

Wiltshire Council

Licensing Committee

2 September 2019

Review of the Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences

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)**'.

To protect and safeguard the travelling public in Wiltshire, the Council is required to have a robust policy for determining the suitability of applicants for hackney carriage and private hire licences.

A review of these policies has been undertaken and one consolidated policy produced which takes into account all five types of licence issued by Wiltshire Council. These are: 1) *hackney carriage driver*, 2) *private hire driver*, 3) *hackney carriage vehicle proprietor*, 4) *private hire vehicle proprietor* and 5) *private hire operator's licences*.

Current legislation, views of the hackney carriage and private hire industry, and professional advice was taken from the 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' document. This is produced by the Institute of Licensing (IOL) in partnership with National Association of Licensing & Enforcement Officers (NALEO), LGA and the Lawyers in Local Government (LLG) and was taken into consideration when drafting the new proposed Fit and Proper Person policy.

The Department for Transport (DfT) announced a consultation on 12 February 2019 on the guidelines for local authorities issuing taxi licences. This was aimed at protecting the public and introducing more stringent checks as part of the taxi licensing process. The consultation closed on 22 April 2019 and Wiltshire Council awaits the outcome of any proposals to change current policy and guidance.

Wiltshire Council currently has two policies in place regarding the relevance of convictions; one for ***new applicants*** and one for ***existing hackney carriage and private hire drivers and private hire operator's licences***. These were last updated in November 2010.

Proposal

It is proposed that the Licensing Committee, considers and approves adopting Option 2 below, detailed within this report under Section 13:

To adopt the revised policy set out in Appendix A. This option will replace the two existing policies regarding the relevance of convictions for new applicants, existing hackney carriage and private hire drivers licence holders and will form the basis of the authority's new Fit and Proper Person check.

If approved this policy change will apply to all new applications and renewals that are received from 01 October 2019 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 update the council's current policies into one new policy in line with current legislation and guidance, meeting Government requirements for more stringent checks on taxi operators and drivers
- To safeguard communities, vulnerable adults and children
- To safeguard against the risk of child sexual exploitation

Parvis Khansari
Director, Highways, Transport & Waste

Wiltshire Council

Licensing Committee

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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 revision to Wiltshire Council's Fit and Proper Person Policy for hackney carriage and private hire licences.

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'.
- 2.2 Current legislation and Wiltshire Council policy does not require the proprietor of a hackney carriage or private hire vehicle licence to be assessed against such a policy. It should be noted that the Department for Transport announced a consultation on 12 February 2019 to look at introducing more robust checks on taxi proprietor's and license holders with a view to protecting the public.
- 2.3 This revised policy will bring the council's existing policy in line with current legislation and professional advice, including the application process for hackney carriage and private hire driver, hackney carriage/private hire vehicles and private hire operator's licences. The proposed revised Fit & Proper Person policy is attached as **Appendix A**.
- 2.4 Wiltshire Council currently issues licenses for:
- 875 hackney carriage and private hire drivers (dual licences)
 - 173 private hire only drivers
 - 674 hackney carriage vehicles
 - 251 private hire vehicles
 - 110 private hire operators.
- 2.5 On average Wiltshire Council issues 100 new hackney carriage driver and private hire driver licences, 160 new hackney carriage vehicles, 90 new private hire vehicles and 29 private hire operator licences per annum, in addition to the renewal of existing licenses both yearly or 3 yearly.
- 2.6 As a licensing authority, the council is empowered to set standards which are in excess of the minimum laid out in law. In the case of licensees who

are vehicle proprietors only, the current policies allow potentially unsuitable applicants to obtain a licence from Wiltshire Council. The revised policy would mitigate the risk by setting a standard to which all licensees will be held. The recommended policy aligns with the draft guidance issued by the Department for Transport in its consultation document see **Appendix B**.

2.7 The new policy, should it be adopted, will apply to the following licences:

- Hackney carriage and private hire driver (dual licence)
- Hackney carriage vehicle proprietor
- Private hire driver
- Private hire vehicle proprietor
- Private hire operator.

Hackney carriage vehicles are often called taxis or cabs and are licenced to pick people up from the roadside, i.e. those hailing a cab or waiting at a rank. Private hire vehicles are only permitted to pick up people who have made pre-arranged bookings and are not permitted to pick people up from the side of the road or to park on a taxi rank. Private hire vehicles must be booked through a private hire operator.

2.8 Wiltshire Council approved a scheme of delegated powers at its full council meeting held on 1 December 2009, the latest version of which came into effect on 20 December 2013. The scheme of delegation provides that powers to grant licences for hackney carriage and private hire licences are delegated to Compliance Officers.

2.9 The current Fit and Proper Person Policy was last considered at the Licensing Committee meeting held on 30 November 2010. Members then approved the policies on the relevance of convictions for hackney carriage drivers, private hire drivers and private hire operators for both new applicants and existing licensees.

