

<b>Report to:</b>	<b>Licensing Committee</b>
<b>Date:</b>	<b>24<sup>th</sup> May 2021</b>
<b>Title:</b>	<b>Taxi Licensing Guidance Review</b>
<b>Report of:</b>	<b>Director of Service Delivery</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<p><b>1) To report the findings of the consultation on the proposed Eastbourne Borough Council Hackney Carriage and Private Hire Licensing Guidance (“Guidance”).</b></p> <p><b>2) To agree a final Guidance document to be adopted on a date to be agreed.</b></p>
<b>Officer recommendation(s):</b>	<p><b>1) That the Committee considers the consultation responses received.</b></p> <p><b>2) That the Committee considers if changes are to be made to the Guidance taking into account the Department of Transport Statutory Taxi and Private Hire Vehicle Standards (“the Standards”) and its recommendations, and the results of the public consultation.</b></p> <p><b>3) That the Committee delegates the Senior Specialist Advisor to take the necessary steps to implement any changes, produce a final Guidance and publish it on a date to be agreed with the Chair of the Licensing Committee.</b></p>
<b>Reasons for recommendations:</b>	<b>The consultation sought views on changes to the Guidance in line with the Standards.</b>
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## **1 Introduction**

- 1.1 This Committee is a follow up to the meeting of 18<sup>th</sup> January 2021 when it proposed changes to Guidance attached as Appendix 1 and authorised a public consultation. Several changes were considered to this Guidance because of the Standards attached as Appendix 2 published in July 2020.

- 1.2 One of the purposes of the 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.
- 1.3 The Licensing Team has taken the opportunity, whilst taking into account the recommendations of the Standards, to reword and update several sections of its Guidance to provide clarity and consistency for all users.
- 1.4 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.
- 1.5 The Standards recommend measures be put in to 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.
- 1.6 By implication the Standards are being considered by all local authorities in England and Wales.
- 1.7 Section 2 of the Standards document (Appendix 2) sets out very clearly that, per Section 177(4) Policing and Crime Act 2017, 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.
- 1.8 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.”
- 1.9 Paragraph 2.8 states that whilst Licensing Authorities must reach their own decisions both on overall policies and on individual licensing matters in light of the relevant law, the 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.
- 1.10 The same section informs that the Department for Transport (DfT) will monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults and by extension all passengers. The Council was contacted by the DfT in February for progress on the Standards and were informed that the Council were consulting on changes to its Guidance.
- 1.11 The Guidance that went out for public consultation is attached at Appendix 1.

## **2 Background**

- 2.1 A wide-ranging consultation took place from 1<sup>st</sup> February 2021 for a period of 8 weeks. A press release was issued, and existing licence holders were contacted to

make them aware of the proposed changes. Information and an online survey were placed on the Council's Web site.

2.2 Comments were received from businesses, existing licence holders and members of the public.

2.3 A composite document with the responses is attached at Appendix 3.

### **3 Changes considered during public consultation.**

- 3.1
- a) Changes in Licensing – Any changes in licensing requirements for drivers will be followed by a review of the licences already issued. Part 1.
  - b) Relicensing of vehicles – age restriction. Condition reworded to clarify circumstances under which application may be made for vehicles over the age limit. Part 3 - Maximum age of Vehicles.
  - c) Vehicle Door Signs – clarifying that signs produced by the council must be permanently fixed to the doors rather than using magnetised strips. Part 3 - Livery.
  - d) Insurance Write Offs – The Authority will not license any vehicle which has previously been recorded as a write off. Part 3 - Vehicle Specification.
  - 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. Part 3 - Intended Use.
  - f) In-vehicle visual recording – CCTV. The Consultation sought 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. Part 3 - See also paragraph 4.5 below.
  - 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. Part 3 - Wheelchair Accessible Vehicles.
  - 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. Part 3 - Executive Private Hire Vehicles.
  - i) Dual Drivers Licences – Clarifies length of time that driver's licences will be issued for. Part 4 – Licences.

