



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Wednesday, 6 March 2019

6.00 pm

Pittville Room - Municipal Offices, Promenade

Membership	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.		MINUTES OF LAST FULL COMMITTEE MEETING To approve the minutes of the last meeting held on 5 th December 2018.	(Pages 3 - 10)
5.		MINUTES OF SUB COMMITTEE MEETINGS To approve the minutes of the Miscellaneous Licensing Sub Committee held on 2 nd January 2019 and the Alcohol and Gambling Licensing Sub Committee held on 4 th February 2019.	(Pages 11 - 18)
6.		APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY Miss Casey Mann - 18/02791/OBJAX	(Pages 19 - 26)
7.		MAKE-UP OF LICENSING COMMITTEE Report of the Licensing Team Leader	(Pages 27 - 28)
8.		REVIEW OF PERFORMANCE BRIEFING NOTE	(Pages 29 - 34)
9.		DEPARTMENT FOR TRANSPORT CONSULTATION	(Pages

		REPORT Report of the Licensing Team Leader	35 - 72)
10.		GOVERNMENT CONSULTATION ON TAXI AND PRIVATE HIRE LICENSING	
11.		REVIEW OF PREVIOUS DECISIONS	
12.		<p>ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION</p> <p>The Licensing Team Leader advised that their focus during race week was monitoring any illegal taxi activity, checking taxi meters in response to complaints about overcharging and refusals to take short fares. Council and police staff would also be conducting the alcohol venue and lap dancing club inspections to make sure they are adhering to rules and regulations. He explained that the council in partnership with the police would continue its operation to crack down on ticket touts who were selling race tickets. He advised that the licensing team would be working from first thing in the morning to the early hours and that Members of the licensing committee had been invited to attend the inspections.</p> <p>The committee thanked the licensing department for all their hard work during the race week.</p>	
13.		DATE OF NEXT MEETING 5 th June 2019.	

Contact Officer: Sophie McGough, Democracy Officer, 01242 264130
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Licensing Committee

**Wednesday, 5th December, 2018
6.00 - 8.35 pm**

Attendees	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler
Also in attendance:	Vikki Fennell and Louis Krog

Minutes

1. APOLOGIES

Apologies were received from Councillor Harman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

There were no public questions.

4. MINUTES OF LAST MEETING

The minutes of the Licensing meeting held on 6th June 2018 were signed as a correct record.

The committee wished to note that the makeup of the committee had now changed since the meeting on the 6th June 2018.

5. MINUTES OF SUB COMMITTEE MEETINGS

The minutes of the licensing sub-committee meeting held on the 7th November 2018 were signed as a correct record.

6. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer introduced the report, he explained that Mr Laurentiu-Gabriel Raducu had applied for a Private Hire driver's licence, however, he had penalty points on his DVLA driver's licence which he had declared on his application form. He advised that the application had come before the committee as the licencing policy states a new driver's licence will not be granted unless the applicant held a full UK driving licence for a minimum of 12 months prior to the application being made and must be free of convictions and endorsements for at least one year. He advised that the offence was considered a minor traffic offence as Mr Raducu had received 3 penalty points and the details of the offence were contained in the enclosed background papers. He confirmed that Mr Raducu had completed all other required tests and assessments to obtain a Private Hire driver's licence.

The following responses were offered to Members questions:

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- Mr Raducu had held a UK drivers licence since 2016 but had 12 years driving experience;
- The Licensing Officer confirmed that they were reviewing the licensing policy and the relevance of convictions would be picked up as part of this review;
- The Legal Officer confirmed that the committee must determine each case on its own merits and could deviate from the policy if it had good reasons for doing so.

Mr Raducu explained that when he had applied for his private hire driver's licence he was under the impression that he must have no more than 6 penalty points and so he could still apply for a licence despite the fact he had 3 penalty points. The Licensing Officer explained that it was still possible to make an application with penalty points, however, if officers have concerns the applicant will be brought before the licensing committee.

Mr Raducu was invited to speak in support of his application, he explained that:

- He had already been working as a taxi driver and had a Tewkesbury plate licence, he had also been working at a driving school;
- He had applied for a licence in Cheltenham as this is where he lived and it would be more convenient for him to work here also;
- The occasion when he had received the 3 penalty points was when he was driving on the A40 in Oxford, it was 11pm at night and there were very few other users on the road. It was a 30mph zone and he believed he was doing around 46-47mph. He explained that the speed limit had suddenly dropped from 50mph to 30mph and he had not reduced his speed in time;
- He had incurred no further penalty points since this incident;
- He had requested to attend the speed awareness course when he had received the form but had not been given the option to and subsequently had to pay a £100 fine and take the 3 points. The Legal Officer advised that drivers are only given the option to do the speed awareness course if they are 10% over the speed limit if it is in excess of this they must take the points;
- He had held a licence with Tewkesbury Borough Council since August 2017 and he confirmed he had declared the points to Tewkesbury.

The application was then open to debate by Members. They noted the following:

- One Member believed this to be a one off event and considered Mr Raducu a safe driver. They felt that he had learnt his lesson.
- Other Members agreed that it was an easy mistake to make when the speed limit suddenly drops. They felt it would be harsh to deny Mr Raducu his licence based on a minor traffic offence and the fact he had no previous offences and had been truthful on his application form.

Members proceeded to vote on section 1.4.1 of the report to Grant Mr Raducu a Private Hire driver's licence because the committee considers him to be a fit and proper person to hold such a licence

Upon a vote it was unanimously for.

RESOLVED THAT

Mr Raducu be granted a Private Hire driver's licence because the committee considers him to be a fit and proper person to hold such a licence.

7. REVIEW OF PREVIOUS DECISIONS

8. ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION

A APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer introduced the report, he explained that an application had been received from Mr Steven Palmer for a street trading consent to sell Christmas trees, natural decorations and wreaths from an enclosed area on Pittville Lawn, the location of the proposed trading pitch was highlighted at Appendix 1. He reported that Mr Palmer had applied for a time limited consent from the 30 November 2018 – 21 December 2018 on Monday – Sunday from 08:00 – 21:00.

He reminded Members that when determining the application they should give consideration to the assessment criteria outlined at paragraph 3.2 of the report and also be mindful of the fact that there may be times when consent may be sought otherwise than in accordance with the policy for special one-off events.

He confirmed that no objections had been received from any of the responsible authorities. However, the Senior Environmental Health Officer had recommended a number of conditions relating to noise and lighting conditions and these were outlined at paragraph 4.2 of the report. A number of objections had been received from interested parties and these were outlined in the accompanying background papers.

The Licensing Officer advised the Committee that they must determine the application with a view to promoting the council's adopted policy and should not arbitrarily deviate from the council's policy. He further noted that as the proposed trading location falls outside the scope of the policy's permitted locations the application should be determined on its merits.

He briefly outlined the council's process for granting permission for events to go ahead on council owned land and explained that events occupying council owned land were subject to a land use agreement which the occupier needed to comply with when occupying the land. He explained that as this is an officer delegated function and the process is the responsibility of the council's Green Space Team no consultation takes place. However, in some instances, occupiers also require a formal authorisation to do what they propose to do as part of their operation and in this case were required to apply to the council's licensing department for a trading licence. He advised that the consultation on this application was open from 20 November to 30 November, however, due to a technical issue with the council's public access system, the consultation was extended and additional information was made publically available on the council website.

The Licensing Officer explained that Mr Palmer had already begun trading as he was charging an entry fee which takes him outside the scope of street trading legislation. As such, whilst he continues to charge an entry fee, the area is not one to which the public have access without payment and consequently he is able to trade without a trading licence.

The Chair explained that whilst there had been a number of complaints they had to be mindful that a lot of the interested parties concerns were not material considerations for the licensing committee. He noted that there was evidently an issue relating to public consultation prior to the issuing of Land Use Agreements for commercial activities in our parks and agreed to refer the committee's concerns to Cabinet. He reiterated that this was no criticism of any of the officers in the case, as they had all followed the current policy, however, the policy evidently needed reviewing.

One Member noted that the current arrangements whereby visitors had to pay 1p to enter the site were farcical and it was easy to enter the site without paying. They suggested that should the application be refused the site should not open until they rectified the payment arrangements.

One Member noted that in the current financial climate, and with the removal of central government financial support, councils needed to investigate alternative ways to generate income, including permitting commercial activities in parks.

In response to Members questions, the Licensing Officer advised that:

- There was a planning condition on Montpellier and Imperial Gardens that restricted the number of events to 70 days a year. If the committee were minded to do the same for Pittville Lawn they would need to raise this with the planning committee.
- As there had been technical issues with the public access system, they had done additional consultation via the local ward councillors who had distributed letters to all the residents who surrounded the park. They had also uploaded information to the council's website.
- In response to a query from a Member about the weight that could be applied to the appropriateness of the event, the Licensing Officer advised that Members must give consideration to the assessment criteria outlined in the officers report regarding the needs of the area and that the appropriateness of the event in terms of its appearance could form part of Members discussions.
- He advised that when he had visited site that day there had been no music playing and the lights were all pointing inwards and Environmental Health had been satisfied that there was no light pollution from the site.

The applicant explained that the reason they were charging 1p was because they had had no legal agreement on what was acceptable and so had devised their own solution to the problem. The Licensing Officer explained that from his site visit it had appeared they were requesting a charitable donation, he advised that this was different to charging an entrance fee and would require a separate permit.

Mr David Potter was then invited to speak in objection to the application.

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- He explained that he lived diagonally adjacent to the site.
- The main reason he had attended the committee meeting was to observe how the matter was dealt with by the Council.
- He had no concerns regarding the noise and light pollution, his main issue was with the fact that they were running a commercial enterprise in the park which had no benefit to the local community.
- The length of time the site was open each day was also a concern and the unsightly appearance of it.
- He felt the operation was better suited to other locations such as the racecourse.

Mr Palmer was invited to speak in support of his application. He advised that:

- They had dealt with many councils previously who all had different processes and so when he had signed the land use agreement in September he was not aware that he had to apply for a trading licence;
- They were surprised to see so many objections and had never received this many at other locations;
- They were genuinely unaware they were unable to advertise and had immediately rectified this when they had been notified;
- As a company they were passionate about Christmas trees and wanted to give residents an enjoyable experience when choosing a tree;
- Their operation had been well received at other locations and this year they had decided to expand to Cheltenham where they thought it would also be welcomed;
- They had received extremely positive feedback from all those who had visited the site so far.

Mr Palmer offered the following responses to Members questions:

- They had had 5 pallets of trees delivered in the first instance which had equated to 500 trees. Based on current trends and experience they would not sell the full 500 and would likely have to take trees away. There would, therefore, be no further deliveries by crane.
- They used no noisy machinery just simply sliced off the bottom of the tree with a handsaw.
- There were 2 site managers on site over night for security. They did not play any music and used low level LED lights which faced inwards and downwards, these were turned off at 9pm every evening.

