

## Consideration of Department for Transport's Statutory Taxi and Private Hire Vehicle Standards

### Background

The Department for Transport published its Statutory Taxi and Private Hire Vehicle Standards' in July 2020, with the document focusing on establishing common core minimum standards across the taxi and private hire sector and aiming to protect children and vulnerable adults.

The Department for Transport expects all licensing authorities to implement these recommendations unless there are compelling local reasons not to.

The standards in the document replace relevant sections of the Best Practice Guidance issued by the Department in 2010, where there is a conflict between the Statutory Taxi and Private Hire Vehicle Standards and the Best Practice Guidance the Department issue on taxi and private hire vehicle licensing, the standards in the more recently published document take precedence.

The Department for Transport states that, in the interest of transparency, all licensing authorities should publish their consideration of the measures contained in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these.

### Consideration of Recommendations

This document includes the recommendations contained in the Department for Transport's Statutory Taxi and Private Hire Vehicle Standards, accompanied by an explanatory note detailing how Winchester City Council shall have regard to each recommendation and any action required.

### *Licensing Policies*

*3.1 The Department recommends all licensing authorities make publicly available a cohesive policy document that brings together all their procedures on taxi and private hire vehicle licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.*

The Council's Statement of Licensing Policy with respect to Hackney Carriage and Private Hire Drivers, Vehicles and Private Hire Operators currently details all of the above, and will continue to do so on review.

*3.5 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. Licensing authorities*

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

**PROPOSAL:** Commitment to reviewing the Statement of Licensing Policy at least every five years, with provision made for interim reviews where necessary. This commitment will be documented in the policy itself.

### **Duration of licences**

3.7 *The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire vehicle operators. Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand; they should not be issued on a 'probationary' basis.*

The Council currently offers applicants for hackney carriage and private hire drivers licence with the option of either a 1 year or 3 year licence, and applicants for a private hire operator licence with the option of either a 1 year or 5 year licence.

### **Whistleblowing**

3.8 *It is in the application of licensing authority's policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.*

The Council has an effective internal procedure in place for staff to raise concerns, with details made available to staff via the organisation's intranet and HR Department.

### **Consultation at the local level**

3.12 *Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-*

*agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.*

The Council has reviewed its list of consultees for policy reviews to ensure that, wherever possible, any group of individuals that may be affected by the proposals are consulted on them and given opportunity to comment.

*3.13 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas; and licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; this should be adopted by all authorities.*

The Council has reviewed its list of consultees for policy reviews to include all neighbouring licensing authorities. It will be requested that details of the proposals and how to comment on them are passed to that authority's hackney carriage and private hire drivers, vehicle proprietors and private hire operators where resources allow. A representative from the licensing authority also attends a quarterly Hampshire-wide liaison meeting and will draw members' attention to any consultations.

### ***Changing licensing policy and requirements***

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

The Council does, and shall continue to, review current licences in the light of any changes to licensing policy or conditions. Wherever possible, licence holders will be given a reasonable time period to achieve compliance (for example, a deadline given to attend a training course) and this is communicated promptly and clearly.

*3.15 Where a more subjective change has been introduced, for example an amended policy on previous convictions, a licensing authority must consider each case on its own merits. Where there are exceptional, clear and*

*compelling reasons to deviate from a policy, licensing authorities should consider doing so. Licensing authorities should record the reasons for any deviation from the policies in place.*

The Council does, and shall continue to, review current licences in the light of any changes to licensing policy or conditions. For example, in circumstances where the Council's policy on criminal convictions is reviewed, officers would review any current licences likely to be affected and make a decision on a case-by-case basis.

### **The Disclosure and Barring Service**

4.4 *It should be noted that licensing authorities must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not otherwise be disclosed on a DBS certificate. Whilst data protection legislation (not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)) gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, it is a criminal offence to require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This could potentially lead to the authority receiving information to which it is not entitled. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.*

The Council does not, and will not, require an applicant or current licence holder to exercise their own 'right of access' to personal data in order to obtain information about convictions or cautions. Data obtained in relation to convictions or cautions will be obtained via the DBS or through Common Law Police Disclosure.

### **The Disclosure and Barring Service Update Service**

4.5 *Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual's consent, allows nominees to check the status of a certificate online at any time. Subscription to the service removes the need for new certificates to be requested, reduces the administrative burden and mitigates potential delays in relicensing.*

**PROPOSAL:** Mandatory requirement for all licensed hackney carriage and/or private hire drivers to sign up, and maintain a subscription, to the DBS Update Service. This will enable the Council to conduct status checks with minimal administrative burden to both the licence holder and the Council.

### **Common Law Police Disclosure**

4.11 *This procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies.*

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

The Council shall continue to maintain positive relationships with the police to ensure that information relevant to hackney carriage and/or private hire drivers, vehicles and private hire operators is shared. The Council has an information sharing agreement in place with Hampshire Constabulary to facilitate this.

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

*4.12 Licence holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope should result in a review by the issuing authority as to whether the licence holder is fit to continue to do so. This must not however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities. Should an authority place an obligation on licensees to notify under these circumstances, authorities should also ensure appropriate procedures are in place to enable them to act in a suitable timeframe if and when needed.*

The Council's Hackney Carriage and Private Hire Driver Conditions currently require licence holders to disclose to the Council writing, within 7 days, any conviction or caution imposed on them during the period of licence.

PROPOSAL: Amend Hackney Carriage and Private Hire Driver Conditions to require licence holders to disclose to the Council in writing, within 48 hours, any arrest, charge, conviction, caution, fixed penalty notice or community resolution imposed on them during the period of licence.