- j) Stretched Limousines – The licensing of stretched limousines will be included in the Guidance. Part 3 - Stretched Limousines and Other Specialist Vehicles.
- 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. Part 4 - Fit and Proper Test.
- 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 12 months for Operators. Part 4 - DBS and Part 5 - Private Hire 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. Part 4 – DBS.
- n) DVLA Drivers Licence checks – Clarifies drivers belonging to DVLA free online shared service that enables the Council to check their licence electronically. Part 4 - DVLA Licence Checking.
- 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. Part 4 - English Language Proficiency Test. See also Paragraph 4.11 below.
- 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 period, then their licence will be suspended until the safeguarding training is completed. Part 4 - Safeguarding Training. See also Paragraph 4.9 below.
- q) Mandatory Disability Awareness Training – This will be introduced. If a driver fails to complete the training within a fixed period, then the licence will be suspended until this training is completed. Part 4 - Safeguarding Training. See also Paragraph 4.9 below.
- r) Clarifies process to apply for an exemption certificates from carrying assistance dogs. Part 8.
- 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. Part 9.
- t) Vaping – The current condition banning smoking by drivers will be amended to confirm that drivers or passengers cannot vape in licensed vehicles. Appendix 3, Paragraph 26.

- 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). Part 3 – Vehicles.
- 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. Appendix 3, Paragraph 15 and Appendix 6, Section 6.3.
- 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. Part 4 – DBS.
- 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. Part 5 - DBS Disclosures.
- 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. Part 5 - DBS Disclosures.
- 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. Part 5 - Complaints about drivers.
- aa) **Operator records** – Amends the requirements for type of records to be kept. Appendix 4 – Records.
- 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. Appendix 4, Section 5.
- 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. Appendix 6. See also Paragraph 4.14 below.
- 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.  
Appendix 7. See also Paragraph 4.8 below.

- 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. Part 4.

## 4 Key Findings

4.1 The online survey asked six questions from the list in Section 3 above in addition to a section for generalised comments.

4.2 The first question asked 'in what capacity the respondents were acting':

A resident	108	49.54%
A licensed driver working in Eastbourne District	104	47.71%
An operator based in Eastbourne Borough	2	0.92%
Other	4	1.83%
Total	218	

### 4.3 Question 2

We are considering whether to prohibit the use of magnetised fittings to secure door signs to the front driver and passenger doors. Our intention is to ensure these signs are permanently fixed to the doors. How much do you agree or disagree with this proposal?

### 4.4 Responses:

Strongly agree	32	14.61%
Agree	26	11.87%
Disagree	26	11.87%
Strongly disagree	115	52.51%
Don't Know	20	9.13%
Total	219	

### 4.5 Question 3:

Under the current guidance CCTV is not mandatory but is strongly advised by the council. We are proposing that all licensed vehicles will be required to have a council-approved CCTV system installed by October 2022. How much do you agree or disagree with this proposal?

### 4.6 Responses:

Strongly agree	58	26.48%
Agree	53	24.20%

Disagree	28	12.79%
Strongly disagree	70	31.96%
Don't Know	10	4.57%
Total	219	

4.7 Question 4:

We are proposing to introduce a Penalty Points scheme on driver's and operator's licence for breach of conditions. This would aim to improve levels of compliance and raise standards. Penalty Points would be cumulative and remain active for 12 months. This would not however prevent the council from taking other forms of legal action where needed. How much do you agree or disagree with this proposal?

4.8 Responses:

Strongly agree	65	29.95%
Agree	73	33.64%
Disagree	28	12.90%
Strongly disagree	39	17.97%
Don't Know	12	5.53%
Total	217	

4.9 Question 5:

We are proposing to make safeguarding and disability awareness training mandatory for all new and current drivers. The aim of this would be to raise awareness of the exploitation of children and young vulnerable adults, including where to report incidents, within the trade. How much do you agree or disagree this should be implemented for all new and current drivers?

4.10 Responses

Strongly agree	76	34.70%
Agree	89	40.64%
Disagree	26	11.87%
Strongly disagree	20	9.13%
Don't Know	8	3.65%
Total	219	

4.11 Question 6:

We are proposing to introduce an English proficiency test, designed to ensure all new applicants are able to communicate effectively with passengers. This is particularly important when transporting vulnerable people and in the case of emergencies such as when medical treatment is required. All applicants, regardless of their nationality, would be required to take an English proficiency test or provide evidence of a relevant English Language qualification, for example a GCSE or equivalent (grade 4 or higher). How much do you agree or disagree with this proposal? Do you think this should be implemented for all new applicants?

