

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 February 2015

Subject: Hackney Carriage Proprietors (HCP) – appropriate suitability assessment – update report

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Council has in place an approved policy for dealing with the transfer of HCP licences which applies a suitability requirement in respect of a Disclosure and Barring Service (DBS) convictions check and an English language comprehension assessment.
2. Representations have been made by the Hackney Carriage trade that the English comprehension requirement should be removed on the basis that when a HCP dies the widow could be excluded from taking over the proprietorship because of lack of English language skills.
3. A Licensing Committee Working Group (WG) was formed which consulted with the trade and Officers as well as obtaining legal advice. The WG were advised that the initial proposal from the trade, that the English comprehension requirement be removed only for the wives of Hackney Carriage Proprietors, would be in conflict with equality legislation.
4. Following discussion at Licensing Committee on 9 September 2014, Members asked for clarity on a number of issues and subsequently legal advice was obtained. The extent of that advice and the options available to members is set out at '3 - Main Issues', in the body of the report.

Recommendations

5. That the recommendations of the Licensing and Regulatory Panel of 7 February 2006 be retained in respect of the requirement to attain ESOL level 3 English comprehension skills for all Hackney Carriage proprietors, but with the following policy considerations
 - Following transfer of the licence to a widow or civil partner of the licensed proprietor upon the death of the proprietor, the Council allows 3 months for the next of kin to resolve the issues of estate with a further 6 months to attain ESOL level 3.
 - A joint proprietor who is a spouse or civil partner should attain ESOL level 3 within 6 months unless circumstances as above arise, in which case the process is held in abeyance for 3 months.
 - Following the transfer of a licence to any other person or a joint proprietorship taking place in any other circumstances all parties must have attained ESOL level 3 English comprehension prior to the transfer.
 - That all translation costs incurred during the transition and lead-in periods are met by the proprietor and accredited translators must be used to the satisfaction of the Council.
 - That Members consider and approve in principle the amendments to the policy and new policy proposals in respect of the 'Hackney Carriage Proprietors transfer policy' and direct Officers to prepare a report for the consideration of the Executive.

1 Purpose of this report

- 1.1 To supply Members with precise legal information on issues raised at Licensing Committee on 9 September 2014, when the full report was presented.
- 1.2 Members will recall there has been wide discussion on this issue in previous Licensing Committees and Working Groups. Specific questions were posed by Members in the Committee meeting of 9 September 2014 and these are set individually under main issues.

2 Background information

- 2.1 The Council conducts a number of statutory responsibilities across the Taxi & Private Hire licensing functions. The question of 'fit and proper' does not fit as neatly into this area of licensing as other areas. Council policy to date is that it is important to recognise the responsibilities of a HC proprietor and that appropriate accreditations are required.
- 2.2 This particular debate revolves around the English comprehension requirement to the UK Citizenship level, ESOL level 3, for the wives or civil partners of the proprietor in the event of their death and is it necessary in those circumstances to require ESOL level 3 comprehension skills or is it more important for the widow to continue having an income from the licence.

3 Main issues

- 3.1 Legal advice has been sought on the following issues (in bold) and the first point to be covered by Counsel **is the legality of the whole question of refusing to licence an applicant if they did not meet a policy condition set by the council.**
- 3.2 Counsel opinion: "The licensing authority may refuse such an application if it is considered that the applicant is not suitable. It would be perverse to say that the law enabled anyone to have a licence for a year regardless of their suitability."
- 3.3 Counsel opinion: "Therefore there is no absolute right to have (or hold) a licence as a proprietor. What reasons may provide ground for refusal? In the context of this advice, one need only consider whether a failure to attain a minimum level of English comprehension would be a reasonable cause. If it is, then it is perfectly permissible to require such attainment as a prerequisite to being granted a licence provided that is a universal requirement."
- 3.4 Counsel opinion: "This could include a requirement to communicate effectively – i.e. speak and understand a basic level of English. The HCP is accountable for a wide range of statutory responsibilities; the safety of the vehicle(s); controlling the drivers and maintaining a relationship with the regulating council. It is, in my view, reasonable to expect a proprietor to speak and understand English."
- 3.5 **Is it discriminatory to require a proprietor of a Hackney Carriage to hold ESOL3 standard of comprehension?**

