of both strictly confined and open-ended discretion, and the influence which localism plays in decisions to restrict entry. In the rest of this section, I examine what local authorities seek to achieve by restricting access to the taxi trade. In section 2, I analyse the use of confined discretion in the context of quantitative regulation to ascertain whether and how this method achieves the aim of regulating entry. In section 3, I look at open-ended discretion and its exercise in the area of qualitatively restricted entry. From these results, I draw conclusions not only about which method better achieves the aim of restricting entry, but also whether local authority discretionary powers and localism are being used to their best advantage.

¹ MM Kleiner, *Licensing Occupations: Enhancing Quality or Restricting Competition* (Upjohn Institute, Kalamazoo 2006).

From chapter 1, it will be recalled that one notable feature of the legal framework for regulating taxis was the difficulty in identifying any express or implied aim of the legislation. A number of possible aims are posited as the goal of regulation. Local licensing authorities in practice are unencumbered by such difficulties. They are very clear on what they are seeking to achieve, as the following statement illustrates:

Safety of the public, that's our primary feature that guides all our thinking. They are the ones that elect us to do the job and to look after their safety, and it's up to us to ensure we do that to the best of our ability... If everyone could guarantee the safety of all passengers all of the time, we probably wouldn't need much regulation. *Interview 1, Chair of Licensing Committee.*

The claim to regulate the trade to protect the public or ensure the safety of the public is the one aspect of regulation upon which all 32 councils were in agreement, according to their documents. This point was reinforced by all senior licensing officers, committee chairs and enforcement officers who participated in interviews. In respect of vehicles, this concern is underpinned by a desire to safeguard members of the public against taxis which are in an unsafe structural and mechanical condition. Typical views on this point were:

[In] my view, the whole point of regulation of taxis is the public safety. The person who uses the taxi is often alone, potentially vulnerable. You need to make sure that the vehicle they're [travelling in] is a safe vehicle. So my view is that licensing regulation is all about public safety and ensuring...your safety throughout. *Interview 11, Senior Licensing Officer.*

As the [licensing] officer, my real concern is to make sure that the taxis are safe to be used by the general public throughout the whole of the area. We are here to regulate the trade for the public safety. *Interview 30, Senior Licensing Officer.*

I go along with the idea that we are here to enforce standards, standards of vehicles that are directly linked to safety of the passengers, because no one wants taxis with dodgy brakes, badly worn tyres or where the wheel's about to drop off. *Interview 16, Senior Licensing Officer.*

What local authorities believe they are trying to achieve is clear enough from these interviews. Councils claim to be, and believe that they are, protecting the public by regulating entry to the trade. The obvious questions which flow from this claim are: how do they go about this task? Do they achieve their stated aim? If the councils are not achieving their stated aim, what are they achieving by restricting entry to the market? Less obvious questions concern the role of discretion and localism in restricting entry. Given that they feature so prominently in the legislation, how do discretion and localism influence the methods used by local authorities? Do discretion and localism assist in achieving protection of the public?

It is the legislative framework itself which grants local authorities discretionary power and provides for a local system of governance in preference to a national system. Quantitative restriction on entry for vehicles is based upon a tightly confined and limited discretion. Restriction of entry to vehicles on the basis of their quality, on the other hand, is founded upon an open-ended discretion, which is only confined, structured and checked (in the sense used by Davis²) by each local authority's own policies and practices. There is no logical construction underpinning these different levels of discretion or explanation why they apply to distinct areas of regulation. The different levels of discretion do not in themselves provide any clues as to how they are connected to protection of the public. Any such connection, if it exists, has to be established by how the discretion at each level is exercised in practice. Localism cuts across the two levels of discretion identified here. It is clear from the legislative framework that regulation of the taxi trade is designed to be governed locally rather

² KC Davis, *Discretionary Justice: A Preliminary Inquiry* (Louisiana State University Press, Baton Rouge 1969) 52.

than simply being the local administration of centrally determined policies. In this context, localism involves the question of government by locally elected officials, rather than central government, and the local variations in requirements. Therefore, as Leigh points out, discretion and localism are inextricably linked³ and enjoy a symbiotic relationship. Local authorities are granted discretion and in exercising that discretion produce local variations influenced by factors in their own local sphere. In the rest of this chapter, I consider how discretion and localism combine to regulate entry to the taxi market through analysis of the two different levels of discretion.

2) Confined discretion: quantitative restriction of vehicle entry

The most straightforward method of regulating entry to any market is to impose a numerical limit on the number of entrants. Such a method is not favoured by central government under its current ‘open-market’ ethos. The model of market entry preferred by central government, at least since the passing of the Transport Act 1985, has been one based on the interacting economic forces of supply and demand, with no other restrictions on entry.⁴ The Department for Transport has made it clear to all local authorities that ‘the government considers that, unless a specific case can be made, it is not in the interests of consumers for market entry to be refused to those who meet the application criteria.’⁵

In chapter 1, I described the historical discretionary power of local authorities to limit the numbers of vehicle licences granted and how this power is now severely

³ I Leigh, ‘The Changing Nature of Local and Regional Democracy’ in Jowell J and Oliver D (eds), *The Changing Constitution* (7th edn, Oxford University Press, Oxford 2011) 239-240.

⁴ Department for Transport, *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance* (HMSO, London, March 2010).

⁵ Department for Transport, ‘Letter to Chief Executives of Local Authorities’ 16th June 2004.

restricted by the provisions of section 16 of the Transport Act 1985. In accordance with central government's belief in market forces as the appropriate model for restricting entry, the effect of section 16 is to transform the exercise of the local authorities' powers from what was previously a wide discretionary power to a very confined exercise of discretion. Although the discretion to restrict numbers survives the amendment introduced by section 16, it may now be exercised only where the licensing authority can satisfy itself that there is no significant unmet demand for taxi services in its area.

The question of imposing quantitative limits on the numbers of taxi licences granted is the most controversial issue which divides regulators and the trade today. Some of the theoretical approaches to this issue of quantitative regulation, both generally and specifically to the taxi trade, were considered in chapter 2. There are equally divided opinions on the issue amongst councils, although they do not necessarily coincide with the arguments contained in the literature. In this section, I examine the debate surrounding the exercise of local authority discretion to limit the numbers of licences by analysing the reasons why those councils which restrict numbers do so, why those which do not decline to do so, and which approach better serves the aim of regulation.

a) Why exercise the discretion to limit numbers?

The amended legislation created a situation in which it became very difficult for local authorities to limit the number of taxi licences they granted.⁶ In order to restrict numbers, local authorities have to be able to demonstrate that there is no significant

⁶ C Walker and I Cram, 'Taxi Deregulation and the Courts' (1991) 20 *Anglo-American Law Review* 482.

unmet demand for hackney carriage services in their area. There is evidence that councils have received legal advice to the effect that they must grant licences unless they can prove there is no significant unmet demand.⁷ It should also be borne in mind that, because the power to grant licences is discretionary, councils are not obliged to limit the numbers of licences even where there is no significant unmet demand. There are examples of councils electing not to limit numbers, even where an absence of significant unmet demand can be proved.⁸ Strictly speaking, the exercise of discretion is in choosing whether to impose a limit having first established the qualifying condition of no significant unmet demand. However, the findings of this study show that councils do not approach the decision in that way.

Although it is the area of most restricted discretion, it is the one area where local control and knowledge would be invaluable. When it comes to regulation of entry, awareness of local needs and demands would be useful and relevant in assessing the number of taxis required to meet those needs and demands. Clearly the number of taxis and drivers needed in Birmingham or Bristol is considerably larger than in a small rural area like Flintshire or Fenland. The local council is in the best position to judge how many vehicles are needed to meet local demand and whether a limit should be placed on the number of licences granted. One chair of a licensing committee said:

We as a regulatory committee take the view that we can continue to regulate numbers by having regard to the peaks and troughs of demand provided that overall unmet demand is not considered significant. We decide what is a significant amount of unmet demand for this area based on surveys and other

⁷ North East Lincolnshire Council, 'Report of Executive Director of Community Services to Community Protection Committee' 15th March 2010. This advice is based on the interpretation of section 16 preferred by the court in *Egan*, discussed in chapter 1 section 3*b*).

⁸ Gloucester City Council, 'Minutes of Meeting Licensing and Enforcement Committee' 16th November 2010; Worcester City Council, 'Minutes of Meeting Licensing Committee' 10th March 2011.

information we receive, such as lengths of queues at taxi ranks. *Interview 40, Chair of Licensing Committee.*

However, in the case of vehicles, the local authority is only able to limit numbers within the restricted discretion provided for by the statute.

Interpretation of the phrase ‘significant unmet demand’ was initially left to local authorities, but it is now widely accepted that significant unmet demand has to be established on the basis of an expert survey.⁹ This further restricts the circumstances in which local authorities may exercise their discretion to limit numbers, as obtaining the necessary survey is both time-consuming and expensive.¹⁰ Although councils set great store by the surveys carried out on their behalf, it is clear that they also take into account other local factors. In so doing, councils attempt to strike a balance between the needs of the public and the trade, as the following example illustrates:

I know that the police sometimes say that we could do with more taxis on Friday and Saturday nights, but you can’t cater for peak demand on a busy Friday or Saturday night, leaving taxis with nothing to do for the rest of the week. The streets just get more congested with taxis sitting about doing no work. *Interview 14, Chair of Licensing Committee.*

The academic literature in support of quantitative regulation of the trade endorses the restriction of entry on the basis that such regulation maintains the supply of taxis, driver incomes, quality standards and enforcement costs within reasonable boundaries.¹¹ These arguments correspond with a range of different legislative aims, as discussed in chapter 2, not necessarily the protection of the public aim claimed by

⁹ *R(North Devon HCOA) v North Devon District Council* [1999] EWHC 503 (Admin).

¹⁰ The councils which took part in this study estimated the cost of demand surveys at between £18,000 and £30,000.

¹¹ JP Toner, ‘English Experience of Deregulation of the Taxi Industry’ (1996) 16(1) *Transport Reviews* 79, 83.

local authorities. Those who argue against removal of numerical limits claim that this is an issue of public safety because falling incomes result in poorly maintained and serviced vehicles and drivers working longer hours.¹² The trade unanimously takes the view that deregulating numbers is detrimental to public protection and safety. Two taxi representatives said:

There are just too many drivers competing for customers. Livelihoods are at risk - they can't afford to maintain their vehicles properly. You see them driving around with bald tyres and all sorts. It's a question of passenger safety. *Interview 34, Taxi Representative.*

Rising competition caused by deregulation is leading to fewer fares and forcing drivers to work longer hours and encouraging poor conduct at the ranks. *Interview 4, Taxi Representative.*

Eight of the 32 councils (25 per cent) imposed a maximum number of licences for hackney carriages throughout the whole or parts of their area. From the documentary evidence, the councils justify retaining numerical thresholds by reference to the negative aspects of removing the limits rather than on the positive aspects of imposing them. Explanations such as increased traffic congestion, reduced income for drivers, and reduced quality of vehicles, frequently appear amongst council documents as justification for retaining numerical regulation.¹³ More unusual suggestions for having a numerical limit on the number of taxi licences include that the removal of limits might attract organized crime to the trade as a cover for money laundering.¹⁴ With the exception of vehicle quality issues, none of these justifications has any obvious public protection implications. Nor do they particularly reflect local concerns.

¹² Transport Committee, 'The Regulation of Taxis and Private Hire Vehicle Services in the UK' HC (2003-04) 251-I. These arguments were canvassed in more detail in chapter 2 section 2*b*).

¹³ Cornwall Council, 'Minutes of Meeting Miscellaneous Licensing Committee' 5th November 2010 [MLC/124] as one example.

¹⁴ Newcastle City Council, 'Minutes of Meeting Licensing Regulatory Committee' 19th May 2010 [6.3].

From the interview materials, the reasons given for having numerical controls are more limited, but are no clearer on how they involve local needs or seek to achieve the aim of the legislation. Councils which retain quantitative restrictions justify doing so on the grounds that this has always been the position historically and regulation is designed to deal with concerns about congestion and public disorder. One licensing officer took the view that:

Historically I suppose you look back to the Town Police Clauses Act where you had lots and lots of cabs, didn't you, and they needed to be regulated because some bad practices were going on, and that's the history of regulation of taxis. *Interview 32, Senior Licensing Officer.*

Another respondent recalled the experience, albeit some years ago, in a different city from the one in which he now chaired the licensing committee:

We went through a period of taxi wars because there were too many taxis in the city, and there quite literally was violence and mayhem with cabs being set on fire, turned over in the street. That's what happens in an open market. It was regulated but it became unregulated by sheer volume and unless you keep a very close eye on it, it can become 'interesting'. *Interview 44, Chair of Licensing Committee.*

The decisions of councils based upon historical perspectives echo the views of writers who claim that increasing insistence on local control over local environments reflects urban disorder generally.¹⁵ Although such concerns are important and are better dealt with at a local level than a national one, any disorder resulting from an oversupply of taxis is likely to be confined within the trade. The public need to be protected from the collateral consequences of such oversupply, such as congested

¹⁵ RC Schragger, 'The Limits of Localism' (2001) 100 Michigan Law Review 371, 380.

streets or poor driving practices in order to maximize journey numbers, but such effects do not represent a direct threat to public safety.

In fact, it is the impact on the trade that plays a major role in the decisions made by councils which retain quantitative regulation. As was seen in chapter 2, supporters of a deregulated market argue that it is the trade itself, rather than the public, which benefits most from restrictions on entry. Although there is no evidence that councils decide to limit numbers purely for the benefit of the trade, there is some suggestion that councils may be heavily influenced by the trade in retaining quantitative regulation. The importance of the economic interests of the trade in the decision to regulate numbers of vehicles is illustrated by the following statements from three of the respondents:

It's historic, and I think once it's established you then have the vested interest of the hackney carriage trade who have paid to enter the trade and obviously that makes it harder to change...But you have to have a happy medium to stop the market being flooded. *Interview 16, Senior Licensing Officer.*

[Limiting numbers is] beneficial to the taxi community because as soon as the unmet needs study starts being mentioned, they all get very nervous because they're convinced we're going to double the number of licences and they'll all be earning half what they need to earn. *Interview 14, Chair of Licensing Committee.*

[Trade representatives] approached, on a number of occasions, the committee or the committee chair, who was not minded to change their policy. In the end they went to their MP. They decided they wanted an unmet demand survey. Essentially, the survey was done at the behest of the trade. The trade felt that there were too many vehicles and the survey said that there were. *Interview 20, Senior Licensing Officer.*

In the last example, it may be argued that the trade's position was vindicated in that the demand evaluation confirmed the existence of the statutory grounds for exercise of the council's discretion to limit numbers. However, it is the council's discretion to

exercise, not that of the trade. Nevertheless, this last statement highlights that councils consider the effect that their decisions will have on the trade as one factor in deciding whether to exercise the discretion, once the qualifying condition has been met.

By limiting the number of taxi licences granted, local authorities are aware that they are acting against central government advice and open market ethos. Notwithstanding these difficulties, licensing authorities continue to restrict entry in this way because they consider, whether under the influence of the trade or not, that such an approach is beneficial for their area. One respondent emphasized the local context of the decision when they said:

Well, it's obviously against the government guidelines, it's against the OFT recommendations, it's against EU recommendations. It's against practically everything, isn't it? When the trade protested, we had a survey which recommended we continue with managed growth, but [the full council] decided that the best thing to do was to re-limit the numbers. *Interview 32, Senior Licensing Officer.*

I conclude from this information that councils which decide to exercise their discretion to restrict vehicle entry by imposing a numerical limit justify their choice largely by reference to ideas of congestion management and the perceived problems of oversupply. Such problems provided the background to the original statutory intervention in 1847. In doing so, they are addressing problems which vary according to locality and which may be of concern to local citizens. However, it is difficult to identify any direct public protection issue which is addressed by quantitative regulation, and councils do not lay any claim to be doing so.

b) Why decline to exercise the discretion?

Is the position any different for the 24 councils which do not regulate their taxi licence numbers? The point to be borne in mind is that, so far as limiting numbers is concerned, there is no discretion. The underlying presumption is that no applicant will be refused on the grounds that a quota has been reached. Advocates of removal of entry limits argue that it produces more taxis, reduces waiting times for passengers, lowers fares, reduces administrative costs, and prevents excessive prices being demanded upon transfer of existing licences.¹⁶ Again, it is questionable how far any of these objectives are directly connected to the aim of protecting the public. Supporters of deregulation claim that reduced waiting times mean that vulnerable passengers are not left standing for long periods of time awaiting the arrival of the next taxi.¹⁷ In my view, however, this is several steps removed from the methods used to achieve the stated aim of regulation.

With the exception of the economic argument of preventing excessive price demands on the transfer of licences, none of the theoretical arguments are used by councils to justify their deregulatory stance. The main reason for not imposing a limit on the number of licences granted is that the council supports the open market ethos of central government used to underpin the empowering legislation and the government's guidelines on best practice. This justification appears in the

¹⁶ LA Harris, 'Taxicab Economics: The Freedom to Contract for a Ride' (2002) 1(1) *Georgetown Journal of Law and Public Policy* 195.

¹⁷ Office of Fair Trading, 'The Regulation of Licensed Taxi and PHV Services in the UK' (OFT, London, November 2003).

documentary evidence from councils¹⁸ and was reinforced by some of the views expressed in interview.

We thought, on balance, that we ought to deregulate. There was the report from the Office of Fair Trading. We had had a limit on prior to that and we took it off following the recommendations in that report and the government advice that followed. *Interview 27, Senior Licensing Officer.*

On entry control, it's a free market, supply and demand. The market usually settles the number of taxi licences. Our numbers have been pretty stable over the last few years, so I think we've reached the optimum number the market will stand. *Interview 10, Enforcement Officer.*

Historically we've never controlled. Until recently there's never been an issue. I think it's fair to say that a few years ago the passengers were fighting each other for taxis, but more recently it's the taxi drivers fighting each other for fares ... There is this fine balance between numbers. Now it's the view of this council that it's not our place to start regulating numbers, it's a free market economy. *Interview 45, Senior Licensing Officer.*

It is clear from these statements that councils which choose not to impose quantitative regulation still appreciate the need to limit numbers and the potential public order implications of not achieving the appropriate balance. However, in those areas where there is no predetermined limit on the number of taxi licences, the council places its faith in market forces to achieve the necessary balance without any local authority intervention.

The main concern of councils which do not impose numerical limits is to avoid what they see as the primary disadvantage of regulating market entry by fixed numbers, namely that quantitative regulation creates monopoly rents reflected in large monetary values being placed on vehicle licences.¹⁹ Two of the respondents highlighted this point:

¹⁸ For example, Bristol City Council, 'Minutes of Meeting Public Safety and Protection Committee' 12th November 2007.

¹⁹ SD Barrett, 'The Sustained Impacts of Taxi Deregulation' (2010) 30(1) Economic Affairs 61.

I know that there are some authorities that restrict the number of hackney carriages, and then a hackney carriage plate can go for ridiculous amounts of money because people are on waiting lists. But I think it should be dealt with by market forces. *Interview 42, Senior Licensing Officer.*

As soon as you restrict numbers you create difficulties, because if you want to get into the taxi trade and you can't get a taxi because the council won't issue any more licences, you then become prey to the rogue traders. We know what happens, we restricted numbers for over 20 years...this black economy, with plates being passed around for huge sums. You don't need it. *Interview 8, Senior Licensing Officer.*

However, this reasoning fails to take into account the argument that high monetary values placed on vehicle licences represent a significant financial commitment by the licence holder to the trade. No licence holder will want to risk losing such a substantial investment by trading in a manner which jeopardizes his or her licence.²⁰ More importantly, it is not part of the local authority's function to regulate the price for which licence plates change hands. Even if licence holders are making 'excessive' profits on the sale of their plates, it is not clear how preventing them from doing so advances the aim of protecting the public.

By the same token, the argument that quantitative regulation protects the interests of the trade, leaving the limitation of taxi numbers to the open market, has been criticized as protecting the financial interests of the licensing authorities. There are suggestions that authorities which do not regulate entry regard licensing as a 'cash cow',²¹ and there is, unsurprisingly, some support for this point of view amongst the trade. One taxi representative said:

²⁰ EC Gallick and DE Sisk' 'Reconsideration of Taxi Regulation' (1987) 3 *Journal of Law, Economics and Organization* 117, 123.

²¹ Law Commission Advisory Group on Taxi and PHV Regulation, 'Minutes of Meeting' 22nd November 2011 [7] (J Button).

The fees keep going up, but I'm not sure what we are getting out of it. All we seem to get in return is a load of hassle and stupid rule changes. The council is doing very well out of us taxi drivers. *Interview 36, Taxi Representative.*

Councils, of course, dispute any suggestion that they are acting unlawfully or inappropriately. One senior licensing officer specifically made the point that,

the purpose of licensing...is not to make money; that would be illegal. *Interview 32, Senior Licensing Officer.*

However, it is clear from the documentary evidence that all councils which consider the issue of quantitative regulation mention that a consequence of regulating is the loss of income from reduced numbers of licence fees. Restriction of numbers reduces incomes generated by licence fees, and deregulating brings increased fee incomes. Increased revenue and avoidance of the costs of a survey every three years are factors cited for retaining a deregulated market.²²

While, in interview, no participant admitted that loss of income from reduced numbers of licence fees was a factor in their decision to limit numbers, the effect of regulation on fee income was a matter of concern. This unease related to the impact of reduced fee income on the service provided by the council or the use to which increased income from more vehicles would be put. Two of the respondents expressed these worries as follows:

What hasn't helped from our point of view is that [limiting numbers] has reduced income. Now there's nowhere near the new applicants we were getting. There's still important work to be done and the cost of the service is covered by the fees. We're trying to improve things, but it all costs money and

²² *Worcester City Council* (n 8).

without a fee rise, the income has dropped. *Interview 20, Senior Licensing Officer.*

If they kept staff levels as they are now then, we're busy enough as we are now, it would be undoable really. But if you've got another 800 licences, those fees must be paid in providing a service, but a lot of councils they use it as a revenue collecting service, and it's wrong. They should not be doing that. It all just goes in the pot. *Interview 32, Senior Licensing Officer.*

Councils which decide not to regulate numbers of taxis by imposing a specific numerical limit still appreciate the need to control numbers to prevent congestion and oversupply. The difference between these councils and those which do impose numerical limits is that the former have faith in market forces to set the appropriate levels rather than have an 'artificial' limit set by the council. Justification for not exercising their discretion is found in an appeal to the ethos of the open market rather than the lessons of history. However, such a justification does not address the question of how restriction on the basis of market forces better protects the safety of the public than fixing a numerical limit.

c) To exercise discretion or not to exercise discretion?

Councils which adopt a policy of relying upon the open market to determine the appropriate number of licences firmly believe that their approach is the correct one and should be adopted by all other licensing authorities. One respondent's view was very forthright:

You wouldn't have a policy to say you can only have 500 butchers. It just doesn't stack up, it's archaic. And it's a shame really the government didn't take on board the OFT recommendations a few years back. *Interview 8, Senior Licensing Officer.*

On the other side of the debate, councils which have a policy of quantitative regulation are not as enthusiastic in support of their position, and some of them are undecided on the subject, as the following statement indicates:

I actually sit on the fence here a bit really. Part of me thinks the trade do actually have a point that oversubscription to taxis [means] the public don't get such a good service. On the other hand, someone that wants to come into the trade as a hackney carriage operator, they have to wait for somebody to retire or drop out of the system. *Interview 30, Senior Licensing Officer.*

Viewed from a localism perspective, there is some evidence that both sides of the quantitative or open market debate could be right in that their decision on whether to limit numbers is the correct one for their area. An analysis of the size and nature of each council's area supports a relationship between locality and a propensity for quantitative regulation. The more populated urban areas are more inclined to restrict numbers than the less densely populated rural ones. Councils in larger cities, such as Birmingham and Newcastle, favour restricted numbers of taxis, although their fleets are already quite large. In the smaller rural areas, such as Fenland or Mid-Devon, the councils have not exercised their discretion to limit numbers, and they have relatively small numbers of licensed vehicles. There is also some support for such a link in the interview data:

In my experience the only authorities that do licence [taxi numbers] are in the bigger Mets, where potentially, if you didn't regulate, there would be so many taxis you'd never get around the town. *Interview 45, Senior Licensing Officer.*

The removal of the limits on numbers just revolutionized things here in [this area]. Here the sale of taxis is much more reliant on market forces. The trade are more spread out here because [this area] is huge with lots of smaller towns and villages. I think that really makes a difference. *Interview 23, Chair of Licensing Committee.*

The one thing that I would like to see, and I'll possibly be shot down by my colleagues here, I would like to see the number of cab licences issued related to the size of the population of the authority, because at the moment we've got a situation where we've got too many people chasing too little trade, all of them suffering and all of them taking chances. *Interview 6, Senior Licensing Officer.*

Despite these views, the evidence for such a relationship is inconclusive. The suggestion of a link between size of fleets and a preference for limiting numbers is contradicted by evidence from other areas. Bristol, for example, is a large city with a high number of licensed vehicles but does not regulate numbers. Lancaster, on the other hand, is a relatively small city with a low number of vehicles but retains limits.

It is difficult to assess which is the better approach in terms of its impact in practice. One point upon which all 16 taxi representatives who participated in the study agreed, whether their local council limited numbers or not, was that there were too many taxis. The trade invariably blamed the local authority for this state of affairs, either for not limiting numbers or for setting the limit on numbers at too high a figure. However, the difficulty from the local authority's point of view is that the exercise of discretion is confined by the notion of 'significant unmet demand'. This is a vague concept in itself, but 'demand' is not the only factor at play in determining taxi usage. Koehler makes the point that current legislative requirements focus entirely on demand and overlook the factors affecting the supply side of the economic balance.²³ The state of the economy, both generally and locally, is a major factor, as is the nature of the locality and the local 'taxi culture'. This point is illustrated by the following comments from four of the respondents:

²³ B Koehler, 'Licence Values in Taxi Markets' (2005) 25 *Economic Affairs* 52, 54.

The trade will always complain. They think that the limit is set too high. Maybe it is, maybe it isn't, but they don't seem to appreciate that people just don't have the money to go out like they used to, and that's why business is bad. *Interview 20, Senior Licensing Officer.*

After we took the decision to deregulate, there was a big upsurge in demand for new taxi licences in the first few months. It's starting to drop again now though because of the economy. People round here just aren't using taxis like they used to. *Interview 27, Senior Licensing Officer.*

We don't have a vibrant night-time economy like [a neighbouring area]. Our one and only nightclub closed down last year, so there's no real late night business for the taxis here. People go to [the neighbouring area] if they want that kind of excitement. *Interview 24, Senior Licensing Officer.*

[This area] has never been a real taxi city as such. If you go to [a neighbouring area], they'll get a taxi to the end of the street there. That just doesn't happen in [this area], never has done. *Interview 44, Chair of Licensing Committee.*

The point is that only the local authority can know the level of demand for taxis in its area and what level of supply its taxi market is capable of sustaining. This is bound to vary depending upon the location. It is ironic that the method of restricting market entry that would benefit the most from local choice is the one in which use of locally exercisable discretion is most closely confined. Local authorities should be permitted the discretion to limit numbers or not depending upon local knowledge and local needs.

d) Conclusions on confined discretion

Deciding between restricting market entry by quantitative regulation and relying on market forces is not easy to resolve. It has been discussed both by academics and those involved in the trade for many years and is likely to continue to be contentious for many more. There is some common ground in that both supporters and opponents of quantitative regulation appreciate that, without some limits to entry, there is likely

to be disorder and general poor behaviour and practices within the trade. The real debate revolves around whether a local authority imposed limit or the interaction of market forces is the better instrument to resolve such potential disorder. However, when this debate comes down to the issue of whether local authorities should exercise their discretion to limit numbers, councils see the function of restricting entry as managing actual or potential disorder within the trade. The general public is unlikely to be directly involved in any such control issues although there may be some indirect impact.

No council, whether it regulates numbers or not, attempts to justify its position on the basis that its approach better protects the public. Appeals to history, suggestions of trade capture, support for an open market ethos and suggestions of acting in the financial interests of the regulators themselves, all present interesting perspectives, but none of them addresses the fundamental question of how restricting market entry in this way achieves the stated aim of regulation. Furthermore, there is a strong case that use of quantitative regulation is something which can be best decided at a local level, taking into account the nature of the locality and local concerns and needs. It is unfortunate that the scope for localism is at its most restricted in this area. Although there is some limited evidence that councils take other factors into account in exercising their discretion, on the whole they feel bound by considerations which focus on the economic concept of demand. It is not clear how confining the use of discretion to limit numbers within such narrow boundaries, defined purely by the vague concept of 'significant unmet demand', helps to further the protection of the public.

Overall, therefore, I have concluded that restricting market entry by permitting a fixed limit on numbers of licences issued to be imposed at the local authority's discretion only in very restrictive circumstances does not achieve public protection. But, the alternative open market policy does not do so either. Regulating entry purely on the basis of numerical limits, whether determined by the regulators or left to market forces, protects certain economic interests. But it does not address in any meaningful way the protection of the public.

3) Open-ended discretion: Qualitative restriction of vehicle entry

If the very restricted exercise of discretion does not achieve the regulatory aim, is the opposite way of exercising discretion in relation to qualitative restriction more effective in attaining that aim? The general power to grant licences to vehicles is expressed in open-ended discretionary terms. The operative words 'may... licence to ply for hire' contained in section 37 of the Town Police Clauses Act 1847 indicate that local authorities have a wide discretion to grant vehicle licences without any pre-qualifying conditions or restrictions on the exercise of that discretion.²⁴

In this section, I consider the following three issues concerning regulation of entry to the market of vehicles by the use of quality control. The first is whether local authorities control entry on the grounds of quality in practice, given the questionable lawfulness of so doing. Second, assuming that they restrict entry on this basis, I examine the methods by which councils regulate entry on the ground of quality and the extent to which local issues are influential in the choice and implementation of

²⁴ In contrast to the position with regard to private hire vehicles, where licences can be granted only to vehicles considered suitable in terms of type, size, design, mechanical condition, safety and comfort - Local Government (Miscellaneous Provisions) Act 1976, s 48(1).

such methods. The third issue is whether quality can be the only basis for restricting vehicle entry to the market or whether local authorities may exercise their discretion on other grounds.

a) Do councils restrict entry on the grounds of quality?

Aside from unmet demand, the wording of section 37 of the Town Police Clauses Act 1847 suggests that local authorities have wide discretion to grant licences to vehicles as they wish. It will be recalled that there are conflicting court authorities on whether councils have the power to restrict entry on the ground of quality at all.²⁵ Whilst these arguments may not have been satisfactorily resolved in judicial circles, they do not cause any practical concerns for local authorities. Councils believe that they retain discretion to refuse to grant a licence for any reason, particularly in relation to the quality of the vehicle, and apply that belief in carrying out their regulatory functions. The confidence of local authorities in their power to regulate as they see fit is illustrated by the following comments:

We're here to make sure that any vehicles that want to be put on as taxis are suitable and safe. If they are not suitable and they don't measure up to the job, then they don't get in. It's as simple as that. *Interview 35, Senior Licensing Officer.*

We know there are rules to be followed, but we are not legal experts, or taxi experts if it comes to it...We have to decide whether a vehicle is suitable for use as a taxi. We try to come to a fair decision in accordance with our policies and common sense. But we rely on the opinions of others when it comes to technical issues. *Interview 21, Chair of Licensing Committee.*

We are there to make decisions for the benefit of the people of [this area], and we make the decisions about whether our vehicles are up to standard...what people expect when they get into a taxi. If someone wants to use a particular

²⁵ The conflicting authorities of *Egan* and *Ghafoor* are discussed in chapter 1 section 3b).

vehicle as a taxi, it has to be up to the mark. *Interview 14, Chair of Licensing Committee.*

These views indicate that councils are concerned about the quality of vehicles that they are asked to licence, and they are prepared to place a pragmatic interpretation on the scope of their powers in order to address those concerns. Councils take for granted that they have the discretion to regulate entry to the market on the basis of quality standards, even if the legal basis for that presumption is contentious. Councils are aware that the practical effect of a policy of quality control is that there will be fewer applicants for licences, as not every proprietor will have the ability or the inclination to ensure that his or her vehicle meets the quality standards. Thus, quality control is used as a means of limiting numbers, with or without evidence of an absence of significant unmet demand. This is clear from the following statements from three of the respondents:

We here in [this authority] take the view that any limit on numbers should be achieved by a quality control policy rather than a restriction on numbers. *Interview 11, Senior Licensing Officer.*

One method of indirectly limiting [entry] although that's not the reason for doing it...is obviously to improve the standards. If you make the entry requirements higher in terms of improved vehicle quality, then less people are going to come in. *Interview 20, Senior Licensing Officer.*

If someone wants to put a completely new vehicle on now, we have completely disabled accessible [requirements], but of course that puts a certain amount of people off applying because those type of vehicles are more expensive than your average family saloon. *Interview 27, Senior Licensing Officer.*

Licensing authorities are not provided with any guidance on how to exercise their discretion. The literature on discretionary powers points out that open textured discretion operating without any boundaries or structure is 'likely to morph into

arbitrariness, permitting any action or inaction.²⁶ Given the absence of any other direction, councils cannot be criticised for developing their own policies to assist in the exercise of their discretion. Indeed, it is imperative that they be encouraged to develop such policies to avoid suggestions of arbitrary decision making.²⁷

All 32 local authorities, including the eight which impose quantitative restrictions, have developed policies, guidelines and practices with regard to quality standards they apply to vehicles in order to guide their exercise of discretion to grant vehicle licences. Eight of the councils in the study make it clear that they have taken a positive decision to adopt a policy of quality control, rather than quantitative restrictions, to control entry to the market. Two licensing officers said:

We've taken the view here to move away from restricting the number of hackney carriage licences that we issue. We replaced numerical control with quality control, so that for any new hackney carriage we set a quite high vehicle standard, and they must be fully compliant. *Interview 8, Senior Licensing Officer.*

We wanted to move towards quality control rather than go for quantity regulation. The members declined to order a survey of demand and went for quality control instead. *Interview 2, Senior Licensing Officer.*

Councils clearly believe that they have the power to control entry on the basis of vehicle quality and have developed policies to structure their discretion in exercising this power. In the next sub-section, I consider how this translates into practical control of quality.

²⁶ M Feintuck, *'The Public Interest' in Regulation* (Oxford UP, Oxford 2004) 85

²⁷ *Davis* (n 2) 58

b) The application of quality standards

Although all councils are consistent in having a policy on quality regulation, there are wide variations in the detail of the quality standards applied.²⁸ I examine how these different standards are applied to confine and structure discretion, and the influence of localism, in respect of each criterion. All 32 councils have some form of standard specifications that apply to all vehicles seeking a licence. The level of complexity and detail in such specifications varies between the different councils. Written specifications range in size from two sides of A4 paper²⁹ to a 20 page document containing much technical detail,³⁰ with every permutation in between. Commonly, however, vehicle specifications lay down either precise or general requirements relating to such matters as external or internal dimensions of the vehicles, numbers and lay out of seats, numbers of doors, construction and appearance of the vehicle, and basic safety equipment such as fire extinguishers, first aid kits, or a functioning spare wheel and jack. Although vehicle specifications vary in their detail, they all have one feature in common – they generate a set of rules with which vehicles applying for a licence must comply before a licence may be granted. Vehicles which meet the specifications are usually granted a licence; those which do not are normally refused. This means that the exercise of local authority discretion is strictly confined to the choice of the requirements to be included in the specifications or the choice of whether to depart from the specifications in an individual case as an exception to the general rule.

