

BUSINESS DIRECTORATE

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This matter is being dealt with by:

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Our reference: CLB/Z26-860

Your reference: Rossendale Taxi Association

12th January 2017

Dear Mr Wilson

- 1 **In the matter of a proposed application for judicial review**
- 2 **Proposed Claimant: David Lawrie on behalf of the Rossendale Taxi Association (“the Association”)**
- 3 **Proposed Respondent: Rossendale Borough Council (“the Council”)**
- 4 **Decision proposed to be challenged: decision of the Licensing Committee dated 15th November 2016 amending the Council’s Policy for the Licensing of Hackney Carriage Drivers and Vehicles, Private Hire Operators, Driver and Vehicles**
- 5 **Response to a pre-action protocol letter under the Pre-Action Protocol for Judicial Review**

Further to your letter dated 28th December 2016, I have considered your client’s prospective claim for judicial review of the decision of the Council’s Licensing Committee dated 15th November 2016 to amend its “Policy for the Licensing of Hackney Carriage Drivers and Vehicles, Private Hire Operators, Driver and Vehicles” (“the Policy”). I would reply as follows:-

Issue 1: The Committee’s decision to adopt a recommendation reducing the maximum age of licensed vehicles from 7 to 5 years was “a shot in the dark”, not evidenced based and unlawful (Proposal 1)

- 1 This allegation is particularised on page 5 of your letter before claim. It is plainly founded on a purported breach of Provision 3 of the Regulator’s Code, which requires Regulators to take an evidence based approach to determining how to tackle what they regard as the most serious risks to public safety in its widest sense arising from the exercise of its taxi licensing function.

CLB /Z26-860/080656

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- 2 The allegation is factually incorrect. The decision to amend the Policy was made following the Committee's consideration of a report prepared by the Council's Licensing Manager. The report was supported by 2 appendices. The first of those appendices ("Appendix B") is entitled "Briefing Paper for Licensing Committee: Proposals re Changes to Taxi Licensing Policies". It was considered by the Committee when it made its decision.
- 3 Appendix B is presented in tabular form. The first column sets out each of the proposed amendments to the Policy. The third column describes the substance of responses received from the consultees enumerated in the second column. The fourth column makes recommendations on the final form on an amendment. The fifth column gives reasons for that recommendation.
- 4 The decision to amend the Policy to reduce the age of the licensed fleet was justified by reference to the observed fact that older vehicles "have usually been subject to extensive wear and tear". That assertion was based on the Licensing Manager's analysis of Council records, which indicated (for example) that vehicles aged between 5 and 7 years old had travelled on average about 138,000 miles which is roughly twice the average mileage recorded by a privately owned car of the same age. Moreover, although licensed vehicles must hold a valid M.O.T. certificate, the Council is conscious that there is a real risk high mileage cars are more likely to develop post-test faults than lower mileage private vehicles of the same age because of the extra wear and tear they have been subjected to. Therefore the interests of public safety (assessed against the reasonableness of the financial impact on drivers and operators) was judged to weigh in favour of the amendment.
- 5 The rationale for this amendment was well understood by the Association. The purpose of the amendment and its justification was subject to detailed public consultation. That involved posting a consultation questionnaire and an explanatory letter to some 4,500 licence holders. The Council also convened a workshop on 16th August 2016, which was attended by members of the taxi trade, who were able to, and did, explore the rationale for the amendment.
- 6 The consultation responses were then analysed, compiled into a single document and disseminated to all those who took part in the consultation exercise. That was followed up by a further workshop on 20th October 2016 which considered, amongst other things, the legality of the amendment.
- 7 In the circumstances, I am satisfied that the Committee's decision was supported by evidence and that the Association and others understood the reason for the amendment.

- 8 I should add that the amended policy incorporates flexibility which admits the licensing of older vehicles that are in an “exceptional condition”. This helps to moderate the effect of applying the policy strictly by reference to age and to strike a fair balance between public safety and the interests of drivers and operators.

Issue 2: Does the requirement for CCTV impose an additional burden on the trade that is not supported by any evidence? (Proposal 19)

- 9 This allegation is set out on page 5 of your letter. It is also rooted in a purported breach of Provision 3 of the Code. However, Appendix B illustrates the allegation is factually incorrect (see under “Question 4”). The response to consultation and the analysis of consultation response indicates clearly that this amendment is evidence based. Indeed, as you will see, it is supported by a majority of the trade in Rossendale.

Issue 3: Is the prohibition of tinted window vehicles evidence based? (Proposal 31)

- 10 This issue also alleges a breach of Provision 3 of the Code. Your letter also alleges the implementation of this amendment was postponed in or about March 2016 pursuant to a previous pre-action protocol letter which challenged its lawfulness.
- 11 The Council does not accept this amendment was postponed. Accordingly, this element of the challenge is out of time. The Council is also satisfied that the reason for this amendment is plain and obvious, was communicated clearly during consultation with the trade and is supported by material set out in Appendix B.

Issue 4: Is the introduction of a basic skills assessment and a geographical knowledge test supported on renewal by evidence or otherwise arbitrary and unreasonable? (Proposals 26, 32 and 33)

- 12 The Council accepts that some drivers have operated for several years even though they have not taken a basic literacy and geographical knowledge test. However, that does not necessarily indicate they possess the requisite knowledge to ply their trade satisfactorily. On the contrary, as was explained during consultation, and is well known by members of the Committee, the Council receives many complaints from customers. That is clear evidence of the need for these tests. Absent such evidence, I trust that you will agree, that as a matter of common sense, it is essential that licensed drivers are able to communicate effectively with their customers. That is all this amendment seeks to achieve. Tests will be set at an appropriate standard.

With respect, the Council does not understand the basis upon which, viewed objectively, this Policy is said to be unreasonable.

Issue 5: Was the process to be adopted for dealing with new applications from existing licensed drivers who wish to apply for another type of licence subject to consultation?

- 13 The allegation in this case is that in breach of paragraph 2.1 of the Code the Council failed to consult on the procedure it will adopt for dealing with applications by existing licensed drivers for another type of licence. The Council agrees it did not consult. However, it did not need to: the change of practice concerns an administrative process not a change of policy. Accordingly, there is no breach of the Code.

For the reasons I have given the Council does not accept it failed to take account of the Code or that its decision was otherwise unlawful. It will therefore contest any claim for judicial review on the grounds you have canvassed.

However, out of an abundance of caution, the Licensing Manager will report this proposed claim to the Committee and advise the Committee why it believes the claim to be unfounded by reference to the evidence that underpins the amendments. The Committee will then be invited to ratify its decision.

Other matters

I am the Legal Representative with conduct of this matter. My address is:-

Clare Birtwistle
Legal Services Manager (Monitoring Officer)
Rossendale Borough Council
The Business Centre
Futures Park
Bacup
Lancashire OL13 0BB

I am not aware of any Interested Party who would be affected by the claim.

Yours sincerely,



Clare Birtwistle
Legal Services Manager (Monitoring Officer)

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