- 3.6 As a starting point Counsel advised :- “that it is reasonable to expect a proprietor to speak and understand English on the basis of the wider range of statutory responsibilities; the safety of the vehicle(s); controlling the drivers and maintaining a relationship with the regulating Council. The existing requirement to attain ESOL level 3 is not regarded as too onerous as to be unlawful and setting ESOL level 3 as a benchmark provides a consistent approach.”
- 3.7 Is it discriminatory for the Council to require that any other party to the Proprietor’s licence, and including those who have a licence transferred to them on the death of an HCP proprietor, speak English to ESOL level 3 standard**
- 3.8 Counsel opinion: “If it is not discriminatory to require a proprietor to attain that minimum standard then it cannot be discriminatory to require the person to whom it transfers to in the event of death, to attain that same standard. They are by definition, a proprietor.”
- 3.9 Counsel opinion: “It is both fair and reasonable to allow that individual some ‘lead in time’ in such an eventuality as is the case for joint proprietors. In my view, there can be no special exemption for partners or spouses of deceased proprietors as this would create inconsistency.”
- 3.10 A view previously expressed by Officers that wives or partners of the proprietor could go onto the proprietor’s licence now and be allowed a period of time to attain ESOL level 3 is supported by Counsel and in their view “amounts to an entirely lawful and non-discriminatory approach. However, it is not considered to be good practice to compel wives or partners to become joint proprietors in order to retain proprietorship in the event of death but it could be advisable to provide this as an option.”
- 3.11 Counsel opinion: “It was further advised that a period of three months would be appropriate to enable a spouse or partner to sort out the issues of the estate etc. following the death of the proprietor.”
- 3.12 Building on those views of Counsel, Members may wish to consider the following time scales:
- A) Following transfer of the licence to a widow or civil partner of the licensed proprietor upon the death of the proprietor, the Council allows 3 months for the next of kin to resolve the issues of estate with a further 6 months to attain ESOL level 3.
 - B) A joint proprietor who is a spouse or civil partner should attain ESOL level 3 within 6 months unless circumstances as at ‘A’ arise, in which case the process is held in abeyance for 3 months.
 - C) Following the transfer of a licence to any other person or a joint proprietorship taking place all parties must have attained ESOL level 3 English comprehension.
 - D) It is considered both appropriate for a lead in time for spouses or civil partners.

E) That all costs incurred during the transition and lead-in periods are met by the proprietor and accredited translators must be used to the satisfaction of the Council.

3.13 To consider the public sector equality duty and the need for any further equality impact assessment.

3.14 The response of the Counsel having considered the existing policy and proposals for change is:-

“It is not discriminatory to require that any other party to the proprietor’s licence (whether a transfer following death or a joint proprietor), speak English to ESOL level 3.”

3.16 Consideration of potential discrimination was considered across all of the scenarios by Counsel with a conclusion “the policy is not discriminatory”.

3.17 Inheritance issues including the relevance of Power of Attorney; **whether it would be sufficient for another member of the business such as a manager or driver to attain the English comprehension requirement.**

3.18 Counsel opinion: *“With regards to a proprietor dying intestate, it seems to me that the answer is straightforward. The Council could not properly continue to licence a HC that has no discernible proprietor. This would therefore provide justifiable grounds to refuse to renew a licence (s.60 (1) (c)). This does not mean that the Council could not consider writing a policy exemption to cover this scenario, but it is not uncommon for matters regarding wills and probate to take some considerable time to resolve. There needs to be a proprietor otherwise there is no lawful licence.”*

3.19 Counsel opinion: *“I do not feel it is for the Council to endeavour to cover every scenario that may present. The harsh reality is that it should not be for the Council to assist in resolving intestacy issues. Proprietors should be encouraged to expressly deal with the proprietorship in the event of death to prevent a scenario where the Council does not know who the proprietor is.”*

3.20 Counsel opinion: *“Of course, the policy does not stop the spouse from transferring proprietorship to a trusted member of the family to run the business as proprietor should they wish to keep the business running within the family, provided they reach the requisite level of comprehension. The key point is that the proprietor has legal obligations and is accountable – they should therefore be able to understand a certain level of the language.”*

3.21 The Officer view is that the proprietor must retain responsibility and accountability. If the proprietor wishes the ‘business’ to run for them that is their choice of relationship and not the Councils. The Council’s legal relationship is only with the licensed proprietor. To do otherwise causes confusion, potentially difficult litigation issues along with a host of administrative difficulties which are unnecessary and avoidable.

3.22 The Council must be satisfied that the existing named proprietor had set out in writing their intention to transfer the proprietorship of the licence to the person seeking to become the new proprietor and the Council are entitled to make reasonable enquiries to satisfy themselves of the validity of a claim to the proprietorship of a licence.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 There has been full engagement with the affected trade representatives through Member led Working Groups.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 Independent legal advice has been sought on this issue and the advice of Counsel, in summary, is that the requirement set out in the existing recommendations is not unlawfully discriminatory when applied to all HC proprietors consistently, whether at the time of bereavement, or otherwise. With further flexibility built into the policy for 'lead-in times' the policy would be seen as reasonable and fair.

4.3 Council policies and City Priorities

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

4.3.4 Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 There are no cost implications to the Council when dealing with standard and properly recorded transfer details. In circumstances of dispute, or counter claim that the Council has transferred the proprietorship incorrectly the pathway to a legal resolution could be time consuming and expensive.

4.4.2 That all costs incurred during the transition and lead-in periods are met by the proprietor and accredited translators must be used to the satisfaction of the Council. The Working Group viewed this as being a necessary part of the arrangements to be met by the proposed transferee. For information purposes a copy of the interpreter's costs and policy are attached at **Appendix 1**.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The Council must be satisfied that the existing named proprietor had set out in writing their intention to transfer the proprietorship of the licence to the person seeking to become the new proprietor and the Council are entitled to make reasonable enquires to satisfy themselves of the validity of the claim.