The Council's Statement of Licensing Policy currently specifies the following as an offence for which up to 6 local authority penalty points can be applied to a hackney carriage or private hire driver's licence: *Failure to notify the Licensing Authority, in writing, or any motoring or criminal conviction or caution within 7 days during period of licence.*

PROPOSAL: Amend Statement of Licensing Policy to specify the following as an offence for which up to 6 local authority penalty points can be applied to a hackney carriage or private hire driver's licence: *Failure to notify the Licensing Authority, in writing, of any arrest, charge, conviction, caution, fixed penalty notice or community resolution within 48 hours during period of licence.*

*4.13 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that*

*questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.*

**PROPOSAL:** Inclusion of additional paragraph in Statement of Licensing Policy to confirm that failure by any applicant or current licence holder to disclose an arrest, charge, conviction, caution, fixed penalty notice or community resolution, that the licensing authority is subsequently advised of, may be seen as behaviour that questions honesty and therefore the suitability of the applicant or current licence holder.

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

*4.14 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS. A decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, should be referred to the DBS. The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the DBS.*

*4.15 The Department recommends that licensing authorities should make a referral to the DBS when it is thought that:*

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;*
- an individual has satisfied the 'harm test' ; or*
- received a caution or conviction for a relevant offence and;*
- the person they are referring is, has or might in future be working in regulated activity;*

*if the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.*

*4.16 These referrals may result in the person being added to a barred list and enable other licensing authorities to consider this should further applications to other authorities be made. Further information on referrals to DBS is available.*

**PROPOSAL:** Inclusion of additional paragraph in Statement of Licensing Policy to require the Council to consider whether it is appropriate to make a referral to the DBS where a hackney carriage and/or private hire drivers licence is revoked, or an application refused.

### ***Working with the Police***

*4.17 The police are an invaluable source of intelligence when assessing whether a licensing applicant is a 'fit and proper' person. It is vital that licensing*



*authorities have a partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police, **action taken by the licensing authority as a result of information received should be fed-back to the police.** Increasing the awareness among police forces of the value licensing authorities place on the information received, particularly on non-conviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.*

The Council shall continue to maintain positive relationships with the police to ensure that information relevant to hackney carriage and/or private hire drivers, vehicles and private hire operators is shared. The Council has an information sharing agreement in place with Hampshire Constabulary to facilitate this.

*4.19 To aid further the quality of the information available to all parties that have a safeguarding duty, a revocation or refusal on public safety grounds should also be advised to the police.*

**PROPOSAL:** Inclusion of additional paragraph in Statement of Licensing Policy to require the Council to consider whether it is appropriate to notify the police where a hackney carriage and/or private hire driver's licence is revoked, or an application refused, if done so on public safety grounds.

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

*4.20 As has been stated elsewhere in this document, obtaining the fullest information minimises the doubt as to whether an applicant or licensee is 'fit and proper'. An obvious source of relevant information is any previous licensing history. **Applicants and licensees should be required to disclose if they hold or have previously held a licence with another authority. An applicant should also be required to disclose if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority.** Licensing authorities should explicitly advise on their application forms that making a false statement or omitting to provide the information requested may be a criminal offence.*

The Council currently requires all applicants and current licence holders to disclose if they hold or have previously held a licence with another authority, and to disclose if they have any an application for a licence refused or a licence revoked by another licensing authority.

**PROPOSAL:** Include the requirement for all applicants and current licence holders to disclose if they have a licence suspended by another licensing authority, in addition to the above requirements.

4.21 *The LGA's Councillors' Handbook on taxi and private hire vehicle licensing advises that those responsible for licensing should "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."* While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as 'NR3'). **Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.**

A representative from the licensing authority already attends a quarterly Hampshire-wide liaison meeting between licensing authorities. This group has an information sharing agreement in place between authorities with regards to the sharing of critical information relevant to decision-making.

The Council is in the process of signing up to the National Anti-Fraud Network (NR3) and intends to utilise this to inform decision-making.

PROPOSAL: Include a statement in the policy confirming that information stored on the National Anti-Fraud Network (NR3) may be used to inform the licensing authority's decision on whether an applicant or current licence holder is 'fit and proper' to hold a licence.

4.22 *For these processes to be beneficial, all licensing authorities must keep a complete and accurate record as to the reasons for refusal, suspension or revocation of a licence in order that this might be shared if requested and appropriate to do so.*

The Council already keeps a record of all decisions made to refuse, suspend or revoke a licence, with documented reasoning. An internal review will be undertaken to ensure that this data is stored in that accessible format that can be easily shared if required.

4.23 *Data protection legislation provides exemption from the rights of data subjects for the processing of personal data in connection with regulatory activities. This includes taxi and private hire vehicle licensing. The exemption applies only to information processed for the core regulatory activities of appropriate organisations; it may not be used in a blanket manner. The exemption applies only to the extent that the application of the rights of data subjects to the information in question would be likely to prejudice the proper discharge of the regulatory functions. The Information Commissioner's Office has published*



*guidance to assist organisations to fully understand their obligations and suggest good practice.*

The Council will have regard to the guidance published by The Information Commissioner's Office and obtain advice from the Council's Data Protection Officer where required.

*4.24 If notification under paragraph 4.20 or 4.21 of a refused or revoked licence is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. In those circumstances, the relevant licensing authority must consider whether it should disclose any information in relation to the previous decision, consistent with its obligations under data protection legislation. If information is disclosed, it can then be taken into account in determining the applicant's fitness to be licensed. The relevance of the reason for refusing/revoking a licence must be considered. For example, if any individual was refused a licence for failing a local knowledge test, it does not have any safeguarding implications. Conversely, a revocation or refusal connected to indecency would. Licensing authorities should not simply replicate a previous decision, authorities must consider each application on its own merits and with regard to its own policies.*

The Council obtain advice from the Council's Data Protection Officer where required in relation to disclosing information to other licensing authorities.

