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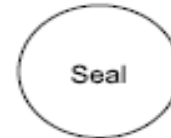
2 Claim Form

Judicial Review Claim Form

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

<i>For Court use only</i>	
Administrative Court Reference No.	
Date filed	

In the High Court of Justice Administrative Court	
Help with Fees - Ref no. (if applicable)	HWF - <input type="text"/> - <input type="text"/> - <input type="text"/> - <input type="text"/>



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
Mark Guy Rostron

address
17 Lower Guildford Rd
Knaphill
Woking
GU21 2EE

Telephone no. **Fax no.**
07956 935886

E-mail address
markgrostron@gmail.com

Claimant's or claimant's solicitors' address to which documents should be sent.

name
As Claimant

address
As Claimant

Telephone no. **Fax no.**
As Claimant

E-mail address
As Claimant

Claimant's Counsel's details

name
None

address

Telephone no. **Fax no.**

E-mail address

1st Defendant

name
Guildford Borough Council

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

name

address
Millmead House
Millmead
Guildford
Surrey GU2 4BB

Telephone no. **Fax no.**
01483 505050

E-mail address
customerservices@guildford.gov.uk

2nd Defendant

name
N/A

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

name
N/A

address
N/A

Telephone no. **Fax no.**
N/A

E-mail address
N/A

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name None	name
address	address
Telephone no.	Telephone no.
Fax no.	Fax no.
E-mail address	E-mail address

SECTION 3 Details of the decision to be judicially reviewed

Decision:
Decision by Guildford Borough Council to adopt a new Tax and Private Hire Policy by resolution.

Date of decision:
13th April 2021

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name Guildford Borough Council	address Millmead House Millmead Guildford SurreyGU2 4BB
--	--

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)? Yes No

Are you making any other applications? If Yes, complete Section 8. Yes No

Is the claimant in receipt of a Community Legal Service Fund (CLSF) certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application. Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below. Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below. Yes No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below.

Yes No

Article 6 Right to a fair hearing.
Article 1 Peaceful enjoyment of property.

SECTION 5 Detailed statement of grounds

set out below attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim

Yes No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below

SECTION 7 Details of remedy (including any interim remedy) being sought

1. Order allowing claimants appeal against the decision to appeal against Guildford Borough Council's Tax and Private Hire Licensing Policy 2021.
2. Order for costs against the Defendant.

SECTION 8 Other applications

I wish to make an application for:-
Permission to file claim late.

SECTION 9 Statement of facts relied on

Please see attached document.

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Mark Guy Rostron

Name of claimant's solicitor's firm N/A

Signed Mark Rostron

Position or office held N/A

Claimant ('s solicitor)

(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or CSLF certificate <i>(if legally represented)</i> | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed Mark Rostron Claimant ('s Solicitor) Mark Guy Rostron

3 Decision appealed against

On 13th April 2021 Guildford Borough Council RESOLVED:

That the updated Hackney Carriage and Private Hire Licensing Policy, attached as Appendix 1 to the report submitted to the Council, be approved.

Reasons:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

(See page 90)

4 Essential documents for advance reading

- a) Applicants address to the Licensing Committee. please see page 84)
- b) Applicants address to the full Council Meeting. (Please see page 85)
- c) Skeleton argument. (Please see page number 14)

Note

- i. The Skeleton argument, Statement of Fact and Statement of Grounds all use the same subheading numbers for cross reference.
- ii. All the Judicial Review case and legal references are from The Judicial Review Handbook, Sixth Edition by Michael Fordham QC. Kindle Edition.

5 Skeleton Argument

- a) This application is for a Judicial Review (JR) of Guildford Borough Council's (Council's) Taxi and Private Hire License Policy (Policy), in particular regard to the unlawful requirements for taxi livery, and the lack of policy concerning taxi vehicle safety and comfort.
- b) The GBC Taxi Livery Policy is Ultra Vires and unreasonable and unlawful.
- c) It is a perpetuated wrong obtained by fraud unidentified at the time the original 2015 Policy was adopted and decision not to Judicially Review then made.
- d) Taxi Safety Policy neglected to follow the Statute Law and is unreasonable.
- e) Taxi Comfort Policy neglected to follow the Statute Law and is unreasonable.

5.1 The Council did not review for their Taxi and Private Hire Licensing Policy of 2021, the terms of the previous Licensing Policy for 2015-2020 as they undertook to do when making the previous Policy.

5.2 The Council fraudulently declared that their Livery Policy was for the purposes of Public Safety when in fact it was for marketing and branding purposes.

5.3 The Council and its Officers did not have regard to, or failed to follow the Statute and Common Law with regard to a Taxi Licensing Policy.

5.3.1 Legislative and Regulatory Reform Act

5.3.2 Local Government Act 2000 Section 3(1)

5.3.3 Local Government (Miscellaneous Provisions) Act 1976 Section 47(1)

5.3.4 Local Government (Miscellaneous Provisions) Act 1976 Section 48(1)(a)(i),
(iv), and (v)

5.3.5 Guildford Borough Council failed to use its own Police Reporting Protocol

5.3.6 The Council excluded the above Statutes from the list of those it would have regard to in their Draft Policy.

5.4 The Council did not give proper reasons for their Policy on taxi Livery, Safety, or Comfort.

Too little time and attention was given at the Council and Licensing Committee Meetings and in the Council Meeting Information Pack, to the points raised by the Applicant in the Consultation.

That was procedurally unfair.

5.5 The Council and the Licensing Committee did not marshal the facts relating to Taxi Livery, Safety, and Comfort properly.

P60. Procedural unfairness.

(iii) Failure properly to marshall the evidence on which the decision should be based. For example, taking into account an immaterial factor or failing to take into account a material factor or failing to take reasonable steps to obtain the relevant information ... (iv) Failure to approach the decision in the right spirit. For example, where the decision maker is actuated by bias,

5.6 The Council relied on unjustified assurances by Councillors and Officers and rubber stamped the recommendations.

5.7 Councillors and Officers contributions to the meetings by “chat” were not visible to all public participants including the Applicant, and were not recorded in the Minutes.

5.8 Licensing Officer Mike Smith the author of the Policy was not at the Council Meeting to answer questions raised.

5.9 The Council wrongly included Taxi License Conditions in its Policy that are contrary to the restriction placed on their powers under the LGA s1 and s3 which limits powers to promote wellbeing, by limitation in s47 of the LGMPA, to those that they believe to be reasonably necessary. And the Council could not have reasonably believed those license conditions were necessary.

That is an error of law

5.10 The Council ignored the Statute Law.

5.11 The Council ignored the requirements of s48 of the LGMPA that licensed vehicles must be safe and comfortable.

5.12 The Council ignored the Ministerial Guidance “Taxi And Private Hire Vehicle Licensing: Best Practice Guidance March 2010” by the Department for Transport

5.13 The Council misapplied the following Ministerial Guidance.

5.13.1 Taxi And Private Hire Vehicle Licensing: Best Practice Guidance March 2010 by the Department for Transport

5.13.2 Statutory Taxi & Private Hire Vehicle Standards July 2020 by the Department for Transport

5.14 The Council ignored the Regulators Code 2014.

5.15 The Council and its Officers obtained the Taxi Licensing Policy in 2015 by means of collusion.

5.16 The Council and its Officers did not mention that there were undisputed allegations of fraud against Councillors and Officers in connection with the Livery Policy obtainment in 2016.

5.17 The Council and its Officers made Fraudulent statements whilst obtaining approval for the 2021 Policy.

5.18 The Councillors and Council Officers did not provide any evidence that the allegations of fraud against them were untrue.

5.19 The Council did not properly consider and have regard to allegations of fraud regarding the Policy.

5.20 The Council Officers did not disclose the Statutory and Ministerial and evidential problems with the Taxi Policy.

5.21 Councillors Goodwin and Moseley failed in their Duty of Candour to disclose they were party to a small unauthorised meeting that chose the taxi livery colour.

5.22 Council failed in their Duty of Candour to disclose or were not aware of matters regarding previous legal actions against the Council Livery Policy.

5.23 The Applicant did not have a fair hearing as required by the Human Rights Act.

6 Statement of Facts including Chronology

Chronology

- a) 11th January 2021 Applicant replied to the Guildford Borough Council Consultation re Taxi and Private Hire Policy 2020
- b) 24th March 2021 Council's response to Applicant
- c) 24th March 2021 Applicant's statement to GBC Licensing Committee
Three minutes including interruptions allowed to address the Committee.
- d) 24th March 2021 Mike Smith GBC Licensing Team Leader response to the Applicant
No questions from Council Members about the written 17 Page Consultation response from the Appellant, including allegations of Fraud under the Fraud Act or to the points raised by him in the meeting.
- e) 13th April 2021 Applicants statement to GBC Council Meeting
- f) 13th April 2021 Councils response to Applicant's statement to GBC Council Meeting
- g) 7th May 2021 An application for Judicial Review of Surrey Magistrates refusal to hold a Committal Hearing after information was provided to them about the Fraud allegations in connection with Taxi Livery Policy was lodged and copied to GBC, set out on pages .

6.1 The Council did not review for their Taxi and Private Hire Licensing Policy of 2021, the terms of the previous Licensing Policy for 2015-2020 as they undertook to do when making the previous Policy.

6.1.1 Councillor James Steel Lead Councillor for Licensing

"So the Policy in front of you tonight is a review of the current Policy along with the addition of new policies. (See Page 87)

8.1.4.11 Councillor Richard Potter

....And as I believe Councillor Moseley has just pointed out and as I was just about to say, this report has been through the Licensing Committee which I am not a member of but which I am confident that our colleagues who sit on the Licensing Committee would have raised any serious concerns with the rest of us had they had any..... (See page 88)

Councillor David Goodwin

From the Minutes (See page **Error! Bookmark not defined.**):

RESOLVED: That the updated Hackney Carriage and Private Hire Licensing Policy, attached as Appendix 1 to the report submitted to the Council, be approved.

Reasons:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

8.1.4.7 Councillor Richard Redpath

....This is an incredibly long, very very fantastic document I'm sure. 160 odd pages. Are we as Councillors expected to read every 160 odd

pages to find out what the changes were from the last review of this document and I assume it's not a brand new document? I assume it's one where most of it has been passed by the Council before, and we now have some amendments, so it would be very nice for future, if in future reviews of this document if we could see an executive summary, a summary of what's changed. Otherwise expecting every Councillor to read 160 pages to approve or disapprove a document that's already been approved, except for the changes is I think, is unfair on the Councillors. So it'd be great if the executive summary in future could be a proper summary of what's changed. (See page 87)

8.1.4.8 Mayor.

I have sympathy with that view.

6.2 The Council fraudulently declared that their Livery Policy was for the purposes of Public Safety when in fact it was for marketing and branding purposes

- a) The word "brand" was included in the first information pack for the 2015 Licensing Committee Meeting, but was removed.
- b) A comparison of the report to the Licensing Committee dated 18th March 2015 and the Supplementary Report published after the meeting reveals the following change where the word "brand" is struck through.:

- Creates local identity/~~brand~~: A local livery creates a strong local identity, which in the case of cities like London and New York becomes one that is recognised across the world.

As a matter of fact, the real reason was disclosed in the first report made to the Council 5 years ago, and that was to do with Guildford Council branding, but those words were removed from the subsequent Reports to the Meeting, so the subsequent Meetings never knew that. (See page 85)

.

6.3 The Council and its Officers did not have regard to, or failed to follow the Statute and Common Law with regard to a Taxi Licensing Policy.

6.3.1 Legislative and Regulatory Reform Act

6.3.2 Local Government Act 2000 Section 3(1)

6.3.3 Local Government (Miscellaneous Provisions) Act 1976 Section 47(1)

6.3.4 Local Government (Miscellaneous Provisions) Act 1976 Section 48(1)(a)(i), ((iv), and (v)

6.3.5 Guildford Borough Council failed to use its own Police Reporting Protocol

6.3.6 The Council excluded the above Statutes from the list of those it would have regard to in their Draft Policy (see page 161) section 3.3

In undertaking its licensing function, the Council will comply with relevant legislative requirements including:

· Town Police Clauses Act 1847 and 1889

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- *Local Government (Miscellaneous Provisions) Act 1976*
- *Transport Act 1985 and 2000*
- *Crime and Disorder Act 1998*
- *Environmental Protection Act 1990*
- *Equality Act 2010*
- *Road Traffic Acts*
- *Health Act 2006*
- *Human Rights Act 1998*
- *Immigration Act 2016*
- *The Police and Crime Act 2017*

6.4 The Council did not give proper reasons for their Policy on taxi Livery, Safety, or Comfort.

The Council's adopted Policy (see page 161) however states:

4.1 Policy guidance

This policy statement sets out the Council's approach to making licensing decisions. It will only be deviated from in exceptional circumstances based upon the merits of those particular circumstances and provided that the overall principles of the Policy are not undermined.

6.5 The Council and the Licensing Committee did not marshal the facts relating to Taxi Livery, Safety, and Comfort properly.

2. No public demand for full body livery

a) There has been no demand for imposing full body livery for taxis at any Local Authority in Surrey or neighbouring Guildford, so why is Guildford different?

b) The current level of support amongst the general public for a standard livery is unknown.

c) The Council has ignored a petition against the introduction of a livery for hackney carriages, signed by 115 drivers by 18 March 2015.

d) Some customers prefer to use non-liveried vehicles.

4. Comfort

a) Many of the licensed hackney carriages are too small to carry 4 adult passengers and luggage in safety and comfort.

b) A large number of taxis have fixed axle rear suspension designed for transporting goods not humans and providing unacceptably uncomfortable ride.

c) Minimum standards should be Mercedes E class, VW Passat or Ford Mondeo size vehicles or similar.

The Public were not advised that having the livery would lead to a deterioration in the quality of the hackney carriage fleet

d) A large number of vehicles licensed are coupés and have restricted rear headroom, door size and boot. making them unsuitable for four adult passengers and luggage. They also have restricted rear view mirror view.

In the back, taller adults might find their heads a little too close to the roof lining for comfort, but the width and length of the CC means there's enough leg and shoulder room to compensate.

Getting in and out of the rear isn't as easy as in a regular Passat, due to the sloping roof making the door openings smaller. There are technically three seats in the back, but whoever draws the short straw and has to sit in the middle will feel pretty cramped – it's only really suitable for short journeys. Visibility isn't as good as in the more practical Passat, either – those rakish looks and smaller windows make themselves known when you check your rear-view mirror.

Volkswagen CC boot space

The CC is based on a thoroughly practical family saloon, the VW Passat, but in the name of style the four-door coupe loses some of its sister model's practicality. First up is the boot. To give the car a less boxy look, it has a more rounded exterior shape and therefore less impressive luggage capacity – 532 litres compared to the Passat's 586.

3. Safety

a) There has been no regulation imposing full body livery for taxis at any Local Authority in Surrey or neighbouring Guildford, so why is Guildford different?

b) There has been no evidence of reduced passenger safety in any Boroughs that have not imposed a full body livery on their taxis.

