

## HAVANT BOROUGH COUNCIL

### Consideration of the Department for Transport's Statutory Taxi and Private Hire Vehicle Standards (2020)

#### Background

The Department for Transport published its Statutory Taxi and Private Hire Vehicle Standards in July 2020, under section 117(1) of the Police and Crime Act 2017. The document aims to establish common core minimum standards across the taxi and private hire sector, with a focus on protecting children and vulnerable adults.

The Department for Transport expects all licensing authorities to consider the standards rigorously, and with an open mind. This requires the Council to give more than a cursory glance before arriving at a preconceived conclusion. The expectation is that licensing authorities implement the recommendations unless there are compelling local reasons not to.

The standards outlined in the 2020 publication replace relevant sections of the Department for Transport's *'Taxi and private hire vehicle licensing: best practice guidance'* issued in 2010. Where there is conflict between the two documents, the standards in the 2020 document take precedence.

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

The purpose of this document is to outline the recommendations made by the Department for Transport in its 2020 publication and respond with the measures that Havant Borough Council will take to ensure that the standards are implemented where appropriate.

#### Consideration of Statutory Standards

##### *Licensing policies*

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

The Council's Hackney Carriage and Private Hire Licensing Policy is currently available on the Council's website.

**PROPOSAL:** A review of the policy will be undertaken in in 2023 to ensure that all details above, and any recommendations made by the Department for Transport, are incorporated.

- 3.5 *One of the key lessons learned is that it is vital to review policies and reflect changes in the industry both locally and nationally. **Licensing authorities should review their licensing policies every five years, but should also consider interim reviews should there be significant issues arising in their area, and their performance annually.***

**PROPOSAL:** Commitment to reviewing the Hackney Carriage and Private Hire Licensing Policy at least every five years, or sooner if there are relevant legislative changes or significant issues arise in the area.

### **Duration of licences**

- 3.6 *A previous argument against issuing licences for more than a year 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 for drivers by authorities to undertaking regular interim checks. To help authorities monitor licensees' suitability, licensing authorities should engage with their police force to ensure that when the police believe a licensee presents a risk to the travelling public they use their Common Law Police Disclosure powers (see paragraphs 4.9 - 4.11) to advise them.*
- 3.7 *The Local Government (Miscellaneous Provisions) Act 1976 (as amended) sets a standard length at three years for taxi and private hire vehicle drivers and five years for private hire vehicle operators. Any shorter duration licence should only be issued when the licensing authority thinks it is appropriate in the specific circumstances of the case, if a licensee has requested one or where required (e.g. when the licence holder's leave to remain in the UK is time-limited) or when the licence is only required to meet a short-term demand; they should not be issued on a 'probationary' basis.*

The Council currently offers a 3-year Combined (Dual) Hackney Carriage and Private Hire Driver's Licence as standard. A licence may be issued for a shorter period where appropriate in the circumstances of the case, i.e., finite leave to remain, or where the driver specifically requests a shorter licence period.

**PROPOSAL:** Formalise this process in the revised Hackney Carriage and Private Hire Licensing Policy.

### **Whistleblowing**

- 3.8 *It is in the application of licensing authority's policies (and the training and raising of awareness among those applying them) that protection will be*

*provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. Licensing authorities should have effective internal procedures in place for staff to raise concerns and for any concerns to be dealt with openly and fairly.*

The Council's Whistleblowing Policy was last reviewed in June 2018 and is published on the Council's intranet site for all staff members to access.

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

*3.12 Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.*

**PROPOSAL:** The Council shall review its list of standard consultees and ensure that any groups mentioned above are included / represented. It may also be appropriate for the Licensing Committee to review the proposed list of consultees prior to public consultation taking place.

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

A representative of the Council's Licensing Team attends quarterly meetings at the Hampshire and Isle of Wight Licensing Officers' Group, a forum used to discuss county-wide issues and ideas.

**PROPOSAL:** The Council shall review its list of standard consultees and ensure that neighbouring licensing authorities are consulted on any proposed changes to the Hackney Carriage and Private Hire Licensing Policy.

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

*3.14 Any changes in licensing requirements should be followed by a review of the licences already issued. If the need to change licensing requirements*

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

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

**PROPOSAL:** The Council shall ensure that, once any proposed revisions to the Hackney Carriage and Private Hire Licensing Policy have been adopted, a review of current licences is undertaken. This may result in overturning decisions made under the previous policy. Each case will be considered individually with public safety as the overriding consideration.

Where new requirements for licensees are introduced (e.g., new training requirements) the Council shall ensure that a reasonable period is given for current licensees to achieve compliance and that this is communicated promptly and effectively.

It is preferred that a review of current licences will be undertaken at renewal stage, rather than during the period of licence, to ensure that this project can be undertaken within the Council's current resources.

