

Allerdale Borough Council

Licensing Committee – 31 January 2022

Statutory Taxi and Private Hire Vehicle Standards

Portfolio holder	Councillor Colin Sharpe Portfolio Holder for Legal and Finance
Report from	Gillian Collinson – Senior Specialist – Licensing and Compliance
Wards affected	All Wards
Is this a key decision	Yes

1.0 The reason for the decision

- 1.1 The purpose of this report is to inform Members of the statutory guidance issued by the government which relates to taxi and private hire vehicles.
- 1.2 To set out the basis of work required to be completed in respect of the recommendations contained within the Hackney Carriage and Private Hire Vehicle Standards.
- 1.3 To consider the new standards and recommended changes. Further reports will be presented in order to implement changes to current conditions and policies and these will then be subject to wider consultation including the trade.

2.0 Recommendations

- 2.1 That Members note the content of the Statutory Taxi and Private Hire Vehicle Standards issued by the Department for Transport.
- 2.2 That Members approve a full review of current policy and procedure to determine the necessary amendments required by the new standards.
- 2.3 That Members agree to further reports detailing changes to existing terms and conditions of Hackney Carriage, Private Hire and Private Hire Operators' licences.
- 2.4 That Members agree that the Licensing Department will amalgamate the associated requirements of the licences outlined in paragraph 2.3, into a policy that encompasses the statutory standards.

3.0 Background and Introduction

- 3.1 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.
- 3.2 On 21 July 2020, the Department for Transport issued the Statutory Taxi and Private Hire Vehicle Standards ('the Standards') for the first time, which replaced its Best Practice Guidance. A copy of the new standards is set out in Appendix 1 to the report.
- 3.3 Under the Policing and Crime Act 2017, the Secretary of State for Transport can issue statutory guidance in respect of exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using those services.
- 3.4 The guidance is the result of extensive consultation with the police, the trade, the Institute of Licensing and others, and sets out the approach that Licensing Authorities must adopt when carrying out their functions.
- 3.5 The Licensing Authority has already previously implemented a number of the recommendations, but the new guidance provides the opportunity to further tighten the current licensing scheme.
- 3.6 The statutory guidance has been issued for the following reasons, as extracted from its introduction:

"There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and, in some cases, perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers.

Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from Greater Manchester and Merseyside suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the Crime Survey for England and Wales."

- 3.7 The guidance states:

"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.

All local authorities and district councils that provide children's and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the Working Together to Safeguard Children statutory guidance.

The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the 2010 version of the Department's Best Practice Guidance. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme)".

3.8 The main headings covered in the guidance include:

- Administering the licensing regime
- Gathering and sharing information
- Decision-making
- Driver, Vehicle and Operator licensing; and
- Enforcement

3.9 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. Any standards adopted must be appropriate for the Council's local needs and the Council must be transparent in explaining the reasons for the standard it adopts.

4.0 Content

4.1 The Licensing Department has discussed the guidance and believes that there is no compelling reason not to implement the majority of the recommendations within it.

4.2 A copy of the statutory guidance can be found appended to the report at Appendix 1

4.3 The main areas of the statutory standards cover the following:

4.3.1 Licensing Policy

Authorities should produce a 'cohesive policy document' that brings all procedures together and this should include a convictions policy. When formulating policies, the overriding objective must be to protect the public. Policies should be reviewed every five years. Whilst the Council has several taxi licensing policies and procedures, these are not contained in a single document. The intention is to review and update any existing policies. Following production of a Taxi Licensing

Policy, the Council would be expected to review existing licences against the content and standard of the new policy.

4.3.2 'Fit and Proper' test

Until now, there has been no statutory definition of what amounts to a 'fit and proper' person for the purposes of the legislation. This should now be based on a balance of probabilities basis and should be proportionate. Applicants should not be given 'the benefit of the doubt' and if the panel is only 50/50 as to whether the applicant is 'fit and proper', they should not be given a licence. This is a lower threshold than for criminal convictions and can therefore include information that goes beyond conviction information.

4.3.3 Administration

There should be sufficient training and adequate resource for all those involved with making licensing decisions. Any functions that are delegated should be set out in a clear scheme of delegation and it is suggested that less contentious matters can be resolved by authorised officers. It is recommended that more serious matters are dealt with by committee.

