

Private Hire and Hackney Carriage Licensing Fit and Proper Person Policy



Policy Adopted: ???



Walsall Council

Private Hire and Hackney Carriage Licensing

**DRAFT FIT AND PROPER PERSON
POLICY**

Introduction

The primary and overriding aim of Walsall Council when carrying out its functions as a licensing authority is the protection of the public.

Licences for drivers of hackney carriages, private hire vehicles or private hire operators may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence. Local Government (Miscellaneous Provisions) Act 1976 S51 (1)(a) and S59 (1)(a)

This policy is intended to show which tests and checks Walsall Council will use to determine the suitability of an applicant to be granted a licence. If a licence holder falls short of this fit and proper standard at any time, Walsall Council will give consideration based on all the evidence available to it as to whether the licence will be, suspended, revoked or not renewed on application.

In considering whether an applicant or licence holder is fit and proper, those making the decision on behalf of the Council will ask themselves the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

All decisions on the suitability of an applicant or licence holder are made on the balance of probability. This means that an applicant or licence holder will not be 'given the benefit of doubt'. If the committee or authorised officer is only "50/50" as to whether the applicant or licence holder is 'fit and proper', they will not grant a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

If an applicant or current licence holder is not satisfied with a decision made by an authorised officer, they may appeal the decision to the Licensing and Safety Committee. The appeal should be set out in writing clearly explaining why the decision is unreasonable or what the exceptional circumstances are surrounding the case. The appeal should be addressed to the Director of Resilient Communities at Walsall Council.

Licence holders or applicants may also have the right to appeal to the Magistrates Court against certain decisions made by the licensing authority. The applicant or licence holder should take legal advice as to the most appropriate procedure to follow in these circumstances as appeals to the Magistrates Court are time limited and incur costs.

Unless specified elsewhere all checks and tests are undertaken at the applicant's own risk and must be paid for by the applicant.

1 Fit and Proper Person test at the application stage

- 1.1 Walsall Council requires applicants for all types of licence to complete the process relevant to their specific application as described in this policy.
- 1.2 In determining whether an applicant or licence holder is fit and proper, those making the decision on behalf of the Council will consider:
- Whether an applicant has met the Council's application requirements
 - Any information revealed by DBS certificates relating to the applicant / licence holder
 - Any information revealed under Common Law Police Disclosure provisions
 - Any information revealed by checks undertaken on the applicant or licence holder's DVLA driving licence records
 - Any information revealed on the medical fitness certificate
 - Any information revealed during checks on NR3s
 - Any information regarding complaints received about an applicant or licence holder
- 1.3 An application will normally be refused or action will be taken in relation to an existing licence if the applicant: -
- Fails any of the checks listed below.
 - Is in breach of the Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines (otherwise referred to as the Convictions Guidelines).
 - Has previously been a licence holder in this or any other borough and that licence has been revoked, suspended or refused.
 - Has exhibited behaviour which is inconsistent with that expected of a Walsall licence holder.
 - Is in breach of any conditions/legislation relating to their licence.
- 1.4 Walsall Council's Convictions Guidelines assist in determining whether an applicant is fit and proper. While each application must be determined on its individual merits, the Convictions Guidelines set out a recommended minimum period free of conviction for offences falling into broad categories.
- 1.5 Where an applicant has previous convictions, cautions or other relevant matters held against their name and these are within the parameters set in the Convictions Guidelines, authorised officers are delegated to determine whether to grant or refuse a licence.
- 1.6 Where a refusal, suspension or revocation decision is made either by an

authorised officer or Licensing and Safety Committee or Sub Committee the details of this refusal, suspension, or revocation will be placed on the National Register of Taxi and Private Hire Licence Revocations, Refusals and Suspensions (NR3s). In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for staff to make referrals to the DBS for example where a decision is made to refuse, suspend or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult.

