

REPORT TO: LICENSING COMMITTEE

DATE: 19 JANUARY 2021

TITLE: DEPARTMENT OF TRANSPORT STATUTORY
VEHICLE AND PRIVATE HIRE STANDARDS

LEAD OFFICER: MICHAEL PITT, ENVIRONMENT AND
LICENSING MANAGER
(env.health@harlow.gov.uk)

CONTRIBUTING OFFICERS: CHRIS BENNETT, PRINCIPAL
ENVIRONMENTAL HEALTH OFFICER
(licensing@harlow.gov.uk)

ADAM SHERWOOD, SENIOR LICENSING
OFFICER
(licensing@harlow.gov.uk)

RECOMMENDED that:

- A** The Committee determine that each of the Department for Transport (DfT) standards set out in the report below is appropriately allocated to the groups A-C in the report below, and note these matters set out under the heading Group A – No Policy Change Required.
- B** Subject to A, the Committee recommend to Full Council the adoption of the policy changes set out at recommendation items 9-16 under the heading in the report below; Group B – Policy Change Can be Recommended at This Time.
- C** Subject to A, the Committee receive reports at future meetings in relation to the DfT standards set out under the heading Group C - Report to be Brought to a Future Meeting.

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 attached at Appendix A to the report.
4. At the Licensing Committee meeting on 17 November 2020 the Committee agreed:
 - i) That the Statutory Taxi and Private Hire Vehicle Standards (2020) issued by the Department for Transport (DfT), are noted;
 - ii) That the committee approve a full review of current policy and procedure to determine the necessary amendments required by the new standards;
 - iii) That the required changes identified by Officers as a result of the review are brought before the committee on 19 January 2021.
5. This report specifically deals with item iii) above.

REQUIRED CHANGES

6. For the purposes of this report the Standards have been allocated into the following Groups:

GROUP A - NO POLICY CHANGE REQUIRED; Standards with which the Council already complies, or for which only minor procedural changes that do not require changes in policy are required;

GROUP B - POLICY CHANGE CAN BE RECOMMENDED AT THIS TIME; Standards that require policy changes which are relatively straightforward and for which recommendations can be made at this stage;

GROUP C - REPORT TO BE BROUGHT TO A FUTURE MEETING; Standards that require policy changes which will take some time to develop, and thus will require further reports to be brought to future meetings of the Committee.

7. The intention in grouping the DfT standards in this way is to provide clarity and direction in setting out an action plan. Subject to the Committee's approval, DfT standards may be moved from one group to another as appropriate.
8. Specific Member recommendations are provided for each Standard.

GROUP A – NO POLICY CHANGE REQUIRED

DFT STANDARD 1 – 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.

CURRENT POSITION

This Authority has an up to date policy in place for staff for Whistleblowing. It was last implemented in June 2019 and will be renewed in June 2022.

<https://www.harlow.gov.uk/sites/default/files/documents/Whistleblowing%20policy%20and%20procedure.pdf>

ACTION REQUIRED

The Council is already compliant with this Standard. Reference to the whistleblowing policy and procedure will be included in the new cohesive policy.

MEMBER RECOMMENDATION

Recommended that:

1. No specific recommendation, however, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 2 - 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).

CURRENT POSITION

The Licensing Team has a working relationship and clear communication channels with the Police. We have recent examples of effective information sharing.

There is a signed protocol that already exists between Harlow Council and Essex Police under the Safer Harlow Partnership. This protocol is subject to annual review.

ACTION REQUIRED

The Authority is largely compliant with this DfT standard. The Licensing Team have been in recent contact (December 2020) with Essex Police and Harlow Council Legal Services to ensure that at the next protocol annual review full consideration is given to the DfT standards with particular reference to the requirements of 'Common Law Police Disclosure'.

MEMBER RECOMMENDATION

Recommended that:

2. No specific recommendation. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 3 - REFERALLS 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.

CURRENT POSITION

Enforcement action would be taken against any driver that poses an evidential risk to a child or vulnerable adult. If a decision to refuse or revoke is taken in relation to a risk of harm to a child or vulnerable adult, this would be discussed firstly with Harlow Council's Safeguarding Officer before making a DBS referral.

The Council is already compliant in respect of this Standard.

ACTION REQUIRED

The new cohesive policy will need to make reference to this procedure.

MEMBER RECOMMENDATION

Recommended that:

3. No specific recommendation. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 4 - 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.

