

TRANSPORT FOR LONDON

SURFACE TRANSPORT PANEL

SUBJECT: **PEDICABS UPDATE**

DATE: **19 MAY 2009**

1 **BACKGROUND**

- 1.1 The purpose of this report is to provide an update on issues surrounding the operation of pedicabs in London.
- 1.2 Pedicabs are generally pedal-powered tricycles with two wheels at the back and one at the front, with a rider on the front and space for passengers on a bench seat at the back. There are also examples of four-wheeled vehicles, or three-wheeled vehicles with the passengers carried at the front.
- 1.3 The number of pedicabs in London is estimated to be 900. There are several large pedicab operators who rent out pedicabs to riders for ply for hire operations, organise bookings and provide pedicabs for large advertising events. There are also companies operating pedicabs for deliveries and to carry advertising.
- 1.4 Pedicabs in London are heavily concentrated around the tourist attractions and theatres within the City of Westminster and passengers are usually transported short distances. A small survey of 113 pedicab users was carried out in January 2009 which showed that most estimated their journeys to have been less than a mile.
- 1.5 The pedicab survey showed that the main reasons given for using a pedicab were for fun (38 per cent), for convenience (29 per cent) and wanting to try it (19 per cent) and 6 per cent responded that it was a treat for someone else. Overall satisfaction with pedicabs was 76 per cent compared to a score of 87 per cent for Thames river tourist services.

2 **ISSUES**

- 2.1 There are a number of safety and operating issues surrounding the pedicab industry in London. Most models allow two to three passengers to be carried behind the rider, although it appears some riders attempt to carry more. Some pedicabs have been fitted with safety belts although this appears to be a minority and they are rarely observed in use.
- 2.2 There are concerns around the intrinsic safety of a three-wheeled pedal-powered vehicle – especially when carrying passengers. The London Taxi Driver Association commissioned the Transport Research Laboratory (TRL) to examine pedicabs. Its findings showed that a laden pedicab's braking performance was significantly lower than that of a car and that in crash tests with a car travelling at 30 miles per hour, the passenger compartment would provide little or no protection.

- 2.3 The majority of pedicab owners do not have third party insurance to cover accidental injury to passengers or damage to other vehicles. In the last three years there have been nine recorded accidents involving pedicabs in London. There is no accurate data on injuries or casualties although there are reports of serious accidents in other cities.
- 2.4 There are also personal safety considerations for the riders as lone workers. The pedicab industry predominantly operates at night and the riders often come into contact with drunken individuals who may disagree with the fare or become aggressive if a fare is refused.
- 2.5 Poor value for money is a common complaint against the pedicab industry. The recent survey indicated that the majority of trips taken by those interviewed were perceived to be under a mile with an average fare of £11.67. Of those respondees who indicated that they would not use a pedicab again, 79 per cent said that it was because pedicabs were too expensive.
- 2.6 There is a heavy concentration of pedicabs in the West End. They can cause obstruction of roads and footways by parking illegally outside theatres and other tourist attractions. Parking is a particular problem. Pedicabs park in residents' parking bays and metered parking bays without paying the appropriate charge. This obstructs other drivers and prevents them from parking in legitimate paying parking places.
- 2.7 In the last 18 months, some pedicabs have been constructed or adapted to assist the rider to propel the vehicle by having an electric motor fitted, powered by on-board 12-volt car batteries. Vehicle regulations prescribe that an electrically assisted tricycle such as a pedicab cannot weigh more than 60 kilograms. If it exceeds this weight, it will generally be considered to be a motor vehicle and must have the appropriate motor insurance, MOT Test certificate, Vehicle Excise Licence and the rider must have the relevant driving licence. These vehicles fall under the responsibility of VOSA and the DVLA.
- 2.8 A joint operation undertaken in December 2008 by Westminster City Council (WCC), TfL and the Metropolitan Police Service (MPS) resulted in six rider arrests relating to electrically assisted pedicabs being driven without tax and insurance and almost overnight the motors were removed from most pedicabs in London. WCC, TfL and the MPS continue to monitor the situation.

3 CURRENT LEGAL FRAMEWORK

- 3.1 There is a limited legal framework to deal with pedal powered pedicabs beyond the Highway Code. TfL does not have any legal powers to deal with pedicabs.
- 3.2 The High Court decision in *R (Oddy) v Bugbugs Ltd* [2003] found that a pedal powered pedicab was not a hackney carriage because it was a stage carriage for the purposes of section 4 of the Metropolitan Public Carriage Act 1869. Based on this decision, TfL is not able to license pedicabs under a hackney carriage licensing regime.
- 3.3 The police are able to deal with pedicabs parked on the pavement by means of the Metropolitan Police Act 1839, which prohibits pedicabs, under the term stage carriage, from being drawn or driven upon any footway or kerb stone. However, there is no wider legal framework for stage carriages which governs other safety aspects of these vehicles, their operation or how they obtain and service their customers.

