

**BRISTOL CITY COUNCIL
PUBLIC SAFETY AND PROTECTION COMMITTEE
22 March 2016**

**APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE LICENCE
SEEKING DEPARTURE FROM BRISTOL CITY COUNCIL POLICY**

RE: Mr Abid Hussain

Report of the Director of Neighbourhoods

Purpose of Report

1. To consider an application for the renewal of a Hackney Carriage licence seeking departure from Council policy.

Background

3. On 10 September 2015 the Council received notification from Mr Abid Hussain and Mr Abdirahman Hussein that the ownership of a Fiat Doblo, registration number YY56 KHJ, first registered 4 January 2007, licensed as Hackney Carriage 679 had transferred from Mr Hussein to Mr Hussain.
4. On 19 February 2016 Mr Hussain submitted an application to renew the licence for Hackney Carriage 679. The previous licence for the vehicle expired on 25 February 2016.
5. Council policy with regard to applications for Hackney Carriage licences states:

“...7. Vehicles presented for licensing on the first occasion should be brand new with only reasonable delivery mileage, and any licence granted shall be renewed annually until the vehicle has reached eight years provided that the vehicle remains continuously licensed in that period a vehicle will be deemed to have been continuously licensing notwithstanding a delay in renewal following expiry provided that;

- a. Any late renewal is made within 3 months of expiry and,*
- b. An additional fee levied by the Council has been paid...”*

...Grandfather rights

All grandfather rights in respect of vehicle colour have now expired so all vehicles must be Bristol Blue.

However in other respects the following transitional provisions still apply. –

i. An eight year transitional period from the 1 May 2008 shall apply after which all existing proprietors at the time of the implementation date must comply with the new specification.

ii. During the transitional period existing proprietors may change their vehicle provided that the vehicle complies with the specification in place before the policy

date change.

iii. Applications to renew a hackney carriage vehicle licence that do not comply with the vehicle specification that have been transferred to new proprietors who were not proprietors as at 1 May 2008 shall be refused.

6. On 27 May 2015 a letter was sent to all current Hackney Carriage proprietors clarifying the intention of the policy. A copy of the advice is attached at **Appendix A**.
7. On 8 March 2016 Mr Hussain was sent a letter detailing the reasons why the renewal application was being referred to the Public Safety and Protection Committee, copy attached at **Appendix B**. The advice contained in the letter relevant to this application is detailed below.

“Transfer of vehicles

4. The Council has adopted a policy of refusal in respect of renewal applications for vehicles that do not comply with the new specification that have been transferred to a new proprietor. This means that the Council will register the new owner when notified as required under the law but the new owner can expect the licence to last for only the remainder of the period left on the licence as at the date of transfer. The new proprietor would also be affected by the recent decision to defer current applications as, not having the benefit of transitional arrangements, the new proprietor will find that any application they make to licence a vehicle that does comply is not going to be determined for some time.

NB If you are transferring a vehicle in respect of which you have grandfather rights you therefore need to take care that the new owner does not purchase under a misapprehension about the life of the licence or their ability to continue as a hackney carriage proprietor in Bristol without interruption. You should ensure that the new owner is aware that the Council’s policy is to refuse to renew that licence. You should also ensure that the new owner is aware that currently the determination of applications for compliant vehicles has been deferred. If you are selling a vehicle for which you have enjoyed transitional protection you may find it helpful in explaining the position to provide a copy of this letter to any prospective purchaser. In any event a leaflet providing this information will be provided to any new proprietor following receipt of the Notice of transfer that the owner who makes the transfer must give to the Council under section 49 of the Local Government (Miscellaneous Provisions) Act 1976 within 14 days of the transfer taking place.

The person transferring his/her interest in a licensed Hackney Carriage to a new party must warn the new proprietor before the sale takes place that currently applications for new vehicle licences are being deferred. This could mean (depending on what decisions the Council takes in due course) that the new proprietor may not be able to continue in the trade as a Hackney Carriage proprietor once the transferred licence has expired.

We would take this opportunity to remind proprietors who are still using the transitional rights from 2008 that the transitional arrangements were linked to a particular vehicle (and, of course, its replacements under the transitional arrangements) and the particular proprietor as at 1 May 2008 and did not go beyond that; in particular the committee was careful to make clear that the provisions were intended to help proprietors by giving them time to comply and not to give them any additional advantage over and above other people who wish to be proprietors as that would not be necessary, proportionate just or fair. We

take this opportunity to clarify this as we are aware that some licensees with transitional arrangements believe they can increase the number of non-compliant vehicles they can renew and that is simply not correct. We will be making careful checks of all claimed transitional rights to ensure the purpose of the committee decisions is achieved and to avoid any applicant gaining an unfair advantage by claiming transitional rights for vehicles that are not the one they owned as at 2008 nor a vehicle that specifically replaced that one.”

