



# Report to Licensing Committee

**Date:** 30<sup>th</sup> June 2021

**Title:** Taxi & private hire vehicle drivers: English language assessment

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## Recommendations:

1. To note and comment on the licensing service's proposed arrangements to ensure all licensed taxi and private hire drivers meet the English language requirements stipulated in the council's new Taxi and Private Hire Licensing Policy.
2. To agree the proposed minimum assessment level of B1 on the Common European Framework Reference of languages (CEFR).

## 1. Introduction

- 1.1 The principal reason for assessing drivers' standard of English language skills is to ensure that they can converse effectively, particularly in emergency situations and where there are safeguarding concerns. The ability to converse effectively in English also helps avoid job related misunderstandings such as wrong directions, fare disputes, collecting the wrong customer and misunderstanding a customer's assistance needs. In accordance with new national statutory, which focus on safeguarding passenger safety, all licensed taxi and private hire drivers are expected to possess proficient English language skills.

## 2. Background

### Statutory Standards

- 2.1 In accordance with the Policing and Crime Act 2017, the Department for Transport published the "Statutory Taxi & Private Hire Vehicle Standards" ("standards") in July 2020. There is evidence nationally that the use of taxis and private hire vehicles has been associated with harm to children and vulnerable adults. The aim of the statutory standards is to safeguard travelling passengers from the risk of abuse and exploitation. Councils have a legal duty to have regard to these standards and it is expected that they are adopted unless there is compelling local reason not to.

- 2.2 The possession of proficient English language skills by drivers has been identified as a key factor in addressing safeguarding concerns. The standards contain the following recommendation with respect to language proficiency:

“A lack of language proficiency could impact on a driver’s ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others.

A licensing authority’s test of a driver’s proficiency should cover both oral and written English language skills to achieve the objectives stated above.” (paragraphs 6.14-6.15)

- 2.3 Furthermore, the standards make it clear that any change to the licensing requirements should be applied retrospectively to existing licence holders and state the following:

**“Any changes in licensing requirements should be followed by a review of the licences already issued.** If the need to change licensing requirements has been identified, this same need is applicable to those already in possession of a licence. That is not however to suggest that licences should be automatically revoked overnight, for example if a vehicle specification is changed it is proportionate to allow those that would not meet the criteria to have the opportunity to adapt or change their vehicle. The same pragmatic approach should be taken to driver licence changes - if requirements are changed to include a training course or qualification, a reasonable time should be allowed for this to be undertaken or gained. The implementation schedule of any changes that affect current licence holders must be transparent and communicated promptly and clearly.” (paragraph 3.14).

#### **Buckinghamshire Council Policy**

- 2.4 On 24<sup>th</sup> February 2021 the Council resolved to adopt the new Taxi and Private Hire Licensing Policy (“policy”) for Buckinghamshire Council. The new policy will take effect from 6 September 2021 and contains the majority of the recommended statutory standards.

- 2.5 With respect to English language proficiency the policy is as follows:

“All licensed taxi and private hire drivers are expected to be able to speak, understand and read English, so that they can communicate freely and clearly with passengers and officials, including in stressful and emergency situations. You will also need to be able to follow instructions or directions from passengers and be able to identify and report situations where there may be safeguarding concerns about a passenger.

As a result, and in line with the Statutory Standards, you are required to undertake an assessment of your communication skills (for which an additional fee will be payable) unless you can provide evidence that you have previously completed an English-language qualification at an acceptable level.

Existing drivers who have not previously taken this assessment will be required to take and pass it. From 12 months after the date of the implementation of this policy, if you have not passed the assessment criteria the Council is unlikely to renew your licence until you have done so.” (paragraph 3.7).

### **3. Recommended approach**

#### **Timescales**

- 3.1 Once the new Policy is implemented, drivers will have a minimum period of 12 months to demonstrate that they meet the council’s required standard of language proficiency. After this time, drivers who have not demonstrated that they meet the required standard will be unable to renew their licence. Drivers licences are issued for three years, so depending on the expiry date of their current licence, drivers will have up to four years to pass the assessment.

