

Licensing Committee – 24th May 2019

Late Item

Taxi & Private Hire Licensing - Response
to Department for Transport consultation
on Statutory Guidance

This page is intentionally left blank



Report author: Andrew White
Tel: 37 81562

Report of **Taxi & Private Hire Licensing Manager**

Report to **Licensing Committee**

Date: **24 May 2019**

Subject: **Taxi & Private Hire Licensing – Response to Department for Transport consultation on Statutory Guidance**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

- 1 This report presents to committee members the council's response to Department for Transport (DfT) consultation on proposed Statutory Guidance for licensing authorities.
- 2 In March 2019, the Licensing Committee discussed the DfT consultation, which follows a report by a DfT Task and Finish group in October 2018.
- 3 The consultation period has completed, and this report presents the council's response to the consultation.

Recommendations

1. That committee members note the purpose and content of the information in this report.
2. That committee members note the council's response to the consultation, in particular the responses where the council suggests the approach recommended in the Statutory Guidance may not work effectively in Leeds.

1 Purpose of this report

- 1.1 To inform committee members of the results of the council's response to a recent consultation of licensing authorities by the Department for Transport (DfT).

2 Background information

- 2.1 Leeds City Council has responsibility for licensing Hackney Carriage (taxi) vehicles, drivers and proprietors, Private Hire and Executive vehicles, drivers, and operators within the city. The council's primary focus is the safety of the travelling public.
- 2.2 The council has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1976, which governs the licensing of Private Hire Vehicles, Private Hire Operators and drivers (PHV). The adoption of this Act also encompasses the adoption of the Town Police Clauses Act 1847, which governs the licensing of Hackney Carriages.
- 2.3 The council's policies and conditions are reviewed by the council's Licensing Committee. The council's policies and conditions apply to all drivers, vehicles and operators who hold the relevant licenses issued by the council. The council's Taxi & Private Hire Licensing team are responsible for making decisions relating to the application of the policies and conditions, under the council's scheme of sub-delegation.
- 2.4 Committee members will be aware that the UK taxi and private hire industry is rapidly changing in the UK, although much taxi and private hire law has changed little since the 1970s. In order to continue to keep the travelling public safe, the council's policies and conditions also need to keep pace with new developments, particularly the rise of cross border working (drivers and vehicles licensed in one area and working predominantly in another) and the growth in use of smartphone apps enabling customers to book and pay for journeys. The council has a plan to review and consult on each of the specific policies and conditions after either three or five years, to make sure they remain up to date and effective.
- 2.5 In 2017, the Department for Transport established a Task and Finish Group, with a remit to
- consider evidence relating to the adequacy of current taxi and PHV licensing authority powers, as set out in legislation and guidance, making recommendations for actions to address any priority issues identified. Specifically:
 - identify the current priority concerns regarding the regulation of the sector, based on evidence of impact and scale across England;
 - consider, in particular, the adequacy of measures in the licensing system to address those issues;
 - consider whether it would advise the Government to accept the recommendations made in the Law Commission's May 2014 report on taxi and PHV legislative reform relevant to the issues, and;

- make specific and prioritised recommendations, legislative and non-legislative, for action to address identified and evidenced issues.

2.6 Leeds City Council invited the chair of the group, Professor Mohammed Abdel-Haq, to visit Leeds to see the current challenges and licensing and enforcement responses of local authorities. The chair invited the Taxi and Private Hire Licensing Manager to give evidence to the group in January 2018. The Task and Finish Group reported their recommendations in October 2018, a link is provided in section 7 of this report.

2.7 The DfT published [a consultation document entitled] Taxi and Private Hire Vehicle Licensing: Protecting Users, Statutory Guidance for Licensing Authorities in February 2019, which addressed some, but not all, of the recommendations of the Task and finish group report. The DfT consulted on the Statutory Guidance during March and April 2019.

2.8 The DfT has indicated that licensing authorities must pay regard to the guidance, and recommends publishing their consideration of the recommendations.

“The Guidance 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 PHV licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.

“Having regard” to guidance requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that this is statutory guidance issued directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these recommendations cannot be overestimated. It is not a question of box ticking; the recommendations must be considered rigorously and with an open mind.