- 1.7 Any applications that are not within the parameters set in the Convictions Guidelines or this Policy will normally be refused. The Head of Community Safety & Enforcement or a Team Leader may determine that an application within Policy should be referred to the Licensing and Safety Committee if it is contentious in any way.
- 1.8 On a case-by-case basis and only in exceptional circumstances the Licensing and Safety Committee may resolve to set aside or amend the standard conditions or policies in circumstances where the committee considers that not to do so would be unjust or unfair. The setting aside or amendment of the condition or policy will be specific to that case alone.
- 1.9 Applicants and licence holders are required to disclose if they hold or have previously held a private hire or hackney carriage licence with another authority. An applicant should also disclose if they have had an application for a licence refused, or a licence revoked or suspended by Walsall Council or any other licensing authority.
- 1.10 In these cases, the application will normally be placed before a Licensing and Safety Sub Committee to determine whether considering all evidence placed before them the applicant is a fit and proper person to be granted a licence.
- 1.11 The applicant must follow and complete the process to be considered a fit and proper person at their own risk. If the licence is ultimately not granted or if the applicant fails any part of the process the applicant will not be entitled to any refund of the costs of the various tests and assessments carried out.
- 1.12 The licensing service will inform applicants of the approved contractor, individual or organisation that carries out the various tests on behalf of the licensing authority. The council may change the contractor, individual or agency it uses as long as the decision is constitutionally correct. The authority will seek assurances as to the quality of service provided and that it provides value for money for the trade.
- 1.13 Applicants who have never been licensed by Walsall Council previously must provide all valid documentation requested below and must have undertaken and passed all tests listed below.
 - A Home Office entitlement to work. This may be either a valid British Passport or documents listed in the Home Office Guidance confirming the entitlement to remain and work in the UK.

- A full UK driving licence or equivalent held for no less than 12 months.
- Completed and passed the most current version of the Driver Training Course.
- Provide to the licensing authority a valid medical certificate completed by their GP, who has seen the applicant's medical history. The medical must declare the applicant is fit to drive private hire/hackney carriage vehicles and be signed within the last 2 months prior to the date of submission of the application.
- Completed and passed the practical driving assessment and provided relevant certificates.
- For Private Hire and Hackney Carriage Vehicle Drivers – they must provide evidence that they have completed the online DBS application as instructed by the licensing authority prior to the submission of their application.
- Vehicle Proprietors and Base Operators who do not hold a hackney carriage & private hire drivers licence issued to them by Walsall Council, must provide a Standard Disclosure (Basic Disclosure) from the Disclosure and Barring Service. The disclosure must be dated no more than 12 months prior to the date of the submission of the vehicle application. Where the certificate discloses information, a determination will be required to be made by Licensing Sub-Committee or the Head of Community Safety & Enforcement as to whether the individual is fit and proper.
- Provide a valid DVLA sharing code so that the status of the driving licence and any endorsements can be checked by the Licensing Authority using that code. The code must be provided to the Licensing Authority within 21 days of obtaining the code.
- Have passed the language and maths tests stipulated by the authority.
- Have passed the Hackney Carriage knowledge test where appropriate.
- The trading name of base operators must be approved by Walsall Council before a licence is issued.

Walsall Council Licensing Service will check with other agencies such as the Walsall Safeguarding Partnership or any other organisation, local authority Walsall Council feel they need to check with.

1.14 Any allegations, complaints or concerns raised by other persons, authorities or agencies will be suitably investigated during the application process and before a decision is made on the issuing of a licence.

1.15 An applicant who has previously been licensed by Walsall Council but who has allowed their licence to expire or has had their licence revoked will need to complete a new application and undertake and pass all tests listed above. That is unless Head of Community Safety & Enforcement is satisfied that the tests previously undertaken were suitable and sufficient to warrant waiving the requirement for them to be retaken as part of the new application.

This decision will only relate to:

1. The most current version of the Driver Training Course
2. The current practical driving assessment
3. Any language and maths tests stipulated by the Authority
4. The Hackney Carriage knowledge test where appropriate

1.16 The Licensing Service will use information obtained through the application process to send and communicate information relating to the licence, including reminders of the expiry of time limited tests and certificates, notifications of changes to policy or procedure and other information which is deemed beneficial for the trade.