In the Members debate, they noted the following:

- One Member felt that the public still had substantial space in the park to use and enjoy. They also felt that should you live near a park you should expect a variety of events to take place and interesting events were beneficial to the community. They did, however, feel that there was an issue of competition given that other established traders were also selling Christmas trees in the area.
- One Member felt that the £2625 paid by Tree Amigos was a sizeable contribution to the park and would considerably help the incredible work that Friends of Pittville already did in maintaining the space.

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- Members noted a similar situation whereby a licence was required for the picnic in the park event. They reasoned however that the scale of Tree Amigos was considerably smaller and not taking place over a bank holiday weekend as picnic in the park had been.
- Members were alarmed that the land use agreement had been signed before the local ward councillors had been made aware of the event.
- One Member felt that a lot of the objector's comments were invalid, although they did agree with their concerns regarding the highways, although this did not appear to be a big issue considering the number of trees they had sold thus far. They also felt that the park was for all of the Cheltenham residents to enjoy, not just those who resided in Pittville.
- One Member's main concerns were around the parking and the light pollution in the evenings, they explained that they would be more comfortable if the opening hours were reduced so it closed at 7/8pm.
- One Member reasoned that the park was situated close to a busy road which generated a considerable amount of noise anyway, they felt that any noise as a result of Tree Amigos would be drowned out by the road in any event..
- Members agreed that Members concerns regarding the lack of consultation on land use agreements were valid, however, they had no reason to turn the application down on licensing grounds.
- One Member felt that there were no other fixed locations in the immediate vicinity that were selling Christmas trees and so there were no issues with competition. They also agreed with their colleagues previous comment regarding the noise from the nearby A road. They felt that the site looked reasonable and posed no risk to public safety. It therefore did not conflict with the licensing policy and they could see no reason for objecting to the application.

The Members proceeded to debate the opening hours and the possibility of amending them. Mr Palmer explained that he would be willing to amend the opening hours if it would satisfy Members. Following a discussion, one Member wished to formally propose amending the opening hours so the site closed at 8pm every day and opened at 9:30am on a Sunday. The Legal Officer reminded Members that should they be minded to amend the opening hours Mr Palmer could still charge an entry fee and open at the originally requested times. Some Members felt that there was a commercial benefit to having the same opening hours each day to save confusion for customers and reasoned that simply changing the hours wouldn't rectify residents' concerns.

In his final right of reply, Mr Palmer explained that:

- Due to the nature of the event, there were no real issues with parking as the event was spread across 3 weeks and so there was never a large influx of customers. They had the same event in London with twice as many customers and never had any issues with parking there;
- He sympathised with residents, however, felt that they had kept noise and light pollution to a minimum;
- He felt that they provided a nice environment to purchase a tree and reasoned that not many used the park in December anyway.

The Members proceeded to vote on whether to vary the opening hours to close at 8pm every day and open at 09:30am on a Sunday.

Upon a vote it was 2 in favour and 7 against.

Resolved That

The opening hours remain as applied for.

The Members had a short discussion regarding the conditions suggested by Environmental Health and agreed they were happy with them apart from the condition regarding site deliveries. They agreed that instead of requiring deliveries to be between 9am-5pm, the timings of deliveries should first be agreed with the Greenspace Team.

The Members voted on section 1.5.1 of the report to approve the application subject to the conditions suggested by Environmental Health because Members are satisfied that the location is suitable

Upon a vote it was 7 in favour, 1 against and 1 abstention

Resolved That

The application be approved because Members are satisfied that the location is suitable.

B MEETING CONDUCT

A Member wished to discuss the conduct of meetings and suggested the procedure be altered so that the applicant/licensee be given the final right of reply after Members have debated the application. The Licensing Officer confirmed that it was within the committee's remit to amend the procedure if they so wished. Following a discussion, the committee agreed that it was fair that the applicant had the final right of reply before the committee went to vote and once they had heard the debate.

One Member objected to declarations of site visits being declared at the start of the meeting as they felt this was misleading to the public if Members had conducted site visits but had not declared it. Following a discussion, Members agreed that there was an expectation that all Members conducted site visits prior to the meeting and didn't feel it was necessary to declare it.

C-COMMITTEE STRUCTURE

One Member wished to discuss the possibility of returning back to the previous committee structure which saw the full licensing committee deal with the majority of matters and then draw upon 3 Members from the full committee to deal purely with Alcohol and Gambling. They noted that the 5 Members who sat on the miscellaneous sub-committee got a great deal of exposure to cases which helped develop their skills as a Councillor whilst the other 5 Members rarely got called upon. They also felt that it was important that the Alcohol and Gambling committee was politically balanced.

Some Members felt that it wasn't rational for the full committee of 10 Members to meet to deal with minor applications and that was why the sub-committees

had been established. Some Members agreed that the current system of picking Members was unsatisfactory and suggested that instead of Members being picked on a first come first serve basis it be rotated.

It was agreed that further discussions needed to be had on the matter and a report formally brought before the committee to consider.

D STREET TRADER

The Licensing Officer informed the committee that there was an issue with a street trader on the high street which the committee needed to make a decision on. They explained that hoarding had been erected on the premises next to John Lewis which coupled with the street trader in that vicinity, had blocked the line of site to New Look.

Whilst the hoarding was a matter for Gloucestershire County Council they needed to make a decision on the street trader.

He explained that they had already requested the street trader move 6 inches to improve the line of site to New Look and whilst he had been sympathetic to the issue he felt it would be too inconvenient to move and so had refused. The Licensing Officer advised that under delegated powers the Director of Environment had the authority to vary the consent of the licence to force the street trader to move.

One Member felt that New Look were seriously disadvantaged and proposed that they call the street trader before the committee and revoke their licence. They felt that it was important that the Council sent out a strong message to local traders that they were on their side. Following a discussion, the committee agreed that the best course of action would be to allow officers to vary the consent and inform the street trader that if they did not comply their licence would be revoked.

9. DATE OF NEXT MEETING

6th March 2019

David Willingham
Chairman

Licensing Sub-Committee - Miscellaneous

**Wednesday, 2nd January, 2019
6.00 - 7.10 pm**

Attendees	
Councillors:	David Willingham (Chair), Mike Collins, Simon Wheeler, Tim Harman (Reserve) and Roger Whyborn (Reserve)
Also in attendance:	Louis Krog and Vikki Fennell

Minutes

1. APOLOGIES

Apologies were received from Councillor Seacome and Parsons. Councillor Whyborn and Harman were in attendance as substitutes.

The Chair wished to put on record his thanks to Louis Krog, Beverly Thomas and Yvonne Hope for their assistance in dealing with the urgent matter that had come before the committee over the Christmas break.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC AND MEMBER QUESTIONS

A Member question had been received from Councillor Wilkinson, as Councillor Wilkinson was not in attendance the answer was taken as read.

4. REVIEW OF STREET TRADING CONSENT

Mr Morris explained that he had only received the meeting papers that day, he was, however, happy for the committee to proceed as he wished to resolve the matter as quickly as possible.

The Licensing Team Leader proceeded to introduce the report. He advised that Mr Morris was granted a 12 month renewal of his street trading consent in October 2018. However, on the 20th of November 2018 the council had received a complaint that Mr Morris was exceeding his permitted pitch size. The complaint was accompanied by a picture showing the infringement. He advised that a number of the objectors to the renewal application referenced the perceived lack of enforcement by the council for breaches of the terms of the consent. Therefore, in light of the sensitivities around the trading location and in the interest of fairness and transparency, officers, in consultation with the chair and vice-chair of the Miscellaneous Licensing Sub-Committee had decided it would be appropriate to refer the matter to the sub-committee for consideration. He reminded Members that that they were not here to review the suitability of the location but consider the suitability of the trader to comply with the restrictions and terms of his consent. He further advised that 17 representations

had been received in support of Mr Morris and these were passed around to the sub-committee.

The Licensing Team Leader offered the following responses to Members questions:

- The complaint had come from one of the businesses in the immediate vicinity to the stall;
- The complainant had not stipulated the length of the breach, the only evidence they had of the breach was from the picture taken;
- He confirmed that there should be 3 metres clear on either side of the stall. The complaint referred to the boxes which had been placed by the kerbside;
- He was unaware of what time the photo had been taken but would suspect it was near closing time, which Mr Morris confirmed was around 16:45;
- None of the Council's street trading pitches were physically demarcated. He advised that this was outside of CBC's remit and if the committee were minded to recommend this a formal request it would need to put it to Gloucestershire County Council.

Mr Morris was invited to speak, he noted the following:

- He was certain that the complaint had been received from a named retail premises adjacent to his stall and felt it was unreasonable given that the named retail premises adjacent to his stall had scaffolding erected outside of their store for 3 months yet he had not complained;
- He informed the sub-committee that the named retail premises adjacent to his stall had also placed pot plants outside of their premises and passed around an image for the committee to see, this now made it difficult to leave a clear 3 metres either side;
- The picture that had been received from the complainant had been taken at closing time when they were taking the stall down, he explained that leniency was necessary at these times in order for objects to be collected;
- No complaints had been received from members of the public about the stall in 14 years;
- He regularly measured the stall with a tape measure to ensure they were not breaching their licence;
- He felt studs to demarcate the space would be helpful to both staff and local businesses.
- Following a Members question, he advised that the breach had likely been for around 10-15 minutes until the van picked up the boxes.

Councillor Mason spoke in support of Mr Morris, he reiterated Mr Morris's comments and felt saddened that it had come to this point. It was clear that the photograph had been taken at the time of packing and unpacking and he felt there needed to be some leeway during these times.

In the Members debate that followed, the following points were made:

- Members agreed that the breach was not a serious offence and were satisfied that members of the public could pass safely, as such there was no public interest in taking the matter forward;
- Whilst some felt that demarcating the pitches would be sensible, this could set a precedent for future applications and could potentially be expensive

and damaging to the paving. The Chair explained that there were innovative ways of demarcating the space i.e. with street art or jet washing the pavement and felt that further discussions should be had with GCC;

- The Licensing Team Leader agreed to investigate the pot plants which had been erected outside the named retail premises adjacent to his stall;
- One Member felt that the pictures were taken at an opportune moment and could easily misrepresent the situation.
- One Member noted that historically the size of the pitch had actually been reduced to make Regent Arcade more visible. They felt it was important that a discussion was had between the licensing committee and the complainants to discuss the rationale behind the size of the pitch;
- Members agreed that they were disappointed the case had come before the committee and were concerned about the relationship between the businesses and street traders and lack of community cohesion;
- The Licensing Team Leader advised that it was possible to vary the consent if an application was made, this could potentially give Mr Morris more space at times when he is likely to breach the current consent i.e. Christmas and Valentine's Day;
- Whilst they felt it was important enforcement action was taken when there were clear breaches of the consent, they did not see that as the case here. Members did however, appeal to Mr Morris to remain within his allocated pitch as far as possible;

In his final right of reply, Mr Morris explained that he was keen to work with local businesses, he thanked Members for their time and confirmed that he would try, as best as possible, to remain within the allocated space.