- c) With reference to the abuse scandal in Rotherham and the Casey report, the proposition that hackney carriage livery improved public safety was untrue.
- d) The need for special driver training is unproven, and costly.
- e) There are no measures to control vehicles plying for hire not licenced by GBC, consequently large numbers of Guildford Private Hire Drivers have been using taxi licences obtained mor cheaply in local Boroughs, forcing up the price for Guildford Drivers and potentially avoiding regulations that the Council have thought necessary for Public Safety.
- f) There is no need for door signs on Private Hire Vehicles, UBER manage quite well without them and so did GBC licenced Private Hire before the 2015 Policy, and they damage and discolour car paintwork.
- g) Some licenced vehicles have an inadequate power to weight ratio. And inadequate Torque for acceleration That is important as Guildford is hilly and the access roads to the A3 can be uphill as well. To access the A3 at rush hour Southbound at Dennis's Roundabout in an underpowered fully laden car is dangerous.
- h) Peugeot Partner Tepee type rear loading vehicles are unsafe for wheelchair taxi use as they only have one wheelchair means of escape in the event of an accident.
- i) The Policy should include drivers and proprietor's declaration that they are aware of and adhere to the Equalities Acts

6.6 The Council relied on unjustified assurances by Councillors and Officers and rubber stamped the recommendations

Lead Councillor for Licensing James Steel (See page 86)

Starts at 21'40"

I'll just provide a brief response to the Livery question. So, as Mr Rostron kind of said, the decision was a historic one which was taken back over, close to five and a half years ago in December 2015. And the decision to adopt the decision was based on a public safety rationale, to improve confidence in the taxi service in Guildford, and was consulted on at the time quite extensively. The decision was not challenged by way of a JR at the time, and as such there was no change to the requirements on the update, there was no reason to change the requirements in the updated policy and the removal of the Livery requirement would be detrimental to Public Safety, and I have to agree with Mr Roberts key point on Public Safety and it would be detrimental to Public Safety and contrary to the Statutory Guidance that we get, that we gain from Central Government. (See Page 86)

Mr Mayor

"I think Mr Rostron will know, but I think that this came in the wake of a Rochdale scandal, or some other scandal from somewhere, and we were trying therefore to make genuine taxis obvious to younger people." (See page 87)

Councillor Goodwin

I fully agree with Councillor Marsha Moseley on this one. We did have a few discussions about it on Licensing Committee, and it is also as Councillor George Potter has mentioned, legit, what we've done and so on. And so therefore I'm happy with the recommendation as it stands. Thank you. (See page 88)

Councillor Marsha Moseley's contribution was not spoken and therefore not recorded. It may have been by text in the (chat) as mentioned below, but it was not visible to the Applicant and was not noted in the Minutes.

Councillor James Steel

I believe that Councillor Goodwin and Councillor Potter sort of answered some of the questions to do with the ultra vires but I'm happy to pass that given the fact I'm not a legal specialist to our Monitoring Officer to confirm that. I've also seen that Councillor Moseley in the chat has also taken you know sort of what has happened in the past to do with that. (See page 88)

Diane Owens Council Monitoring Officer

Yeh. I am confident with the new policy will stand up to any legal challenge. The Council is not acting ultra vires in passing it. The correct consultation process has been undertaken, and we've dealt with, followed our legal obligations to consultation, privacy impact assessments and equality impact assessments. There is also, you'll note, on page 66 in the legal paragraphs, that there is some discretion, so an applicant can apply, and each case should be considered on its merits, so the Committee can make exceptions if someone can't comply with the Policy for any reason. (See page 89)

6.7 Councillors and Officers contributions to the meetings by "chat" were not visible to all public participants including the Applicant, and were not recorded in the Minutes.

Councillor Goodwin

Mark Rostron v Guildford Borough Council Taxi and Private Hire Policy 2021

I fully agree with Councillor Marsha Moseley on this one. We did have a few discussions about it on Licensing Committee, and it is also as Councillor George Potter has mentioned, legit, what we've done and so on. And so therefore I'm happy with the recommendation as it stands. Thank you. (See page 88)

Councillor Marsha Moseley's contribution was not spoken and therefore not recorded. It may have been by text in the (chat) as mentioned below, but it was not visible to the Applicant and was not noted in the Minutes.

Councillor James Steel

I believe that Councillor Goodwin and Councillor Potter sort of answered some of the questions to do with the ultra vires but I'm happy to pass that given the fact I'm not a legal specialist to our Monitoring Officer to confirm that. I've also seen that Councillor Moseley in the chat has also taken you know sort of what has happened in the past to do with that. (See page 88)

- 6.8 Licensing Officer Mike Smith the author of the Policy was not at the Council Meeting to answer questions raised.
- 6.9 The Council wrongly included Taxi License Conditions in its Policy which set out conditions that taxis must be liveried in a green plastic wrap.

- 6.10 The Council did not mention any of the following Statutes or Ministerial Guidance
- 6.11 The Council did not mention the requirements of s48 of the LGMPA that licensed vehicles must be safe and comfortable.
- 6.12 The Council did not mention the Ministerial Guidance on Taxi and Private Hire Vehicle Licensing: Best Practice Guidance March 2010 by the Department for Transport
- 6.13 The Council misapplied Ministerial Guidance.
- 6.14 The Council ignored the Regulators Code 2014.
- 6.15 The Council and its Officers obtained the Taxi Licensing Policy in 2015 by means of collusion.
- 6.16 The Council and its Officers did not mention that there were undisputed allegations of fraud against Councillors and Officers in connection with the Livery Policy obtainment in 2016.
- 6.17 The Council and its Officers made the following Fraudulent statements whilst obtaining approval for the 2021 Policy.

- 6.18 The Councillors and Council Officers did not provide any evidence that the allegations of fraud against them were untrue.
- 6.19 The Council did not properly consider and have regard to allegations of fraud regarding the Policy.
- 6.20 The Council Officers did not disclose the Statutory and Ministerial and evidential problems with the Taxi Policy.
- 6.21 Councillors Goodwin and Moseley failed in their Duty of Candour to disclose they were party to a small unauthorised meeting that chose the taxi livery colour.
- 6.22 Council failed in their Duty of Candour to disclose or were not aware of matters regarding previous legal actions against the Council Livery Policy

Council did everything they could to prevent taxi driver Ben Simmonds from having his appeal against the imposition of the Livery License Condition heard.

Council did know or did not disclose that the legal advice not to Judicially Review the 2016 Taxi Licensing Policy to the Guildford Taxi Drivers was provided by a Barrister who did not disclose to the taxi drivers that he was a Conservative Councillor in Woking and that he was Chairman of their Licensing Committee.

The Barrister did not ask or was not aware of the fraudulent nature of the claims made by Guildford Borough Council in obtaining their Taxi Licensing Policy in 2016. Those fraudulent statements are set out starting on page 60.

6.23 Human Rights Act

STATEMENT OF TRUTH

I believe that the facts stated in these statements of fact and the following grounds are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Mark Rostron 11th July 2021

Address for service
markgrostron@gmail.com
17 Lower Guildford Rd
Knaphill
Woking
Surrey
GU21 2EE

7 Statement of Grounds for Judicial Review

This application is for a Judicial Review (JR) of the Councils decision to have a Policy which included unlawful policies on:

Taxi vehicle livery

Taxi vehicle safety

Taxi vehicle comfort

7.1 The Council did not in 2021 review for their Taxi and Private Hire Licensing Policy of 2021, the terms of the previous Licensing Policy for Taxis 2015-2020 as they undertook to do when making the previous Policy.

a) From the Meeting Agenda Pack, the Council were required:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

b) The Council wrongly, did not in fact review the 2016 Policy except for the requirements of the Statutory Guidance following the Police and Crime Act 2017.

c) The review of the 2016 Policy was mandated in the 2016 Policy itself.

1.7 We will review this policy at least every five years (or sooner in light of any significant changes to legislation or guidance) and consult

on any proposed amendments. If we make any changes, we will then re-publish the policy. (See page 56)

- d) The Council were duty bound to review the whole 2021 Policy not just the changes made.
- e) The Review was referred to by Councillor
- f) There is no evidence that they read the papers
- g) There is no evidence that they sufficiently understood the points made by the Applicant.
- h) There is evidence from the Councillors questions, that the only thing they were concerned with was legal liability for Ultra Vires acts by them.
- i) Cllr Sarah Parker (See page 87):

Can somebody just confirm that Mr Rostron's contention is not correct and that the decision was not ultra vires when originally taken, so that this Council is not doing anything improper, if necessary just before this is actually ratified, so that we aren't actually in breach of our existing powers, so if we could ratify subject to that if necessary subsequent confirmation, that would be helpful.

- j) The Council made insufficient inquiry. They did not sufficiently acquaint themselves with the relevant information, fairly presented and properly addressed

7.2 The Council fraudulently declared in their reports of 2015/16 that their Livery Policy was for the purposes of Public Safety when in fact it was for branding purposes

- a) The word "brand" was included in the first information pack for the 2015 Licensing Committee Meeting, but was removed. This indicates that the Councils original

purpose had been branding, but they sought to hide that from subsequent meetings. The Council Meetings in 2021 made insufficient or no enquiry about this point which was raised by the Applicant at the full Council Meeting (See page 85) and in his reply to the Consultation. (See page 56)

As a matter of fact, the real reason was disclosed in the first report made to the Council 5 years ago, and that was to do with Guildford Council branding, but those words were removed from the subsequent Reports to the Meeting, so the subsequent Meetings never knew that.

b) The Council had an improper motive, and had an improper object or purpose. P52

7.3 The Council and its Officers did not have regard to, or failed to follow the Statute and Common Law with regard to a Taxi Licensing Policy.

a) Failure to apply the following Statutes was an error of Law.

7.3.1 Legislative and Regulatory Reform Act

a) The Legislative and Regulatory Reform Act 2006 puts further limits on the authority of the Council:

21 Principles

(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

(2) Those principles are that—

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

b) The Council did not have regard to this Act.

7.3.2 Local Government Act 2000 Section 3(1)

a) The stipulation that the Council did not have power to override the Statutory requirements of the LGMPA 1976 were ignored.

b) The Council have no power in the Local Government Act 2000 or their Policy to override the requirement for “necessity” of licence conditions in s47 of the LGMPA 1976.

c) 3 Limits on power to promote well-being.

(1) The power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).

d) The Council did not have regard to this Act.

e) Error of Law.

7.3.3 Local Government (Miscellaneous Provisions) Act 1976 Section 47(1)

a) The requirement that there be a proper reason for livery was ignored.

b) The Council did not have regard to this Act.

c) Error of Law.

7.3.4 Local Government (Miscellaneous Provisions) Act 1976 Section 48(1)(a)(i), ((iv), and
(v)

The requirements that licensed vehicles be safe and comfortable was ignored.

7.3.5 Guildford Borough Council failed to use its own Police Reporting Protocol

- a) Documented allegations of Fraud against some Councillors and Officers had been made, (See page 60) and those were not dealt with using the Council's own Police Referral Procedure (See page 284).

Allocation to and appointment of Police Investigating Officer

10 If the Complaint includes an alleged crime, it is assessed in accordance with police policies and procedures and if appropriate, allocated to an officer of such rank as the police deem appropriate for investigation.

11 The Police will contact the Monitoring Officer who will confirm the outcome of their assessment of the Initial Jurisdiction Test and whether the allegation is a potential breach of the Council's Code of Conduct and/or a DPI Offence.

- b) Failed to take into account a relevant matter.
- c) Obtained Policy by means of fraud.

7.4 The Council did not give proper reasons for their Policy on taxi Livery, Safety, or Comfort.

- i. From the Minutes (See page **Error! Bookmark not defined.**):

Reasons:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the

Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

- ii. Copied from the Executive Summary to the Meeting Agenda (See Page 95)
- iii. Mike Smith Licensing Team Leader

Obviously a number of points that were raise historical matters such as the decision to adopt livery in 2015, a decision which wasn't challenged at the time, and as such still stands and is implemented today.

- iv. Mr Smith wrongly considered that the objections to Livery were merely “Historical” and still stood because they weren’t challenged then.
- v. Mr Smith does not mention that a Taxi Driver attempted to challenge the Livery condition in the Magistrates Court under s48 of the LGMPA, but the Council prevented a hearing of his objection (See page 14).
- vi. Mr Smith also refers to the Statutory Guidance, which is about taxi drivers, not their vehicles, and nowhere mentions Livery.
- vii. Mr Smith re taxi vehicle Safety and Comfort:

about vehicles being underpowered, the Policy has been subject to the Policy requirement for engine propulsion hasn't changed. Obviously vehicle technology has moved on quite considerably so you don't need to make engine capacity bigger in order to give it more power. You can have things like turbos etc that give engines more charge. I'm not aware of any complaints we've had from any members of the public about vehicles being underpowered. Certainly that has not come up as a response from anybody else in the Consultation, even you know, members of the trade.

- viii. Mr Smith did say that the vehicles were sufficiently powered or safe, there is no power to weight ratio requirement.

- ix. Mr Smith did not address the point about lack of comfort. A large number of the vehicles have insufficient headroom, legroom, luggage space, and do not have independent rear suspension and are designed as light goods vehicles, not for carrying passengers.
- x. Mr Smith wrongly thinks that because he did not get any complaints, or ask about those matters from anyone else, he can safely disregard the points made by the Applicant.
- xi. Lead Councillor for Licensing James Steel

I'll just provide a brief response to the Livery question. So, as Mr Rostron kind of said, the decision was a historic one which was taken back over, close to five and a half years ago in December 2015. And the decision to adopt the decision was based on a public safety rationale, to improve confidence in the taxi service in Guildford, and was consulted on at the time quite extensively. The decision was not challenged by way of a JR at the time, and as such there was no change to the requirements on the update, there was no reason to change the requirements in the updated policy and the removal of the Livery requirement would be detrimental to Public Safety, and I have to agree with Mr Roberts key point on Public Safety and it would be detrimental to Public Safety and contrary to the Statutory Guidance that we get, that we gain from Central Government.

- xii. Cllr Steel did not say why the Livery was necessary for Public Safety. It is not required in any of the surrounding Boroughs.
- xiii. Cllr Steel did not say which part of the Statutory Guidance required taxi livery, and there is no part that does.
- xiv. Mayor said:

we were trying therefore to make genuine taxis obvious to younger people

- xv. But the Rotherham Report makes clear that the young people already knew they were getting into taxis which were already liveried, so livery made them no safer.

- xvi. Cllr Richard Potter said:

the decision when made has was not challenged at Judicial Review and therefore I believe such time for Judicial Review has long since passed, so a decision made five odd years ago is stands and we are merely continuing with it. And as I believe Councillor Moseley has just pointed out and as I was just about to say, this report has been through the Licensing Committee which I am not a member of but which I am confident that our colleagues who sit on the Licensing Committee would have raised any serious concerns with the rest of us had they had any.

- xvii. But the requirement for review was set out in the 2016 Policy document itself.

- xviii. The lack of a Judicial Review at the time does not negate that.

- xix. Cllr David Goodwin said:

I fully agree with Councillor Marsha Moseley on this one. We did a have few discussions about it on Licensing Committee, and it is also as Councillor George Potter has mentioned, legit, what we've done and so on. And so therefore I'm happy with the recommendation as it stands.

- xx. But there was no discussion by Councillors during the Licensing Committee Meeting of Livery, or the taxi vehicle safety or comfort points raised by the Applicant.

Those Policies were not justified by the information given in the Minutes or in the meeting information pack.

- a) Too little time and attention was given at the Council and Licensing Committee Meetings and in the Council Meeting Information Pack, to the points raised by the Applicant in the Consultation.
- b) That was a procedural unfairness.
- c) The Council and its Officers did not make sufficient inquiry to properly consider or make adequate responses to the points raised by the Applicant in their Taxi Policy Consultation.
- d) That was a failure to take into account a relevant matter.
- e) The Council did not sufficiently acquaint itself with the relevant information, fairly presented and properly addressed.

7.5 The Council and the Licensing Committee did not marshal the facts relating to Taxi Livery, Safety, and Comfort properly.

- a) The Council did not sufficiently marshal the relevant information, to enable a decision to be properly made.
- b) There was no information as to a measurable test for sufficient taxi vehicle power for safety.
- c) There was no sufficient information provided as to what might constitute a comfortable taxi.
- d) The Council did not have regard to all legally relevant considerations.

