

REPORT TO: LICENSING COMMITTEE

DATE: 17 NOVEMBER 2020

TITLE: DEPARTMENT OF TRANSPORT
STATUTORY VEHICLE AND PRIVATE
HIRE STANDARDS

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RECOMMENDED that the Committee:

- A** Notes the Statutory Taxi and Private Hire Vehicle Standards (2020) issued by the Department for Transport (DfT);
- B** Approves a full review of current policy and procedure to determine the necessary amendments required by the new standards;
- C** Agrees that that required changes identified by Officers as a result of the review are brought before the Committee on 19 January 2021.

BACKGROUND

1. The Council is responsible for licensing Hackney Carriage and Private Hire drivers, vehicles and Private Hire operators. In undertaking those responsibilities, the Council has regard to the legislation in place including case law, relevant guidance, best practice documentation and its own policies and procedures.
2. On 21 July 2020 the Department for Transport (DfT) published "Statutory Taxi and Private Hire Vehicle Standards." The publication of these standards has been awaited for some time and follows an extensive period of consultation by the Department for Transport following a number of high-profile incidents and issues highlighting the risk to members of the public and to drivers. The standards reflect the significant changes within the industry in recent years, and lessons learned in respect of safeguarding children and vulnerable adults, and cases of child sexual abuse and exploitation (CSAE). The Policing and Crime Act 2017 made provisions for the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions, to protect children and vulnerable individuals who are over 18 from harm when using these services. Although the focus of the standards produced, is on protecting children

and vulnerable adults, it is expected that any passengers of these licensed vehicles will benefit from the recommendations, which aim to better regulate the taxi and private hire vehicle sector as a whole. It is felt that these issues are, in part, a result of the significant differences in standards applied to the licensing of drivers and vehicles across the country.

3. A copy of the new DfT standards is set out in Appendix A to the report.
4. The Council will need to review its taxi licensing policies and standards so that as a minimum they meet the standards outlined in the DfT document. However, any standards adopted must be appropriate for Harlow's local needs, and the Council will need to be transparent in explaining the reasons for the standards it adopts.
5. The standards in this document replace relevant sections of the Best Practice Guidance issued by the DfT in 2010. Where there is a conflict between the Statutory Taxi and Private Hire Vehicle Standards and the Best Practice Guidance from 2010, the standards in this latest document will take precedence.

SIGNIFICANT CHANGES

6. The Standards cover a wide range of issues, including driver, vehicle and operator standards. The main areas of the statutory standards cover the following;
7. Licensing Policies (paras 3.1 & 3.5) - Authorities should produce a 'cohesive policy document' that brings all policy and procedures together. When formulating policies, the overriding objective must be to protect the public. Policies should be reviewed every five years but should also consider interim reviews should there be significant issues arising in their area.
8. Duration of licences (para 3.6 & 3.7) - Issuing driver licences for more than a year. Risk can be mitigated for drivers by authorities undertaking regular interim checks (e.g. regular Disclosure and Barring Service checks). The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire operators.
9. Whistleblowing (para 3.8) - Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. Licensing Authorities should have effective internal procedures in place for staff to raise concerns and for them to be dealt with openly and fairly.
10. Criminal records checks (para 4.5) - Licensing Authorities should insist on licensed drivers signing up to the Disclosure and Barring Service's (DBS) On-Line Update Service. This allows the Licensing Authority to make checks at any time and at least every six months.

11. Common Law Police Disclosures (para 4.11) - Licensing Authorities should maintain close links with the police to ensure effective and efficient information-sharing procedures and protocols are in place and are being used (previously the Notifiable Occupation Scheme).
12. Licensee self-reporting (para 4.12) - Licence holders should be required to notify the issuing authority within 48 hours (currently drivers have to report within 72 hours) of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of any of the offences within this scope should result in a review of their licence.
13. Referrals to the DBS (para 4.14) - A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS.
14. Working with the Police (para 4.17) - action taken by the Licensing Authority as a result of information received from the Police should be fed-back to the Police.
15. Sharing licensing information with other Licensing Authorities (para 4.20 & 4.21) - An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other Licensing Authority (already requested as part of the application procedure). The National Anti-Fraud Network have developed a national register of taxi and private hire vehicle driver licence refusals and revocations (known as NR 3). Tools such as NR 3 should be used by Licensing Authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.
16. Overseas convictions (para 4.35) - Licensing Authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process.
17. Vehicle proprietors (para 7.2) - Licensing Authorities should require a basic disclosure from the DBS and that a check is undertaken annually.
18. Private Hire Vehicle operators and staff (para 8.2 & 8.8) – All operators should be subject to an annual basic DBS check. Ancillary staff that have access to booking records should also be DBS checked.
19. Multi-Agency Safeguarding Hub (MASH) (para 4.28) - All Licensing Authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). Obstacles in sharing information can be a barrier to effective safeguarding.
20. Criminal convictions and rehabilitation (para 5.16) - Annexed to the statutory guidance document is the Department's recommendations on the assessment of previous convictions. This is largely based on the Institute of Licensing's Guide that was adopted by Harlow Council in 2019.

