

PART A

Report to: Licensing Committee
Date of meeting: 14 January 2020
Report of: Business Compliance Officer
Title: Report on the Department for Transport Taxi and Private Hire Standards

1.0 Summary

1.1 This report provides information on options available to align current policy and procedure with the requirements of the new Statutory Taxi and Private Hire Vehicle Standards

1.2 Where a change has been made to current policy, whether by way of addition or removal of a requirement, the relevant section of the new policy has been included in the body of this report along with reference to the relevant section of the Standards.

1.3 Members are asked to consider this report and options contained within and to decide on which of the options they wish to adopt or to suggest an alternative option.

2.0 Risks

2.1

Nature of Risk	Consequence	Suggested Control Measures	Response (Treat, tolerate,	Risk Rating (the combination of severity
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			terminate, transfer)	and likelihood)
Not implementing all new standards	Challenge to future decisions and risk that the council is seen to be doing all it can to safeguard passengers and drivers	Apply all options contained in the report	Treat	High
Implementing some standards	Risk of future issues where it may be necessary for the authority to explain the reasoning behind not implementing all of the recommended standards	Provide full reasoning for not implementing all standards offering alternatives where appropriate.	Treat	High
Legal challenge from incorrect decision	Negative perception of council and its licensing functions, and challenge through the Courts	Ensure that any proposed policy is subject to thorough public consultation and considered again by the committee before any proposed changes are adopted.	Treat	2

3.0

Recommendations

- 3.1 That the committee approve The draft Hackney Carriage and Private Hire Licensing Policy 2021 - 2026 as found at Appendix 2 for public consultation commencing 18th January 2021
- 3.2 That the committee note the relevant sections of the Standards contained in section 10 of this report. These sections of the Standards do not form part of the proposed policy but will be brought before the relevant committee for consideration in due course
- 3.3 That the committee note the contents of section 12 which are taken from the Department for Transport Standards and relate to the Environmental Health Compliance Policy that is due for review in 2021 and not for consideration at this stage.
- 3.4 For further information on this report please contact:
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Report approved by: Justine Hoy, Head of Community Protection

4.0 Introduction, Background and Principals

- 4.1 The Department for Transport Statutory Taxi and Private Hire Standards were published on 21 July 2020. A copy of the Standards is attached at Appendix 1. These have been colour coded by officers and the key to the coding is at section 7.1 of this report.
- 4.2 The publication of these standards has been awaited for some time and follows 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. It is felt that these issues are, in part, a result of the range of standards applied to licensing of drivers and vehicles across the country.
- 4.3 The Standards cover a wide range of issues, including driver, vehicle and operator standards. This report will not repeat the details of the information contained within the introduction to the Standards (particularly sections 1 and 3) which give good background on the reasons for the publication of the standards.
- 4.4 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. 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'.
- 4.5 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).*

(Sections highlighted in bold type are highlighted in the Standards, not by the author of this report).

It is suggested that this report forms the first of the considerations required.

4.6 At Section 1.3 the Standards say:

*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.***

4.7 However, the manner in which the standards are written suggests that the manner in which some can be complied with is variable. For example, section 9.3 which covers driver awareness of the regulatory regime.

4.8 Setting the standards remains the decision of the Council and where good reason can be found to retain current policy and procedure, it remains possible for the Council to depart from these new Standards if it wishes to do so.

5.0 **A review of current policy and procedure**

5.1 In accordance with the committee decision of 19 October 2020 a review of the following licensing procedures and policies was undertaken:

Driver Applications and conditions

Vehicle Applications and conditions

Private Hire Operator Applications and conditions

Guidelines on the Grant, Suspension and Revocation of Hackney Carriage and Private Hire Driver Licences and Operator Licences

The results of the review are outlined in section 7.0

5.2 The Environmental Health Compliance Policy which impacts not only on taxi licensing but on all Environmental Health regulatory decisions was not part of this review. The policy is due for review in 2021 and although there is, as part of this review, a need to review the

taxi licensing specific parts of the policy, they do not impact significantly on the work required to meet the new standards. To conduct a full review of this policy now was not feasible.

5.3 Any changes to the Environmental Health Compliance Policy will be brought before to the Licensing Committee in 2021 when the review takes place. Members may wish to note that the most significant part of this policy in respect of any changes that may be made covers the length of time for which driver licence may be suspended. This is currently limited to a maximum of 2 days.

