

Licensing and Registration Committee

5 October 2016

Report of Corporate Director (Operational Services)

A.1 Report on cessation of Driver and Vehicle Standards Agency (DVSA) Taxi Driver Assessments and how this will affect applicants for new Hackney Carriage and Private Hire drivers licences in Tendring.

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PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to consider its agreement for the Licensing Service to find suitable alternative providers to carry out an equivalent to the Driver, Vehicle and Standards Agency (DVSA) Taxi Driver Assessment course which is being ended by the DVSA as from the 31 December 2016. The reason that it is necessary to do so, is that the requirement to pass a DVSA Taxi Drivers Assessment is part of the Council's policies in relation to hackney carriage and private hire drivers that all new applicants for hackney carriage and private hire drivers licences must pass a DVSA Taxi Drivers Assessment as a prerequisite to being granted a drivers licence in the Tendring District.

EXECUTIVE SUMMARY

- The Council's policy requirement that all new applicants for hackney carriage/private hire drivers licences in the Tendring District must pass a DVSA Taxi Drivers Assessment was reaffirmed by Members of the Licensing Committee at their meeting of the 16 December 2014.
- The requirement that all new applicants for hackney carriage/private hire driver's licences must pass the DVSA Taxi Drivers Assessment before being granted a driver's licence is part of a number of prerequisites for the grant of such a licence in Tendring and which includes Passenger Assisted Training and driver suitability and knowledge tests.
- All of these requirements including the DVSA Taxi Drivers Assessment were introduced by the Licensing Committee in consultation with the local taxi and private hire trades in order to maintain and improve the standards of driver and passenger safety in Tendring, along with encouraging applicants to regard taxi driving as a professional long term occupation in Tendring and one which can provide high standards of customer safety and care for fare paying passengers and in return give long term employment and income for the drivers themselves.
- This overall ethos may have been put in jeopardy by the very recent announcement from the DVSA that they will be ceasing all Taxi Driver Assessments as from the 31 December 2016 because the demand for these tests is outstripping the DVSA's capacity to meet that demand. They have advised that they do not have enough test examiners and need to prioritise their resources to reduce waiting times for those waiting to take ordinary car tests.

- The Licensing and Registration Committee will therefore need to determine whether they wish its Licensing officers to find alternative service providers that will offer an equivalent taxi driver assessment at a comparable price for all new applicants in our District, or whether they wish to remove the requirement for this test from the Council's policy in regards to the grant of a hackney carriage/private hire drivers for all new applicants in our District.

RECOMMENDATION(S)

It is recommended that the Licensing and Registration Committee agree the following actions:

- 1) Continue requiring all new applicants for Tendring Council hackney carriage and private hire drivers licences to take and pass a Taxi Drivers Assessment equivalent to the standard required by the DVSA Taxi Drivers Assessment**
- 2) Allow new applicants for Tendring Council hackney carriage and private hire drivers licences the flexibility to choose the service provider for a DVSA standard taxi driver assessment that suits their needs on locality and price of the test.**
- 3) Continue to reserve the right to require existing Tendring Council licensed hackney carriage and private hire drivers to take and pass a DVSA taxi drivers assessment should it be deemed necessary by the Committee to do for remedial purposes.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's policy to require all new applicants to take and pass a Taxi Driving Assessment as well as promoting passenger and driver safety and comfort also links into and supports the Council's Corporate Plan for 2016 – 2020 under the following criteria:

Community Leadership- Employment and Enjoyment

- Support business growth
- Enable better job prospects
- Facilitate improved qualification and skills attainment

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

- The implementation, administration and compliance of the policy is undertaken from existing budgets although legal and other potential and unknown costs may be incurred if the Councils policy was successfully challenged in Court and costs were awarded against it.

- The actual cost of the test which for weekdays is in the region of £80 to £90 and on evenings and weekends is in the region of £96 to £100 is directly payable by the applicant to the assessment provider. There is no cost payable for the test by the Council.

Risk

- There is a financial and reputational risk to the Council of any successful legal challenge made against its policies in relation to the grant of new hackney carriage/private hire driver's licences. .
- This risk is however reasonable and proportionate when taking into account the need to promote passenger and driver safety by having a policy requirement for all new applicants for hackney carriage and private hire drivers licences to take and pass a DVSA Taxi Drivers Assessment.

LEGAL

Any decision made by the Licensing and Registration Committee in regards to matters of grant, renewal, suspension or revocations of licences and attachment of policies or conditions to individual hackney carriage and private hire licences can be appealed to the Magistrates' Court and from there to the Crown Court.

In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

In terms of challenging policy decisions, appeals can also be made by way of a Judicial Review to the Administrative Court in the High Court and again in the event of an appeal being allowed by this Court, the costs associated with the hearing could be awarded against the Council.