CURRENT POSITION

Two-way communication channels already exist with the Police via phone and email. The Licensing team also attend the multi-agency priority subgroup titled Safer Harlow Partnership ASB and Crime Meeting and, from January 2021, the Licensing Team will be attending the Missing and Child Exploitation (MACE) 2 multi agency meetings.

The information sharing protocol that exists between the Police and Harlow Council makes explicit reference to the need for information sharing. There is a clear duty on the Council to share relevant information. The protocol is explicit about the information that can be shared.

ACTION REQUIRED

No further action required other than to ensure that the new cohesive policy makes reference to Police communication channels.

MEMBER RECOMMENDATION

Recommended that:

4. No specific recommendation. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 5 - 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.

CURRENT POSITION

The Licensing Team attends the multi-agency priority subgroup titled Safer Harlow Partnership ASB and Crime Meeting that is chaired by Essex Police. It is a quarterly meeting that allows for information sharing amongst stakeholders. The next meeting is scheduled for 14 January 2021 (remotely)

In addition to this Harlow Council sits on the Missing and Child Exploitation (MACE) 2

multi agency meetings. This is a bi-monthly multi-agency meeting that looks at child exploitation data, hotspots; trends; interventions and disruption activity. Historically, this meeting has been attended by the Councils designated safeguarding officer and any information relevant to the Licensing Team could be confidentially disseminated. Following consideration of the new DfT Standards a Licensing Team Officer will also attend the MACE 2 meeting (in addition to the Councils safeguarding Officer). The next meeting is scheduled for 21 January 2021 (remotely).

ACTION REQUIRED

The Council is now compliant with this Standard. No further action required.

MEMBER RECOMMENDATION

Recommended that:

5. No specific recommendation. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 6 - CRIMINAL CONVICTIONS AND REHABILITATION

(para 5.16)- Annexed to the statutory guidance document is the Department's recommendations on the assessment of previous convictions.

CURRENT POSITION

The Institute of Licensing Guidelines adopted by the Council in October 2019 clearly forms the basis of the DfT Standards in relation to the 'Assessment of Previous Convictions' Annex. In relation to 'Crimes resulting in death', 'Exploitation', 'Offences involving violence against the person', 'Possession of a Weapon', 'Dishonesty', 'Drugs', 'Discrimination', 'Motoring convictions', 'Drink driving/driving under the influence of drugs', 'Using a hand-held device whilst driving' the timescales are identical and wording identical or at most very minor differences that do not make a material change. Within the new DfT standards there is no reference to 'Other motoring offences', 'Hackney carriage and private hire offences' and 'Vehicle use offences'. (these are considered in our current adopted Institute of Licensing guidelines.)

ACTION REQUIRED

The Council is compliant with this standard. The Institute of Licensing / DfT standards in relation to convictions need to be taken over to the new cohesive Policy document. Consideration will need to be given to the existing Institute of Licensing guidelines, when drafting the new Policy, to 'Other motoring offences', 'Hackney Carriage and Private Hire offences' and 'Vehicle use offences' as the DfT Standards do not specifically cover these offences.

MEMBER RECOMMENDATION

Recommended that:

6. No specific recommendation at this stage. However, Members to note current position in respect of this Standard. Existing adopted Institute of Licensing guidance in relation to convictions to stay in place pending introduction of any subsequently agreed cohesive Policy.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 7 - SAFEGUARDING AWARENESS TRAINING

(para 6.6)- All licensing authorities should require taxi and private hire vehicle drivers to undertake safeguarding training.

CURRENT POSITION

Safeguarding training has been mandatory in Harlow since 2016.

All drivers attend a two hour session at the Civic Centre; identification is verified upon attendance, with Provider being reimbursed by Licensing and driver certificate upon completion. The last training session was held in January 2020 at the Civic Centre.

New driver applicant information sheet requests drivers' attendance on this course by end/expiry of their first driver licence or prior to issue of first licence. Driver licence application form requires signed driver agreement to attend refresher training once every three years.

The Licensing Team need to review provisions of refresher training and how we deliver with COVID-19 restrictions in place.

ACTION REQUIRED

Current provider has been approached to offer ongoing and refresher training sessions, to commence in January 2021, using an online platform. This would provide a COVID-19 secure training environment. First virtual training session for new applicants is booked for approx. 12 drivers with a schedule to be put in place for future refresher training. Costs borne by Licensing, course content, length of session & certification all remain unchanged. Identification prior to participation via right to work documentation and attendance monitored by licensing officer.