*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 this Guidance might be drawn upon in any legal challenge to an authority’s practice, and that any failure to adhere to the Guidance without sufficient justification could be detrimental to the authority’s defence. **In the interest of transparency however, the Department encourages all licensing authorities to publish their consideration of the recommendations contained in this Guidance and the policies and delivery plans that stem from these. The Department has already undertaken to monitor the effectiveness of the Statutory Guidance in achieving an appropriately high level of standards in taxi and PHV licensing with regard to the protection of passengers.***

This Guidance does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.”

(Department of Transport: Taxi and Private Hire Vehicle Licensing: Protecting Users, Statutory Guidance for Licensing Authorities, February 2019)

3 Main issues

Response to the consultation

- 3.1 The council completed and submitted the consultation. The council also encouraged other local stakeholders, such as the taxi and private hire trade representatives to complete the consultation.
- 3.2 **Appendix 1** contains the council’s response to the consultation, addressing each recommendation. The council’s response is broadly very supportive of the recommendations, and in many areas of the guidance, the council already has policies and measures in place. With some further changes, the council could also implement the majority of recommendations.
- 3.3 In some areas of the draft guidance, the council has suggested either an alternative way of addressing the area of risk, or suggested that revised guidance needs to be developed. These areas are summarised in the table below.

3	Administration of the licensing framework and decision making, including officer and member roles	<p>Leeds supports the need for everyone involved in licensing decisions to receive appropriate training.</p> <p>Leeds believes our current division of responsibilities enables councillors to set the policy to drive public safety, and officers to make informed decisions wholly on whether applicants or licence holders are fit and proper people to hold a licence. In some authorities, members (not officers) have been recorded as making decisions on licence holders or in appeals on issues other than public safety.</p>
10	Overseas convictions	<p>Leeds not satisfied with certificate of good character from some countries, or character references from some providers, and would prefer EU/North America DBS and for other countries a statutory declaration.</p>
11	Conviction policy	<p>Leeds broadly supportive, but some significant concerns about how this policy would be applied in practice. Leeds currently has a detailed conviction policy, and has a number of concerns about the IOL/LGA/NALEO suitability policy (in Annex A) and specifically the tables with tariffs for how long a licence would be refused, as a minimum.</p> <p>The suitability policy does not fully address rehabilitation or other actions taken previously to reduce the risk to passengers when considering renewal, and risks reducing the discretion to depart from the policy in exceptional and not so exceptional cases.</p> <p>Leeds does not recommend a public hearing of an application.</p>

21	Suspension and revocation of driver licences	<p>Leeds is not broadly supportive of the direction to revoke and not to use suspensions.</p> <p>Leeds has concerns about allowing licence holders to work while an investigation is under way, in particular where there is considered to be an immediate public safety concern. Leeds also has concerns about an immediate revocation, i.e. before an investigation has been completed.</p> <p>Leeds would request more clarity and examples about how a licensing system would work to support more refusals and fewer suspensions, and prevent licence holders from continuing to work with serious allegations against them, which would fail the fit and proper test.</p>
26	In vehicle visual and audio recording - CCTV	<p>Leeds supportive of the need for clarity about local authority policies for CCTV in licensed vehicles.</p> <p>Unfortunately, the policy guidance does not provide clarity about CCTV in vehicles or definitive guidance which could be followed.</p>
29	Convictions guidance	<p>Leeds notes that a national policy document is the starting point, which will not address every type of conviction and that decision makers may depart from the policy, in refusing to issue a licence at the end of the period specified is they are not satisfied the person is fit and proper, or in refusing to issue a licence for a shorter period than specified 'as a minimum' in the guidance.</p> <p>Leeds would recommend that the table be revised to add a lower level of less serious violence (3-5 years).</p>

3.4 The council has also offered to supply the DfT with additional information, for example, on the likely cost implications of convening members panels for contentious licensing decisions (including, but not limited to suspensions, revocations and refusals, which numbered more than 250 in 2018), on the case for developing best practice in vehicle CCTV guidance, and on the 'fit and proper person' test and its application to existing licence holders.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The council plans to consult on any proposed changes to licensing policies and conditions. Many of the recommendations are already in place, and may need refining, so consultation may not be required. However, significant proposed changes to policies or new policies will require consultation.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 Equality and Cohesion Screening Assessments are carried out on the policies reviewed by the Licensing Committee and policy changes made under the scheme of sub delegation.

