

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 11 March 2014

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

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 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 was formed and it consulted with the trade, Officers and obtained legal advice. This has resulted in a recommendation to the Licensing Committee that the english comprehension requirement be removed for all HCP's.
4. The legal consequence of introducing such a policy is that it may effectively remove the english language requirement in another significant part of the Taxi & Private Hire Licensing functions and Members will need to balance the necessity of the original limited request against the potential wider effects.

Recommendations

5. That Members consider the report and the recommendation of the Working Group and make any appropriate considerations before considering releasing the report for a wider period of consultation of 2 months.

1 Purpose of this report

- 1.1 To inform Members of the legislation applicable to Hackney Carriage Proprietors, the existing policy of the Licensing Committee, legal advice and the recommendation of the Working Group.

2 Background information

- 2.1 The role of the HCP is distinct from that of a HCD or PHD in that they do not have to drive the vehicle, but they are accountable for a wide range of statutory responsibilities, Byelaws and Council conditions. In effect they are responsible for the safety of the vehicle, controlling drivers, some relationships with the public, and responding to the Council when it requires certain actions, for example, complying with statutory vehicle inspections, providing information and meeting licensing requirements. The extent of the legislation and conditions is set out at paragraph 7 of this report, 'Background documents'.
- 2.2 Licensing and Regulatory Panel on 7 February 2006, determined that every PHD, PHO, HCD and HCP should, within certain terms, undertake English comprehension testing. For reference, the relevant extract of that report is attached at **Appendix 1**.
- 2.3 The administrative process of transferring a HCP licence undertaken by Officers has operated over those intervening years and sympathetic consideration has been applied to individual circumstances in order that decisions can be taken by families beyond the grieving period.
- 2.4 Licensing Committee agreed that the policy be referred to a Working Group to consider the removal of the english comprehension requirement on the basis that when a HCP dies some widows could be excluded from taking over the proprietorship because of lack of english language skills. Following the formation of the Working Group full consultation was undertaken with the trade. Officers highlighted the issues and legislation and legal advice was offered by way of guidance and to clarify the variety of ideas on how the transfer of the HCP licence could be managed and the licence properly managed by the HCP.

3 Main issues

- 3.1 The usual 'fit and proper' person test does not totally apply to a HCP licence as there is no necessity for a Proprietor to be 'able bodied' or hold a DVLA licence. However, because of the potential links between having control of a HCV and criminal activity, Proprietor responsibilities and the extent of legislation covering the role of a HCP a DBS check and english comprehension requirement was placed upon the grant of a HCP licence. That is referred to at **Appendix 1**.
- 3.2 The representation made to the Council was that some non english speaking wives of HCP's could be financially disadvantaged by not receiving on-going income from the use of the licensed vehicle upon the death of the Proprietor.
- 3.3 During the Working Group consultation process Members listened to a range of views, considered the legal implications, the concerns of Officers and balanced

those with a recommendation which was considered to be proportionate and fair to the trade. It was from those observations that the policy proposal was formed.

3.4 Members should note that the policy cannot apply solely to a 'widow' as requested by the trade. In order to meet Equality requirements it must apply to any spouse or civil ceremony partner of a HCP. Additionally, it would be discriminatory to apply the policy to women only or those who do not have a recognised legal partnership. The scope of the change would have to apply significantly beyond the trades request and to all HCP's. Attention is drawn to paragraph 4.6. Risk Management.

3.5 An amended policy is shown at **Appendix 2** which sets out the process steps for every HCP, not just in the event of a death of a HCP.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Working Group has met on the following occasions for the purpose indicated:-

25/6/13	Initial planning meeting.
31/7/13	Meeting with Hackney Carriage trade.
15/10/13	Meeting with Elected Members.
15/11/13	Meeting with Private Hire trade.
12/2/14	Working Group considerations of the consultation, legal advice and Officer comment.
17/2/14	Formulation of final considerations.

Following consideration of this report a further short period of consultation should be undertaken and it is recommended that this be set at 1 month.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Screening Assessment has been completed and is available as a background document. There are no contra indicators to this being acceptable practice in terms of equality.

4.3 Council policies and City Priorities

4.3.2 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:

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 The transfer process has to take place in any event and the responsibility for making the necessary arrangements will rest with the transferee in which case there would be additional costs and Service time. If this was an infrequent event that could be managed with existing resources.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The context of equality law move the original intention of the trade request to much wider parameters and the background to that is set out at 3.5.

