

**Monday, 8 January 2018**  
**Town Hall, Eastbourne**  
(To commence at the conclusion of the  
Licensing Act Committee to be held at  
6.00pm)



## General Licensing Committee

**MEMBERS:** Councillor Tester (Chairman); Councillor Rodohan (Deputy-Chairman); Councillors Belsey, Choudhury, Coles, Freebody, Holt, Murdoch, Murray, Robinson, Smart and Swansborough

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## Agenda

- 1 Minutes of the meeting held on 20 March 2017.** (Pages 1 - 2)
- 2 Apologies for absence.**
- 3 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.**
- 4 Questions by members of the public.**  

On matters not already included on the agenda and for which prior written notice has been given (total time allowed 15 minutes).
- 5 Urgent items of business.**  

The Chairman to notify the Committee of any items of urgent business to be added to the agenda.
- 6 Right to address the meeting/order of business.**  

The Chairman to report any requests received to address the Committee from a member of the public or from a Councillor in respect of an item listed below and to invite the Committee to consider taking such items at the commencement of the meeting.
- 7 Hackney Carriage and Private Hire Penalty Points Scheme.** (Pages 3 - 76)  

Report of Functional Lead - Quality Environment.

**Inspection of Background Papers** – Please see contact details listed in each report.

**Councillor Right of Address** - Councillors wishing to address the meeting who are not members of the Committee must notify the Chairman in advance.

**Public Right of Address** – Requests by members of the public to speak on a matter which is listed in this agenda must be **received** in writing by no later than 12 Noon, 2 working days before the meeting e.g. if the meeting is on a Tuesday, received by 12 Noon on the preceding Friday). The request should be made to Local Democracy at the address listed below. The request may be made by letter, fax or e-mail. For further details on the rules about speaking at meetings please contact Local Democracy.

**Disclosure of interests** - Members should declare their interest in a matter at the beginning of the meeting, and again, at the point at which that agenda item is introduced.

Members must declare the existence and nature of any interest.

In the case of a DPI, if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation). If a member has a DPI he/she may not make representations first.

## Further Information

Councillor contact details, committee membership lists and other related information is also available from Local Democracy.

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Members of the public are welcome to attend and listen to the discussion of items in the "open" part of the meeting. Please see notes at end of agenda concerning public rights to speak and ask questions.



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Monday, 20 March 2017  
at 6.00 pm



## General Licensing Committee

Present:-

**Members:** Councillor Dow (Chairman), Councillor Rodohan (Deputy-Chairman)  
Councillors Belsey, Choudhury, Freebody, Holt, Murray, Robinson  
and Swansborough

### **17 Minutes of the meeting held on 9 January 2017.**

The minutes of the meeting held on 9 January 2017 were submitted and approved and the Chairman was authorised to sign them as a correct record.

The Committee was advised that since they delegated power at the last meeting to the Senior Specialist Advisor, in consultation with the Chair of Licensing Committee to resolve the individual case of taxi signage, two more cases had approached the Council to request the ability to use a larger sign.

**RESOLVED: (Unanimous)** That power be delegated to the Senior Specialist Advisor in consultation with the Chair of Licensing Committee to resolve any similar cases.

### **18 Apologies for absence.**

Apologies for absence were reported from Councillors Coles, Murdoch and Smart.

### **19 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.**

None were declared.

### **20 Resourcing of the Licensing Function.**

The Committee considered the report of the Head of Customer First regarding resourcing of the licensing function.

At the previous meeting of the Committee it was resolved that officers investigate the possibility of funding an administrative post in support of the licensing function, using part of the surplus fees and charges fund.

The forecast for income and expenditure over the next three year period and cost of employing an additional caseworker was detailed in the report.

The Committee was advised that from April 2017, work would commence on designing the joint service delivery teams with Lewes District Council. This would provide an opportunity to review staffing levels that support the licensing function across Eastbourne and Lewes. Recruitment to these teams was due for completion by December 2017.

**RESOLVED: (Unanimous)** That the Committee approve that no additional recruitment be made at this time and await the design of the joint service delivery teams, due for completion by December 2017.

The meeting closed at 7.13 pm

**Councillor Dow (Chairman)**

<b>Body:</b>	<b>General Licensing</b>
<b>Date:</b>	<b>8<sup>th</sup> January 2018</b>
<b>Subject:</b>	<b>Hackney Carriage and Private Hire Penalty Points Scheme</b>
<b>Report Of:</b>	<b>Ed Hele, Functional Lead - Quality Environment</b>
<b>Ward(s)</b>	<b>All</b>
<b>Purpose:</b>	<b>To seek Committee's approval for the introduction of a Penalty Points Scheme for all Hackney Carriage and Private Hire Drivers; Private Hire Operators and licensed vehicle owners to operate from 1<sup>st</sup> May 2018.</b>
<b>Recommendation:</b>	<b>1. Members are invited to note the feedback received during the consultation period and the information set out in this report and agree one of the following options: 1.1. Adopt scheme 1 as contained in the report. 1.2. Adopt scheme 2 as contained in the report. 1.3. Authorise officers to develop scheme 3, an enforcement framework to be brought back to Committee. 1.4. Reject the introduction of a scheme.</b>
<b>Contact:</b>	<b>Telephone 01323 415014</b>

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## **1.0 Introduction**

- 1.1 On 9<sup>th</sup> January 2017 the Licensing Committee considered adopting a penalty point scheme. Members discussed the scheme and requested that a report be brought back to a future meeting following the consultation process. This report details the consultation responses and options available to the committee.
- 1.2 Penalty Point Schemes have been in existence around the country since the early 1990's. They stand as a Council's policy on how the council will deal with the behaviour of licensees; be that drivers, operators or proprietors.
- 1.3 A Penalty Points Scheme enables the Council to monitor the behaviour of licence holders to evidence suitability to hold licences. Furthermore, the Magistrates Courts are very supportive of Councils use of the schemes since they demonstrate that drivers are given opportunities to improve behaviour prior to Court actions.

1.4 A Penalty Point Scheme offers a transparent, proportionate and reasoned response to on-going standards of poor behaviour by licence holders by use of an effective, efficient and fair process.

## **2.0 Background**

2.1 Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Council Byelaws and the rules, regulations and licence conditions set by the Council.

2.2 Members will be aware that currently when Officers have sufficient evidence to penalise Operators, Drivers or Proprietors of Vehicles for breaches of licensing legislation and conditions, these matters are usually dealt with by either advice (verbal or written), written warning, an official caution, proceedings before the Court or the General Sub Licensing Committee.

2.3 To assist the Council in improving standards, Officers could introduce a penalty point's scheme. The aim of a penalty point scheme is to provide a formalised stepped enforcement plan which is easy for licence holders. The purpose of the scheme is to record misdemeanours and to act as a record of the licence holders behaviour and conduct. The operation of the scheme ensures that the most serious cases are referred to Members for a decision to be taken as to the fitness and properness of licence holders.

2.4 Following initial feedback the Functional Lead - Quality Environment has had discussions with various members of the trade including the main private hire operators and independent hackney carriage drivers on 28<sup>th</sup> November 2017. Following this meeting two additional options have been identified which are both covered at para 4.5 and 4.7 of this report.

2.5 Table 1 show's neighbouring authorities position with regards to adoption of a penalty point scheme. The Committee should note that the proposed scheme in Appendix 1 is based on schemes at neighbouring authorities and Appendix 2 is a more streamlined version.

Table 1

<b>Authority</b>	<b>Scheme in operation</b>
Lewes	Planned in 2018
Rother	Yes
Wealden	Yes
Hastings	Yes
Mid-Sussex	Yes
Horsham	No
Crawley	Yes
Brighton & Hove	No
Arun	Yes
Worthing	Yes
Chichester	No
Adur	No

2.6 Members are advised that 7 out of the other 12 Local Authorities in Sussex have adopted a similar penalty point scheme and 1 is currently considering it. It is estimated that about 65% of Local Authorities in the country are operating similar schemes.