The Council already considers all applications on their own merits and will request reasons for refusal, suspension and revocation by another licensing authority to ensure that it makes an informed decision about the applicant or licence holder's fitness and propriety to hold a licence.

*4.25 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 4.20, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should review whether the licence holder remains 'fit and proper'.*

The Council currently requires all applicants and current licence holders to disclose if they hold or have previously held a licence with another authority, and to disclose if they have any an application for a licence refused or a licence revoked by another licensing authority.

Where the above information is not disclosed and subsequently obtained through other means (i.e. NR3 database), the Council will consider the case on its own merits and determine whether failure to disclose the information affects the applicant or current licence holder's fitness and propriety to hold a licence.

## **Multi-agency Safeguarding Hub (MASH)**

4.28 *All licensing authorities should operate or establish a means to facilitate the objectives of a MASH (i.e. the sharing of necessary and relevant information between stakeholders). As has been emphasised throughout this document, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and private hire vehicles is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.*

Discussions are ongoing between the Council and other agencies (i.e. Hampshire County Council's Safeguarding Unit) to determine how we may better communicate and share information relevant to the protection of children and vulnerable adults when using taxis and private hire vehicles.

## **Complaints against licensees**

4.29 *Complaints about drivers and operators provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint, may be indicative of characteristics that raise doubts over the suitability to hold a licence. **All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees.** Such a system will help authorities to build a fuller picture of the potential risks an individual may pose and may tip the 'balance of probabilities' assessment that licensing authorities must take.*

The Council has a suitable system in place for recording complaints against licensed licensees, including where complaints are made against drivers or vehicles from other licensing authorities and subsequently referred on. The system can be searched for key information such as holder holders' names, licence numbers and vehicle details to establish whether a trend is emerging and whether further action is required.

4.30 *Licensees with a high number of complaints made against them should be contacted by the licensing authority and concerns raised with the driver and operator (if appropriate). Further action in terms of the licence holder must be determined by the licensing authority, which could include no further action, the offer of training, a formal review of the licence, or formal enforcement action.*

The Council regularly reviews its complaints data and will contact a licensee where there is cause for concern regarding repeat complaints. Licensees may be issued with a formal warning, penalty points, a licence suspension pending completion of

further training, or referral to the Licensing Sub-Committee for consideration of how to deal with the matter.

4.31 *To ensure that passengers know who to complain to, licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that should be available on their website. Ways to make complaint to the authority should be displayed in all licensed vehicles. This is likely to result in additional work for the licensing authority but has the advantage of ensuring consistency in the handling of complaints. Currently, it is more likely that a complaint against a taxi driver would be made directly to the licensing authority whereas a complaint against a private hire vehicle driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged.*

The Council currently provides an online form on its website for customers to provide feedback about a driver, vehicle or operator.

PROPOSAL: To amend the policy and vehicle conditions to mandate the display of this information in all licensed vehicles, in a format and style prescribed by the Council. This signage will include the vehicle licence number, contact details for the licensing authority and a QR code that, upon scanning with a smartphone or similar device, directs the customer to the online feedback form.

SAMPLE:



4.23 *Importantly, this approach will assist in the directing of complaints and information regarding the behaviour of drivers who may be carrying a passenger outside of the area in which the driver is licensed to the authority that issued the licence. In order for this to be effective licensing authorities must ensure that drivers are aware of a requirement to display information on*

*how to complain and take appropriate sanctions against those that do not comply with this requirement.*

All vehicle proprietors will be issued with the relevant information to be displayed in their vehicle, in the form of an easily-applied adhesive sign.

As the proposal to amend the policy and conditions will include the mandatory requirement to display this information in all licensed vehicles, the Council may suspend a vehicle licence in the event that a vehicle is found to be on contravention of this condition.

### **Overseas convictions**

- 4.34 *The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK. It should however be noted that some countries will not provide an 'Certificate of Good Character' unless the individual has been resident for six months or more*
- 4.35 *Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process (. It is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office [guidance](#).*
- 4.36 *Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document ([Annex = Assessment of previous convictions](#)), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.*

The Council currently requires applicants to provide a Certificate of Good Character from an overseas country, where they have not lived in the UK for more than 10 years.

**PROPOSAL:** To amend the policy to require an applicant to submit a Certificate of Good Character where they have spent an extended period (six or more continuous months) outside the UK. Where the time spent outside the UK was prior to the

applicant turning 18 years old, this may not be required but will be considered on a case-by-case basis.

### **Administration of the licensing framework**

- 5.1 *A policy is only effective if it is administered properly. The taxi and private hire vehicle licensing functions of local councils are non-executive functions i.e. they are functions of the council rather than the executive (such as the Cabinet). The functions include the determination of licence applications, reviews and renewals, along with the attachment of conditions when considered appropriate. The function may be delegated to a committee, a sub-committee or an officer – which should be set out within a clear scheme of delegation. In London the taxi and private hire vehicle licensing function is undertaken by Transport for London.*
- 5.2 *Licensing authorities should ensure that all individuals that determine whether a licence is issued or refused are adequately resourced to allow them to discharge the function effectively and correctly.*

The Council's Constitution and Scheme of Delegation details the individuals and relevant committees responsible for making decisions in relation to the determination of licence applications, reviews, renewals and attachment of conditions.

