

# West Somerset Council

## Licensing Committee – 27 November 2018

### Adoption of a new policy concerning use of the National Register of Taxi Licence Revocations & Refusals

This matter is the responsibility of Cabinet Member Keith Turner

Report Author: John Rendell, Licensing Manager

#### 1 Executive Summary

- 1.1 Members are asked to consider the licensing requirements for hackney carriage and private hire drivers and the recommendations set out at section 2 of the report with regard to the adoption of a new policy which will enable the council to use the National Register of Taxi Licence Revocations & Refusals, also known as 'NR3'.

#### 2 Recommendations

- 2.1 That members approve the adoption of the policy attached at **Appendix 1** which can then be incorporated into the 'Hackney Carriage/Private Hire Regulations'; more commonly referred to as the 'Taxi Handbook'.

#### 3 Risk Assessment (if appropriate)

##### Risk Matrix

Description	Likelihood	Impact	Overall
Were this authority not to adopt the proposed policy and use NR3, this authority may license individuals as hackney carriage/private hire vehicle drivers who are unsuitable by virtue of, fully or in part, them having been revoked or refused licences by other licensing authorities. This would be because an individual or individuals have failed to disclose information about having had licences revoked/refused and there being no other means to check this aspect of their history except for NR3.	4	4	16

Similarly to above; were this authority not to use NR3, another licensing authority may inadvertently license an individual as a hackney carriage/private hire vehicle driver despite them not being suitable, by virtue of them not being able to access relevant and important information on that individual which this authority holds but is not identified on NR3.	4	4	16
Increase cost to those applying for hackney carriage/private hire driver licences as a result of the licensing authority carrying out additional checks.	5	1	5

### Risk Scoring Matrix

<b>Likelihood</b>	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
			<b>Impact</b>				

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

## 4 Background and Full details of the Report

4.1 Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 states

that a district council shall not grant a licence to drive private hire vehicles unless they are satisfied that the applicant is a fit and proper person. Section 59 of the same Act requires that district councils make the same consideration when deciding whether to grant a licence to act as the driver of a hackney carriage. The term 'fit and proper' is not further defined in the legislation, nor are there any statutory requirements or tests that a local authority must apply, other than that the applicant must have held a DVLA issued driving licence for a period of not less than a year, prior to making an application.

- 4.2 The council currently issues dual licences; to allow individuals to drive both hackney carriages and private hire vehicles, and has a multi-faceted approach to determining the fitness and propriety of an applicant. This licence will herein be referred to as a 'taxi driver licence' for the sake of brevity. As part of the application process for this licence, the applicant is required to complete an application to the Disclosure and Barring Service (DBS – formerly CRB), for which they receive a certificate with details of their criminal history, including any convictions (whether spent or unspent), cautions and any non-conviction information that the Chief Officer of Police sees fit to disclose. This certificate is submitted to the council and is considered alongside other information, such as a medical certificate and the applicant's ability to complete the 'knowledge and suitability interview'.
- 4.3 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 gives a district council the power to suspend, revoke or refuse to renew a drivers licence, on the following grounds:
- The holder has been convicted of an offence involving dishonesty, indecency or violence;
  - The holder has been convicted of an offence under or has failed to comply with the provisions of, the Town Police Clauses Act of 1847 or of Part II of the Act of 1976
  - The holder has, since the grant of the licence, been convicted of an immigration offence or required to pay an immigration penalty (excluding convictions which are 'spent' within the meaning of the Rehabilitation of Offenders Act 1974 or, where a penalty is imposed, that more than three years have elapsed since the date on which the penalty was imposed and the amount of the penalty has been paid in full);
  - Any other reasonable cause.
- 4.4 Suspending, revoking or refusing to renew a licence is facilitated by the district council serving the holder of the licence a notice to that effect. The holder of the licence has the right to appeal such a notice to a magistrates' court.
- 4.5 As highlighted at paragraph 4.2, the legislation which regulates taxi drivers identifies certain offences, for which an individual can be prosecuted, if found guilty. Such convictions will, like any other, appear on an individual's 'criminal record' and therefore an enhanced DBS certificate. As the suspension, revocation and refusal to renew a taxi drivers licence is not a conviction; instead

being an administrative decision; the matter will not appear on a DBS certificate.

