

NORTH LINCOLNSHIRE COUNCIL

LICENSING COMMITTEE

**TOWN POLICE CLAUSES ACT 1847
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

MEMBERS HANDBOOK – TAXI AND PRIVATE HIRE LICENSING

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To introduce the Licensing Committee to the Taxi and Private Hire Vehicle Licensing Handbook produced by the Local Government Association.
- 1.2 To add the provision to the Taxi Licensing Policy that all members of the Licensing Committee must attend Safeguarding and Child Sexual Exploitation (CSE) Training before being allowed to sit on the Committee.

2. BACKGROUND INFORMATION

- 2.1 Hackney Carriage and Private Hire vehicles, drivers and operators are licensed in accordance with the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
- 2.2 Before issuing a licence to any person the Licensing Authority must be satisfied that a person is “fit and proper”. In order to determine if a person is fit and proper, we carry out a number of checks including an enhanced Disclosure and Baring Service (DBS) check.
- 2.3 The Local Government Association Handbook highlights the role of councillors in the licensing function and deals with the fit and proper person test, points scheme and enforcement. It also recommends that members of the Licensing Committee should be trained on safeguarding and CSE issues. A copy of the Members Handbook is attached to the report as Appendix A.
- 2.4 Many aspects of the handbook are already in place, however following an audit of the taxi licensing function it has been recommended that Safeguarding and CSE training be made mandatory for all members of the Licensing Committee..

3 OPTIONS FOR CONSIDERATION

3.1 The options available to the Licensing Committee are:

Option 1 – To take note of the Members Handbook and to make Safeguarding and CSE awareness training mandatory for all members of the Licensing Committee and for new members before they sit on the committee.

Option 2 – To take note of the Members Handbook but not to make the training mandatory.

4. ANALYSIS OF OPTIONS

4.1 Option 1 – To introduce mandatory training for all members of the Licensing Committee. This would further safeguard vulnerable people in North Lincolnshire and provide members of the committee with more knowledge of this sensitive area.

4.2 Option 2 – Should the training not be mandatory, then the Council could be open to criticism and could potentially fail in its responsibility to protect the public.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 There are no resource implications.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 There are no other implications associated with this report.

7. OUTCOMES OF CONSULTATION

7.1 Not applicable.

8. RECOMMENDATIONS

8.1. That Option 1 be approved and the revised Taxi Licensing Policy be submitted to a meeting of the Council for approval.

DIRECTOR OF PLACES

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Date: 2 September 2016

Background Papers used in the preparation of this report: -
None

Taxi and PHV Licensing

Councillors' Handbook
(England and Wales)

Foreword

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

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

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

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

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

We hope you find it useful.



Councillor Tony Page

LGA Licensing Champion, Safer and Stronger Communities Board

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The regulatory framework for taxis and PHVs – an overview

Terminology

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

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

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

Legislation

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

This mix of legislation is widely regarded as outdated and in 2014 the Law Commission published the results of a three year study into consolidating and updating the laws governing both taxis and PHVs into a single piece of legislation.¹ The Government has yet to respond to the report, although two clauses were brought forward early in the Deregulation Bill 2015². A third clause, permitting anyone to drive a licensed vehicle when it was ‘off-duty’ was removed after lobbying from the LGA and other stakeholders.

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

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

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

Facts and figures:

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

There are an estimated 27,000 licensed taxi and PHV drivers in England and Wales.

Taxis and PHVs together account for just over one per cent of all trip stages per person per year in Great Britain. This is about 600 million trip stages or around 3 million miles a year.

An estimated 58 per cent of all taxis are wheelchair accessible in England and Wales.

Differences between taxis and PHVs

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

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

Council role in taxi and PHV licensing in England and Wales

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

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

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

- setting the local framework, which can include fares, vehicles standards or limits on vehicle numbers
- considering applications and issuing, reviewing or revoking licences
- undertaking inspection and enforcement activities.

Taxi and private hire licensing may be undertaken within a single department but usually sits within one of the council's regulatory services such as environmental health or legal services. It is often also combined with other licensing functions.

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

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

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

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

There are no statutory timescales or performance measures for taxi/PHV licensing, unlike some other licensing regimes. However many councils use internal targets to measure the service being provided to customers. A periodic review of the licensing service's processes and procedures can help to improve this. One council, for instance, subjected its licensing procedures to a LEAN business review and succeeded in reducing the time taken to process vehicle licences from 45 days to just one day.