There is no scope, caveat, restriction or guidance as to what may be considered as "reasonably necessary" within the Act in terms of adopting policy in regards to taxi or private hire licensing or attaching conditions to a licence but the standard of "reasonableness" imposed by the Courts is high and what is "unreasonable" has been said by the Courts to be "whether an authority had acted, or reached a decision, in a manner so unreasonable that no reasonable authority could ever have come to it" (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948) and in subsequent cases the Courts have considered whether a decision is "... so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." (Council of Civil Service Unions v Minister for the Civil Service (1985))

The Courts have upheld a Council's powers to set local conditions and policy on a number of occasions as stated cases.

The most recent stated cases of interest being R v Hyndburn Borough Council ex p Rauf and Kasim 12 February 1992 QBD and R v City & County of Swansea (Respondent) Ex Parte Julie Amanda Jones (Applicant) 1996 EWHC Admin 290

While these cases have involved the setting of maximum age policies in respect to hackney carriage and private hire vehicles, nonetheless the Courts of appeal have upheld the principle of a Council's right to set reasonable policies that do not fetter the discretion of the Council in relation to the hackney carriage and private hire drivers, vehicles and operators that it licences.

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

Not applicable to this matter.

EQUALITY AND DIVERSITY

Each hackney carriage or private hire driver licence application is considered in its own right and on its own merits and in accordance with the Council's licensing standards, conditions and policies.

AREAS/AWARDS AFFECTED

All

CONSULTATION

The requirement for all new applicants applying for a hackney carriage and private hire driver's licence to take and pass a DVSA Taxi Drivers Assessment is an existing policy. Members are being asked to approve that their licensing officers seek out suitable alternative service providers to carry out this test in light of the DVSA withdrawing its own test examiners and facilities with effect from the 31 December 2016. Therefore given that there is no change suggested or required to the Council's current policy in this regard and also that there is likely to be very little difference in cost for new hackney carriage and private hire driver applicants, undertaking any form of consultation with the existing hackney carriage and private hire trades or any form of public consultation is unnecessary in the circumstances and could also incur the existing taxi trade in unnecessary cost through their licence fees.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Council's policy requirement that all new applicants for hackney carriage/private hire drivers licences in the Tendring District must pass a DVSA Taxi Drivers Assessment has been in place for a number of years and was reaffirmed by Members of the Licensing Committee at their meeting of the 16 December 2014. A copy of the minutes of the meeting of the 16 December 2014 is attached to this report as **APPENDIX 1**.

A guide to what is involved with taking and passing the DVSA Taxi Drivers Assessment is attached to this report as **APPENDIX 2**.

The requirement that all new applicants for hackney carriage/private hire driver's licences must pass the DVSA Taxi Drivers Assessment before being granted a driver's licence is part of a number of pre-requisites for the grant of such a licence in Tendring

and which includes Passenger Assisted Training and driver suitability and knowledge tests. Again these pre-requisites have been in place for a number of years and were reviewed and affirmed by Members of the Licensing Committee at their meeting of the 16 December 2014.

All of these requirements including the DVSA Taxi Drivers Assessment were introduced by the Council and approved by its relevant Licensing Committee in consultation with the local taxi and private hire trades in order to maintain and improve the standards of driver and passenger safety in Tendring, along with encouraging applicants to regard taxi driving as a skilled and professional long term occupation in Tendring and one which can provide high standards of customer safety and care for fare paying passengers and in return gives high value employment and long term income for the drivers themselves.

DfT Taxi and Private Hire Vehicle Licensing Best Practice Guidance

The following extract is taken from the Department for Transport's Taxi and Private Hire Vehicle Licensing Best Practice Guidance issued in March 2010.

Driving Proficiency

70. Many local authorities rely on the standard car driving licence as evidence of driving proficiency. Others require some further driving test to be taken. Local authorities will want to consider carefully whether this produces benefits which are commensurate with the costs involved for would-be drivers, the costs being in terms of both money and broader obstacles to entry to the trade. However, they will note that the Driving Standards Agency provides a driving assessment specifically designed for taxis.

This guidance is advisory best practice only for local authorities and is not binding but draws attention however to the fact that the DVSA provides a driving assessment specifically for taxi drivers.

The Licensing manager believes that requiring all new applicants to take and pass a taxi driver assessment to be a reasonable and proportionate requirement which helps to sustain and promote taxi and private hire driver and passenger safety and passenger care and comfort in Tendring. It also helps applicants to regard taxi driving as a professional long term occupation in Tendring and one which should provide high standards of customer safety and care for fare paying passengers and in return it can also provide the drivers themselves with high value employment and long term income. In response to the DfT's guidance shown above, the Licensing manager also believes that these long term benefits are commensurate to the cost incurred by new applicants to take and pass the taxi driver assessment. The Committee have also previously taken this view when determining that all new applicants for taxi and private hire driver's licences in Tendring must take and pass a DVSA taxi driver's assessment.

CURRENT POSITION

The DVSA have written to all Local Authorities on the 31 August 2016 to advise them that it is withdrawing its Taxi Driver Assessment with effect from the 31 December 2016. There was no prior warning or consultation with Local Authorities over this withdrawal. See letter attached to this report as **APPENDIX 3**.

It has advised that it is withdrawing this test because of the examiner resource needed to run the assessment and the pressure on the DVSA to reduce waiting times for persons taking ordinary car tests.