6.0 **The Taxi and Private Hire Licensing Policy**

6.1 In accordance with section 3.1 of the Standards one of the most significant changes has been made through the creation of a single licensing policy for taxi and private hire services. This brings together the existing independent policies and introduces clear written guidance on driver applications. The proposed policy can be found at Appendix 2.

7.0 **Current differences between the proposed policy and existing policies or procedures**

7.1 In order to assist Members in tracking changes to existing policy a copy of the new Standards was created with colour coding. This colour coded document was presented to the Committee in October. It has now been updated and is attached again at Appendix 1. The table shows the status of current policies or procedures of the Council in comparison to the new proposed policy as follows:

Green	No change has been made to existing policies as we already comply, offer advice as suggested by the Standards and/or current standards are considered better for local requirements than those proposed.
Yellow	Small amendments have been made to bring existing policy in line with the standards
Red	Requirements have been added to the policy to bring policy in line with the standards.
Purple	Requirement does not form part of the policy for applicants.
White	Is not a suggestion of policy within the Standards or is not considered a suitable addition to policy at this time.
Blue	For consideration as part of review of EH Compliance Policy

7.2 The Standards are intended as a minimum standard. Councils are free to apply higher standards where they see fit to do so. Therefore, in areas where the current policy or procedure is equal to or of a higher standard than those proposed in the new Standards, the requirements are not discussed in detail in this report but they are still subject to review. If members have questions about these areas, or suggestions for changes to the areas, the officer presenting the report will be able to answer these questions and take these suggestions. As all parts of the policy are based upon ensuring the safest service and in encouraging the most sustainable and accessible service, there were no suggestions that officers could make to remove existing requirements. Members will be aware that the vehicle licensing policy was introduced in December 2019, the Operator Conditions in 2017 and the 'Guidelines' in 2016.

7.3 A small number of sections in the Standards do not relate to policies for applicants and these are detailed at the end of the report.

8.0 **Yellow Areas – amendments to existing policy**

8.1 Yellow areas are those where some changes are necessary in order to bring policies or procedures which already exist fully in line with the new Standards. The following changes have been introduced to bring these sections in line. Changes are listed with relevant section of the Standards, the old policy that is amended by the change, and an explanation of the differences.

8.2

Change	Section(s) of Standards	The policy that is amended by the change	Difference
A requirement that all licences are subject to review where new standards are introduced	3.14	Driver Applications	This is something currently already done but it is not explicitly stated. Each case is on its merit and all applications are treated in this way. The change is therefore now written in the policy.
<i>Licence holders are 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.</i>	4.12	‘Guidelines on the Grant of Licences, etc’ Conditions attached to the grant of a private hire drivers licence	The current policy requires convictions to be notified within 28 days. There is a discrepancy between the current private hire driver licence condition which requires only ‘convictions’ to be notified and the wording of section 4.4 of the existing ‘Guidelines’ which lists the broader definition to include arrests, charges etc. This is rectified in the proposed policy at section 18.4.4 and the new proposed Private Hire driver licence conditions at condition 13.
Applicants who have been abroad for more than 3 months must provide a ‘certificate of good conduct’	4.34, 8.6	‘Guidelines on the Grant of Licences, etc’	This is currently set at 6 months.
In the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list.	6.3	‘Guidelines on the Grant of Licences, etc’	This is current policy under the ‘fit and proper’ consideration but not something that is explicitly stated. It is now listed.
A licensing authority’s test of a driver’s proficiency should cover both oral and written	6.15	Driver Applications	As part of our Driver Training Day candidates are expected to attend and to understand a detailed training session

<p>English language skills to achieve the objectives stated above.</p>			<p>covering a range of topics. New applicants are subject to a written test but existing drivers are not.</p> <p>This requirement is now listed as part of the driver application procedure.</p> <p>Existing drivers to be subject to a written test following attendance at refresher training.</p>
<p>Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.</p>	8.2	Private Hire Operator Licence Application and conditions	<p>We currently require a check on application (including where an applicant is a company, for all directors) but we do not do this annually. This has now been added to the proposed PHO licence conditions</p>
<p>Minimum record keeping requirements for Private Hire Operators:</p> <ul style="list-style-type: none"> • <i>the name of the passenger;</i> • <i>the time of the request;</i> • <i>the pick-up point;</i> • <i>the destination;</i> • <i>the name of the driver;</i> • <i>the driver's licence number;</i> • <i>the vehicle registration number of the vehicle;</i> • <i>the name of any individual that responded to the booking request;</i> 	8.13	Private Hire Operator Licence Conditions	<p>The list of records to be kept is currently:</p> <ul style="list-style-type: none"> (a) Place at which vehicle is to attend; (b) Date and time at which vehicle is to attend; (c) Destination; (d) Plate and registration numbers of vehicle; (e) Name of driver of vehicle.

