

LICENSING AND REGULATION COMMITTEE

5 FEBRUARY 2008

APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCES -
POLICIES AND PROCEDURES

REPORT OF HEAD OF LEGAL SERVICES

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RECENT REFERENCES:

LR 205 - APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER
LICENCES - POLICIES AND PROCEDURES – 12 DECEMBER 2006

EXECUTIVE SUMMARY:

This report sets out policies and procedures to be applied in determining applications for hackney carriage and private hire driver's licences.

The Council has been issuing licences to drive Hackney Carriages and Private Hire vehicles for a number of years. The licences have been issued according to various policies. This report aims to consolidate these policies to ensure all licences are issued to set criteria.

RECOMMENDATIONS:

- 1 That the Committee resolve to adopt the policies and procedures for applications for Hackney Carriage and Private Hire Driver Licences as set out in Appendix 1.

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DETAIL:

1 Introduction

- 1.1 This Council is responsible for the issue of licences to drive Hackney Carriages and Private Hire Vehicles within the Winchester City Council District.
- 1.2 In order to obtain a licence to drive such vehicles, the applicant must be a "fit and proper person." There is no definition of this phrase. However, a number of checks are carried out by licensing officers in order to test the applicant's suitability to drive vehicles for hire or reward.
- 1.3 Some of these checks are carried out under policies which have been formally adopted by resolution. Others which have not been formally adopted have also been used in order to ensure a high standard of drivers.
- 1.4 The purpose of this report is to consolidate the checks and inspections into a single document, in order to maintain that high quality.

2 Background to Policy review

- 2.1 The Taxi Review Informal Members/Officers Working Group examined the policies and procedures over a number of meetings, and their findings were reported to the Licensing and Regulation Committee on 12 December 2006 (Report LR 205 refers).
- 2.2 The Committee resolved that:-

"The Policies and Procedures for Applications for Hackney Carriage and Private Hire Driver Licenses, as set out in Appendix A to Report LR205, be approved as a draft document for consultation with relevant representatives of the taxi and private hire trade and other appropriate consultees, and that the Guidance issued by the Department of Transport be noted and taken into account in future reviews of policies, conditions and byelaws on taxi and private hire licensing."

- 2.3 A copy of the Appendix was sent to 115 drivers of Hackney Carriages and Private Hire Vehicles, along with a questionnaire. 37 replies were received.

3 Summary of Responses Received

- 3.1 Many drivers were in favour of the knowledge test, which has been in operation for a number of years.

- 3.2 34 of the 37 returned questionnaires (92%) thought that it was essential that prospective drivers were tested in the ability to communicate in English. This is achieved by use of the written knowledge test and by personal interview with a licensing officer.
- 3.3 There was general support for the Council's current policy of requiring all new drivers to take a driving test, and for a test to be required if officers have concern about a driver's standard. 25 of the 37 drivers (67%) were agreed that some test must be should be taken under those circumstances.
- 3.4 The current medical form specifies a standard of eyesight which has remained in force for many years. It is suggested that the standard of eyesight is increased to that required for Group 2 driving licences issued by the Driver and Vehicle Licensing Agency, in accordance with guidance issued by the DVLA.
- 3.5 The suggested Policies and Procedures document is attached at Appendix 1. Other than the addition of the section on medical fitness, and minor editing changes, the document is the same as was agreed by the Committee in December 2006.
- 4 Issues for Consideration
- 4.1 **Are the proposed conditions reasonable and proportionate to ensure the required standard of drivers of hackney carriages and private hire vehicles?**
Passengers carried in vehicles for hire or reward are entitled to a high standard of safety and quality of customer care.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

- 5.1 This report covers issues which affect the principles of "safer and more inclusive communities" and "safeguarding our high quality environment for the future."

6 RESOURCE IMPLICATIONS:

- 6.1 None

BACKGROUND DOCUMENTS:

Responses to Consultation Exercise held by Legal Services Division.

None

APPENDICES:

- Appendix 1. Applications for Hackney Carriage and Private Hire Driver Licences – Policies and Procedures.

APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCES- POLICIES AND PROCEDURES

1. Ability to Communicate in English

Licence holders will need to be able to deal with passengers and must therefore be able to understand and converse in English to an adequate standard for this purpose. This will be assessed by means of the written knowledge test and interview with a licensing offer.

2. Driving Licence

Applicants must have held a full driving licence for at least 12 months, granted by a country which belongs to the European Union or is within the European Economic Area (Iceland, Liechtenstein, and Norway are not in the EU, but are members of the EEA). An applicant from any country outside of these will have to pass a U.K. driving test and hold for at least 12 months before re-applying.

3. Entitlement to Work in UK

The Council co-operates with the Home Office by scanning all application forms and forwarding these to the Home Office to ensure that applicants are entitled to work as a hackney carriage/private hire driver in the UK.

4. Assessing Applicants' Fitness and Propriety

All applicants must supply details of two referees from whom references may be obtained by the Council. Referees cannot be a member of the applicant's family or connected with the taxi trade. At least one reference must be from a previous employer.

Applicants who were not born in the U.K. and/or have not lived in the U.K. for 10 years must supply a certificate of good conduct from their embassy or home country.

5. Criminal Records Bureau Check

All applicants must complete and submit with their application a Criminal Records Bureau application form. This form will be submitted by the countersignatory for the Council and submitted to the Bureau. Any convictions disclosed will be taken into account in deciding whether or not to grant the application in accordance with the Policy on Criminal Convictions.

Notwithstanding the Council's requirements for a Criminal Records Bureau check, applicants **MUST** disclose full details of their criminal convictions (including any "spent" convictions under the Rehabilitation of Offenders Act 1974), on the application form. An applicant's failure to disclose convictions which are subsequently disclosed under the Criminal Records Bureau check will be taken into account when considering their application. Failure to notify a conviction on an application form is also a criminal offence.

6. Driving Standards

In addition to possessing a driving licence issued by a relevant country, all applicants are required to undertake the Driving Standards Agency Taxi Assessment Test and produce a pass certificate. The Licensing Sub-Committee and the Head of Legal Services have discretion to require any licensed hackney carriage or private hire driver to undergo and pass a Taxi Assessment Test where he is satisfied that the driver's standards of driving or general conduct are such that such an assessment is desirable.

Exemptions

Drivers licensed for Schools and Disabled Contracts only.

7. Knowledge Test.

All applicants will be required to take and pass the Private Hire and Hackney Carriage Knowledge Tests. Tests will be conducted by the Council on a regular basis, usually once a month.

Private Hire Knowledge Tests are used to examine an applicant's knowledge of streets, public houses, hotels and other important locations within the Winchester Town area (i.e the six Town Wards together with Olivers Battery, Kings Worthy and Harestock).

Hackney Carriage Knowledge Tests are used to examine an applicant's knowledge of the whole of the Winchester City Council area which runs from Sutton Scotney to the north, Portsdown Hill to the south, Hursley to the west and West Meon to the east.

The pass mark for both tests is 80%. Applicants who achieve between 75% and 79% may undertake a further oral test with the Licensing and Registration Manager, comprising 10 questions. Applicants who are able to answer 8 questions or more will be treated as having passed the Knowledge Test. Applicants who fail the oral test may retake the oral test on up to two further occasions. Applicants who fail three successive oral tests will be required to wait one year and re-sit the written exam.

Exceptions

- (a) Drivers from outside this area are not required to take a private hire knowledge test, but it will be necessary if they transfer to a Winchester operator.
- (b) Drivers licensed for Schools and Disabled only are exempt from the requirement to undergo a knowledge test.

8. Medical Fitness

All applicants shall undergo a medical examination with regard to their fitness to carry fare paying passengers and shall provide a medical assessment form completed by the examining doctor. Such examination is to be carried out on initial application and every fifth year thereafter until the age of 63 years and 65 years, and every year thereafter.

The Licensing Sub-Committee and the Head of Legal Services have discretion to require any licensed hackney carriage or private hire driver to undergo a medical examination where he is satisfied that a condition has arisen which may affect the person's physical fitness to hold a licence.

