

Taxi and PHV licensing

Councillors' handbook
(England and Wales)

Foreword

Taxis and Private Hire Vehicles (PHVs) are vital to our communities; whether it's the iconic black cab in our cities or the flexible minicab in a rural district. As elected members, we are responsible for ensuring the public travel safely and receive a good level of service, and that our systems attract good, reputable drivers.

Our critical responsibilities in licensing these drivers and vehicles have been highlighted by recent examples of licensed vehicle drivers and/or operators being involved in the sexual exploitation of children. Taxis are regularly used to transport children during the school run. Elderly and disabled users also rely heavily on the door-to-door service taxis and PHVs provide, as it is often the only way for many residents to access local services. Clearly, drivers must therefore command the highest level of confidence before they can be entrusted with this responsibility. It is essential that we take seriously our responsibility to determine whether someone is a 'fit and proper' person to hold a licence.

There are economic benefits too in enabling visitors to move quickly and safely through your area. Taxis and PHVs have a particularly important role in the night-time economy, ensuring the public return home safely, and can be helpful in ensuring that people disperse quickly and peacefully after events.

Unfortunately, the existing licensing system is outdated and needs urgent reform. One of the main pieces of legislation dates from 1847, which means it predates even the earliest motor vehicles, let alone online and mobile booking apps. The Local Government Association (LGA) is lobbying for a Taxi and PHV Licensing Reform Bill to modernise the governance system for taxis and PHVs and better protect passengers from the many and varied risks which now exist. Until then, it is incumbent on us to do the best we can with the tools at our disposal.

We have developed this handbook to help you use these tools and understand some of the key issues concerning taxi and PHV licensing. It is intended to be used as a starting point to explain some of the difficulties that can arise in this complex area of business regulation, but of course is not a replacement for the training provided by your own authority.

We hope you find it useful.

Councillor Simon Blackburn

Chairman, LGA Safer and Stronger Communities Board

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The regulatory framework for taxis and PHVs – an overview

Terminology

Taxis are referred to in legislation, regulation and common language as ‘hackney carriages’, ‘black cabs’ and ‘cabs’. The term ‘taxi’ is used throughout this handbook and refers to all such vehicles.

Private hire vehicles (PHVs) include a range of vehicles such as minicabs, executive cars, limousines and chauffeur services. The term ‘PHV’ is used throughout this handbook to refer to all such vehicles.

Councils are only responsible for the licensing of vehicles which carry up to a maximum of eight passengers. Vehicles with a seating capacity of more than eight passenger seats, which can include some stretch limousines, are licensed by the Traffic Commissioners, who are appointed by the Transport Secretary.

Legislation

Taxi and Private Hire Vehicle (PHV) legislation is primarily concentrated in the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The legislation provides a broad framework for the licensing of drivers, vehicles and operators but the detail of how this is done, including standards and conditions, is the responsibility of individual district and unitary councils (‘licensing authorities’). There are a number of other Acts which also have an impact; for example the Equalities Act 2010, which places a duty on councils to take steps to meet the needs of disabled people where these are different from the needs of other people, and enables regulations to improve disabled access to taxis.

This mix of legislation is widely regarded as outdated and in 2014 the Law Commission published the results of a three year study into consolidating and updating the laws governing both taxis and PHVs into a single piece of legislation¹. The Government has yet to respond to the report, although two clauses were brought forward early in the Deregulation Act 2015. A third clause, permitting anyone to drive a licensed vehicle when it was ‘off-duty’ was removed after lobbying from the LGA and other stakeholders.

The LGA, in consultation with our member councils, does not fully agree with all the Law Commission’s proposals, but feels that it does provide a sound basis for the reform that is very urgently needed. The LGA will therefore be lobbying for a Taxi and PHV Licensing Reform Bill to be brought forward in the next Parliament.

¹ The full report can be found on the Law Commission’s website:
<http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>

Facts and figures:

- In England and Wales, there were around 76,000 taxis and 166,000 PHVs as at the end of March 2015.
- There are an estimated 297,000 licensed taxi and PHV drivers in England and Wales.
- Taxis and PHVs together account for just over one per cent of all trip stages per person per year in Great Britain. This is about 600 million trip stages or around 3 million miles a year.
- An estimated 58 per cent of all taxis are wheelchair accessible in England and Wales.

Differences between taxis and PHVs

One of the key differences between the vehicles is that a PHV, unlike a taxi, cannot ply for hire, which means that all journeys must be pre-booked in advance through a licensed operator. It is an offence for PHVs to pick up passengers from any location unless pre-booked. Local councils can, if they wish, also regulate the fares charged by taxis, whereas there is no power to do so with PHVs.

	Taxi	Private Hire
Ply for hire	✓	x
Pre booked	✓	✓
Operating from a rank	✓	x
Fare meter required	✓	x
Fare tariff set by council	✓	x
Number of vehicles may be restricted by councils	✓	x
Taxis require two types of licence:		Hackney carriage proprietors (vehicle) licence Hackney carriage drivers licence
The provision of a private hire service requires three types of licence:		Private hire operators licence Private vehicle licence Private hire drivers licence

Council role in taxi and PHV licensing in England and Wales

Taxi and PHV licensing in England and Wales is undertaken by licensing authorities (district and unitary councils), which have the responsibility for ensuring the public travel in safe, well maintained vehicles driven by competent drivers; as well as providing a fair and reasonable service for the taxi and PHV trade.

In London, taxi and PHV licensing is the responsibility of Transport for London and delivered by London Taxi and Private Hire, which is accountable to the Mayor of London and responsible for delivering the Mayor's Transport Strategy. Local councils in London have no direct role in licensing taxis and PHVs.

To deliver their responsibilities, councils' core functions in taxi and PHV licensing can be summarised as:

- setting the local framework, which can include safeguarding standards, fares, vehicles standards or limits on vehicle numbers
- considering applications and safeguarding the public by issuing, reviewing or revoking licences
- undertaking inspection and enforcement activities to ensure the required standards are being maintained.

Taxi and private hire licensing may be undertaken within a single department but usually sits within one of the council's regulatory services such as environmental health or legal services. It is often also combined with other licensing functions. The committee overseeing decisions is often referred to as the 'Regulatory Committee' to distinguish it from the committee overseeing decisions under the Licensing Act 2003 (Alcohol and regulated entertainment).

In providing the licensing function, the council, under the provisions of the 1976 Act, is entitled to levy fees to recover the reasonable cost associated with:

- recovering the costs of the issue and administration of drivers' licences
- the inspection of vehicles for the purposes of determining whether any such licence should be granted or renewed
- the provision of hackney carriage stands
- any administrative or other costs in connection with the control and supervision of hackney carriage and private hire vehicles.

With the exception of drivers' licences, the council is required to consult upon the fees it intends to levy through a public notice procedure. In determining the fees to be charged, it would be reasonable to do so with a view to achieving full cost recovery.

Licensing income from these schemes must therefore be 'ring-fenced' in that licensing fees and charges cannot be spent on other areas of council activity – even other areas of licensing business. It is important to ensure that applicants and licensees receive value for money. As a councillor you should ensure that your authority's budgets can stand up to scrutiny by the District Auditor and under the Freedom of Information Act, which has been increasingly used in recent years by licensees and trade associations.

There are no statutory timescales or performance measures for taxi/PHV licensing, unlike some other licensing regimes. However many councils use internal targets to measure the service being provided to applicants and licensees. A periodic review of the licensing service's processes and procedures can help to improve this. One council, for instance, subjected its licensing procedures to a business review and succeeded in reducing the time taken to process vehicle licences from 45 days to just one day. However, whilst it is important to be as efficient as possible, the council's primary function is to protect the public. Refocusing a service on its public protection role typically leads to improvements in efficiency while strengthening the service's delivery of its primary function, and there are tried and tested systems thinking approaches to achieve this.

Department for Transport's (DfT) role

The DfT's role is that of regulatory ownership and maintenance of the regulatory framework for taxis and private hire vehicles. The Department collects and publishes statistics on a regular basis and produces guidance to assist local councils in carrying out their taxi and PHV licensing functions. The guidance is considered to be 'best practice' and addresses a number of issues where inconsistency of approach exists in taxi and private hire licensing in England and Wales. The Policing and Crime Bill, once enacted, will introduce the power for government to produce statutory guidance on using licensing to prevent harm to children and vulnerable adults, and councils will have to have regard to this guidance. This handbook will be updated to reflect the statutory guidance once it is produced.

Strengths and weaknesses of the current system

Councils have a wide range of powers that can be used to regulate taxis and PHVs, protecting the public and supporting local economies; but there are also some anomalies within the existing system.

Local councils have the power to attach conditions to the licences of operators, taxis (vehicles), PHVs, and PHV drivers, but not the licences of taxi drivers. They can also influence the local context in which vehicles operate, and a range of licensing policies have been developed to do this by councils, but they vary from relatively relaxed to very strict regimes. Many councils have also adopted local bylaws under the Town Police Clauses Act 1889 that regulate driver conduct, which can helpfully provide some of the otherwise missing influence over the conduct of taxi drivers.

