

Proposed Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences – August 2019

1.0 Introduction

1.1 Many members of our society use, and even rely on hackney carriage and private hire vehicles to provide transportation services. They are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated. A licensed hackney carriage and/or private hire driver has significant power over a passenger who places themselves, and their personal safety, in their hands. In all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.

1.2 As a Unitary Authority Wiltshire Council, is responsible for hackney carriage and private hire licensing within the Council's area. Therefore, it takes public safety very seriously as the paramount consideration as part of the licensing process.

1.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in Paragraph 8 of the Department of Transport 'Taxi and Private Hire Licensing – Best Practice Guide':

"The aim of local authority licensing of the Taxi and Private Hire Vehicles (PHV) trades is to protect the public."

1.4 Within the hackney carriage and private hire licensing regime, there are 5 types of licence:

- **Hackney carriage driver and private hire driver (Dual Licence)**

A dual licensed driver:

- Can drive both hackney carriage and private hire vehicles

- **Private hire driver**

A private hire driver:

- Can only drive private hire vehicles

- **Hackney carriage vehicle**

A hackney carriage vehicle (often referred to as a Taxi):

- Can be flagged down by passengers in the street and can use designated taxi ranks
- Must be fitted with a roof sign and a meter, the meter must be calibrated to the maximum fare, which is set by the council

- **Private hire vehicle**

A private hire vehicle (sometimes referred to as a minicab):

- Must be booked in advance of the journey
- Must not have a roof sign and does not have to have a meter fitted
- The council has no control of the fare
- Bookings must be taken through a private hire operator

- **Private hire operator**

A private hire operator:

- Accepts or invites bookings for a private hire vehicle.

1.5 In relation to all licences stated above, the authority has discretion over whether to grant any such licence.

1.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 Section 51 and 59 in respect of drivers and Section 55 in respect of operators).

1.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion in this regard.

1.8 In each case, the authority has powers to grant a licence, renew it on application and throughout the duration of the licence, suspend or revoke it.

2.0 Policy Aim

2.1 The aim of this policy is to provide guidance on the criteria taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver, hackney carriage or private hire vehicle or a private hire operator licence.

2.2 The overriding aim of the licensing authority is to protect the safety of the public.

The licensing authority is concerned to ensure:

- That the person does not pose a threat to the public
- That the public are safeguarded from a dishonest person
- The safeguarding of children, young persons and vulnerable adults

2.3 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively to:

- Applicants for hackney carriage and/or private hire driver, hackney carriage or private hire vehicle or a private hire operator licence

- Existing licence holders having their licence reviewed
- Licensing/Compliance Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions

2.4 Where licensing/compliance officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee/panel (or other relevant decision-making body) who will also utilise these guidelines. Whilst officers and the committee/panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.

3.0 Application process for Hackney Carriage and Private Hire licences

Hackney carriage and/or private hire drivers

3.1 A driver has direct responsibility for the safety of their passengers, for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

3.2 Applicants for a hackney carriage and/or private hire drivers' licence will need to meet the following criteria in order to obtain a licence:

- Will be required to reside at an address in the United Kingdom for at least six months (if applicants have not lived in the United Kingdom for the six months prior to application they must have a residential address in the United Kingdom to enable a DBS to be carried out)
- Applicants will also be required to complete five separate hours of driving tuition in the United Kingdom to enable familiarisation of the Highway Code and United Kingdom driving legislation. This must be completed by a driving instructor currently registered by the Driver Vehicle Standards Agency (DVSA) and a certificate of completion will be required. This certificate will need to show the name and current address of the applicant and show that their photographic driving licence has been checked and issued by the issued by Driver and Vehicle Licensing Agency (DVLA)
- Must have held a United Kingdom or equivalent driving licence for at least three years
- Driving licence must be a United Kingdom licence and in the applicant's current address
- Must not have incurred any penalty points on their driving licence within the last six months

3.3 Applicants are required to provide the following documents, all of which must be produced and dated within the last 6 months (further information is available in the driver step by step guide):

- Disclosure and Barring Service (DBS) enhanced criminal records check. If an applicant, from the age of ten years, has spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the Country/Countries covering the relevant period will be required.

Following receipt of the Disclosure and Barring Service (DBS) enhanced criminal records check certificate, applicants are advised to subscribe to the Disclosure and Barring Service (DBS) update service throughout the licence duration. (Details can be found at: www.gov.uk/dbs-update-service).

- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all applicants. To carry these out we will need to obtain, check & copy one of the following documents:
 - A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- DVLA live driving licence check, this will be checked at regular intervals throughout the duration of the licence
- Completed New Driver application form, signed by prospective employer
- Medical form - this must be on completed by a GP. You will be required to complete a medical fitness declaration and meet the DVLA's Group 2 Medical Standards of Fitness. Once a licence has been obtained, licensees will need to undergo further medical checks and meet the DVLA's Group 2 Medical Standards of Fitness at the age of 45, then every 5 years until the age of 65. After 65 you will need to have a medical every year.