#### **Level of proficiency**

- 3.2 The statutory standards do not specify a level of language proficiency. It is clear from the standards that drivers are expected to be able to read and understand documents relating to safeguarding matters. Furthermore, drivers are expected to be able to hold conversations and understand what is being said by passengers in order to identify indicators of concern. Whilst basic English language skills are essential for job related functions such as understanding directions and discussing fares, the standards require language skill levels to a higher level.
- 3.3 The Common European Framework of Reference for languages (CEFR,) published by the Council of Europe, is an internationally recognised scheme that describes language proficiency in terms of one of six levels. The various levels can be summarised as follows:

PROFICIENT USER C2	Can understand with ease virtually everything heard or read. Can summarise information from different spoken and written sources, reconstructing arguments and accounts in a coherent presentation. Can express him/herself spontaneously, very fluently and precisely, differentiating finer shades of meaning even in more complex situations.
PROFICIENT USER C1	Can understand a wide range of demanding, longer texts, and recognise implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions.

	Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear, well-structured, detailed text on complex subjects, showing controlled use of organisational patterns, connectors and cohesive devices.
INDEPENDENT USER B2	Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialisation. Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party. Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantages and disadvantages of various options.
INDEPENDENT USER B1	Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc. Can deal with most situations likely to arise whilst travelling in an area where the language is spoken. Can produce simple connected text on topics which are familiar or of personal interest. Can describe experiences and events, dreams, hopes & ambitions and briefly give reasons and explanations for opinions and plans.
BASIC USER A2	Can understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need.
BASIC USER A1	Can understand and use familiar everyday expressions and very basic phrases aimed at the satisfaction of needs of a concrete type. Can introduce him/herself and others and can ask and answer questions about personal details such as where he/she lives, people he/she knows and things he/she has. Can interact in a simple way provided the other person talks slowly and clearly and is prepared to help.

3.4 Based on the above summaries, it is proposed that the basic user levels A1 and A2 would be insufficient to meet the council's requirements. These levels may be sufficient for drivers carrying out routine functions, in familiar settings, but do not reflect the ability to understand subject matter of a more complex or unfamiliar nature. To meet the council's passenger safety and safeguarding requirements

drivers need to be able to understand and report such things as conversations which are inappropriate or to reference matters of concern.

3.5 Historically only the Aylesbury Vale area of Buckinghamshire Council has conducted routine formal English language assessments on drivers prior to accepting a licence application. At the time of implementation in 2019, the former Licensing Committee approved the introduction of the Versant automated telephone based test system (see 3.16 for further explanation). It was agreed that the pass criteria would be 56 out of 80 on the Versant scoring range which equates to the threshold of a B1/B2 user on the CEFR scale. This level was set based on consideration of the above user summaries and consultation with other local authorities using the same system. Drivers scoring 50 or more are able to appeal and a senior officer will listen to the open question element of the test and make an assessment on whether they deem the candidate’s English language sufficient.

3.6 The Councils current supplier, Pearson, have considerable experience delivering English language testing using the Versant system. Over 1 million Versant English tests are conducted each year on behalf of both private and public sector organisations. Since the introduction of the statutory standards there has been increasing interest from local authorities looking at how they can administer language assessment tests on their licensed drivers. Pearson have conducted their own research in this area and have reported the following:

“Pass marks against the Versant English Test for the purpose of taxi licence applications differ across the country with many councils keen to align and agree a more standardised and consistent approach. Whilst we cannot provide pass marks, we do consider B1/GSE 43-58 (Global Scale of English) to be a good level and worth consideration”.

B1/GSE 43-58 is equivalent to a score of 47-57 on the Versant scoring system.