4.12 Responses:

Strongly agree	145	66.21%
Agree	47	21.46%
Disagree	13	5.94%
Strongly disagree	5	2.28%
Don't Know	9	4.11%
Total	219	

4.13 Question 7:

We are proposing to introduce a more robust and comprehensive convictions guidance. Please take a moment to read the proposed convictions guidance before answering this question. How much do you agree or disagree with this proposal?

4.14 Responses:

Strongly agree	78	35.62%
Agree	91	41.55%
Disagree	17	7.76%
Strongly disagree	11	5.02%
Don't Know	22	10.05%
Total	219	

4.15 Question 8: allowed free generalised comments about the whole document summarised as follows:

Trade is very bad more expense is not needed	12
Door Signs – can't use as family car	14
Door Signs – Damage paint work	12
CCTV – Expensive	11
CCTV - Intrusive and unnecessary	7
Conditions needed for electric vehicles and 2030	7
Carbon Neutrality	
Drivers need Annual test – standard of driving is poor	6
Too many Licensed vehicles	2
Don't change anything	2
Supportive of proposals	6
Other Comments	26

4.16 Written submissions

Nine written submissions were received during the consultation; from Five Drivers, three Operators and a local Group representing those with accessibility issues. These are attached at Appendix 4.

4.17 These submissions are summarised as follows:

- a. Driver - broadly welcomes the proposals with the exception of; CCTV – too expensive and no consultation with the trade



Door Signs – no requirement for permanent signs – non-compliance figures do not support this change

Penalty Points – Previously rejected by the Council, overall it appears excessive arbitrary and potentially punitive.

- b. Operator – Very supportive – as are his drivers of CCTV. Has some queries about the impact of points on Operators, overall supportive of proposals.
- c. Driver – Does not agree with permanent door signs
- d. Driver – Changes will cost him more to keep his vehicle on the road, CCTV should be a drivers choice, points system punishes good drivers, disagrees with permanent door signs.
- e. Driver – Cannot understand the timing of the changes (during pandemic), no need for ‘vulnerable’ persons training as its all-common sense anyway.
- f. Operator – queries about type and spec of CCTV will be required, time limit for paperwork to be submitted for renewals and why is there a need for age limits on vehicles.
- g. Operator – CCTV not to be implemented before October 2022 and for consultation with the trade about this and the penalty points system.
- h. Eastbourne Access Group  
WAVs concerned about unmet demand for Wheel Chair Accessible Vehicles  
Queries whether a number of current measures to deal with discriminatory behaviour towards vulnerable people have been deleted and not replaced.  
Disability awareness training should not be discretionary.
- i. Driver – overall supportive but queries the penalty points system as being disproportionate.

## **5 Options**

- 5.1 The Committee is asked to consider what, if any, changes are to be made to the Guidance taking into account the Standards and its recommendations, and the results of the public consultation.
- 5.2 The Committee will see that 3.1 paras a) to ee) outline several proposed changes to the Guidance. The Committee is asked to decide for each one as follows:
  - a. Implement the change as proposed.
  - b. Disregard the change.
  - c. Implement the change in part as appropriate.

If the Committee choose Options a) or c) they can decide a date for commencement.

- 5.3 The Committee is asked to delegate the Senior Specialist Advisor to take the necessary steps to implement any changes, produce a final Guidance for publication and implement it on a date to be agreed with the Chair of the Licensing Committee.

## **6 Financial Implications**

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.

## **7 Legal Implications**

- 7.1 There is no statutory requirement for the Council to adopt any Guidance in relation to hackney carriage and private hire licences. However, the statutory Standards recommends that all licensing authorities should make publicly available a cohesive document which brings together all their procedures on hackney and private hire 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.
- 7.2 The Council can and should make its own decisions as to the content of the Guidance, 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 of any legal challenge.

- 7.3 The Legal Section considered this Report on 5 May 2021 (IKEN-10119-EBC-MW).

## **8 Equality Analysis**

- 8.1 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.

## **9 Risk Management Implications**

- 9.1 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.

## **10 Appendices**

- Appendix 1 – Proposed Eastbourne Borough Council Hackney Carriage and Private Hire Licensing Guidance (Consultation document)
- Appendix 2 – Department for Transport Statutory Taxi and Private Hire Vehicle Standards – July 2020
- Appendix 3 – Analysis of Public consultation (including responses from the trade)
- Appendix 4 – Written submissions

## **9 Background papers**

None.