



# Walsall Council

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## **REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES**

### **LICENSING AND SAFETY COMMITTEE**

**13 SEPTEMBER 2023**

## **TAXI AND PRIVATE HIRE LICENSING – CONVICTIONS POLICY**

### **1.0 Summary of report**

- 1.1 In the statutory guidance issued by the Department for Transport in July 2020 a recommendation was made that all licensing authorities make publicly available a cohesive policy document bringing together all their procedures on taxi and private hire vehicle licensing. It recommended that this should include but not be limited to policies on convictions, a fit and proper person test, licence conditions and vehicle standards.
- 1.2 Walsall Council has for many years used as a mainstay of its decision-making process its Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines. It is however right that periodically and particularly following changes in national guidance that these policies are reviewed and updated. The existing policy is contained at **Appendix 1**.

### **2.0 Recommendations**

- 2.1 Members of the Licensing & Safety Committee consider the draft Convictions Policy and agree that public consultation should be started.
- 2.2 That the result of the consultation be reported back to this Committee at a future meeting.

### **3.0 Background information**

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976 provides that in considering applications for taxi driver and operator licences the Council must not issue a licence unless it is satisfied that the applicant is 'fit and proper'. In this regard the consideration of an applicant's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.

- 3.2 The taxi trade is vital to the UK's transport infrastructure and the majority of drivers are honest and hard working. However there have in recent years been cases across the country of licensed drivers and operators being involved in criminal activity including the sexual exploitation of children. It is important that as a licensing authority Walsall Council take appropriate steps to prevent future cases occurring in its area by ensuring that licensed drivers are 'fit and proper.' Consideration of a person's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.
- 3.3 Walsall Council, in common with many other licensing authorities, has for many years used a convictions policy based upon Home Office guidance dating from the 1990s. The Department for Transport published its latest statutory taxi and private hire vehicle standards guidance document in July 2020 and the part of the document relevant to the assessment of previous convictions is contained at Appendix 3.
- 3.4 The use of the Department for Transport statutory guidance will mean Walsall Councils convictions policy is based upon the same statutory framework as other local authorities. This type of standardisation is always useful in ensuring consistent decisions are made across the country and not encouraging applicants to choose the 'softest' council to apply for a licence. The draft policy is contained at Appendix 2.
- 3.5 The Department for Transport's statutory guidance makes the following points clearly.

In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

- 3.6 The Institute of Licensing have also published guidance on Convictions in which they say,

A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the authority.

Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision.

### 3.7 Walsall Councils current Convictions policy states

...if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:

- How relevant the offence(s) are to the licence being applied for.
- How serious the offence(s) were.
- When the offence(s) were committed.
- The date of conviction.
- Circumstances of the individual concerned.
- Sentence imposed by the court.
- The applicant's age at the time of conviction.
- Whether they form part of a pattern of offending.
- Any other character check considered reasonable (e.g. personal references).
- Any other factors that might be relevant.

This is sensible way to approach decision making and consistent with statutory guidance.

### 3.8 The importance of a licensing regime and convictions policy which takes into account a great many factors not just the convictions themselves has been highlighted by a number of key documents.

### 3.9 In a letter to Chief Executives from Baroness Kramer, Minister of State for Transport in November 2014 she said "In the interests of public safety and the reputation of the licensed trade, I encourage you all to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed and all available information is fully considered when making licensing decisions.

### 3.10 In February 2015 a report was published on the review of Rotherham Council on its handling of child sexual exploitation. A section of the report written by Louise Casey, a Director General working for the Department for Communities and Local Government, commented "In our view, the reliance on convictions alone will not provide a strong message to the trade on acceptable standards or reassure parents and the public that drivers are safe to transport their children.

### 3.11 The Department for Transport in its Statutory Standards states;

Licensing authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of

probability. This means that an applicant or licensee should not be given the benefit of doubt. If the committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

#### **4.0 Resource considerations**

- 4.1 **Financial:** The costs involved in carrying out the consultation will be met from existing budgets held by the licensing services.
- 4.2 **Legal:** Members of the public, the trade or responsible authorities can appeal against the policy. The policy could also be judicially reviewed.
- 4.3 The Department for Transport Statutory taxi and private hire vehicle standards were published in July 2020 under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).

