





**Brighton & Hove
City Council**

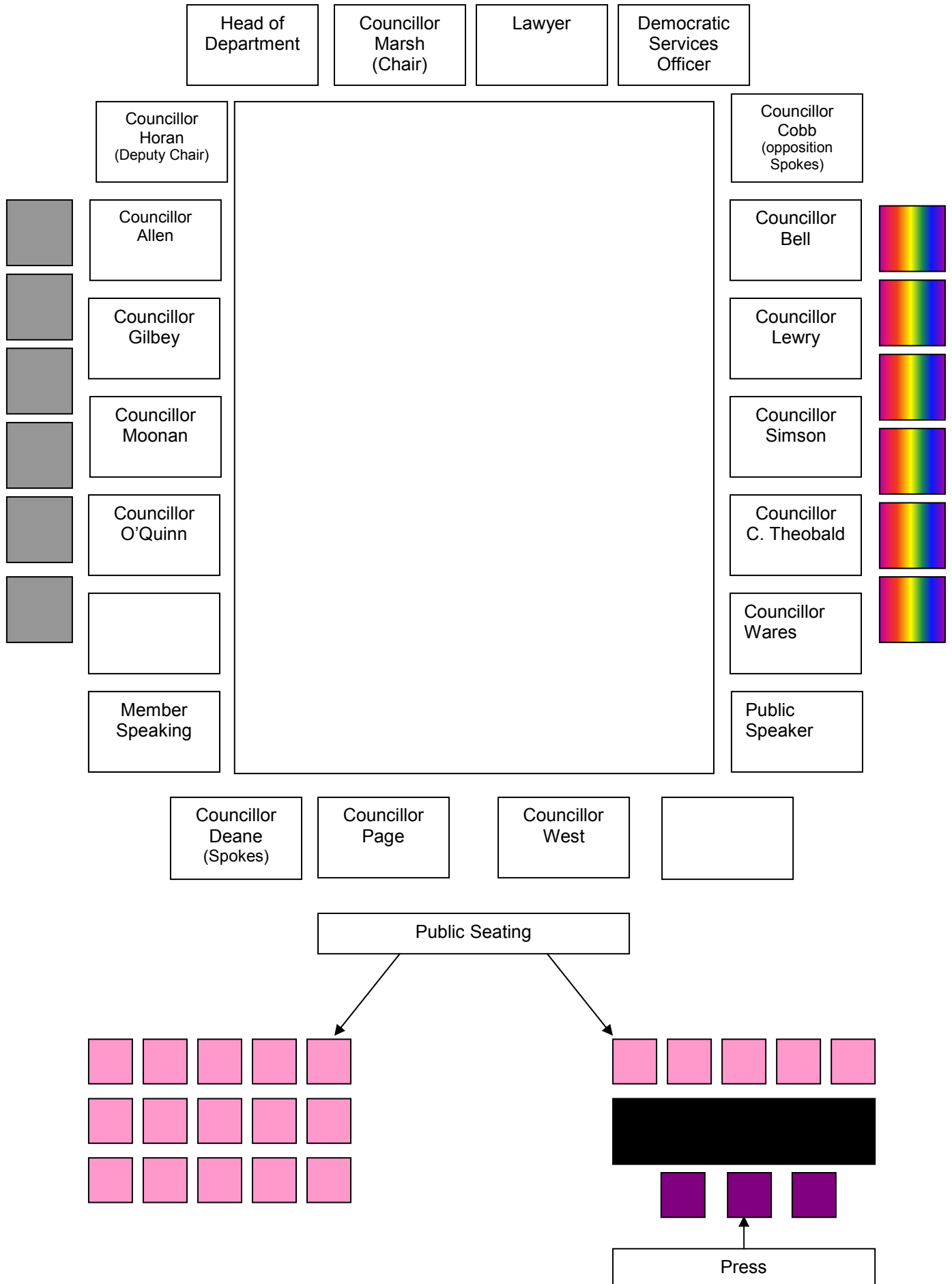
Licensing Committee

(Non-Licensing Act 2003 Functions)

| | |
|----------|---|
| Title: | Licensing Committee (Non Licensing Act 2003 Functions) |
| Date: | 25 June 2015 |
| Time: | 3.00pm |
| Venue | Main Hall, Friends Meeting House, Ship Street, Brighton |
| Members: | Councillors: Marsh (Chair), Horan (Deputy Chair), Cobb (Opposition Spokesperson), Deane (Group Spokesperson), Allen, Bell, Gilbey, Lewry, Moonan, O'Quinn, Page, Simson, C Theobald, Wares and West |
| Contact: | Penny Jennings Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk |

| | |
|---|--|
|  | The Town Hall has facilities for wheelchair users, including lifts and toilets |
|  | An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival. |
| | <p>FIRE / EMERGENCY EVACUATION PROCEDURE</p> <p>If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions:</p> <ul style="list-style-type: none"> • You should proceed calmly; do not run and do not use the lifts; • Do not stop to collect personal belongings; • Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and • Do not re-enter the building until told that it is safe to do so. |

Democratic Services: Meeting Layout licensing Cttee



AGENDA

1 PROCEDURAL BUSINESS

(a) Declaration of Substitutes: Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.

(b) Declarations of Interest:

- (a) Disclosable pecuniary interests not registered on the register of interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

(c) Exclusion of Press and Public: To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

2 MINUTES OF THE PREVIOUS MEETING

1 - 4

Minutes of the meeting held on 5 March 2015 (copy attached)

3 CONSTITUTIONAL MATTERS - LICENSING COMMITTEE (NON-LICENSING ACT 2003 FUNCTIONS)

5 - 12

Report of the Head of Legal and Democratic Services (copy attached)

Contact Officer: Mark Wall

Tel: 01273 291006

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

Ward Affected: All Wards

4 CHAIR'S COMMUNICATIONS

5 PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

- (a) **Petitions:** to receive any petitions presented to the full council or at the meeting itself;
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on the 18 June 2015;
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on the 18 June 2015.

6 MEMBER INVOLVEMENT

To consider the following matters raised by councillors:

- (a) **Petitions:** to receive any petitions submitted to the full Council or at the meeting itself;
- (b) **Written Questions:** to consider any written questions;
- (c) **Letters:** to consider any letters;
- (d) **Notices of Motion:** to consider any Notices of Motion referred from Council or submitted directly to the Committee.

7 APP BASED PRIVATE HIRE OPERATORS

13 - 16

Report of the Director of Public Health (copy attached)

Contact Officer: Jean Cranford Tel: 29-2550
Ward Affected: All Wards

8 REVIEW OF BLUE BOOK IN LIGHT OF CHILD SEXUAL EXPLOITATION

17 - 100

Report of the Director of Public Health (copy attached)

Contact Officer: Jean Cranford Tel: 29-2550
Ward Affected: All Wards

9 ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the INSERT DATE Council meeting for information.

In accordance with Procedure Rule 24.3a, the Committee may determine that any item is to be included in its report to Council. In addition, any Group may specify one further item to be included by notifying the

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

Chief Executive no later than 10am on the eighth working day before the Council meeting at which the report is to be made, or if the Committee meeting take place after this deadline, immediately at the conclusion of the Committee meeting

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 17 June 2015

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 5 MARCH 2015

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Powell (Chair), A Kitcat (Deputy Chair), Simson (Opposition Spokesperson), Lepper (Opposition Spokesperson), Cobb, Hamilton, Hyde, Jones, Kennedy, Marsh, Rufus and C Theobald

PART ONE

24 PROCEDURAL BUSINESS

24a Declaration of Substitutes

24.1 Councillor Hamilton declared that he was substituting for Councillor Gilbey.

24b Declarations of Interest

24.2 There were none.

24c Exclusion of the Press and Public

24.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

24.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

25 MINUTES OF THE PREVIOUS MEETING

25.1 **RESOLVED** – That the minutes of the Licensing Committee (Non Licensing Act 2003 Functions) Meeting held on 20 November 2014 be agreed and signed as a correct record.

26 CHAIR'S COMMUNICATIONS

26.1 The Chair confirmed that since the last meeting of the Committee, suspensions, revocations and formal warnings had been issued as set out below:

7 Drivers had their licences revoked following motoring convictions;

5 Drivers had their applications to renew refused on medical grounds;

1 Driver had their application refused due to a previous conviction; and

1 Driver had their application to renew refused following a serious motoring offence.

26.2 **RESOLVED** - That the position be noted.

27 PUBLIC INVOLVEMENT

27a Petitions

27.1 There were none.

27b Written Questions

27.2 There were none.

27c Deputations

27.3 there were none.

28 MEMBER INVOLVEMENT

28a Petitions

28.1 There were none.

28b Written Questions

28.2 There were none.

28c Letters

28.3 There were none.

28d Notices of Motion

28.4 There were none.

29 HIGHWAY LICENSING

- 29.1 The Committee considered a report of the Executive Director of Environment, Development and Housing setting out the current status of licensing advertising boards, outside seating and shop displays on the public highway. The Chair had requested this report due to the growing public debate and media interest in street clutter.
- 29.2 The Head of Highway Operations, Christina Liassides explained that in 2009 the council had reviewed the Highway Licensing policy, and in the light of extensive interest from local groups, as well as a potential challenge from the RNIB, it had been agreed to hold an in-depth scrutiny review. The scrutiny review had looked at street access as a whole and a number of recommendations had resulted and had been set out in their report published in 2010. Some of those recommendations now formed part of the standard licensing conditions including maintaining a minimum pavement width around licenced items of 1.3m and only allowing one advertising board per elevation. However, some, including the marking out of areas for outside seating had proved harder to implement. After several years of trying to find a suitable marking material it was now hoped to have all outside seating areas, shop displays and advertising boards marked out by October 2015.
- 29.3 Councillor Kennedy commended the report which was very informative and detailed the progress which had been made across various areas of the departments activities. Councillor Kennedy cited an instance in her ward where prompt action had been taken deal with an overgrown hedge.
- 29.4 Councillor Lepper was pleased to note the progress that had been made in respect of addressing issues in relation to street furniture and the placement of tables and chairs adjacent to the highway. Councillor Lepper was also pleased to note that whilst supported where appropriate enforcement action was taken when it was not and in stances where repeated remedial action had not been taken and advice given had been ignored.
- 29.5 Councillor Simson asked for further details of joint initiatives which had been undertaken in concert with the Police. Councillor Simson also noted the measures being undertaken to source suitable materials to delineate areas where tables and chairs were to be placed on the highway.
- 29.6 **RESOLVED** - That Members note the contents of the report and associated policy.

30 HACKNEY CARRIAGE FARE REVIEW

- 30.1 The Committee considered a report of the Director of Public Health seeking the Committee's approval and authority to advertise proposed fare increases following the hackney carriage trade's request for an increase in fares.
- 30.2 Councillor Marsh sought information regarding fares proposed to be charged in the city relative to comparable cities. Notwithstanding that she understood that these were within permitted limits, she considered these were high, particularly as fuel prices had

reduced and bearing in mind that a number of those in the city who relied on taxis had fixed or limited incomes and would find it difficult to meet sustained increases.

