

## Report to: Environment and Safety Committee

Date of Meeting: 20<sup>th</sup> May 2021

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**Report Title:** Taxi Licensing Policy review and inclusion of the statutory guidance issued by the secretary of state for transport to protect children and vulnerable individuals.

**Report By:** Mike Hepworth. Assistant Director. Environment and Place.

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### Purpose of Report

To review the draft Statement of Taxi Licensing Policy and to implement changes in policy following the introduction of the Statutory guidance issued by the Department for Transport in June 2020, and other matters.

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### Recommendation(s)

1) The Committee reviews the proposed Hastings Borough Council Hackney Carriage and Private Hire Licensing Policy, including the proposed implementation of the changes in process in light of the new 2020 Statutory guidance issued by the secretary of state for transport and agree the new policy.

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### Reasons for Recommendations

- a. The Secretary of State for Transport has issued new Statutory Guidance to Local Authorities on the exercising of taxi and private hire licensing functions, Hastings Borough Council does not currently have an all-encompassing Hackney Carriage and Private Hire Licensing Policy and it is now a requirement and best practice to do so.
- b. The Guidance sets out a framework of policies that, under section 177(4), of the Policing and Crime Act 2017, licensing authorities **must have regard** to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire licensing regimes.
- c. The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards. When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated.
- d. To enable the Licensing Committee to review the proposed changes and to consider and approve changes as identified following public consultation.

## 1.0 Introduction

1.1 Hastings Borough Council does not currently have an all-encompassing Policy relating to Hackney Carriage and Private Hire Licensing (**Appendix 1**) although it does have licence conditions and bylaws and guidelines in the form of a Handbook relating to the relevance of convictions etc. This handbook has been in place for several years. The Secretary of State for Transport has issued new Statutory Guidance to Local Authorities on the exercising of taxi and private hire licensing functions (**Appendix 4**).

1.2 The Department (DFT) recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards. When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated.

1.3 The council drafted a policy document and consulted on it from the 25<sup>th</sup> January 2021 till 15<sup>th</sup> March 2021. It was open to the public as well as the Taxi trade and displayed on the council website, emailed to the trade direct and placed on all council social media. We have received detailed responses from the trade and other interested parties, these have been discussed with the respondents separately. The responses are available within **Appendix 3**.

## 2.0 Background

2.1 Nationally, 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.

**2.2 It is expected the recommendations contained within this Guidance be implemented unless there is a compelling local reason not to.**

2.3 The Guidance sets out a framework of policies that, under section 177(4), of the Policing and Crime Act 2017, licensing authorities must have regard to when exercising their functions. These functions include developing, implementing, and reviewing their taxi and private hire licensing regimes. 'Having regard' is more than having a cursory glance at a document before arriving at a preconceived conclusion.

2.4 'Having regard' to these standards requires public authorities, in formulating a policy, to give considerations and 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.

## 3.0 Key points in Policy

3.1 For ease and to avoid detailed commentary on every aspect covered in the statutory standards, **Appendix 2** contains a table detailing the requirements made and officer's comments with respect to those requirements. Only those aspects that require further consideration by the Environment and Safety Committee are detailed in this report. The draft Guidance introduces four broad objectives. These are: -

1. Ensure the safety and welfare of the public, which is the overriding objective.
2. Encourage environmental sustainability.
3. Ensure an efficient and effective hackney carriage and private hire provision.
4. Monitor and improve standards of service in the trade.

3.2 Minor amendments to this Guidance may be made by the Environmental Health and Licensing Manager or their nominated representative in consultation with the Chair of the Environment and Safety Committee. Significant changes shall be brought before the Environment and Safety Committee.

3.3 Specific guidance on equalities and accessibility is provided in response to requests from members of the public.

### **3.4 Licensing policies**

**3.4.1 Licensing authorities should review their licensing policies every five years but should also consider interim reviews should there be significant issues arising in their area, and their performance annually.**

3.4.2 One of the main requirements of the revised standards, is that Licensing Authorities should have a cohesive taxi and private hire policy document with a minimum review of every 5 years. As members of the Environment and Safety Committee will now be aware, the authority has already produced a consolidated policy document that can be used by the Committee, Officers, licensees, and members of the public as a single point of reference. As the document is a working one, it is recommended that a review date be set of May 2026 at the latest, as a result of this report and is kept under review and revised as appropriate or after any significant legislative change.

