

**BRISTOL CITY COUNCIL**

**PUBLIC SAFETY AND PROTECTION COMMITTEE**

**18<sup>th</sup> February 2020**

**Report of: Executive Director, Growth and Regeneration**

**Title: Revision to Hackney Carriage and Private Hire Driver Policy:  
Requirement to subscribe to the Disclosure and Barring  
Service (DBS) Update Service as part of the Fit and Proper  
Person Policy**

**Ward: Citywide**

**Officer Presenting Report: Emma Lake, Licensing Team Leader**

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**Purpose of Report**

To seek permission for the Licensing and Trading Standards Manager to commence a consultation to introduce the DBS update Service as part of the Fit and Proper Person Policy for hackney carriage and private hire drivers.

**RECOMMENDATION**

The committee are recommended to:

- (1) consider the information within this report and;
- (2) to delegate authority to the Licensing Manager to consult on the proposal to amend the fit and proper persons policy to require drivers and applicants to sign up to the online Disclosure and Barring Service (DBS) update;
- (3) to bring a report back to committee to consider the responses to the consultation and any further proposed changes.

**Summary**

The DBS update service is a service that enables applicants keep their DBS certificates up to date online and allows local authorities (if given consent by the applicant) to check if there has been a change to the status of a DBS certificate online. In accordance with the Councils Fit and Proper Person

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Policy for Hackney Carriage and Private Hire Drivers all hackney carriage and private hire drivers currently need to undertake an enhanced check with the DBS every three years to check for any criminal behaviour that could affect their ability to hold a licence. Officers recommend amending the policy to make it mandatory for all drivers to sign up to the online service prior to the grant of a new licence or on renewal. Officers have drafted policy amendments to reflect this which includes amendments to the policy in respect of the requirements for expired licences.

### **Policy**

- 1.** The Council, as the Licensing Authority under the Local Government (Miscellaneous Provisions) Act 1976, is responsible for licensing all Hackney Carriage and Private Hire Drivers operating within its area, pursuant to Sections 51, 57 and 59 of the Act.
- 2.** The Council has a legal duty to ensure that all licensed drivers are fit and proper persons to apply for and continue to hold such a licence. This includes the power to refuse to grant a licence and suspend or revoke a licence where a driver is not deemed or no longer deemed to be 'Fit and Proper' where they have been convicted or cautioned for criminal and road traffic offences.
- 3.** The Council's current Hackney carriage and Private Hire fit and proper person policy was last revised in August 2017. It states that an enhanced DBS check must form part of the fit and proper persons test.

### **Consultation**

#### **4. Internal**

Passenger Transport  
Neighbourhood Enforcement Team

#### **5. External**

If members are minded to approve the recommendation, an external consultation would take place in line with Department for Transport Best Practice Guidance which recommends that local authorities consult with the following parties in respect of any significant proposed changes:

- hackney carriage and private hire vehicle trades via newsletter
- trade representatives
- groups representing equalities groups
- PC Patrick Quinton

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The consultation will be take place over an 8 week period and the consultation will be published on the Councils Consultation finder.

### Context

6. The Hackney Carriage and Private Hire trades are the only parts of the public transport system that are operational 24 hours a day, 365 days a year. It is therefore important that the Council regularly reviews its fit and proper person policy to ensure it is effective and fit for purpose.

7. There is no legal requirement for the Licensing Team to be sent a copy of the DBS disclosure certificate and there is no specific time period for the applicant to submit their copy of the disclosure certificate to the Licensing Team. Currently, the Licensing Team contact applicants approximately three months prior to expiry to advise they need to submit their DBS check promptly and that if this check has not been completed we may not be able to renew their licence. Due to delays in the turnaround time of DBS applications from the DBS a number of drivers have requested short term licences to enable them to work while awaiting their DBS check. This puts the Council in a difficult position as there is a risk that a licence could be issued when the driver is not fit and proper in accordance with Council policy.

8. Members are aware that the information disclosed within a DBS disclosure is vital to the decision making process to ensure that the Council meets its statutory requirement to ensure all drivers are a fit and proper people.