- 30.3 The Hackney Carriage Officer, Martin Seymour explained that the level of increases were comparable to those levied elsewhere and were considered acceptable for the reasons set out in the report. The Trade had argued that although fuel costs had reduced recently, operators had carried increased costs when there had been no fare increases and fuel costs had been higher.
- 30.4 Councillor A Kitcat stated that she had raised a number of concerns about the rationale for these proposed increases at the Chair's Briefing and was pleased to see that these issues had been addressed in the final version of the report. Whilst she had also expressed concerns regarding them she was satisfied that the case for increases had been made in this instance whilst acknowledging that in her view regular high levels of increases not acceptable.
- 30.5 Councillors C Theobald and Cobb considered that these increases were badly timed bearing in mind reductions in fuel costs. Councillor Simson stated that whilst noting that these figures had been put forward by the Taxi Forum she considered that the trade needed to be mindful that there should be a suitable time lapse before there were any further increases. Other Members of the Committee concurred in that view.
- 30.6 The Head of Regulatory Services, Tim Nichols stated that the proposed increases needed to be advertised and if objections were made and not withdrawn it was possible that an urgency sub committee would be required.
- 30.7 **RESOLVED** – (1) That the Committee approves the proposed fare increases and authorises the Head of Regulatory Services to advertise the proposed variation in fares, and invite any objections in accordance with the legal requirements;

31 ITEMS TO GO FORWARD TO COUNCIL

- 31.1 There were none.

The meeting concluded at 4.00pm

Signed

Chairman

Dated this

day of

| | | | |
|--------------------------|---|--|---------------------|
| Subject: | Constitutional Matters –Licensing Committees | | |
| Date of Meeting: | 25 June 2015 | | |
| Report of: | Monitoring Officer | | |
| Contact Officer: | Name: | Mark Wall | Tel: 29-1006 |
| | Email: | mark.wall@brighton-hove.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To provide information on the committee's terms of reference and related matters including the appointment of a sub-committee, (Licensing Panel), and an urgency sub-committee.

2. RECOMMENDATIONS:

- 2.1 That the committee's terms of reference, as set out in Appendix A to this report, be noted;
- 2.2 That the Committee establish the Licensing Panel as a sub-committee (the membership of such Licensing Panel shall consist of three Members from the trained Members on the Licensing Committee, who will be able to sit on a panel and substitute for any designated Member of the Panel) to deal with licensing applications in accordance with the Terms of Reference are set out at Appendix A to this report.
- 2.3 That the Committee agree to disapply the proportionality rules so far as a Licensing Panel is concerned in accordance with the Local Government (Committees and Political Groups) Regulations 1990;
- 2.4 That the establishment of an Urgency Sub-Committee consisting of the Chair of the Committee and two other Members (nominated in accordance with the scheme for the allocation of seats for committees), to exercise its powers in relation to matters of urgency, on which it is necessary to make a decision before the next ordinary meeting of the Committee be approved.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Article 6 of the constitution, incorporates a schedule of all the Committees/Sub-committees established in the new constitution together with a summary of their respective functions.

Licensing Committee – Terms of Reference

- 3.2 A copy of the terms of reference for the committee is attached in Appendix A. These should be read in the context of the 'Introduction and General Delegations' included in the Scheme of Delegations to Committees and Sub-Committees at part 4 of the constitution.

Membership

- 3.3 The membership of the committee is set at 15 Members of the Council.
- 3.3 The arrangements for substitute Members to attend meetings of Committees/Sub-Committees, as set out in the Council Procedure Rules 18 to 24, apply to meetings of the Licensing Committee.

Programme Meetings

- 3.5 Ordinary meetings of the Licensing Committee are scheduled to take place on the following dates during 2015/16:

Thursday 25 June 2015
Thursday 19 November 2015
Thursday 3 March 2016

- 3.8 Meetings of the Committee will normally be held at Hove Town Hall and will start at 3.00 p.m. For the 2015/16 municipal year, meetings will be held in The Friends Centre at 3.00pm due to renovation work at Hove Town Hall.

Licensing Panel

- 3.9 All Members of the Licensing Committee will be trained and form a pool of councillors for the sub-committee and will be called on to form a licensing panel. However, any trained Member of the Licensing Committee will be able to sit on a panel and substitute for any designated Member of the Sub-Committee.

Urgency Sub-Committee

- 3.10 The Constitution states that 'each Committee of the Council except the Audit & Standards Committee may appoint an Urgency Sub-Committee to exercise its powers. The Membership of such Urgency Sub-Committee shall consist of the Chair of the Committee, and two other Members nominated by the Group Leader or Leaders as appropriate to meet the requirements for the allocation of seats between political groups. Under current allocations this would mean an urgency sub-committee will consist of one Member from each of the three political groups on the Council.
- 3.11 Such Urgency Sub-Committees may exercise their powers in relation to matters of urgency on which it is necessary to make a decision before the next ordinary meeting of the Committee. Every decision of each Urgency Sub-Committee shall be reported for information to the next ordinary meeting of the Committee as appropriate.'

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The council's constitution provides for the appointment of the sub-committees and urgency sub-committees and it is for the Committee to determine this action and it could decide not to make such appointments. However, this would be contrary to the wishes of the council and is not therefore regarded as a viable alternative option.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Full Council has considered and approved the Brighton & Hove City Council constitution, most recently on 26 March 2015.

6. CONCLUSION

- 6.1 The recommendations are being put forward in line with the requirements of the constitution.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The costs of establishing and running the Urgency Sub-Committees are expected to be met within existing levels of resources. The cost of holding the committee meetings at the Friends Centre have been included in the overall Workstyles Programme for the move to Hove Town Hall and will be reported to the Policy & Resources Committee at a later date.

Finance Officer Consulted: Peter Francis

Date: 08/06/2015

Legal Implications:

- 7.2 The Council's constitution complies with the legal framework set out in the Localism Act 2011, the Local Government Act 2000 and other relevant legislation.

Lawyer Consulted: Rebecca Sidell

Date: 08/06/2015

Equalities Implications:

- 7.3 There are no equalities implications arising from the report

Sustainability Implications:

- 7.4 There are no sustainability implications arising from the report.

Any Other Significant Implications:

- 7.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. Licensing Committee Terms of Reference

Documents in Members' Rooms

1. None

Background Documents

1. The Constitution

LICENSING COMMITTEE

Explanatory Note

The Licensing Committee is responsible for discharging the Council's functions under the Licensing Act 2003. It also has responsibility for all licensing and registration functions not covered by the Licensing Act 2003. The day to day decisions on individual applications are dealt with by the Licensing Panel.

Delegated Functions

1. Licensing Act 2003

- (a) To discharge all functions which, under the Act, stand referred to a Licensing Committee, including, but not limited to the following:
 - (i) Applications for a personal licences;
 - (ii) Applications for premises licence/club premises certificate;
 - (iii) Applications for provisional statement;
 - (iv) Applications for Interim Authorities.
- (b) The powers of the Committee under 1(a) shall include the power to deal with all applicants for the grant, renewal, variation or revocation of any licence or consent or any actions which a Licensing Committee is required or authorised to take under the Act.
- (c) The delegated powers of the Committee shall not include the adoption or review of the Statement of Licensing Policy (which are functions of Full Council).

2. Gambling Act 2005

- (a) To discharge all functions which, under the Gambling Act 2005 ('the Act'), stand referred to the Licensing Committee, including but not limited to the following:
 - (i) applications for premises licences;
 - (ii) applications for provisional statements;
 - (iii) applications for club gaming / club machine permits.
- (b) The powers of the Committee under 2(a) shall include the power to deal with all applications for the grant, renewal, variation, cancellation or revocation of any licence or consent or any actions which a Licensing Committee is required or authorised to take under the Act.
- (c) The powers of the Committee shall also include the power to set fees pursuant to section 212 of the Act, but shall not include the power to adopt or review the Licensing Policy, which is a function of Full Council.

3. Other Licensing and Registration Functions

- (a) To discharge all the Council's functions regarding licensing and registration and any associated or connected functions.

Referred Functions

1. To advise Full Council regarding the Statement of Licensing Policy under the Gambling Act 2005.
2. To advise Full Council regarding the Statement of Licensing Policy under the Licensing Act 2003.
3. To advise the Council and other Committees on matters related to functions under the Licensing Act 2003 and the Gambling Act 2005, but are not themselves Licensing Act or Gambling Act functions.

NOTE: The Licensing Committee and the Licensing Panel may operate as two separate committees and sub-committees respectively with identical membership. The functions of the two separate committees/sub-committees shall relate to Licensing Act and Gambling Act functions and non-Licensing Act functions respectively.

LICENSING PANEL

Explanatory Note

The Licensing Panel is a Sub-Committee of the Licensing Committee. Its functions are to:-

- Hear applications under the Licensing Act 2003 and the Gambling Act 2005 where the matter is authorised or required to be dealt with by a Committee. These are usually, but not necessarily, cases where officers do not have delegated powers or a hearing is required;
- Deal with appeals against licensing and registration decisions and cases where officers do not have the power to make determinations;
- Serve as the appellate Committee where there is a right of appeal from a decision of an officer and no other arrangements have been made under the constitution; and
- Determine any other matter of a quasi-judicial nature which may be referred to it.

Delegated functions

1. Licensing Act Functions

- (a) To deal with applications under the Licensing Act 2003 and make determinations on all matters required or authorised by the Act to be dealt with by a Committee.
- (b) The powers under (a) above shall not include the adoption of the Statement of Licensing Policy.
- (c) Where, in the opinion of the Strategic Director of Place or Head of Planning & Public Protection, after consultation with the Chair of the Licensing Committee, an application is a major application having regard to the licensing objectives, the Strategic Director or Service Head may refer the matter to the Licensing Committee.

2. Gambling Act 2005 Functions

- (a) To deal with applications under the Gambling Act 2005 and make determinations on all matters required or authorised by the Act to be dealt with by a Committee.
- (b) The powers under (a) above shall not include the adoption of the Statement of Licensing Policy.
- (c) Where, in the opinion of the Strategic Director of Place or Head of Planning & Public Protection, after consultation with the Chair of the Licensing Committee, an application is a major application having regard

to the licensing objectives, the Strategic Director or Service Head may refer the matter to the Licensing Committee.

3. Other Licensing and Registration Functions

Within the policy framework set by the Council or the Licensing Committee, to exercise the Council's functions in relation to licensing and registration providing that the power shall not include the adoption, revocation or amendments of policies.

4. Determinations and Appeals

To hear and determine cases:

- (a) where there is a right (under the Human Rights Act 1998 or otherwise) to be given the opportunity to appear before and be heard by a Committee or Sub-Committee of the Council and no other arrangements have been made under the Council's constitution, or
- (b) where the case is referred to the Panel as it is considered to be a suitable forum for the determination of matters of fact and/or law, for example determinations relating to rights of way or the Council's definitive map of rights of way.

5. General

For the avoidance of doubt and without prejudice to the generality of 1 to 3 above, the powers of the Panel under those provisions shall include the power to deal with all applications for the grant, renewal, variation or revocation of any licence or consent or any actions (other than the adoption or review of a Licensing Policy) which a Licensing Committee is required or authorised to take under the Licensing Act 2003 or the Gambling Act 2005.