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

- 4.2 *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.*

- 4.3 *Enhanced certificates with a 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. Spent convictions and cautions are disclosed on standard and enhanced certificates according to rules set out in legislation. Convictions which resulted in a custodial sentence, and convictions or cautions for a specified serious offence such as those involving child sexual abuse will always be disclosed on a standard or enhanced certificate. Full details of the disclosure rules, and those offences which will always be disclosed, are available from the DBS. As well as convictions and cautions, an 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 statutory guidance issued by the Home Office when considering disclosure. A summary of the information provided at each level of DBS checks is annexed to this document (Annex – Disclosure and Barring Service information).*
- 4.4 *It should be noted that licensing authorities must not circumvent the DBS process and seek to obtain details of previous criminal convictions and other information that may not otherwise be disclosed on a DBS certificate. Whilst data protection legislation (not just the Data Protection Act 2018 or General Data Protection Regulation (GDPR)) gives individuals (or data subjects) a ‘right of access’ to the personal data that an organisation holds about them, it is a criminal offence to require an individual to exercise their subject access rights so as to gain information about any convictions and cautions. This could potentially lead to the authority receiving information to which it is not entitled. The appropriate way of accessing an individual’s criminal records is through an enhanced DBS and barred lists check.*

The Council does not, and will not, require an applicant or current licence holder to exercise their own ‘right of access’ to personal data in order to obtain information about criminal convictions or cautions.

Applicants for Hackney Carriage and Private Hire Drivers’ Licences are requested to disclose any known criminal convictions or cautions on their application form, with basic information required. However, the Council shall rely on the Disclosure and Barring Service and/or Common Law Police Disclosure to obtain data relating to convictions and/or cautions and use this data in its decision-making.

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

- 4.5 *Subscription to the DBS Update Service allows those with standard and enhanced certificates to keep these up to date online and, with the individual’s consent, allows nominees to check the status of a certificate online at any*

*time. Subscription to the service removes the need for new certificates to be requested, reduces the administrative burden and mitigates potential delays in relicensing.*

**PROPOSAL:** Introduce a mandatory requirement for all licensed hackney carriage and private hire drivers to sign up, and maintain a subscription, to the DBS Update Service. This will enable the Council to conduct regular status checks in line with the Department for Transport's guidance and reduce the administrative burden on the licence holder having to apply for a new enhanced DBS each time one is required. New applicants will be required to demonstrate that they are signed up to the DBS Update Service prior to a licence being granted.

It is likely that the Council will outsource the DBS Update Service checking function to an authorised third-party, appointed in line with the Council's current procurement process.

### **Common Law Police Disclosure**

- 4.9 *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 private hire vehicle drivers. 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.*
- 4.10 *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*
- 4.11 *This procedure provides robust safeguarding arrangements while ensuring only relevant information is passed on to employers or regulatory bodies. **Licensing authorities should maintain close links with the police to ensure effective and efficient information sharing procedures and protocols are in place and are being used.***

The Council shall continue to maintain a positive relationship with the police to ensure that information relevant to hackney carriage and/or private hire licensing is shared. The Council may also apply for Common Law Police Disclosure, where reasonable and necessary in the circumstances, via Hampshire Constabulary. There is often a small fee for information to be disclosed, which will be covered by the Council.

## **Licensee self-reporting**

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

**PROPOSAL:** Amend the Hackney Carriage and Private Hire Licensing Policy to require licence holders to disclose to the Council in writing, within 48 hours, any arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence.

**PROPOSAL:** Amend the Hackney Carriage and Private Hire Licensing Policy to require licence holders to disclose to the Council in writing, within 7 days, any conviction not included above.

**PROPOSAL:** Addition of paragraph in Hackney Carriage and Private Hire Licensing Policy providing clarity that failure to disclose the information above within the prescribed time period may be seen as behaviour that questions the honesty and integrity and therefore suitability of the applicant / licence holder.

**PROPOSAL:** Amend the Combined (Dual) Hackney Carriage and Private Hire Driver's Conditions to require licence holders to disclose convictions as per the two paragraphs above.

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

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

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

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

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

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

**PROPOSAL:** Addition of paragraph in Hackney Carriage and Private Hire Licensing Policy, requiring the Council to consider whether it is appropriate to make a referral to the DBS where a hackney carriage and private hire driver's licence is revoked, or an application refused.

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

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

The Council shall continue to maintain a positive relationship with the police to ensure that information relevant to hackney carriage and/or private hire licensing is shared.

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

**PROPOSAL:** Addition of paragraph in Hackney Carriage and Private Hire Licensing Policy, requiring the Council to consider whether it is appropriate to notify the police



where a hackney carriage and private hire driver's licence is revoked, or an application refused, if done so on public safety grounds.

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

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

The Council already requires applicants to disclose whether they have had a licence refused, revoked or suspended on the application form.

**PROPOSAL:** Addition of paragraph in Hackney Carriage and Private Hire Licensing Policy, requiring applicants to notify the Council on application of any refusal, suspension or revocation with another licensing authority.