Ensuring that those with decision-making authority do not take annual leave or similar at the same time is considered when arranging staffing.

### **Training decision makers**

- 5.3 ***All individuals that determine whether a licence is issued should be required to undertake sufficient training.*** *As a minimum, training for a member of a licensing committee should include: licensing procedures, natural justice, understanding the risks of CSAE, disability and equality awareness and the making of difficult and potentially controversial decisions. Training should not simply relate to procedures, but should include the use of case study material to provide context and real scenarios. All training should be formally recorded by the licensing authority and require a signature from the person that has received the training. Training is available from a number of organisations including the Institute of Licensing and Lawyers in Local Government; the LGA may also be able to assist in the development of training packages.*
- 5.4 *Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:*



- *policies should be used as internal guidance, and should be supported by a member/officer code of conduct.*
- *any implications of the Human Rights Act should be considered.*
- *the rules of natural justice should be observed.*
- *decisions must be reasonable and proportionate.*
- *where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.*
- *decision makers must avoid bias (or even the appearance of bias) and predetermination.*
- *data protection legislation.*

*5.5 When a decision maker has a prejudicial interest in a case, whether it be financial or a personal relationship with those involved they should declare their interest at the earliest opportunity; this must be prior to any discussions or votes and, once declared, they must leave the room for the duration of the discussion or vote.*

The Council provides annual training to members of both its Licensing and Regulation Committee and Licensing Sub-Committee. Those who have sat on these committees for some years are required to undertake refresher training. Members who have not undertaken training are not permitted to sit on the relevant committees until they have done so.

The Council currently provides training with David Lucas of Lucas Licensing Limited. Mr Lucas is a trustee and regional chairman of the Institute of Licensing. The training provided covers all aspects of decision-making, including reference to legislation, case law and local policy.

The Council has provision at all committees for members to declare an interest, be it financial or personal, in the case being considered and they are encouraged to do so at the earliest opportunity.

### ***The regulatory structure***

*5.6 It is recommended that councils operate with a Regulatory Committee or Board that is convened at periodic intervals to determine licensing matters, with individual cases being considered by a panel of elected and suitably trained councillors drawn from a larger Regulatory Committee or Board. This model is similar to that frequently adopted in relation to other licensing matters. To facilitate the effective discharge of the functions, less contentious matters can be delegated to appropriately authorised council officers via a transparent scheme of delegation.*

The Council has a Licensing and Regulation Committee for consideration of matters relating to policy and procedure. The Council also has a Licensing Sub-Committee,

with members drawn from the aforementioned larger committee and suitably trained in making decisions relevant to specific applications or licences.

Less contentious matters are frequently delegated to suitably trained and authorised council officers via the Council's Scheme of Delegation.

*5.7 It is considered that this approach also ensures the appropriate level of separation between decision makers and those that investigate complaints against licensees, and is the most effective method in allowing the discharge of the functions in accordance with the general principles referred to in 5.4. In particular, the Committee/Board model allows for:*

- Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them. Oversight and scrutiny can be provided in relation to the licensing service generally, which can provide independent and impartial oversight of the way that the functions are being discharged within the authority.*
- Clear separation between investigator and the decision maker – this demonstrates independence, and ensures that senior officers can attempt to resolve disputes in relation to service actions without the perception that this involvement will affect their judgement in relation to decisions made at a later date.*

*5.8 Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.*

*5.9 Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.*

*5.10 Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.*

Provision is made in the Council's Enforcement Policy for matters to be referred to a panel of officers, where the Council is considering whether to prosecute an individual or business. The panel would be made up of individuals not involved with

the case being determined, but rather individuals from other departments who have experience and training in enforcement matters. This option is rarely used but is available.

### ***Fit and proper test***

5.12 *Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:*

***Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?***

5.13 *If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.*

The Council considers the above question when making decisions on applications and current licences. Members of Sub-Committees are also asked this question when determining the outcome of applications or current licences.

**PROPOSAL:** Addition of statement in the policy confirming that decisions on the suitability of an applicant or licence holder may be made on the balance of probability; that is, absence of a conviction does not mean that an applicant or current licence holder will necessarily be granted a licence or have their licence renewed.

5.14 *Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.*

It is understood that decisions need not be made on criminal convictions alone; other conduct may be taken into consideration and all cases must be considered on their own merits. This is clarified in the policy.

## ***Criminal convictions and rehabilitation***

*5.15 In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licensed regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.*

The Council's policy includes the 'Hackney Carriage and Private Hire Driver's Licences and Operators Criminal Convictions Policy', which details the minimum number of years free of conviction that the Council expects prior to granting a licence. It also includes a list of which offences would prevent an applicant from being licensed regardless of the period elapsed, in all but truly exceptional circumstances. The policy aims to achieve consistency in considering applications where the applicant has a conviction.

These minimum periods are not a 'hard and fast' rule and may be varied on a case-by-case basis, often by referring the application to the Licensing Sub-Committee for consideration of whether the policy should be departed from.

*5.16 Annexed to this document are the Department's recommendations on the assessment of previous convictions ([Annex – Assessment of previous convictions](#)). This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and private hire vehicle licensees.*

The Council's current 'Hackney Carriage and Private Hire Driver's Licences and Operators Criminal Convictions Policy' is based on the Institute of Licensing's guidance on determining the suitability of taxi and private hire vehicle licensees. There is no proposal to amend this, as it is considered of high standard and has been adopted by many other licensing authorities around the country to achieve consistency.