7.6 The Council relied on unjustified assurances by Councillors and Officers and rubber stamped the recommendations

- a) Councillor Goodwin wrongly claimed that, “We did a have few discussions about it on Licensing Committee”. There were no discussions of the Applicants points. (See page 88)
- b) Councillor Goodwin claimed the Licensing Committee decision was “pukka” when it was not.
- c) The Mayor was unaware that the young people of Rotherham, who were abused, knew they were getting into taxis, which were already liveried, so the original Council Policy could not have been to protect against that. (See page 88)
- d) Diane Owens Council Monitoring Officer said. “there is some discretion”. But the Policy says there is none. (See page 89).
- e) Council took into account irrelevant or wrong information.

7.7 Councillors and Officers contributions to the meetings by “chat” were not visible to all public participants including the Applicant, and were not recorded in the Minutes.

- a) The Council allowed unrecorded “chat” on the Microsoft Teams videoconferencing app.
- b) is procedurally wrong to have undisclosed comments made by a Councillor Moseley on the Teams App, to influence the Meeting.

- c) The Council by allowing unrecorded “chat” did not adopt a fair procedure by keeping the Applicant uninformed of what was communicated.
- d) The method and content of the comments indicate bad faith by Councillor Moseley. She should have spoken and had the opportunity to do so.
- e) It was also contrary to the HRA right to a fair hearing.

7.8 Licensing Officer Mike Smith the author of the Policy was not at the Council Meeting to answer questions raised.

- a) Licensing Officer Mike Smith was challenged by the Applicant at the Council Meeting as to the truthfulness of his contribution at the Licensing Committee Meeting but was not at the full Council Meeting to answer that charge, and was not asked by the Council to do so.

At the last Licensing Committee Meeting, Mike Smith said that the reason for Livery was contained in the Government Statutory Taxi and Private Hire Vehicle Licensing Standards, but it isn't. There is nothing about Livery in there, and he also said that that Guidance applied to the general public, but it doesn't. It only applies to children and vulnerable individuals who are over 18. It doesn't apply to anyone else. So, there's been no reason given. Plenty of opportunity has been given for reasons to be stated, but an evidence based reason for public safety hasn't been provided. So that means in effect that the Livery Policy is Ultra Vires, and outside the Council's Statutory powers.

- b) Council Officer Mike Smith was the author of the Report on the Policy presented to the Council, but was not present at the full Council Meeting to answer the charge that he had not provided a reason for the livery.

- c) It was procedurally unfair for him not to be there to answer those points raised particularly those of Fraud raised in the Applicants reply to the Consultation. (See page 54)
- d) That was procedurally unfair.
- e) Showed bad faith / improper motive.

7.9 The Council wrongly included Taxi License Conditions in its Policy that are contrary to the restriction placed on their powers under the LGA s1 and s3 which limits powers to promote wellbeing, by limitation in s47 of the LGMPA, to those that they believe to be reasonably necessary. And the Council could not have reasonably believed those license conditions were necessary.

- a) The Council have never put forward an evidence based reason that taxi livery is beneficial for Public safety.
- b) That was an error of law in failing to provide reasons.
- c) Frustrated the legal purpose of the various Acts referred to herein.

7.10 The Council ignored the Statute Law.

Local Government Act 2000 Section 10.2 (See Page 282)

The Legislative and Regulatory Reform Act 2006 Principles (See section 10.3 Page 282)

Local Government Act 1974 (See section 10.5 Page 283)

Police Protocol of GBC (See section 10.6 page 284)

- a) And in not following those laws or Council regulations, they were Frustrating the legislative purpose.

7.11 The Council ignored the requirement of s48 of the LGMPA that licensed vehicles must be safe and comfortable. See page 282

- a) GBC has not made any license condition that requires taxis to be safe and comfortable, and have not set standards that should be applied to any vehicle being licensed.
- b) The Council have frustrated the legislative purpose and did not act so as to promote the purpose for which the power was conferred. P53

7.12 The Council ignored the Ministerial Guidance on Taxi And Private Hire Vehicle Licensing: Best Practice Guidance March 2010 by the Department for Transport (see page 200)

The Taxi And Private Hire Vehicle Licensing: Best Practice Guidance March 2010 by the Department for Transport Paras 8-10 were not followed in the following respects.

- a) GBC did not recognise that their restrictive an approach to licensing policy, particularly in respect of taxi livery would work against the public interest, and have safety implications for the general public and the vulnerable. (See section 9)

Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach

can work against the public interest - and can, indeed, have safety implications.

- b) GBC did not consider whether the supply of taxis in Guildford has been unduly constrained by the onerous taxi livery licensing conditions.
- c) GBC did not consider whether and the public safety has been put at risk by having to wait on late-night streets or ranks for a taxi to arrive due to reduced supply. (See section 9)
- d) GBC did not make sure that their taxi livery licensing requirement was in proportion to the risk it aims to address; or, to put it another way, whether the cost of the requirement in terms of its effect on the availability of transport to the public is at least matched by the benefit to the public, for example through increased safety. (See section 10)
- e) GBC did not conduct any, quantitative, cost-benefit assessment; they did not look carefully at the costs – financial or otherwise – imposed by their livery licensing policy. They did not ask themselves whether those costs were really commensurate with any benefits the policy was meant to achieve. (See section 10)

7.13 The Council Officer Mike Smith misled the Council and the Licensing Committee as to the effect of the Statutory Taxi And Private Hire Vehicle Standards 2020 by the Department for Transport see page 232)

- a) Although described as for vehicles, this guidance was about taxi drivers, not about taxi vehicles or their livery or safety or comfort.

- b) The Statutory Taxi and Private Hire Vehicle Standards included extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure, (see section 1.6), but nothing about livery, vehicle safety or comfort as was falsely implied by Council Officer Mike Smith (see page 85) when he addressed the Licensing Committee.

....so I would perhaps refer Mr Rostron and the Committee members to that Statutory guidance which outlines that taxis are a high risk environment and that the Local Authorities are expected to review and implement the Standards without any further delay. Those are the requirements of the Department of Transport. This is clearly outlined in the report and is why the Policy has been reviewed now and presented for the full Committee to consider this evening. (See section 8.1.4.2)

- c) Mike Smith made a deliberately misleading statement in relation to the Applicants claims about taxi livery, comfort, and safety, and showed bad faith or improper motive.
- d) A body must not act in bad faith or have an improper object or purpose. P52.
- e) Mike Smith was unable to give a true reason for the adoption of the Livery Policy or the lack of a taxi vehicle safety and comfort policy.
- f) Public Bodies are required to give proper reasons, and always required to make the reasons they do give adequate.
- g) In this case the Council Office Smith deliberately refused to give a reason for livery, other than it had previously been adopted in 2016.
- h) The Livery Policy was obtained in 2016 and continued by means of Fraud. See page 60, and 80).
- i) Decisions should not be obtained by Fraud. P63.1.2

- j) GBC misinterpreted the Ministerial Guidance as applying to taxi vehicles, when the purpose of setting standards was to protect children and vulnerable adults, and by extension the wider public, from abuse by drivers, when using taxis and private hire vehicles. Any livery had no benefit to those to be protected because the taxis in Rotherham where the abuse occurred were already liveried, and the passengers knew full well that they were getting into taxis. (see section 2.1)
- k) The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles. But the taxi livery had been shown to be irrelevant for those purposes, as the Rotherham Reports made clear, the victims did know they were getting into taxis, and the taxis were liveried in white. They also did know they were in danger when they got into the taxis because it was well known that the drivers were abusers. (see section 2.1)
- l) Both the Jay and Casey reports on CSAE highlighted examples of where taxi drivers in liveried taxis picked up children from schools, children's homes or from family homes and abused, or sexually exploited them. (See Page 232, Consideration of the Statutory Taxi and Private Hire Vehicle Standards, Section 2 paragraph 3,).
- m) The Casey Rotherham Report said:

Judgement

Inspectors have found that Rotherham has not taken, and does not take, sufficient steps to ensure only fit and proper persons are permitted to hold a taxi licence. As a result, it cannot provide assurances that the public, including vulnerable people, are safe. The inspection uncovered serious weaknesses and concerns.

- n) The Casey Report criticised taxi driver licensing, not taxi vehicle licensing.

- o) The Casey Report did not mention taxi livery.
- p) The livery on the taxis did not in any way protect the children or the vulnerable or the general public from abuse.
- q) GBC failed to educate the public on the risks of using unlicensed drivers and vehicles, or how to identify the licensed trade and what appropriate measure to take when using these services that will protect and help all passengers, and did not follow the additional guidance annexed to that document (Annex - Staying safe: guidance for passengers). (see section 2.2)
- r) All the above are examples of P56 the Council having regard to irrelevant considerations, and P51 Making insufficient inquiry into the real meaning of the Rotherham Casey and Jay Reports.

7.14 The Council ignored the Regulators Code 2014. See Page 283

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

Please see Cases referred to page . P48 Error of law, P53 Frustrating the legislative purpose P57 Unreasonableness P56 the Council not having regard to relevant considerations, and P51 Making insufficient inquiry

7.15 The Council and its Officers obtained the Taxi Licensing Policy in 2015 by means of collusion. See page 60

- a) 63.1.2 Decision procured by fraud / collusion / perjury. Please see Page 268 (Unauthorised livery meeting attendees)
- b) The collusion occurred in the unauthorised and unminuted meeting (Letter to Ombudsman regarding unauthorised livery meeting See page 91.)
- c) Between Councillors Gillian Harwood, David Goodwin, Marsha Moseley, Graham Ellwood and Council Officers John Martin and Justine Fuller
- d) The Council and its Officers also renewed the Taxi Licensing Policy in 2021 by means of collusion of some of this group (Goodwin, Moseley and Harwood) which has continued to the current Policy review.
- e) The Council livery policy colour was chosen by an unauthorised meeting.

7.16 The Council and its Officers did not mention that there were undisputed allegations of fraud against Councillors and Officers in connection with the Livery Policy obtainment in 2016.

- a) Not taking into account relevant information.
- b) Policy obtained by Fraud.

7.17 The Council and its Officers made the following Fraudulent statements whilst obtaining approval for the Policy in 2021.

- a) Licensing Team Leader referred the Council to the Statutory Guidance (See section 7.13 Page 46 subhead b).
- b) That was a misleading and fraudulent statement within the meaning of the Fraud Act.

7.18 The Councillors and Council Officers did not provide any evidence that the allegations of fraud against them were untrue.

a) Insufficient inquiry

7.19 The Council failed to properly consider and have regard to allegations of fraud regarding the Policy.

a) Insufficient inquiry

7.20 The Council Officers did not disclose the Statutory and Ministerial and evidential problems with the Taxi Policy.

a) Failed to have regard to relevant matter

7.21 Councillors Goodwin and Moseley failed in their Duty of Candour to disclose to The Council Meetings that they were party to a small unauthorised meeting that chose the taxi livery colour.

a) Bad faith / improper motive,

b) Lack of Candour.

7.22 Council failed in their Duty of Candour to disclose or were not aware of matters regarding previous legal actions against the Council Livery Policy

- a) Council did everything they could to prevent taxi driver Ben Simmonds from having his appeal against the imposition of the Livery License Condition heard.
- b) Council did know or did not disclose that the legal advice not to Judicially Review the 2016 Taxi Licensing Policy to the Guildford Taxi Drivers was provided by a Barrister (Ashley Bowes) who did not disclose to the taxi drivers that he was a Conservative Councillor in Woking and that he was Chairman of their Licensing Committee. And did not disclose that he was moving to the Cornerstone Chambers in August 2015, which was headed by Philip Kolvin QC who represented the Council in their refusal to hear a drivers appeal against the taxi Livery.
- c) The Barrister did not ask or was not aware of the fraudulent nature of the claims made by Guildford Borough Council in obtaining their Taxi Licensing Policy in 2016. Those fraudulent statements are set out starting on page 60.
- d) Please see Cases P52 Bad faith / improper motive, Lack of Candour.

7.23 Human Rights Act (See Page 293) reasonable opportunity to present their point of view.

- a) The fair hearing requirement means that the people affected are given a reasonable opportunity to present their point of view and to respond to facts presented by others, and that the decision-maker will genuinely consider what each person has told them when making the decision.
- b) The Council breached that Human Right when in allowing only three minutes for the Applicant to present his points of view at each of the two License and full Council Meetings.

- c) That time of six minutes in total was clearly insufficient in relation to the written points the Applicant gave notice of. (See page 54)
- d) Contrary to the Law P48
- e) Unreasonable P57

8 Documents referred to

8.1 Applicants reply to the Taxi and Private Hire Policy consultation 2020-2025

1. GBC is a Corporation with legal powers given solely by various Acts of Parliament.

The principal Act governing hackney carriage licence conditions is the Local Government Miscellaneous Provisions Act 1976, specifically sections 47 and 48 which authorise the regulation of the vehicles.

47 Licensing of hackney carriages.

(1)A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.

48 Licensing of private hire vehicles.

(1)Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence:

Provided that a district council shall not grant such a licence unless they are satisfied—

(a)that the vehicle is—

(i)suitable in type, size and design for use as a private hire vehicle;

(ii)not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;

(iii)in a suitable mechanical condition;

(iv)safe; and

(v)comfortable;

The Council's Taxi and Private Hire Policy regulation should be lawful, necessary, and proportionate to risk, but they are not, in the following respects.

2. No public demand for full body livery

- a) There has been no demand for imposing full body livery for taxis at any Local Authority in Surrey or neighbouring Guildford, so why is Guildford different?
- b) The current level of support amongst the general public for a standard livery is unknown.

- c) The Council has ignored a petition against the introduction of a livery for hackney carriages, signed by 115 drivers by 18 March 2015.
- d) Some customers prefer to use non-liveried vehicles.

3. Safety

- a) There has been no regulation imposing full body livery for taxis at any Local Authority in Surrey or neighbouring Guildford, so why is Guildford different?
- b) There has been no evidence of reduced passenger safety in any Boroughs that have not imposed a full body livery on their taxis.
- c) With reference to the abuse scandal in Rotherham and the Casey report, the proposition that hackney carriage livery improved public safety was untrue.
- d) The need for special driver training is unproven, and costly.
- e) There are no measures to control vehicles plying for hire not licenced by GBC, consequently large numbers of Guildford Private Hire Drivers have been using taxi licences obtained more cheaply in local Boroughs, forcing up the price for Guildford Drivers and potentially avoiding regulations that the Council have thought necessary for Public Safety.
- f) There is no need for door signs on Private Hire Vehicles, UBER manage quite well without them and so did GBC licenced Private Hire before the 2015 Policy, and they damage and discolour car paintwork.
- g) Some licenced vehicles have an inadequate power to weight ratio. And inadequate Torque for acceleration That is important as Guildford is hilly and the access roads to the A3 can be uphill as well. To access the A3 at rush hour Southbound at Dennis's Roundabout in an underpowered fully laden car is dangerous.
- h) Peugeot Partner Tepee type rear loading vehicles are unsafe for wheelchair taxi use as they only have one wheelchair means of escape in the event of an accident.
- i) The Policy should include drivers and proprietor's declaration that they are aware of and adhere to the Equalities Acts

4. Comfort

- a) Many of the licensed hackney carriages are too small to carry 4 adult passengers and luggage in safety and comfort.
- b) A large number of taxis have fixed axle rear suspension designed for transporting goods not humans and providing unacceptably uncomfortable ride.
- c) Minimum standards should be Mercedes E class, VW Passat or Ford Mondeo size vehicles or similar.

The Public were not advised that having the livery would lead to a deterioration in the quality of the hackney carriage fleet

- d) A large number of vehicles licensed are coupés and have restricted rear headroom, door size and boot. making them unsuitable for four adult passengers and luggage. They also have restricted rear view mirror view.

In the back, taller adults might find their heads a little too close to the roof lining for comfort, but the width and length of the CC means there's enough leg and shoulder room to compensate.