4.6 Risk Management

4.6.1 There are several challenges which would need to be safely managed at the adoption of the policy and in the long term:-

Accountability and public safety

Members were insistent that this position could not be compromised on the basis of an argument of lack of knowledge, understanding or control of the driver of the vehicle. Where there were such proven issues the licence would be revoked and returned to the Council. It was felt by Members that this statement and the control measures in the policy would be sufficient to ensure proportionate control of the licence. The policy would also make very clear to Proprietors the absolute necessity to adhere to all the responsibilities of the Proprietors licence and the consequences of failing to do so.

Control measure

At the point of transfer Officers will serve upon the new proprietor the relevant legislation which will be summarised by the interpreter.

The interpreter and Proprietor will each sign statement of understanding detailing what has taken place. This will be an acceptance and understanding of the responsibilities and accountabilities of the Proprietor. It will also set out the consequences of non-compliance to conditions, byelaws or breaches of legislation, or a failure to exercise management or control of the vehicle or driver.

Financial risk

- 1) There is potential for some limited financial risk to the Council by interpreting fees not being paid and it would not be an acceptable proposition to expect the Council to recover such costs through a civil debt procedure.
- 2) The engagement with a HCP for all licensing matters would also necessarily involve the Interpreting Services and this would be reflected in other licensing fees.

Control measure

- 1) A potential solution is that organised meetings are given time parameters and a schedule of hourly costs obtained from the Interpreting Services in advance. This would enable the interpreting fee to be paid immediately to the Taxi & Private Hire Licensing Office at the time of transfer or other procedure which could then be re-directed by internal budgets to the Interpreting Service.
- 2) The existing transfer administration fee would also need to be increased in such cases and reflected in the extended timescales for the transfer process as would all of the other licensing functions.

Extent of change impact

To date the number of events involving non English speaking transferees has been minimal but if the practice was to be taken up on a wider basis and further develop into other areas of licensing there could be adverse impact upon proposed training initiatives, enforcement investigations and licensing administration functions. This potential cannot be measured at this time.

Legal challenge

As this is a policy document the route of appeal is by way of Judicial Review.

5 Conclusions

- 5.1** Members will note that the original well intentioned request might now have much wider implications for service provision and the report has to deal with two distinct issues. Firstly, the arrangements for the transfer of a HCP licence upon the death of a Proprietor and the english language requirement which is dealt with at **Appendix 2**. Secondly, how government driven policies to promote english language comprehension on the basis of inclusivity might be viewed.
- 5.2** The issue is much wider than first thought by the trade and Members have to balance all of their licensing responsibilities, considerations of the Service against those examples presented by the trade of lack of opportunity or disadvantages to non English speaking relations.

6 Recommendations

- 6.1** That Members consider the report and the recommendation of the Working Group and make any appropriate considerations before considering releasing the report for a wider period of consultation of 1 month.

7 Background documents¹

Equality impact assessment.

Town and Police Clauses Act 1847 Sections 43, 45 - 55

Local Government (Miscellaneous Provisions) Act 1976 Section 47, 49, 50, 57, 58, 60, 66, 68, 69, 71, 72, 73.

LCC Byelaws

LCC conditions attached to HC Proprietors licence 1-15

LCC Hackney Carriage vehicle conditions

LCC conditions attached to a Wheelchair Accessible Hackney Carriage Proprietor licence 1 -9

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.

LCC Special conditions attached to the grant of a Wheelchair Accessible vehicle
Hackney Carriage vehicle licence

Equalities Act 2010 Sections 163, 165, 166, 168

Extract of Report

Report of the Director of Legal & Democratic Services

To the Licensing and Regulatory Panel

Date: 7th February 2006

Subject: Knowledge Testing for the Private Hire and Hackney Carriage Trade – Supplementary Report (English literacy, language & numeracy skills).

1.0 Purpose Of This Report

1.1 To enable Members to consider the introduction of testing of English literacy, language and numeracy skills to an approved standard before licences are issued by the Taxi and Private Hire Licensing Section to drivers, Operators and Proprietors.

2.0 Background Information

2.1 The Council issues licences to Hackney Carriage Proprietors and drivers and to Private Hire Operators and drivers. There are standard tests applied prior to the grant of a licence to assess the suitability of the applicant, and thereafter there are Conditions, Byelaws and various other acts of Parliament controlling the conduct of licence holders. There is no element (other than ability to pass a driving test) in any of these controls which reflects on a licence holders ability to read, write and speak English or use basic mathematics.

2.2 In 2003 when Scrutiny Board (Central and Corporate functions) reviewed the Council policy in respect of the issue of additional Hackney Carriage Proprietor licences, several concerns were expressed by Members of their own experiences in respect of licence holders who had difficulty in speaking English. Officers would add weight to those concerns from their experiences of applicants or existing drivers where speaking or understanding English was quite clearly a difficulty in some cases. Similar concerns have been expressed by the trade and the public contacting the Licensing Section.