MEMBER RECOMMENDATION

Recommended that:

7. No specific recommendation. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 8 - 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.

CURRENT POSITION

Currently there are no Joint Authority agreements in place locally. Harlow Council's Licensing Team routinely attends the Essex Joint Licensing Forum Group meetings (Group attended by Essex Local Authorities and Essex Police). This meeting allows for the sharing of best practice and provides a mechanism for ensuring consistency in approach.

ACTION REQUIRED

Consideration needs to be given to an agreement between licensing authorities to jointly authorise officers to enable the use of enforcement powers regardless of which authority the officer is employed by and which issued the licence.

Joint Authority Agreements will need to be placed on the work plan for the Essex Joint Licensing forum group and discussed at the next meeting (date TBC).

Officer authorisation is via the Councils delegated authority as set out in the constitution.

MEMBER RECOMMENDATION

Recommended that:

8. No specific recommendation at this time. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

GROUP B: POLICY CHANGE CAN BE RECOMMENDED AT THIS TIME

DFT STANDARD 9 - CRIMINAL RECORD 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.

CURRENT POSITION

Currently licensed drivers have the choice to join the DBS Update Service every time they apply for a new DBS certificate and are encouraged to do this by the Licensing Team. Currently, 55 per cent of all licensed drivers are already on the DBS update service.

The cost of an application for an enhanced DBS with Barring List checks through Harlow Council is £64. A DBS certificate check currently lasts for three years.

To join the DBS Update Service currently costs drivers an additional £13 a year subscription fee (payable to the DBS Service). If a driver joins the update service and maintains the annual subscription fee then they would not be required to apply for a new certificate.

If the DBS Update Service was not mandatory, a new DBS application every six months would cost a driver £128 a year rather than the £13 subscription fee.

ACTION REQUIRED

To comply with the DfT Standards the Council will need to make joining the DBS Update Service mandatory.

This will allow drivers to provide authorisation for the Licensing Team to remotely check their DBS status on a six monthly basis.

The DBS Update Service will cost drivers £13 a year subscription fee to the DBS. For logistical reasons it is proposed that the six monthly DBS checks will be undertaken in one batch at the same time each year. For example April and October each year. Drivers licence conditions and associated handbooks and web information will require updating to reflect these changes.

The new requirement will need to be communicated to the licensed trade.

An implementation date will need to be agreed for new and renewal applications.

It should be noted that it is not possible to change the terms of current licences already issued. For example if a licensed driver had their licence renewed in October 2020 for a three year period then this new requirement would not come into effect until their licence is subsequently renewed in October 2023.

There are enforcement considerations when a driver's subscription to the DBS Update

Service fails (due to non-payment of the fee). This will be incorporated into the new cohesive policy.

MEMBER RECOMMENDATION

Recommended that:

9. The Licensing Committee recommend to Full Council that a new mandate is introduced to require all drivers (new applicants and existing drivers) to join the update service;
10. Subject to 9, the timescale for the implementation of the mandate be delegated to the Environment and Licensing Manager, in consultation with the Chair of the Licensing Committee.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 10 - LICENSEE SELF-REPORTING

(para 4.12) - Licence holders should be required to notify the issuing authority within 48 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 the offences within this scope should result in a review of their licence.

CURRENT POSITION

Licence holders are currently required to notify the Council in writing, within 72 hours of:

- a) Any conviction (motoring or criminal);
- b) Any caution, warning or reprimand (issued by the Police or any other agency);
- c) Their arrest for any offence (whether or not charged);
- d) Issue of any magistrates court summons against them;
- e) Any fixed penalty notice for any matter.

An understanding of the requirement for self-reporting is included as part of the existing knowledge test for new applicants. The current application form for driver licences also specifies details of this condition.

Failure to notify the Council of any relevant information may result in enforcement action being taken against the licensed driver. This enforcement action could include review of their licence by way of attendance at a Licensing subcommittee hearing.

ACTION REQUIRED

To comply with the DfT Standards the Council needs to reduce the self-reporting notification period from 72 hours to 48 hours. The Council is currently requiring a higher standard of reporting matters than that proposed by the DfT, for example the Council

requires the reporting of any conviction and not just the offences listed by the DfT. It is proposed that the current list of what needs to be notified remains the same and we are simply seeking to reduce the notification timescale.

The six monthly DBS checks referred to in these Standards will help identify any drivers who have failed to report convictions.

