

REPORT TO: LICENSING COMMITTEE

DATE: 7 SEPTEMBER 2021

TITLE: BASIC DBS FOR VEHICLE PROPRIETORS, PRIVATE HIRE VEHICLE OPERATORS AND OPERATOR STAFF

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RECOMMENDED that:

- A** The Licensing Committee recommend to Full Council that a new mandate is introduced to require all vehicle proprietors to provide a basic disclosure certificate from the DBS (Disclosure and Barring Service) and that a new check is undertaken annually;
- B** The Licensing Committee recommend to Full Council that a new mandate is introduced to require all Private Hire Vehicle Operator licence holders, to hold a basic disclosure certificate from the DBS and that a new check is undertaken annually;
- C** The Licensing Committee recommend to Full Council that a new mandate is introduced to require operator staff who take bookings, dispatch vehicles or any other staff who have access to booking information or have contact with members of the public to hold a Basic disclosure certificate from the DBS and that a new check is undertaken annually;
- D** Subject to A, B and C the requirements be introduced as set out in the Proposals section of this report.

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 had been awaited for some time and followed 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 taxi and private hire vehicle licensing, 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 DfT intend to support better regulation of the taxi and private hire vehicle sector as a whole, and to address significant differences in standards applied to the licensing of drivers and vehicles across the country.
3. As statutory guidance under section of the Policing and Crime Act 2017 the new DfT standards are guidance to which the Council formally must have regard. A copy of the standards is attached at Appendix A to the report.
4. Licensing Committee at its meeting of 19 January 2021 approved an action plan in relation to the implementation of the DfT standards. For the purposes of the action plan the DfT standards were grouped into the following categories;
 - a) **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;
 - b) **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;
 - c) **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.
5. This report is the first to deal with such “Group C” DfT standards, and considers the introduction of Basic DBS checks annually for the proprietors of licensed vehicles and for private hire Operators and their staff. Licensed drivers are already subject to enhanced DBS checks.
6. A Basic DBS can be used for any position or purpose, costs £23 and will usually be processed within 14 days. A basic check will contain details of convictions and conditional cautions considered to be ‘unspent’ under the terms of the Rehabilitation of Offenders Act 1974. Under the Act, eligible convictions or cautions become ‘spent’ after a specified period of time known as the ‘rehabilitation period’, the length of which varies depending on how the individual was dealt with.

7. People requiring Basic DBS checks are unable to sign up to the DBS Update Service, so new certificates are required for each new check.

ISSUES/PROPOSALS

DBS Checks for Vehicle Proprietors

8. The DfT Standards state that 'licensing authorities should require a basic disclosure from the DBS for all vehicle proprietors' and 'that a check is undertaken annually.'
9. Section 48(3) of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA76) states that the 'name and address of every other person who is a proprietor of the private hire vehicle in respect of which the licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing or letting on hire of the private hire vehicle' shall be provided as part of an application for a vehicle licence.
10. Applications for a hackney carriage or private hire vehicle licence submitted to the Licensing Team will include details of any person(s) applying for the licence.
11. Currently, there is no disclosure requirement from the DBS for the application of a vehicle licence.
12. The majority of vehicle proprietors are licensed drivers and are already subject to an enhanced DBS disclosure (with Barring List checks) and will not require a Basic DBS check.
13. Currently, any person named on a vehicle licence application who is not a licensed driver is asked what their interest is in the vehicle in relation to the LGMPA76. Where that person is a Registered/Limited Company, a check of Companies House records is made.
14. Some vehicle proprietors that licence vehicles in Harlow provide their vehicles to licensed drivers, often offering vehicle maintenance as part of any agreement between the two parties.
15. It is understood that DfT standards require DBS checks on proprietors, because proprietors may be in a position of considerable influence over the drivers who use their vehicles. However on occasion, when a licensed vehicle sustains accident damage, the insurance company will provide a replacement vehicle service while the damaged vehicle is repaired to prevent loss of earnings to their client. These vehicles will be licensed under a temporary arrangement, usually for one or two weeks, and when the vehicle is no longer needed the temporary licence is surrendered. These vehicle replacement companies (often regional/national in scale) that provide vehicles for the clients of insurance companies are not considered to require Basic DBS checks. The vehicle hire companies do not provide a vehicle rental service or have local knowledge; they do not know the licensed driver, bar taking copies of his ID. It does not appear to have been the intention of the DfT Standards to incorporate these companies in the basic DBS checking regime. Further information on replacement vehicles for accidents will be included in the new overarching taxi policy proposed later in the current Licensing Committee work plan.

DBS Checks for Private Hire Vehicle Operators and their Staff

16. The DFT Standards state that 'licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.' Furthermore, 'licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles.'
17. At present applications for an operator licence submitted to the Licensing Team will include details of the business premises to be used and details of the person(s) applying for the licence.
18. Currently, a Basic DBS check is required for any person(s) named on the application for an operator licence. DBS certificates are submitted with the application, whether for a one or five year licence and periodic DBS checks are not made during the period of the licence.
19. A few operator licence holders are also licensed drivers and so already subject to an enhanced DBS disclosure (with Barring List checks) and will not require a Basic DBS check.
20. Any person named on an operator licence application provides their personal details, including position in the business (e.g. Director, Partner). Where a person is a Registered/Limited Company, a check on Companies House is made.
21. There are currently no Basic DBS checks required on operator staff by condition of the operator licence.