The Drivers Medical Group of the Driver and Vehicle Licensing Agency recommends that that the Group 2 medical standards applied by DVLA should also be applied by local authorities to taxi drivers. This places a higher standard of medical fitness than that of a normal driver.

In particular, a new applicant's standard of acuity of vision, using corrective lenses if necessary, will be considered unsatisfactory if it is below 6/9 in the better eye or 6/12 in the other eye. Also, the uncorrected acuity in each eye must be at least 3/60.

Complete loss of vision in one eye or corrected acuity of less than 3/60 in one eye shall bar the applicant from holding a hackney carriage or private hire driver licence.

Exceptions

Persons who have held a hackney carriage or private hire driver licence prior to 5 February 2008 must have a visual acuity of at least 6/12 in one eye and 6/36 in the other.

Persons who have held a hackney carriage or private hire driver licence prior to 1 January 1991, AND the authority was aware of the loss of sight in one eye before that date.

Hackney Carriage and Private Hire Driver's Licences - Policy on Criminal Convictions.

GENERAL

1. This Policy applies to the following:-
 - a. Applications for a Hackney Carriage or Private Hire Driver's Licence;
 - b. Revocation of an existing Hackney Carriage or Private Hire Driver's Licence;
 - c. Suspension of an existing Hackney Carriage or Private Hire Driver's Licence.
2. Each case will be decided on its own merits.
3. A person with a conviction for a serious crime will not normally be permanently barred from obtaining a licence but **should** be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before the application is entertained. However, persons with convictions of a sexual or child related nature or other very serious crime will not normally be issued with a licence.
4. The Council will exercise discretion where an offence is isolated and there are mitigating circumstances. However, the overriding consideration in all cases will be the protection of the public.
5. The Head of Legal Services, acting through the Licensing and Registration Manager, has delegated authority to issue Driver's Licences. In any case where he considers it appropriate to do so, he may refer the application to the Licensing Sub Committee for it to determine whether or not an application for a licence should be granted or, where a licence has already been granted, whether that licence should be suspended or revoked.
6. The Council accepts that where an applicant or licence holder has been found guilty of a criminal offence, the Court will have imposed what it considers to be an appropriate penalty for that offence. Accordingly, in considering convictions for such offences, the Sub-Committee dealing with a case should not 're-try' any offence for which the applicant or licence holder has pleaded guilty or been found guilty by a court of law. However, it should take into account the type and nature of the offence, and the penalty handed down for the offence, and should bear in mind the fact that the paramount consideration is the protection of the public.
7. For the same reason, offences will not be disregarded simply on the basis that the offender has served his or her sentence, and has therefore paid the appropriate penalty for his or her crime. In considering whether to grant an application for a licence, or to suspend or revoke an existing licence, the Sub-Committee will not decide a penalty to impose, but whether or not the public will be adequately protected.
8. The Council considers that in determining applications for licences, or deciding whether to revoke or suspend licences, the Sub-Committee proceedings will constitute "proceedings before a judicial authority" within the meaning of Section 4(6) of the Rehabilitation of Offenders Act 1974, and therefore, where the Sub-Committee hearing a case considers that justice cannot be done except by admitting evidence relating to spent convictions, such evidence may be admitted in accordance with Section 7 of that Act. Given the need to protect the public, it is likely that in the case of spent convictions involving serious offences. (e.g. death by dangerous driving, drugs, violence, sexual offences or offences of an habitual nature), evidence of such convictions will be admitted.

SPECIFIC EXAMPLES OF OFFENCES

Minor Motoring Offences

9. Isolated convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding, etc should not prevent a person from proceeding with an application. Any new applicant must have held a full drivers licence for a period of 12 months without any period of suspension during those 12 months. Licence Holders convicted of such offences during the period of licence may be warned as to future conduct, and informed that any disqualification may lead to revocation of any hackney carriage or private hire licence issued by the Council

Major Traffic Offences

10. An isolated conviction for reckless or dangerous driving or driving without due care and attention etc will normally merit at least a warning as to future driving and advice on the standards expected of hackney carriage and private hire drivers. In addition, an existing licence holder will normally be required to take (or retake) a Driving Standards Agency Taxi Assessment Test. More serious convictions and those with more than one conviction for these type of offences within 2 years will merit revocation of any existing licence, or a refusal of the application in the case of new applicants, and no further application will then be considered until a period of at least three years from the time the conviction has elapsed.