### 3.0 **Consultation**

3.1 Consultation in relation to the introduction of the Penalty Point Scheme commenced on 1<sup>st</sup> February 2017 and concluded on 1st May 2017.

3.2 Letters were sent to all Drivers, Vehicle Proprietors and Private Hire Operators licensed by Eastbourne Borough Council. Emails were sent to local councillors and special interest groups and the consultation was also placed on the consultation section of Eastbourne Borough Council website.

### 3.3 **Overview of the feedback**

3.4 The Authority has received 5 responses. One of which represents 77 drivers from Eastbourne & County Taxis Ltd. Full copies of the feedback is included at Appendix 3 & 4, however a summary for each appears below.

3.5 Feedback 1: (Appendix 3)

I think this is an excellent idea. It gives the public reassurance and some scope for reporting poor behaviour such as refusing to take an assistance dog when there is no evidence that the driver has a medical reason not to take the dog etc. I would gladly see it implemented in Eastbourne.

3.6 Feedback 2: (Appendix 3)

Re point 6: Private hire drivers should be permitted to pick up/drop off pre-booked customers on the taxi ranks outside Sainsbury's Ashford Rd, Waitrose Church St, Hyde Gardens and Bolton Rd otherwise we will have to use unsafe areas and double yellow lines in contravention of Point 56.

3.7 Feedback 3: (Appendix 3)

I agree with the principals of the scheme and think it will enhance the professionalism and duty of care of these companies and their drivers. I do not agree with the parts that are subjective, these are open to interpretation with a risk of inconsistent application of a given category.

3.8 Feedback 4: (Appendix 3)

I support the introduction of the penalty point scheme in principle however I would like to make the following comments on several of the items: Number 4 - That amounts to fraud and is illegal therefore the number of points awarded should rise to 12. Number 51 - This should be removed. It is not a legal requirement and most new cars don't have a spare wheel any more. Number 56 - Sometimes you have to wait for your pick up on a double yellow. This is already enforced by ESCC. Number 57 - This is illegal and therefore the number of points awarded should rise to 12.

### 3.9 Feedback 5: (Appendix 4)

77 signatories feel that this proposal is totally unnecessary, unlawful, no evidential support and suspension of drivers is only meant to protect the public not to be used as a method of punishment. They feel that there are enough rules and regulation in force already to supervise the Trade.

The feedback draws the committee's attention to the law regarding the powers of a District Council to suspend or revoke a licence. The feedback provides an enforcement table which highlights the provisions already in place.

### **4.0 Penalty Points Scheme 1 (Appendix 1)**

4.1 The primary objective of implementing a penalty point scheme must clearly be to improve the levels of compliance within the trade which would subsequently help improve the standards, safety and protection for the travelling public.

4.2 Where a licensee accumulates more than 12 penalty points in any 12 month period the matter will be referred to the Council's Licensing Sub-Committee. This triggers an opportunity for the Licensing Sub Committee to consider if any actions should be taken about the licence. These powers include suspension, revocation or refusal to renew the licence.

4.3 Penalty Points remain effective for 12 months from the date the penalty points were issued. After 12 month they will lapse for the purpose of the scheme. Points issued to either the proprietor of a vehicle, a driver or an operator will be confirmed in writing normally within 10 working days from the discovery of the contravention.

4.4 Disputes regarding the issuing of penalty points by Officers will be referred to the Licensing Sub-Committee who will have the discretion to award a greater number of points if the complaint is upheld. There is no right of appeal to the magistrate's court on the issue of points.

### **4.5 Amended Penalty Points Scheme 2 (Appendix 2)**

4.6 The amended Penalty point scheme is a streamlined version concentrating on Public Safety to improve the levels of compliance within the trade which would subsequently help improve the standards, safety and protection for the travelling public. The amended scheme is shown at Appendix 2 and reduces the number of offences listed from 57 to 40. The ones that remain are considered essential for public safety and to uphold professional standards.

### **4.7 Enforcement Framework Scheme 3**

4.8 A third option for members is to consider producing an enforcement framework which will provide officers with a formalised method of applying verbal and written warnings.

4.9 A taxi licensing policy incorporating an enforcement framework could be developed that stipulates what offences or actions will result in a verbal warning, a written warning or a caution. The full details need to be developed but an example

could be that 3 or more written warnings or 2 official cautions within a 12 month period will result in a licence holder being taken to the Licensing Sub Committee. The policy would also prescribe what actions would result in a stop notice being issued. This policy would be prepared and brought to the Licensing Committee at a later date.

## **5.0 Guidance**

- 5.1 Members are referred to the Local Government Association Taxi and PHV Licensing Councillors' Handbook (England and Wales), see Appendix 5. In particular the 'fit and proper' person test which starts on page 13 and the Monitoring complaint section on page 17 which states: "*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 highlighting that many other councils have introduced similar schemes and there has been a noticeable improvement in both standards of behaviour and standards of compliance.

## **6.0 Legal Implications**

- 6.1 A suggestion was made during the consultation process that a Penalty Point Scheme would be ultra vires. However the Council's Legal Section is content that such schemes are not ultra vires. It is simply an enforcement mechanism applied by the Council, which has power to suspend, revoke or refuse to renew any of the licences granted under either Town Police Clauses Act 1847 or Local Government (Miscellaneous Provisions) Act 1976. It is not unlawful provided the Council retains its discretion at the time at which the trigger number of points has been accumulated.
- 6.2 The legality of such Schemes was challenged in the leading case of R (app Singh) v Cardiff City Council [2012] EWHC 1852 (Admin) [2013] when HHJ Singh stated at para 64 "*.....In my judgement, what the Council sought to do and has done is to adopt a policy to govern the exercise of its undoubted discretion under S.61 of the 1976 Act. A public authority is perfectly entitled to adopt policies which will regulate the exercise of a given discretionary power. In my judgement there is nothing wrong in principle with a licensing authority such as the present, taking the view that the public interest justifies adopting a policy which would not lead to the suspension or revocation of driver's licence, for example, for a single incident. At para 65 added "In my view, there is nothing wrong in principle with the council; such as the present, adopting a policy, which seeks in both fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgement of the local authority, a person is not a fit and proper person to continue to enjoy the relevant licence."*
- 6.3 It is noted that *Cardiff* failed in the judicial review case because it had developed a practice of suspending/revoking licences on the accumulation of points under its scheme. Rather the Court considered the accumulation of the required points should lead to a licence holder appearing before a Sub Committee for there to be a full consideration of their fit and properness with all options being open to

Members. It is noted that the Scheme proposed in this Report does not automatically lead to the loss of a licence but simply triggers a Sub Committee hearing.

- 6.4 When consulted on the value of having such a Scheme the acknowledged leading expert in this field James Button *stated* “*I am in favour of such schemes as I feel that they provide a graduated, proportionate and transparent method of dealing with low level transgressions which do not in themselves warrant action against a licence.*”
- 6.5 During the consultation process it was contested that there are existing powers available for the Council to prosecute for many matters under the 1847 and 1976 Acts, and therefore the scheme is unnecessary. Members are reminded that ‘fit and properness’ is a concept that is not solely reliant upon the criminal behaviour of an applicant. Members may take into consideration behaviour that demonstrates a lack of regard for conditions of licence, for poor standards of behaviour, and non-compliance with policies and standards set by the Council.
- 6.6 It was stated in the consultation process that suspension should be a final determination and not an interim measure. The Legal Section would accept that contention following *R (app Singh) v Cardiff City Council* para 105 “ It is a power of final suspension, as an alternative to a power of final revocation.” It was also contended that suspension should not be used as a punishment following *Singh*. To quote the leading expert in this area James Button “ suspension is a final decision and not the precursor to other action. Accordingly, it is clear that suspension can therefore be simply used as a punishment” at page 237 Button on Taxis ( 4<sup>th</sup> ed). It is accepted that this is a contested issue and Legal’s view is that sanction by way of suspension can be imposed with the aim of ensuring the conduct is not repeated and to ensure the public are protected. It will be a question for the Licensing Sub Committee considering the merits of each case before it as to the appropriate action to be taken. The process is to ask and then determine in the light of the evidence, whether the licence holder is a fit and proper person and if not what is the appropriate sanction.
- 6.7 The Legal Section has considered the contents of this Report (IKEN-6985-MW 19 December 2017).

