

Report of	Meeting	Date
Director of Public Protection Streetscene and Communities	Licensing and Public Safety Committee	23 July 2014

HACKNEY CARRIAGE VEHICLE LICENCE – PLATE NUMBER 20

PURPOSE OF REPORT

- To advise Members of a lapse in the renewal of a Hackney Carriage Vehicle Licence and seek the committees wishes in dealing with the loss of a hackney carriage vehicle to the currently restricted fleet number.

RECOMMENDATION(S)

- Members are asked to consider the following options and determine their preferred course of action in dealing with the lapsed hackney carriage licence and the consequential reduction in hackney carriage provision:

Option	Impact
1. Re-issue the hackney carriage vehicle licence using the established 'tombola' system to re-establish the limited hackney carriage vehicle licence numbers to 36.	This will ensure the status quo of hackney carriage provision in Chorley. The 'tombola' method of issue has been the traditional means of ensuring a fair process in the issue of the licence.
2. Reinstate the restricted hackney carriage licence numbers to 36 and issue it preferentially to Mr Hussain in the light of the representations he has made to regain his lapsed licence. (Subject to a satisfactory application)	This will ensure the status quo of hackney carriage licence provision in Chorley. The means of issue will satisfy Mr Hussain who wishes to replace his lapsed hackney carriage licence but may be viewed as unfair and preferential to other potential licence applicants. However this decision can be challenged in court by potential applicants who are denied the opportunity to apply for an available licence
3. Accept the reduction of hackney carriage vehicle licences to 35 in total and use the regular unmet demand survey to determine if the hackney provision in Chorley at this level is sufficient at a future date.	This will permanently reduce hackney carriage numbers to 35 in Chorley until such time as Members determine that hackney carriage numbers need reviewing as a result of an unmet demand survey or other wise
4. Increase the number of hackney carriage licences by two to 38 and issue one preferentially to Mr	This will increase hackney carriage provision in Chorley from its current limit of 36 to 37. Issuing one to Mr Hussain

Hussain as in option 2 and the other issued by tombola as in option 1.	directly will satisfy his requirements and making available a further licence may mitigate any challenge. However this decision may still be challenged in court by potential applicants who are denied the opportunity to apply for an available licence.
5. Derestrict the limited hackney carriage licence numbers in Chorley to allow unlimited hackney carriage vehicle licence issue subject to application criteria being met.	Derestriction could lead to an oversupply of hackney carriages in the Chorley area and significant protest from the current hackney carriage trade in Chorley. This will eliminate the requirement for any future unmet demand surveys to be undertaken.

3. Members should note that within options 1, 2 and 5 there is the potential to require any new hackney carriage vehicle licence to be for a disabled access vehicle only.

EXECUTIVE SUMMARY OF REPORT

4. Chorley Council operates a restricted hackney carriage licence service, where the number of licences available to operate a hackney carriage vehicle is currently held at 36 no.
5. The responsibility for ensuring hackney carriage vehicle licences are renewed on time lies solely with the licence holder and save for one particular piece of case law, once a licence has expired due to no renewal, the licence and its associated plate number cease to exist in law.
6. On May 9th 2014 the Council became aware that Hackney Carriage Vehicle (HCV) licence no. 20 had not been renewed on its due date, 30 April 2014. Consequently the HCV licence and plate no. 20 have ceased to exist and the licence holder is unable to operate his vehicle as a hackney carriage.
7. The licence holder Mr M Hussain has made representations to the Council for this committee to review his situation and allow him to apply preferentially for a new HCV licence and plate number.
8. This report details the issues surrounding such a request and provides an analysis of the associated risks.
9. The options provided in paragraph 2 above should be considered by Members and they are asked to determine the most appropriate course of action.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

10. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	√
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