4.3.4 Whistleblowing

Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action can be taken if required. It is recommended that authorities have effective internal procedures for staff to raise concerns, and procedures in place for any concerns to be dealt with openly and fairly. The Licensing Team is working with internal audit to incorporate a comprehensive section in the current whistleblowing policy to cover taxi licensing.

4.3.5 DBS checks

Subscription to the DBS Update Service by drivers and operators at their own expense. This will enable the Authority to review the DBS record of a driver or operator at any time, but it is recommended that the records should be reviewed every six months as a minimum. In addition there is a new requirement that all Booking and Dispatch staff should be subject to a basic DBS check and it will be mandatory for operators to keep records of any individual that responded to the booking request and/or dispatched a vehicle to the booking request.

4.3.6 Overseas Convictions

DBS cannot access criminal records held overseas. Certificates of good character should be obtained where an applicant has previously lived outside the UK for a period of more than three continuous months.

4.3.7 Convictions policies

All authorities should have a clear policy that takes a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. It would be appropriate for the Council to assess the

Annex to the guidance which relates to the assessment of previous convictions, against the Council's current guidelines on conviction policy. 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.

4.3.8 Common law police disclosures

These should be considered as part of the 'fit and proper' test. This replaced the previous Notifiable Occupations Scheme. 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.

4.3.9 Multi-agency Safeguarding Hub (MASH)

Authorities should establish a means to facilitate the objectives of the local MASH. It highlights obstacles to sharing information as a barrier to effective safeguarding.

4.3.10 Complaints against licensees

All authorities should have robust complaint recording systems and take action if necessary. Authorities should produce guidance for passengers on how to make complaints. Operators should be able to share concerns regarding drivers with the local authority. Recording and investigations systems are in place, however the introduction of formalised trends analysis would offer transparency and assist the Licensing Committee in decision-making.

4.3.11 Mandatory safeguarding awareness for all drivers

Authorities should provide safeguarding advice and guidance and explain to drivers how to respond and report concerns and where to get advice. Training should include 'County Lines' drug trafficking awareness.

4.3.12 Proficiency in English language

All drivers should be able to converse with passengers to understand destination, estimates of time and other common passenger requests. Drivers should be able to provide correct change and produce a legibly written receipt upon request.

4.3.13 Enforcement

Joint authority agreements between authorities are encouraged. Drivers should be made aware of relevant policies and repercussions.

4.3.14 Suspension and revocation of driver licences

The guidance clarifies situations in which revocations and suspensions may be used.

4.3.15 Private hire operators and criminal record checks

All operators should be subject to an annual basic DBS check. Ancillary staff that have access to booking records should also be DBS checked.

4.3.16 Record keeping

The guidance suggests minimum information that should be recorded when accepting a booking.

4.3.17 CCTV in vehicles

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. Some systems are able to record audio as well as visual data. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or drivers) consider it necessary). The recording of audio must not be continuously active by default and should recognise the privacy of passengers' private conversations. Imposing a blanket requirement to attach CCTV as a condition is likely to give concerns about proportionality and will require an appropriately strong justification.

4.3.18 Local consultation

The guidance suggests that it is good practice to consult when proposing significant changes in local licensing rules. Consultation should include passengers and trade groups.

4.3.19 Changes to policies

Any changes should apply to all licence holders, so any changes would be retrospective.

4.3.20 Criminality checks for vehicle proprietors

Drivers provide an enhanced DBS check incorporating barred list checks. These are not available for vehicle licensing. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed. It is important therefore that there is assurance that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. A Basic disclosure from the DBS with an annual check should be undertaken.

4.3.21 Stretched limousines

Consideration should be given to their licensing.

4.3.22 Referrals to the DBS

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.

4.3.23 Sharing licensing information with other Licensing Authorities

An applicant should 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 (NAFN) 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. The Council has signed up to the NAFN register.

4.3.24 Joint authorisation of enforcement officers

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.

4.3.25 Enforcement

Joint authority agreements are encouraged. Drivers should be made aware of relevant policies and repercussions.