- NOTE:
- (1) Only Councillors who are members of the Licensing Committee may serve as members or substitute members of the Licensing Panel.
 - (2) The Licensing Committee and the Licensing Panel may operate as two separate committees and sub-committees respectively with identical membership. The functions of the two separate committees/sub-committees shall relate to Licensing Act and Gambling Act functions and non-Licensing Act functions respectively.

LICENSING COMMITTEE (NON-LICENSING ACT 2003)

Agenda Item 7

Brighton & Hove City Council

| | | | |
|--------------------------|---|--|---------------------------|
| Subject: | App based Private Hire Operators | | |
| Date of Meeting: | 25 June 2015 | | |
| Report of: | Director of Public Health | | |
| Contact Officer: | Name: | Jean Cranford/Martin Seymour | Tel: 292550/296659 |
| | Email: | Jeancranford@brighton-hove.gcsx.gov.uk Martin.seymour@brighton-hove.gcsx.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1. This report is to update Members on the issues relating App based Private Hire Operators
- 1.2. That Members are apprised of local and national issues.

2. RECOMMENDATIONS:

- 2.1. That Members note the contents of this report.
- 2.2. That Members note there may need to be reasonable conditions attached to private hire operator licences to protect public safety.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1. A private hire vehicle can only be despatched to a customer by a private hire operator. The operator is someone who holds an operator's licence under the Local Government (Miscellaneous Provisions) Act 1976, s55. This allows the person to operate private hire vehicles. "Operate" means in the course of a business to make provision for the invitation or acceptance of bookings for a private hire vehicle. "Private Hire Vehicle" means a motor vehicle constructed or adapted to seat, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of carrying passengers.
- 3.2. Private Hire Operators have traditionally operated by receiving bookings by telephone or in person at their office. In more recent years with the advent of new technologies many operators can now take bookings by mobile/Text message or via a booking web site run by the operator and more recently by smart phone App.
- 3.3. It is recognised that the legislation has not kept up with these technologies for example an operator that uses a mobile phone to take bookings will be acting as

an unlicensed operator if they take a booking on the mobile phone outside the district in which they are licensed despite in all other respects being fully licensed. There are some concerns: Data Barring Service checks for officers in private hire operator companies; Provision of accessible/WAVs –a prescribed proportion of WAVs condition on PHO licences; Training and enhanced DBS of drivers post deregulation when PHOs can use drivers licensed by other licensing districts; a condition on PHO licences (reasonable) to check and keep records; Electronic records for security and access for LA to examine; Consumer protection currently meters guarantee fare but with demand based/price surging fares may vary.

- 3.4. More recently there has been a growth in smart phone booking Apps. Unlike the more traditional Apps where a booking is still despatched from the operators booking base where the records are held the App designates a vehicle in the area that the request for a vehicle has been made. This is not necessarily a vehicle that is licensed in that area but provided the operator, driver, and vehicle are all licensed by the same licensing authority the provision of a vehicle may be legal.
- 3.5. With this type of App Officers would have great difficulty in proving any illegal provision as any records provided by an operator would show all licences to be from the same authority on investigation. This is because all records are cloud based and could be anywhere in the world and in effect the customer accepts the booking remotely on their phone rather than an operator despatching a vehicle on request from their base. There are also concerns about the security of cloud based data storage and the sale of hacked data.
- 3.6. Currently an operator can pass work to another operator licensed by the same Authority. However, from the 01 October 2015 the Deregulation Act will allow an Operator to transfer bookings from one operator to any other licensed operator anywhere in the Country. This could mean that vehicles from outside the City may operate within City. Officers would have no legal right to inspect these vehicles and passengers may not know where the vehicles are licensed should they need to complain.
- 3.7. As app operators generally do not have a landline number their customers are only able to contact the operator by email should they need to do so or to book a specific vehicle for their needs. i.e. a Wheelchair Accessible Vehicle or an estate car for example.
- 3.8. Private Hire Vehicles are not required to have meters and the Council is unable to set maximum fares. Where Apps/Smart phones are used to calculate fares Operators can “surge” price in peak periods.
- 3.9. Elsewhere in the UK, Transport for London (TfL) has applied to the High Court for a declaration on taximeters, after it was confirmed that the Licensed Taxi Drivers Association had invited the Magistrates’ Court to withdraw their summonses for breach of the private hire taximeter prohibition. According to reports on Local Government Lawyer, TfL said the application to the High Court had been served on Uber and the main trade bodies – the LTDA and the Licensed Private Hire Car Association – who will be entitled to make representations in response to the application.

- 3.10. The High Court will be asked to make a binding determination on whether smart phones, which use GPS technology to measure the time and distance of a journey and then receive information about fares, comply with the current law on 'taximeters', which can only be used in London by taxis. TfL's view is that, on balance, smart phones used by private hire drivers do not constitute the equipping of a vehicle with a 'taximeter'. However, it has acknowledged that the legislation in the area is unclear and able to be interpreted in various ways.
- 3.11. Leon Daniels, TfL's Managing Director of Surface Transport, said: "We are now a step closer to securing a High Court declaration on the issue of taximeters and hope that London's taxi and private hire drivers and operators will work with us. "We welcome developments that make life easier for passengers. As in many other areas of transport and retail services, apps can offer passengers the potential of better and more convenient services, but their use must be legal and on the issue of taximeters the law is unclear. A binding High Court declaration will bring clarity on this issue for all parties."
- 3.12. TfL said it anticipated that the hearing would be held this summer.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1. Taxi forum, finance and legal services.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1. There are no direct financial implications arising from the recommendations made in this report.

Finance Officer Consulted: Michael Bentley *Date:* 10/06/2015

Legal Implications:

- 5.2. Legal implications are contained within the body of this report.

Lawyer Consulted: Rebecca Sidell *Date:*

Equalities Implications:

There are some concerns: Data Barring Service checks have not been sought for private hire operator companies. A prescribed proportion of WAVs condition on PHO licences would assist provide a prescribed proportion of accessible/WAV. Enhanced DBS of drivers post deregulation may be essential when PHOs can use drivers licensed by other licensing districts;

Sustainability Implications:

- 5.3. There are no direct sustainability implications.

Crime & Disorder Implications:

- 5.4. There may be a wider effect on local leisure based economy with huge source of employment.

Risk and Opportunity Management Implications:

- 5.5. No implications

Public Health Implications:

- 5.6. Contained within report.

Corporate / Citywide Implications:

- 5.7. Following the introduction of the Deregulation Act on 1 October bookings may be undertaken by vehicles and drivers not licensed by Brighton & Hove with lower standards and may be difficult to trace should the need arise.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1. None – for information only.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1. For information only.

SUPPORTING DOCUMENTATION

Appendices:

Documents in Members' Rooms

1. None.

Background Documents

1. None.

LICENSING COMMITTEE (NON LICENSING ACT 2003)

Agenda Item 8

Brighton & Hove City Council

| | | | |
|--------------------------|--|--|---------------------------|
| Subject: | Blue Book review in light of recent Child Sexual Exploitation case reviews in Rotherham etc, development of policy relating to web based taxi providers and other minor revisions | | |
| Date of Meeting: | 25 June 2015 | | |
| Report of: | Director of Public Health | | |
| Contact Officer: | Name: | Jean Cranford/Martin Seymour | Tel: 292550/296659 |
| | Email: | Jean.cranford@brighton-hove.gcsx.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1. This report is to update Members on proposed revisions to the Blue Handbook for Hackney Carriage and Private Hire Drivers, Vehicles and Operators (The Blue Book), especially in the light of recent Child Sexual Exploitation (CSE) case reviews and inspection reports in Rochdale, Rotherham and Oxford; on issues relating to licensing web based taxi providers and other amendments to the Blue Book.
- 1.2. This report also aims to apprise Members of local and national issues.

2. RECOMMENDATIONS:

- 2.1. That Members note the contents of this report and resolve to amend the Blue Book advice regarding suspensions, current evidence threshold, justification, the need for enhanced DBS check, Child Sexual Exploitation and modern slavery/human trafficking. (Considered by licensing officers against codified list in blue book).
- 2.2. That the Blue Book clearly states the council's position relating to human trafficking and child sexual exploitation.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 **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' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities. A CSE & taxi drivers presentation from the National Working Group website and trainers notes is attached at appendix 1.

- 3.1.1 The Blue Book was last revised and approved by licensing committee on 6th March 2014.
- 3.1.2 Members will be aware of the publicity surrounding CSE cases in Rotherham, Rochdale and Oxford. With this in mind, officers from across the council have been working together to review the Blue Book with a view to having specific advice around CSE, and clarification surrounding suspensions and warnings. Section 2 of the Blue Book (pages 48, 52, 57, 60, 61 and 64) relate to driver conduct, revocation and suspension and criminal cautions/convictions. Officers will add to this advice to make it clear that “a person who already holds a licence with this Authority, if charged with any indecency offence may expect to have their licence immediately suspended until the case is resolved by either the Police or the Courts. No application will be considered from a person currently on the Sex Offender’s Register”.
- 3.1.3 In an independent inquiry into child sexual exploitation in Rotherham 1997-2013, Professor Alexis Jay OBE noted the role of taxi drivers in CSE as a ‘common thread’ across England. “Taxis and Licensing 8.16 One of the common threads running through child sexual exploitation across England has been the prominent role of taxi drivers in being directly linked to children who were abused. This was the case in Rotherham from a very early stage, when residential care home heads met in the nineties to share intelligence about taxis and other cars which picked up girls from outside their units. In the early 2000s some secondary school heads were reporting girls being picked up at lunchtime at the school gates and being taken away to provide oral sex to men in the lunch break.
8.17 A diagram and backing papers supplied to the Police in 2001 by Risky Business linked alleged perpetrators with victims, taxi companies and individual drivers.
8.18 In the Borough at present there are 1200-1300 licensed taxi drivers, though they may not all be active. There are also well over 100 licensed taxi operators”.
- 3.1.4 Local authorities do not need to take a judgement on their own taxi trade to acknowledge that taxi driving is a ‘notifiable occupation’ precisely because of the automatic vulnerability of an individual entering a vehicle with a stranger. As such, the taxi trade can be engaged in wider mobilisation against CSE: for example, in Rochdale, ‘Sunrise’ stickers are placed in Rochdale taxis who have been through awareness training which includes an exhortation to share information.
- 3.1.5 Public safety is of paramount importance in the licensing of taxis. Where a licensing authority identifies unsuitable practices by taxis such as the collection of minors from residential homes, conditions may be placed on operator licences to prohibit such practices under the terms of the licence.
- 3.1.6 Local authorities have wide discretion in the ‘Fit and Proper’ test for prospective drivers; authorities which set the ‘Fit and Proper’ bar lower than their neighbours can become magnets for applicants who have been refused a taxi licence elsewhere. A local council’s attempts to protect the public are diminished if those who they do not consider ‘Fit and Proper’ are then able to use a badge obtained in a neighbouring borough to operate in the area.

3.1.7 Local authorities can apply a 'balance of probabilities' standard of proof when deciding whether to revoke licences where a driver's conduct may contravene fit and proper behaviour. So while suspected criminal behaviour will be passed on to police, licensing authorities may conduct investigations based on their own specified standards and are not required to prove their case 'beyond reasonable doubt' should they wish to suspend or revoke a licence for CSE-related activities.