Members will note that Mr Hussain’s vehicle is over 9 years old.

8. Prior to the letter sent 27 May 2015, which was sent following clarification of the intention of the policy adopted on 8 April 2008, applications of this nature had been granted. Mr Hussein did hold a Hackney Carriage licence on 27 May 2015 in respect of Hackney Carriage 679 so was sent a copy of the letter sent 27 May 2015.
9. As detailed above the intention behind the policy adopted on 8 April 2008 was to enable existing proprietors time to comply with the policy changes, and did not go beyond that; in particular the committee was careful to make clear that the provisions were intended to help proprietors by giving them time to comply and not to give them any additional advantage over and above other people who wish to be proprietors. In other words it was not intended that existing proprietors would be able to hold a number of licences for Hackney Carriages which did not meet the new policy and were not in relation to licences held for a particular vehicle on 1 May 2008 or its replacement.
10. Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 provides:

60 Suspension and revocation of vehicle licences.

(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke, or (on application therefor under section 40 of the Act of 1847 or section 48 of this Act, as the case may be) refuse to renew a vehicle licence on any of the following grounds:—

(a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;

(b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or

(c) any other reasonable cause.

(2) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the proprietor of the vehicle notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew the licence within fourteen days of such suspension, revocation or refusal.

(3) Any proprietor aggrieved by a decision of a district council under this section may appeal to a magistrates’ court.

11. Mr Hussain has been invited to attend this meeting and has been supplied with a copy of this report.

APPENDICES

Appendix A

Leaflet detailing advice in letter dated 27 May 2015

Appendix B

Letter dated 8 March 2016

Recommended: The committee is asked to refuse the application in line with Council policy.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background papers

Contact Officer: Sarah Flower
Senior Licensing Officer
Neighbourhoods
Telephone: 0117 3574900

INFORMATION ABOUT DECISIONS MADE AT THE MEETING OF THE PUBLIC SAFETY AND PROTECTION COMMITTEE ON 8 APRIL 2008 AND 14 APRIL 2015

This is a re-issue of the guidance sent to all proprietors following the Public Safety & Protection (PSP) Committee meeting of 8 April 2008. It has been updated to reflect the decision of the PSP Committee meeting held on 14 April 2015.

Any proprietor claiming transitional benefits (grandfather rights) as agreed on 8 April 2008 and extended on 14 April 2015 will need to show that the vehicle to which the application relates is either:

- (a) The same vehicle for which they were the proprietor on 1 May 2008 or;
- (b) A vehicle that has replaced a vehicle referred to in (a) above.

Public Safety and Protection Committee 14 April 2015

With effect from 2 April the following changes were made to the Council's Hackney Carriage Policy (at PSP on 14 April 2015):

- **Defer determination of any applications for new Hackney Carriage vehicle licences received after the date of publication of the Committee report (2 April 2015) until the results of the Hackney Carriage Demand Survey and other aspects of the policy have been reviewed.**
- **Commission a survey to measure the demand for hackney carriages in Bristol.**
- **Extend the period of transitional arrangements enjoyed by licensed hackney carriage proprietors in respect of their licensed vehicles as at 1 May 2008 by twelve months, i.e. to 30 April 2017.**

Public Safety and Protection Committee 8 April 2008

Revised Vehicle specification policy

As from 1st May 2008 the Hackney carriage vehicle specification policy will be amended to implement the following:

- Vehicles must be new with only delivery mileage.
- Vehicles must have M1 Full European Community Whole Vehicle Type Approval
- Vehicles should be capable of conveying a passenger using a wheelchair and should be both accessible and comfortable. In considering whether the vehicle for which a licence is sought meets this requirement the Council will have regard to the design and quality standards recommended by the Bristol Physical Access Chain and as varied by the Licensing Manager in consultation with the committee chair from time to time.
- Vehicles should display a uniform all over livery, defined by the paint code **BS381C (108) Blue**

- Any permitted vehicle advertising to be restricted to the sides of the vehicle in the area below the vehicle side windows.
- No vehicle licence to be renewed so as to be licensed beyond 10(ten) years from date of first registration.

Transitional arrangements.

To be able to take advantage of these transitional arrangements you must be the Proprietor of a licensed Hackney Carriage on 1st May 2008.

1. Livery

In respect of that part of the policy concerning the Bristol blue livery policy only, the transitional arrangements are limited to three years duration. This means that existing proprietors will have three years in which to arrange for their existing licensed vehicle (or any vehicle they licence in its place) to bear the Bristol blue livery.

