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Mrs Sandra Mansell  
Team Leader - Licensing  
Licensing Team  
Derby City Council  
Council House  
Derby

Our Ref: KJR  
Your Ref:  
Date: 28 February 2014  
Please ask for: Kevin Rowland

By email only to:  
[licensing@derby.gov.uk](mailto:licensing@derby.gov.uk)

Dear Mrs Mansell,

### **Local Government (Miscellaneous Provisions) Act 1976**

#### **Private Hire Operators**

#### **The use of Hackney carriages licensed by other authorities and the Use of Third Party Vehicles**

I act on behalf of Chads Cars, Unit 4, Parker Centre, Mansfield Road, Derby, DE21 4SZ and an authorisation letter to that effect has previously been submitted to the Licensing Authority.

The reason for writing to you today is to ask the Council not to attach standard conditions 32 and 34 – 38 to the Chads Cars private hire operators licence when it is renewed in the near future.

The application to renew the operator's licence is attached.

For the sake of clarity, I do not intend to cover all the reasons as to why Chads Cars wish to have the above standard conditions removed from their private hire operators licence, because to address all the issues would take a considerable amount of time. I have therefore limited myself to commenting upon the main issues at hand and which will affect Chads Cars to the greatest extent.

From the 1<sup>st</sup> October 2013 Derby City Council introduced revised private hire operator conditions which were approved by the Taxi Licensing and Appeals Committee on the 29 August 2013.

It was our contention during the consultation period, prior to the introduction of the new conditions, and it still remains our view that a licensing authority cannot attach

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conditions to a private hire operators licence in respect of hackney carriages, whether they be licensed by that authority or any other authority. Submissions in this respect have previously been made to the Council by us and these remain valid at this time.

Section 55(3) of the Local Government (Miscellaneous Provisions Act) 1976 'The Act' allows a licensing authority to attach conditions to a private hire operators licence if they are considered 'reasonably necessary' and it is an offence under section 46(1)(d) of the Act to 'operate' any vehicle as a private hire vehicle in a controlled district without having a current licence under section 55 of the Act.

The definitions within section 80 of the Act define the following:

*"Operate" means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.*

*"Private hire vehicle" means a motor vehicle constructed or adapted to seat [fewer than nine passengers], other than a hackney carriage or public service vehicle [or a London cab] [or tramcar], which is provided for hire with the services of a driver for the purpose of carrying passengers. [Highlights by author]*

It is a matter of fact that if a person operates a booking office solely for hackney carriage vehicles (as happens with some businesses in Derby) then no licence is required and conditions cannot be attached to specify how the booking office works. Indeed, as there are no conditions, there is no requirement for any records to be kept at the premises, either in relation to the vehicle, the driver or bookings; this is because the hackney carriage has an inherent right to take bookings on its own behalf.

It has also been established by the Courts that the correct interpretation of section 46(1)(e)(i) in law is that a private hire operator who operates in the controlled district of a particular authority must only operate vehicles licensed as private hire vehicles by that particular authority (see *Dittah v. Birmingham City Council* [1993] RTR 356).

The Council has when introducing the new licence conditions decided that it must control 'third party vehicles' and the manner in which information in relation to these vehicles is held and released to an 'Authorised Officer' of the Council or a Police Constable. However, it is our belief that the Council and Operators were not aware of the implications of the introduction of such conditions at that time.

It would appear, although it is not clear from the Committee report of the 29 August 2013, or within the licence conditions what constitutes a 'third party vehicle', however, it is assumed that this will mean a vehicle which is not owned or licensed by the Private Hire Operator. In essence this could be either a Derby Licensed

hackney Carriage or private hire vehicle, because the conditions appear to deal with 'out of district hackney' carriages as a separate entity.

Thus a private hire operator such as Chads Cars, who operates a split fleet of approximately 40% of their own vehicles and 60% owner drivers will be seriously affected by the imposition of the new conditions.

Every journey undertaken by a vehicle on behalf of Chads Cars is recorded on their Autocab booking system. The use of a single management system allows the private hire operator not only to comply fully with conditions 3 & 8 of their private hire operators licence, but also allows them to allocate work on a zoned system to the nearest available vehicle, so as to reduce costs for the driver, waiting times for the customer and emissions from the vehicle.

Responsible private hire operators such as Chads record all bookings they receive, which vehicle and driver they are allocated to and they also record all other relevant information to comply with the Council's conditions of licence. In addition they also retain copies of all driver and vehicle licences in respect of vehicles that they do not own and check that the vehicles have valid insurance – which is significantly more than a taxi booking office has to do.

