

Taxi and Private Hire Licensing – Review of Policy and Licence Conditions

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

That the Head of Legal and Democratic Services in consultation with the Licensing Manager be authorised to commence a consultation process as set out in paragraph 4.1.

SUMMARY:

- The Department for Transport has published ‘Statutory Taxi and Private Hire Standards’ which must be considered by all Licensing Authorities.
- It is recommended that the Council consult on matters to be included in a new Policy document (a) as a result of the Department for Transport Statutory Standards and (b) resulting from a review of the licensing functions policies and procedures generally. Authority is sought to commence that consultation.

1 Introduction

- 1.1 Legislation enables local authorities to administer licences for hackney carriages (taxis) and their drivers and private hire vehicles (minicabs), their drivers and operators. The taxi and private hire licensing function is delivered by the Licensing and Local Land Charges Team within the Legal and Democratic Service.
- 1.2 The Department for Transport (DfT) published the Statutory Taxi and Private Hire Standards (“the Standards”) on 21st July 2020 which include recommendations on exercising the taxi and private hire licensing function to protect, in particular, children and vulnerable adults in addition to all users of the trade. A copy of the Standards is annexed to this report.
- 1.3 The Standards are designed to strengthen and improve local authorities’ existing policies and practices. The Standards require that recommendations are implemented by each Licensing Authority *unless there is a compelling reason not to do so*. The Standards require all authorities to publish their consideration of the recommendations detailed in the Standards. This will require amendment to the Council’s existing policies. Whilst the DfT Standards constitute statutory guidance, it is nonetheless proposed to consult on the issues raised by the Standards Document both to gauge driver, operator and stakeholder views and as an informative as to the Standards and their requirements. This report therefore seeks authority to commence appropriate consultation.

- 1.4 Simultaneously, the licensing service is taking the opportunity to review its taxi and private hire policies and procedures overall in delivery of the licensing function. It is hoped and intended that amendments to the existing Taxi and Private Hire policies as a result of the DfT Standards and the general review (which overlap to a large degree but by no means entirely) can be captured in the same consultation and policy amendment thereby maximising the benefit and efficiency of the consultation.
- 1.5 The majority of the current taxi and private hire policy matters are contained within the Council's Hackney Carriage and Private Hire Vehicle Licensing Guidelines. This document was first adopted in 2007 and has been periodically revised since then. The DfT Standards propose that licensing authorities should bring together all their procedures on taxi and private hire licensing in a cohesive policy document. A policy should 'set out the council's stall' in respect of the administration of its licensing function and ensure that applicants wishing to enter the taxi and private hire trade, existing licence holders and the general public are made fully aware of the council's expectations, approach and commitment to a safe, fair and equitable licensing service that covers its costs (where applicable).
- 1.6 A policy should set out clear objectives in what it aims to promote and provide very clear expectations of proposed applicants before making applications and their conduct and behaviour once granted a licence. It should include an expectation in respect of the standard of the licensed fleet at all times. There should also be an expectation that new applicants have read and understood the policy before making any applications for a licence.
- 1.7 It is intended that the consultation response will inform a revised single 'Policy' document. A robust and reasonable policy should be more difficult to challenge when used to support decisions about applicants and licence holders on matters related to grants, refusals, suspensions, revocations, appeals and prosecutions.
- 1.8 Conditions of licence apply to the use of a licence once granted and set out how a licence holder may operate whilst using a licence. They ensure that the policy of the Council and the relevant legislation is complied with by the licence holder. All licence conditions should be SMART i.e. Specific, Measureable, Attainable, Relevant and Time based to enable effective compliance by the licence holder and enforcement by the Council.

2 Background

- 2.1 Hackney carriages and private hire vehicles form a vital part of the public transport network within the Borough by providing transport for the public who may not have any safe alternative means of transport available to them. While there is no statutory requirement on the Council to have a taxi policy, it is common practice to do so. It is also advantageous to do so for the reasons set out above.

