

11 November 2020

Report of	Licensing, Food & Safety Manager	Author	Jon Ruder ☎ 282840
Title	Statutory Taxi & Private Hire Vehicle Standards		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 This report examines the implications for the Council's Hackney Carriage and Private Hire Licensing Policy of the Statutory Taxi & Private Hire Vehicle Standards issued by the Department of Transport in July 2020.

2. Recommended Decision

- 2.1 That the actions identified in Section 7 of this report be further investigated and a report brought to the next meeting of the Committee setting out any changes necessary to the Policy and a timetable for their introduction.

3. Reasons for the Decision

- 3.1 The Statutory Taxi & Private Hire Vehicle Standards is statutory guidance and sets out the core minimum standards that are required to regulate better the hackney carriage and private hire sector. The Department of Transport therefore expects the recommendations within the document to be implemented unless there is a compelling reason not to do so.

4. Alternative Options

- 4.1 Failure to adopt the standards will mean the Council is not compliant with the minimum standards set by the Department of Transport and a compelling case for this position will need to be made.

5. Background Information

- 5.1 The Department of Trade issued the Statutory Taxi & Private Hire Vehicle Standards in July 2020 with the intention of establishing minimum standards to better regulate the trade. Whilst the focus is on the protection of children and vulnerable adults, it is believed that all passengers will benefit from the recommendations contained within the document.
- 5.2 The Government have taken this action because there is evidence to support the view that taxis and private hire vehicles are a high risk environment; this can be seen in the 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 licensed drivers.
- 5.3 The full document is attached at Appendix 1 for the attention of the Committee. It sets out a framework of policies to which the Council must have regard, under section 177(4) of the Policing and Crime Act 2017.
- 5.4 In the interests of transparency the Council is required to publish its consideration of the measures contained within the Statutory Taxi & Private Hire Vehicle Standards (Statutory Standards), and the policies and delivery plans that stem from these.

6. Situation in Colchester

- 6.1 The Council has already implemented a number of the recommended provisions in its Hackney Carriage and Private Hire Licensing Policy (the Policy). This policy came into force in January 2019.
- 6.2 This report sets out the recommendations made, or in some cases the recommended stance the Council should take, in the Statutory Standards document; the Council's current position; and where appropriate identifies any further work or changes that need to be made to the Council's Policy.

7. Proposed changes

Administering the Licensing Regime

7.1 Licensing policies

Recommendation – the Council makes publicly available a cohesive policy document that brings together all its procedures on taxi and private hire licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards. This Policy should be reviewed every five years with interim reviews being carried out should there be significant issues arising in the area; performance should be reviewed annually.

Council position – The Council's Policy meets all the requirements set out in the Statutory Standards.

Action to be taken – to submit a report annually to the Licensing Committee setting out action taken over the course of the year in relation to the Policy. It is suggested that this annual report be aligned with the Municipal Year.

7.2 Duration of licences

Recommendation - the Council engages with the Police to ensure the use of the Common Law Disclosure Powers where the Police believes a licence holder presents a risk to the travelling public.

Council position – The use of the Common Law Disclosure process is well established in Colchester.

Recommendation – Short term licences should only be used when the Council thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where the licence is only required to meet a short term demand. Probationary licences should not be issued.

Council position – Probationary Licences are currently included in the Council's Policy but have not been used since the new Policy came into effect in January 2019. The Policy does not currently allow the issue of licences for less than the current standard lengths of 3 years for driver and 5 years for operators.

Action to be taken - This provision for provisional licences should be removed from the Policy and replaced by the ability to grant licences for less than three years where it is appropriate to do so having regard to the merits of the case.

7.3 Whistleblowing

Recommendation – that the Council should ensure that has an effective whistle blowing policy and that all staff are aware of it.

Council position – there is a Council wide whistle blowing policy in place which is available for all staff to access on the Council's intranet.

7.4 Consultation at the local level

Recommendation – that the Council should engage with the trade and its potential customers – i.e. user groups representing the disabled, women's groups, business interests etc. when considering making changes to alter the licensing regime.

Council position – the Council already consults widely when making changes to the Policy and will continue to do so bearing in mind the requirements set out.

Recommendation – that the Council should engage with neighbouring areas to identify any concerns and issues that might arise from a proposed change.