*5.17 These periods should be taken as a starting point in considering whether a licence should be granted or renewed in all cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that*

*they might obtain a licence. Authorities are however reminded that applicants are entitled to a fair and impartial consideration of their application.*

These minimum periods are not a 'hard and fast' rule and may be varied on a case-by-case basis, often by referring the application to the Licensing Sub-Committee for consideration of whether the policy should be departed from.

### **Criminality checks for drivers**

*6.1 Licensing authorities are entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants. The DfT's 2019 survey of taxi and private hire vehicle licensing authorities shows that all licensing authorities in England and Wales have a requirement that an enhanced DBS check is undertaken at first application or renewal.*

The Council currently requires an enhanced Disclosure and Barring Service (DBS) check from all applicants for a new hackney carriage or private hire driver on application, and every three years thereafter.

*6.2 All individuals applying for or renewing a taxi or private hire vehicle drivers licence licensing authorities should carry out a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check (in section x61 of the DBS application 'Other Workforce' should be entered in line 1 and 'Taxi Licensing' should be entered at line 2). All licensed drivers should also be required to evidence continuous registration with the DBS update service to enable the licensing authority to routinely check for new information every six months. Drivers that do not subscribe up to the Update Service should still be subject to a check every six months.*

The Council currently requires both the children and adult Barred Lists to be checked in addition to the enhanced DBS check.

PROPOSAL: Addition of statement in policy to confirm that checks of the children and adult Barred Lists must be undertaken in addition to the enhanced DBS check. This is for clarity only; the Council already does this.

PROPOSAL: Amend policy to mandate the requirement for all hackney carriage and private hire drivers to be signed up to the DBS Update Service, and give consent to the licensing authority checking the status of their DBS at least every six months. Those who fail to sign up to the DBS Update Service shall be subject to six-monthly enhanced DBS checks, complete with checks of the Barred Lists.

PROPOSAL: Amend policy to require hackney carriage and private hire drivers to obtain a new enhanced DBS check, complete with checks of the Barred Lists, where the DBS Update Service indicates that there have been changes to their record.



6.3 *Driving a taxi or private hire vehicle is not, in itself, a regulated activity for the purposes of the barred list. This means that an individual subject to barring would not be legally prevented from being a taxi or private hire vehicle driver but the licensing authority should take an individual's barred status into account alongside other information available. In the interests of public safety, licensing authorities should not, as part of their policies, issue a licence to any individual that appears on either barred list. Should a licensing authority consider there to be exceptional circumstances which means that, based on the balance of probabilities they consider an individual named on a barred list to be 'fit and proper', the reasons for reaching this conclusion should be recorded.*

The Council's policy states that authorised officers will review any convictions and other relevant information disclosed, including whether the individual is on the Barred List(s), in determining whether they are fit and proper to hold a licence.

PROPOSAL: Addition of statement in the policy to confirm that a licence will not ordinarily be granted to any individual that appears on either Barred List.

6.4 *Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006. It is an offence to knowingly allow a barred individual to work in regulated activity. The guidance on home-to-school travel and transport issued by the Department for Education should be considered alongside this document. Please see guidance on driver DBS eligibility and how to apply.*

The Council will continue to liaise with Hampshire County Council's 'Home to School Transport' Department to ensure that where an individual that appears on either Barred List is granted a licence, this is communicated to ensure that that the individual is not offered a contract for regulated activity.

### **Safeguarding awareness**

6.5 *Licensing authorities should consider the role that those in the taxi and private hire vehicle industry can play in spotting and reporting the abuse, exploitation or neglect of children and vulnerable adults. As with any group of people, it is overwhelmingly the case that those within the industry can be an asset in the detection and prevention of abuse or neglect of children and vulnerable adults. However, this is only the case if they are aware of and alert to the signs of potential abuse and know where to turn to if they suspect that a child or vulnerable adult is at risk of harm or is in immediate danger.*

6.6 *All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. This is often produced in conjunction with the police*

*and other agencies. These programmes have been developed to help drivers and operators:*

- *provide a safe and suitable service to vulnerable passengers of all ages;*
- *recognise what makes a person vulnerable; and*
- *understand how to respond, including how to report safeguarding concerns and where to get advice.*

The Council currently requires all hackney carriage and private hire drivers and private hire operators to undertake classroom-based safeguarding awareness training with the Blue Lamp Trust prior to granting a licence. The course aims to provide Hackney Carriage and Private Hire drivers with a knowledge and understanding of Safeguarding, their responsibilities and best practice protocols. The training content covers all of the above and more.

*6.7 Since 2015, the Department for Education (DfE) has run a nationwide campaign – ‘Together, we can tackle child abuse’ which aims to increase public understanding of how to recognise the signs to spot and encourage them to report child abuse and neglect. The DfE continues to promote and raise awareness of the campaign materials through its online toolkit, for local authorities, charities and organisations for use on their social media channels.*

The Council utilises a regular e-newsletter to the taxi and private hire trade, and its website, to communicate key information. These channels can be, and will be, utilised to signpost licence holders to the Department for Education’s campaign and other useful safeguarding resources.

The Council proposes to develop a small leaflet or information card to provide to all licence holders, designed to be easily stored in a glove compartment or similar. This will act as an aide memoire for drivers regarding how to identify and report safeguarding concerns.

### ***‘County lines’ exploitation***

*6.11 Safeguarding awareness training should include the ways in which drivers can help to identify county lines exploitation. Firstly, they should be aware of the following warning signs:*

- *Children and young people travelling in taxis or private hire vehicles alone;*
- *travelling at unusual hours (during school time, early in the morning or late at night);*
- *travelling long distances;*
- *unfamiliar with the local area or do not have a local accent;*
- *paying for journeys in cash or prepaid.*

The Council currently requires all hackney carriage and private hire drivers and private hire operators to undertake classroom-based safeguarding awareness training with the Blue Lamp Trust prior to granting a licence. The course aims to provide Hackney Carriage and Private Hire drivers with a knowledge and understanding of Safeguarding, their responsibilities and best practice protocols. The training content covers the subject of criminal exploitation, including county lines.