Getting in and out of the rear isn't as easy as in a regular Passat, due to the sloping roof making the door openings smaller. There are technically three seats in the back, but whoever draws the short straw and has to sit in the middle will feel pretty cramped - it's only really suitable for short journeys. Visibility isn't as good as in the more practical Passat, either - those rakish looks and smaller windows make themselves known when you check your rear-view mirror.

Volkswagen CC boot space

The CC is based on a thoroughly practical family saloon, the VW Passat, but in the name of style the four-door coupe loses some of its sister model's practicality. First up is the boot. To give the car a less boxy look, it has a more rounded exterior shape and therefore less impressive luggage capacity - 532 litres compared to the Passat's 586.

5. Price

The price of taxi rides is inflated because the public are paying for large numbers of taxis and drivers to lie idle because of the Councils policy of deregulation of the supply of taxis.

6. Cost

- a) The cost of future livery wraps, for example, when a taxi was replaced or when it is repaired after an accident (and insurance would not cover this), and the cost of rectifying paintwork damaged by the removal of wraps has not been taken account of.
- b) Introducing a livery prevents hackney carriages from carrying advertising wraps.
- c) The general public were not informed about the costs of the livery and for the National Vocation Qualification.

7. Illegality

- c) A hackney carriage and private hire policy is not a statutory requirement and the consultations have no statutory authority or status.
- d) The Council's proposals for the taxi policy and particularly full body livery are not proportionate to risk, nor reasonable and interfere with the human rights of the hackney carriage drivers to enjoy their property.
- e) The Council never did genuinely consider that the licence conditions re livery were reasonably necessary, as the principal reason they gave was to protect the public from Child Sexual Exploitation such as that in Rotherham, when in fact the Rotherham taxis were already liveried, and the livery had clearly not protected the children.

The Policy is important as it sets out the public safety standards we require, and these form the framework by which we undertake our statutory responsibilities in respect of taxi and private hire vehicle licensing. These are particularly important in light of the findings of the report into child sexual exploitation in Rotherham.¹

¹ Taxi and Private Hire Policy 2015-20 18th November 2015 Graham Ellwood and Justine Fuller, Licensing Committee Report and full Council, Executive Summary

- f) The Taxi Policy of 2015 with regard to livery was wrongly introduced on the basis of that fraudulent statement and many others.
- g) Additionally, the decision to livery was taken by “A cross party group of Councillors”² the decision was unminuted and that meeting was unauthorised by the Council because the Licencing Committee had instead previously decided that “the two livery designs shown at Appendix 4 be subject to a public on-line vote to select the livery we will adopt”³. The online vote was never held, presumably because the Council did not want the Public to decide, or did not like what the Public preferred, which according to the consultation was a logo with no full body livery.
- h) The Council have no power in the Local Government Act 2000 or their Policy to override the requirement for “necessity” of licence conditions in s47 of the LGMPA 1976.

3 Limits on power to promote well-being.

(1)The power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).

- i) The Legislative and Regulatory Reform Act 2006 puts further limits on the authority of the Council:

21 Principles

(1)Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

(2)Those principles are that—

(a)regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b)regulatory activities should be targeted only at cases in which action is needed.

- j) The instructions to Councils are further set out in the Regulators Code 2014.

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities¹

and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should

² 5.13 Agenda Document 4 9th December 2015

³ 5.17 Licensing Committee Agenda 18 March 2015

choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

- k) The 2015 Policy introduced was without reference to any of those legal requirements and in breach of them.
- l) The 2021 Taxi Policy should follow the law and Ministerial guidance.
- m) Local Government Act 1974 re misconduct has been disregarded by the Council following documented allegations of Fraud re the imposition of Taxi Livery through the 2015 Taxi Policy, and continuing with the proposed 2021 Taxi Policy. A schedule of the fraudulent items is set out in Appendix A.

- n) The 2015 Taxi Policy was enacted by Council resolution to:

1.7 We will review this policy at least every five years (or sooner in light of any significant changes to legislation or guidance) and consult on any proposed amendments. If we make any changes, we will then re-publish the policy.

- o) The Department of Transport Guidance says:

8. The aim of Local Authority licensing of the taxi and PHV trades is to protect the public. Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services, because of the part they play in local transport provision. Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications.

9. if the supply of taxis or PHVs has been unduly constrained by onerous licensing conditions, then that person's safety might be, put at risk by having to wait on late-night streets for a taxi or PHV to arrive; he or she might even be tempted to enter an unlicensed vehicle with an unlicensed driver illegally plying for hire.

10. Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address; or, to put it another way, whether the cost of a requirement in terms of its effect on the availability of transport to the public is at least matched by the benefit to the public, for example through increased safety. This is not to propose that a detailed, quantitative, cost-benefit assessment should be made in each case; but it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve.

- p) The Council have disregarded said guidance.

- q) The Council have failed in their duty to investigate wrongdoing, set out in the Local Government and Housing Act 1989 section 5(2)

(2)[F8Subject to subsection (2B),] it shall be the duty of a relevant authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, [F9or sub-committee of the authority, by any person holding any office or employment under the authority] or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—

(a)a contravention by the authority, by any committee, [F9or sub-committee of the authority, by any person holding any office or employment under the authority] or by any such joint committee of any enactment or rule of law [F10or of any code of practice made or approved by or under any enactment]; or

(b)any such maladministration or injustice as is mentioned in Part III of the M1Local Government Act 1974 (Local Commissioners) or Part IIof the M2Local Government (Scotland) Act 1975 (which makes corresponding provision for Scotland),to prepare a report to the authority with respect to that proposal, decision or omission.

1.1.1 Appendix A Detailed allegations of fraud by Guildford Borough Council

Allegation number	Report section	Fraudulent statement or omission	Fraud Act 2006	Reason statement or omission is fraudulent
1	5.06	The primary reason for adopting a livery is to protect public safety.	s2	False representation. There is no evidence that livery protects public safety. There is evidence that the primary purpose was to promote GBC corporate green colour for branding purposes.
2	5.03	Creates Local identity/ brand : A local livery creates a strong local identity, which in the case of cities like London and New York becomes one that is recognized across the world.	s3	Misleading omission in later versions to omit the word "brand" used in earlier versions (the First Licencing Committee Report 18th March 2015 and the later Ammended First Licencing Committee Report incorrectly dated 11th March 2015). The word "brand" shown in those versions was deleted to hide the fact that the real reason for the livery was not public safety, but fitting in with a Guildford colour "brand". Hence the fraudulent means to get to a Guildford green coloured wrap to match the Guildford corporate colour.
3	8.01	The basis for key changes within the policy is to protect public safety pursuant to statutory requirements and in light of the Casey report and to encourage a more professional service within the Borough.	s2	False representation. There was nothing in the Casey or Jay reports that recommended this. There is no evidence that livery makes the public safer or the drivers more professional. There is no evidence that anyone has come to any harm in Guildford or elsewhere due to the lack of livery.

4		<p>Executive summary: The Policy is important as it sets out the public safety standards we require, and these form the framework by which we undertake our statutory responsibilities in respect of hackney carriage and private hire vehicle licensing. These are particularly important in light of the findings of the report into child sexual exploitation in Rotherham.</p>	s3	<p>Failure to disclose information. GBC never stated that the Casey <u>Rotherham report did not mention taxi livery as a remedy</u> for abuse by taxi drivers, as the Rotherham taxis were already liveried white at the times of the Rotherham abuses. The Casey and Jay reports about Rotherham make it quite clear that the victims clearly knew that the sources of the abuse were Rotherham taxi drivers and knew they were in danger if they got into a liveried Rotherham taxi and in fact did everything they could to avoid getting into a liveried taxi. The Rotherham report recommended CCTV video cameras in taxis as a solution, but GBC completely omitted that.</p>
5		<p>Executive summary: The Policy is important as it sets out the public safety standards we require, and these form the framework by which we undertake our statutory responsibilities in respect of hackney carriage and private hire vehicle licensing. These are particularly important in light of the findings of the report into child sexual exploitation in Rotherham.</p>	s3	<p>Failure to disclose information. Rotherham Council adopted CCTV video cameras in taxis as a solution to the problem of passenger safety in taxis, but GBC completely omitted that.</p>
5		<p>Executive summary: The Policy is important as it sets out the public safety standards we require, and these form the framework by which we undertake our statutory responsibilities in respect of hackney carriage and private hire vehicle licensing. These are particularly important in light of the findings of the report into child sexual exploitation in Rotherham.</p>	s2	<p>Misleading statement. The report for the Council seeks to combine all its proposals, including livery and training, under one broad heading, and conflates all the laws and statutes as being applicable to that group of proposals, instead of explaining which different laws govern individual proposal cited. That fraud is continued at various places throughout the document.</p>

6		<p>Executive summary: The Policy is important as it sets out the public safety standards we require, and these form the framework by which we undertake our statutory responsibilities in respect of hackney carriage and private hire vehicle licensing. These are particularly important in light of the findings of the report into child sexual exploitation in Rotherham.</p>	s3	<p>Failure to disclose information. From the Casey Rotherham report. <u>Training</u>. Resources have gone into training all sorts of people over the years – including parish Councillors, business representatives, magistrates and voluntary sector workers. <u>There is, however, no evaluation of the impact of this training which means that neither the Council, the LSCB, is in a position to judge its effectiveness or whether the money has been well spent. Inspectors did wonder whether training – though important – was a default response and became a substitute for more effective and comprehensive action</u></p> <p><u>on CSE</u> rather than just one part of the overall plan. It is easy to send staff on a training course, but unless the principles set out in the training are embedded and acted upon in the whole organisation, then it is ineffective.</p> <p>“So people just ticked the box with training – if some staff from health have completed training, then as an organisation you have done it so the box is ticked.” A key partner</p>
7	2.03	<p>Strategic Framework.....It emphasised the need for safety to be the uppermost concern of any licensing and enforcement regime when determining policy, setting standards and deciding how they are enforced.</p>	s2	<p>Fraudulent representation suggesting that the policy of liverying of taxis, or of training taxi drivers would make anyone safer, or has any proven benefits in respect of protection from the types of CSE offences committed by Rotherham taxi drivers.</p>
8	2.04	<p>The inspectors uncovered serious weaknesses and concerns and judged that Rotherham had not taken sufficient steps to ensure that only fit and proper persons were permitted to hold a taxi licence and, therefore, could not provide assurances that the public including vulnerable people were safe.</p>	s3	<p>Omitted to mention that the Rotherham report did not make any recommendation to adopt taxi livery or to require more taxi driver training. The implication is that livery and training would solve the not fit and proper person problem.</p>
9		<p>Omitted that the Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 - 2013 Alexis Jay OBE did not consider or mention taxi livery or driver training as a matter of public safety, or at all.</p>	s3	<p>Failure to disclose information.</p>

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10		Omitted that the Rotherham Council "Action Plan in response to the Independent Inquiry into Child Sexual Exploitation" - August 2014 did not consider or mention taxi livery or driver training as a matter of public safety, or at all.	s3	Failure to disclose information.
11	2.05	The aim of the changes to this Policy is to protect public safety by improving standards and helping to professionalise the trade.	s2	Fraudulent representation that livery on taxis or more training protects public safety by improving standards and helping to professionalise the trade. There is no evidence for the Council's statement.
12	9.01	Adoption of the revised Policy and the measures within it will help to protect public safety and professionalise the taxi trade within the Borough	s2	False representation. There is no evidence that liverying taxis helps to protect public safety with regard to taxis, or professionalises the service.
13	2.06	Adoption of the policy will contribute to the delivery of the Council's strategic objectives of Infrastructure, Economy and Society.	s2	False representation. There is no evidence provided that the livery changes to this policy would contribute to the Council's strategic objectives other than those of corporate branding.

14	5.08	A large majority of the public are in favour and this support, together with the other benefits set out above, provide strong reasons for adopting a Guildford livery.	s2	False representation. There was no majority for full body livery in the replies to the consultation. The answers that did not include full body livery were: Council logo / logo relating to Guildford located on door / side of the vehicle. Anything which would be hard to imitate / clearly distinguishes vehicle. Council logo / logo relating to Guildford. Council logo / logo relating to Guildford located on bonnet. Coat of arms. Council logo / logo relating to Guildford located on rear. Word 'taxi' (or similar) located on door / side of the vehicle. Light on top. Anything to match the Guildford Borough Council branding. Word 'taxi' (or similar) (location unspecified). Taxi licence plate / badge to show licensed. Word 'taxi' (or similar) located on rear. And they totalled 280. The consultation itself introduced the idea of Guildford branding not the public.
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15	5.08	A large majority of the public are in favour and this support, together with the other benefits set out above, provide strong reasons for adopting a Guildford livery. The Policy is written on the basis that a livery will be required and it is recommended that this be agreed. The only substantive ground to oppose a livery is the financial cost to drivers and this is discussed later in section 6.	s2	False representation. There is no evidence that a large majority of the public were in favour of a full car green livery. A minority of 26% were in favour of a full car colour livery and a minority of those in favour of Guildford green livery.
16	5.07	The public are strongly in favour of adopting a Guildford livery (84%),	s2	False representation. The consultants executive summary says: 84% agreed with the CONCEPT of liveried taxis [of which 59% supported 'Guildford branding on the body of the car']. But on page 88 they specify: "More than four-fifths (84%) of respondents felt that a standard livery should be introduced for all taxis." On page 90 when FORCED by the predesign of the survey (which of its own volition mentions a standard full car colour for the first time, to choose what sort of livery", around a quarter (26%) of respondents said a standard full car colour should be introduced." NOT ONE of the 280 people surveyed answers listed on page 91 specified a full body livery, or wrap, or Guildford green colour. The most popular choice by 67 respondents (33.8%) was for a "Council logo / logo relating to Guildford located on door / side of the vehicle".
17	5.09	If a livery is adopted, the next issue is what that should be. Respondents were asked to provide their preferences for a livery. The highest preferences were 59% for Guildford branding on the vehicle and 26.2% for a standard full car colour. The consultation feedback shows support for a full car colour and Guildford branding.	s2	Misleading as the Guildford branding is not solely livery, it could include a badge or logo etc. The word "branding" was introduced by the Council itself in the consultation questionnaire, it was not requested by the public.

18	5.09	Respondents were asked to provide their preferences for a livery. The highest preferences were 59% for Guildford branding on the vehicle and 26.2% for a standard full car colour. The consultation feedback shows support for a full car colour and Guildford branding	s2	False representation. Neither of the these percentages were about full car livery. 59% was for a Guildford branding and 26.2% for a standard colour car.
19	5.09	If a livery is adopted, the next issue is what that should be. Respondents were asked to provide their preferences for a livery. The highest preferences were 59% for Guildford branding on the vehicle and 26.2% for a standard full car colour. The consultation feedback shows support for a full car colour and Guildford branding. E35	s3	Omitted to mention that a majority of respondents did not favour livery at all.
20	5.09	Respondents were asked to provide their preferences for a livery. The highest preferences were 59% for Guildford branding on the vehicle and 26.2% for a standard full car colour. The consultation feedback shows support for a full car colour and Guildford branding	s3	Omitted to mention that the majority of the respondents never or rarely caught taxis and were from one small location of Guildford Park which is adjacent to the station and represented by Councillor Goodwin, one of the small group of Councillors who chose the full body green livery.
21	5.02	A number of other Local Authorities such as Brighton, Bournemouth, and Leeds have chosen to adopt a local livery in the interests of public safety and to provide a strong local identity.	s2	False representation. There is no evidence that other Local Authorities have chosen to adopt a local livery in the interests of public safety.
22	3.04	We received responses from 488 individuals including 336 residents.	s3	Failure to disclose information about the petition from around 200 Guildford taxi drivers and others against livery.
23	5.01	We are proposing the introduction of a uniform livery for all taxis (hackney carriage vehicles) to differentiate them clearly from private hire vehicles.	s2	Misleading, as it neglects to mention that the public confusion stems from the Council policy of putting large door signs on private hire vehicles, leading to the Public trying to hire them on the streets.