Department for Transport's role (DfT)

DfT's role is that of regulatory ownership and maintenance of the regulatory framework for taxis and private hire vehicles. The DfT provides non-statutory guidance to local councils as to how to discharge their duties under the regulatory framework. The Department collects and publishes statistics on a regular basis and produces guidance to assist local councils in carrying out their taxi and PHV licensing functions. The guidance is considered to be 'best practice' and addresses a number of issues where inconsistency of approach exists in taxi and private hire licensing in England and Wales.

Strengths and weaknesses of the current system

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

Local councils have the power to attach conditions to taxis, PHVs, and the licences of PHV drivers, but not the licences of taxi drivers. They can also influence the local context in which vehicles operate, and a range of licensing policies have been developed to do this by councils, but they vary from relatively relaxed to very strict regimes. Many councils have also adopted local bylaws under the 1976 Act that regulate driver conduct, which can helpfully provide some of the otherwise missing influence over the conduct of taxi drivers.

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

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

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

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

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

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

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

Role of councillors

Councillors and the council's regulatory/licensing committee

Councils will usually operate with a regulatory/licensing committee which may be made up of non-executive/cabinet councillors, and sub-committees made up of councillors of the parent committee. Apart from setting taxi fares and ranks, taxi/PHV licensing is a 'council' and not an 'executive' function.

The role of the parent committee is to consider and propose policy, including setting the overall approach of the council, conditions and standards for vehicles and drivers.

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

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

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

It is important to take account of the views of the trade and of customers, as well as other stakeholders, when establishing policy in the same way that other areas of council business are developed.

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

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

- in the case of licence applications, to grant a licence, with or without conditions
- in the case of licence applications, to refuse a licence
- in the case of existing licences where matters are brought to the council's attention, to
 - do nothing

- suspend a licence
- introduce conditions on a PHV driver's licence
- revoke a licence.

Suspension can be particularly helpful in improving standards or addressing complaints. For instance, a licence can be suspended until such time as the driver can undergo additional driver training or receive other improvement support. However, you cannot suspend a licence as an interim measure pending a final decision on a court case – it must always be used as a final decision.

Councils may attach conditions to licences – either standard ones that apply to every licence or specific ones bespoke for individual applicants. In either case the conditions must not:

- exceed the council's powers set out in the controlling legislation ('ultra vires')
- be unreasonable or disproportionate
- be beyond the applicant's powers to comply with
- be for an ulterior motive and
- must be clearly stated in order that they can be properly understood to be complied with and enforced.

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

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

Training of councillors

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

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

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

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

Appearance of bias

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

Section 25 of the Localism Act 2011 does not prevent members from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate. However it is recommended that to avoid an appearance of bias the following advice should be observed:

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing sub-committee must avoid expressing personal opinions prior to licensing sub-committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no member of the sub-committee is bound by any party whip.
- Councillors must not be members of the licensing sub-committee if they are involved in campaigning on the particular application.
- Other members (ie those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as bias / pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with.³ Such guidance could include a definition of what is viewed as excessive e.g. attempting to obtain a commitment as to how the member might vote

³ "It is undemocratic and impractical to try to prevent councillors from discussing applications with whomever they want; local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue but in an underhand and covert way." (Nolan Committee Report into Standards in Public Life 285 p. 72)

- Members must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Member behaviour is also governed by the member's code of conduct which you should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities.
- Members should consult their monitoring officers for further advice where necessary.

The ‘fit and proper’ person test⁴

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

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

A licensing authority is also entitled to suspend or revoke a taxi or PHV driver’s licence if there is evidence to suggest that the individual is not a fit and proper person, and specifically⁵:

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

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

On receiving an application, councils should first make use of the Home Office’s free service to check the applicant’s right to work. This ensures that applications are not heard where the applicant has no legal right to work in the UK.⁶ Once this is established, an inquiry into an applicant’s fitness to be licensed is likely to include enquiries into his health, local knowledge and understanding of the responsibilities of a licensed driver. However, character is usually investigated first.

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

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

⁴ The text in this section draws heavily on an article by Ian de Prez, Solicitor Advocate for Suffolk Coastal District Council, in Local Government Lawyer magazine. We are grateful to Mr de Prez and Local Government Lawyer for their permission to reproduce the points from the article.

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

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

Convictions policy

It is important to set out how your sub-committee will view convictions, spent or otherwise, and ideally include it as part of your consolidated taxi licensing policy. DfT has previously issued advice on the period of time that should lapse between certain types of conviction and the issue of a licence, but the most recent Best Practice Guidance in 2010 removed references to this, so councils should feel empowered to make their own decisions. The old advice is available, but councils should treat the recommendations as minimum standards.