2.3 In recent years the Government has recognised the need to increase the vocational skills of the workforce and improve the nation's literacy and numeracy skills. A national strategy was launched by the Government in autumn 2000.

2.4 On Tuesday 10th January 2006 the Licensing and Regulatory Panel approved, in principle, the introduction of knowledge testing and customer service commitments for the trades (draft minute 68 refers). Part of the range of skill requirements approved for training and testing the Hackney carriage and Private Hire services was English comprehension and numeracy.

3.0 Main Issues

3.1 Who it affects

The key proposal of this report is that all applicants for an issue of a Hackney Carriage Proprietor or driver or a Private Hire Operator or driver licence satisfy the Council they can speak, read or write English and are sufficiently numerate to enable them to function in their role.

It is proposed that current licence holders are exempted from the requirements to meet this standard unless there is a reasonable cause to believe it should apply to them; for example, a substantiated public complaint or an expressed concern which was considered reasonable.

3.2 The testing standard

Officers have consulted widely to develop an appropriate scheme which meets the needs of the Council, public expectation, is complementary to the Government adult education program, and beneficial to the individual.

4.0 Implications For Council Policy And Governance

4.1 It is considered that the introduction of such testing would not only contribute to the singular aspect of 'customer care' within the trades but would complement a range of issues within the Councils plan and vision. Better to make reference to them if we can

4.2 The whole of this process has been monitored by the Council's Equalities Team who approve of how the process is undertaken, the marking structure and its relevance to the service provided.

5.0 Legal And Resource Implications

5.3 Members are informed that this proposal is one of a number being prepared which are intended to create an entry level to the trades which is commensurate with the standards of customer care and safety and compliance with the law necessary to safely

Vehicle Transfer Policy: Who does my Hackney carriage licence transfer to in the event of my death?

Legislation requires written authorisation before a Hackney carriage proprietor licence can be transferred. You must therefore either have a legally binding Will in place or have notified Leeds City Council of who you intend to transfer your licence to in the event of your death.

I want to transfer the licence to my spouse but they don't speak English very well. How will the transfer process work?

On notification of the death of a licensed proprietor, the Licensing Office will contact the proprietor's Association, where known, and also the family to arrange a meeting to explain the process.

Will the proposed new owner have to undertake a DBS check?

Yes, the new owner must pay the current fee and complete a DBS check before the transfer can take place.

Where any party or an Authorised Officer considers it appropriate, an interpreter will attend at the time of transfer. Any translator requirements, including costs, are the responsibility of the proposed proprietor. Due to potential legal challenges it is appropriate that the translation service is provided by the Council's preferred service.

How can I let you know who I nominate to transfer the plate to?

You can update details of your nominee at any time by informing the Taxi and Private Hire Licensing Section in writing.

You must provide the full name and date of birth of the person you wish to transfer the Hackney carriage proprietor licence to, their full address and their relationship to you.

I am a joint proprietor; can I nominate my share to go to the other proprietor?

In the case of joint proprietors, it is acceptable for them to nominate each other to transfer their share of their plate.

What happens if the information in my Will does not match the information held on my licence file?

If for some reason the information you have provided to us does not match that recorded in your Will, we will take the most recently dated document as an expression of your wishes. However please note that in the case of any conflicting claims the vehicle licence will return to the Council to be re-issued.

Will I be reminded to provide this information?

The licence renewal letter will include a reminder for you to update this information. We will keep this information stored on your licence file to be used in the event of your death. Please remember this is your responsibility

Appendix 2

I don't know who I want to transfer the licence to... what should I do?

If you haven't yet thought about whom you would transfer your Hackney carriage licence to, now should be the time to do so and you are advised to take legal advice.

If you don't have a will and we do not have a record of your written nomination in place, in accordance with this policy, the proprietor licence will return to the Council to be re-issued. We will ask you to sign a declaration at the time of your next renewal to say you understand that this will happen.

Why do you require a signed declaration?

Councillors have recognised that the legal responsibilities of proprietorship are important and these cannot be compromised on accountability.

Leeds City Council must be satisfied that the proposed proprietor understands all terms and conditions of the licence and we will require a signed declaration to this effect.

Any proposed new proprietor, whatever the level of their English comprehension skills, is liable to have their licence revoked on issues of non-compliance so it is extremely important that they fully understand the conditions and legislation surrounding the grant of their licence.