3.1.8 Oxford CC was explicit warning about suspension and warnings:

- Police Bail

Hackney Carriage and Private Hire drivers are expected to adhere to this Policy's definition of a "fit and proper" person. A person who already holds a licence with the Authority, if arrested for an alleged offence, and subsequently released by the Police on bail, depending upon the nature of the alleged offence, should expect to have their licence suspended by the Head of Environmental Development. The suspension shall remain in force until such time as the case is resolved by either the Police or by the Courts.

- Indecency Offences

....A person with more than one caution or conviction for any indecency offence would not normally be considered to be a suitable applicant. A person who already holds a licence with this Authority, if charged with any indecency offence may expect to have their licence immediately suspended until the case is resolved by either the Police or by the Courts.

3.1.9 Oxford CC have a statement on their taxi licensing web page which states:

"Taxi and Private Hire – Safeguarding children and vulnerable people. Everyone is becoming aware of the well-publicised issues relating to Child Sexual Exploitation and Human Trafficking that have occurred throughout the country. These are abhorrent crimes, and the Licensing Authority has a duty to assist the Taxi and Private Hire Trade and the public in tackling this issue, and to protect those who are vulnerable and/or being exploited. We need the help of taxi and private hire drivers and operators to identify those who commit these crimes, and protect those who most need our help".

They go on to say that they include information in their driver application pack devoted to helping the licence holder or applicant to be aware of those who may be vulnerable or being exploited, and that questions related to the subject are posed within the Local Knowledge Test that all new applicants must undertake as part of the criteria for the grant of a licence.

Current Brighton & Hove taxi operators are 100% supportive.

3.1.10 Oxford City Council also offer advice on their website "What you can do to help those at risk" which officers in B&H intend to publish on the website and include in the Blue Book (See appendix 2).

3.1.11 Officers also intend to include the following in the Blue Book:

"Modern Slavery

Child Sexual Exploitation is one type of abuse that we know is happening to vulnerable people. It is a form of modern slavery and there are many other forms that slavery can take in a modern city like ours. As well as the sexual

exploitation of children and adults, we suspect that people are being forced to work for little or no pay or forced to commit crimes against their will. Another form of slavery is when a person is kept in someone's home, rarely leaving the house without their employer present and forced to work all the time. Victims may be pressurised into debt and find themselves 'owned' by criminals who exploit them, threatening violence to them and their families. Victims could be children or adults, men and women. Modern slaves could be local people or people from elsewhere in the UK who have fallen under the control of criminals. Often they are people brought into the UK from other countries so that they can be exploited. Then they may be forced to repay the debt of finding them a job or getting them into the UK in the first place. Scared and deceived, they may have their passports and documents removed and may be threatened by criminals. Modern slavery can also arise in the sex industry where women and men are controlled and exploited to make money by selling sex.

This is a global crime and big business for the criminals – but it is very hidden and the victims may be terrified to speak out. The police need all possible information from members of the public so that they can tackle this crime. As a taxi driver you could be in a very good position to notice the signs that modern slavery is taking place. You might notice that someone is being controlled by someone else in your cab or perhaps they look scared and unhappy. Perhaps there is an address where you know people are living in overcrowded conditions or where groups of people are being transported so that gangmasters or traffickers can pick them up for low paid work. Or maybe something just doesn't feel right about the situation you have seen or the fare you have taken.

Whether the people being exploited are British or from another country, even if you think they may be in the country illegally, their human rights are still being abused and we need to stop the abuse. New laws provide more protection for victims and make it easier to prosecute the criminals. You do not need to have hard proof that modern slavery is taking place, if you even suspect it, contact the police on 101 to give information – or 999 if you believe that an adult or child is in immediate danger. You can also ring Crimestoppers anonymously on 0800 555 111. Explain that the information is connected to modern slavery”.

3.1.12 Officers attended a Local Government Association (LGA) conference where CSE was amongst the topics under discussion. The LGA have produced a booklet “Tackling child sexual exploitation: a resource pack for councils” which includes a report and case studies. Officers have referred to this booklet when considering the above. (Appendix 3).

3.2 **Deregulation.** The commencement date for the taxi and private hire deregulation measures set out in the Deregulation Act has been set. (See appendix 4).

According to the Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015, section 10 and 11 of the Deregulation Act 2015 will come in to force on 1 October 2015.

Section 10 (Taxis and private hire vehicles: duration of licences): amends two sections of the Local Government (Miscellaneous Provisions) Act 1976 that deal

with the granting of licences to drive taxis and private hire vehicles and licences to operate private hire vehicles.

Subsection (2) changes the law in such a way as to establish a standard duration of three years for taxi and private hire vehicle driver licences. The section specifies that a licence may be granted for a period of less than three years but only in the circumstances of an individual case, not because of a blanket policy.

Subsection (3) changes the law in such a way as to establish a standard duration of five years for a private hire vehicle operator licence. The section specifies that a licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of a blanket policy.

Section 11 (private hire vehicles: sub-contracting): inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976 in relation to the sub-contracting of bookings from one private hire vehicle operator to another.

These sections apply in England and Wales except in London or Plymouth where different legislation applies.

Read the Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 at <http://www.legislation.gov.uk/ukxi/2015/994/made>

- 3.2.1 The Deregulation Act 2015 will make it possible for an operator to sub-contract a booking to an operator licensed in another council area. Cross border hiring is legal currently provided the driver, vehicle and operator are all licensed by the same district. That will be the case until the Deregulation Act 2015 takes effect. Once in effect, the Deregulation Act will make it possible for an operator to sub-contract a booking to an operator licensed in another council area.
- 3.2.2 Officers have discussed at Taxi Forum. The council's licensing policy (Blue Book) may need adding to, in order to cover the responsibility of PHV operators for ensuring that their drivers are fit and proper persons, particularly in the wake of situations like Rotherham. The Council might wish to require operators to demonstrate what steps they are taking to ensure that their drivers are fit and proper and appropriately trained.
- 3.2.3 The condition on an operators' licence would require due diligence to ensure drivers on circuit or licensed elsewhere, comply with our standards. This would include training, medical and 'fit and proper' especially previous convictions and sight of DBS check. LGA advises there is scope to enhance the operator 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.

Attached LGA advice says:

"This responsibility will be even more important when, and if, the Deregulation Bill receives Royal Assent and operators are able 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.

This is an area that has not yet been explored and, once the relevant legislation is passed, 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 Local Government Association and other licensing authorities" (P59 Appendix 3).

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1. Taxi forum, finance, legal services, and Community Safety (Refugees and Migrants).

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1. Any costs associated with revising the Blue Book will be met from within existing revenue budgets.

Finance Officer Consulted: Michael Bentley

Date: 13th May 2015

Legal Implications:

- 5.2 Child sexual exploitation is of course illegal. It is within the power of the local authority to review and draw up proposals to address the threat, both under its wider Children's Act powers and also in this case under its licencing function. As stated the test is that the licence holder (driver or operator's) have to be fit and proper. This is not as straightforward as it may seem. Often allegations received have limited evidence and so great care has to be given to decision making.
- 5.3 Part of the dilemma faced by a local authority follows on from a case called: Cardiff and Singh. In this The Court decided that you could not revoke and suspend as part of the process. So for instance you could not suspend pending investigation and then when investigations are concluded then revoke. For us to act we have to have more than mere suspicion. Counsel's advice supports this as a current proposition, but it may be that in the future this case can be challenged due to the limitations it places on the licencing function.
- 5.4 Deregulation is now a fact. As it is statute we cannot prevent it from occurring. It will have to be monitored for any problems and legal advice will have to be taken as each instance of concern emerges.

Lawyer Consulted: Simon Court

Date: 12.05.15

Equalities Implications:

- 5.5 There are no direct equalities implications.

Sustainability Implications:

- 5.6 There are no direct sustainability implications.

Crime & Disorder Implications:

- 5.7 Contained in the body of the report.

Risk and Opportunity Management Implications:

- 5.8 No implications

Public Health Implications:

- 5.9 Contained within report.

Corporate / Citywide Implications:

- 5.10 Brighton & Hove's economy is leisure based and many people are employed in the leisure sector. There is concern that health and public safety may be compromised.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1. None – for information only.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1. For information only.

SUPPORTING DOCUMENTATION

Appendices:

1. CSE & taxi drivers presentation from the National Working Group website and trainers notes.
2. Oxford City Council – taxi and private hire - safeguarding children and vulnerable people.
3. New LGA taxi handbook.
4. J Button info – mixture of papers to members, background papers and use in body of report.

Documents in Members' Rooms

1. None.

Background Documents

1. None.

Safeguarding Vulnerable Passengers from the Risk of Human Trafficking and Child Sexual Exploitation

Partnership with the Taxi/Private Hire Trade

Learning Outcomes

At the end of the session attendees will be able to:

- Be aware of what child sexual exploitation is
- Be aware of what human trafficking is
- Be able to recognise and report a vulnerable person at risk
- Understand how child sexual exploitation and human trafficking can relate to their business
- Know how to protect themselves as drivers and demonstrate due diligence

What makes a passenger vulnerable?

What are your responsibilities to a vulnerable passenger?

What is human trafficking?

Human Trafficking is a process

- Recruitment (Grooming)
- Pre travel
- Travel
- Arrival
- Exploitation
- Rescue/escape

What is human trafficking the Law?

Section 59(A) Sexual offences act 2003

- A person intentionally arranges or facilitates:
- The travel of a person within the UK For the purposes of sexual exploitation
- During or after the journey
- Believes that another person is likely to sexually exploit the person
- During or after the journey

What does this mean?

- If a taxi driver transports a child knowing or believing that child will be sexually exploited
- During or after the journey
- That driver will commit the offence of Human Trafficking
- Maximum sentence 14 years imprisonment

Consent

1. The international definition of Human Trafficking has 3 elements
2. The Act, what is done, Recruitment, transportation, transfer, harbouring, receipt of a person.
3. The means, how you get someone to consent to the act. Children cannot consent to be exploited so this is not needed
4. The purpose, why it is done, Sexual exploitation
5. As a child cannot consent to be exploited the only elements of the definition that need to be present to identify that an act of Human Trafficking has been committed are one of the elements at 2 above and the purpose Sexual exploitation.

Palermo Protocol

“The recruitment, transportation, transfer, harbouring or receipt of persons...

...by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person...

...for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs“

A child cannot consent to be exploited

Act Means Purpose

What is Sexual Exploitation?

- Young people receive something in return for engaging in sexual activities.
- Offenders have power over victims due to their age, gender, intellect, physical strength and/or economic or other resources.
- Violence, coercion and intimidation are common.

How Are Young People Targeted?

- Vulnerable
- Befriended by offender
- Grooming process
- Blackmail/threats
- Isolation from support

Indicators of Risk

- Going missing from home
- Relationships with older males or females
- Concern that young person is sexually active
- Breaking away from family, friends or professionals
- Not attending school
- Experimenting with drugs and/or alcohol

Indicators of Risk

- Secretive
- Involved in offending behaviour
- Unexplained mobile phones/credit
- Accepting lifts in different cars
- Sending and receiving inappropriate images
- Spending increasing time on social networking sites

Who are the Offenders?