However, over time this has created differing standards with little coordination within regions or nationally. The result is varying standards of service for passengers, particularly disabled users; confusion for taxi and PHV businesses; some types of vehicles operating unregulated; and taxis working in areas in which they are not licensed to do so. This is far from ideal.

Nonetheless, taken together these policies and bylaws offer a reasonable standard of influence when it comes to assessing applications to the licensing committee. The situation for enforcement activities is much less positive.

- First and foremost, councils have no ability to stop vehicles, which leaves them only able to intervene when a vehicle is stationary, and unable to prevent it being driven off – only the police may stop a vehicle.
- Secondly, a council may only take action against a vehicle or driver that it has licensed, meaning that there is absolutely nothing that a council can do if a vehicle or driver licensed elsewhere is operating in their area, other than complain to the 'home' authority.

This is why the issue of cross-border hiring is the most acute taxi/PHV licensing problem facing many councils today. For example if a driver applies to a council for a licence only to be refused by the licensing committee due to police concerns, it is still possible that a neighbouring council could still choose to licence the driver based on the same information. Once a driver is granted a licence, they will be able to operate across council areas including the one which initially refused the licence.

This situation could pose a risk to communities, as well as the reputation of local government as a whole and every council should use all opportunities to protect other communities outside of its immediate responsibility.

Councils following best practice will meet or communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.

The following sections of this handbook set out guidance on how councils can deliver the best possible licensing regulation.

Role of councillors

Councillors and the council's regulatory/licensing committee

Councils will usually operate with a regulatory/licensing committee which may be made up of non-executive/cabinet councillors, and sometimes with sub-committees made up of councillors of the parent committee. Where this is the case, the role of the parent committee is to consider and propose policy, including setting the overall approach of the council, conditions and standards for vehicles and drivers.

Apart from setting taxi fares and ranks, taxi/PHV licensing is a 'council' and not an 'executive' function.

Developing a policy

There is no requirement to create a single licensing statement or policy for taxi and PHV licensing in the way that there is for the Licensing Act 2003 and Gambling Act 2005. However, the LGA strongly encourages licensing authorities to create a unified policy that brings together all their procedures in one place; this could include policies on convictions, determining the 'fit and proper' person test, licence conditions, and vehicle standards.

Creating a single, unified policy that is reviewed on a regular basis will provide clarity for drivers and operators, as well as strengthening the council's position if there is a challenge against a decision in court.

For the purposes of simplicity, the rest of this document will refer to a single licensing statement, even though a licensing authority may choose to retain separate policy documents.

It is important to take account of the views of the trade, customers and other stakeholders when establishing the policy, in the same way the council would do when developing any other licensing policy.

Decision making

Decision-making in respect of individual cases, whether applications for licences or where matters are brought to the attention of the council following the grant of a licence (for example breach of conditions, convictions, driving endorsements, etc), are often made by a regulatory/licensing sub-committee. This sits as a quasi-judicial body and therefore must follow the rules of natural justice – anyone affected by a decision has a right to be heard and no one should be a judge in his own cause. All decisions should be made without 'fear or favour', however difficult they may be.

Sub-committees have a range of options available to them including:

- in the case of licence applications, to grant a licence, with or without conditions (but not for taxi drivers)
- in the case of licence applications, to refuse a licence
- in the case of existing licences where matters are brought to the council's attention, to
 - do nothing (but members should set out reasons for this to protect the council in the future)
 - suspend a licence
 - introduce conditions on a PHV driver's or operator's licence
 - revoke a licence.

Suspension can be particularly helpful in improving standards or addressing complaints. For instance, a licence can be suspended until such time as the driver can undergo additional driver training or receive other improvement support. However, you cannot suspend a licence as an interim measure pending a final decision being made at a later date – it must always be used as a final decision². In other words, the suspension is lifted once the required action has been completed, with no threat of further penalty. In this context, suspension is not a punishment but a tool to protect the public from risk until corrective action has been completed by the driver.

Although the suspension must in itself be a final decision, if new evidence comes to light at a later date, as can happen in a court case, the committee may take a new decision based on the new evidence. This would not fall foul of the *Singh v Cardiff* court case and decision, which considered the issue of suspension, because the decision to suspend would be made on the facts known at that time, and the decision to revoke would be made on the facts known at the later date.

However, the same case law has also determined that there are instances where a suspension can be used as a lesser sanction than revocation.

“The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the [licence]. It may be, for example, a suspension for a period of one year, will constitute sufficient sanction in the interests of the public³”

Councils may attach conditions to taxi and PHV licences (except taxi driver licences) – either standard ones that apply to every licence or specific ones bespoke for individual applicants. In either case the conditions must not:

- exceed the council's powers set out in the controlling legislation ('ultra vires')
- be unreasonable or disproportionate
- be beyond the applicant's powers to comply with
- be for an ulterior motive.

They must:

- be clearly stated in order that they can be properly understood to be complied with and enforced.

2 This was established in *R (application of Singh) v Cardiff City Council* [2012] EWCH 1852 (Admin)

3 *Singh vs Cardiff*

Decision-making may also be delegated to officers, and is an important tool where a serious offence is committed and immediate revocation is needed. All councils should consider having a delegation system in place for this contingency; the chief executive or deputy is often nominated for this role.

Both applicants seeking new licences and the holders of existing licences will have the right of appeal to the local magistrates' court if they are aggrieved by the decision of the council. In all cases where a licence is suspended or revoked, reasons must be given for that decision. Drivers must reach the standard of a 'fit and proper' person with each case being dealt with on its own merits, normally with reference to an objective policy published by the council.

In doing so, councillors must remember established case law which says "[Consideration of a licence] does not require any consideration of the personal circumstances, which are irrelevant, except perhaps in very rare cases to explain or excuse some conduct of the driver".⁴ The overriding consideration is the safety of the public which may, in some cases, outweigh the right of the applicant to hold or continue to hold a licence.

Training of councillors

No councillor should be permitted to sit on a committee or sub-committee without having been formally trained. As a minimum, training should cover licensing procedures, natural justice, understanding the risks of child sexual exploitation, and disability equality, as well as any additional issues deemed locally appropriate.

It is important that training does NOT simply relate to procedures, but also covers the making of difficult and potentially controversial decisions, and the use of case study material can be helpful to illustrate this.

All training should be formally recorded by the council and require a signature from the councillor.

In addition to in-house training, there are a number of independent training providers, including the professional bodies – the National Association of Enforcement and Licensing Officers (NALEO) and the Institute of Licensing (IoL). The LGA has also made available a free online module on regulatory services for all councillors to use: <https://lms.learningnexus.co.uk/LGA/>

Appearance of bias

While third party lobbying of elected members is legitimate and certain councillors may make representations to the licensing committee on behalf of 'interested parties', it is crucial for the licensing authority and its committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which lead to the first Nolan Committee on Standards in Public Life.⁵

Section 25 of the Localism Act 2011 does not prevent members from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate.

⁴ Leeds City Council v Hussain [2002] EWHC 1145 Admin, Siber J

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf

However it is recommended that to avoid an appearance of bias the following advice should be observed:

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing sub-committee must avoid expressing personal opinions prior to licensing sub-committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no member of the sub-committee is bound by any party whip.
- Councillors must not be members of the licensing sub-committee if they are involved in campaigning about the particular application.
- Other members (ie those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as bias / pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with.⁶ Such guidance could include a definition of what is viewed as excessive eg attempting to obtain a commitment as to how the member might vote.
- Members must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Member behaviour is also governed by the member's code of conduct which you should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities.
- Members should consult their monitoring officers for further advice where necessary.

A well-defined policy and comprehensive scheme of delegations to officers can go a long way to avoiding many of these pitfalls, although, of course, members must retain full oversight of how the scheme is working.

⁶ "It is undemocratic and impractical to try to prevent councillors from discussing applications with whomever they want; local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue but in an underhand and covert way." (Nolan Committee Report into Standards in Public Life, p. 72)

The ‘fit and proper’ person test⁷

Passengers should be at the centre of a licensing authority’s taxi licensing policies and processes. As the Casey Review into Rotherham⁸ noted ‘The safety of the public should be the uppermost concern of any licensing and enforcement regime: when determining policy, setting standards and deciding how they will be enforced.’ There is no area where this is more important than in the application of the ‘fit and proper person’ test.

Licensing authority responsibilities

A licensing authority **must not grant a taxi or PHV driver’s licence unless it is satisfied that the applicant is a fit and proper person** to hold such a licence. This is very different to the Licensing Act 2003 or Gambling Act 2005, where the presumption is to permit a licence application.

A licensing authority is also entitled to suspend or revoke a taxi or PHV driver’s licence if there is evidence to suggest that the individual is not a fit and proper person, and specifically⁹:

- if s/he has been convicted since the grant of the licence of an offence involving dishonesty, violence or indecency
- for non-compliance with the licensing requirements of [the 1847 Act or the 1976 Act] and related legislation, or
- for any other reasonable cause.

Properly applying the ‘fit and proper’ person test is essential for ensuring a robust licensing scheme that protects safety and commands the confidence of the general public.