Drivers licence conditions and associated handbooks and web information will require updating to reflect these changes.

The new requirement will need to be communicated to the licensed trade.

An implementation date will need to be agreed for new and renewal applications.

It should be noted that it is not possible to change the terms of current licences already issued. For example if a licensed driver had their licence renewed in October 2020 for a 3 year period then this new requirement would not come into effect until their licence is subsequently renewed in October 2023.

MEMBER RECOMMENDATION

Recommended that:

11. The Licensing Committee recommend to Full Council that the change in timescale from 72 hours to 48 hours is approved;
12. Subject to 11, the timescale for the implementation of the change to be delegated to the Environment and Licensing Manager, in consultation with the Chair of the Licensing Committee.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 11 - 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. The National Anti-Fraud Network has 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.

CURRENT POSITION

An applicant is required to disclose on the application form if they have had an application for a licence refused, or a licence revoked or suspended by any other

licensing authority.

The Council registered with the National Anti-Fraud Network in March 2020 with a view to participating in the national register of taxi and private hire driver licence refusals and revocations. More information about the register can be found at:

<https://www.local.gov.uk/topics/licences-regulations-and-trading-standards/national-register-taxi-and-private-hire-licence>

The Licensing team have nearly completed the process of going through our sub committee report history of applicants refused a licence or drivers that have had a licence revoked. All records held from the last 25 years require consideration. A total of 58 individuals have been identified as possibly needing inclusion on the register. Once this information has been fully considered a letter is required to be sent out to the respective individuals advising them we will be posting their details onto the NR3 register. They have 28 days in which to appeal this decision. After this date has passed the individuals who have not appealed will be added to the register.

Once all individuals have been added to the register then the Licensing Team will check the register on all new and renewal applications. Any applicant that is found to be on the register will have their application considered in accordance with our Enforcement Policy.

ACTION REQUIRED

Licensing team to continue with the process. This was delayed due to resources being diverted as a result of COVID-19. The Licensing Team are aiming to send out letters to affected individuals before the end of March 2021.

MEMBER RECOMMENDATION

Recommended that:

13. The Licensing Committee recommend to Full Council that the checking of the NR3 register as part of the standard new applicant and renewal process for all private hire and hackney carriage drivers is approved;
14. Subject to 13, the timescale for the implementation of the additional check to be delegated to the Environment and Licensing Manager, in consultation with the Chair of the Licensing Committee.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 12 - OVERSEAS CONVICTIONS

(para 4.34 and 4.35) – The DBS cannot access criminal records held overseas. Licensing authorities should seek or require applicants to provide where possible criminal records information or a ‘Certificate of Good Character’ (CGC) from an appropriate authority overseas in this circumstance to properly assess risk and support the decision-making process. In addition, where an applicant has spent an extended period (three or more continuous months) outside the UK then a CGC is required.

CURRENT POSITION

Currently applicants/drivers are required to provide a certificate of good character if they have lived anywhere other than the UK for six or more consecutive months in the last five years.

ACTION REQUIRED

To consider an amendment whereby an applicant has spent three or more continuous months outside the UK to provide a CGC rather than six or more continuous months.

Drivers’ licence conditions and associated handbooks and web information will require updating to reflect these changes.

Drivers will be notified in writing of the changes.

The new Policy will reflect that information from a CGC that provides detail of overseas convictions will support the safe and suitable decision-making process.

A new declaration inserted into the driver application form to state if an applicant has been outside the UK for three or more continuous months.

MEMBER RECOMMENDATION

Recommended that:

15. The Licensing Committee recommend to Full Council that if an applicant has spent three or more continuous months outside the UK then a ‘Certificate of Good Character’ is required;
16. Subject to 15, the timescale for the implementation of the change to be delegated to the Environment and Licensing Manager, in consultation with the Chair of the Licensing Committee.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

GROUP C: REPORT TO BE BROUGHT TO A FUTURE MEETING

DFT STANDARD 14 - 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.

CURRENT POSITION

We currently have a comprehensive range of separate policies and procedures. These include private hire vehicle licence conditions, hackney carriage vehicle licence conditions, private hire driver conditions, private hire operator conditions, convictions guidelines, a hackney carriage handbook, hackney carriage byelaws, a private hire handbook and an enforcement policy.

ACTION REQUIRED

A full review of policies and procedures to incorporate all existing policies and changes required as a result of these new standards into one cohesive policy document.