3.4.3 In order to expedite minor amendments to Policy without the need for consultation or a full committee hearing and decision, it is requested the committee agree the inclusion of the following statement in the Policy:

“Minor amendments to this Policy required for example by virtue of legislative change or administrative procedural change may be made by the Environmental Health and Licensing Manager in consultation with the Chair of the Environment and Safety Committee and the Portfolio lead councillor with responsibility for Licensing. The term Environmental Health and Licensing Manager should be considered as applying to powers conferred to the Manager or their nominated representative”.

### **3.5 Whistleblowing**

**3.5.1 Licensing Authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.**

3.5.2 Hastings Borough Council has a comprehensive Whistleblowing Policy which is regularly reviewed. This can be accessed via the Council's intranet.

### **3.6 Consultation at a local level**

#### **3.6.1 Licensing authorities should engage within the local area to identify any concerns and issues that might arise from a proposed change**

3.6.2 Hastings Borough Council are keen to hear the views of persons affected by its Licensing Policy and have identified people and organisations within its Hackney Carriage and Private Hire Licensing Policy which reflect those used as examples in item 3.12 of the new DfT Statutory Guidance.

### **3.7. Changing licensing policy and requirements**

#### **3.7.1 Any changes in licensing requirements should be followed by a review of the licences already issued**

3.7.2 Implementation of any changes that affect current licence holders will be clearly communicated to all licence holders with further information accessible via the Hastings Borough Council website.

### **3.8 Common Law Police Disclosure**

#### **3.8.1 Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.**

3.8.2 Joint Protocols are in place covering all relevant licensing functions and all related topics, in as much as it applies to each individual organisation in East Sussex. These include, but are not exclusive to; Sussex Police, East Sussex County Council (E.S.C.C), Public Health, and Neighbouring Sussex Authorities and the wider Pan Sussex licensing authorities.

### **3.9 Licensee self-reporting**

#### **3.9.1 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.**

3.9.2 Current Hastings Borough Council Policy states:

The operator shall within seven (7) days notify the Council in writing of convictions of any kind imposed on him/her (or if the operator is a company, any convictions imposed on the company) during the period of the licence, giving particulars of the date and place of conviction, the nature of the charge and penalty imposed together with such further information concerning the offence as the Council may require.

### **3.10 Referrals to the Disclosure and Barring Service and the Police**

#### **3.10.1 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**

3.10.2 The Statutory Standards recommend that where there is 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, this should lead to an automatic referral by the licensing authority to the DBS.

3.10.3 Following a decision to refuse or revoke a licence by Hastings Borough Council as the individual is thought to present a risk of harm to a child or vulnerable adult, the authority make an automatic referral to the DBS under the Safeguarding Vulnerable Groups Act 2006.

### **3.11 Sharing licensing information with other licensing authorities**

#### **3.11.1 Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants**

3.11.2 The standard recommends that tools such as the NR3 National Register of Taxi and Private Hire Refusals and Revocations, are used to share information with other Licensing authorities, and that this register should be consulted for new applications as this can reduce the risk of non-disclosure of relevant information. The Service already asks applicants to detail any previous refusal or revocations, and details of licences held elsewhere, but it is felt that the recommendation to also use and consult NR3 would be an appropriate additional safeguard, The Council already subscribes to the service.

### **3.12 Complaints against licensees**

#### **3.12.1 All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.**

3.12.2 All complaints received are logged and investigated. The Licensing Team are currently using Northgate M3. A software system which allows linking of individual records against investigative files. Whilst the service has systems in place, it is about to undertake a change of software which will enhance the authority's recording and analysis capability further. This project is anticipated to be completed by early 2022.

3.12.3 Details of how to log a complaint against a licensed driver can be found on the website. This information is also to be provided within each licensed vehicle.

3.12.4 Hastings Borough Council has previously implemented a 'Penalty Points' system, which has been reviewed and enhanced to inform enforcement and any action required.