9. In May 2013, the DBS informed all local authorities of changes to the disclosure service with effect from June 2013. In essence the changes are two-fold:

a) The introduction of applicant only certificates

The DBS no longer issues a copy of the applicant's DBS certificate to local authorities. Since this date only the applicant receives the disclosure certificate and councils need to ask the applicant for sight of the original DBS certificate.

b) The introduction of a voluntary update service

For an annual subscription of £13 applicants/ drivers can register their DBS certificate with the DBS update service within 30 days of its issue or applicants can sign up provided DBS receive their application form within 28 days of signing up. Provided that the annual subscription is maintained their DBS certificate becomes 'portable' and can be taken from role to role within the same workforce which are either child, adult or other. Taxi drivers are

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classed as other workforce which means information relating to the role of a taxi driver will be disclosed on a DBS with this workforce specified.

In addition, as long as the applicant/licence holder has given written consent, the local authority can carry out online status checks to check if the status of the certificate has changed. The details relating to the outcomes of DBS update status checks and the meaning of each status is detailed in Appendix 1. There will be no need for the applicant/licence holder to complete a new disclosure application form after three years provided subscription is maintained. However if the status check shows the status has changed as new information has come to light a new certificate must be obtained.

**10.** In 2017 the Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing was established to produce recommendations both legislative and non-legislative to address identified and evidence issues in respect of taxis. One of the recommendations in the report included that Licensing Authorities require drivers to subscribe to the DBS update service and DBS status checks be carried out every 6 months. The recommendation concluded that Licensing Authorities should implement this prior to national standards being implemented. In February 2019 the Government responded to TFG report and advised that they agree with the recommendations relating to DBS update service and that in the long term they will be considered as part of the minimum standards. There are no timescales in respect of the introduction of minimum standards at this time.

**11.** A report went before committee in January 2018 recommending the establishment of a member/officer working party to consider whether any existing BCC hackney carriage and private hire policy provisions need to be reviewed in light of recent national reviews of taxi legislation. This recommendation was approved and the working group have met on a number of occasions and have agreed that the changes detailed in this report in respect of the DBS update service and the Councils Fit and Proper Person policy should be considered.

**12.** A number of core cities and neighbouring authorities already require drivers to be signed up to the update service including Leeds, Manchester, Sheffield, Bath and North East Somerset Council and South Gloucestershire Council. The frequency of how often authorities carry out a status update varies currently.

**13.** This would be a significant step forward for the authority to meet the recommendations of the Task and Finish Group (TFG) on Taxi and Private Hire Vehicle Licensing and the Governments response to the TFG report which both recommend that Licensing Authorities introduce the DBS update service and carry out six month checks ahead of the minimum standards being introduced for taxi drivers.

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**14.** Also the Licensing Service was audited internally in 2018 which recommended that the TFG recommendation in respect of DBS update service and 6 monthly checks be carried out. Following this an audit review was carried out in 2019 and this action is still outstanding.

### **Proposal**

**15.** Members are being asked to support the recommendations set out in this report.

**16.** The DBS process is a credible means of checking on a person's status, whether convicted or otherwise. The introduction of the DBS' online update service would allow officers to carry out an online status check to see if an individual's certificate is up to date, which can be done as often as the local authority wishes. It reduces the need to apply for a further DBS certificate and therefore is more efficient. The full benefits are below:

#### **Benefits to the Local Authority**

- Instant online checks on the status the DBS Certificate
- Increased efficiency with reduction in requests for short term licences
- Enhances our safeguarding processes
- Easy to incorporate into our existing decision-making processes (as part of the fit and proper persons policy)

#### **Benefits to the Applicant**

- Saves time completing applications
- Ability to take the DBS Certificate from role to role within the same workforce
- Allows drivers to be in control of their DBS Certificate
- Less delay with applicants awaiting DBS applications to be processed and certificates being issued

**17.** In order to introduce this process officers recommend amending the fit and proper person policy to require all Hackney Carriage and Private Hire Vehicle driver's licences to sign up to the online update service and provide the Licensing Team permission to use their reference number to carry out a status check. It is likely that the Licensing Team would carry out a DBS update service check at least every 6 months and on renewal. However the draft policy would allow status checks to be carried out at any point. This will take three years to implement as some drivers will have only recently completed the DBS process.

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**18.** If applicants/licence holders do not continue with subscription to the service or their status changes they will have to apply for another DBS Certificate and it is likely their application will not be determined until the certificate is received back, the applicant/licence holder has subscribed to the service and the consent form is completed to the satisfaction of the Council. In respect of existing licence holders the draft policy includes that their licence may be suspended or revoked. Also changes in respect of the requirements for applicants following the expiry of a licence have been drafted.

