

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

**Report to** Licensing Committee

**Date:** 26 January 2021

**Subject:** Taxi & Private Hire Licensing – Leeds City Council assessment against Statutory Guidance from the Department of Transport

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 self-assessment against the Statutory Guidance on and consultation by the Department of Transport (DfT) on proposed taxi and private hire licensing policies.
- 2 While the guidance does not change the underlying UK law, it provides very strong guidance for every licensing authority in England and Wales. The DfT has requested that every licensing authority in the UK report a self-assessment against the guidance.
- 3 The council's self-assessment shows that where the council meets, and in some areas exceeds the guidance, and also identifies a number of areas where the council departs significantly from the guidance.

### Recommendations

1. That committee members note the purpose and content of the information in this report.
2. That committee members read the proposed response to the DfT Statutory Guidance and make any further recommendations for the council's response to the consultation, and forward plan for review of taxi and private hire policies.

## 1 Purpose of this report

- 1.1 To inform committee members of the self-assessment by the council in the new Statutory Guidance for licensing authorities issued by the DfT in July 2020.
- 1.2 To highlight to committee members the areas where the new guidance has already been satisfied, where largely satisfied, and where either not met or at odds with the guidance, using a green, amber and red rating for each of the respective categories.
- 1.3 To seek member views on the response to the consultation and implications for current and planned policy reviews.

## 2 Background information

- 2.1 The guidance was published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.2 The guidance document (link in appendices) states that it:

*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. “Having regard” to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances.*

**DfT Statutory Guidance 2020, p 7**

- 2.3 The document draws attention to the specific focus of the safeguarding of the public and the potential impact of failings in this area,

*the standards 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 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.***

**DfT Statutory Guidance 2020, p 7, emphasis added**

*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). The Statutory Taxi and Private Hire Vehicle Standards 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.*

**DfT Statutory Guidance 2020, p 7**

### **3 Main issues**

#### **Statutory guidance, not legislation**

- 3.1 Statutory Guidance does not alter the key UK legislation, nor does it make any new legislation. However, it is the strongest possible guidance central government can issue in guiding licensing authorities to review and update their policies. It is also much more comprehensive, prescriptive and detailed than the previous 2010 guide to good practice, indicating the importance to public safety.
- 3.2 The guidance advises every local authority to publish consideration of each of the recommendations contained in the guidance. It also advises licensing authorities that any failure to follow very closely the guidance without sufficient justification could be detrimental to the licensing authority when challenged. It is proposed that the council publish the report and detailed appendix to fulfil this requirement, in addition to responding to the DfT.

#### **Areas of Statutory Guidance**

- 3.3 The guidance identifies 30 specific areas of guidance, summarised in the table below, and examined in more detail in the self assessment in **Appendix 1**.

3	<b>Administering the Licensing Regime</b> 3 Green 2 Amber 0 Red
4	<b>Gathering and Sharing Information</b> 7 Green 3 Amber 0 Red
5	<b>Decision making</b> 3 Green 0 Amber 1 Red
6	<b>Driver Licensing</b> 4 Green 0 Amber 0 Red

7	<p><b>Vehicle Licensing</b></p> <p>1 Green</p> <p>2 Amber</p> <p>0 Red</p>
8	<p><b>Private Hire Vehicle Operator Licensing</b></p> <p>2 Green</p> <p>1 Amber</p> <p>1 Red</p>
9	<p><b>Enforcing the Licensing Regime</b></p> <p>2 Green</p> <p>1 Amber</p> <p>1 Red</p>
	<p>Annex – Assessment of Previous Convictions</p> <p>Annex – Disclosure and Barring Service information</p> <p>Annex – CCTV Guidance</p> <p>Annex - Staying Safe: Guidance for Passengers</p>

3.4 A number of the recommendations in the Statutory Guidance recommend a significant change from the policies and arrangements which are in place in Leeds, and in many other licensing authorities. Some of the recommendations of the Task and Finish Group, such as where journeys should start or finish, or on powers to cap the number of drivers or vehicles, are not included in the guidance.

3.5 Many of the recommendations are very likely to affect how the council reviews existing policies and works with neighbouring authorities to align/harmonise some key policies.

### **The council's self-assessment**

3.6 The council's self assessment is attached at **Appendix 1**. It describes each of the seven sections of the guidance which prescribe a specific approach for licensing authorities, and assigns a red, amber or green assessment for each sub-section, where:

- Green indicates complete satisfaction of the requirement;
- Amber indicates that the council has partly or largely met the requirement, but further work is required; and
- Red indicates that the council does not satisfy the requirement or significant policy changes would be required.