*6.12 The Home Office is working with partners to raise awareness of county lines and has provided material to help taxi and private vehicle hire staff to identify victims and report concerns to protect those exploited through this criminal activity.*

The Council utilises a regular e-newsletter to the taxi and private hire trade, and its website, to communicate key information. These channels can be, and will be, utilised to signpost licence holders to the Home Office material to help taxi and private hire vehicle staff to identify victims and report concerns.

*6.13 Drivers (or any person) should be aware of what to do if they believe a child or vulnerable person is at risk of harm. If the risk is immediate they should contact the police otherwise they should:*

- use the local safeguarding process, the first step of which is usually to contact the safeguarding lead within the local authority;*
- call Crime Stoppers on 0800 555 111.*

The Council proposes to develop a small leaflet or information card to provide to all licence holders, designed to be easily stored in a glove compartment or similar. This will act as an aide memoire for drivers regarding how to identify and report safeguarding concerns, including county lines exploitation.

### ***Language proficiency***

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

*6.15 A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.*

The Council currently assesses an applicant's language proficiency through a face-to-face interview on initial application, and a written knowledge test that contains questions relating to local geography, local policy and conditions, basic numeracy and the Highway Code.

Where doubts are raised relating to an applicant's language proficiency, an authorised officer may advise the applicant to improve their language skills by way of a recognised test or assessment prior to them being granted a licence.

### ***Criminality checks for vehicle proprietors***

- 7.2 *Enhanced DBS and barred list checks are not available for vehicle licensing. Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually. Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the 'fit and proper' threshold.*
- 7.3 *However, it is important that authorities acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking to licence a vehicle to provide a basic DBS check as part of the application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately.*

The Council does not currently require vehicle proprietors to supply a basic Disclosure and Barring Service check.

**PROPOSAL:** Amend the policy to mandate basic Disclosure and Barring Service checks for vehicle proprietors every 12 months, and advise registration to the DBS Update Service. Individuals who are already licensed as hackney carriage or private hire drivers (and thus have a six-monthly enhanced DBS check) need not comply with this requirement.

- 7.4 *A refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a vehicle or private hire vehicle operator licence; these decisions must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.*

Where an individual has had a hackney carriage or private hire driver licence refused, suspended or revoked, the Council shall ensure that decisions on the suitability of the individual to obtain a hackney carriage or private hire vehicle licence are made independently from matters relating to the hackney carriage or private hire driver licence.

*7.5 Private hire vehicle operator and vehicle licences may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective private hire vehicle operators and those to whom a vehicle licence should be required to advise the licensing authority of any change in directors or partners.*

**PROPOSAL:** Amend the policy to require that where the applicant for a hackney carriage or private hire vehicle licence is a company or partnership, all directors or partners of that company or partnership shall provide a basic Disclosure and Barring Service check. Where a Directors or partners already licensed as a hackney carriage or private hire driver (and thus have a six-monthly enhanced DBS check) need not comply with this requirement.

*7.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas so other checks must be consider where and applicant has lived or worked overseas (see paragraph 4.34 - 4.36).*

**PROPOSAL:** Amend the policy to clarify that where the applicant for a hackney carriage or private hire vehicle licence has spent an extended period (six months or more) outside of the UK, they must supply a Certificate of Good Character from their embassy or from the country in which they have been living.

### ***In-vehicle visual and audio recording - CCTV***

*7.7 Government has acknowledged the potential risk to public safety when passengers travel in taxis and private hire vehicles. It is unfortunately the case that no matter how complete the information available to licensing authorities is when assessing whether to issue any taxi or private hire vehicle licence, nor how robust the policies in place are and the rigor with which they are applied, it will never completely remove the possibility of harm to passengers by drivers.*

*7.8 The Department's view is that CCTV can provide additional deterrence to prevent this and investigative value when it does. The use of CCTV can provide a safer environment for the benefit of taxi/private hire vehicle passengers and drivers by:*

- *detering and preventing the occurrence of crime;*



- *reducing the fear of crime;*
- *assisting the police in investigating incidents of crime;*
- *assisting insurance companies in investigating motor vehicle accidents.*

*7.9 All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues.*

The Council is currently gathering information to aid in undertaking a comprehensive review of whether installation of CCTV in licensed hackney carriage and private hire vehicles is both proportionate and necessary. This review will include obtaining views of the taxi and private hire trade, and the general public. The Council is committed to undertaking this review but acknowledges that it will take several months, and it does not wish to delay implementing other measures proposed by these standards in the meantime.

*7.12 CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or drivers) consider it necessary). The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button.*

During the Council's review of whether installation of CCTV in licensed hackney carriage and private hire vehicles is both proportionate and necessary, it shall consider the data protection implications of audio recording and whether this should be continuous or capable of being activated by either the driver, passenger or both.

### ***Stretched Limousines***

*7.14 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as private hire vehicles, these vehicles may be used for transport to 'school proms' as well as for adult bookings. It is suggested that licensing authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. It is the Department's view that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle thereby excluding these services from the scope of the private hire vehicle regime and the safety benefits this*

*provides. A blanket policy of excluding limousines may create an unacceptable risk to the travelling public, as it may lead to higher levels of unsupervised operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators.*

The Council currently makes provision for holders of private hire vehicle licences to apply for a 'plate exemption', permitting the vehicle to be exempt from the requirement to display licence plates or door signs. The threshold for granting such an exemption is exceptionally high and the applicant must satisfy the Council that the vehicle will be used only for 'executive' travel. Documentation to support their application is encouraged, including letters from current clients and demonstration of the standard of service offered.

