



REPORT OF THE DIRECTOR OF PUBLIC HEALTH TO THE LICENSING AND SAFETY COMMITTEE

8th JANUARY 2020 at 6.00pm

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

WALSALL COUNCIL LICENSING SERVICE FIT AND PROPER PERSONS AND SAFEGUARDING CONSIDERATIONS

1.0 Summary of report

- 1.1 To place before committee a report concerning the considerations Walsall Council in its role as a Licensing Authority make in order to determine if an individual is a fit and proper person to hold a licence.

2.0 Recommendations

- 2.1 The committee is asked to consider the information contained in the report.

3.0 Background information

- 3.1 The aim of local authority licensing in the respect of the taxi and private hire trades is to protect the public. All decisions made with the respect to new applications and in the consideration of the 'behaviour' of existing licence holders should be taken with public protection in mind.
- 3.2 The legislation states that a council should not issue a licence unless they are satisfied that the applicant is a "fit and proper person". There is no legal definition of a "fit and proper person" and therefore the ordinary meaning is generally attached to these words. Walsall Council make various enquiries, to establish whether an applicant is a "fit and proper person" and these are set out below.

In the case of *McCool v Rushcliffe Borough Council* the court said,

One must, as it seems to me, approach this case bearing in mind the objectives of this licensing regime which is plainly intended, among other things, to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober,

mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers.

- 3.3 Walsall Councils Private Hire and Hackney Carriage Information and Licence Conditions document can be found at walsall.gov.uk/taxi_drivers_licence.

The Motoring and Criminal Convictions Guidelines (the Convictions Policy) can be found at **APPENDIX 1**

Pre Licensing Checks

- 3.4 Walsall Council require the following tests and checks to be undertaken before a licence will be issued to a driver.

The applicant must

- i) be entitled to work in the UK and have a current Home Office permit to work.
- ii) have attended and passed the most recent version of the Driver Training Course (see 3.12 – 3.15)
- iii) have a current medical certificate (based on the DVLA standard) signed by their GP stating they are medically fit to drive a Hackney Carriage or Private Hire Vehicle.
- iv) have passed a practical driving assessment (undertaken at present by the Councils Clean and Green services.
- v) have had an Enhanced DBS completed and returned (Base Operators must provide a Basic Disclosure)
- vi) have had a DVLA mandate check of their drivers licence
- vii) passed the ESOL BKSB English listening, reading and maths tests and achieved an Entry Level 3 (equivalent to a Year 6 Primary School child, 11-12yrs).
- viii) have previously passed the Hackney Carriage knowledge test where appropriate.
- ix) have held a full UK driving licence for no less than 2 years. Taken from the date of first issue by Swansea
- x) not have been convicted of any driving offences involving drink/drugs, dangerous driving or disqualification within the last 5 years
- xi) not have been convicted of careless driving/reckless driving or driving without insurance within the last 3 years
- xii) not have been convicted of a driving offence involving vehicle safety or moving traffic offences within the last 2 years
- xiii) not have received more than 2 motoring convictions within the last 3 years

- xiv) not have accrued 9 penalty points or more during the course of their private hire/hackney carriage drivers licence
 - xv) not have any convictions under the Local Government (Miscellaneous Provisions) Act 1976 or associated legislation i.e. taxi related offences
 - xvi) not have previously been a licence holder in this or any other borough and that licence has been revoked, suspended or refused
 - xvii) not have exhibited behaviour which is inconsistent with that expected of a Walsall licence holder
 - xviii) not be in breach of any conditions/legislation relating to your licence.
- 3.5 Where information on the application suggests the Driver has had a licence revoked or refused at another Council the Licensing Service will make enquiries with that Council to ascertain the details of the refusal/revocation.
- 3.6 The Licensing Service will in appropriate circumstances attempt to obtain additional information from the Police Civil Disclosure team on convictions or cautions where it is felt that additional information will assist in making a fair and transparent decision.
- 3.7 Where an application is consistent with Walsall Councils Private Hire and Hackney Carriage Information and Licence Conditions document and the Motoring and Criminal Convictions Guidelines (the Convictions Policy) then Officers will issue the licence. Where an application is not consistent with those documents it is ordinarily referred to a Taxi Licensing Sub Committee for elected members to make a determination.