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24	5.17	Taking into account the various factors it is suggested that the two livery designs shown at Appendix 4 be subject to a public on-line vote to select the livery we will adopt.	s2	False representation, the Council decision that "the two livery designs shown at Appendix 4 be subject to a public on-line vote to select the livery we will adopt" was never carried out.
25	5.17 Given the customer feedback we will also include a full yellow livery <u>although this will not match with the Corporate logo</u> . The livery colour finally agreed will then be included within the Policy.	s2	False representation, the yellow livery was never put to the Public and the comment indicates that matching the logo was the real objective.
26	8.12	The proposal has been discussed at the Guildford Access Group who are broadly supportive of the reasons for change. Together with the findings from the unmet demand survey, the commitment to review the situation on a regular basis and financial incentives to encourage provision of wheelchair accessible vehicles should ensure that any negative impact is minimised.	s3	Failure to disclose information. Cliff Bush at the time the Chair of Surrey Disabled Peoples Partnership, and the Surrey Coalition of Disabled People said they had never agreed to any change in the provision of disabled vehicles. When that was pointed out at the Council meeting that proposal was withdrawn and delayed until November when the approval had been obtained.
27	8.00	Legal implications	s3	Failure to disclose information. There is no mention of the Legislative and Regulatory Reform Act 2006, or the the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, or the Regulator's Code 2014, or the Explanatory Memorandum, or the Regulators' Compliance Code which was first published in 2008, all of which should have had by law explicit regard by GBC. The aim of the Order is to minimise business costs due to unnecessary regulations that do not address a real risk, like taxi livery. Lack of statutory authority and lack of High Court precedent.

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28	8.04	The Local Government Act 2000 gives a local authority a general power to 'do anything they consider is likely to achieve' the promotion of the economic, social or environmental well being of their area.	s3	Failure to disclose information that section 3 of the Local Government Act 2000 Act limits the Council's power to impose license conditions to those contained in s47 of the Local Government Miscellaneous Provisions Act 1976. Section 3 of the Local Government Act 2000 limits power to promote well-being as follows: (1)The power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).
29	8.04	The Local Government Act 2000 gives a local authority a general power to 'do anything they consider is likely to achieve' the promotion of the economic, social or environmental well being of their area.	s2	Misleading statement. That Act does not give unfettered power to apply taxi licence conditions which are contrary to the Local Government Miscellaneous Provisions Act 1976. s3 of the Local Government Act limits their power, and makes it subject to s47 of the LGMPA 1976, so that any taxi license condition must be believed by the Council to be reasonably necessary.
30	8.05	In relation to hackney carriage and private hire licensing there are specific powers contained in the Town Police Clauses Act 1847, Transport Act 1985 and Local Government (Miscellaneous Provisions) Act 1976.	s3	Omits that the Councils power to impose license conditions is subject to s47 of the LGMPA 1976, which requires that any taxi license condition is limited to those thought by the Council to be reasonably necessary.
31	8.08	Section 3 of the Human Rights Act 1998 requires that, so far as possible, legislation must be read and given effect to in a way that is compatible with the Convention rights, and section 6 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right.	s3	Omits to mention the Article 1 Protection of property Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

32		<p>Having considered the proposals, the Executive RESOLVED: (1) That the additional maximum expenditure of £53,070 towards the cost of livery be approved, with £25,035 in 201516 being financed from the central inflation budget and £28,035 growth added to the 2016-17 outline budget (for one year only). (2) That the lost income of a maximum of £5,000 to subsidise the cost of reduced vehicle licence fees be approved, with £2,000 in 2015-16 being financed from the central inflation budget and £3,000 growth added to the 201617 outline budget (and future years). Reasons for Decision: To provide financial support to drivers to offset some of the cost of introducing taxi livery and encourage the provision of wheelchair accessible taxis by providing a subsidy.</p>	s3	<p>Failure to disclose information. That the cost of livery would ultimately fall on the farepaying public by increasing the taxi fares. Councillor Graham Ellwood said at the TAG meeting in January 2016 that, "GE stated that he stopped the fare calculator (in 2015 prior to the Council decision on livery cost) for a number of reasons..... GE confirmed one of the reasons was he knew that if policy was approved drivers would have additional expense."</p>
33	5.25	<p>Officers recommend that the trade be asked to contribute 25% of the total cost, with the Council financing the rest (option 2). Given the short timescale for implementation (18 months) we expect that the majority of vehicles will be wrapped during 2015-16, with a cost to the Council of £90,560. The 2015-16 estimates included a growth bid of £3,000; there is therefore a shortfall of £87,560 in the 2015-16 estimates.</p>	s3	<p>Omitted to mention that it was the intention of GBC that the cost of livery would be transferred to the taxi fare price paid by the public in future by increases in the taxi fares.</p>

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34	5.25	Officers recommend that the trade be asked to contribute 25% of the total cost, with the Council financing the rest (option 2). Given the short timescale for implementation (18 months) we expect that the majority of vehicles will be wrapped during 2015-16, with a cost to the Council of £90,560. The 2015-16 estimates included a growth bid of £3,000; there is therefore a shortfall of £87,560 in the 2015-16 estimates.	s2	Misleading statement. The actual cost was set out in the Taxi Advisory Group meeting of January 2016, and was estimated to be between £1200 and £1600.
34	5.03	The benefits of this are that it: Increases trade: It can improve customer confidence and customers are happier to hail a liveried taxi rather than take a chance on an un-liveried one.	s2	False representation, there is no evidence that livery increases taxi trade or that people "take a chance" on an unliveried taxi.
35	5.03	Helps professionalise the service: A local livery coupled with clear driver training and vehicle standards helps to create a more professional service.	s2	False representation. There is no evidence that green livery coupled with driver training and vehicle standards does help to create a more professional service.
36	5.03	The benefits of this are that it: Improves Identification: Vehicles are clearly identifiable as a taxi	s3	Omitted to mention that, as Guildford taxis were already clearly marked by their topsigns, which said taxi on them there has never been a problem with public identification of a taxi in Guildford.
37	5.03	The benefits of this are that it: Safety/security: Customers can be confident that the taxi is properly licensed and meets the necessary safety standards. This is particularly important to women and to vulnerable clients.	s3	Omitted to mention that there had never been a safety problem for anyone with improperly licensed or unsafe Guildford taxis.

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38	5.03	Enables easier enforcement: Taxi drivers raise regular concern about the loss of trade to alleged touting by private hire vehicles and to taxi vehicles licensed by other Boroughs. A clear and identifiable livery makes enforcement much easier.	s3	Omits to mention that most of the public confusion about which vehicles are available for street hire stem from the Council policy of putting large door signs on private hire vehicles and the public's unawareness of the legal difference between taxis and private hire vehicles with regard to hailing.
39	5.04	The disadvantages are primarily: The cost: The livery is best achieved by 'wrapping' the car with the new colour and any logos. A typical cost for this is around £750, although this will last the effective life of the vehicle. The wrap can be removed which then enables the car to be sold or used in its original colour scheme and protects the paintwork of the vehicle in the interim.	s2	These statements are all false representations. The livery cost was estimated at the TAG meeting to be between £1200 and £1600. The manufacturers guarantee for the wrap was stated to be 2 years not 10, by the supplier at the TAG (Taxi Advisory Group) meeting in January 2016.
40	5.04	The livery is best achieved by 'wrapping' the car with the new colour and logos.	s2	False representation. There is no evidence for the claim that livery is "best achieved" by 'wrapping' the car with the new colour and logos.
41	5.04	The wrap can be removed which then enables the car to be sold or used in its original colour scheme and protects the paintwork of the vehicle in the interim.	s3	Omission that the livery is very susceptible to scratches and stone chips, and the livery can adhere to the paintwork leading to damage on its removal.
42	5.04	The disadvantages are primarily:	s3	Failure to disclose information. Council left out many disadvantages, set out in this document.
43		If taxis were put off the road for any reason a replacement temporary vehicle had to be liveried, something that the claims companies won't keep on hand.	s3	Failure to disclose information about something that can put drivers out of work for weeks, at great cost, if no spare liveried taxi is available.
44		Because the taxis are in Guildford green colours, some customers think drivers are employed by GBC.	s3	Failure to disclose information of costs that were known or should have been known by the Council.

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45		Because the livery colour is similar to the local Aviva bus company, some customers think taxis are part of the local bus company.	s3	Failure to disclose information of costs that were known or should have been known by the Council.
46		Drivers can't do wedding or chauffer work in Guildford green liveried taxis as customers don't like the colour.	s3	Failure to disclose information of costs that were known or should have been known by the Council.

47		The wrap is easily damaged and when damage occurs the wrap for whole panels has to be replaced at significant cost.	s3	Failure to disclose information of costs that were known or should have been known by the Council.
48		The wrap can damage paintwork when removed, at significant cost to the drivers.	s3	Failure to disclose information of costs that were known or should have been known by the Council.
49		The livery fitters do damage the cars with screwdrivers etc, when light and other car fittings are removed and refitted to enable wraps to be done.	s3	Failure to disclose information of costs that were known or should have been known by the Council.
50		The Council had done no risk assessment on any fitting companys suitability to disassemble the cars for the livery fitting.	s3	Failure to disclose information of potential costs that were known or should have been known by the Council.
51		The Council secretly disposed of their proof of concept livery demonstrator car, after it had been unwrapped, so that drivers could not inspect it. The Council would not say who the new owners were, or where the car had gone to.	s3	Failure to disclose information of information, by the Council hiding evidence that the livery installation and removal damaged the demonstrator car paintwork and did not protect it.
52		The Council said that the livery wrap material colour would not vary. But in fact livery wrap material from same company has different shades making colour matching of repaired panels impossible.	s3	Failure to disclose information of costs that were known or should have been known by the Council.

8.1.1 Claim for Judicial Review Rostron v Surrey Magistrates re GBC Fraud

See next page.

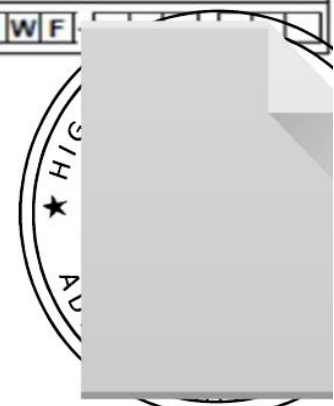
3 Claim Form

Judicial Review Claim Form

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

<i>For Court use only</i>	
Administrative Court Reference No.	
Date filed	

In the High Court of Justice Administrative Court	
Help with Fees - Ref no. (if applicable)	H W F



Is your claim in respect of refusal of an application for fee remission? Yes No

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
Mark Guy Rostron

address
17 Lower Guildford Rd
Knaphill
Woking
GU21 2EE

Telephone no. 07956 935886 Fax no.

E-mail address markgrostron@gmail.com

Claimant's or claimant's legal representatives' address to which documents should be sent.

name
None

address

Telephone no. Fax no.

E-mail address

Claimant's Counsel's details

name
None

address

Telephone no. Fax no.

E-mail address

1st Defendant

name
Surrey Magistrates

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name
Surrey Magistrates Court Clerk

address
Mary Road
Guildford
GU1 4PS

Telephone no. 01483 405 300 Fax no. DX:97865

E-mail address

2nd Defendant

name
None

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name

address

Telephone no. Fax no.

E-mail address

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name Guildford Borough Council	name
address Millmead House, Millmead, Guildford GU2 4BB	address
Telephone no. 01483 505050	Telephone no.
Fax no.	Fax no.
E-mail address customerservices@guildford.gov.uk	E-mail address

SECTION 3 Details of the decision to be judicially reviewed

Decision:
Surrey Magistrates refused to set a date for committal hearing re allegations of fraud.

Date of decision:
10th February 2021.

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name Surrey Magistrates	address Mary Road Guildford GU1 4PS
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SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)? Yes No

Are you making any other applications? If Yes, complete Section 8. Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application. Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below. Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below. Yes No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below. Yes No

European Human Rights Act 1998 Article 6(1) failed to provide a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law and pronounce judgement publicly.

SECTION 5 Detailed statement of grounds

set out below attached

See attached bundle.

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim

Yes No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

1 Order of Mandamus directing the Magistrates Court to hold a committal hearing. OR
2 Order to an appropriate Court to proceed at once to a determination of the issue of the fares fraud allegations.
3 Order for Costs against the Defendant.

SECTION 8 Other applications

I wish to make an application for:-

Application for extension of time to register application for Judicial Review of 28 days in case of clerical or other administrative error.

SECTION 9 Statement of facts relied on

See attached bundle.

Statement of Truth

I believe (~~The claimant believes~~) that the facts stated in this claim form are true.

Full name Mark Guy Rostron

Name of claimant's solicitor's firm None

Signed

Mark Rostron

Position or office held

(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|--|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input checked="" type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate <i>(if legally represented)</i> | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |
| <input type="checkbox"/> Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's significant assets, liabilities, income and expenditure. | <input type="checkbox"/> included | <input type="checkbox"/> attached |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed Mark Rostron Claimant (s Solicitor)

[Print form](#) [Reset form](#)

8.1.2 History of Fraud allegations against Guildford Borough Council

a) Application for Committal hearing re Fraud by Guildford Borough Council Officers

On the 22nd December 2020 an application by Mark Rostron (the Applicant) was made to Surrey Magistrates (SM) for the committal for trial of Officers and Councillors of Guildford Borough Council (GBC) in connection with the Council Policy on Taxi Livery. (Please see document **Error! Reference source not found.**) following information alleging hackney carriage fares fraud (FARES FRAUD) by then. There was no reply to the application.

b) Magistrates refuse Committal hearing

On the 10th February 2021 after being reminded by the Applicant, Surrey Magistrates refused to hold a committal hearing or indeed any hearing saying the District Judge had left and was not contactable. See document **Error! Reference source not found.**)

c) First Information re FARES FRAUD by GBC Officers and Councillors

On the 2nd March 2018 District Judge Szagun's (DJS) refused the first application for summons for Fares Fraud by Guildford Borough Council Officers and Councillors made by Mark Rostron. (Please see document **Error! Reference source not found.**)

d) Police refused to act on information

On the 14th March 2020 Surrey Police refused to act on information supplied. (Please see document **Error! Reference source not found.**)

e) Second revised information

DJS's refusal objections were remedied in a second application for Summons.

f) Second application refused

On the 7th April 2018 District Judge Christopher James (DJCJ) gave different reasons for refusing the second application to issue summons.

g) Third application

DJ CJ's objections were remedied in a third application to Central London Magistrates Court.

h) Third application refused

That application was returned by Bromley Magistrates Court referring it back to Guildford, without any other action on their part.

i) Fourth revised information re FARES FRAUD only

On 7th July 2020, a fourth application on the same basis as the third was made. (See document **Error! Reference source not found.**), this time to Guildford Magistrates Court a gain. This was an application about a different allegation of FARES FRAUD, NOT that of LIVERY FRAUD which had been made previously and separately on the 1st April 2020.

j) Reminder sent to Magistrates

On 16th October 2020 the Applicant asked what had happened to this application for a FARES FRAUD summons, and why a summons has not been issued after a delay of three months.

k) Fourth application refused re FARES FRAUD

On 28th October 2020 at Guildford Magistrates Court, District Judge's (DJ), without a hearing for the fourth application re FARES FRAUD by Mark Rostron, refused to issue a Summons. The Court said:

"The District Judge has considered all of your information and has refused all applications."

l) Application to State Case re FARES FRAUD summons

On the 2nd November 2020 an application was made to Surrey Magistrates for them to State their Case as to why the Summons for FARES FRAUD applied for should not be issued.

m) Refusal to state case re refusal to issue FARES FRAUD

On 4th November 2020 at Guildford Magistrates Court, DJ refused to state his case for refusing to issue a Summons deciding that the applications were out of time.