2. Other changes

For all other aspects of the policy the committee agreed an 8(eight) year transitional period from **1st May 2008** (extended to 9 (nine) years at the meeting of the PSP Committee on 14 April 2015) after which all vehicles are expected to fully comply with the prevailing vehicle specification in all respects i.e. by 30 April 2017

3. During this period existing proprietors (i.e. proprietors on 1st May 2008) will be able to replace their licensed hackney carriages with another vehicle that complies with either:
 - (a) The vehicle specification in place as at 30 April 2008; or
 - (b) The vehicle specification applying at the time of application for licence for the replacement

Transfer of vehicles

4. The Council has adopted a policy of refusal in respect of renewal applications for vehicles that do not comply with the new specification that have been transferred to a new proprietor. This means that the Council will register the new owner when notified as required under the law but the new owner can expect the licence to last for only the remainder of the period left on the licence as at the date of transfer. The new proprietor would also be affected by the recent decision to defer current applications as, not having the benefit of transitional arrangements, the new proprietor will find that any application they make to licence a vehicle that does comply is not going to be determined for some time.

NB If you are transferring a vehicle in respect of which you have grandfather rights you therefore need to take care that the new owner does not purchase under a misapprehension about the life of the licence or their ability to continue as a hackney carriage proprietor in Bristol without interruption. You should ensure that the new owner is aware that the Council's policy is to refuse to renew that licence. You should also ensure that the new owner is aware that currently the determination of applications for compliant vehicles has been deferred. If you are selling a vehicle for which you have enjoyed transitional protection you may find it helpful in explaining the position to provide a copy of this letter to any prospective purchaser. In any event a leaflet providing this information will be provided to any new proprietor following receipt of the Notice of transfer that the owner who makes the transfer must give to the Council under section 49 of the Local Government (Miscellaneous Provisions) Act 1976 within 14 days of the transfer taking place.

The person transferring his/her interest in a licensed Hackney Carriage to a new party must warn the new proprietor before the sale takes place that currently applications for new vehicle licences are being deferred. This could mean (depending on what decisions the Council takes in due course) that the new proprietor may not be able to continue in the trade as a Hackney Carriage proprietor once the transferred licence has expired.

We would take this opportunity to remind proprietors who are still using the transitional rights from 2008 that the transitional arrangements were linked to a particular vehicle (and, of course, its replacements under the transitional arrangements) and the particular proprietor as at 1 May 2008 and did not go beyond that; in particular the committee was careful to make clear that the provisions were intended to help proprietors by giving them time to comply and not to give them any additional advantage over and above other people who wish to be proprietors as that would not be necessary, proportionate just or fair. We take this opportunity to clarify this as we are aware that some licensees with transitional arrangements believe they can increase the number of non compliant vehicles they can renew and that is simply not correct. We will be making careful checks of all claimed transitional rights to ensure the purpose of the committee decisions is achieved and to avoid any applicant gaining an unfair advantage by claiming transitional rights for vehicles that are not the one they owned as at 2008 nor a vehicle that specifically replaced that one.

5. Vehicle write-off

Any vehicle written off can be replaced with another vehicle provided it is not older than the written off vehicle.

To help explain the policy some frequently asked questions are set out below:

Q: I have just one vehicle, which is a vehicle that replaced the one that was licensed before 1 May 2008, so I have Grandfather rights. I want to acquire another vehicle and have been offered one by another proprietor who also has grandfather rights. The vehicle I have been offered is licensed but doesn't comply with current policy. Will I be able to renew it when it expires in three months time?

A: It depends. If it is being used to replace your current vehicle, for which you have grandfather rights, then yes: we can renew it. But if you are keeping that other vehicle then the answer is no, because you only get grandfather rights for the vehicle you had on 1 May 2008 or any vehicle you replaced it with

Q: I don't want to get rid of my current vehicle, so when that other licence expires and you refuse to renew can I appeal?

A: yes, you would have the right to appeal and the Council would defend any such appeal

Q: So you are saying that I would have to buy a vehicle that complies with the policy and apply to licence that one?

A: In the absence of another transfer, yes, but you must remember that that currently determination of new applications is being deferred

Q: That doesn't seem fair, why would the council act against the interest of the trade wanting to expand their business?

A: We understand why you say that but it isn't actually true. The Trade representatives have asked for this review and support applications being deferred so clearly they think this is in the interests of the trade as a whole. The truth is that we are not treating you any differently in relation to additional vehicles than we would any other person. As an existing proprietor you are better placed than new entrants in relation to your existing vehicle and although new applicants might think that is unfair we would argue that there was a clear justification for giving you a benefit in relation to your existing vehicle to give you time to maintain your existing business until you could afford to replace your vehicle. However it would have been unfair on new entrants to the trade to give you a competitive advantage in comparison to them without there being any lawful justification for doing so, which is why you are in the same position in relation to extra vehicles as any new or returning entrant to the trade would be.