On receiving an application, councils should first check the applicant’s right to work. This ensures that applications are not heard where the applicant has no legal right to work in the UK, and is a requirement of the Immigration Act 2016. In addition to checks of standard documents, council may wish to use the Home Office’s free checking service for new or existing drivers:¹⁰

Once this is established, an inquiry into an applicant’s fitness to be licensed is likely to include enquiries into his health, local knowledge and understanding of the responsibilities of a licensed driver. However, character is usually investigated first.

Most councils have adopted a formal statement of policy about the relevance of convictions and how this assists in determining whether an applicant is fit and proper. While each application must be determined on its individual merits, the convictions policy should set out a recommended minimum period free of conviction for offences falling into broad categories as a guideline for licensing committees.

⁷ The text in this section draws heavily on an article by Ian de Prez, Solicitor Advocate for Suffolk Coastal District Council, in *Local Government Lawyer* magazine. We are grateful to Mr de Prez and Local Government Lawyer for their permission to reproduce the points from the article.

⁸ Casey, L. ‘Report of Inspection of Rotherham Metropolitan Borough Council’, 2015

⁹ S60(1)(a)(b)(c), Local Government (Miscellaneous Provisions) Act 1976

¹⁰ The service can be contacted at: evidenceandenquiry@homeoffice.gsi.gov.uk

The reason a person's past criminal conduct is taken into consideration is that it can indicate **what is likely to happen in the future if a licence is granted.**

However, councils should not focus solely on an applicant's convictions as an indication of their character. For instance, failure to comply with regulatory requirements may not itself be criminal, but may demonstrate a concerning tendency to disregard licence conditions. Factors such as anti-social behaviour, solvency and sobriety may also be relevant.

Convictions policy

It is important to set out how your sub-committee will view convictions, spent or otherwise, and ideally include it as part of your consolidated taxi licensing policy. Decisions on licensing drivers are exempt from the provisions of the Rehabilitation of Offenders Act and so historic convictions that might otherwise be considered as spent or expired can be taken into consideration.

As set out above, licensing authorities should set out their approach in their convictions policy, which should be regularly reviewed and updated as appropriate. The LGA has developed a sample convictions policy which sits alongside this handbook. This should be used to assist licensing authorities in developing their own policies, rather than directly replicated.

In particular, **the LGA encourages councils to take a strong stance on indecency offences, such as those relating to sexual assault or rape.** While each case must be considered on its own merits, the default position should be that if an applicant has a previous conviction for a sexual offence, a licence will not be issued. Members should be aware of the wide range of criminal offences identified in the Sexual Offences Act 2003 that are very strong indicators of risk if an offender were enabled to be alone in a licensed vehicle with a young person or vulnerable adult.

In addition to indecency offences, Parliament also singled out offences of violence and dishonesty as being of particular concern and relevance when issuing licences, and your policy should weight these offences accordingly. Again, while each case must be considered on its own merits, the LGA policy sets out a default position whereby an applicant with a conviction for a violent offence or driving offence involving a loss of life will be refused a licence.

The convictions policy should set out expectations for how the licensing authority will remain updated about relevant convictions after the point at which a licence has been granted. The Disclosure and Barring Service (DBS) update service, which costs an applicant £13 a year as of November 2016, can help to ensure that licensing authorities receive relevant information as quickly as possible. **The LGA suggests that all licensing authorities consider making it mandatory for drivers to register for the update service and nominate the licensing authority to receive updates.** Licensees should be able to provide evidence of continuous registration and nomination throughout the duration of their licence.

If licensees are obliged under their licence to inform the local authority of their arrest or conviction and they fail to do so (or where they fail to notify the police that they hold a licence), this should be viewed particularly seriously as it prevents the local authority from taking that information into account when protecting public safety. This is also a breach of condition and can be actioned by the authority on that basis. Whilst the law does not allow conditions to be added to a Hackney Carriage Driver licence, many councils only issue 'dual' Private Hire / Hackney Carriage Driver licences in order to address this point. Alternatively, licensing authorities may wish to attach a condition to hackney carriage vehicle licences for the proprietor to notify the licensing authority as soon as they become aware that a driver of the vehicle is arrested, charged, cautioned or convicted of an offence.

Use of soft intelligence

It is important to remember that your decisions need not, and should not, be based solely on convictions. Licensing committees are able to take into account soft intelligence provided by the police and other partners, as well as of the applicant's responses in the committee hearing. Crucially, the evidential threshold for licensing committees is **not** the 'beyond reasonable doubt' standard which is the criminal standard of proof for criminal trials.

Anecdotal evidence suggests that some authorities have been reluctant to attach much weight to non-conviction information, and in some instances have even doubted the propriety of reporting it to members. However, there is no doubt that this information can and should be taken into account and may sometimes be the sole basis for a refusal, a suspension or revocation.

When dealing with allegations rather than convictions and cautions, a decision maker must not start with any assumptions about them. Allegations will have been disclosed because they reasonably might be true, not because they definitely are true. It is good practice for the decision makers, with the help of their legal adviser, to go through the contents of an enhanced disclosure certificate with an applicant/driver and see what they say about it. If, as sometimes happens in practice, admissions are made about the facts, that provides a firm basis for a decision.

It will not be possible to give a comprehensive list of points that will be considered as part of the fit and proper person test, but each council should set out in writing, preferably as part of its licensing statement, an outline of how the council intends to approach these decisions and what factors will carry the most weight.

Decision making

A reasonable rule of thumb is to ask yourself 'Would I be happy letting my wife/husband/ daughter/son be driven by this driver?'. If you are not confident that the answer is 'yes', then you should refuse the licence. In short, if you are 51 per cent certain that the applicant may not be a fit and proper person then you are able to, and should, refuse the licence. You should not give a driver the benefit of the doubt at this stage in the process.

A licensing authority can take into account any spent conviction but of course must do so in a fair and proportionate way, following the authority's policy. It is still appropriate to note the distinction between spent and unspent convictions when considering an application, and there will be many cases in which a particular spent conviction is no longer relevant because sufficient time has passed to demonstrate a change of character. Sometimes an applicant/driver will assert that he was wrongly convicted, or only pleaded guilty to get it over with, to shield a family member or to avoid the risk of a more severe sentence. However the licensing authority should not go behind the existence of the conviction in an attempt to 're-try' the case.¹¹ Sub-committee members should also be mindful that if a person claims to have perverted the course of justice by lying to protect a relative or friend, that in itself may demonstrate a dishonest character.

When making decisions at both the application stage, or in a disciplinary situation with an existing driver, the sole deciding factor should be the safety of the travelling public. Exceptional mitigation may be relevant to assessing the risk to the travelling public if it shows that the driver/ applicant acted out of character, so that the misdemeanour is unlikely to be repeated – but **personal circumstances, and specifically the potential economic hardship of an applicant or driver, are not a factor to weigh in the balance against the safety of passengers.**

¹¹ Nottingham City Council v Farooq 1998 EWHC Admin 991

In the case of *McCool v Rushcliffe Borough Council*¹², Lord Bingham said this:

“One must it seems to me approach this case bearing in mind the objectives of this licensing regime which is plainly intended among other things to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience; sober, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.”

Lord Bingham’s view has since been confirmed in two further court cases – *Anwar v Cherwell District Council* and *Leeds Council v Hussain*.

Councils have a broad discretion when refusing to grant a licence, providing the decision is reasonable, proportionate and – ideally – in line with a published policy. If the decision departs from the policy, then the council should state the reasons for this in writing to the applicant.

Where you have refused a licence, or granted a licence subject to strict conditions or criteria, or for a shorter period than three years, then you must set out these reasons in writing. Applicants have a right of appeal to the magistrates’ court against those decisions and it aids both applicants and the court to understand the nature of the decision being appealed against.

A decision to revoke, suspend or refuse to renew a licence will engage the licensee’s rights under the Human Rights Act 1998 (the 1998 Act) by providing a right to a fair hearing and a right to an independent and impartial appeal tribunal (in this case the magistrates’ court). It may also engage the licensee’s rights not to be deprived of their underlying economic interests in the licence unless that can be justified in the public interest and is proportionate.

There have been a number of challenges to decisions to suspend or revoke licences on the basis that a licence is a personal piece of property, and therefore revocation infringes the driver’s human rights. However, case law has established that a decision maker dealing with a currently licensed driver should not regard the licence as a piece of property under the 1998 Act.¹³

PHV operator responsibilities

Taxi and PHV licensing is not an area where there is much scope for self-regulation, but PHV operators do have a key role in ensuring that their drivers are fit and proper persons, that the vehicles they use are adequate and insured, that their staff handle customer information correctly, and that everyone is properly trained in their roles including awareness of child sexual exploitation (CSE) and disability equality.

Your policy should therefore cover the responsibility of PHV operators for ensuring that their drivers are fit and proper persons; as part of the process of granting and monitoring an operator licence, you may wish to require operators to demonstrate what steps they are taking to ensure that their drivers are fit and proper persons, as well as appropriately trained.

This responsibility is even more important now that the Deregulation Act has enabled operators to sub-contract bookings to other providers. There are existing obligations on operators who seek to pass on a booking and the first operator will always retain overall responsibility for its fulfilment. However, there is scope for councils to enhance this responsibility by placing conditions on an operator’s licence to require them to set out how they will handle sub-contracting and ensure consumer protection.

