

<b>Subject:</b>	Hackney Carriage Intended 'Use' Policy	<b>Status:</b>	For Publication
<b>Report to:</b>	Council	<b>Date:</b>	24 <sup>th</sup> February 2016
<b>Report of:</b>	Licensing and Enforcement Manager	<b>Portfolio Holder:</b>	Legal and Democratic Services
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
<b>Equality Impact Assessment:</b>	Required: No	Attached:	No
<b>Biodiversity Impact Assessment</b>	Required: No	Attached:	N/A
<b>Contact Officer:</b>	Tracy Brzozowski	<b>Telephone:</b>	01706 238602
<b>Email:</b>	tracybrzozowski@rossendalebc.gov.uk		

<b>1.</b>	<b>RECOMMENDATION(S)</b>
1.1	Full Council are asked to: - Adopt the Hackney Carriage Intended 'Use' Policy at <a href="#">Appendix A</a>
1.2	Delegate all future amendments to the Hackney Carriage Intended 'Use' Policy to the Licensing Committee, and amend the Constitution at Part 3 section 7.2 to include this delegation in the Terms of Reference of the Licensing Committee.
1.3	Approve that delegation be given to Licensing and Enforcement Manager following consultation with the Chair or Vice Chair of the Licensing Committee, for the refusal of an application for the grant, renewal, transfer or new owner application on the grounds that the vehicle is not to be predominantly used in the Borough in line with the Council's Intended 'Use' Policy.

## 2. PURPOSE OF REPORT

- 2.1 This report gives an overview for Council 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 10<sup>th</sup> 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 30<sup>th</sup> November 2015 and 21<sup>st</sup> December 2015.
- 5.5 A policy workshop with members of the Rossendale Taxi Association took place on 15<sup>th</sup> 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 31<sup>st</sup> 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 Recommendation from the Licensing Committee**

At a meeting of the Licensing Committee on Monday 25<sup>th</sup> January 2016, elected members resolved:

1. That Council are recommended to adopt the Hackney Carriage Intended Use Policy.
2. That Council recommend that all future amendments to the Hackney Carriage Intended Use Policy are delegated to the Licensing Committee.

**5.8 Consultation with the Governance Working Group**

Members are asked to approve that delegation be given to Licensing and Enforcement Manager following consultation with the Chair or Vice Chair of the Licensing Committee, for the refusal of an application for the grant, renewal, transfer or new owner application on the grounds that the vehicle is not to be predominantly used in the Borough in line with the Council’s Intended ‘Use’ Policy. This delegation has been included within the Constitution Review report, and the Governance Working Group have been consulted regarding the inclusion of this delegation (should the policy be approved by members).

- 5.9 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.

### **5.10 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 1<sup>st</sup> 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 3<sup>rd</sup> June until 31<sup>st</sup> 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 Council resolves to 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.

9.2 That Council approve that delegation be given to the Licensing and Enforcement Manager following consultation with the Chair or Vice Chair of the Licensing Committee, for the refusal of an application for the grant, renewal, transfer or new owner application on the grounds that the vehicle is not to be predominantly used in the Borough in line with the Council's Intended 'Use' Policy.

### 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>

# Hackney Carriage Intended 'Use' Policy

Date of Issue: Draft 2016

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## 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 1<sup>st</sup> 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 1<sup>st</sup> 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 31<sup>st</sup> 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 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 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.