Q: I have Grandfather rights in respect of one vehicle. I hold another licence for an additional vehicle on another plate number. I wish to replace this second vehicle, how old can the vehicle I wish to licence be?

A: The new vehicle must be brand new with delivery mileage. With regard to your first vehicle the policy states: *"During the transitional period existing proprietors may change their vehicle provided that the vehicle complies with the specification in place before the policy date change."* As such the first vehicle may be replaced with a vehicle up to three and a half years old. However you only hold grandfather rights in relation to the first vehicle (as licensed on 1 May 2008). As such any vehicle you wish to replace the second vehicle with must meet the current Hackney Carriage Policy and as such be brand new with delivery mileage.

Q: I have acquired an existing licensed vehicle and had the licence transferred into my name. The vehicle complies with the policy i.e. is less than 10 years old and has European Community Whole Vehicle Type Approval. Will this licence be renewed?

A: Yes.

Please note a decision to defer an application is not a refusal.

If you have any questions regarding any of the points raised in this leaflet please contact Mr Carl Knights, Senior Licensing Officer on 0117 357 4900.

deferred. This could mean (depending on what decisions the Council takes in due course) that the new proprietor may not be able to continue in the trade as a Hackney Carriage proprietor once the transferred licence has expired.

We would take this opportunity to remind proprietors who are still using the transitional rights from 2008 that the transitional arrangements were linked to a particular vehicle (and, of course, its replacements under the transitional arrangements) and the particular proprietor as at 1 May 2008 and did not go beyond that; in particular the committee was careful to make clear that the provisions were intended to help proprietors by giving them time to comply and not to give them any additional advantage over and above other people who wish to be proprietors as that would not be necessary, proportionate just or fair. We take this opportunity to clarify this as we are aware that some licensees with transitional arrangements believe they can increase the number of non-compliant vehicles they can renew and that is simply not correct. We will be making careful checks of all claimed transitional rights to ensure the purpose of the committee decisions is achieved and to avoid any applicant gaining an unfair advantage by claiming transitional rights for vehicles that are not the one they owned as at 2008 nor a vehicle that specifically replaced that one."

According to our records you purchased this vehicle 7 September 2015. Our records do not indicate that this vehicle was replacing one for which you did hold grandfather rights. If this is incorrect please advise me immediately.

The vehicle to which this application relates does not comply with the current policy as it is over 10 years of age. A copy of the leaflet referred to above (which mirrors the information contained in the letter sent to all proprietors on 27 May 2015) is attached for further information.

There will be an opportunity for you to comment on the report to the committee on that day, either in person, or by a friend or a legal representative who you want to speak for you. In the event that you do not attend the meeting the matter may be dealt with in your absence. Should you have any documentation that you would wish to submit to the committee in support of your case (including character references) please notify and provide the documentation to the Licensing Office prior to the hearing in order that copies can be made for distribution to the committee members. If you are unable to do this before the meeting please bring the documentation with you, there may be a delay in which copies might need to be taken. You are also required to bring your DVLA driving licence with you (If you hold a photocard and paper counterpart you must bring both parts).

If you require an interpreter please contact the Licensing Office on receipt of this letter and appropriate arrangements will be made to ensure an interpreter is present, you will not be able to bring your own interpreter.

PLEASE FIND ENCLOSED A REPLY SLIP WHICH YOU NEED TO COMPLETE AND RETURN TO THIS OFFICE IN THE PRE-PAID ENVELOPE PROVIDED. In the event that you wish to contact the licensing office please do so via telephone on 0117 357 4900 or via email at licensing@bristol.gov.uk .

Yours faithfully

Licensing Authority

Enc. Reply form, committee report, return envelope, policy re criminal behaviour where required

PUBLIC SAFETY AND PROTECTION COMMITTEE

APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE /PRIVATE HIRE / DRIVERS / VEHICLE LICENCE SEEKING DEPARTURE FROM BRISTOL CITY COUNCIL POLICY.

Abid Hussein
183 Glenfrome Road
Bristol
BS5 6XF

The meeting will be held on the: 22 March 2016 at 12:45 in Brunel House, St Georges Road, Bristol BS1 5UY

Please complete this form and return to this office in the pre-paid envelope provided.

*Delete as appropriate

I (name)
confirm that I *will / *will not be attending the above meeting

If you are not able to attend please give your reasons
.....
.....

If the timing of the meeting is inconvenient please give your reasons and if possible give an indication of a convenient time.
.....

I intend to bring the following persons with me to speak on my behalf:

Name:
Name:

I *do / *do not require the services of an interpreter.

If you require an interpreter please advise which language you will use:
.....

I confirm that I have received and read the policy document relating to the relevance of convictions.

Signed.....

Date.....