- 2.2 The Council currently licenses 44 hackney carriages, 112 private hire operators, approximately 200 private hire vehicles and approximately 300 drivers. The current licensing procedures, policy and conditions have been in place and reviewed incrementally over 15 years but do not necessarily take full account of the increased level of demand from those wishing to become licensed and also those wishing to make use of taxi services, hence the on-going review.
- 2.3 Whilst Test Valley has not seen some of the significant issues experienced by other local authorities – such as safeguarding concerns like those in Rotherham or the introduction of operators using ride-hailing apps like Uber – it is important that the Council continues to comply with its statutory duties and is able to maintain a safe, accessible and well managed taxi and private hire service in Test Valley.
- 2.4 Section 177 of the Policing and Crime Act 2017 enables the Secretary of State for Transport to issue Statutory Guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals from harm when using these services. Under this legislation the DfT issued the Statutory Guidance document – the Standards – which 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, in parts ineffective and inconsistent arrangements nationally 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.
- 2.5 Licensing Authorities “must have regard” to the Standards when exercising their functions with the functions including 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.”
- 2.6 Members will note that some of the recommendations in the DfT Statutory Standards are already accommodated within existing policy and that certain others have been introduced over recent times for example the introduction of mandatory driver safeguarding training and updating the Council’s criminal convictions policy.
- 2.7 As set out above, the taxi and private hire licensing service is also undergoing a general review of its policies, procedures and conditions. This report seeks delegation to the Head of Legal Services in consultation with the Licensing Manager to include such items in the proposed consultation as properly require consultation prior to inclusion in a revised draft policy. This will include items such as (but is not limited to) gathering opinion on conditioning public liability insurance, reviewing current policy/licensing conditions relating to vehicle specification and including the date and time of any subcontracting in the records to be kept by a licenced operator.

3 Corporate Objectives and Priorities

- 3.1 Hackney carriage and private hire licensing falls within the broader remit of public safety which in itself cuts across the Council's corporate priorities with particular reference to growing the potential of our Communities and People. In deciding whether a driver, vehicle or operator should be issued with and then retain a licence, the overriding consideration will be the protection of the public. The Council's role in safeguarding and protecting the travelling public cannot be understated and strong measures to improve standards in the trade should be built upon and not diluted.

4 Consultations/Communications

- 4.1 There has not yet been any consultation on this matter. It is recommended that an eight week consultation be undertaken, which will be open to the taxi trade, the consultees specified in the DfT Standards and the wider public, seeking views where appropriate on the specific matters contained in the DfT Statutory Standards along with such other issues as the authorised officers consider require consultation in respect of the wider functioning of the service. This Committee will then receive a further report on the findings of the consultation with a view to those findings determining the formulation of a new Policy and Licence Conditions.

5 Options and Option Appraisal

- 5.1 The adoption of a Policy and Licence Conditions are matters entirely at the Council's discretion. In theory it could decide to continue with the current policy and conditions but as already mentioned these are in need of significant revision. The Council could adopt a revised Policy and Licence Conditions without any form of consultation but, this is not recommended best practice and could potentially result in an aggrieved applicant or member of the taxi trade challenging aspects of the Policy or Licence Conditions.
- 5.2 In some areas the Council has a choice as to its future policy e.g., in terms of the existing restriction on the number of hackney carriage licences the review recommends either undertaking an unmet demand survey or removing the restriction. This particular matter has already been considered by the Committee at the meeting held on 19 November 2020 where it was decided to undertake a consultation exercise to help formulate future policy. Unfortunately the survey has not taken place as a result of Covid and it is suggested that rather than conduct the survey in isolation it now be included in a wider public consultation on all of the matters identified by the review and the Standards recommendations.
- 5.3 The options available to Committee are therefore:
- 5.4 **Option 1**

To adopt the recommendation that Officers be delegated authority to commence consultation as a precursor to a revision to existing licensing policies and conditions. This is the recommended option.

5.5 **Option 2**

To reject the recommendation in its entirety.

5.6 **Option 3**

To resolve to take some other course of action.