- 4.6 Given that there is nothing stopping an individual, who has had a licence revoked or refused, from re-applying for a taxi drivers licence; be that to the same district council that or a different district council; it is important that the district council receiving the application knows if that individual has had a licence revoked or refused, as this may indicate they are not 'fit and proper'. As this information does not appear on the DBS certificate, this authority, and many others, has relied on asking the individual/applicant to self-declare if they had a licence revoked or refused and if so, identify which district council did so. The idea being that this authority would then contact the district council that made the decision to find out why it was made, in order for that information to be considered when the application is determined. Of course, this system has always relied upon the honesty of the individual making the application and were they not to declare having had a licence revoked, it is extremely unlikely that this authority (and others) would know. This has always been an area of concern for Licensing Officers nationally.
- 4.7 This authority has most recently revoked a licence from/an individual due to allegations of inappropriate behaviour and sexual advances towards customers (although no actual charges were brought about by the Police). Since the individual was not convicted, they could apply to other councils for a licence and those councils would potentially not be aware of the events which led to the revocation.

#### National Register of Taxi Licence Revocations & Refusals or 'NR3'

- 4.8 In June 2017, the Local Government Association commissioned the National Anti-Fraud Network (NAFN); who are a local authority owned, not for profit organisation specialising in data and intelligence services; to develop and host a national register of individuals who have had their taxi driver licences revoked. The result was the National Register of Taxi Licence Revocations & Refusals or 'NR3'.
- 4.9 NR3 was launched in July this year. It was built with two basic elements of functionality; it enables authorities to record details of relevant drivers and it enables them to undertake searches of the data held in the register. Licensing authorities are be responsible for adding basic details of drivers who have had a licence revoked or an application for one refused. The intention is that when a licensing authority receives an application for a licence or renewal of one, the applicant's details will be checked on the register to confirm that there is no record of them having being revoked or refused elsewhere.
- 4.10 Details contained on the register are limited to information that will help to identify an individual to a certain degree of accuracy, including name, address and national insurance number, but will not give a reason or explanation of why an action was taken. It is up to individual authorities to follow up on any potential matches with the appropriate licensing authority, whose contact details will be included in the search result.
- 4.11 There is currently no legal requirement for local authorities to use NR3, however

this will change if the Licensing of Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Bill 2017-19, which is currently at the second reading stage in the House of Commons, receives Royal Assent. Although not a legal requirement, I believe it would be negligent for the council not to use NR3 and would put this authority at high risk of a major incident, as identified in the 'Risk Matrix' at section 3 of this report.

- 4.12 The report author has already taken steps to register with the NAFN as a single point of contact (SPOC); a process which involved completed data processing and sharing agreements on behalf of this authority. Further work is required before we can use NR3 in full, as described in the proceeding paragraphs.
- 4.13 An initial check of this authorities licensing records has been carried out and there is 1 recorded revocation that this authority would be seeking to record on NR3.

#### Complying with the General Data Protection Regulations (GDPR)

- 4.14 The sharing between licensing authorities of more detailed data, following an initial search on NR3, may often involve the processing of what is defined in GDPR as 'special category personal data'. Use of this type of data is not included within the data processing and data sharing agreements governing use of the register itself (referred to in paragraph 4.11). Any authority which shares information in response to a request and any authority which receives information having made a request, must have in place a clear and published policy which governs its approach to the circumstances in which it will share, receive and use information of this type. Having such a policy is a requirement of data protection law, Article 8 of the European Convention on Human Rights and of public law.
- 4.15 The LGA and NAFN has published guidance in respect of NR3 which includes a template policy for this very purpose. The adoption of this policy is what members are being asked to consider, as per paragraph 2.1 of this report. The template has been adapted so that it refers specifically to West Somerset Council and is attached at **Appendix 1**. Amendments to the template policy have been highlighted in yellow. Adoption of this policy is necessary before any further progress can be made.
- 4.16 Should the policy at **Appendix 1** be adopted, this authority would need to, before it can contribute to NR3, notify the individual referred to at paragraph 4.7 of its intention to submit their details NR3. This would be in accordance with GDPR. The LGA and NAFN have produced a template letter which officers would use; this is attached at **Appendix 2**. Essentially, the letter explains that the authority will be using NR3 and what rights they (the individual) have in accordance with GDPR, which includes the right to request the erasure of their data. It is hard to envisage circumstances in which erasure would, in the case of NR3, be warranted but were this authority to receive any such requests, each would be considered on its own individual merits.

