

Wiltshire Council

Licensing Committee

02 December 2019

Subject: Adoption of the National Register of Taxi Licence Revocations and Refusals (NR3)

Cabinet Member: Councillor Bridget Wayman – Highways, Transport & Waste

Councillor Laura Mayes – Adult Social Care, Public Health and Public Protection

Key Decision: No

Executive Summary

Wiltshire Council has a statutory responsibility under the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976 and the Transport Act 1985 to licence the hackney carriage and private hire services. Under this legislation the council shall not grant a hackney carriage driver, private hire driver or private hire operator's licence unless it is satisfied that the applicant is a 'Fit and Proper Person ('FPP')'.

The determination of an application for a licence is assessed against the (FPP) criteria and is regularly reviewed during the life of a licence. For example, when evidence is obtained that suggests that a licensed individual is not a fit and proper person the licensing authority is entitled to suspend, revoke or refuse to renew a licence.

Wiltshire Council's application form requires applicants to confirm if they are licensed by another local authority or if they have had a licence revoked. This ensures individuals who have had a licence revoked by another authority do not simply come to Wiltshire and secure a licence.

At present, if drivers do not disclose information about a previous revocation or refusal of a licence, it is difficult for a licensing authority to find this information out. Therefore, vital intelligence about an applicant's past behaviour has the potential to be missed and an individual may be able to get a new licence in Wiltshire or another LA area, despite having had their licence revoked elsewhere. High profile instances of this happening have undermined public confidence in the safety of hackney carriages and PHVs, and left licensing authorities open to criticism for something that is currently very difficult for them to control.

In response to this issue, the Local Government Association (LGA) has now developed a national register of hackney carriage and PHV driver licence refusals and revocations, the 'National Register of Refusals and Revocations' or NR3. The register allows licensing authorities to record details of where a hackney carriage or PHV drivers' licence has been refused or revoked, and allows licensing authorities to check new applicants against the register. This

prevents people found to be not fit and proper in one area from securing a licence elsewhere through deception and non-disclosure. For the avoidance of doubt, NR3 does not extend to vehicle or operator licensing decisions, only drivers.

Under the data protection principles and General Data Protection Regulation 2018 ('GDPR') Wiltshire Council would be the data controller in relation to the processing of personal data in regard to NR3. This includes uploading information to NR3, consulting NR3, and disclosing or receiving information about individuals listed on NR3. The Taxi Licensing team have consulted the Information Governance and Legal teams to ensure they are taking the necessary steps to comply with data protection and other laws in regard to NR3.

Wiltshire Council is currently a member of the National Anti-Fraud Network ('NAFN') which hosts NR3. Access to NR3 is only available to NAFN members who sign up specifically to the NR3 element of the NAFN database which is provided access via a dedicated portal.

Proposal

It is proposed that the Licensing Committee, considers and approves adopting Wiltshire Council's use of the National Register of Taxi Licence Revocations and Refusals (NR3) database as set out in option 2 at the end of the report.

If approved this policy change will apply to all new applications and renewals that are received from 01 January 2020 and thereafter.

Reasons for Proposal

- To ensure the safety of the travelling public in Wiltshire, by raising the standard required for hackney carriage and private hire licence holders
- To allow the Council greater scrutiny over driver and operator applications.
- To safeguard communities, vulnerable adults and children
- To safeguard against the risk of child sexual exploitation

Parvis Khansari
Director, Highways, Transport & Waste

Adoption of the National Register of Taxi Licence Revocations and Refusals (NR3)

1.0 Purpose of Report

- 1.1 To provide Wiltshire Council's Licensing Committee with the relevant information to make an informed decision on the proposed adoption of the National Register of Taxi Licence Revocations & Refusals (NR3).