²⁸ The nature of the quality standards applied is considered in chapter 1 section 5*b*).

²⁹ Flintshire County Borough Council, 'Taxi Vehicle Specifications' undated.

³⁰ Newcastle upon Tyne City Council, 'Hackney Carriage Licensing: Testing and Inspection Guidance' undated.

In the case of one of the councils, Birmingham City Council, the discretion to grant a licence is more limited than in the other authorities. This is because Birmingham City Council grants licences only to specified makes and models of vehicle. The list of approved vehicles runs to 23 makes and models, but the only element of discretion is the choice of which vehicles appear on the list. If a particular make or model is not an approved vehicle, then no licence will be granted. Where a vehicle is listed as an approved vehicle, then the grant of a licence is dependent upon it fulfilling the other quality criteria in the Council's specifications. Such an arrangement is a manifestation of localism in that it is contrary to central government advice³¹ and is claimed to be a 'long established practice in Birmingham'.³² There is recent authority from Scotland which indicates that there is nothing unlawful in maintaining a list of approved types of vehicle.³³ There is no indication, however, in the case of Birmingham, why the vehicles on the list are considered more appropriate or desirable than other makes and models or how such an arrangement addresses local needs and demands. Whilst other councils do not replace discretion with rules quite so restrictively as Birmingham, some, such as Carlisle and Great Yarmouth, require their licensed vehicles to match a generic description, such as 'London Cab Type Vehicle'.³⁴ Only certain vehicles can comply with such a specification and so, by definition, the number of such vehicles must be limited.

The remaining councils do not limit their licensing power to particular makes or models of vehicles, but they nonetheless create their own set of rules, with which

³¹ *Department for Transport: Best Practice Guidance* (n 4) [27-28].

³² Birmingham City Council, 'Report of Director of Regulatory Services to Licensing Committee' 10th June 2010 [4.1.1].

³³ *Re Spring Radio Cars Ltd, Petitioner* [2013] CSOH 15; 2013 SLT 491.

³⁴ Carlisle City Council, 'Hackney Carriage Specifications' (1st August 2007); Great Yarmouth Borough Council, 'Hackney Carriage and Landau Licence Conditions' (August 2009).

applicant vehicles must comply, by setting vehicle specifications which take the nature of their locality into account. Certain vehicles, such as limousines, traditional 'London' style taxis and those based on motorcycles, are considered to be unsuitable by many councils to deal with local road conditions and the needs of particular passengers. Nonetheless, local authorities like to retain the flexibility to deal with developing vehicle technology that not specifying particular makes and models permits. These points are illustrated by the following statements from respondents:

You have to bear in mind that we are a fairly rural area and have a lot of elderly people who are not as mobile as they used to be. With the best will in the world, the buses are not great, so many of them rely on taxis to get about. Some of these vehicles might not be suitable for the passengers or the roads they encounter. *Interview 1, Chair of Licensing Committee.*

We don't insist on our hackney carriages being a particular type of vehicle because it's a big geographical area. It's not like in London where taxis are generally going relatively short distances. It's predominantly rural, and so it wouldn't suit necessarily [London] hackney carriages. There's a lot of places [large vehicles] just couldn't go and if [the driver] got the vehicle stuck down a lane, he'd never get it out again. *Interview 27, Senior Licensing Officer.*

We don't have a set policy on what vehicles will be allowed. We've got guidelines on it, but technology is changing so much, vehicle sizes are changing so much, if we said we will only allow these, they may not be suitable. We won't allow tuk-tuks [which] may be suitable in Bangkok, but not suitable for this area. *Interview 3, Enforcement Officer.*

The types of vehicle licensed, and the requirements which such vehicles are expected to meet, have obvious safety implications, particularly those aspects of the specifications which relate to the construction and mechanical condition of the vehicle. Local authorities devise rules about the types and specifications of vehicle to which they are willing to grant licences, rather than simply having an open-ended invitation to any form or make of vehicle. This results in vehicle specifications which vary from one area to another. While councils link the nature of their localities to the

policies they devise, they fail to address why those policies are needed for that area. Particular types of passengers, roads or terrain are not unique to one council's area. Indeed, none of the local authorities considers that there is anything 'unusual' about their area that differentiates it from other areas when it comes to setting standards. Nevertheless, many local authorities implement vehicle standards which go beyond basic construction and mechanical condition specifications.

Six councils have no additional quality standards beyond their set of vehicle specifications. The remaining councils, however, use other quality criteria, such as age limits, livery, and wheelchair accessibility, either individually or in combination, to limit entry of vehicles to the market. These standards are used cumulatively and in different combinations in order to make entry to the market more restrictive for potential applicants. Councils take a 'pick and mix' approach to the additional standards that they wish to impose, without any thought about why those individual requirements are considered necessary, how they fit with the other specifications, or why they are appropriate for their locality. This creates an impression that the selection of these additional criteria is arbitrary, without any connection to any aim of regulation. By creating more obstacles for prospective licence holders to overcome, the local authorities are generating a situation where they are restricting the exercise of discretion and replacing it with strict rules. Whilst boundaries for discretion are appropriate, the standards adopted by councils become firm rules from which there is little scope for departure. According to the literature, one of the claimed advantages of rules over discretion is consistency and uniformity.³⁵ When viewed nationally, these rules lack consistency and uniformity. A situation is created where a vehicle may be

³⁵ J Jowell, 'The Legal Control of Administrative Discretion' [1973] PL 178.

licensed in one area but would be refused a licence in another purely on the basis of its age, engine size, colour, or a combination of those characteristics. Where the primary concern is said to be the safety of the public, such variation and inconsistency does not assist local authorities to achieve their aim.

There is considerable variation between different localities. Maximum age limits on vehicles entering the market for the first time were imposed by 18 councils in the study. Such age limits ranged from the eldest at a maximum age of six years³⁶ downwards to the four councils which would license only brand new vehicles.³⁷ The adoption of an age limit policy is said to:

make sure that you know, or at least can be fairly certain, that the vehicle is going to be up to a reasonable standard and making the most of safety advances in vehicle technology. *Interview 32, Senior Licensing Officer.*

However, the safety argument is not accepted by the councils which do not impose age limits. One council official said:

We don't have a maximum age limit on first licensing here. It's the condition of the vehicle that matters, not the age. Some people have really looked after some older cars, and others have some newish vehicles that are real sheds. *Interview 16, Senior Licensing Officer.*

As the following statement illustrates, passenger safety is advanced as the reason behind a livery requirement.

We want passengers to be able to identify our hackney carriages and distinguish them from private hire and other ordinary private vehicles. This

³⁶ West Dorset District Council.

³⁷ Solihull, Bristol, Great Yarmouth and Mid-Sussex

colour scheme really does that and helps protect passenger safety. *Interview 8, Senior Licensing Officer.*

Using a distinctive colour scheme does not really address passenger safety issues. The imposition of a livery requirement does not, for example, consider private vehicles which have the same colour as the livery selected, and so could be mistaken for hackney carriages. Councils which do not have livery requirements oppose them on the grounds of cost and diversity. One respondent commented:

I don't think I'd support that a) because of the expense that has to be borne by the drivers and b) because we actually value the diverse nature of all our taxi cabs. We've got some black cabs; one's got a huge union jack painted on, it's lovely. I don't see the merit at all in making them have a livery. *Interview 14, Chair of Licensing Committee.*

Ten councils have a requirement that all licensed vehicles are wheelchair accessible, but there is no universal agreement about what constitutes a wheelchair accessible vehicle. Another difficulty is that none of the councils which have such a policy claim safety as a justification. The reason given by all ten councils is, 'to fulfil the requirements of the DDA'. This is not only a misinterpretation of what is now the Equality Act 2010, which requires only reasonable provision for wheelchair accessibility,³⁸ but also fails to consider the needs of non-wheelchair users. Councils which do not impose wheelchair accessibility standards prefer to have a 'mixed-fleet' of vehicles. One respondent pointed out that:

People don't always like the bigger wheelchair accessible vehicles. Older people with mobility problems can't get in them because they're too big, and a lot of able bodied people think that a WAV will cost them more. They're wrong, but that's what they think. *Interview 17, Enforcement Officer.*

³⁸ Equality Act 2010, s 165-172

While there are obvious links between some aspects of vehicle quality control and safety, particularly in relation to the construction and mechanical condition of the vehicle, many of the policies, or the implementation thereof, are merely cosmetic. These policies are linked more closely to issues of civic pride and reputation than to safety. Commenting on their respective pre-licensing testing regimes, two council officials said.

Part of [the inspection is] mechanical, part of it's cosmetic, because obviously if somebody takes a vehicle and it's filthy inside, it won't pass the test. And unless it passes the test, it doesn't get a licence. *Interview 27, Senior Licensing Officer.*

The vehicle test is about the MOT and we put them through a supplementary test alongside the MOT which is about presentation of the vehicle. We've got an international reputation to maintain; often the first person or only person that somebody coming into the city might come into contact with will be a taxi from the airport or the station so the vehicle should be up to standard that puts [the area] in a good light. *Interview 11, Senior Licensing Officer.*

The control of entry through quality standards is clearly an important exercise of discretion. Failure to meet the quality standard is often portrayed as the only ground for councils which do not adopt quantitative regulation to refuse to grant a licence. However, in doing so local authorities are replacing discretion with hard and fast rules which suggests that the discretion is not as open-ended as it might appear from the wording of the statute. Furthermore, the use of discretion may also extend to factors other than quality, and I explore this point in the following sub-section.

c) Use of discretion beyond quality standards

Five councils have recently introduced a further stipulation which potential applicants must overcome before their application is considered: that the applicant

must confirm, usually in the form of a written declaration, that the vehicle will be used predominantly within the licensing authority's area and will not be used to fulfil private hire bookings in other areas. Strictly speaking, this is not an issue of quality, in that it does not relate directly to the condition or nature of the vehicle itself. However, such a prerequisite has the effect of erecting a further barrier to entry as refusal or failure to make such an assertion affords grounds upon which the council may refuse to grant a licence.³⁹

The stipulation has been introduced as a result of the High Court decision in *R(Newcastle City Council) v Berwick upon Tweed Borough Council*.⁴⁰ In this case, the court endorsed an earlier ruling that hackney carriages did not commit an offence by fulfilling private hire bookings in areas other than the one in which they were licensed.⁴¹ This view was said to support 'the inherent right of the hackney carriage proprietor to undertake pre-booked hirings anywhere in England and Wales.'⁴² Berwick Borough Council had granted large numbers of taxi licences in the belief that, in the absence of evidence of significant unmet demand, they had no choice other than to grant a licence to any vehicle that applied for one.⁴³ Many of the Berwick licensed taxis were being used as private hire vehicles in Newcastle. The judge held that it could be a proper use of the licensing authority's discretion to refuse to grant a licence to a vehicle,

³⁹ Sandwell, Amber Valley, Southend, Uttlesford and Canterbury all have a proviso along such lines, permitting a licensing officer to refuse to grant a licence if the applicant refuses to sign.

⁴⁰ [2008] EWHC 2369 (Admin); [2009] RTR 34.

⁴¹ *Brentwood Borough Council v Gladen* [2004] EWHC 2005 (Admin); [2005] RTR 12.

⁴² JHT Button *Button on Taxis: Licensing Law and Practice* (3rd edn, Tottel, Haywards Heath 2009) xvi. A view later affirmed in *Stockton Borough Council v Fidler* [2010] EWHC 2430 (Admin); [2011] RTR 23.

⁴³ *Berwick* (n 40) [5].

that is not intended to be used to ply for hire within its area and/or is intended to be used (either entirely or predominantly) for private hire remotely from the area of that authority.⁴⁴

This approach has been approved recently both in the High Court⁴⁵ and in the Crown Court in dismissing appeals against refusal to grant a licence for declining to give such an undertaking.⁴⁶

In creating such a barrier to entry, the local authorities claim to be exercising their discretion in order to maintain adequate control over the licensed vehicles which operate in their area and to avoid vehicle owners taking advantage of what are perceived to be laxer licensing regimes elsewhere. Two respondents expressed their concerns as follows:

It might not be illegal, but it flies in the face of public safety. Having people licensed in one area but operating in another means we have no control over taxis. We don't have the jurisdiction to control taxis from outside the area, and we can't control our taxis if they're working in [another area]. *Interview 10, Enforcement Officer.*

People can have a hackney carriage licensed in Rochdale or Shrewsbury or wherever and they can come and operate as a private hire in [our area]. They don't have the same standards as us. It's just madness. *Interview 11, Senior Licensing Officer.*

Although local councils argue that this exercise of their discretion addresses an issue of public protection, I think it raises two different and distinct issues. The first is that by refusing to grant a licence to a vehicle whose owner fails to provide the requisite declaration, local authorities are imposing a rule and are not exercising their

⁴⁴ *ibid* [59] (Christopher Symonds QC).

⁴⁵ *R(Blue Line Taxis) v Northumberland County Council* [2012] EWHC 1539 (Admin).

⁴⁶ *Mohamed v Shropshire Council* Shrewsbury Crown Court, 20th July 2012; *Mahmood v Shropshire Council* Shrewsbury Crown Court, 27th July 2012; *Banggar v Shropshire Council* Shrewsbury Crown Court, 6th August 2012.

discretion at all. The second is that the real concern of local authorities is to protect their own interests. After all, the vehicles operating in another council's area are licensed vehicles. The council which has granted a licence to that vehicle will have done so on the basis that certain quality standards were met. The councils which object to this practice are concerned that vehicles operating in their area do not comply with their standards, but no one has suggested that other councils impose such low standards that the other councils are licensing vehicles which are unsafe. Councils are taking the localism view that 'our standards are better than other councils' standards' and this may well be correct. However, as has been discussed, many councils impose standards which are beyond basic safety requirements. Standards of cosmetic appearance and comfort are not the same as standards of safety. The problem with which councils are troubled is more one of enforcement rather than restricting entry to the market, as the councils' real concern is that they have no jurisdiction to control 'out of town' vehicles operating in their area. Exercising 'discretion' on the basis of where a vehicle intends to operate addresses the aims of control over the trade and income generation by the councils, but it has no direct relevance to protecting the public.

d) Conclusions on open-ended discretion

In the opening part of this section, I raised the question whether open-ended discretion on quality regulation exists at all and, if it does, how open-ended is it. Whatever the strict legal position may be, and the issue may still be seen as contestable, councils take the view that they have such powers to regulate entry to the market by reference to the quality of vehicles licensed. If it were otherwise, any

vehicle could be licensed, regardless of its condition or quality. There has to be limits on vehicles permitted and how councils exercise discretion. This is achieved by local authorities confining their own discretion by considering quality issues and by further structuring the exercise of discretion by policies on which to base decisions about acceptable standards of quality. However, the exercise of discretion is not as open-ended in practice as it might first appear on reading the statute, because councils create their own system of rules with which vehicles must comply, thereby removing, or at least severely restricting, discretion.

The quality of vehicles in terms of their construction and mechanical condition clearly link to public protection and safety issues. All councils' basic specifications are devised to cover the essential structural and mechanical condition requirements at least, but many go beyond what is necessary from a safety perspective. Additional factors such as age of vehicle, livery, accessibility and engine size do not have any direct impact on public safety, despite attempts by certain councils to justify them on that basis. Not only is there no direct link between public safety and some elements of quality standards, there is no connection between local issues and those same standards. Localism produces local variation in quality requirements but does not create justifications for the need to have such a requirement at all or for the specific detail of that standard.

The creation of national standards for vehicle quality would remove any argument on the appropriate criterion of safety, but would replace discretion with rigid and inflexible rules and would effectively remove the element of local control except to the extent of enforcement. I will return to the issues surrounding whether national

standards should replace local discretion in subsequent chapters, but to conclude this section, it appears that in reality local authorities already replace their own discretion with specific rules and thereby create their own local regime.

4) Conclusions on regulation of vehicle entry.

Restricting entry of vehicles to the taxi market is vital to ensure that only safe and suitable vehicles are licensed. The current legislation does not make this purpose sufficiently clear to those responsible for regulating the market. Local authorities are given discretionary powers to determine the basis upon which vehicles will be granted a licence. This has produced a licensing system which is characterized by confusion, complexity, inconsistency and lack of uniformity.

The quantitative versus qualitative regulation debate about restriction of entry to the market is one that is difficult to resolve on the basis of these findings. There are firmly entrenched views on both sides of this debate and some evidence which supports both arguments. None of the arguments or supporting evidence adequately addresses the issue of which approach better serves the aim of protection of the public. I conclude on the basis of this research that neither method advances this aim in any meaningful way. However, I found that the emphasis on the exercise of discretionary powers to control entry is the wrong way around. Where wider discretion would be most beneficial, in the setting of quantitative limits on numbers of taxis for an area using knowledge of the local market, the current regime imposes the most restricted use of discretion, exercisable in certain circumstances only and by reference to very limited criteria. On the other hand, where wide discretionary powers

currently exist, in the setting and application of quality standards, this produces the most inconsistency, uncertainty and lack of uniformity. Whilst local officials should have the discretion to refuse entry to a vehicle on quality grounds, otherwise there remains the prospect that any vehicle, regardless of condition or suitability, could be licensed, the exercise of this discretion in practice creates a confused picture both nationally and locally. It is also the area in which the councils take it upon themselves to impose strict rules in place of the discretion which the statute has granted to them.

An important finding of this study was that locality and local culture are more significant factors in the decision whether to impose quantitative restrictions on market entry in practice than the legislation or most of the literature would suggest. I think the exercise of discretion ought to be more open-ended in the case of quantitative regulation, structured by local needs and demands. This would enable local authorities to take into account the nature of the locality, local culture and other local factors, such as the economy, which influence both the demand and supply sides of the market. The present restrictive exercise of discretion is too heavily reliant on determining levels of demand, and overlooks the importance of other factors. The study provides some empirical support for Schaller's view that, at least in relation to quantitative restrictions, policies need to be adapted to each area's unique characteristics and needs.⁴⁷

The other point which emerges from this study is that all councils restrict entry to the market by imposing quality standards, in the form of vehicle specifications, even those councils which claim to regulate entry by market forces. This is an illustration

⁴⁷ B Schaller, 'Entry Controls in Taxi Regulation: Implications of US and Canadian Experience for Taxi Regulation and Deregulation' (2007) 14 Transport Policy 490, 503. Discussed in Chapter 2, section 4.

of the considerable divergence between what councils claim they are doing when they restrict entry to the taxi market and what they are actually achieving. All local authorities believe that they are acting in order to protect the public, and there is no reason to doubt the sincerity of that belief. However, when it comes to putting that aspiration into practice, this is not necessarily what is achieved. So far as regulation of vehicles is concerned, the aim is to protect the public against the potential dangers of unsuitable or unsafe vehicles. In so far as quality specifications imposed by all councils provide for minimum standards of construction and mechanical condition for all licensed vehicles, I think councils may justifiably claim some success. Unfortunately, I also found that much of this achievement is often hidden by the extension of regulatory powers into areas where there is no clear link between those powers and the protection of the public. Quality standards beyond construction and condition requirements and intervention to control the location where licensed vehicles are to operate are not public safety issues and cannot be justified on such grounds.

There is little doubt, in my view, that discretion and localism play important roles in regulating the entry of vehicles to the taxi market, at least in terms of how they shape the methods used to restrict such entry. Discretion and localism do not necessarily assist, and may even hamper, efforts to achieve the aim of regulation. I have already mentioned the misplaced emphasis on the exercise of discretion when considering the issues of quantitative and qualitative regulation. Localism is used to justify policies on the grounds of public protection, policies which more often than not have little connection to either the specific needs of the local area or this aim of regulation. I

think that these characteristics of the regulatory regime could be better employed to achieve the claimed aim of regulation.

Local authorities are clearly achieving something by restricting the entry of vehicles to the market, but not necessarily what they claim to be achieving. One of the potential aims of regulation is administrative convenience, and I think this view is borne out in the case of quantitative restrictions. A taxi market which has a limited number of vehicles is administratively easier to manage than a deregulated market. The council knows how many vehicles it has to regulate, what its income from licence fees will be, and so it is easier to plan the administration and enforcement of the system. On the other hand, a deregulated market is more difficult to administer but does bring the opportunity to increase revenue in the form of more licence fees. Although the findings of this study indicate that neither administrative ease nor increased incomes are driving forces behind vehicle regulation, both are relevant factors considered by local authorities. There is no doubt that many of the quality standards imposed by local authorities have improved the physical and cosmetic appearance of vehicles, the comfort of passengers, and have enhanced civic pride. I think, however, that the contribution of such standards to improved safety, or indeed levels of service, is debatable.

I think that a solution to some of these difficulties would be to permit the exercise of more discretion based on local knowledge in the area of quantitative regulation, combined with a set of national quality standards for all licensed vehicles. No local authority in this study provided a paradigm for national standards. I think any such standards would have to be devised at national government level and would have to

address issues about responsibility for enforcement and licence fee rates as well as setting the appropriate quality standards. This is an issue which will be returned to in Chapter 8. Attention now turns to the entry of drivers to the taxi market.

CHAPTER 5: PRE-ENTRY DRIVER REQUIREMENTS

1) Introduction

In the previous chapter, I examined regulation of entry to the market for vehicles to determine how far the aim of the legislation was achieved by restricting entry to the market. Every taxi needs a driver to make it commercially productive, and entry of taxi drivers to the market is also regulated by the local licensing authorities. Although many features of entry restriction are common to both vehicle and driver licensing, there are a number of matters raised which are unique to regulation of driver entry. In this chapter, I consider the following issues concerning regulation of driver entry to the market. First, what are local authorities seeking to achieve by restricting entry of drivers to the market? The second issue is how far discretion and localism, which feature so prominently in vehicle regulation, influence the way in which councils set about their task and contribute to attaining the aim of driver regulation. Third, what are the methods used by local authorities to limit driver entry and are they appropriate to the task? The fourth issue is how the predominant method used to control entry is applied in practice and how closely the outcome of this method approximates to the aim of restricting entry. The final issue is whether local authorities are able to employ other means of limiting entry to the driver market and, if so, how far the outcome of these methods achieves the aim of regulation.

As in the case of vehicle entry, the first of these issues is a relatively straightforward matter to determine. There is very little consideration of the aim of regulating driver entry in the literature on this subject, which tends to concentrate on the economic

effects of vehicle regulation, particularly quantitative restrictions on entry to the market. Despite the absence of a theoretical basis, when it comes to regulating the entry of drivers to the taxi market, local authorities are very clear that their aim is the protection and safety of the public. In the case of driver regulation, this approach is underpinned by the concern that members of the public travelling by taxi are in a vulnerable position, as illustrated by the following views:

The whole point of regulation of taxis is the public safety. A lot of users are vulnerable because they have been out for a night out, it's late at night, they may have had alcohol. They are going into a confined environment with a person they don't know. You need to make sure [the drivers] are medically fit to be driving...they've got a driving licence... they're not under the influence of alcohol or drugs...and that they're not a rapist, murderer, likely to cause assault etc. So to me the whole point of the licensing regime is all associated with public safety. *Interview 11, Senior Licensing Officer.*

In terms of why should it be regulated, basically for the protection of the public I would say the main reason. It does need regulation because there's no doubt about it, a person in a vehicle with that other person is a very vulnerable person. They are at risk. *Interview 32, Senior Licensing Officer.*

You're talking about vulnerable people, of course. They may be vulnerable for lots of reasons, because they're elderly or very young, disability, gender even. You have to try to make sure that drivers are not going to assault them, abuse them, molest them or rip them off. That's the point of regulation. *Interview 35, Senior Licensing Officer.*

Although, as in the case of regulating vehicle entry, the stated aim of local authorities is crystal clear, how they go about seeking to achieve this by restricting driver entry is somewhat more complex. As the above statements illustrate, councils are concerned with regulating the physical and moral attributes of human beings rather than the construction and mechanical condition of machines. This in itself makes the task of restricting driver entry an altogether more difficult proposition than regulating vehicle market entry. Notwithstanding these difficulties, it is a function which the local authorities are obliged to perform. How they go about it, whether they

achieve their aim and what they are achieving are questions which I address in this chapter.

2) Discretion, localism and driver entry regulation

The exercise of discretionary power and localism are dominant characteristics of the restriction of entry for drivers, just as they are for controlling vehicle entry. Discretion and localism are recurring themes throughout the study of restriction of market entry, and consequently throughout this chapter. In the case of driver entry, however, there is no clear explanation of why these notions are believed to be preferable to the alternatives or how these features are connected to the aim of regulation than there is in the case of vehicle regulation.

Regulation of entry into the taxi market for drivers, nonetheless, provides a different insight into the operation of local authority discretionary powers. The circumstances in which licensing authorities may exercise their discretion are much more circumscribed than for vehicles. Entry controls for drivers are built upon a discretion, the exercise of which is conditional upon satisfaction of a specified statutory standard. There does not appear to be any reason why this approach is adopted in the case of drivers but not for vehicles. However, such a model provides a useful tool for analysis of how the exercise of discretionary power is connected to the protection of the public. The different approach used in the case of driver entry means that conclusions can be drawn about whether such a practice better achieves the aims of regulation.

It will be recalled from Chapter 1 that, before a driver may be granted a licence, the local authority has to be satisfied of two things: that the applicant is a 'fit and proper person' to hold a licence;¹ and that the applicant has been the holder of a full ordinary driving licence for a minimum period of twelve months preceding the application.² Both criteria produce their own difficulties which are considered in subsequent sections of this chapter. However, at this stage it should be noted that the grant of a driver's licence rests on the exercise of discretion which is itself confined and structured, in Davis' terms,³ by the preconditions of the qualifying criteria. The exercise of discretion lies not in whether to grant a licence but in deciding what factors constitute the qualifying conditions. Unless an applicant meets the necessary standard, councils are prohibited from issuing a licence.⁴ The local authority has no discretion to allow the application if one of the conditions is not met.

This approach to restriction of driver entry raises two issues. First, what sort of discretion is being exercised? Are councils simply required to interpret and apply the statutory criteria before deciding whether to grant a licence? Or are they obliged to create their own standards to determine the basis upon which their discretion is to be exercised?⁵ Second, how far does the exercise of discretion extend? Are local authorities exercising discretion in deciding both the meaning of the statutory conditions and how the facts are characterised within that meaning?⁶

¹ Local Government (Miscellaneous Provisions) Act 1976, s 59(1)(a).

² Local Government (Miscellaneous Provisions) Act 1976, s 59(1)(b).

³ KC Davis, *Discretionary Justice: a Preliminary Inquiry* (Louisiana State University Press, Baton Rouge 1969) 52.

⁴ Local Government (Miscellaneous Provisions) Act 1976, s 59.

⁵ Dworkin's senses of 'weak' and 'strong' discretion respectively - R Dworkin, *Taking Rights Seriously* (Duckworth, London 1977) 31 – discussed in more detail in chapter 2 section 3.

⁶ DJ Galligan, *Discretionary Powers: A Legal Study of Official Discretion* (Clarendon Press, Oxford 1986) 35.

Although these two issues are useful for analysis purposes, licensing authorities do not exercise their functions with such distinctions uppermost in their thoughts. While councils appreciate that they are exercising discretion, they tend to focus their attention on the ‘fit and proper person’ criterion within which all other elements of their discretion are subsumed. In general,⁷ where this criterion is met to the council’s satisfaction, the grant of a licence will almost always follow. This is illustrated by the following statements from three of the respondents:

It’s all about the fit and proper person test, isn’t it? If they are fit and proper, then there’s no reason why we can’t give them a badge. We’re not here to stop anybody from making a living. If they are going to be safe on the roads and around passengers, then they should be allowed a licence. *Interview 39, Senior Licensing Officer.*

I think that the fact is that you’re working with old legislation which says you will if someone comes up, you will give them a licence. So that’s the starting point. Now the legislation says if there’s a fit and proper person, he gets the licence. *Interview 7, Enforcement Officer.*

We go by the phrase ‘fit and proper person’ as far as the driver is concerned and that is something usually we don’t need to worry about that at all, particularly with our drivers. They’re particularly good so most applications go through without a problem. Everything depends on whether they are fit and proper in our view. *Interview 14, Chair of Licensing Committee.*

These statements support the view from the literature that, from a practical perspective, distinctions between the exercise of strong and weak discretion or questions about how far discretion extends are immaterial, as all such issues tend to be determined together.⁸ Although councils are called upon to interpret the phrase ‘fit and proper person’ before applying the test to the circumstances of the application with which they are presented, Dworkin’s weak sense of discretion, they are not provided with any guiding principles upon how the phrase is to be interpreted. This

⁷ Some exceptions to this generalization are discussed in sections 4 and 5 of this chapter.

⁸ Galligan (n 6) 35.

suggests that local authority officials will have to determine their own principles upon which their discretion is to be exercised – the strong sense of discretion in Dworkin’s terms. However, as the above points illustrate, councils do not divide their decision making into such fine distinctions. Reliance on the ‘fit and proper person’ criterion as the sole consideration upon which to base the exercise of discretion means that councils are giving little thought to how this phrase is interpreted by them. As the quotations mentioned above illustrate, local authorities tend to treat the ‘fit and proper person’ criterion as if its meaning is self-evident, when it is not. And yet it is the interpretation of this criterion, as well as its application, which creates such a variety of approaches by the councils. It is in these respects that councils may be said to be exercising strong discretion in devising their own standards outside settled principles and using discretion in the interpretation of criteria and application of the relevant facts. However, I think a better view is that of Galligan, who argues that any official exercise of power must be explicable in terms of its purposes and within recognised principles.⁹ Licensing officials should be able to explain why an individual is considered to be a fit and proper person and how that finding is grounded in the purposes of the legislation. There ought to be some measure of consistency both between different councils and within the same council.

What each council understands by ‘fit and proper person’ is determined as a local issue. The following statements from three of the respondents indicate that local authorities regard it as appropriate that the criterion should be interpreted in accordance with local standards:

⁹ *ibid* 20.

We may want to set different standards to, say, [neighbouring authorities]. It's right that there should be freedom in the legislation to give us discretion to set standards locally. *Interview 5, Chair of Licensing Committee.*

[This authority] isn't [the neighbouring authority] and I don't want our drivers to worry that we will follow their decisions. They have a totally different environment to work in. It's local decisions, based on local needs. We have our own way of deciding these issues. *Interview 14, Chair of Licensing Committee.*

I'd say the balance is about right as having discretion allows us to be flexible and do things our way, without being too concerned about any outside influences or what other authorities do. We can set our own local standards to make local decisions. *Interview 37, Senior Licensing Officer.*

Although localism significantly influences the interpretation of the qualifying standards, councils do not offer any further justification for local variations in those standards other than to differentiate their area from other local authorities. Councils do not address the issues of why their interpretation of the qualifying conditions is to be preferred to that of another area or why their local area's requirements differ so much from those of other areas. However, because each council applies its own interpretation of the circumstances in which discretion may be exercised, localism also influences the methods of regulating driver entry, particularly when it comes to applying those methods in practice. The methods used to restrict driver entry are considered in the next section.

3) Methods of regulating driver entry

Historically, the power to grant a licence to a driver was unqualified and open-ended, but is now restricted by the need for applicants to satisfy the qualifying criteria of fitness and propriety and holding an ordinary driving licence for the minimum

period of twelve months.¹⁰ The exercise of discretionary power in the interpretation and application of these qualifying conditions, in particular the ‘fit and proper person’ requirement, was considered in section 2 of this chapter. The use of a ‘fit and proper person’ criterion creates difficulties both in terms what this phrase means and what it encompasses.

a) *What does ‘fit and proper’ mean?*

Although the ‘fit and proper person’ test is designed to play an important part in restricting driver entry to the market, there is no definition of this phrase in the legislation and the assistance provided by the courts is of limited benefit.¹¹ In the absence of definitive guidance, it is not surprising that local authorities adopt their own interpretations of the phrase. One respondent indicated that his council used the statement of Lord Bingham CJ in *McCool*¹² as their guide to interpretation:

I can recite it [Bingham CJ’s dicta] word for word it comes up that often in committee meetings and appeals. [He recites passage from Bingham’s judgement]. That’s what we base our understanding of fit and proper person on. Can the applicant measure up to that? *Interview 10, Enforcement Officer.*

It will be recalled from chapter 1 that Lord Bingham’s criteria for determining a fit and proper person included that the applicant be a safe driver with a good driving record, experienced, sober, mentally and physically fit, honest and not someone that would take advantage of their employment to abuse or assault passengers.¹³ Other councils are aware of Lord Bingham’s dicta but do not make direct reference to it or have it in their minds when interpreting the phrase ‘fit and proper person’. There are,

¹⁰ Local Government (Miscellaneous Provisions) Act 1976, s 59

¹¹ Discussed in chapter 1 section 3b).

¹² *McCool v Rushcliffe BC* [1998] 3 All ER 889 – discussed in chapter 1 section 3c).

¹³ *ibid* 891f (Lord Bingham CJ).

however, similarities between the elements involved in Lord Bingham's description and those upon which officials base their interpretation. Three respondents explained how they interpreted 'fit and proper person':

You look at all sorts really whether [the applicant] has a criminal record, what it's for, what [the applicant's] driving record is like, what [the applicant's] character is like. Do they come across as decent and honest or a bit of a villain? *Interview 40, Chair of Licensing Committee.*

You weigh up the different factors, don't you? Has this person been in trouble before? What was the nature of any previous offence? How long ago was it? Have they kept out of trouble since? Do they have family or relatives to support? Are they up to the physical and psychological demands of the job? You weigh it up and come to a decision. *Interview 45, Senior Licensing Officer.*

I would want to see that [the applicant] is going to be a safe and competent driver, they are not going to attack someone or fleece them, drive like a lunatic and be someone I would feel comfortable being driven by. Whatever they have done in the past is only relevant to how they would act as a driver. *Interview 18, Chair of Licensing Committee.*

In addition to these general factors that licensing officials use to determine the fitness or otherwise of an applicant, it became apparent from the interviews that there is a widespread use of what is referred to as the 'relative' or 'loved one' test. This non-statutory and vague test is used by councils as a means of simplifying the process of interpreting the 'fit and proper person' requirement. Although there are different versions of this simplified test, they all essentially ask the decision-maker, 'Would you be happy for your relative, wife, child, or loved one to travel in a taxi with this person?' Opinions as to the effectiveness of this test are divided, as the following statements illustrate:

I think it's a useful test, as there's no doubt about it that there are certain people who would put themselves in the position of taking people for hire and

reward who you would not want your relatives to be in with; you would not want them in there. *Interview 32, Senior Licensing Officer.*

We always use the test about whether you would trust this person to drive your wife, daughter or loved one. If you can say 'yes', then the licence should be granted. We...always find that quite helpful in these sort of cases. *Interview 2, Senior Licensing Officer.*

One way is to apply the test of harm, you know the...would I trust my daughter to be with this taxi driver? If you've ever met my daughter, I'd be more concerned for the taxi driver. But it's very subjective, isn't it? It depends how protective you feel towards your family. But then, what would you replace it with? *Interview 5, Chair of Licensing Committee.*

When you look at the 'would you want your loved one in a taxi with this person' test, well some days I'd be happy to see my [spouse] get in a taxi with Freddy Krueger so long as he was out of my hair...I'm being facetious, I know, but you get my point. The test is too subjective. I'm not sure that it's the best test we could use. *Interview 40, Chair of Licensing Committee.*

At first glance, these statements give the impression that local authorities are 'making it up as they go along' when interpreting the qualifying standard of the 'fit and proper person' test. This would suggest a degree of Dworkin's notion of strong discretion in that the interpretation is based on principles of the council's own making, outside the bounds of their legal constraints. When examined more closely, however, the factors contained in Lord Bingham's dicta or the similar elements used by authorities or the 'loved one' test could all be seen as attempts to create some recognizable principles, albeit somewhat imprecise ones, upon which to interpret a provision which is itself vague and poorly defined. The practical difficulty is that with the use of locally determined principles comes local variation in interpretation of the term which leads to inconsistency in entry restrictions. An applicant considered 'fit and proper' on one council's understanding of that phrase may not be deemed 'fit and proper' in another area, resulting, in the latter case, in refusal of a licence. This situation is not improved by a lack of consensus on the scope of the 'fit and proper' requirement.

b) *What does 'fit and proper' include?*

In trying to understand how entry to the market is restricted, an already complex situation is not helped by confusion about the scope of the 'fit and proper person' requirement. The statutory wording suggests that 'fit and proper person' is an overarching standard which has to be attained before the local authority may exercise its discretion to grant a driver's licence. This is the view taken by 21 councils which consider the 'fit and proper person' standard to be constituted of a number of different factors, such as medical fitness, driving ability and criminal record.¹⁴ However, eleven councils, according to their documentation,¹⁵ treat the 'fit and proper person' requirement as either a stand alone element, which has to be satisfied in addition to the other factors, or as relevant to criminal convictions only.

