

Subject:	Hackney Carriage Intended 'Use' Policy	Status:	For Publication
Report to:	Licensing Committee	Date:	25 th January 2016
Report of:	Licensing and Enforcement Manager	Portfolio Holder:	Legal and Democratic Services
Key Decision:	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required: No	Attached:	No
Biodiversity Impact Assessment	Required: No	Attached:	N/A
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1.	RECOMMENDATION(S)
1.1	The Licensing Committee are asked to: - To recommend Council adopt the Hackney Carriage Intended 'Use' Policy at <u>Appendix A</u>
1.2	To recommend to Council that all future amendments to the Hackney Carriage Intended 'Use' Policy to be delegated to the Licensing Committee.

2. PURPOSE OF REPORT

- 2.1 This report gives an overview for Licensing Committee and recommends the adoption of The Hackney Carriage Intended 'Use' Policy appended at Appendix A which has been drafted with case law in mind.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **Regenerating Rossendale:** This priority focuses on regeneration in its broadest sense, so it means supporting communities that get on well together, attracting sustainable investment, promoting Rossendale, as well as working as an enabler to promote the physical regeneration of Rossendale.
 - **Responsive Value for Money Services:** This priority is about the Council working collaboratively, being a provider, procurer and a commissioner of services that are efficient and that meet the needs of local people.
 - **Clean Green Rossendale:** This priority focuses on clean streets and town centres and well managed open spaces, whilst recognising that the Council has to work with communities and as a partner to deliver this ambition.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- The aim of the legislation (Town Police Clauses Act 1864) is to provide a local control over hackney carriages and their drivers, for the protection of the public. This implies that in general the licensing system should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are principally used. The case law is at odds with the aim of the legislation and the Hackney Carriage Intended 'Use' policy seeks to bring control back to Rossendale.

5. BACKGROUND AND OPTIONS

- 5.1 The remote use of hackney carriages to fulfil pre-booked hirings was dealt with in the case of Brentwood Borough Council v Gladen. In that case the question arose as to whether a licensed hackney carriage with a licensed hackney driver could be used to fulfil a pre-booked

journey in another district. Mr Gladen was accused of knowingly operating the vehicles as private hire vehicles in a controlled district without a current operator's licence under section 55 of the Local Government (Miscellaneous Provisions) Act 1976. The High Court considered the application of section 46.

The definition of "private hire vehicle" in section 80 specifically excludes hackney carriages. Section 46(1)(d) provides that no one shall in a controlled district operate any vehicle as a private hire vehicle without an operator's licence. The High Court found that it was not necessary for a licensed hackney carriage and driver to be subject to the requirements of an operator's licence. As a result of this decision it became increasingly common for hackney carriages to be used to fulfil pre-booked hirings in remote districts such as Rossendale.

- 5.2 The case of Newcastle City Council v Berwick-upon-Tweed Borough Council was concerned with the influx of hackney carriages licensed in Berwick, used by private hire operators in Newcastle to fulfil their pre-booked hire contracts. Newcastle sought a declaration that it was unlawful for Berwick to grant a hackney carriage licence to a proprietor where it was not satisfied that the vehicle would be used to ply for hire in Berwick.

The High Court found that the local authority concerned had discretion as to whether to grant a hackney carriage licence or not. The Court considered policy and objectives namely to promote public safety, ensure vehicles are easily identifiable and that they are properly regulated.

The Court declined to direct Berwick as to how to exercise the discretion but did consider what the relevant considerations were. Importantly, the Court concluded that the licensing regime is local in character. It was the intention behind the licensing system that it should operate in such a way that the licensing authority is the authority for the area in which vehicles are generally used. The Court considered that a local authority is not only entitled, but obliged, to have regard to:

- whether the applicant intends to use the licence to operate the hackney carriage to ply for hire in the authority's area; and
- whether the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area.

Newcastle sought a declaration that Berwick should cease to issue licences unless satisfied that the applicant intended to ply for hire in the area. The Court declined to go that far. It was a matter for the local authority to decide whether to exercise the power to seek information from applicants or whether to seek information by means of an application form. It was suggested that there should be an element of flexibility in the exercise of the discretion in cases in which proprietors intend to use vehicles in a number of different authorities.

- 5.3 This item was presented to a meeting of the Licensing Committee on 10th November 2015 where it was resolved: That the item be deferred to a future meeting of the Licensing Committee to allow further work to be carried out on the revised Policy.
- 5.4 Policy workshops have taken place with elected members of the Licensing Committee on 30th November 2015 and 21st December 2015.
- 5.5 A policy workshop with members of the Rossendale Taxi Association took place on 15th December 2015 where the Rossendale Taxi Association made submissions.
- 5.6 As a result of such workshop discussions, the Intended Use Policy has since been revised to include proposed "transitional arrangements" if the Council is satisfied that a licence which

expires between the adoption of this policy and 31st March 2017 would not be used to a material extent within the Borough of Rossendale under the terms of the licence for which the application is made, the Council will renew the licence once only to allow the licensee to become licensed elsewhere in order that they can continue to work in the area that they have built up their business.