2. Home Office Entitlement to Work

This check is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**
- **Base Operators**

- 2.1 The Immigration Act 2016 was brought in to prevent illegal working and is directly relevant to the private hire and hackney carriage trade. The provisions of the Act prohibit all Licensing Authorities across the UK issuing licences to anyone who is disqualified by reason of their immigration status.
- 2.2 An applicant's right to work in the UK will be checked as part of their licence application, this includes checking an applicant's immigration status with the Home Office. Walsall Council may also share information with the Home Office. An applicant must therefore provide a document or document combination that is stipulated as being suitable for this check. The list of documents is set out in the Home Office document 'Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales' or any successive document.
- 2.3 An applicant will be asked to provide the original document(s), such as their passport or biometric residence permit, as indicated in the published guidance, so that the check can take place. The document(s) will be copied and the copy retained by Walsall Council Licensing Service. The original document will be returned to the applicant. An application will not be considered valid until all the necessary information and original document(s) have been produced and the relevant fee has been paid.
- 2.4 If there are restrictions on the length of time an applicant may work in the UK, their licence will not be issued for any longer than this period. In such circumstances the check will be repeated each time they apply to renew their licence. If, during this period, the applicant is disqualified from holding a licence

because they have not complied with the UK's immigration laws, the licence will lapse and must be returned to Walsall Council Licensing Service. Failure to do so is a criminal offence.

3. Driver Training Course

This assessment will be carried out in relation to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**
- **Base Operators**

3.1 This course aims to teach attendees about:

- Licence conditions and legislation that apply to the trade
- Enforcement issues and road safety
- Personal safety for drivers
- Customer care
- Safeguarding, including identifying and reporting vulnerable persons, children at risk of sexual exploitation and county lines
- Disability awareness and protecting vulnerable people e.g. older people,
- Demonstration on how to load and secure a wheelchair and wheelchair user in a vehicle and otherwise assisting wheelchair users

3.2 The applicant must pass the examination at the end of this training in order to fulfil the fit and proper person test and continue with their application. Should an applicant fail the test they will be required to pay for a re-test. Should the applicant fail the re-test, they will be required to pay for a full training day again and be booked on to the next available day the training will be provided.

3.3 From time to time existing or currently licensed drivers may be asked to take part in update or refresher training. A determination as to content, cost and location will be considered and consulted on prior to implementation.

3.4 As a consequence of any Committee resolution following a review of their licence or application a licence holder may be required to attend this training and pass the test at their own expense.

4. Medical Assessment

This check is relevant to:

- Private Hire Vehicle Drivers
- Hackney Carriage Vehicle Drivers

- 4.1 It is important that those who choose to drive for a living are medically fit to drive so that they do not pose a hazard to themselves, passengers and other road users. The applicant/driver's medical history must be assessed as well as their current health status. Applicant's/licence holders will be required to meet the DVLA's Group 2 Medical Standards.
- 4.2 Medical assessments will be carried out by the applicant's GP. Where the applicant's GP is unable to undertake medical assessments or refuses, the applicant will inform the Licensing Authority who will then confirm with the GP Surgery and inform the applicant on the next steps to take.
- 4.3 The applicant/licence holder or GP must provide satisfactory evidence to the Licensing Service of the outcome of the assessment prior to the application being processed (for example a signed certificate from their GP).
- 4.4 Failure to supply the Council with an up-to-date copy of a medical assessment (or medical certificate where appropriate) or providing an incomplete or false medical assessment may also result in refusal to licence the individual or suspension, revocation of the licence and may lead to enforcement action being taken.
- 4.5 The medical assessment must be undertaken every 5 years for persons under the age of 65 and annually for persons aged 65 and above. The medical must be carried out within the last 3 months following the receipt of the application.
- 4.6 The Licensing Authority may make a request for a medical assessment outside of the normal requirement mentioned in 4.5, should they have valid reasons to do so.

5. Practical Driving Assessment

This check is relevant to:

- Private Hire Vehicle Drivers
- Hackney Carriage Vehicle Drivers

- 5.1 Applicants must have held a full UK driving licence for no less than 12 months from the date of first issue by the DVLA.
- 5.2 Walsall Council also requires that professional drivers who are spending a considerable amount of time driving themselves and passengers should have

an additional practical assessment carried out by Walsall Council approved instructor, to ensure their driving is safe and suitable.