### **3.13 Overseas convictions**

#### **3.13.1 Licensing Authorities 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.**

3.13.2 Prior to consideration of any new application, overseas applicants who have lived in the UK for a continuous period of less than five years are required to provide a certificate of good conduct from their previous country or countries of residence (within the previous 5 years) in addition to an Enhanced Certificate from the Disclosure & Barring Service.

### **3.14 Criminality checks for drivers**

**3.14.1 All licensed drivers should be required to evidence continuous registration with the Disclosure & Barring Service (DBS) update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe to the Update Service should still be subject to a check every six months.**

3.14.2 This is an increase on current checks (currently undertaken upon application; and every 3 years after the issue of the licence).

3.14.3 It will be a mandatory requirement for all drivers to sign up to the online Disclosure & Barring Service update service, and to give Hastings Borough Council authority to access records.

3.14.4 It is requested the committee consider mandating the requirement for all drivers to sign up to the online DBS update service, and to include an administrative fee of £40 in addition to the cost of the DBS application on any manual enhanced checks that need to be carried out due to the extra administrative processes required.

3.14.5 A 6 monthly DBS checks will be carried out throughout the duration of a licence: should the Authority not be able to access online records, a driver will still be required to undertake an Enhanced Check, at an additional cost to the driver. If no check is undertaken within 2 months of the 6-month requirement; the licence will be suspended.

3.14.6 For councillors information: in future, it will also be a requirement to have all licensed vehicle proprietors (that are not licensed drivers), and all Private Hire Operators, licensed with the Authority to undertake Basic Disclosures on an annual basis.

### **3.14 Safeguarding awareness**

3.14.1 Hastings Borough Council is to seek and approve a provider of Safeguarding and CSE Awareness training as part of the application process and knowledge test (the provision of a training provider used by all Sussex councils is currently being investigated). This will be a phased approach to encompass all new applications and renewals.

### **3.15 Language proficiency**

**3.15.1 A licensing authority's test of a driver's proficiency should cover both oral and written English language skills.** This is assessed during the application process and Knowledge test.

### **3.16 Booking and Dispatch Staff**

**3.16.1 Licensing authorities should, as a condition of granting an operator licence, require a register to be kept of all staff that will take bookings or dispatch vehicles.**

3.16.2 A register of all staff that will take bookings or dispatch vehicles under the authority of the Private Hire Operator will be kept.

3.16.4 The standards recommend that Operators should conduct basic DBS checks and have a policy on employing ex-offenders in call handling and dispatching roles. Operators have expressed concerns over how they would implement such a condition on their licences. Whilst this would be for them to seek their own advice regarding implementation and dealing with any human resource issues that may arise, it is appreciated that this policy change will take some time to implement. Therefore, it is recommended that the policy seeks to include this as a condition and that records need to be kept and provided for inspection by the licensing authority upon request. But that it does not come into effect until 1 January 2022.

### **3.17 Use of passenger carrying vehicles (PCV) licensed drivers**

3.17.1 A PCV is not licensed by the council and drivers therefore do not have to have an enhanced DBS certificate in place. This policy will therefore prohibit the use of PCV and Drivers by a licensed private hire operator unless it is necessary (due to the number of passengers or luggage requirements) and the informed consent of the person booking is given.

3.17.2 Subject to the comments of Members, Officers intend to add the following condition to all Private Hire Operator Licences

“Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than 8 passenger seats are required or to accommodate luggage, the booker should be informed that a PCV is necessary, and that a PCV licensed driver will be used who is subject to different checks and not required to have an enhanced DBS check.

### **3.18 Relevance of Convictions and Cautions**

3.18.1 The purpose of this policy is to set out the Council’s approach to convictions and cautions when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a driver, vehicle or operator licence. The Institute of Licensing publication “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades” (2018) and DfT Statutory Standards have been taken into account in preparation of this policy and will be taken into consideration when making decisions. (Appendix F of the Taxi Policy).

### **3.20 CCTV in Vehicles**

3.20.3 Imposition of a blanket requirement to attach in vehicle CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach, and will therefore require an appropriately strong justification and must be kept under regular review.