There have been some other minor revisions to provide clarity in particular the policy has been revised to ensure that the hackney carriage trade are not restricted to obtaining their work from plying for hire as there is an inherent legal right to undertake pre-booked work.

5.7 The Intended Use Policy has been drafted with the above case law in mind. In fact, the High Court judgment in Newcastle City Council v Berwick is specifically referred to within the policy. The policy includes an introduction and gives reasons for the introduction of the policy demonstrating that regard has been had to the relevant case law and that relevant considerations have been taken into account. In brief:

Paragraph 9

This sets out the principles said to be established by the judgment in Newcastle v Berwick case.

Policy HC1

This deals with applications for the grant of a new hackney carriage licence

Policy HC2

This has regard to applications for the renewal of a hackney carriage licence

Policy HC3

This concerns the transfer of ownership of a hackney carriage licence

Policy HC4

This deals with a change of vehicle licensed as a hackney carriage

It is important that the policies in relation to new applications, renewals and transfer of ownership are coherent and consistent, even if there needs to be a greater degree of flexibility in relation to renewals. It is right to say that the decision in the Newcastle case concerned new applications under section 37 of the Town Police Clauses Act 1847. However, section 60 of the Local Government (Miscellaneous Provisions) Act 1976 empowers an authority to suspend, revoke or refuse to renew a vehicle licence for “any other reasonable cause. The principle of local regulation and the paramount consideration of public safety must still apply on renewals and transfers. For this reason “any other reasonable cause” must include the fact that an applicant does not intend to use the vehicle to ply for hire to any material extent within the area and the fact that an applicant intends to use the vehicle remotely from the area to fulfil private hire bookings.

The policy recognises that there may be hardship in certain cases in which current licence holders have earned their livings or built up businesses in reliance on licences granted without regard to the Judgment in the Newcastle case.

5.8 **Matters arising from the Consultation**

Excluding those within a 50 mile radius from the Policy

There is no justification for limiting the applicability of the policy in this way. The mischief at which the policy is aimed still applies. The problem of regulating hackney carriages out of area arises whether the work is being carried out in a neighbouring borough or a distant one.

How to deal with current licence holders – application of the policy and financial impact

The consultation responses threw up two extreme views as to the position of current licence holders operating remotely. On the one hand, drivers licensed in other areas and other councils suggest that the power of review should be exercised in order to deal with the problem immediately. On the other hand, those drivers affected point to the fact that they have invested significant sums of money in the expectation that they would be able to operate in a different area.

The Licensing and Enforcement Unit has not positively encouraged applications from proprietors proposing to work outside the area, such applications have been neither encouraged nor discouraged. It is important to note that there is nothing to stop anyone from making an application for a private hire licence in the area in which they wish to work. The Intended Use Policy gives guidance as to which is the appropriate authority.

Some responses to the consultation point out that there is a significant delay in the application process in some areas and this could prevent drivers from working in the short term. This may well be the case but the discretion allowed for on renewal applications in the Intended 'Use' Policy ought to be able to cater for such cases.

The revocation of a licence may be an infringement of a licence holder's property rights under Article 1 of the First Protocol of the European Convention on Human Rights. Such an infringement can be justified if it is in the public interest and it is proportionate. Ensuring that there is proper regulation of taxis is clearly in the public interest and is necessary in a democratic society.

In this case, to exercise a power of review (as suggested in some responses) in order to revoke existing hackney carriage licences used remotely (prior to renewal) may well be disproportionate, having regard to the fact that many proprietors will have acted to their detriment (particularly financially) in applying for the licence in the first place.

Similar arguments may be raised on a renewal but with less force. The discretion allowed for in the proposed policy ought to be sufficient to deal with cases in which real hardship can be shown.

The transitional arrangement proposed tackles such matters giving a reasonable time period to obtain a licence elsewhere.

Lack of clarity/ subjective wording of the policy

A concern is expressed that the wording of the policy is too vague, in particular that the words "to a material extent" and "exceptional circumstances" are not further defined. The policy is a document which should assist potential applicants to know when a licence will be granted but also allow for the exercise of discretion by the Council. It is clear that the central aim of the policy is to ensure that a licence is granted by and regulated by the appropriate authority.

Given the difficulty in knowing precisely what the impact will be in individual cases, it is important that there is a sufficiently broad discretion to allow for the balancing of competing interests. The policy indicates that each case will be decided on its merits and this will allow individual circumstances to be taken into consideration. There does not need to be any further definition of "exceptional circumstances" but such cases are likely to include cases in which a vehicle is used in more than one area and cases in which the immediate application of the presumptions is likely to cause real hardship to a vehicle licence holder.

In consultation with members and the Trade, amendments to the policy have been made in order to address these concerns.

Enforcement/ power of review

When new licences are granted or renewed following the introduction of the Intended Use Policy, the question arises as to how the remote use of vehicles will be monitored and the circumstances in which licences might be reviewed.

It is clear that some respondents to the consultation believe that drivers will continue to work remotely even if their stated intention says otherwise. The position can only be monitored through greater cooperation and the sharing of information between authorities. Except in the most obvious cases in which there is clear evidence, it is difficult to see how a licence could be revoked on the grounds that the vehicle is used predominantly or entirely remotely from the area. It seems more realistic that such information will be taken into consideration on an application to renew.