The document sets out a framework of policies that, under section 177(4), licensing authorities must have regard to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. Having regard is more than having a cursory glance at a document before arriving at a preconceived conclusion.

Having regard to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated. It is not a question of box ticking, the standards must be considered rigorously and with an open mind.

Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the statutory taxi and private hire vehicle standards might be drawn upon in any legal challenge to an authority's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in statutory taxi and private hire vehicle standards, and the policies and delivery plans that stem from these. The department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).

The statutory taxi and private hire vehicle standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

- 4.4 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence.
- 4.5 A district council may attach to the grant of a licence such conditions as they may consider reasonably necessary.
- 4.6 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.

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

- 4.7 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.8 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he/she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].
- 4.9 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore, the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 4.10 There is no statutory definition of Fit & Proper Person but within the Department for Transport Statutory Standards it is suggested that the basis for such a definition would be.

'Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence.'

- 4.11 In a legal case relied upon by many in the licensing regime *McCool v Rushcliffe Borough Council* (1998) the decision arrived at included the following

'it is for the applicant to establish that he is a fit and proper person on the balance of probabilities. The real question to be decided is whether or not, on the balance of probabilities, the applicant is a fit and proper person to be granted a licence. This does not require the view to be formed as to whether the person had, in all likelihood, committed a specific offence'

- 4.12 Another key case includes *Leeds City Council v Hussain* (2002) where the following was determined

"the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers."

- 4.13 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq* (1998)]

## **5.0 Staffing:**

Nothing arising from this report.

## **6.0 Citizen Impact**

- 6.1 Walsall Councils Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines state that:-

The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:

- That a person is a fit and proper person.
- That the person does not pose a threat to the public.
- That the public are safeguarded from dishonest person.
- The safeguarding of children and young persons.

- 6.2 As set out by Phillip Kolvin QC in his foreword to the Institute of Licensing document 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trade' (April 2018) stated

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger maybe you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

- 6.3 The Department for Transport Statutory Standards make clear the impact on citizens from adopting these policies including

The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday – and the term vulnerable individual has the same meaning as the definition of a vulnerable adult for the purpose of Section 42 of the Care Act 2014, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):

- has needs for care and support (whether or not the authority is meeting any of those needs)
- is experiencing, or is at risk of, abuse or neglect
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it

## **7.0 Community Safety**

- 7.1 The introduction of the policy is for the benefit of the community and people of Walsall. As set out in section 6 the impact on individuals and whole communities is significant particularly vulnerable members of the community.
- 7.2 The development of this Policy is of particular interest to partners such as Walsall Police, Childrens Services, Adult Services, Public Health, Community Safety and others. This is because Community Safety strategic and operational issues including exploitation, violence, county

lines, human trafficking and a host of other social ills have been associated with the taxi trade historically in other areas of the country. The taxi trade in Walsall consists of many honest and diligent individuals who we must work with to drive out poor performers, criminals and others who spoil the reputation of the trade and have detrimental impacts on our communities.

## **8.0 Environmental Impact**

There is little environmental impact as a consequence of this report or policy adoption.

## **9.0 Performance and Risk Management Issues**

9.1 The statutory standards were published in 2020 and the authority is now seeking to develop and publish its policy changes as a result of those standards. Since 2020 in all decision making either at officer level or committee/subcommittee level due regard has been paid to the standards and relevant extracts have been included in all relevant decision making.

9.2 To ensure the council's decision making is formally updated and to ensure any challenges to decision making can be robustly defended it is important this Policy receives due consideration and is published expeditiously.

## **10.0 Equality Implications**

None arising from this report

## **11.0 Consultation**

11.1 The Statutory Standards state with regard to Consultation

Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (such as the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.

Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas – and licensing authorities should engage with these



areas to identify any concerns and issues that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings – this should be adopted by all authorities.

- 11.2 The service will ensure this consultation meets the requirements of this and any other corporate consultation requirements.

## **12.0 Appendices**

Appendix 1 Current Walsall Council Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines

Appendix 2 Draft Convictions Policy

Appendix 3 Department for Transport Statutory taxi and private hire vehicle standards annex assessment of previous convictions

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