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

In particular, **the LGA encourages councils to take a strong stance on indecency offences, such as those relating to sexual assault or rape.** While each case must be considered on its own merits, the default position should be that if an applicant has a previous conviction for these offences, a licence will not be issued.

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

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

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

If licensees are obliged under their licence to inform the local authority of their arrest or conviction and they fail to do so (or where they fail to notify the police that they hold a licence), this should be viewed particularly seriously as it prevents the local authority from taking that information into account when protecting public safety. This is also a breach of condition and can be actioned by the authority on that basis.

A licensing authority can take into account any spent conviction but of course must do so in a fair and proportionate way, following the authority's policy. It is still appropriate to note the distinction between spent and unspent convictions when considering an application, and there will be many cases in which a particular spent conviction is no longer relevant. Sometimes an applicant/driver will assert that he was wrongly convicted, or only pleaded guilty to get it over with, to shield a family member or to avoid the risk of a more severe sentence. However the licensing authority should not go behind the existence of the conviction in an attempt to 're-try' the case.⁷

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

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

There have been a number of challenges to decisions to suspend or revoke licences on the basis that a licence is a personal piece of property, and therefore revocation infringes the driver's human rights. However, case law has established that a decision maker dealing with a currently licensed driver should not regard the licence as a piece of property under the 1998 Act.⁸

When making decisions at both the application stage or in a disciplinary situation with an existing driver, the sole deciding factor should be the safety of the travelling public.

Exceptional mitigation may be relevant to assessing the risk to the travelling public if it shows that the driver/ applicant acted out of character, so that the misdemeanour is unlikely to be repeated – but personal circumstances are not a factor to weigh in the balance against the safety of passengers.

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

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

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

⁷ Nottingham City Council v Farooq 1998 EWHC Admin 991

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

PHV operator responsibilities

Taxi and PHV licensing is not an area where there is much scope for self-regulation, but PHV operators do have a key role in ensuring that the drivers they employ are fit and proper persons, and are properly trained in their roles.

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

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

This is an area that has not yet been explored and, once the relevant legislation is passed, offers a fertile ground for those innovative councils who wish to make full use of their powers to protect their communities. We encourage councils to explore this, and to share their new practice with the Local Government Association and other licensing authorities.

Monitoring complaints

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

The licensing committee should review the complaints procedure and records on at least a yearly basis, and always before a review of the licensing policy. The committee should also have oversight of the council's 'mystery shopping' and test purchasing checks on licensed vehicles to ensure that the council is properly carrying out its enforcement responsibilities.

Penalty points enforcement system: Rother District Council

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

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

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

Rother found that on the whole the trade agreed that the process led to improvements in behaviour, especially by those drivers who tend not to take their role as licensed drivers too seriously. The trade appreciated that the scheme is transparent and clear, and removes any ambiguity about whether officers or members felt that a matter was serious, or when the driver thought it was very minor.

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

Many other councils have introduced similar schemes and there has been a noticeable improvement in both standards of behaviour and standards of compliance.

Scrutiny

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

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

The Centre for Public Scrutiny⁹ provides guidance on how to hold effective scrutiny, and also has a number of case studies from councils that have already held scrutiny enquiries into their taxi and PHV licensing systems.

⁹ <http://www.cfps.org.uk/>

Public protection and enforcement

Partnership working

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

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

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

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

There has also been a formal ability to share information under the Notifiable Occupations Scheme, but this has been challenged and is no longer used by many police forces. A replacement is being developed, but in the meantime all licensing authorities should use their local relationships to continue the flow of information. Councillors should seek the support of their local police and crime commissioner if necessary.

Sharing intelligence: Norfolk councils and Norfolk Constabulary

Safeguarding information sharing process

What is the issue?

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

Why is this necessary?

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

How will this work?

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

What is a 'safeguarding issue'?