My decision to not issue any summons was made and communicated to Mr Rostron on 16/6/20.

Therefore this further application to state a case (dated 2nd November 2020) about my decision, is hopelessly out of time.

In any event I have already adjudicated upon Mr Rostron's application to state a case about my decision not to issue any summons.

I refused to state the case on 15th July 2020.

A certificate to that effect was issued to Mr Rostron on 29th July 2020, at his request.

This further application dated 2nd November 2020 is both out of time and otiose.

- n) On 4th November the Magistrate was reminded by email that the application for Summons for FARES FRAUD had not previously been refused by him on the 11th June 2020 (although an application for LIVERY FRAUD had been), and therefore the application to State his Case could not be out of time. DJ had previously refused to issue a Summons for fraud re LIVERY, a different matter, on the 16th June 2020.

I am afraid there is some misunderstanding.

This summons application and request for case stated was for a DIFFERENT matter, that of FARES fraud.

The previous single application the District Judge referred to was about LIVERY fraud.

As it appears the application for summons has not been properly considered and decided, could you please deal with this request for a summons for FARES fraud now?

- o) On 24th November 2020 the Magistrate referred to his previous refusal to issue a certificate of refusal that referred to an application for a different fraud, that of LIVERY FRAUD.

Mr Rostron may apply to the High Court if he wishes.

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I have read all of the information that has been sent to me.

My decision not to issue any summons regarding all of his various allegations of fraud remains.

*He has my certificate of refusal to state a case for the opinion of the High Court so he may rely on that if he wishes. (Please see page **Error! Bookmark not defined.**)*

- p) On the 7th May 2021 the Applicant lodged a claim for Judicial Review of Surrey Magistrates decision not to hold a Committal Hearing following the allegations of Fraud in connection with the 2015 Taxi Livery Policy.

8.1.3 Guildford Borough Council fails to use its own Police Reporting Protocol

8.1.4 Transcript of excerpts of Council Meetings

8.1.4.1 24th March 2021 Applicants statement to GBC Licensing Committee

My comments are all in the bundle there from page 218 to 235. I'll try and be brief. My basic point about the regulations in general, the Council should only do the minimum that's required to meet any statutory obligation, any safety obligation and so forth, and really according to the Acts of Parliament that apply, the Local Government Act and the Regulatory Reform Act 2006 and the Regulators Code, it seems that every regulation should have a full cost benefit justification. That is, you should be able to show and prove why something is necessary, what the benefit is to the public, both in financial terms and in safety.

So, moving on to the particular points. There's no evidence been provided that taxi livery has given any benefit to the public in Guildford and was ever needed. People in the surrounding Boroughs are no less safe than they are in Guildford and they don't have livery on their taxis. The Council still relies on what happened in Rotherham, citing what happened in Rotherham as justification for the taxi livery safety, but the taxis in Rotherham were already liveried, so that's still as irrelevant now as it was then.

Going on to the specific taxi license conditions under section 47 of the LGMPA, it says that you can only impose a condition that you believe is reasonably necessary, and you can't possibly believe that the livery of taxis is necessary because there is no evidence for it, there's never been any evidence presented for it.

Moving on to another part now, which is about the types of vehicles that are licensed, a separate issue, the section 48 of the LGMPA provides that the Council shall not grant a license unless they're satisfied that the vehicle is safe and comfortable, and what I would say is that there are too many vehicles being licensed now which are underpowered rendering them unsafe especially when they've got four passengers on and a full load of luggage, and especially when Guildford is a very hilly area, you've got to access major roads like the A3, going uphill on slip roads in the rush hour, having to stop and go from a standing start to fifty miles an hour.

So, I would say about the (Interruption by timekeeper, sorry how many seconds did you say? 30. Got 20 now.)

Just going onto the other main point was about not giving any drivers benefit of the doubt at regulatory hearings, and in my view that's a danger of them turning into kangaroo court. Ask the Officers what happened with Mohammed Hussein who was falsely accused of sexual assault improperly traduced and lost an hours (SB years) work

(Interruption by Chairman. Thank you. You're straying off the subject a little bit. Thank you, and your time is up.)

Well, no, that's part of the licensing policy. That was part of the licensing policy.

Three minutes including interruptions allowed to address the Committee.

No questions from the Committee.

8.1.4.2 24th March 2021 Mike Smith GBC Licensing Team Leader response to the Applicant

Thank you to Mr Rostron for coming to speak here this evening.

Obviously a number of points that were raised historical matters such as the decision to adopt livery in 2015, a decision which wasn't challenged at the time, and as such still stands and is implemented today.

Mr Rostron says that the Council should do the minimum for taxi licensing in order for the vehicles to be licensed and there should be a cost benefit and there should be a cost benefit justification. I don't know whether Mr Rostron has read the Statutory guidance which came out in July last year which focuses very much on the work that Authorities must do to promote standards in the Licensed Trade for vulnerable passengers, and therefore by extension all passengers, so I would perhaps refer Mr Rostron and the Committee members to that Statutory guidance which outlines that taxis are a high risk environment and that the Local Authorities are expected to review and implement the Standards without any further delay. Those are the requirements of the Department of Transport. This is clearly outlined in the report and is why the Policy has been reviewed now and presented for the full Committee to consider this evening.

With regards to the point about vehicles being underpowered, the Policy has been subject to the Policy requirement for engine propulsion hasn't changed. Obviously vehicle technology has moved on quite considerably so you don't need to make engine capacity bigger in order to give it more power. You can have things like turbos etc that give engines more charge. I'm not aware of any complaints we've had from any members of the public about vehicles being underpowered. Certainly that has not come up as a response from anybody else in the Consultation, even you know, members of the trade. The point about giving drivers the benefit of the doubt, again that's a very clear requirement from the Statutory guidance, that drivers shouldn't be given the benefit of the doubt, and again, this is the Statutory guidance that Local Authority must have regard to. I don't think there's any other points to consider, but I'm happy to answer any questions that there may be. Thank you.

No questions from Council Members about the written 17 Page Consultation response from the Appellant, including allegations of Fraud under the Fraud Act or to the points raised by him in the meeting.

8.1.4.3 13th April 2021 Applicants statement to GBC Council Meeting

Starts at 18'40" on the Council podcast.

Mark Rostron v Guildford Borough Council Taxi and Private Hire Policy 2021

Good Evening. Just a little recapitulation for people who don't know the full history of this, new Councillors who've come here more recently. I'm objecting to the Policy about green livery on taxis. The main reason is that there is no public safety evidence based reason for green livery on taxis. As a matter of fact, the real reason was disclosed in the first report made to the Council 5 years ago, and that was to do with Guildford Council branding, but those words were removed from the subsequent Reports to the Meeting, so the subsequent Meetings never knew that.

At the last Licensing Committee Meeting, Mike Smith said that the reason for Livery was contained in the Government Statutory Taxi and Private Hire Vehicle Licensing Standards, but it isn't. There is nothing about Livery in there, and he also said that that Guidance applied to the general public, but it doesn't. It only applies to children and vulnerable individuals who are over 18. It doesn't apply to anyone else. So, there's been no reason given. Plenty of opportunity has been given for reasons to be stated, but an evidence based reason for public safety hasn't been provided. So that means in effect that the Livery Policy is Ultra Vires, and outside the Council's Statutory powers.

And in actual fact the original choice of Livery colour, you may not know this, was the result of a secret meeting, an unauthorised meeting attended by four Councillors and four Officers, who didn't keep any Minutes of that Meeting and the emails associated with it have all now been destroyed.

So, I'd like you to take this seriously because the mis spending of public money on things that are unnecessary and outside the Council powers are things that can actually rebound on Members. And if you aren't aware of what's gone on before I think you really ought to make some enquiries before you go ahead and rubber stamp this Livery Policy, because it's very expensive, and it might turn out to be very expensive for your good selves.

And that's err, I think I'm within my three minutes so I'll stop now and let you all get on with your important business.

8.1.4.4 13th April 2021 Councils response to Applicants statement to GBC Council Meeting

8.1.4.5 Lead Councillor for Licensing James Steel

Starts at 21'40"

I'll just provide a brief response to the Livery question. So, as Mr Rostron kind of said, the decision was a historic one which was taken back over, close to five and a half years ago in December 2015. And the decision to adopt the decision was based on a public safety rationale, to improve confidence in the taxi service in Guildford, and was consulted on at the time quite extensively. The decision was not challenged by way of a JR at the time, and as such there was no change to the requirements on the update, there was no reason to change the requirements in the updated policy and the removal of the Livery requirement would be detrimental to Public Safety, and I have to agree with Mr Roberts key point on Public Safety and it would be detrimental to Public Safety and contrary to the Statutory Guidance that we get, that we gain from Central Government. Thank You Mr Mayor.

8.1.4.6 Mr Mayor

Starts at 22'40"

I think Mr Rostron will know, but I think that this came in the wake of a Rochdale scandal, or some other scandal from somewhere, and we were trying therefore to make genuine taxis obvious to younger people.

8.1.4.7 Mr Mayor introduced Item 8 a Review of the Taxi and Private Hire Licensing Policy.

Councillor Steel to move the adoption of the motion set out on page 3 of your Order Paper.

8.1.4.8 Councillor James Steel Lead Councillor for Licensing

So the Policy in front of you tonight is a review of the current Policy along with the addition of new policies that aim to improve the safety of drivers and passengers along with improvements of efficiency of service. Previous policies began in 2015 and run till the end of 2020 with the current time span introduced elements such as of course the livery which was just discussed there, etc. (remainder not relevant in this case)

8.1.4.9 Councillor Richard Redpath

At 27'18"

It's just a comment really. This is an incredibly long, very very fantastic document I'm sure. 160 odd pages. Are we as Councillors expected to read every 160 odd pages to find out what the changes were from the last review of this document and I assume it's not a brand new document? I assume it's one where most of it has been passed by the Council before, and we now have some amendments, so it would be very nice for future, if in future reviews of this document if we could see an executive summary, a summary of what's changed. Otherwise expecting every Councillor to read 160 pages to approve or disapprove a document that's already been approved, except for the changes is I think, is unfair on the Councillors. So it'd be great if the executive summary in future could be a proper summary of what's changed.

8.1.4.10 Mayor.

I have sympathy with that view.

8.1.4.11 Councillor Sarah Parker

It's a question really. Can somebody just confirm that Mr Rostron's contention is not correct and that the decision was not ultra vires when originally taken, so that this Council is not doing anything improper, if necessary just before this is actually ratified, so that we aren't

actually in breach of our existing powers, so if we could ratify subject to that if necessary subsequent confirmation, that would be helpful.

8.1.4.12 Mayor

Ultra vires are very big words in the legal world.

8.1.4.13 Councillor Richard Potter

I will speak briefly. In relation to the point raised by Councillor Parker. I believe that is addressed in the report itself. If one searches for Livery in the document then one finds it somewhere in one of the Appendices. I believe the situation there is the decision when made has not been challenged at Judicial Review and therefore I believe such time for Judicial Review has long since passed, so a decision made five odd years ago stands and we are merely continuing with it. And as I believe Councillor Moseley has just pointed out and as I was just about to say, this report has been through the Licensing Committee which I am not a member of but which I am confident that our colleagues who sit on the Licensing Committee would have raised any serious concerns with the rest of us had they had any. The one comment I wish to make is that whilst I will be voting for this new policy, I do have concerns about the relative burden placed upon the licensed taxi drivers versus the obligations placed upon private hire vehicle operators. (Further comment not relevant to JR).

8.1.4.14 Councillor David Goodwin

I fully agree with Councillor Marsha Moseley on this one. We did have a few discussions about it on Licensing Committee, and it is also as Councillor George Potter has mentioned, legit, what we've done and so on. And so therefore I'm happy with the recommendation as it stands. Thank you.

8.1.4.15 Councillor James Steel

I believe that Councillor Goodwin and Councillor Potter sort of answered some of the questions to do with the ultra vires but I'm happy to pass that given the fact I'm not a legal specialist to our Monitoring Officer

to confirm that. I've also seen that Councillor Moseley in the chat has also taken you know sort of what has happened in the past to do with that. When it comes talking about the cost to drivers it is important to realise that given the high risk nature of the trade we have take passenger safety incredibly seriously, (excluded passage not relevant to Livery)....

8.1.4.16 Diane Owens Council Monitoring Officer

Yeh. I am confident with the new policy will stand up to any legal challenge. The Council is not acting ultra vires in passing it. The correct consultation process has been undertaken, and we've dealt with, followed our legal obligations to consultation, privacy impact assessments and equality impact assessments. There is also, you'll note, on page 66 in the legal paragraphs, that there is some discretion, so an applicant can apply, and each case should be considered on its merits, so the Committee can make exceptions if someone can't comply with the Policy for any reason.

8.2 Minutes Guildford Borough Full Council Meeting approved new taxi and private hire licensing policy 2020-2025

CO98

REVIEW OF THE TAXI AND PRIVATE HIRE VEHICLE LICENSING POLICY

Councillors noted that that the Council, in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades, had a paramount obligation to ensure the safety of the public. Following the publication of Statutory Taxi and Private Hire Standards in July 2020, a draft updated Policy had been approved by Licensing Committee for full public consultation in September 2020.

The results of that consultation had been presented to the Committee at its meeting on 24 March 2021. Following consideration of the consultation responses, the Committee had recommended that the Council approves the Policy, which was set out as Appendix 1 to the report submitted to the Council.

The Lead Councillor for Environment, Councillor James Steel, proposed and the Chairman of the Licensing Committee, Councillor David Goodwin seconded the motion to approve the updated Hackney Carriage and Private Hire Licensing Policy

It was suggested that, for future reviews, it would be useful if a summary of the changes to the Policy could be provided. Councillors sought assurance that approval of the Policy would not be ultra vires. The Monitoring Officer confirmed that the new policy would stand up to any legal challenge and the Council would not be acting ultra vires in approving it. Councillors noted that the Policy did not preclude an applicant who may not meet the criteria from making an application and that each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances. Accordingly, the Council

RESOLVED: That the updated Hackney Carriage and Private Hire Licensing Policy, attached as Appendix 1 to the report submitted to the Council, be approved.

Reasons:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

Under the Remote Meetings Protocol, a roll call was taken to record the vote on the motion in respect of this matter, which was approved, with thirty-seven councillors voting in favour, none voting against and seven abstentions, as follows:

8.3 Letter to Ombudsman regarding unauthorised livery meeting

122D Heath Rd
Twickenham
Surrey
TW14BW

16th April 2018

07956 935886

markgrostron@gmail.com

Your ref: 17019777

Dear Madam

Complaint against Guildford Borough Council

The Council has misled the Ombudsman about its' actions.

The unminuted meeting was a formal meeting to decided what kind of livery the taxis in Guildford would have.

There were four meetings concerning livery.

The first Licensing Committee meeting 18/03/2015

Originally the Council said at the first Licensing Committee meeting 18/03/2015:

5.9 If a livery is adopted, the next issue is what that should be. Respondents were asked to provide their preferences for a livery. The highest preferences were 59% for Guildford branding on the vehicle and 26.2% for a standard full car colour. The consultation feedback shows support for a full car colour and Guildford branding.

Also, at the first Licensing Committee meeting on the 18th March 2015, when discussing livery colour, the report said:

4. Vehicle appearance

5.1 We are proposing the introduction of a uniform livery for all taxis (hackney

carriage vehicles) to differentiate them clearly from private hire vehicles.