Council position – the Council is part of the Joint Licensing Officer Forum for Essex, and the Licensing Manager is currently the Chairman of this group. This provides a forum to discuss any changes and potential implications.

7.5 Changing licensing policy and requirements

Recommendation – 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 all those already licensed. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.

Council position – the Council takes a pragmatic approach to such changes usually rolling out changes which effect existing licence holders over a period of time and consulting with licence holders on any major policy change; these practices will continue.

Action to be taken – where a subjective change is made to the Policy, e.g. amending the convictions policy, the Council will consider whether changes should be made retrospectively having regard to the merits of each case.

Gathering and Sharing Information

7.6 Disclosure and Barring Service (DBS)

Recommendation - The Council must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not be disclosed on a DBS certificate. Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual's consent, allows nominees to check the status of the certificate online at any time. The DBS will search regularly to see if any relevant new information has been received since the certificate was issued; conviction information will be sort on a weekly basis, non-conviction information will be sought every nine months. The Council would be able to request large numbers of status checks on a daily basis.

Council position – the Council currently uses a third party to carry out the DBS checks on its behalf.

Action to be taken – further investigation of the DBS update service is necessary before any recommendation can be made on this matter.

7.7 Common Law Police Disclosure

Recommendation – the Council should maintain a close relationship with the Police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.

Council position – The use of the Common Law Disclosure process is well established in Colchester.

7.8 Licensee Self Reporting

Recommendation – that licence holders should be required to notify the Council within 48 hours of an arrest and release, charge and conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope should result in a review by the Council as to whether the licence holder is fit to continue to hold a licence. The Council should consider what, if any action, in terms of the licence should be taken based on the balance of probabilities.

A failure of a licence holder to disclose and arrest might be seen as behaviour that questions the honesty and therefore the suitability of the licence holder regardless of the outcome of the initial investigation

Council position – The Council's Policy already requires notification within 7 days and appropriate measures are in place to deal with this information. The Council's penalty point system gives penalty points, in addition to conviction points given for the offence,

for failure to notify the Council to encourage licence holders to report; penalty points are not applied where the Council is notified.

Action to be taken – the Policy requires amendment to reflect the requirement to disclose matters within 48 hours.

7.9 Referrals to the Disclosure and Barring Service and the Police

Recommendation – 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.

Council position – the Council does not currently have a process in place to do this.

Action to be taken – to put in place a process to ensure referrals to the DBS are made where necessary.

7.10 Working with the Police

Recommendation – Action taken by the Council as a result of information received should be fed back to the Police.

Council position – the Council has a good working relationship with the Police which has been strengthened in recent years with joint working in some areas. This working relationship assists with the flow of information.

7.11 Sharing licensing Information with other licensing authorities

Recommendation – Applicants and license holders should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be obliged to disclose if they have had an application refused or a licence revoked or suspended by any other licensing authority

Council position – this information is requested as part of the Council's application process.

Recommendation – Tools such as the NR3 should be used to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.

Council position – the Council is proposing to use this service and further work is required to facilitate the upload of data.

7.12 Multi Agency Safeguarding Hub (MASH)

Recommendation – The Council should operate or establish a means to facilitate the objectives of MASH - the sharing of necessary and relevant information between stakeholders

Council position – a member of the Licensing Team is one of the Council's safeguarding officers and is therefore able to make referrals to the appropriate bodies where necessary.

7.13 Complaints against licensees

Recommendation – the Council should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.

Council position – All complaints are recorded on the Council's record management system enabling a comprehensive picture of the licence holder to be developed and retained throughout the life of the licence. The Council has a variety of options available to it and a stepped enforcement approach through the penalty point system.

Recommendation – The Council should produce guidance for passengers on making complaints directly to the Council that should be available on the website. Ways to make a complaint to the Council should be displayed in all licensed vehicles. The Council must ensure that drivers are aware of the requirement to display information on how to complain and take appropriate sanctions against those who do not comply with this requirement.

Council position – The Council has a complaint form on its website enabling the public to raise these concerns directly with the Council.

Action to be taken – to put together guidance on making a complaint which can be placed on the website and displayed in licensed vehicles. This information would include details of the Council's dedicated safeguarding complaint telephone line and email address.

7.14 Overseas convictions

Recommendation – the Council should seek or require applicants to provide where possible criminal records information or a Certificate of Good Character from overseas to properly assess risk and support the decision-making process.

