

CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting:	16 th November 2015
Report of:	Miss Kim Evans – Licensing Team Leader
Subject/Title:	Proposed changes to the joint Hackney Carriage and Private Hire Driver knowledge test
Portfolio Holder:	Cllr Les Gilbert – Communities

1.0 Report Summary

- 1.1 To seek Members' approval for changes to the testing requirements of applicants for joint Hackney Carriage and Private Hire Driver Licenses.

2.0 Recommendation

- 2.1 That Members consider the proposed changes to the Council's knowledge test and retest fee and resolve that the Licensing Team Leader be given delegated authority to consult on the proposals by publishing them on the Council's website for 4 weeks.

3.0 Reasons for Recommendations

- 3.1 The Licensing Committee has delegated authority to determine such matters in accordance with the Council's Constitution.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 None

7.0 Financial Implications

- 7.1 The purpose of the paper is to authorise consultation on changes to the way the knowledge fee is levied and the potential that a retest fee is charged. Depending on the results of the consultation, a further paper will consider whether there will be any changes to the licence fee and whether any payments are made separately.

8.0 Legal Implications

- 8.1 Section 46 of the Town Police Clauses Act 1847 provides local authorities the power to issue Hackney Carriage driver's licences. Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') provides the authority to issue licences to drive private hire vehicles.
- 8.2 The provisions of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the 1976 Act state that a council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.
- 8.3 What constitutes fit and proper is not defined in the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. Similarly, there is no judicially approved test of fitness and propriety.
- 8.4 To assist the Licensing Authority in determining whether an applicant is fit and proper a number of processes are conducted, namely:
- Completion of the Council's application form
 - Satisfactory enhanced Disclosure and Barring Certificate
 - Satisfactory driving record
 - Medical assessment
 - Knowledge test
- 8.5 Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Licensing Authority to charge fees for the grant of licences in respect of hackney carriage and private hire drivers, vehicles, and operators. The fees must be set for these licences on the basis that it only recovers costs which it is entitled statutorily to recover. Where no licence is granted the fee for the grant of licence must be refunded or not levied.
- 8.6 In respect of drivers' licences the Act states that the Council may charge, 'such a fee as it considers reasonable with a view to recovering the costs of issue and administration associated with the grant of Hackney Carriage and Private Hire drivers' licences'.
- 8.7 In *Darlington v Kaye* [2004] EWHC 2836 (Admin) it was held that the requirement by the local authority that the respondent pass a Driving Standards Agency taxi test before it would consider renewing his hackney carriage licence was not a condition attached to the grant of the licence but a request for information. It was reasonably necessary for the Local Authority to request such information in order to assess whether the respondent was a fit and proper person for a licence. This same view could be taken with a local knowledge test.

9.0 Risk Management

- 9.1 Thorough consideration of all the information prior to making a decision will reduce any risk of a successful challenge.

10.0 Background

- 10.1 On the 5th November 2012 the Licensing Committee gave Officers the delegated authority to review, update and amend the driver knowledge test, including the consideration and implementation of an appropriate numeracy/language skills test.
- 10.2 Following that decision, the Licensing Team researched the testing arrangements of a number of Licensing Authorities across the country. This research included our neighbours at Cheshire West and Chester, Stoke-on-Trent and colleagues at Manchester City Council.
- 10.3 It became evident that the testing arrangements in place within the Borough fell short of the standards required by other Licensing Authorities. This makes Cheshire East vulnerable to applicants from outside the Borough and who have failed the requirements of other Licensing Authorities.
- 10.4 This vulnerability is exacerbated by recent case law that allows a licensed vehicle to be used for pre-booked work throughout England and Wales. Members are aware that we have seen an increase in the number of applications being made by residents of North Manchester.
- 10.5 It was confirmed that many Licensing Authorities are requiring applicants for driver licenses to undergo a more formal testing process. This includes the attainment of a national accredited and recognised qualification.
- 10.6 Accordingly, following appropriate consultation the Licensing Committee resolved that all applicants would be required to undertake a professional qualification in addition to taking a local knowledge test.