The timescale for the introduction of the new policy will be dependent on compliance with the other required standards as the new policy will need to reflect the changes needed.

MEMBER RECOMMENDATION

Recommended that:

17. The Licensing Committee recommend a full review of existing policies into one new cohesive policy document;
18. Subject to 17, a draft of the new Policy will be brought back to Licensing Committee for discussion and approval prior to full sign off of a new policy. Timescale to be agreed at 9 March 2021 Committee when the dates for 21/22 are available

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

DFT STANDARD 15 - 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 by the Deregulation Act 2015) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire operators.

CURRENT POSITION

Currently new and renewal driver applications are given a one or three year licence option.

The DBS and Medical checks must cover the entire licence duration. Currently 30 per cent of licensed drivers are on a three year licence duration.

Some drivers are on a restricted six monthly licence or less depending on how much time remains on their right to work document or the Home Office check carried out by the Licensing Team.

Private hire operator licence applications are given the option of one or five year licences.

Currently a DBS check is carried out every three years. Therefore, a new DBS check is required for a three-year licence.

Group 2 medicals recognised nationally as a five year check for HGV, lorry and bus drivers for their first licence, and then at their 45th, 50th, 55th, 60th, 65th birthdays, and then annually after that.

Taxi and private hire licensing at Harlow also require five year medicals but based on when an applicant receives their first licence and five year intervals after that until they pass their 64th birthday, at which time they then have annual medicals.

In Harlow, licensed drivers under 60 years of age receive a five year medical. Therefore, drivers are currently restricted to a single three-year licence in a five year period.

After an applicant's 62nd birthday only one year licences are available because of the need for a Group 2 medical examination annually after the age of 64. Currently 18 per cent of Harlow's licensed trade are age 62 or over.

Driving licences are checked online using DVLA share code at every licence renewal whether a one or three year licence is granted.

ACTION REQUIRED

To consider the current procedure whereby DBS and Medicals cover the licence

duration continues to be the best option.

Six monthly checks will no longer cover to end of the licence period if six monthly DBS checks are introduced.

MEMBER RECOMMENDATION

Recommended that:

19. Members note the contents of this standard and feedback initial comments at this committee for officers to consider as part of the further report;

20. A further report is brought before the Licensing Committee specific to this matter. Timescale to be agreed at 9 March 2021 Committee when the dates for 21/22 are available.

DEPARTURE FROM THE DFT STANDARD PROPOSED

Dependant on outcome of full report

DFT STANDARD - 16 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.

CURRENT POSITION

Licensed drivers who hold an operator licence do not require a Basic DBS check as they are subject to enhanced DBS checks.

Operator applicants without a Driver Licence are already required to submit a Basic DBS with every application. Therefore, these are supplied on a one year or five year basis due to the two licence period options.

Operator ancillary staff are not currently requested to have Basic DBS checks by the Council.

ACTION REQUIRED

Operators who do not hold a Driver Licence will be required to provide a Basic DBS certificate to the Licensing Team on an annual basis regardless of licence duration.

The Council, as a condition of granting an operator licence, will need to require a register of all staff that will take bookings or dispatch vehicles. This register will be made available for inspection by the Licensing Team or the Police upon request.

Operator ancillary staff on this register are required to have a Basic DBS check.

MEMBER RECOMMENDATION

Recommended that:

21. Members note the contents of this standard and feedback initial comments at this committee for officers to consider as part of the further report;
22. A further report is brought before the Licensing Committee specific to this matter. Timescale to be agreed at 9 March 2021 Committee when the dates for 21/22 are available.

DEPARTURE FROM THE STANDARD PROPOSED

Dependant on outcome of full report

DFT STANDARD 17 - 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.

A licensing authority's test of a driver's proficiency should cover both oral and written language skills to achieve the objectives stated above.

CURRENT POSITION

All new drivers have to pass a knowledge test as part of the licensing process. A basic grasp of the English language is needed in order to complete the knowledge test. For example drivers need to understand and respond to the oral question put to them in order to pass the test.

There is currently no reading or written assessment.

The current position does not fully satisfy the DfT requirements.

Preliminary research by the Licensing Team has identified that some local authorities have required applicants to undertake an English test to a B1 level (Intermediate on the Common European Framework). This is a universally recognised qualification. The charge for this is expected to be circa £60.

Transport for London (TFL) require this B1 Level or give the option for the applicant to demonstrate competence in an alternative way, for example: if the applicant holds a UK GCSE / A Level / or degree level qualification then this would be sufficient and they would not be required to undertake the B1 test.