11. The Council operates a restricted hackney carriage service which essentially limits the number of hackney carriage vehicles operating in Chorley to 36.
12. Approximately every 3 years the Council commissions a survey of hackney carriage provision in the Borough, known as an 'Unmet Demand Survey'
13. This survey identifies if the level of hackney carriage provision is sufficient to meet public demand for the service, i.e. are there sufficient hackney carriage vehicles that can be hailed in the street; accessed at a taxi rank and obtained by persons with a disability or is there significant unmet demand in provision?
14. Recent surveys (latest one undertaken in 2012) have deemed Chorley's current provision to be sufficient.
15. As an alternative and an issue that has been reviewed nationally, is the removal of restricted numbers to allow a derestricted service to operate and allow market demand to set the level of provision.
16. In previous years Chorley Members and the hackney trade have always been keen to retain a restriction on hackney carriage numbers.
17. In terms of process and previously, when a hackney carriage licence becomes available for applications the issuing of the licence has been conducted in a 'tombola' style to ensure equity and fairness in its issue.

HACKNEY CARRIAGE PLATE NO. 20

18. HCV Plate 20 has been issued to Mr M Hussain for several years and has been renewed in a timely manner on previous occasions.
19. On 9th May 2014 the Council became aware as a result of a road traffic accident that HCV 20 had not been renewed by Mr Hussain when its renewal date was set for 30 April 2014. As a consequence and in legal terms the licence and the associate plate ceased to exist on the date of renewal and from that date Mr Hussain had been operating his vehicle without a licence and without the necessary insurance for carrying members of the public until the omission was brought to his attention on the 9th May 2014. It is understood the police are currently investigating the matter of insurance and the carriage of a passenger in an vehicle without the necessary hackney carriage vehicle licence.
20. In mitigation Mr Hussain cites two reasons that he failed to renew as follows:
 - a. The Council failed to notify him of the renewal date.
 - b. An alleged telephone conversation between a council licensing officer and his representative Mr B Hussain led him to believe he did not need to renew.
21. The Head of Health Environment and Neighbourhoods has investigated these reasons and has responded to Mr Hussain as follows:
 - a. The Council is not obliged to remind licence holders of renewal dates and the responsibility for ensuring renewal in a timely fashion lies solely with the licence holder. However as a matter of course the Council does send out a reminder letter two months prior to a renewal date. A renewal letter was sent to Mr Hussain on 28 February 2014 at the address he had provided on his most recent vehicle licence transfer form.

- b. There was a telephone conversation in late April which is recalled by the licensing officer in question and a Mr B Hussain which related to the inspection and testing of a vehicle that the hackney carriage vehicle licence had been transferred from. At no time does the officer recall discussing the renewal of the vehicle licence itself. It is not clear how Mr B Hussain then communicated this conversation to Mr M Hussain to lead him to believe he did not need to renew his hackney carriage vehicle licence.

22. As a consequence Mr Hussain is seeking approval of Members of this committee to allow him preferential access to a new hackney carriage licence.

COUNCIL DISCRETION TO RENEW

23. There is established case law (*Sandle v Exeter*) which gives the licensing authority some discretion to renew a hackney carriage licence where the licence holder has overlooked the renewal and the circumstances can be deemed exceptional. However the case in question is clear that the delay in renewal can only amount to one or two days and that the exceptional circumstances in that case were that the licence holders application had been delayed in the postage service and was to some extent out of his control.
24. The Councils legal officer has reviewed the circumstances in Mr Hussain's case and determined that they are not of an exceptional nature in this case.

