

BRISTOL CITY COUNCIL

PUBLIC SAFETY AND PROTECTION COMMITTEE

15 August 2017

Report of: Strategic Director, Neighbourhoods

Title: Hackney Carriage and Private Hire Fit and Proper Person Policy Review

Ward: Citywide

Officer Presenting Report: Nick Carter, Regulatory Services Manager

Contact Telephone Number: 0117 357 4900

RECOMMENDATION

That the Public Safety and Protection Committee:

- a) **Agree to adopt the proposed changes to the draft Fit and Proper Person Policy as set out in the report.**

Summary

1. The Council requires applicants and licence-holders to conduct themselves appropriately and honestly in their dealings both with the public and with the Council. The Licensing Authority cannot grant (or allow a licence to remain in force) a Hackney carriage or private hire drivers or operator's licence unless the applicant is a fit and proper person. It is the responsibility of the applicant/licence holder to satisfy the Licensing Authority that they are a 'fit and proper person' and not the role of the licensing authority to prove that they are not.
2. Fit & Proper Person is the statutory test and a pre-requisite to an applicant being granted a licence. There is no statutory definition of Fit & Proper Person but there is case law that aids the Council's understanding of its meaning. In simple terms it means the applicant's suitability to hold a licence by complying with the minimum expected standards as detailed in the Policy.
3. 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 our 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.

The significant issues in the report are:

4. A policy is needed to guide applicants and decision makers and to ensure transparency and consistency in the decision making process. Officers have drafted an updated Fit and Proper Person policy attached as **Appendix A** and recommend that members approve the draft policy.

Policy

5. The licensing of private hire and Hackney carriage drivers is regulated under sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976. Those sections provide that a licence shall not be granted unless the Council is satisfied that the applicant is a fit and proper person.
6. Section 55 (1) of The Local Government (Miscellaneous Provisions) Act 1976 states that a Local Authority must grant an application for a licence to operate private hire vehicles provided they are satisfied the applicant is a fit and proper person.
7. The fit and proper person consideration is a very wide test in law which has been supported by the High Court on judicial review. Checks that are undertaken as standard by licensing authorities relate to criminality and medical fitness.
8. 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."

Consultation

9. Internal:

- a. Legal Services

10. External:

The Council has consulted with representatives of the taxi trade.

Context

11. The Council last reviewed its fit and proper person policy nearly five years ago. As the Hackney carriage and private hire trades are operational 24 hours a day, 365 days a year. It is therefore very important that the Council regularly reviews its fit and proper person policy.

12. The overriding aim of the Council as licensing authority is to protect the safety of the public. The Council 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 persons, and
- the safeguarding of vulnerable persons, children and young persons

13. There is no attempt made within the legislation to define the term fit and proper person and the draft policy likewise makes no attempt to formulate such a definition. The Council may consider any relevant issue when making its determination on this point. The policy should be regarded as a collection of examples of issues that may lead to the Council not being satisfied that an applicant is fit and proper, rather than an exhaustive list of the issues that may be taken into consideration.

Proposal

14. The purpose of the 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 or private hire driver or operator licence or to be a proprietor of such vehicles.

15. In determining whether an applicant is 'fit and proper' the authority will consider, amongst other things, an applicant's criminal record (using an enhanced DBS check for drivers and a basic DBS check for operators and proprietors), driving record, medical fitness, driving skills, knowledge, experience and previous history as a licence holder (if applicable). Decisions are made on the civil standard of proof which is 'on the balance of probabilities' rather than the higher criminal threshold.