- Driver Assessment form - if concerns are raised, this may be reassessed at any time throughout the licence duration
- Online Safeguarding training - refresher training will be required every three years throughout the duration of the licence
- Hackney Carriage and Private Hire Knowledge Test - if concerns are raised, this may be reassessed at any time throughout the duration of the licence
- Hackney Carriage Geographical Knowledge Test (If applicable) - if concerns are raised, this may be reassessed at any time throughout the duration of the licence

Hackney carriage/private hire vehicle proprietors

3.4 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.

- They must ensure that the vehicle is in a roadworthy condition at all times.
- They must ensure that the vehicle is maintained to the standard advised in the Wiltshire Council's Guidelines for Hackney Carriage and Private Hire Vehicles.
- They must ensure that the vehicle is not used for illegal or illicit purposes.

3.5 All applicants for a hackney carriage or private hire vehicle' licence will need to provide the following documents in order to obtain a licence:

- Completed application form
- Current insurance certificate, showing registration details of vehicle and covering it for relevant purpose
- V5C – Registration document
- MOT (this must be dated less than 28 days prior to the licensing appointment date unless it is a brand new vehicle with delivery mileage of under 500 miles)

If the applicant is not the holder of a current hackney carriage and/or a private hire drivers' licence issued by Wiltshire Council they will be required to complete the following:

- Basic DBS check (details can be obtained from www.disclosures.gov.uk). If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all applicants. To carry these out we will need to obtain, check & copy one of the following documents:
 - A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- Hackney Carriage and Private Hire Knowledge test. If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

4.0 Private Hire Operators

4.1 A private hire operator ("an operator") does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.

4.3 Applicants for a private hire operators' licence will be required to provide the following documents in order to obtain a licence:

- Completed application form

If the applicant is not the holder of a current hackney carriage and/or a private hire driver's licence issued by Wiltshire Council they will be required to complete the following:

- Basic DBS check (details can be obtained from www.disclosures.gov.uk). If concerns are raised, this may be reassessed at any time throughout the duration of the licence.
- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all

applicants. To carry these out we will need to obtain, check & copy one of the following documents:

- A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- Hackney Carriage and Private Hire Knowledge test. If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

5.0 Guidance on determination of licence applications

- 5.1 As public trust and confidence in the overall safety and integrity of the hackney carriage and private hire system is vital, the same standards will be applied to drivers, vehicles and private hire operators, which are outlined below.
- 5.2 'Fit and proper' means that the individual (or in the case of a private hire operator's licence, the limited company together with its directors and secretary, or all members of a partnership) is 'safe and suitable' to hold the licence.
- 5.3 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament.
- 5.4 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A Caution is regarded in exactly the same way as a conviction. Fixed penalties and community resolutions will also be considered in the same way as a conviction.
- 5.5 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being

quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to 'conviction' will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.

- 5.6 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 5.7 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in accordance of this policy.
- 5.8 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle; or in connection with an operator of a private hire vehicle will be viewed as aggravating features.
In addition, the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 5.9 As the licensing authority will be looking at the entirety of the individual; in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 5.10 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 5.11 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 5.12 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee

which would have prevented them being granted a licence on initial application will lead to that licence being revoked.

- 5.13 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 5.14 As the direct impact on the public varies depending upon the type of licence applied for or held; it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 5.15 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 5.16 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use this policy as an indication of the approach that should be taken.
- 5.17 This policy does not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by this policy, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.
- 5.18 **Crimes resulting in death**
Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
- 5.19 **Exploitation**
Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.
- 5.20 **Offences involving violence**
Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 5.21 **Possession of a weapon**
Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.22 Sex and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

5.23 Dishonesty

Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.24 Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed. Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

5.25 Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.26 Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

5.27 Drink driving/driving under the influence of drugs/using a hand-held telephone or hand-held device whilst driving

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least

5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

5.28 Other motoring offences

A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed. (A list of offences and categories can be found at: <https://www.gov.uk/penalty-points-endorsements/endorsement-codes-and-penalty-points>).

5.29 Hackney carriage and private hire offences

Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.30 Vehicle use offences

Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

6.0 Appeals

- 6.1 Any applicant refused a driver or operator's licence on the grounds that the licensing authority is not satisfied he 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, Section 77 (1)].

6.0 Powers

- 6.1 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the licensing authority to suspend, revoke or refuse to renew a drivers 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.

- 6.2 Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allows the licensing authority to suspend, revoke or refuse to renew an operators' licence: if the applicant/licence holder has been convicted of any offence under, or none compliance with Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any conduct on the part of the operator which appears to render him unfit to hold an operators' licence; or any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or any other reasonable cause.
- 6.3 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.
- 6.4 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence, in advance, to prove that any action required to be undertaken as part of a court agreed reduction in the period of disqualification has been successfully completed.