Competition

Representations have been made on both sides that there is or will be unfair competition. Some argue that the Rossendale drivers working remotely have an unfair financial advantage (presumably through lower insurance premiums and perhaps cheaper licences). Some argue that the introduction of the policy will unfairly prejudice the position of Rossendale drivers and restrict competition. These are not relevant considerations. The policy does not serve to restrict competition unfairly but simply to ensure that the appropriate authority grants and regulates the licence.

Council Revenue

Some respondents have pointed to the revenue to the Council from the administration of the licensing regime. Some suggest that this is revenue which the Council should seek to maintain and some suggest that it is a factor which has influenced the position of the Council in relation to remote working. This is clearly not a relevant consideration when determining licensing policy and should not be taken into account.

Inability to regulate drivers using vehicles remotely

Many complaints are made about the quality of the service provided by Rossendale drivers using hackney carriages to work remotely. However, the evidence seems to be largely anecdotal and there is little in the way of hard evidence. The complaints include poor local knowledge and plying for hire.

It is inevitable that there will be obstacles to proper regulation if hackney carriages are being used to fulfil private hire contracts remotely. It is clear from the Newcastle case that this is a relevant consideration and justifies the introduction of an Intended Use Policy.

Failure to insure vehicles properly

Insurance is clearly an important matter. It is essential that any vehicle licenced by the Council is properly insured to cover the area in which work is to be carried out and the nature of that work. The particular concern here is that proprietors of hackney carriages are failing to disclose to their insurers that they are working remotely from Rossendale. There is no evidence of this other than anecdotal evidence from responses to the consultation. Appropriate requests for information are made to ensure vehicles are properly insured.

The concerns expressed about insurance should be addressed by the introduction of the Intended Use Policy and, if necessary, requiring confirmation of appropriate insurance in cases in which the intention is to use a vehicle in another area.

The Law Commission proposals/ effect of deregulation

The Law Commission Report dealt with the problem of out of area working but considered that the problem would be largely resolved by the introduction of national standards and cross-border enforcement powers. Such standards and enforcement powers may eventually be introduced but for the time being the problem of regulating those working out of area remains.

From 1st October 2015 private hire operators are able to sub-contract bookings to other operators in other districts. This may have an impact on the ability of authorities to regulate vehicles operating within their area. However, it does not change the principle that, in so far as is possible, the licensing and regulation of vehicles should be carried out locally.

There is no reason why deregulation should affect the decision as to whether to introduce the Intended Use Policy. The policy will of course be kept under review.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

6.1 It is anticipated that there will be a significant reduction in the number of applications and therefore fees generated in future years. The Council will continue to ensure that income and expenditure is matched, however, the contribution to expenditure is anticipated to reduce in future years by c. £200,000 pa.

7. MONITORING OFFICER

7.1 The Council must make a decision based on all relevant information and following consideration of all relevant Council policies, legislation and case law. The Council has clearly set out its reasoning for the introduction of the policy. All other matters are set out in the body of the report.

8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

- 8.1
- Consultation period ran from 3rd June until 31st July 2015 via the Council website, Taxi Association and other Local Councils in Greater Manchester and Yorkshire, Elected Members and Legal and Democratic portfolio holder.
 - 75 responses were received including from:
 - 8 Councils responded; plus
 - West Yorkshire prepared a combined response
 - 3 Elected Councillors
 - 3 Members of Parliament
 - 2 Hackney Carriage Driver Employers
 - 1 insurance company
 - 57 Hackney & Private Hire Drivers; of which
 - 48 are licensed elsewhere; and
 - 9 are licensed by Rossendale

Further consultation workshops have been carried out with the trade and members as outlined in the body of the report.

8.2 There are no specific human resources implications.

8.3 An EIA initial assessment has been undertaken and it has been identified there are no disproportional impact and a Full EIA is not required.

9. CONCLUSION

- 9.1 That the Licensing Committee resolves to recommend Council adopt the Hackney Carriage Intended 'Use' Policy and all future amendments to the Hackney Carriage Intended 'Use' Policy to be delegated to the Licensing Committee.

Background Papers

Document	Place of Inspection
1. Brentwood Borough Council v Gladen [2004] EWHC 2500 [2005] R.T.R. 12	Licensing and Enforcement Unit
2. Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin)	Licensing and Enforcement Unit
3. Law Commission Report on Taxi and Private Hire Services, May 2014, Chapter 3.44	Licensing and Enforcement Unit
4. Proposed new section 55A of the Local Government (Miscellaneous Provisions) Act 1976	Licensing and Enforcement Unit
5. Town Police Clauses Act 1847	Licensing and Enforcement Unit
6. Local Government (Miscellaneous Provisions) Act 1976	Licensing and Enforcement Unit
7. Transport Act 1985	Licensing and Enforcement Unit

Appendices

Document	Appendix Number
Hackney Carriage Intended 'Use' Policy	<i>Appendix A</i>