Members proceeded to vote on section 1.5 of the report to resolve to take no action in relation to the complaint

Upon a vote it was unanimously for.

RESOLVED THAT

No action be taken in relation to the complaint.

The Chair advised that the street trading policy was subject to a review and due to come before the full licencing committee in March. As part of this review, they could look at the potential to demarcate the pitches. He also reiterated the importance of a conversation between the BID, local businesses and street traders to improve community cohesion. The Licensing Team Leader confirmed that a draft street trading policy would come before the full licensing committee in March and Members would have the opportunity to input in to this. Subject to this, the policy would go to Cabinet before the formal consultation process would take place.

5. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

The Chair advised that an urgent confidential matter concerning a Hackney Carriage Driver needed to be determined by the sub-committee.

LOCAL GOVERNMENT ACT 1972 -EXEMPT INFORMATION

RESOLVED THAT

In accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 3, Part (1) Schedule (12A) Local Government Act 1972, namely:

Information relating to any individual,

Information which is likely to reveal the identity of an individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Following a debate, Members were invited to vote upon section 1.6.1 of the report to:

Resolve to lift the Hackney Carriage driver's licence suspension as the committee is satisfied that they are a fit and proper person to hold such a licence.

Upon a vote, it was unanimously against

Members then voted on section 1.6.2 to:

Resolve to revoke the Hackney Carriage driver's licence because the committee do not consider them to be a fit and proper person to hold such a licence.

Upon a vote it was unanimously for

Members then voted on section 1.6.3 to:

Revoke the Hackney Carriage driver's licence with immediate effect if it appears to the committee to be necessary in the interest of public safety pursuant to section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.

Upon a vote it was unanimously for

Resolved That

The Hackney Carriage driver's licence be revoked with immediate effect as the Committee no longer considers them a fit and proper person to hold such a licence

David Willingham
Chairman

Licensing Sub Committee-Alcohol and Gambling

Monday, 4th February, 2019

2.00 – 2.35 pm

Attendees	
Councillors:	Diggory Seacome (Chair), Roger Whyborn, Dennis Parsons
Also in attendance:	Louis Krog (Licensing Officer), Vikki Fennell (Legal Officer) Mr Ali Ansar (applicant)

Minutes

1. ELECTION OF CHAIR

The sub-committee elected Councillor Seacome as Chair.

2. APOLOGIES

There were none.

3. DECLARATIONS OF INTEREST

There were none.

4. MINUTES OF THE LAST MEETING

These were accepted and signed as a true record, without amendment.

5. DETERMINATION OF APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE: INDIA LOUNGE, SUFFOLK PARADE

Officer Introduction

The Licensing Officer stated that the purpose of the meeting was to determine an application to transfer the premises licence for India Lounge to Mr Ali Ansar. An objection has been received from the Home Office, as responsible authority in relation to the application, for the following reason: in August 2016, the premises licence for the Indian Voojan, of which Mr Ansar is the licence holder, was subject to a review following an application submitted by Gloucestershire Constabulary, as a response to Home Office enforcement staff finding four illegal workers on the premises. As a result, the premises licence for Indian Voojan was suspended for four weeks, and a fine was imposed, £13,978.80 of which remains outstanding.

As set out at Para. 5.7 of the report, the prevention of crime includes the prevention of immigration crime, one element of which is the prevention of illegal working in licensed premises. The sub-committee is under a statutory duty to determine this application with a view to promoting the licensing objectives; the guidance identifies immigration-related offences as relevant to the 'prevention of crime and disorder' objective.

The sub-committee must determine the application on its individual merits, with regard to statutory guidance, the council's licensing policy and representations received. They can consider:

- Granting the application as requested;
- Modifying the conditions attached to the licence; or
- Refusing the application.

At this stage, neither the members nor the applicant had any questions for the licensing officer, so Councillor Seacome invited Mr Ansar to state his case.

The applicant

Mr Ansar said he learnt a big lesson from his experience at Indian Voojan in 2016. Since then, he has put a lot of measures in place to ensure he doesn't make the same mistake again, following advice on the Home Office website to check closely the papers of potential staff and make sure that they have the legal right to work in the UK. He has recently taken on two new members of staff, and can provide proof of the measures he has taken.

Member questions to the applicant

Mr Ansar gave the following responses to Members' initial questions:

- He has just become a co-director of India Lounge, which is why he has applied to take on the premises licence;
- He is paying the fine for employing illegal workers in monthly installments of £700 month; he has never missed a payment; he has £13, 978.80 still to pay;
- To explain the company structure arrangements around the group of restaurants, the Indian Voojan is his, opened in 2008; Mr Mannan (current licence holder at India Lounge) helped him acquire a second business, Soho Bar in Montpellier. Now he is looking to take on India Lounge. He has some interest in the buildings of other restaurants, such as Prima Vera, but not in the businesses themselves;
- His three businesses – Indian Voojan, Soho Bar, and India Lounge – are all independent entities, with no ties and with separate accounts;
- He is the sole shareholder for India Voojan; Mr Mannan has 15% shareholding of Soho Bar;
- He is DPS at all three premises, and also currently at the Montpellier Bar and Grill, though this business has recently been taken over by Mr Mannan. He lives in Montpellier, with flats above two of the restaurants and just a few minutes' away from the others, but no longer has any business interest in the Montpellier Bar and Grill so can apply to remove his name as DPS for that restaurant.

Councillor Whyborn expressed collective concern about how many premises can share one DPS, and whether this application can be conditioned on the number and spread of Mr Ansar's DPS situation. The licensing officer confirmed that the DPS is generally the manager of a venue, is expected to be regularly on site and involved in the daily running of the venue, generally in control and ensuring that the premises are managed in a responsible, lawful way. The authority wouldn't expect an individual to be DPS of more than 2-3 premises at once. At present, Mr Ansar has an interest in up to four businesses, but only holds three licences; Mr Mannan is currently DPS at India Lounge. The consideration today is just whether Mr Ansar is able to take over the licence of India Lounge in line with the crime and disorder objective.

Councillor Whyborn noted the DPS situation – that Mr Ansar will not be DPS at India Lounge – but wanted this noted so that it may be referred to at a later date, should Mr Ansar apply to become the DPS at that venue.

Councillor Whyborn then turned to the issue of the outstanding fine of £13,978.80, which Mr Ansar has stated that he is paying off at £700 a month. He suggested that if colleagues are minded to grant the transfer, they should see evidence of payments to date, and of payments going forward to clear the arrears in a timely way. Non-payment of a civil penalty is a serious consideration, and such evidence would influence his decision whether to grant or not.

Councillor Seacome felt that this was irrelevant to this particular application, but asked Mr Ansar for further details. Mr Ansar confirmed that the original fine was £20-25,000, and the monthly payments started at a later date. He can provide evidence of payments to date.

Councillor Parsons said it is clear there are arrears to pay, and desirable that monthly payments continue, but this does not need to be taken into account. The licence was suspended for four weeks and a fine imposed; it would be indefensible to refuse this application two years later as further punishment. Councillor Whyborn said the representation from the Home Office states that £13,978.80 remains unpaid. If this large fine is not paid, the applicant would not be considered a law-abiding citizen; if it is being paid, as Mr Ansar has stated, is happy to grant the licence, but wants to see the evidence.

The legal officer said that the Home Office gave the figures to show the outstanding debt, but the main issue now is making sure that Mr Ansar has policies and procedures in place when taking on new staff, to ensure that they are legally entitled to work in the UK. The outstanding debt is not relevant in what we are considering today.

Councillor Seacome considered all issues had been covered and invited Mr Ansar to respond.

Applicant's summing-up

Mr Ansar repeated that he had learnt a lot from the experience of 2016 regarding employment of illegal workers, and while employing staff from different ethnic backgrounds who move from other towns and cities to work in Cheltenham can be difficult, he is ensuring that proper procedures are now in place and that previous mistakes will not happen again. He now uses the Home Office checklist, and can email or call the helpline if in any doubt about a person's entitlement to work in the UK.

Members' summing-up

Councillor Whyborn said that although he is minded to support, he will abstain, in the absence of evidence to support Mr Ansar's assurance that he is clearing his debt to the Home Office. The legal officer said that this is acceptable; in the event of one Member voting to grant and the other voting not to, the Chairman will have the casting vote.

Vote on transfer of premises licence of India Lounge to Mr Ali Ansar

2 in support

0 in objection

1 abstention

Transfer of premises licence approved

In view of the earlier advice from the licensing officer that one individual should not hold the position of DPS at more than 2-3 premises, the legal officer advised Mr Ansar to remove himself as DPS from the Montpellier Bar. Mr Ansar stated that he would do this as soon as possible.

6. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

There were none.

Cheltenham Borough Council

Licensing Committee – 06 March 2019

Highways Act 1980 Part VIIa Local Government (Miscellaneous Provisions) Act 1982

Application for permission to place an object on the Highway – ‘A’ Board

Miss Casey Mann - 18/02791/OBJAX

Report of the Licensing Officer

1. Executive Summary

1.1 Miss Casey Mann based at Bakers Fine Jewellery, Cheltenham, has made an application to place an advertising board outside 15 Montpellier Walk, Cheltenham GL50 1SD. The dimensions of the proposed advertising board are 1050mm (w) x 1270mm (h).

1.2 It is intended that the ‘A’ board be displayed;

Monday	08:45 - 17:30
Tuesday	08:45 - 17:30
Wednesday	08:45 - 17:30
Thursday	08:45 - 17:30
Friday	08:45 - 17:30
Saturday	09:00 - 17:30
Sunday	None

1.3 The Committee are minded to note that the size of the advertising board does not comply with the standard sizes recommended in the council’s policy.

1.4 A picture of the proposed structure is attached at **Appendix A**.

1.5 The width of footpath available is 3.5m.

1.6 A plan of the proposed location is attached at **Appendix B**.

1.7 **The Committee can:**

1.7.1 **Approve the application because Members are satisfied that the location is suitable, or**

1.7.2 **Refuse the application because it does not comply with the provision of the Street Scene policy.**

1.8 **Summary of implications**

Legal No right of appeal.

Contact officer: One Legal
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Tel no: 01684 272693

2. Introduction

2.1 Responsibility for this aspect of highways enforcement has transferred from the highways agency to the borough council.

3. Policy Principles, Aims & Objectives

3.1 All new applications for 'A' boards/display stands are considered by the Licensing Committee.

3.2 Such objects are subject to a maximum width of 844mm (32") in any one direction and a maximum height of 1100mm (43") and must be of a colour, design, finish and materials which are of a high standard appropriate to the conservation area.