**PROPOSAL:** Addition of paragraph in Hackney Carriage and Private Hire Licensing Policy, requiring current licensees to notify the Council, in writing, of any refusal, suspension or revocation with another licensing authority within 7 days of such refusal, suspension or revocation.

4.21 *The LGA's Councillors' Handbook on taxi and private hire vehicle licensing advises that those responsible for licensing should "communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistency and robustness in decision-making. By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities.". While this approach may aid consistency and robustness in decision-making within regions, it has obvious inherent limitations as it is unlikely such protocols could be established between all licensing authorities. The LGA commissioned the National Anti-Fraud Network to develop a national register of taxi and private hire vehicle driver licence refusals and revocations (the register is known as 'NR3'). Tools such as NR3 should be used by licensing authorities to share information on a more consistent basis to mitigate the risk of non-disclosure of relevant information by applicants.*

A representative of the Council's Licensing Team attends quarterly meetings at the Hampshire and Isle of Wight Licensing Officers' Group, a forum used to discuss county-wide issues and ideas. Discussion about enforcement cases and decision

making are often held. The Group also has an information sharing agreement in place to enable licensing authorities to share key information about refusals, suspensions, revocations and other behaviour where deemed proportionate and necessary.

Regular conversations with neighbouring licensing authorities, such as Portsmouth City Council, and reviews of other authorities' policies can help to achieve a consistent approach to hackney carriage and private hire licensing.

**PROPOSAL:** Implement use of the National Anti-Fraud Network's NR3 database, as required by the Department for Transport and the Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022. The database will be used for searching driver applicants (both at the point of initial application and renewal) recording details of any refusal, suspension or revocation. Include details of how applicants' and licensees' data will be shared on the database in the case of a refusal, suspension or revocation, and update application forms to include a declaration confirming that the applicant understands this.

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

The Council currently completes decision notices for any refusal, suspension or revocation of licence, which is signed off by an officer with the appropriate delegated authority to make such a decision. Decision notices are kept and provided to other licensing authorities and/or the Police upon receipt of a completed Data Protection Request.

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

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

*4.24 If notification under paragraph 4.20 or 4.21 of a refused or revoked licence is disclosed, the relevant licensing authority should be contacted to establish*

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

The Council shall obtain advice from the Council's Data Protection Officer where required in relation to disclosing information to other licensing authorities, taking into account any data protection sharing agreements in place.

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

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

The Council already requires applicants to disclose whether they have had a licence refused, revoked or suspended on the application form. It also proposes to require current licence holders to disclose a refusal, suspension or revocation by another licensing authority within 7 days.

**PROPOSAL:** Clarify in the revised Hackney Carriage and Private Hire Licensing Policy that a failure to disclose / notify this information to the Licensing Authority may impact the outcome of an individual's application / a current licence holder's licence.

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

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

The Council intends to raise the matter of how best to liaise with the local MASH at a Hampshire and Isle of Wight Licensing Officers' Group meeting, and understand how other authorities currently fulfil this requirement to better inform its own processes.

### **Complaints against licensees**

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

**PROPOSAL:** The Council shall review its current system for recording complaints to ensure that it is fit for purpose and enables officers to analyse trends across all licensees in addition to complaints against individual licensees. Where improvements are required, these will be implemented to ensure that the system continues to be fit for purpose.

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

**PROPOSAL:** Outline the Council's approach to enforcement and compliance within the revised Hackney Carriage and Private Hire Licensing Policy, referring to complaints and how behaviour other than convictions may be considered in determining the fitness and propriety of an applicant or licensee.

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

The Council currently supplies all vehicle proprietors with signage that must be displayed both in the windscreen and the rear of the vehicle. This signage contains information on how to contact the Licensing Authority to raise a complaint or concern.

**PROPOSAL:** Review and revise guidance on the Council's website in relation to submitting complaints to the Licensing Authority.

**PROPOSAL:** Include a requirement, as a condition of licence, for private hire operators to notify the Council of any complaint received which relates to the conduct of a driver or the condition of a vehicle, within 7 days of receiving such a complaint.

4.32 *Importantly, this approach will assist in the directing of complaints and information regarding the behaviour of drivers who may be carrying a passenger outside of the area in which the driver is licensed to the authority that issued the licence. In order for this to be effective licensing authorities must ensure that drivers are aware of a requirement to display information on how to complain and take appropriate sanctions against those that do not comply with this requirement.*

All vehicle proprietors and private hire operators are provided with the relevant signage to be displayed in licensed vehicles.

**PROPOSAL:** Amend the policy and vehicle conditions to include a mandatory requirement to display the information in licensed vehicles. The Council may suspend a vehicle licence in the event that the vehicle is found to be in contravention of this requirement.