2.0 Background

- 2.1 Wiltshire Council has a statutory responsibility under the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976 and the Transport Act 1985 to licence the hackney carriage and private hire service. Under this legislation the council shall not grant a hackney carriage driver, private hire driver or private hire operator's licence unless it is satisfied that the applicant is a 'Fit and Proper Person' ('FPP'). The FPP test concerns character, likelihood of conduct of bad behaviour, health, driving skills, ability, local knowledge including knowledge of the duties and obligations placed in law including a council's licence conditions placed upon a driver.
- 2.2 Wiltshire Council's application form asks applicants if they are licensed by another authority or if they have had a licence revoked to help prevent individuals who have had a licence revoked by one authority from simply coming to Wiltshire and securing a licence. The determination of an application for a licence is assessed against the FPP test and is regularly reviewed during the lifetime of a licence.
- 2.3 At present, if drivers do not disclose information about a previous revocation or refusal of a licence, it is difficult for a licensing authority to find this information out. This means that vital intelligence about an applicant's past behaviour is potentially being missed and an individual might be able to get a new licence in Wiltshire or another area, despite having their licence revoked elsewhere.
- 2.4 In response to this issue, the Local Government Association (LGA) has developed a national register of hackney carriage and PHV driver licence refusals and revocations, the 'National Register of Refusals and Revocations' or NR3. The register allows licensing authorities to record details of where a hackney carriage or PHV drivers' licence has been refused or revoked and allows licensing authorities to check new applicants against the register. This prevents people found to be not fit and proper in one area from securing a licence somewhere else through deception and non-disclosure
- 2.5 NR3 does not extend to vehicle or operator licensing decisions.

- 2.6 Under then data protection principles and GDPR Wiltshire Council would be data controllers in relation to its processing of personal data in connection with NR3, including in relation to uploading information to NR3, consulting NR3, and disclosing or receiving information about individuals who appear on NR3.
- 2.7 The National Anti-Fraud Network hosts NR3, access to NR3 is only available to NAFN members, Wiltshire Council is a member. Members sign up specifically to the NR3 element of the NAFN database and are provided access via a dedicated portal.
- 2.8 The register does not record data on the suspension of licences.
- 2.9 Subscribing to the register will require Wiltshire Council to sign up to data sharing and data processing agreements with NAFN, these outline the steps the Council must take to ensure compliance with GDPR, and the Data Protection Act 2018. These documents are included as Appendix C.
- 2.10 Adoption of the database represents a fundamental change in the way the Council uses driver and operator data. The data is only currently shared with the Police for criminal investigations and the National Fraud Initiative.
- 2.11 Wiltshire Council will be responsible for adding its own data to the register. The only other functionality the Council would have would be a search facility to review driver's history.
- 2.12 Data will be kept on the register for 25 years and the taxi licensing team would need to ensure this is reflected in its data retention schedule policies. The relevant schedule is attached as Appendix D.
- 2.13 Local authorities are requested to upload historical data going back 25 years, Wiltshire Council does not have this data readily available but can supply 5 year's data. Before any historical data is uploaded the Council is required to write to the driver stating that their data will be uploaded. Drivers will be informed about the purposes of the data processing, the legal basis for it and their various rights to object.
- 2.14 Adopting the register will place a requirement on the Council to inform all applicants of the existence of NR3 and that it will be checked during the application process. The driver must be informed that their personal data will be placed on the register if at any time their licence is revoked. A privacy information notice will be provided to applicants when they apply to cover our data protection obligations.
- 2.15 To comply with GDPR the Council must make a clear written record of all information received from the register. If the Council wishes to share data with another authority after a request, it must ensure appropriate data sharing agreements are in place.
- 2.16 The Council's driver and operator guidelines have been updated to reflect the use of NR3.