The treatment of the 'fit and proper person' test as either a stand alone requirement or an overarching one causes a number of difficulties. One is what precisely constitutes the stand alone 'fit and proper person' test, if elements such as medical fitness, criminal record and driving ability are not included. Furthermore, does the local authority have the power to refuse a licence even where an applicant meets all of the other criteria? The fact that so many councils take such an approach serves to highlight a general inconsistency which is prevalent in the area of taxi licensing. The point may appear to be an academic one but it has practical implications for an applicant's right of appeal which is regarded as an important check on the exercise of

¹⁴ These factors are discussed further in section 4 of this chapter.

¹⁵ Great Yarmouth Borough Council, 'Hackney Carriage and Private Hire Driver's Licences: Information and Guidance Notes for New Drivers' (2011), is one example.

necessary discretion.¹⁶ An aggrieved applicant whose application has been refused may only appeal if the ground for refusal was that the applicant was not considered to be a 'fit and proper person'.¹⁷ If an application is refused for some other reason, then the applicant's only redress is to challenge the decision by way of judicial review which is much more limited than an appeal.

Councils, however, do not draw any fine dividing lines between the 'fit and proper person' test and the elements which comprise it, regardless of the position set out in their documentation. In practice, local authorities either fail to appreciate the distinction, regard it as of no consequence, or treat the phrase 'fit and proper person' as a default position if no other element covers the situation with which they are presented. These points are illustrated by the following statements:

I'm not aware of it being treated as a separate issue. If we're asked to deal with a case, then we just treat everything as part of the [fit and proper person] test. I suppose it's separate to cover any cases that aren't covered elsewhere...we can't think of every possible situation we might face. *Interview 2, Senior Licensing Officer.*

I don't know really. I guess that's designed to cover any other issues that come up that affects their fitness that might not be covered by our conviction or medical policies. *Interview 30, Senior Licensing Officer.*

[A case] is only likely to come before committee if something has come up on the CRB check or wherever. If it comes to our committee, there's a grey area and we have to apply the fit and proper standard to that. *Interview 14, Chair of Licensing Committee.*

¹⁶ *Davis* (n 3) 142

¹⁷ Local Government (Miscellaneous Provisions) Act 1976, s 59(2).

c) Conclusions on methods of regulating driver entry

Unlike the case of vehicle entry, in the case of drivers there is only one method of regulating entry to the market. This is based on a quality standard, achievement of which is assessed by the exercise of discretionary powers subject to the applicant satisfying two preconditions. The focus of the discretion is not so much on whether to grant the licence, but on the interpretation and application of one of the preconditions. It is in the meaning and scope of 'fit and proper person' that the choice lies and upon which authorities most direct their attention in determining applications. Satisfaction of the qualifying conditions does not, however, automatically guarantee that a licence will be granted as councils are still able to exercise the discretion to refuse, as will be seen.

4) Practical application of 'fit and proper person'

Once local authorities have decided upon their own scope and interpretation of the qualifying requirement, that criterion has to be applied in practice. Local authorities are required to apply the 'fit and proper person' test to any potential applicant for a driver's licence before deciding whether to grant a licence to that applicant. The difficulties created by having to interpret the phrase 'fit and proper' are discussed in section 3 of this chapter. To assist them in applying the 'fit and proper person' test to new applicants, councils separate the requirement into a number of constituent elements. Some elements are common to all councils, while others are used more selectively by individual authorities. In this section, the different elements are analysed to discover what influences their choice and application and how they

connect to the aim of regulation. The common elements are medical fitness and criminal history as well as individualized factors including knowledge test, practical driving tests and formal qualifications.

a) Medical fitness

All 32 local authorities have a requirement that applicants for drivers' licences have to demonstrate a certain level of medical fitness, both physically and mentally. This is normally achieved by the applicant's own general practitioner or a medical practitioner appointed by the local authority examining the applicant and the applicant's medical records and certifying that the applicant meets the Group 2 medical standard set by the DVLA.¹⁸ There is no statutory requirement that applicants for taxi driver's licences pass a medical fitness test although there is a discretionary power for local authorities to request a medical report.¹⁹ Notwithstanding the discretionary nature of this provision, all the councils in this study required a medical report to establish medical fitness as an element of the 'fit and proper person' test.

The need for taxi drivers to be medically fit is relatively uncontroversial. There is a clear and obvious link between medical fitness and the protection of the public. No passenger would want to be driven by a taxi driver who was unable to control the vehicle due to physical or mental infirmity or, even worse, who may not survive the journey. Because they are based on a national standard, medical fitness criteria vary little from one area to another. This is subject to the exception of three local authorities which, in addition to the general medical standard, impose a requirement

¹⁸ This is the medical standard expected of all professional drivers, and is applied to drivers of heavy goods vehicles and passenger service vehicles as well as taxi drivers.

¹⁹ Local Government (Miscellaneous Provisions) Act 1976, s 57(2)(a).

that all applicants pass a drug test. Although compelling applicants to undergo such a test intuitively feels unnecessary and intrusive, it is possible to see a public protection issue being met by such tests, as two of the respondents explained:

We introduced drug testing...not that we saw a particular problem, but we noticed a lot of minor drug possession offences coming up on the CRB checks. That got us wondering if they were still using. We like our drivers to be calm, but not so chilled out because they're stoned. They still have to be fit to drive. *Interview 42, Senior Licensing Officer.*

I suppose we are fairly unique in requiring this part of the medical. A lot of drivers originally failed for cannabis, but this is now very much reduced. The message is slowly getting home and we get very few failures on drugs test. The ones that know they are likely to fail the drugs test will apply for a licence elsewhere. *Interview 7, Enforcement Officer.*

While compulsory drug testing addresses a public protection issue, the views of the councils which impose such a requirement raise further questions. Offences of drug possession and recreational use of certain drugs are not problems confined to particular localities. There is no reason, therefore, why only a small number of councils should impose drug tests. On the other hand, there is no indication that taxi drivers driving under the influence of drugs is a significant cause for concern in any area, and even the councils which have drug testing accept as much. It may become an issue, if drug testing by only some local authorities means that drug using prospective taxi drivers apply to other areas. The results of this study confirm that, where drug testing has been introduced, the local authorities are satisfied with the outcome.

b) Criminal history

Medical fitness criteria may be uncontroversial but the same cannot be said for the criteria applied to an applicant's criminal history and background. How local authorities assess the fitness and propriety of prospective taxi drivers who have criminal records generates great controversy between the trade and the regulators. It also produces the greatest local variation. All 32 councils have developed their own policy on the relevance of criminal convictions to applications for taxi driver's licences. Most of these policies are based on the limited legislative framework available to councils on this topic which comprises two relatively dated central government circulars from 1992²⁰ and later delegated legislation exempting taxi drivers from the provisions of the Rehabilitation of Offenders Act 1974.²¹ Because of the scant guidance available from central government, every council has created its own policy, and every policy is different.

By developing policies on how to deal with criminal convictions, councils acknowledge that to impose a blanket ban on any person with criminal convictions from ever being granted a taxi driver's licence would be unfair, impractical and unnecessary to protect the public. The position of the local authorities is summarized by one respondent, who said:

We obviously don't expect our taxi drivers to be angels, but we do expect them to be relatively conviction free, reliable and trustworthy. That is why we have published criteria of persons who we would licence and people that we would not, but obviously every case is treated on its own merits. *Interview 11, Senior Licensing Officer.*

²⁰ Home Office Circular 2/92 and Department for Transport Circular 13/92.

²¹ Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002, SI 2002/171.

The problem in practice for local authorities, particularly if their policies are drawn too rigidly, is one of over-inclusiveness. Potential applicants may find their fitness and propriety called into question because of offences which are either very old or of no relevance to the licence for which they have applied, as the following comments illustrate:

We regularly get cases coming before the committee where the offences are nine or ten years old, or even more. I know it's following the council's policy, so it's right on that basis, but some of it's pretty trivial stuff. It makes you wonder if it's really that necessary. *Interview 12, Enforcement Officer.*

[T]he CRB check had thrown something up [which] was utterly unrelated to their driving skills, which is very unfortunate circumstances. You know lots of these drivers when they were very very young, as so many of us do, they were a bit wild and there's no reason that they should suffer or be restricted in their life choices for evermore. And it's usually something terribly mild. *Interview 14, Chair of Licensing Committee.*

Even in cases where an applicant's convictions may be relevant to the issue of public protection, local authorities recognize that assessment of the applicant's suitability has to be based on present circumstances, not past misdemeanours. In deciding whether to grant a licence, councils seek to achieve a balance between protecting the public from harm caused by unsuitable drivers and protecting the public generally from the potentially harmful consequences of refusing a licence. This point is illustrated by the following statements:

There's that balance, isn't there? I know it's difficult, but if he's an ex-convict and all he can do is drive a taxi, I'd rather see him drive a taxi and reform than burgle next door. *Interview 5, Chair of Licensing Committee.*

We had a case recently. He was a bit thick, illiterate, rude manners and did not know where the bounds of appropriate behaviour lay, but was a good driver, clean licence and no recent trouble with the police. What do you do? Do you refuse, knowing that he will probably turn to crime, or do you give him a chance? *Interview 28, Chair of Licensing Committee.*

We all know that people make mistakes, sometimes they are serious mistakes, but if they've done their time and are trying to reform and they're a fit and proper person, I'm not going to kick a man while he's down. They should be given a chance. *Interview 7, Enforcement Officer.*

As the local authority is exercising a discretionary power in determining whether an applicant is a 'fit and proper' person, this enables councils to be flexible in their approach. In some circumstances, councils follow their policies when legislative guidelines may lead them in another direction. While councils cannot act contrary to the law, they may decide to adopt their policy guidelines to determine an applicant's suitability in a situation where, so far as the law is concerned, the applicant is not yet 'rehabilitated'. An example of such a situation was given by one of the respondents:

If the [applicant has] served a term of imprisonment, say for theft...should his penalty for not being able to apply for a licence, should it be four years or would you invoke the Rehabilitation of Offenders Act which is probably seven? We would weigh up, who it is, what it is, so we would take all that into account. *Interview 32, Senior Licensing Officer.*

Whilst attempts at rehabilitating ex-offenders by licensing them to drive taxis are very laudable, this is not part of the council's role. Local authorities exercising licensing functions are not responsible for creating job opportunities for those with criminal records. Policies on the treatment of applicants with criminal histories should be targeted more specifically at those offences which are directly relevant to the role of a taxi driver. This would be a better assurance of public safety. As the system works at present, it is difficult to see what it is achieving.

c) Additional factors: knowledge tests, driving skills and formal qualifications

Medical and criminal conviction policies are common to all 32 councils. For eight councils, these policies are the only means of structuring their discretion in assessing an applicant's suitability as a taxi driver. The remaining 24 councils, however, employ a number of additional factors which are relevant to their determination of an applicant's fitness and propriety. These different factors are used in various combinations by the councils to restrict market entry. Failure to meet any of these additional requirements is likely to result in a licence being refused. In a similar way to which vehicle quality standards are adopted,²² in the case of drivers, councils take a 'pick and mix' approach to these additional factors. Again, little thought has been given to why these standards are considered necessary, how they fit with the other elements of the 'fit and proper' test or why they are appropriate for their locality.

The most common of these additional factors is the requirement to pass a 'knowledge' test for the local area. Although 24 councils impose such a test on prospective taxi drivers, the nature, scope and quality of every council's test are different. The variation between knowledge tests is considerable and complex. Tests may be either written or oral or a combination of both. 'Knowledge' may cover local geography, the general law, local byelaws and licence conditions or various combinations of these. Pass marks vary from 100 per cent on a ten question test in Sandwell to 90 per cent, on a more comprehensive test in both Bristol and Solihull and as low as 60 per cent in Amber Valley.

²² Discussed in Chapter 4.

By its very nature, a knowledge test is a 'local' matter. What is not so obvious, however, is why each council feels that it needs to have such a test. A topographically ignorant taxi driver can be a source of annoyance and frustration but rarely presents a public protection problem. Councils which have knowledge tests justify them on the basis that, in the council's view, taxi customers expect drivers to know the local area, as the following statement makes clear:

There's a knowledge of the city test for hackney carriage drivers because if you get into a taxi you expect them to know where to take you. *Interview 11, Senior Licensing Officer.*

More enlightening on this point, however, are the following views of three officials at councils which do not employ any form of knowledge test:

We're only a small area, and it's not too difficult to find your way around. In these days of sat-nav and all that GPS technology, drivers should not get lost in this area. The time and resources needed just aren't justified by the benefits. *Interview 46, Enforcement Officer.*

We don't have a knowledge test, no. [We did] think about it, but decided against. This is a rural area. There aren't that many roads, certainly not many large towns or one-way systems. So a bit of common sense and a map is all you need. *Interview 37, Senior Licensing Officer.*

We debate [the knowledge test] quite a lot. But we don't get reports from members of the public that drivers don't know where they are going. If we did we would consider it, but we don't ever get that report. *Interview 24, Senior Licensing Officer.*

There are 13 councils which require applicants to pass a formal test of their driving ability, usually the test administered by the Driving Standards Agency. The statutory requirement that an applicant must have held an ordinary driving licence for at least

twelve months at the time of application²³ means that the applicant has already passed what is generally regarded as a demanding test of his or her driving competence. Nonetheless, those councils which have such a requirement justify its imposition on the grounds of improving existing driving standards, as the following comments illustrate:

We put them through a driving test so that we can validate their standard because I'm not potentially as good a driver as I was 20 years ago when I passed my test. You [have] got to bear in mind that a taxi driver is a professional driver. *Interview 11, Senior Licensing Officer.*

We are always trying to improve standards of driving. In [this area] we think our standards are pretty high. We don't get many complaints about driving from customers, but you can always improve standards, can't you? *Interview 23, Chair of Licensing Committee.*

There is no indication why additional driving assessments are deemed necessary to protect the public, other than as a general improvement in driving standards. But it is not part of the local authority's function to improve driving standards. Using a requirement of additional driving qualifications appears to treat drivers as employees of the council, when they are, in fact, mainly self-employed entrepreneurs. Local authorities impose such a qualifying condition because they have the power to do so, and the applicant will not be granted a licence unless he or she meets this qualifying criterion. Even if councils believe that this will improve driving standards across their area, it does not make such improvements part of their function, given that they have no equivalent power to impose such a condition on ordinary drivers.

Nine councils require applicant drivers to hold some form of vocational or literacy qualification. In some cases, the qualification has been introduced in response to

²³ Local Government (Miscellaneous Provisions) Act 1976, s 59(1)(b)

particular customer complaints but not necessarily about safety issues. No thought has been given to why these qualifications are needed in a particular local area or how possessing the qualification achieves the aim of regulation. Councils which have introduced such requirements are satisfied with the results they have produced, as the following statements make clear:

We're happier with the other things like the training requirement, I think that's helped. We used to get quite a lot of complaints about drivers not being able to understand people. We felt if we introduced a qualification that would help and it has helped in that respect. *Interview 20, Senior Licensing Officer.*

The thinking behind [the NVQ qualification] was a chance to develop professionally, other employers have staff development and taxi drivers are professionals; we saw an opportunity to extend that professionalism. *Interview 14, Chair of Licensing Committee.*

To my mind, these comments suggest that training and other requirements produce results which benefit the local authority rather than the public. Reduction in the numbers of complaints and a more professional appearance for drivers are not aims which are concerned with public protection. The second comment also overlooks the fact that taxi drivers are not council employees. Requirements such as those discussed here I think add weight to the suggestion that local authorities view control over the trade as an end in itself. By imposing additional requirements, councils restrict the exercise of local authority discretion because failure to meet these obligations results in refusal of a licence and the numbers of drivers considered eligible to enter the market is reduced. However, none of these additional provisions restricts entry in a way which achieves public protection or promotes local issues.

d) Conclusions on the application of 'fit and proper person'

Local authority policies on medical fitness and the relevance of convictions have some connection to the protection of the public, particularly those that are designed to reveal certain medical conditions or indicate that an applicant has a propensity for violence, indecency or dishonesty or is simply a bad driver. Equally, it is clear that in developing their policies local authorities are structuring the exercise of their discretion to determine how to restrict market entry for drivers. What is not so clear is why there is such variation between local policies on an issue which has national application. Surely a 'fit and proper' taxi driver ought to be considered suitable to hold that position regardless of the area of the country in which he or she wishes to work. Nor is it clear why a particular local policy is thought to be more appropriate than an alternative policy for that area. The fact that the phrase 'fit and proper person' is so vague means that it can be interpreted and applied in any way that the local authority views as appropriate. Although the flexibility of exercising discretion in interpreting and applying this standard can be advantageous to decision-makers, the way in which the power is exercised in practice can result in decisions which are unconnected to the purpose for which the power was granted.

In this section the focus has been on the 'fit and proper' qualifying standard, and this is the centre of attention for local authorities exercising their discretion in deciding whether to grant driver's licences. However, councils' discretionary powers go beyond determining applicants' physical and moral characteristics.

5) Residual discretion beyond ‘fit and proper person’ standard

On the wording of the statute, it would be assumed that once an applicant satisfies the local authority that they are a ‘fit and proper person’ and meets the minimum period as an ordinary licence holder, then there is no reason why a licence would not be granted. Councils, however, still retain a residuary discretion to refuse to grant a licence, even to an applicant who fulfils the criteria. The statutory wording is permissive and not mandatory. In this section, I examine the exercise of this residuary discretion by considering the two other bases, and they are the only two, upon which some local authorities use their discretionary power. The first is local authorities which impose their own minimum driving experience requirement beyond the statutory minimum twelve month period. The second is councils which attempt to control the location in which the driver is to operate.

a) Minimum driving experience qualification

In most cases the requirement to have held a licence for a period of at least twelve months prior to the application does not cause any real difficulty as it is an easily verifiable factual state of affairs. Difficulties can arise, however, where councils require a minimum period of driving experience beyond the statutory twelve month period. Nine councils (28 per cent) in this study imposed an obligation for applicants to have minimum driving experience in excess of the statutory one year period. The councils concerned have a policy that requires prospective drivers to have held an

ordinary driving licence for two, three, or even four years before considering their application.²⁴

It may be argued that, as councils have discretion to grant licences, there is nothing wrong with their adopting policies to guide the exercise of that discretion. Similarly, as the statute specifies that an applicant must hold a licence for ‘at least’ twelve months, councils are within their powers to impose a longer period. It could also be said that, as the extended minimum periods are local authority policy, not fixed rules, they can be departed from in appropriate cases. For example, Bath and North-East Somerset Council made an exception to their three year driving experience requirement in the case of one applicant, who had been driving for two years and nine months at the time of the application and had demonstrated her abilities as a good driver.²⁵ The making of such an exception highlights a lack of certainty and uniformity in the approach to permitting market entry. Councils which apply extended minimum driving experience periods do not, however, seek to justify their policies on any of these grounds. The longer period of driving experience requirement is believed to be a matter of public safety, as the following statements from three of the respondents make clear:

You’ve seen the statistics, I’m sure, about how many young drivers have an accident in their first few years of driving. Experience counts for a lot, and we like our drivers to have that bit of extra experience before giving them a licence. *Interview 32, Senior Licensing Officer.*

Even after a year they’re not very experienced drivers. I’m not convinced they’re suitable to drive a taxi. In [this area] we like them to have bit more

²⁴ Amber Valley, Solihull, Sandwell and Mid-Devon have a minimum two year period; Bath, Lancaster, Southend and Northampton require three years minimum; and Tendring obliges applicants to have held an ordinary licence for four years.

²⁵ Bath and North-East Somerset Council, ‘Minutes of Meeting of Licensing Sub-committee – Miss KD’ 1st March 2011, 86.

experience before being allowed to drive the public around. *Interview 16, Senior Licensing Officer.*

[There is] nothing unusual about driving in our area that makes it different from elsewhere. Not sure a less experienced driver is necessarily suitable as a taxi driver, at twelve months they're still learning. I would not be happy about my relative being driven by someone who has only passed their test twelve months ago. We all have to learn and gain experience, but the public should not be paying for a driver to gain experience. *Interview 17, Enforcement Officer.*

Where an extended minimum driving period is imposed, local authorities make a convincing case for their position on the basis of public protection. This might suggest some connection to the 'fit and proper' person test, but the two conditions are clearly distinguished in the statute and so any attempt to conflate the driving experience requirement with the fit and proper person test is potentially unlawful. However, what these councils do not address is why they consider their area needs a longer minimum period than the one set by central government and which is applied in other areas. None of the councils makes any case that driving conditions are more onerous in their area than in any other. Exercising their discretionary powers in this way creates a lack of consistency and an impression that councils are exceeding their powers because a prospective driver who fulfils all the statutory criteria is likely to be granted a licence in one area but refused one in another. There is no reason why any council should impose a period of driving experience of longer than the statutory minimum. If a longer period is felt to be necessary, for whatever reason, then this should be addressed by Parliament and a fixed period, rather than simply a minimum, ought to be imposed.

b) Location where the driver intends to work

In the case of vehicle entry, it may be recalled that five local authorities require prospective vehicle owners to give an undertaking that, if granted a licence, the vehicle would be used predominantly for hackney carriage work within the granting local authority's area. Refusal to give such an undertaking normally results in refusal of a licence.²⁶ The same five councils apply a similar provision to prospective drivers. Although the use of such a restriction on entry has been held to be an appropriate exercise of discretion in the case of vehicles,²⁷ the position of drivers is different. The exercise of discretion in the case of vehicles is largely open-ended, whereas in the case of drivers the exercise of discretion is conditioned by the 'fit and proper person' test. Where a driver intends to work is not something which affects whether they are considered to be a 'fit and proper person' to hold a driver's licence. Furthermore, a driver refused a licence on the grounds that he or she does not intend to work within the local authority's area has no right of appeal against such a decision.²⁸

Such difficulties are not appreciated, or have been ignored, by the councils which adopt such a practice. The local authorities justify their position as a public protection issue on the basis that their standards of fitness and propriety for drivers are better than other areas, and drivers with more questionable or colourful backgrounds may be able to operate in their area by obtaining a licence from other areas. As in the case of vehicles, this issue is of more relevance to enforcement than to restricting driver

²⁶ Discussed in more detail in chapter 4, section 3(c).

²⁷ *R(Newcastle City Council) v Berwick on Tweed Borough Council* [2008] EWHC 2369 (Admin); [2009] RTR 34.

²⁸ Appeals are limited to cases where refusal is on the grounds that the applicant is not a fit and proper person - Local Government (Miscellaneous Provisions) Act 1976, s 59(2).

entry, and councils which have such a requirement acknowledge that enforcing such provisions may be difficult. One respondent explained their council's position as follows:

There's a lot of licence holders who can't get a licence in their preferred borough, so they go to neighbouring boroughs where they deem it easy to get licensed. That is something that we are aware of, not particularly happy about and trying to combat basically. I understand it may be difficult to enforce once they get the licence, but we'll have to see how that works out. It is something we are trying to tackle. *Interview 42, Senior Licensing Officer.*

Although the attempt to tackle the problems caused by this form of 'forum shopping' by drivers is understandable from the local authorities' point of view, the use of discretion in this way to restrict entry is not provided for by the statutory regime. Nor does it convince as a local or public protection issue. As with the case of vehicles, use of discretion in this way serves mainly the interests of the council in terms of ensuring sufficiently high numbers of licensed drivers for its area and income generation. Such requirements permit local authorities to control the location where drivers work which is not a legitimate use of discretionary powers.

c) Conclusions on residual discretion

There can be little doubt that, in the case of hackney carriage drivers, local authorities have a residual discretion to refuse a licence, even to an applicant who otherwise fulfils the statutory criteria. Most councils do not choose to exercise this discretion, and there is generally no reason why they should do so. Local authorities which exercise discretion beyond the confines of the 'fit and proper person' test create an impression that they are acting beyond the scope of their powers by refusing

licences in the circumstances that they do. Those councils which exercise discretion based upon driving experience make a strong case for doing so on public protection grounds. None of the uses of residual discretion, however, are exclusively local issues, and the difficulties raised by these points need to be considered at a national level.

It might be said that by making decisions based on driving experience and the location in which drivers are to operate councils are creating a rule and not exercising discretion at all. The only elements of choice are whether to impose the requirement in the first place or whether to overlook the criteria in individual cases. The fact that councils have such a choice suggests that such decisions are discretionary, but local authorities generally do not display or claim that they are guided by principles in exercising such discretion. Where they do so, such as in the case of extended driving experience being based on the principle of public safety, such principles are difficult to support because of a lack of an evidential link to protection of the public.

6) Conclusions on restriction of driver entry

The aim of restricting driver entry to the taxi market is claimed to be protection of the public. In the case of drivers, this protection is against the potentially adverse consequences of the passengers' vulnerable position in relation to the driver when travelling by taxi. In regulating entry of drivers by reference to their medical condition and the relevance of their criminal convictions, I think that local authorities believe they are protecting the public from its own vulnerability, and so are achieving the aim of regulation. I think the absence of widespread reported incidents of attacks upon or thefts from passengers by drivers supports this conclusion to some extent.

That is not to say that such incidents do not happen, and standards can always be improved. However, the way in which local authorities go about their task of protecting the public means that they often go further than is necessary to achieve their aim. Many of the restrictions on entry have no relevance to the protection of the public, which means that those that do are either lost amongst the irrelevant restrictions or do not receive sufficient attention to fulfil their aims properly. It is difficult to measure the effect of entry restriction in terms of protection of the public, although there are some provisions which are clearly designed to achieve this. The effectiveness of these protective provisions is often disguised by requirements which are designed to achieve other aims, such as the professionalism of drivers.

It is appropriate, in my view, that there should be discretion for the regulator to grant or refuse a licence to an applicant. In the case of taxi drivers, the local authority has discretion, the exercise of which is qualified by a pre-requisite condition. An important finding of this study is that the council has a residual discretion beyond merely satisfying that qualifying condition. Even if a local authority is satisfied that the applicant is a 'fit and proper person' and has the minimum period of driving experience, it can still refuse to grant the licence. Councils very rarely do this, largely because they do not necessarily realise that they have the power to do so. Decisions to grant licences mainly focus on the 'fit and proper person' test. Once that is met to the satisfaction of the council, the licence usually follows. In interpreting the qualifying condition, councils adopt guiding principles and standards as an aid to exercise of weak discretion. Licensing officials can normally point to criteria upon which his or her decision had been based, even if some of those criteria are themselves a little vague and imprecise. In the unusual cases where councils exercise discretion to refuse

beyond the scope of the fit and proper person test, this also tends to be guided by principle, although the connection between such principles and the claimed aims of regulation is dubious.

The findings of the study confirm that taxi licensing officials do not make any distinctions between interpretation of the statutory standards which precondition the exercise of their discretion and the determining and application of facts upon which the exercise of discretion is based. I think councils view the whole process as using their discretionary powers, but in doing so often take into account matters which are irrelevant to the purpose for which those powers are claimed to be exercised. Because the exercise of discretion allows for considerable variation in the interpretation and scope of the 'fit and proper' standard, this results in confusion, inconsistency and lack of uniformity. This means that it is possible for the same prospective driver to be refused a licence in one area on the grounds that they are not a 'fit and proper person' yet granted a licence in a different area. If the aim of regulation is public protection, I think this state of affairs is highly unsatisfactory. The concern must be that the current regime permits drivers with certain medical conditions or character traits to engage in 'forum shopping' to obtain a licence that he or she may not be able to obtain in another area. This presents clear difficulties for the protection of the public.

Some of the difficulties caused by these inconsistencies may be removed by the introduction of national standards to create a clearer definition of the appropriate quality standard in place of the 'fit and proper' test. The problem with arguments for more consistency and uniformity is, of course, there has to be a decision about who is

right.²⁹ Any such standards would have to be devised at national government level, with local authorities having to make a case for departure from such national standards to accommodate specific local needs. I will return to the issues about national standards in Chapter 8.

²⁹ JL Mashaw, *Bureaucratic Justice: Managing Social Security Disability Claims* (Yale University Press, New Haven 1983) 195.

CHAPTER 6: POST-ENTRY REGULATION OF VEHICLES, DRIVERS AND

FARES

1) Introduction

Once a vehicle and driver have been granted a licence, the local authority continues to regulate all aspects of the licensed trade. Post-entry to the market, the emphasis moves from controlling which vehicles and drivers are granted a licence to regulating the quality standards of those vehicles and drivers. Regulation also extends to controlling the cost to users of taxi services in the form of fares. Thus the licensing regime enables councils to supervise every facet of the taxi trade from beginning to end.¹ Not only do the licensing authorities have a major role in ‘setting the basic rules of the game’² but they also monitor the implementation of those rules.

There is widespread agreement in the literature on the need for regulation of quality standards in the taxi market.³ Regulation of the quality of vehicles and of the standard of service provided by drivers is justified largely on the grounds of safety for both the passengers and other road users.⁴ A potential customer is unable to assess the quality of a vehicle or its driver before hiring a taxi,⁵ but unsafe vehicles or misbehaviour by drivers may result in serious loss or injury being sustained by the customer.

¹ AI Ogus, *Regulation: Legal Form and Economic Theory* (Clarendon Press, Oxford 1994) 214.

² T Prosser, ‘Regulation and Legitimacy’ in J Jowell and D Oliver (eds), *The Changing Constitution* (7th edition, OUP, Oxford 2011) 317.

³ EC Gallick and DE Sisk, ‘Reconsideration of Taxi Regulation’ (1987) 3 *Journal of Law, Economics and Organization* 117, 120; LA Harris, ‘Taxicab Economics: The Freedom to Contract for a Ride’ (2002) 1 *Georgetown Journal of Law and Public Policy* 195, 210.

⁴ C Siebert, ‘Taxi Deregulation and Transaction Costs’ (2006) 26(2) *Economic Affairs* 71, 71.

⁵ C Shapiro, ‘Investment, Moral Hazard and Occupational Licensing’ (1986) 53 *Review of Economic Studies* 843, 845.

Qualitative regulation of service providers is said to reduce the uncertainty and risk of injury or loss.⁶

Similarly, individuals will be unaware of the fare rates applicable for journeys in an unregulated market. This could result in drivers exploiting their advantage, in terms of knowledge of the appropriate rates, by charging excessive fares.⁷ Regulatory intervention is said to redress this inherent inequality of information in an open market.⁸ It is also argued that fare regulation prevents service providers from taking advantage of the limited supply of vehicles, as a reason for charging higher fares, where quantitative restrictions are applied.⁹ In this chapter, I examine the application of these viewpoints to post-entry regulation of the taxi trade.

There is no doubt from the interviews I conducted that local licensing authorities see their role in post-entry regulation of the trade as being all-embracing. Councils consider they have control of all aspects of the trade and this is for the protection of the public. The following comments from three of the respondents capture the typical views of the local authorities:

Second to the concerns about public safety it is about standards, standards of behaviour, standards of vehicles. So the vehicle has to be fit and so does the driver. And the standards we expect of them, we set them pretty high. But it's all closely linked to safety as well. *Interview 12, Enforcement Officer.*

⁶ G Akerlof, 'The Market for Lemons: Qualitative Uncertainty and the Market Mechanism' (1970) 84 *Quarterly Journal of Economics* 488, 500.

⁷ PR Verkuil, 'The Economic Regulation of Taxicabs' (1970) 24 *Rutgers Law Review* 672, 694; RD Cairns and C Liston-Heyes, 'Regulation and Competition in the Taxi Industry' (1996) 59 *Journal of Public Economics* 1, 15.

⁸ *Ogus* (n 1) 4.

⁹ C Shreiber, 'The Economic Reasons for Price and Entry Regulation of Taxicabs' (1975) 9(3) *Journal of Transport, Economics and Policy* 268, 278; RF Teal and M Berglund, 'The Impacts of Taxi Deregulation in the USA' (1987) 21(1) *Journal of Transport, Economics and Policy* 37, 50.

We are required to look after the interests of all citizens of [this area] and do what is in their interests to regulate all aspects of taxi service. We know full well that that contact between the customer and the hackney carriage driver in the early hours of the morning is a relationship which is open to be abused. *Interview 8, Senior Licensing Officer.*

At the end of the day if you want to be a taxi driver, these are the rules and if you don't like the rules, then don't be a taxi driver. And the rules are there for a reason to protect the public whether they like the rules or not that's a different kettle of fish, isn't it? *Interview 20, Senior Licensing Officer.*

In this chapter, I critically assess these claims of comprehensive control and protecting the public. The issue considered is whether local authorities achieve the aim of public safety and protection within the limits prescribed by the licensing regime itself or whether they are simply seeking ascendancy over the trade by whatever means are at their disposal.¹⁰ I analyse each substantive area of regulation - vehicles, drivers and fares – separately, through the measures used to impose quality standards on the trade. I evaluate the relative merits and limitations of the regulatory instruments available to local authorities – byelaws and licence conditions – in respect of each area of regulation to assess their ability to achieve the desired goals. Finally, I examine some elements of the trade which are beyond the control of the licensing authority, together with the implications that this may have for public protection.

Licensing authorities use a variety of non-statutory rules, regulations, procedures, orders and guidelines in order to carry out the functions required of them under the primary legislation. The basic statutory framework is supplemented by a mixture of secondary and tertiary legislation.¹¹ The legal status and effect of secondary legislation, such as statutory instruments and byelaws, are well known. The same

¹⁰ M Clarke, *Regulation: The Social Control of Business Between Law and Politics* (Macmillan, Basingstoke 2000) 117.

¹¹ R Baldwin, 'Governing with Rules: The Developing Agenda' in G Richardson & H Genn (eds), *Administrative Law & Government Action: the Courts and Alternative Mechanisms of Review* (Clarendon Press, Oxford 1994).

cannot be said for the assortment of additional rules and regulations, which Ganz collectively refers to as ‘quasi-legislation’.¹² The form, content, legal validity and status of such measures can vary between local authorities. The detail and sophistication of the rules may vary from very short statements of the requirements of the local authority on a particular subject to very long and detailed statements, often considered to be authoritative and determinative of the local authority’s powers in any given situation. Procedural rules may direct how licensing regulatory committees are to conduct disciplinary hearings against alleged transgressors of the rules who appear before them. Understanding the status of such rules is not assisted by the variety of names attributed to them. What one council calls ‘guidelines’ may be another council’s ‘code of practice’ and another’s ‘rules of practice and procedure’. In the remainder of this chapter, I consider the various ‘quasi-legislative’ instruments used by the 32 local authorities in the context of post-entry control of the trade.