Introducing a dual system for 'third party vehicles' will effectively cripple Chads Cars, because they will have to operate two separate booking and record management systems. Drivers will be required to travel further to undertake bookings; passengers will wait longer for their vehicles, while emissions and abortive mileage will be increased while service delivery will be significantly reduced. Longer waiting times for passengers will result in them looking for other modes of transport and as a result will use unlicensed vehicles or private hire vehicles that are plying for hire for their journeys, thus significantly reducing public safety. In addition, conflict between drivers may occur where they see or perceive that the drivers on the other operating system are receiving more work than them.

The Council specify the issue to be addressed is that the Operator currently does not need to keep a record of any work allocated to persons/vehicles not licensed to their fleet. This statement is incorrect, Section 56(1) of the Act clearly sets out that any booking taken by the operator and not completed by him, remains his responsibility. Thus the conditions of licence at 3 & 8 apply in their entirety to all private hire vehicles operated irrespective of the ownership of the vehicle and records kept accordingly.

As the Licensing authority cannot control 'out of district' hackney carriages and because these vehicles have an inherent right to undertake private hire work anywhere in England and Wales, the Council cannot add conditions to a private hire operators licence in respect of these vehicles. What information they collate or retain in respect of these vehicles is a matter for them as a booking agent for the

vehicle in a similar manner to how a booking office will operate for Derby City Council hackney carriages.

Condition 4 requires a person to be advised at the time of booking (and requires their acceptance to be recorded) that they will be allocated either a vehicle not licensed by the operator or a hackney carriage licensed by another licensing authority. This condition is extremely onerous and unworkable for the private hire operator and clearly shows a lack of knowledge by the Council as to how modern IT booking software operates. When a booking is made the private hire operator, especially if they are working on a system such as Autocab or Auriga will not know which vehicle will complete the work. Indeed in Chads Cars case over 90% of all bookings are automatically allocated by the booking software without the intervention of their staff. As bookings may actually be made by the customers hours, days or weeks in advance, the operator will not know at that time which vehicle will be free to complete the booking and therefore will be unable to obtain acceptance from the client. Moreover it is unlikely that he will know which vehicles will be working at that time and the vehicle will remain unknown until the vehicle is automatically dispatched. To advise the client at the time of booking that they will receive a 'third party vehicle' or an 'out of town hackney carriage' and to receive and record their approval would require the vehicle to be allocated to the booking at that time and that is impossible, unless blanket permission was sort, which would then detract from the intent of the condition.

Moving now to the issue of signage and in particular condition 32, as amended, which has been redrafted in the Council's own words to "*Restrict the use of company signage by vehicles not licensed to the operator*". The presumption has to be that the intention of this condition is to prevent 'third party vehicles' from displaying the operators name and phone number on the side doors of the vehicle. If this is indeed the case then, approximately 60% of the private hire vehicles operated by Chads Cars will be prevented from displaying signage – one has to ask if this was the intention of the condition, because if so then public safety may be compromised as a result. In real terms however, the wording of the condition does not address this issue and it specifies that "*only vehicles registered with their company and which are currently licensed as private hire vehicles with the Council, shall display the company signage and telephone number*". Thus this leads one to believe that any private hire vehicle working for the operator can use the company signage, which is simply not what the condition was intended to address. Bearing in mind that there are private hire operators such as Chads Cars, who operate other services, including garages and PSV vehicles and legitimately display both the company name and telephone numbers on these vehicles, then it appears wholly unreasonable for the council to impose such a restriction, especially when those vehicles are operating lawfully.

It would appear that the overall intention of this condition was to prevent private hire operators from displaying their company signage and telephone numbers on 'out of


town' hackney carriages, but as they are exempt from the legislation then there is nothing preventing them from doing so.

I presume that you will refer this matter to the Licensing and Appeals Committee for their consideration.

Should the Council attach the above conditions, which it is believed are unreasonable, then my clients will have no alternative but to appeal, to the Magistrates Court, regarding the imposition of those conditions and this letter will be produced in the matter of costs as the Council will have prior knowledge of the matters raised above in accordance with City of Bradford Metropolitan District Council v Booth [2000] EWHC Admin 444 (10 May 2000).

I shall look forward to receiving your response in due course.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'KJ Rowland', with a long horizontal flourish extending to the right.