3.0 Relevance to the Council's Business Plan

3.1 The process of controlling and licensing hackney carriage and private hire licensees assists the council in achieving a number of the outcomes in the Business Plan 2017-2027. Adoption of the revocation and refusal register would assist these outcomes by:

- **Growing the economy** - increased confidence in hackney carriage and private hire licensees which may drive up the number of users in Wiltshire ensuring that the public utilise this transport means and access good services
- **Building strong communities** - That all members of the public feel safe and the most vulnerable can access services with confidence.
- **Protecting those who are most vulnerable** - ensuring that the council has robust checks in place to manage licensed individuals which will ensure that vulnerable persons are protected when using hackney carriage and private hire services
- **Demonstrating an innovative and effective council** – the council has undertaken work to introduce NR3 as part of the taxi licensing process ahead of the DfT's announcement on its consultation on increased checks. Taking such advice from the Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades document which is produced by the LGA in partnership with the National Association of Licensing And Enforcement Officers ('NALEO'), LGA and the Lawyers in Local Government ('LLG'). Making decisions that are robust, open, inclusive, flexible and responsive maintains the safeguarding of communities, vulnerable adults, children and safeguarding against child sexual exploitation.

4.0 Main Considerations for the Council

4.1 Licensing authorities must have the appropriate privacy notices and data protection processes and policies in place to implement. The LGA guidance attached as Appendix A. provides example templates for authorities to use in each case. The taxi licensing team have drafted all required privacy notices and subject information statements and updated the relevant forms, these have been reviewed by the Council's Legal and Information Governance ('IG') Teams. The IG team have suggested minor amendments to the policies.

4.2 A policy/process statement will be required on how the Council reacts to and deals with requests for data from other authorities following their searches. A policy has been drafted by the taxi licensing team and mirrors the suggested policy supplied with the official NR3 guidance, the policy is included as Appendix B. The policy has been reviewed by the Councils IG / Legal and will be implemented on 01 January 2020.

4.3 Wiltshire Council takes safeguarding responsibilities in the protection of vulnerable people seriously. It has long been recognised in case law that the hackney carriage and private hire licensees are in a unique position of trust with vulnerable members of the public; as such the potential for

unscrupulous activity must be mitigated with robust and clear policies and checks on drivers and operators.

- 4.4 There may be applicants who have been revoked by another authority, this should not automatically prevent them from holding a license in Wiltshire. Each individual case must be assessed on its own merits. 4.5 All new applicants since 2018 will be checked against the NR3 database, existing drivers will be checked upon licence renewal.

5.0 Safeguarding Implications

- 5.1 When assessing applications for all hackney carriage and private hire licences, a failure to have the appropriate checks relating to the application of the 'Fit and Proper Person' test and other considerations of character leaves children and vulnerable people at risk.
- 5.2 The new requirement to check the refusal and revocation database provides the Council with greater powers to refuse or revoke licences should a licensed individual not report such details. Adoption of the register allows the council to manage existing drivers and operators in a more robust manner. It provides the council with greater powers to establish if an individual is a (FPP) and if required to revoke their licence for inappropriate behaviour.

6.0 Public Health implications

- 6.1 A robust policy helps guard against the risk that residents, especially children and vulnerable people, are not safe when travelling by hackney carriage or private hire vehicles.

7.0 Corporate Procurement implications

- 7.1 There are no direct procurement implications arising from this report.

8.0 Environmental and Climate Change Considerations

- 8.1 There are no environmental or climate change considerations arising from this report.

9.0 Equalities Impact of the Proposal

- 9.1 The impact of these proposals is assessed as 'medium' against the council's statutory responsibilities. The adoption of NR3 relating to determining the suitability of applicants and licensees will ensure a fair and consistent approach across Wiltshire and other local authority areas.

10.0 Risk Assessment

Risks officers consider may arise if the proposed decision and related work is not taken:

- 10.1 Drivers revoked by another authority for serious reasons being given a licence in Wiltshire if the information is not divulged as part of the application process.

- 10.2 Members of the public would not receive the best possible protection from potential harm; there would be a greater risk of unsuitable people obtaining a licence issued by Wiltshire Council.
- 10.3 The overriding principle of licensing is the protection of members of the public. Failure to adopt NR3 will increase the likelihood that an unsuitable applicant will be able to obtain a licence from Wiltshire Council.
- 10.6 Hackney carriage and private hire drivers hold a position of trust within society and the new check reduces the chances of an unsuitable person obtaining a licence, abusing their position, exploiting vulnerable passengers or causing physical, emotional or financial harm to service users.

