

## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>23<sup>rd</sup> June 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
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### DfT Statutory Taxi & Private Hire Vehicle Standards

#### PURPOSE

1. Further to Licensing Committee on 4<sup>th</sup> February 2021, this report progresses actions to deliver compliance with the Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards and seeks Committee approval in relation to changes to licence conditions.

#### RECOMMENDATION

2. That Licensing Committee agrees to:
  - (i) Require 6 month DBS reviews for all drivers and annual DBS reviews for all operators via mandatory subscription to the DBS Update Service. To be implemented immediately for new applications, and at the first DBS renewal date for all existing licence-holders.
  - (ii) Introduce a mandatory requirement of Safeguarding Awareness Refresher Training for driver's licence renewal applications. To be completed within 2 months of renewal.
  - (iii) Require applicants for vehicle proprietor licences, who do not hold a Burnley BC driver or operator licence, or another vehicle licence where DBS conditions are met, to submit a basic DBS check with the application, and each year thereafter for as long as they retain a vehicle proprietor licence. To be effective from 1<sup>st</sup> July 2021.
  - (iv) Introduce a condition requiring Private Hire Operators to retain a register of all booking/despatch operators, containing dates of annual DBS reviews, for as long as they remain in their employment. To be effective from 1<sup>st</sup> July 2021.
  - (v) Consider at a future Licensing Committee any element of the DFT requirements relating to convictions that are more onerous than those contained in the existing convictions policy

#### REASONS FOR RECOMMENDATION

3. To enable the Licensing Authority to comply with the recommendation of the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance and fulfil its obligations and remove

obstacles and delays in DBS reviews and in the determination of licence applications. Additionally, for the Licensing Authority to adopt a strong approach to Safeguarding Awareness by ensuring more regularity and consistency in the training program.

## **SUMMARY OF KEY POINTS**

### **4. Subscription To The DBS Update Service**

Recommendation (i) brings the Council into line with the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance Section 6 (6.1 – 6.4) – Criminality Checks For Drivers and Section 8 (8.2 – 8.6) – Criminality Checks For Private Hire Vehicle Operators. For ease of reference, the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance document is available at Appendix A.

#### Drivers

The DfT Standards document recommends that DBS reviews are conducted biannually for all drivers (Paras 6.1 – 6.4 refers).

To do so effectively requires:

- a) subscription to the update service, and
- b) consent of the applicant/driver.

The update service is the most practical and cost effective way of allowing biannual DBS reviews.

Where an individual fails to consent, the individual would instead need to apply, pay for and submit a new DBS certificate every 6 months. This is an additional manual process that officers would need to manage, whereas update service checks are electronic and straightforward to complete in a matter of minutes.

Although applicants are strongly recommend to subscribe to this service now, at present it is not mandatory. The cost of each enhanced DBS check is £55.49 and the cost of the update service subscription is £13.00 annually equating to £39.00 over a 3 year period. The update service also streamlines the renewal process. Providing subscription is continued and an individual's personal circumstances remain unchanged, it is not necessary to apply for a new DBS certificate every time a licence is renewed. An additional benefit is the certificate is transferrable for other occupations where an enhanced certificate is required.

As the update service is only available at the application stage or within 28 days of the certificate issue date, implementation will need to be phased in over a 6 month period until the first check is due.

However, if Members agree to make this mandatory, a period of implementation will be required for existing drivers who do not subscribe to the update service and have not yet provided the required consent.

#### Operators

It is recognised that most operators are licenced as drivers and, therefore, would already be subject of a biannual DBS review. In which case, this section does not apply. However, for those who are not, all operators are also subject to an enhanced DBS check.

It is recommended by the DfT Standards document that DBS reviews are also conducted annually for operators (Paras 8.2 – 8.6 refers).  
The issues outlined above in relation to drivers also apply to operators and similar implementation arrangements will be necessary.

## 5. **Safeguarding Awareness Refresher Training**

Members are asked to consider making Safeguarding Awareness Refresher Training a mandatory requirement for driver's licence renewal applications. This will ensure that Safeguarding Awareness is current and up to date and meet some of the member's concerns in respect of public safety.

Although completing the Safeguarding Awareness Training Course is a mandatory licensing requirement, it only has to be fulfilled on a single occasion, at application. Although the DfT document makes recommendations for the need of Safeguarding Awareness Training within the trade, it does not make reference to refresher training.

Organisations throughout the UK, both commercial and voluntary, require employees and volunteers to complete Safeguarding Refresher Training on a regular basis. Given the nature of the hackney and private hire trade, similar arrangements should be considered.

Discussions with the current Safeguarding Awareness Training provider, Taxi Plus (formerly Personnel Checks), confirm they are able to deliver an online refresher course.