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

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

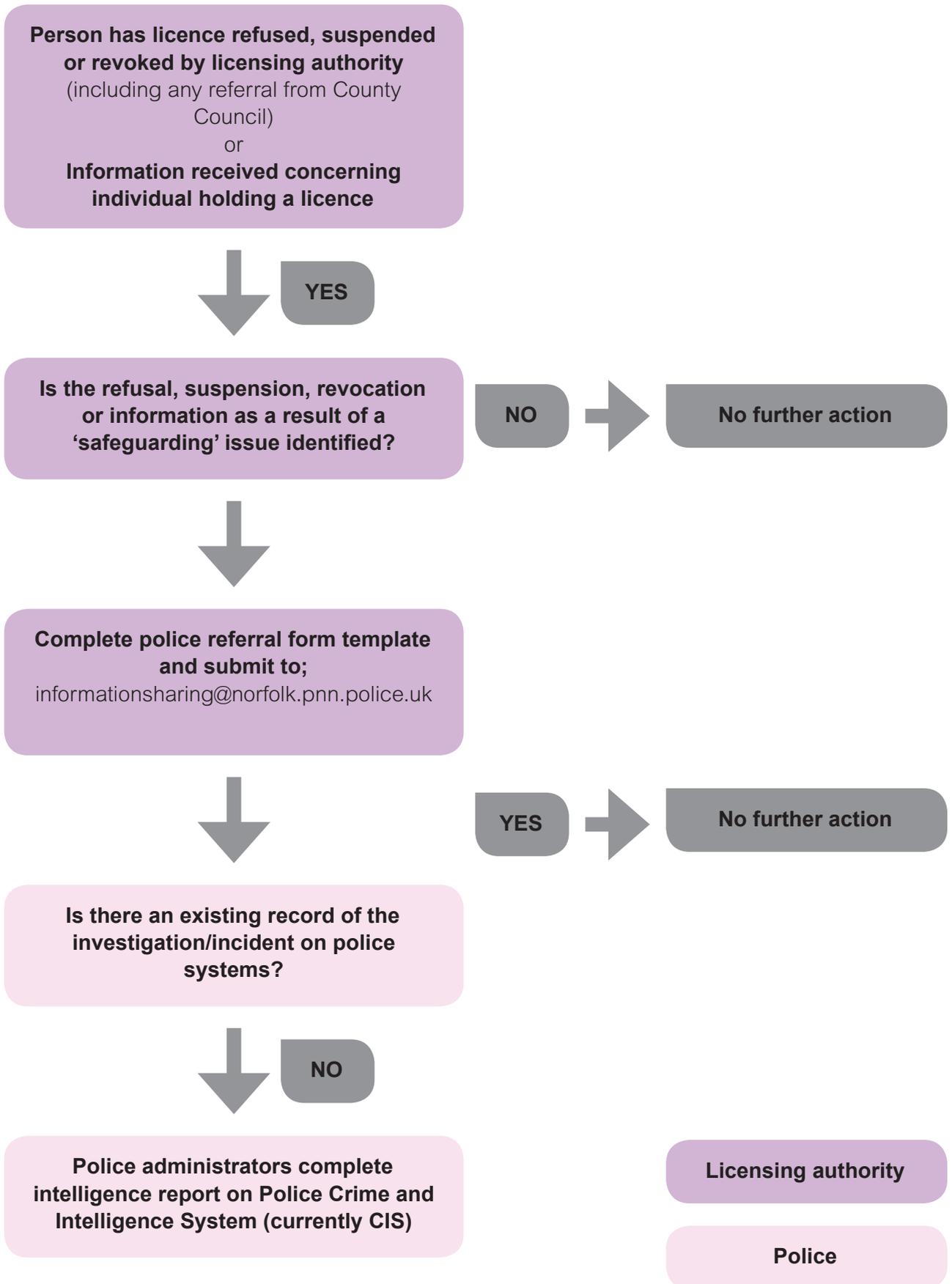
Psychological – Including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks

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

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

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

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



Police Referral Form Template

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

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

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

Joint operations: Blaenau Gwent Council

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

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

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

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

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

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

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

Managing cross border hiring

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

This is also problematic, because when a taxi is being driven for PHV purposes in another district, the local council has no powers to intervene if the driver contravenes any condition of the licence or provides a poor service to the passenger. It is also unfair on the trade in the local area, as they may face competition from drivers who may have paid cheaper licence fees or undergone less rigorous checks elsewhere.

As a councillor you can take some simple steps to ensure that your local authority is not having a detrimental impact on other authorities and their communities. Ask your taxi and PHV licensing service whether they have a high enough standard of conditions (see councillor

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

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

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

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

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

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

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

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

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

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

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

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

Until the Law Commission's proposals extending an authorised officer's powers are enacted, the protocol¹⁰ below could be used by authorities to ensure rogue drivers and vehicles are prevented from hiding 'over the border' or routinely operating outside the reach of enforcement by their licensing authority. It allows councils to authorise officers from other councils to use enforcement powers on their behalf. This enables those councils to then take action against vehicles which are licensed by the other authority when they cross over council boundaries.

