

MEDICAL ASSESSMENT OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS

Purpose of Report

1. This report seeks members endorsement of the application of a policy in relation to medical assessment of licensed hackney carriage and private hire drivers (licensed drivers) having regard to age discrimination legislation.

Background

2. In 1995 the House of Commons Select Committee recommended that licensed drivers should pass a medical examination as part of the licensing process. It was further recommended that Group 2 medical standards be adopted to ensure that fare paying passengers were provided the maximum protection. This is the standard applied to drivers of other public service vehicles and heavy goods vehicles.
3. Group 2 medical standards are stricter than the Group 1 standard which applies to the private car driver. The issue of a Group 2 licence requires the applicant to submit a standard report of medical assessment from a medical practitioner. At present (currently under discussion in EU) this medical report must be submitted by the driver when first licensed, every five years from 45-65 years and annually thereafter.
4. The majority of taxi licensing authorities have adopted this standard and the policy was adopted by this authority in 1995.
5. The Employment Equality (Age) Regulations 2006 (the Regulations) outlaw discrimination, victimisation or harassment of a person on the grounds of age in connection with employment. The regulations are also applicable to "qualification bodies" and it is the view of the council's legal services that the regulations do extend to taxi licensing activities.
6. Regulation 3(1) defines direct discrimination as less favourable treatment on the grounds of someone's age. It therefore follows that requiring additional medical certification at a certain age is discrimination. The Regulations do, however, recognise that there may be certain circumstances where such discrimination is justified if it is a proportionate means of achieving a legitimate aim.
7. If the Council wishes to continue with its existing policy on medical examinations it must be able to demonstrate that there is:

- a legitimate aim, and
 - the age discrimination is a proportionate means of achieving that legitimate aim
8. In relation to licensed drivers, the legitimate aim of the licensing authority is the safety of those using licensed vehicles driven by licensed drivers and other road users.
 9. In relation to proportionality, it is necessary to show that older drivers are more likely to have medical conditions which would render them less safe to drive licensed hire vehicles than younger persons and that those medical conditions could reasonably and realistically be expected to be detected by medical examination.
 10. The latest authoritative work on fitness to drive is contained in a publication published by the Royal Society of Medical Press entitled *Fitness to Drive: A Guide for Health Professionals*. The publication is written by Tim Carter, Chief Medical Adviser in the Department of Transport. It has been endorsed by the British Medical Association. The DVLA website (last updated 10/07/07) states that this new guidance continues to recommend that the Group 2 medical standards be applied by Local Authorities to taxi drivers.
 11. This publication makes no direct reference to the relationship between group 2 medical requirements and the Regulations. It does, however, confirm the effect of age on the health and performance of an individual. It states:

“Advancing age – visual function restricted to a limited range of distances and many responses become slower.

Increased frequency of health problems and medication use with age will have implications for performance of some older drivers.

Increased age, even in the absence of any identifiable cause of disability, is associated with less effective visual function, slowing of cognitive processes and of the executive functions of the brain, as well as with reductions in strength and flexibility of musculoskeletal function.

Many of the common causes of visual impairment are associated with ageing and most of them lead to stable or slowly progressive functional limitations.

The majority of taxi licensing authorities use Group 2 standards as the basis for acceptance because of the public safety implications of health related impairment in a driver who carries passengers for financial reward.

Most driving licence systems use age as a criteria for increased frequency of re-licensing.”

12. These references support the generally accepted lay-man’s view that health deteriorates with age and that could have an impact on driver safety.
13. The concept that with advancing age more stringent checks on health are required is supported by the DVLA, the European Union and other licensing regimes.

14. Having regard to the above, it is considered that it is appropriate for City of York Council to put in place additional safeguards to protect passenger and driver safety as the driver's age increases.
15. The only logical safeguard is to ask for a medical assessment. The standard assessment as required by the DVLA and recommended by the Department of Transport is the group 2 standard.