It is noteworthy that The Children's Society charity recently offered supplementary online Safeguarding training sessions free of charge to operators and drivers. The training focused on the exploitation of children. Details of the training sessions were notified to all operators to be cascaded to their respective drivers. Although attendance was voluntary, attendance across the trade was extremely poor.

It is proposed refresher training is complete every 3 years to coincide with the duration of a driver's licence and licence renewal applications.

The same 3 year period would also apply to drivers restricted to a 12 month licence.

The cost of the refresher course would be £18.00 which may be subject to change from time to time.

## 6. **DBS Checks For Vehicle Proprietors & Booking/Dispatch Staff**

### Vehicle Proprietors

Most vehicle proprietors are already licenced as drivers and/or operators and subject to an enhanced DBS check and passed a fit and proper test. If subscription to the DBS update service is made mandatory, most would be subject of an annual or biannual DBS review. In which case, this section does not apply.

However, at the present time there is no requirement for a vehicle proprietor to show they are a fit and proper person to hold a licence.

Unlike the London Cab Order 1934, the provisions of the Local Government (Miscellaneous Provisions) Act 1976 Part II (the Act) do not require a fit and proper test to be applied to vehicle proprietors.

The reasons for this are not specified in the Act. However, if an individual has to show they are a fit and proper person to hold an operator's licence and/or a driver's licence, then the same scrutiny should perhaps be considered for a vehicle proprietor. For example, individuals involved in the hackney & private hire trade as businesses solely providing a vehicle hire service (also known as credit hire) to replace taxis or private hire vehicles off the road due to accident damage or other reason, do not have to show evidence they are a fit and proper person when applying for a vehicle licence. The suggestion a vehicle proprietor should meet a fit and proper test is to ensure that every effort is made in the interest of public safety that vehicle proprietors are fit and proper to hold a licence and not likely to abuse the privilege of being a licence holder for illicit purposes. The DfT Standards document recommends that a licence applicant who is solely a vehicle proprietor should be the subject of a fit and proper test by way of a basic DBS check, an annual DBS review and where necessary applying the Conviction Policy (other than for those offences relating to driving convictions).

### Booking/Dispatch Staff

Many Booking/Dispatch Staff are already licenced as drivers and/or operators and subject to an enhanced DBS check and passed a fit and proper test. If subscription to the DBS update service is made mandatory, most would be subject of an annual or biannual DBS review. In which case, this section does not apply.

For those who are not, a vehicle dispatcher is responsible for deciding which driver to send to a user of a private hire vehicle, a position that could be misused by those seeking to exploit children and vulnerable adults. It is therefore appropriate that Booking/Dispatch staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or pose a safeguarding risk to children and vulnerable adults.

Individuals performing this task are dealing with sensitive information relating to a private hire vehicle user's personal details.

The Licensing Authority does not have a `licensing relationship` with the booking staff, and so has no authority to require DBS checks of those individuals. The conditions attached to operator's licences currently make it the responsibility of the operator to ensure employees carrying out this task are subject to a recent basic DBS check.

As, subscription to the update service is not available with a basic DBS check, the operator should also be required to maintain a register of employees performing this task, and details of annual DBS reviews undertaken by them.

Cost of a basic DBS check is £43.99.

## **7 Priorities Already Introduced:**

### **NAFN NR3 National Database**

Burnley Borough Council subscribe to the NAFN NR3 national database. This is a mechanism for licensing authorities to share details of individuals who have had a hackney/private hire drivers licence revoked or an application for one refused. This is necessary for the performance of a task carried out in the public interest or in the exercise

of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney/private hire driver's licence.

- Where a Hackney/ Private Hire Drivers Licence is revoked or an application for one refused, the authority will automatically record this decision on NR3.
- All applications for a new licence or a licence renewal will automatically be checked on NR3. If a search of NR3 indicates a match with an applicant, the authority will seek further information about the entry on the register from the authority which recorded it. Any information received as a result of an NR3 search will only be used in respect of the specific licence application and will not be retained beyond the determination of that application.

Only basic information of an individual's details is recorded and individual cases can only be kept for as long as is necessary depending on the circumstances. Where it is no longer necessary for an individual to remain on the database, their details will be removed. Management of this will be the responsibility of authorised officers with access to the database.

Whilst this facility has been used in the determination process of licence applications, it has not been used by the Council to record licence revocations and application refusals. This was partly due to Data Protection protocols.

This has been resolved and all drivers have now received documentation fully explaining the purpose of the database.

It is necessary for the Council to consider the content of the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance and take appropriate steps to meet its statutory duties. Whilst options are not without risk, measures have been taken to minimise this as much as possible to maintain the highest possible degree of integrity.