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

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

Protocol:

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

¹⁰ The relevant enabling legislation is Section 32 Part I of the Local Government (Miscellaneous Provisions) Act 1976

32 Power of local authorities to execute works outside their areas.

Any power to execute works which is conferred on a local authority by any enactment may, unless the contrary intention appears in that or any other enactment, be exercised outside as well as inside the area of the authority.

Protecting vulnerable people

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

We know that many victims of exploitation are too traumatised for investigations to proceed to court, meaning that issues do not always show up through disclosures. This makes additional intelligence from all other sources critical to licensing deliberations.

A detailed exploration of tackling child sexual exploitation (CSE) is outside the remit of this guide, but all councillors and officers, across all services, should familiarise themselves with the LGA's guides on CSE, which can be found at <http://tinyurl.com/CSEguide>.

It is important to recognise that this is a subject that needs to be sensitively handled to avoid drivers feeling that they are being treated as potential criminals. However, the sensitivity around the subject must not mean that the issue is not discussed or that training is not provided.

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

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

If allegations of CSE or other serious offences are made, then your council should have in place procedures to allow a rapid response from the council. In the most serious cases, it will not be appropriate to wait until a licensing committee or sub-committee can be held.

Safeguarding training: Scarborough Borough Council

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

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

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

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

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

Operation Sanctuary

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

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

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

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

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

To date 30 people have been arrested for conspiracy to rape women (28 men and 2 women). Those arrested come from a range of communities and backgrounds."Operation Sanctuary, Northumbria Police

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

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

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



Information for taxi drivers and taxi firms

What is Operation Sanctuary?

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

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

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

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

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

How does it affect you?

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

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

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

What to look out for:

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

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

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

If you see something, say something.

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



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

Liaison with Children's Safeguarding: Torfaen County Borough Council

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

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

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

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

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

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

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

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

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

Taxi marshals: Watford Borough Council

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

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

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

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

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

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

Installing CCTV in cabs

A number of councils require CCTV to be installed in taxis, as a way of reducing crimes and providing evidence to support prosecution. This approach can benefit both passengers and drivers, who can equally be the subjects of assaults, abuse or fraud.

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

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

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

“As well as assessing the impact on privacy, we have accepted they [councils] can take into account factors such as the likelihood of crimes being committed against drivers and passengers; the vulnerable one-to-one situation; the fact that taxis are travelling all over the area at different times of day; and CCTV can protect both the driver and passengers.”¹¹

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

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

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

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

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

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

Due to the complexity of surveillance and privacy legislation and case law, this information is provided only as a summary. Councils wishing to explore this further should seek their own legal advice.

¹¹ The Information Commissioner's Office, <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2014/10/ico-warns-cctv-operators-that-use-of-surveillance-cameras-must-be-necessary-and-proportionate/>
<https://ico.org.uk/media/about-the-ico/documents/1042192/ico-annual-report-201213.pdf> at page 39

Special considerations

Driver training - disability awareness

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

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

The Equality Act 2010 sets out obligations for public bodies to advance equality of opportunity among people and eliminate discrimination. Taxi and PHV drivers need to have regard to this responsibility when they are operating, and also need to understand how to safely make use of their vehicles' ability to transport wheelchairs. Media stories relating to extra or over-charging for users of wheelchairs have appeared with some frequency in 2014, so councils should make clear to drivers that they cannot charge a disabled passenger more than any other passengers.

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

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

Training packages: Telford and Wrekin Council

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

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

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

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

Promoting equality awareness: Stockport Metropolitan Borough Council

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

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

The guide has been recognised as good practice by the Government's Accessible Britain Challenge. The guide can be found at <http://tinyurl.com/stockportdisability>

Quantity restrictions

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

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

Restricting the number of taxis: Stockport Metropolitan Borough Council

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

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

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

Lifting quantity restrictions: Salford City Council

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

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

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

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

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

Stretched limousines

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

Limousines with up to eight passenger seats

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

Limousines with over eight passenger seats

The DVSA licenses vehicles over eight seats such as buses and HGVs, and as such any stretched limousine which has a seating capacity of over eight passenger seats cannot be licensed by councils as a PHV.

Stretched limousine enforcement: Basingstoke District Council

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

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

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

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

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

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

Checklist for councillors in England and Wales

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

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

Glossary

1847 Act – Town Police Clauses Act 1847

1976 Act – Local Government (Miscellaneous Provisions) Act 1976

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

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

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

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

Hackney carriage – See Taxi

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

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

PHV – See Private hire vehicle

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

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

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



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