

COMMITTEE Licensing

DATE 13 January 2010

DIRECTOR Stewart Carruth

TITLE OF REPORT Age Discrimination

REPORT NUMBER: CG/01/134

1. PURPOSE OF REPORT

1.1: At the Licensing Committee's meeting on 2 September 2009, Officers were instructed to research whether the Committee's current policy practice requiring taxi and private hire car drivers aged 65 years or over to submit to the Licensing Authority ('the Authority'), an annual medical certificate or letter from a doctor confirming that he or she is fit to carry out his or her duties as a driver, constitutes age discrimination. This Report advises on the outcome of that research.

2. RECOMMENDATION

2.1: That Members revoke the current practice requiring all drivers aged 65 years or over to submit an annual medical report on their fitness to hold a taxi or private hire car driver's licence.

3. FINANCIAL IMPLICATIONS

3.1: None.

4. SERVICE & COMMUNITY IMPACT

4.1: None.

5. OTHER IMPLICATIONS

5.1: If the Authority revokes current practice and follows DVLA practice, there is no evidential link to suggest that greater risk implications would arise from a safety perspective to either the driver and/or the general public.

6. REPORT

6.1: Current Authority practice:

6.1.2: Current practice is that the Authority requires all drivers aged 65 years or over to submit an annual medical certificate or letter confirming that the driver is fit to carry out the duties of a taxi or private hire car driver. In procedural terms, this request is initiated by the Authority sending out a letter to the driver in question. If this information is not produced, a further letter is sent to the driver advising that the driver's licence may be suspended. Currently the GP's cost is met by the driver.

6.1.3: The Authority is not legally obliged to request this information when a driver reaches the age of 65 years. There is no written policy. It is a practice that has been in place for many years and has evolved through time. There is also currently no condition attached to a driver or operator's licence requiring a driver to submit this information when they reach the age of 65 years.

6.2: General legislative background: Age Discrimination:

6.2.1: European Council Directive 2000/78/EC ('the Directive') establishes a general legislative framework with regards to equal treatment in employment, access to employment and vocational training. It requires EU member states to implement legislation outlawing various types of discrimination (including age) no later than December 2006.

6.2.2: The Employment Equality (Age) Regulations 2006 as amended ('the Regulations') implement the UK's obligations under the Directive in relation to discrimination on the grounds of age. The Regulations provide for equal treatment in employment, access to employment, and vocational training on the grounds of age. The Regulations came into force 1 October 2006.

6.3: The Regulations

6.3.1: The Regulations generally prohibit age discrimination in employment, access to employment and vocational training. They do not cover the provision of goods and services, which includes the taxi service.

6.3.2: The Regulations also provide that age discrimination may be justified in certain circumstances. For example, if an employer can prove a sound business reason for the age discrimination. The Regulations give legal protection to certain individuals but not to all individuals.

6.4: Section 13(4) of the Civic Government (Scotland) Act 1982 'the Act'

6.4.1: Under Section 13(4) of the Act the Authority have the power, at any time, to require an applicant for or holder of a taxi driver's licence or private hire car driver's licence to submit to a medical examination at the Authority's expense by a medical practitioner nominated by them. There must however be a reason for such a request.

6.4.2: The purpose of invoking this power is for the Authority to satisfy itself that the driver is physically fit to drive the vehicle in question. If the Authority rely on this power in every case as statutory authority to require a driver to submit medical information when they reach the age of 65 years, a reasonable question that could arise is why it is that the Authority requires every driver aged 65 years to prove their physical fitness to drive? What is the significance of age 65 as opposed to age 64 or 66? Physical fitness issues may not necessarily be linked to the age of an individual. If challenged, the Authority would probably require to prove a link between increased risk from a safety perspective and a driver reaching the age of 65 years, which could prove difficult in many cases.

6.5: Grounds of Suspension: Schedule 1, paragraph 11 (2) the Act:

6.5.1: As noted in paragraph 6.1.2 above, if the required information is not produced by a driver upon request by the Authority, the ultimate sanction could be suspension of the licence.

6.5.2: Schedule 1, paragraph 11 (2) (a) provides that the Authority may order the suspension of a licence if, in their opinion, the holder of the licence is not or is no longer a 'fit and proper person' to hold the licence. If a driver refuses a request to submit the information confirming fitness to drive it could be difficult to invoke this as a ground for suspension as the Authority won't have before it the necessary information for their consideration. This ground of suspension could therefore be difficult to rely on.

6.5.3: Schedule 1, paragraph 11 (2) (c) provides that the Authority may order the suspension of a licence if, in their opinion, the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause 'undue public nuisance' or 'a threat to public order or public safety'.

6.5.4: Whilst the 'undue public nuisance' test would not be open to the Committee, the 'threat to public order or public safety' could be a more concrete ground for suspension. However, the Authority would require to have in place evidence before them confirming non fitness to drive before invoking this as a ground for suspension. If a driver refuses to submit the information the Authority would not have the evidence before them for their consideration.