16. The policy provides guidance to any person with an interest in Hackney carriage and private hire licensing. In particular, but not exclusively:

- Applicants for Hackney carriage and private hire licences
- Existing licensed drivers and operators whose licences are due for renewal
- Licensing officers
- Members of the Public Safety and Protection committee
- Magistrates hearing appeals against local authority decisions

17. The below changes are proposed to the current policy:

FIT AND PROPER PERSON POLICY			
Provision	Change	Reasons	Date of Change
DVLA Licence Check	Applicants who hold a; <ul style="list-style-type: none"> • community licence, • exchangeable licence 	This ensures licence holders convert their foreign driving	1 September 2017

	<p>or</p> <ul style="list-style-type: none"> Northern Ireland driving licence <p>may still be granted a Hackney carriage or private hire driver licence. Such applicants will be required to exchange their driving licence to a Full DVLA Driving Licence before the renewal of their first private hire or hackney carriage driver licence.</p>	<p>licence to a DVLA licence. This enables the council to conduct a search on the DVLA records to ascertain if any endorsements are recorded on the licence.</p>	
<p>Enhanced Disclosure and Barring Service (DBS) Check</p>	<p>An enhanced DBS check, or future equivalent as specified by the Licensing Manager, must be completed through the Licensing Team.</p> <p>a. The application must be submitted through the Council's Licensing Department and for new applicants the returned DBS certificate must be less than six months old when the private hire or Hackney carriage driver licence application is ready to be issued.</p> <p>b. Existing licensees must supply a new enhanced DBS certificate (completed through the Council's Licensing Department) on renewal every three years.</p> <p>c. The Council will have the right to require a further DBS check to be completed at the licensees expense at any time during the currency of the licence should the Council have reason to doubt the fitness of the licence holder to hold the</p>	<p>To reflect the Criminal Records Bureau becoming the DBS and to update the existing policy to reflect the approach already taken by the council.</p>	<p>1 September 2017</p>

	licence.		
Medical Test	<p>Applicants shall demonstrate that they have satisfied the medical standard as specified by the Council, by a registered medical practitioner selected by the Council to assess the drivers fitness. This will be a Group 2 medical as specified by the (DVLA) for PCV HGV drivers. A completed medical examination report must be provided by new applicants. Existing drivers must supply a medical examination report as follows:</p> <ul style="list-style-type: none"> i. Every five year period from the age of 45, ii. Annually from the age of 65 <p>The Council will also have the right to recall the licence holder at any time during the currency of the licence for a medical examination should the Council have reason to doubt the fitness of the licence holder to hold the licence.</p>	To clarify that licence holders are required to carry out a further medical at set intervals (this is already reflected in DVLA policy and followed by the council)	1 September 2017
Knowledge Test	<p>All new applicants must pass a knowledge test as specified by the Council relevant to the licence type applied for. The test will include a requirement that the applicant demonstrates a sufficient level of communication skills such as are reasonably required for the licence to be conducted in a proper manner.</p> <p>Current private hire driver licence holders applying for a Hackney carriage driver licence must pass the knowledge test at Hackney carriage standard.</p>	<p>To clarify that existing private hire drivers applying for a Hackney carriage driver licence must pass the test at Hackney carriage standard.</p> <p>This reflects the approach already taken by the Council.</p>	1 September 2017

Gold Standard	<p>All new applicants for a Hackney carriage or private hire driver licence must provide information to the Council to show they have completed the Bristol Gold Standard.</p> <p>Applicants who already hold a current Hackney carriage or private hire driver licence do not have to undertake the Bristol Gold Standard if applying for the alternative licence.</p>	To amend the existing policy to permit licence holders who already hold a private hire or Hackney carriage driver licence issued by the council to be granted the other licence without undertaking the Gold Standard course.	1 September 2017
Driving Test	All new applicants must pass a further driving test as specified by the Licensing Manager in consultation with the Chair of the Public Safety & Protection Committee.	To reflect the fact the Driving and Vehicle Standards Agency (DVSA) no longer carry out practical tests for private hire or Hackney carriage drivers.	Date of Committee
Training for existing licensed drivers	All existing Hackney Carriage and Private Hire drivers will be required from time to time to attend mandatory training as set by the Council. Completion of any training may be a requirement of licence renewal	To introduce a new requirement to enable the Council to provide refresher training to ensure that standards are maintained	1 September 2017
Expired Licences	See below table	To update the existing policy to reflect the approach already taken by the Council.	Date of Committee
APPLICATION DATE		REQUIREMENT FROM APPLICANT	
Up to seven days after the expiry of the previous licence*		<ol style="list-style-type: none"> 1. Complete application form for the grant of a licence 2. Pay an application fee in 	

