

Appendix M

Hackney Carriage

Intended 'Use' Policy

Date of Issue: February 2016

Introduction

1. Any representation as to the law in relation to the licensing and regulation of hackney carriages contained within this policy document is intended to assist in understanding the policy and its application and represents Rossendale Borough Council's ("the Council") understanding of the law as it stands at the time when the policy was adopted. It is not intended that it should be relied upon for any other purpose and, in particular, it should not be relied upon as giving any indication as to how any other prosecuting/ regulatory authority may act or interpret the legislation and the case law.
2. Presumption
Presumption is the act of presuming or an assumption of something as true. When using presumption in applying this Policy, it follows that there will be an evidenced based belief on reasonable grounds or probable evidence. This can be rebutted if the facts are proven to be false or at least thrown into sufficient doubt by the evidence.
3. The Council has a duty to carry out the licensing functions relating to Hackney Carriage Drivers and Vehicles as set out within legislation which includes:
 - Town Police Clauses Act 1847 (TPCA 1847)
 - Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 1976)
 - Transport Act 1985 (TA 1985)
4. The purpose of this policy is to set out how the Council will deal with the licensing and renewal of hackney carriage vehicle licences and other related matters following the effects on Rossendale of the High Court Judgment - Newcastle City Council v Berwick-upon-Tweed [2008] EWHC 2369 (Admin).
5. For clarification, a hackney carriage is what most people would call a 'taxi'. Its main features are: it carries passengers in return for payment; it may advertise itself to be for hire and be hailed in a street in the area of the council with which it is licensed; or it may be hired from a taxi-rank in the area of the council with which it is licensed. It is to be distinguished from a private hire vehicle (often referred to as a 'minicab'), which also carries passengers for reward, but must be pre-booked with a private hire operator – it cannot be hailed in the street, or hired from a rank.
6. A hackney carriage may only ply for hire within the area of the relevant licensing authority. That is, the authority to which the application was made for its licence, and which granted the licence.
7. Once a vehicle has been licensed as a hackney carriage, it is a hackney carriage for the duration of that licence, wherever it is currently located, and can therefore be used for pre-booked purposes in any district in England and Wales. It is not an offence for a licensed private hire operator to take bookings for, and then dispatch a

hackney carriage licensed by a district which is different from that which licenses the operator.

8. Putting a condition on an operator's licence in an attempt to prohibit that operator from using hackney carriages licensed by a different district from that which licenses the operator will be of no effect as the High Court held in *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin) that a hackney carriage has an inherent legal right to be used for pre-booked work outside its district.
9. The High Court judgment in *Newcastle v Berwick* has provided some guidance as to an approach to be taken by a licensing authority when considering an application made to it for a hackney carriage licence by someone who does not intend to ply for hire in the area of the authority, but only applies to be granted such a licence in order to take advantage (elsewhere) of the statutory exemption from the requirements of private hire licensing.
10. The following principles appear to be established by the judgment in that case and will inform the approach of the Council when it considers an application for a hackney carriage licence in which the applicant has stated they intend to use the vehicle (either entirely or predominantly) to undertake private hire work outside the borough.
 - a) The aim of the legislation 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
 - b) A licensing authority is obliged to have regard to whether an applicant for a licence intends that the hackney carriage if licensed will be used to ply for hire within the area of that authority. It would be a lawful exercise of the authority's discretion to refuse to grant a licence to an applicant who does not so intend to do so.
 - c) A licensing authority is also obliged to have regard to whether an applicant for a licence intends that the hackney carriage will be used (either entirely or predominantly) for private hire remotely from the area of that authority. It would be a lawful exercise of the authority's discretion to refuse to grant a licence to an applicant who does so intend.
 - d) It is generally desirable therefore that a licensing authority should only licence hackney carriages which it is intended will be used within the area of that authority and should refuse licences to hackney carriages where the proprietor does not intend that it will be used to a quantifiable extent, in the area.

- e) While it is not unlawful to grant a licence to a proprietor who intends that the hackney carriage shall only be used remotely from the area of the licensing authority, it is not practical nor desirable for an authority to do so. It follows that it is only in wholly exceptional circumstances that a licence is likely to be granted where the proprietor intends that the hackney carriage shall only be used remotely from the area of the licensing authority.
- f) The discretion whether to grant or refuse remains with the licensing authority. It should not be exercised to frustrate the intention of the legislation, namely that the licensing authority ought to be the authority for the area in which the vehicle is generally used. However, there may be proprietors who wish to use their vehicles in a number of different authorities' areas and in that case there should be flexibility in the exercising of the discretion.

11. In light of the above, the Council has approved the following policies

- a. Applications for the Grant of a New Hackney Carriage Licence – Policy HC1**
- b. Applications for the renewal of a hackney carriage licence – Policy HC2**
- c. Transfer of ownership – Policy HC3**
- d. Change of vehicle – Policy HC4**

12. For the avoidance of doubt, the individual policies will only apply to those areas where the Council, when carrying out the licensing function, is able to exercise discretion. In all other instances, the requirements of the individual relevant statutory provisions will be applied.