Risks that may arise if the proposed decision is taken and actions to mitigate these risks

- 10.7 There may be existing licensees that would not be considered suitable should they have not disclosed information as part of the application process. If this was the case the current licence holder would be considered on a case by case basis to ensure a balance between fairness to the individual and the protection of the public.
- 10.8 There may be a legal challenge if existing licenses are not renewed due to the proposed check, where they have been previously cleared under the 2010 policies. This may result in damage to the council's reputation but any risk to reputation would be outweighed by the clear and robust revised policy to ensure that all drivers, proprietors and operators operate within the new guidance for safeguarding formally put in place to protect the public.
- 10.9 There is a risk that not all existing licence holders would be aware of the adoption of the new check. If approved the new policy will be published on the council's web site and communicated to the hackney carriage and private hire licensees, through the Hackney Carriage and Private Hire Newsletter, the Local Authority Working Group and individual correspondence with all licensees.

11.0 Financial Implications

- 11.1 The adoption of an additional check is expected to reduce the likelihood of legal challenge to the council's licensing committee, thereby avoiding the legal costs of dealing with challenges.
- 11.2 There are no additional costs associated with the implementation of this revised policy as the Council is already a member of NAFN. Wiltshire Council pays a membership fee to NAFN of £1500 per year. The checks will be completed by the existing resource within the Taxi Licensing Compliance Team.

12.0 Legal Implications

- 12.1 Approval of the use of the register will reduce the risk of a legal challenge by a driver or third party to the licensing process. The use of the register check is best practice against which any application for a licence can be considered. There are clear benefits for both the council and applicants in having guidelines that are consistent with those operated by other local authorities.

13.0 Options for consideration and approval

- 13.1 There are two options are considered and detailed below:

Option 1

To continue as the Council has previously and rely solely on the applicants to ensure that all data relevant to revocations is disclosed.

The benefits of this option include:

- No additional work will be required
- No new process for the Taxi Licensing team to learn
- No additional process for licensees to understand

The risks of this option include

- Potential for negative press exposure
- The Council could inadvertently license unsuitable applicants
- The public could potentially be put at risk

Option 2

To accept the proposal laid out in this report, join NR3 as recommended by DfT.

The benefits of this option include:

- Increased confidence and certainty that all potential licensees have been checked in accordance with more stringent policies for suitability to hold a licence so ensuring additional protections for the safety of the travelling public including vulnerable users and children are in place.
- Meeting the standards set out in the DfT - Taxi and Private Hire Vehicle Licensing: Protecting Users consultation version from February 2019.
- Joining NR3 will align the Council with the majority of other local authorities in England & Wales.

The risks of this option include:

- Additional obligations arising from being the data controller for NR3 data
- The additional resources which may be required to ensure that applicants and existing licensed drivers are aware and understand the new process.

14.0 Conclusions

- 14.1 To ensure the safety of the public the Council is required to perform checks regarding the safety and suitability of licensees. These checks form the Fit & Proper person test. Checks of the NR3 database will form part of the Fit & Proper test.
- 14.2 Should the Council decide to implement the use of NR3, this will give officers additional information on which to base their decisions. Information disclosed in conjunction with information included in the Disclosure and Barring Service will allow officers to ensure decisions are made in the best interests of the Wiltshire public.
- 14.4 It is therefore proposed that the council adopts the additional check of the National Refusal and Revocation Register (NR3) for hackney carriage and private hire licences.
This will ensure the safeguarding of children, vulnerable adults and the general public by adoption of the updated (FPP) policy.

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The following unpublished documents have been relied on in the preparation of this report:

Appendices

Appendix A: LGA Guidance on adopting the National Register of Taxi Licence Revocations and Refusals (NR3)

Appendix B: Wiltshire Council policy for data requests from other Licensing Authorities.

Appendix C: NAFN Data Sharing agreements

Appendix D: Taxi Licensing data retention policies.