	addition to the yearly licence fee
Between seven days and up to six months after the expiry date*	<ol style="list-style-type: none"> 1. Complete application form for the grant of a licence 2. Pay an application fee in addition to the yearly licence fee 3. Complete and submit DBS check and pay current fee
Between six months and up to 12 months after the expiry date*	<ol style="list-style-type: none"> 1. Complete application form for the grant of a licence 2. Pay an application fee in addition to the yearly licence fee 3. Complete and submit DBS check and pay current fee. The licence can only be issued on return of a satisfactory result.
12 months and over from expiry*	TREAT AS NEW APPLICANT
<p>*Where an expired licence is being renewed by a driver who still holds a current Hackney carriage or private hire driver licence the above criteria will not apply with the exception that a grant application form and grant fee in addition to the licence fee will be required.</p>	

Other Options Considered

18. Do nothing: This would not leave the Council in a suitable situation as the policy was last updated in August 2012. The policy needs updating to take into account a number of external changes and ensure the policy adequately ensures all licence holders meet the fit and proper person test.

Risk Assessment

19. As set out in the below tables:

The risks associated with the implementation of the recommendations of the report							
No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls)		RISK CONTROL MEASURES Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	CURRENT RISK (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	Any policy decision is open to challenge	Low	Low	Officers have consulted with key representatives of the taxi trade.	Low	Low	

The risks associated with <u>not</u> implementing the recommendations of the report							
No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls)		RISK CONTROL MEASURES Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation)	CURRENT RISK (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	Failure to amend the policy as recommended could lead to applicants obtaining a licence when they are not fit an proper persons to do so.	Medium	Medium	Determine and publish the revised policies	Low	Low	

Equalities Impact Assessment

20. An Equality Impact Assessment has been produced and is attached as Appendix B.

Legal and Resource Implications

Legal:

There is no statutory duty to consult upon the proposed policy changes and nor is there a general common law duty to do so. A duty of consultation will however exist in circumstances where there is a legitimate expectation of such consultation, usually arising from an interest which is held to be sufficient to found such an expectation, or from some promise or practice of consultation. In this case the Council has consulted with representatives from the taxi trade in line with previous practice.

Where a consultation process is undertaken, case law guides on what constitutes lawful consultation and from this some key guiding principles have been established, in summary that those being consulted must:

- (i) be provided with material upon which a decision is likely to be made;
- (ii) be given enough time for intelligent consideration of that material and to respond to it;
- (iii) be given the opportunity to make considered representations;
- (iv) have their representations conscientiously considered.

It is therefore important that members are satisfied that that any consultation process allows sufficient time to enable any person or body wishing to make representations

to obtain relevant material, to consider it and to put their representations to the Council.

Legal advice given by: Lynne Harvey, Solicitor, Legal Services

Financial:

This report updates policy guidance regarding the 'fit and proper' conduct of licence applicants and licence holders.

No financial impact is planned.

Financial advice given by: Jemma Prince (Finance Business Partner) 27/7/17

Land

Not applicable

Personnel:

While Hackney Carriage and Private Hire drivers are not employees of Bristol City Council, it is important that when they are operating vehicles licensed by Bristol City Council and on behalf of Bristol City Council, clear standards of suitability are adhered to – both in terms of the protection of citizens and maintaining the reputation of the Council. This report clearly advocates going above the minimum requirement, and reflects good practice around the performing of DBS checks and allows for an objective judgement of whether the individual applying for a license is a “fit and proper person”.

Personnel advice given by: Alex Holly, HR Business Partner, Talent and Resourcing

Appendices:

Appendix A Draft Fit and Proper Person Policy
Appendix B Equality Impact Assessment

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None