2.10 A comprehensive review of the guidelines for determining the suitability of applicants of hackney carriage and private hire licences has been undertaken utilising guidance from:

- The Institute of Licensing (IOL) - These guidelines are attached at **Appendix C**.
- The Department of Transport (DfT) - Ministers Taxi Working Party Report on Taxi and Private Hire Vehicle Licensing (attached as **Appendix D**).
- The Rotherham Steering Group - This was set up in response to sexual exploitation issues in the area. These recommendations are attached at **Appendix E**.

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 updated policy 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 and all hackney carriage and private hire drivers receive online training in safeguarding children and vulnerable adults 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 a more robust fit and proper person policy 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 NALEO, LGA and the 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 should have a policy in place to determine the suitability of applicants and licensees for hackney carriage driver, private hire driver or private hire operator’s licences and a clear application process for new hackney carriage driver and private hire driver, vehicle proprietors and private hire operator licences.
- 4.2 Wiltshire Council’s current policies do not cover applicants for hackney carriage or private hire vehicle licences, known as vehicle proprietors. In some cases, these applicants do not hold a hackney carriage or a private hire driver’s licence and as such do not currently go through the ‘fit and proper person’ test. Vehicle proprietors who do not hold a hackney carriage or private hire driver’s licence are not permitted to drive the vehicles, however, they are responsible for the maintenance and safety of the vehicles. It is recommended that these applicants and licensees be assessed in accordance with the revised policy to achieve consistency across hackney carriage and private hire driver, vehicle and proprietor licensing and to safeguard the public.
- 4.3 Where compliance officers have delegated powers to grant licences they will utilise the new policy when making a decision on whether to grant a licence.
- 4.4 The present policy guidelines are outdated and refer only to more serious offences. In places, they are also vague in their description, leaving the document open to interpretation. The proposed new policy gives clear guidelines that will reassure the public and give licence holders and applicants clear boundaries.

- 4.5 The main changes in the new policy are the introduction of new standards on offences involving **exploitation, possession of a weapon, discrimination**, hackney carriage and private hire offences. It should be noted that for offences involving; **drugs, drink driving, dishonesty, criminal damage, violence and traffic violations**, the periods of time for which a new applicant **or** existing driver must wait before applying for a new licence have been **increased**. Under the new policy anyone convicted of a sexual offence **will not** be considered for a licence.
- 4.6 Table 1 below provides a comparison between existing policy elements and the proposed changes, showing increased times before a new licence can be reapplied for, in line with the DfT recommendations:

Key Differences between Proposed and Current Fit and Proper Person (F & PP) Policies				
Offence	Current New Driver F&PP Policy 2010	Current Existing Driver F&PP Policy 2010	Proposed New F&PP Policy August 2019*	Proposed by DfT Consultation
Crime resulting in death	Officers discretion	Officers discretion	Refusal	Refusal
Exploitation	N/A	N/A	Refusal	Refusal
Offences involving violence	3/7 years	3/7 years	10 Years	10 years
Possession of a weapon	N/A	N/A	7 Years	7 years
Sex and indecency offences	5/7 years	5 years	Refusal	Refusal
Dishonesty	3 years	3 years	7 Years	7 Years
Drugs with intent to supply	3/5 years	3/5 years	10 Years	10 Years
Discrimination	N/A	N/A	7 Years	7 Years
Motoring offence (minor) single	6 Months	N/A	Single offence no minimum	Single offence no minimum
Motoring offence (minor) multiple	12 months	N/A	Multiple offences officer's discretion	Multiple offences officer's discretion
Drink driving/ drug driving	12 months/3 years	12 months/3 years	7 Years	7 years
Mobile phone use while driving	12 months	12 months	5 Years	5 years

*See para 4.11 below

Table 1

- 4.7 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.

- 4.8 The council currently has operational application procedures in place for hackney carriage and private hire drivers, vehicle proprietors and private hire operator's licences however these have not been formally adopted by the Licensing Committee. It is recommended that these processes are now formally adopted by the Licensing Committee on behalf of the council and they have been included in the proposed Fit and Proper Person Policy for hackney carriage and private hire licences.
- 4.9 There may be existing licensees who will not meet the requirements of the proposed policy. The intention is that their applications will be reviewed when licences are being considered for renewal. The expectation is that all applicants, whether for a new licence or on renewal, will meet the new policy requirements.
- 4.10 Whilst conducting the review, legal advice was sought and whilst it is not a requirement to consult it was agreed that some consultation should take place. Hackney carriage and private hire trade representatives were sent the proposed fit and proper person policy document and consulted at the hackney carriage and private hire trade representative meeting held on 9 July 2018 and were asked for comments by 31 July 2018. During the consultation period one response was received which stated that it seemed comprehensive and it is better if there is a common policy across all taxi authorities. The consultee response is attached at **Appendix F**.