2) Regulation of vehicles

Upon a licence being granted, a licensed hackney carriage is regulated by means of local authority byelaws and conditions attached to the vehicle licence.

a) Regulation by byelaws

The power to regulate the taxi trade using byelaws is provided to local authorities by section 68 of the Town Police Clauses Act 1847. The ability to promulgate byelaws is discretionary; the local authority ‘may from time to time...make byelaws

¹² G Ganz, *Quasi-legislation: recent developments in secondary legislation* (Sweet & Maxwell, London 1987).

for all or any of the purposes following'.¹³ The 'purposes following' are a series of general purposes relating to the use of vehicles, conduct of drivers and monitoring of fares.¹⁴ However, the capacity to regulate vehicles by means of byelaws is restricted by two factors - the limitation placed on the scope of byelaws by the empowering statute itself and the need for the byelaws to be approved by central government.

Under the terms of section 68, there are only three general purposes for which byelaws may be made to regulate vehicles. These purposes are the display of the vehicle's licence number; regulation of the numbers of persons to be carried; and the manner in which the vehicle is furnished.¹⁵ Of these three, only the second has a direct connection to public safety issues, as an overloaded vehicle presents a clear danger to both passengers and other road users. The first helps to identify the vehicle as a licensed taxi, distinguishing it from private vehicles, and so has a tenuous connection to the protection of the public. The manner in which the vehicle is furnished, which implies the interior fittings of the vehicle, has no obvious public safety implications. Byelaws promulgated under section 68, however, extend the normally understood meaning of 'furnished' to include the provision of a fire extinguisher, first aid kit, separate means of ingress and egress for passengers and drivers, and a taximeter. Although they might strain the meaning of the statutory language, such provisions plainly involve safety features. Nevertheless, the scope for regulation of vehicles by byelaw is confined by the statutory wording, and cannot extend to such matters as the structural and mechanical condition of the vehicle.

¹³ Town Police Clauses Act 1847, s 68.

¹⁴ The purposes which relate specifically to vehicles are considered in the remainder of this section. Those which relate to drivers and fares are discussed in the appropriate section later in the chapter.

¹⁵ Town Police Clauses Act 1847, s 68.

All the byelaws used by the councils in this study are virtually identical in substance, with only minor organizational and textual variations. Unlike other areas of vehicle regulation, this means that there is little difference between the byelaws of any council. This is because, although byelaws are a form of delegated legislation in their own right, they require the approval of the Home Secretary in order to be valid.¹⁶ The Department for Transport has issued model byelaws,¹⁷ and it is difficult to secure the confirmation of a byelaw which departs from this model.¹⁸ Indeed, the Department for Transport has made it clear that it ‘would expect local authorities to base their byelaws on the model’.¹⁹ This thinly disguised exhortation to standardization is carried into practice. Sandwell Council, for example, had one of its proposed new byelaws deleted by the Home Office before it was approved in 1976.²⁰ More recently, Oadby and Wigston Council experienced a long and difficult process of approval for its new byelaws submitted in March 2006. After a number of amendments and clarifications, the byelaws were approved, in substantially the same form as the model byelaws, on 3rd September 2007.²¹

However, the current system of regulation by byelaws is not favoured by all local authorities. Only 19 of the 32 councils in this study have byelaws to regulate vehicles. Many of the byelaws are very old and have not been reviewed or updated for many

¹⁶ Local Government Act 1972, s 236(3).

¹⁷ The most recent version of the model byelaws was issued in July 2005, but differed little in substance from older versions.

¹⁸ SH Bailey, *Cross on Principles of Local Government Law* (2nd edn, Sweet and Maxwell, London 1997) [6-05].

¹⁹ Department for Transport, ‘Guidance Note and Model Byelaws’ (HMSO, London, July 2005) [11].

²⁰ Sandwell MBC Byelaw no 2(b)(iii) was deleted by the Home office on 1st October 1976. Sadly, history does not record the contents of the offending byelaw. Copeland Borough Council had a similar experience in 1983.

²¹ Oadby and Wigston District Council, ‘Byelaws Relating to Hackney Carriages’ 3rd September 2007.

years.²² This lack of enthusiasm for using byelaws is the product of a number of factors. Councils feel discouraged by the restrictions created by the statutory provisions, the slow and cumbersome approval process, and the fact that byelaws are seen as somewhat outmoded. These views are reflected in the following comments from three respondents:

Obviously [vehicles] are governed by byelaws, but you can only go so far with byelaws and they can't cover everything, especially the mechanical parts, so we have our own conditions too. *Interview 17, Enforcement Officer.*

The Home Office has got these 'modern' byelaws, even though they go back a lot of years, and you just cannot get them changed. I think they need to be brought up to date. To try and get those changed, chances of success - plaiting fog, as they say. *Interview 27, Senior Licensing Officer.*

We don't really see the need for the use of byelaws. We can get where we want to go, regulate more flexibly and more instantly by licence conditions. They're a bit old fashioned these days, and need to get approved by the Home Office. [There is] more flexibility with licence conditions and [we] can tailor them to our own needs. *Interview 20, Senior Licensing Officer.*

This is not to say that byelaws are viewed as having no advantages over other measures of regulation, such as licence conditions. One of the main advantages is that a byelaw is the law and, if validly made, has the 'force of law within the sphere of its legitimate operation.'²³ The view of one respondent was that councils ought to retain byelaws for that reason alone:

Some of the byelaws are fine, but the other ones need to be brought up to date or put into simpler language or extended or whatever. I don't think we should scrap the byelaws necessarily. I want byelaws for hackney carriages only because you can prosecute on the byelaws. Of course, you can't prosecute on the conditions; you haven't got the power to do that, unless you bring in new legislation. *Interview 27, Senior Licensing Officer.*

²² For example, Canterbury City Council's current hackney carriage byelaws date from 1968 and those of Gloucester City Council from 1972.

²³ *Kruse v Johnson* [1898] 2QB 91, 96 (Lord Russell CJ).

Byelaws are also seen as the archetypal local laws. One of the main justifications for using byelaws instead of primary legislation is their local character and their ability to take into account local conditions.²⁴ Laws which cater for local differences and needs have their uses in areas of regulation where local variations are necessary. The control of vehicle standards is, however, not such an area of regulation. Acceptable standards of cleanliness and comfort for a vehicle should be the same, regardless of where in the country the taxi is operating. Standards of this nature could just as easily be dealt with as part of a national scheme as by local byelaws. Indeed, the existing system of byelaws, with the need for ministerial approval and adherence to a set of model byelaws, resembles such a centrally organized, national system administered locally. This is contrary to the whole idea of local authority autonomy over the trade.²⁵ Insistence on the use of standard byelaws has the advantage of uniformity²⁶ but undermines the 'local' characteristic of byelaws.

b) Regulation by conditions attached to vehicle licences

Local authorities have the power to attach conditions to vehicle licences under section 47 of the Local Government (Miscellaneous Provisions) Act 1976. As with many other areas of taxi regulation, the power to impose conditions is discretionary. A district council 'may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.'²⁷ There is no indication of what is meant by the phrase 'reasonably

²⁴ B Jones and K Thompson, *Garner's Administrative Law* (8th edn, Butterworths, London 1996) 127.

²⁵ Discussed previously in chapter 2 section 4.

²⁶ *Bailey* (n 18) [6-05].

²⁷ Local Government (Miscellaneous Provisions) Act 1976, s 47(1).

necessary' in the statute.²⁸ Presumably any condition imposed should be 'reasonably necessary' to achieve the purpose for which the power was granted. It will be recalled from earlier chapters that it is difficult to identify a single aim of the legislation, but local authorities always claim that they are acting for the protection of the public. Although there have been few reported court decisions on the exercise of the powers under section 47, public protection is not something which appears as a priority in the small number that are available. In *Parsons v South Kesteven DC*, the court held that 'reasonably necessary' necessitated a judgment to balance the interests of the public on the one hand and the providers of the service on the other.²⁹ The decision made by the court, however, strongly favoured the interests of the industry by concluding that it could not have been reasonably necessary to impose a fare structure which was so unfair on the trade.³⁰ Similarly, in *Durham City Council v Fets*,³¹ a list of objectives was put forward as justifying the imposition of a condition that all vehicles be painted white. These objectives included public safety, the need to distinguish hackneys from private hires, as well as civic image and control of taxis generally. The court decided that it was not reasonably necessary to paint all vehicles white in order to achieve any of these aims.

Although the power to impose conditions is discretionary, all 32 councils attach conditions to their vehicle licences. In practice, this extensive discretion produces a wide variety of regulatory provisions attached to vehicle licences. Some conditions are numerous, long and detailed, others less so. Councils take the view that it would

²⁸ Discussed in chapter 1 section 3c).

²⁹ Lincoln Crown Court, November 1996, [3] (HH Judge Pollard).

³⁰ *ibid* [18].

³¹ Newcastle Crown Court, 10th October 2005 (HH Judge Carr).

be ‘clearly impractical not to have conditions attached to licences.’³² This view is supported by the following comments from three respondents:

We’ve actually spent a lot of time on our conditions policy document. It’s difficult...impossible, I would say, to control taxis and the taxi trade without adding conditions to the licence, because the powers that we have are so vague. You have to spell it out in the licence conditions. *Interview 24, Senior Licensing Officer.*

The decisions on vehicle quality are taken by the regulatory committee. We set quite a high vehicle standard. All our vehicles must be fully compliant with this new standard. You can only achieve that by imposing conditions. *Interview 8, Senior Licensing Officer.*

We need to be able to impose conditions on licences, How else are we going to cope with all the different situations that might come up. We need the sort of flexibility that conditions offer us to control the trade. *Interview 35, Senior Licensing Officer.*

These comments suggest that local authorities are aware of the advantages of precision and flexibility that licence conditions offer. They also show that councils regard control of the trade as an aim of regulation in itself rather than as a means to achieving the aim of public protection. Councils, therefore, tend to impose conditions which they think are ‘reasonably necessary’ to achieve their own interests, not necessarily protection of the public. This approach is often supported by the courts. In the recent case of *R(Shanks) v Northumberland County Council*,³³ for example, the court held that the decision to impose conditions should be left to the local authority as it sees fit. It is also implicit, from some of the obiter comments in the judgment, that the court viewed ascendancy over the trade as an aim in itself.³⁴ I examine this point further in the discussion of specific licence conditions which follows.

³² Tendring Borough Council, ‘Report of Head of Licensing Services to Licensing Committee’ 3rd September 2009 [2]

³³ [2012] EWHC 1539 (Admin); [2012] RTR 36.

³⁴ *ibid* [63] (Foskett J).

The use of licence conditions also allows local authorities to take a deterrence approach to enforcing standards. Unlike the case of byelaws, section 47 does not create a criminal offence of breaching or failing to observe a licence condition. Nonetheless, six councils impose conditions which include the warning, ‘failure to comply with conditions may lead to prosecution’³⁵ or words to that effect. Whilst prosecution for breach of a licence condition *per se* is simply not possible, such statements are, in my view, likely to create the impression in the minds of the trade that the licensing authority has greater powers than it actually possesses. Even those councils which do not threaten licence holders with criminal sanctions make it clear that they regard any breach of licence condition as ‘reasonable cause’³⁶ to suspend, revoke or refuse to renew a vehicle licence. Such an approach enables local authorities to control standards by the use of administrative sanctions.

The main disadvantage of a discretionary power to impose licence conditions is that it is capable of producing a variety of different provisions. This is what happens in practice in the case of taxi licence conditions. There are some common areas covered by all the licence conditions, but no two sets of vehicle licence conditions are the same. Simply in terms of the number of conditions imposed, there is considerable variation between councils. Tendring Borough Council, for instance, has only ten basic conditions attached to vehicle licences, whereas Worcester City Council has 40. The remaining councils impose conditions which vary in number between these two extremes.

³⁵ Northampton Borough Council, ‘Hackney Carriages: Byelaws, Conditions, Relevant Legislation and Guidelines’ (3rd edn, April 2008) [1].

³⁶ Local Government (Miscellaneous Provisions) Act 1976, s 60(1)(c).

Local authorities claim that, by setting vehicle standards through licence conditions, they are protecting the public. However, in many cases any connection to public safety or protection is, in my view, tenuous at best and often non-existent. In the remainder of this sub-section, I examine a number of common vehicle licence conditions in relation to their connection to public safety issues. The first group of conditions include those where there is an arguable public safety connection. This group includes conditions relating to the provision of safety equipment, age limits on vehicles, vehicle specifications, livery requirements, and the use of roof lights. The second set of conditions involves those which present no obvious safety concerns, and includes insurance provisions, conditions which repeat statutory requirements and other miscellaneous conditions.

i) *Conditions connected to public protection.*

One common condition, imposed by 22 of the councils in this study, requires that all vehicles are provided with safety equipment, more specifically serviceable fire extinguishers and first aid kits. Although some councils are more specific in their requirements than others,³⁷ such a condition has a direct and obvious connection with protection of the public. A condition requiring such equipment to be in the vehicle carries with it the implication that the driver will know how to use it. Not one of the councils, however, has any formal requirement for drivers to undergo first-aid or fire-fighting training.

³⁷ King's Lynn and West Norfolk Council, for example, has very particular requirements about make, model, capacity and location of fire extinguishers.

There is no statutory limit imposed on the age of a licensed vehicle. Central government advice to local authorities is that there should not be any such limit, as older vehicles can be just as safe as newer vehicles.³⁸ Nevertheless, 14 of the 32 councils impose a maximum age limit upon their vehicles by means of a licence condition. Such age limits range from six years³⁹ to twelve years.⁴⁰ Councils which impose an age limit acknowledge that this condition is not a legal requirement, but claim that it is justified on the grounds of promoting the public image of the area as well as public safety. Three of the participants justified their council's position as follows:

We know it's not a legal requirement to have an upper age limit, but we feel there is a need to ensure suitable vehicles [are] used for promotion of comfort of passengers. Having newer vehicles helps to achieve that. *Interview 32, Senior Licensing Officer.*

We like our vehicles to be in exceptional condition to reflect well on the area and to provide comfortable journey for passengers. So that's why we limit our vehicle age to eight years. After that, even well looked after cars start to go down hill a bit. *Interview 28, Chair of Licensing Committee.*

The initial limit was to establish a higher standard of vehicle across the trade. The older a car gets, especially with the bashing taxis get, the more it deteriorates. Even one or two years can make a difference in vehicle quality. *Interview 2, Senior Licensing Officer.*

The other 18 councils do not impose any age restrictions on their vehicles. In declining to impose an age limit, or removing an existing one, some councils acknowledge that it is the condition of the vehicle, not its age, that is the critical factor from the safety point of view. This point is illustrated by the following comments:

³⁸ Department for Transport, 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' (HMSO, London, March 2010) [26,27].

³⁹ Winchester City Council.

⁴⁰ Uttlesford District Council (Recently increased from 10 years).

We used to have a five year age limit, but now there isn't an age limit, but anything over ten years it goes more regularly for testing. And the vehicles have to be immaculate, we would not accept anything other than that. *Interview 17, Enforcement Officer.*

If we made them all have no older than a three year old vehicle or whatever. We could not justify it in terms of the vehicle is now unroadworthy, it's perfectly roadworthy, there's nothing wrong with it. It would be disproportionate in how it would affect the trade. *Interview 11, Senior Licensing Officer.*

However, other councils which do not impose an age limit justify their position largely as a response to trade concerns about falling revenues and increasing costs of replacing vehicles. One respondent said:

The desire to improve standards has to be balanced against the impact on individual drivers, the economic impact on them. Income levels are recognised to be low for taxi drivers. There aren't as many customers out there as there were, so it's harder for them to buy newer vehicles. *Interview 12, Enforcement Officer.*

Various specifications for the vehicle often appear as licence conditions. Such specifications can include, for example, the internal and external dimensions of the vehicle, minimum engine capacity and the removal of rust, dents and scratches from the bodywork of the vehicle. Whilst some of these specifications relate to the structural and mechanical condition of the vehicle, and as such have a clear connection to safety issues, the majority of them do not. On the whole, councils explain the imposition of vehicle specifications on the grounds of improving passenger convenience and comfort or the public image of the trade and the area.⁴¹

Two respondents made the following points:

⁴¹ For example, Mid-Sussex District Council's 'rust, dents and scratches' policy, which had been suspended in October 2009 under pressure from the trade, was reinstated from 1st March 2011 due to concerns about the deteriorating condition of vehicles and the 'scruffy' and 'unroadworthy' appearance of some taxis. Mid-Sussex District Council, 'Minutes of Meeting of Licensing Committee' 16th December 2010 [24].

We have our own manual with specifications that the vehicles have to comply with. At one time we used the London taxi one. We kind of diluted that in conjunction with the engineers in our own garage. Part of it is mechanical, part of it is cosmetic. *Interview 27, Senior Licensing Officer.*

We adopted vehicle specs to include, for saloon vehicles, a minimum size, engine size, internal features for comfort of the passenger. Increased technology [means] the equivalent can now be achieved with a much smaller engine and smaller vehicles. So the specs can be amended to help savings in fuel, cheaper initial purchase, more environmentally friendly. *Interview 3, Enforcement Officer.*

Neither of these statements, however, explains why it is ‘reasonably necessary’ for some areas to have vehicles with certain characteristics when other areas license taxis without such characteristics. Similarly, none of the detail found in many of these specifications is necessary to address safety concerns.

Seven out of 32 councils impose a condition that all licensed vehicles should be the same colour. These councils claim that this makes it easier for the public to distinguish between hackney carriages and private hire vehicles, and so improves public safety.⁴² However, even amongst supporters of livery requirements, it is acknowledged that other factors besides safety are taken into account, as the following statements indicate:

Fleet colours are a good idea. They are distinguishable from other vehicles, not many other vehicles of the same colour, everyone knows that’s a taxi. The drivers themselves might see the benefits of having them recognisable and differentiated to a private hire vehicle. *Interview 24, Senior Licensing Officer.*

It tells you a little bit about [the area], so I think there’s a value to that from the tourist perspective. But tourism and that angle of how you would promote [the area] would never come into the regulatory framework. But I think you need to look a little bit wider and just see what part the taxi service can play. *Interview 8, Senior Licensing Officer.*

⁴² Mid-Sussex District Council, ‘Report of Head of Legal and Regulatory Services to Licensing Sub-Committee’ 21st September 2011 [4].

These statements suggest that livery requirements are designed to achieve more than one aim, and not necessarily just public safety. Clearly, no local authority should be acting outside its regulatory framework, whatever goals it is trying to achieve.

Opponents of livery obligations take the view that the imposition of such conditions does not help the public to distinguish one type of hire vehicle from another and only serves to increase the costs to the trade. Even the choice of a suitable colour is problematic. These points are illustrated by the following comments:

The hackney carriage proprietors objected mainly on the grounds of cost, but they just didn't like it. Interfering council - dictatorship, you know, all that sort of thing. They could never have agreed on a colour. Do you know how many different shades of white there are? Also the manufacturers would add on a couple of grand premium because it was a particular colour. *Interview 16, Senior Licensing Officer.*

Well, other authorities have come a cropper on that one. There are varying shades of blue, if you say blue, there's light blue, dark blue. There are varying shades of white, surprisingly, even black, so, no, I don't think we would go down that line. *Interview 27, Senior Licensing Officer.*

The imposition of a livery is difficult to justify on safety grounds. The general public tends not to appreciate the difference between hackney carriages and private hire vehicles and care even less so long as they reach their destination. Visitors to an area are unlikely to know the colour of local taxis. Whilst local authorities are able to dictate the colour of licensed vehicles, including private hire vehicles, they are unable to exert the same degree of control over the general public. Councils could not prevent a member of the public from buying a car the same colour as a taxi. This could cause other members of the public to mistake a private car for a taxi. It is, therefore, hard to verify any claimed connection between public safety and all vehicles being a uniform colour.

The use of illuminated roof lights is, on the other hand, seen as a feature which can improve public safety, as it allows the customer to identify the vehicle as a bona fide licensed taxi. All 32 councils impose a condition that taxis are to have a roof light or ‘top-box’ installed and operating whilst plying for hire. The safety aspect of this is especially important during the hours of darkness when, for example, the colour of the vehicle or other identifying marks may be difficult to distinguish.⁴³ This feature is generally seen as a safety requirement by most councils. However, even on this point, there are some detractors, as the following conflicting views illustrate:

Obviously, we like our vehicles to display the [area] signage and the top light, and that’s the only identifying marks they can have. It’s the top light that really makes a vehicle stand out as a taxi. We’ve had them putting ‘TAXI’ over the back window but without the top light it’s not a taxi. *Interview 17, Enforcement Officer.*

Personally, I’d paint them all silver and do away with the top boxes altogether. I don’t see the need for roof lights. They are difficult to see at the best of times, and the drivers switch them off when it suits them so that it looks like they’re not available. *Interview 42, Senior Licensing Officer.*

The safety advantages of roof lights can be obscured by the over-specificity of some councils in respect of the location, dimensions, colours and lettering of the illuminated box.⁴⁴ The detail of such conditions focuses on the attributes of the roof light, such as its size and location. There appears to be a lack of appreciation by regulators that it is simply the existence of the roof light which protects the public.

⁴³ Uttlesford District Council, ‘Minutes of Meeting of Licensing Committee’ 19th January 2011 [LC63].

⁴⁴ For example, Mid-Devon District Council imposes very detailed conditions in relation to roof signs; Mid-Devon District Council, ‘Hackney Carriage & Private Hire Licensing Policy 2010’ (April 2010) [3.1-3.5].

ii) *Conditions with no clear public safety connection*

One of the most common vehicle licence conditions, imposed by 27 councils, requires the taxi to be adequately insured. This is presented as a public safety measure⁴⁵ but, in my view, there is no clear connection. All vehicles used on a road are required by the general criminal law to be adequately insured against third party risks.⁴⁶ Lack of insurance does not permit a local authority to refuse a licence,⁴⁷ yet insurance cover is required as a condition of the licence once granted. Insurance is a sensible precaution and protects the public from the consequences of seeking damages against an impecunious tortfeasor. Insurance cover in itself does not produce a safer vehicle or driver. Furthermore, insurance does not protect the public from the particular events against which they are considered to be in most need of protection. The scope of cover under taxi insurance policies does not extend to claims for loss and damage sustained as a result of criminal offences, such as assault or fraud, committed by the driver outside the ordinary use of the vehicle as a taxi.⁴⁸

Other examples of licence conditions which address issues which have no safety implications at all include those which relate to advertising in and on vehicles,⁴⁹ those which require vehicle proprietors to reside within or very close to the borough,⁵⁰ and conditions which insist on documentation being available in the vehicle at all times.⁵¹

⁴⁵ Law Commission, *Reforming the Law of Taxi and Private Hire Services* (Law Com CP No 203, 2012) [8.21].

⁴⁶ Road Traffic Act 1988, Part VI.

⁴⁷ *Cannock Chase DC v Alldritt* [1993] RTR 935.

⁴⁸ *AXN v Worboys* [2012] EWHC 1730 (Admin); [2013] Lloyds Rep IR 207.

⁴⁹ 18 councils in this study had such conditions attached to vehicle licences.

⁵⁰ Southend-on-Sea Borough Council, 'Hackney Carriage Licence Conditions' 2007 [7].

⁵¹ Twelve councils imposed such a requirement.

The vehicle licence conditions considered under this heading are relied upon by local authorities as instruments of administrative control over the trade, rather than as specific safety measures. Councils acknowledge that such conditions make their task of regulating the trade much easier than it would otherwise be. Two respondents made the following points:

How else are we to keep track on the trade, who owns what vehicle and whether their documents and what have you are up to date, if they exist at all. It makes my enforcement officers' job a lot easier, as they've no other way of checking. *Interview 35, Senior Licensing Officer.*

It means the information is easily accessible in the event of an accident or incident, or if someone puts in a complaint and for compliance purposes. We have no power to demand documents like insurance documents and such like; we are not the police and don't have their powers. *Interview 17, Enforcement Officer.*

However, even if easier management of the industry is accepted as a legitimate aim of regulation, councils do not make clear why they believe that such conditions are 'reasonably necessary' to achieve that aim.

c) Conclusions on effectiveness of vehicle regulation

Byelaws provide only a limited means by which vehicle standards can be regulated. The sphere in which byelaws operate is restricted by the words of the enabling statute, together with the way in which byelaws are viewed by local authorities and the need for central government approval before formal adoption. These restrictions mean that byelaws which relate to licensed vehicles lack any connection to specific public safety or protection concerns, either locally or nationally. Under the current regulatory regime, any proposed byelaw which seeks to address such concerns is likely to be

seen as a misuse of power and, in any event, would not gain Home Office approval. Byelaws, within their existing limitations, are not an effective measure for controlling vehicle quality standards or achieving the protection of the public.

Licence conditions, on the other hand, have the advantages of a wider scope of regulation, flexibility, and more precision than statutory or byelaw provisions. They are enforceable by administrative rather than criminal sanctions. However, they are also capable of producing wide variation in standards expected of licence holders. This can create a situation where a vehicle considered safe and suitable for use as a taxi in one area might not be considered so in a neighbouring area, something which is recognised by local authorities. One respondent made the point that:

As our neighbours have different standards from ours, we have to bear that in mind, especially if we decide to change things. You'll see people suddenly moving their vehicles to a neighbouring [area] because they don't have an obstacle that we are seen to have. *Interview 24, Senior Licensing Officer.*

The flexibility of licence conditions enables them to be amended more quickly than statute or byelaws in the event of any change in local authority standards. This allows councils to recognise that vehicle standards are fluid and capable of improvement. The councils are generally satisfied with the way in which vehicle standards are achieving the local authority's idea of effectiveness. One respondent said:

Yes, it is raising standards and achieving what we set out to achieve. We have developed our own standards and have seen a significant number of vehicles come off the road to be replaced by new ones that meet the standard. *Interview 8, Senior Licensing Officer.*

Overall, I think that judging the effectiveness of vehicle regulation is difficult because it is not clear what local authorities are seeking to achieve. Public protection is claimed to be the aim, but this is not fully reflected in how councils go about their task. If a licence condition is not ‘reasonably necessary’ to further the aim of regulation, it is an improper use of the local authority’s power to impose it at all. Yet there are many examples of licence conditions which have no connection to the protection of the public.⁵² Even where a tenuous link to this regulatory aim exists, the way in which the licence condition operates is often remote from public safety concerns. Ascendancy over the trade, the public image of the area and the economic situation of taxi proprietors and drivers are all irrelevant to the question of protection of the public. But these issues feature prominently in local authority decisions about imposing vehicle standards.

I think there should be a system of national safety standards for vehicles in view of the limitations of the current system of byelaws and licence conditions. National vehicle standards would have to be set centrally, based on safety specific standards and which could be imposed by licence conditions. The current system of post-entry control of vehicles through byelaws is unsuitable. The quality standards which can be covered by byelaws are too restricted and the need to obtain central government approval is too inflexible. As byelaws are local in nature, they would not be appropriate to implement and enforce a system of national uniform standards.⁵³

⁵² Such as those discussed in section 2) b) ii) above.

⁵³ Discussed further in Chapter 8.

3) Regulation of driver conduct

Just like the vehicles they drive, hackney carriage drivers are subjected to local authority regulation as soon as they are granted a licence. However, unlike the case of vehicles, the extent to which councils are able to control driver conduct is not clear-cut. Even the measures available to regulate the behaviour of licensed drivers are contestable. In this section, I analyse regulation of driver conduct through the measures utilized by local authorities, including the steps taken to address the limitations of those measures.

a) Regulation by byelaws

The general position with regard to regulation of the trade through byelaws has already been considered in the context of vehicle licences. The observations regarding the nature and limitation of byelaws are equally applicable to driver's licences as they are to vehicle licences.⁵⁴ However, regulation of drivers by byelaw differs from the position of vehicles in two important respects. First, the byelaws relating to drivers set general standards which are wider in scope than those which apply to vehicles. Second, driver byelaws have to be formulated in this way because they are the only legitimate method of controlling driver behaviour and conduct. Under section 68 of the Town Police Clauses Act 1847, the only general purpose for which byelaws may be made in respect of drivers is to regulate

⁵⁴ These observations are discussed at length in section 2 a) of this chapter.

the conduct of the proprietors and drivers of hackney carriages...and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling.⁵⁵

Although the extent of this provision is vague, there is a clear relationship between what the byelaws are intended to cover and the protection of the public against physical or financial misbehaviour on the part of the driver. In particular, the ability to regulate a driver's 'conduct' is capable of a purposive interpretation to permit control of those aspects of a driver's behaviour which may have an adverse affect on public safety.

However, the connection to public protection is somewhat mixed when this general purpose is implemented in practice. Some of the approved byelaws have a direct link to protection of the public. These are byelaws requiring the operation of taximeters on all journeys⁵⁶ and carriage of the correct number of passengers. Such byelaws are clearly designed to prevent passengers from being taken financial advantage of and to avoid overloading the vehicle. All the 19 councils which have byelaws issued drivers with badges and had a byelaw requiring the driver to wear the badge at all times whilst standing or plying for hire. I think this byelaw has only a tangential connection to public protection in that it identifies the driver as a licensed driver and assists in identifying that driver in the event of an incident or complaint. The remaining model byelaws have no direct connection with public safety and are more related to image and simple control of the trade than the protection of the public. Into this category fall byelaws covering the conduct of drivers on ranks, punctual attendance at bookings,

⁵⁵ Town Police Clauses Act 1847, s 68.

⁵⁶ This provision is considered in more detail in the section on fare regulation which is discussed later in this chapter.

the dress, appearance and manners of drivers, provision of assistance to customers with luggage, and prohibiting ‘touting’ for custom.⁵⁷

There are no provisions in the model byelaws relating to the hours during which drivers may engage in their trade. Councils do not seek to control drivers’ hours, either by setting a maximum number of permitted driving hours or limiting driving to certain hours of the day. Although the issue of drivers’ hours has obvious safety implications, local authorities view attempts to control driving hours as unworkable, unenforceable and a restraint upon the drivers’ ability to trade. Three respondents explained their council’s position on drivers’ hours as follows:

We don’t, for example, try to limit what hours the drivers can work. It would be useful to try to control drivers’ hours but you just can’t do it, and I don’t know how you would enforce it even if you could. They rely on picking up as many fares as possible and, if you limited their hours, some days they just wouldn’t earn enough to make it worth their while going out. *Interview 6, Senior Licensing Officer.*

No, we don’t control drivers’ hours. [I am] not sure how you would keep an eye on that and monitor it short of putting a ‘tacho’ in the cab. We’re not their employers; we can’t say how many hours they can work. There’s nothing to stop them getting out of one car, then doing another eight hour shift in another car. *Interview 32, Senior Licensing Officer.*

What you’d get is two things; one, you’d get a flood of taxis at the ‘cream’ times when it was busy and none at all at the quiet times; and two, the trade would accuse us of preventing them from earning a living, because they could not make their money in the time allowed. *Interview 20, Senior Licensing Officer.*

Although this is an area where local authorities have the legal power to control driver behaviour in a way which would protect the public from tired drivers, they choose not to use it for pragmatic reasons, even though those reasons are not safety

⁵⁷ Department for Transport, ‘Model Byelaws’ (n 19).

related. And yet, as other parts of this thesis illustrate, councils are not so reticent in controlling other aspects of a driver's working conditions.

The decision of the High Court in *Wathan v Neath and Port Talbot CBC*⁵⁸ made it clear that byelaws are the only legitimate method by which the conduct of a driver can be regulated.⁵⁹ This decision raises particular difficulties for local authorities which do not have any byelaws relating to hackney carriages. Whilst control over vehicles can be exercised by the imposition of licence conditions, there is no power to regulate driver behaviour and conduct by the same method. Nor is any alternative regulatory mechanism for drivers provided for other than byelaws. How councils seek to control the behaviour of drivers without relying upon or resorting to byelaws is considered in the next sub-section of this chapter. An indication of the importance councils attach to control of the trade is given by the lengths they go to in order to circumvent the difficulties caused by the decision in *Wathan*.

b) 'Conditions' on drivers' licences.

In this sub-section, I consider the issue of conditions attached to drivers' licences in two respects. The first is whether it is lawful to impose such conditions at all. The second is the contents of the conditions themselves on the assumption that they are legal.

⁵⁸ [2002] EWHC 1634 (Admin)

⁵⁹ The effect of this judgment was discussed in chapter 1 section 3c)

i) *The lawfulness of drivers' licence conditions*

Imposing conditions on a licence can only be used as a technique of regulation in the case of vehicles. There is no power to impose conditions upon a hackney carriage driver's licence.⁶⁰ Some councils recognise the difficulties that this causes for exercising control over driver behaviour, much to the frustration of licensing officials:

You have the anomaly in the law where you can put conditions on a private hire driver's badge requiring [the driver] to tell us of any convictions, but you can't impose the same condition for hackney carriage drivers. And that could be a big issue. It's things like that cause a problem for people. *Interview 27, Senior Licensing Officer.*

I would implement a complete care package for drivers through the licence conditions to enhance the reputation and professionalism of the drivers as ambassadors for the city. But at the moment you just can't do it. *Interview 11, Senior Licensing Officer.*

The dissatisfaction of council officials with this state of affairs is easy to understand. Local authorities feel they need to exercise control over the behaviour of the trade, and view licence conditions as the most flexible and practical measure for achieving such control. This point is expressed clearly with regard to vehicle licences,⁶¹ and a similar view is echoed in relation to drivers' licences. The following statements from three respondents illustrate the belief councils have in the need to employ some method of controlling driver behaviour and conduct.

We have the conditions that we consider reasonably necessary to regulate the hackney carriage drivers in our district. We try to keep it to what's reasonable, but we have to maintain some sort of control, otherwise drivers would do what they liked. *Interview 37, Senior Licensing Officer.*

⁶⁰ *Wathan* (n 58).

⁶¹ Discussed in section 2 b) of this chapter.