3.7 For the majority of the sections, the self-assessment reveals the council as entirely or largely in line with the guidance, although some further comparatively

minor developments (i.e. without the need for extensive consultation, publishing a new policy, but requiring technical or organisational improvements).

- 3.8 For a small number of sections of the guidance, the council's current position either remains short of the standard proposed in the guidance, or differs significantly from the approach the guidance strongly recommends. In order to satisfy the requirement for the council to give due consideration in its consideration of policies and procedures against the guidance, specific attention is directed to those sections.

### **The regulatory structure**

- 3.9 The guidance recommends that members of a regulatory or licensing committee are convened, such as a Sub-Board basis to make licensing decisions.

*5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation....*

*5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.*

*5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.*

**DfT Statutory Guidance 2020, pp 20-21**

- 3.10 In contrast to this recommended approach, the council operates a procedure where licensing officers, supervisors and managers make individual decisions, and members of Licensing Committee review and set policies and conditions which are then applied by officers, supervisors and managers.
- 3.11 The council achieves a clear separation between investigation and decision making by tasking officers with distinct and separate roles. Officers (usually enforcement officers) investigate complaints, following up reported incidents, arrest, cautions, convictions, endorsements and produce an officer report. Managers then make a decision about the licence based on the information before them, working upwards from the smallest actions required to address the risk. It may be that Leeds is unusual in having sufficient officers in different roles to allow this clear separation.
- 3.12 Focusing attention to the likely scale and scope of change, and the circumstances which are specific to Leeds, it is likely that a Taxi and Private Hire Licensing Sub-Board would be required to make decisions, dealing with a

minimum of four or five suspensions, revocations or refusals each time. Using the 2019 data (the last full pre-Covid year), this would require around 85 Sub Boards a year to make decisions on around 400 driver, operator or vehicle suspensions, around 100 requests for more information, and around 30 refusals or revocations. These figures could be reduced if immediate suspensions were dealt with by officers, but it is likely that the council would still be required to convene Sub Boards on a weekly basis, with the associated use of member and officer time, both of which would be chargeable to the respective fees regime. The current cost of a Licensing Sub Board for purposes of Entertainment Licensing is around £2100 per hearing. 50 new Licensing Sub-Board meetings would cost in the region of an additional £100,000 a year.

### **Booking and dispatch staff**

- 3.13 The guidance recommends that members of a regulatory or licensing committee are convened, such as a Sub-Board basis to make licensing decisions.

*8.8 Licensing authorities should be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.*

*8.9 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 and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a 'responsible organisation' to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.*

**DfT Statutory Guidance 2020, p 30**

- 3.14 The council does not currently have this requirement in place. While vehicle proprietors, private hire operators and both hackney carriage and private hire drivers are required to have a DBS, operators' staff taking phone calls and bookings are not currently required to do so.
- 3.15 It is undoubtedly a development which would strengthen the council's approach, as operators' staff do often have access to information about vulnerable people. Looking forward, this provision would be included in the Private Hire Operator policy review.

### **Suspension and revocation of driver licences**

- 3.16 The guidance recommends that a decision is made to either suspend or revoke a licence, and that a licence, once suspended, should seldom be revoked.

*9.6 Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty*

*or convicted of an immigration offence the licence should be revoked immediately. Guidance for licensing authorities to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. 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.*

*9.7 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.*

*9.8 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. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.*

*9.9 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.*

*9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed though additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.*

**DfT Statutory Guidance 2020, p34**

- 3.17 In contrast to this recommended approach, the council currently operates a procedure where licensing officers, supervisors and managers can make decisions to suspend a licence on immediate public safety grounds to allow the council or the police to conduct an investigation. This is in line with the Local Government Miscellaneous Provisions Act 1976, section 61 a) and b), and captured in an immediate suspension policy.
- 3.18 The council suspends immediately more than 100 licences a year, and usually revokes or refuses to renew the licences of not more than 30 licence holders. This pattern suggests that only around 1 on 3 cases where a serious allegation or incident has taken place results in sufficient evidence to justify a licence being revoked.
- 3.19 If the council were to adopt the guidance in its entirety, it is likely that the council would increase the number of revocations, in some cases before the council had received essential information. A suspension can be both appealed (to magistrates court, for drivers and operators) and reversed by an officer. A revocation can be appealed, but cannot be reversed.