• <i>the name of any individual that dispatched the vehicle.</i>			

9.0 Red Areas – New additions to policy

9.1

Red areas are those where additions are made to the proposed policy. The following changes have been introduced to bring these sections in line. Changes are listed with relevant section of the Standards, the existing policy that is amended by the change, and a brief explanation of the requirement or impact of the change where necessary or relevant.

New Requirement	Section(s) of Standards	The policy that is amended by the change	Impact (where necessary)
The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing.	3.1	New	This should lead to a significant improvement in accessibility and understanding for applicants.
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.	4.14, 4.15, 4.16	'Guidelines on the Grant of Licences, etc'	We would currently notify relevant authorities but do not specify the DBS. Reporting will lead to improvement to public safety
To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on	4.19	'Guidelines on the Grant of Licences, etc'	We would currently notify relevant authorities but do not specify the police. Reporting will lead to improvement to public safety

public safety grounds should also be advised to the police.			
All licensed drivers should also be required to evidence continuous registration with the DBS update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.	6.2	Driver Applications	WBC require DBS checks to an enhanced standard. However, we do not currently require drivers to subscribe to the update service. This addition will increase safety and reduce the burden on drivers when re-licensing.
Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually for those holding or applying for a vehicle licence	7.2	Vehicle Licensing Conditions	Section 16.6.2 of the Policy had been added to introduce this check. It does not apply to those who are licensed as drivers or operators who have already been checked.
Applicants who have been abroad for more than 3 months must provide a 'certificate of good conduct'	7.6	Vehicle Licensing Conditions	This is the same updated requirement (reduced from 6 months to 3 months) as placed upon drivers and operators by virtue of section 18.19 - Fit and Proper – Guidelines on the Grant, Suspension and Revocation of Licences
Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.	8.8, 8.10	Private Hire Operator Licence Conditions	Currently no requirement to provide the details of staff working in the office.
Operators must evidence that they have	8.11	Private Hire Operator	Currently no requirement

conducted sufficient checks of any other companies to which they sub-contract bookings to make sure systems are in place to protect customers, particularly children and vulnerable adults		Licence Conditions	
Operators must supply any policy on the employment of ex-offenders	8.12	Private Hire Operator Licence Conditions	Currently no requirement
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 should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.	8.16, 8.17	Private Hire Operator Licence Conditions	This is not an issue that has arisen in Watford.

10.0 Purple section - Sections of the Standards not directly relevant to policies concerning applicants

10.1 There are, in addition to changes to licensing policies affecting drivers, vehicle owners and operators, a number of suggestions in the new Standards that impact upon the working of the council. These primarily focus on training of officers and members and the structure and role of the Licensing Committee.

These do not form part of the policies as they are not directly relevant to applicants but they are issues that require consideration by the committee. They are as follows (with the wording, and bold highlight, taken directly from the relevant section of the Standards):

10.2

Requirement	Section(s) of Standards	The change to current procedure or process	Impact (where necessary)
<p>Training decision makers.</p> <p><i>All individuals that determine whether a licence is issued should be required to undertake sufficient training</i></p>	<p>5.3</p>	<p>Some training is already delivered but some training topics will be new.</p>	<p>A requirement for all officers and members to undergo, <i>as a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions.</i></p>
<p>The regulatory structure</p> <p>It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board.</p>	<p>5.6</p>	<p>This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.</p>	<p>WBC currently operate with most decisions, including potentially contentious matters, delegated to an officer level. The system is robust and has been tested on a number of occasions to ensure separation in decision making. However, it is not in line with this proposal.</p>
<p>Joint authorisation of enforcement officers</p>	<p>9.2</p>	<p><i>An agreement between licensing authorities to</i></p>	<p>Increase in enforcement capability but also the level of enforcement work.</p>

<i>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.</i>		<i>jointly authorise officers is required</i>	Majority of 'out of town' enforcement issues, particularly due to nuisance parking, are likely to arise from vehicles licensed by TfL which operates under a different regulatory regime. How easy it would be to agree a joint protocol needs to be investigated.
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11.0 White section - Not recommended for adoption at this time

11.1 For the reasons given in the table below, these parts of the standards are not recommended for adoption at this time.