### **Overseas convictions**

4.34 *The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK. It should however be noted that some countries will not provide an 'Certificate of Good Character' unless the individual has been resident for six months or more.*

4.35 *Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process (. It is the character of the applicant as an adult that*

*is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office guidance.*

- 4.36 *Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document (Annex – Assessment of previous convictions), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.*

The Council currently requires applicants for a Combined Hackney Carriage and Private Hire Driver's Licence to provide a Certificate of Good Character, where required to complete a 5-year address history. If the individual has lived in the UK for more than five years, a Certificate of Good Character is not required.

**PROPOSAL:** Amend the Hackney Carriage and Private Hire Licensing Policy to introduce the requirement for a Certificate of Good Character where:

- a) An applicant has spent six or more continuous months overseas from the age of 18 years old, and
- b) A current licensed driver who has spent six or more continuous months overseas since their last licence renewal

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

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

The Council will review its scheme of delegation to ensure that the relevant decision makers have the correct delegations in place.

## **Training decision makers**

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

Licensing Officers and the Licensing Team Leader undertake regular refresher training in the form of Institute of Licensing training courses and other learning opportunities, such as conferences and webinars.

Licensing Committee members undertake in-house training provided by the Licensing Team prior to sitting on the committee, although this is not mandatory. External training providers have been used in the past with minimal attendance from committee members.

**PROPOSAL:** Introduce the requirement for Licensing Committee members to complete mandatory training (whether in-house or with an external provider) prior to being permitted to exercise their functions as a committee member. Liaison with Democratic Services will be key in ensuring that training records are maintained.

5.4 *Public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:*

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

The Council shall ensure that training provided to Licensing Officers and Committee Members covers the above points. Reports to the Licensing Committee will also highlight the general principles.

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

The Council has procedures in place for officers and committee members to declare an interest in any case, and those who have declared an interest will not be involved in the determination of that case.

#### *The regulatory structure*

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

The Council has a Licensing Committee for consideration of matters relating to policy and procedure. A Licensing Sub-Committee may be convened, with members drawn from the aforementioned larger committee, for making decision relevant to specific applications or licences.

Less contentious matters are frequently delegated to suitably trained, authorised officers via the scheme of delegation.

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

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



*involvement will affect their judgement in relation to decisions made at a later date.*

- 5.8 *Avoidance of bias or even the appearance of bias is vital to ensuring good decisions are made and instilling and/or maintaining confidence in the licensing regime by passengers and licensees.*
- 5.9 *Unlike officers, elected members are not usually involved in the day to day operation of the service and as such do not have relationships with licence holders that may give the impression that the discharge of a function is affected by the relationship between the decision maker and the licence holder.*
- 5.10 *Some licensing authorities may decide to operate a system whereby all matters are delegated to a panel of officers; however, this approach is not recommended and caution should be exercised. Decisions must be, and be seen to be, made objectively, avoiding any bias. In addition, it may be more difficult to demonstrate compliance with the principles referred to above due to the close connection between the officers on the panel, and those involved in the operational discharge of the licensing functions.*

The Environmental Health Department is in the process of reviewing its enforcement policy. It is noted that it is not recommended that matters are delegated to a panel of officers, and the Licensing Team will feed this back to the Environmental Health Manager.

Where it is considered that a Licensing Officer's previous experience with a licensee could prejudice their decision making, it will be ensured that either an alternative officer handles the case or the case is overseen by a manager who has no prior experience with the licensee.

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

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

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

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

The Council already undertakes a number of steps to test whether an applicant or licence holder is fit and proper. However, the question above frames the 'fit and proper' test in an accessible and easily-understandable way for decision makers.

**PROPOSAL:** Include the above question in the Council's revised Hackney Carriage and Private Hire Licensing Policy, to aid decision makers in making informed decisions about fitness and propriety of applicants and licence holders.

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

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

**PROPOSAL:** Highlight in the revised Hackney Carriage and Private Hire Policy that 'the balance of probability' is the evidential standard required for determining an applicant or licence holder's fitness and propriety.

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

5.15 *In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being 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.*

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

*guidance on determining the suitability of taxi and private hire vehicle licensees.*

5.17 *These periods should be taken as a starting point in considering whether a licence should be granted or renewed in all cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that applicants are entitled to a fair and impartial consideration of their application.*

**PROPOSAL:** Introduce a section in the Hackney Carriage and Private Hire Licensing Policy that specifically deals with consideration of criminal convictions, providing guidelines on how an applicant or licence holder's criminal history will inform the Council's decision-making process. This section of the policy will adopt the Department for Transport's recommendations for the number of years free from conviction that the Council expects prior to granting a licence. It will also include a list of which offences would prevent an applicant from being licensed regardless of the period elapsed, in all but truly exceptional circumstances. The policy will aim to achieve consistency in considering applications where the applicant has a conviction.