Council position – the Council used to require a certificate of good character but because it was found that these were difficult to obtain the requirement was removed in favour of the requirement for a criminal record check or equivalent documentation from the county involved.

Action to be taken – to reinstate the requirement for a Certificate of Good Character alongside the Council's existing requirements.

Decision Making

7.15 Administration of the licensing framework

Recommendation – there should be a clear Scheme of Delegation for discharge of the Council's functions.

Council position – a Scheme of Delegation from the Council to the Licensing Committee and from the Committee to officers is in place.

7.16 Training decision makers

Recommendation – All individuals that determine whether a licence is issued should be required to undertake sufficient training.

Council position – The Council has a member training programme to meet the needs of both experienced members of the Licensing Committee and members new to it. The training offered makes use of case study material and provides an opportunity to discuss real cases in which the Council has been involved.

7.17 The Regulatory Structure

Recommendation – that the Council operates with a Regulatory Committee to determine licensing matters and that individual cases are determined by a panel of elected, and suitably trained Councillors drawn from this larger committee. To facilitate the effective discharge of functions, less contentious matters can be delegated to appropriately authorised Council Officers via a transparent Scheme of Delegation. The Council should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence.

Council position – the Council has the appropriate regulatory structure in place. The Scheme of Delegation is kept under review to ensure it remains fit for purpose and meets the demands of the Service.

7.18 Fit and Proper Test

Recommendation – in determining whether an individual is fit and proper use the following question “without prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their conditions, to travel alone in a vehicle driven by this person at any time of day or night”. Decisions should be made on the balance of probability and can take into consideration conduct that has not resulted in a criminal conviction

Council Position – the Council sets out the tests it applies to determine fit and proper, including this test, in its Policy. Decisions are made on the balance of probability and taking into consideration, where appropriate, other matters.

7.19 Criminal Convictions and rehabilitation

Recommendation – Each case must be considered on its own merits but the Council should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable group, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, the Council should have a clear policy for the consideration of criminal records. The Council must ensure that applicants have fair and impartial consideration of their application.

Council Position – The Council's Convictions Policy sets out the stance to be taken in relation to criminal convictions and rehabilitation and the implications for the granting of a licence.

Driver Licensing

7.20 Criminality checks for drivers

Recommendation – In the interests of public safety, the Council should not, as part of its policy, issue a licence to any individual that appears on either the children or adult barred list in addition.

Council Position – the Council conducts these checks by way of a third party.

Action to be taken – the process will be amended to require updates every six months. Further investigation is necessary in relation to checking the barred lists.

7.21 Safeguarding awareness

Recommendation – the Council should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training.

Council position – the Council provided safeguarding training for all its drivers in 2019 and is moving to an online training course for all new drivers which must be completed before they are able to obtain their licence.

Action to be taken – to finalise arrangements for the online safeguarding training.

7.22 County Lines exploitation

Recommendation – Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation.

Council position – the training provided by the Council and the training going forward will provide guidance on the identification of county lines exploitation.

7.23 Language Proficiency

Recommendation – the Council's test of a driver's language proficiency should test both oral and written skills to ensure a driver's ability to understand both written documents relating to the protection of children and vulnerable adults and their ability to communicate with passengers to identify possible signs of exploitation.

Council position – the Council's current English test covers both written and oral assessment.

Vehicle Licensing

7.24 Criminality checks for vehicle proprietors

Recommendation – the Council should require a basic disclosure from the DBS for vehicle proprietors and ensure that this check is undertaken annually. Where this is not possible because the applicant/licence holder has been resident overseas for a period the Council should carry out other checks in line with process for drivers set out above.

Council position – the requirement to carry out a basic DBS is included in the Policy but other elements of the recommendation are not included.

Action to be taken – – the Policy requires amendment to bring it fully into line with the requirements of the Statutory Standards.

7.25 In-vehicle visual and audio recording – CCTV

Recommendation – the Council 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.

Council position – the Council has stated its commitment to CCTV in the Policy and it has been the subject of two consultations with the trade.

Action to be taken - The outcome of the most recent consultation is to be reported to the Committee in due course following further investigation work.

7.26 Stretched limousines

Recommendation – the Council should include within its policy the ability to licence stretched limousines (where they carry less than nine passengers) to ensure that such vehicles are brought within the scope of the private hire licensing regime and the safety benefits that this provides. This should include the ability to licence those vehicles which have space for more than eight passengers where the number of passenger seats is hard to determine. In these cases, the Council should consider the matter on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers.