¹² 1998 3 All ER 889

¹³ *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

It is also appropriate to remind operators that they have responsibilities towards their drivers and should ensure that they are not working excessive hours. A recent case in Mansfield of a driver falling asleep at the wheel and causing a fatality was investigated by the Coroner, who recommended greater attention was given to ensuring drivers were not unduly fatigued. This is most effectively done by the operator, who will have more regular contact with the driver and should be reminding them of the serious consequences that can result if they drive for excessive hours.

These are areas that have not yet been tested through the courts and offers a fertile ground for those innovative councils who wish to make full use of their powers to protect their communities. We encourage councils to explore this, and to share their new practice with the LGA and other licensing authorities.

Changes in technology mean that there are newly emerging operator models, which can require scrutiny to ensure that they comply with the law as it stands. Functions and processes that are well established among non-digital operators may need to be questioned and traced when considering a proposal to operate online. A checklist of questions to ask is included at the end of this handbook, although the list is not exhaustive.

Monitoring complaints

All councils should have a robust system for recording complaints, including analysing trends across the whole system as well as complaints against individual drivers. Complaints about drivers should be taken seriously and drivers with a number of complaints made against them should be contacted by the council and concerns raised with the driver and operator (if appropriate). Further action must be determined by the council, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.

The licensing committee should review the complaints procedure and records regularly, and always before a review of the licensing policy. It is expected that councils will carry out 'mystery shopping' and test purchasing checks on licensed vehicles; and the committee should have oversight of this to ensure that the council is properly carrying out its enforcement responsibilities.

Penalty points enforcement system: Rother District Council

When taxi and PHV drivers contravene conditions of their licence the only sanctions available to members of taxi licensing committees is that of revocation or suspension. For minor infringements, such as not displaying a name badge at all times, revocation or suspension can be too harsh a punishment. Drivers who make an error in judgement on any given day, with a previous unblemished career, may face all or nothing decisions by councillors if they are reported to committee following a complaint from a member of the public.

Also once drivers are licensed there is limited information available to continually assess whether they are fit and proper persons, and as such for members to have a clear view of their past conduct when drivers are called to committee for hearings.

In light of this Rother District Council decided to develop a 'penalty points enforcement scheme', where drivers can carry a fixed number of points for minor matters of misconduct that would allow the driver to continue driving until such time as they either reached the level set by members, at which point there would be a hearing, or if officers decided that the nature of the complaint against a driver was too serious to deal with under the scheme.

Rother found that on the whole the trade agreed that the process led to improvements in behaviour, especially by those drivers who tend not to take their role as licensed drivers too seriously. The trade appreciated that the scheme is transparent and clear, and removes any

ambiguity about whether officers or members felt that a matter was serious, or when the driver thought it was very minor.

The penalty points enforcement scheme gives councillors a more influential role in the licensing process, and it allows drivers to understand that members make the decisions on fitness and propriety and not officers. However, it is worth noting that the accumulation of points cannot automatically lead to a sanction and that the 'fitness' or otherwise of a licensee has to be dealt with separately and in its own way.

Many other councils have introduced similar schemes and there has been a noticeable improvement in both standards of behaviour and standards of compliance. Councils should have regard to case law that has established parameters for these schemes, including a judgement in *Singh v Cardiff* that the scheme must not fetter the discretion of the decision maker.

Scrutiny

Public scrutiny is an essential part of ensuring that government remains effective and accountable, and this is especially true of quasi-judicial systems like taxi and PHV licensing. Scrutiny ensures that executives and committees are held accountable for their decisions, that their decision-making process is clear and accessible to the public and that there are opportunities for the public and their representatives to influence and improve public policy.

There are a number of aspects of taxi and PHV licensing that are suitable for a scrutiny investigation, ranging from a review of the policy and framework, including how it contributes to a wider transport policy, its success in delivering accessible transport for disabled users, or the handling of complaints; to more specialist subjects such as the setting of fees, provision of taxi ranks, or the age and maintenance of the fleet.

The Centre for Public Scrutiny¹⁴ provides guidance on how to hold effective scrutiny, and also has a number of case studies from councils that have already held scrutiny enquiries into their taxi and PHV licensing systems.

¹⁴ www.cfps.org.uk

Public protection and enforcement

Partnership working and information sharing

Effective partnership working between local licensing authorities, the Driver and Vehicle Standards Agency (DVSA), police, other council services such as trading standards and environmental health, as well as the local trade, is vital to ensuring effective taxi and PHV regulation.

It is particularly important to join-up enforcement operations with the police as taxi licensing officers do not have powers to stop and search vehicles. Similarly, licensing officers may only take action against drivers and vehicles that they have licensed, which is why the issue of cross-border usage is so problematic (see below). You should ensure your council taxi licensing officers meet regularly with their local police force and develop good relationships.

As a councillor, you are well placed to shape and influence how this crucial partnership relationship between your council and other bodies works and develops. There are many areas across England and Wales where these partnerships are working well.

It is particularly important to have effective intelligence sharing protocols in place with the local police force. The police have powers to disclose information under common law, which enables them to share information about relevant investigations with licensing teams even before an arrest or conviction is made.

The Home Office's abolition of the Notifiable Occupations Scheme has led to significant inconsistencies between councils and police forces when it comes to sharing soft intelligence. A replacement scheme has been developed, called the Common Law Disclosure Policy, but reports from the ground raise significant concerns about the way it has been implemented, and the LGA is raising this with the Home Office.

In the meantime all licensing authorities should use their local relationships to continue the flow of information. Councillors should seek the support of their local police and crime commissioner if necessary.

Sharing intelligence: Norfolk councils and Norfolk Constabulary

Safeguarding information sharing process

What is the issue?

Licences are issued by the local authority for a wide variety of purposes. For example, a licence is required to drive either a licensed hackney or a private hire vehicle (a dual licence allows a driver to drive a hackney carriage vehicle or private hire vehicle) and all PHV drivers must work for a licensed private hire operator. When a licence is refused, suspended or revoked by the licensing authority or there are any other concerns raised which may be considered a safeguarding issue it has been agreed that the licensing authority will notify the police for intelligence purposes.

Why is this necessary?

Licence holders can operate in positions of trust and it is vital that any relevant information about safeguarding issues is shared so that individuals are blocked from becoming taxi operators or holding any other kind of licence in different council areas across the county/country. Without effective information sharing, there is a real risk of unsuitable people being granted licences to operate which puts people at risk.

How will this work?

When a licence is refused/suspended/revoked due to a 'safeguarding' issue then licensing authorities are to complete a template and submit it the police electronically via secure email. The referral template should also be used to report any safeguarding concerns about any licence holder. The police will create an intelligence report which becomes disclosable as part of any subsequent DBS check undertaken anywhere in the country, thereby reducing the risk of unsuitable persons being granted a licence.

What is a 'safeguarding issue'?

Physical – Including hitting, slapping, pushing, kicking, restraint or inappropriate sanctions.

Sexual – Including rape and sexual assault or sexual acts to which the vulnerable person (including any young person) has not consented, could not consent or was pressured into consenting.

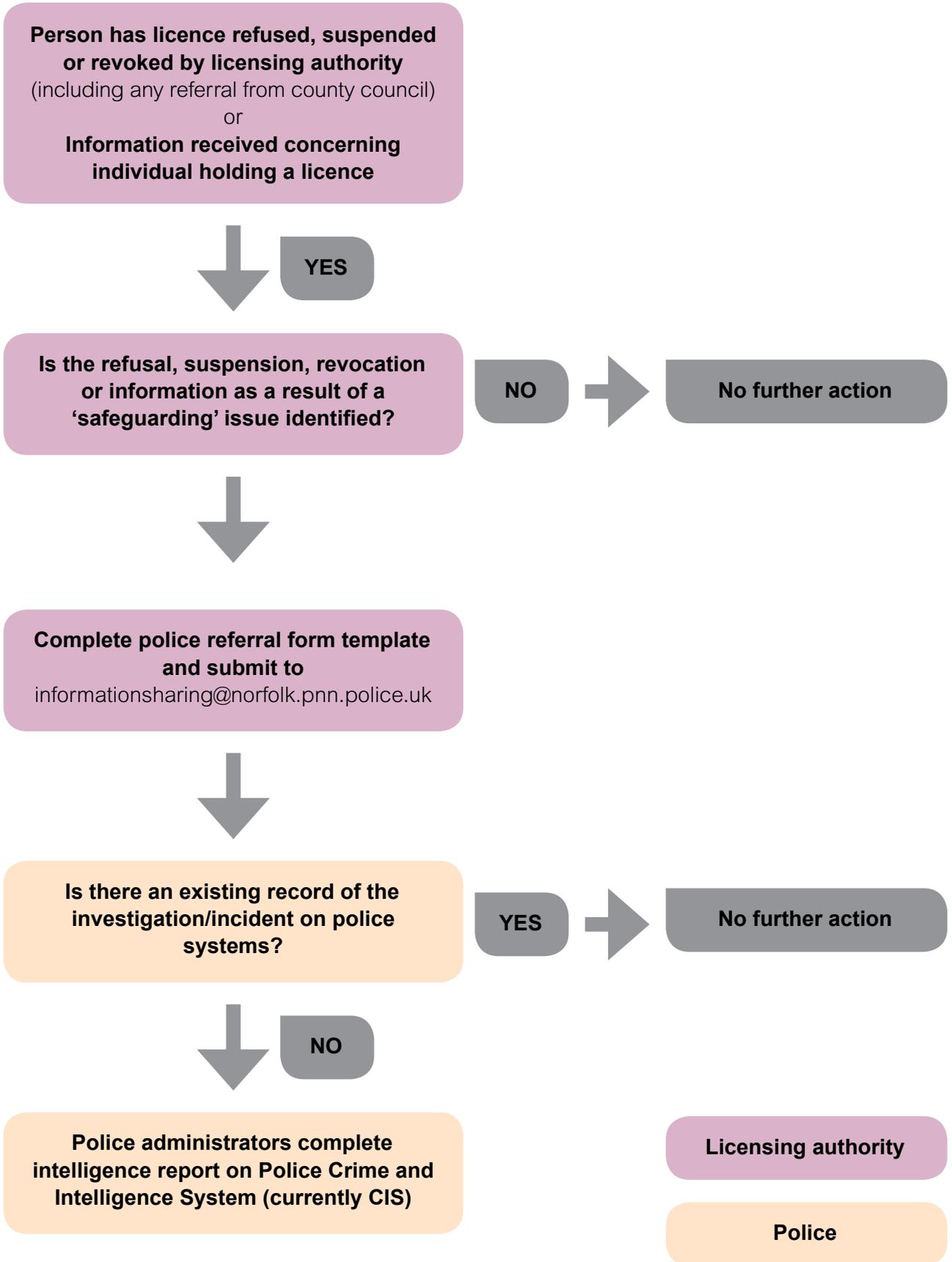
Psychological – Including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.