5.0 Safeguarding Implications

- 5.1 When assessing applications for all hackney carriage and private hire licences, a failure to have robust policy guidelines 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 policy places more responsibility on licensed drivers and operators to report any concerns or suspicions in relation to any safeguarding and exploitation issues. The new policy provides the council with greater powers to revoke licences should a licensed individual not report such concerns. The new policy also provides the council with greater power to refuse new applicants a licence based on previous convictions, cautions or other information available, thus ensuring the public are not exposed to any avoidable risk. The policy also allows the council to manage existing drivers and operators in a more robust manner should they receive convictions whilst licensed. It provides the council with greater powers to establish if an individual is a fit and proper person 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 a revised policy 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 that may arise if the proposed decision and related work is not taken:

10.1 Current policies have areas that are unnecessarily vague and subjective, leaving them open to interpretation and ambiguity. As a result, there is the potential for a lack of consistency in the licensing of new and existing drivers.

10.2 New driver applicants are currently held to a higher standard than those that already hold a Wiltshire Council licence. This lack of consistency is a risk to the council e.g. for a single minor motoring offence a new driver would have to wait 6 months before being able to re-apply but an existing driver would not – see the table para 4.6 above. The implementation of the new policy will remove this risk.

10.3 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. The current policies are not in line with DfT proposed guidance and the proposed policy resolves a number of the issues highlighted in the DfT's consultation document.

10.4 If the policy is not reviewed regularly, the council may be open to legal challenge from interested parties on the basis that the current policy does not reflect current circumstances or requirements.

10.5 The overriding principle of licensing is the protection of members of the public. Failure to adopt this policy 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 policy 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 against the proposed policy. In the event that this was the case these

current licence holders will 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 policy, 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 policy. 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 and individual correspondence with all licensees.

11.0 Financial Implications

- 11.1 The adoption of a clear and more robust policy should reduce the likelihood of legal challenge to the council's licensing committee, thereby avoiding the cost of such challenges.
- 11.2 There are no additional costs associated with the implementation of this revised policy. The licensing process will be conducted by the existing resource within the Taxi Licensing Compliance Team.

12.0 Legal Implications

- 12.1 Approval of the revised policy will reduce the risk of legal challenge to the licensing process. The adoption of the revised guidelines 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 Two options are considered and detailed below.

Option 1

To keep the existing policies which leave room for interpretation. Wiltshire Council currently has two separate guidance policies relating to whether an applicant is a fit and proper person and currently covers hackney carriage driver, private hire driver or private hire operator's licences only.

Or

Option 2

To accept the proposals laid out in this report, which provide a revised policy in line with current industry guidelines and which resolves the issues highlighted in the DfT consultation announced on 12 February 2019. The revised policy will assist in creating a standardised, more robust

approach to hackney carriage and private hire licensing across the county in line with national recommendations for local authorities.

14.0 Conclusions

- 14.1 It is recommended that the council reviews policies on a regular basis to ensure that it keeps up to date with current guidance and legislation. The council's existing policies for determining whether someone is a fit and proper person in this context have not been significantly updated since 2010. Following the Rotherham case, the role which licensing authorities can have in safeguarding children, vulnerable adults and the general public is nationally recognised.
- 14.2 With the introduction of nationally revised guidelines, there is a clear requirement for the review of Wiltshire Council's existing policies relating to the application of the 'Fit and Proper Person' test and other considerations of character when determining the suitability of applicants and licensees for hackney carriage and private hire. Hackney carriage and private hire licence holders are in a position of trust with vulnerable members of the public; as such there is the potential for illegal activity.
- 14.4 To ensure the safeguarding of children, vulnerable adults and the general public the council needs to have a clear and robust policy. It is therefore proposed that the council adopts the revised 'Fit and Proper Person Policy' for hackney carriage and private hire licences.

Parvis Khansari
Director, Highways & Waste

Report Author: Jo Hulbert, Fleet Compliance Officer
jo.hulbert@wiltshire.gov.uk
Tel: 01225 770277

Julie Anderson-Hill Head of Culture and Operational Change
julie-anderson.hill@wiltshire.gov.uk

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

Appendices

Appendix A: Wiltshire Councils proposed Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences – 2019.

Appendix B: Department for Transport consultation document on protecting taxi users - published 12 February 2019.

Appendix C: Institute of Licensing - Proposed revised guidelines relating to determining the suitability of applicants and licensees in the hackney carriage and private hire trades.

Appendix D: Ministers Taxi Working Party Report on Taxi and Private Hire Vehicle Licensing Steps towards a safer and more robust system.

Appendix E: Rotherham Steering Group – Licensing Suggestions for Taxi Licensing.

Appendix F: Response received from the hackney carriage and private hire trade representative consultation on the revised policy.