Existing Licence Holder Checks

- 3.8 Once an applicant is issued with their licence they then become subject to the relevant legislation governing the taxi and private hire trade, the Councils Licence conditions and the Councils Motoring and Criminal Convictions Guidelines (the Convictions Policy).
- 3.9 Where a licence holders behaviour or criminal record falls short of that expected of a licence holder during the currency of the licence (with reference to the Convictions Policy), or they breach their licence conditions there are a number of outcomes.
- i) In the most serious cases that directly or immediately pose a risk to public safety Officers can suspend or revoke a licence.
 - ii) In serious cases but where it is considered there is no immediate threat to the public the matter is generally brought before a Taxi Licensing Sub Committee for determination
 - iii) In 'minor' cases officers will issue a warning to a licence holder or

refer the matter to a Taxi Licensing Sub Committee depending on the nature of the concern or the licence holders attitude.

- iv) Where a person carries out illegal activity (plying for hire, unlicensed taxi/driver, failing to secure a wheelchair etc) a prosecution case may be brought.

3.10 There are a number of 'punishments' the Taxi Licensing Sub Committee can impose upon licence holders and these include;

- i) Take no further action.
- ii) Caution the licence holder for the matter
- iii) Require the licence holder to pass the Driver Training Course conducted by Walsall MBC within a *certain time period* at their own expense
- iv) Require the licence holder to pass a Practical Driving Assessment conducted by Walsall MBC within a *certain time period* at their own expense
- v) Suspend the private hire driver licence for a determined period of time with or without immediate effect.
- vi) Revoke the private hire driver licence with or without immediate effect

3.11 During the currency of a licence, which for most drivers is a three-year licence, the holder will have to ensure they 'refresh' the following checks.

- i) Undertake their enhanced DBS every 3 years
- ii) Undertake a medical every 5 years
- iii) Ensure their right to work continues to be valid
- iv) Prior to the renewal of a licence undertake a DVLA check of their driving licence

Driver Training Course

3.12 For many years all new applicants for drivers licences have had to take part in a Driver Training Course. The course runs over the course of a day and there is a multiple-choice test at the end, which applicants have to pass in order to proceed with the licence application. The Councils Licensing Officers present the course in collaboration with Childrens Services Safeguarding Team.

3.13 The content of the course has always related to those key issues the authority felt applicants ought to be aware of in order to fulfil the definition of fit and proper.

3.14 In 2016 extensive consultation took place with the trade and partners regarding updating the Driver Training Course to include such 'modern day' issues as child sexual exploitation (CSE), safeguarding and protecting vulnerable people. The updated Driver Training Course was rolled out to over 800 drivers. It is now used for all new applications and for those who Licensing Sub Committees send back for refresher training following infringements of their licence conditions.

3.15 The syllabus for the updated training is

1. Enforcement Issues and Road Safety
2. Licence conditions and legislation that apply to the Trade
3. Personal Safety for Drivers
4. Customer Care
5. Safeguarding, disability awareness and protecting vulnerable people e.g. older people, children at risk of sexual exploitation and vulnerable adults
6. Practical demonstration on how to load and secure a wheelchair in a vehicle and otherwise assisting wheelchair users

BKSB ESOL English Reading, Listening and Mathematics.

- 3.16 Since 2008 applicants have attended Walsall Adult Community College and more latterly Walsall College to undertake these tests. The required standard the applicant must meet is Entry Level 3, which is the equivalent of a Year 6 child in a primary school. The applicant must book with the College and attend a given appointment where they undertake the online course and when completed are provided with the details of the level they have attained. They then bring this to the Licensing Service as evidence of their capabilities.

The content of Entry Level 3 includes straightforward narratives, accounts, explanations, discussions instructions, information and descriptions.

1. Identify and extract relevant information and detail in straightforward explanations
2. Make requests and ask concise questions using appropriate language in different contexts
3. Communicate information and opinions clearly on a range of topics
4. Respond appropriately to questions on a range of straightforward topics
5. Follow and understand the main points of discussions
6. Make relevant contributions to group discussions about straightforward topics
7. Listen to and respond appropriately to other points of view, respecting conventions of turn-taking

Department of Transport Consultation Taxi and Private Hire Vehicle Licensing: Protecting Users.