Financial – Including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, the misuse or misappropriation of property, possessions or benefits.

Neglect/failure to act – Including ignoring medical or physical care needs, failure to provide access to appropriate health care, social care, education services or misuse of **medication, adequate nutrition or heating**.

Discriminatory – Including racist, sexist behaviour and harassment based on a person's ethnicity, race, culture, sexual orientation, age or disability, and other forms of harassment, slurs or similar treatment.

Institutional abuse – This can sometimes happen in residential homes, nursing homes or hospitals when people are mistreated because of poor or inadequate care, neglect and poor practice that affects the whole of that service.



Police Referral Form Template

(submit to informationsharing@norfolk.pnn.police.uk)

Local Authority							
Disclosing Officer							
Role							
Driver/Applicant/Subject							
Surname							
Forename(s)							
Date of Birth							
Home Address							
Telephone							
Type of Licence Application (if applicable)							
Vehicle Details (if known/ applicable)							
*include registrtaion / make / model							
Information/Intelligence							
Refusal	Yes/No	Suspension	Yes/No	Revocation	Yes/No	Information	Yes/No
Date of refusal / suspension / revocation / information							
Circumstances *							
(must include any relevant time / date / location information)							
Additional Information							

* Circumstances should provide sufficient summary information to identify threats and risks associated with the applicant / driver. Full records of any investigation need not be disclosed on the IR as these will be retained locally by relevant authority

Joint operations: Blaenau Gwent Council

Blaenau Gwent Council's Licensing Team coordinated roadside checks on taxis and private hire vehicles to make sure Blaenau Gwent pupils travelled to school safely.

On the morning of the school run the council's licensing team, officers from the council's school transport division and technical experts from DVSA checked 16 buses and eight taxis.

The school run checks were followed up with detailed safety inspections that resulted in one notice and a number of warnings.

- One deferred prohibition notice was issued for a defect. The company was told to carry out the repairs within a time period.
- Four drivers were given advice regarding minor defects.
- Six warnings were given for not wearing seatbelts.
- Four enquiries were made by Blaenau Gwent Council's education division about school contracts operating logistics.

During the day, Gwent Police traffic officers gave out 16 fixed penalties for no seatbelts, two fixed penalties for using mobile telephones while driving and ordered repairs for a cracked windscreen.

Chair of Blaenau Gwent Council's Licensing Committee, Councillor Jim Watkins said:

"We are committed to maintaining and improving the standards of the home-to-school transport service provided by independent operators and those contracted to us. Our regular check-ups are important. We have to thank our partners in Gwent Police and the DVSA, and the operators as well, for their cooperation."

Managing cross border hiring

Cross border hiring is a term to describe when a taxi is lawfully used for PHV purposes in a district outside which it has been licensed to operate. This is a problem in many areas because there are disparities in conditions on licences; a prospective driver in one council district may apply to be licensed as a driver in another district because there are lower standards in driver testing, cheaper licence fees or less rigorous/fewer pre-licence checks. The term 'cross border' is also used when a PHV in one district picks up a passenger from another district. This is legal, provided either that the driver, vehicle and operator are all licensed by the first district; or that the operator sub-contracts the booking to an operator licensed in another council area.

This is also problematic, because when a taxi is being driven for PHV purposes in another district, the local council has no powers to intervene if the driver contravenes any condition of the licence or provides a poor service to the passenger; all that can be done is to write to the authority that issued the licence, where this is known. This practice is also unfair on the trade in the local area, as they may face competition from drivers who may have paid cheaper licence fees or undergone less rigorous checks elsewhere. These safeguards are rarely visible to consumers, who therefore cannot make an informed decision to use the more heavily checked and therefore safer, albeit more expensive, option.

As a councillor you can take some simple steps to ensure that your local authority is not having a detrimental impact on other authorities and their communities. Ask your taxi and PHV licensing service whether they have a high enough standard of conditions (see councillor checklist) and consider where an applicant intends to work when issuing licences.

You do have the legal right to refuse to issue a licence if the applicant does not intend to work mainly in your area and should recognise that the reputational impact to your council of knowingly licensing taxis to operate elsewhere could severely limit your ability to develop partnership working with neighbouring authorities.

If you seek to include a section on this in your licensing policy, then it is important to remember that a 'hackney carriage' cannot 'work' or 'operate' as a PHV. The law simply allows them to be used for 'private hire purposes'. This may sound like semantics, but has been tested in the courts and means that you cannot use your greater power to condition PHV driver licences to regulate the driver of a hackney carriage, even though they may at times be working in the same manner as a PHV driver (ie making pre-booked journeys, rather than plying for hire).

The most notable piece of case law on cross-border hiring was between Newcastle City Council and Berwick Borough Council. Between 2006 and 2008, Berwick's licensed fleet had grown from 46 taxis to 672. Many of the fleet were not operating in Berwick but had applied there as a result of a less stringent application process and were operating in neighbouring or nearby areas.

In his judgment, the judge rejected Berwick's arguments that it is obliged by law to issue a hackney carriage licence to any applicant, so long as they and their vehicles are fit.

Commenting on the potentially 'undesirable consequences' of Berwick's stance, he said the council is having to carry out its enforcement powers from a distance and faces difficulty in keeping its licensed cabs under observation.

He said: "It seems to me that it must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licences to proprietors and drivers which are intending to ply for hire in that authority's area."

He said the intention of the licensing system is that "it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used".

The judge added: "If the hackney carriages are used in areas remote from Berwick-upon-Tweed, enforcement will be very difficult and impracticable.

"It seems to me it is very difficult to exercise proper control over hackney carriages which are never, or rarely, used in the prescribed area.

"It is also undesirable for authorities to be faced with a proliferation of hackney carriages licensed outside the area in which they are being used and therefore not subject to the same conditions and bylaws as apply to those vehicles licensed in the area."

Judge Symons said he would leave it to the judgment and common sense of the borough council to decide how to react to his ruling, that it does have a 'discretion' to refuse to licence taxis if there is no 'unmet demand' for cabs in Berwick itself.

"While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from Berwick-upon-Tweed, I am not prepared to say that it is bound to be unlawful" he concluded.

Until the Law Commission's proposals extending an authorised officer's powers are enacted, the protocol¹⁵ below could be used by authorities to ensure rogue drivers and vehicles are prevented from hiding 'over the border' or routinely operating outside the reach of enforcement by their licensing authority.

It allows councils to authorise officers from other councils to use enforcement powers on their behalf. This enables those councils to then take action against vehicles which are licensed by the other authority when they cross over council boundaries.

This practice was recently highly commended by the then Transport Minister Baroness Kramer, citing some of Merseyside councils' practices since 1995. Transport is also often one of the issues identified as a priority by combined authorities. These new structures will make sharing enforcement powers increasingly attractive and could pave the way to extending your regulatory reach beyond your borders. In time, a shared framework similar to Transport for London could evolve.

The protocol is suggested as an easy way forward for those authorities wishing to consider such joint authorisations of officers.

Protocol

1. All authorities agree what level of expertise/qualification/skills is the minimum for approval of authorisation of each individual.
2. All authorities establish, via their own schemes of delegation, what procedural steps need to be taken to validly authorise (ie chief officer's report, sub-committee or full committee decision).
3. All authorities agree the form and wording of the 'letter of authorisation' and 'photo warrant card' to be issued.
4. Each 'requesting council' formally requests authorisation of named individual officers.
5. Each 'receiving council' obtains authorisation and provides a 'letter of authorisation' in respect of the other authority's officers.
6. Each employing authority provides its own officers with a photo warrant card specifying that for the purposes of [specify Acts of Parliament] that officer [name] is a duly authorised officer of [list all authorising councils].
7. Each authority provides all officers with copies of appropriate bylaws, conditions and agreed methodologies/reporting mechanisms for dealing with defective vehicles and other issues from other areas.
8. Each authority seeks political and financial approval for pre-planned joint operations both with each other and also police/HMRC Customs & Excise.
9. Data sharing protocols, as required, be established between authorities, including standard incident reporting templates/operation logs to be used by all for consistency and scheme recording.