- 5.3 As a consequence of any committee resolution following a review of their licence a driver may be required to attend this assessment and pass the test at their own expense.

6. Disclosure and Barring Service Checks

ENHANCED DBS CHECK

This check is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**

STANDARD DBS CHECK

This check is relevant to:

- **All Vehicle Proprietors**
- **Base Operators**
- **Other workers at a private hire base**

- 6.1 As a Licensing Authority Walsall Council is entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants at first application or every 6 months.
- 6.2 All individuals applying for or renewing a taxi or private hire vehicle driver's licence will be subject to a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check prior to a new licence being issued. Once licensed all drivers will be required to evidence continuous registration with the DBS update service to enable Walsall Council to routinely check for new information every six months. Drivers that do not subscribe to the update service will still be subject to a check every six months at their own expense. A licence holder who fails to remain subscribed to the DBS Update Service or fails to co-operate with obtaining a new DBS certificate will be subject to a review to determine if they remain a fit and proper person to hold a licence, which could lead to the suspension or revocation of their licence
- 6.3 Following the grant of the renewal and submission of the enhanced DBS, the Enhanced DBS and Barring list check returns and subsequently there is information received that in the opinion of the Licensing Service makes that person unfit to hold a licence consideration will be given to the revocation of the licence.
- 6.4 Where convictions are reported to the Licensing Service in relation to a currently licensed driver and these convictions have not previously been considered an Authorised officer or the Taxi Licensing Sub Committee or full Licensing & Safety committee will determine whether action is necessary in relation to the continuance of that licence.

- 6.5 Once information on the Enhanced DBS has been considered by the Licensing Service or the Taxi Licensing Sub Committee it need not be reconsidered each time the licence is reapplied for unless it shows a pattern of offending that calls into question whether the person is fit and proper or breaches the Convictions Guidelines.
- 6.7 Vehicle proprietors have two principal responsibilities, to ensure their vehicle is maintained to an acceptable safe standard at all times and to ensure their vehicle is not used for illegal or illicit purposes.
- 6.8 Applicants for a vehicle licence will therefore have to undertake an annual standard Disclosure from the DBS. If the standard disclosure shows relevant convictions Walsall Council will give consideration as to whether the applicant should be granted a licence (see Convictions Guidelines for relevant convictions). A standard Disclosure will be accepted upto 12 months from the date of issue of the certificate.
- 6.9 If the vehicle proprietor is also a licensed vehicle driver compliant with points 6.2 and 6.3 above then there will be no need to undertake a standard disclosure check. This does not apply to businesses hiring vehicles to drivers in the event of an accident. Where the vehicle is owned jointly, in partnership or by a company, all partners, directors of the company will be required to undertake the standard disclosure.
- 6.10 Where a vehicle proprietor owns more than 1 vehicle it is sufficient for one Basic Disclosure to be undertaken annually and not each time each vehicle is licensed.
- 6.8 Private Hire Base Operators are in a position whereby they have access to significant amounts of personal information regarding their customers. Therefore it is essential Base Operators are trustworthy and reliable. Base Operators will therefore have to undertake a Standard Disclosure prior to the issue of any licence and upon any renewal.
- 6.9 Private hire vehicle operators must demonstrate to Walsall Council that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. Base Operators must therefore keep a register of all staff that will take bookings or dispatch vehicles.
- 6.10 Operators must be able to provide evidence to Walsall Council that they have had sight of a Standard DBS check on all INDIVIDUALS LISTED ON THEIR REGISTER OF BOOKING AND DISPATCH STAFF and to ensure that Standard DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a 'responsible organisation' to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment

contract, to advise the operator of any convictions while they are employed in this role.

- 6.11 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a standard DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new standard DBS certificate should be requested and sight of this recorded.
- 6.12 Failure by the Base Operator to carry out suitable checks will call into question their own suitability and may result in the refusal to licence or enforcement action taken against the operators which may lead to a revocation of the operators licence. Walsall Council Licensing Service will ask for evidence these checks have been carried out at least upon application and if necessary during the currency of the licence through a formal request or visits to the operators.