## **7.0 Recommendations**

- 7.1 Members are invited to note the feedback received during the consultation period and the information set out in this report and agree one of the following options:
- 8.1.1 Adopt scheme 1 as contained in the report.
  - 8.1.2 Adopt scheme 2 as contained in this report.
  - 8.1.3 Adopt an enforcement framework scheme 3 and request officers present this to a future Committee.
  - 8.1.4 Reject the introduction of a scheme.
- 7.2 If members choose to adopt either scheme, either 8.1.1, or 8.1.2 the scheme will operate from 1<sup>st</sup> May 2018. Scheme 3 will be subject to another report being presented to Committee.

## **8.0 Financial Implications**

- 8.1 Holding Sub-Committee meetings does involve the authority in additional costs. However, it is not anticipated that there will be more than three or four a year. There are minimal administrative costs associated with issuing penalty point notices.
- 8.2 These will be factored into the overall costs of running the service, with the objective of the service to balance income against expenditure over the course of a 3 year period.

## **9.0 Human Rights**

- 9.1 The provisions of the Human Rights Act 1998, must be borne in mind by the Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property, and Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory.

### **Background Papers:**

The Background Papers used in compiling this report were as follows:

Local Government Association – Taxi and PHV licensing Councillors' handbook (England and Wales)

### **Appendices:**

Appendix 1 – Eastbourne Borough Council Proposed Penalty Point Scheme 1

Appendix 2 – Eastbourne Borough Council Proposed Penalty Point Scheme 2

Appendix 3 – Consultation feedback via web consultation

Appendix 4 – Consultation feedback from Eastbourne & County Taxis Ltd.

Appendix 5 – Local Government Association – Taxi and PHV licensing Councillors' handbook (England and Wales)

**Appendix 1**  
**Eastbourne Borough Council - Penalty Points Scheme 1**

	<b>Details of the misconduct</b>	<b>Points Applicable</b>	<b>Driver</b>	<b>Vehicle Proprietor</b>	<b>Operator</b>
1	Providing false or misleading information on licence application form / failing to provide relevant information or pay the relevant fee (including dishonoured cheques)	6	✓	✓	
2	Failure to notify, in writing, the Council of a change of address within 7 calendar days	3	✓	✓	
3	Refusal to accept hiring without reasonable cause	6	✓		✓
4	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓		
5	Plying for hire by Private hire drivers or Hackney Carriage drivers plying for hire outside the district	9	✓	✓	
6	Private hire vehicle parking or waiting on a taxi rank	9	✓	✓	
7	Inappropriate behaviour at a taxi rank,	1-12*	✓		
8	Leaving a taxi unattended at a rank	4	✓		
9	Using unlicensed vehicle or using a licensed vehicle without insurance or without a valid VST	12	✓	✓	
10	Failure to produce relevant documents within timescales when requested by an Authorised Officer	4	✓	✓	
11	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓	
12	Failure to undergo the 6 monthly VST on time	6		✓	
13	Failure to provide proof of insurance cover when requested	6	✓		
14	Failure to produce Hackney Carriage or Private Hire vehicle for re-testing when required	4		✓	
15	Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12	✓	✓	
16	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓	
17	Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓	
18	Carrying more passengers than stated on the vehicle licence	6	✓		
19	Failure to display external/internal licence plate in a fixed position or failure to display appropriate door signs	6	✓	✓	
20	Carrying an offensive weapon in the vehicle	12	✓		

	<b>Details of the misconduct</b>	<b>Maximum* Points Applicable</b>	<b>Driver</b>	<b>Vehicle Proprietor</b>	<b>Operator</b>
21	Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer	4		✓	
22	Failure to carry fire extinguisher	4		✓	
23	Failure to carry first aid kit	3		✓	
24	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle	3		✓	
25	Failure to use authorised roof light	4	✓		
26	Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day	4			✓
27	Failure to produce on request records of drivers' work activity	4			✓
28	Using a non-approved or non-calibrated taximeter (HC)	6	✓	✓	
29	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	12	✓	✓	
30	Evidence of smoking in vehicle	3	✓	✓	
31	Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage	6		✓	
32	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	✓	
33	Driver not holding a current DVLA licence	12	✓	✓	
34	Failure to have the driver's badge clearly displayed	4	✓		
35	Failure to notify, in writing, a change in medical circumstances	6	✓	✓	
36	Unsatisfactory appearance of driver	4	✓		
37	Failure to observe rank discipline (HC)	3	✓		
38	Failure to maintain proper records of private hire vehicles	3			✓
39	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6			✓
40	Misleading use of the words 'Taxi' or 'Cab' on advertising materials	3		✓	✓
41	Failure to issue receipt on request.	6	✓	✓	
42	Using a licensed vehicle in a dangerous condition	9	✓	✓	
43	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓	

	<b>Details of the misconduct</b>	<b>Maximum* Points Applicable</b>	<b>Driver</b>	<b>Vehicle Proprietor</b>	<b>Operator</b>
44	Unsatisfactory behaviour or conduct of a driver.	1-12*	✓		
45	Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence	6	✓	✓	
46	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute.	1-12*	✓	✓	
47	Failure to provide reasonable assistance to a passenger	1-12*	✓	✓	
48	Failure to display a correct up to date fare card (HC)	3	✓	✓	
49	Carrying two or more separate fares without the appropriate consent	9	✓		
50	Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel	4	✓	✓	
51	Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓	
52	A licensed vehicle with a bald or dangerous or defective tyre	4 per tyre	✓	✓	
53	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓	
54	Failure to display an applicable fare card AND the Councils valid fare card together	3	✓	✓	
55	Waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle	3	✓		
56	Driving whilst using a mobile phone	9	✓		

Notes:

\*- points up to a maximum of 6 points can be issued by officers, but greater awards of points can only be issued by the Licensing Sub-Committee. Officers may refer any award of points to Members where there are aggravating features to any case.

The Maximum points applicable refers to points issued by Officers. If the matter is referred to the Licensing Sub-Committee the Sub-Committee may impose up to 12 points.

Ticks indicate potential recipients of points for infringements, but are not limited to those only. Certain cases may result in drivers and/or proprietors and/or operators receiving penalty points. Points may be awarded to one or several persons depending upon the circumstances of the case, but each case will be considered on its individual merits.

## **Penalty Point Scheme**

### **Introduction**

- 1.0 Hackney Carriage and Private Hire Operators, drivers and vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Councils Byelaws and the Rules, Regulations and Conditions set by the Licensing Committee.
- 2.0 Should operators, drivers or proprietors of vehicles commit an offence or breach those rules, regulations or conditions of licence, persons involved are asked to attend the offices for an interview and then once investigations are completed, letters are sent out detailing the outcome and a permanent record kept on the persons' file. The outcome of investigations may result in no further action being taken, penalty points being awarded, a formal warning, referral to the Licensing Panel and /or prosecution.
- 3.0 The aim of a penalty point scheme is to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme is to record misdemeanours and to act as a record of drivers, vehicle proprietors and operator's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.
- 4.0 The primary objective of the penalty point's scheme is to improve levels of compliance and help improve the standards, safety and protection of the travelling public.
- 5.0 Penalty points remain on the licensee's record for twelve months. The period is a roll forward basis, so as to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee.

### **Issue of Penalty Points**

- 6.0 Complaints from the public concerning significant breaches of conduct will be subject to investigation by officers and may be reported to the Licensing Sub-Committee for the issue of discretionary points.
- 7.0 Where a licensee accumulates 12 or more penalty points in any 12 month period, the matter will be referred to the Council's Licensing Sub-Committee for the members to decide whether the licensee remains a fit and proper person. The Licensing Sub-Committee may then suspend or revoke a licence, or issue a warning to the Licensee, depending on the circumstances. Periods of suspension of a licence by a Sub-Committee will be dependent on the nature of the breaches of the legislation/conditions and the compliance history of the individual. Suspension periods will normally vary between 7 to 31 days.
- 8.0 Penalty Points will remain current for 12 months from the date the penalty points were issued. Points issued to either the proprietor of a vehicle, operator or a driver will be confirmed in writing normally within 10 working days of the conclusion of the investigation into the contravention.