Drunkenness

- (i) With a motor vehicle

11. A serious view will be taken of convictions of driving or being in charge of a vehicle under the influence of drink. An isolated incident in the past will not necessarily debar an applicant. At least three years should elapse after the restoration of the D.S.A. driving licence before an applicant is considered for hackney carriage or private hire licence but strict warnings will be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a hackney carriage or private hire driver's licence. If the applicant is found to be an alcoholic a minimum period of five years should elapse after treatment is completed before a licence application is considered.
12. A driver found guilty of driving passengers for hire and reward under the influence of drink will have his/her hackney carriage or private hire drivers licence revoked immediately and be banned from holding a hackney carriage or private hire drivers licence with the Council for a minimum of five years.

- (ii) Not in a motor vehicle.

13. An isolated conviction for drunkenness need not debar an applicant from being granted a licence, nor will it automatically be a ground for revoking or suspending an existing licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating a critical examination.

Insurance Offences

14. A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily debar an applicant provided at least three years free of conviction have elapsed since the offence, but strict warning will be given as to future behaviour. More than one conviction will raise grave doubts as to the applicant's fitness to hold a hackney or private hire licence. At least three years should elapse after the restoration of the D.S.A. driving licence before an applicant is considered for hackney carriage or private hire licence.

15. A driver found guilty of driving passengers for hire and reward whilst without insurance will have his/her driving licence revoked immediately and be banned from holding a hackney carriage or private hire driving licence with the Council for five years.
16. Any applicant with three insurance offences or more will not be considered fit and proper to hold a hackney carriage or private hire licence with the Council.

Drugs

17. An applicant with a conviction for a drug related offence should be required to show a period of at least three years free of convictions before any application is entertained, or a minimum of five years after detoxification treatment, if applicant was an addict.

Violence

18. As hackney carriage and private hire drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for grievous bodily harm, wounding or assault. A minimum of three years free of convictions should be shown before an application is entertained and even then a strict warning will be administered. An existing licence holder could expect his/her licence to be suspended or revoked if convicted of these offences.

Indecency

19. As hackney carriage and private hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any or the more serious sexual offences, will not normally be granted a licence until they can show a substantial period (at least 3 to 5 years) free of such offences. A strict warning of future conduct would always be given if a licence is granted.

Dishonesty

20. Licence holders are expected to be persons of trust. The widespread practice of deliveries for companies, taking children to school, and families on holiday, shows the trust which is placed in such drivers. It is easy for dishonest drivers to defraud foreign visitors when giving change, or other customers by taking them by other than the shortest route. Lost property can be kept by unscrupulous drivers. For these reasons a serious view will be taken of any convictions involving dishonesty. In general, a period of at least three years free of conviction will be required before entertaining an application for a hackney carriage or private hire drivers licence by the Council. Any existing driver convicted of dishonesty may expect any licence held to be suspended or revoked and a possible ban on holding a hackney carriage or private hire driver's licence for a minimum period of three years.

Scanners

21. Anyone convicted for an offence involving the unlawful use of a radio scanner will be banned from holding any licence for a minimum of a five year period.

It is an offence for any person knowingly or recklessly to make a false statement or to omit any material particular in giving information required by the application for a licence, punishable by up to seven years imprisonment upon conviction. However with regard to questions concerning previous convictions the applicants attention is drawn to the provisions of section 4(2) of the Rehabilitation of Offenders Act 1974 which, in summary provides that any such question shall be treated as not relating to spent convictions as defined in that Act or to any circumstances ancillary to spent convictions and answer thereto may be framed accordingly. However notice is also brought to Section 4 (2), and 6 and 7 of that same Act that the Local Authority may admit evidence of spent convictions which relate to determining whether an applicant is suitable to hold a licence.