

Report to: Licensing Committee

Date: 17 December 2020

Title: Amendments to the Hackney Carriage and Private Hire Licensing Guidance as a result of the Department for Transport (DfT) Statutory Guidance of July 2020

Report of: Tim Whelan – Director Service Delivery

Ward(s): All

Purpose of report: To review the changes to the Hackney Carriage and Private Hire Licensing Guidance and agree a six-week public consultation.

Officer recommendation(s):

(1) The Committee review the amended Lewes District Council Hackney Carriage and Private Hire Licensing Guidance.

(2) The Committee authorise the Senior Specialist Advisor to start a six-week consultation with the taxi trade and the public.

(3) Agree that the results of the consultation be reported to a subsequent meeting of the Licensing Committee, unless only minor changes are proposed as a result of the consultation responses, in which case any changes may be made by the Functional Lead- Quality Environment in consultation with the Chair of the Licensing Committee.

Reasons for recommendations: The changes seek to update the Guidance in line with the Department for Transport Statutory Guidance.

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1 Introduction

- 1.1 Section 177 of the Policing and Crime Act 2017 enables the Secretary of State for Transport to issue Statutory Guidance on exercising Taxi and PHV licensing functions to protect children and vulnerable individuals from harm when using these services.
- 1.2 The Department for Transport (DfT) issued a Statutory Guidance document – titled ‘Statutory Taxi and Private Hire Vehicle Standards’ (the Standards) in July

2020. These Standards have been produced in the main as a response to the Jay and Casey reports on Child Sexual Abuse and Exploitation (CSAE). One of the issues from these reports highlighted weak and ineffective arrangements in taxi and private hire licensing leaving the public and particularly children and vulnerable adults at risk in the areas reported on. The Standards recommends measures be put into practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting these Standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.

- 1.3 The purpose of the Council's Licensing Guidance is to set out the terms and conditions that will apply to those seeking licences for the Hackney Carriage or Private Hire trade, to protect the public and help ensure they receive a good service.
- 1.4 Licensing authorities "must have regard" to the Standards when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. "Having regard" is more than having a cursory glance at a document before arriving at a preconceived conclusion. The Standards further states "Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated."
- 1.5 The amendments to the Council's Guidance address consideration of areas within the issued Standards. The Council's Guidance document already deals with a number of these areas but there are sections of the Guidance and Driver, Vehicle and Operator conditions which need to be amended and updated to reflect the new Statutory Taxi and Private Hire Vehicle Standards. The Licensing Team has taken the opportunity to reword and update other sections of the policy to provide clarity and consistency for all users. Appendix 1 to this report contains a composite summary of the changes.
- 1.6 When considering the current and any future Guidance, the Council's role in safeguarding and protecting the travelling public cannot be understated, and that strong measures to improve standards in the trade should be built upon and not diluted.

2 Significant Changes to the Guidance

- 2.1
 - a) Changes in Licensing - Any changes in licensing requirements for drivers will be followed by a review of the licences already issued.
 - b) Relicensing of vehicles – age restriction. Condition reworded to clarify circumstances under which application may be made for vehicles over the age limit.
 - c) Vehicle Door Signs – clarifying that signs produced by the council must be permanently fixed to the doors rather than using magnetised strips.

- d) Insurance Write Offs - The Authority will not license any vehicle which has previously been recorded as a write off.
- e) Intended work area – Hackney Carriages. Drivers will be asked what area they intend to work in predominantly. If the answer is outside of this district they will not be granted a licence. Those found to be flouting this may render themselves liable for disciplinary action. The change to this condition clarifies that those who transgress may be liable to disciplinary sanctions.
- f) In-vehicle visual recording – CCTV - 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. The mandating of CCTV in vehicles may deter people from seeking a taxi or private hire vehicle licence with the intent of causing harm. It will also provide protection for drivers from customers who may wish to harm them. The Consultation will seek views as to whether licensed vehicles will be required to have a Council approved CCTV system installed by October 2022 or to retain the current Guidance which does not mandate CCTV but does strongly encourage it.”
- g) Wheelchair Accessible Vehicle Licences - A condition will be added to WAV licences that the vehicle must always carry the appropriate equipment to transport wheelchair passengers otherwise the vehicle licence will be suspended immediately.
- h) Plate and Livery exemptions – amends and replaces current condition clarifying how the application is made for exemption from displaying door signs and a plate.
- i) Dual Drivers Licences – clarifies length of time that driver’s licences will be issued for.
- j) Stretched Limousines – The licensing of stretched limousines will be included in the Guidance.
- k) Fit and Proper test – The Authority will formally adopt the Standards guidance relating to the ‘Fit and Proper’ test that will be used in all decision making.
- l) Disclosure Barring Service (DBS) Update Service – All drivers and Private Hire Operators will subscribe to the DBS Automatic Update Service and provide evidence of this subscription. DBS checks will be undertaken by the Licensing Team every 6 months on all drivers and Operators.
- m) Overseas Applicants - the Council will seek criminal records information from overseas when an applicant has previously lived outside the UK for any period of more than three continuous months since the age of 18.