- 9.0 The system will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, byelaws and regulations.
- 10.0 Any disputes regarding the issuing of penalty points will be referred to the Licensing Sub-Committee who will have the discretion to award a greater number of points than displayed on the tariff, if the complaint is upheld. Drivers or Operators must appeal against points awarded by officers to the Licensing Sub-Committee within 21 days of them being issued.
- 11.0 If points are issued to a proprietor/driver or operator by the Council for a matter which is also a criminal offence, e.g. bald tyres, no badge, those person(s) will not be the subject of a prosecution for that offence by the Council.

**Appendix 2**  
**Eastbourne Borough Council - Penalty Points Scheme 2 (Amended)**

	<b>Details of the misconduct</b>	<b>Points Applicable</b>	<b>Driver</b>	<b>Vehicle Proprietor</b>	<b>Operator</b>
1	Failure to notify, in writing, the Council of a change of address within 7 calendar days	3	✓	✓	
2	Refusal to accept hiring without reasonable cause	6	✓		✓
3	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓		
4	Inappropriate behaviour at a taxi rank,	1-12*	✓		
5	Leaving a taxi unattended at a rank	4	✓		
6	Failure to produce relevant documents within timescales when requested by an Authorised Officer	4	✓	✓	
7	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓	
8	Failure to provide proof of insurance cover when requested	6	✓		
9	Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓	
10	Carrying more passengers than stated on the vehicle licence	6	✓		
11	Failure to display external/internal licence plate in a fixed position or failure to display appropriate door signs	6	✓	✓	
12	Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer	4		✓	
13	Failure to carry fire extinguisher	4		✓	
14	Failure to carry first aid kit	3		✓	
15	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle	3		✓	
16	Failure to use authorised roof light	4	✓		
17	Using a non-approved or non-calibrated taximeter (HC)	6	✓	✓	
18	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	12	✓	✓	
19	Evidence of smoking in vehicle	3	✓	✓	
20	Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage	6		✓	

	<b>Details of the misconduct</b>	<b>Maximum* Points Applicable</b>	<b>Driver</b>	<b>Vehicle Proprietor</b>	<b>Operator</b>
21	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	✓	
22	Failure to have the driver's badge clearly displayed	4	✓		
23	Failure to notify, in writing, a change in medical circumstances	6	✓	✓	
24	Unsatisfactory appearance of driver	4	✓		
25	Failure to observe rank discipline (HC)	3	✓		
26	Failure to maintain proper records of private hire vehicles	3			✓
27	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6			✓
28	Failure to issue receipt on request	6	✓	✓	
29	Using a licensed vehicle in a dangerous condition	9	✓	✓	
30	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓	
31	Unsatisfactory behaviour or conduct of a driver.	1-12*	✓		
32	Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence	6	✓	✓	
33	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute.	1-12*	✓	✓	
34	Failure to provide reasonable assistance to a passenger	1-12*	✓	✓	
35	Failure to display a correct up to date fare card (HC)	3	✓	✓	
36	Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel	4	✓	✓	
37	A licensed vehicle with a bald or dangerous or defective tyre	4 per tyre	✓	✓	
38	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓	
39	Failure to display an applicable fare card AND the Councils valid fare card together	3	✓	✓	
40	Driving whilst using a mobile phone	9	✓		

Notes:

\*- points up to a maximum of 6 points can be issued by officers, but greater awards of points can only be issued by the Licensing Sub-Committee. Officers may refer any award of points to Members where there are aggravating features to any case.

The Maximum points applicable refers to points issued by Officers. If the matter is referred to the Licensing Sub-Committee the Sub-Committee may impose up to 12 points. Ticks indicate potential recipients of points for infringements, but are not limited to those only. Certain cases may result in drivers and/or proprietors and/or operators receiving penalty points. Points may be awarded to one or several persons depending upon the circumstances of the case, but each case will be considered on its individual merits.

## **Penalty Point Scheme**

### **Introduction**

- 1.0 Hackney Carriage and Private Hire Operators, drivers and vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Councils Byelaws and the Rules, Regulations and Conditions set by the Licensing Committee.
- 2.0 Should operators, drivers or proprietors of vehicles commit an offence or breach those rules, regulations or conditions of licence, persons involved are asked to attend the offices for an interview and then once investigations are completed, letters are sent out detailing the outcome and a permanent record kept on the persons' file. The outcome of investigations may result in no further action being taken, penalty points being awarded, a formal warning, referral to the Licensing Panel and /or prosecution.
- 3.0 The aim of a penalty point scheme is to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme is to record misdemeanours and to act as a record of drivers, vehicle proprietors and operator's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.
- 4.0 The primary objective of the penalty point's scheme is to improve levels of compliance and help improve the standards, safety and protection of the travelling public.
- 5.0 Penalty points remain on the licensee's record for twelve months. The period is a roll forward basis, so as to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee.

### **Issue of Penalty Points**

- 6.0 Complaints from the public concerning significant breaches of conduct will be subject to investigation by officers and may be reported to the Licensing Sub-Committee for the issue of discretionary points.
- 7.0 Where a licensee accumulates 12 or more penalty points in any 12 month period, the matter will be referred to the Council's Licensing Sub-Committee for the members to decide whether the licensee remains a fit and proper person. The Licensing Sub-Committee may then suspend or revoke a licence, or issue a warning to the Licensee, depending on the circumstances. Periods of suspension of a licence by a Sub-Committee will be dependent on the nature of the breaches of the legislation/conditions and the compliance history of the individual. Suspension periods will normally vary between 7 to 31 days.
- 8.0 Penalty Points will remain current for 12 months from the date the penalty points were issued. Points issued to either the proprietor of a vehicle, operator or a driver will be confirmed in writing normally within 10 working days of the conclusion of the investigation into the contravention.

- 9.0 The system will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, byelaws and regulations.
- 10.0 Any disputes regarding the issuing of penalty points will be referred to the Licensing Sub-Committee who will have the discretion to award a greater number of points than displayed on the tariff, if the complaint is upheld. Drivers or Operators must appeal against points awarded by officers to the Licensing Sub-Committee within 21 days of them being issued.
- 11.0 If points are issued to a proprietor/driver or operator by the Council for a matter which is also a criminal offence, e.g. bald tyres, no badge, those person(s) will not be the subject of a prosecution for that offence by the Council.

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**Appendix 3**

Name	Comment/Feedback
Anon	I think this is an excellent idea. It gives the public reassurance and some scope for reporting poor behaviour such as refusing to take an assistance dog when there is no evidence that the driver has a medical reason not to take the dog etc. I would gladly see it implemented in Eastbourne.
Alan Harffey	Re point 6: Private hire drivers should be permitted to pick up/drop off pre-booked customers on the taxi ranks outside Sainsburys Ashford Rd, Waitrose Church St, Hyde Gardens and Bolton Rd otherwise we will have to use unsafe areas and double yellow lines in contravention of Point 56.
Ray Blakebrough	I agree with the principals of the scheme and think it will enhance the professionalism and duty of care of these companies and their drivers. I do not agree with the parts that are subjective, these are open to interpretation with a risk of inconsistent application of a given category.
Roland Groves	I support the introduction of the penalty point scheme in principle however I would like to make the following comments on several of the items: Number 4 - That amounts to fraud and is illegal therefore the number of points awarded should rise to 12. Number 51 - This should be removed. It is not a legal requirement and most new cars don't have a spare wheel any more. Number 56 - Sometimes you have to wait for your pick up on a double yellow. This is already enforced by ESCC. Number 57 - This is illegal and therefore the number of points awarded should rise to 12.