3.3 Cheltenham Borough Council's policy on measures to control street scene activities states the following in relation to A-boards: "In setting the policy principles relating to 'A' boards, the Council seeks to strike a balanced approach between promoting the Council's priorities, in particular strengthening the borough's economy by assisting and promoting local businesses, but at the same time ensuring free passage along footpaths and maintaining the visual street environment by the controlled use of 'A' boards in the streets. To this end the Council will permit one 'A' board per premises subject to that premises meeting all of the conditions stipulated below."

3.3 Cheltenham Borough Council's Outdoor Advertising Protocol states:

"No 'A' board will be approved within Conservation Areas except in the following circumstances, having regard to the position and location of the premises:

- (a) Where those premises are located at basement or first floor level i.e. the premises has no shop-front at street level;
- (b) The premises are situated along a side alleyway and / or on private land which is not a public thoroughfare / right of way."

3.4 Permission to place an A-board on the highway is subject to the following standard conditions:

Conditions of Consent

- (a) A minimum of 1.8 metres of footway remains along the line of the board between the edge of the object and either the kerb or other highway boundary.
- (b) Where there are existing consents in place in the vicinity of the application, there must be a minimum distance of 4 metres (either way) between 'A' boards.
- (c) The size of the 'A' board does not exceed 1100mm (43") in height (inc feet) and 844mm (32") in width.
- (d) The 'A' board is placed directly outside the premises, immediately adjacent to the front of the premises or in the case of premises that do not have a street frontage, immediately adjacent to the entrance to the premises.
- (e) The 'A' board must not contain any visual or written material that could be construed as inappropriate or offensive. *(Any breach of this condition will result in the immediate removal of any such signs.)*
- (f) The 'A' board must not cause an obstruction to access by emergency or service vehicles.

- (g) The 'A' board must not interfere with sight lines for any road users. *(For example 'A' boards placed on street corners, central reservations, roundabouts, pedestrian safety refuges and junctions, or pedestrian crossing facilities.)*
- (h) The 'A' board must be sufficiently weighed down to avoid falling over. *(It will not be sufficient that 'A' board is attached to fixed structures. The applicant must be able to demonstrate that the 'A' board has been sufficiently weighed down and the Council reserves the right to inspect the 'A' board prior to issuing a consent.)*
- (i) The 'A' board must relate to the trade of the premises.
- (j) The 'A' board must be constructed in such a way that it does not have any moving parts *(i.e. rotating or swinging 'A' boards).*
- (k) The object does not obstruct the safe passage of users of the footway or carriageway in any other way not mentioned above.

4. Consultee Comments

- 4.1 No objections or comments were received from consultees.

5. Licensing Comments

- 5.1 The committee must determine the application with a view to promoting the Council's adopted policy.
- 5.2 This report has been brought to members' attention as prescribed in the scheme of delegation set out in the adopted policy, whereby all applications for A-boards which do not comply with the policy requirements are referred to the Licensing Committee for determination..
- 5.3 Miss Mann has been sent a copy of this report, invited to attend the meeting and advised that she may be represented if she so chooses.
- 5.4 The application does not comply with the policy requirements in that the premises has direct street frontage on Montpellier Walk. The location is in the conservation area.
- 5.5 The application does not comply with the policy requirements in that the height (1270mm) and width (1050mm) of the A-board both exceed the maximum permitted dimensions set out in the adopted policy (respectively 1100mm and 844mm).
- 5.6 This application must be determined on individual merits taking into account the information received and in accordance with the Council's current adopted policy with respect to objects being placed on the highway.
- 5.7 Whilst the policy and officer recommendation should not fetter the committee's discretion, the committee should only depart from the policy where there are clear and defensible reasons for doing so.

6. Officer recommendation

- 6.1 The officer recommendation is that this application be refused

Reason(s): The application does not comply with the adopted policy in the following respects:

- (1) Its size exceeds the maximum permitted dimensions;
- (2) The Council's Outdoor Advertising Protocol permits the use of A-boards in the conservation area only where premises are disadvantaged due to their location, for example where they have no shop front at street level, or where they are positioned in a side alleyway or away from a public thoroughfare. In this case, the premises benefit from street-level shop frontage on Montpellier Walk, and are therefore not disadvantaged by their location.

Background Papers

Service Records

Case Officer

Contact officer: Mr Phillip Bowen
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Tel no: 01242 775200

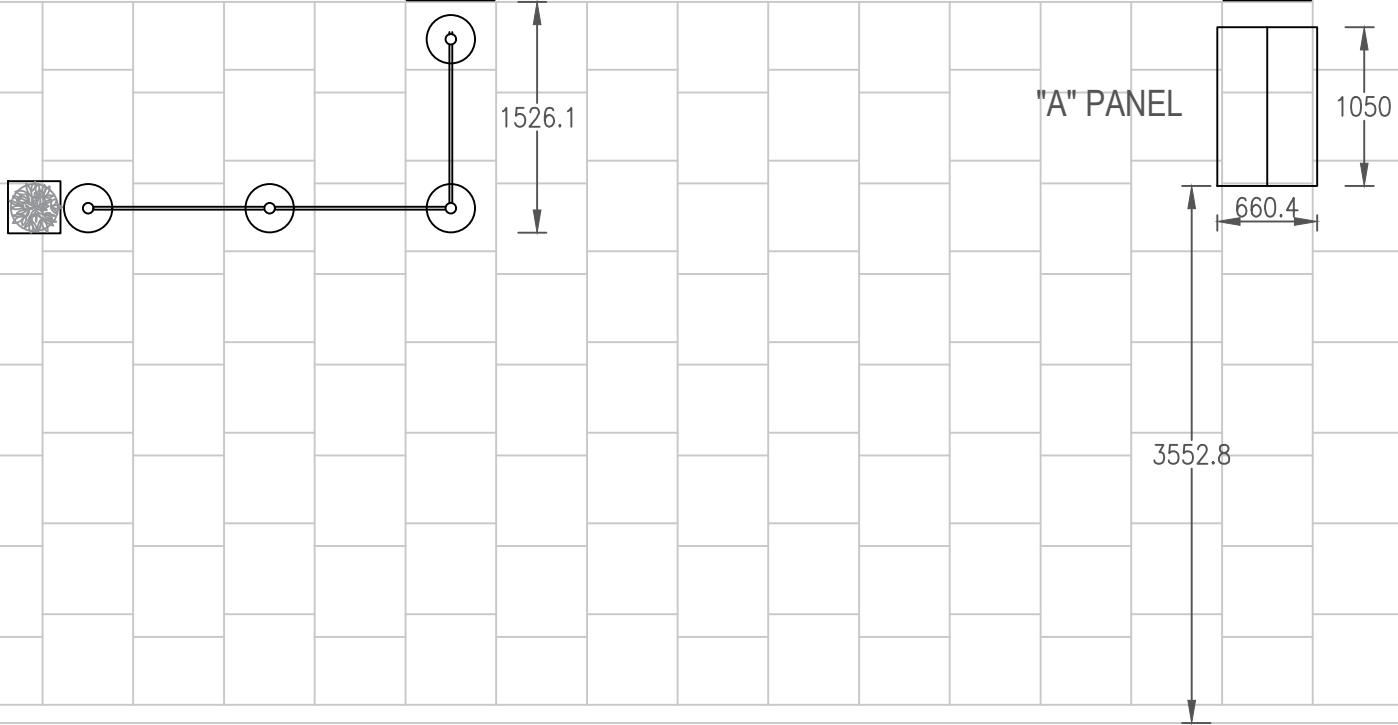


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NEIGHBOURING PROPERTY

BAKERS FINE JEWELLERY

NEIGHBOURING PROPERTY



MONTPELLIER WALK

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Cheltenham Borough Council

Licensing Committee – 6 March 2019

Make-up of Licensing Committee

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 In 2016 Council passed a resolution directing officers, in consultation with the Licensing Committee, to carry out a review of the committee's structure and meeting arrangements.
- 1.2 On 12 April 2017 the Licensing Committee approved a revised committee structure to become effective from September 2017.
- 1.3 Under the Licensing Committee's revised structure, two sub-committees, each of five members, were established to discharge the committee's substantive business such as individual applications, reviews and other relevant matters. The full committee meets quarterly, acting as consultee to Cabinet / Lead Member on policy matters, establishing sub-committees and dealing with relevant briefings, training, updates and policies and reviewing performance.
- 1.4 The intention was that the membership of the sub-committees would rotate on an annual basis to maintain competency, experience and balance attendance requirements.
- 1.5 A request for a review of the revised structure has been made. The purpose of this report therefore is to give the full committee an opportunity to consider and debate the request for a review.
- 1.6 The Committee can:**
- 1.6.1 Resolve to keep the current structure (as outlined in 1.3); or**
- 1.6.2 Resolve to change the current structure either reverting back to the previous structure (see 2.1) or to another structure as agreed by the committee.**

1.3 Implications

- 1.3.1 Legal

Contact officer: One Legal
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Tel no: 01684 272015

2. Background

- 2.1 Prior to 12 April 2017, the Licensing Committee operated as one full politically balanced committee consisting of 10 Members. The full Licensing Committee was responsible for discharging the council's licensing function with one ad-hoc sub-committee being responsible for Licensing Act applications.

3. Rationale for 2017 review

- 3.1 **Proportionality** – The structure sought to balance, in a more proportionate way, the work priorities of the Licensing Committee.

- 3.2 **Member development & resilience** – The old structure and means of operation resulted in gaps in Members’ skills and knowledge. Some Members have gained more experience in specific areas of licensing and chairing committees as a result of the current meeting arrangements.
- 3.3 This in turn has, at times, caused difficulties with finding suitable experienced Members to sit on and/or chair committees.
- 3.4 **Accountability and transparency** – Beyond reactively determining applications, the Licensing Committee did not operate in a proactive way. This is primarily because the committee’s old setup and reactive workload left it with very little scope to be proactive in terms of, for example, policy development, strategic and operational scrutiny and quality training.
- 3.5 Through dividing the workload and responsibility each sub-committee would have more scope and opportunity to be more focussed and proactive but always under the oversight of the full committee.
- 3.6 **Place shaping** – The Licensing Committee has a recognised role to play in place shaping and economic development in the town particularly through its influence and implementation of local policy. The role will become increasingly important and significant as it supports the Place and Economic Development’s commercial transformation work and the emerging place strategy.
- 3.7 The committee review and subsequent proposal will also assist the Licensing Committee to operate more effectively in this capacity because the current issues identified above (3.1.3) could be overcome under the proposed new structure.

4. Constitution

- 4.1 Under part 3E of the council’s constitution, the licensing committee can decide whether to establish sub-committees.
- 4.2 As such, it is within the committee’s remit to (re)organise itself without the need to make changes to the constitution or refer the matter to Council.

Background Papers

Service Records

Report Author

Contact officer: Louis Krog
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Tel no: 01242 262626

Briefing Notes

Committee name: Licensing Committee

Date: 6 March 2019

Responsible officer: Louis Krog

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

Review of performance: Licensing Section

The briefing paper seeks to provide the Licensing Committee with a performance review of the Licensing Section in 2018. It requires no decision making by the committee but does give the committee an opportunity to comment and scrutinise the department's performance as outlined in this briefing note.