## **Policy review**

- 3.20 The areas of minor development and major consultation will be built in to the forward plan of policy review, which could also be aligned with neighbouring authorities. In order to prevent consultation/engagement overload, it is proposed only one policy development and consultation at a time.
- Working group of trade and stakeholders – Suitability 7 points;
  - Consultation on voluntary CCTV in vehicles (possibility of West Yorkshire & York consulting on the same policy, the draft policy developed for consultation does not need any significant revision following the statutory guidance);
  - Operator conditions, smartphone apps, cross-border (and will now include the call/booking handling DBS, possibility of involving West Yorkshire & York authorities);
  - Vehicle conditions (will include the vehicle conditions recommendations in the guidance, possibility of involving West Yorkshire & York authorities);
  - Driver conditions (will include the vehicle conditions recommendations in the guidance, possibility of involving West Yorkshire & York authorities);
- 3.21 The areas of minor development and major consultation can be built into a new forward plan, however, engagement and consultation has been extremely difficult during the Covid pandemic and lockdown. Online and email consultation is not a replacement for focused face to face meetings, which have proved positive in the working group approach.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The national consultation on the Statutory Guidance was completed in 2019. The council will need to engage and or consult on any changes which may be made to align the council with the guidance.
- 4.1.2 For minor changes or updates, it is anticipated that the council will not need to consult, but can make the necessary administrative or operational decisions. In order to support and strengthen the regional approach, the council will also share and engage neighbouring authorities in these changes.
- 4.1.3 For significant changes, such as major changes to policies and procedures, the council will need to engage and consult, with a wide range of trade, stakeholders and other licensing authorities. In order to support and strengthen the regional approach, the council will also share and engage neighbouring authorities in these changes, and it may be relevant to strengthen communication with other core cities, who may be in a similar position to Leeds.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Equality and Cohesion Screening Assessments are carried out on the policies agreed at Licensing Committee and policy changes made under the scheme of sub delegation. The DfT has completed its own impact assessment on the

Statutory Guidance. The council is currently conducting a survey of licence holders to establish current equalities characteristics for any subsequent screening and impact assessments.

### **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.

### **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, administering and enforcing licences.
- 4.4.2 These arrangements mean that if proposals such as those indicated in the Statutory Guidance are associated with additional costs, they will be funded via licence fees and will not place additional pressure on the council's budget. Conversely, it also means that the council will not run a significant budget surplus.
- 4.4.3 It is likely that the policy development, consultation and technical work will involve both officer time and expenditure. These budget pressures will be considered in addition to the financial pressures on the service from Covid pandemic. While the service has lost income, the pandemic has undoubtedly adversely affected the incomes of a large number of licence holders. The council is currently conducting a survey of licence holders to get their feedback on the impact of Covid on their earnings, how they have adjusted, and their suggestions for help or advice.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Legal implications will be considered if policies are reviewed in light of the statutory guidance.

#### **4.6 Risk Management**

- 4.6.1 The aim of the guidance is 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 advised committee members of the content of final statutory guidance on taxi and private hire licensing.
- 5.2 The report has provided a self-assessment of the council's approach to each of the themes of the guidance. It has drawn attention to themes where the council is compliant or exceeds the standards, where the council largely satisfies the standard, and a small number of areas where the council does not meet the standard or follow the approach strongly recommended.
- 5.3 The council plans to respond to the DfT using this report and appendix, and to share this information with neighbouring authorities.

### **6 Recommendations**

- 6.1 That committee members note the purpose and content of the information in this report.

- 6.2 That committee members read the proposed response to the DfT Statutory Guidance and make any further recommendations for the council's response to the consultation, and forward plan for review of taxi and private hire policies.

## **7 Background documents**

### **Appendix 1 Leeds City Council self-assessment against Statutory Guidance**

#### **Links**

Department for Transport July 2020: [Statutory taxi and private hire vehicle standards - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458212/Statutory_taxi_and_private_hire_vehicle_standards_-_GOV.UK.pdf)

Report to Leeds City Council Licensing Committee, March 2019  [\(Public Pack\)Taxi & Private Hire Licensing – New Statutory Guidance from the Department of Transport Agenda Supplement for Licensing Committee, 05/03/2019 10:00 \(leeds.gov.uk\)](https://www.leeds.gov.uk/sites/default/files/2019-03/20190305%20Taxi%20%26%20Private%20Hire%20Licensing%20-%20New%20Statutory%20Guidance%20from%20the%20Department%20of%20Transport%20Agenda%20Supplement%20for%20Licensing%20Committee%2C%2005%2F03%2F2019%2010%3A00.pdf)