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

**PROPOSAL:** Adopt the Institute of Licensing's recommendation that where an applicant has 7 or more points on their DVLA driving licence, a Hackney Carriage and Private Hire Driver's Licence shall not be granted until at least 5 years has elapsed since the completion of any sentence imposed. Any current driver with 7 or more points on their DVLA driving licence can expect their licence to be revoked. These recommendations are included in the Institute of Licensing's 2018 publication, '*Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades.*'

### ***Criminality checks for drivers***

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

The Council currently requires applicants to submit an enhanced DBS certificate prior to their Hackney Carriage and Private Hire Driver's Licence being granted, and every three years thereafter.

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

The Council currently requires both the children and adult Barred Lists to be checked with the enhanced DBS certificate.

**PROPOSAL:** Addition of paragraph in revised Hackney Carriage and Private Hire Licensing Policy to formalise the requirements for an enhanced DBS certificate, including checks of the Barred Lists. This is for clarity only, as the Council already requires this.

**PROPOSAL:** Amend the Hackney Carriage and Private Hire Licensing Policy to require all licensed drivers to be signed up to the DBS Update Service, enabling the Council to check the status of their DBS certificate at least every six months. This will be a mandatory requirement. Those who fail to sign up to the DBS Update Service will not have their licence renewed until such time as they can provide an enhanced DBS certificate and evidence of subscription to the DBS Update Service. Drivers will be given sufficient advance warning of this requirement.

**PROPOSAL:** Amend the Hackney Carriage and Private Hire Licensing Policy to clarify that, where the DBS Update Service indicates that there has been a change to a driver's DBS certificate, the driver must obtain a new enhanced DBS certificate complete with checks of the Barred Lists.

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

**PROPOSAL:** Addition of statement in the Policy to confirm that a licence will not ordinarily be granted to any individual that appears on either Barred List. Any current driver found to appear on either Barred List can expect their licence to be revoked.

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

The Council will continue to work with Hampshire County Council's Home to School Transport Team, establishing a data sharing agreement to the satisfaction of both councils for the purposes of sharing information about drivers who undertake school transport.

### **Safeguarding awareness**

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

6.6 *All licensing authorities should provide safeguarding advice and guidance to the trade and should require taxi and private hire vehicle drivers to undertake safeguarding training. This is often produced in conjunction with the police and other agencies. These programmes have been developed to help drivers and operators:*

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

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

**PROPOSAL:** Introduce the mandatory requirement for applicants for a Hackney Carriage and Private Hire Driver's Licence to complete a safeguarding course approved by the Council. This will be required before a licence is granted.

**PROPOSAL:** Introduce the mandatory requirement for all current holders of a Hackney Carriage and Private Hire Driver's Licence to complete a safeguarding course approved by the Council by a specified date. Failure to complete the course by the deadline without reasonable cause shall result in the individual's licence being suspended.

The Council does not currently propose to require ongoing refresher training with regards to safeguarding awareness. This is because ensuring that the existing 500+ drivers comply with the requirement to complete the initial training already demands significant resources. Once all current licensees are compliant, the Licensing Team will consider what processes need to be put in place to achieve ongoing refresher training.

The current proposal is to approve the Blue Lamp Trust's Virtual Classroom Safeguarding Awareness Course, but further courses may be approved in the future should the Blue Lamp Trust not provide sufficient sessions to meet demand. The course aims to provide hackney carriage and private hire drivers with a knowledge and understanding of safeguarding, their responsibilities and best practice protocols. The training content covers all the above and more.

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

### ***'County lines' exploitation***

- 6.8 *County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs (primarily crack cocaine and heroin) into one or more importing areas [within the UK], using dedicated mobile phone lines or other form of "deal line".*
- 6.9 *Exploitation is an integral part of the county lines offending model with children and vulnerable adults exploited to transport (and store) drugs and money between locations. Children aged between 15-17 make up the majority of the vulnerable people involved in county lines, but they may also be much younger. We know that both girls and boys are groomed and exploited, and offenders will often use coercion, intimidation, violence (including sexual violence) and weapons to ensure compliance of victims. Children exploited by county lines gangs may have vulnerabilities besides their age, such as broader mental health issues, disrupted or chaotic homes, substance misuse issues, being excluded from school or frequently going missing.*

6.10 *The National Crime Agency's 2018 county lines threat assessment set out that the national road network is key to the transportation of county lines victims, drugs and cash; with hire vehicles being one of the methods used for transportation between locations.*

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

- *Children and young people travelling in taxis or private hire vehicles alone; 25*
- *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.*

As above, the Council proposes to introduce the mandatory requirement for all applicants for, and current holders of a Hackney Carriage and Private Hire Driver's Licence to complete a safeguarding course approved by the Council. The current proposal is to approve the Blue Lamp Trust's Virtual Classroom Safeguarding Awareness Course, but further courses may be approved in the future should the Blue Lamp Trust not provide sufficient sessions to meet demand. The course aims to provide hackney carriage and private hire drivers with a knowledge and understanding of safeguarding, their responsibilities and best practice protocols. The training content covers the subject of criminal exploitation, including county lines.

