

**REPORT FROM: CENTRAL SERVICES AND REGENERATION
ENGINEERING AND SPECIAL PROJECTS MANAGER**

TO: TAXI LICENSING COMMITTEE

DATE: 13 JUNE 2013

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HACKNEY CARRIAGE INTENDED USE POLICY

PURPOSE OF REPORT

To consider the attached hackney carriage intended use policy for Pendle Council's hackney carriage fleet.

RECOMMENDATION

That the Executive be recommended to adopt the intended use policy as set out.

REASON FOR RECOMMENDATION

The Council wishes to ensure that applications for the grant of hackney carriage vehicle proprietor licenses are determined in accordance with the guidance given by the High Court in its judgment and the Declaration made in the case of Newcastle City Council v Berwick-upon-Tweed (2008).

BACKGROUND

1. A person who accepts advanced or pre-bookings for a hackney carriage does not require a private hire operator's licence and can use the vehicle for private hire purposes in any local authority area.
2. East Lancashire local authorities have agreed to adopt the attached "intended use policy" which will help in the control of hackney carriages working in other authorities.
3. Rossendale Borough Council has seen a dramatic increase in the number of hackney carriage vehicle applications as they do not have a limit and have no knowledge test to deter applicants. Some of their applicants live as far away as London and have no intention of working in the Rossendale area. This is causing problems as many Rossendale taxis are working in Manchester, Bury, Hyndburn, Burnley and other areas.

4. As Pendle has a limit on the number of hackney carriage licences it issues, it has not been a problem and we have not seen any hackney carriages licensed in other areas coming into Pendle. A small number of our hackney carriages have gone to work in other areas.
5. Berwick-upon-Tweed, like Rossendale, did not have a limit on the number of hackney carriage licences issued but Newcastle did. Staff found that drivers from Newcastle were getting licensed in Berwick and then using these taxis in Newcastle, which upset the trade.
6. A High Court case followed which addressed this issue. The case was Newcastle City Council v Berwick-upon-Tweed 2008 and the judge addressed concerns that arise from the concept of vehicles working remotely from the licensed area. Some of these are:
 - The licensing authority will not easily keep their licensed fleet under observation.
 - It will be carrying out its enforcement powers from a distance.
 - The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in its area.
 - Unlike its own licensed vehicles, the hackney carriage from remote areas will not be subject to the same conditions and byelaws as the local vehicles.
7. The judge added that Section 37 of the 1847 Town Police Clauses Act gives the authority concerned a discretion as to whether to grant a licence or not, the local imposition of conditions and byelaws, local testing and enforcement together with the other statutory provisions. Thus, the licensing regime is local in character. In addition, it can be seen that most of the provisions have public safety much in mind. In his judgment, a local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of hackney carriages which operate remotely from the area where they are licensed.

CONCLUSION

8. The Council will have to use its discretion when applying this policy and it is suggested that any applicants who state they will work predominately out of the area should be allowed to state their case before the Taxi Licensing Committee before a decision is made on their application.

IMPLICATIONS

Policy: The proposed policy is appended to this report for approval.

Financial: None arising directly from the report.

Legal: There will be a right of appeal for any refusal or revocation of a licence.

Risk Management: None arising directly from the report.

Health and Safety: None arising directly from the report.

Sustainability: None arising directly from the report.

Community Safety: None arising directly from the report.

Equality and Diversity: None arising directly from the report.

APPENDICES

Appendix: Draft Intended Use Policy.

LIST OF BACKGROUND PAPERS

Newcastle City Council v Berwick-upon-Tweed (2008).

INTENDED USE POLICY FOR THE LICENSING OF HACKNEY CARRIAGES

All applications for the grant, renewal, transfer, or new vehicle that are considered not to comply with this policy will be referred to the Taxi Licensing Committee for decision.

1. Applications for the New Grant of a Hackney Carriage Licence

- 1.1 Applicants for new hackney carriage vehicle proprietor licences shall be expected to demonstrate a bona fide intention to ply for hire within the local authority area of Pendle under the terms of the licence for which application is being made.
- 1.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the local authority area of Pendle will not be granted a hackney carriage vehicle proprietor's licence authorising them to do so. Each application will continue to be decided on its merits.
- 1.3 Even where the applicant intends to ply for hire to a material extent in the Pendle local authority area, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

2. Applications for the Renewal of a Hackney Carriage Licence

- 2.1 Applicants for the renewal of licences will be required to inform the Authority whether they have a bona fide intention to ply for hire within the Pendle local authority area under the terms of the licence for which application is being made.
- 2.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within Pendle will not be granted a hackney carriage vehicle proprietor's licence authorising them to do so. Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") gives the authority a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.
- 2.3 Even where the applicant intends to ply for hire to a material extent in the Pendle local authority area, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

3. Transfer of Ownership of Hackney Carriage

- 3.1 The transferee of a licensed hackney carriage shall be asked to inform the Authority whether they have a bona fide intention to ply for hire within the Pendle local authority area. Transferees should note the obligation under Section 73 the 1976 Act to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation.
- 3.2 Transferees of existing licences shall be expected to have a bona fide intention to ply for hire with the Pendle local authority area under the terms of the licence in respect of the vehicle being transferred.
- 3.3 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent within the Pendle local authority area and/or intends to trade in another local authority area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence. Where the transferee proposes to operate remotely from Pendle there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

4. Change of Vehicle – When a Proprietor Replaces a Licensed Vehicle

- 4.1 Applicants seeking the grant of a hackney carriage vehicle proprietor's licence for a vehicle intended to replace another licensed vehicle shall be asked to inform the authority of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within Pendle will not have the new licence granted. Even where the applicant intends to ply for hire to a material extent in Pendle, if the intention is to trade in another local authority area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

5. Revocation of Licence

- 5.1 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within Pendle but is subsequently found not to be plying for hire to a material extent in Pendle and/or to be trading in another local authority area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be reviewed by the Authority which could lead to the revocation of that licence.

6. Exceptional Circumstances

- 6.1 Each application will be decided on its merits. However, the presumptions that intended use is to ply for hire to a material extent within Pendle will be

rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, applicants will be expected to be able to satisfy the Authority that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if it were not suspended or revoked as the case may be.

7. Reasons for Policy

- 7.1 The Authority wishes to ensure that applications for the grant of hackney carriage vehicle proprietor licences are determined in accordance with the guidance given by the High Court in its judgment and the Declaration made in the case of *Newcastle City Council v Berwick-upon-Tweed* (2008).
- 7.2 The Authority is required to register the name of the new proprietor of a hackney carriage vehicle. Section 3 of this policy is intended to put the Authority in a position to respond responsibly to the transfer of a Pendle hackney carriage into the name of someone who operates outside Pendle or remotely from it.
- 7.3 Unless there has been a change in the vehicle proprietor's intentions with regard to plying for hire within Pendle, there should be no reason why he should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within Pendle 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 earlier.