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

Our Ref: KJR  
Your Ref:  
Date: 24 January 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**  
**The use of Hackney carriages licensed by other authorities**

I act on behalf of Albatross Cars, 14A Midland Rd, Derby, DE1 2SN and I am advised that an authorisation letter to that effect has been submitted to the Licensing Authority.

As you are no doubt aware the Council consulted on changes to the private hire operator licence conditions last year and following the consultation the Licensing Committee adopted a number of additional private hire operator licence conditions regarding the use of hackney carriages licensed by other licensing authorities.

It was our contention during the consultation period and it still remains our view that a licensing authority cannot attach conditions to a private hire operators licence in respect of hackney carriages, whether they be licensed by that authority or any other authority, for the following reasons:

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.***

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***“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]***

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 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 appeal 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.

I have three attached documents in sequence relating to this case: (i) magistrates' court judgment; (ii) article by my co-director at a2z licensing, David Wilson, regarding the magistrates' court judgment; and (iii) the High Court judgment.

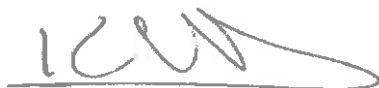
As it is believed that attaching conditions to a private hire operators licence regarding the use of hackney carriages is outside the scope of the legislation, any licensing authority doing so would be acting ultra vires and the conditions would be unenforceable.

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

Should the Council attach the above conditions, which it is believed are outside the scope of the licence, 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', written over a horizontal line.

**Kevin J Rowland**  
a2z Licensing Ltd

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