¹⁵ The relevant enabling legislation is Section 32 Part I of the Local Government (Miscellaneous Provisions) Act 1976: 32 Power of local authorities to execute works outside their areas. 'Any power to execute works which is conferred on a local authority by any enactment may, unless the contrary intention appears in that or any other enactment, be exercised outside as well as inside the area of the authority.'

Child sexual exploitation

As set out in the fit and proper person section above, protecting all passengers lies at the heart of taxi and PHV licensing systems. However, recent cases have shown that licensing authorities must ensure that their licensing regimes effectively protect some of their most vulnerable residents, including children at risk of sexual exploitation. A detailed exploration of tackling child sexual exploitation (CSE) is outside the remit of this guide, but all councillors and officers, across all services, should familiarise themselves with the LGA's guides on CSE.¹⁶

Sadly, both licensed premises and licensed vehicles have been used as opportunities to sexually exploit children, as recent high profile cases have underlined. The Government commissioned Dame Louise Casey CB to investigate reports into the governance of Rotherham Council following widespread allegations of child sexual exploitation. Her subsequent review contained two chapters on the role that licensing could and should have played in preventing some of this exploitation, and the report is essential reading for any councillor joining a licensing committee. The full report and documents relating to the Rotherham investigation can be found at: www.gov.uk/government/collections/inspection-into-the-governance-of-rotherham-council

It is important to recognise that this is a subject that needs to be sensitively handled to avoid drivers feeling that they are being treated as potential criminals. However, the sensitivity around the subject must not mean that the issue is not discussed or that training is not provided. There are two particular points licensing authorities should be aware of:

The first is that we know that many victims of exploitation are too traumatised for investigations to proceed to court, meaning that issues do not always show up through disclosure. This makes additional soft intelligence from all other sources critical to licensing deliberations – as outlined in the 'use of soft intelligence' section above.

The second is that taxi and PHV drivers can be a valuable source of intelligence about exploitation if they know what to look for. For this reason, many councils now make CSE training a mandatory part of the licensing application process, which the LGA supports.

Your local safeguarding boards also have an important role to play in licensing and you should ensure that safeguarding boards understand the role that licensing can play in their discussions. Your licensing officers should also be fully engaged with relevant safeguarding discussions.

This is particularly important in two-tier areas, with licensing located in the districts and child protection in the county council. A number of serious case reviews have highlighted a failure of communication between the two-tiers of local government as a contributing factor to child exploitation going undetected.

¹⁶ http://www.local.gov.uk/web/guest/children-and-young-people/-/journal_content/56/10180/3790391/ARTICLE

If allegations of CSE or other serious offences are made, then your council should have in place procedures to allow a rapid response from the council. In the most serious cases, it will not be appropriate to wait until a licensing committee or sub-committee can be held. Councils should consider how they can structure their scheme of delegations to enable the effective use of immediate powers of suspension and revocation in appropriate cases.

Operation Sanctuary

Operation Sanctuary investigated allegations of a series of sexual offences predominantly within Newcastle, but also in other local authority areas, involving a number of men from a range of communities and vulnerable female victims, including teenagers and young adults.

Operation Sanctuary was about targeting men exploiting vulnerable teenagers and women and stopping their behaviour. Commenting at the time, Northumbria Police stated:

‘These crimes are happening behind closed doors, in local streets and it is likely that people living nearby recognise the behaviour we describe. It may be groups of men going into properties with teenage girls or one or two women. They might see women under the influence of drink or drugs who might appear distressed in some way. We need them to report this to us. If it is innocent then nothing will happen to them. But this allows us to check and may avoid someone else becoming a victim.

We also know some of these girls and women may frequent certain businesses which brings them into contact with these men so we will be visiting the premises and speaking to those who work there and those who hang around.

We also believe that the victims are transported in taxis to the different addresses – again we will be speaking to all taxi firms to ask for their help if they spot anything that appears suspicious or fits the description of what we are looking at.

To date 30 people have been arrested for conspiracy to rape women (28 men and two women). Those arrested come from a range of communities and backgrounds.’

As part of Operation Sanctuary, officers delivered leaflets in Newcastle city centre to taxi drivers, hotels, and other businesses.

The leaflets advised them of the ongoing operation, how it affected them and what to look out for to identify any potential vulnerable girls or young women.

This helped to keep people informed and updated about the operation, as well as aware of how everyone has a part to play in ensuring information is reported to police.

Installing CCTV in cabs

A number of councils require CCTV to be installed in taxis and PHVs, as a way of reducing crimes and providing evidence to support prosecution. This approach can benefit both passengers and drivers, who can equally be the subjects of assaults, abuse or fraud. However, it is important to recognise that the cost of installing such equipment, can be an issue for drivers.

Consultation with your driver community will help determine a suitable approach; including the period of time allowed for installation if you decide to introduce this approach.

It is important to be aware of surveillance and data protection issues when considering the use of CCTV, particularly with regard to the recording of conversations.

The Information Commissioner's Office (ICO) has said it is not normally justified to use CCTV to record conversations between members of the public as 'it is highly intrusive', but have also stated that council applications to install cameras in cabs are likely to be acceptable because of the number of crimes being committed in taxis.

'As well as assessing the impact on privacy, we have accepted they [councils] can take into account factors such as the likelihood of crimes being committed against drivers and passengers; the vulnerable one-to-one situation; the fact that taxis are travelling all over the area at different times of day; and CCTV can protect both the driver and passengers.'¹⁷

It is therefore essential that licensing authorities take account of people's right to privacy when deciding whether to impose CCTV as a licence condition for taxis. Whether the installation of CCTV is mandatory or voluntary it is essential that the local authority has a strict specification for permissible systems to ensure that there are adequate safeguards, such as who can access the footage.

It is also important to note that the use of CCTV inside and outside the vehicle are treated differently, and that once a passenger is inside a vehicle that they have hired they have a right to privacy. This means that they must be notified that the vehicle has a CCTV system in operation.

Some councils have chosen to specify that audio recording should only be activated when there is a specific threat, in the same way that a panic button could be used.

Transport for London, acting on advice from the ICO, recommend:

- **Where recording is triggered due to a specific threat, eg a 'panic button' is utilised. Where this audio recording facility is utilised a reset function must be installed which automatically disables audio recording and returns the system to normal default operation after a specified time period has elapsed.**
- **The time period that audio recording may be active should be the minimum possible and should be declared at the time of submission for approval of the equipment.**

¹⁷ The Information Commissioner's Office: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2014/10/ico-warns-cctv-operators-that-use-of-surveillance-cameras-must-be-necessary-and-proportionate/>
<https://ico.org.uk/media/about-the-ico/documents/1042192/ico-annual-report-201213.pdf> (page 39)

Any specified company, organisation or individual vehicle owner who has a CCTV system installed in a licensed vehicle must register with the ICO ('notification') and obtain documented evidence of that registration. This documentary evidence may be required to be presented to an official of the taxis and private hire team (TPH) at any time during the term of the TPH vehicle licence. The notification requires renewal on an annual basis and payment of the appropriate fee.

Due to the complexity of surveillance and privacy legislation and case law, this information is provided only as a summary. The Information Commissioner's Code of Practice provides a helpful starting point, and references case law on when audio is and is not appropriate.¹⁸ The LGA is however working with councils that have introduced a requirement for mandatory CCTV to produce a short guide on the issues to consider.

¹⁸ <https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>

Disability and equality issues

The Equality Act 2010 sets out obligations for public bodies to advance equality of opportunity among people and eliminate discrimination. Councils should think about how they can fulfil this obligation in relation to taxi and PHV licensing. Although there are few specific requirements that councils must implement in relation to disability issues, the LGA encourages councils to go beyond what is strictly required by introducing wheelchair accessible vehicle lists and mandatory disability training for all drivers.

Accessibility requirements – wheelchairs

In April 2017, various parts of the Equality Act 2010 relating to taxis and PHVs were enacted, meaning new duties were placed on both drivers and councils around accessibility for passengers in wheelchairs. The Department for Transport's (DfT) updated statutory guidance¹⁹ on access for wheelchair users to taxis and PHVs sets out these new requirements and is a useful tool to support councils with these changes.

The new provisions give councils the power, although not a duty, to maintain a statutory list of designated wheelchair accessible vehicles they license that meet “such accessibility requirements as the licensing authority thinks fit”.²⁰ Where councils opt to do so, drivers of taxis and PHVs designated as being wheelchair accessible must comply with the requirements of Section 165 of the Equality Act 2010, unless they have been issued with an exemption certificate. Prior to April 2017, while some councils had designated vehicles as wheelchair accessible, the obligations on drivers under section 165 were not in force.