- n) DVLA Drivers Licence checks. – clarifies drivers belonging to DVLA free online shared service that enables the Council to check their licence electronically.
- o) Introduction of English Language Proficiency Test for all new applicants. This is a computer-based test of understanding of the English Language, supervised by an Authorised Officer. All applicants regardless of nationality will have to sit the test. Exceptions are those who have a relevant qualification in English.
- p) Safeguarding Awareness Training - Introduction of Mandatory Safeguarding awareness training. The training will also address County Lines issues. If a driver fails to complete it within a fixed time period, then their licence will be suspended until the safeguarding training is completed.
- q) Mandatory Disability Awareness Training – This will be introduced. If a driver fails to complete the training within a fixed time period, then the licence will be suspended until this training is completed.
- r) Clarifies process to apply for an exemption certificates from carrying assistance dogs.
- s) Card Payments - A condition will be added to the vehicle licence that when credit cards are accepted by a driver they cannot set a minimum card payment amount.
- t) Vaping – The current condition banning smoking by drivers will be amended to confirm that drivers or passengers cannot vape in licensed vehicles.
- u) Criminality Checks on Vehicle Proprietors - It is important that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. The Council will require a basic disclosure from the DBS and that a check is undertaken annually. An individual may apply directly for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC).
- v) Licensee Self Reporting - Licence holders should be required to notify the Council 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.
- w) Sharing Licensing Information - Applicants and licensees will 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.
- x) Private Hire Vehicle Operators – will be required to maintain a register of staff that will take bookings or dispatch vehicles and to provide evidence of DBS checks for them.

- y) Private Hire Vehicle Operators – Operators who do not already supply an enhanced DBS certificate to the Council will be required to supply an annual basic disclosure annually. This check will also apply to all named directors of the company.
- z) Operators will be required to advise the authority when any driver is subject to complaints regarding safeguarding, dishonesty, abusing customers or more than one complaint which does not fall into these categories in any 12 months.
- aa) Operator records – amends the requirements for type of records to be kept.
- bb) Use of PCV licensed Drivers – The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a private hire vehicle booking will not be permitted as a condition of the private hire vehicle operator’s licence without the informed consent of the booker.
- cc) Convictions Policy – This replaces the current arrangements, with more robust and comprehensive arrangements that deal with a full range of offences and eventualities. It gives clear guidance to the Council
- dd) Penalty Points scheme – allocates points to the driver or operator for breaches of rules, conditions. The objective is to improve levels of compliance and help improve standards. Points remain active for 12 months before being considered as spent. This scheme does not prevent the Council taking action it’s entitled to under legislation, byelaws and regulations.
- ee) Common Law Police Disclosure/Referrals to the Police/DBS – The Council will maintain close links with the Police to ensure effective and efficient information sharing procedures. Any decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult will be referred to the Police and DBS.

2.2 A draft of the new Guidance is attached to this report at Appendix 1 with the proposed amendments highlighted in red.

2.3 The Dft Guidance is appended at Appendix 2.

2.4 The draft of the new Guidance is included at Appendix 1 and will be published for a six-week consultation period starting on the XXXXXXXX. The list of consultees includes the following:

- a. Local Licensing Authorities that border Lewes District Council
- b. East Sussex County Council
- c. Elected Members of the Council
- d. The hackney carriage and private hire trade licensed by the Council
- e. Parish and Town Councils
- f. Sussex Police

- g. Social Services Child Protection Office
- h. DVSA (Driver and Vehicle Standards Agency)
- i. The Members of Parliament for the District
- j. Local Bus and Rail operators
- k. Organisations representing local businesses
- l. Members of the public via the Council's web site, the local libraries and help points
- m. Age UK
- n. Women's Institute
- o. Fawcett Society
- p. Local disability groups

3 Financial Impact

3.1 Some proposals in this review involve costs to the trade as follows;

- a. Drivers are already able to sign up to the DBS update service at a cost of £13 per annum. By signing up to the update service, this would negate the need for drivers to pay for a new DBS every 3 years at an approximate cost of £71.
- b. Safeguarding and Disability Awareness training; these are in the region of £25 for each course. These costs would be charged to the driver.
- c. English Language Test: £53 one off test on application.
- d. CCTV installation estimated cost of £500. The implementation period of October 2022 does give some time for financial preparation.

4 Legal implications

- 4.1 There is no statutory requirement for the Council to adopt any Guidance in relation to hackney carriages or private hire licences. However, the statutory Standards recommend that all licensing authorities should make publicly available a cohesive document which brings together all their procedures on taxi and private hire vehicle licensing. Such a document should include but not be limited to guidance on convictions, a "fit and proper person" test, licence conditions and vehicle standards. In any case, it is considered best practice to have such Guidance as it informs, guides decision makers and assists with consistent decision making. Any Guidance is not a fetter on decision making as each case must be judged on its own merits.
- 4.2 The Council can and should make its own decisions as to the content of the Guidance and in relation to individual decisions, in light of the relevant law, but Members should note that if the Council does not adhere to the Standards, without sufficient justification, that may be detrimental to the defence from any legal challenge.
- 4.3 The statutory Standards state that licensing authorities should review their Guidance every five years but should also consider interim reviews should there be significant issues arising in their area.

4.4 This Report was considered by the Legal Section on 3 December 2020 (IKEN - 7273-MW).

5 Risk management implications

5.1 In accordance with the Council's Risk Management Strategy, consideration has been given to the potential risks associated with the recommendations set out in this report. Although it remains the case that licensing authorities must reach their own decisions, both on overall Guidance 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 Council's defence.

6 Equality analysis

6.1 An Equality Analysis has been undertaken for these proposals. Overall a positive impact is expected for disabled people and their carers, and anyone who may be vulnerable because of their age, or mental or physical health condition.

If any consultation submissions are pertinent to equalities they will be included in the Equality Analysis and noted in the subsequent committee report.

7 Environmental sustainability implications

7.1 There are no sustainability and/or carbon reduction implications associated with this report.

8 Appendices

- 8.1
- Appendix 1 - Proposed new Guidance.
 - Appendix 2 - DfT Statutory Taxi and Private Hire Vehicle Standards.

9 Background papers

9.1 None.