- Individuals who control adult sex workers
- Drug dealers with links to violent crime
- Groups of males who exploit for their own sexual gratification
- Males who pass young people on to others for sex
- Female offenders
- Other young people

What are we doing to stop this?

- Professionals and Partners trained to spot signs of exploitation.
- Young people warned of risks.
- Those at risk supported by youth workers.
- Information passed to police to disrupt activities and prosecute offenders.

How Could this Affect You?

- Concerns about young people in your vehicle.
- Concerns about locations/venues you drop young people off at.
- Concerns about adults paying for young peoples' taxi fares.
- Concerns about young person's conversation in your vehicle

What can you do to help?

- Be aware of indicators of risk.
- Be aware of young people you think may be at risk.
- Be aware of addresses you are taking young people to.
- Pass on any information/concerns you have.

Scenario

You work in a city centre and often pick up passengers from pubs and clubs. You notice that there are often high numbers of young people who appear to be drunk and underage coming out of a particular night club at weekends.

On this occasion when you arrive to pick up your passenger you see a young girl leaving the premises. The girl seems to be about 14 or 15 years of age and is very intoxicated. She is with three significantly older men and the group is walking towards your vehicle.

Scenario

An intoxicated 14 year old offers you sex in place of a taxi fare. She is dropped off at a children's home.

Scenario

You are called to a job at a massage parlour at 3.15am where you pick up an adult female who looks about 23 years old, she has a young girl and a boy with her who look about 13. They are escorted to the car by two older men who address the woman in a foreign language. The children appear afraid and the woman seems upset. The men are in a hurry and ask you to take the passengers to an address in Leeds.

How to report your concern

- **Phone 999** if risk is imminent / assault happened or likely to
- **Record and report concerns to the police 101** and / or the safeguarding services if a child (xxxx) or vulnerable adult (xxxx) is involved.
- **Signpost if safe to do so** – offer the passenger information (for example make contact cards or window stickers visible)
- **Crimestoppers** – insert info

Protecting yourself

- Risks
- Code of Good Safeguarding Practice

Good Safeguarding Practice (1)

- Check at the point of booking if there are any vulnerability issues This will allow you to prepare for the journey in the right way.
- Ask the person booking if an escort for the vulnerable passenger is required and if they are providing one
- Let head office know (or keep a record) of the time you picked up the vulnerable passenger, the time and place you dropped them off and whether there was any incident or anything significant on the journey.
- If you refuse to take a passenger inform someone that you can't take them so they can deal with the person another way (eg hospital staff; family; security staff if a club/pub)
- Record incidents and refusals
- Be professional – try not to be over-friendly or talk about personal or intimate issues, don't exchange personal contact information such as passenger's telephone numbers or facebook address. Avoid swearing or aggressive behaviour. Do not touch passengers.
- Never accept an offer of a sexual favour instead of payment.
- Make sure you are wearing ID, either a badge or company uniform.
- Sit lone passengers in the back unless otherwise agreed.
- Ask or explain to passengers if using a centralised locking system – don't just put it on without an explanation.

Good Safeguarding Practice (2)

- DON'T ASSUME that your passenger wants help – ALWAYS ASK
- Never follow a passenger into the house unless previously agreed / properly authorised
- ASK before making a journey shorter by going off the main roads/using isolated country roads, explain and give the passenger (or person booking) a choice of route.
- NEVER set off with a passenger without a specific destination address
- NEVER double up on a booking – even if passengers are travelling in a similar direction, they may pose a threat or risk to the other passenger
- If you think the passenger is afraid, offer to ring head office to tell them you have a passenger named XXXX with you and give the address and approximate time of arrival; this reassures the person that they are safe and someone is monitoring the trip.
- As with all professions if you are concerned about another driver's conduct report your concerns to your manager or the relevant agency.
- Organisations should have a lead member of staff for safeguarding, this person should be able to advise colleagues about how to manage vulnerable passengers and any incidents arising.
- ALWAYS KEEP A RECORD either in your cab or at head office, of ANY incidents or situations you were not happy with – the record should include a description of what happened and what you did to keep yourself and your passenger safe.

Taxi and Private Hire - Safeguarding children and vulnerable people Human Trafficking and Child Sexual Exploitation

Everyone is becoming aware of the well-publicised issues relating to Child Sexual Exploitation and Human Trafficking that have occurred throughout the country. These are abhorrent crimes, and the Licensing Authority has a duty to assist the Taxi and Private Hire Trade and the public in tackling this issue, and to protect those who are vulnerable and / or being exploited. We need the help of taxi and private hire drivers and operators to identify those who commit these crimes, and protect those who most need our help. Here is some information devoted to helping you as a license holder or applicant to be aware of those who may be vulnerable or being exploited.

However, there is always more that can be done by everyone to help promote a better understanding of this subject, and we hope that this information will assist you in being able to identify those at risk, how to protect those who may be vulnerable or being exploited, how to ensure that your actions do not negatively contribute to such persons becoming victims, and to whom to report your concerns.

What You Can Do To Help Those At Risk

By following the Good Safeguarding Practices below you will be helping to protect those who are vulnerable and / or being exploited. We need your help to bring to justice those who commit these crimes.

- Check at the point of booking if there are any vulnerability issues. This will allow you to prepare for the journey in the right way.
- Ask the person booking if an escort for the vulnerable passenger is required and if they are providing one.
- Let your head office know (or keep a record) of the time you picked up the vulnerable passenger, the time and place you dropped them off and whether there was any incident or anything significant on the journey.
- If you refuse to take a passenger inform someone that you can't take them so they can deal with the person another way (e.g. hospital staff; family; security staff if a club/pub)
- Record incidents and refusals
- Be professional - try not to be over-friendly or talk about personal or intimate issues, don't exchange personal contact information such as passenger's telephone numbers or Facebook address.
- Avoid swearing or aggressive behaviour.
- Do not touch passengers.
- Never accept an offer of a sexual favour instead of payment.
- Make sure you are wearing ID, (your licence badge)
- Sit lone passengers in the back unless otherwise agreed.
- Ask or explain to passengers if using a centralised locking system - don't just put it on without an explanation.
- DON'T ASSUME that your passenger wants help - ALWAYS ASK
- Never follow a passenger into the house unless previously agreed / properly authorised
- ASK before making a journey shorter by going off the main roads/using isolated country roads, explain and give the passenger (or person booking) a choice of route.
- NEVER set off with a passenger without a specific destination address
- NEVER double up on a booking – even if passengers are travelling in a similar direction, they may pose a threat or risk to the other passenger
- If you think the passenger is afraid, offer to ring head office to tell them you have a passenger named XXXX with you and give the address and approximate time of arrival; this reassures the person that they are safe and someone is monitoring the trip.
- As with all professions if you are concerned about another driver's conduct report your concerns to your manager or the relevant agency.
- Organisations should have a lead member of staff for safeguarding; this person should be able to advise colleagues about how to manage vulnerable passengers and any incidents arising.
- ALWAYS KEEP A RECORD either in your cab or at head office, of ANY incidents or situations you were not happy with – the record should include a description of what happened and what you did to keep yourself and your passenger safe.

Who To Contact

If you think you may be carrying someone who is vulnerable and / or the victim of exploitation: Phone 999: Call the Police emergency number if you believe that the risk is imminent / assault happened or likely to. Record and report concerns to the Police 101 and / or the safeguarding services if a child or vulnerable adult is involved.

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 LGA is lobbying for a Taxi and PHV Licensing Reform Bill which will 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 training provided by your own authority.

We hope you find it useful.



Councillor Tony Page

LGA Licensing Champion, Safer and Stronger Communities Board

Contents

| | |
|---|----|
| The regulatory framework for taxis and PHVs | 06 |
| Role of councillors | 10 |
| The 'fit and proper' person test | 14 |
| Public protection and enforcement | 19 |
| Special considerations | 33 |
| Checklist for councillors | 37 |
| Glossary | 39 |

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 councils. There are a number of other Acts which also have an impact; for example the Equalities Act 2010, which 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.¹ The Government has yet to respond to the report, although two clauses were brought forward early in the Deregulation Bill 2015². 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 feel that it does provide a sound basis for the reform that is very urgently needed. The LGA will therefore be lobbying for a Taxi and PHV Licensing Reform Bill to be brought forward in the next Parliament.

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

² This Bill had not received Royal Assent at the time of writing, but is expected to successfully complete its passage through Parliament in early 2015. It will enter legislation as the Deregulation Act 2015, and references to it in the Handbook should be read as such once that has happened.

Facts and figures:

In England and Wales, there were around 78,000 taxis and 153,000 PHVs licensed as at the end of March 2013.

There are an estimated 27,000 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 district and unitary councils ('licensing authorities'), 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 fares, vehicles standards or limits on vehicle numbers
- considering applications and issuing, reviewing or revoking licences
- undertaking inspection and enforcement activities.

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.

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:

- the administration and issue of 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 and 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 customers. 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 LEAN business review and succeeded in reducing the time taken to process vehicle licences from 45 days to just one day.

Department for Transport's role (DfT)

DfT's role is that of regulatory ownership and maintenance of the regulatory framework for taxis and private hire vehicles. The DfT provides non-statutory guidance to local councils as to how to discharge their duties under the regulatory framework. 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.

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 taxis, PHVs, and the licences of 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 1976 Act 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 co-ordination 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 stopped, and unable to do anything if it drives 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.

This is why the issue of cross-border hiring is perhaps the most acute problem facing many councils today. In one recent example, a driver applied to a council for a licence only to be refused after the police presented concerns to the licensing committee; the driver then applied to the neighbouring council, which was given the same information by the police but chose to licence the driver. The driver now operates in the first council's area and there is nothing they can do to stop it.

This poses a risk to communities everywhere, as well as the reputation of local government as a whole. Every council should be mindful of its opportunities to protect communities outside of its immediate responsibility.

The best councils 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 sub-committees made up of councillors of the parent committee. Apart from setting taxi fares and ranks, taxi/PHV licensing is a 'council' and not an 'executive' function.

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.

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 and of customers, as well as other stakeholders, when establishing policy in the same way that other areas of council business are developed.

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
- 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

- suspend a licence
- introduce conditions on a PHV driver'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 on a court case – it must always be used as a final decision.

Councils may attach conditions to 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 and
- must be clearly stated in order that they can be properly understood to be complied with and enforced.

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' or crown 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. 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 awareness 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 - <http://lga.learningpool.com/>.

Appearance of bias

While third party lobbying of elected members is legitimate and certain members 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.

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. 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.
- 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 on 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.³ Such guidance could include a definition of what is viewed as excessive e.g. attempting to obtain a commitment as to how the member might vote

³ "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 285 p. 72)

- 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.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards 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.

The ‘fit and proper’ person test⁴

Passengers should be at the centre of a licensing authority’s taxi licensing policies and processes, and there is no area where this is more important than in the application of the ‘fit and proper person’ test.

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 specifically⁵:

- if 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 make use of the Home Office’s free service to 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.⁶ 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 relevant convictions and how this will determine whether an applicant is fit and proper. While each application must be determined on its individual merits, the statement may set out a recommended minimum period free of conviction for offences falling into broad categories to act as a guideline to licensing committees.