Key Performance Indicators

The section's performance is attached at appendix 1 of this briefing note.

Modernisation and commercialisation work

The licensing section has been actively contributing to the corporate modernisation and commercialisation transformation work during 2018.

Highlights of this include:

1. Digital transformation work that has resulted in the vast majority of licensing applications now being submitted and processed electronically.
2. End to end processing times reduced by as much as 60%
3. Substantial cost savings to the council
4. Invited to speak about CBC transformation work at IoL and LGA conferences

The Licensing section's contribution has been recognised in the corporate Modernisation Programme Case for Change: *"Another great example of how modernisation can improve services whilst achieving savings is shown in the recently published Licensing case study, where approximately £93,000 of savings has been realised from this invest to save transformation programme within Place and Growth."*

An infographic of the section's modernisation and commercialisation work's outcomes is attached at Appendix 2 of this briefing note.

Policy reviews

The following policies were due to review in 2018:

- Street scene activities
- Street trading
- Taxi and private hire
- Sexual Entertainment
- Gambling policy statement

Not all the policies due for review have been initiated to date due to officer resource constraints.

A review of the following policies is in progress or has been completed:

- Street trading – review in progress
- Taxi and private hire – Adopted and being implemented
- Gambling policy statement – Adopted and being implemented

It is proposed that, subject to resource availability, the following policy reviews will be initiated in 2019:

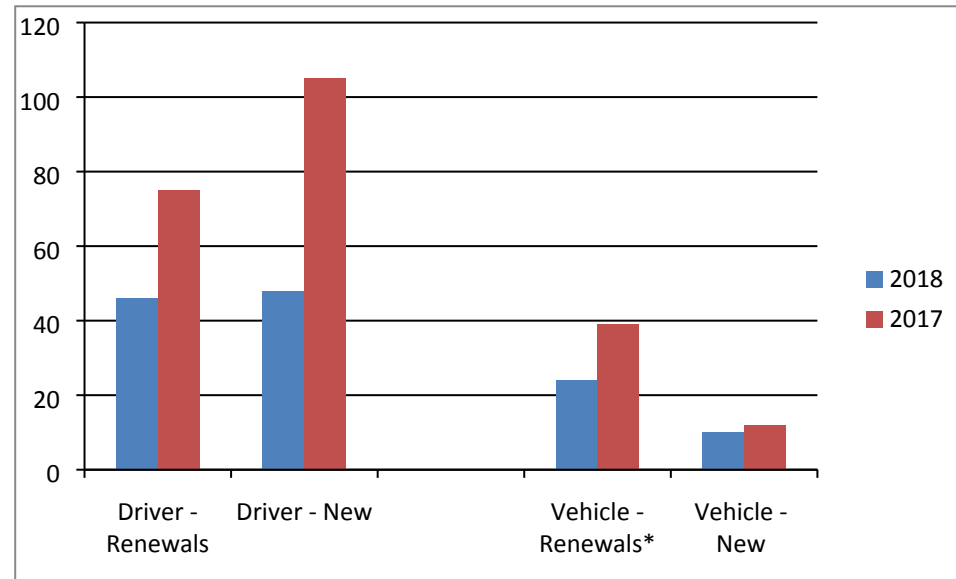
- Street scene activities
- Sexual entertainment

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Appendix 1 - Key Performance Indicators

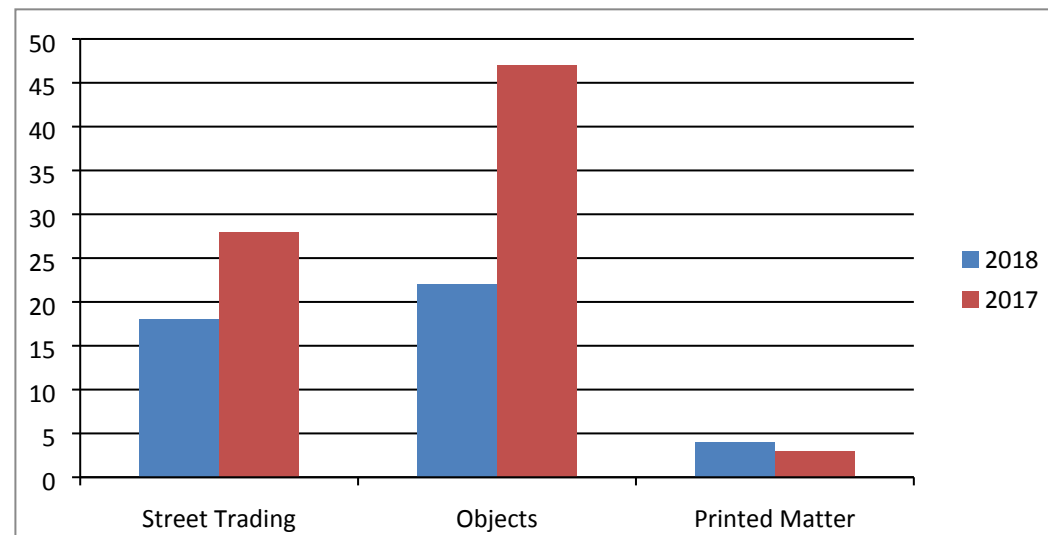
Taxi/PH licensing

	2018	2017
Driver - Renewals	46	75
Driver - New	48	105
Vehicle - Renewals*	24	39
Vehicle - New	10	12



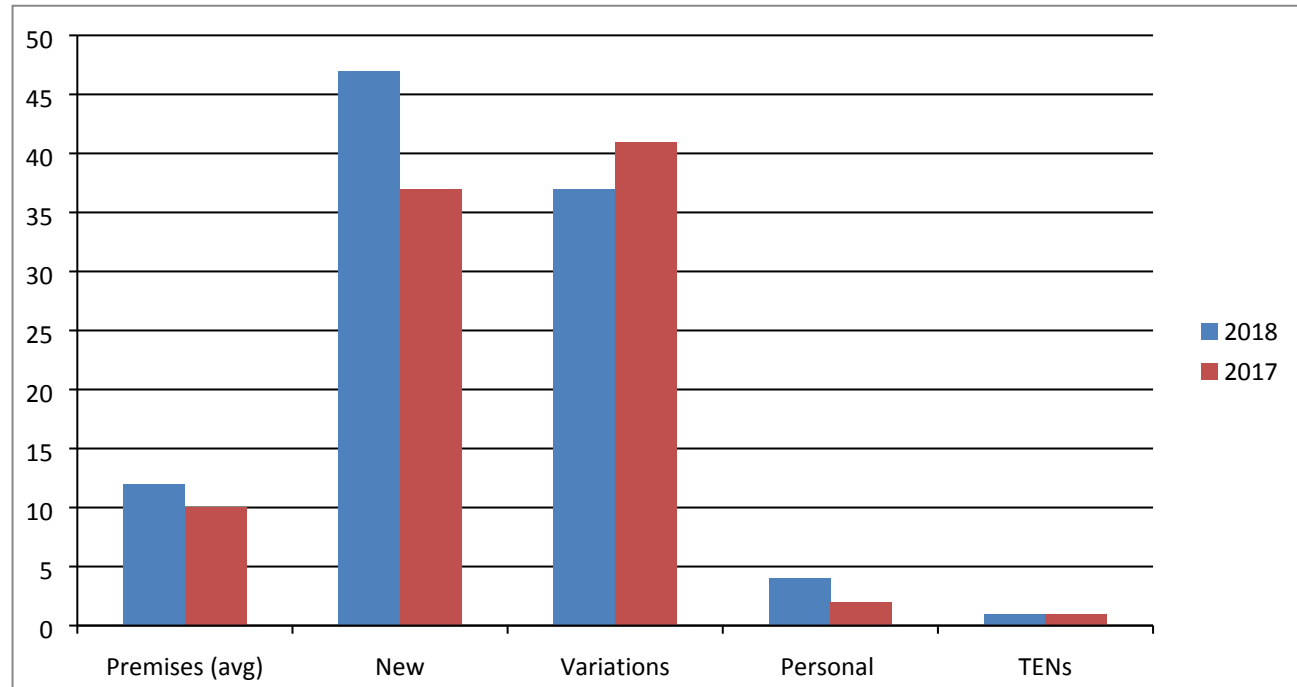
Miscellaneous Licensing

	2018	2017
Street Trading	18	28
Objects	22	47
Printed Matter	4	3



Alcohol Licensing

	2018	2017
Premises (avg)	12	10
New	47	37
Variations	37	41
Personal	4	2
TENs	1	1



A LICENCE TO THRIVE

January to March 2017

Back office
process review



March to April 2017

Launch new back
office processes



Nov 2017 to Jan 2018

Procurement
process



March 2017

LGA funding
approved



Nov 2017 to Jan 2018

Stakeholder
engagement



Nov 2018 to Mar 2018

Project
implementation



September 2018

Alcohol Licencing
online forms launch



March 2018

Taxi/Private hire online
forms launch



November 2018

Street Trading online
forms launch



November 2018

LGA #Digital
Showcase



February 2019

Enter MJ
Awards



November 2018

Institute of Licencing
National Conference



February 2019

LGA National
Licencing Conference



June 2019

Fingers crossed for
MJ Awards!



The Difference Made



1 Robust Business Case



23 industry representatives support the UAT process



LGA Funding

£15k



Overall savings

£93k



Legacy processes

£40k



Payment processing

£6k



Paperwork

£15k



64 Funding Bids received by LGA, only **23** successful



Success and learning shared with **23** LAs and counting



Public Facing

£156hrs



Channel Shift

100%



Commercial Activity

+£4-5k



End to End Times

+71%

View from the LGA

“An excellent effort by Cheltenham Borough Council whose investment has resulted not only in a substantial financial saving but also delivered a digital platform that has improved customer access to licensing services and significantly reduced processing times”

Siobhan Coughlan
Programme Manager at the LGA



Cheltenham Borough Council

Licensing Committee – 6 March 2019

Taxi and private hire vehicle licensing - protecting users: statutory guidance for licensing authorities - Consultation

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 On the 12th of February, the Department for Transport launched a consultation on proposed statutory guidance for licensing authorities on taxi and private hire vehicle licensing.
- 1.2 The proposed statutory guidance is currently being consulted on by the DfT. Since the Licensing Committee has formal responsibility in discharging the council's licensing functions, it is appropriate that the Committee be given an opportunity to review and respond to the proposed statutory guidance.
- 1.3 A copy of the proposed statutory guidance is attached at Appendix 1 of this report.

1.4 The Committee is recommended to:

- 1.4.1 Note the proposed statutory guidance;
- 1.4.2 Submit any comments it has in relation to the consultation on proposed statutory guidance; and
- 1.4.3 Delegate authority to the Licensing Team Leader to submit the Committee's response, along with any other officer response, to the Department for Transport prior to the consultation deadline.