The Policies

Applications for the Grant of a New Hackney Carriage Licence – Policy HC1

The Council when considering new applications for hackney carriage vehicle licences will determine those applications in accordance with the above principles and the overall conclusions contained within the judgment handed down by the High Court in *Newcastle v Berwick*. In summary:

- i. Applicants for new licences will be expected to demonstrate to the satisfaction of the Council a bona fide intention that the vehicle is to be used to a material extent within the Borough of Rossendale under the terms of the licence for which the application is being made.
- ii. There will be a presumption that applicants who do not intend that the vehicle is to be used to a material extent within the Borough of Rossendale will not be granted a hackney carriage licence authorising them to do so.
- iii. Even if the applicant intends to use the vehicle to a material extent within the Borough of Rossendale, there will be a presumption that applicants who also

intend that the hackney carriage is to be used predominantly remotely from the area of the Council will not be granted a hackney carriage licence.

- iv. Every application will be decided on its merits and the above presumptions may be rebutted in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that a licence can be granted without frustrating the purposes of the legislation and / or compromising public safety.
- v. In all cases, when considering applications for hackney carriage proprietors licences, the Council will place public safety above all other considerations
- vi. In relation to licences granted after the adoption of this policy, any information as to the use of the vehicle remotely, including information from other councils, will be considered by the Council in determining whether to exercise powers to suspend or revoke a licence and whether or not to renew a licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976.

Reasons for Policy HC1

13. The Council believes it has a duty to:

- Balance the human rights of both applicants and the public with the need to protect public safety through a system of local control.
- Balance the rights of individuals to seek licences and employment whether in Rossendale or otherwise.

14. The existing legislative provisions relating to the licensing of private hire vehicles, drivers and operators (Local Government (Miscellaneous Provisions) Act 1976) do not permit a licensing authority to restrict the number of licences that may be granted. It is therefore possible for an applicant seeking a licence who intends to use a vehicle for private hire remotely from the area of the relevant hackney carriage licensing authority area to seek a licence from the relevant licensing authority.

15. The Council will determine each application on its merits, but the Council will place public safety above all other considerations.

Applications for the renewal of a hackney carriage licence – Policy HC2

- i. Section 43 of the Town Police Clauses Act 1847 provides that a hackney carriage licence shall only be in force for one year. Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 introduces the concept of “renewal” and gives the Council the power to refuse to renew a licence on both specific grounds and for any other cause.

- ii. 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.
- iii. Applicants seeking to renew a licence that expires on or after the 1st April 2017 will be expected to demonstrate to the satisfaction of the Council a bona fide intention that the vehicle is to be used to a material extent within the Borough of Rossendale under the terms of the licence for which the application is made.
- iv. There will be a presumption that applicants who do not intend that the vehicle is to be used to a material extent within the Borough of Rossendale on or after the 1st April 2017 will not be granted a hackney carriage licence authorising them to do so.
- v. Even if the applicant intends to use the vehicle to a material extent within the Borough of Rossendale, there will be a presumption that applicants who also intend that the hackney carriage is to be used predominantly remotely from the area of the Council, that licence will not be renewed.
- vi. Every application will be decided on its merits and the above presumptions to refuse to renew a licence may be rebutted in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that a licence can be granted without frustrating the purposes of the legislation and/ or compromising public safety.
- vii. In all cases, when considering applications for hackney carriage proprietors' licences, the Council will place public safety above all other considerations.
- viii. In relation to licences renewed after the adoption of this policy, any information as to the use of the vehicle remotely, including information from other councils, will be considered by the Council in determining whether to exercise powers to suspend or revoke a licence and whether or not to renew a licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976.

Reasons for Policy HC2

16. There will inevitably be a large number of licensees who have been granted licences prior to the adoption of this policy, and who now earn their livings or have built up businesses in reliance on those licences. The Council recognises that there is potential that those licensees may not have their licences renewed, if the basis on which their licences were originally granted to them were to be changed so as to disentitle them to renewal. Notwithstanding, the Council believes it has a duty to:

- Balance the human rights of both applicants and the public with the need to protect public safety through a system of local control.
- Balance the rights of individuals to seek licences and employment whether in Rossendale or otherwise.

17. This Policy does however include a transitional provision which provides for a hackney carriage vehicle licence that expires between the adoption of this policy and 31st March 2017 to be renewed 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.

18. After the transitional period the Council will only consider the grant of a further renewal of a licence to an applicant not intending to use their vehicle predominantly within the Borough of Rossendale if the Council can be satisfied, and the applicant can demonstrate:-

- a. that they have acted promptly and done everything possible to licence themselves elsewhere,
- b. will suffer extreme financial hardship if the licence is not renewed, and
- c. that the renewal of the licence would not frustrate the legislative purpose or undermine public safety.

19. The existing legislative provisions relating to the licensing of private hire vehicles, drivers and operators (Local Government (Miscellaneous Provisions) Act 1976) do not permit a licensing authority to restrict the number of licences that may be granted. It is therefore possible for an applicant seeking a licence who intends to use a vehicle for private hire remotely from the area of the relevant hackney carriage licensing authority area to seek a licence from the relevant licensing authority.