There are 18 separate conditions on our drivers' licences relating to general conduct of the driver. They cover all the main statutory requirements plus some of our own to deal with some additional or higher standards that we may want to impose. *Interview 32, Senior Licensing Officer.*

Our drivers' licences are subject to a number of conditions. [They] cover things like notifying the council within seven days of any conviction, caution or fixed penalty notices. Historically, we found that drivers were not coming to us with that sort of information until renewal, so we made it a condition so that we are informed straightaway. *Interview 45, Senior Licensing Officer.*

Notwithstanding the authoritative statement of the law on this issue from the High Court in *Wathan*, central government advice to local authorities is that this decision has been misinterpreted and there is an implied power to impose conditions on a driver's licence.⁶² In my view, the Department for Transport's arguments on this point are unconvincing. Had Parliament intended local authorities to have the power to impose conditions on a driver's licence, it could have done so in the 1976 Act, just as it did for private hire vehicles. However, such conflicting advice makes policy decisions difficult for local authorities. One respondent explained the dilemma as follows:

What do you do? Do you go along with the 'untested' - probably the politest way to describe it - opinion of the DfT or do you follow a judgment from the High Court? The trade are capable of causing us enough problems as it is without inviting them to take us to judicial review. It would be an open goal. *Interview 30, Senior Licensing Officer.*

Despite an absence of power to impose conditions, 25 of the councils included in this study attempt to do so. A variety of devices is used to exercise control over drivers through licence 'conditions'. The most common method of avoiding the difficulties caused by *Wathan* is for local authorities to issue 'dual-licences'. Such licences permit the holder to drive both hackney carriages and private hire vehicles,

⁶² *Department for Transport, 'Model Byelaws'* (n 19).

but the licensing authority uses its powers to attach conditions to the private hire driver part of the licence.⁶³ 15 councils⁶⁴ issue dual licences for this purpose. One respondent justified the council's approach as follows:

Following *Wathan*, the consensus of opinion was that the cheapest and most practical way of ensuring continued control of the hackney carriage trade would be to issue dual licences to all hackney carriage drivers. That way conditions could be attached under the Miscellaneous Provisions Act powers to attach conditions to private hire driver's licences. *Interview 35, Senior Licensing Officer.*

Councils which acknowledge their lack of power to attach conditions to drivers' licences, attempt to control driver conduct by other less obvious means. They may, for example, call the requirements something other than 'conditions', such as a 'code of conduct.' Six of the 32 councils issued codes of conduct for their drivers. The content and detail of these codes varied between councils, but essentially they attempted to regulate the behaviour of drivers in their dealings with members of the public and with other drivers when standing at taxi ranks.⁶⁵ Two respondents explained the scope of their codes of conduct as follows:

There is a 'code of conduct' for drivers requiring them... amongst other things, to be courteous and polite at all times. Normally, it's the sort thing that would be covered by licence conditions, but as no conditions can be attached. *Interview 12, Enforcement Officer.*

All our drivers are provided with an 'info pack' detailing all the requirements of drivers. This relates to the conduct expected of a licence holder in [this area] and is on top of the licence conditions. So it covers standards that cannot be covered by byelaws or conditions, such as how a driver would ensure a

⁶³ Local Government (Miscellaneous Provisions) Act 1976, s 51(2)

⁶⁴ This includes two councils, Newcastle upon Tyne and Cornwall, where a dual licence is available, at the option of the driver, as an alternative to an ordinary hackney carriage or private hire driver's licence.

⁶⁵ It is not clear whether the codes issued by Mid-Devon or King's Lynn and West Norfolk councils are attached as a purported condition to the licence or in addition to it. Lancaster's code is not significantly different from the conditions imposed on drivers' licences before the *Wathan* decision.

passenger reached their destination safely and on time in the event of a puncture or breakdown. *Interview 2, Senior Licensing Officer.*

Whatever they may be called, councils regard these measures as *de facto* licence conditions, because failure to abide by the code of conduct may lead to suspension or revocation or refusal to renew the licence. As one respondent explained:

After *Wathan* we realized that we could not use licence conditions for drivers any more. So we introduced a code of conduct as a way of keeping some sort of control over drivers. It might not be as enforceable as licence conditions but if drivers breach the code, that does call into question whether they are still a ‘fit and proper person’ to hold a licence. *Interview 16, Senior Licensing Officer.*

Seven councils just ignore the point altogether and impose what purport to be conditions on the driver’s licence anyway. None of these councils suggest that they have implied power to impose conditions as the Department for Transport claims they have.⁶⁶

Non-statutory codes and guidelines, such as the devices used by councils to regulate driver behaviour, may, according to the literature, be given legal effect by making the grant or renewal of a licence conditional upon compliance with such a code.⁶⁷ The use of such devices by local authorities to control drivers goes further than simply threatening to refuse future licence applications. Councils maintain regulation of the trade by threatening lesser administrative sanctions, such as written warnings as to future conduct,⁶⁸ for non-compliance with ‘conditions’ or codes of practice. This is in addition to more severe administrative sanctions, such as suspension or revocation of

⁶⁶ Department for Transport, ‘Model Byelaws’ (n 19).

⁶⁷ Ganz (n 12) 25.

⁶⁸ Flintshire County Borough Council, ‘Hackney Carriage and Private Hire Drivers’ Licence Applications – Guidance on the Treatment of Convictions, Cautions, Criminal Charges or Other Recorded Sanctions’ 16th February 2011 [4.4].

the licence, and even prosecution.⁶⁹ It matters little whether such requirements are called conditions, guidelines or codes of conduct. Councils which issue such dire warnings, however, do not make clear how they could possibly prosecute a licence holder for breaching a measure which does not in itself create a criminal offence and which has a doubtful legal status.

Whatever councils may call them, in my view these devices are ultra vires local authority powers and, as such, legally unenforceable against licence holders. It might be suggested that councils' attempts to control drivers' behaviour and conduct are 'calculated to facilitate, or [are] conducive or incidental to, the discharge' of the council's functions within the meaning of section 111 of the Local Government Act 1972. As such, they would be a lawful exercise of local authority 'general competence' powers and thereby enforceable. However, I think this is a very dubious argument as there is already a complete statutory scheme for regulating drivers' conduct by means of byelaws and so there is no scope for implying the existence of additional powers outside the statutory code.⁷⁰ It is noteworthy that neither local authorities nor central government attempt to rely on 'general competence' powers to justify attaching what purport to be conditions on a driver's licence.⁷¹

Councils do not necessarily appreciate that their powers to impose conditions on driver licences are limited. Elected representatives in particular point out that they are reliant on legal advice from appointed officials and are not always aware of the extent

⁶⁹ Uttlesford District Council *op cit* [AI 9].

⁷⁰ *Credit Suisse v Waltham Forest LBC* [1997] QB 362

⁷¹ After February 2012 a similar argument might be advanced for the scope of local authority powers under Localism Act 2011, s 1(1). However, the strength of such an argument, where there is an existing statutory scheme, is still in some doubt according to dicta in *Manydown Company Ltd v Basingstoke and Deane DC* [2012] EWHC 977 (Admin); [2012] JPL 1188 [145] (Lindblom J).

of their legal powers. In April 2010, for example, Gloucester City Council revoked all existing drivers' licences and immediately replaced them with new ones incorporating new licence conditions. This action was taken in the belief, supported by counsel's advice, that the need to impose new licence conditions was 'reasonable cause' to revoke existing licences and was within the Council's discretion.⁷² A similar view was expressed by two of the respondents:

I'm pretty new to the taxi licensing game, and we're not lawyers of course, so we are pretty much in the hands of our officers for the appropriate legal advice. When they tell us that what we decide is within our discretionary powers, we have to take it that it's right. *Interview 21, Chair of Licensing Committee.*

I'm not familiar with that case [*Wathan*], no. We rely on our officers for legal advice, and they are usually pretty good, so we have to take it from them that we are operating within the law in everything we do. *Interview 33, Chair of Licensing Committee.*

The effectiveness of such non-statutory codes rests on the acceptance by those who are regulated by the code of the legitimacy of the decision maker to impose it.⁷³ It is clear that the 32 councils believe that their 'quasi-legislative' measures, whatever form they take, are necessary to control driver behaviour, and do control the conduct of drivers in practice. However, this is more a resigned recognition by the trade of the council's dominant position over them than any acceptance of the legitimacy of the measures used. This is illustrated by the views of two taxi representative respondents:

Well, at the end of the day, they are the council. They have the final say over whether you have a business or you don't. So it's probably not too wise to upset them. I don't always agree with what they do...I just go along with whatever they say to avoid any hassle. *Interview 22, Taxi Representative.*

⁷² Gloucester City Council, 'Minutes of Meeting of Licensing and Enforcement Committee' 10th April 2010 [5.7].

⁷³ *Ganz* (n 12) 96.

You get a feeling that some of what [the council] decides is a bit dodgy legally, but what can you do? If you want to dispute it, you'll need determination and deep pockets. Much as I enjoy sticking it to the council, I'd rather be out earning a living than fighting it out in some court room and lining the lawyers' pockets. *Interview 19, Taxi Representative.*

All this indicates that, whatever the legal status of drivers' licence 'conditions', the trade generally accepts that the council uses measures to exercise *de facto* control over drivers' conduct and behaviour. As the above quotations suggest, this acceptance is more by way of acquiescence on the part of the trade rather than a formal acknowledgment of the lawfulness of the steps taken by the authority. This can be as a result of ignorance, a desire not to upset the status quo, or the local authority creating an aura of legitimacy. Even if the lawfulness of those standards is called into question, identifiable and measurable standards are preferable to the alternative of arbitrary and unpublished standards. One respondent observed that:

We'd welcome national standards across the board. All sorts of local interpretations are happening. That doesn't do anybody's reputation any good. If drivers are moving around, it's good for them to know what the standards are and the standards are the same whichever authority they go to. *Interview 25, Enforcement Officer.*

This is an important comment in respect of maintaining uniformity and consistency across the trade. However, if the standards are set on unsure legal foundations, then it would only take one challenge from the trade to render those standards ineffective.

ii) *Specific drivers' licence 'conditions'.*

Ignoring for the time being the issues surrounding the lawfulness or otherwise of drivers' licence conditions, local authorities use their licensing powers to impose

certain requirements upon drivers. The most prevalent of these obligations is in respect of training and qualifications, including mandatory training requirements as a condition of continuing to hold their licence. Other, more unusual conditions relate to dress codes, recording bookings and prohibition of sexual activity.

Twelve councils, as a 'condition' of the licence, require drivers to undergo formal training, normally within their first year of holding a licence or by a specified date. The training typically addresses 'customer care' or 'disability awareness' issues and usually leads to a nationally recognised qualification.⁷⁴ Whilst such post-entry training may have advantages for the quality of service provided to the public, the training schemes raise issues concerning funding and measurable improvements in safety. The idea of compulsory post-entry training is a popular one amongst councils. Even councils which do not enforce training by licence conditions encourage drivers to undergo some form of training and would make training compulsory if the financial burden was not placed on the council. One respondent said of training:

The NVQ qualification would help, I think, and we encourage our drivers to go for that. I don't think we can make it compulsory though. Who pays for it all if the government suddenly pulls the plug on the funding? *Interview 30, Senior Licensing Officer.*

Some councils which impose a training condition are happy with the outcomes. It is believed that this form of post-entry training 'ensures the highest standards within the trade'.⁷⁵ The majority of councils are, however, less impressed with the results of training requirements. This can be because the training is not considered effective,

⁷⁴ The most common qualification was the NVQ in Transporting Passengers in Taxis and Private Hire Vehicles. Other councils used the BTEC equivalent qualification.

⁷⁵ Cherwell District Council, 'Report of Head of Urban and Rural Services to Licensing Committee' 15th December 2009 [1.21].

particularly when imposed on existing members of the trade. Other reasons are that the standard of training provided is not considered adequate, and doubts about the results of training schemes in terms of improvements to quality standards. These concerns are illustrated by the following comments:

The NVQ qualification went down very poorly, well, not well anyway, with experienced drivers. They thought it was like teaching their grandmother to suck eggs. So it did not change their behaviour at all. *Interview 14, Chair of Licensing Committee.*

I'm not being overly cynical but there was sufficient evidence that what was happening is, I'm supposed to be doing an assessment on you. You tick box, I tick box, I sign it, you get your certificate, I draw the funding down. Quality of training - rubbish. *Interview 8, Senior Licensing Officer.*

A lot of authorities have all kinds of things on drivers, you know, the customer care type qualifications. The ones that have passed, when you see them. Well, some of them must have been cheating, that's all I can say. I don't think it serves any purpose. *Interview 27, Senior Licensing Officer.*

Such training schemes are essentially an exercise which allows councils to demonstrate a commitment to improving standards without having any means of measuring such improvement or any demonstrable benefit to the public or the trade.

Three councils impose a 'dress-code' for drivers. There is no obvious public safety issue here,⁷⁶ particularly the requirement to wear, for example, a shirt and collar or to refrain from wearing shorts.⁷⁷ Opinion is divided on the merits and effectiveness of operating a dress code as the two following statements illustrate:

⁷⁶ In the Restormel zone of Cornwall there was an unfortunate incident where a driver's 'flip-flop' tangled in the pedals causing an accident. This resulted in a call for a countywide dress code for drivers although this was not pursued. Cornwall Council, 'Minutes of Meeting of Miscellaneous Licensing Committee' 17th September 2010 [MLC/101].

⁷⁷ North East Lincolnshire, 'Dress Code for Hackney Carriage Drivers' 1st April 2010.

We used to have a lot of complaints about dirty and scruffy looking drivers as well as cars. You don't want some guy who looks like a tramp driving you around. It gives a poor impression. It's really all about promoting the ambassadorial role of the taxi driver. *Interview 20, Senior Licensing Officer.*

We don't require our drivers to stick to a dress code. That would be utterly ridiculous, making them all dress a certain way. How does that affect their driving? *Interview 14, Chair of Licensing Committee.*

Some of the more bizarre requirements imposed by licence conditions include a requirement for hackney carriage driver to keep a record of all bookings.⁷⁸ This, for some unexplained reason, applies to pre-bookings only and not to passengers who are picked up from ranks or street-hails. Another unusual 'condition' is a prohibition on any sexual activity, consensual or otherwise, in a licensed vehicle, in order to reduce the number of incidents of serious sexual crime.⁷⁹ None of these requirements have any clear connection to public safety and are further measures controlling the conduct of drivers for the sake of such control.

c) Conclusions on driver regulation

So far as regulation of drivers' conduct is concerned, the only instrument of control provided for by the legislation is byelaws. The byelaws relating to drivers have wider scope for regulation than those which apply to vehicles, and could be used more widely if a broad interpretation of 'conduct' is adopted. However, there is nothing in the control of driver activities which has a particularly 'local' flavour. Safe, honest and competent drivers exhibit those characteristics wherever they choose to ply their

⁷⁸ Northampton Borough Council, 'Hackney Carriages: Byelaws, Conditions, Relevant Legislation and Guidelines' 3rd edition, April 2008 [23].

⁷⁹ Cherwell District Council, 'Minutes of Meeting of Licensing Committee' 15th December 2009 [1.25]. The report does not include any explanation of how the measure is designed to achieve its objective. Nor does the report explain the council's authority for attempting to control the behaviour of passengers, to whom the condition, if interpreted literally, also seems to apply.

trade. This calls into question whether byelaws are the most appropriate way of setting and enforcing driver standards. Nevertheless, as the regulatory system is currently framed, byelaws have to be as effective as regulators can make them as they are the only legitimate means of control.

Attempts to regulate drivers by other instruments, such as codes of conduct, have no statutory basis and are legally unenforceable. This does not prevent local authorities from using such instruments and, regardless of what name is given to them, they are effectively treated as conditions on the driver's licence. The effectiveness of such measures rests on the unsure grounds of the councils' own belief in their powers of control and the acceptance by the trade, reluctantly or otherwise, of the *de facto* lawfulness of those measures. Where local authorities attempt to regulate driver behaviour through licence 'conditions', there is rarely any connection between those conditions and the protection of the public. Moves towards national driver standards, to be discussed later, imposed by licence conditions would have to ensure that they were directed towards protection of the public, if they are to be effective.

4) Regulation of Fares

This area of regulation is the one least mentioned in the literature. This is surprising as, in my experience, it is the main concern of the travelling public, often ahead of safety and availability issues. Fares are also of considerable interest to the proprietors and drivers as they provide an indication of their potential earning capacity. Control of fares is done in two stages - fare setting and the regulation of that set fare.⁸⁰

⁸⁰ Discussed previously in chapter 1 section 3d)

a) Setting fare rates under the statutory procedure

It is paradoxical that the two general purposes for which byelaws could have been made under the original version of section 68 of the 1847 Act which have distinct local characteristics, the placing of taxi stands and the setting of fares, were removed from the scope of byelaws altogether and replaced by statutory schemes.⁸¹ In this subsection, I focus attention on the system created to set the rates of fares which taxi drivers are entitled to charge. This scheme is now found in section 65 of the 1976 Act. Although the setting of fares is still a matter for local authority discretion, it should be noted that the statutory procedure applies nationally. Section 65 only sets out a statutory procedure for the setting of fares. It does not provide any indication of the rate at which fares should be set or how that rate is to be calculated. The statutory procedure provides for the fixing of fare rates in the form of a fare table, publication of the table in local newspapers and at council offices, an opportunity for objections to be made, and a date upon which the table comes into force.⁸²

The need to regulate fares according to the relevant literature was discussed in Chapter 2.⁸³ It is recognised that setting prices generally for a regulated business requires a balance to be achieved between the desires of consumers for low prices and the businesses' wish to maximize profits. For this reason, regulators are given a degree of discretion in setting fares.⁸⁴ The need for balance is acknowledged by the

⁸¹ Local Government (Miscellaneous Provisions) Act 1976, s 63 (fixing of stands) and s 65 (fixing of fares).

⁸² Local Government (Miscellaneous Provisions) Act 1976, s 65.

⁸³ Chapter 2, section 2*b*).

⁸⁴ M Armstrong, S Cowan and J Vickers, *Regulatory Reform: Economic Analysis and British Experience* (MIT Press, Cambridge Mass 1994) 92.

Department for Transport in its recommendation that local authorities should pay particular regard to what it is reasonable to expect people to pay and the need to give taxi drivers sufficient incentive to provide a service when it is needed.⁸⁵

Without any statutory or other guidance, how do local authorities set rates of fares? It is suggested in the literature that rates should be set at a level which prevents excess profits, holds prices down to costs and assures administrative ease.⁸⁶ Ogus identifies two principal categories of price setting methods - one which affects a fair rate of return for suppliers, the other which limits prices by reference to a historic base and permits incremental increases to take into account the extent to which suppliers can control their costs.⁸⁷ In practice, there is no link between these models and the setting of fares. In particular, there is little correlation between actual costs to the trade of operating taxis and the fares permitted. There is little public participation in the fare setting exercise, despite the statutory scheme designed to encourage such involvement.⁸⁸ Councils do not take into account customers' ability to pay or other needs of the travelling public.

The predominant influence over the fixing of fares is the trade. This suggests some degree of regulatory capture. It is recognised by writers on capture that regulators might use whatever discretion is at their disposal to favour whichever group brings the most pressure to bear on their decision making.⁸⁹ When it comes to fixing fares, all the pressure upon the council emanates from the trade. There is no countervailing interest from the public or the authority itself. The fact that the trade is so influential

⁸⁵ *Department for Transport, 'Best Practice Guidance'* (n 38) [52].

⁸⁶ S Breyer, *Regulation and its Reform* (Harvard University Press, Cambridge Mass 1982) 36.

⁸⁷ *Ogus* (n 1) 295.

⁸⁸ Local Government (Miscellaneous Provisions) Act 1976, s 65

⁸⁹ *Armstrong et al* (n 84) 92.

when it comes to fare setting stands in contrast to the position on the other aspects of post-entry regulation. The preceding sections of this chapter show that, in controlling quality standards for both vehicles and drivers, the regulator has the ascendancy and benefits most from regulation. In the case of fares, however, the converse is true. The following statements reflect the typical position so far as local authorities are concerned:

The trade themselves can apply for an increase in tariffs at any time, and have done so previously. The taxi trade themselves set their fare. They obviously do their homework and see what is happening in [other areas], and so they set their fares and then the local authority have to approve the new fare regime. *Interview 24, Senior Licensing Officer.*

The trade come to us. We would discuss and table something. We would then put it out for consultation in the statutory process. We have recently increased our fare tariffs in [this area] by two and a half per cent in accordance with an application by the trade. *Interview 30, Senior Licensing Officer.*

We have an annual review. The trade put forward any proposals in writing that they want to be considered. If they want an increase, we put it out to advertise in accordance with the statutory procedure and then it's brought in. *Interview 45, Senior Licensing Officer.*

The local authority actually sets it, in that we authorise it, approve it and agree the fare tariffs. But the impetus comes from the trade. We don't go to them and say would you like to put your prices up. *Interview 12, Enforcement Officer.*

Councils justify allowing the trade to direct fare setting on the grounds that councils are ignorant of the costs involved in running the taxi business. Local authorities also claim that they face competing pressures from opposing factions of the trade. Regardless of how valid these justifications may be, the influence of the trade is still predominant, as the following statement illustrates:

We consult all the taxi proprietors each year. We only know vague details about the costs of running their taxi. We all know the cost of petrol and diesel

and the cost of road tax and insurance. But there could be many other things that we don't know. But it's their business, we ask them. *Interview 27, Senior Licensing Officer.*

Two councils in the study base their setting of fares on long-standing formulae. This approach is closest to the historic base method described in the literature but takes into account external costs, all of which are beyond the control of proprietors and drivers. The formulae are normally linked to the Retail Prices Index for transport costs with the calculation of a percentage increase based on that figure. Even here the influence of the trade can be clearly seen, as the formulae and the weighting upon which the increases are calculated are agreed with taxi representatives.⁹⁰ Other local authorities leave the issue of fare setting and fare increases to the trade.

I was surprised how accommodating the local authorities are in meeting the demands of those they regulate when it comes to the setting of fares.⁹¹ In the period studied, between April 2010 and March 2011, every request for an increase in fares from the trade, within the 32 councils studied, was agreed by the council. This may be explained in part by an acceptance by the regulators that this is how the system works and partly by the reasonableness of the request itself. This point is illustrated by the following statements:

It's the trade that comes to us with their request for an increased tariff. What they ask for is generally approved by the licensing committee. *Interview 12, Enforcement Officer.* .

We're not here to ruin their business. We know they've got to make a living. Fuel and insurance don't come cheap. We'll try to help them as much as we

⁹⁰ Carlisle Borough Council and Southend-on-Sea Borough Council are the local authorities which base fare increases on a formula agreed many years ago with local taxi representatives.

⁹¹ For example, Mid-Sussex District Council's Licensing Committee was particularly accommodating to the local trade at its meeting on 13th October 2010. It not only increased the fares but also allowed taxi drivers to charge an additional 'fuel surcharge' when the price of fuel reached specified levels.

can, so long as they are reasonable. At the end of the day they are self-employed. *Interview 20, Senior Licensing Officer.*

I've negotiated a few times with councils about fare increases and I think so long as you are fair and don't go too over the top, then they are normally willing to approve any fare increase we ask for. I've never known them say 'no' yet. *Interview 50, Taxi Representative.*

The accommodative approach taken by local authorities towards fare setting may also be explained by the absence of any effective objection to the proposed fare. It is generally the case that no objections are received to advertised fare increases. But the study revealed a number of instances in which fares were increased in accordance with trade requests, even in the face of objections. This is partly as a result of the way the fare setting procedure is structured. The statutory provisions mean that, even if an objection is made, the new fare table comes into force on whatever date is set by council. This is the case, regardless of any objections, and the council is not obliged to modify fares in response to objections, although it may do.⁹² However, in practice, the approved fares are rarely changed because objections either are seen to make no difference or originate from the trade itself. The following statements illustrate this point:

Once the new fares are set, they are put out to advertising under the statutory procedure, but then they are in place regardless of any objections. We may consider them but at the end of the day they make no difference. The new fares come in anyway. I don't recall us ever changing the fares in response to objections, not that we get that many. *Interview 1, Chair of Licensing Committee.*

The new fares will still come in on the appointed date whether changed or not as a result of objections. If there are any objections come back then we would send it to cabinet but the new fares still come into force on the appointed day. *Interview 8, Senior Licensing Officer.*

⁹² Local Government (Miscellaneous Provisions) Act 1976, s 65(4).

The trouble is the trade can't agree amongst itself, most objections are from the trade. We hardly ever - in fact I'd probably say never - get any objections from members of the general public. *Interview 16, Senior Licensing Officer.*

Given the influence which the trade has over the rate of fares set, the question must be asked why taxi proprietors and drivers do not try to set fares at higher rates. The study showed that the trade tends to seek small increases to existing fares, usually only a matter of extra pence per mile. The trade's restraint may be in an effort to appear moderate and reasonable in its demands for fare increases. Owners and drivers want to avoid antagonising and alienating the public by setting fares too high, as this is likely to have a detrimental effect on business. This can be illustrated by the following statements from three taxi representative respondents:

I feel that we as a trade have done our bit to be as fair as possible. We have appreciated that times are hard and people don't have the disposable income they used to have. These are difficult times, we all know that. Things are bad for us just like they are for everybody else. Increasing costs, fuel costs have gone up enormously. We decided as a trade not to request an increased fare tariff this year. *Interview 26, Taxi Representative.*

This year, although we would probably want another review in about six months time, we decided we don't want it increased at all. I just don't think the state of the market would support it. *Interview 29, Taxi Representative.*

We've got to deal with the impact of rising fuel charges on our business. But, I think that the feeling is that a fare rise in the current economic climate would damage the taxi industry in the district. *Interview 19, Taxi Representative.*

These statements suggest that the trade has regard to the effect on the travelling public of setting a fare at too high a rate than the market can stand. This is for self-interested purposes, as excessive demands will have a detrimental effect on their business. However, the setting of fares is supposed to be the function of the regulator. It is not a self-regulated market. The licensing authorities are required to set fares, but only do so by way of rubber-stamping a rate of fares already determined by the trade.

Fares represent the area of regulation in which there is the greatest variation between councils. This is unsurprising as the operational costs of a taxi vary from one area of the country to another. Licence fees demanded by local authorities, together with the price of vehicles, insurance, fuel, and the costs of routine maintenance and repairs, all vary across the country. Comparisons are difficult because each council uses a different pricing structure, with different tariffs applying at different times of the day. Each council's tariff commences at a different 'flag fall' distance and uses different mileage rates. There are variations in tariffs within each area for different sizes of vehicle⁹³ or numbers of passengers.⁹⁴ Such variation between areas is a source of confusion, even amongst regulators. One respondent commented that:

I hate taxi tariffs, they're way too complicated. And they don't need to be. I don't know many taxi drivers who would pack up and go home at midnight just because the taxi fares haven't gone up. *Interview 8, Senior Licensing Officer.*

Notwithstanding these difficulties, comparison of fares across all 32 councils is possible. The National Private Hire Association publishes a monthly table of taxi fares for each licensed area based on an average day time journey of two miles. According to the table for January 2013, the cost of an average two mile journey across the 32 councils varied between £6.40⁹⁵ and £4.40.⁹⁶ The mean two mile journey fare across all 32 councils was £5.56.⁹⁷ Further details of the relative fares for each of the 32 councils are set out in Table 3 below.

⁹³ Rhondda Cynon Taf Council, 'Table of Hackney Carriage Fares' September 2010.

⁹⁴ Uttlesford District Council, 'Minutes of Meeting of Licensing Committee' 9th June 2010 [A/I 4].

⁹⁵ Bath and North-East Somerset Council and Mid-Sussex District Council.

⁹⁶ Oadby and Wigston District Council.

⁹⁷ Private Hire and Taxi Monthly, 'League Table of National Average Fares by Area' January 2013, 73.

Table 3: Comparative Fares for Daytime (Tariff 1) Two Mile Journey⁹⁸

<u>Council</u>	<u>Position in sample</u>	<u>Fare</u>
Bath/NE Somerset	1=	£6.40
Mid-Sussex	1=	£6.40
Cornwall	3	£6.30
Birmingham	4=	£6.20
Winchester	4=	£6.20
Solihull	4=	£6.20
Horsham	4=	£6.20
Canterbury	8=	£6.00
Southend-on-sea	8=	£6.00
West Dorset	8=	£6.00
Tendring	11	£5.95
Bristol	12=	£5.80
Uttlesford	12=	£5.80
Gloucester	12=	£5.60
Mid-Devon	15	£5.70
Newcastle u Tyne	16=	£5.60

⁹⁸ Cornwall is not listed in the publication as a separate council; each of the six zones in Cornwall is listed individually. The figure in Table 3 is an average (mean) value of the fares in the six zones, which range from £6.80 in Caradon (the second highest in the country) to £5.80 in Carrick.

Northampton	16=	£5.60
Carlisle	18	£5.50
Great Yarmouth	19=	£5.40
Worcester	19=	£5.40
Kings L/W Norfolk	21	£5.36
NE Lincolnshire	22=	£5.30
Fenland	22=	£5.30
Lichfield	22=	£5.30
Rhondda	25	£5.20
Cherwell	26	£5.08
Flintshire	27	£4.90
Lancaster	28	£4.80
Sandwell	29	£4.75
Copeland	30=	£4.60
Amber Valley	30=	£4.60
Oadby & Wigston	32	£4.40
AVERAGE (Sample)		£5.56

There is no obvious rationale to the variation in fares charged by each area. I have been unable to identify any pattern in relation to geographical location or the nature of the area, whether urban or rural. Some of the highest fares are set by councils which

retain quantitative entry restrictions, such as Bath and Mid-Sussex. This is contradicted by some of the lowest fares being set by other councils which also have quantitative restrictions, such as North-East Lincolnshire (£5.30) and Lancaster (£4.80). This goes against some of the evidence presented in the literature which claims to show a link between upward pressure on fares and quantitative regulation of entry.⁹⁹ No connection can be made between the rate of fares set and the general affluence of an area, which could reflect the ability of the public to pay the set fares. Nor is there a link between the costs to the trade of providing the service or even the costs to the regulators of administering and supervising the scheme. Regional variations can be justified in terms of the cost differentials of operating a taxi in different areas, but this is difficult to sustain in the case of neighbouring authorities. For example, there is a marked difference between neighbouring authorities Birmingham (£6.20) and Sandwell (£4.75) without any explanation for such a disparity.

Although fares are supposed to be set under the statutory procedure by the local authority, in practice councils simply rubber-stamp fare rates set by the trade. The travelling public, which is supposed to benefit from the statutory consultation process, does not participate in the procedure and has no influence on the rate of fares. Because rates are effectively set by the trade, this makes variations in fares even more difficult to explain. Each area sets its fare on the basis of an increase on a historic rate. There is no direct reference to the costs of operating vehicles, for example.

⁹⁹ T Çetin and KY Eryigit, 'The Economic Effects of Government Regulation: Evidence from the New York Taxicab Market (2013) 25 Transport Policy 169.

b) Byelaws and licence conditions and regulation of fares

The regulation of fares is enforced by specific criminal offences relating to overcharging.¹⁰⁰ But these all are premised on the fact that the local authority has set a ‘legal fare’ or rate of fares. Those fares then have to be regulated and monitored by the local authority. The set fares are regulated by byelaws and licence conditions attached to the vehicle licence. Regulation of fares is carried out in this way because the statutory scheme relates only to procedural provisions for fare setting, not regulation of the fares once they have been set. The Home Office approved ‘model’ byelaws used by 19 councils¹⁰¹ contain provisions on the regulation of fares in two aspects: the use of taximeters and display of table of fares. In those councils which have not passed byelaws, virtually identical provisions appear as part of the vehicle licence conditions.

Under the general provision relating to conduct of the proprietor and driver,¹⁰² councils have adopted byelaws regulating the operation of taximeters on all journeys. Taximeters are not a legal requirement, but all 32 councils make them a regulatory obligation through either byelaws or conditions imposed on the vehicle licence. Whether they are imposed by byelaw or condition, taximeters are required to be of an approved type,¹⁰³ calibrated and sealed.¹⁰⁴ Taximeters are claimed to be necessary for two reasons. The first is because ‘members of the public usually expect to see a

¹⁰⁰ Discussed in chapter 1 section 3*d*).

¹⁰¹ Discussed in more detail in section 2 a) above.

¹⁰² Town Police Clauses Act 1847, s 68.

¹⁰³ In order to be approved, the meters must comply with the provisions of the Measuring Instruments (Taximeter) Regulations 2006 SI 2006/2304.

¹⁰⁴ JHT Button, *Button on Taxis: Licensing Law and Practice* (3rd edn, Tottel, Haywards Heath 2009) [9.8].

taximeter in a hackney carriage.’¹⁰⁵ The second is that taximeters are seen as the only effective way of ensuring uniformity amongst the trade in charging only the permitted fares, as the following statements illustrate:

We have it written into our detailed conditions on the driver licence that there is a specific requirement to operate the meter at all times. We like our drivers to operate the meter, even in the case of a negotiated fare, as it saves any arguments later. *Interview 3, Enforcement Officer.*

The use of taximeters is compulsory. We found evidence of firms in [this area] charging pre-determined fares at more than tariff fare, and a situation whereby some vehicles operated on meter and others operated on manually calculated tariff. This caused total confusion with taxi users, so we introduced mandatory taximeters. *Interview 37, Senior Licensing Officer.*

I know some people are against meters and argue that customers want to know what the fare will be in advance, and we should be allowed to charge booking and admin fees and all that. But nothing upsets customers more than being charged £5 for a journey that the previous day only cost them £2. *Interview 51, Taxi Representative.*

It is important to be aware that the fare set by the council is the maximum fare that can be charged and is open to downward negotiation. The Office of Fair Trading, in its influential 2003 report, recommended that councils should publicize this as much as possible.¹⁰⁶ Of the 32 councils studied, only Mid-Sussex highlights the scope for downward negotiation of fares in licensing policy, and even in this case it is not clear how much general publicity is given to this fact.¹⁰⁷ On the other hand, the Department for Transport advises councils against encouraging downward negotiations of fares for rank or on-street hailings. It is claimed that such negotiations could cause

¹⁰⁵ *R v Liverpool City Council ex p Curzon Ltd* QBD 12th November 1993 [12] (McCullough J).

¹⁰⁶ Office of Fair Trading, ‘The Regulation of Licensed Taxi and PHV Services in UK’ (OFT 676, London November 2003).

¹⁰⁷ Mid-Sussex District Council, ‘Minutes of Meeting of Licensing Sub-committee’ 16th December 2010 [9].

confusion and lead to disagreement and security problems in the event of the requested fare not being displayed on the meter.¹⁰⁸

Downward negotiation of fares may also be difficult in practice, even for drivers willing to negotiate, because of the local authority's byelaws or licence conditions relating to the use of taximeters. The fare regulations require that taximeters be calibrated and sealed to the council's set tariff. Given that the customer can only be charged what is on the meter, and the customer will expect to pay what is on the meter even if this is a discounted fare,¹⁰⁹ the scope for charging less than the council set fare is considerably reduced. Furthermore, byelaws make it an offence not to bring the meter into operation even in the case of an agreed or negotiated fare.¹¹⁰ Some councils' licence conditions require that vehicles be fitted with a calendar control meter which automatically calibrates to the correct tariff.¹¹¹ These difficulties are reflected in the following comments:

Because it's on the table of fares, the table of fares is displayed, [the drivers] will charge that. *Interview 27, Senior Licensing Officer.*

If that's what the council say the fare is, then that's what I'm going to charge. Why should I do it for any less than that? I've got to make a living. Why should I pass up a passenger who will pay the full fare for one that wants to pay less? *Interview 36, Taxi Representative.*

Our meters set automatically to the right tariff as soon as you switch them on. We have to use these type of meter and you cannot vary the meter, so I could not do the fare for less even if I wanted to. I suppose I could, but then I'd have to explain the shortfall on the meter. *Interview 41, Taxi Representative.*

¹⁰⁸ Department for Transport, *Best Practice Guidance* (n 19) [53].

¹⁰⁹ Curzon (n 105) [12] (McCullough J).

¹¹⁰ *Stratford on Avon District Council v Dyde* [2009] EWHC 3011 (Admin); [2010] RTR 13.

¹¹¹ Newcastle City Council, 'Hackney Carriage Licence Conditions' [10.7], as an example.