6.5.5: If a driver did submit the information then it is arguable that this ground could be a strong ground for suspension of the licence if a link was proven between physical fitness to drive and the threat to public safety.

6.6: Schedule 1, paragraph 11 (2)(d) of the Act:

6.6.1: In terms of this subparagraph, the Authority could order suspension of the licence if, in their opinion, a condition of the licence has been contravened.

6.6.2: There is currently no condition attached to any licences requiring a driver to submit a medical certificate or letter confirming fitness to drive when they reach the age of 65 years. This ground could thus not be invoked as a ground of suspension of the licence.

6.6.3: If the Authority did wish to attach such a condition then, in terms of Schedule 1 paragraph 5 (2), it would require to be reasonable.

6.6.4: Whether this condition is reasonable in every case when a driver reaches the age of 65 years is questionable for the reasons stated in paragraph 6.4 above.

6.7: Schedule 1 Paragraph 11(4)(b) the Act:

6.7.1: This subparagraph provides that the Authority, when considering whether to suspend a licence, may make such reasonable inquiries as it thinks fit and may include the results of their inquiries in the matters to which they have regard in such consideration.

6.7.2: The Authority could request submission of medical information under this power when considering whether to suspend a licence. However, the purpose of requesting the information is to ascertain the fitness of the driver and to link proof of fitness to reaching a certain age may not be reasonable in every circumstance. Requesting the information may therefore be a reasonable inquiry in some circumstances but not all.

6.8: Driver and Vehicle Licensing Agency (DVLA) position:

6.8.1: The current position in the United Kingdom is that when a driver reaches the age of 70 their DVLA driving licence expires and they require to submit an application for renewal to the DVLA. The renewed licence is normally valid for a period of three years. The driver must disclose any medical conditions that they have on the application form. The DVLA then write to the driver's GP making further enquiries with regards to the medical condition. Any costs incurred with this request are met by the DVLA.

7: Options for the Committee:

7.1: Maintain Status Quo

7.1.1: As noted in paragraph 6.3 above, the Regulations cover the employment relationship.

7.1.2: The Authority is not a taxi/private hire car driver's employer. Its role is to issue a licence. The Regulations therefore do not apply to the relationship between the Authority and taxi/private hire car drivers. Drivers therefore cannot rely on them to protect them against age discrimination. Current practice therefore does not constitute age discrimination in terms of the Regulations.

7.1.3: There is currently no other legislative regime pertaining to age discrimination that would give a taxi/private hire car driver potential legal protection in this regard. However, there is currently a proposed Equality Bill going through the various procedural stages in the Westminster Parliament. If this Bill receives Royal Assent and becomes law, it proposes to widen age discrimination protection outwith the workplace. As this Bill is not current law comment on its provisions are speculative.

7.1.4 As noted in paragraphs 6.4, 6.5, 6.6 and 6.7 above, the problem with current practice is that it is questionable whether the Authority has the legal power to require a driver to submit a medical certificate or letter confirming fitness to drive in every case on the sole basis of their age.

7.2: Abolish current policy practice

7.2.1: The Authority may abolish current practice and invoke its Section 13(4) power (see paragraph 6.4 above) on a case by case basis to determine whether a driver is fit to drive a vehicle.

7.2.2: If Members follow this recommendation, there are also two additional safeguards already in place with regards to ascertaining the medical fitness of a driver. The application form for the grant or renewal of a taxi driver's licence currently requests whether an applicant is 'subject to any illness, deformity or bodily infirmity' and, if so, the applicant requires to indicate its nature. This is one mechanism by which pre-existing medical conditions may be brought to the attention of the Authority.

7.2.3: As noted in paragraph 6.8 above, those who reach the age of 70 years require to renew their driver's licence with the DVLA and disclose pre-existing medical conditions. The DVLA have deemed those between 65 and 70 fit to drive a vehicle, then it is reasonable to assume that the driver is fit to drive a taxi/private hire car.

7.3 : Abolish current policy practice and adopt the DVLA position

7.3.1: Members could additionally require drivers to renew their taxi/driver's licence at the age of 70 years and if any medical conditions are disclosed, require submission of a letter/medical certificate confirming fitness to drive. However, in terms of Section 13(4) of the Act, the expense of this would require

to be met by the Authority. Cost considerations therefore arise. Adopting this approach could also lead to an increased administrative workload for relevant staff.

8: The Taxi Inspector has indicated that he concurs with the recommendation as per paragraph 2 above.

9. REPORT AUTHOR DETAILS

Caroline Treanor

Solicitor

email: ctreanor@aberdeencity.gov.uk

Tel No: 01224 (52)3173

BACKGROUND PAPERS

The Civic Government (Scotland) Act 1982;

European Council Directive 2000/78/EC;

The Employment Equality (Age) Regulations 2006 (No 1031);

The Employment Equality (Age) (Amendment) Regulations 2006 (No 2408);

The Employment Equality (Age) (Amendment No 2) Regulations 2006 (No 2931);

The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (No 825);

The Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008 (No 573)

www.dvla.gov.uk

Equality Bill and Explanatory Notes