The statements adopted by English and Welsh councils tend to be broadly similar and are based on Government guidance issued in the early 1990s. **The LGA is recommending that all councils review their policies, and update them as required.**

⁴ 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.

⁵ S60(1)(a)(b)(c), Local Government (Miscellaneous Provisions) Act 1976

⁶ The service can be contacted at EvidenceandEnquiry@homeoffice.gsi.gov.uk

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. DfT has previously issued advice on the period of time that should lapse between certain types of conviction and the issue of a licence, but the most recent Best Practice Guidance in 2010 removed references to this, so councils should feel empowered to make their own decisions. The old advice is available, but councils should treat the recommendations as minimum standards.

The LGA has produced a sample policy which is available to assist officers in drafting this crucial part of your approach to licensing taxis and PHVs. You should ensure this is not directly replicated, but use it to inform your own discussions at your committee.

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 these offences, a licence will not be issued.

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. You are also able to take full account of the applicant's responses in the committee hearing. The evidential threshold for licensing committees is based on the balance of probabilities, and not the 'beyond reasonable doubt' standard which is the criminal standard of proof for criminal trials.

In short, if you are 51 per cent certain that the applicant is not a fit and proper person then you are able to, and should, refuse the licence. You could also take proportionate steps to further test a candidate's suitability by issuing a licence for a short period of time, such as a month, before reviewing it, and issuing it for longer and longer periods of time as the applicant proves they are a fit and proper person. However, the provisions of the Deregulation Bill 2015, which create a presumption for licences to be issued for the full three years, means this approach may only be justified in exceptional circumstances and not adopted as a routine practice.

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.

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.

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. 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.⁷

Councils have a very 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.

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 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.⁸

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 are not a factor to weigh in the balance against the safety of passengers.

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 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.

⁷ Nottingham City Council v Farooq 1998 EWHC Admin 991

⁸ Cherwell DC v Anwar [2011] EWHC 2943 (Admin)

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 the drivers they employ are fit and proper persons, and are properly trained in their roles.

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 will be even more important when, and if, the Deregulation Bill receives Royal Assent and operators are able 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.

This is an area that has not yet been explored and, once the relevant legislation is passed, 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 Local Government Association and other licensing authorities.

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. Drivers with a high 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 on at least a yearly basis, and always before a review of the licensing policy. The committee should also have oversight of the council's 'mystery shopping' and test purchasing checks on licensed vehicles 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 judgment on any given day, with a previous unblemished career, may face all or nothing decisions by members 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, 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.

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 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 Scrutiny⁹ 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.

⁹ <http://www.cfps.org.uk/>

Public protection and enforcement

Partnership working

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.

There has also been a formal ability to share information under the Notifiable Occupations Scheme, but this has been challenged and is no longer used by many police forces. A replacement is being developed, but 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 vehicle (a dual licence allows a driver to drive a hackney carriage vehicle or private hire vehicle) and must work for a licensed taxi 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 (IR) which becomes disclosable as part of any subsequent DBS check undertaken anywhere in the country, thereby reducing the risk of unsuitable persons being granted a licence.

What is a 'safeguarding issue'?

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

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

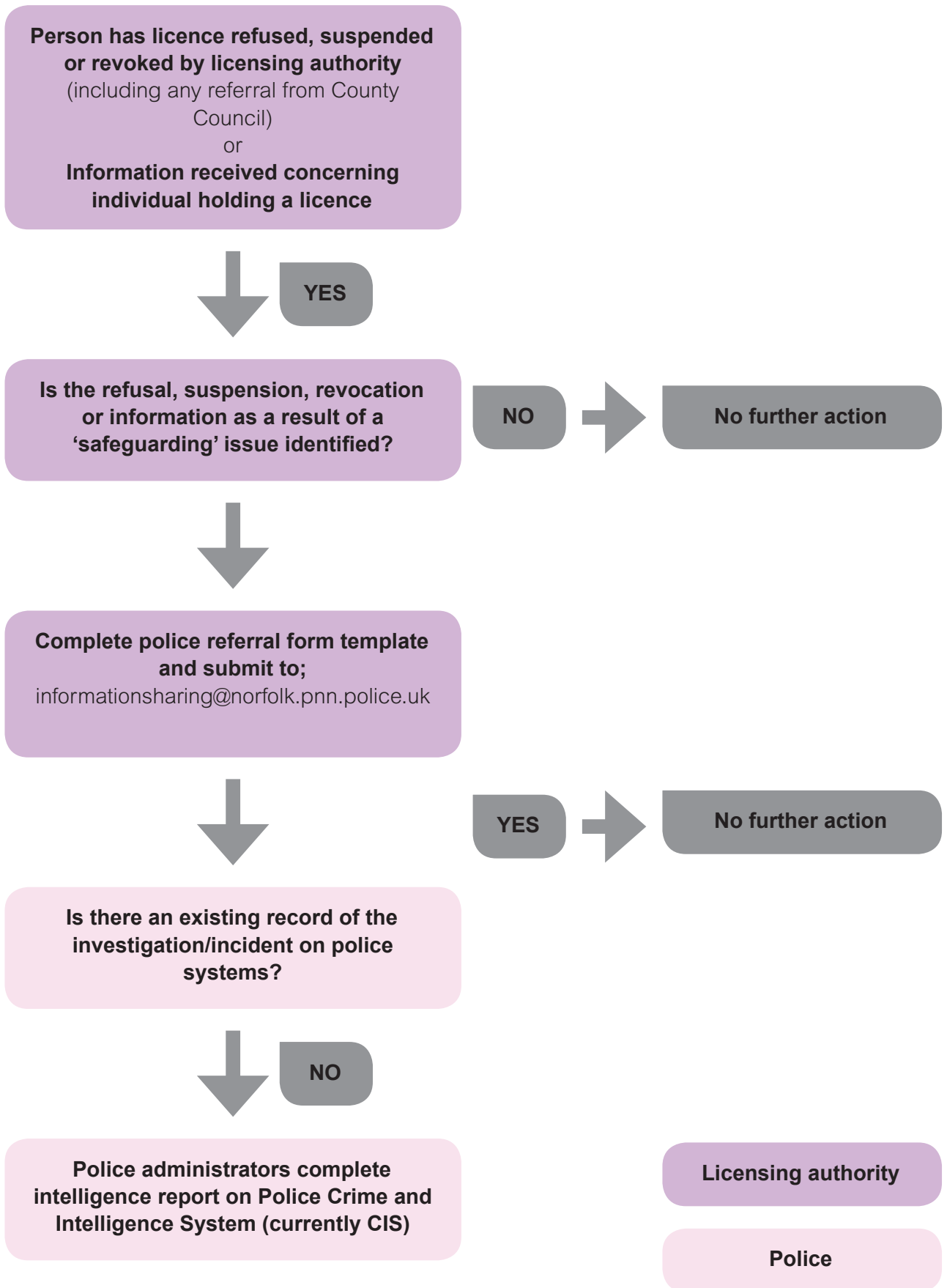
Psychological – Including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks

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

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

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

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



Police Referral Form Template

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

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

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

Joint operations: Blaenau Gwent Council

Blaenau Gwent Council's Licensing Team co-ordinated 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 currently legal, provided the driver, vehicle and operator are all licensed by the first district, although the Deregulation Bill will make it possible for an operator to sub-contract a booking to an operator licensed in another council area, if it passes into law.

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. It 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.

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 protocol¹⁰ 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 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 byelaws, 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.

¹⁰ 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.

Protecting vulnerable people

Councils can help to protect some of their most vulnerable residents through effective licensing regimes, including children at risk of sexual exploitation. Sadly, both licensed premises and licensed vehicles have been used as opportunities to sexually exploit children, as recent high profile cases have underlined.

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 disclosures. This makes additional intelligence from all other sources critical to licensing deliberations.

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, which can be found at <http://tinyurl.com/CSEguide>.

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.

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.

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.

Safeguarding training: Scarborough Borough Council

Working together, Scarborough Borough Council and North Yorkshire Police identified that working with taxi drivers was key to safeguarding practices linked to the local night-time economy (NTE), particularly in helping to prevent sexual exploitation, and in accessing the information and intelligence drivers held which they'd been reluctant to share with agencies.

An opportunity to capture those individuals arose when Scarborough Borough Council's Taxi Licensing Policy was renewed, introducing **mandatory safeguarding training for taxi drivers wishing to obtain or retain their licences**.

This comprises a two-hour tailored session, written and delivered by Sandra Rees, the Council's Community Safety and Safeguarding Manager and Sgt Rachel Wood, both of whom have operational experience in the NTE. It was essential, for the package to have maximum impact, that it had to be delivered by people who were not only passionate about safeguarding, but also had credible operational experience working in the NTE. The training covers safeguarding children and vulnerable adults, making referrals, signposting to relevant agencies, domestic violence, child sexual exploitation and 'hate and mate' crime.

As well as delivering this training to drivers, it gave an opportunity to establish closer working relationships with drivers going forward. Local taxi officers are now allocated a named PCSO to visit them on a weekly basis to share information and concerns. In addition to this, having listened to drivers' concerns, stickers with 'zero tolerance on abuse to drivers' were printed and distributed to all taxis, and information cards with relevant agency numbers were produced and given to all taxi companies for distribution by their drivers.

With perseverance and careful delivery, the outcomes have been very positive; forging closer relationships with drivers and impacting on their decisions to report concerns. For instance, it has led to a greater number of reports to police regarding drugs information.

Operation Sanctuary

Operation Sanctuary is an investigation into 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 is about targeting men with appalling attitudes towards vulnerable teenagers and women, and stopping their behaviour.

"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 2 women). Those arrested come from a range of communities and backgrounds."Operation Sanctuary, Northumbria Police

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

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

It is another way we are keeping people informed and updated about the operation and how everyone has a part to play in ensuring information is reported to police.



Information for taxi drivers and taxi firms

How does it affect you?

Taxis are a very safe and reliable way to get around the city and we want to keep it that way.

We know that some victims are transported in taxis to addresses where they are then sexually assaulted or raped. We also know that some men have posed as taxi drivers and picked up women who have then been assaulted or raped.

We need the help of all legitimate taxi drivers to help us stop this criminal behaviour. If you spot anything that appears suspicious or fits the description of what we are looking for please take action and contact police.

What is Operation Sanctuary?

Operation Sanctuary is about ensuring our towns and cities are safe places for women and girls to live, work and visit. In particular it is about everyone working together; the police, local authorities, businesses and all local communities to ensure those who may be vulnerable in some way are protected from anyone who seeks to take advantage of them by committing sexual crimes against them.

These crimes can range from those offenders who deliberately set out to target specific women and girls over a long period of time to those who commit such crimes when they come across someone in a vulnerable state

as a result of being under the influence of alcohol, drugs or for other reasons.

Only by working together can we make our communities safe and we all have a part to play. It is the responsibility of everyone to be vigilant and identify such criminal behaviour and to contact police if they have any concerns. If you witness something that doesn't look right or feel right then we need to know about it.

We have had tremendous support from the public and we need this to continue. Only then can we stop such crimes and bring offenders to justice.

