

East Herts Council Report

Licensing Committee

Date of meeting: 10 March 2021

Report by: Oliver Rawlings (Service Manager – Licensing and Enforcement)

Report title: Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards – Consultation Responses

Ward(s) affected: All

Summary

The Department for Transport (DfT) has issued the “Statutory Taxi and Private Hire Vehicle Standards” document. As an authority that issues both Hackney Carriage and Private Hire licences we “must have regard” to the document when exercising our functions and formulating policy. Following agreement by Licensing Committee to the terms of the consultation this report contains the responses and conclusions.

RECOMMENDATION FOR LICENSING COMMITTEE

- (a) That the Licensing Committee recommends the Policy changes detailed in Appendix A (a to f) to Council for adoption with a commencement date of the 1st June 2021.

1.0 Proposal(s)

- 1.1 That the Members of the Licensing Committee recommend for adoption the proposed policy changes to Council on 12th May 2021 to take effect on the 1st June 2021.

2.0 Background

2.1 On the 21st July 2020 the DfT issued a detailed update of the “Best Practice Guidance” issued by the DfT in 2010. This came in the form of the “Statutory Taxi and Private Hire Vehicle Standards” document which despite its title covers matters relating to drivers, operators and vehicles.

2.2 The DfT states the following in the introduction of the document:

- 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.
- 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 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.

2.3 The DfT therefore expects these recommendations to be implemented unless there is a compelling local reason not to do so.

- 2.4 The document sets out a framework of policies that, under section 177(4), licensing authorities “must have regard” to when exercising their functions.
- 2.5 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.
- 2.6 “Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. 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. It is not a question of box ticking; the standards must be considered rigorously and with an open mind.
- 2.7 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.
- 2.8 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).

3.0 Reason(s)

3.1 On 25th November 2020 the Licensing Committee instructed officers to carry out an eight week public consultation regarding proposed Taxi policy changes to bring East Herts Council in line with the standards set by the DfT.

3.2 As part of the consultation the following steps were taken:

- a consultation page was set up on East Herts Council website;
- all the Hackney Carriage or Private Hire licence holders were contacted directly twice;
- community groups and organisations whose details were provided by the Community & Wellbeing team were contacted;
- local Pub Watches and representatives of the Night Time Economy were contacted;
- a wide variety of groups, including those with wider transport interests were contacted;
- all of the members of the Herts & Beds Licensing Group were sent the consultation and this includes all the LA's in Hertfordshire, Bedfordshire and our neighbouring LA in Essex.

3.5 The consultation closed at midnight on 21st February 2021. During the eight week consultation eight responses were received and these can be found as **Appendix B**.

3.6 Response 1 was received from the representative of a Community Group within East Herts. The response simply asked why the consultation had been received so officers responded further explaining its possible relevance but no further comments were received.

- 3.7 Response 2 was received from a Family Support Worker from one of the organisations that were sent the consultation. The response raises issues about nuisance being caused by licensed vehicles but does not have any relevance to the proposals that formed part of the consultation.

Officers have contacted the respondent to see if they can assist with the issues being raised separately to this piece of work.

- 3.9 Response 3 is from a member of the public and states that they 100% agree with the proposed changes. Within the specific comments there is support for CCTV being introduced in vehicles which will form part of future work and further consultation.

There is reference to proposal 11 which will require operators to ensure that when they outsource booking or dispatch staff functions that the same standards are applied as would be if this service were provided by direct employees.

The respondent suggests that where this work is outsourced customers should be informed. Officer would suggest that this is not a necessary requirement to impose on operators as where an operator outsources the booking and dispatch of their own vehicles the customer would not notice any difference or suffer any detriment or risk from not knowing.

- 3.10 Response 4 is from a member of the public and applauds the steps being taken and supports the compulsory use of CCTV in licensed vehicles. There is specific reference to the issue of grooming gangs and a number of suggested steps the authority should take to address this risk. Officers have responded directly explaining that safeguarding is taken very seriously and the steps that are in place to ensure public safety.

3.11 Response 5 was from the Hertfordshire LEP and thanks the authority for offering the opportunity to comment on the proposals but made no specific comments about the proposals.

3.12 Response 6 was from Women's Aid and advised that it would be best to contact the local domestic abuse service. The Herts Area Service were contacted but no response was received.

3.13 Response 7 was from a Private Hire Operator and also represented the views of four individuals licensed as Dual Drivers. This response agrees with many of the proposals but raises a number of queries and points of clarity which are addressed below:

- In reference to proposal 3 the response suggests that the proposed period of needing five years to have elapsed following conviction for using a hand-held mobile telephone or a hand-held device whilst driving is too long. As detailed in paragraph 2.3, the DfT have stated that they expect "these recommendations to be implemented unless there is a compelling local reason not to". The current Suitability Policy could require a similar length period depending on the penalty imposed upon conviction for this offence so this is an increase in the minimum period stipulated but does not increase the maximum period that could have already been imposed. Officers do not consider that there is a compelling local reason to not implement this proposal.
- In reference to proposal 12 the response suggests a stronger position on employee convictions than is recommended in the DfT document. Whilst we applaud the Operators position, this would mean that employees that received any conviction that would appear on a basic DBS Check, regardless of its relevance, could not be employed. It is considered that the criteria which would apply in these circumstances from the "Taxi Licensing Suitability Policy" are

clear and, should an Operator have any concerns, they could contact the Licensing Team for advice.