3.7 As previously stated, pass marks set by local authorities using the Versant system vary. The table below shows the current pass mark, CEFR level and cost of test of a sample of local authorities using the Versant system:

LA	Pass mark (Versant score)	CEFR	Cost £
Buckinghamshire (Aylesbury Vale area)	56	Upper B1/B2	46
Bath & NES	46	B1	67
West Northants	46	B1	40
Dartford	56	Upper B1/B2	40

Dacorum	56	Upper B1/B2	46.80
Mid-Sussex	56	B1/B2	53
Mid-Devon	58	B2	27.50
Stevenage	60	B2	45
East Devon	69	C1	30

- 3.8 The reason for the difference in pass mark is not clear but suggests that averaging scores between authorities is not a reliable pass mark setting option and that further guidance from the Department for Transport for licensing authorities would clearly be beneficial.
- 3.9 Transport for London (TfL) have a comprehensive policy in place in respect of English language assessment requirements for their licensed drivers. They have set a pass mark of B1 on the CEFR. Candidates are required to provide documentary evidence from an approved list of certified qualifications. Alternatively, candidates are required to undertake an assessment with an approved assessor, the cost of which ranges from £180 to £200.
- 3.10 The Home Office recently published guidance, “Assessing the English Language requirement”, April 2021, which sets out the required levels of English language for those applicants required to demonstrate their ability under immigration rules. The guidance sets levels from the CEFR according to the applicant’s particular application route for a visa. The “Skilled worker” category applies to a wide array of professions including mechanics, MOT testers and driving instructors. Skilled worker visa applicants are required to demonstrate that they meet level B1 on the CEFR.
- 3.11 On the basis of the above information, specifically taking into account the advice from Pearson and the approach of TfL and the Home Office, it is proposed that the pass criteria for English language testing for Buckinghamshire Council be set at B1 on the CEFR. It is considered that this would set the proficiency level at a sufficient standard to ensure that drivers can meet the council’s requirements regarding the reporting of safeguarding concerns. It is further proposed that this level be kept under review and pass levels closely monitored following implementation of the Policy.

### **Implementation**

- 3.12 In practice it is predominantly the ability to comprehend and verbalise English language that are the most desirable skills. The challenge for the licensing authority is how to test this effectively and efficiently. Officers routinely conduct interviews with applicants but this is not always reliable and there are potential issues around objectivity and unconscious bias.

- 3.13 A number of local authorities, including the former Aylesbury Vale area of Buckinghamshire Council, use the Versant English Test which uses speech processing technology to instantly assess applicant's linguistic skills via the telephone. The test is typically conducted at the council offices under the supervision of a member of staff. The candidate is given a unique TIN (test identification number) which they enter via the telephone key pad. The candidate is asked to identify themselves and is then taken through a series of exercises which take around 15 minutes to complete. The exercises test the candidates' ability to:
- Read accurately a number of sentences from a test sheet/screen.
  - Repeat a series of sentences that are read out via the system.
  - Answer questions in order to test comprehension.
  - Rearrange words and phrases to form meaningful sentences.
  - Converse in free speech for 40 seconds in response to open questions.
- 3.14 The system produces a test report which is immediately available. Candidates are given an overall score, with a further breakdown of scores in the areas of sentence mastery, vocabulary, fluency and pronunciation. Scores are reported on both the Versant scoring system and the Global Scale of English with an indicator of equivalency levels on the CEFR. This allows the results to be accurately compared against other language-based qualifications. The score report provides descriptors which give written summaries of the candidate's ability and advice on how skills can be improved in each of the scored areas. Examples of recent test score reports for candidates demonstrating C1, B1 and A2 user abilities are shown in Appendix 1.
- 3.15 It is proposed that the licensing service use the Versant system as the primary means of assessing driver's English language skills. The system provides an objective assessment of the candidate's level of English language proficiency and has proved fair and effective. It is also being used by an increasing number of other local authorities and government departments which provides assurance on the test type and process, and ultimately should aid consistency across the wider public sector. The test does not include an assessment of the candidates' ability to write English but this is not considered necessary for the purposes of promoting passenger safety and is not generally a skill required by drivers in their day to day duties.
- 3.16 Since the system was introduced in Aylesbury Vale in March 2019, over 400 drivers have successfully passed the test. Drivers who are able to demonstrate that they meet the assessment criteria by way of appropriate qualification certificate are exempt from the requirement to take the assessment, although this is rare.
- 3.17 An analysis of test results from the Aylesbury Vale area between March 2019 and April 2021 show that that of 779 tests taken, 50% were deemed as passes. However approximately 20% of the total tests taken were repeat tests by returning candidates