7. DVLA mandate/code check

This check is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**

- 7.1 Driver licences issued by the DVLA will need to be checked by the local authority to ascertain the date of the licence expiry, disqualification and any endorsements at the time of application.
- 7.2 For subsequent applications ('renewals'), the applicant will utilise the DVLA share-code. Failure to supply the Council with an up to date DVLA share-code may result in a delay in the issue of the licence. Where endorsements are recorded following the DVLA licence check a decision will be taken as to whether the driver is a fit and proper person and whether they can proceed in their application, further information is also contained in the Convictions Guidelines.
- 7.3 Where a currently licensed driver receives a motoring conviction during the currency of their licence a review will be undertaken of the conviction and the matter may be placed before the Licensing and Safety Sub Committee or the Head of Community Safety & Enforcement for a decision as to the continuance of the Licence.

8. English/Maths test

This check is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**

- 8.1 All new applicants must attain a satisfactory level of English Reading, English Listening and Mathematics as part of Walsall Councils pre licensing fit and proper person test. This ensures prospective drivers can communicate effectively with passengers in terms of their requirements and their fares. The details of the nominated organisation administering these tests will be made available to the applicant during the application process together with the types of qualification(s) that will be acceptable.
- 8.2 A valid GCSE in English Reading, English Listening and Mathematics (or any other equivalent qualification approved by the Head of Community Safety & Enforcement) would be accepted providing the Licensing Authority are satisfied.

9. Knowledge Test for Hackney Carriage Drivers

This check is relevant to:

- **Hackney Carriage Vehicle Drivers**

- 9.1 It is important that Hackney Carriage drivers have a good knowledge of the Borough so that as they pick up customers, they can effectively find their way around the Borough without undue delay and by taking the most appropriate direct route.
- 9.2 This test gives the Licensing Service the opportunity to ascertain the driver's knowledge of Hackney Carriage conditions, byelaws that are not covered in the Driver Training Course, geographical knowledge and shortest routes.

10. Base Operators – Trading Name

This is relevant to:

- **Base Operators**

- 10.1 The Licensing Office shall have the right to refuse to register any trading name that is likely to cause confusion to the general public or is similar to a trading name registered to another licensed operator.

11. Other Sources of Information

This is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**
- **Vehicle proprietors**
- **Base Operators**

11.1 Walsall Council is entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence.

11.2 This may include information held by the Council, other Licensing Authorities, held on the National Register of Taxi and Private Hire Licence Revocations, Refusals and Suspensions (NR3s) and information disclosed by the police for example under the Home Office scheme for reporting offences committed by notifiable occupations. It should also be noted that the determination of whether an applicant is “fit and proper” includes consideration of conduct falling short of a criminal conviction.

11.3 Walsall Council may also be asked to share the information it holds in respect of those persons or companies licensed by it. The information will only be shared with those entitled to request it and in accordance with statutory guidelines. In terms of licence refusals, revocations or prosecutions information may be shared on national databases developed and implemented by national agencies or central government such as the NR3s.

12. Complaints

This is relevant to:

- **Private Hire Vehicle Drivers**
- **Hackney Carriage Vehicle Drivers**
- **Vehicle proprietors**
- **Base Operators**

12.1 Walsall Council may become aware of a complaint from residents, businesses, partner agencies etc about the conduct of an applicant or licence holder. In this case the evidence submitted will be scrutinised and the matter fully investigated. Subsequently a determination about whether the licence holder or applicant is a fit and proper person will be made by the relevant Authorised Officer or Committee of Elected Members. The authority will follow the code of practise and enforcement policy.

13. Legal Requirements

The law relating to ‘Fit and Proper’ persons is contained within

- The Local Government (Miscellaneous Provisions) Act 1976 s51(1) (private hire drivers)
- The Local Government (Miscellaneous Provisions) Act 1976 s55(1) (operators).
- The Local Government (Miscellaneous Provisions) Act 1976 s59(1) (hackney carriage drivers)

In producing this Policy regard has been had to the Statutory Taxi & Private Hire Vehicle Standards issued by the Department for Transport in July 2020

From time to time case law or guidance in relation to the Private Hire and Hackney Carriage licensing regime may change. Walsall Council will always take into consideration these changes when determining individual licences.