5.0 Delivery arrangements

- 5.1 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.
- 5.2 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'.
- 5.3 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)”.
- 5.4 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**”.

- 5.5 It is clearly the expectation that the new standards are implemented, but setting them does however remain the decision of the Council. Where good reason can be found to depart from the new statutory standards, it is possible to do so providing that there is clear justification for the decision. The review that officers recommend will detail these matters for consideration at the next meeting of the Licensing Committee which deals with this issue. This will include any relevant information if there are proposals brought for consideration which depart from, or vary, the expected standards.
- 5.6 The Licensing Team are currently working to identify a list of actions required to comply with the guidance and present this to the Licensing Committee at a later date in the form of a work plan.
- 5.7 In its letter to Local Authorities introducing the Standards, the Department for Transport 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.

6.0 Implications and Impact

6.1 Contribution to Council Strategy Priorities, Outputs and Outcomes

- 6.1.1 Outstanding local services – The implementation of the standards relating to complaints and whistleblowing will increase the ease by which customers and the hackney and private hire trade can contact the council. Undertaking extensive consultation with both the trade and other interested parties will contribute to the appropriate policies being implemented.
- 6.1.2 Resilient communities – The focus of the standards is to protect children and vulnerable adults and by extension all passengers will benefit from the recommendations within the guidance thereby making a significant contribution to community safety. There will be comprehensive engagement with the community including town and parish councils and other relevant agencies.

6.2 Finance/Resource implications

- 6.2.1 There are no financial implications in respect of this report, however compliance with the Department for Transport standards will require a significant amount of officer time and may result in policies and practices that incur additional costs to the licensing regime, e.g. additional training for officers and members.
- 6.2.2 There is the potential for challenges by the trade to any policy changes that are introduced which may lead to the Council incurring legal costs to defend any such challenge.
- 6.2.3 Any additional costs associated with the administration and enforcement of the taxi licensing regime can be recovered via taxi licensing fees.
- 6.2.4 It is likely that there will be additional financial cost to the taxi trade, which could include additional indirect costs of recovering the Council's administrative costs, and direct costs associated with any possible change in policy, e.g. additional training, CCTV etc.

6.3 Legal and governance implications

- 6.3.1 The guidance is published by the Secretary of State for Transport under s177(1) Policing and Crime Act 2017. Under s177 of the Policing and Crime Act 2017, the Secretary of State may issue guidance to local authorities as to how their licensing functions under taxi and private hire legislation may be exercised so as to protect children and vulnerable adults from harm. In accordance with s177(4) the Council must have regard to the guidance.
- 6.3.2 The Statutory Taxi and Private Hire Vehicle Standards are not legislation. However, paragraph 1.3 of the Standards states that the Department for Transport expects the recommendations to be implemented unless there is compelling local reason not to.
- 6.3.3 The duty is a "have regard" duty. This means that the Council must take the standards into account and must give clear reasons for departing from them.

6.4 Risk analysis

A scored and mitigated risk log

Risk	Consequence	Controls required	Mitigated score
Political – Failing to deliver the standards	Dft enquiry and not tightening the licensing regime to further protect the public and trade	Ensuring the work plan is presented to Licensing Committee and full justification given for each decision	1

6.5 Increasing satisfaction and service

- 6.5.1 Consultation and the implementation of the appropriate standards will involve community and trade engagement with the outcome supporting better local services

giving both the trade and the public the confidence in the safety and protection given when working or travelling in hackney and private hire vehicles.

6.6 Equality impacts

6.6.1 Standards will be applied equally across the hackney and private hire licensing scheme and for this reason it is not necessary to complete an impact assessment.

6.7 Health and Safety impacts

6.7.1 Standards will promote the health and safety of the trade and the travelling public.

6.8 Health, wellbeing and community safety impacts

6.8.1 The focus of the standards is to protect children and vulnerable adults and the nature of them will by extension protect all passengers and the people working in the trade.

6.9 Environmental/sustainability impacts

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

6.10 Other significant implications

No other significant implications.

Appendices attached to this report

Appendix number	Title of appendix
1	Statutory Taxi & Private Hire Vehicle Standards

Background documents available

Name of background document	Where it is available

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