

## Intended Use Policy

### 1. Introduction

1.1 Any representation as to the law in relation to the licensing and regulation of private hire vehicles and hackney carriages contained within this policy document is intended to assist in understanding the policy and its application and represents the Council's 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.

1.2 At Allerdale Borough Council ('the Council'), the Licensing Committee is authorised to discharge the functions of licensing.

1.3 For many years, the Council has chosen to licence Hackney Carriage Vehicles within Allerdale without imposing restriction on numbers.

1.4 The Council had no control over whether these Hackney Carriage Vehicles work within the Borough of Allerdale. There has been an increase in the numbers of applicants applying for Hackney Carriage Licences who intend to work as Private Hire Drivers in other authorities.

1.5 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:

- The Local Government (Miscellaneous Provisions) Act 1976
- The Town Police Clauses Act 1847
- The Transport Act 1985

1.6 Section 57 of the Local Government (Miscellaneous Provisions) Act 1976 states that "a district council may require any applicant for a licence under the Act of 1847 or under this Part of the Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence".

1.7 The purpose of the Hackney Carriage Intended Use 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 of the High Court judgement – Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin) ('the Judgement').

1.8 It is difficult to monitor Hackney Carriages licensed by Allerdale being driven in other areas of the country.

1.9 The aim of the Hackney Carriage Intended Use Policy is to provide local control over Hackney Carriages and their drivers, for the protection of the travelling public.

1.10 For clarification, a Hackney Carriage is what most people refer to as a 'taxi'. Its main features are that:

- it carries passengers in return for payment
- it may advertise itself to be for hire and be hailed in a street in a borough that it is licensed
- it may be hired from a taxi rank within the borough in which it is licensed

1.11 Within Allerdale, a Hackney Carriage Vehicle can be distinguished as it will have a taxi sign on the roof of the vehicle, self-adhesive door signs and front and rear vehicle plates. A hackney carriage licensed within Allerdale 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. It can be distinguished from a Private Hire Vehicle which also carries passengers for reward, but must be pre-booked with a Private Hire Operator and cannot be hailed in the street or hired from a rank.

1.12 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.

1.13 Putting a condition on an operator's licence attempting to prevent that operator from using hackney carriages licensed by a different district from that which licenses the operator will be of no effect, as a hackney carriage has an inherent legal right to be used for pre-booked work outside its district.

1.14 The High Court judgement in the Judgement 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 vehicle licensing.

1.15 The following principles appear to be established by the judgement in that case and will inform the approach of the Council when it receives an application for a hackney carriage licence, when having asked the question required by the high court judgement "do you intend to use this vehicle for pre-booked work outside this district?" and given the answer "yes":

- 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 ply for hire within the area of that authority and should refuse licences to hackney carriages that do not intend to ply for hire, 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.

1.16 In light of the above, the Council proposes the Hackney Carriage Intended Use Policy to be made up of the following sections:

- a. Applications for the grant of a new Hackney Carriage Licence
- b. Applications for the renewal of a Hackney Carriage Licence
- c. Transfer of Ownership
- d. Change of Vehicle

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

## 2. Declaration

2.1 All applicants will be expected to complete an intended use declaration as part of the application process. The declaration will be as follows (or will be drafted in such a way as to have similar effect and meaning):

### **DECLARATION FOR THE INTENDED USE OF HACKNEY CARRIAGES**

I have been advised that, in carrying out its functions under section 37 of the Town Police Clauses Act 1847 and section 57(1) of the Local Government (Miscellaneous Provisions) Act 1976, the Council expects applicants for Hackney Carriage vehicle licences to demonstrate a bona fide intention to ply for hire within the administrative area of Allerdale Borough Council.

I hereby declare that it is my intention that the vehicle licensed by me will be used entirely and/or predominantly in the Borough of Allerdale and I understand that should this not be the case either at the date hereof or at any time thereafter, the Council may suspend, revoke or refuse to renew the licence under section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.

Name \_\_\_\_\_

Vehicle Registration \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

### 3. The Policy

#### 3.1 **Applications for the grant of a new Hackney Carriage Licence**

3.1.1 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 Allerdale or otherwise.

3.1.2 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.

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

3.1.4 The Council when considering new applications for hackney carriage proprietors' licences, more commonly referred to as hackney carriage vehicle licences, will determine those applications in accordance with the above principles and the overall conclusions contained within the High Court Judgement of Newcastle City Council v Berwick upon Tweed ('the Judgement'). 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 ply for hire to a material extent within the Borough of Allerdale 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 to ply for hire within the Borough of Allerdale will not be granted a hackney carriage licence authorising them to do so.

- iii. Even if the applicant intends to ply for hire to a material extent within the Borough of Allerdale, there will be a presumption that applicants who 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 the intended use 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.

#### **4. Applications for the Renewal of a new Hackney Carriage Licence**

4.1 There will inevitably be a large number of licensees who have been granted licences prior to the Judgement 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 licenses 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 Allerdale or otherwise.

4.2 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 to seek a licence from the relevant licensing authority.

4.3 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.

4.4 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.

- 4.5 The Council will determine each application on its merits, but the Council will place public safety above all other considerations.
- 4.6 The Council recognises that, in the short term, 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. 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.
- 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 1847 introduces the concept of "renewal" and gives the Council the power to renew a licence on both specific grounds and for any other cause.
  - ii. Applicants seeking to renew a licence will be expected to demonstrate to the satisfaction of the Council a bona fide intention that the vehicle is to be used to ply for hire to a material extent within the Borough of Allerdale under the terms of the licence for which the application is made.
  - iii. There will be a presumption that applicants who do not intend that the vehicle is to be used to a material extent to ply for hire within the Borough of Allerdale will not be granted a hackney carriage licence authorising them to do so.
  - iv. Even if the applicant intends to ply for hire to a material extent within the Borough of Allerdale, there will be a presumption that applicants who 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.
  - v. 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.
  - vi. In all cases when considering applications for hackney carriage proprietors' licences, the Council will place public safety above all other considerations.
  - vii. In relation to licences granted after the adoption of the intended use 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.

#### *4.7 Notification of the 'transfer' of hackney carriage licences*

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.

### **5. Transfer of ownership**

5.1 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 recent decision of the High Court, unless precautionary steps are taken. This policy is intended to put the Council in a position to respond responsibly to the transfer of an Allerdale hackney carriage into the name of someone who operates outside the Borough or (more importantly) remotely from it.

5.2 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.

- 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 to ply for hire within the Borough of Allerdale 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 an 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 LG(MP)A 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 ply for hire to a material extent within the Borough of Allerdale 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 to ply for hire within the Borough of Allerdale, 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 ply for hire to a material extent within the Borough of Allerdale, where transferees intend that the hackney carriage is to 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.

## **6. Change of vehicle**

6.1 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 plying for hire within the Borough of Allerdale, there should be no reason why he should not be granted a licence for a replacement vehicle.

6.2 An applicant who obtained his first licence on the expressed intention of plying for hire within the Borough of Allerdale 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 applications will be determined on its merits will apply.

- 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 to ply for hire within the Borough of Allerdale will not be granted a hackney carriage licence authorising them to do so.
- iii. Even if the applicant intends to ply for hire to a material extent within the Borough of Allerdale there will be a presumption that applicants who 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.