3.20.4 Due to financial damage and loss of earnings the trade have encountered during the past 15 months owing to the Covid-19 pandemic, It should be noted that at this time we do not feel that it is fair or proportionate to mandate the requirement to install CCTV within all vehicles. However, a fair proportion of vehicles already have CCTV installed. The requirement to mandate compulsory CCTV also carries serious data management responsibilities as the council would have to become the ‘Data Controller’. Nevertheless, we strongly recommend the voluntary use of CCTV and the policy details

the Information Commissioner Office (ICO) guidelines to assist. Officers recommend that this be reviewed again in 2023 and brought back to this committee.

## 4.0 Legal Consideration

4.1.1 Section 177(1) of the Policing and Crime Act 2017 states that '[t]he Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm'. The Secretary of State for Transport published the attached guidance, 'Statutory Taxi and Private Hire Vehicle Standards' in July 2020. Section 177(4) states that any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.' Therefore, Licensing authorities are under a legal duty to have regard to the guidance.

4.1.2 In publishing this document, The Secretary of State for Transport stated that 'licensing authorities will be expected to fully implement these measures as soon as possible. The department will closely monitor progress, work with authorities not meeting their responsibilities and look to introduce legislation if licensing authorities fail to adopt the standards and update their operations.'

4.1.3 Paragraph 2.8 of the Standards states '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.'

## 5.0 Options

5.1.1 The Committee review the proposed HBC Hackney Carriage and Private Hire Licensing Guidance as proposed in Appendix 1. The Committee agrees for the Environmental Health and Licensing Manager to implement the policy.

5.1.2 Any changes as result of this meeting may be made by the Environmental Health and Licensing Manager or their nominated representative in consultation with the Chair of the Environment and Safety Committee.

5.1.3 As stated above at paragraph 4.1.1 concerning legal aspects, section 177 of the Policing and Crime Act 2017, '[a]ny public authority which has a licensing function under taxi and private hire vehicle legislation must have regard to any guidance issued under this section'. Accordingly, there is a legal duty for the Environment and Safety Committee to have regard to the Statutory Taxi and Private Hire Vehicle Standards.

## 6.0 Financial

6.1.1 There is no significant cost identified within this report, and the recommendations can be implemented within existing licensing service budgets. There is a minor cost associated with administering the consultation and a small yearly cost of membership to the National Anti-fraud Network, which is a cost considered appropriate to be taken from the Licensing fees.

6.1.2 There is small cost to the trade of around £4 per annum per driver for the supply of Safeguarding and CSE training, which will be required every three years.

## 7.0 Risk management implications

7.1.1 It is important that these changes are considered to ensure the safety of the public. Nationally taxi and private hire services have unfortunately been shown to be a high-risk licensing activity, with the primary purpose of this licensing regime being to maintain public safety. In terms of passengers this risk can be seen in cases of abuse, exploitation, and sexual crimes.

7.1.2 Whilst unfortunately no Licensing Authority can eliminate such risks entirely, having a robust set of policies and maintaining high licensing standards will help safeguard the most vulnerable in our borough and by extension the wider public.

## 8.0 Environmental Considerations

Local licensing authorities are encouraged to consider how they can support any local air quality management policies that the local authority may have adopted, particularly where Air Quality Management Areas (AQMAs) or Clean Air Zones have been introduced. At present HBC does not have any Air Quality Management Areas or Clean Air Zones but continues to monitor air quality on a daily basis. However, should this happen in the future, then further vehicle emissions standards relating to Clean Air Zones and Hackney Carriage and Private Hire Vehicles could be incorporated into the policy.

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### Wards Affected

All

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### Implications

Relevant project tools applied? N/A

Have you checked this report for plain English and readability? Yes

Climate change implications considered. Yes

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness

Crime and Fear of Crime (Section 17) YES

Risk Management YES

Environmental Issues YES

Economic/Financial Implications YES

Human Rights Act YES

Organisational Consequences  
Local People's Views YES  
Anti-Poverty

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### **Additional Information**

Appendix 1. Draft HBC Hackney Carriage and Private Hire Licensing Policy  
Appendix 2. Measures contained within the Statutory Taxi and Private Hire Vehicle Standards and timescales for implementation.  
Appendix 3. Consultation responses.  
Appendix 4. DFT Statutory Taxi & Private hire Vehicle Standard 2020.

Background information:

[DFT Best Practice Guidance 2010](#)

[HBC Driver and operator handbook revised 2017](#)

[Institute of Licensing Guidance on determining the suitability of applicants April 2018](#)

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