1.6 Implications

- 1.6.1 Legal The Licensing Committee is delegated authority under the constitution to act as consultee to Cabinet or Lead Member on recommendations and responses for, amongst other things, the review of licensing policy and national licensing policy.

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Background Papers

Service Records

Report Author

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Taxi and Private Hire Vehicle Licensing: Protecting Users

Statutory Guidance for Licensing Authorities

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1. Introduction

- 1.1 The Department first issued Best Practice Guidance to assist those licensing authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades in 2006. Following consultation with stakeholders, taking into account their feedback on the original version, the Guidance was revised and updated in 2010.
- 1.2 There is evidence to support the view that taxis and PHVs are a high-risk environment. In terms of risks to passengers, this can be seen in the number of sexual crimes reported which involve taxi and PHV drivers. Data from Greater Manchester¹ and Merseyside² on reported sexual assaults suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83% in the Crime Survey for England and Wales³.
- 1.3 The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue Statutory Guidance on exercising taxi and PHV licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this guidance, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the Care Act 2014⁴, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
 - (b) is experiencing, or is at risk of, abuse or neglect, and
 - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
- 1.4 There is consensus that common core minimum standards are required to regulate better the taxi and PHV sector, and the recommendations in this document are the result of detailed discussion and consideration. **The Department therefore expects these recommendations to be implemented unless there is compelling local reason not to.**

1 https://www.whatdotheyknow.com/request/sex_attacks_2

2 https://www.whatdotheyknow.com/request/taxi_private_hire_related_rapes#incoming-286178

3 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#main-points>

4 <http://www.legislation.gov.uk/ukpga/2014/23/section/42/enacted>

- 1.5 It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Guidance issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxis and PHVs was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate the sector, this guidance would however cease to apply.
- 1.6 All local authorities and district councils that provide children's and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the *Working Together to Safeguard Children*⁵ statutory guidance.
- 1.7 This new Statutory Guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department's Best Practice Guidance was last updated. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 1.8 This Statutory Guidance replaces relevant sections of the Best Practice Guidance issued by the Department in 2010. A consultation on revised Best Practice Guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be taken forward once the final Statutory Guidance has been issued.

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 guidance and refers to all such vehicles. Taxis are able to be hired immediately by hailing on the street or at a rank.

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV operator and are subject to a 'triple licensing lock' i.e. the operator fulfilling the booking must use vehicles and drivers licensed by the same authority as that which granted its licence. The term **PHV** is used throughout this guidance to refer to all such vehicles.

⁵ <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

2. Statutory Guidance

Consideration of the Statutory Guidance

- 2.1 The Government set out in the Modern Crime Prevention Strategy⁶ the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too.
- 2.2 The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and PHV licensing regimes. Both the Jay⁷ and Casey⁸ reports on CSAE highlighted examples of taxi/PHV drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.
- 2.3 The Casey Report made clear that weak and ineffective arrangements for taxi and PHV licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government Association (LGA), personal safety charities, trade unions and trade bodies, holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the formulation of this Statutory Guidance.
- 2.4 This Statutory Guidance is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).
- 2.5 The Guidance sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions. These functions include developing, implementing and reviewing their taxi and PHV licensing regimes. “Having regard” is more than having a cursory glance at a document before arriving at a preconceived conclusion.
- 2.6 “Having regard” to guidance requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. **Given that this is statutory guidance issued directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these recommendations cannot be overestimated.** It is not a question of box ticking; the recommendations must be considered rigorously and with an open mind.
- 2.7 Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that this Guidance might be drawn upon in any legal

6

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf

7 https://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham

8 <https://www.gov.uk/government/publications/report-of-inspection-of-rotherham-metropolitan-borough-council>

challenge to an authority's practice, and that any failure to adhere to the Guidance without sufficient justification could be detrimental to the authority's defence. **In the interest of transparency however, the Department encourages all licensing authorities to publish their consideration of the recommendations contained in this Guidance and the policies and delivery plans that stem from these. The Department has already undertaken to monitor the effectiveness of the Statutory Guidance in achieving an appropriately high level of standards in taxi and PHV licensing with regard to the protection of passengers.**

- 2.8 This Guidance does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

Licensing policy

- 2.9 The Department encourages licensing authorities to create a cohesive policy document that brings together all their procedures on taxi and PHV licensing. This should include but not be limited to policies on convictions, a 'fit and proper' person test, licence conditions and vehicle standards.
- 2.10 When formulating a taxi and PHV policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the report by Dame Louise Casey CB of February 2015 on safeguarding failings⁹.

"It will be evident from this report that in many cases the activities of perpetrators take place in spheres which are regulated by the Council – taxis have been the focus of particular concern. Persistent and rigorous enforcement of the regulatory functions available to the council, including the placing of conditions on private hire taxi operator licences where appropriate, would send a strong signal that the trade is being monitored and would curtail the activities of opportunistic perpetrators whereby taxi drivers have solicited children to provide sex in return for cigarettes, alcohol or a fare free ride."

- 2.11 The long-term devastation caused by CSAE was summarised in the same report:

"Victims suffer from suicidal feelings and often self-harm. Many become pregnant. Some have to manage the emotional consequences of miscarriages and abortions while others have children that they are unable to parent appropriately. The abuse and violence continues to affect victims into adulthood. Many enter violent and abusive relationships. Many suffer poor mental health and addiction."

9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/401125/46966_Report_of_Inspection_of_Rotherham_WEB.pdf

- 2.12 Rotherham Metropolitan Borough Council ('Rotherham Council') provides an example of how the systematic review of policies and procedures and the implementation of a plan to drive improvements in practice can result in a well-functioning taxi and PHV sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere are well known, but it is the transparency and resolution that Rotherham Council has demonstrated and the high standards they now require that are rebuilding public confidence.
- 2.13 One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. It is therefore recommended that licensing authorities regularly review their licensing policies and their performance, but should also consider interim reviews should there be significant issues arising in their area.

Fit and proper test

- 2.14 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or PHV 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?

- 2.15 If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 2.16 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 2.19 below) 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 therefore include information that goes beyond criminal convictions.

Administration of the licensing framework

- 2.17 A policy is only as effective as the way it is administered. The taxi and PHV 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 where 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.
- 2.18 It is essential that all those involved in the determination of licensing matters have received sufficient training and are adequately resourced to allow them to discharge the function effectively and correctly. The Department for Transport

supports the recommendation of the LGA that, as a minimum, training should cover licensing procedures, natural justice, understanding the risks of CSAE and disability and equality awareness in addition to any other issues deemed appropriate. Training should not simply relate to procedures, but should also cover the making of difficult and potentially controversial decisions – the use of case study material can be helpful to illustrate this. 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 the LGA can assist in the development of training packages.

2.19 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.

2.20 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.

2.21 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 2.19. 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.

2.22 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. 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.

2.23 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.

2.24 Regardless of which approach is adopted, all councils should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

Whistleblowing

2.25 The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in this Guidance and believe that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of this Guidance is to protect children and vulnerable adults, and by extension the wider public, when using taxis and PHVs. However, it is in the application of these 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. It is therefore recommended that licensing authorities have effective internal procedures for staff to raise concerns and procedures in place for any concerns to be dealt with openly and fairly.

A report into the licensing of drivers by South Ribble Borough Council highlights the implications of not applying the agreed policies. In early August 2015, concerns were raised regarding decisions to renew the licences of drivers where there were potential incidents of child sexual exploitation. An internal review concluded that there had been failings in local investigatory procedures which might have affected the ability of the General Licensing Committee to make proper decisions, and information sharing with the police and data recording was not satisfactory.

2.26 The external investigation in South Ribble concluded “*that there had been a lack of awareness and priority given to safeguarding and the safety of taxi [and PHV] passengers in the manner in which licensing issues were addressed*”. We are pleased to note that the report concludes¹⁰, “*The Council have been active at every stage in responding to issues and concerns identified. It has taken steps to address operational issues in the licensing function and has engaged fully with other agencies in so doing. In the light of the above, it is not necessary to make any further recommendations.*”

2.27 It is hoped that all licensing authorities will have learnt from these mistakes but to prevent a repeat, local authorities should ensure they have an effective ‘whistleblowing’ policy and that all staff are aware of it. If a worker is aware of, and has access to, effective internal procedures for raising concerns then ‘whistleblowing’ is unlikely to be needed.

2.28 The Public Interest Disclosure Act 1988 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer’s confidential information to the press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected.

Implementing changes to licensing policy and requirements

2.29 It is important to remember that 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

¹⁰ http://www.southribble.gov.uk/sites/default/files/FINAL_REPORT_JUNE_2016.pdf

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.

- 2.30 Where a more subjective change has been introduced, for example an amended policy on previous convictions, licensing authority must still consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from a policy, licensing authorities are able to do so. Licensing authorities should record the reasons for any deviation from the policies in place.

The Disclosure and Barring Service

- 2.31 The Disclosure and Barring Service (DBS) provides access to criminal record information through its disclosure service for England and Wales. The DBS also maintains the lists of individuals barred from working in regulated activity with children or adults. The DBS makes independent barring decisions about people who have harmed, or where they are considered to pose a risk of harm to a child or vulnerable person within the workplace. The DBS enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves vulnerable groups including children. 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.
- 2.32 The DfT's 2018 survey of taxi and PHV licensing authorities¹¹ 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 Department considers that all licensing authorities should also request a check of the barred lists in addition to the enhanced DBS check, for individuals applying for or renewing taxi and PHV driver licences.
- 2.33 Enhanced certificates with check of the barred lists include details of spent and unspent convictions recorded on the Police National Computer (PNC), any additional information which a chief officer of police believes to be relevant and ought to be disclosed, as well as indicating whether the individual is barred from working in regulated activity with children or adults. The filtering rules allow for certain old and minor convictions to be removed from a DBS certificate after an appropriate period has passed, but they do not allow filtering where an individual has more than one conviction, has received a custodial sentence or has committed a specified serious offence such as those involving child sexual abuse. Full details of the filtering rules, and those offences which may never be filtered, are available from the DBS¹². As well as convictions and cautions, an

11 <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2018>

12 <https://www.gov.uk/government/collections/dbs-filtering-guidance>

enhanced certificate may include additional information which a chief police officer reasonably believes is relevant and ought to be disclosed. Chief police officers must have regard to the detailed statutory guidance¹³ when considering disclosure. The information provided at each level of DBS checks is summarised in table 1.

- 2.34 It should be noted that licensing authorities must not seek to circumvent the legitimate filtering of previous criminal convictions and other information held by the DBS. The appropriate way of accessing an individual's criminal records is through an enhanced DBS and barred lists check.
- 2.35 Whilst data protection legislation¹⁴ gives individuals (or data subjects) a 'right of access' to the personal data that an organisation holds about them, you must not require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This is an offence under data protection legislation.
- 2.36 Driving a taxi or PHV is not, in itself, a regulated activity. This means that an individual subject to barring would not be legally prevented from being a taxi or PHV driver but the licensing authority should take an individual's barred status into account alongside other information available. It is the Department's opinion that, 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.
- 2.37 Drivers working under an arrangement to transport children may be working in 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006¹⁵. It is an offence to knowingly allow a barred individual to work in regulated activity. The guidance on home-to school travel and transport¹⁶ issued by the Department for Education should be considered alongside this document. Please see DBS guidance on driver eligibility and how to apply.