20. The High Court was not directly concerned with the position on the renewal of a licence already granted but it inevitably follows that the applicant's intentions as to the use of the vehicle are also relevant to applications to renew.

21. The Council recognises that there may be applications for renewal in which it may be appropriate to consider exceptional circumstances when it may not be right, or consistent with an existing licensee's legitimate expectations, to determine the application by reference to criteria that are wholly different from those pertaining at the time of the first application and grant.

22. The Council will determine each application on its merits, but the Council will place public safety above all other considerations.

Note:

The Council recognises that, it may be necessary to take account of the financial impact on an applicant of a refusal to renew. There may be cases in which an

applicant has acted to his or her detriment (particularly financially) in reliance on the grant of a licence prior to the introduction of this policy and following the transitional provisions. In such cases the Council will allow an opportunity for an applicant to provide evidence before a final decision is taken. It will be for the applicant to show genuine hardship/ unfairness and to satisfy the Council that a licence can be granted without frustrating the purposes of the legislation and/ or compromising public safety.

Notification of the 'transfer' of hackney carriage licences

23. No statutory provision is made for the transfer of hackney carriage licences. What are commonly regarded as transfers of licences, however, regularly take place – as when a proprietor replaces a licensed vehicle, or when the “ownership” of a licensed vehicle changes, and the new owner wishes to continue to operate the vehicle as a hackney carriage under the terms of the existing licence. In the latter situation Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who “transfers” his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse to register the new proprietor: see *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583.

24. Policies have been adopted to address each of the above-mentioned situations.

Transfer of ownership – Policy HC3

- i. The transferee of a licensed hackney carriage will be requested to inform the Council whether he or she has a bona fide intention to use the vehicle within the Borough of Rossendale and also whether he or she intends to use the hackney carriage exclusively or predominantly remotely from the area. There is an obligation under Section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation.
- ii. Where there is a failure to provide the requested information, the Council will give consideration to exercising its powers of suspension of the licence under section 60 of the LGMPA 1976 until such information is forthcoming.
- iii. Transferees will be expected to have a bona fide intention that the vehicle is to be used to a material extent within the Borough of Rossendale under the terms of the licence in respect of the vehicle being transferred.
- iv. Where a transferee does not intend that the vehicle is to be used to a material extent within the Borough of Rossendale there will be a presumption (either at renewal or earlier) that the suspension or revocation of the licence under section 60 of the 1976 Act will follow.

- v. Even if the transferee intends to use the vehicle to a material extent within the Borough of Rossendale, where transferees intend that the hackney carriage is to also be used predominantly remotely from the area of the Council there will be a presumption (either at renewal or earlier) that the suspension or revocation of the licence under section 60 of the 1976 Act will follow.
- vi. Every case will be decided on its merits and the above presumptions may be rebutted in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that a licence can be granted without frustrating the purposes of the legislation and/ or compromising public safety.
- vii. In all cases, when considering reviews of hackney carriage proprietors' licences, the Council will place public safety above all other considerations.

Reasons for Policy HC3

25. The Weymouth decision requires the Council to register the name of the new proprietor of the vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court in the Newcastle v Berwick judgement, unless precautionary steps are taken. This policy is intended to put the Council in a position to respond responsibly to the transfer of a hackney carriage into the name of someone who operates outside the Borough or (more importantly) remotely from it.
26. The Council has a duty to balance the human rights of both applicants and the public with the need to protect public safety through a system of local control whilst balancing the rights of individuals to seek licences and employment whether in Rossendale or otherwise

Change of vehicle – Policy HC4

- i. Applicants seeking the grant of a hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of any material change to the intended use of the replacement vehicle from that which was expressed to the Council (if any was) when application was made for the licence which is to be replaced.
- ii. There will be a presumption that applicants who do not intend that the replacement vehicle is to be used to a material extent within the Borough of Rossendale will not be granted a hackney carriage licence authorising them to do so.
- iii. Even if the applicant intends to use the vehicle to a material extent within the Borough of Rossendale there will be a presumption that applicants who also

intend that the replacement vehicle is to be used predominantly remotely from the area of the Council will not be granted a hackney carriage licence.

- iv. Every application will be decided on its merits and the above presumptions may be rebutted in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that a licence can be granted without frustrating the purposes of the legislation and/ or compromising public safety.
- v. In all cases, when considering applications for hackney carriage proprietors' licences, the Council will place public safety above all other considerations.

Reasons for Policy HC4

27. It is assumed that if the proprietor has a legal entitlement to hold a licence that, unless there has been a change in his intentions with regard to using the vehicle within the Borough of Rossendale, there should be no reason why he should not be granted a licence for a replacement vehicle.

28. An applicant who obtained his first licence on the expressed intention of using the vehicle within the Borough of Rossendale, and who on application to replace that vehicle with another discloses that he no longer so intends, effectively engages the presumption against grant that is mentioned in the earlier policies. That presumption, however, admits of exceptions in the usual way; and the fundamental principle that each application will be determined on its merits will apply.