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

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

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

As above, the Council proposes to develop a small leaflet or information card to provide to all licence holders, designed to be easily stored in a glove compartment or similar. This will act as an aide memoire for drivers regarding how to identify and report safeguarding concerns. The Council will have regard to the Home Office's toolkit when developing this document.

## **Language proficiency**

- 6.14 *A lack of language proficiency could impact on a driver's ability to understand written documents, such as policies and guidance, relating to the protection of children and vulnerable adults and applying this to identify and act on signs of exploitation. Oral proficiency will be of relevance in the identification of potential exploitation through communicating with passengers and their interaction with others.*
- 6.15 *A licensing authority's test of a driver's proficiency should cover both oral and written English language skills to achieve the objectives stated above.*

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

**PROPOSAL:** Amend the Policy to include the right for the Licensing Authority to require an applicant to pass an English test with an approved provider, where concerns are raised about the applicant's ability to speak and understand English.

## **7. Vehicle Licensing**

- 7.1 *As with driver licensing, the objective of vehicle licensing is to protect the public, who trust that the vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those granted a vehicle licence also pose no threat to the public and have no links to serious criminal activity. Although vehicle proprietors may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed and so maintain the safety benefits of the licensing regime.*

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

- 7.2 *Enhanced DBS and barred list checks are not available for vehicle licensing. **Licensing authorities should require a basic disclosure from the DBS and that a check is undertaken annually.** Any individual may apply for a basic check and the certificate will disclose any unspent convictions recorded on the Police National Computer (PNC). Licensing authorities should consider whether an applicant or licence holder with a conviction for offences provided in the annex to this document (Annex – Assessment of previous convictions), other than those relating to driving, meet the 'fit and proper' threshold.*
- 7.3 *However, it is important that authorities acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. An authority which undertakes the biannual DBS checks recommended for its*



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

**PROPOSAL:** Amend the Policy to require vehicle proprietors to submit a basic DBS certificate (no more than 1 month from the date of issue) on application for a Hackney Carriage or Private Hire Vehicle Licence, and every year on renewal. This will not apply to applicants who already hold a Hackney Carriage and Private Hire Driver's Licence with Havant Borough Council. However, in the event that the individual ceases to hold a Hackney Carriage and Private Hire Driver's Licence, a basic DBS certificate in respect of the Hackney Carriage or Private Hire Vehicle Licence will be required immediately.

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

Where an individual has had a Hackney Carriage and Private Hire Driver's Licence refused, suspended, or revoked, the Council shall ensure that decisions on the suitability of the individual to obtain a Hackney Carriage or Private Hire Vehicle Licence are made independently from matters relating to the Hackney Carriage and Private Hire Driver's Licence.

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

**PROPOSAL:** Amend the policy to require that, where the applicant for a Hackney Carriage or Private Hire Vehicle licence is a company or partnership, all directors or partners shall provide a basic DBS certificate (no more than 1 month from the date of issue). Where a director or partner already holds a Hackney Carriage and Private

Hire Driver's Licence with Havant Borough Council, they need not comply with this requirement.

**PROPOSAL:** Amend the Policy and vehicle licence conditions to require the licence holder, if a company or partnership, or notify the Council in writing of any changes to directorship or partnership within 7 days of such change.

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

**PROPOSAL:** Amend the Policy to state that the Council reserves the right to request a Certificate of Good Character from an applicant for a Hackney Carriage or Private Hire Vehicle Licence where they have spent six or more continuous months outside of the UK since the age of 18 years old. This includes directors and partners, where the applicant is a company or partnership.

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

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

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

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

7.9 *All licensing authorities should consult to identify if there are local circumstances which indicate that the installation of CCTV in vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, and taking into account potential privacy issues. 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 Wales only 17 percent of victims report their experiences to the police, 28 percent 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.*

- 7.11 *The mandating of CCTV in vehicles may deter people from seeking a taxi or private hire vehicle 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.*
- 7.12 *CCTV systems that are able to record audio as well as visual data may also help the early identification of drivers that exhibit inappropriate behaviour toward passengers. Audio recording should be both overt (i.e. all parties should be aware when recordings are being made) and targeted (i.e. only when passengers (or drivers) consider it necessary). The recording of audio should be used to provide an objective record of events such as disputes or inappropriate behaviour and must not be continuously active by default and should recognise the need for privacy of passengers' private conversations between themselves. Activation of the audio recording capability of a system might be instigated when either the passenger or driver operates a switch or button.*
- 7.13 *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. More information and guidance on assessing the impacts of CCTV and on an authority mandating CCTV is annexed to this document (Annex – CCTV guidance).*

The Council understands that the process of undertaking a review, to determine whether installation of CCTV in licensed vehicles is necessary and proportionate, will require considerable resources. The process will involve a data protection impact assessment, obtaining views from the public, taxi trade and key stakeholders, and the gathering and analysis of crime statistics and complaints data.