Mark Rostron v Guildford Borough Council Taxi and Private Hire Policy 2021

5.11 We have looked at the colours of the vehicles currently licensed and there are 9 different colours, black and silver being the most popular (51 each).

Unfortunately, there are also 56 black and 153 silver private hire vehicles.

5.12 To make a livery distinctive and unique, it is suggested that the scheme should be unusual and not a mainstream colour. We have therefore looked at options to achieve this.

5.13 Some Boroughs have opted to have a livery where the bonnet and/or boot of the vehicle is a local colour. Whilst this is cheaper to achieve it is not necessarily visually very pleasing.

5.14 Preliminary designs for two full body options, both using the Guildford corporate colour Pantone 321, have been prepared. These are set out as examples in Appendix 4. The first uses a white vehicle with the inset printing in Pantone 321. The second reverses the colours but uses the same design.

5.15 The technical advice is that there would be no difference in the cost, as there is no standard white paint colour and so vehicles would need to be fully wrapped in order to ensure a uniform livery.

5.16 In terms of public safety, the white vehicle design would be easier to mimic whereas a pantone 321 would be more distinctive and unique both at night and daytime.

5.17 Taking into account the various factors it is suggested that the two livery designs shown at Appendix 4 be **subject to a public on-line vote to select the livery** we will adopt. Given the customer feedback we will also include a full yellow livery although this will not match with the Corporate logo. The livery colour finally agreed will then be included within the Policy. From the (Public Pack) Agenda Document for Licensing Committee, 18/03/2015.

At this stage the Licensing Committee were considering three options; white on green, green on white, or yellow.

The unminuted meeting

This meeting was not called “accidentally”.

Secondly, it was not authorised by the first meeting, as that meeting decided to make the choice by holding a public vote.

At some point after the decision by the first Licensing Committee meeting to put the decision as to what colour livery to a public vote, someone (unauthorised by, and going against the wishes of the first Licensing Committee meeting) called a meeting of Councillors and others to replace the public vote decision with a private decision by an unnamed group of people whose meeting was said to be unminuted, and whose reasons were therefore not open to public scrutiny, as they properly should have been.

If the meeting was unauthorised and informal it amounted to an improper extension of the consultation period for the policy from which other interested parties were excluded.

The second Licensing Committee meeting from the (Public Pack) Agenda Document for Council, 09/12/2015

At the second Licensing Committee meeting on 18th November 2015 the report said:

Livery standard

5.5 There are three issues for consideration, namely, whether a Guildford livery should be adopted, over what period should it be introduced and should the Council contribute towards the costs for existing vehicles.

5.13 A cross party group of Councillors was formed to evaluate the livery options including the formal consultation results and feedback from Surrey Coalition for Disabled People and the Guildford Access Group.

5.14 A full car livery in the Guildford corporate colour Pantone 321 with the Council Logo and the licensed vehicle number in white lettering has been proposed by the group. A full car livery in an unusual colour was the preferred option as it would achieve the aims of increasing public safety, create a clearer distinction between taxi and private hire vehicles plus would be a strong identity for the Borough's taxi fleet.

So, by the second Licensing Committee meeting a small group, NOT the general public by vote, had ruled out the other two options for livery and chosen the green colour with white markings. Only the specification for that single option was put to the Meeting, and that option was approved.

The full Council meeting

At the full Council Meeting the choice of green livery was simply endorsed without the consideration of any other options.

Damages

I have suffered injustice through not being able to use my taxi since 4th January because I refuse to have it damaged and defaced by the green livery which was improperly chosen. That has lost me several thousand pounds in earnings and £200 per week for the last three months in additional cost of hiring a private hire vehicle to work with. Also, there has been a great cost in lost time and legal fees disputing the matter with Guildford Borough Council.

Additionally all the 200 plus taxi drivers and the general public in Guildford have been saddled with the £1200 per vehicle cost and associated ongoing maintenance costs of a green livery that was wanted by no member of the public in the original consultation.

Incorrect procedures

The Ombudsman must require the Council to reconsider a decision which was NOT taken according to its published procedures.

Either the matter was decided at a meeting that was not properly formally constituted and was in effect an improper extension of the consultation, OR it was properly formed but lacked a record of its reasons for the choice of the green livery colour.

Either way the Council reached the decision in breach of its procedures and therefore improperly.



Yours truly

Mark Rostron

8.4 Full Council Agenda Licensing Policy 2021



GUILDFORD
BOROUGH

James Whiteman

Managing Director

www.guildford.gov.uk

Contact Officer:

Sophie Butcher, Democratic Services Officer.

16 March 2021

Dear Councillor

Your attendance is requested at a meeting of the **LICENSING COMMITTEE** on **WEDNESDAY 24 MARCH 2021** at **7.00 pm**. This meeting can be accessed remotely via Microsoft Teams in accordance with the provisions of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authorities and Police and Crime Panel Meeting) (England and Wales) Regulations 2020.

If for any reason Councillors lose their wi-fi connectivity to the meeting and you are unable to join using the link on the Outlook Calendar invitation, please re-join using the telephone number +44 020 3855 4748. You will be prompted to input a conference ID: 873 702 673#.

Yours faithfully

James Whiteman

Managing Director

MEMBERS OF THE COMMITTEE

Chairman: Councillor David Goodwin

Vice-Chairman: Councillor Dennis Booth

Councillor Tim Anderson Councillor Gillian Harwood Councillor Nigel Manning
Councillor Ted Mayne Councillor Ann McShee Councillor Bob McShee

Councillor Masuk Miah

Councillor Marsha Moseley Councillor Maddy Redpath Councillor Will Salmon

Councillor James Steel

Councillor Catherine Young **QUORUM 5**



Page 1

Guildford Borough Council

Millmead

House,

Millmead,

Guildford,

Surrey

GU2

4BB

THE COUNCIL'S STRATEGIC FRAMEWORK

Vision – for the borough

For Guildford to be a town and rural borough that is the most desirable place to live, work and visit in South East England. A centre for education, healthcare, innovative cutting-edge businesses, high quality retail and wellbeing. A county town set in a vibrant rural environment, which balances the needs of urban and rural communities alike. Known for our outstanding urban planning and design, and with infrastructure that will properly cope with our needs.

Three fundamental themes and nine strategic priorities that support our vision:

Place-making Delivering the Guildford Borough Local Plan and providing the range of housing that people need, particularly affordable homes

Making travel in Guildford and across the borough easier

Regenerating and improving Guildford town centre and other urban areas

Community Supporting older, more vulnerable and less advantaged people in our community

Protecting our environment

Enhancing sporting, cultural, community, and recreational facilities

Innovation Encouraging sustainable and proportionate economic growth to help provide the prosperity and employment that people need

Creating smart places infrastructure across Guildford

Using innovation, technology and new ways of working to improve value for money and efficiency in Council services

Values for our residents

· We will strive to be the best Council.

- We will deliver quality and value for money services.
- We will help the vulnerable members of our community.
- We will be open and accountable.
- We will deliver improvements and enable change across the borough.

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AGENDA

1 APOLOGIES FOR ABSENCE

2 LOCAL CODE OF CONDUCT - DISCLOSABLE PECUNIARY INTERESTS

In accordance with the local Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, the councillor must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

Councillors are further invited to disclose any non-pecuniary interest which may be relevant to any matter on this agenda, in the interests of transparency, and to confirm that it will not affect their objectivity in relation to that matter.

3 MINUTES (Pages 5 - 6)

To confirm the minutes of the meeting of the Licensing Committee held on 25 November 2020.

4 ANNOUNCEMENTS

To receive any announcements from the Chairman of the Committee.

5 LICENSING COMMITTEE ITEMS

5.1 Review of the Taxi and Private Hire Licensing Policy (Pages 7 - 270)

The Committee is asked to recommend that Full Council approve the updated Hackney Carriage and Private Hire Licensing Policy at

Appendix A following consideration of the consultation responses received.

5.2 Taxi and Private Hire Fees and Charges 2021-22 (Pages 271 - 276)

The Licensing Committee is asked to note the current circumstances affecting the calculation of fees and charges, and agree that the fees and charges for 2021-22 remain at the current level and notes that fees and charges are planned to be reviewed again for 2022-23.

6 LICENSING COMMITTEE WORK PROGRAMME (Pages 277 - 280)

**PLEASE CONTACT US TO REQUEST THIS DOCUMENT IN
AN ALTERNATIVE FORMAT**

Page 3

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Agenda item number: 3

LICENSING COMMITTEE

25 NOVEMBER 2020

LICENSING COMMITTEE

* Councillor David Goodwin (Chairman)

* Councillor Dennis Booth (Vice-Chairman)

* Councillor Tim Anderson

* Councillor Graham Eyre

* Councillor Gillian Harwood

Councillor Gordon Jackson

Councillor Ted Mayne

* Councillor Ann McShee

* Councillor Bob McShee

L15 APOLOGIES FOR ABSENCE

* Councillor Masuk Miah

* Councillor Marsha Moseley * Councillor Maddy Redpath * Councillor Will Salmon

* Councillor James Steel

* Councillor Catherine Young *Present

Apologies for absence were received from Councillors Gordon Jackson and Ted Mayne.

L16 LOCAL CODE OF CONDUCT - DISCLOSABLE PECUNIARY INTERESTS No

disclosures of interest were declared.

L17 MINUTES

The minutes of the Licensing Committee held on 23 September 2020 were approved and signed by the Chairman.

L18 ANNOUNCEMENTS

The Chairman had no announcements.

L19 LICENSING ACT 2003 : REVIEW OF STATEMENT OF LICENSING POLICY

The Committee received a report from the Licensing Team Leader and noted that the Licensing Authority, for the purposes of the Licensing Act 2003, had to review its Statement of Licensing Policy every five years. The existing policy was due for review by 7 January 2021. In May 2020, the Licensing Committee approved a draft policy for public consultation. The consultation ran from 6 July – 4 September and no comments were received. The Committee was therefore asked to recommend that Council adopted the policy at its meeting on 8 December 2020.

The Committee noted that at page 22 of the report, Section 6, in relation to Premises Licences and Club Premises Certificates, the policy stated that a premises licence was required for the sale of hot food and drink to the public between 11pm and 5am. A query was raised whether the premises needed to be licensed outside of these hours? The Licensing Team Leader confirmed that the Licensing Act 2003 dealt with licensable activities, the main one of which was the sale of alcohol. In addition, there was the regulation of entertainment and provision of late-night refreshment. If selling hot food prior to 11pm, premises would need to be registered with Environmental Health for the purposes of maintaining food safety. Premises however did not need authorisation under the Licensing Act.

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Agenda item number: 3

The Committee, having considered the report;

LICENSING COMMITTEE 25 NOVEMBER 2020

RESOLVED to recommend that Council on 8 December 2020, adopted the Statement of Licensing Policy 2021-26 which had been publicly consulted on.

L20 LICENSING COMMITTEE WORK PROGRAMME

The Committee noted its work programme.

The meeting finished at 7.11 pm

Signed Date

Chairman

Licensing Committee Report

Ward(s) affected: All Wards

Report of Director of Service Delivery Author: Mike Smith

Tel: 01483 444387

Email: mike.smith@guildford.gov.uk Lead Councillor responsible: James Steel Tel: 07518 995615

Email: james.steel@guildford.gov.uk Date: 24 March 2021

Agenda item number: 5(1)

Review of the Taxi and Private Hire Licensing Policy

Executive Summary

The Council in its role as the Licensing Authority for the hackney carriage and private hire vehicle trades has a paramount obligation to ensure the safety of the public. Following the publication of Statutory Taxi and Private Hire Standards in July 2020, a draft updated Policy was approved for full public consultation in September 2020. The results of the consultation

are presented for consideration by the Committee, and for the Committee to recommend Full Council approves the Policy at Appendix A following consideration of the consultation responses.

Recommendation to Committee

That the Committee recommends Full Council approve the updated Hackney Carriage and Private Hire Licensing Policy at Appendix A following consideration of the consultation responses received.

Reason(s) for Recommendation:

To ensure that the Council's Licensing Policy is updated to reflect the needs of the Borough and to account for the requirements of the Statutory Guidance issued under section 177 of the Policing and Crime Act 2017.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

1.1 The purpose of this report is to present the results of the public consultation on the revisions to the Council's Taxi and Private Hire Licensing Policy to the Committee.

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Agenda item number: 5(1)

2. Strategic Priorities

The review of the Taxi and Private Hire Licensing Policy will contribute to our fundamental themes as follows:

- **Place making** – ensuring safe travel in the Borough through a well regulated taxi and private hire service.
- **Innovation** – using new ways of working to improve efficiency. **3.**

Background

- 3.1 Taxi and Private Hire Vehicles are licensed by Local Authorities under powers arising from the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976.
- 3.2 The current Taxi and Private Hire Licensing Policy 2015-2020 adopted on the 9 December 2015 introduced positive changes to protect public safety by introducing livery for taxis, door signs for private hire vehicles and the requirement for drivers to complete the BTEC Level 2 Certificate in the Introduction to the Role of the Professional Taxi and Private Hire Driver. The Policy was revised on 7 February 2018 to introduce a uniform 'convictions Policy' across Surrey, mandatory Safeguarding training for all licensed drivers, and a requirement for all hackney carriages to accept card payments.
- 3.3 On 27 November 2019 the Licensing Committee considered a report concerning the strategic direction for the Taxi and Private Hire Licensing Policy and recommended that Officers develop a Policy incorporating measures proposed under draft Guidance issued by the Secretary of State under section 177 of the Policing and Crime Act 2017 for consultation.
- 3.4 On 21 July 2020 the Department for Transport published Statutory Taxi and Private Hire Vehicle Standards, the final version of guidance issued by the Secretary of State under section 177 of the Policing and Crime Act 2017. This document follows the version consulted upon in 2019 following the publication of the Government's response to the Task and Finish Group Report. The Task and Finish Group report, together with the Government response are linked in the background papers section of this report.
- 3.5 The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in areas such as Rotherham since the 2010 version of the Department's Best Practice Guidance. The Department for Transport is currently updating the Best Practice Guidance which then should be subject of consultation.
- 3.6 The document sets out a framework of standards which licensing authorities "must have regard" to when exercising their functions. The document defines that "having regard" to the standards requires the Council, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated.

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Agenda item number: 5(1)

- 3.7 The Department for Transport has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers), and expects that Licensing Authorities will have taken steps to implement these measures by January 2021.

3.8 The Council is also recommended to publish its consideration of the measures contained in the Statutory Standards, and the policies and delivery plans that stem from these. A consideration of the standards was presented in the report to Licensing Committee on 23 September 2020.

3.9 Also on 23 September 2020 the Licensing Committee considered a draft Taxi and Private Hire Licensing Policy developed following the publication of the Statutory Standards, and approved the draft for public consultation.

3.10 The draft policy considered the following changes to the Council's Taxi and Private Hire Licensing Policy:

Measures to improve driver standards through:

- requiring drivers to sign up to the Disclosure and Barring Service update service and a check every 6 months
- adopting a robust previous convictions policy
- a code of conduct for drivers

Measures to improve vehicle standards through:

- requiring CCTV in licensed vehicles
- emissions standards for licensed vehicles
- a suitability test for vehicle proprietors
- a transparent policy on executive hires

Measures to improve private hire operator standards through:

- a defined 'fit and proper' test for licensed operators
- Improved staff training and vetting
- Improved procedures for
 - vetting drivers/vehicles allocated bookings
 - advertising
 - sub-contracting
 - tariff display
 - pickup/drop off procedures

3.11 The summarised changes above are detailed as follows:

3.12 Hackney Carriage and Private Hire Drivers

Guildford has already adopted a number of measures outlined in the Standards, including requiring an enhanced Disclosure and Barring Service (DBS) certificate (a criminal records check) which checks the barred lists (list of individuals barred from working with adults and/or children), with a robust Policy on previous convictions; a test of the applicant's knowledge, including an understanding of English; safeguarding awareness training; a BTEC qualification which includes

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equality awareness and use of the NR3 register (National register of drivers whose licences have been refused/revoked by an authority).