## **5 Links to Corporate Aims / Priorities**

- 5.1 One of the councils core roles is 'public safety'. Ensuring that those licensed to drive hackney carriage and private hire vehicles are fit and proper to do so is key to protecting the travelling public. Adoption of the policy, as per the report author's recommendation, and use of NR3 will not only help this council's officers make better informed decisions about prospective and licensed taxi drivers, but do the same for other councils too.

## **6 Finance / Resource Implications**

- 6.1 The carrying out of a searches on NR3 and contacting of local authorities where further information is required, will increase the overall time it takes officers to process applications for the grant and renewal of taxi driver licences, at further cost to this authority.
- 6.2 Within section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976, it states: "Notwithstanding the provisions of the Act of 1847, a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so."
- 6.3 The increase in time spent on driver licence applications will have no significant impact on the bottom line of the licensing budget as the additional staff time will be compensated for in a future increase in fees. As a set of proposed fees for 2019/20 has been already been submitted for consideration by full council, the additional staff time would not be accounted for until fee setting for 2020/21.
- 6.4 Until officers are routinely carrying out searches of NR3, the exact increase to licence fees cannot be known. However, based on current bases costs and an estimate of a search taking up 5 minutes of Licensing Officer time per application, the cost would be £4.62.
- 6.5 Section 70(1) of the Local Government (Miscellaneous Provisions) Act 1976 allows a council to include within its fees 'any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.' This essentially refers to costs which are incurred other than those associated with processing applications. This principal does not apply to taxi driver licences and therefore, the council would not be able to recover costs which are incurred as a result of processing requests from other local authorities for further information (themselves having identified an individual who has had a licence revoked or refused by Taunton Deane Borough Council). This will have a negative impact on the bottom line of the licensing budget but until requests like this are processed, it is difficult to understand that true impact although it is anticipated that requests would be rare.

## **7 Legal Implications**

- 7.1 As explained earlier in this report, adopting such a policy is necessary in order

for this authority to use NR3 in accordance with data protection law, Article 8 of the European Convention on Human Rights and public law.

## **8 Environmental Impact Implications**

8.1 No environmental impact implications were identified.

## **9 Safeguarding and/or Community Safety Implications**

9.1 Adopting the proposal can only serve to further promote community safety, by making vital information available to officers when considering the fitness and propriety of taxi drivers.

## **10 Equality and Diversity Implications**

10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance quality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant characteristic and persons who do not share it.

10.2 No equality and diversity implications have been identified within this report.

## **11 Social Value Implications**

11.1 No social value implications were identified.

## **12 Partnership Implications**

12.1 No partnership implications were identified.

## **13 Health and Wellbeing Implications**

13.1 Through effective regulation, confidence in licensed taxi drivers and their activities can be maintained, helping communities to thrive.

## **14 Asset Management Implications**

14.1 No asset management implications were identified.

## **15 Consultation Implications**

15.1 There has been no consultation with the holders of hackney carriage/private hire drivers licences. Any individuals whose details will be submitted to the register will be notified and made aware that of their various rights in accordance with GDPR.

**16 Scrutiny Comments / Recommendation(s)**

16.1 None

**Democratic Path:**

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

**Reporting Frequency:**  **Once only**     **Ad-hoc**    **quarterly**  
 **Twice-yearly**     **annually**

**List of Appendices**

Appendix 1	Policy on use of NR3
Appendix 2	Template letter