The Council is committed to undertaking a review but acknowledges that it will take several months, and it does not wish to delay implementing other measures proposed by these standards in the meantime. It may be that the Council requires an additional, temporary resource to undertake a successfully thorough review, and this will require an additional proposal to Members.

## **Stretched Limousines**

- 7.14 *Licensing authorities are sometimes asked to license small (those constructed or adapted to carry fewer than nine passengers) limousines as private hire vehicles, these vehicles may be used for transport to ‘school proms’ as well as for adult bookings. It is suggested that licensing authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. It is the Department’s view that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle thereby excluding these services from the scope of the private hire vehicle regime and the safety benefits this provides. A blanket policy of excluding limousines may create an unacceptable risk to the travelling public, as it may lead to higher levels of unsupervised operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators.*
- 7.15 *Stretched large limousines which clearly seat more than eight passengers should not be licensed as private hire vehicles because they are outside the licensing regime for private hire vehicles. However, in some circumstances a vehicle with space for more than eight passengers can be licensed as a private hire vehicle where the precise number of passenger seats is hard to determine. In these circumstances, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than eight passengers, bearing in mind that refusal may encourage illegal private hire operation.*

The Council already makes provision for the licensing of stretch limousines and other ‘special’ vehicles in its vehicle specification and intends to carry this provision into the revised Policy. The Council acknowledges that stretch limousines play legitimate role in the private hire trade and therefore appropriate conditions need to be in place to ensure that they are licensed wherever possible to prevent illegal private hire operation.

## **8. Private Hire Vehicle Operator Licensing**

- 8.1 *As with driver licensing, the objective in licensing private hire vehicle operators is to protect the public, who may be using operators’ premises and trusting that the drivers and vehicles dispatched are above all else safe. It is important therefore that licensing authorities are assured that those that are granted a private hire vehicle operator also pose no threat to the public and have no links to serious criminal activity. Although private hire vehicle operators may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are*

*appropriately licensed and so maintain the safety benefits of the driver licensing regime.*

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

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

**PROPOSAL:** Amend the Policy to require individuals to submit a basic DBS certificate (no more than 1 month from the date of issue) on application for a Private Hire Operator’s Licence, and every year on renewal. This will not apply to applicants who already hold a Hackney Carriage and Private Hire Driver’s Licence with Havant Borough Council. However, in the event that the individual ceases to hold a Hackney Carriage and Private Hire Driver’s Licence, a basic DBS certificate in respect of the Private Hire Operator’s Licence will be required immediately.

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

Where an individual has had a Hackney Carriage and Private Hire Driver's Licence refused, suspended, or revoked, the Council shall ensure that decisions on the suitability of the individual to obtain a Private Hire Operator's Licence are made independently from matters relating to the Hackney Carriage and Private Hire Driver's Licence.

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

**PROPOSAL:** Amend the Policy to require that, where the applicant for a Private Hire Operator's Licence is a company or partnership, all directors or partners shall provide a basic DBS certificate (no more than 1 month from the date of issue). Where a director or partner already holds a Hackney Carriage and Private Hire Driver's Licence with Havant Borough Council, they need not comply with this requirement.

**PROPOSAL:** Amend the Policy and operator licence conditions to require the licence holder, if a company or partnership, or notify the Council in writing of any changes to directorship or partnership within 7 days of such change.

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

**PROPOSAL:** Amend the Policy to state that the Council reserves the right to request a Certificate of Good Character from an applicant for a Private Hire Operator's Licence where they have spent six or more continuous months outside of the UK since the age of 18 years old. This includes directors and partners, where the applicant is a company or partnership.

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

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

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

**PROPOSAL:** Amend the Policy and operator conditions to require private hire operators to maintain a register of staff members that take bookings and/or dispatch vehicles.

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

**PROPOSAL:** Amend the Policy and operator conditions to require private hire operators to record the date on which they have seen each staff members' basic DBS certificate.

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

**PROPOSAL:** Amend the Policy and operator conditions to require private hire operators to keep the register of staff members up to date, and to require a new basic DBS certificate from a staff member if they cease working for the operator and then continue working with them again in the future.

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

**PROPOSAL:** Amend the operator conditions to require private hire operators, where they outsource their booking and dispatch functions to another company or

organisation, to retain a copy of that company or organisation's policy on protecting children and vulnerable adults.

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

**PROPOSAL:** Amend the Policy and the operator conditions to require applicants for a Private Hire Operator's Licence to submit their policy on employing ex-offenders. Current licensed operators will be requested to provide this on renewal.

The Council will either provide a template or direct applicants and licensees to suitable guidance on producing their policy.