The notice period that the DVSA has given to Local Authorities may have seemed like a reasonable lead in time to them, but in reality it has left a significant number of Council's locally in Essex and further afield nationally with a problem in this regard for their new hackney carriage and private hire driver applications. Particularly given that in many areas, it is understood that DVSA test centres have already stopped taking any new bookings for taxi driver assessments pretty much with immediate effect following the sending of their letter of the 31 August. Nationally new applicants are also reporting to Council's that where they have been able to book a test they are being offered places a considerable distance away from their local test centre area.

The Licensing Manager along with over seventy of his opposite numbers in Essex and nationally have written to the Local Government Association (LGA) to highlight this problem and also to seek the LGA's assistance to intercede with the Department for Transport (DfT) and also the DVSA itself to see if the period of notice for withdrawing the taxi driver assessment can be extended, perhaps to the end of the financial year in order that persons who currently have an application pending can have their test honoured. It has been pointed out to the LGA that no prior warning or consultation was offered to Local Authorities by the DVSA before sending its letter of the 31 August.

The LGA are raising this matter with the DfT and the DVSA on behalf of all Local Authorities and applicants affected, but it seems unlikely that there will be a change of heart given the pressures on the DVSA to reduce waiting times for persons taking ordinary car tests.

Therefore if the Licensing and Registration Committee wish to ensure that all new applicants for hackney carriage and private hire driver licences in our area continue take and pass a taxi drivers assessment and which helps sustain and promote passenger and driver safety and comfort in Tendring in a positive way, it is imperative that we find a suitable alternative service provider to the DVSA as soon as it is practically possible.

The Licensing manager therefore requests that the Licensing and Registration Committee continues to require all applicants for new hackney carriage and private hire driver licences to take and pass a suitable taxi driver assessment and also continues to reserve the right to require an existing Tendring licensed driver to do so if it became necessary for remedial purposes.

Initial enquiries have shown that there are a small number of alternative service providers who carry out taxi driver assessments that are equivalent to the DVSA taxi driver assessment and who will carry them out for a very similar price to the DVSA which is in the region of £80 to £90 on weekdays and on evenings and weekends in the region of £96 to £100.

Of the three alternative companies/organisations researched so far, an organisation called the Blue Lamp Trust seems to offer a reasonable equivalent service and assessment to the current DVSA taxi driver assessment.

The Blue Lamp Trust

The Blue Lamp Trust is a charitable organisation based in Eastleigh in Hampshire and has its offices within the Hampshire Fire and Rescue Services Headquarters. It was set up a number of years ago principally to promote driver education and training and it also works closely with Hampshire Constabulary, Hampshire County Council and a number of local authority partners in that area to reduce crime and support victims of crime and incidents of fire in the County.

Initial approaches to the Blue Lamp Trust indicate that they already carry out taxi driver assessments in their area for a number of local authorities and are able and willing to offer taxi driver assessments within our area for a cost that will be in the region of £87 including VAT which is a comparable cost to the current DVSA taxi drivers assessment. They have been carrying out taxi driver assessments for over five years.

For every test booked with them by drivers from authorities outside of Hampshire they rebate £7 per test as a grant back to the local authority in question who can use this for good causes in its area.

The Licensing manager would however like the flexibility of being able to offer new applicants for Tending hackney carriage and private hire drivers licences the option of being able to choose from a number of service providers in order to provide them with the flexibility of choice.

The Licensing teams initial research suggests that there are other taxi driver assessment providers available which includes the following organisations:

Diamond Advanced Motorists

Is accredited by the government through its advanced driver and rider development programme and their examiners are also DVSA accredited. Diamond already carry out taxi driver assessments for a cost of £78 and will carry out the test in the local area as they have over 100 examiners available nationally.

Green Penny

Are based in Bedfordshire and provide a taxi driver assessment that meets the same DVSA requirements. Price for assessment is comparable to DVSA and for example the cost for a weekday test is £80.

Conclusions

- The DVSA have announced that they will no longer conduct taxi drivers assessments as from the 31 December 2016.
- Nationally in some areas it is already becoming difficult for new applicants to book these assessments.
- The Licensing and Registration Committee needs to determine whether or not it wishes to maintain its policy of requiring all new applicants for hackney carriage/private hire drivers licences to take and pass the equivalent to a DVSA taxi drivers assessment after the 31 December 2016. If it does, then alternative but equivalent service providers for the taxi driver assessment will need to be sourced at a comparable price for our new applicants.

- A number of alternative but equivalent taxi driver assessment providers have been identified and at a comparable price per test.
- The Licensing manager would wish to see to retention of the taxi driver assessment for all new applicants for hackney carriage and private hire driver licences and would like the flexibility for new applicants to be able to choose which service provider is more convenient and cost effective for them to use.

BACKGROUND PAPERS FOR THE DECISION

APPENDICES

APPENDIX 1 - A copy of the Licensing Committee minutes of the meeting of the 16 December 2014.

APPENDIX 2 - DVSA Taxi Drivers Assessment Schedule.

APPENDIX 3 - Letter from DVSA 31 August 2016