21. Safeguarding awareness training (para 6.6) - Already mandatory in Harlow but the Council will need to review provisions of refresher training and how we deliver with Covid-19 restrictions in place.
22. Language proficiency (para 6.14 & 6.15) - All licence holders to demonstrate proficiency in English language. All drivers should be able to converse with passengers to understand destination, estimates of time along with other common passenger requests. A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation.
23. In-vehicle visual and audio recording (CCTV) (para 7.9) - All Licensing Authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.
24. Joint authorisation of enforcement officers (para 9.2) - Licensing Authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area.
25. Enforcement (para 9.3) - Joint authority agreements between authorities are encouraged. Drivers should be made aware of relevant policies and repercussions.
26. Stretched Limousines (para 7.14) - Consideration should be given to their licensing.

IMPLEMENTATION

27. It is important to note that it remains the decision of the Council as to whether or not the entirety of these standards should be implemented. A full review of the current policies as recommended will allow Members to make an informed decision on which parts should be adopted. Section 2 of the Standards gives some detail of the legal framework under which the Standards are published and the effect this has in terms of the Council's decision. Members' attention is drawn particularly to sections 2.5 to 2.9 and the definitions covering the term 'must have regard'.

28. Members should note that in Section 2.8 of the Standards it is stated:

Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the Statutory Taxi and Private Hire Vehicle Standards might be drawn upon in any legal challenge to an authority's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained

in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these. The Department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).

29. At Section 1.3 the Standards say (sections highlighted in bold type are highlighted in the Standards, not by the author of this report):

*Whilst the focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults, all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document are the result of detailed discussion with the trade, regulators and safety campaign groups. **The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.***

30. It is clear there is an expectation that these new Standards are implemented. Setting the Standards does, however, remain the decision of the Council and where good reason can be found to depart from the new Statutory Standards it is possible to do so providing there is clear justification for the decision. The review that Officers recommend will detail these matters for consideration at the January committee. This will include any relevant information if there are proposals brought for consideration which depart from, or vary, the expected standards.

31. In its letter to Local Authorities introducing the Standards, the DfT made it clear that Local Authorities are expected to act upon the Standards without delay. However, since the publication of the Standards on 21 July 2020 there has been an upturn in cases of coronavirus both at a local and national level. In July it was hoped that the economy was on the cusp of commencing recovery and the aspiration was that businesses may be returning to some form of normality. However, more recently it has become clear that this is not the case and more restrictions have been placed on businesses and individuals. Councils have a key role to play both in terms of enforcing the Covid-19 restrictions imposed and supporting local communities. Resources to develop and implement new taxi policies may be restricted, as may be communities' abilities to respond to consultations on any draft proposals.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

This much anticipated new guidance on vehicle licensing standards is expected to ensure more consistency in approach between licensing authorities and so is to be welcomed. Although the Council has in many ways been forward looking in adopting standards, there will nonetheless be significant work involved in meeting all requirements, and this summary the areas for forthcoming change provides a useful overview.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific at this stage.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

None specific.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As contained within the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

The Council has a statutory obligation to protect the public and safeguard vulnerable adults and children when travelling in taxis and private hire vehicles, by ensuring that they are properly licensed by the Council.

Whilst the standards are only guidance, it is clear that the DfT intends it to carry significant weight, as paragraph 1.3 on page 4 states: “The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.”

Policy is only effective if it is administered properly. Therefore a Council should review and republish its Taxi and Private Hire Licensing Policy regularly, as there may be potential for decisions made in determining licensing applications that become the subject of judicial review or appeal. If the Licensing Policy is not credible it may be subject to a successful legal challenge.

Author: Simon Hill, Head of Governance

Appendices

Appendix A - Statutory Taxi and Private Hire Vehicle Standards

<https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehiclestandards>

Background Papers

Working together to safeguard children 2018 (Department for Education)

<https://www.gov.uk/government/publications/working-together-to-safeguard-children>

Glossary of terms/abbreviations used

CSAE – Child Sexual Abuse and Exploitation

DfT - Department for Transport

DBS - Disclosure and Barring Service

MASH - Multi-Agency Safeguarding Hub