

Licensing and Registration Committee

18 January 2017

Report of Corporate Director (Operational Services)

A.1 Report recommending amendment to Council's Hackney Carriage (Taxi) & Private Hire Driver Knowledge Test

Report prepared by Simon Harvey

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to agree an amendment to the Council's Hackney Carriage and Private Hire Driver Knowledge Test procedures in order to delegate its authority to the Licensing Manager to allow applicants to re-sit a fourth knowledge test on appeal to the Licensing Manager, rather than having to lodge an appeal to the Licensing (General Purposes) Sub-Committee.

EXECUTIVE SUMMARY

- The Licensing Committee reviewed the procedures and process of the Council's hackney carriage and private hire driver knowledge test at its meeting of the 16 December 2014;
- As part of that review, the Committee decided to retain the appeal process to the Licensing (General Purposes) Sub Committee whereby new applicants for hackney carriage and private hire drivers licences can appeal to be allowed to take a fourth knowledge test after having failed three tests;
- There has been 10 appeals to the Licensing (General Purposes) Sub Committee in the last two calendar years 2015 to 2016 to allow new applicants for a hackney carriage/private hire drivers licence to re-sit a fourth driver knowledge test;
- This appeal process has therefore become quite onerous and expensive for the Licensing (General Purposes) Sub Committee to undertake and it is suggested that it is delegated to the Licensing Manager as a result.

RECOMMENDATION(S)

It is recommended that Members:

- a) **Agree to delegate the decision to allow applicants on appeal to re-sit a fourth hackney carriage/private hire driver knowledge to the Council's Licensing Manager or their appropriate delegated substitute if the licensing manager is unavailable.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Council's policy to require all new applicants for hackney carriage and private hire drivers licences to take and pass a driver knowledge test promotes overall passenger safety and a better travelling experience for fare paying passengers and 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

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 fare paying passenger safety and their overall travelling experience by having a policy requirement for all new applicants for hackney carriage and private hire drivers licences to take and pass a driver knowledge test.

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.

OTHER IMPLICATIONS

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

Sections 51 & 59 of the Local Government (Miscellaneous Provisions) Act 1976 places a responsibility on a Council that it shall not grant a Hackney Carriage and Private Hire Driver's licences unless it is satisfied that the applicant is fit and proper person to hold a driver's licence.

EQUALITY AND DIVERSITY

The suitability and driver knowledge tests applies to all new applicants for hackney carriage and private hire drivers licences and must be passed by all new applicants.

AREA/WARDS AFFECTED

All

CONSULTATION

Not necessary or applicable in these circumstances, but if it chose to do so, the Committee could decide to put this proposal out to consultation with the taxi trade before making any final decision if it felt it was an appropriate and proportionate course of action to take.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

As part of the Council's hackney carriage and private hire new driver application procedure, all new applicants are required to take and pass a driver knowledge test. This test consists of 45 questions in total broken down into sections on road signage, highway code, routes of roads within the Tending area. Places of interest and local knowledge, licence conditions, law and equality.

The test is a modular test which means that if a test is failed, applicants have to re-sit only those sections of the test that they have failed on. Applicants are allowed to sit the test on three occasions, but if the third test is failed then their application is terminated with any fee paid towards the grant of the driver licence refunded to the applicant.

Applicants cannot submit a further hackney carriage/private hire driver licence application and re-apply to sit another knowledge test for a period of 3 months from the date of the last failed test.

They do however have the right of appeal to the Council's Licensing (General Purposes) Sub Committee to be able to sit a fourth driver knowledge test at the Committee's discretion.

These procedures were last reviewed and agreed by the Members of the Licensing Committee at their meeting of the 16 December 2014.

CURRENT POSITION

Since agreeing the new procedures and in particular the appeals process to allow applicants to re-sit a fourth knowledge test, there has been 10 appeals made to the Licensing (General Purposes) Sub Committee.

To process these appeals for consideration by the Sub Committee, covering reports have to be written, agenda's printed and published and the Council chamber booked. Members and officers including a Legal officer and a Committee Services officer need to be present to assist Members at the appeal and a licensing officer has to be in attendance to present the report.

This appeal process is costly and time consuming for the Council to offer and may also be costly and time consuming for applicants if for example they need to take time off work to attend the appeal hearing.

It is therefore recommended to the Sub Committee that it agrees to delegate the appeal process and the appeal decision to the Council's Licensing Manager or in their absence, to an appropriate Licensing Officer as a substitute.

Such a change would reduce time and costs to the licensing service all round and therefore provide a more efficient and cost effective service for hackney carriage and private hire driver licence holders as a result. It will also enable Members to focus their time on those appeal matters that are perhaps not so straight forward as considering or allowing a re-sit of a fourth driver knowledge test.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

None