However, despite the difficulties involved in agreeing a reduction on the metered fare, these positions represent a minority view. Many members of the trade are still willing to charge less than the set fare, as the following statements illustrate:

We're all in this game to make money. I can't see any problem in discounting the normal fare to do an 'off-meter' job. It all goes in the old 'sky rocket', doesn't it? *Interview 34, Taxi Representative.*

Top and bottom of it is, I'm a businessman. I don't want to lose a fare to another cab. Why should he have my money? I'm happy to help anybody out with a negotiated fare, especially if I can see they are genuinely struggling, so long as they don't take the piss. *Interview 19, Taxi Representative.*

I think we're all aware of giving the option of giving discounts on the meter price at our individual discretion, but it would help if the council weren't quite so uptight about using the meter. *Interview 31, Taxi Representative.*

Regulation of set fares by means of byelaws or licence condition allows councils to monitor the fares charged to members of the public. Even in this, however, local authority influence only extends to creating a cap on fares rather than prescribing a precise fare for each journey. In some measure, the exact fare charged is still in the hands of the trade.

c) Conclusions on fare regulation

The setting of fares is a matter upon which local knowledge and local variations are crucial. Despite the fact that it is a subject ideally suited to regulation by byelaws, the power to set fares by byelaws was removed and replaced by a statutory scheme in 1976. Fare regulation is more suited to local control than other aspects of regulation, and there are bound to be some regional variations. It is difficult, however, to justify

large variations between neighbouring authorities, and there needs to be a closer correlation between the fares set and the actual costs of operating taxis as a business.

Local authorities, despite the statutory duty upon them, only set the fare in a nominal way. The actual rates of fares are set, and the move to increase fares is driven by, the trade. I think that permitting the trade to set the rates of fares cannot be in the interest of the public and is a complete abrogation of the local authority's duty. There is little connection between any of the bases for calculating appropriate rates of fares set out in the literature and the fare produced by the statutory procedure. Once the fare is set, although there is a degree more control in the hands of the local authority, in practice the price the customer pays is still largely in the hands of the driver.

This is in contrast to the other areas of post-entry regulation where the local authority is in the ascendancy. In the case of fare regulation, councils have ceded some of the balance of power to the trade. Whether this is a *quid pro quo* for proprietors and drivers declining to challenge some of the more 'irregular' licence conditions imposed by local authorities is a highly speculative notion. There is certainly no evidence of any explicit understanding along those lines.

5) Journeys outside regulation.

One further point about post-entry regulation needs to be considered. In this final section, I examine the issue of journeys which may be outside local authority regulation altogether. Particular journeys may not be included in the regulatory

regime at all. This problem has two dimensions: journeys within or outside a local authority's area which may not be regulated at all because of their place of origin and journeys which go outside the council's licensed area.

According to the High Court decision in *Young v Scampion*,¹¹² section 38 of the Town Police Clauses Act 1847 exhaustively defines what constitutes a 'hackney carriage' for the purposes of the Act. In order to be deemed a hackney carriage, the vehicle must be a 'wheeled carriage...used in standing or plying for hire in any street.'¹¹³ Standing or plying for hire in a 'street' is as much a part of the definition of a hackney carriage as being a wheeled vehicle. The difficulty is that premises from which taxi drivers derive a substantial amount of their work, such as railway stations, airports and hotels, are nearly always on private land and do not necessarily constitute a 'street' within the meaning of the Act. Further uncertainty was created by the decision in *Eastbourne Borough Council v Stirling*¹¹⁴ where it was held that whether a railway station forecourt constitutes a 'street' depends on its precise location and is a matter of fact.¹¹⁵ This will vary depending upon which station is under consideration. The difficulty created for the regulator in all of this is that, if the starting point of the journey is not a 'street' for the purposes of the Act, then the vehicle is not a hackney carriage, and thus the journey is unregulated. The licensing authority has no regulatory control over the vehicle in respect of the fare, quality standards or criminal offences. All 32 authorities have at least one mainline railway station in their area. Some stations are located in places which would clearly constitute a 'street' for the purposes of the Act and others equally clearly are not in a 'street'. There are yet

¹¹² [1989] RTR 95

¹¹³ Town Police Clauses Act 1847, s 38.

¹¹⁴ [2000] EWHC 410; [2001] RTR 7.

¹¹⁵ *ibid* [18] (Pill LJ).

others which represent a grey area, where the status of the location is not easily definable. The stations are a popular source of work for taxis, but the precise extent of this is difficult to quantify, as the following statements illustrate:

I spend most of my time during the day down here [the railway station]; most of the lads do. I spend most of the day here, but then if I am working nights, like at weekend, I'll go on to the city ranks. If I had to put a figure on it, I'd say about 40 per cent of my work was from the station. *Interview 9, Taxi Representative.*

I always hang around the station. It's the only place you're guaranteed to get any regular work. At least you know the trains will come and there will be customers even if you have to wait a while. I'd say nearly all my work comes from the station rank. *Interview 47, Taxi Representative.*

This means that there are a significant number of journeys being undertaken by taxi every day to which the regulatory regime does not extend. I am surprised that this is not seen as a problem by the local authorities which view such difficulties as ones of the trade. On the other hand, the trade often does not appreciate the significance of this rule. The following statements illustrate the respective positions of regulator and regulated:

I don't see airport and railway station pick ups as a problem for us as regulators, but for the trade it can be a problem. The taxis that are licensed by us still come under our jurisdiction if they're operating in our area. *Interview 6, Enforcement Officer.*

No, if it's a public rank then it comes under the council's control, doesn't it? I know [the rail company] screw us for the permit fees but they can't tell us what to do once we've paid the fees. Only the council have the power to take our licences away. *Interview 41, Taxi Representative.*

In my view, this problem for the regulator is not appreciated as such by either the councils or the regulated who can easily take advantage of such a situation. The trade assumes that the normal regulations apply from railway stations whatever the true

legal position. This is another example of the regulator gaining ascendancy over the trade without any firm legal foundation. This problem can be ameliorated to some extent by the local authority adopting section 76 of the Public Health Act 1925 which extends the hackney carriage provisions of the 1847 Act, including any byelaws, to ‘hackney carriages standing or plying for hire at any railway station or railway premises... as if such...were a stand for hackney carriages or a street.’¹¹⁶ Little use is made of this provision in practice, however, as only two of the 32 councils, Birmingham and Gloucester, have passed resolutions adopting section 76.

The second type of ‘unregulated’ journey is only of significance in relation to fares. Maximum fares set by the council apply to journeys undertaken within the regulated geographical boundaries of the local authority’s area. For journeys ending outside that area, the fare is a matter for open market negotiation between the customer and the driver. The relevant negotiations must take place before commencement of the journey; otherwise the driver may charge no more than the metered fare.¹¹⁷ However, this means that a negotiated fare of more than the metered fare is possible, and drivers could take advantage of customers on such a journey.

Some councils appreciate the potential difficulties created by out of district journeys, and attempt to address them. The following statements from three respondents illustrate the way in which local authorities are trying to protect passengers from being taken advantage of in such a situation, and the restrictions on their powers to do so:

¹¹⁶ Public Health Act 1925 s 76.

¹¹⁷ Local Government (Miscellaneous Provisions) Act 1976 s 66

We make it a requirement that all fares, both within and outside the licensed area, are on the meter, so that there is no opportunity for overcharging. The out of district ones are difficult to monitor of course. We've no control once they leave our area. *Interview 3, Enforcement Officer.*

You might have a journey outside the district and the cabbie says, 'Right, that's going to be some ridiculous price'. There's an unofficial code of fares for out of district but it's a very difficult one to control. *Interview 8, Senior Licensing Officer.*

We have licence conditions about using the meter even for an outside district journey, but how far we can enforce that is open to debate, isn't it. It's not something official; it's not normally within our jurisdiction as a council. *Interview 12, Enforcement Officer.*

However, the majority of local authorities do not appreciate the possibility that out of area journeys may undermine their public protection role and allow exploitation of vulnerable passengers. It is not possible to say how substantial this problem is. No records are kept of how many journeys involve fares which are outside the council's area. Even the trade can only estimate how much of its work involves out of district journeys and this can fluctuate, making accurate estimates difficult.

6) Conclusions on post-entry regulation.

Notwithstanding local authorities' belief that they have complete control over the taxi trade once a licence is granted, councils do not possess the degree of control they like to believe they have. There are substantial areas of taxi work where local authorities have no legal power to exercise control at all. The extent of such areas is unquantified, and may be unquantifiable, but they exist and are significant. The statutory framework means that journeys from a certain point of origin may not be regulated at all, although this depends on the existence of certain facts; journeys to a destination outside the local authority area may be at unregulated fares. Fares which

are regulated are set by the trade, with very little influence from either the local authority or the public.

It is an important finding of the study, however, that, on the whole, local authorities are in the ascendancy in matters of post-entry regulation, even though some of the ways in which this is achieved are not within the boundaries of their legal powers. The statutory powers granted to councils for this area of regulation are very restricted in the scope of their operation, and so would appear to allow only limited control. Byelaws can only create offences in relation to certain aspects of both vehicle and driver regulation. Even so, what could be a useful local instrument for regulating the condition of vehicles and behaviour of drivers is restricted in its effect to those fields of operation of which central government approves. Licence conditions, which can provide flexibility in regulation, can only be imposed on vehicle licences. There is no method of controlling driver behaviour other than byelaws. Yet, despite these restrictions, local authority regulators maintain significant control over the trade by gaining a dominant position through claims to powers that they simply do not possess. Claims by regulators to be able to prosecute for breach of provisions which carry only administrative sanctions, or the power to impose licence conditions on driver's licences, help to reinforce the impression of council ascendancy. For the most part, the trade acquiesces in the regulator's use of its powers for these purposes.

The one exception to this general picture is in respect of fare setting. Here some degree of control has been ceded to the trade which uses this position to promote its own interests. This rather stands out as anomalous when the material and trends from the other aspects of regulation in this and other chapters are considered. The only real

explanation suggested is that local authorities have relinquished control over fares on the basis of the trade's greater knowledge and expertise in such matters. However, this is not a convincing explanation in my view, as the trade might be said to have greater expertise in most other aspects of regulation, but this does not prevent councils from maintaining a dominant position. This area of regulation should also be under the direct control of local authorities to promote the interests of the travelling public. This is not happening under the present regime.

CHAPTER 7: ENFORCEMENT OF REGULATION

No system of regulation will achieve its objectives without effective enforcement. In this chapter, I use the research material to shed light on how local authorities enforce the taxi licensing regime and how effective that enforcement is in achieving the regulatory objectives. The whole area of enforcement is very complex and in this chapter it is only possible to look at issues surrounding enforcement which are relevant to the themes of the thesis. This means that only some of the key elements which illustrate these general themes are considered. Other topics relevant to enforcement, such as the tension between elected representatives and employed officers or the impact of human rights on enforcement action, have had to be disregarded.

In their public pronouncements, councils like to portray themselves as adopting a conciliatory-based approach to enforcement. It will be recalled from chapter 2 that the literature suggests that most regulators prefer and implement what I have termed a conciliatory approach.¹ Recent studies in other areas of licensing have reached a similar conclusion.² In the case of taxi licensing, I found the opposite to be the case. All of the measures used by local authorities, with one main exception, were used to inflict punitive sanctions on the licence-holder and demonstrated a deterrence-based approach to enforcement by the councils. This was the case, somewhat surprisingly,

¹ G Rhodes, *Inspectorates in British Government: Law Enforcement and Efficiency* (Allen and Unwin, London 1981) 176; K Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Clarendon Press, Oxford 1984) 3.

² P Hadfield, S Lister and P Trayner, "‘This Town’s a Different Town Today’: Policing and Regulating the Night-Time Economy" (2009) 9(4) *Criminology and Criminal Justice* 465, 473.

even when those instruments which are normally associated with more conciliatory approaches were used. The one important exception was routine inspection and testing, which I consider was a much underused strategy. Disinclination by local authorities to make the maximum use of such inspections is in itself an indication of the attitude which councils take towards enforcement.

One theme which runs through the previous chapters on pre and post-entry regulation is the way in which local authorities regard control of vehicles and drivers as an end in itself rather than as a means to achieve the claimed aim of protection of the public. Councils, for example, restrict vehicle entry on the grounds of quality when it is not clear that they have the legal power to do so,³ and create an impression that they have certain powers which they do not in fact possess.⁴ This theme, of local authorities operating within their own regulatory realms beyond and regardless of their formal legal powers, has particular resonance in the context of enforcement. It is in the area of enforcement that this cultural characteristic of local authority regulators can be most clearly seen operating in practice. The local authorities' viewpoint is apparent in the following comments of two of the respondents:

I would update the legislation to allow us to control all vehicles and drivers that are operating locally. I know that may create problems with different areas having different standards. But if they want to come into our area and work on our patch, then our officers should have jurisdiction over them. *Interview 5, Chair of Licensing Committee.*

The trade are very often affronted and surprised that we have the power to tell them what they can and cannot do. They think they should be allowed to do whatever they want without interference. [They] cannot understand why they have been brought before the committee. *Interview 18, Chair of Licensing Committee.*

³ Discussed in chapter 4, section 3a).

⁴ Discussed in chapter 6, section 3b)i).

It should be borne in mind, however, that enforcement involves the exercise of discretionary power by local authorities. Councils have the choice whether to enforce the legislation and, if they decide to do so, how they go about that task. With such wide discretion to bring enforcement action comes the commensurate discretion not to do so. Licensing officers can engage in what has been termed ‘selective enforcement’, that is the discretion to refrain from initiating proceedings for enforcement in circumstances where such proceedings are clearly appropriate.⁵ This issue is addressed in some detail in the literature, largely in relation to prosecution, with the debate revolving around the relative merits of certainty and flexibility.⁶ Judicial decisions have acknowledged that it is not a basic principle of the rule of law that prosecution should be automatic wherever an offence is detected, and that enforcement officials should have a wide discretion to enforce the law to benefit consumers.⁷ In reality, not every violation of the law or licence conditions results in enforcement activity, nor, in my view, is it appropriate that it should be. Not all contraventions of the rules are detected and, even when they are, the costs of bringing proceedings for every breach would be prohibitive in the light of any benefit to the public gained as a result of the action. Nevertheless, the process by which local authorities decide when to take enforcement action is instructive in relation to the themes of the chapter.

⁵ KC Davis, *Discretionary Justice: a Preliminary Inquiry* (Louisiana State University Press, Baton Rouge 1969) 162-164.

⁶ R Cranston, *Regulating Business: Law and Consumer Agencies* (Macmillan, London 1979) 105; G Richardson, with A Ogus and P Burrows, *Policing Pollution: A Study of Regulation and Enforcement* (Clarendon Press, Oxford 1982) 21.

⁷ *Smedleys Ltd v Breed* [1974] AC 839, 856 E-G (Viscount Dilhorne).

In this chapter, I consider the following questions. First, how do councils go about the task of enforcement as reflected in their policies and practices? Local authorities are a form of government and, as Dearlove points out, all governments must have policies in the sense of a stated pattern of resources committed to achieving certain goals which has an effect on those outside government.⁸ Given that enforcement involves the exercise of discretionary power, councils normally adopt policies in order to structure and confine the exercise of their discretion.⁹ I think it is a reasonable assumption, therefore, that local authorities will have implemented taxi licensing enforcement policies to guide the exercise of their powers. Such policies would also enable licence holders to know what is expected of them by the council and to provide a benchmark against which to judge the effectiveness of regulation. How far this assumption is mirrored in reality is considered in section 1.

Second, what powers of enforcement do councils have and are they effective? It is suggested in the literature that local authorities have a wide range of enforcement powers available to them,¹⁰ yet the powers prescribed by law available to councils to enforce the taxi licensing regime are quite limited. In section 2, I describe the enforcement measures which local authorities are permitted to use by the legislation and examine how councils use those powers and how effective they are in achieving the regulatory objectives.

Third, what enforcement measures do councils use in practice? The findings of this study reveal certain instruments of enforcement which are used regularly by councils,

⁸ J Dearlove, *The Politics of Policy in Local Government* (Cambridge University Press, London 1973) 4.

⁹ Davis (n 5) 97.

¹⁰ J Stewart and K Walsh, *Influence or Enforcement: The Nature and Management of Inspection and Regulation in Local Government* (The Local Government Management Board, Luton 1992) 19.

even though they have no legislative basis. Intuitively, I would expect such a lack of statutory support for the activities of the regulator to weaken the position of the local authority and reduce the effectiveness of enforcement. Yet, in practice, local authorities continue to exercise control over the trade without any apparent diminution in their ability to do so. In section 3, I describe the measures which councils use in addition to those provided for by the law and examine whether these methods are more effective than those considered in section 2.

The literature points out that there are no simple indicators to show how successful or otherwise enforcement activity has been.¹¹ Thus, it is difficult to evaluate the effectiveness of particular enforcement measures.¹² It will become apparent in this chapter that councils have different ideas on what enforcement is seeking to achieve and how the effectiveness of enforcement is to be assessed. However, as all councils assert that they regulate taxis for the protection of the public, I believe that the measure of effectiveness should be how far enforcement action achieves that aim. For the purposes of this chapter, therefore, the effectiveness of local authority enforcement activities will be gauged against how well they protect the public.

1) Enforcement policies

The first question posed in this chapter concerns how local authorities perform the function of licensing enforcement through the policies they adopt. In view of the importance of enforcement, I find it surprising that the councils in this study have such a haphazard approach to the formulation of enforcement policies. Only five of

¹¹ BM Hutter, *The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers* (Clarendon Press, Oxford 1988) 183.

¹² A difficulty discussed in more detail in chapter 2 section 6.

the 32 councils have a formal codified enforcement policy specifically designed for taxi licensing.¹³ Although the contents of these policies vary, they cover details of such matters as how each council defines what it means by enforcement; the resources that the council proposes to devote to enforcement; the frequency of enforcement activities; the methods to be employed and the approaches to be adopted to enforcement; how enforcement activities will be monitored; and the standards against which enforcement will be measured. These codified policies also set out procedures to be followed at committee meetings and the enforcement options available to committees which hear cases involving licence holders said to have contravened the rules. This is significant in the context of this chapter as the policy document is the only source to which a council can point for their claim to have many of these enforcement options.¹⁴

The documentary evidence and the interview data reveal three main problems relating to local authority enforcement policies. First, councils are not always talking about the same thing when discussing enforcement. Local authorities operate under their own definitions of what constitutes enforcement, and these do not always coincide. Hutter makes the point that ‘enforcement’ should not simply be equated with prosecution but should include the whole process of ensuring observance of some broadly perceived objectives of the law.¹⁵ Some councils echo this viewpoint, others take a narrower view. The conflicting opinions from two of the respondents illustrate the diverse views on how enforcement is defined:

¹³ The councils with such a policy are those in Birmingham, Worcester, Winchester, West Dorset and Kings’ Lynn and West Norfolk.

¹⁴ The importance of this point is considered in more detail in section 3 of this chapter.

¹⁵ Hutter (n 11) 5.

We have to take a holistic approach to [enforcement]. It involves everything from the guys that walk around the ranks making sure everyone is doing what they should be doing right up to the committee and, worse case scenario, those cases that end up in court. *Interview 14, Chair of Licensing Committee.*

We enforce the regulations through deciding which cases need to be prosecuted or whether the case should come before the committee. Do we have enough evidence to take further action? That is what enforcement is all about. *Interview 28, Chair of Licensing Committee.*

Working with different definitions of enforcement is bound, in my view, to have an adverse impact on any assessment of how effective enforcement is because it is not possible to compare like with like. Different understandings of what constitutes enforcement will lead to different conclusions on whether enforcement has been successful.

Second, the enforcement policies employed by some councils are inappropriate for taxi licensing. Three councils operate a policy which has clearly been deracinated from the local environmental health department.¹⁶ These policies lay claim to certain powers, such as warnings, financial penalties and deferred suspensions, which are not available to taxi regulators. Such measures may be used by environmental health officers in some circumstances,¹⁷ officers responsible for taxi licensing do not have those instruments at their disposal. Another council uses its policy under the Licensing Act 2003 in relation to alcohol licensing as a model for taxi enforcement.¹⁸ This is also inappropriate because the alcohol licensing scheme operates under different legislative provisions and has its own statutory objectives.¹⁹ Adopting such

¹⁶ Fenland, Amber Valley and Tendring Councils.

¹⁷ Regulatory Enforcement and Sanctions Act 2008, Part 1.

¹⁸ Canterbury City Council, 'Report to Annual General Meeting of Licensing Committee' 30th June 2010.

¹⁹ Licensing Act 2003, s 4(2) sets out the statutory objectives of the alcohol licensing regime. Objectives such as the prevention of crime and disorder, prevention of nuisance and the prevention of

policies creates the impression that the council has powers that it simply does not possess in relation to taxi licences, even though it may possess those powers in other contexts.

Third, the formal policies do not cover all the elements of enforcement that councils need to in order to confine and structure the exercise of discretion properly. One study concluded that the influence of the putative policy makers on enforcement policy tends to be limited to decisions on the allocation of resources and to the occasional instruction to conduct a 'purge' against a particular category of infringement.²⁰ This perception results in what has been termed the 'bottom up' approach²¹ whereby 'lower level actors take decisions which effectively limit hierarchical influence, pre-empt top decision making or alter policies'.²² The enforcement policies adopted by the councils in my study on the whole exhibit such a 'bottom up' approach. Enforcement policy is largely driven by the full-time licensing officers. This was confirmed by many of the respondents in my study, two of whom made the following comments:

Enforcement should come from the bottom going up, not the top coming down, because then you've got a sporting chance of at least getting it fifty per cent right. If it comes from the top down, ten per cent if you're lucky, or maybe I'm just a cynic. *Interview 6, Senior Licensing Officer.*

I feel that decisions on enforcement are taken on and should be taken from the 'bottom up' and not 'top down' and that's a good thing. 'Top down' does not

harm to children do not correspond directly with the taxi regulation objective of protection of the public.

²⁰ J Rowan-Robinson et al, *Crime and Regulation: A Study of the Enforcement of Regulatory Codes* (T and T Clark, Edinburgh 1990) 213.

²¹ M Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russell Sage Foundation, New York 1980).

²² S Barrett and C Fudge, 'Examining the Policy-Action Relationship' in S Barrett and C Fudge (eds), *Policy and Action: Essays on the Implementation of Public Policy* (Methuen, London 1981) 23.

really work. They don't know what goes on in the real world. *Interview 45, Senior Licensing Officer.*

Although 'bottom up' policies are supposed to be more compatible with the demands of the beneficiaries of regulation,²³ this is not necessarily the case in reality. According to the literature, the risk of a 'bottom up' approach is that enforcement decisions are taken without due regard to the goals of the legislation.²⁴ In taxi licensing, where the aim of the legislation is not clear cut, this could be said for both 'top down' and 'bottom up' approaches. The findings of this study indicate that the real beneficiaries of 'bottom up' policy making are the council officials and, in some cases, the trade itself rather than the travelling public.

It will be recalled from chapter 2 that regulators are said to adopt either a conciliatory or deterrence based approach to enforcement; the former centred around attempts to persuade and cajole the regulated into compliance, the latter relying on punitive sanctions. I was not surprised that no councils admitted to adopting a predominantly deterrence style as this would tend to reinforce the view that the objective of enforcement is control of the trade. For example, some councils highlight in their policy documents the clear distinction they draw between the informal compliance (conciliatory) approach and more formal sanctioning (deterrence), and they have a preference for the former.²⁵ Other local authorities draw attention to their 'educative approach to the trade'.²⁶ Councils are often keen to emphasize that they adopt a conciliatory style, as the following comments from two of the respondents illustrate:

²³ CS Diver, 'A Theory of Regulatory Enforcement' (1980) 28 *Public Policy* 257.

²⁴ Rowan-Robinson et al (n 20) 296.

²⁵ Amber Valley Borough Council, 'Enforcement Policy Statement' April 2010 – as one example.

²⁶ Winchester City Council, 'Statement of Licensing Policy with Respect to Hackney and Private Hire Vehicles, Drivers and Private Hire Operators' April 2011 [1.4].

We like to think that prevention is better than cure so we like to work with the trade, not against them to advise on and assist with compliance. Prosecution is very much the last resort. *Interview 1, Chair of Licensing Committee.*

Our whole approach is based on co-operation and participation for the benefit of the public. We'd rather educate and persuade the trade to work with us. Of course, if they don't want to co-operate...then we will take action. It's up to them. *Interview 5, Chair of Licensing Committee.*

Even in these comments, the claim to a conciliatory style is accompanied by a veiled threat of sanctions should licence-holders fail to comply. Other councils prefer to regard their style as 'rigorous' rather than deterrence based.²⁷ In effect, this amounts to the same thing, as the following statements reveal:

I would say we take a fairly rigorous approach to enforcement. I know the trade think we are out to get them and they see [a neighbouring area] as a softer touch than us. But I think we are firm, but even-handed and fair. *Interview 42, Senior Licensing Officer.*

We like to avoid prosecutions where we can, but we're prepared to do so if that's what it takes. I like to think we take a rigorous line on enforcement, and sometimes you just run out of options. Prosecution is the last resort but sometimes it's needed. *Interview 12, Enforcement Officer.*

Notwithstanding the image which local authorities like to portray of their conciliatory approach to regulation, the statements above indicate a contrary view. In reality, there may be elements of both approaches used by councils but the issue of where the balance lies will be considered later in this chapter.

In addition to recognising different enforcement styles, the literature draws a distinction between two models of enforcement strategy: the proactive model, where

²⁷ The Councils in Canterbury, Rhondda Cynon Taf, Bath and North East Somerset, Sandwell, Birmingham and Solihull all use this description of their enforcement style in their policy documents.

the licensing officer is the instigator of the method of assessing compliance, and the reactive model, where the licensing officer responds to an external stimulus.²⁸ The choice of enforcement strategy can be influenced by the enforcement style adopted, with a tendency for proactive methods to be linked with a conciliatory approach and reactive methods to be associated with a deterrence style, but this is not always the case. In this study, all 32 councils use a mixture of proactive and reactive methods but to varying extents. The most significant factor in determining the choice of enforcement strategy is the size and nature of the area, as can be seen from the following quotations:

Oh yes, we take a very proactive approach. I think you have to in a place the size of [this area]. You'd never keep on top of all the vehicles and drivers if you just sat back and waited for the complaints to come rolling in. *Interview 11, Senior Licensing Officer.*

We don't do a huge amount of proactive work to be honest especially not in [this area] because it's such a huge area. From an enforcement point of view, we present a completely different challenge to say [a neighbouring town] which is very compact and busy. So, for us, it's mostly reactive. *Interview 25, Enforcement Officer.*

The lack of properly formulated and codified enforcement policies creates the impression that very little thought has been given to the way in which enforcement of regulation is to be implemented. The adoption and implementation of particular enforcement policies, approaches, styles and strategies are driven by a number of competing factors. The exercise of discretionary powers, the hierarchical position of the policy maker, and the nature of the locality all play their part in influencing local authority decision-making. The interplay of these different influences produces a haphazard and inconsistent picture of council enforcement policies. Within their

²⁸ AJ Reiss, *The Police and the Public* (Yale UP, New Haven 1971).

enforcement policies, local authorities often lay claim to powers which they do not possess. But this is not questioned by the trade. What has been lost, in my view, in the formulation of these policies is the ostensible reason for enforcing regulation; the protection of the public.

2) Powers provided for by law

The enforcement powers available to local authorities under the statutory framework are limited and, for the most part, are associated with a deterrence style. Local authorities may prosecute for contraventions of the taxi licensing regime which constitute a criminal offence. Councils also have the power to remove a licence administratively, either temporarily by way of suspension or permanently by revocation or refusal to renew.²⁹ The exception to this is routine inspection and testing which is designed to urge compliance with quality standards. In this section, I analyse the use of routine testing and inspection and its effectiveness before considering the formal sanctions of prosecution and removal. I also examine the power to ‘stop-check’ a licensed vehicle which represents a ‘grey area’ in terms of the conciliatory or deterrence styles.

a) Routine testing and inspection

Routine presentation of a hackney carriage for inspection and testing is a mandatory requirement.³⁰ According to the literature, routine inspections are a traditional,

²⁹ Local Government (Miscellaneous Provisions) Act 1976 s 60 (vehicle licences) and s 61 (driver’s licences).

³⁰ Local Government (Miscellaneous Provisions) Act 1976 s 50(1).

proactive and highly valued mode of enforcement.³¹ The compulsory nature of testing and inspecting taxi vehicles means that councils have no discretion in carrying out the tests, although the manner and frequency of inspection and the criteria against which the vehicle is tested are policy decisions of the council. None of the 32 councils expressly point out the consequences of failure to pass an inspection but it is implicit that a vehicle which fails testing is deemed no longer fit for use as a hackney carriage, providing grounds to suspend, revoke or refuse to renew the licence.³² The purpose of routine inspection is clear enough and was neatly summarised by one of the respondents:

We can't really check on them 24 hours per day, but they'll have to satisfy us that they are complying by bringing themselves in to show us that they are sticking to the rules, at least when we see them. *Interview 20, Senior Licensing Officer.*

Although the routine inspection and testing of vehicles are uncontroversial, as enforcement measures they are, in my view, considerably underused. The statutory powers permit councils to inspect and test vehicles up to three times per year.³³ None of the 32 councils makes full use of this maximum number of inspections and they generally require vehicles to be inspected only once or twice per year. Four councils required vehicles to be tested three times per year, but only for older vehicles which are licensed, exceptionally, beyond the council's normal maximum age limit.³⁴ I think that greater use of routine inspections could be made without stepping outside the existing legislative framework.

³¹ BM Hutter, *Compliance, Regulation and Environment* (Clarendon Press,, Oxford 1997) 107.

³² Local Government (Miscellaneous Provisions) Act 1976 s 60(1).

³³ *ibid* s 50(1).

³⁴ The councils which have such a requirement are Lichfield, Amber Valley, Copeland and Carlisle Councils.

From the authorities' point of view, the objections to more frequent testing are the additional administrative burden to councils and increased costs to the trade, as indicated by the following statement:

I suppose we could test more often, but that would depend on the co-operation of our testers and I would imagine the trade would not be too happy about extra testing. *Interview 39, Senior Licensing Officer.*

However, I think that these are unconvincing reasons not to test more frequently. The additional administrative burden can be overcome by the increased revenue from testing fees, and the extra expense to the trade represents only a small part of the overall costs of operating a taxi. More significantly, these objections overlook the obvious safety benefits of inspecting and testing vehicles more frequently, and place council resource and trade interests ahead of protection of the public.

The incidence of non-compliance for vehicles discovered by regular inspections is relatively low. An average failure rate of between seven and eight per cent is reported for vehicles undergoing routine testing and inspection procedures. This figure has remained fairly constant over the last three years.³⁵ Some commentators have doubted the efficacy of having inspections which are announced in advance.³⁶ However, others argue that any problems picked up on routine inspection are the more serious ones, including matters not understood to be non-compliant or illegal.³⁷ It is certainly true that high rates of compliance ought to be achievable for such inspections, given that the licence holders are aware that such inspections are required and when they are going to be carried out. As one taxi representative pointed out:

³⁵ This figure represents an average across all 32 councils and is derived from the reports to licensing committees of licensing or enforcement officers where this information was available.

³⁶ Department for Employment, *Safety and Health at Work* (Cmnd 5034, 1972) [218].

³⁷ *Hutter, Compliance, Regulation and Environment* (n 31) 114.

You must be pretty dozy if you can't get through the test. You know when it's going to happen, you've got plenty of time to prepare for it. So if your taxi fails, there must be something badly wrong. *Interview 19, Taxi Representative.*

Strangely there is no statutory provision empowering councils to carry out routine inspections or testing of drivers. Certain convictions recorded against a driver or deteriorating health of a driver are likely to cast doubt upon his or her fitness to hold a licence.³⁸ Routine testing of a driver's suitability can only be carried out by requesting a Criminal Records Bureau (CRB) certificate³⁹ in respect of criminal offences or other misconduct and a discretionary power to request a medical report or require a driver to undergo medical examination.⁴⁰ I think these provisions represent an unnecessarily convoluted means of testing a driver's continued fitness. They raise two other substantive concerns.

First, driver testing is carried out too infrequently in my view. All 32 councils require licence-holders to undergo a CRB check every three years. In the case of medical reports, the frequency varies between the councils, but they too are generally required every three years, with annual examinations only once a driver reaches a specified age.⁴¹ This means that a substantial period of time can pass before something which affects a driver's suitability comes to the attention of the regulator.⁴²

³⁸ Local Government (Miscellaneous Provisions) Act 1976 s 61(1).

³⁹ Police Act 1997 s 113A and s 113B.

⁴⁰ Local Government (Miscellaneous Provisions) Act 1976 s 57(2).

⁴¹ According to the documentation from the 32 councils, three years is the most common frequency for medical reports, with only six councils specifying a lesser frequency of every four or five years. The specified age at which annual reports become obligatory is generally 65, with two councils having a lower age of 60, and three extending the age for annual medicals to 70 and above.

⁴² Attempts by councils to require drivers to report convictions or the onset or deterioration of medical conditions are legally unenforceable due to the absence of power to impose conditions on a driver's licence – *Wathan v Neath and Port Talbot CBC* [2002] EWHC 1634 (Admin), discussed in chapter 6.

In the meantime the driver has continued to trade. More frequent testing of drivers' suitability would address public protection anxieties.

The second concern is that neither CRB checks nor medical reports are mandatory requirements in that the absence of either is not in itself a ground to refuse or remove a driver's licence. However, all 32 local authorities interpret 'may' in the statutory provisions as 'must' and would not consider renewing a licence in the absence of both a CRB certificate and a medical report. The following statements represent typical views of councils on this point:

We have our CRB check every three years and medical reports. We do rely very heavily on those as proof that the driver is a 'fit and proper person'. If you don't have those, then you don't get in. *Interview 11, Senior Licensing Officer.*

We keep a check on all our drivers by making sure they stay medically fit and keep out of any bother. So they have to have a medical and we do a CRB check on them every three years when the licence comes up for renewal. Without clear checks, we wouldn't contemplate renewing their licence. *Interview 35, Senior Licensing Officer.*

However, refusal to renew licences in the absence of CRB certificates and medical reports and refusal to accept any other evidence of a driver's 'fitness' where the power being exercised is discretionary, would amount to an unlawful fetter on that discretion. Councils would, effectively, not be exercising any discretion at all.⁴³ There would, of course, only be an unlawful fettering of discretion if councils failed to consider or countenance any exceptions to the policy. It is evident from the preceding comments that some local authorities take a stringent line on this point. I think that mandatory requirements to obtain a CRB certificate and medical report or some other

⁴³ *Sagnata Investments Ltd v Norwich Corporation* [1971] 2QB 614.

acceptable evidence of fitness before renewing a driver's licence would place the exercise of the local authority's power on a clearer footing. Currently, councils have no other mechanism for routinely checking drivers other than the periodic licence renewal process, and that is insufficient to protect the public.

During the period of the study, 63 (29 per cent) hearings which came before licensing committees were in respect of information received through CRB checks or adverse medical reports.⁴⁴ The cases were referred to the committee because the information reflected unfavourably on the 'fitness' of the licence holder or because the licence holder had failed to disclose the information voluntarily. In just under half of these cases (31), the outcome was that no further action was taken against the licence holder. In the remainder, actions ranged from oral warnings to suspension of or refusal to renew the licence.

Although this is a very crude measure of the effectiveness of routine testing of drivers, it illustrates two points. First, there is no evidence to indicate that taking no further action in these circumstances encourages the licence holder to modify his or her behaviour to ensure future compliance. As such, no further action fails to achieve the main objective of a conciliatory approach. Second, routine testing of drivers results in a penalty against the driver if non-compliance is discovered, albeit not always the most severe penalty. This suggests that a method normally associated with a conciliatory style is being used for the purpose of deterring the driver, by requiring him or her to appear before the committee, with the stress, anxiety and stigma associated with such an appearance, and loss of income whilst attending the hearing.

⁴⁴ This figure is based on the available committee meeting minutes from all 32 councils for the one year period of the study. The statistics do not include action taken by licensing officers acting under delegated powers in similar circumstances, as these are not recorded in public documents.