- 3.17 In February 2019 the Department for Transport consulted on Statutory Guidance it was considering implementing to give local authorities greater clarity in their role and responsibilities in relation to the Taxi and Private Hire licensing regime.

The guidance stated that there was

“consensus that common core minimum standards are required to regulate better the taxi and PHV sector, and the recommendations in this document are the result of detailed discussion and consideration. The Department therefore expects these recommendations to be implemented unless there is compelling local reason not to.”

“It is the Department’s recommendation that licensing authorities provide safeguarding advice and guidance to the trade and that taxi and PHV drivers are required to undertake safeguarding training”

“Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation. Drivers (or any person) should be aware of what to do if they believe a child or vulnerable person is at risk of harm.”

Language proficiency

- 3.18 The Guidance also covered the issue of drivers language proficiency and stated

“Authorities should consider whether an applicant would have any problems in communicating with customers because of language difficulties. Licensing authorities have the freedom to specify the level of proficiency, but it is recommended to cover both oral and written English language skills necessary to fulfil their duties, including in emergency and other challenging situations. This should include:

- conversing with passengers to demonstrate an understanding of the desired destination, an estimation of the time taken to get there and other common passenger requests;
- providing a customer with correct change from a note or notes of higher value than the given fare, and doing so with relative simplicity;
- providing a legibly written receipt upon request.

- 3.19 The Department for Transport stated that in October 2019 no new legislation was likely to be enacted to resolve the current issues within the taxi and private hire licensing regime. They did suggest that they would move forward with the Statutory Guidance however no time scales have been provided for this work to be complete.

4.0 Resource considerations

4.1 **Financial:** Presently the checks and tests noted in this document are carried out at the applicant's expense. Licence fees paid to the authority cover the costs of the Licensing service including salaries. At the time of the last Driver Training update an agreement was reached that any new training for existing drivers would be free for those drivers and would be met at the expense of the authority. Due to the large numbers of persons involved, this was extremely costly and was complex to implement. Any new or updated training ought to be carefully planned and costed to ensure the costs of implementation for the Authority and those undertaking the training are kept to a minimum.

4.2 The cost of any appeal to a Magistrates Court by any person aggrieved by the refusal of the Council to grant a driver's licence, or any conditions attached to the grant of a driver's licence will have to be met from within existing budgetary provision.

4.3 **Legal:** Section 51 (1) of The Local Government (Miscellaneous Provisions) Act 1976 states that a district council shall, on receipt of an application from any person for the grant to that person of a licence to drive Private Hire vehicles, grant to that person a driver's licence:-

Provided that a district council shall not grant a licence:

- (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence or
- (b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised.

4.4 A district council may attach to the grant of a licence such conditions as they may consider reasonably necessary.

4.5 Section 52 of the 1976 Act states that any person aggrieved by:-

- (1) The refusal of the district council to grant a licence under Section 51 of the Act, or
- (2) Any conditions attached to the grant of a driver's licence, may appeal to a Magistrates Court.

4.6 Any appeal must be made to the Magistrates Court within 21 days of notification of such a decision.

5.0 Staffing: Nothing arising from this report.

6.0 Citizen Impact

6.1 Nothing arising from this report.

7.0 Community Safety

- 7.1 The communities of Walsall may expect that licensed drivers act in accordance with their licence and the laws governing safe driving on the public highway. Where licensed drivers fall short of the standards set by Walsall Council Licence conditions or UK law these communities may expect that a decision with regard to issuing or continuance of the licence will be made following rigorous discussion and that the decision making is robust so as to protect their safety.

8.0 Environmental Impact

- 8.1 Nothing arising from this report.

9.0 Performance and Risk Management Issues

- 9.1 Significant lessons were learned from the implementation of the updated driver training course in 2016. The implementation of any new policies, procedures and training courses ought to be carefully planned, extensively consulted on with partners and the Trade, adequately costed and resourced appropriately. Failure to do this could result in the training not meeting the purposes for which it was set out and a significant burden on those delivering and receiving the training. The Council could be legally challenged by the trade should any new policy or training requirements be considered unreasonable.

10.0 Equality Implications

- 10.1 None arising from this report

11.0 Consultation

- 11.1 None.

12.0 Appendices

- 12.1 APPENDIX 1 Motoring and Criminal Convictions Guidelines

13.0 Contact Officer:

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