4.6 Risk Management

4.6.1 In a regulated and well audited environment, such as exists now, the risk is low. The risk might be increased when proprietorship and the responsibility for compliance and accountability are managed by unlicensed third parties. Members are advised that a licensed Hackney Carriage not in the full control of the proprietor can present opportunities for links to crime.

5 Conclusions

- 5.1 The regulatory control of Hackney Carriages and the responsibilities of the proprietor conducting their legal responsibilities are important. It is also important that the Council can conduct its statutory business in an efficient manner.
- 5.2 There are ample opportunities for attaining ESOL level 3 English comprehension and with lead-in times built into the policy the Council can demonstrate reasonableness and fairness

6 Recommendations

- 6.1 That the recommendations of the Licensing and Regulatory Panel of 7 February 2006 be retained in respect of the requirement to attain ESOL level 3 English comprehension skills for all Hackney Carriage proprietors, but with the following policy considerations
- Following transfer of the licence to a widow or civil partner of the licensed proprietor upon the death of the proprietor, the Council allows 3 months for the next of kin to resolve the issues of estate with a further 6 months to attain ESOL level 3.
 - A joint proprietor who is a spouse or civil partner should attain ESOL level 3 within 6 months unless circumstances as above arise, in which case the process is held in abeyance for 3 months.
 - Following the transfer of a licence to any other person or a joint proprietorship taking place all parties must have attained ESOL level 3 English comprehension.
 - It is considered in these circumstances appropriate for a lead time for spouses or civil partners.
 - That all costs incurred during the transition and lead-in periods are met by the proprietor and accredited translators must be used to the satisfaction of the Council.
 - The Council must be satisfied that the existing named proprietor had set out in writing their intention to transfer the proprietorship of the licence to the person seeking to become the new proprietor and the Council are entitled to make reasonable enquires to satisfy themselves of the validity of a claim to the proprietorship of a licence.

7 Background documents¹

- 7.1 7 February 2006 – Report to the Licensing and Regulatory Panel
- 7.2 11 March 2014 – Report to the Licensing Committee

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

- 7.3 10 June 2014 – Report to the Licensing Committee
- 7.4 9 September 2014 – Report to the Licensing Committee
- 7.5 Interpreting and Translation Team Language Access Provision Policy and Procedures



Customer Services Leeds City Council

Interpreting and Translation Team
The Compton Centre
322 Harehills Lane
Leeds LS9 7BG
Tel 0113 3367800
Email: interpreting@leeds.gov.uk

Charges For External Companies for Interpreting and Translation

Face-to-Face Interpreting Minimum booking of 1 hour

- The hourly charge for interpreting from 7.00 am till 7.00 pm is £27.00 for the first hour thereafter every 15 minutes is £6.75. Time is rounded up to the nearest 15 minutes.
- Plus travel time (a one-off charge of either £7.50 or £15.00 depending on where the interpreter is travelling from).
- Plus travel expenses (either public transport costs or mileage at £0.25 per mile). This charge is at cost price.
- If interpreter makes a telephone call from their own mobile - £5.00
- Plus £0.50 admin charge.
- From the hours of 7.00 pm to 7.00 am for the first hour £40.50 thereafter every 15 minutes is £10.13. This is also the weekend and bank holiday rate.

Telephone Interpreting Minimum booking of 30 minutes

- £19.50 per 30 minutes then £9.75 for every 15 minutes. Time is rounded up to the nearest 15 minutes.
- If interpreter makes a telephone call from their own mobile - £5.00
- Plus £0.50 admin charge.

Translations Minimum charge of £21.00

- £0.21 per word up to 1000 words, thereafter £0.19 per word.



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Cancellations

If bookings are cancelled with more than 24 hours notice, no charges will apply. If the booking is cancelled/curtailed on the day e.g. where the interpreter is booked from 9.30am to 5pm and only required from 9.30 to 1pm, the remaining hours will be charged at half-hourly rate.

i.e. 9.30am-1pm will be charged at the full hourly rate and 1pm-5pm will be charged at 50%.

If an interpreter has been booked for a session and the session is cancelled within 24 working hours and they have not set off to the venue, then a minimum of 60 minutes will be charged. We will charge for appointments cancelled due to the professional user or customer's failure to attend.

All these rates are exclusive of VAT.

British Sign Language interpreters

	Minimum charge: 2 hours	Per hour thereafter (pro rata 15 mins)
Member of the Register of BSL/English Interpreters	£90.00 + Travel (£45.00 ph)	£45.00

Out of area/unsociable hours and weekends

	Minimum charge: 2 hours	Per hour thereafter (pro rata 15 mins)
Member of the Register of BSL/English Interpreters	£120.00 + Travel (£60.00 ph)	£60.00

BSL Cancellation Charges

If notice is more than working 10 days	No fee
If notice is less than 10 working days and more than 5 working days	Half fee
If notice is less than 5 working days	Full fee