13 <https://www.gov.uk/government/publications/statutory-disclosure-guidance>

14 the full range of data protection legislation, not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)

15 <https://www.legislation.gov.uk/ukpga/2006/47/contents>

16 <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

INFORMATION INCLUDED IN CRIMINAL RECORD CHECKS				
Information included	Type of check			
	Basic	Standard DBS	Enhanced DBS	Enhanced DBS (including barred list check)
Unspent convictions	Yes	Yes	Yes	Yes
Unspent cautions ¹	Yes	Yes	Yes	Yes
Spent convictions ²	No	Yes	Yes	Yes
Spent cautions ^{1&2}	No	No	Yes	Yes
Additional police Information ³	No	No	Yes	Yes
Barred list(s) Information ⁴	No	No	No	Yes

Table 1

1. Cautions include reprimands and warnings, but not fixed penalty notices, penalty notices for disorder or any other police or other out-of-court disposals.
2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not disclosed on any level of certificate. Further guidance is available at <https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide>.
3. This is any additional information held by the police which a chief police officer reasonably believes to be relevant and considers ought to be disclosed.
4. This is information as to whether the individual concerned is included in the children's or adults' barred lists maintained by the Disclosure and Barring Service (DBS).

DBS update service

- 2.38 Licensing authorities should make use of the DBS update service. This subscription service allows licensees to keep their DBS certificates up to date online and, with the individual's consent, allows licensing authorities (as a nominee) to check the status of a certificate online at any time. Subscription to the service removes the need for repeat checks, reduces the administrative burden and mitigates potential delays in relicensing. Licensees should be required to evidence continuous registration and nomination throughout the period of the licence.
- 2.39 The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the level and type of DBS certificate. For criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months. Licensing Authorities should therefore consider routinely checking the DBS certificates of their licence holders, for example every six months.
- 2.40 Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check facility that can be accessed via a web service. The Multiple Status Check facility enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the Multiple Status Check facility is available from the DBS.¹⁷ As discussed above, for taxi and PHV driver licensing purposes the recommended level of check is always the enhanced level with check of the adult and children Barred lists. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2.

Licensee self-reporting

- 2.41 As discussed above, the DBS update service is a valuable tool in discharging a licensing authority's duty to ensure that licence holders are fit to hold a licence. However, the routine checking of the DBS record should be in addition to a requirement that licence holders notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any motoring offence, or any offence involving dishonesty, indecency or violence. 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.
- 2.42 Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of, would be a breach of a licence condition and might therefore be seen as behaviour that questions honesty and

¹⁷ <https://www.gov.uk/government/publications/dbs-update-service-multiple-status-checking-guide>

therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

Referrals to DBS and the police

2.43 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for licensing authorities to make referrals to the DBS; for example, 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 in this context arises from the undertaking of a safeguarding role. Further guidance has been provided by the DBS¹⁸.

2.44 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;
- the DBS may consider it appropriate for the person to be added to a barred list.

2.45 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 available¹⁹.

2.46 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.

Overseas convictions

2.47 **The DBS cannot access criminal records held overseas.** 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. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before

18 <https://www.gov.uk/government/publications/dbs-barring-referrals-local-authority-referral-duty-and-power/referral-duty-and-power-for-local-authorities-and-regulatory-bodies#local-authorities-as-regulated-activity-providers>

19 <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

the age of 18 may not be relevant. For information on applying for overseas criminal record checks or 'Certificates of Good Character' please see the Home Office guidance²⁰. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.

- 2.48 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

Conviction policy

- 2.49 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 licenced 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.

- 2.50 Engagement with licensing authorities identified that greater direction from the Department was sought and in some cases required. The Department did not make specific recommendations regarding the assessment of convictions in the 2010 update of the Best Practice Guidance. In response to concerns raised by stakeholders and to assist in greater consistency in licensing, Annex A provides the Department's recommendations on this issue. 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 PHV licensees²¹. These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. 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 each case must be considered on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.

Common Law Police Disclosure

- 2.51 The DBS is not the only source of information that should be considered as part of a fit and proper assessment for the licensing of taxi and PHV drivers.

²⁰ <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

²¹ [https://instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_\(16_May_2018\).pdf](https://instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)

Common Law Police Disclosure ensures that where there is a public protection risk, the police will pass information to the employer or regulatory body to allow them to act swiftly to mitigate any danger.

2.52 Common Law Police Disclosure replaced the Notifiable Occupations Scheme (NOS) in March 2015 and focuses on providing timely and relevant information which might indicate a public protection risk. Information is passed on at arrest or charge, rather than on conviction which may be some time after, allowing any measures to mitigate risk to be put in place immediately.

2.53 The new procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. We would therefore strongly recommend that licensing authorities maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.

Other information

2.54 The LGA's Councillors' Handbook on taxi and private hire vehicle (PHV) licensing²² 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.*"

2.55 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 we strongly recommend that action taken as a result of information received is 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.

2.56 This relationship can be mutually beneficial, assisting the police to prevent crime. The police can gain valuable intelligence from drivers and operators, for example, the identification of establishments that are selling alcohol to minors or drunks, or the frequent transportation of substance abusers to premises.

2.57 As has been stated elsewhere in this guidance, 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 should therefore 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. For this process

²² <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

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.

- 2.58 The LGA's Taxi and PHV licensing Councillors' handbook²³ advises that Councils should meet or communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared. 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 PHV driver licence refusals and revocations (the register is known as 'NR3'). The use of tools such as NR3 by licensing authorities to share information on a more consistent basis would mitigate the risk of non-disclosure of relevant information by applicants.
- 2.59 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 PHV driver 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 practice²⁴.
- 2.60 If notification under paragraph 2.57 or 2.58 of a refused or revoked license is disclosed, the relevant licensing authority should be contacted to establish when the licence was refused, suspended or revoked and the reasons why. The information disclosed 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.
- 2.61 Should a licensing authority receive information that a licence holder did not disclose the information referred to in paragraph 2.57, for example by checking the NR3 register, the authority should consider whether the non-disclosure represents dishonesty and should therefore review whether the licence holder remains 'fit and proper'.

Multi-agency Safeguarding Hub (MASH)

- 2.62 Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models)

²³ <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

²⁴ <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

should operate on three common principles: information sharing, joint decision making and coordinated intervention.

2.63 The Home Office report on Multi Agency Working and Information Sharing²⁵ recommended that effective multi-agency working still needs to become more widespread. The Children's Commissioner's 2013 Inquiry into Child Sexual Exploitation in Gangs and Groups²⁶ found that both police and local authorities still identified the inability to share information as a key barrier to safeguarding children from sexual abuse and exploitation.

2.64 The Department recommends all licensing authorities should establish a means to facilitate the objectives of a MASH. As has been emphasised throughout this guidance, one of the most effective ways to minimise the risk to children and vulnerable adults when using taxis and PHVs is to ensure that decisions on licensing individuals are made with the fullest knowledge possible.

Complaints against licensees

2.65 The LGA recommends that all councils should have a robust system for recording complaints, including analysing trends across the whole system as well as complaints against individual licensees²⁷. 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.

2.66 Licensing authorities should produce guidance for passengers on making complaints directly to the licensing authority that **must** be available on their website and displayed in 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 PHV driver is more likely to be made to the operator. An effective partnership in which operators can share concerns regarding drivers is also encouraged. A systematic recording of complaints will provide a further source of information to consider when renewing a licence for a driver or operator or identify problems during the period of the licence.

2.67 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.

25 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338875/MASH.pdf

26 https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/If_only_someone_had_listened.pdf

27 <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

2.68 CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 2.104 - 2.106.

Duration of licences

2.69 The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and PHV drivers and five years for PHV operators. Any shorter duration should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case. Such circumstances could include where the licensing authority considers that a probationary period is necessary 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.

2.70 A previous argument against this length of licence was that a criminal offence might be committed, and not notified, during this period; this can of course also be the case during the duration of a shorter licence. This risk can be mitigated by requiring licensees to subscribe to the DBS update service as discussed in paragraphs 2.38 – 2.40 and authorities to undertake regular interim checks. To help authorities monitor licensees' suitability, police forces should inform licensing authorities when they believe a licensee presents a risk to the travelling public. Paragraphs 2.51 - 2.53 provide further information about this process.

Safeguarding awareness

2.71 Licensing authorities should consider the role that those in the taxi and PHV 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.

2.72 It is the Department's recommendation that licensing authorities provide safeguarding advice and guidance to the trade and that taxi and PHV drivers are required 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.

2.73 In February 2018, the Department for Education (DFE) launched phase 3 of its nationwide campaign – ‘Together we can tackle child abuse’. Building on phases 1 and 2, which ran in 2016 and 2017, it aims to increase public understanding of how to recognise and report child abuse and neglect. The DfE has developed an online toolkit²⁸ of material for local authorities, charities and other organisations to use to support the campaign.

Other forms of exploitation – ‘County lines’ drug trafficking

2.74 Victims of exploitation may not appear as such at first sight. 74% of police forces noted the exploitation of vulnerable people (including children) by gangs and organised criminal networks involved in trafficking illegal drugs within the UK²⁹ to move and store drugs and money across the country, often from urban areas to regional locations. They will frequently use coercion, intimidation, violence (including sexual violence) and weapons. This gang activity (known as county lines), and the associated violence, drug dealing and exploitation has a devastating impact on young people, vulnerable adults and local communities.

2.75 The National Crime Agency’s updated annual threat assessment of county lines reported that county lines groups are using taxis and PHVs as a method of transportation. In that assessment, 33% of police forces in England and Wales (14 forces) reported use of taxis and PHVs to transport drug couriers between markets. These couriers are often young people who have been exploited and may be victims of trafficking; the typical age range is 15-17 years old, but may be much younger. They may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues or reported as missing.

2.76 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:

- young people, sometimes as young as 12, travelling in taxis 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.

²⁸ <https://tacklechildabuse.campaign.gov.uk/>

²⁹ <http://www.nationalcrimeagency.gov.uk/news/1247-latest-threat-update-estimates-at-least-720-county-lines-drug-dealing-lines>

2.77 The Home Office is working with partners to raise awareness of county lines and has produced promotional material that can be used by taxi and PHV companies.³⁰

2.78 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.