COUNCIL OPTIONS AS LICENSING AUTHORITY

25. The loss of a hackney carriage licence has some implications for the Council and the public in that the number of hackney carriages in service is reduced by one.
26. Members may conclude that such a loss can be tolerated and retain a restricted number at the current number of 35 vehicles. Members will need to have good reason to reach this conclusion albeit the last Unmet Demand Survey (2012) identified that there was no significant unmet demand in provision with 36 vehicles. Indeed the survey recommendation was to maintain the number at 36. However Members may conclude that a reduction from this level of one vehicle will not significantly impact on demand.
27. Members may determine that Mr Hussain's circumstances, and his reasons for failing to renew the licence in a timely manner, warrant a sympathetic hearing. Members may decide to offer Mr Hussain a preferential licence application, which would have to be considered on its merits, for a new hackney carriage vehicle licence. This would reinstate the number of hackney carriage vehicle licences to 36. However this decision may still be challenged in court by potential applicants who are denied the opportunity to apply for an available licence.
28. Members may determine that Mr Hussain's circumstances, whilst unfortunate, do not warrant preferential treatment and seek to reinstate the hackney carriage vehicle licence numbers to 36 but issue the licence to valid applications via the established 'tombola' style process.
29. Alternatively Members may determine an opportunity exists to increase the number of licences by two to 37 and offer two hackney carriage licences, one preferentially to Mr Hussain and one through a 'tombola' style process to suitable applications. This could mitigate some criticism that the preferential issue of a licence was inequitable and unfair. However this decision may still be challenged in court by potential applicants who are denied the opportunity to apply for an available licence.

30. Finally Members could determine to derestrict hackney carriage vehicle licence numbers in Chorley in which case Mr Hussain and any other person could submit an application for consideration of a hackney carriage vehicle licence. If Members were minded to approve option 5 and propose derestriction of the hackney carriage vehicle licence numbers, they could determine that all future applications should be for vehicles that meet the disabled access criteria for hackney carriage vehicles only.

DISABLED HACKNEY CARRIAGE PROVISION

31. The current range of hackney carriage vehicle provision includes 7 licences which must be applied to a vehicle capable of carrying disabled passengers
32. Previous 'Unmet Demand' Surveys indicate that sufficient disable provision is currently made, however Members may wish to use this opportunity to increase that provision and could require all or a proportion of future new hackney carriage licence applications to be for disabled access vehicles only.

IMPLICATIONS OF REPORT

33. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	√	Customer Services	
Human Resources		Equality and Diversity	
Legal	√	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

34. There are no budgetary implications resulting from the contents of this report.

COMMENTS OF THE MONITORING OFFICER

35. Members are obliged to act reasonably in making this decision. That Mr Hussain failed to fulfil the statutory test of "exceptional circumstances" does not in itself mean it would be unreasonable to allocate the Hackney Carriage Plate to him without a ballot.
36. However, members must be satisfied that to do so would be reasonable. Matters members should consider are the actions of Mr Hussain, the promptness of his actions when the issue was brought to his attention, the implications of his failure to renew, the impact on Mr Hussain's livelihood but also the loss of opportunity to those who have registered to be placed in the ballot should a plate become available.
37. Members should remember that a Hackney Carriage Plate is akin to licences, permissions and insurances necessary to undertake employment, Mr Hussain was holding himself out as a licenced Hackney Carriage Driver when he was in fact not entitled to do so and this had consequences for his insurance position.
38. If members feel that it is reasonable that this is overcome by Mr Hussain's personal circumstances then they have to consider the impact on the persons who have registered to be balloted if a Hackney Carriage Plate becomes available. Is it reasonable in the members eyes to prioritise Mr Hussain over them?
39. The same issues apply if members consider increasing the Hackney Carriage provision to enable an award to Mr Hussain and a ballot of an additional Plate. Are there grounds in the opinion of members which make it reasonable to prioritise Mr Hussain over other drivers?

40. The final consideration is whether to derestrict the Hackney Carriage trade completely. However, the most recent unmet demand survey does not support this

JAMIE CARSON
DIRECTOR OF PUBLIC PROTECTION COMMUNITY AND STREETSCENE

Background Papers			
Document	Date	File	Place of Inspection
Chorley Unmet Demand Survey	August 2012	Hard Copy	HEN Office

Report Author	Ext	Date	Doc ID
Simon Clark	5732	30 June 2014	HCV20