**19.** The draft Fit and Proper Person Policy for taxi hackney carriage and private hire drivers with all of these amendments detailed is attached as Appendix 2. The table below outlines the existing policy and draft policy:

Existing policy	Draft policy
<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>1. The following shall be in place for all applicants and drivers:</p> <ul style="list-style-type: none"> <li>a. An enhanced DBS certificate, or future equivalent must be provided to the satisfaction of the Licensing Team;</li> <li>b. The applicant must subscribe to the DBS Update Service , or future equivalent and maintain subscription to the service;</li> <li>c. Information relating to the applicants DBS Update Service Details and a Consent Form shall be provided to the satisfaction of the Licensing Team</li> </ul>
N/a (New requirement)	In the event of a delay of 6 weeks or more for a DBS application to be returned the Licensing Team may inform the Chair of the Public Safety and Protection Committee of the delay.
N/a (New requirement)	<p>If an applicant or licence holder does not continuously subscribe to the DBS Update service or the status of a DBS certificate changes the applicant will be required to;</p> <ul style="list-style-type: none"> <li>a. Provide a new enhanced DBS Certificate or future equivalent;</li> <li>b. Subscribe to the DBS Update Service , or future equivalent;</li> <li>c. Provide information relating to the applicants DBS Update Service Details and a Consent Form shall be provided to the satisfaction of the Licensing Team</li> </ul> <p>Any pending applications may not be determined and existing licences may be revoked or suspended until these steps are completed to the satisfaction of the Licensing Team.</p>

The draft policy also proposes to remove from the existing Fit and Proper Person policy:

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*In the event a private hire or Hackney carriage driver licence expires the following applies:*

APPLICATION DATE	REQUIREMENT FROM APPLICANT
Up to seven days after the expiry of the previous licence*	<ol style="list-style-type: none"> <li>1. Complete application form for the grant of a licence</li> <li>2. Pay an application fee in addition to the yearly licence fee</li> </ol>
Between seven days and up to six months after the expiry date*	<ol style="list-style-type: none"> <li>1. Complete application form for the grant of a licence</li> <li>2. Pay an application fee in addition to the yearly licence fee</li> <li>3. Complete and submit DBS check and pay current fee</li> </ol>
Between six months and up to 12 months after the expiry date*	<ol style="list-style-type: none"> <li>1. Complete application form for the grant of a licence</li> <li>2. Pay an application fee in addition to the yearly licence fee</li> <li>3. Complete and submit DBS check and pay current fee. The licence <b>can only be issued</b> on return of a satisfactory result.</li> </ol>
12 months and over from expiry*	TREAT AS NEW APPLICANT
*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.	

### Other Options Considered

**20.** Do nothing and awaiting changes to legislation and the introduction of minimum standards. However the proposals detailed in this report would meet the Councils statutory requirement to ensure drivers are 'fit and proper' and would be in line with the recommendations from the TFG report, the government's response to the report and internal audits recommendations.

### Risk Assessment

**21.** The report outlines the main options that may be considered by members and the possible implications of policy changes.

**22.** The Council is under a duty to ensure that all new applicants and current licence holders of private hire and hackney carriage driver licenses are fit and proper persons to hold a licence and that they do not pose a risk to any fare paying passengers or other members of the public.

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**23.** The approval of this policy will ensure that all relevant checks will continue to be conducted in relation to any criminal conviction or caution.

### **Public Sector Equality Duties**

**21a.** Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - tackle prejudice; and
  - promote understanding.

**21b.** An Equalities Impact Relevance Check has been produced and is attached as Appendix 3.

### **Legal and Resource Implications**

#### **Legal**

The proposals set out in the report are lawful.

There is no legal requirement to consult upon the proposed changes to



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the fit and proper person policy. However, should a consultation process be 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:

- a. be provided with material upon which a decision is likely to be made;
- b. be given enough time for intelligent consideration of that material and to respond to it;
- c. be given the opportunity to make considered representations;
- d. 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.

### **Financial**

#### **(a) Revenue**

#### **(b) Capital**

No comments received.

### **Land**

Not applicable

### **Personnel**

Not applicable

## **Appendices**

Appendix 1 – DBS Update service – Outcomes of Successful status checks

Appendix 2 – Draft Hackney Carriage and Private Hire Driver Fit and Proper Person Policy

Appendix 3 – Equalities Impact Assessment Relevance Check

## **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers:**

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Disclosure & Barring Service 'DBS update service Employer Guide' (version 3.9):

<https://www.gov.uk/government/publications/dbs-update-service-employer-guide>