Language proficiency

2.79 Authorities should consider whether an applicant would have any problems in communicating with customers because of language difficulties. Licensing authorities have the freedom to specify the level of proficiency, but it is recommended to cover both oral and written English language skills necessary to fulfil their duties, including in emergency and other challenging situations. This should include:

- conversing with passengers to demonstrate an understanding of the desired destination, an estimation of the time taken to get there and other common passenger requests;
- providing a customer with correct change from a note or notes of higher value than the given fare, and doing so with relative simplicity;
- providing a legibly written receipt upon request.

Enforcement

2.80 Implementing an effective framework for licensing authorities is essential to a well-functioning taxi and PHV sector. These steps will help prevent the licensing of drivers that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.

2.81 We have discussed the benefits of licensing authorities working collaboratively in regard to the sharing of information, and this can equally apply to enforcement powers. 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. Together with increased clarity for the public on complaining, these measures will mitigate the opportunities for drivers to evade regulation. Such an agreement will enable those authorities to take action against vehicles and

³⁰https://www.gov.uk/government/publications/county-lines-posters-for-taxi-and-private-vehicle-hire-staff?utm_source=HO&utm_campaign=LA

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' handbook³¹.

2.82 It is not reasonable to expect drivers to adhere to a policy unless they 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.

2.83 The Department suggest that there should be a clear, simple and well-publicised process for the public to make complaints about drivers and operators. 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.

Suspension and revocation of driver licences

2.84 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

2.85 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 PHV sector has been issued by the Home Office³². 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.

2.86 Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the

³¹ <https://www.local.gov.uk/councillor-handbook-taxi-and-phv-licensing>

³² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/613415/A_Licensing_Authority_guide_to_right_to_work_checks_-_England_and_Wales.pdf

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.

2.87 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 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.

2.88 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.

2.89 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.

Criminal record checks for PHV operators

2.90 As with driver licensing, the objective in licensing PHV operators is to protect the public, who may be using operators' premises and trusting that the drivers and vehicles they dispatch are above all else safe. It is important therefore that licensing authorities are assured that the operators they license also pose no threat to the public and have no links to serious criminal activity. Although an operator may not have direct contact with passengers, they are still entrusted to ensure that the drivers and vehicles used to fulfil a booking are appropriately licensed and so 'fit and proper'. PHV operators are also frequently provided with sensitive information such as periods when a home may be vacated as the residents are on holiday. Those making licensing decisions should consider whether they would be content for an applicant to hold sensitive information and are confident that this would not be misused.

2.91 PHV operators (as opposed to PHV drivers) are not eligible for standard or enhanced criminal records checks. We recommend that licensing authorities request a criminal conviction certificate (Basic disclosure) from the DBS. Any individual may apply for a Basic check and the certificate will disclose any unspent convictions recorded on the PNC. Licensing authorities should consider whether an applicant or licence holder with a conviction for offences detailed in Annex A (other than those relating to driving) meet the 'fit and proper' threshold.

2.92 PHV operator 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 PHV

operators should be required to advise the licensing authority of any changes to the directors or partners.

- 2.93 Individuals, directors or partners granted a PHV operator licence should be required to subscribe to the DBS update service as a condition of licensing and licensing authorities should consider routinely checking the DBS certificates of their licence holders, for example every six months
- 2.94 As explained earlier in the context of driver licensing, the **DBS cannot access criminal records held overseas**. 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. A licensing authority should ensure they have access to all the information available to them when making a decision whether to grant a licence, particularly when an applicant has previously lived outside the UK. It should be noted that it is the character of the applicant as an adult that is of interest, therefore a period outside the UK before the age of 18 may not be relevant. For information on applying for overseas criminal record checks or a 'Certificate of Good Character' please see the Home Office guidance³³ on criminal record checks for overseas applicants. Licensing authorities should seek criminal records information from overseas when an applicant has previously lived outside the UK for a period of more than three continuous months to properly assess risk and support the decision making process.
- 2.95 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in Annex A, they should seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.

PHV Operators - ancillary staff

- 2.96 PHV drivers are not the only direct contact that PHV users have with PHV operators' staff, for example a person taking bookings (be it by phone or in person). A vehicle controller decides which driver to send to a user, a position that could be exploited by criminals. It is therefore appropriate that all staff that have contact with PHV users and the dispatching of vehicles should not present an undue risk to the public or the safeguarding of children and vulnerable adults.
- 2.97 Licensing authorities should be satisfied that PHV 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 request that, as a condition of granting an operator licence, a register of all staff that will take bookings or dispatch vehicles is kept. The operator should be required to evidence that they have had sight of a Basic DBS check on all individuals listed.
- 2.98 Operators or applicants for a licence should also be required 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 PHV operators' licence, those with a

³³ <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

conviction for offences detailed in Annex A (other than those relating to driving) may not be suitable to handle the sensitive information the public may provide (e.g. that their home is likely to be empty between certain dates) or to decide who is sent to carry a child or vulnerable adult unaccompanied in a car.

- 2.99 Those granted an operator licence should be required to maintain a register of staff that take bookings and/or control vehicles and 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.

PHV Operators – Use of passenger carrying vehicles (PCV) licensed drivers

- 2.100 Members of the public are entitled to expect when making a booking with a PHV operator that they will receive a PHV 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 PHV booking should not be permitted as a condition of the PHV operator's licence. Drivers of PSVs who are PCV licence holders are not subject to the same checks as PHV drivers, as the work normally undertaken, i.e. driving a bus or coach, does not present the same risk to passengers.

PHV Operators - record keeping

- 2.101 Section 56 of the Local Government (Miscellaneous Provisions) Act 1976³⁴ requires PHV 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. The particulars to be recorded may be specified by the licensing authority as a condition of the operator licence. The Department recommend that this information should include:

- 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.

- 2.102 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 six months is generally appropriate as the length of time that records should be kept.

³⁴ <http://www.legislation.gov.uk/ukpga/1976/57>

2.103 PHV 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.

In-vehicle visual and audio recording – CCTV

2.104 Government has acknowledged the potential risk to public safety when passengers travel in taxis and PHVs. In 2012 the Government enabled licensing authorities to undertake enhanced DBS checks. The Department appreciates that all licensing authorities have recognised the risk posed by the very small minority of licensed drivers and undertake this level of check. It is unfortunately the case that no matter how complete the information available to licensing authorities is, nor how robust the policies in place are and the rigor with which they are applied, it will never remove the possibility of harm to passengers by drivers. 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/PHV passengers and drivers by:

- deterring 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.

2.105 While only a small minority of licensing authorities have so far mandated all vehicles to be fitted with CCTV systems, the experience of those authorities that have has been positive for both passengers and drivers. In addition, the evidential benefits of CCTV may increase the level of reporting of sexual offences. According to the Crime Survey for England and Wales³⁵ only 17% of victims report their experiences to the police, 28% of rape or sexual assault victims indicated that a fear they would not be believed as a factor in them not reporting the crime. The evidential benefits CCTV could provide are therefore an important factor when considering CCTV in vehicles.

2.106 The mandatory installation of CCTV in vehicles may deter people from seeking a taxi or PHV licence with the intent of causing harm. Those that gain a licence and consider perpetrating an opportunistic attack against a vulnerable unaccompanied passenger may be deterred from doing so. It is however unfortunately the case that offences may still occur even with CCTV operating.

2.107 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 and targeted i.e. only when

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#main-points>

passengers (or drivers) consider it necessary and all parties should be made aware that a recording is being made. 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.

- 2.108 It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and PHV will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire.
- 2.109 Imposition of a blanket requirement to attach CCTV as a condition to a licence is likely to give rise to concerns about the proportionality of such an approach and will therefore require an appropriately strong justification and must be kept under regular review.
- 2.110 The Home Office '*Surveillance Camera Code of Practice*'³⁶ advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is:
- in pursuit of a legitimate aim;
 - necessary to meet a pressing need;
 - proportionate;
 - effective, and;
 - compliant with any relevant legal obligations
- 2.111 The Code also sets out 12 guiding principles which, as a 'relevant authority' under the Protection of Freedoms Act 2012³⁷, licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

³⁶ <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice>

³⁷ [Section 33\(5\) of the Protection of Freedoms Act 2012](#)

- 2.112 The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its '*Passport to Compliance*'³⁸ which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office³⁹ (ICO) has also published a code of practice which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a self-assessment tool⁴⁰ to assist operators to ensure compliance with the principles set of in the Surveillance Camera Code of Practice. The SCC also operate a certification scheme⁴¹; authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.
- 2.113 The Data Protection Act 2018⁴² regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access and to erasure. The ICO has provided detailed guidance⁴³ on how data controllers can ensure compliance with these.
- 2.114 It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in guidance⁴⁴ that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc. Licensing authorities should consult on this issue 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 PHV users, including children or vulnerable adults.
- 2.115 It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the

38 <https://www.gov.uk/government/publications/passport-to-compliance>

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

40 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-self-assessment-tool>

41 <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice-third-party-certification-scheme>

42 <http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

43 <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

44 <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/>

licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

- 2.116 All passengers must be made aware if CCTV is operating in a vehicle. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems.

Stretched Limousines

- 2.117 Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as PHVs. 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. Indeed, the Department's view is 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 service from the scope of the PHV 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.
- 2.118 Stretched large limousines which clearly have more than eight passenger seats should not in most circumstance be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the Individual Vehicle Approval (IVA) regime accepts vehicles with space for more than eight passengers, particularly where the precise number of passenger seats is hard to determine. In these circumstances, if the vehicle has obtained an IVA certificate, 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.

Consultation at the local level

- 2.119 It is good practice for licensing authorities to consult on any significant proposed changes in licensing rules. Such consultation should include not only the taxi and PHV 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.

- 2.120 Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and PHV sector in neighbouring areas; it would therefore be good practice to engage with these to identify any concerns and issue that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings; the Department considers this approach to be good practice.

Annex A – Previous convictions guidance

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or PHV licence. The following recommendations to licensing authorities on previous convictions reflect this.

Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial public hearing of their application if required. The periods given below should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. 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 or retain a licence.

Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

Offences involving violence

Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Sex and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

Dishonesty

Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a

licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction of a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or PHV driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Annex B - Staying safe: guidance for passengers

Licensing authorities should provide guidance to assist passengers in identifying licensed vehicles and the increased risks of using unlicensed vehicles. The guidance might include advice on:

- how to tell if a taxi or private hire vehicle is licensed.

Educate the public in the differences between taxis and PHVs e.g.:

- a taxi can be flagged down or pre-booked.
- a PHV that has not been pre-booked should not be used as it will not be insured and may not be licensed.
- what a PHV should look like e.g. colour, signage, licence plates etc.
- the benefit of pre-booking a return vehicle before going out.
- arrange to be picked up from a safe meeting point.
- requesting at the time of booking what the fare is likely to be.

When using a private hire vehicle, passengers should always:

- book with a licensed operator.
- confirm their booking with the driver when s/he arrives.
- note the licence number.
- sit in the back, behind the driver.
- let a third party know details of their journey.

When using a taxi, passengers should where possible:

- use a taxi rank and choose one staffed by taxi marshals if available.