Human Rights Considerations

16. In terms of the Human Rights Act 1998, the holding of a driving licence is neither an absolute right, nor is it a privilege that can be taken away without reason. It is a "qualified right" (Article 8: private life – Protocol 1, Article 1, enjoyment of property).
17. Interference with qualified rights is permissible only if what is done meets certain conditions:
 - has basis in law
 - is necessary in democratic society, i.e.
 - fulfils a pressing social need
 - pursues a legitimate aim
 - is proportional to the aims being pursued, e.g. the protection of public health or order
18. Thus the fair application of statutory standards to prevent death and injury on the roads meets the required criteria.

Consultation

19. The York Taxi Association and York Private Hire Association have been consulted. The Taxi Association are in agreement with the recommendations of the report. At the time of writing this document no comment has been received from the Private Hire Association. If received, it will be reported verbally at the committee.

Options

20. Option 1 – To retain existing policy on the basis of the justification set out above.

Option 2 – To remove the requirement for medical examination other than on application for the initial grant of a drivers licence.

Option 3 – To require medical examination for drivers of all ages at regular intervals, i.e. annually or every 5 years or any other pre-determined frequency.

Appraisal

- Option 1 – Retain existing arrangements

21. No specific data has been found that suggests what specific ages are key milestones at which the additional checks must be made. In the absence of any other evidence, this option is for City of York Council to follow the standards set by the national licensing authority for Great Britain (DVLA).
22. The Council recognises that the national policy is kept under constant review and indeed this issue is being considered by the EU.
23. It is considered that adoption of group 2 standards with the additional medical assessment at 45, 50, 55, 60, 65 and annually thereafter to be a proportionate response to protecting the safety of passengers.

Option 2 – Remove requirement for medical examination after initial grant of licence

24. The standard condition attached to all drivers' licences require all licensed drivers to submit details of any serious illness or prescription of any medication that may affect his/her ability to provide a public transport service.
25. In practice this condition is often not complied with and cannot be relied on. It also requires the driver to self identify problems and refer to a doctor or, in the case of eyesight, to an optician.
26. If this option was approved it would reduce the level of medical scrutiny of drivers to the detriment of passenger safety.

Option 3 – Require regular medical examination of all drivers irrespective of age

27. This option could provide an enhanced level of medical scrutiny for all drivers, however, it will not target those considered to be a greater risk. The cost of a group 2 medical examination varies between £80 and £120 depending on the GP practice referred to. This additional financial burden could be seen to be unreasonable for younger drivers and would be a higher standard than applied nationally for bus and large lorry drivers.

Corporate Priorities

28. There is no link to any of the corporate priorities.

Implications

29. **Financial** – The taxi and private hire licensing accounts are designed to meet the requirements of legislation by balancing expenditure against income derived from licensing fees. The only financial implication resulting from the selection of any option would be the costs of any potential legal challenge to that decision.

Human Resources (HR) – None.

Equalities – As legal advice has been sought there are no problems with this approach.

Legal – For the council to embrace existing national policy is a proportionate approach to protecting the public. The recommended option is consistent with the requirements of current legislation.

Crime and Disorder – None.

Information Technology (IT) – None.

Property – None.

Other – None.

Risk Management

30. Members will note from the analysis that some decisions may be liable to legal challenge. Whilst not suggesting that there would be merit to any challenge, to minimise the risk members must be sure to take all relevant matters into consideration and give clear reasons for their decision.

Recommendations

31. Members are asked to endorse the application of the current policy for medical assessment of licensed drivers as set out as option 1.

Reason: This option provides a legitimate aim of protecting the safety of those travelling in licensed hackney carriage and private hire vehicles and is a proportionate means of achieving that aim. It is in line with the current standards being applied by the government for other classes of driver.

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Report Approved

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Specialist Implications Officers: None

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

Fitness to Drive: A Guide for Health Professionals
The Employment Equality (Age) Regulations 2006