

PUBLIC PROTECTION COMMITTEE: 1 November 2016

Report of the Head of Shared Regulatory Services

**INTRODUCTION OF 'INTENDED USE/ REMOTE TRADING POLICY' FOR
HACKNEY CARRIAGES**

1. Background

- 1.1 Members may be aware that some authorities across the UK have been experiencing a high number of applications for Hackney Carriage Vehicle licences, and Joint Hackney Carriage and Private Hire Driver licences from applicants who live in different local authorities to the one in which they are applying to. After a test case in the North East of England, the precedent was set that any person could apply for a hackney licence and work anywhere in the UK as a Private Hire Vehicle (PHV) driver.
- 1.2 There are a number of guidelines and conditions governing the suitability of persons and vehicles issued with licences and also how those licences operate. These conditions are decided by each authority, having regard to whether they're proportionate to local conditions and support a viable fleet within the authority. With this in mind, there is the potential that this situation could cause confusion for the public, as different types and colour vehicles from out of area marked "Hackney Carriage" operate throughout the city. This could also present a significant risk to public safety, as the authority that the vehicle is operating in does not have the same enforcement powers against driver and vehicles from outside authorities.
- 1.3 A notable authority to have dealt with this problem is Shropshire. They were faced with a large number of their licensed vehicles operating out of Birmingham and the West Midlands. For this reason they adopted an 'Intended Use' policy in February 2012. The justification for such a policy was on the grounds of public safety, in that if vehicles are predominantly operating outside of the area where they are licensed then they are not available to be spot checked by officers when carrying out enforcement.

- 1.4 A number of Welsh authorities have also adopted Intended Use policies as a result of identifying that their hackney carriage vehicles were remotely trading in areas such as Bristol.
- 1.5 The draft Intended Use Policy is detailed in Appendix A.

2. Relevant Issues

- 2.1 In 2008 a High Court Judgement – Newcastle City Council v Berwick-upon-Tweed established a principle that it was lawful for Hackney Carriages to trade as Private Hire Vehicles, (accepting only pre bookings) in a local authority area other than that which issued the licences (the home authority). See Appendix B for full judgement.
- 2.2 The judgement in itself was acceptable, in that many licensed vehicles trade to some extent in areas other than the home licensing authority where licences are issued. For example, residents of Cardiff may wish to travel to or from neighbouring Boroughs, such as the Vale of Glamorgan, Bridgend, Newport, or Caerphilly and this generally does not present a problem to the trade or the travelling public, being a legitimate aspect of a journey.
- 2.3 However, the case precedent arose as a result of a challenge from a licensing authority (Newcastle City Council) against a neighbouring licensing authority (Berwick-upon-Tweed) where there was a considerable disparity between standards of vehicles, conditions of licence and fees.
- 2.4 There were a disproportionate number of licence applications, (both personal and vehicle), in Berwick-upon-Tweed, where applicants sought to take advantage of less stringent conditions of licence and preferential fees, although vehicles and drivers were actually intending to trade exclusively in Newcastle.
- 2.5 The position of Berwick-upon-Tweed was that the less stringent conditions and lower fees applied to their licences were proportionate to the local conditions and supported a viable fleet in their Borough.
- 2.6 The position of Newcastle City Council was that the less stringent conditions and lower fees detracted from their ability to promote public safety in a city centre environment, with a consequential risk to the travelling public.
- 2.7 As a result of the decision that such activity was indeed lawful, several licensing authorities identified ‘out of area’ vehicles trading in their Boroughs and took

steps to eliminate such trade. This primarily affected larger cities, but more recently all types of areas have been affected.

- 2.8 The principle of local control is important and a licensing authority will set out its regime to ensure that its statutory obligations to provide a service are met, subject to the specific needs of its area – with the understanding that such vehicles and drivers will trade primarily within that area.

3. Risk to Public Safety

- 3.1 The key risk to public safety is that only the home licensing authority has enforcement powers to deal with any offences/anomalies. Furthermore, where trading areas are a considerable distance apart this undermines effective enforcement & control to the detriment of the travelling public.

- 3.2 It is accepted that, in principle, this activity is not unlawful, but it can present certain difficulties which have the potential to compromise public safety in the following manner:

- The Licensing Authority which issues the licence will not easily keep their licensed fleet under proper control;
- Enforcement powers have to be exercised at a distance;
- The Licensing Authority, whose district a remote vehicle has chosen to operate, has no enforcement powers over the vehicle in its area;
- The remote vehicle will not be subject to the same conditions & By-Laws as local vehicles
- The concept of local control is undermined

- 3.3 Discretion is afforded to a Licensing Authority as to whether to grant a licence. The exercise of that discretion should be considered in the context of public interest, for the protection of public safety in a manner consistent with the local policy objectives of the issuing authority – without adverse impact to neighbouring Authorities.

4. Consultation

- 4.1 The trade consultation procedure was undertaken in accordance with the consultation procedure on any policy matters. The draft reports intended for

consideration were made available at the Public Carriage Office for any interested party to provide written submissions.

5. Achievability

5.1 This report contains no equality personnel or property implications.

6. Legal Implications

6.1 Newcastle City Council v Berwick-upon-Tweed Council [2008]. In this judgement, the following statements were made:-

- “It was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used”;
- “A licensing authority, properly directing itself, is entitled and indeed obliged to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority’s area” and;
- “It must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licence to proprietors and drivers which are intending to ply for hire in that authority’s area”

6.2 Under Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 the Council may impose such conditions upon hackney carriage licences as it may consider reasonably necessary.

7. Financial Implications.

7.1 This report does not result directly in any additional financial implications.

8. Recommendation

8.1 It is recommended that members:

- (i) Note the content of the report;
- (ii) Determine the adoption of the policy in respect of intended use/remote trading of Hackney Carriages detailed in Appendix A

.

Dave Holland

13th October 2016

HEAD OF SHARED REGULATORY SERVICES

This report has been prepared in accordance with procedures approved by Corporate Managers.