- In reference to proposal 13 officers made contact with the Operator to discuss the grey areas that were referenced. The concerns were that there are instances where an operator may not have some of the information that the DfT recommends is kept and what should happen if that information cannot be obtained.

Practical examples were given where this might happen, for example a hotel or supermarket service desk may not have a passenger's name. If someone is booking a number of vehicles to transport a group they themselves may not be a passenger and may not know any of the passenger's names. Similarly a destination may be a town or a leisure park rather than a particular house in a street or particular venue.

Officers consider that a minor amendment to operator licence conditions proposed by the DfT would allow for appropriate records to be maintained without being overly prescriptive for operators. The requirement to record the "name of the passenger" to be amended to read "name of the passenger (where this is not available then the details of the hirer should be recorded whether this is an individual, company or other legal entity)".

Officers consider that it is not necessary to amend the requirement to record the destination as this does not specify the level of detail an operator is required to obtain unlike the requirement to obtain the "name of the passenger".

- 3.14 Response 8 was from a Private Hire Driver. This response commented on three particular subjects (Criminal convictions and rehabilitation, English language proficiency and CCTV in licensed vehicles) whilst supporting the other changes.

- The response suggests that the newly proposed time scales for the offences of drink/drug driving and using a hand held device are excessive. As previously explained the DfT expect the standards within their document to be implemented unless *“there is a compelling local reason not to”*. Officers do not consider there is a compelling local reason not to implement proposals 2 and 3. Regardless of the level set for any offence each case still has to be considered on its own merits so should an applicant demonstrate a compelling reason to depart from policy then a licence could still be granted.
- The response agrees with having English proficiency testing for new applicants for driver licences but suggests that requiring all renewing drivers to be tested is excessive. It is suggested that the testing at renewal could be only for those that have been granted a new licence in the last 2 years. The DfT standards state at paragraph 3.14 that *“Any changes in licensing requirements should be followed by a review of the licences already issued. If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence”*. This section makes it clear that as an authority we must ensure that all individuals that we licence must reach the same standard. However in response to this point officers have amended the proposed requirement for renewing drivers so that there are exemptions to the need to be tested where suitable evidence of an English qualification is provided.
- The respondent believes that CCTV in vehicles is a good idea in certain circumstances but that it shouldn't be compulsory and the decision should be left to individuals or companies. With regards to the option to have audio recording it is again stated that this should be left to the individual to decide. As previously stated the issue of CCTV will be the

subject of further consultation once the evidence to support any proposal has been gathered.

4.0 Options

- 4.1 Having given due consideration to the consultation responses, to recommend to Council the policy changes as detailed in the recommendations contained within Appendix A of this report. This would meet the requirement to give the standards due regard and would implement the recommendations of the DfT making our Policies less open to challenge.
- 4.2 To recommend to Council the policy changes as detailed in the recommendations contained within Appendix A of this report having made any amendments considered appropriate having given due consideration to the consultation responses. There would need to be compelling local reasons to implement any changes that fell below the standards set by the DfT or our Policies would be open to challenge.
- 4.3 Not recommend any changes to Policy following the eight week consultation on the requirements of "The Statutory Taxi and Private Hire Vehicle Standards". This is not recommended as an authority we are required to give the standards due regard and the DfT "expects these recommendations to be implemented unless there is a compelling local reason not to." As the standards have been set directly to address the safeguarding of the public we would be failing to meet this obligation.

5.0 Risks

- 5.1 If the council cannot demonstrate that it has given due regard to the DfT Statutory Taxi and Private Hire Vehicle Standards then it could find it difficult to successfully defend a legal challenge from any party feeling they have been aggrieved by the council's insufficient regard for this guidance

- 5.2 If the council cannot demonstrate that it has carried out consultation at a local level then it could find it difficult to successfully defend a legal challenge from any party feeling they have been aggrieved by the application of the policy amendments recommended in this report.
- 5.3 Failure to adhere to the standards without sufficient justification could be detrimental to the authority's successful defence of any legal challenge by any party feeling aggrieved by the council's reference to, or lack of reference to, the standards.
- 5.3 If the authority does not have robust policies and procedures in place then its ability to safeguard the public could be compromised with the corollary being there may be a risk to the safety of a member of the public and consequent reputational risk.

6.0 Implications/Consultations

Community Safety

See paragraph 5.3.

Data Protection

No changes are proposed to how data will be held or handled so no additional implications.

Equalities

Officers do not anticipate any equality concerns arising from the policy changes recommended in this report, however, in order for Council to determine the matter in light of equalities considerations, an Equalities Impact Assessment will be conducted prior to recommendation to Council.

Environmental Sustainability

None

Financial

None, as implementing any changes will be possible within existing budgets or fees can be adjusted to balance any shortfall.

Health and Safety

None

Human Resources

None

Human Rights

None

Legal

See section 5 for a discussion of risks relating to legal challenge

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix A – Recommendations for final policy changes

7.2 Appendix B – Consultation responses

7.3 Department for Transport, Statutory Taxi & Private Hire Vehicle Standards:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928583/statutory-taxi-and-private-hire-vehicle-standards-english.pdf

7.4 East Herts, Taxi Licensing Suitability Policy:

<https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2019-11/Taxi%20Licensing%20Suitability%20Policy.pdf>

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