*7.15 Stretched large limousines which clearly seat more than eight passengers should not be licensed as private hire vehicles because they are outside the licensing regime for private hire vehicles. However, in some circumstances a vehicle with space for more than eight passengers can be licensed as a private hire vehicle where the precise number of passenger seats is hard to determine. In these circumstances, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers, bearing in mind that refusal may encourage illegal private hire operation.*

The Council shall carefully consider any application received to licence a stretched limousine, taking into consideration the relevant sections of its policy and conditions. Each case will be considered on its own merits and any decision made will be in the interest of public safety.

### ***Criminality checks for private hire operators***

*8.2 Enhanced DBS and barred list checks are not available for private hire vehicle operator licensing. **Licensing authorities should request a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document ([Annex – Assessment of previous convictions](#)), other than those relating to driving, meet the 'fit and proper' threshold.*

*8.3 However, it is important that authorities acknowledge that in many cases individuals that license as a private hire vehicle operator may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its drivers should not require those seeking a private hire vehicle operator licence to provide a basic DBS check as part of the*

*application process; a basic DBS would not provide any information in addition to that disclosed under the enhanced DBS and barred lists check used for the driver assessment. In these circumstances, the authority should instead rely on the fact that the applicant is considered as fit and proper to hold a driver licence when considering their suitability to hold a vehicle licence. Should the individual cease to hold a driver licence a basic certificate should be required immediately*

The Council currently requires private hire operators to provide a basic Disclosure and Barring Service (DBS) certificate every three years.

PROPOSAL: Amend the policy to mandate basic Disclosure and Barring Service checks for private hire operators every 12 months, and advise registration to the DBS Update Service. Individuals who are already licensed as hackney carriage or private hire drivers (and thus have a six-monthly enhanced DBS check) need not comply with this requirement.

*8.4 Refusal to license in individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a private hire vehicle operator licence; this decision must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.*

Where an individual has had a hackney carriage or private hire driver licence refused, suspended or revoked, the Council shall ensure that decisions on the suitability of the individual to obtain a private hire operator licence are made independently from matters relating to the hackney carriage or private hire driver licence.

*8.5 A private hire vehicle operator licence may be applied for by a company or partnership; licensing authorities should apply the 'fit and proper' test to each of the directors or partners in that company or partnership. For this to be effective private hire vehicle operators should be required to advise the licensing authority of any change in directors or partners.*

PROPOSAL: Amend the policy to require that where the applicant for a private hire operator licence is a company or partnership, all directors or partners of that company or partnership shall provide a basic Disclosure and Barring Service check. Where a Directors or partners already licensed as a hackney carriage or private hire driver (and thus have a six-monthly enhanced DBS check) need not comply with this requirement.

- 8.6 As explained earlier in the context of driver licensing, the DBS cannot access criminal records held overseas. Further information on assessing the suitability of those that have spent extended periods in overseas is provided in paragraphs 4.34 - 4.36.

**PROPOSAL:** Amend the policy to clarify that where the applicant for a private hire operator licence has spent an extended period (six months or more) outside of the UK, they must supply a Certificate of Good Character from their embassy or from the country in which they have been living.

### ***Booking and dispatch staff***

- 8.7 *Private hire vehicle drivers are not the only direct contact that private hire vehicle users have with private hire vehicle operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle dispatcher decides which driver to send to a user, a position that could be exploited by those seeking to exploit children and vulnerable adults. It is therefore appropriate that all staff that have contact with private hire vehicle users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.*

- 8.8 *Licensing authorities should be satisfied that private hire vehicle operators can demonstrate that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. **Licensing authorities should, as a condition of granting an operator licence, require a register of all staff that will take bookings or dispatch vehicles is kept.***

**PROPOSAL:** Amend Private Hire Operator Licence Conditions to require all private hire operators to keep a register of all staff members that take bookings and/or dispatch vehicles.

- 8.9 *Operators should be required to evidence that they have had sight of a Basic DBS check on all individuals listed on their register of booking and dispatch staff and to ensure that Basic DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a 'responsible organisation' to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.*

**PROPOSAL:** Amend the Private Hire Operator Licence Conditions to require all private hire operators to record the date on which they have seen staff members'

basic Disclosure and Barring Service (DBS) check; this should be prior to employment.

*8.10 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a basic DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new basic DBS certificate should be requested and sight of this recorded.*

PROPOSAL: Amend the Private Hire Operator Licence Conditions to require all private hire operators to request and record sight of a new Disclosure and Barring Service (DBS) certificate, in the event that a staff member ceases to be on the register and later re-entered.

*8.11 Operators may outsource booking and dispatch functions but they cannot pass on the obligation to protect children and vulnerable adults. Operators should be required to evidence that comparable protections are applied by the company to which they outsource these functions.*

PROPOSAL: Amend the Private Hire Operator Licence Conditions to require all private hire operators, where they outsource their booking and dispatch functions to another company or organisation, to retain a copy of that company or organisation's policy on protecting children and vulnerable adults.

*8.12 Licensing authorities should also require operators or applicants for a licence to provide their policy on employing ex-offenders in roles that would be on the register as above. As with the threshold to obtaining a private hire vehicle operators' licence, those with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, may not be suitable to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.*

PROPOSAL: Amend the Private Hire Operator Licence Conditions and Statement of Licensing Policy to require all private hire operators to provide the licensing authority with a policy on employing ex-offenders. New applicants will be required to provide this prior to a licence being issued.