Under section 165 of the Equality Act taxi/ PHV drivers are obligated to carry passengers while in a wheelchair without additional charge. Drivers are also required to give the passenger any mobility assistance that is reasonably required, for example help getting in or out of the taxi and with loading luggage. Drivers who believe that for medical or physical reasons they should be exempt from these duties are required to apply to the council for exemption. Whilst there is no prescribed format for the exemption certificates that councils issue to drivers, there is a prescribed format for the exemption notices²¹, which are separate to certificates and will need to be issued by the council and displayed in the vehicle by drivers. Prescribed exemption notices should be issued to new and existing exemption holders and a consistent process for handling exemption applications implemented to support this. Any appeal against a refusal to grant exemption will need to be heard by a Magistrate's court.

¹⁹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf

²⁰ 'Accessibility requirements' are “requirements for securing that it is possible for disabled persons in wheelchairs: (i) to get into and out of vehicles in safety, and (ii) to travel in vehicles in safety and reasonable comfort, either staying in their wheelchairs or not (depending on which they prefer).

²¹ www.legislation.gov.uk/uksi/2017/342/pdfs/ukxi_20170342_en.pdf

As these new powers requiring taxis and PHVs to carry wheelchair users only apply if the council has published a statutory list of wheelchair accessible vehicles, the LGA strongly recommends that councils do so, to increase access for wheelchair users and ensure that enforcement action can be taken against drivers where necessary. Publishing a statutory list also sends a strong signal to the trade locally that they are expected to follow access requirements. Following the implementation of the Equalities Act provisions, campaign groups have submitted Freedom of Information requests to identify which councils are and are not intending to develop a statutory list, and it is likely that this level of engagement with the issue will be maintained in the coming years.

The statutory guidance sets out in more detail what the statutory lists should include, for example the details of the make and model of the vehicle and the name of the driver and/or PHV operator. The guidance also recommends that a separate, non-statutory list should be developed of vehicles that are accessible to passengers in wheelchairs if they transfer from their wheelchair.

For councils not currently publishing a statutory list but planning to do so, it is important that transition plans are in place and communicated to licence holders. Consideration should be given to whether operator and driver licence conditions could be reviewed to aid enforcement.

Accessibility requirements – guide dogs

Media stories and research by the charity Guide Dogs show there is a widespread problem of assistance dog owners being refused access to taxis and PHVs²² despite the legal requirement for taxis and PHVs to carry guide dogs unless the driver has a valid medical exemption certificate. Similarly, there are many stories of extra or over-charging for users of wheelchairs. Councils should make clear to drivers that they cannot charge a disabled passenger more than any other passenger.

Working with disabled people locally to carry out mystery shopping of taxis and PHVs can provide valuable insight into whether drivers are complying with their legal duties. However, figures suggest that only 20 per cent of councils assess the quality of services provided to assistance dog owners in their areas. Only 18 local authorities conduct mystery shopping or surveys to ensure that taxi and PHV drivers are meeting their obligations.²³

In relation to assistance dogs, Guide Dogs have developed some standard wording which they encourage councils to include in their taxi licensing policies, as well as a guidance note²⁴ on access to taxis and minicabs for guide dog owners.

Disability equality training

Disability equality training can support taxi and PHV drivers to understand and meet requirements under the Equality Act. The LGA supports the call for disability equality training to be mandatory for taxi and PHV drivers; currently, less than a third of councils make this a mandatory component of a licence. At a time when council enforcement and discretionary travel resources are heavily under pressure, engaging with your driver community to ensure they are aware of their responsibilities should not be underestimated and can repay the small investment needed.

22 www.guidedogs.org.uk/media/7868390/access-all-areas-main-report_final.pdf

23 Data gathered by Guide Dogs following a Freedom of Information request in November 2015.

24 www.guidedogs.org.uk/media/8240022/access-guide-taxis.pdf

Although many councils have chosen to provide their own training support on disability issues, there are also a number of other providers who offer this training. It is important to remember that stories and information given by people who have a disability is much more powerful and resonant than just numbers or tables on a spreadsheet, or lists of things not to do. You may therefore want to work with your local disability and victim groups to co-design this element of training.

Guide Dogs suggestions for taxi licensing policy

Taxi and PHV Policy – assistance dogs

The law

Under the Equality Act 2010, licensed drivers of taxis and private hire vehicles are under a duty to carry passengers with guide, hearing and other assistance dogs without additional charge.

When carrying such passengers, drivers have a duty to:

- a) convey the disabled passenger's dog and allow it to remain under the physical control of the owner; and
- b) not to make any additional charge for doing so.

We would ask Licensing Authorities to use their best endeavours to ensure that licensed drivers of taxis and private hire vehicles ask the passenger where they prefer to sit with their dog in the vehicle.

Enforcement

Under the Equality Act 2010, it is an offence for any operator or driver to refuse to carry assistance dogs or to charge more for the fare or booking. On conviction for such an offence, drivers can be fined up to £1,000 and have their licence removed.

To ensure best practice in achieving effective enforcement the Licensing Authority will use its best endeavours to:

- investigate all reported violations of the Act with a view to pursuing a conviction
- work together in conjunction with assistance dog owners by various means such as, but not limited to, test purchases to ensure that licensing requirements are being complied with
- ensure that all taxi and private hire vehicle drivers undertake disability equality training, which includes information regarding the carriage of assistance dogs.

Medical Exemption Certificates

Drivers who have a certifiable medical condition which is aggravated by exposure to dogs may apply to the council for exemption from the duty on medical grounds. All other taxi and private hire vehicle drivers are required to carry assistance dogs. Drivers must place the notice of exemption in an easily accessible place, for example on the windscreen or in a prominent position on the dashboard.

The Licensing Authority will:

- where an exemption certificate is issued, provide an additional tactile and/or large print resource to taxi and private hire vehicle drivers (as a reasonable adjustment within the Equality Act) so that assistance dog owners who are blind can identify that the driver has been issued with a certificate
- only issue an exemption certificate when it is authorised by a medical practitioner and is accompanied by medical evidence, for example a blood test, a skin prick test or clinical history.

Promoting equality awareness: Stockport Metropolitan Borough Council

Stockport Council's licensing team has worked in partnership with Disability Stockport to produce a brochure that includes:

- the contact details of licensed drivers who have successfully completed disability awareness training provided by Disability Stockport and Solutions SK, funded by Stockport Council
- information to enable disabled passengers to book transport with providers who best suit their needs
- guidance to passengers on the types of licensed vehicles available for hire in Stockport
- guidance to disabled passengers on how to hire a licensed vehicle in Stockport and what service they should expect
- advice to licensed drivers on how to assist disabled passengers
- guidance to licensed drivers on what is expected of them further to their disability awareness training
- information on how to improve the service and awareness of it.

The guide has been recognised as good practice by the Government's Accessible Britain Challenge. The guide can be found at: www.stockport.gov.uk/general-information-and-applications-taxi-licensing/stockport-disability-aware-transport-providers-guide

Mystery Shopping Case Study: Kirklees Council

Kirklees Council's licensing team has been involved in a mystery shopping exercise with local guide dog owners. The activity saw guide dog owners making mystery shopping telephone calls to local taxi and PHV firms requesting a driver and informing them that they had an assistance dog. The guide dog owners then informed the council about which companies refused them access, or provided them with a substandard service.

Kirklees Council's licensing team then wrote to all the firms contacted in the mystery shopping stating the law. A second round of mystery shopping calls then took place, and for any taxi or PHV operators that guide dog owners still had concerns about, the licencing team visited them to speak about their legal obligations.

This was followed up by mystery shopping in person in partnership with West Yorkshire Police and Kirklees Council. As a result of the mystery shop, Kirklees Council have taken action against three drivers. Kirklees Licensing team have continued to be supportive, and are currently taking another driver to court following a further access refusal.

Other Issues

Quantity restrictions

Quantity restriction is a term used to describe a local council imposing limits on the number of taxi licences within its area. This is often seen as a controversial issue because in those areas that continue to impose quantity restrictions, the taxi trade is often a strong advocate of keeping a 'restricted fleet'. Currently only 88 councils in England and Wales continue to restrict numbers. The decision to restrict taxis is left to the local council, but the LGA suggests that councils consider the DfT's view and state your reasons for departing from it when setting out your licensing policy.

'Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice. Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public.' **DfT Taxi and PHV Licensing Best Practice Guidance on quantity restrictions.**

Restricting the number of taxis: Stockport Metropolitan Borough Council

Local councils which limit the number of taxis within their fleets should regularly produce an unmet demand survey. The survey reviews the consumer demand for taxis and considers factors such as the length of time customers wait at ranks and waiting times for street hailings and telephone bookings.

In 2008 Stockport Metropolitan Borough Council carried out an unmet demand and public opinion survey, which indicated that there was no significant unmet demand. Stockport licensing committee agreed to maintain a limit on the number of taxis currently licensed by the authority. To ensure this was a balanced decision Stockport considered the guidance issued by the DfT in relation to maintaining limits and various consumer reports which indicate that a general increase in the number of taxis is beneficial for consumers. While maintaining a limit the committee also agreed to increase that limit by five licences per year over the next three years.