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## REPLY TO PUBLIC CONSULTATION ON THE DRAFT TAXI AND PRIVATE HIRE LICENSING PENALTY POINTS SCHEME

- 1) In regards to the proposal by the Licensing Committee, we would like to draw to the Committee's attention, the Law regarding the powers of a District Council to suspend or revoke a licence of a Hackney Carriage or Private Hire Vehicle – see attached document 1
- 2) We would like to break down the consultation documents into various sections as follows – See document 2

Items considered Public Safety	4,5,17,18,19,42,45,46,48,35,36
Already powers "stop notice" (deferred)	9,11,12,13,14,22,23,24,25,28,43,49,51,53,54,31
P.A.C.E. interview	1,15,16
Automatic Revocation	34
Police Matter	20,47,57,7
Unnecessary red tape and/or Further explanation required	6,32,37,38,41,50,52,55,56,58
Town Police Clauses Act and local Government (Misc Provisions Act)	2,3,8,10,21,26,27,29,30,33,39,40,44

We would ask the Committee to explain the definition of "operator" in Penalty Point Scheme column

- 3) We would also like to inform the Committee of the Enforcement Table (which includes the offences contained within Town Police Clauses Act 1847. (The local Government Provisions Act 1976) (The Transport Act of 1980) for which provisions are already in place – see attached document 3 – pages 120,122,123 and 124



# DOCUMENT - 1

## Taxi Penalty Points System

### 1) Proposal is Ultra Vires:

[http://www.localgovernmentlawyer.co.uk/index.php?option=com\\_content&view=article&id=16667%3Asuspension-of-taxi-drivers-licences&catid=61&Itemid=29](http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=16667%3Asuspension-of-taxi-drivers-licences&catid=61&Itemid=29)

#### **The law**

By s.61(1) Local Government (Miscellaneous Provisions) Act 1976 'a district council may suspend or revoke... or refuse to renew the licence of the driver of a hackney carriage or a private hire vehicle' on the grounds (a) that he has since the grant of the licence been convicted of an offence involving dishonesty, indecency or violence or (b) any other reasonable cause.

'Any other reasonable cause' is generally taken to mean something that may lead the authority to consider that the driver is no longer a fit and proper person to hold a drivers' licence – to grant a drivers' licence the authority must be satisfied 'that the applicant is a fit and proper person' (by s.51 for PHVs and s.59 for hackney carriages).

It has been suggested that 'any other reasonable cause' extends beyond a simple consideration of whether the evidence suggests that the driver continues to satisfy the fit and proper person criterion. For example, it may be considered in the interests of public safety that a person who has been charged with a serious criminal offence should not be allowed to continue as a taxi driver. However, in order to be able to conclude that it is against the public interest for a driver to continue to operate as a taxi driver there would need to be a consideration of the risk posed by the driver – in other words a consideration of whether the person is considered fit and proper to hold a driver's licence.

If 'any reasonable cause' was interpreted to mean other than 'fit and proper' it would put a driver facing action under s.61(1) in a worse position than a new applicant for a licence who must satisfy the fit and proper person criterion. The better view must be that 'any other reasonable cause' under s.61(1)(b) simply extends s.61(1)(a) to include matters other than a criminal conviction for the offences specified in that subsection. For example, charges being laid, a failed prosecution or a criminal matter not involving dishonesty, indecency or violence (such as drink-driving).

#### **The practice**

Councils may come into possession of information that raises concerns as to whether a person holding a taxi driver's licence remains a fit and proper person. **For example, the council may have been informed that a driver has been charged with a serious criminal offence.** The practice of a number of councils has been to suspend the driver's licence under s.61 in order to allow a full investigation into the matter to be conducted and to consider at a later date what action, including revocation, should be taken.

***R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)***

This decision now seems to make **such an approach unlawful as Singh J decided that s.61 does not confer a power of interim suspension**: "it is rather after a considered determination ... a final decision on whether a ground for either revocation, or suspension of a licence is made out"(para.103). So suspension is a sanction and cannot be used as an administrative measure to allow an authority to investigate matters: "it is not, as it were, a protective or holding power. **It is a power of final suspension, as alternative to a power of final revocation"** (para.105). So it is a final determination on the fitness and propriety of the driver and, as such, appealable.

This is the case whether the suspension is made under s.61(1) or if deemed necessary for public safety under s.61(2B) where the suspension takes place with immediate effect rather than 21 days after notice is given. Note also that if a suspension or revocation is made under s.61(1) and an appeal is lodged within the 21 days the suspension or revocation does not take effect until the appeal is abandoned or determined.

**Practice after *Singh***

A council on receiving information which causes concern over whether a taxi driver is a fit and proper person will need to have delegated powers and a policy framework in place to enable it to take action quickly and without delay. This was good practice even before *Singh*.

The difference post-*Singh* is that the action that is taken by the council can no longer be an interim step pending a fuller investigation with a final adjudicated at a later date. **The council must therefore approach the matter in the same way that it would approach a final determination – because it is a final determination.**

There will have to be a **full consideration of the available evidence and the driver should be given the opportunity to state his or her case. The council must then weigh the evidence and decide how to exercise its discretion. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.**

However, while the determination is a 'final' one, it is a determination based on the evidence available to the council at the time it made the determination. New evidence may, of course, become available at a later date.

New evidence may be adduced at an appeal leading the appeal court to a determination different to that reached by the council or an appeal may be settled by agreement between the council and the driver on terms which, in the light of subsequent evidence, becomes the appropriate course.

If, for example, the allegations against the driver were unfounded, a suspension could be lifted and if the licence was revoked, an expedited re-licensing process used (if the council has formulated one).

## When to suspend

The pre-*Singh* practice of suspension of a licence pending the outcome of serious criminal charges may have been a reasonable one and was clearly a useful tool for councils to use. Now that suspension can no longer be used in this way when would suspension be an appropriate sanction? **Can suspension be used as a punishment?**

If on a consideration of the evidence the council decides that the driver can no longer be considered a fit and proper person then revocation would seem appropriate. The more serious the conduct, the more likely this will be.

However, *Singh J* suggests that suspension may be appropriate "even if misconduct has been established" if something "**less than complete revocation**" is appropriate and suspension "**will constitute sufficient sanction in the interests of the public**" (para.104). What does this mean?

It is clear that the aim of suspension is to **protect the public** (*Leeds City Council v Hussain* [2002]). It is not to **punish the driver**. **Punishment in the form of retribution (legally sanctioned revenge)** is therefore not a proper use of suspension. Retribution is backward looking and its aim is no more than to give the driver his or her just deserts for their conduct ('an eye for an eye').

Other purposes of punishment – variously termed utilitarian, reductive or corrective – look to the future and have a **positive aim**. Most appropriate when considering suspension of taxi drivers' licences are 'corrective' measures aimed at the driver. This may entail **the driver attending a driver training course or other improving measure (rehabilitation) or the sanction of suspension operating as an individual deterrent against future misconduct by the driver**.

The public interest is not in seeing a driver punished for his conduct as this is not the function of the licensing regime. The licensing regime is concerned with protection of the public. If a sanction by way of suspension is imposed the aim is to ensure that the drivers' conduct will not be repeated.

*Roy Light is a barrister at St John's Chambers, Bristol.*

Clearly the proposal suggested by Mr Gaimster in his correspondence dated 9th February 2017 is to "ascertain whether they are a fit and proper person".

This is not in accordance with *R (application of Singh) v Cardiff City Council* [2012] *EWCH 1852 (Admin)*. If a driver is not fit and proper, as per s61 (action i.e. been convicted of an offence involving dishonesty, indecency or violence) of the Local Government (Miscellaneous Provisions) Act 1976, then revocation is the correct course of action.

James Button in his book *Taxis, licensing law and practice* states that it is "difficult to understand how the punishment of a driver by means of suspension actually protects the public" Subsequently "points systems" that punish a driver for misdemeanours do not protect the public. If a driver is a significant threat to public safety then revocation

is the correct course of action i.e. been convicted of an offence involving dishonesty, indecency or violence.

