



Walsall Council

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING AND SAFETY COMMITTEE

13 SEPTEMBER 2023

TAXI AND PRIVATE HIRE LICENSING – FIT AND PROPER TEST FOR LICENSED DRIVERS, OPERATORS AND PROPRIETORS.

1.0 Summary of report

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. This report sets out a Fit and Proper Policy drafted by the Licensing Service for future use in relation to private hire and hackney carriage licensing.

2.0 Recommendations

- 2.1 Members of the Licensing & Safety Committee consider the Fit and Proper 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 Council as the licensing authority requires applicants and licence-holders to conduct themselves appropriately and honestly in their dealings both with the public, statutory agencies and the Council. It cannot grant (or allow a licence to remain in force) a hackney carriage or private hire driver or operator's licence unless they determine that the applicant is a fit and proper person.
- 3.2 It is the responsibility of the applicant or licence holder to satisfy the licensing authority that they are a fit and proper person by complying with various requirements. Previously in Walsall these requirements were part of the authority's application, renewal and compliance processes and included checks such as the following

- Right to work in the UK
- Driving licence and endorsements
- Enhanced DBS
- Medical fitness
- Practical driving test
- Driver Training Course
- Hackney Carriage Drivers test
- Tax code check
- National Register for Refusals, Revocations and Suspension.
- Data protection Requests to other Local Authorities
- Relevant insurance documents

These checks and tests are now being brought together in one policy as recommended by the Department for Transport. The draft policy is attached at Appendix 1. It will be used in conjunction with the 'Convictions Policy'

- 3.3 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.'

- 3.4 In a legal case relied upon by many within 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'

- 3.5 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.”

- 3.6 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.”
- 3.7 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.”
- 3.8 In April 2018, the Institute of Licensing (IOL) put together some guidance in determining the suitability of applicants and licensees in the hackney and private hire trades. The IOL is a leading institute that work together with the Local Government Association (LGA) and local authorities on licensing matters. Local Authorities throughout the country have adopted the relevant parts of the guidance within their policies. A copy of the guidance is attached as **Appendix 3**.
- 3.9 It is clear that Members and Officers, in reaching decisions, should have regard not only to convictions but to any other information which would not make the applicant a fit and proper person to hold a licence. Protection of the public and their safety is of paramount consideration in such matters. Decisions are made on the civil standard of proof which is ‘on the balance of probabilities’ rather than the higher criminal threshold. Again, as stated by the Department for Transport in its Statutory Standards:

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.

- 3.10 **Appendix 2** is a table showing the types of Disclosure and Barring Service checks that are available and what they include.

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 service.

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 states in the chapter Consideration of the statutory taxi and private hire vehicle standards: -

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 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.

4.5 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.

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 form 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.

7.3 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 – Draft Fit & Proper Policy

Appendix 2 – Types of checks available

Appendix 3 – IOL guidance in determining the suitability of applicants and licensees

13.0 Contact Officer:

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