What to look out for:

- Females who appear to be in a vulnerable state due to excessive drink or drugs.
- Female passengers who are accompanied by a man when in this state and don't know where they are going
- Passengers being dropped off at a location which causes you concern. Contact police immediately.
- Unlicensed vehicles hanging around areas where there are likely to be women in a vulnerable state looking for taxis to go home.

We are also encouraging passengers to take a photo of taxi licence plates of the vehicles they get into - reputable drivers have nothing to be worried about.

We have already received valuable information from the public that has helped to keep women and girls safe. We need this to continue. You are the eyes and ears in the community and can help stop this.

If you see something, say something.

Let us know on 101 or in an emergency call 999.



To see a higher resolution version, please visit: http://www.northumbria.police.uk/advice_and_information/operation_sanctuary/downloads/index.asp

Liaison with Children's Safeguarding: Torfaen County Borough Council

In Torfaen, licensing officers are regularly called in to a case conference by their children's services when they become aware that they are dealing with a licensed taxi driver. In the last five years there have been seven occasions where they have been invited to attend a case conference by children's services; not all result in action being taken as it is down to the meeting to decide how to respond.

However, there have been two notable occasions where formal action did result from these meetings.

1. At the case conference it was alleged that while not working a male taxi driver invited a 10 year old girl, a neighbour, into his home as she was waiting outside for her parents to return.

The girl alleged in a specialist interview that while in the man's house, he fondled her breasts and displayed other inappropriate behaviour. At the case conference it was accepted that there was insufficient evidence for the CPS to prosecute him.

The police had conducted an investigation which included a recorded interview with the girl. This information was released to the council who took immediate action to revoke the driving licence on the grounds of public safety. The driver was not prosecuted.

2. Information about a man who was on the register for inappropriate sexual activity with family children was discussed at the case conference. The man was no longer a taxi driver as he had not renewed his licence, however his new partner was a driver with the company he worked for and he was being used by the private hire company as an escort on an education contract.

The council could not take any action against the subject as he no longer held a licence, however, they approached the operator on a confidential basis with agreed information that could be disclosed to make them aware.

Rapid response to serious issues: Breckland Council and South Holland Council

- All intelligence will be from a creditable source only and is restricted to the police or a qualified medical officer. Cases could include charges of rape, other sexual related incidences, violent attacks or medical related issues which means the driver no longer meets the DVLA group 2 standard.
- Reports of a serious nature by a member of the public will always be referred on to the police, in addition to recording by the council. For less serious reports, an investigation will be completed and taken to a committee panel for final decisions.
- On receipt of information from the police or medical practitioner the driver will be contacted by an officer to be made aware of the allegation and requested to attend the office to discuss the report and put forward his/her case - all reasons will be recorded in writing.
- A minimum period of two hours will be provided for this meeting and all methods of communicating the appointment will be explored, including telephone calls, voice mails, text, a visit to the home or a combination of these methods. All interviews are to be conducted in the council offices and only in extreme medical situations the officer should attend their home, accompanied by another member of staff.
- All discussions with the driver will be conducted by two members of staff and, if felt relevant due to the nature of the incident, with the police to ensure no-one is placed in any danger.
- If the driver decides not to attend the meeting, the matter is still dealt with in their absence and will not delay the decision-making process - this decision needs to be recorded.
- A decision would be made by the licensing officer or assistant licensing officer, a senior officer (licensing manager or head of service), a member of CMT and the chairman or vice chairman of the licensing committee.
- Once the decision has been agreed by the appropriate person, the licensing officer or the licensing manager has the relevant delegation to sign any revocations required.
- All decisions and actions should be taken within 48 working hours and ideally within 24 hours of receipt of the information.
- If a driver's licence is revoked under these procedures but later investigation clears the driver of the offence, then it will be a priority to get the licence re-instated. If there is a period of time left on the licence at the point of revocation, this will be the time reinstated on the licence issue and the department will not charge for such a licence.

Taxi marshals: Watford Borough Council

Since 2005, taxi drivers servicing the late night economy in Watford, Hertfordshire have benefited from a taxi marshal scheme.

On three nights of the week – and other identified occasions – two taxi marshals work on the Rickmansworth Road rank, getting passengers in an orderly queue. Passengers who are excessively drunk, are eating or smoking, appear to be violent, don't know their destination or don't have enough money for their fare are refused carriage.

A third marshal at a remote feeder rank is radioed when more taxis are needed at the main rank.

The scheme is not cheap, and taxi drivers have been reluctant to contribute. Over the years, funding has principally come from licensed premises who make annual contributions, and grants from Hertfordshire County Council – who also fund taxi marshals in five other towns in the county. Money has also been obtained from Watford Borough Council, the Safer Watford Partnership, and from the Home Office's now-defunct Tackling Violent Crime programme.

An independent study by The Centre for Public Innovation in April 2008 found that: "Stakeholders agreed that the taxi marshal schemes were having a positive impact on both anti-social behaviour and certain crimes – although they were unable to quantify the extent of the impact. They also noted that the taxi marshal schemes played an important role in influencing perceptions of the night-time economies, sending out a clear message that councils were listening and responding to residents' concerns about the effects of the night-time economies."

Licensing Manager Jeffrey Leib says: "The scheme is generally welcome by many participants in our night-time economy. We have enhanced drivers' safety even further with marshals using CCTV and recording passengers' details before they get into a cab, to reduce the risk of attacks on drivers while en route."

Installing CCTV in cabs

A number of councils require CCTV to be installed in taxis, 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 weigh up the frequency of such instances against the cost of installing such equipment, which can be an issue for drivers. Consultation with your driver community will help determine a suitable approach; it is also possible to permit drivers to install CCTV without a requirement for all drivers to install it. You should always require voluntary installation to be notified to the council and check that it meets appropriate standards.

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.”¹¹

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 taxi drivers. 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.**

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 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. Councils wishing to explore this further should seek their own legal advice.

¹¹ 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> at page 39

Special considerations

Driver training - disability awareness

93 authorities (30 per cent) have a requirement for disability awareness training for taxi drivers, compared to 75 having a requirement for PHV drivers.

It is important that your drivers are fully aware of their responsibilities to the public and their community.

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 operating, and also need to understand how to safely make use of their vehicles' ability to transport wheelchairs. Media stories relating to extra or over-charging for users of wheelchairs have appeared with some frequency in 2014, so councils should make clear to drivers that they cannot charge a disabled passenger more than any other passengers.

There are few training opportunities available to drivers, so many councils have chosen to provide their own training support. Not only does this ensure that your taxis and PHVs are fully compliant with the law, but it adds a roving network of eyes and ears in your area who can help identify and tackle issues such as child sexual exploitation and drugs misuse.

At a time when council enforcement and discretionary travel resources are heavily under pressure, engaging with your driver community in this way should not be underestimated and it repays the small investment needed.

Training packages: Telford and Wrekin Council

Telford and Wrekin Council have developed a one-hour training package which includes a number of subjects aimed to increase drivers' knowledge of the role and improve their level of service.

A presentation is given which explains which acts are unlawful such as PHV drivers loitering in places of public resort without prior booking, drivers charging excessive fares, and drivers smoking in their vehicles.

The training includes useful tips on how to best assist disabled people, including the conveying of wheelchairs and having awareness of the different types of disability. There is also a section on drivers looking after themselves such as being aware of attacks and considering their overall health and fitness.

At the end of the training session the drivers are required to complete a multiple-choice test paper which contains 25 questions based on the driver training package and 52 questions based on street knowledge.

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 <http://tinyurl.com/stockportdisability>

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 campaign which also called for the removal of quantity restrictions
- representations from certain members of the taxi and private hire trades that the 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

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.

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 balls 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 awareness, 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.

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.

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.



Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Telephone 020 7664 3000
Fax 020 7664 3030
Email info@local.gov.uk
www.local.gov.uk

© Local Government Association, March 2015

For a copy in Braille, larger print or audio,
please contact us on 020 7664 3000.
We consider requests on an individual basis.

L15-87

April 2015

Private Hire Operators, Vehicle Proprietors, Deregulation Act, Licence Fees post Hemming

Following on from the last Bulletin, this Edition takes a look at Private Hire Operators and Vehicle Proprietors. It also considers the passing of the Deregulation Act 2015 on Taxi and Licensing Act matters, and finally examines the Supreme Court decision in *Hemming*

Private Hire Operators

What is a private hire operator ("PHO")? The definition is reasonably straightforward, although there are a number of unanswered questions surrounding the "ancillary use" of vehicles¹. S80 Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") defines "operate" and "operator's licence" thus:

"operate" means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle;

"operator's licence" means a licence under section 55 of this Act;"

S46(1)(d) makes it clear that anyone acting as an operator must have an operators licence:

"(d) no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act;"

and a local authority cannot grant a licence (s55(1)):

"unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence."

So in simple terms, a private hire operator is the person who takes a booking for a private hire vehicle ("PHV"), and then dispatches a PHV driven by a licensed

¹ See "*Private Hire Vehicle Licensing - A note for guidance from the Department for Transport*" August 2011 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3985/phv-licensing-guidance.pdf

private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.²

But as with taxi drivers³ the role goes far beyond simply taking bookings and despatching vehicles. In the course of making the booking and despatching the vehicle and driver, the PHO will obtain significant amounts of personal information. For example, when a booking is made to an airport, and a return booking made for a week or fortnight later, it is reasonably apparent that a holiday is being taken. With a little further research (either by questioning the person making the booking, or following reports of conversations between the passengers and the driver) it will soon be apparent that the house is going to be empty for that period of time. In dishonest hands this information is extremely valuable. Likewise, where regular bookings are made, it is easy to ascertain when parents are leaving children alone in the house, and so on.

It is therefore vital that PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role.

How then does a local authority satisfy itself as to “fitness and propriety”? Once again, I think the term “safe and suitable” is a modern interpretation of “fit and proper”⁴, but there are some difficulties placed in the path of the local authority.

Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 does not cover PHOs who are therefore not excluded from the workings of the Rehabilitation of Offenders Act 1974 (“1974 Act”). This means that convictions become “spent” in relation to a PHO. However, the ruling of the High Court in *Adamson v Waveney District Council*⁵ means that local authorities can take spent convictions into account when determining suitability for a licence.

In addition, the fact that the role of the PHO is not an exempt occupation for the 1974 Act means that it is not possible to obtain an Enhanced DBS check. However, the applicant (or licensee on renewal) can be asked to obtain a Basic Disclosure from Disclosure Scotland. This can be combined with a statutory declaration as part of the application process requiring the applicant to list all previous convictions, together with other material information in a similar fashion to taxi drivers.

Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing PHO.

As with taxi drivers, it is not only permissible but eminently sensible to have a policy in relation to previous convictions and other matters for PHOs.

² See *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³ See James Button & Co Bulletin February 2015

⁴ See James Button & Co Bulletin February 2015

⁵ [1997] 2 All ER 898, QBD

To enable consistent and informed decisions to be made, it is useful to have a working test of fitness and propriety for PHOs and the one I would offer is this (which can be seen as a clear variation on the taxi driver test):

“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”

It is also useful to note that s57(2)(c) of the 1976 Act allows the local authority to investigate and consider the fitness and propriety of limited companies, their secretaries and directors, and any convictions recorded against the company whilst an applicant was a secretary or director.