Private hire operators will be signposted to the Council's own criminal convictions policy and the Department for Transport's *Assessment of previous convictions* document to assist them in writing their policies.



## **Record keeping**

8.13 Section 56 of the Local Government (Miscellaneous Provisions) Act 1976 requires private hire vehicle operators to keep records of the particulars of every booking invited or accepted, whether it is from the passenger or at the request of another operator. **Licensing authorities should as a minimum require private hire vehicle operators to record the following information for each booking:**

- the name of the passenger;
- the time of the request;
- the pick-up point;
- the destination;
- the name of the driver;
- the driver's licence number;
- the vehicle registration number of the vehicle;
- the name of any individual that responded to the booking request;
- the name of any individual that dispatched the vehicle.

8.14 This information will enable the passenger to be traced if this becomes necessary and should improve driver security and facilitate enforcement. It is suggested that booking records should be retained for a minimum of six months.

8.14 Private hire vehicle operators have a duty under data protection legislation to protect the information they record. The Information Commissioner's Office provides comprehensive on-line guidance on registering as a data controller and how to meet their obligations.

The Council currently requires private hire operators to record the name of the hirer; the time and date of booking; the time and date of pickup; the call sign of the vehicle used; the name and licence badge number of the driver dispatched; how the booking was made (i.e. telephone call, email etc); the destination; the fare quoted or to be charged; and the exact location of where acceptance of the booking was taken.

**PROPOSAL:** Amend the Private Hire Operator Licence Conditions to add the requirement for the operator to record the pickup point, registration number of the vehicle used; the name of any individual that responded to the booking request and the name of any individual that dispatched the vehicle.

The Council currently requires private hire operators to retain their records for a minimum of 12 months.

The Council will signpost private hire operators to the Information Commissioner's Office guidance on registering as data controller and how to meet obligations under data protection legislation.

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

- 8.16 *PCV licensed drivers are subject to different checks from taxi and private hire vehicle licensed drivers as the work normally undertaken, i.e. driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. **The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.***
- 8.17 *Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licensed driver will be used who is subject to different checks and not required to have an enhanced DBS check.*

**PROPOSAL:** Amend the Private Hire Operator Licence Conditions to require the operator and/or their staff to notify customers when their booking is to be fulfilled by a PCV licensed driver and a PSV, and to ensure that bookings are not fulfilled by a PCV licensed driver and a PSV without the informed consent of the customer.

## **Joint authorisation of enforcement officers**

- 9.2 *Licensing authorities should, where the need arises, jointly authorise officers from other authorities so that compliance and enforcement action can be taken against licensees from outside their area. An agreement between licensing authorities to jointly authorise officers enables the use of enforcement powers regardless of which authority within the agreement the officer is employed by and which issued the licence. This will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and drivers that are licensed by the other authority when they cross over boundaries. A model for agreeing joint authorisation is contained in the [LGA Councillors' handbook](#).*

The Council shall continue to liaise with neighbouring licensing authorities on the subject of jointly authorising officers, and refer to the LGA's model should an agreement be reached on the matter.

## **Setting expectations and monitoring**

- 9.3 *Licensing authorities should ensure that drivers are aware of the policies that they must adhere to and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and*

*considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.*

The Council provides all new applicants with a link to the Statement of Licensing Policy, and the relevant licence conditions. The Statement of Licensing Policy and the three sets of conditions are published in the public domain on the Council's website.

Licensees are regularly reminded of their obligations under the Statement of Licensing Policy and relevant conditions via email bulletins, particularly where non-compliance has been identified across a number of licensees.

The Council currently operates a point-based system for dealing with minor breaches, which is detailed in the Council's Criminal Convictions Policy. A consistent approach is taken to imposing points, with previous cases referred to.

*9.4 The provision of a clear, simple and well-publicised process for the public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity (see paragraphs 4.29 - 4.33). This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.*

The Council provides a feedback form on its website, which has resulted in the receipt of complaints in a consistent format since its introduction in 2019. Data relating to complaints is assessed by licensing officers in considering whether to suspend or revoke a licence, or require the licensee to undergo further training.

### ***Suspension and revocation of driver licences***

*9.5 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides a licensing authority with the ability to suspend or revoke a driver's licence on the following grounds: -*

*(a) that he has since the grant of the licence—*

*(i) been convicted of an offence involving dishonesty, indecency or violence; or*

*(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;*

*(aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or*

*(b) any other reasonable cause*

- 9.6 *Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. Guidance for licensing authorities to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.*
- 9.7 *Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.*

The Council has a robust approach to determining whether a driver is fit and proper to hold a licence. All decisions are made on the balance of probabilities and take into consideration all evidence presented.

Drivers are typically invited to attend an informal interview or recorded interview under caution, depending on the severity of the matter being considered. Drivers may also opt to appoint a legal advisor to assist them.

- 9.8 *A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.*
- 9.9 *New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.*

The Council will make decisions based on information available to them at the time, and acknowledges that new information may come to light after a decision has been made. The Council will lift the suspension, or invite a driver to re-apply for a licence, in the event that new evidence suggests that a suspension or revocation is no longer appropriate.

- 9.10 *A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further*

*consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.*

The Council will always seek to address minor issues without suspension or revocation; where a training opportunity exists, a driver may have their licence suspended until such time as that training is completed. The Council acknowledges that more serious issues will not be suitably resolved through training and that suspension/revocation may be more appropriate in these cases.