

REPORT TO:		Cabinet	
DATE:		11 November 2020	
PORTFOLIO:		Cllr Joyce Plummer - Resources	
REPORT AUTHOR:		Wendy Redfern – Licensing Manager	
TITLE OF REPORT:		DFT Statutory Guidance - Proposed amendments to the Taxi & Private Hire Licensing Policy	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	No	If yes, date of publication:	

1. Purpose of Report

- 1.1 To advise members about new Statutory Guidance introduced by the Secretary of State for Transport relating to taxi and private hire licensing. To seek approval of a new training programme for new applicants and to seek approval to commence a consultation process relating to other proposed changes to the Taxi and Private Hire Policy.

2. Recommendations

- 2.1 Cabinet approves the introduction of the updated training programme in line with DFT requirements.
- 2.2 Cabinet approves the commencement of an 8 week consultation period relating to other proposed changes to the Taxi and Private Hire Licensing Policy.

3. Reasons for Recommendations and Background

- 3.1 In July 2020 the Department for Transport (DFT) issued new statutory guidance to licensing authorities responsible for issuing of licences and regulating those in the taxi and private hire industry. The guidance sets out taxi and private hire vehicle standards. The guidance states that 'the Department has carefully considered the measures contained in the Statutory Taxi and Private Hire Vehicle Standards and recommend that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.'
- 3.2 The DFT has stated that the Statutory Guidance has been issued because '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.'

Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from Greater Manchester and Merseyside suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the Crime Survey for England and Wales.'

- 3.3 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 who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday; and the term "vulnerable individual" has the same meaning as the definition of a 'vulnerable adult' for the purpose of section 42 of the Care Act 2014, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
 - (b) is experiencing, or is at risk of, abuse or neglect, and
 - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 3.4 Further the guidance goes on to 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.**' (DFT emphasis)
- 3.5 'The document sets out a framework of policies that, under section 177(4), licensing authorities "**must have regard**" to 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.
- 3.6 "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.
- 3.7 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. **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).

- 3.8 It follows then that we as the licensing authority must have regard to the statutory guidance and amend our policy accordingly unless there are compelling local reasons not to do so the statutory guidance should be followed.
- 3.9 On the whole Hyndburn Borough Council's Policy aligns quite well with the new guidance. Members will be aware that in October 2018 we adopted the Institute of Licensing (IOL) Policy on determining the suitability of applicants in the hackney carriage and private hire trade and the DFT have consulted with the IOL and have adopted the same convictions policy.
- 3.10 The new guidance does require some amendments to our policy if we are to bring it totally in line as set out below:

Disclosure and Barring Checks (DBS) will need to be carried out on drivers every 6 months (currently every 3 years). To enable this to be done with more ease and at less financial burden for the drivers it is proposed that all drivers should be required to enrol on the DBS update service which means that their status can be checked on line. This will cost the driver £13 per year and he will not have to apply for another DBS check unless there are any changes to the certificate (e.g. he commits an offence). Alternatively he would have to pay £49.60 every 6 months to apply for a new check and this would not only be expensive for the driver, it would also cause administration problems for the licensing team and could lead to the driver not being able to work until a certificate is produced.

Licence holders should be 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. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. Currently our policy requires drivers to notify us within 7 days of any conviction, caution of fixed penalty notice. They do not have to notify us if they have been arrested. The DFT guidance states that 'this must not however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities. Should an authority place an obligation on licensees to notify under these circumstances, authorities should also ensure appropriate procedures are in place to enable them to act in a suitable timeframe if and when needed.'

As the DFT have clearly set out that when adopted all matters in the policy should be applied in retrospect, it is proposed that all licence holders will be required to undertake safeguarding training which must include County Lines training. An accredited training course is available on line at a cost of £12 and it is proposed that all existing drivers are given 6 months to complete the training. New applicants will be dealt with differently as set out at paragraphs 3.12 to 3.16 below.

Private hire operators will be required to keep a register of staff who are concerned with the booking and despatching of vehicles. This register should be kept for the same period

as booking records are required to be kept which is currently set out as 6 months in our policy.

Private hire operators will be required to produce a policy on employing ex-offenders. The DFT have set out the reason for this as follows: - 'Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.'

- 3.11 As members will note from 3.10 above, there are only minimal changes required to our policy to bring it in line with the statutory requirements, however the proposals should be consulted upon locally.
- 3.12 In addition to the above requirements the DFT guidance requires all of those involved in the taxi and private hire trade to undergo Safeguarding Training including County Lines awareness. All new applicants at Hyndburn have been required to do a 10 week college course at Hyndburn and Accrington College. One module in the course covered Child Sexual Exploitation (CSE) training and was delivered by licensing officers. However it did not cover all of the safeguarding issues now required. Since the beginning of March the college have been unable to deliver the course and there is no indication as to when they will be able to offer it again. The licensing manager has sourced another training course which is delivered by a charitable organisation called the Blue Lamp Trust. (Leaflet attached appendix 1)
- 3.13 Unlike the college course this course is accredited and will be delivered via zoom. The course is recommended by the IOL and it covers all of the requirements of the DFT Statutory Guidance. The cost of the course is £25 per candidate (payable by the applicant) and the benefit to the candidate is that the course can be completed in one day. Although there was no cost involved in attending the college course it was very time consuming with drivers having to attend for approximately 2 hours in an evening for 10 weeks, this would probably result in loss of earning equating to more than the £25 cost of the Blue Lamp Course. The fees for new drivers were significantly decreased last year by over £200 which more than covers the cost of the course. In any case the college course is currently not available.
- 3.14 Currently applicants are granted a licence and are then given 6 months to complete the college course. This does cause administrative problems with many drivers missing sessions and not completing in the requisite 6 months. It is proposed that applicants will complete the Blue Lamp Course before the licence is granted. This means that we can be satisfied that the applicant is a 'fit and proper person' at the point of grant of a licence. Any attempt to remove a licence from someone who has not completed the college course in the first 6 months could be open to challenge as it could be argued that the Council should only issue a licence in the first place if they are satisfied that someone is a fit and proper person.
- 3.15 The above proposal relating to the training course for new applicants would not need to be subject to consultation as we are only changing the provider of the course and it will only apply to new applicants.

4. Alternative Options considered and Reasons for Rejection

4.1 The Council do not have any alternative options other than to have regard to the DFT Statutory Guidance and to follow the guidance unless there are exceptional reasons not to do so

5. Consultations

5.1 It is proposed that a local consultation on all of the proposals in 3.10 is carried out with members of the hackney carriage and private hire trade and members of the public and any other stakeholders. It is proposed that the consultation will last for 8 weeks and all responses will be brought back to cabinet for consideration.

6. Implications

Financial implications (including any future financial commitments for the Council)	None
Legal and human rights implications	Failure to have proper regard to the DFT Statutory Guidance could lead to legal challenge.
Assessment of risk	The Council could be challenged if they fail to have regard to the DFT Statutory Guidance.
Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	<p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none">• eliminate unlawful discrimination, harassment and victimisation; and• advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and• foster good relations between those who share a relevant protected characteristic and those who don't. <p>For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out as part of the review process</p>

	and is attached as Appendix 1 to this report. Cabinet is advised to consider the Customer First Analysis and its obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.
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7. **Local Government (Access to Information) Act 1985:**
List of Background Papers

DFT Statutory Guidance

Appendix 1 - Customer First Analysis.