10.7 Our current knowledge test

- 10.7.1 The Council's current knowledge test is 45 minutes long and in two parts:

Geographical Knowledge	10 written questions (from a choice of 15)	Pass mark 8
Taxi legislation & Local Conditions	25 multiple choice questions	Pass mark 21

- 10.7.2 The Licensing Team records the pass figure, which is currently 29%. Applicants have two attempts at the tests per application.
- 10.7.3 The fee of £228.00 is levied for the grant of a licence so, where no licence is granted a refund of £180.00 is given (this is the fee minus the amount used for the Disclosure and Barring check) and therefore does not take into account any administrative work undertaken as part of an unsuccessful application process

10.8 Proposed Changes

10.8.1 Officers have reviewed the test and consider that the test would benefit from being one hour long with additional questions based on the Highway Code. It is suggested that the test would consist of:

Geographical Knowledge	10 written questions (from a choice of 15)	Pass mark 8
Taxi legislation & Local Conditions	25 multiple choice questions	Pass mark 21
Highway code	15 multiple choice questions	Pass mark 11

10.8.2 Since 01/04/2015 there have been 49 complaints from the public made against taxi drivers and 11 of them could be considered matters covered by the Highway Code (e.g. going through a red/amber light, poor standard of driving and bald tyres). After breaches of the Council's conditions this is the second most common reason for a complaint.

10.8.3 It would therefore be appropriate for the Council to test applicants on their knowledge of the rules and regulations of driving before a licence is granted.

10.8.4 Where an application is closed or withdrawn following two failed attempts at the knowledge test, the fee paid (less DBS costs) is refunded to the applicant. This means that the cost of the knowledge test process in these cases is actually being met by all successful applicants. Levying a separate fee will reduce the need to increase taxi driver fees generally to accommodate these costs, and may also minimise speculative applications by those who would find it difficult to pass the test but who have nothing to lose by doing so under the current arrangements.

10.8.5 Therefore, the Committee is requested to consider proposals to separately levy a fee for knowledge tests that would be charged separately from the fee for a grant of a licence. This change would mean that the charge for the test(s) would not be refunded if a licence is not granted.

10.8.6 If no changes to the test are made the fee can be broken down as:

Action	Time	Costs (average costs per hour - £13.36)
Issuing of letters of invite and result and updating the system accordingly and dealing with telephone bookings	60 minutes Second class post of two letters per applicant	£13.36 £1.08
Test paper and room preparation	60 minutes	£13.36
Conducting and Invigilating test (two officers)	60 minutes (divided by ten applicants)	£2.67
Marking test paper (including verification)	30 minutes per applicant	£6.68

Total		£37.15
Suggested fee		£38.00

10.8.7 If the Committee is minded to change the knowledge test as proposed this would change the fee break down:

Action	Time	Costs (average costs per hour - £13.36)
Issuing of letters of invite and result and updating the system accordingly and dealing with telephone bookings	60 minutes Second class post of two letters per applicant	£13.36 £1.08
Test paper and room preparation	60 minutes	£13.36
Conducting and Invigilating test (two officers)	90 minutes (divided by ten applicants)	£3.96
Marking test paper (including verification)	35 minutes per applicant	£7.70
Total		£39.46
Suggested fee		£40.00

10.8.8 The suggested fee is higher than the breakdown as there are some costs associated with the process that are insignificant if looked at separately. For example, we can accommodate 10 applicants taking the test at a time and this is reflected in the charge for this process being divided by 10. However, there are occasions where the sessions are run below this figure because applicants fail to attend. The above figures also do not include apportionments for general costs that the service meets and no costs for room hire or contacting applicants for responses to correspondence. Similarly, the hourly rate figure used is likely to be less than the actual cost incurred. This is because different aspects of the process are undertaken by officers on different pay grades.

10.9 Insofar as possible the Licensing Service should run on a cost neutral basis, that is where a fee can be levied to cover the costs of the service provided it should be.

10.10 Additionally, if applicants are failing tests and require resits, the cost of that process should be met by the applicant rather than being subsidised by applicants who go through the process without needing to resit tests.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

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