### **Record keeping**

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

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

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

**PROPOSAL:** Amend the operator conditions to require operators to record the information above for each private hire booking. The Council currently provides a template for keeping operator records and it shall ensure that this template complies with the above minimum standards.



The Council currently requires operators to retain their records for a minimum of 24 months and has no plans to reduce this.

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

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

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

8.16 *PCV licensed drivers are subject to different checks from taxi and private hire vehicle licensed drivers as the work normally undertaken, i.e. driving a bus, does not present the same risk to passengers. Members of the public are entitled to expect when making a booking with a private hire vehicle operator that they will receive a private hire vehicle licensed vehicle and driver. The use of a driver who holds a PCV licence and the use of a public service vehicle (PSV) such as a minibus to undertake a private hire vehicle booking should not be permitted as a condition of the private hire vehicle operator's licence without the informed consent of the booker.*

8.17 *Where a private hire vehicle is unsuitable, for example where a larger vehicle is needed because more than eight passenger seats required or to accommodate luggage, the booker should be informed that a PSV is necessary, and that a PCV licensed driver will be used who is subject to different checks and not required to have an enhanced DBS check.*

**PROPOSAL:** Amend the Policy and operator conditions to require the operator and/or their staff responsible for taking bookings or dispatching vehicles to notify customers when their booking is to be fulfilled by a PCV licensed driver and/or a PSV. The operator and/or their staff shall not fulfil a booking using a PCV licensed driver and/or a PSV without the informed consent of the customer.

## **9. Enforcing the Licensing Regime**

9.1 *Implementing an effective framework for licensing authorities to ensure that as full a range of information made available to suitably trained decision makers that are supported by well-resourced officials is essential to a well-functioning taxi and private hire vehicle sector. These steps will help prevent the licensing of those that are not deemed 'fit and proper' but does not ensure that those already licensed continue to display the behaviours and standards expected.*

## **Joint authorisation of enforcement officers**

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

The Council shall continue to liaise with neighbouring authorities with regards to enforcement matters and explore the effectiveness of jointly authorising officers with reference to the LGA's model.

## **Setting expectations and monitoring**

9.3 *Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points- based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.*

The Council currently provides all new applicants with an application pack, which includes the current policy document. Should the revised Policy be adopted, the Council shall ensure that either a copy of the Policy or a weblink to the Policy is provided to all new applicants and existing licensees. Links to the licence conditions will be provided on the website and included on any licence issued.

The Council currently operates a point-based system for dealing with minor breaches. 1-3 points are awarded and remain 'current' on the licensee's record for a period of 12 months. A consistent approach is taken to imposing points, with previous cases referred to.

**PROPOSAL:** Review of the Council's penalty points system to ensure that it is fit for purpose and covers the majority of circumstances where penalty points would be an appropriate outcome.

9.4 *The provision of a clear, simple and well-publicised process for the public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity (see paragraphs 4.29 - 4.33). This will provide a further source of intelligence when considering the renewal of*

*licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.*

**PROPOSAL:** Review the process in place for customers to make complaints and consider development of an online complaints form instead of requiring submission via email. Data relating to complaints is assessed by licensing officers in considering whether to take enforcement action.

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

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

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

- (i) been convicted of an offence involving dishonesty, indecency or violence; or*
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;*

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

*(b) any other reasonable cause.*

9.6 *Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. Guidance for licensing authorities to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.*

9.7 *Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.*

The Council's current Policy does not provide clear guidance to decision makers or to applicants/licensees, and therefore it has been historically difficult to take a robust approach to determining whether a driver is fit and proper.

The Council intends, with the review of its Policy, to take a robust approach to determining whether a driver is fit and proper to hold a licence. All decisions will be made on the balance of probabilities, with consideration given to all evidence and with reference to the Council's Policy.

Drivers are typically invited to attend an informal interview or recorded interview under caution, depending on the severity of the matter being considered. Drivers may also opt to appoint a legal advisor to assist them. There is no proposal to change this approach and the revised Policy will recommend that a driver is given an opportunity to present their case in an interview prior to any decision being made.

*9.8 A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.*

*9.9 New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.*

The Council shall make enforcement decisions based on the information and evidence available to officers at the time. It acknowledges that new information may come to light after a decision has been made, and in these circumstances the Council shall re-consider the case in light of this new information or evidence. The Council may lift a suspension, or invite a driver to re-apply for a licence, in the event that the new information or evidence suggests that a suspension, revocation or refusal is no longer appropriate. In all cases the Council will give justified reasons for its actions and base all decisions on public safety.

*9.10 A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.*

The Council will always seek to address minor issues without refusal, suspension or revocation. Where there is an opportunity for an applicant or licensee to objectively resolve the issue at hand, i.e., by completing a training course or similar, a licence

may be suspended until such time as that remedial action has been undertaken. The Council acknowledges that more serious issues will not be suitably resolved through training and that suspension/revocation may be more appropriate in these cases.

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