

ABERDEEN CITY COUNCIL

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COMMITTEE	LICENSING
DATE	19 JANUARY 2016
DIRECTOR	RICHARD ELLIS
TITLE OF REPORT	STREET KNOWLEDGE TESTING FOR PRIVATE HIRE DRIVERS
REPORT NUMBER	CG-16-004
CHECKLIST COMPLETED	Yes

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1. PURPOSE OF REPORT

This report informs the Committee of a decision from the Sheriff Court which may have implications for the Committee's policy on street knowledge testing for private hire drivers and includes recommendations for a review of that policy.

2. RECOMMENDATION(S)

That the Committee:-

- i. agrees to suspend the administration of the street knowledge test for private hire drivers thereby setting aside the decision of the Committee of 2 February 1990; and
- ii. instructs officers from Legal and Democratic Services to include training for private hire driver licences as part of the current consultation on taxi driver training instructed by the Committee at its meeting on 1 September 2015.
- iii. instructs officers to report to Committee with proposals for street knowledge testing for private hire drivers once section 64 of the Air Weapons and Licensing (Scotland) Act 2015 is in force.

3. FINANCIAL IMPLICATIONS

There are no financial implications at this stage.

4. OTHER IMPLICATIONS

There are no other implications at this stage.

## 5. BACKGROUND/MAIN ISSUES

### 5.1 Background

Section 13 of the Civic Government (Scotland) Act 1982 (hereinafter referred to as “the 1982 Act”) explicitly states that a licensing authority can require applicants for a taxi driver’s licence to take a street knowledge test prior to the grant of the licence.

Section 64 of the Air Weapons and Licensing (Scotland) Act 2015 (hereinafter referred to as “the 2015 Act”) will amend section 13 of the 1982 Act to include private hire drivers’ licences within the requirements for knowledge testing. However section 64 is not yet in force and at present the Scottish Government has not given any timescales for implementation.

At its meeting on 2 February 1990 the Licensing Committee agreed to extend the administration of a street knowledge test to private hire drivers. The test was already in operation in relation to taxi drivers. The Committee was aware that there was no specific reference in the 1982 Act for knowledge testing for private hire drivers. However the Committee noted that it was a condition of every private hire drivers licence that the driver ensured the passenger was driven to their destination by the shortest possible route. By imposing a street knowledge test on private hire drivers the Committee sought to ensure the interests of the public could be suitably protected.

### 5.2 Appeal

On 25 November 2014 the Licensing Committee refused an application for a private hire drivers licence on the ground that there was other good reason for refusal, namely the applicant’s failure to pass the street knowledge test. The applicant in question subsequently appealed the decision to the Sheriff Court. After hearing submissions from both the applicant and the Council, the Sheriff issued his judgement on 18 November 2015.

The Sheriff upheld the appeal by the applicant. He determined that the Committee’s policy of 2 February 1990 is ultra vires and therefore the Committee acted beyond its powers. He considered that the words used in the 1982 Act in relation to knowledge testing for taxi drivers, together with the structure of that Act, indicate that the Government envisaged a two tier system for taxi and private hire car licensing. Whilst there is provision in the 2015 Act for knowledge testing in relation to private hire car drivers, those provisions are not in force and, as the legislation currently stands, local authorities should only have power to require street knowledge testing in the case of taxi driver licences. Accordingly the applicant did not require to except himself from the policy and the Committee’s decision to refuse the licence cannot stand.

The Sheriff has therefore ordered that the application is remitted back to the Licensing Committee for consideration without any reference to the 1990 policy. Accordingly the Committee has to determine the application anew and will not be able to consider the applicant's failure to sit the knowledge test as a reason for refusal. The application will be placed before the Committee at its meeting on 19 January 2016.

### 5.3 Policy Review

In view of the Sheriff's decision the Committee cannot at this time administer the street knowledge test to applications for private hire driver licences. It is therefore recommended that the Committee agree that the decision of 2 February 1990 will be set aside pending the implementation of the relevant provisions of 2015 Act. Officers will report to Committee with further recommendations on street knowledge testing for private hire car drivers once the provisions are in force.

Whilst the Sheriff's decision prevents the Committee from imposing street knowledge testing on applicants for private hire car drivers, the Committee could consider other forms of training for private hire drivers to ensure a consistent standard of service across its taxi and private hire fleet. In 2012 the Scottish Government issued "Taxi and Private Hire Car Licensing: Best Practice for Licensing Authorities, Second Edition, April 2012". Chapter 8 of the guidance states that the Government would commend any licence condition imposing training on taxi and private hire drivers with a view to raising standards with the fleet. It would therefore be open to the Committee to consider alternative forms of training for private hire drivers. However such training could not include any street knowledge element until the relevant provisions of the 2015 Act are in force.

At its meeting on 1 September 2015 the Committee instructed officers to consult on proposals for taxi driver training to include a variety of topics such as customer service. It is proposed that the Committee includes training for private hire drivers as part of that consultation.

## 6. IMPACT

### **Improving Customer Experience –**

Whilst the removal of the street knowledge test could have an impact on service provision across the private hire car fleet, the Committee can explore alternative forms of training to mitigate this. Training for private hire car drivers could ensure insofar as possible consistency of service across the taxi and private hire car fleet and offer a better experience for customers.

### **Corporate -**

There are positive benefits to consultation on training for private hire car drivers insofar as improving public perception and ensuring that drivers are able to provide a high standard of service. This fits in with the aims of the Council's Local Transport Strategy.

## **Public –**

This report will be of interest to members of the public who make use of licensed private hire cars. An EHRIA has been completed however it has concluded that there will be a neutral impact and no negative effect on the protected characteristics.

### 7. MANAGEMENT OF RISK

If the Committee continues to administer the street knowledge test in the face of the Sheriff's decision it is likely that an applicant who faces a decision for refusal based on the policy will appeal the decision. The Committee may again be accused of acting ultra vires and any decision based on the policy may be unsound. Any future challenge would be by way of court proceedings and there could be a financial burden in terms of legal costs if the Committee's defence was unsuccessful.

Whilst there may be a risk in terms of a reduction in the standard of service provision through the removal of the street knowledge test, this could be mitigated by the introduction of alternative training for private hire drivers.

### 8. BACKGROUND PAPERS

Judgement by Sheriff Napier in the cause Sam Murray v Aberdeen City Council dated 18 November 2015  
Civic Government (Scotland) Act 1982  
Air Weapons and Licensing (Scotland) Act 2015  
Taxi and Private Hire Car Licensing: Best Practice for Licensing Authorities, Second Edition, April 2012

### 9. REPORT AUTHOR DETAILS

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