They further committed to reviewing current rank facilities including creating new ranks, particularly night-time ranks in busy areas. The policy is kept under continuous review, with the most recent survey in late 2014 determining that there was no unmet demand and that restrictions should be maintained, although there is scope for providing additional ranking facilities.

Lifting quantity restrictions: Salford City Council

Salford City Council previously had a policy of limiting taxi licence numbers. An unmet demand survey had been carried out in 2004 which recommended an increase in the issue of one licence which brought the total number of taxis in Salford to 79. If the council wished to retain this limit, an additional unmet demand survey would have been required in 2007 costing the council additional resources. It was recognised that a complete review of taxi and private hire licensing functions was required.

The decision to delimit was based on a number of factors:

- the Office of Fair Trading (OFT), now the Competition and Markets Authority (CMA), market study into 'The Regulation of Licensed Taxi and Private Hire Services in the UK' and the Department for Transport's 'Taxi and Private Hire Best Practice Guidance' which called for the removal of quantity restrictions
- the National Consumer Council's campaign calling for the removal of quantity restrictions
- representations from certain members of the taxi and private hire trades that wheelchair users were unable to hire taxis at certain times of the day or in certain areas of the city
- feedback following consultation with the public, business community, wheelchair users, elected members and the taxi trade as to taxi availability.

Following adoption of the policy to delimit taxi numbers an interim injunction was served on the council, on behalf of two taxi proprietors who operated a total of 18 vehicles, preventing implementation of the policy pending a judicial review.

The case was heard in the High Court where the judge ruled that none of the grounds put forward by the claimants were properly arguable for the purpose of judicial review, and the council were awarded their costs in full.

Stretched limousines and larger vehicles

Many of these vehicles were built in America and do not comply with British requirements for a vehicle of this passenger capacity. This is also true of many other novelty vehicles, which should always be considered on a case-by-case basis. The recent Law Commission report proposed bringing all such vehicles within a standard licensing scheme and the LGA supports this proposal.

Limousines with up to eight passenger seats

These vehicles should be licensed by your council. To become 'road legal' vehicles must meet certain standards before they can be licensed. Vehicles that meet these standards and operate unlicensed pose a risk to public safety.

Limousines with over eight passenger seats

The DVSA licenses vehicles over eight seats such as buses and HGVs, and as such any stretched limousine which has a seating capacity of over eight passenger seats cannot be licensed by councils as a PHV. The LGA has highlighted concerns that drivers of vehicles with more than eight seats are not subject to the same checks as taxi and PHV drivers, and is arguing that anyone driving a vehicle used for these purposes should be subject to the same checks.

Stretched limousine enforcement: Basingstoke District Council

In 2006 following concerns from the trade and parents, Basingstoke District Council developed a strategy to stop unlicensed stretched limousines plying their trade. Unlicensed vehicles are often in a dangerous state of disrepair and extremely unsafe for the public to travel in, and drivers who are not checked may have a prior serious criminal record.

Enforcement activity was targeted by writing to all secondary schools within the borough to ask where and when their summer proms were to be held. They provided the schools with an advisory letter, which gave advice to parents about ensuring that the limousines they booked were properly licensed and what evidence to look for.

Basingstoke carried out over 16 joint enforcement operations at the summer balls over the next three years with local traffic police and DVSA checking over 100 vehicles and drivers.

The checks were carried out to ensure the safety of the pupils, and Basingstoke arranged private hire companies to be on standby if necessary and take any affected pupils home as a priority.

The majority of limousines checked were unlicensed by local councils or DVSA, and some drivers had serious criminal records, no DVLA licence and no insurance.

Where there had been serious issues such as unlicensed vehicles or drivers arrested the parents who booked the vehicles were advised in case they wished to claim back costs from the company and so they could also avoid using them again in the future.

Checklist for councillors in England and Wales

This list is intended to help you gauge your council's effectiveness in providing a competent taxi and PHV licensing service. The answers should help you determine the quality of the service your council delivers, and whether changes should be made.

- Are the needs and safety of passengers placed at the centre of your licensing system?
- Are drivers assessed against agreed and appropriate standards to ensure they are 'fit and proper' and entitled to hold a licence? Many councils require applicants to undertake Group 2 medical checks, enhanced Disclosure and Barring Service (DBS) checks, and local knowledge tests before they are licensed to carry the public.
- Are your drivers provided with training on disability equality, spotting child sexual exploitation and other locally relevant issues?
- Does your council have a taxi and PHV licensing policy document, which has been subject to regular review and has regard to the Department for Transport's Best Practice Guidance (last issued March 2010) and has been consulted on with the trade and user groups?
- Do your taxi licensing officers have a regular dialogue with neighbouring councils, with a view to adopting consistent standards, developing a common approach and to share relevant information?
- Do you have sufficient information and understanding to challenge or defend your council's taxi and PHV licensing activity in the context of an overview and scrutiny committee?
- Does your council have a multi-agency enforcement programme with the police, DVSA and neighbouring councils? Such operations help ensure the public remain safe.
- Does your council have adequate numbers of accessible taxis – to ensure people who are vulnerable in society such as disabled users can utilise the service?
- Does your council have effective consultation methods with taxi and PHV representatives and taxi users? Many councils have taxi liaison forums which meet on a regular basis.
- Are vehicles subject to agreed and routine stringent testing to ensure they are mechanically safe and suitable to transport the public?
- Are your licensing fees and charges sufficient to provide the resources for an efficient licensing service but which does not create a surplus? If there is a surplus, is this returned through a reduction in future fees?
- Does your council license stretched limousines under eight passenger seats? Many vehicles are operating unlicensed and unchecked as some councils refuse to license such vehicles.

Operator licensing: checklist for councillors

New and emergent technologies are enabling vehicles to be booked through non-traditional methods that can require additional scrutiny to ensure that they comply with the law as it stands. These are some of the issues you may want to consider when deciding whether to license such operators:

- PHV operator licences are required for anyone who makes provision in the course of business for the invitation or acceptance of bookings for PHVs, so you need to consider:
 - Who will invite the booking? If passengers are invited to make bookings through an app, does the app belong to the applicant? If not, it may be that the applicant is not the right person to be licensed.
 - Who will accept the booking? If it is the driver who accepts (for instance, by pressing 'accept' on a smartphone app), the driver may need to be licensed as a PHV operator too. This may depend on who the passenger has a contract with – is it the app provider or the driver?
 - What does the applicant intend to do in your district? Some models can mean that all the activities of inviting or accepting bookings happen remotely outside your authority's jurisdiction and control.
- Can vehicles be booked in advance, or can customers only 'book' a vehicle at the time they want it?
- If there is no facility to pre-book, you should satisfy yourself that the vehicles are not unlawfully plying for hire, and you should be clear in your reasons why you have come to this conclusion.
- Can passengers specify a vehicle to suit their needs, for instance a wheelchair accessible vehicle, saloon, number of seats, etc? If not, how will the applicant ensure that an appropriate vehicle is sent to the customer?
- How will complaints be dealt with?
- Is the fare structure transparent and well publicised? Remember that passengers who have had too much to drink can be vulnerable and may not realise they are being charged two or three times the normal fare. How will the applicant ensure that vulnerable passengers are not taken advantage of?
- Does the applicant intend to use Hackney Carriages and/or minibuses to fulfil bookings? Operator licences only govern PHV bookings, so bookings that are fulfilled by Hackney Carriages and/or minibuses are not subject to the safeguards in the operator licence. How can you ensure that passengers receive the protection they expect when they make a booking through a PHV operator?
- Some app-based booking platforms require passengers to enter into a separate contract for hire with the driver. If this is the case, you should consider whether the driver also needs to be licensed as an operator.²⁵ What safeguards will be in place to ensure that passengers can seek redress against the operator rather than the driver when things go wrong?

²⁵ See *Blueline v Newcastle City Council*: <http://www.licensingresource.co.uk/sites/default/files/2599.pdf>

Glossary

1847 Act – Town Police Clauses Act 1847

1976 Act – Local Government (Miscellaneous Provisions) Act 1976

1998 Act – Human Rights Act 1998. This Act transposed the European Convention on Human Rights into UK law.

App – Application. A tool that can be downloaded to a phone or smart device and used to engage a licensed vehicle. These may use taxis, PHVs, or both.

CSE – Child sexual exploitation. Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive ‘something’ (eg food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities.

DVSA – The Driver and Vehicle Standards Agency is an executive agency of the Department for Transport and is responsible for setting and improving standards for driving, including the roadworthiness of vehicles.

DVLA – The Driver and Vehicle Licensing Agency is an executive agency of the Department for Transport and maintains registers of drivers and vehicles in Great Britain.

Hackney carriage – See Taxi

IoL – The Institute of Licensing is a membership body for licensing officers, licensing lawyers and the licensed trade

NALEO – The National Association of Licensing and Enforcement Officers is a professional body for licensing officers.

PHV – See ‘Private hire vehicle’

Ply for hire – To be hailed in the street to pick up a passenger. This can only be done by taxis.

Private hire vehicle – Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, limousines and chauffeur services. They must be pre-booked and cannot be hailed by people on the street.

Taxi – Taxis are referred to in legislation, regulation and common language as ‘hackney carriages’, ‘black cabs’ and ‘cabs’. They can be hailed in the street, but can also be pre-booked.



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