There is also a possibility that an in-house test could be devised as a bolt on to the knowledge test and that the additional work of undertaking this test is met by an increase

in licence fees. (for new applicants)

Consideration will also need to be given as to whether any additional test or proof of proficiency is required for all existing drivers or just for new applicants.

ACTION REQUIRED

The Licensing Team undertake further research and report back to Members in a further committee report with options to consider.

MEMBER RECOMMENDATION

Recommended that:

23. Members note the contents of this standard and feedback initial comments at this committee for officers to consider as part of the further report;

24. A further report is brought before the Licensing Committee specific to this matter. Timescale to be agreed at 9 March 2021 Committee when the dates for 21/22 are available.

DEPARTURE FROM THE DFT STANDARD PROPOSED

Dependant on outcome of full report

DFT STANDARD 18 - 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.

CURRENT POSITION

Detailed committee report on CCTV was submitted to Members in January 2020; prior to these new DfT standards. Review at that time did not identify local circumstances that justified a CCTV mandate. The Council has been awaiting clearer national guidance on CCTV. This Standard does not make installation of audio and CCTV mandatory. Currently only 4 per cent of UK authorities require CCTV. Costs are met by the vehicle owner and costs are high at a minimum of £500 per CCTV unit. Mandatory requirement places the data responsibilities on the Council. This requires further review with the licence holders and Essex Police.

ACTION REQUIRED

Licensing Team to raise at Essex Liaison working groups and with the Police. Need to review with the Police how crimes are categorised to see if more information can be obtained regarding crimes connected with licensed vehicles in Harlow.

MEMBER RECOMMENDATION

Recommended that:

25. No specific recommendation at this time. However, Members to note current position in respect of this Standard.

DEPARTURE FROM THE DFT STANDARD PROPOSED

N/A at this stage

DFT STANDARD 19 - STRETCHED LIMOUSINES

(para 7.14)- Consideration should be given to their licensing.

CURRENT POSITION

There are currently no known limousines licensed to operate by Harlow Council. An enquiry was received in 2019 and the applicant started the licence process for two vehicles but subsequently sold the vehicles and withdrew their application. The Council would require stretched Limousines to be licensed as a private hire vehicle. Requirements for private hire vehicles, including emission standards, must be met. The maximum passenger capacity that can be licensed by any Council is eight. A public service vehicle (PSV) operator's licence is required to operate a vehicle for hire or reward (payment or payment in kind) that can carry 9 or more passengers. This is issued by the Driver and Vehicle Standards Agency (DVSA).

Imported vehicle specifications must meet British or European Standards. Drivers of limousines and executive vehicles must complete the licensing application process, as must any other private hire driver.

ACTION REQUIRED

The Council has no blanket policies in place to exclude limousines from the licensing process.

A policy is required for all executive, chauffeur and limousine applications which will include application criteria and external vehicle signage exemption.

All licensed vehicles must be tested/inspected at the Councils approved testing station. However, the current provider does not have a suitable ramp to carry out inspections of limousine type vehicles. Market to be sourced regarding MOT & Compliance provision for these specialist vehicle types.

Driver must confirm in writing that passenger numbers will be restricted to no more than eight passengers.

MEMBER RECOMMENDATION

Recommended that:

26. Members note the current position with regard to this Standard;

27. A further report is brought before the Licensing Committee specific to this matter. Timescale to be agreed at 9 March 2021 Committee when the dates for 21/22 are available.

DEPARTURE FROM THE DFT STANDARD PROPOSED

No

IMPLEMENTATION

9. 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'.

10. 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).

11. 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.***

12. 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.
13. 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)

As set out within the report.

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

As outlined in the report.

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 guidance only, 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 the Council should review its Taxi and Private Hire Policy as recommended and make an informed decision on which standards should be adopted. Where there is good reason to depart from the recommended standards, clear justification for the decision must be given. 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: Dimple Roopchand, Principal Solicitor on behalf of 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-vehicle-standards>

Background Papers

Working together to safeguard children 2018 (Department for Education)

<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Glossary of terms/abbreviations used

CSAE – Child Sexual Abuse and Exploitation
CGC - Certificate of Good Character
DBS – Disclosure and Barring Service
DVSA – Driver and Vehicle Standards Agency
DFT - Department for Transport
MACE – Missing and Child Exploitation
MASH – Multi-Agency Safeguarding Hub
TFL – Transport for London