Council position – the Policy includes the ability to licence stretched limousines including those capable of carrying more than 8 passengers; the relevant safeguards regarding numbers are in place.

Private hire vehicle operator licensing

7.28 Criminality checks for private hire operators

Recommended – that the Council should request a basic disclosure from the DBS and that the check is undertaken annually. A private hire operator licence may be applied for by a company or partnership; the Council should therefore apply the fit and proper test to each of the directors or partners in that company or partnership. Private hire operators should therefore be required to advise the Council of any change in its directors or partners. Where it is not possible to obtain a DBS because the applicant/licence holder has been resident overseas for a period, the Council should carry out other checks in line with process for drivers set out above.

Council position – the requirement to carry out a basic DBS is included in the Policy.

Action to be taken – the Policy needs to be amended to reflect the need for an annual check and to put in place arrangements where a DBS is not possible. The Policy also needs to be updated to reflect the fit and proper test for all directors/partners.

7.29 Booking and dispatch staff

Recommendation – the Council should as a condition of granting an operator licence require that a register of all staff that will take bookings or dispatch vehicles is kept. Operators should be required to evidence that they have had sight of a basic DBS check on all individuals listed on their register of booking and dispatch staff, carry out such checks on new staff, and that this is compatible with their policy on employing ex-offenders. Operators may outsource the booking and dispatch functions but cannot pass on the obligation to protect children and vulnerable adults. Operators are required to evidence that comparable protections are applied by the company to which they outsource these functions.

Council position – that Policy contains a number of these provision.

Action to be taken – the Policy requires amendment to bring it fully into line with the requirements of the statutory standards.

7.30 Record Keeping

Recommendation - The Council should requires operators to record, for each booking, the name of the passenger, the time of the request, the pick-up point, the destination, the name of the driver, the driver's licence number, the vehicle registration number of the vehicle' the name of any individual that responded to the booking request, the name of any individual that dispatched the vehicle. Booking records should be retained for a minimum of six months.

Council position – the Policy requires operators to keep most of this information.

Action to be taken – to amend the Policy to bring it fully into line with the requirements of the statutory standards.

7.31 Use of passenger carrying vehicles (PCV) licensed drivers

Recommendation – the use of a driver who holds a PCV licence and the use of a public service vehicle such as a minibus to undertaken a private hire booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker who must be made aware that the a PCV licensed driver is not subject to the same level of checks as a private hire driver and is not required to have an enhanced DBS.

Council position – the Policy does not currently cover this point.

Action to be taken – to amend the Policy to bring it fully into line with the requirements of the statutory standards.

Enforcing the Licensing Regime

7.32 Joint authorisation of enforcement officers

Recommendation – that the Council 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. Such an agreement will enable those authorities to take action against vehicles and drivers that are licensed by other authorities when they cross over boundaries.

Council position – this has been the subject of discussion in the past in the light of cross border working but no action has been taken.

Action to be taken – that the matter be put forward for consideration in the first instance to the Joint Licensing Officers Forum for Essex.

7.33 Setting expectations and monitoring

Recommendation – the Council should ensure that drivers are aware of the policies they must adhere to and are properly informed of what is expected of them and the repercussions for failing to do so. The provision of a clear, simple and well publicised process for the public to make complaints will enable the Council to target compliance and enforcement activities.

Council Position – the Policy sets out the expectations for licence holders and the convictions and penalty point systems set out the repercussions of failing to adhere to the Policy requirements.

Action to be taken - to put together guidance on making a complaint which can be placed on the website and displayed in licensed vehicles.

7.34 Suspension and revocation of driver licences

Recommendation – the Council may suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt. Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date. A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made; a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used. A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration.

Council position - the Policy reflects this guidance in relation to suspensions and revocations.

8. Strategic Plan References

- 8.1 The Policy aims to contribute to the Council's vision of the Borough by ensuring that the licensed trade plays a significant role not only in the Borough's transport strategy but also in helping to promote Colchester and thereby enhancing our reputation as a destination and encouraging further investment.

9. Standard references

- 9.1 There are no known financial, publicity, equality, diversity and human rights implications, risk management, health & safety and community safety, and environmental and sustainability implications in relation to this report.