who had previously failed. The actual pass rate per candidate was 62% based on the current pass mark. The proposed pass criteria for English language testing for the Buckinghamshire Council policy is B1 on the CEFR. Analysis shows that when assessed against B1 pass criteria a further 76 drivers who previously failed in the Aylesbury Vale area, would now pass the test. This means that the overall pass rate at B1 level would have been 73%, an increase of 11% on current actual pass rates.

- 3.18 While it is not possible to know precisely how many existing licensed drivers would pass the English language test, these figures give an indication of the likely pass rate if testing started immediately. Pass rates in the Aylesbury Vale area have remained consistent since the test was introduced, which indicates that applicants are not deterred by the test, and the results do not appear to be skewed by candidates only applying when they believe they can pass the test.
- 3.19 There are currently approximately 3500 drivers licensed by Buckinghamshire Council. It is anticipated that approximately 3000 of the current licensed drivers will require an assessment. In accordance with the new Taxi and Private Hire Licensing Policy, from September 2022 drivers will no longer be able to renew their licence unless they can demonstrate that they meet the council's English language proficiency requirements. The Licensing Service understands that many working in the trade are apprehensive about this assessment. The Service is currently working with Buckinghamshire Adult Learning who are developing two dedicated courses for drivers to assist them with preparing and passing the test. The first is a workshop to prepare drivers for the Versant assessment. The second is a more comprehensive ESOL (English for Speakers of Other Languages) qualification that can be run at either Entry level 3 (equivalent to B1) or Level 1 (equivalent to B2), and is aimed at those drivers who may need more help than just the workshop to prepare for the test.
- 3.20 The Service is currently working with the Council's existing supplier to determine how the Versant system can be developed and used to implement the English language test assessment for new applicants and existing licensed drivers from the 6<sup>th</sup> September 2021. During the Covid-19 pandemic the Service has focused on improving and developing robust digital solutions to support service users, customers and staff. The current proposal is that testing will be conducted remotely (in the main), with robust ID verification checks in place. The test will be taken via an app on a smart device, which the candidate downloads in advance. The app also has a practice mode so that the candidate can try a sample test in advance of taking the assessed test. Results will be immediately digitally available to the Licensing Service and shared with the candidate. There will be provision for candidates to take the test in person for those with limited access to online technology. The fee for the test will be paid directly by the candidate to the supplier and will be no more than £55 (this will be kept under review and could reduce depending on the level of demand for

tests). The supplier will also take responsibility for re-testing arrangements and the provision of signposting and guidance to help candidates improve their test scores.