11.2 Requirement	Section(s) of Standards	The change to current procedure or process if adopted	Impact (where necessary)
Criminal convictions and rehabilitation policy	5.16 and 5.17	<p>A variation on the 'Guidelines' policy already in place and included as section 18 in the new Policy.</p> <p>The full suitability policy suggested by the Standards is contained in Appendix 1 should Members wish to discuss the differences or choose to apply the policy in place of the</p>	WBC Guidelines are robust and well tested, including in court. Some of the time periods given in WBC Guidelines are not the same as those in the Annex to the Standards and are lower. Some changes have been made to the 'Guidelines' to reflect these differences as detailed in the table in section 8 but the policy has not been adopted wholesale.

		current guidelines.	
Private Hire Record keeping	8.15	The creation of a condition that Private Hire Operators comply with GDPR and DPA 2018	<p>This is correct but it is not clear the extent to which the Standards suggest it is the duty of the local authority to regulate this. The correct organisation would be the Office of the Information Commissioner (ICO). Information concerning data protection and the duties on licence holders is anyway included in the policy to assist businesses in operating lawfully.</p> <p>It is a general rule that conditions should not, if possible, replicate existing legislation and this is the approach taken by the Policy and other WBC licensing policies.</p>
Setting expectations and monitoring Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points- based system, which allows minor breaches to be recorded and considered in context while referring those	9.3	Creation of a new penalty points system	<p>WBC operated a points-based system for a number of years. This was replaced with the current system of case reviews which, in the opinion of officers, is a more robust, fair and effective system.</p> <p>Should the Committee feel that the re-introduction of a points system is worth exploring it is recommended that this forms part of the review of the Environmental Health Compliance Policy.</p>

with persistent or serious breaches to the licensing committee.			
In-vehicle visual and audio recording – CCTV		The Standards give substantial information on the consideration of mandating CCTV. This matter was consulted upon and discussed at length when the Vehicle Licensing Policy 2019-2024 was implemented.	Members may wish to re-visit the current requirements which can be found at section 16.13.9 of appendix 2. CCTV is not compulsory for vehicles licensed by Watford Borough Council. Significant guidance on the use of CCTV is provided.

Blue section - For consideration on review of EH Compliance Policy

12.0

The Environmental Health Compliance Policy is the comprehensive departmental policy

12.1

on compliance and enforcement. It is right that hackney carriage and private hire services are subject to the same compliance regime as all other regulated businesses. It is accepted that due to the nature of the licensing regime, there may be specific measures applicable to these services but the general principals of regulation and compliance are the same.

The following suggestions in the Standards are relevant to the EH Compliance Policy and should be considered on review of that policy.

Requirement	Section(s) of Standards	The change to current procedure or process if adopted	Impact (where necessary)
Suspension and revocation of driver licences	9.10	A change to the current limit of 2 days maximum for	The ability to apply longer suspensions would allow the Authority greater flexibility in dealing with driver, vehicle and operator issues where

		the suspension of any licence.	<p>revocation is not the best course of action.</p> <p>The current limit of 2 days means that the Authority may decide to revoke a licence due to the severity of an issue where otherwise a suspension may have been an option.</p> <p>A change to this limit could therefore be beneficial to licence holders in some circumstances.</p>
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13 Implications

13.1 Financial

13.1.1 The Shared Director of Finance comments that there are no financial implications identified in this report.

13.2 Legal Issues (Monitoring Officer)

13.2.1 The Group Head of Democracy and Governance comments that any comments on the revised policy following consultation will need to be considered by the committee before the final policy is approved.

13.3 Equality Impact Assessment

13.3.1 An impact assessment on the consultation of the proposed policy has been undertaken and can be found at appendix 3

Appendices

Appendix 1, Colour Coded Department for Transport Statutory Taxi and Private Hire Vehicle Standards

Appendix 2 Taxi and Private Hire Licensing Policy 2021-2026 (draft)

Appendix 3 – Equality Impact Assessment for consultation

Background Papers

Guidelines on the Grant, Suspension and Revocations of Hackney Carriage and Private Hire Driver Licences and Operator Licences, 2016 - 2021

Private Hire Operator Conditions (2017)

Vehicle Licensing Policy 2019 – 2024