4.3 Council policies and City Priorities

4.3.1 Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs;
- Boosting the local economy; and
- Generating income for the council.

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time; and
- Improving customer satisfaction.

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds;
- Effectively tackle and reduce anti-social behaviour in communities;
- Safeguarding children and adults at risk:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and adults at risk across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or adults at risk of harm.

4.4 Resources and value for money

4.4.1 The Taxi and Private Hire Licensing service is currently cost neutral to the council and by virtue of the Local Government (Miscellaneous Provisions) Act, 1976, raises its own revenue by setting fees to meet the cost of issuing and administering licences.

4.4.2 These arrangements mean that if the proposed policy reviews and changes are associated with additional costs, they will be funded via licence fees and will not place additional pressure on the council's budget.

4.5 Legal Implications, Access to Information and Call In

4.5.1 There are no legal implications arising from this report. If, going forward, council policies may need to be reviewed as a result of the outcome of the consultation exercise, and/or introduction of statutory guidance, then specific legal advice can be provided at that time.

4.6 Risk Management

4.6.1 There are no major risks and mitigating actions identified in completing the response to the consultation. If risks arise as a result of the introduction of statutory guidance and any resulting proposed changes to policies, mitigating actions will be considered at that time. The aim of any new policies would be to reduce the risk posed by licence holders to the travelling public, and to increase the confidence of the public that their taxi and private hire drivers can be trusted.

5 Conclusions

5.1 The report has provided the background to the consultation by the department for Transport on recommended guidance for licensing authorities.

5.2 The report has provided details of the council's response to the consultation and highlighted the areas in the recommended guidance where the council's response was to request clearer guidance or propose a different approach.

6 Recommendations

- 6.1 That committee members note the purpose and content of the information in this report.
- 6.2 That committee members note the council's response to the consultation, in particular the responses where the council suggests the approach recommended in the Statutory Guidance may not work effectively in Leeds.

7 Background documents

Department of Transport: Taxi and Private Hire Vehicle Licensing: Protecting Users, Statutory Guidance for Licensing Authorities, February 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784216/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf

Department of Transport: Government Response Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing Moving Britain Ahead, February 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775983/taxi-task-and-finish-gov-reponse.pdf

Department of Transport: Taxi and Private Hire Vehicle Licensing, Steps towards a safer and more robust system, October 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745516/taxi-and-phv-working-group-report.pdf

Appendix 1 Leeds City Council Response to consultation on Statutory Guidance

	Statutory Guidance recommendation	Leeds City Council response, April 2019
1.	Single taxi and private hire licensing policy	Leeds is supportive, but single taxi and private hire licensing policy is not in place at the present.
2.	Fit and proper person test	<p>Leeds supportive of the policy.</p> <p>We are in favour of those judgments being made by licensing officers with appropriate training and delegation.</p> <p>Leeds very supportive of the fit and proper person test, based on the balance of probabilities, not beyond reasonable doubt, and there needs to be scope for decisions to be made about someone as a fit and proper person without a conviction.</p> <p>Leeds has some concerns that revocation/suspension and suitability guidance proposed moves away from or conflicts with the fit and proper person test.</p>
3.	Administration of the licensing framework and decision making, including officer and member roles	<p>Leeds supports the need for everyone involved in licensing decisions to receive appropriate training.</p> <p>Leeds Licensing Committee sets the policies for taxi and private hire licensing, but members of the committee do not make licensing decisions, which are made by trained and qualified officers who focus on taxi and private hire licensing. Leeds has more than 5000 vehicles licences and more than 6300 driver licences. Appeals against decisions are directed to the local magistrates court.</p> <p>Leeds believes this division of responsibilities enables councillors to set the policy to drive public safety, and officers to make informed decisions wholly on whether applicants or licence holders are fit and proper people to hold a licence. In some authorities, such as Rotherham, and Derby, Milton Keynes, members (not officers) have been recorded as making decisions on licence holders or in appeals on issues other than public safety.</p>