**Kevin J Rowland**  
a2z Licensing Ltd

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**Mrs Sandra Mansell**  
**Team Leader - Licensing**  
**Licensing Team**  
**Derby City Council**  
**Council House**  
**Derby**

**Our Ref:** KJR  
**Your Ref:**  
**Date:** 10 March 2014  
**Please ask for:** Kevin Rowland

**By email only to:**  
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Dear Mrs Mansell,

**Local Government (Miscellaneous Provisions) Act 1976**  
**Private Hire Operators**

**The use of Hackney carriages licensed by other authorities and the Use of Third Party Vehicles**

Further to my letter of the 26 February 2014 regarding the renewal of the private hire operators licence for Chads Cars Ltd.

I am aware that I have previously written to Derby County Council regarding the policy and procedure issues relating to the granting of a private hire operators licences, but on reflection have not raised those issues on behalf Chads Cars and believe that I ought to do so. Therefore please accept this letter as additional information in relation to Chads Cars application for the renewal of their private hire operators licence and in particular their request for the detaching of certain standard operator conditions.

As the Council are aware in 2010, the High Court handed down a judgment in the case of Stockton-On-Tees Borough Council v Fidler, Hussain & Zamanian. This identified that 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 (private hire) purposes in any district in England and Wales.

In Hawkins v Edwards [1901] 2 KB 169 Alverstone LCJ at paragraph 172 stated:

*.....The language of s38 of the Town Police Clauses Act 1847, means, I think, that every wheeled carriage which is in fact from time to time used in standing or plying for hire is to be deemed to be a hackney carriage for the whole*

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*period during which it is so from time to time used, and the language of the section does not limit the period to the time during which the carriage is in fact used for standing or plying for hire.*

In *Benson v Boyce* [1997] RTR 226; see paras 13.77 of the above decision in *Hawkins v Edwards* that 'once a vehicle is licenced it remains licensed as such for the duration of the licence or until the licence is surrendered' was re-affirmed, but in this case in relation to private hire vehicles as opposed to hackney carriages.

As a result of the above case law and the construction of the relevant legislation it is clear that a hackney carriage cannot be a private hire vehicle and vice versa. It is also clear that operating a hackney carriage does not fall within the scope of the Act because it is specifically excluded by virtue of the definition of 'Private Hire Vehicle' in section 80 of the Act. Thus any person taking bookings for and operating a hackney carriage is acting as a booking agent rather than a private hire operator.

It is widely accepted that a hackney carriage licensed under the Town Police Clauses Act 1847 has an inherent right to accept and fulfil bookings and as such does not require a licence to do so. Therefore anyone can in the course of business make the provision for the invitation and acceptance of bookings for a hackney carriage and again this falls outside the scope of the Local Government (Miscellaneous Provisions) Act 1976.

The issue of attaching conditions to operator licenses in respect of out of town hackney carriages has been considered by a number of local authorities. In the case of Newcastle City Council the Council imposed conditions on private hire operator licenses relating to this matter and were subsequently challenged by way of appeal in the Magistrates Courts. The Court accepted that conditions relating to the use of hackney carriages could not be included on a private hire operator licence.

This case was subsequently appealed to the High Court and in essence Newcastle could have cross-appealed against the hackney carriage conditions attached to the operator's licence, but chose not to do so when Blue Line Taxis (Newcastle) Ltd appealed against the telephone number conditions.

Moving now to the issue of the determination of whether or not conditions 32 & 34-38 should be detached from the licence. As the Licensing Committee are the only body with delegated authority to attach/detach conditions can you please confirm that this matter will be put forward for consideration by that body.

In addition, as this cannot by its nature be a policy matter, because the policy has already been determined by the Committee and as such the detaching of conditions must be an operational matter we would request that the matter be considered by the full Committee in a quasi-judicial manner in a similar manner as to how Derby City Council normally deals with driver licensing matters at Licensing Sub-Committee, by following your own standard hearing procedure.



Failing to hear this matter in a quasi-judicial manner will prevent Chads Cars from receiving a fair hearing, or indeed from being seen to receive a fair hearing and will almost certainly result in them appealing the Council's decision to the Magistrates Court, should the Council refuse to detach the conditions.

It is a nonsense that the Council will deal with driver and vehicle applications and renewals in a quasi-judicial manner, but will not deal with applications for private hire operator licences in a similar manner.

Should the Council attach the above conditions, which it is believed are unreasonable, then my clients will almost certainly have no alternative but to appeal to the Magistrates Court, regarding the imposition of those conditions and this letter will be produced in the matter of costs as the Council will have prior knowledge of the matters raised above in accordance with City of Bradford Metropolitan District Council v Booth [2000] EWHC Admin 444 (10 May 2000).

Please acknowledge receipt of this letter and confirm how this matter will be dealt with.

I shall look forward to receiving your response in due course.

Yours sincerely,

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