Suspension for a number of **arbitrary misdemeanours** is **punishment** and should have no place in the licensing regime as it **does not protect the public**

## **2) Evidence Based Practice**

No evidence has been included in the consultation to ascertain why such a proposal is actually required.

Best practice would be to **include a tabulation of all the offences/misconduct for each consecutive years over the last 10 years** to determine whether there has been an increase in enforcement activity in relation to declining standards?

Also a **record of all driver licence suspensions and stop notices issued to vehicles over the same period.**

## **3) Intra Vires & Enforcement Activity**

The local authority *already has a suite of powers enshrined by parliament* to enforce all of the misconduct featured in the consultation tabulation. These are all included in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. Therefore why not use these powers as intended by parliament and the local authority to enforce the rules that already exist and in accordance with the Regulators Compliance Code adopted by EBC:

<http://www.eastbourne.gov.uk/resources/assets/inline/full/0/246064.pdf>

As James Button correctly points out "as with any criminal investigation and subsequent prosecution, the general rules applicable to such investigations must be followed. These include compliance with the requirements of PACE and RIPA and the right to a fair trial as enshrined in British and European law".

Therefore any enforcement activity must be conducted in accordance with the above Acts and code. Deviation renders the investigation (and hence any points awarded) void and would not stand in court.

The proposal blurs the differentiation between the vehicle, operator and the drivers licences. These are different licences with varying sanctions should an infringement occur as stipulated by parliament. Lumping them together under a "points system" is not in keeping with parliamentary intent and would therefore be *ultra vires*. The powers already exist, use them as necessary!!

Who is the legal officer who cleared the proposal prior to consultation?

## Eastbourne Borough Council - Penalty Points Scheme

	Details of the misconduct	Points Applicable	Driver	Vehicle Owner or Operator
1	Providing false or misleading information on licence application form / failing to provide relevant information or pay the relevant fee (including dishonoured cheques)	6	✓	✓
2	Failure to notify, in writing, the Council of a change of address within 7 calendar days	3	✓	✓
3	Refusal to accept hiring without reasonable cause	6	✓	
4	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓	
5	Plying for hire by Private hire drivers or Hackney Carriage drivers plying for hire outside the district	9	✓	✓
6	Private hire vehicle parking or waiting on a taxi rank	9	✓	✓
7	Inappropriate behaviour at a taxi rank,	1-12*	✓	
8	Leaving a taxi unattended at a rank	4	✓	
9	Using unlicensed vehicle or using a licensed vehicle without insurance or without a valid VCT	12	✓	✓
10	Failure to produce relevant documents within timescales when requested by an Authorised Officer	4	✓	✓
11	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓
12	Failure to undergo the 6 monthly VCT on time	6		✓
13	Failure to provide proof of insurance cover when requested	6	✓	
14	Failure to produce Hackney Carriage or Private Hire vehicle for re-testing when required	4		✓
15	Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12	✓	✓
16	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
17	Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓
18	Carrying more passengers than stated on the vehicle licence	12	✓	
19	Failure to display external/internal licence plate in a fixed position or failure to display appropriate door signs	6	✓	✓
20	Carrying an offensive weapon in the vehicle	12	✓	
21	Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer	4		✓
22	Failure to carry fire extinguisher	4	✓	✓
23	Failure to carry first aid kit	3	✓	✓

	Details of the misconduct	Maximum* Points Applicable	Driver	Vehicle Owner or Operator
24	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle	3	✓	✓
25	Failure to use authorised roof light	4	✓	
26	Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day	4		✓
27	Failure to produce on request records of drivers' work activity	4		✓
28	Using a non-approved or non-calibrated taximeter (HC)	6	✓	✓
29	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	12	✓	✓
30	Evidence of smoking in vehicle	3	✓	✓
31	Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage	6	✓	✓
32	Using a vehicle, the appearance of which suggests that it is a Taxi	6		✓
33	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	✓
34	Driver not holding a current DVLA licence	12	✓	✓
35	Failure to have the driver's badge clearly displayed	4	✓	
36	Failure to notify, in writing, a change in medical circumstances	6	✓	✓
37	Unsatisfactory appearance of driver	4	✓	
38	Failure to observe rank discipline (HC)	3	✓	
39	Failure to maintain proper records of private hire vehicles	3		✓
40	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6		✓
41	Misleading use of the words 'Taxi' or 'Cab' on advertising materials	3	✓	✓
42	Failure to issue receipt on request .	6	✓	✓
43	Using a licensed vehicle in a dangerous condition	9	✓	✓
44	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓
45	Unsatisfactory behaviour or conduct of a driver.	1-12*	✓	
46	Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence	6	✓	✓
47	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute.	1-12*	✓	✓

	Details of the misconduct	Maximum* Points Applicable	Driver	Vehicle Owner or Operator
48	Failure to provide reasonable assistance to a passenger	1-12*	✓	✓
49	Failure to display a correct up to date fare card (HC)	3	✓	✓
50	Carrying two or more separate fares without the appropriate consent	9	✓	
51	Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel	4	✓	✓
52	Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓
53	A licensed vehicle with a bald or dangerous or defective tyre	4 per tyre	✓	✓
54	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓
55	Failure to display an applicable fare card AND the Councils valid fare card together	3	✓	✓
56	Waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle	3	✓	
57	Driving whilst using a mobile phone	9	✓	
58	Appeal of points by way of Licensing Sub-Committee	4-12*	✓	✓

**Notes:**

\*- discretionary points up to a maximum of 6 points can be issued by officers, but greater awards of points can only be issued by the Licensing Sub-Committee.

Officers may refer any mandatory award of points to Members where there are aggravating features to any case.

The Maximum points applicable refers to points issued by Officers. If the matter is referred to the Licensing Sub-Committee the Sub-Committee may impose up to 12 points.

Ticks indicate potential recipients of points for infringements, but are not limited to those only. Certain cases may result in drivers and/or proprietors and/or operators receiving penalty points. Points may be awarded to one or several persons depending upon the circumstances of the case, but each case will be considered on its individual merits.



Table 6.2 Enforcement table – Town Police Clauses Act 1847

Section	Offence	Maximum penalty
40	Giving false information on application for HC proprietor's licence	Level 1
44	Failure to notify change of address of HC proprietor	Level 1
45	Plying for hire without HC proprietor's licence	Level 4
47	Driving a HC without HC driver's licence	Level 3
47	Lending or parting with HC driver's licence	Level 3
47	HC proprietor employing unlicensed driver	Level 3
48	Failure by HC proprietor to hold HC driver's licence	Level 1
48	Failure by HC proprietor to produce HC driver's licence	Level 1
52	Failure to display HC plate	Level 1
53	Refusal to take a fare	Level 2
54	Charging more than the agreed fare	Level 1
55	Obtaining more than the legal fare	Level 3 and 1 months' imprisonment until the excess is refunded
56	Travelling less than the lawful distance for an agreed fare	Level 1
57	Failing to wait after a deposit to wait has been paid	Level 1
58	Charging more than the legal fare	Level 3
59	Carrying other person than the hirer without consent	Level 1
60	Driving HC without proprietor's consent	Level 1
60	Person driving another to drive HC without proprietor's consent	Level 1
61	Drunk driving of HC	Level 1
61	Wanton or furious driving or wilful misconduct leading to injury or danger	Level 1
62	Driver leaving HC unattended	Level 1
64	HC driver obstructing other HCs	Level 1

HC: hackney carriage.

Notes: The number for breach of law is made under TPCA 1847 s. 60 and the Town Police Clauses Act 1847.