### **Exemptions**

- 3.21 It is proposed that drivers who have already successfully taken the Versant test with Aylesbury Vale District Council or the Aylesbury Vale area of Buckinghamshire Council (while legacy policies applied) will not be required to take the test again.
- 3.22 Further exemptions are proposed for drivers who are able to provide evidence by way of certified qualifications which demonstrate English language proficiency to the same standard as the assessment level. Examples of the type of qualification that will be considered suitable are as follows:
- UK GCSE/O level (or equivalent) certificate.
  - UK AS-Level/A level certificate
  - UK NVQ\*/BTEC/City & Guilds qualification, along with confirmation from the awarding body that the qualification provided is equivalent to GCSE or above (for example, a Blue Badge Guide qualification)
  - UK BA Hons, BSc Hons degree or higher i.e. master's, PhD
  - UK HNC/HND qualification
  - ESOL, SELT and IELTS qualifications.
- 3.23 \*The Licensing Service will need to be satisfied that any qualification has been taught in English. The UK ENIC, (National Information Centre for the recognition and evaluation of international qualifications and skills) will supply a recognised 'statement of comparability' for qualifications awarded overseas. In addition, if the qualification was obtained from a non-majority English speaking country Ecctis <https://www.ecctis.com/> will provide English Language Proficiency Statements (ELPS) confirming that the subject was taught in English.

## **4. Summary**

- 4.1 In accordance with the council's new Taxi and Private Hire Licensing Policy and to meet the Statutory Standards obligations, the Licensing Service is required to ensure that all licensed taxi and private hire drivers meet a minimum level of English language proficiency. The primary motive for this requirement is to safeguard travelling members of the public, particularly children and vulnerable adults by ensuring that drivers have adequate skills to recognise and report instances of concern. Based on research and enquiries made in this area, the Licensing Service believes that this objective can be achieved with the introduction of a minimum proficiency level equivalent to B1 on the CEFR of languages. In order to assess in the region of 3000 current drivers, as well as the ongoing assessment of new drivers, it is

proposed that the work be provided by the Councils existing supplier, who are specialists in the field of education and assessment. They will make use of the Versant test system which has proved efficient, reliable and effective in the Aylesbury Vale area and is widely used across both the private and public sector. The Licensing Service will facilitate and promote ongoing training to assist drivers to prepare for the test. Pass rates under the new proposed testing arrangements will be closely monitored and kept under review.

## **5. Other options considered**

- 5.1 The implementation of the assessment requirements for existing drivers is likely to place additional burdens on the taxi and private hire trade both in terms of time and financial resources. The Secretary of State has made it clear to local authorities that there is an expectation that the statutory standards be implemented forthwith and there is no compelling reason to delay the introduction of the assessments. However, they also recognise that it is reasonable to provide drivers with time for a training course or qualification to be gained. Licensed drivers will have until at least September 2022 to prepare for the tests, with some drivers having up to a further three years to prepare, dependent on their licence expiry date.
- 5.2 The council could consider setting either a lower or higher assessment level than B1. However, based on the user criteria of the CEFR, candidates with proficiency levels lower than B1 are not likely to be equipped with sufficient language skills to identify and report safeguard concerns. Setting a level higher than B1 would clearly be advantageous in promoting higher standards of English language skills, but based on research and experience to date this is not necessary to meet the council's safeguarding objectives and could unnecessarily disadvantage existing licensed drivers. Clearly in local authority areas where the majority of applicants are native English language speakers, pass marks can be set at higher levels without detriment to the pass rate. In Buckinghamshire a significant number of applicants have English as their second language. Of the 495 hackney carriage and private hire drivers that responded to the Taxi and Private Hire Licensing Policy consultation in December 2020/January 2021, 58% said English was not their first language. A balance needs to be struck between implementing the Standards and potential impacts on the existing licensed trade. It is proposed that setting a pass criteria of level B1 will achieve that balance.

## **6. Legal and financial implications**

- 6.1 Under section 177(1) of the Policing and Crime Act 2017, the Secretary of State for Transport may issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. Under section 177(4), licensing authorities

“must have regard” to this guidance when exercising their functions. These functions include reference to English language proficiency and the retrospective assessment of existing licence holders. “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. 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.

6.2 Furthermore, the High Court has held that it is reasonable for a licensing authority to require private hire drivers to demonstrate that they are competent in spoken (and written) English, *R (on the application of Uber) v Transport for London (2017)*. In addition, provided the English test is required for genuine reasons and applied universally, i.e. to all applicants, there is no discrimination under the Equalities Act 2010.