The DfT Statutory Standards require licencing authorities to implement its recommendations unless there is compelling local reason not to. Therefore simply rejecting the recommendation would put the Council in a position where it was non-compliant with statutory guidance. Option 2 is therefore not recommended. Option 1 will enable comprehensive consultation to be carried out which can then inform a revised draft Policy and Conditions documents. It would be open to Committee to make some other provision as to how to proceed (Option 2), however full consultation followed by consideration of draft policy informed by consultation would be the most thorough and robust way to proceed. Option 1 is therefore the recommended option.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of the recommendation. The consultation exercise can be undertaken from within existing budgets although it should be noted this will place an additional demand upon an already busy staff team and will also require assistance from others in the Council e.g. the Policy Team of the Strategy and Innovation Service. Any additional resource implications will be identified as amended policy emerges.

7 Legal Implications

- 7.1 There are specific powers contained in legislation, most notably the Local Government (Miscellaneous Provisions) Act 1976, which allow the Council to specify the requirements that vehicles, operators and drivers must meet in order to be licensed, and to refuse a licence to drivers and operators if the Council is not satisfied that the drivers are fit and proper persons to hold a licence; in the case of vehicles the Council can refuse a licence if they consider the vehicle is not safe and suitable.
- 7.2 Whilst couched as “Standards”, the DfT Statutory Taxi & Private Hire Vehicle Standards is in fact statutory guidance, to which local authorities must have regard.
- 7.3 The Council can and should make its own decisions as to the content of its policy 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.

8 Equality Issues

- 8.1 There are no equality and diversity implications in undertaking the consultation.

- 8.2 The Department of Transport carried out an Impact Assessment which included Equalities Impact consideration prior to introducing the Standards. That assessment included the following:

“130.0 The Jay and Casey reports demonstrate that not all councils apply the same high standards when undertaking their taxi and private hire vehicle licensing functions. To address this the Police and Crime Act 2027 enabled the Secretary of State for Transport to issue statutory standards to local authorities.

131. Whilst we are aware that the statutory standards may impact disproportionately a higher level of ethnic minorities in some areas due to the makeup of the taxi and private hire trade, any possible negative impacts on minority licensees must be weighed up proportionately against the legitimate aim of protecting children and vulnerable adults from harm through the use of licensing authorities’ powers.

132. It is expected that the standards will be applied equitably but this is the responsibility of local authorities and could be subject to challenge. We expect that both drivers and passengers will benefit from a safer environment in which to travel. We also expect that the policy will increase user confidence and may facilitate higher passenger demand from more vulnerable groups such as older or disabled people.

- 8.3 Overall, the production of a new Policy and Licence conditions is expected to produce a positive impact (and certainly not a negative impact) for those with protected characteristics. An Equality Impact Assessment will be carried out when considering changes to existing policy as a result of the proposed consultation.

9 Other Issues

- 9.1 Community Safety – the primary purpose and overriding objective of the hackney carriage and private hire licensing regime is to protect public safety.
- 9.2 Environmental Health Issues – no implications identified.
- 9.3 Sustainability and Addressing a Changing Climate – no implications identified.
- 9.4 Property Issues – no implications identified.
- 9.5 Wards/Communities Affected – none specific but potentially the whole Borough.

10 Conclusion

- 10.1 There is no statutory requirement to have a taxi and private hire licensing policy; however, it is good practice to do so. A policy assists with consistent decision-making and sends a clear message to potential applicants (and those already licensed) as to the standards the Council expects persons to meet.
- 10.2 As a result of the Department for Transport Statutory Taxi and Private Hire Vehicle Standards and an on-going review of the Taxi and Private Hire Function generally, it proves necessary to amend the Council’s existing policies and licence conditions.

10.3 Prior to producing a revised policy/ condition document for consideration it is proposed to consult with members of the trade, stakeholders and other affected parties.

10.4 Authority is sought to undertake that consultation.

Background Papers (Local Government Act 1972 Section 100D)

1 Hackney Carriage and Private Hire Vehicle Licensing Guidelines

<https://www.testvalley.gov.uk/business/licensingandregulation/licensing/taxi-licensing>

2 Hackney Carriage and Private Hire Licensing Conditions

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	1		
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