Implementing Basic DBS Disclosure for Vehicle Proprietors:

22. It is proposed that a Basic DBS disclosure be required on first licensing and thereafter by condition annually for all vehicle proprietors who are not also licensed drivers. Where the proprietor is a company, every director or partner will be required to provide a Basic DBS disclosure.
23. It is proposed that the following new conditions be added to all vehicle licences from 1 December 2021:
 - a) All vehicle proprietors who do not hold a driver licence shall provide a Basic DBS disclosure to the Licensing Team on an annual basis.
 - b) The vehicle proprietor must provide details of any change to directors or partners responsible for the management of the business where the licence holder is a company or partnership, a new Basic DBS disclosure will be provided for all new persons becoming a director or partner.
 - c) An applicant's suitability to be a vehicle proprietor for vehicle licensing purposes will be judged in the context of the Council's enforcement policy and the Institute of Licensing's 'Guidance on determining the suitability of applicants and licensees in the Hackney and private hire trades.'

Implementing Basic DBS disclosure for Private Hire Operators:

24. It is proposed that a Basic DBS disclosure be required on first licensing and thereafter by condition annually for all persons named on an operator licence application. Where the applicant is a company or partnership, every director or partner shall provide a Basic DBS disclosure.
25. It is proposed the following new conditions will be added to all operator licences from 1 December 2021:
- a) All applicants named on the operator licence who do not hold a driver licence will be required to provide a Basic DBS disclosure to the Licensing Team on an annual basis regardless of licence duration.
 - b) The operator must provide details of any change to directors or partners responsible for the management of the business where the licence holder is a company or partnership, a new Basic DBS disclosure will be provided for all new persons becoming a director or partner.
 - d) An applicant's suitability to hold an operator licence will be judged in the context of the Council's enforcement policy and the Institute of Licensing's 'Guidance on determining the suitability of applicants and licensees in the Hackney and private hire trades.'

Implementing Basic DBS disclosure for Booking and Dispatch staff:

26. It is proposed that the Council require that a Basic DBS disclosure check be carried out annually by the operator licence holder(s) for all operator staff who take bookings, dispatch vehicles or have access to booking information or contact with members of the public. Details of DBS checks will be maintained in a staff register.
27. It is proposed the following new conditions will be added to all operator licences from the 1 December 2021:
- a) The Operator will keep a register of all staff that take bookings, dispatch vehicles or have access to booking information or contact with members of the public. The register may be kept either electronically or in hardcopy.
 - b) The Operator shall ensure that Basic DBS checks are carried out on recruitment and thereafter annually on every person included in the staff register.
 - c) Basic DBS checks will be carried out by the holder of an operator licence. The certificate's date of issue, its reference/certificate number and the time and date that the certificate was first viewed must be recorded in the staff register and signed.
 - d) Where offences or conditional cautions are present on a DBS certificate, the suitability of the staff member to carry out their role shall be reviewed: the date and time of such reviews and the decision made with regard to a member of staff's suitability shall be recorded in the staff register.

- e) In the absence of an operator having their own stricter policy in relation to employing ex-offenders, the operator will use the Council's standards applied to private hire operators (as detailed in the Institute of Licensing's 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades').
- f) Where bookings and vehicle dispatch is outsourced, operators are required to evidence to the Council that the outsourced staff have been vetted to at least the same level as if they worked directly for the operator.
- g) The staff register and shall be produced on demand to a police officer or authorised officers of the Council's Licensing team, and copies shall be furnished as required.

Conclusion

28. The introduction of Basic DBS disclosures for vehicle proprietors, operator licence holders and their staff on an annual basis will assist in the overall regulation of the taxi and private hire sector. These changes are expected to provide added protection to children and vulnerable adults, while benefitting all passengers that use these services.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

The proposed policy changes will enhance standards in taxi and private hire vehicle licensing albeit at a modest cost in additional staff time.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific

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)

Measures to reduce the risk of criminality on licensed trades may be expected to increase confidence in taxi and private hire services on which vulnerable people may rely and to benefit the wider travelling community.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

As DfT's published licensing standards form statutory guidance to which the Council must have regard, it is appropriate to implement the recommendations unless there are exceptional local circumstances that indicate an alternative approach

Author: Simon Hill, Head of Governance

Appendices

Appendix A - Statutory Taxi and Private Hire Vehicle Standards, DfT

Glossary of terms/abbreviations used

DBS - Disclosure and Barring Service

DfT - Department for Transport

CSAE - Child Sexual Abuse and Exploitation

LGMPA76 - Local Government (Miscellaneous Provisions) Act 1976