DOCUMENT W

Table 6.3

Enforcement table – hackney carriage provisions – Local Government (Miscellaneous Provisions) Act 1976

Section	Offence	Maximum penalty
49	Failure to notify transfer of HC proprietor's licence	Level 3 (by virtue of s 76)
50(1)	Failure to present HC for inspection as required	Level 3 (by virtue of s 76)
50(2)	Failure to inform local authority where HC is stored if requested	Level 3 (by virtue of s 76)
50(3)	Failure to report an accident to local authority	Level 3 (by virtue of s 76)
50(4)	Failure to produce HC proprietor's licence and insurance certificate	Level 3 (by virtue of s 76)
53(3)	Failure to produce HC driver's licence	Level 3 (by virtue of s 76)
57	Making false statement or withholding information to obtain HC driver's licence	Level 3 (by virtue of s 76)
58(2)	Failure to return plate after notice given after expiry, revocation or suspension of HC proprietor's licence	Level 3 plus daily fine of £10
61(2)	Failure to surrender drivers licence after suspension, revocation or refusal to renew	Level 3 (by virtue of s 76)
64	Permitting any vehicle other than HC to wait on a HC stand	Level 3 (by virtue of s 76)
66	Charging more than the meter fare for a journey starting outside the district, without prior agreement	Level 3 (by virtue of s 76)
67	Charging more than the meter fare when HC used to estimate the vehicle	Level 3 (by virtue of s 76)
69	Proprietor obstructing a journey	Level 3 (by virtue of s 76)
71	Failure to use a taximeter	Level 3 (by virtue of s 76)
73(1)(a)	Obstruction of authorised officer or constable	Level 3 (by virtue of s 76)
73(1)(b)	Failure to comply with requirement of authorised officer or constable	Level 3 (by virtue of s 76)
73(1)(c)	Failure to give information or assistance to authorised officer or constable	Level 3 (by virtue of s 76)

Table 6.4

**Enforcement table – private hire provisions – Local Government (Miscellaneous Provisions) Act 1976**

Section	Offence	Maximum penalty
46(1)(a)	Using an unlicensed PH vehicle	Level 3 (by virtue of s 76)
46(1)(b)	Driving a PH vehicle without a PH driver's licence	Level 3 (by virtue of s 76)
46(1)(c)	Proprietor of a PH vehicle using an unlicensed driver	Level 3 (by virtue of s 76)
46(1)(d)	Operating a PH vehicle without a PH operator's licence	Level 3 (by virtue of s 76)
46(1)(e)	Operating a vehicle as a PH vehicle when the vehicle is not licensed as a PH vehicle	Level 3 (by virtue of s 76)
46(1)(e)	Operating a PH vehicle when the driver is not licensed as a PH driver	Level 3 (by virtue of s 76)
48(6)	Failure to display PH vehicle plate	Level 3 (by virtue of s 76)
49	Failure to notify transfer of PH vehicle licence	Level 3 (by virtue of s 76)
50(1)	Failure to present PH vehicle for inspection as required	Level 3 (by virtue of s 76)
50(2)	Failure to inform local authority where PH vehicle is stored if requested	Level 3 (by virtue of s 76)
50(3)	Failure to report an accident to local authority	Level 3 (by virtue of s 76)
50(4)	Failure to produce PH vehicle licence and insurance certificate	Level 3 (by virtue of s 76)
53(3)	Failure to produce PH driver's licence	Level 3 (by virtue of s 76)
54(2)	Failure to wear PH driver's badge	Level 3 (by virtue of s 76)
56(2)	Failure by PH operator to keep records of bookings	Level 3 (by virtue of s 76)
56(3)	Failure by PH operator to keep records of PH vehicles operated by him	Level 3 (by virtue of s 76)

**Chapter 6**

Section	Offence	Maximum penalty
58(2)	Making false statement or withholding information to obtain PH driver's or operator's licence Failure to return plate after notice given after expiry, revocation or suspension of PH vehicle licence	Level 3 (by virtue of s 76) Level 3 plus daily fine of £10
61(2)	Failure to surrender driver's licence after suspension, revocation or refusal to renew	Level 3 (by virtue of s 76)
67	Charging more than the meter fare when HC used as PH vehicle	Level 3 (by virtue of s 76)
69	Unnecessarily prolonging a journey	Level 3 (by virtue of s 76)
71	Interfering with a taximeter	Level 3 (by virtue of s 76)
73(1)(a)	Obstruction of authorised officer or constable	Level 3 (by virtue of s 76)
73(1)(b)	Failure to comply with requirement of authorised officer or constable	Level 3 (by virtue of s 76)
73(1)(c)	Failure to give information or assistance to authorised officer or constable	Level 3 (by virtue of s 76)

PH: private hire.

Table 6.5

**Enforcement table – private hire provisions – Transport Act 1980**

Section	Offence	Maximum penalty
64(2)(a)	Driving a PH vehicle with a roof sign which contravenes s 64(1)	Level 3
64(2)(b)	Causing or permitting a PH vehicle to be driven with a roof sign which contravenes s 64(1)	Level 3

In conclusion we the undersigned feel that this proposal by the Licensing Authority is totally unnecessary, unlawful, no evidential support and suspension of drivers is only meant to protect the public not to be used as a method of punishment. We also feel that there are enough rules and regulations in force already to supervise the Trade.

Print Name	Hackney Carriage/PH Number	Signature
K.R. LECKIE	HC 58	K.R. Leckie
K.J. KEMP	P.H. 619	K.J. Kemp
M.BARRETT	HC 182	M Barrett
K. COLEMAN	P.H. 06	K Coleman
K. MOLLONONG	HC 99	K Mollonong
C. MUSK	PH 802	C Musk
M. DIVALL	H 130	M. Divall
A BALWAT	PH 623	A Balwat
E.M. BURKE	PH 114	E.M. Burke
NICHOLAS DAWES	PH 200	Nicholas Dawes
TOBIAS ALLCHORN	PH 489	Tobias Allchorn
Paul Weller	PH 316	Paul Weller
Bill Stovall	PH 157	Bill Stovall
BARRIE WOOD	PH 155	Barrie Wood
PAUL DONOGHUE	PH 627	Paul Donoghue
PAUL DOLAN	PH 269	Paul Dolan
CAROL YOUNG	PH 94	Carol Young
STEVE HOPKINS	PH 300	Steve Hopkins
SMOKE CHITALL	PH 424	Smoke Chitall
DARREN SAMWAYS	HC 5	Darren Samways
STUART YONNIE	PH 117	Stuart Yonnie
MARK HAYNES	PH 502	Mark Haynes
LEE GATTAN	HC 111	Lee Gattan
PAUL HOFFMANN	PH 50	Paul Hoffmann
JANET SARGENT	PH 112	Janet Sargent
MARK BIGGSBY	PH 212	Mark Biggsby
NASSER FOTOONI	PH 78	Nasser Fotooni
JAMES MURRAY	P.H. 254	James Murray
MARTIN WRAXALL	PH 406	Martin Wraxall
JANE LEE	PH 363	Jane Lee
ROBERT A. HOLLAND	PH 241	Robert A. Holland
CK HADLAND	HC 61	CK Hadland
PAUL PRIX	HC 74	Paul Prix
G. BROWN	HC 63	G. Brown
LUCASZ SKIDA	276 PH	Lucasz Skida
MARCOU	418 PH	Marco
MARVIN SCULLON	304 PH	Marvin Scullon
CLIVE CONNELL	299 PH	Clive Connell
Steve Donoghue	228 HC	Steve Donoghue

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Print Name	Hackney Carriage/PH Number	Signature
STEVE MORRIE	PH 143	
JAY HIGGELL	PH 351	
TREVOR SLATER	443 PH	
ROBERT SHERS	170 PH	
MUN DAVIES	498 PH	
DARRELL OWEN	61 PH	
GORT EUNIS	31 PH	
THOMAS HARNER	166 H/C	
SCOTT VIRGO	211 PH	
STEVE ADAMS	PH 363	
JUSTIN LEATHAM	PH 730	
LIONEL WARD	HC 803	
RANJEEV SHARMA	65 PH	
FRANK BAKER	512 PH	
FRANK WHITING	96 PH	
AMANDA CHAPMAN	617 PH	
IAN COOKE	PH 625	
JARREN PELLEGRINO	PH 302	
Sokol Guma	H. 445	
Gentian Cero	PH 410	
ABDUL QUDDUS	PH 504	
J.F. CAPOCCI	PH	
D. R. CARR	PH	
OILY BIST	H 91	
KLOPP HIRSHVE	PH 421	
KLEIN PATRICK	PH 412	
VOI MACCREADIE	PH 525	
T. WELLS	107 PH	
S. PARKS	PH 323	
T.H. THOMSON	315 PH	
RITW ABRAHAM	PH 161	
BARBY MORRIS	H. 02	
TONY KIRKAGE	H 130	
TRACEY SUMNER	PH 452	
HEITH WILLIAMS	PH 188	
BRIAN FIELD	264	
JAY VIRGO	388	

# 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 legislation<sup>1</sup>. 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.