6.3 If the proposed arrangements are adopted there will be no significant cost implications for the council. Drivers will pay the cost of the tests directly to the supplier. Some officer time will need to be allocated to monitoring contractual arrangements and updating back office systems with test results. This cost has been factored into the proposed taxi and private hire fees and charges that are currently advertised for consultation purposes

## **7. Corporate implications**

7.1 Protecting the vulnerable – taxi and private hire vehicles play a valuable role in transporting vulnerable members of the community such as children and those with physical disabilities. Many children, including those with special educational needs, rely on taxis and private hire vehicles for school transport. The implementation of English language assessments for all licensed drivers will help further promote the safety of children and vulnerable adults using licensed vehicles.

7.2 Property – N/A

7.3 HR – N/A

7.4 Climate change – N/A

7.5 Sustainability – N/A

7.6 Equality – a full equalities impact assessment has been carried out and published and accompanied the Licensing (Regulatory) Committee Report of the 3<sup>rd</sup> February 2021. The most recently updated copy is shown as Appendix 2.

- 7.7 The implementation of English language assessments for existing drivers has been delayed until September 2022 to give candidates sufficient time to prepare. Additional resources, including dedicated training and guidance, will be provided to assist candidates to meet the assessment requirements.
- 7.8 Data – measures will be in place to ensure relevant personal data is managed in accordance with the Data Protection Act and GDPR requirements.
- 7.9 Value for money – fee levels will be kept under review and could reduce depending on the level of demand for tests.

## **8. Consultation and communication**

- 8.1 The council's intention to introduce mandatory English language assessments for all drivers has been widely communicated to the taxi and private trade as part of the extensive consultation exercise on the council's new Taxi and Private Hire Licensing Policy. Licensed drivers, operators and vehicle owners were invited to respond to surveys, which included specific questions on this issue, prior to the first draft of the policy being prepared and once again during the full policy consultation exercise. Invitations were sent via SMS and individual emails and the surveys were also publicised on the council's webpages. Trade representative attended workshops and question and answer sessions with council officers where the matter was also discussed. The views of the trade and other interested stakeholders responding to the consultations were considered by the Licensing Committee, the Cabinet and Full Council prior to final adoption of the Policy.
- 8.2 Subject to approval by the Licensing Committee on the proposed approach to implementing the assessments, and agreement of the minimum standard required, the licensing service will commence further communication with the trade. Details of the assessment requirements will be publicised on a web page dedicated to the new policy and communicated directly with the licensed trade by email and SMS. Information will also be provided about various support options to assist drivers to prepare for the test. This will include information about the Buckinghamshire Adult Learning workshops and courses, tips and advice on preparing for the assessment and links to other resources available. It is also intended to publicise the new assessment requirements more widely through the council's various media channels, this will help demonstrate the council's commitment to safeguarding the community and provide assurance to the travelling public.

### **Key documents:**

DfT Statutory Taxi & Private Hire Vehicle Standards, July 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/928583/statutory-taxi-and-private-hire-vehicle-standards-english.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928583/statutory-taxi-and-private-hire-vehicle-standards-english.pdf)

Buckinghamshire Council Taxi and Private Hire Policy, 2021

<https://buckinghamshire.moderngov.co.uk/documents/s18132/Appendix%201%20draft%20policy.pdf>

Home Office, Assessing the English Language Requirement, 6 April 2021

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/975254/english-language-requirement-v3.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975254/english-language-requirement-v3.0-ext.pdf)

TfL, Private Hire Drive – English language requirement guidance, 16 Sept 2020

<https://content.tfl.gov.uk/english-language-requirement-guidance-16-09-20.pdf>

Council of Europe, Common European Framework of Reference for Languages (CEFR)

<https://www.coe.int/en/web/common-european-framework-reference-languages/table-1-cefr-3.3-common-reference-levels-global-scale>