	Statutory Guidance recommendation	Leeds City Council response, April 2019
4.	Whistleblowing	Leeds has a whistle blowing policy in place
5.	Implementing changes to licensing policy and requirements	Leeds broadly supportive of the need to consider the impact on existing licence holders of any changes in licensing policies.
6.	Disclosure and Barring Service (DBS)	<p>Leeds supportive of this policy.</p> <p>This is in place in Leeds. All but 12 licence holders have enhanced DBS via the update service, and those 12 are still completing manual DBS checks.</p> <p>Leeds concerned that because of differences in DBS policies, some licence holders licensed by other authorities may be able to drive in Leeds without a recent DBS check.</p> <p>Leeds currently checks DBS every 12 months, and is exploring options to bulk check DBS on a six monthly basis.</p>
7.	DBS update service	<p>Leeds supportive of the policy.</p> <p>This is in place in Leeds. All but 12 licence holders have enhanced DBS via the update service, and those 12 are still completing manual DBS checks.</p> <p>Leeds currently checks DBS every 12 months, and is exploring options to bulk check DBS on a six monthly basis.</p>
8.	Licensee self-reporting	Leeds supportive. We currently require 72 hours, which allows for events taking place on a Friday night to be reported the following Monday at the latest.

	Statutory Guidance recommendation	Leeds City Council response, April 2019
		Leeds pleased that the guidance recognises the importance of reporting and the way in which failure to report should be regarded, and would like to see stronger guidance in suitability policy on this. This should include an interview about any offence as a suspect, irrespective of whether or not the individual attended voluntarily or was arrested.
9.	Referrals to DBS and police	Leeds satisfied with this approach, Leeds has contacted the relevant police service to raise issues of DBS. However this is via a police intelligence officer which some licensing authorities may not be able to fund.
10.	Overseas convictions	<p>Leeds not satisfied with certificate of good character from some countries, or character references from some providers.</p> <p>We would prefer EU/North America DBS and for other countries a statutory declaration.</p>
11.	Conviction policy	<p>Leeds broadly supportive, but some significant concerns about how this policy would be applied in practice. Leeds currently has a detailed conviction policy, and is working with other authorities on developing a harmonised conviction policy for West Yorkshire and City of York.</p> <p>Leeds has a number of concerns about the IOL/LGA/NALEO suitability policy (in Annex A) and specifically the tables with tariffs for how long a licence would be refused, as a minimum.</p> <p>The suitability policy does not fully address rehabilitation or other actions taken previously to reduce the risk to passengers when considering renewal, and risks reducing the discretion to depart from the policy in exceptional and not so exceptional cases.</p> <p>Leeds does not recommend a public hearing of an application.</p>

	Statutory Guidance recommendation	Leeds City Council response, April 2019
12.	Common Law Police Disclosure	Leeds works to disclosure guidelines with West Yorkshire police. Disclosure to the council from the police often takes several months.
13.	Other information	Leeds supports this strongly. We already ask this information at application and renewal. As with the failure to disclose an arrest or caution, it is important to pay regard to the failure to disclose having previously been licenced with a different authority.
14.	Multi agency safeguarding hub	Leeds supportive of the requirement for safeguarding concerns to be raised with the appropriate individuals and teams by taxi and private hire licensing teams. Leeds refers to separate safeguarding teams for adults, children and domestic violence concerns. Whether Leeds has a MASH approach is a separate issue to taxi and private hire licensing.
15.	Complaints against licence holders	Leeds is supportive of the recommendation. Leeds has a robust system for recording and administering complaints. Every vehicle contains information on ways to complain. Leeds has strict conditions on the operator conditions to report 'open' complaints from passengers about drivers which include inappropriate sexual behaviour and violence. The extent of cross-border working sometimes makes it unclear to which licensing authority a passenger should complain if they are dissatisfied.