I conclude that, whilst routine testing and inspection of vehicles provide an effective incentive to compliance, the same cannot be said for routine testing of drivers. The system for checking the suitability of drivers is not a mandatory one and operates in such a way that challenges to the licence holder's fitness to hold a licence are revealed long after the event. Drivers have no opportunity either to remedy any perceived defect or modify their behaviour to produce compliance. For these reasons, testing and inspection of drivers are much less effective than for vehicles.

b) Prosecution

When non-compliance with the general law, taxi legislation or byelaws is discovered, the licensing authority may bring criminal proceedings by way of prosecution. I have already noted that the decision to prosecute is a discretionary one and councils are not obliged to do so even where such an action would be appropriate. In this sub-section, I consider the circumstances in which local authorities decide to prosecute and the effectiveness of formal prosecutorial action.

By the nature of a decision not to take proceedings, there is no formal record of such a decision, and so the frequency with which local authorities decline to take action when they could do so is impossible to quantify. Although they do not talk in terms of 'selective enforcement', licensing officers accept that choices are made concerning prosecutions, and having a strong case is not sufficient on its own to result in prosecution. There is some recognition that, as is pointed out in the literature, councils are 'vulnerable to charges of over-interference and persecution and thus the agency

must choose its prosecutions with care.’⁴⁵ According to the interview data, there has to be ‘something in it’ for the council in order to justify proceeding with a prosecution, as the following statements illustrate:

We always prosecute the plying for hire cases and always charge no insurance, because invalidates it if breaking the law. The rest of cases - factors I take into account - depends on what we would get out of the case. Is it worth our while prosecuting? What would council gain from prosecution? *Interview 7, Enforcement Officer.*

We will nearly always prosecute for plying for hire and no insurance because of the implications for the travelling public of travelling whilst uninsured. When deciding whether to prosecute other cases we follow the Code for Crown Prosecutors. We wouldn’t prosecute if we didn’t think it was worth our while. *Interview 10, Enforcement Officer.*

We will always prosecute drivers and owners where vehicles are caught unlawfully plying for hire. That’s [our] policy. In other cases, it depends on the case. If the offence was too trivial to justify the costs, such as not wearing a badge, for example, we probably wouldn’t bother. We don’t want to alienate the trade completely by bringing cases just for the sake of it. *Interview 12, Enforcement Officer.*

These comments provide some examples of the factors which councils take into account before initiating formal proceedings, even in cases where there is clear evidence of an offence having been committed. The reference to the Code for Crown Prosecutors is interesting, as this document specifically does not apply to local authority prosecutors,⁴⁶ but six of the 32 councils make reference to it in their policy documents.

A council’s policy always to prosecute in respect of particular offences is an important consideration. There is nothing wrong with local authorities adopting such a

⁴⁵ *Richardson* (n 6) 198.

⁴⁶ Prosecution of Offences Act 1985, s 6.

policy so long as it is applied flexibly and in good faith.⁴⁷ Earlier studies found that other considerations might include an evaluation of the prospects of success⁴⁸ or that formal proceedings should be reserved for situations where there is a blatant flouting of the law.⁴⁹ These findings are reflected in further reasons suggested for bringing or refraining from action in particular cases in the follow statements:

[T]hat would depend on the seriousness of the offence. If it was a case of overcharging, it may depend on how much the overcharge was or how blatant. It might boil down to the complainant's word against the driver's in which case we would not normally risk taking it to court. *Interview 37, Senior Licensing Officer.*

The one case where we did prosecute was because we thought he was just taking the piss. He was already suspended and he just thought [indicates two fingered V gesture] to that and was still driving. *Interview 20, Senior Licensing Officer.*

What is of concern, however, is that too much unstructured and unconfined discretion in the hands of licensing officers may result in enforcement decisions which lack consistency and uniformity.⁵⁰ I think that the reasons upon which licensing officers decide not to proceed against non-compliance reflect this concern. Factors such as the benefit to the council of bringing proceedings, triviality or blatancy of offence, and avoiding alienation of the trade are not appropriate grounds upon which to refrain from taking action. None of these factors is directly linked to public safety. Local authorities have the power to bring proceedings but they do not make sufficient use of these powers for the protection of the public.

⁴⁷ *R v Commissioners of Inland Revenue ex p Mead* [1993] 1 All ER 772.

⁴⁸ *Hawkins* (n 2) 170.

⁴⁹ *Cranston* (n 6) 125.

⁵⁰ *Davis* (n 5) 27.

Prosecution is rarely used in practice to enforce regulation of the licensing regime. Only twelve prosecutions were recorded against hackney carriage drivers or proprietors during the period studied, and only six of those were for specific hackney carriage offences.⁵¹ The offences included defective taximeters, failure to display licence plates, damaged licence plates, documentary offences or breaches of hackney carriage byelaws. The non-taxi specific offences were defective vehicle offences. Such low numbers make it difficult to use the volume of prosecution as a measure of effectiveness. Although Birmingham City Council claims in its documentation a 98 per cent success rate for its enforcement activities, it is clear, on further examination of the records, that this claim relates only to successful prosecutions before the magistrates' courts for illegal plying for hire offences.⁵² Other councils measure their effectiveness in terms of numbers of successful prosecutions, but these also relate to private hire vehicle offences. Numbers alone are not a good indication of effectiveness in this context.

In my view, the low number of prosecutions is largely the result of a choice by the local authorities. This may be partly due to selective enforcement of cases to be prosecuted⁵³ but, according to council officials, is largely due to a lack of faith in the effectiveness of prosecution in securing compliance. The prospects of being caught coupled with the low level of fines imposed by the courts, in their view, do not provide any incentive for licence-holders to comply. The following comments illustrate the officers' opinions:

⁵¹ This figure is derived from prosecutions recorded in the documents of the 32 Councils during the period of study between April 2010 and March 2011. During the same period, the 32 Councils between them record 275 prosecutions of private hire drivers and owners.

⁵² Birmingham City Council, 'Report from Director of Regulatory Services to Licensing Committee' 16th June 2010.

⁵³ Discussed in the introductory section of this chapter.

We don't get a lot [of prosecutions]. We used to get quite a few for not putting meters on and for drivers not displaying their badges, but we don't tend to get many of those now. I'm not saying that because they all put their meters on but it may well be that the enforcement team are just not there to catch them. *Interview 27, Senior Licensing Officer.*

We know that they will more than likely have done it many times before because they know that most of the time they can get away with it. It's like any other form of crime. They do it because they know that on the whole they won't get caught. If they thought they would get caught every time, they would not do it. *Interview 5, Chair of Licensing Committee.*

Every month there was a new prosecution to do But, as much as you'd think it would get the message out, and they'd stop doing it, they didn't. The fines weren't massive and the chances of getting caught they maybe saw it as a risk worth taking. *Interview 24, Senior Licensing Officer.*

It is correct that, for taxi offences, the most severe sanction that may be imposed by a court is a monetary penalty.⁵⁴ The level of fine is not a disincentive to non-compliance for most taxi offences. However, the chances of being discovered infringing the rules and the perceived degree of recidivism reflected in the above statements are a strong indication of the lack of effectiveness of prosecution as an enforcement method.

c) Suspension and revocation of licences

Whilst local authorities make little use of the power to prosecute, much more use is made of administrative sanctions. Powers are provided for local authorities to remove the licence holder's ability to trade by suspending, revoking or refusing to renew a licence.⁵⁵ Although the power to remove a licence is provided by statute, I think the difficulty with administrative sanctions is the way in which they are applied by

⁵⁴ Local Government (Miscellaneous Provisions) Act 1976 s 76. The current maximum for a level three fine is £1,000 – Criminal Justice Act 1982 s 37(2).

⁵⁵ Local Government (Miscellaneous Provisions) Act 1976 s 60 and s 61.

regulators, rather than any inherent objection to the power itself. In this sub-section, I consider the circumstances in which local authorities use their powers to impose administrative sanctions on licence holders and the effectiveness of those sanctions.

Where the alleged non-compliance constitutes both a criminal offence and a breach of the regulatory code, councils generally refrain from prosecution in favour of administrative proceedings. Of the 216 cases of contested licence reviews or renewals referred to committees during the period of the study, 32 (15 per cent) involved allegations or admissions of criminal offences which had not been tried by the criminal courts prior to appearing before the committee.⁵⁶ It is said that regulators are reluctant to surrender control over disposal of cases to the courts⁵⁷ because, once a prosecution is commenced, the regulator forfeits control of the proceedings and the outcome is more uncertain.⁵⁸ These views are echoed in the following statement:

I've been doing taxi licensing for 13 years now and I don't think we've had to prosecute anybody. We've taken their licences away, but not prosecuted. After all you can never be sure of the outcome once it's gone to court, can you? By taking their licences away, or threatening to, we stay in control. *Interview 25, Enforcement Officer.*

This statement, however, reflects a high degree of confidence that administrative proceedings will produce the outcome enforcement officials want. Licensing officers are more likely to resort to administrative sanctions where the chances of obtaining a conviction before the criminal courts are assessed to be low. This is particularly the case where the officer feels that the licence holder's actions deserve some form of

⁵⁶ This figure is taken from the minutes of meetings of licensing committees of all 32 councils during the period of the study. The figures do not include the cases in which sanctions were imposed by licensing officers exercising delegated powers and so never came before a committee.

⁵⁷ *Hawkins* (n 2) 162.

⁵⁸ *Cranston* (n 6) 109.

censure, but those actions do not constitute a criminal, or indeed any other, offence. One council's documents reveal the view of a senior official that suspension may be appropriate where a licence-holder's actions may fall short of affecting fit and proper person status but still require sanction to express disapproval or serve as a deterrent to others.⁵⁹ Later, the same official asserted that he had the power to revoke a vehicle licence where a taxi was not being used within the district 'in light of the *Berwick* case.'⁶⁰ The following statements provide some examples of the views of other licensing officers on this point:

We would consider whether to look at prosecution. But, if the case was not good enough for prosecution, we may consider putting the driver before the committee for a lesser offence. *Interview 37, Senior Licensing Officer.*

I think that it is good that we don't need the same level of proof as the police because sometimes, when the police can't prosecute, they can still come in front of us. And letting them know that is good. We don't need to prove beyond reasonable doubt that any offence has been committed. It keeps them on their toes. *Interview 24, Senior Licensing Officer.*

We can also fall back still on our condition that behaviour not consistent with that expected of a [district] licence holder can be dealt with as a disciplinary matter. That can cover just about anything, even if it's not a criminal offence or a breach of the byelaws or not specifically prohibited elsewhere. *Interview 42, Senior Licensing Officer.*

I think that this displays an outrageous abuse of the power to impose sanctions by local authorities. The whole purpose of the power is to regulate the trade and, even if a strong deterrence approach is taken, this does not permit the regulator to impose severe sanctions in circumstances where the licence holder, in the eyes of the law, has done nothing wrong. Such an approach also makes it difficult for drivers to modify their own behaviour in order to comply with the law.

⁵⁹ Uttlesford District Council, 'Report to Licensing Committee of Assistant Chief Executive – Exercise of Delegated Powers' 9th June 2010.

⁶⁰ Uttlesford District Council, 'Minutes of Meeting of Licensing Committee' 8th September 2010 [LC38].

It has also been said that loss of livelihood, whether temporary or permanent, may be out of all proportion to the offence.⁶¹ An examination of the records of regulatory committee meetings from the 32 Councils reveals many instances where a decision to suspend or revoke a licence appears, at least on the face of the documents, to be out of proportion to the severity of the non-compliance. This is particularly the case where there is no obvious connection between the offence or breach of regulatory code and any danger presented to the public. Examples include licence holders suspended following conviction for drug possession where it was accepted that there was no evidence of drug use or dealing⁶² and where it was accepted there was no connection between the possession and the offender's occupation;⁶³ and the immediate revocation of a licence following conviction for minor motoring and insurance offences not connected to taxi driving.⁶⁴

Some licensing officers agree that, particularly in the case of relatively trivial matters, the power to remove a licence can be draconian. This is a good example of what one writer called the 'paradox of enforcement', that is, the more damaging and more limited a choice of sanction a regulator has, the less that sanction will be used.⁶⁵ Faced with the stark choice between doing nothing and depriving an individual of a livelihood, most committees will do nothing. Some local authorities have alternative enforcement actions which they believe are open to them.⁶⁶ However, for those

⁶¹ *Rowan-Robinson* (n 20) 305.

⁶² Bristol City Council, 'Minutes of Meeting of Public Safety and Protection Committee' 25th January 2011 [PSP 162.1/11].

⁶³ Great Yarmouth Borough Council, 'Minutes of Meeting Licensing Committee' 17th March 2011.

⁶⁴ Cornwall Council, 'Minutes of Meeting of Miscellaneous Licensing Committee' 18th February 2011 – the decision was passed by the narrowest of margins on committee vote.

⁶⁵ J Mendeloff, *An Economic and Political Analysis of Occupational Safety and Health Policy* (Cambridge Mass, MIT Press 1979).

⁶⁶ These alternatives are discussed in section 3 of this chapter.

councils which do not use such alternatives, the severe nature of the sanctions cause something of a dilemma, as the following statements illustrate:

It's quite difficult, really. You have to do something and you feel your hands are tied. But, on the other hand you don't want to stop somebody's livelihood even for a short time, if the offence is fairly trivial which a lot of them are. *Interview 13, Chair of Licensing Committee.*

When you think about it, it's quite draconian, isn't it? You're depriving somebody of a livelihood. That looks disproportionate. But what else can you do? You could make it just a short suspension, but even then they will lose money even if off the road for a short time. *Interview 40, Chair of Licensing Committee.*

There is also the possibility that a licence holder convicted of an offence which is unrelated to their work may suffer the 'double punishment' of sentencing by the court followed by loss of livelihood inflicted by the licensing authority. Councils always require licence holders convicted of a criminal offence, of whatever nature, to appear before the committee. The purpose is for the committee to assess how the conviction impacts upon the driver's fitness to continue to hold a licence. Some councils in the study recognise that this gives the impression of a convicted licence holder being sanctioned twice for the same offence. Such councils are, however, in the minority. Other authorities either do not accept that there is anything inappropriate about their actions or justify such action in the wider public interest. The following statements provide examples of the range of views among council officials:

We do see the problem of double punishment when the driver has already been dealt with by the courts. It comes up quite a few times in committee. We do take into account the fact that a licence holder has already been punished for the offence by criminal sanctions from the courts... and quite often in such cases we deem that no further punishment is necessary. It depends on the circumstances of course. *Interview 44, Chair of Licensing Committee.*

Once a driver has been convicted, they will be brought back before the committee for them to consider what action to take on their licence. This can be a bit of a problem with taxis. They don't see it as a separate thing from the court case. They see it as the council punishing them again for something they've already been penalized for. We see it as the maintenance of proper standards, so any decision to suspend a driver is seen as more of a deterrent rather than as a punishment. *Interview 10, Enforcement Officer.*

I don't see the committee's actions as double punishment for the offender. If the penalty from the committee is an additional sanction to conviction, that is a separate issue. *Interview 35, Head of Service.*

Whatever the position of councils may be, it is clear that further sanctions imposed by committees are designed as a punishment in the sense used by von Hirsch, in a criminal context, of a deprivation coupled with the censure of the decision maker.⁶⁷ In my view, the use of the power of sanction in circumstances where the driver has already been penalized by a court, especially where the conviction is unconnected to the licensed activity, is excessive and an abuse of that power.

Dickens sees administrative sanctions as a 'more limited' form of sanction than prosecution.⁶⁸ This is the overall impression given by local authorities in their documents. Prosecution is portrayed as a higher form of sanction than suspension or revocation of a licence. However, this is not a view shared by all commentators. Ayres and Braithwaite, for example, argue that, whilst prosecution may have the symbolic and instrumental higher ground, it is administrative sanctions that have the most severe bite.⁶⁹ The findings of the study support the view that, in practice, councils prefer administrative sanctions to criminal ones because of the perceived greater efficacy of the former and the greater deterrent effect on the trade. These points are prominent in the following comments:

⁶⁷ A von Hirsch, *Censure and Sanctions* (Clarendon Press, Oxford 1993) 58.

⁶⁸ BM Dickens, 'Discretion and Local Authority Prosecutions' [1970] CLR 618, 632.

⁶⁹ I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, New York 1992) 35.

If you take their licences away, even for a short time I think this is much more effective than taking them through the courts. They won't want to lose money.
Interview 25, Enforcement Officer.

I think it's the chance of losing their licence that really frightens the drivers. They don't worry about the courts because they know that the worst that can happen is they get a fine...not very much at that. But, if they can't work...
Interview 38, Chair of Licensing Committee.

I would be much more concerned about coming in front of the licensing committee. If I'm done in court, then I get a fine. That means I just have to work a bit harder to pay it off. If I lose my licence, I've had it – knackered.
Interview 19, Taxi Representative.

There were, however, some detractors who cast doubt on the effectiveness of administrative sanctions in securing compliance. It was felt that a certain 'hard-core' of licence-holders would always be resistant to any form of administrative action. Three examples of this viewpoint are set out here:

I found a taxi parked and unattended on the taxi rank. It was there most of the day. I think [the driver] just fancied a free car park, but the vehicle licence was already suspended and [the driver] knew that. Some people are just like that, they never learn. *Interview 49, Enforcement Officer.*

We have one driver, on twelve points already. [She] got caught on a speed camera but she just ignored the letter from the police. That's what she's like. So, she'll be back in front of the committee again, probably for another suspension. Then, last Friday, [an enforcement officer] caught her with bald tyres. You just can't tell some people. *Interview 20, Senior Licensing Officer.*

We get quite a few of those that don't behave themselves. They come up before us fairly regularly. Usually same old things. They keep getting suspensions, but they never learn. They'll be back again until they finally lose their licence altogether. *Interview 1, Chair of Licensing Committee.*

Although some council officials express reservations about the effectiveness of administrative sanctions, the use of such measures is considerably more widespread than prosecutions. During the period of the study, 35 cases involving alleged

regulatory non-compliance brought before licensing committees resulted in suspension of a licence, 33 in revocation and eight in refusal to renew.⁷⁰ These findings run counter to the views of Ayres and Braithwaite in their famous ‘enforcement pyramid’.⁷¹ Ayres and Braithwaite suggest that the least amount of enforcement activity occurs at the apex of the pyramid where the most serious sanctions of administrative withdrawal of licences occur. According to my findings, however, more activity takes place at the level of administrative sanctions than prosecution. To translate the findings of this study into a similar symbolic representation would produce a very odd shape, more akin to an hour glass than a pyramid, with more activity at the administrative levels of enforcement than at the level of prosecution.

It was also clear from the interviews that licensing officers are frustrated that more action cannot be taken against non-compliant licence holders. Councils attribute their lack of action to public reluctance to pursue complaints and support enforcement activity, as the following statements illustrate:

A lot of people don’t want to put in formal complaints, do they? They don’t want to be bothered, and don’t even want to leave their name and address. That’s when it becomes a bit frustrating when people won’t put in formal complaints. *Interview 25, Enforcement Officer.*

We have had occasional complaints from customers about being overcharged but they usually come to nothing because people, especially I find the older people, don’t want to get involved and don’t want to give us a statement. They think that it’s just enough to tell us about it and somehow we will magically sort everything all out from there. They don’t seem to understand that we can’t

⁷⁰ These figures were compiled from the available committee meeting minutes from all 32 councils for the one year period of the study. It does not include instances of licences suspended or revoked by licensing officers exercising delegated powers. A further 19 drivers faced with refusal were permitted to keep their licences subject to conditions or warnings as to future conduct.

⁷¹ *Ayres and Braithwaite* (n 69) 35; discussed in chapter 2, section 6.

do anything without their cooperation or without any evidence to use to take action. *Interview 37, Senior Licensing Officer.*

I've only ever had one complaint that followed it through into court and stood up in the witness box. Most people if we say 'can we take a statement off you...I'm not going to court, I'm not going to court'. That's the end of it then. You're kind of stuck. But they expect you to do something without actually them doing anything, and you can't. *Interview 27, Senior Licensing Officer.*

These statements suggest that council officials would like to take a larger number of punitive actions against recalcitrant licence holders than they currently do, which indicates a preference for a deterrence-based enforcement style, but are inhibited from doing so by a lack of co-operation from the general public.

d) Spot checks

'Spot checks' involve unannounced checks and inspections carried out at random intervals by or on behalf of the council to assess levels of compliance. This is said to deter potential offenders and to remind those lacking in diligence and care of their responsibilities.⁷² As such, spot checks are designed to secure compliance, but the findings of this study show that, in practice, they are used as a sanction. Councils are provided with the statutory power to carry out such checks upon licensed vehicles. A vehicle found to be unfit for use as a hackney carriage as a result of a spot check may have its licence suspended pending further testing and inspection.⁷³

According to the findings of this study, the frequency with which the power to carry out spot checks is exercised depends on a number of factors, including the desire to retain an element of surprise and the extent to which the council favours proactive

⁷² *Cranston* (n 6) 74.

⁷³ Local Government (Miscellaneous Provisions) Act 1976 s 68.

strategies and availability of resources. Oadby and Wigston Council, for example, used to carry out spot checks up to six times per year but, due to budget constraints, has now had to reduce the number to three times per year. The strain on the budget was caused in part by the police introducing a charge for the attendance of an officer, which had previously been provided free of charge, and the Vehicle and Operators Standards Agency being unable to guarantee the attendance of an inspector even if payment was offered.⁷⁴ The following quotations illustrate the considerations taken into account in relation to spot checks:

The enforcement team does spot checks not on any regular basis, because obviously they'd know we were coming if we did it on the third Thursday of every month. We're not going to warn them in advance. *Interview 27, Senior Licensing Officer.*

We carry out spot checks a minimum of once per month and we pull in about 70 to 80 vehicles at random on each occasion. We don't give them any advance notice, of course. We like to keep them on their toes. *Interview 12, Enforcement Officer.*

We carry out one spot check across the whole of [the district] per year. That's designed to take in all vehicles over the course of four or five days. Individual areas within [this district] carry out their own spot checks at least two or three times per year but that's a manpower and resources thing. *Interview 30, Senior Licensing Officer.*

What is noticeable by its absence in both the documentary evidence and the interview material is any reference to the safety of the public, notwithstanding the obvious connection which could be made.

The use of spot checks, however, raises four main concerns. The first is the frequency of spot checks generally. Whilst some councils carry out fairly regular

⁷⁴ Oadby and Wigston Council, 'Minutes of Meeting of Licensing and Regulatory Committee' 13th October 2011.

checks, others are as infrequent as two or three times per year, which, in my view, is clearly insufficient to encourage the trade to maintain quality or conduct standards. Assessment of compliance is dictated mainly by availability of resources, not by the need to protect the public.

A second issue is the extent to which council officers act beyond their powers in carrying out checks. The statutory power permits the inspection and testing of ‘any hackney carriage...licensed by a...council, or any taximeter attached to such a vehicle’.⁷⁵ There is no power to assess the compliance of drivers yet local authorities often do so under the auspices of the spot check provisions, as confirmed by the following statements:

We make frequent use of spot checks. They give us a good opportunity to keep an eye on the trade, check the state of vehicles and make sure drivers are wearing their badges, are appropriately dressed and have all their documentation in order. *Interview 8, Senior Licensing Officer.*

The spot checks we carry out can find defects with vehicles and we will obviously deal with those. But they also reveal badge and documentary offences committed by drivers. *Interview 12, Enforcement Officer.*

Our procedures for spot-checks are designed to cover vehicle standards and the appearance and behaviour of drivers and include the use of breath testing equipment for the detection of alcohol. *Interview 37, Senior Licensing Officer.*

I think the use of spot checks to assess the compliance of drivers in this way goes beyond the limits of the licensing officer’s power under section 68. It is a significant gap in the licensing officer’s powers that he or she may carry out spot checks of vehicles but not drivers. The fact that licensing officers fill this void by checking drivers anyway does not make it lawful. Council officials certainly have no authority

⁷⁵ Local Government (Miscellaneous Provisions) Act 1976 s 68.

to use breath testing equipment, which is reserved for the police.⁷⁶ This deficiency in enforcement powers needs to be addressed by Parliament.

Thirdly, it is not only the frequency of spot checks which varies between councils, but the consistency with which they use their powers of suspension under section 68. Some councils take a very strict line on compliance and make liberal use of suspension notices under the section. Other councils reserve suspension for cases of defects which have the potential to present a threat to safety. Yet others consider the powers under section 68 to be draconian and only use them in blatant instances of unfit vehicles. The following statements give a flavour of the views of the use of section 68 taken by different councils:

We do regular inspections on [vehicles] through spot checks, and they would get a section 68 notice suspending the vehicle from the road if they don't comply with anything that we require. *Interview 17, Enforcement Officer.*

If we were to find a bald tyre, for example, then we would obviously take action, issue an immediate stop notice. The driver or owner would have seven days to rectify the problem and have the vehicle retested before it would be allowed back on the road. And the licence would be suspended in the meantime. *Interview 10, Enforcement Officer.*

We don't make very much use at all of section 68 because we've never found a case where it was so absolutely obvious that the car was dropping to bits. So it's not just safe to slap a section 68 on which we wouldn't do, unless it really was that obvious. *Interview 27, Senior Licensing Officer.*

This inconsistent use of section 68 powers means that vehicles deemed unfit for use by the public in one area will not necessarily be considered so in another district. This causes concerns for both the trade and the public. Defects to vehicles which may be

⁷⁶ Road Traffic Act 1988 s 6.

viewed as trivial in one area may result in a vehicle being removed from the road elsewhere.

A final concern in relation to spot checks is that ‘fitness’ of a vehicle for these purposes rests entirely on the subjective opinion of the officer carrying out the check. There is no right of appeal against suspension of the vehicle licence under section 68.⁷⁷ A licence holder served with a section 68 notice has no realistic choice other than to rectify the alleged defect and have the vehicle re-tested if he or she wishes to continue to trade. This means that licence holders can be penalized by lost revenue and the costs of rectifying defects in circumstances where, on an objective view, such a penalty is unnecessary and ought not to be imposed.

Some writers consider that, as a method of assessing compliance, an occasional spot check is as effective as routine inspections.⁷⁸ In practice, most local authorities find the power to spot check and suspend the licences of unfit vehicles to be a better measure of compliance than routine inspections. Licensing officials view spot checks as ways of dealing instantly with a problem without the necessity of further proceedings and a way of keeping the trade vigilant. However, not all respondents were in favour of spot checks, with the main objection being resource commitment. The following statements provide some of the views on this issue from respondents:

Once the immediate danger to the public is removed and then rectified, it’s unlikely that any further action would result. The owner and driver will already have been penalized by the loss of revenue whilst the taxi was off the road. Any further action beyond that might just be a waste of time. *Interview 10, Enforcement Officer.*

⁷⁷ Contrast this with the position where the licence is suspended under section 60.

⁷⁸ *Department for Employment, Safety and Health at Work* (n 36) [218].

Much more use should be made of on the spot inspections, as that is what keeps people on their toes. It's no good if they know you are coming. We need to make sure that standards are maintained all the time, not just at testing time. *Interview 5, Chair of Licensing Committee.*

We do carry out on the spot inspections, but they are used fairly infrequently. It is very expensive in terms of officer time as it's usually at night and out of office hours, so overtime payments come into it. You could be looking at over £1,000 for few hours' operation for what we get out of it. *Interview 7, Enforcement Officer.*

It is interesting that none of these views mentions the protection of the public as a justification for spot-checks.

The use of spot checks in the way in which the legislation provides leads to a much more deterrence style of enforcement, even though random checks are more usually associated with a conciliatory-based approach. The practical use of the powers beyond their statutory limitations, and in an inconsistent manner based on the subjective view of the enforcing official, detract from their effectiveness as an enforcement tool. Although councils on the whole regard spot checks as an effective means of ensuring adherence to standards, this is largely measured against notions of effectiveness which do not take into account the protection of the public.

e) Conclusions on powers provided by law

Councils are provided with only a limited number of enforcement powers by the legislation; testing and inspection, prosecution, administrative withdrawal of licence and stop checks. Although these are powerful weapons,⁷⁹ they are not used by regulators as often or as frequently as they might be, largely as a result of resource

⁷⁹ Rhodes (n 1) 184.

allocation considerations. This is surprising in view of the fact that, according to the legislation, these are the only enforcement powers which local authorities possess. Where the statutory powers are used, they are often applied incorrectly or for purposes other than those for which the powers were granted. This, in itself, can detract from any effectiveness that they may have had in addressing public safety concerns.

There is a clear preference amongst local authorities for administrative sanctions rather than prosecution. I think, however, that this preference is based upon councils' wishes to retain control over the enforcement process and to avoid the uncertainties of placing enforcement in the hands of the courts. Administrative sanctions are viewed as more effective than prosecution in securing observance of vehicle and driver standards. This is largely because local authorities can be reasonably certain that the outcome will be in their favour and the scope for challenging administrative sanctions is more limited than for proceedings before the criminal courts. Councils' use of administrative actions relies on the concerns of licence holders about the loss of their livelihood that withdrawal of the licence would represent outweighing the effort involved in disputing the factual or legal basis of the authority's decision.

Therefore, the general conclusion is that local authorities use the powers granted to them to adopt a deterrence style approach to enforcement. The notable exception to this is the use of routine inspection and testing of vehicles. This method represents a conciliatory-based style and is largely effective in ensuring that quality standards are met, at least at the time of testing. Because licence-holders have advance warning of the test, they are able to ensure compliance at the time of inspection. The incentive to

compliance is the renewal of the vehicle's licence. The threat of removal of the licence is usually not an imminent danger because, in the event of failure, there is always an opportunity to re-test, and so achieve compliance. However, even in this case, the power is not used as often as it could be and councils are not making the most of the opportunity they have to secure compliance. A more frequent testing regime would both encourage and ensure increased observance of vehicle quality standards.

I think that, in view of the shortcomings of the powers provided by the law which I have discussed in this section, local authorities perceive that there are certain gaps in their ability to enforce the law. This has led to councils assuming certain powers for which the law does not provide any basis. It is the use and effectiveness of these powers to which I now turn.

3) Powers used but not provided for by law

Whatever the shortcomings of the measures and sanctions discussed in the preceding section may be, they all have a legal basis. In this section, I examine various enforcement instruments and sanctions which have no legal basis, but which are still used by some of the councils in this study. These measures are not used by all councils, although they have achieved sufficiently extensive usage to make their analysis instructive. They are interesting in the context of this thesis precisely because they have no legal basis. They are local creations of discretion which exert control over the taxi trade. Some councils assert the ability to use these powers in their enforcement policies, others rely on local customary practice. In my view, such

instruments are beyond the legitimate powers of the licensing authorities and should not form part of regulatory enforcement. However, the fact is that they are used for enforcement purposes and so their effectiveness needs to be assessed.

The instruments that fall into this ‘extra-legal’ category include measures such as test purchases, penalty points or staged warning schemes, deferred suspensions, warnings, changes in licence conditions, and informal actions. They are the sort of techniques normally associated with administrative actions falling short of suspension or revocation, and as such are more closely allied to a conciliatory approach. This is certainly the view of the literature.⁸⁰ However, in the case of taxi licensing, the findings of this study suggest that these measures are used to impose sanctions on drivers. This indicates a deterrence based approach. It is noteworthy that where these instruments are mentioned in council policy documents they are, in some cases, referred to as ‘penalties’ or ‘sanctions’, although most councils use the more neutral description ‘enforcement options’.

a) Test purchases

Test purchases are a controversial area of enforcement. They involve local authority officers posing as customers or potential customers in order to gather evidence of non-compliance against licence-holders. Unlike the power to carry out spot checks on vehicles under section 68, there is no specific statutory power for local authorities to perform test purchases. Other regulatory regimes, such as those applicable to the safety of consumer goods or retail of alcohol, permit the making of test purchases

⁸⁰ *Hawkins* (n 2); *Hutter, The Reasonable Arm of the Law?* (n 11).

under particular statutory powers,⁸¹ but these do not apply to the taxi licensing system.

Notwithstanding the absence of such a power, twelve of the 32 councils record the use of test purchases as part of their enforcement activities. In some cases the test purchase operation is carried out in response to complaints of illegal activity in a council's area. Other councils take a more proactive approach, and yet others would like to perform test purchases but are concerned about the resource implications. The following statements represent the range of local authority views:

We carry out test purchases every now and again. It's usually used to target particular problems, such as if we've had a lot of complaints about overcharging or private hires picking up un-booked fares. It's the easiest way to gather evidence, although it's not without its problems. *Interview 8, Senior Licensing Officer.*

We usually try to do two covert operations per month when we're really targeting the unlicensed vehicles, which have caused us a problem in the past, or illegal plying for hire ones. We also check on drivers and documentary offences. We have pulled in ten or a dozen some nights for illegal pick ups. *Interview 12, Enforcement Officer.*

We would like to do test purchases to keep an eye on the drivers and the state of the vehicles, but we don't have the resources to manage it. If we did test purchases, we would have to pay out for out of hours working, overtime, weekend rates etc. *Interview 37, Senior Licensing Officer.*

The practice has been called into question before the courts, although the legality of test purchasing has never been challenged directly. When the issue has been raised in court proceedings, the court has proceeded on the tacit assumption that the practice is valid, and the argument has been about the admissibility of evidence gathered by this method.⁸² The whole purpose of test purchasing is to gather evidence of breach of the

⁸¹ Trade Descriptions Act 1968 s 27; Licensing Act 2003 s 149(2) and s 152(4).

⁸² *Stratford-on-Avon DC v Dyde* [2009] EWHC 3011 (Admin); [2010] RTR 13; *East Riding of Yorkshire Council v Dearlove* [2012] EWHC 278 (Admin); [2012] RTR 29.

law or regulatory regime which may be used against a licence-holder in criminal or administrative proceedings. There is no element of persuasion or encouragement to comply. However, test purchasing is a resource intensive technique, with no guarantee of detecting non-compliance, and as such must be regarded as ineffective.

b) Penalty points and staged warnings

Six of the councils have created their own ‘penalty points’ or ‘staged warning’ schemes. Although they vary in detail, these schemes work in a similar way to the ‘totting up’ procedure for penalty points under the Road Traffic Offenders Act 1984.⁸³ A specified number of points are allocated for particular infringements of the substantive law, licence conditions or codes of conduct. The accumulation of a set number of points results in referral to the licensing committee or, in some versions of this scheme, automatic suspension of a licence. There is no legal basis for such schemes which are operated entirely as a product of each council’s own invention.

Penalty point schemes present a number of difficulties and divide opinion on the merits of their adoption. Those local authorities which use penalty points justify such systems on the basis of administrative ease and improved fairness to the trade. Other councils take an opposite view of the merits of such methods. The following statements represent contrasting opinions about penalty point schemes:

Our penalty points scheme we see as a fair and effective way of dealing with persistent, repeat, but low-level offenders. A lot of the complaints we get are pretty trivial. To bring them before the committee is a bit excessive. This is a

⁸³ Road Traffic Offenders Act 1984 s 35.

way of staging sanctions in a proportionate manner. *Interview 32, Senior Licensing Officer.*

We don't see the value of penalty points. It's too prescriptive and inflexible, officers may be accused of bias or picking on drivers, and I don't see how they help improve driving standards or drivers getting their paperwork in on time. *Interview 40, Chair of Licensing Committee.*

Although penalty point schemes divide opinion amongst the regulators, some clarity on their use has recently been received from the High Court. In *R(Singh) v Cardiff City Council*, the High Court held that a penalty points scheme was within the powers of the council as a policy to govern the exercise of its discretion to suspend or revoke a licence under the statutory provision.⁸⁴ However, the decision was not entirely supportive of the scheme used by that particular council. The Court ruled that the terms of the scheme were unlawful because the policy fettered the Council's discretion by providing for automatic revocation on the accumulation of ten points. Furthermore, there was no opportunity to consider the facts underlying earlier points leading to the accumulation of ten, no consideration whether suspension was more appropriate than revocation, and the scheme was capable of producing arbitrary and unequal treatment.