There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. The licence is granted to the PHO on the basis of their fitness and propriety, but there is no overt mechanism to consider the suitability of those who work for the PHO. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task, and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust) would then have serious implications on the continuing fitness and propriety of the PHO.

Vehicle Proprietors

Similar considerations apply to the vehicle proprietors, both Hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may well not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a drivers licence), they clearly have an interest in the use of the vehicle.

As with drivers and operators, it is worth considering what a taxi actually does. Clearly they transport people from where they are to where they want to be in a convenient safe and comfortable manner, but again the impact of a licensed vehicle goes beyond that.

Taxis are seen everywhere across the United Kingdom, at all times of the day and night, in any location. As a result the presence of a taxi does not elicit any interest or curiosity. This can be contrasted with the unexpected presence of a van in the small hours of the morning.

As a consequence of this, taxis provide the ideal transportation system for any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, male or female prostitutes, or children who may be at risk of, or are being, abused.

In relation to both hackney carriages and private hire vehicles, the local authority has a discretion over granting the licence.

S37 of the Town Police Clauses Act 1847 (“the 1847 Act”) gives that discretion in relation to hackney carriages, and the only grounds upon which that can be altered is where there is significant unmet demand for hackney carriage services within the district (or zone). This discretion is usually exercised in respect of the vehicle, both its size and specification and also its mechanical and suitability, but it is equally applicable in respect of the suitability of the proprietor.

Similar discretion exists in relation to private hire vehicles under section 48 of the 1976 Act. Although the legislation is considerably more detailed than that for Hackney carriages, it is clear that there is no prohibition on considering the suitability of the applicant, as the only grounds upon which the vehicle licence cannot be refused is for number limitation of private hire vehicles.

It seems obvious that the local authority would not wish to grant a vehicle licence (or a fleet of vehicle licences) to a drug dealer, gun-runner, pimp or child abuser and accordingly local authorities must make robust enquiries about the character of such applicants.

As with PHOs, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and (hopefully) PHOs.

Deregulation Act

Taxis

The Deregulation Act 2015 introduces 3 changes to taxi legislation: the supposed requirement that drivers licenses should last for 3 years and operators licences for 5 years; and the freedom for a private hire operator to subcontract a booking across a council boundary. These will come into effect on 1 October 2015.

Duration of Licence

It is by no means clear that drivers’ licences or operators’ licences will have to be granted for the 3 or 5 years that the DFT maintained will be the case. There appears to be some confusion over the new wording which will amend the provisions of sections 53 and 55 of the Local Government (Miscellaneous Provisions) Act 1976.

The revised wording is as follows (new wording in red italics):

“53 Drivers’ licences for hackney carriages and private hire vehicles

(1)(a) Every licence granted by a district council under the provisions of this Part of this Act to any person to drive a private hire vehicle shall remain in force for three years from the date of such licence or *for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.*

(b) Notwithstanding the provisions of the Public Health Act 1875 and the Town Police Clauses Act 1889, every licence granted by a district council under the provisions of the Act of 1847 to any person to drive a hackney carriage shall remain in force for three years from the date of such licence or *for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.*”

“55 Licensing of operators of private hire vehicles

(1) Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator’s licence:

Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator’s licence.

(2) Every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case”.

It can be seen that the local authority is still given a discretion as to how long a licence should last. This is in complete contrast to the perception that has existed that licences for a shorter duration would only be available in exceptional circumstances. However, the explanation given by the DFT when the proposals were first introduced in the Deregulation Bill does make the position clearer. In their letter dated 14th March 2014 they stated:

“(iii) Making the standard duration for all taxi and PHV driver licences three years; and five years for all PHV operator licences. Shorter durations will only be granted on a case by case basis, where it is justifiable for a particular reason. This will reduce the financial and administrative burden of having to make more frequent licence renewals.”

It seems that local authorities will still be able to grant licences for shorter periods. As to what would be “appropriate in the circumstances of the case” will have to be judged on a case to case basis. I think that a request for a one-year licence would be hard to resist. I can also see a good argument that where there are serious and justifiable concerns over a drivers conduct, again a short term licence might well be a sensible step. At present there is no indication that the DFT will issue any guidance, but that will have to be assessed if and when it is published, and of course any such guidance will only inform the local authority’s decision, rather than compel it.

Subcontracting across Borders

The third change concerns cross-border subcontracting. This will bring to an end the prohibition which currently exists (and is arguably contained in *Shanks v North Tyneside Borough Council*⁶) on an operator licensed in one district subcontracting a booking to an operator licensed by another district.

There has been considerable opposition to this, not least by the Local Government Association (“LGA”) on the grounds of public safety. There does not appear to be a particularly convincing argument, as the vehicle and driver that are being supplied under the subcontracted booking must themselves be licensed by the authority which licences the “new” operator.

The legislation (which is contained in section 11 of the Deregulation Act, and which will become sections 55A and 55 B of the 1976 Act) is unwieldy and arguably unnecessarily complex, but the principles seem relatively straightforward.

In simple terms, a PHO licensed under the 1976 Act can subcontract a booking to a licensed PHO in another district, in London or in Scotland⁷. This power overrides any contractual restriction on the subcontracting in the original contract between the hirer and the first PHO⁸.

Finally, the first PHO commits an offence if he knows that the second PHO is going to use an unlicensed vehicle or driver to fulfil the subcontracted booking⁹.

It remains to be seen how this is going to work in practice. It will clearly allow much greater freedom of operation by private hire firms. There may be questions over the quality of the vehicle and driver provided by the subcontracted firm, but that would appear to be a matter of contract rather than public safety. If the initial contract with the first PHO was for a high-quality vehicle, or that was the expectation because that is the nature of the first PHO’s business, and the supplied vehicle from the second PHO fell short of that agreed or anticipated standard, then that is a matter for the hirer to take up with the first PHO. From the public safety perspective, the vehicle and driver supplied must be licensed and therefore must be suitable (in the case of the vehicle) and fit and proper (in the case of the driver). As to whether this will really cause problems in the future, of either a safety or contractual nature, only time will tell.

⁶ [2001] EWHC Admin 533, [2001] All ER (D) 344 (Jun), QBD

⁷ S55A(1)

⁸ S55A(2)

⁹ S55B(3)

Licensing Act

The proposed changes to the Licensing Act under the provisions of the Deregulation Act were considered in Bulletin February 2014, and those that were examined there have not changed between the publication of the Bill and the passing of the Act¹⁰. However, the introduction of section 67 to allow the “Sale of alcohol: community events etc and ancillary business sales” was not in the Bill as originally laid before Parliament. At present there is no proposed commencement date for these provisions.

These proposals allow what is effectively a 36 month TEN to be given by certain community bodies (which will be prescribed by regulation) or specified types of business (again to be specified by regulation). The Community and Ancillary Sellers Notice (“CAN”) will allow sales of alcohol between 7 AM and 11 PM in very limited circumstances.

The Government consulted on these proposals in November 2014 and made it clear that this is a potentially very restrictive freedom¹¹. In particular it stated in relation to the types of activity where a CAN can be used:

“The CAN is intended to benefit providers of bed and breakfast or other similar overnight accommodation who may wish to offer overnight guests a bottle of wine in their room or a drink with an evening meal, and community groups putting on small community events who wish to sell an alcoholic drink to those attending the event. The Government does not intend to extend the proposal to include florists and hairdressers or other business types at this stage.”

The consultation concentrated primarily on the amount of alcohol that could be sold in certain circumstances, and we await the outcome of that consultation which will no doubt inform the regulations.

As with the community film shows, the prohibition on the community groups trading for profit may limit the use of this restriction. However until the regulations are published it is difficult to establish exactly what the parameters of this new authorisation will be.

¹⁰ The clauses in the Bill do not correlate to the sections in the Act. Clause 38 (increase in number of TENs) is section 68; Clause 39 (abolition of renewal of personal licences) is section 69; Clause 40 (allowing sale of liquor confectionary to children) is section 70; Clause 41 (exemption for certain late night refreshment establishments) is section 71; Clause 42 (removal of requirement to report loss or theft of various documents to the police) is section 72; Clause 43 (community film shows) is section 76.

¹¹ <https://www.gov.uk/government/consultations/community-and-ancillary-sellers-notice-consultation>

Hemming

On 29th April the Supreme Court finally handed down its long-awaited judgment in the case of *Hemming*.¹²

The judgment is concise and the view of the 5 judges was unanimous, with judgment being given by Lord Mance.

In a nutshell, the Supreme Court upheld the position determined by both the High Court of the Court of Appeal that enforcement costs against unlicensed traders cannot be recovered via the licence fee where the particular licensing regime is covered by the Provision of Services Regulations 2009. They did not demur from the view that compliance costs i.e. the costs of ensuring that those who were licensed were complying with the requirements of that licence and the legislation, were a legitimate part of the cost to the authorisation process.

The court accepted that an application fee for a licence was covered by the Regulations, but that neither those regulations nor the underlying European Directive prevented a maintenance charge being levied for the licence. In an interesting development, the court stated that such a maintenance fee would have to be proportionate and comply with the overall requirements of the Directive. The court said this:¹³

“But there is no reason why it [the maintenance fee] should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.”

In response to an argument put forward that the existence of a maintenance fee was itself part of the authorisation scheme and therefore contrary to the directive and the regulations, the court said this:¹⁴

“19. The respondents’ case is that, . . . the requirement to pay the further fee mentioned in sub-paras (ii) above is an aspect of the authorisation scheme within the meaning of the Directive. . . . I have no doubt that it is not. It is a mere provision that, if and when authorisation is successfully obtained, the actual grant or renewal of a licence will be subject to payment of a fee to cover enforcement costs. Once it is accepted (paras 15 to 17 above) that article 13(2) permits a licensing authority to levy on a successful applicant, in respect of the possession or retention of a licence, charges enabling the authority to recover the full cost of running and enforcing the scheme, it would be incongruous if an application could not refer to or include a requirement to pay such charges on the application being successful. The inclusion in the application of a requirement to pay a licence fee for the possession or retention of a licence, if the application is successful, does not turn that requirement into an authorisation procedure

¹² *R (app Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council* [2015] UKSC 25

¹³ Para 17

¹⁴ Para 19

or formality or into a charge incurred from the application. It remains a licence fee incurred for the possession or retention of the licence.”

In relation to the specific approach taken by Westminster whereby an application for a sex establishment licence had to be accompanied by both the application fee and maintenance fee, the Court concluded that this could be argued as being a means of dissuading someone from applying, and this element (and this element alone) is subject to a reference to the European Court of Justice.

So where does that leave licensing fees? If there is a general power to levy a reasonable fee (e.g. sex establishments, street trading), then it seems enforcement costs against non-licensees could be recovered via a maintenance fee, levied separately from the application fee, and after the licence has been granted.

Where the legislation is more restrictive, the overriding considerations will remain with the domestic legislation.

It will be interesting to see what the determination of the European Court is on this point, and equally interesting to see if the parties can expand the argument to cover the points already determined.

James Button

30th April 2015

For further information please contact James Button on 01629 735566 or james@jamesbutton.co.uk

This bulletin is for information only and does not constitute legal advice.
James Button & Co is regulated by the Solicitors Regulation Authority 197525
James T H Button, BA, Solicitor, CIOl – Principal.