	Statutory Guidance recommendation	Leeds City Council response, April 2019
16.	Duration of licences	Leeds supportive of the policy.
17.	Safeguarding awareness	<p>Leeds supportive of the policy.</p> <p>Leeds makes reference to safeguarding in each of its taxi and private hire policies.</p> <p>All licence holders are required to attend/pass safeguarding training.</p> <p>Leeds has an 'are you taxi aware?' web page, which we publicise to passenger groups.</p>
18.	Other forms of exploitation / 'County lines'	<p>Leeds is supportive of measures to prevent and report other forms of exploitation.</p> <p>All licence holders are required to attend/pass safeguarding training.</p> <p>Leeds is developing strong links with West Yorkshire Police and their safeguarding / trafficking teams.</p>
19.	Language proficiency	<p>Leeds supportive of this policy.</p> <p>Leeds is working with neighbouring authorities to set a common standard in the W Yorks region for literacy and numeracy. Very likely to be ESOL Entry Level 3.</p>
20.	Enforcement	<p>Leeds supportive of this policy.</p> <p>Licensing policies are not effective unless they are effectively enforced.</p> <p>The rise in cross border working in W Yorkshire has led the five W Yorks authorities and City of York to enter into a collaboration approach along the lines suggested in the policy document.</p>

	Statutory Guidance recommendation	Leeds City Council response, April 2019
		It would be preferable for authorities not to have to enter into collaboration and information sharing agreements to enforce across borders, but for national enforcement powers to be in place.
21.	Suspension and revocation of driver licences	<p>Leeds is not broadly supportive of the direction to revoke and not to use suspensions.</p> <p>Leeds does suspend licence holders to allow an investigation to take place, or to allow a temporary safety problem, e.g. failure to get a group 2 medical to be resolved. However, Leeds does not set a period on that suspension.</p> <p>Leeds has concerns about allowing licence holders to work while an investigation is under way, in particular where there is considered to be an immediate public safety concern. Leeds also has concerns about an immediate revocation, i.e. before an investigation has been completed.</p> <p>Leeds recognises that the national databases of refused and revoked licences will not include a record about drivers who have been suspended due to an immediate public safety concern.</p> <p>Leeds would request more clarity and examples about how a licensing system would work to support more refusals and fewer suspensions, and prevent licence holders from continuing to work with serious allegations against them, which would fail the fit and proper test.</p>
22.	Criminal checks for PHV operators	<p>Leeds supportive of the policy.</p> <p>Leeds requires all operators to have an enhanced DBS check.</p>
23.	PHV Operators – ancillary staff	<p>Leeds supportive of the policy.</p> <p>This would have significant resourcing implications for the operator to meet this requirement and for the licensing authority in enforcing this policy.</p>

	Statutory Guidance recommendation	Leeds City Council response, April 2019
24.	PHV Operators – use of passenger carrying vehicles (PCV) licensed drivers	Leeds supportive of the policy. Anyone doing private hire work should meet the fit and proper standard, irrespective of which vehicle is being driven.
25.	PHV Operators – record keeping	Leeds supportive of the policy. Leeds concerned about use of taxi and ride hailing apps and kiosks and their ability to meet the requirement of the policy.
26.	In vehicle visual and audio recording - CCTV	Leeds supportive of the need for clarity about local authority policies for CCTV in licensed vehicles. Unfortunately, the policy guidance does not provide clarity about CCTV in vehicles or definitive guidance which could be followed.
27.	Stretched limousines	Leeds has a stretched limousine policy. However, Leeds has not licenced any vehicles as stretched limousines under this policy. Stretched limousines continue to be used in Leeds, but are not licensed as private hire vehicles in the district. This is a concern, and may require test purchases and further investigation to detect unlicensed activity.
28.	Consultation at the local level	Leeds supportive of the benefit of full and meaningful engagement and consultation. Leeds uses consultation and engagement regularly with trade, passengers, and other stakeholders.
29.	Convictions guidance	Leeds supportive of the need for national conviction guidance. Leeds notes that a national policy document is the starting point, which will not address every type of conviction and that decision makers may depart from the policy, in refusing to issue a licence at the end of the period specified

	Statutory Guidance recommendation	Leeds City Council response, April 2019
		<p>is they are not satisfied the person is fit and proper, or in refusing to issue a licence for a shorter period than specified 'as a minimum' in the guidance.</p> <p>Leeds would recommend that the table be revised to add a lower level of less serious violence (3-5 years).</p>
30.	Staying safe – guidance for passengers	Not a question on the survey