- 3.4 TfL previously explored the possibility of licensing pedicabs as hackney carriages. TfL applied to the High Court for a declaration that pedicabs are hackney carriages (which would involve a re-examination of the decision in *R (Oddy) v Bugbugs Ltd* [2003]) but these proceedings have now been discontinued.
- 3.5 Licensing pedicabs as hackney carriages would have meant adapting the existing statutory hackney carriage licensing framework that applies to London licensed taxis to the pedicab industry. TfL now considers that regulating pedicabs within a hackney carriage licensing regime is unlikely to address many of the issues that currently cause concern regarding their operation.
- 3.6 Specifically, a hackney carriage licensing regime would not deal with those pedicabs that operate pre-booked services, operate as a hired fleet or work as couriers. It would also not address the intrinsic safety problems of a light, three wheeled passenger carrying vehicle in London's traffic. In addition, it may not be able to deal with electrically assisted pedicabs which potentially fall outside the scope of hackney carriage law.
- 3.7 A hackney carriage licensing regime would require a thorough and complex licensing system to be developed that is tailored to the pedicab industry. This would require TfL to prescribe matters such as appropriate vehicle design (and safety) standards to be met in order to be granted a vehicle licence and the level of training, geographic knowledge and skills required in order to be granted a pedicab rider's licence. These matters are likely to be contentious for both the pedicab industry and other key stakeholders such as the taxi trade.
- 3.8 Hackney carriage legislation allows TfL to recover the costs of licensing hackney carriages. In practical terms the existing pedicab industry may not be able to bear the costs of a hackney carriage licensing regime, especially when compliance and enforcement costs are taken into account.
- 3.9 In light of these considerations, TfL's view is that a hackney carriage licensing regime is inappropriate for the pedicab industry and it would be more appropriate for Government to determine necessary safety and licensing standards for pedicabs as it does for other passenger carrying vehicles.
- 3.10 In the absence of a statutory licensing regime for pedicabs, WCC has been developing a voluntary registration scheme in consultation with the pedicab industry. Under this scheme, pedicab operators will sign up to a voluntary code of practice to which they and their riders must adhere. This will cover driver background checks, cycle training (including the Highway Code), agreeing fares in advance and keeping rider records. In return, those within the scheme will be given permit access to pedicab parking bays which will be located across the City of Westminster. The success of the scheme will be centred on educating the public to use the pedicabs with permits from the designated bays and making them aware what to expect from the rider.
- 3.11 The London Local Authorities and Transport for London (No. 2) Bill would allow for more effective enforcement of moving traffic offences and parking contraventions against pedicabs by treating them as "motor vehicles" for the purposes of these contraventions. The Bill only deals with traffic enforcement issues and does not itself set up a licensing or registration scheme for pedicabs. The Bill is currently in the House of Lords and should progress to the House of Commons later this year.

4 OPTIONS

Option 1 – No change

- 4.1 This would maintain the current position with no form of registration or licensing for pedicabs. However, this may not be appropriate given that the industry is believed to have more than doubled in the last three years and it would be reasonable to expect further increases.

Option 2 - Ban pedicabs

- 4.2 While it may be possible to introduce new Government or private legislation to regulate or ban pedicabs, the issue would be whether the will exists to do so and whether such legislation could be successfully passed.
- 4.3 It has also previously been suggested that it would be possible for TfL to ban pedicabs by obtaining the High Court declaration that they are hackney carriages and then not licensing them as such, thus in effect prohibiting them from plying for hire. The power to grant hackney carriage licences is found in section 6 of the Metropolitan Public Carriage Act 1869. These provisions do not impose a duty on TfL to make hackney carriage licences available to all types of 'hackney carriage' including pedicabs. In principle, if the court had found that pedicabs were hackney carriages, TfL could have lawfully decided not to adopt a hackney carriage licensing regime for pedicabs. However, by seeking a declaration from the High Court that pedicabs were hackney carriages and concluding a consultation on the form of a hackney carriage licensing regime for pedicabs, there was an expectation that TfL would have proceeded to license pedicabs had the declaration been obtained.
- 4.4 These earlier steps in support of licensing would have placed serious constraints on TfL's power to change its position. Had TfL obtained the declaration, any decision not to license pedicabs as hackney carriages would have been at high risk of challenge by judicial review.

Option 3 - TfL to license pedicabs

- 4.5 The decision in *R (Oddy) v Bugbugs Ltd* [2003] remains authority that pedicabs are not hackney carriages and therefore could not be licensed under existing hackney carriage legislation. As a result, the introduction of a licensing regime for pedicabs would require new primary legislation. A bespoke licensing regime could be created specifically to deal with pedal powered and electrically assisted pedicabs and cover all potential operations beyond just plying for hire. This new licensing regime could be based on vehicle standards set down by DfT and its agencies such as VOSA.
- 4.6 Any licensing would need to be by a voluntary scheme, in order to demonstrate that all non-legislative avenues have been explored. Therefore, should the scheme be successful, the need for licensing will be removed and the parliamentary process avoided.

Option 4 – Press Government for legislation to regulate pedicabs

- 4.7 The Mayor's preferred approach is to persuade the Government that legislation is required to regulate and license the pedicab industry. This would ensure that there are clear safety standards for pedicabs and that all such vehicles are required to be registered as for any other class of passenger carrying vehicle. Such legislation would also provide the framework for local licensing schemes

specifically tailored to the pedicab industry.

- 4.8 Concurrently, the Mayor is keen to encourage voluntary registration schemes, such as that being developed by WCC. This would enable the pedicab industry to participate in the development of appropriate regulations. In all likelihood this would underscore the need for a clear national legal framework to ensure effective regulation and enforcement. The Mayor has asked TfL to support WCC in the development of the voluntary scheme. Option 4 is the recommended option.

5 PROPOSED NEXT STEPS

- 5.1 TfL will support WCC in taking forward its voluntary scheme and will work with the MPS to assist with enforcement activity.
- 5.2 TfL will continue to work with WCC and other boroughs to press for specific primary legislation to establish an effective legal framework for pedicabs including specific licensing powers for the boroughs.
- 5.3 TfL will continue to promote the provisions of the London Local Authorities and Transport for London (No. 2) Bill to allow for more effective enforcement of moving traffic offences and parking contraventions against pedicabs.
- 5.4 The Public Carriage Office will no longer lead on this issue.

6 RECOMMENDATION

- 6.1 The Panel is asked to NOTE the report.

7 CONTACT

- 7.1 Contact: Jeroen Weimar, Chief Operating Officer, Enforcement and Compliance, Surface Transport.
Phone: 020 3054 0187