<sup>1</sup> 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 decision<sup>2</sup>. 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 public<sup>3</sup>”

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.

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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".<sup>4</sup> 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.<sup>5</sup>

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.

<sup>4</sup> Leeds City Council v Hussain [2002] EWHC 1145 Admin, Siber J

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336919/1stInquiryReport.pdf](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.<sup>6</sup> 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.

<sup>6</sup> "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 test<sup>7</sup>

Passengers should be at the centre of a licensing authority’s taxi licensing policies and processes. As the Casey Review into Rotherham<sup>8</sup> 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 specifically<sup>9</sup>:

- 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:<sup>10</sup>

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](mailto: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.<sup>11</sup> 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.**

<sup>11</sup> Nottingham City Council v Farooq 1998 EWHC Admin 991

In the case of *McCool v Rushcliffe Borough Council*<sup>12</sup>, 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.<sup>13</sup>

## 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.

<sup>12</sup> 1998 3 All ER 889

<sup>13</sup> *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 Scrutiny<sup>14</sup> 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.

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<sup>14</sup> [www.cfps.org.uk](http://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.

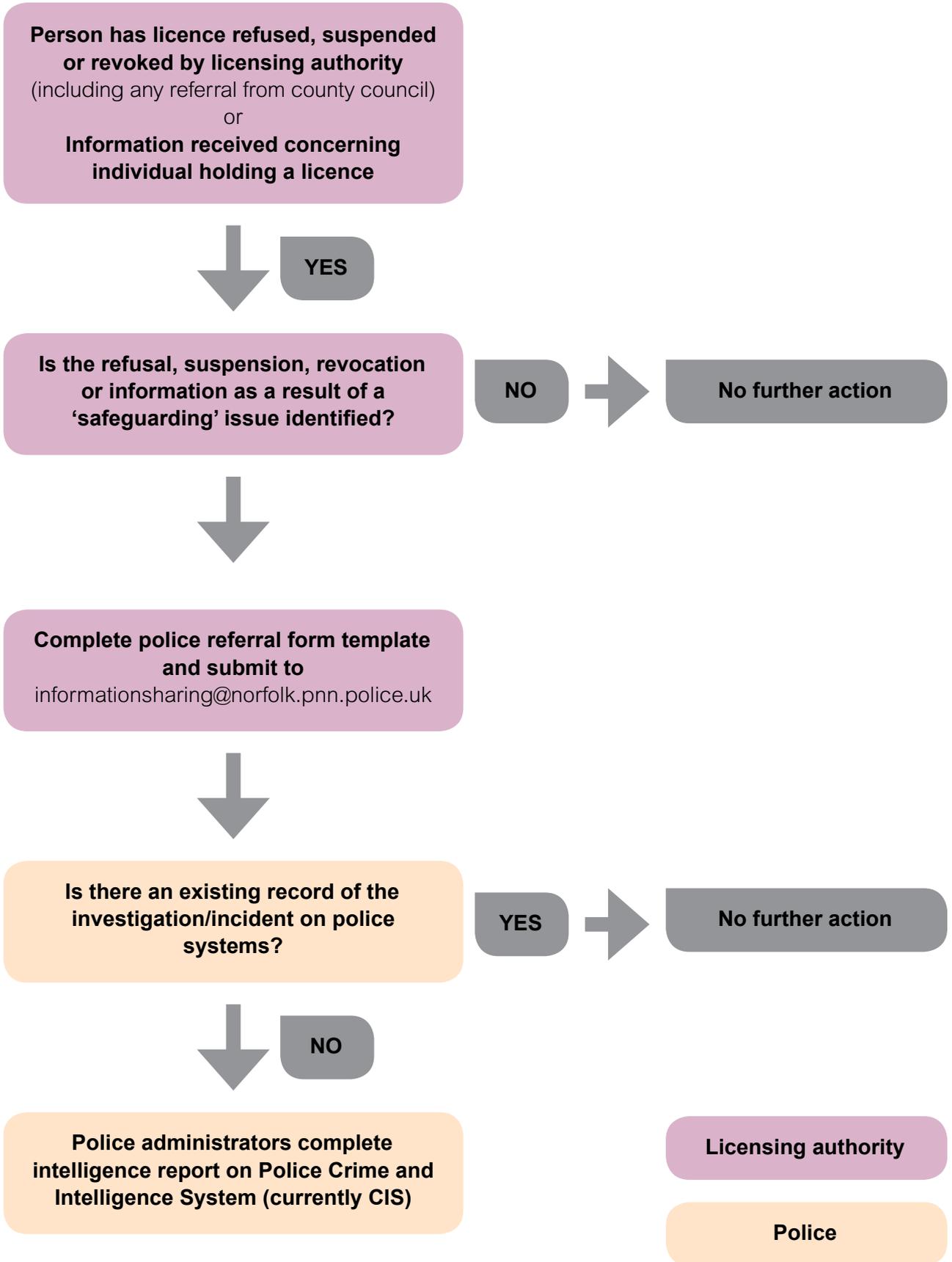
**Psychological** – Including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.

**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](mailto:informationsharing@norfolk.pnn.police.uk))

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

\* 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 protocol<sup>15</sup> 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.

<sup>15</sup> 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.<sup>16</sup>

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](http://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.

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<sup>16</sup> [http://www.local.gov.uk/web/guest/children-and-young-people/-/journal\\_content/56/10180/3790391/ARTICLE](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.’

Operation Sanctuary, Northumbria Police

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.'<sup>17</sup>

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.**

<sup>17</sup> 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.<sup>18</sup> 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.

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<sup>18</sup> <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. Taxi and PHV drivers need to have regard to this responsibility when they are working, and disability equality training can support them with this. 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.

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.

Media stories and research from the charity Guide Dogs show there is a widespread problem of assistance dog owners being refused access to taxis and PHVs<sup>19</sup> 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 local disabled people to carry out regular 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<sup>20</sup>.

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 note<sup>21</sup> on access to taxis and minicabs for guide dog owners.

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19 [http://www.guidedogs.org.uk/media/7868390/access-all-areas-main-report\\_final.pdf](http://www.guidedogs.org.uk/media/7868390/access-all-areas-main-report_final.pdf)

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

21 <http://www.guidedogs.org.uk/media/8240022/access-guide-taxis.pdf>

## **Guide Dogs' suggestions for taxi licensing policies**

### **Taxi and PHV policy – assistance dogs**

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
- b) not to make any additional charge for doing so.

It is best practice to ask the passenger where they want themselves and their dog to sit in the vehicle.

### **Enforcement policy**

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 that the Equality Act 2010 is upheld, the Licensing Authority will:

- have a zero tolerance policy to access refusals – investigating all reported violations of the Act with a view to pursuing a conviction
- undertake periodic test purchasing with assistance dog owners on licenced vehicles to ensure that licensing requirements are being complied with
- make it a condition of taxi and private hire vehicle drivers' licences that they have undertaken 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. If no exemption has been applied for and subsequently granted, then drivers are still required to carry assistance dogs.

The Licensing Authority will:

- make it a condition to the licence that the notice of exemption must be exhibited in the vehicle by fixing it in an easily accessible place, for example on the windscreen or in a prominent position on the dashboard
- seek to use tactile medical exemption certificates so that guide dog owners are able to identify the certificate, which should be presented to the guide dog owner upon request
- only issue an exemption certificate when it is authorised by the driver's GP 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](http://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.<sup>22</sup> What safeguards will be in place to ensure that passengers can seek redress against the operator rather than the driver when things go wrong?

<sup>22</sup> 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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