I think that this ruling confuses the policy to apply the penalty point scheme to incidents of misconduct with the means by which the policy is implemented, the scheme itself. A policy can only be implemented by measures which are within the authority's powers, and imposing penalty points is not. Moreover, the working of similar schemes rests on the judgment of the licensing officer to determine who has infringed the rules, in what way, and what consequences should flow from that infringement. Points are allocated to the driver's licence by the same official who

⁸⁴ [2012] EWHC 1852 (Admin).

determined 'guilt'. With the exception of Winchester City Council's scheme,⁸⁵ there is no mechanism by which an aggrieved driver can challenge the imposition of points on his or her licence. This can lead to the penalty points systems being used where the evidence against a driver is insubstantial or inconclusive of guilt.

Despite the legal difficulties, those councils which use penalty point schemes believe they are more effective than the alternatives. This is, of course, the local authority's own view of effectiveness. One respondent said:

We find our penalty points scheme works well. It's used in place of prosecution where we have enough evidence to prosecute, but this is a more effective and efficient way of doing things. *Interview 35, Senior Licensing Officer.*

The effectiveness and efficiency in this example, in my view, lie in avoiding an independent adjudicator assessing the adequacy or veracity of the evidence. The council alone is the judge of whether the evidence is sufficient to support a prosecution. If the evidence is so strong, why not prosecute?

Penalty point schemes, assuming they are lawful *per se*, have to be implemented in a lawful manner. There is evidence that at least one council has attempted to extend its powers beyond the terms of the system. Winchester City Council indicates in its documentation that drivers who regularly accumulate just under the twelve point threshold for reference to the sub-committee will nonetheless be referred on the

⁸⁵ Winchester City Council, 'Statement of Licensing Policy with respect to Hackney and Private Hire Vehicles, Drivers and Private Hire Operators' April 2011 [15.5].

grounds that they are no longer a fit and proper person.⁸⁶ This is manifestly not within the terms of the scheme, and so is an abuse of the council's powers.

Local authorities claim success for their penalty points and staged warnings schemes. For example, Tendring District Council asserts that only one driver was sanctioned for breach of licence conditions prior to the introduction of the staged warning scheme. After introduction of the scheme, 85 drivers have received an informal warning, 25 a formal warning and nine transgressed for a third time and had their licence suspended.⁸⁷ Whilst this is declared a success by the Council, there could be any number of reasons for such a large increase in enforcement activity, such as previous lax enforcement procedures or simply that the warning scheme makes it easier to sanction drivers.

Penalty point and similar schemes are a simple way for local authorities to penalize the trade without any administrative or court checks on this exercise of discretionary power. In this way, they are used as sanctions, not as encouragement for compliance, and are instruments designed for administrative ease.

c) Deferred suspensions

Ten of the 32 councils asserted the power to issue 'defect' or 'advisory' notices to vehicles. These take the form of written notices which do not suspend the licence immediately. Instead, the vehicle continues to trade whilst repairs are carried out within a stated period of time. Failure to carry out repairs within the period results in

⁸⁶ *ibid*, 'Minutes of Meeting of Licensing and Regulatory Committee' 25th January 2011 [5].

⁸⁷ Tendring District Council, 'Report of Head of Legal Services and Monitoring Officer to Licensing Committee' 2nd November 2010 [3].

automatic suspension of the licence. Councils which use these notices admit that there is no statutory basis for them but view them as a way of maintaining standards without resorting to draconian action. One respondent explained:

We give the driver a 'defect' notice if we find anything wrong with the vehicle. This can be anything from a worn tyre to a dirty seat cover. The notice is a non-statutory one. It gives the driver a chance to remedy the problem. Otherwise we would go for enforcement action for not complying with the notice. *Interview 17, Enforcement Officer.*

The difficulty with such procedures, in my view, is that they look more like a means of gaining ascendancy over the trade than a safety issue. If the defect renders a vehicle unfit for use, then there are already powers in place to suspend the licence on those grounds.⁸⁸ If the defect does not impact on public safety, then why is any intervention necessary? Although at first glance this looks like a conciliatory approach to enforcement, the effect on the trade is a punitive one, incurring what may be unnecessary expense, loss of business and inconvenience.

d) Warnings

Local authorities claim they have the power to issue oral or written warnings for incidents of non-compliance which fall short of requiring more serious action. The councils which use this device acknowledge that it can only be employed as a hollow threat, but assert some degree of success in rectifying trivial misdemeanours or those more serious ones for which the evidence is scant. Two respondents gave examples of their use of warnings:

⁸⁸ Local Government (Miscellaneous Provisions) Act 1976 s 68.

Anything that doesn't justify committee action or a suspension we might just give someone a warning letter, if we thought we'll just mark their card to let them know we're watching them and they'd better be careful. There's no real way we can enforce that, but at least the intention is there. *Interview 46, Enforcement Officer.*

If we had a case where we felt the driver's behaviour fell short of what was expected but the evidence was a bit iffy, or it was one person's word against another, you don't want to let him get off too lightly. So we might consider a warning or something like that to the driver for acting in a manner not expected of a taxi driver or something along those lines. *Interview 37, Senior Licensing Officer.*

The use of warnings demonstrates a conciliatory approach to enforcement, but as is clear from the above two statements, the effectiveness of such a method is difficult to measure.

e) Changes in licence conditions

As part of their disciplinary procedures, eight councils in the sample state that they have the ability to add further conditions to the driver's licence as a means of securing future compliance. The councils which use this device justify their action on the grounds of flexibility and ease of administration by avoiding formal court proceedings. The following statements from two respondents make the position of their councils clear:

The emphasis of our approach is flexibility. We can play around with the licence conditions to suit the particular circumstances of the case. It's got to be better for us and the drivers to keep these sort of things away from the courts, especially for what are usually quite trivial transgressions. *Interview 30, Senior Licensing Officer.*

We can use our discretion to create individual conditions to suit the circumstances for each case on its merits as an aid to enforcement going beyond our statutory powers. *Interview 17, Enforcement Officer.*

I think such measures miss two vital points. One is that councils have no powers to impose any conditions on drivers' licences, let alone change them or add new ones.⁸⁹ The second is that local authorities should not be doing anything 'beyond their statutory powers' for any reason at all. Whilst this would be consistent with a conciliatory approach, it is entirely unenforceable, and there is no evidence as to its efficacy.

f) Informal actions

This study came across a number of instances where very informal advice or action in the face of non-compliance was found to be effective. These forms of action are certainly not found on the statute books, but the licensing officers responsible felt that the outcome was more effective than any formal sanction or other course of action. The following are examples of such informal, but effective, steps to deal with non-compliance:

We had a problem with one chap who was unlicensed but was hanging around outside nightclubs trying to pick up young women. But we could never catch him at it. So I went round to his house when I knew he was out and said to his wife, 'I just wanted a quick word with him about the taxi' She said 'He doesn't drive a taxi'. I then told her what we had been told and left it at that. I thought, if I can't get him, I'll drop him in the shit with his missus; she can inflict far greater punishment than I ever could. Funny, we've never had any trouble with him since. *Interview 30, Senior Licensing Officer*

When we hear of an unlicensed spouse driving a taxi or someone whose licence has expired but might continue on a few more days, just ring the insurance company and they'll just cancel their insurance. I've found the insurance companies will help. Handy. *Interview 24, Senior Licensing Officer.*

If we can't support a complaint with evidence you can still say to the driver 'So and so has made a complaint about you'. But that's just a shot across the

⁸⁹ *Wathan v Neath and Port Talbot CBC* [2002] EWHC 1634 (Admin).

bows to say 'Look, I know what you've been up to, stop it'. And it's fair to say that the few complaints that we've had tend to end there. So I suppose something must work. *Interview 27, Senior Licensing Officer.*

Such actions are unorthodox but effective and within the spirit of a conciliatory-based approach. Licensing officials who used such measures found them much more effective in achieving their particular purpose than more formal and resource consuming actions. These methods are effective for certain forms of non-compliance but they will not work in every case. There will always be intransigent members of the trade who will still oppose requests to co-operate.

g) Conclusions on 'extra-legal' powers used.

It is easy to see why 'extra-legal' measures might prove attractive to regulators. They have three main advantages over the statutory provisions. First, the exercise of these powers allows local authorities to deal with what they see as quite trivial breaches of the rules. Councils take the view that the offence was trivial, but not so minor that it should be allowed to pass without penalty. Formal enforcement instruments are considered too draconian to deal with petty infringements. Second, sanctions imposed by councils, rather than the courts, allow local authorities to retain control over enforcement. Although this can also be achieved by formal powers, in the case of informal measures there are no rights of appeal against the imposition of these sanctions. This leaves the exercise of discretion unchecked. Third, the sanctions provide flexibility and can be tailored to the needs of the regulator. The findings of this study showed that it is the very informal approaches which prove the most effective although, in terms of cost, benefits and efficiency some of the 'non-statutory' powers, such as test purchasing, proved the most ineffective.

The one major drawback of these measures is their lack of a legal base. The fact that the instruments themselves are beyond the powers of the local authorities makes them susceptible to challenges from the trade. Even where there is an arguable case that the measure itself is lawful, often its implementation is not, and this makes the power equally prone to legal challenge.

4) Conclusions on enforcement.

According to Snider, ‘non enforcement is the most salient characteristic of regulatory law enforcement’.⁹⁰ In the case of enforcement of taxi regulation, I found the opposite to be the case. All councils undertake some form of enforcement on a regular basis, even if the result is that no further action is taken. Some local authorities undertake enforcement at more or less frequent intervals than other councils, and different approaches and methods are used. But enforcement is always occurring.

Macrory took the view that, in practice, many regulatory agencies relied too much on the ‘single blunt instrument of criminal prosecution.’⁹¹ This is clearly not the case in respect of taxi enforcement, as there are very few prosecutions in this field. Licensing authorities have only limited faith in prosecution to secure compliance, and prefer administrative sanctions instead. However, this preference is driven as much by a desire to maintain control over the enforcement process as it is by any belief in the ability of administrative sanctions to achieve compliance. However, more effective

⁹⁰ L Snider, ‘Towards a Political Economy of Reform, Regulation and Corporate Crime’ (1987) 9 Law and Policy 37, 47.

⁹¹ P Macrory, ‘Regulatory Justice: Making Sanctions Effective’ (Final Report, Better Regulation Executive, November 2006) [E.9].

enforcement could be achieved if local authorities were to make better use of the powers which the law gives them, such as routine inspection of vehicles. An increased frequency of vehicle checks for all vehicles would produce a much more effective incentive for vehicles to comply and remain compliant in readiness for the next inspection.

Many of the more effective enforcement strategies rely for their efficacy on a degree of bluff by the licensing authorities.⁹² In some cases this relies on the ignorance or lack of resources of the trade by bringing formal or informal actions without any firm legal basis. There are many examples in this study where action has been taken against taxi licence-holders, who have simply accepted the local authority's claims that a regulatory offence has been committed and the council's power to take action. This is particularly noticeable in relation to the informal powers asserted by local authorities. In fact, the most effective techniques for securing adherence to standards were the very informal measures, such as reporting suspected breaches of the rules to external private bodies. However, many of these strategies are based on unreliable foundations, and a successful legal challenge could render them of little value to enforcement. The potential weakness of these informal measures could be resolved quite easily by placing them on a statutory footing. Local authorities already use minor penalties such as warnings and deferred sanctions in practice, so there is a case to be made, in my view, for regularizing the position and granting councils such powers formally. This could be achieved by a change to the legislation along the lines of the scaled sanctions currently used in the area of environmental regulation.⁹³

⁹² *Hawkins* (n 2) 153.

⁹³ Regulatory Enforcement and Sanctions Act 2008, Part 1.

In their public pronouncements, councils like to portray themselves as adopting a conciliatory approach to enforcement. However, in practice, local authorities use their powers, both provided by the law and of their own creation, to penalize those licence holders who are considered to have infringed the regulatory regime and to deter others from breaking the rules. Enforcement activity is generally not designed to urge or encourage compliance, but to penalize offenders. The activities of local authorities in fact reveal a deterrence approach to enforcement, contrary to both the findings of previous studies in other fields and the councils' own claims about their style.

Finally, the findings of this study only partly support the point that reactive measures tend to indicate a deterrence type approach and proactive measures suggest a conciliatory approach. Although the councils in this study used a combination of both reactive and proactive strategies, the finding that councils tended to adopt a deterrence approach suggests that even the proactive instruments, such as spot checks and test purchases, resulted in deterrence based sanctions. Other proactive measures, such as routine testing, did support a conciliatory approach, as I have already indicated, but the effect of those methods was outweighed by the sanctions which came about as a result of the other enforcement measures.

CHAPTER 8: CONCLUSIONS

In this concluding chapter, I draw together all the themes from the preceding chapters to consider whether regulation of the trade achieves what it sets out to achieve. I also reflect on the practical implications of the study both for the taxi trade now and in the future and some suggested areas for legislative changes and further research.

1) General findings of the study

One thing which has been clear from the outset and has been confirmed by the findings of this research is that regulation of the taxi trade in England and Wales is in a state of confusion. There is no clear idea of what it is trying to achieve or how it is supposed to get there. No-one knows what many of the legislative provisions mean because of the vagueness of the language used. Granting wide discretionary powers to local authorities has produced a system which has wide variations in practice across the country. This results in a system which lacks coherence and uniformity in key areas, such as the suitability of vehicles and drivers, where consistency and regularity would be expected.

The current Coalition Government accepts that there is a strong case for overhauling the legislation governing taxis.¹ Indeed, during the course of this research the Law Commission has instigated a ‘root and branch’ study of taxi and private hire licensing

¹ Transport Committee, *Taxis and Private Hire Vehicles – The Road to Reform* (HC 2010-11, 720-I) [14].

with a view to recommending reform of the existing regime.² Although my research is not designed to complement or critique the work of the Law Commission, it would be remiss to overlook the fact that soon there is likely to be a new legislative framework for regulation of the taxi trade. There are some areas of overlap between this study and that of the Law Commission, particularly in relation to quantity restrictions, the creation of national quality standards and officers' enforcement powers.³ However, the Law Commission's remit is much broader than the scope of my research, covering many aspects of regulation of private hire vehicles, drivers and operators as well as the hackney carriage trade. Some of the Law Commission's recommendations are purely cosmetic and do not begin to tackle the root of the perceived problems. For example, the suggestion that the words 'hackney carriage' be removed from the legislation and replaced by the word 'taxi'⁴ may be sensible, long overdue and reflect modern parlance, but it is not going to shake the trade to its core, nor will it make the task of regulating taxis any easier or more effective.

As I indicated in the opening chapter, one of the main criticisms of the current regime from those who have to apply and enforce it on a daily basis is that the legislation is 'too old'. This was the only point upon which all the interview respondents held unanimous views. There is a sense of frustration at the perceived inadequacies of the legislative framework purely because of the age of the statutory provisions and the fact that they are seen as being unsuitable for the contemporary taxi industry. However, as I hope I have made clear, the deficiencies that exist within the regulatory system are as a result of the way in which the legislation is interpreted

² Law Commission, *Reforming the Law of Taxi and Private Hire Services* (Law Com CP No 203, 2012).

³ *ibid*, Chapters 2, 9, 16, 17 and 19.

⁴ *ibid* [14.88].

and applied, not as a result of its age *per se*. Nevertheless, I accept that there is a clear need for reform of the regime to reflect modern business practices and lifestyles. Indeed, I argue for a number of reforms which I believe would improve the effectiveness of regulation of the trade. I do not advocate dramatic wholesale changes to the existing system and I believe that the necessary changes can be brought about by amendment of the current system.

The need to regulate the taxi trade is beyond question. Government rhetoric and economic opinions about ‘de-regulation’ of the industry are misleading in that they refer only to one particular aspect of regulation – quantity restrictions on entry to the market. No-one seriously suggests that quality standards for vehicles and drivers ought to be left to market forces. Licensing as a method of regulation still provides the best system for the taxi trade. No-one, either in the literature or during the course of this research, has suggested a viable alternative to licensing as the means by which the taxi trade should be regulated. Some of those who criticise licensing generally do so on the basis of economic theory, and even then do not suggest any viable practical substitute. Although other options exist, none of them are able to achieve the advantages which licensing possesses over the other means. The requirement to seek prior approval for vehicles and drivers, although initially more costly in terms of local authority resources, is more effective, and less costly in the long term, than having to investigate and impose financial or other sanctions after something has gone wrong. Alternatives to licensing, such as economic instruments or criminal or civil law remedies, would cause considerable difficulties in the case of taxi regulation, as they all involve *ex post facto* judgments of fitness and suitability or the causes of incidents. Even alternative forms of prior approval, such as registration or certification, pose

problems for public safety without the backing of criminal sanctions because either the vehicle or the driver or both may be unsuitable and unsafe. Whatever the aim of taxi regulation is said to be, licensing provides the best way of achieving all or any of those aims over any alternative regulatory measures. In this chapter, I consider how to make the best use of the licensing system in the light of the findings of the study.

2) Specific findings of the study and their significance

a) Local authority culture

One of the main findings which emerges from this study is the extent to which the effectiveness of the regulatory regime is reliant upon a particular local authority culture. The impact of local authority culture on taxi licensing has not been the subject of previous research. Although there are, as one might expect, local variations and differences in the culture of individual councils, the findings of this research suggest that generally all local authorities display basically similar cultural characteristics.⁵ In relation to taxi regulation, this culture becomes apparent in the belief that councils may do whatever they see fit to regulate the trade. Local authorities essentially run their own 'fiefdoms' within which they feel able to disregard or even break the law, create their own law and generally do as they wish in the knowledge that their decisions are unlikely to be challenged by the trade.

This culture manifests itself throughout the regulatory process, from councils creating impressions that they have powers which they do not in fact possess to

⁵ RJ Haynes, *Organisation Theory and Local Government* (New Local Government Series No 19, Allen and Unwin, London 1980) 194-95.

imposing licence conditions which are not reasonably necessary for any recognised aim of regulation. Council officials often equate licence holders with employees and believe the degree of control they are able to exercise is commensurate with that status. Thus local authorities dictate where and how taxis are to operate and their appearance, including the colours, make and age of vehicles. Councils also control the way drivers behave, dress and conduct themselves. But taxi owners and drivers are not employees and ought not to be subject to the same degree of control. Local authority culture has greatest resonance in the area of enforcement, where local authorities often act beyond the scope of the powers which Parliament has provided to them and create their own enforcement powers as an addition to their statutory powers. For the most part, the trade simply acquiesces in what councils do, largely as a result of ignorance of the law, lack of resources, and prioritizing the running of business over regulatory concerns. Indeed, the trade generally only thinks to challenge local authority decisions when those decisions have a direct impact on business. Even then, as can be seen in the example of ‘penalty point schemes’, the courts mainly defer to the decisions of the local authority.

Somewhat paradoxically, the findings of this research indicate that the most effective instruments of control, in terms of their ability to achieve the main aims of regulation, are those produced by councils when creating their own powers in disregard or even breach of the law. This is particularly noticeable in relation to informal enforcement procedures and is also apparent in, for example, the imposition of driver’s licence conditions notwithstanding the absence of any legal power to do so. Whilst there are inherent limitations placed on councils’ powers by the legislation, and some frustrations on the part of licensing officials caused by such limitations, the

absence of power is not a justification for licensing authorities to create and adopt their own measures to fill in any gaps, perceived or real, in the legislative framework. Placing the more contestable powers on a proper statutory basis would remove any doubts about their legality and would also enable proper safeguards to be put in place to prevent excessive or arbitrary use of such powers by licensing officials. However, legislative change alone would not alter the entrenched attitude of local authorities; only a change of culture will produce real progress towards a more uniform and ordered regulatory scheme.

b) Use of discretion

The findings of this study provide examples of situations where the scope of local authority discretion is misplaced. It is the wrong way around. Decisions on which vehicles and drivers are of suitable quality to be admitted to the trade ought to be the most tightly confined. An assessment of whether a limit should be imposed on the number of taxis permitted to ply for hire locally ought to have the widest discretion. Where the exercise of discretion is currently ‘open-ended’, councils have no choice other than to devise their own guidelines in the absence of any direction from central government. The results of this study, however, illustrate that the principles formulated by local authorities are not always linked to specific aims, although they are at least based on some recognisable principles. This partly explains why the exercise of discretion produces inconsistent outcomes in different cases within the same area and between different areas. The consequence of the current approach is that there is an absence of consistency and uniformity in the outcomes of exercises of discretion. This means, for example, that vehicles and drivers considered perfectly ‘fit

and proper' in one area may not be so regarded in another area. At the same time, a council which believes that restriction of vehicle numbers is appropriate for its area is prevented from imposing such a limit or can only do so at considerable expense and inconvenience.

Whilst I accept that some discretion within the system is both unavoidable and desirable, I think that where discretion is currently 'open-ended', it should be more tightly confined, structured and checked by the use of specific rules. The attitude of the respondents in this study to the idea of stricter legal rules to restrict discretion was somewhat mixed. Some felt that existing principles used to shape the exercise of discretion were unsatisfactory or unclear and more specific guidance on the interpretation and application of standards would be welcome. On the other hand, others would regard stricter control of discretion as an unwarranted interference with their autonomy. However, I think that the results of this study illustrate that too much discretion produces inconsistency where there ought to be uniformity and leads licensing officials to assume for themselves powers which they do not possess under the legislative framework.

Stricter rules could appear in the form of national quality standards for both vehicles and drivers. The Law Commission's proposal for the introduction of such standards may help to confine and structure local authority discretion in this area.⁶ Indeed, many of the interview respondents thought that such standards were needed and should be welcomed. However, it is not yet clear how specific the proposed standards are going to be or whether they will still leave local authorities with broad based discretion over

⁶ *Law Commission* (n 2) [15.5] and [16.4].

issues such as livery or signage. The difficulty in establishing national standards is the question of who decides what the standard is going to be. I think that this must be a task for central government, in the shape of the Secretary of State for Transport. This would require views and opinions from experts on the appropriate standards of mechanical condition and construction for vehicles. It would also require guidance on suitable standards of medical fitness and how to deal with criminal convictions for drivers. Whilst the drawing up of standards would be complex, there is no reason why a set of standards which apply across the country cannot be formulated. A safe vehicle and a safe driver is the same wherever in the country a vehicle and driver operate. Quality standards should also be applied to other areas of local authority discretion, such as removal of licences or decisions on prosecution, which are not considered by the Law Commission proposals.

Once implemented, however, national standards should be precisely that; standards which apply in the same way across the country. Although, in my view, there are very good reasons for retaining local administration of the taxi regime, there should not be, as the Law Commission propose, the retention by local authorities of the power to create and impose their own 'local' standards in addition to the national ones.⁷ If there is one important lesson to be learnt from this research, it is that where local authorities are given the opportunity to impose their own requirements they will take it. This is likely to result in a system which suffers from the same problems of variation and inconsistency as the present regime. National quality standards would also require standardization of licensing fees and enforcement procedures to prevent 'forum shopping' by applicants for councils which are a 'cheaper' or 'softer' option.

⁷ *ibid* [15.26] and [16.21].

Whilst the currently ‘open-ended’ areas of discretion ought to be subject to stricter rules, the findings of this study suggest that the areas of discretion which are currently restricted should be more open. This is particularly the case in relation to quantitative regulation of market entry. I think it is noteworthy that the Law Commission, which initially recommended removal of the power to limit numbers of taxi licences altogether,⁸ has recently reversed its original proposal and now suggests that councils should be permitted to restrict numbers if they wish to do so.⁹ As the Law Commission has yet to report, it is not clear from this indication what the basis for the exercise of this discretion is proposed to be. I think, on the basis of this study, that this is the correct approach. Limits on numbers should be a matter of local preference based on factors which extend beyond economic considerations to include the size and nature of the locality, the extent of the night-time economy and the local taxi ‘culture’.

c) *Local or central control.*

The findings of this study suggest that the ‘local’ nature of the regulator is significant for some aspects of regulation, but is less so for others. There are aspects of regulation, such as quantitative restrictions based on unmet demand and enforcement proceedings, for which local knowledge and choice is required and assists in efficient enforcement. In other areas, such as quality standards for vehicles and drivers, local information is less significant and regulation could just as easily be carried out centrally. As in the case of discretionary powers, the current emphasis on

⁸ *ibid* [17.14].

⁹ Law Commission, ‘Taxi and Private Hire: Interim Statement’ (9th April 2013) [6-7].

localism is the wrong way around in certain respects. Where local knowledge is most needed and beneficial to decision making, for example where levels of local demand for taxi services need to be assessed, the local authority's powers to act are severely restricted by the legislation. On the other hand, standards of vehicle and driver quality and safety, which ought to be uniform regardless of where in the country the service is provided, are left to the local authority's discretion, resulting in the wide disparity of quality conditions across the country.

I was not surprised to find that all respondents to the study were in favour of retaining local control over taxi services. There was a feeling amongst respondents that the quality and enforcement standards of their council were superior to those imposed by local authorities elsewhere. I think that there are certain aspects of regulation which would be more effectively dealt with by the exercise of local control and the balance needs to be redressed so that those areas which would benefit most are regulated locally. This is particularly the case for those areas of regulation which require local knowledge or local presence in order to ensure more effective regulation.

I suggested in an earlier chapter that one way of resolving the tension between local and central control might be to adopt an approach similar to the one used under the regime implemented for alcohol licensing under the Licensing Act 2003.¹⁰ This would enable a centrally created framework of general principles to be used as a model of local control. The system used for liquor licensing has been criticised as permitting central government still to exert influence over local decision making through the use

¹⁰ Discussed in Chapter 2 section 4*a*).

of statutory guidance.¹¹ The findings of this research illustrate that local authorities believe that central government already interferes excessively in their regulatory functions, such as through the need for approval of byelaws, and that such influence is likely to continue. Amendment to the regulatory regime would also face the challenge of local authority culture discussed above. Part of that culture is an embedded reluctance to adapt to changes in the law. Cammiss and Manchester, in their recent study of licensing committee proceedings under the Licensing Act 2003, found that ‘long established practices continued largely unchanged despite a formal change in the law.’¹² There may be a similar reluctance to adapt to a new taxi licensing regime, should one be introduced.

An alternative proposal would be to delegate a national licensing function to a centralized government department or agency with responsibility for enforcement remaining with local authorities. This would be similar to the system which currently operates in the case of consumer credit licences.¹³ In the case of taxi licences, however, the numbers of vehicles and drivers involved may result in such a system becoming overly complex and bureaucratic.

Notwithstanding these potential difficulties, however, there remain sound reasons for keeping quantitative market entry and enforcement functions for taxis local,

¹¹ A Hunt and C Manchester, ‘The Licensing Act and its Implementation: Nanny Knows the “Third Way” is Best’ [2007] Web Journal of Current Legal Issues. The government have recently provided further evidence for this view by requiring local authorities to have regard to a statutory code of practice when imposing licence conditions in relation to CCTV cameras – Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013 SI 2013/1961.

¹² S Cammiss and C Manchester, ‘“ Careering Out of Control”: Decision-making in Contested Cases Under the Licensing Act 2003’ (2012) 31(1) Civil Justice Quarterly 89, 110.

¹³ Consumer Credit Act 1974.

because of the need for and importance of local knowledge and presence, which could not be achieved by a more remote and centralized system.

d) Some exceptions

Contrary to much of the literature and the perceptions and claims of the local authorities themselves, my research also suggests that councils, adopt a more deterrence based approach to enforcement than a conciliatory one. There was clear evidence that council officers are frustrated that they are unable to take more strenuous action due to the limitations of their enforcement powers. This was particularly noticeable in relation to the inability to take action against vehicles and drivers licensed in other areas, and also because of a lack of co-operation on the part of the public. However, the implications of a more deterrence based approach are likely to be a withdrawal of co-operation and more defensive and antagonistic response from the trade.

Some of the difficulties and frustrations of the licensing officials may be partly addressed by proposals from the Law Commission, which recommends a range of new enforcement powers for licensing officers, including the ability to stop licensed vehicles, impounding and fixed penalty schemes. Such powers are to be extended to include out of area vehicles.¹⁴ Whilst this proposal is a welcome one, it does not go far enough, in my view. Many of the sanctions falling short of outright removal of a licence, such as warnings and penalty point schemes, ought to be placed on a statutory footing.

¹⁴ *Law Commission, Interim Statement* (n 9) [17].

Contrary to the general findings of the study, especially in relation to the local regulator's culture of control despite and in the face of the strict legal position, I found that in certain respects councils did not exercise the degree of control that they thought they did. This was most noticeable in two areas, neither of which is mentioned in the relevant literature. The first area is in relation to the setting of fares. The general trend of local authority ascendancy in all regulatory matters is not followed in the case of fares, where the trade has the upper hand and maintains a position of dominance. It is the trade which sets the appropriate fare levels, and the local authorities generally acquiesce in the trade's demands. This is, however, an exception to the general rule. The second area concerns journeys which are undertaken from a particular location or which finish outside a local authority's area. The study indicates that there are a significant, but unquantifiable, number of journeys undertaken which are not regulated at all by councils because they do not fall within the scope of the legislation.

3) Limitations on study and further research

I have to acknowledge that there are a number of limitations upon this study. Firstly, it is confined to a particular and narrow part of the public transport industry. Some of the issues researched are common to other parts of that industry, such as buses and trains, although they are not equivalent to taxis. Similarly, some matters of concern are shared with private hire vehicles and drivers, and some of the findings of this study may be applicable to that trade. However, a study of similar issues in other forms of transport would have to be the subject of further research.

Secondly, although I tried to make the sample of 32 councils as representative as possible, the findings are not necessarily generalizable to all of the other 283 councils in England and Wales. I anticipate that a similar exercise carried out with a different sample of councils would produce a similar set of findings, although part of the interest of the study was the range of views I was able to obtain on a narrow range of issues. There were many areas of commonality, but each respondent had his or her individual take on the issues raised. The fact that there were so many views expressed on all the subjects made it difficult to see any likelihood of consensus on the controversial topics. I do not think, however, that the relatively small sample size or range of views detracts from the significance of the findings.

Thirdly, as I indicated in the methodology chapter, some of the source material used is age specific, in that it relates to particular events which occurred during a specific one year period, other information is not. It is possible that procedures and approaches may have changed at individual councils during the course of this study.

There were other potential areas of research which were revealed by my study, but which constraints of time, space and direct relevance prevented me from pursuing further in this thesis. Issues such as the relationship between appointed officers and elected councillors, particularly in relation to regulating entry and enforcement, and some of the due process concerns surrounding grant and removal of licences are potentially interesting and fruitful sources of future research. It would also be of interest to undertake further empirical research into matters such as the numbers of

taxi journeys which commence at railway stations, airports and seaports, or travel outside the licensed area, and as such are potentially unregulated.

These must remain matters for further research. I have concluded that any lack of effectiveness within the taxi licensing regime is a product of the way in which the system is applied. Where the regime is deficient, this is as a result of the approach, interpretation and application of the legislation by the local authority regulator. Effectiveness could be improved, and I hope that the conclusions I have reached will stimulate some debate on the direction of reform. In what is a vital part of the transport system, it is hoped that a more effective system can be produced than the contemporary one.

APPENDIX A

Councils which retain quantitative regulation

Aylesbury Vale	North Tyneside
Barnsley	Nottingham
Bolton	Oldham
Barrow in Furness	Oxford
Basingstoke and Deane	Pendle
Bath & North East Somerset	Plymouth
Bedford	Poole
Birmingham	Portsmouth
Blackburn with Darwen	Preston
Blackpool	Reading
Bournemouth	Ribble Valley
Bradford	Richmondshire
Braintree	Rochdale
Brighton & Hove	Rotherham
Calderdale	Scarborough
Cardiff	Sefton
Cheshire East (Part)	Sheffield
Cheshire West & Chester (Part)	Southampton
Chorley	Southend on Sea
Colchester	South Tyneside
Corby	Stevenage
Cornwall (Part)	St. Helens
Derbyshire Dales	Stockport
Dover	Sunderland
Durham (Part)	Tameside
Exeter	Test Valley
Halton	Thurrock
Harrogate	Torbay
Hastings	Torridge
Havant	Trafford
High peak	Tunbridge Wells
Hull	Wakefield
Hyndburn	Warrington
Kirklees	Weymouth & Portland
Knowsley	Wigan
Lancaster	Windsor & Maidenhead
Leeds	Wyre
Leicester	York
Lincoln	
Liverpool	
Maidstone	
Manchester	
Mid-Sussex	
Newcastle under Lyme	
Newcastle upon Tyne	
North East Lincolnshire	

APPENDIX B

Interview Schedule

The general areas for discussion are identified in the questions set out below. These questions are designed to prompt conversation in the direction of the desired general area. Some questions may be suitable only for particular categories of respondent.

1) Introductory Question - Tell me about your position as Chair of the Licensing Committee/Licensing Officer/Enforcement Officer/Taxi Representative?

2) What would you say are the aims of taxi regulation?

Why do you think the taxi trade is licensed?
What are regulations trying to achieve?
What influences your decisions on taxi licensing issues?
Do you think taxis should be controlled locally or nationally?

3) What do you think about controlling entry to the taxi market?

Why does your council have the policy it does on limiting/not-limiting numbers of taxis?
Why such detailed/lack of detailed specifications for entry?
Why does your area have/not have these requirements when other areas do not/do?
Should entry to the market be controlled by quality rather than quantity?
Would you prefer more/less rules/guidelines than currently exist to assist/direct your decisions on licence applications?
Why is your council's policy on vehicle age limits/knowledge test/relevance of convictions etc. [as appropriate to specific councils] different from other areas?
Should there be national standards of 'suitability' for vehicles and drivers?

4) How does your council go about setting and maintaining standards of quality for the taxi service in your area?

How are the quality of service standards set by your council?
Why do standards set by your council go beyond the statutory minimum? (if this is the case).
Would you prefer more/less rules/guidelines than currently exist to assist/direct how quality standards are set and maintained?
How do you control behaviour/conduct of drivers?
Could more/better use be made of byelaws/conditions on licences/codes of conduct/guidelines to set and maintain quality standards?
Why does your council [as appropriate to specific council] impose/not impose quality requirements such as age limits on vehicles, livery, WAVs, length of driving experience, driver qualifications, DSA assessments, dress codes, advertising on vehicles, insurance etc?

Should there be national quality standards for vehicles and drivers?

5) How do you decide on the fare tariff for your area?

How are fare rates set in your area?

What factors influence your decisions when setting fare rates?

Why do your fare rates differ from those in other areas?

What are the difficulties with regulating fares?

How many complaints are received about fares/overcharging?

[Drivers only]: approximately what percentage of your fares end outside the area?

Approximately how many of your fares are from the railway station ranks?

6) How does your council go about enforcing the taxi regulations in your area?

How would you describe your council's general enforcement policy/style/approach?

What enforcement methods does your council use?

Does the trade generally cooperate/prove obstructive in enforcement?

How often are infringements overlooked, not pursued, 'let off' with an oral warning etc?

Does the system work as you would like it to? Is it effective? Why do you say that?

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