## 8 NEXT STEPS

### **TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION (Conviction Policy)**

The Council currently has a Taxi Licensing Conviction Policy which is robust and fit for purpose.

The Conviction Policy takes into account a wide range of offences and other circumstances and applied appropriately. Where it is applied, proportionate measures are taken to ensure an individual is a fit and proper person to hold a licence in the interest of Public Safety.

The DfT Statutory Taxi & Private Hire Vehicle Standards Guidance makes recommendations in the form of an Assessment Of Previous Convictions document. A comparison of both documents identifies differences in some offence categories.

Some comparison examples are listed below:

#### Offences Of Violence

In this category, the DfT Statutory Taxi & Private Hire Vehicle Standards Guidance – Assessment of Previous Convictions does not specify any particular offences and suggests a period free on conviction of 10 years since the completion of sentence. Whereas, Burnley Borough Council's Conviction Policy is more comprehensive and specific to the offence/conviction. Depending on the severity of the offence, the Policy ranges from a licence not normally issued for the most serious offences. Then, to a period

free of conviction from 5 - 10 years depending on the nature and seriousness of offence.

### Exploitation

In this category, the DfT document includes Exploitation. It does not define specific offences. The reason is likely to be due to the wide reaching nature of offences where a degree of exploitation has been used to facilitate a crime.

The only reference to exploitation in the Council's Conviction Policy is under offences of violence and only refers to exploitation of prostitutes.

Whilst there are likely to be other categories of offences within the body of the Council's Conviction Policy that may include an underlying element of exploitation of a victim to facilitate a crime, there is no other reference to exploitation.

For example, apart from very rare extenuating circumstances, the illegal supply of controlled drugs requires an element of exploitation towards an addict to facilitate the supply of drugs for the financial benefit of one at the expense of the other.

### Drug Related Offences

Both the DfT document and the Council's Conviction Policy in this category are very similar. However, whereas the Council's conviction policy specifies the classification of drug, the DfT document does not.

### Motoring Convictions

In this category, the DfT document does not categorise motoring convictions in the same manner as the Council's conviction policy.

For example, the DfT document specifically refers to the offence of using a hand held device or a hand held mobile telephone whilst driving. It recommends that where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least **5 years** have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

The Council's conviction policy in respect of motoring convictions is more comprehensive in that it categorises Major, Minor and Hybrid Traffic offences. Additionally, it also takes into account the number of penalty points imposed.

Comparing the two documents, the Council conviction policy categorises using a hand held device or hand held mobile phone whilst driving as a Major Traffic Offence.

It states:

Where the Conviction is within **3 years** prior to the date of the Application the Application will normally be refused.

Applications where there is more than one Conviction for this type of offence within the last **5 years** will normally be refused.

Both documents will be the subject of comparison and further review. Any elements which are more onerous than existing policy will be the subject of a further report to Licensing Committee at a later date.

## 8 Private Hire & Hackney Carriage Licensing Policy

Officers will bring together in a single document all Council policy and conditions relating to taxi licensing issues.

### FINANCIAL IMPLICATIONS AND BUDGET PROVISION

- 9 In the event subscription to the DBS update service is made a mandatory requirement, operators and drivers would have to pay an additional nominal annual fee direct to the Update Service.  
In the event Safeguarding Awareness Refresher Training is agreed, operators and drivers would again have to pay an additional nominal fee direct to the training provider.  
In the event vehicle proprietors are required to pass a fit and proper test when applying for a vehicle licence in the manner described above, they would have to pay the required fee for a basic DBS check.  
There are no financial implications for the Council at this stage of the review process.

### POLICY IMPLICATIONS

- 10 The measures outlined will bring Council policy into line with the recommendations of the DfT Statutory Taxi and Private Hire Vehicle Standards.

### DETAILS OF CONSULTATION

- 11 Chair of Licensing Committee – Cllr Jeff Sumner  
Vice Chair of Licensing Committee – Cllr Arif Khan  
Executive Member For Community & Environmental Services – Cllr Bea Foster  
Taxi Task Group Trade Representatives

During the consultation process, details of this Committee Report were circulated to members of the Taxi Task Group Trade Representatives on Tuesday 1<sup>st</sup> June 2021 and afforded the opportunity to comment on the content.

Mr. Charles Oakes is the only Taxi Task Group member to have responded who agreed with the majority of the proposals.

He asked for a minor point of clarification in respect of the DBS subscription service and for the cost of the Safeguarding Refresher Training to be included in the report.

These matters have now been resolved.

### BACKGROUND PAPERS

- 12 Report To Licensing Committee – 4<sup>th</sup> February 2021

**FURTHER INFORMATION**

**PLEASE CONTACT:**

**James Astin**

**ALSO:**

**Karen Davies**