Despite these existing measures, the Standards recommend that all drivers are required to subscribe to the DBS update service, and that Authorities check their criminal histories every 6 months. The Standards also recommend that drivers are required to 'self-report' any arrest, charges or conviction within 48 hours (we currently require notification within 7 days) and consequently it is proposed to include these measures in the Policy revision. Additionally, the previous convictions policy in Annexe A of the Statutory Guidance is included. A previous convictions Policy sets out the criteria to be considered by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person based upon any convictions they may hold. The Council is currently signed up to the Surrey-wide convictions policy, which provides a consistent framework across Surrey. The previous convictions template in the Standards is more stringent in some areas to the Surrey template, and it will be for the other Surrey Licensing Authorities to adopt this standard.

Both Private Hire Vehicle and Hackney Carriage drivers holding a dual licence are subject to the Council's Licence conditions with regard to their conduct. Despite this, the Council does receive complaints and occasionally has to take action against drivers who have fallen short of the standards expected to protect the public. As such, a code of conduct which sets out the standards expected would help improve standards and the professional image of the service, and would be a more transparent method of taking action against a driver who falls short of the standards expected.

3.13 CCTV in Licensed Vehicles

The Task and Finish Group recommended that all licensed vehicles are fitted with CCTV covering the inside of the vehicle in order to provide greater protection to customers and drivers. The Standards discuss the benefits and risks to using CCTV, concluding that 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. It is also important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and PHVs will be responsible for the data. It is important that any decision to mandate CCTV fully considers concerns regarding privacy and how systems are configured.

3.14 Licensed Vehicle Age/Emissions

Air quality and climate change has been of increased concern since the Policy was last reviewed and on 23 July 2019 the Council declared a 'Climate Change Emergency' and adopted an Air Quality Strategy, which has reviewing taxi and vehicle emissions standards within its action plan.

The Council currently does not have an emission standard for licensed vehicles, however has an age limit which is as follows:

Up to five years old for a vehicle at first licensing, up to a maximum age of 10 years (15 for wheelchair accessible type vehicles).

Whilst the proportion of licensed vehicles makes up a small percentage of traffic in and around Guildford at any one time, it is recognised that licensed vehicles are used regularly throughout the day on multiple journeys. As such, the Committee were invited to consider any strategic direction for the Policy to improve air quality in the Borough.

Any radical measures to remove diesel vehicles or require a hybrid or electric fleet are considered premature due to the purchase cost of vehicles and lack of charging infrastructure being prohibitive. As such a two stage policy is proposed:

- Vehicles licensed for the first time from 1 April 2021 (or date policy effective) and all renewal applications from 1 January 2025, must meet or exceed Euro 6 emission standards.
- From 1 January 2030 the Council will only licence hackney carriage and private hire vehicles (new and renewal) which are Ultra Low Emission Vehicles (ULEV).

3.15 'Fit and Proper' Test for Vehicle Proprietors

There is focus in the Standards on the role of vehicle proprietors, who also have an important role in ensuring the safe maintenance of vehicles. Unfortunately, licensed vehicles are regularly presented for inspection in a defective and sometimes dangerous condition. As such officers recommend introducing a policy of allowing action to be taken against proprietors for continued non compliance.

Additionally, as a licensed vehicle is the ideal cover for illegal activity such as moving vulnerable persons and contraband around in an inconspicuous manner the Standards recommend the introduction of a basic DBS for proprietors and previous convictions policy.

3.16 Private Hire Operators

The Standards also recognise the important role that Private Hire Operators have in protecting the public. The Council already requires Private Hire Operator Licence holders to obtain a Basic DBS. The draft Policy also introduces a 'fit and proper' test for licensed operators, which reflects the important role Operators have in terms of data protection, but also introduces an expectation that Operators licensed by the Council should utilise vehicles and drivers licensed by Guildford. This is so as to ensure that the licensed trade working in Guildford conform to the standards set by the Council, and can be subject of local compliance.

The Standards also recommend that Licensing authorities should be satisfied that PHV operators can demonstrate that all staff that have contact with the

public and/or oversee the dispatching of vehicles do not pose a risk to the public. Licensing authorities should request that, as a condition of granting an operator licence, a register of all staff that will take bookings or dispatch vehicles is kept

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and maintained. The operator should be required to evidence that they have had sight of a Basic DBS check on all individuals listed and produce a policy on employing staff with a relevant criminal record.

The Standards also recommend that Operators and their staff should receive similar training to that of drivers around safeguarding and equalities awareness, and that the use of a driver who holds a Public Carriage Vehicle (PCV) licence and the use of a public service vehicle (PSV) such as a minibus to undertake a PHV booking should not be permitted as a condition of the PHV operator's licence.

The Private Hire Operator market has also seen considerable changes since the Policy was last reviewed, with many smaller, local operators merging and the increased popularity of app-based operators. This has created local challenges in terms of enforcement, with the current Operator licence conditions still based upon the 'traditional' telephone booking method of operation.

As such, in order to raise standards and improve enforcement, officers recommend the following changes for the Policy review:

Trading names:

Each operator licence can be linked to one trading name – the only exceptions are where all trading names clearly relate to the same business. Any mobile app, websites or advertising used by the operator should clearly give the registered operator name in any links, and Guildford Borough Council licence details must be clearly shown on the app, website or advert. This is so as to ensure that customers know exactly who their booking is with, and will enable improved enforcement through preventing one operator having multiple trading names.

If more than one licence is held to accommodate different trading names, the records and contact details for each trading name must be kept separate, and any receipts or correspondence with the customer must clearly relate to the company the booking was made with.

Sub-contracting:

If an operator sub-contracts the booking, whether to another private hire operator or a hackney carriage vehicle, they should inform the customer and fix the price, and if using a hackney taking care not to charge more than the hackney carriage metered rate if the journey starts and ends in the relevant district. A clear record of the sub-contracting and when the customer was informed shall be kept.

Operator Staff:

All staff employed by the operator must be regularly vetted by the operator, and a record of this maintained for each employee. Vetting must include ensuring the staff are fit and proper persons with the right to live and work in the UK.

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Operator Procedures:

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The operator shall have procedures in place to ensure all drivers and vehicles used have the required licences and are complying with the relevant conditions of the licences. This should include a record of the regular checks done by the operator showing compliance on each licence.

The operator shall have procedures in place to ensure that no bookings are passed to a driver or vehicle without a valid licence, MOT or insurance.

The wording of Licence conditions will be improved to ensure any information a licensed operator is required to hold should be made available to an authorised officer.

Pick up and drop off locations

The operator shall have procedures in place to pick up and drop off customers from locations of safety. This is particularly relevant in Guildford town centre as Officers regularly see drivers waiting for bookings, and picking up/dropping off customers in unsuitable (including occasionally illegal and dangerous) locations. These procedures must be reviewed and amended at the request of an authorised officer.

Operator Tariff:

Traditionally operator's fares have matched the hackney carriage fares, until the fare review in 2017. Whilst the Council regulates the fares for hackney carriages, we do not regulate fares for private hire vehicles or operators. Feedback from previous mystery shopping exercises cited confusion from operators who were asked to quote for a local journey, with the response that the journey would be 'on the meter'. This does not provide any clarity for customers about how much a journey may cost them. Additionally there may be a temptation for a private hire driver to take a journey without a booking as it would be 'on the meter', rather than the customer booking and being quoted for a journey in advance.

Similarly at every fare review officers experience a considerable increase in work through dealing with private hire vehicles with taxi meters fitted and private hire vehicles displaying the hackney carriage fare chart.

Consequently, it is recommended that in order to put the emphasis on operators to ensure customers are provided with a reliable quote for services in line with current licence conditions, it is recommended that Private Hire Vehicles are prohibited from having taxi meters. Vehicles may still be fitted with a mobile/PDA device which records the journey and generates a fare based upon time and distance, and operators may still use the hackney carriage fare tariff rates as their own tariff, however by removing taxi meters from private hire vehicles, customers are more likely to receive a more reliable quote for journeys and workload for officers would be reduced.

Executive hires:

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The current policy allows some vehicles to be 'plate exempt' which means that they are not required to display the mandatory vehicle licence plates or door signage. As not displaying a plate does not identify the vehicle as being licensed, this should be utilised in only the most discerning of cases, where the safety or integrity of the customer may be compromised by being seen in a licensed vehicle. The current policy should be tightened to reflect that 'plate exemptions' will only be granted in circumstances where the vehicle and client base are 'exceptional' (over and above purely executive specification) to improve decision making, enforcement and public safety.

4. Consultations

- 4.1 Consultation is critical to ensure any changes to the Taxi and Private Hire Licensing Policy are clear and transparent for licence holders and the travelling public.
- 4.2 Section 3.12 of the Statutory Standards suggests Licensing authorities should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers in consultation. Examples include 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. The standards also suggest consultation with night-time economy groups (such as Pubwatch) as the Taxi and Private Hire trade is an important element of dispersal from the local night-time economy's activities.
- 4.3 Following the Committee's approval, full, formal consultation took place with members of the public, community stakeholders, specific groups and individuals as identified in Appendix B.
- 4.4 The consultation period was from 2 October 2020 for 12 weeks ending on 11 January 2021. A dedicated consultation webpage with questionnaire was set up

facilitating the capturing of responses, with this being promoted to the public via the Council's Communications team on the Council's website and social media channels. The consultation was also promoted with a direct email to stakeholders and members of the Taxi and Private Hire trades were invited to participate in the consultation via a number of reminders in the Council's regular newsletters.

4.5 Members of the trade were also invited to join a series of 'virtual' meetings to discuss the proposals and to answer any questions they may have had. Seven meetings occurring between November 2020 to January 2021 were scheduled with the trade receiving invites and reminders via the Council's newsletter. One member of the trade took the opportunity to join a meeting.

4.6 Fifty-five (55) responses were received to the online questionnaire. The questionnaire and responses can be seen at Appendix C.

4.7 In addition, five (5) individual written responses were received from:

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- Guide Dogs
- Guildford Environmental Forum
- Luxury in Motion
- Mark Rostron
- Normandy Parish Council
- Surrey Police

These individual responses are set out at Appendix D.

4.8 Licensing Committee are invited to consider the results of the consultation as set out below.

5. Consideration of Consultation Responses

5.1 The online questionnaire

The online questionnaire set out to capture responses and views of the changes, and perceptions of the Policy overall so that these could be presented in a clear form.

Identity of respondents

The first questions sought to identify the respondents and their background. Just

over half, 51% (23) respondents identified themselves as a resident of the Borough. 49% (22) identified as living outside the Borough.

Just under half, 47% (21) respondents identified that they operated a business in the Borough. 53% (24) advised they did not.

Just over half, 56% (25) of respondents advised they held a taxi/private hire licence issued by Guildford Borough Council. In addition, a further 16% (7) of respondents advised that they held a licence issued by another authority, of these, 3 also identified that they held a licence with Guildford in the earlier question.

Accounting for both sets of entries, 64% (29) respondents identified themselves as members of the licensed trade.

Perceptions of proposed changes overall

Most respondents, 76% (33) considered that the Policy was clear and understandable, and most respondents, 64% (29) considered that the Policy was consistent with the objective of protecting the travelling public.

Just over half of respondents, 56% (25) agreed that the Policy was consistent with the objective of ensuring the highest standards within the professional licenced taxi trade; and just over half of respondents, 55% (24) agreed that the Policy was consistent with the objective of maintaining public confidence in the licensed trade.

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A high proportion of respondents 68% (30) considered that there were elements of the Policy which were unfair or unreasonable.

Most respondents 77% (33) believed that the Policy made it clear that applications should be treated on their own merits.

High numbers of respondents agreed that the Policy was clear and sought to ensure high standards for the protection and confidence of the public. It is positive that there was strong agreement as to the measures proposed, including a high number of responders from the licensed trade.

However whilst the majority of respondents believed the policy met these aims, a high number of respondents also believed that some elements of the Policy were unreasonable, although at the same time most also agreed that the Policy allowed each application to be treated on its merits. There is perhaps a discord between respondents agreeing that the Policy is clear, seeks to promote public confidence and allows each application to be treated on its merits, and yet considering elements of the Policy unreasonable. Again as a number of respondents were from the licensed trade it is possible that the high number of positive responses to this question reflect the views from the licensed trade of the

Council imposing further requirements on them.

Turning to the free text comments, there were a number of comments relating to the perception of the Policy. Most of the comments centred around the need and cost of CCTV, with six comments relating to CCTV either being unnecessary or costly. Three comments made reference to the proposed dress code. Three comments related to 'cross border hire issues'. Two comments related to vehicle accessibility with one wishing to see more incentives to provide accessible vehicles, and the other appearing to suggest mandating of accessible vehicles. Two comments related to vehicle emissions. One comment was an unsolicited offer to provide training. One comment was a question relating to display of plates.

Other comments asked questions about the Policy, made accusations against the Council or requested the Council to stop imposing requirements on the trade which have not been considered. A consideration of the comments is below.

Comment	Officer's Response
WILL PLATE EXEMPT VEHICLES STILL HAVE TO DISPLAY INTERIOR LICENCE PERMANENTLY	This is a question rather than a comment about the Policy.
Why don't councils butt out and leave the trade alone. Always tinkering and pissing drivers right off with all your meddling crap. Seems to me it's just some officials keeping busy to keep themselves employed at our expense. Leave us alone !!	It is well established that Licensing Authorities are responsible for setting standards locally for reasons of public safety.
In the full policy I would like the Vehicle Accessibility section (copied	The requirement for an all accessible fleet previously required by the

<p>below) to be expanded to provide more information about the incentives offered so we can ensure more vehicles are accessible to disabled people particularly wheelchair users.</p> <p>We will encourage the provision of accessible vehicles through financial incentives in vehicle application fees. There will be a separate fee set for wheelchair accessible hackney carriage vehicles and published in the fees and charges book.</p>	<p>Council but never fully implemented was removed in 2015 during the Policy review.</p> <p>With Local Authority finances under considerable pressure there isn't unfortunately any funding available to incentivise provision of accessible vehicles.</p>
<p>A dress code is unreasonable.</p>	<p>The Council currently has a dress code in the form of guidance attached to driver licence conditions. It has been updated and moved into the main policy standards for clarity.</p>

<p>Guildford borough council propose Guildford taxis do livery , Btec , exploitation course , dsa driving test & say to keep taxis at high standard & safety for public but then grant operator license to uber & other company's who take the majority of our work without the same conditions as us Guildford licensed taxis , this all reflects in the cost of fares to public & does not allow us to be competitive to the likes of uber ect , and also encourages operators of cabs & private hire working here to license vehicles with outside boroughs eg waverly & woking ect who more & more drivers are using to bypass the Guildford conditions & are allowed to operate on an uneven par as Guildford taxis . Also at a time when the world is trying to reduce plastic use GBC require Guildford taxis to cover the whole vehicle in Vinyl Allowing accident claim company's to charge over the top for replacement vehicles & drag claims on as to profit from accidents & if you try & use another insurance company they can't supply replacement vehicles to Guildford spec which results in driver unable to work why vehicles are repaired & claims settled .</p>	<p>This comment relates to cross border hire which the Council is keen to resolve to ensure that the trade operating in Guildford is licensed by Guildford, however requires the Government to introduce legislative change or perhaps greater clarity on current regulations.</p> <p>The updated 'fit and proper' test and expectations for operators specifies that we expect operators not to use vehicles licensed by other authorities on a regular basis to circumvent Guildford's standards.</p> <p>The comment about use of plastic is noted. The reasons for livery were discussed at the time of adoption although the Council cannot comment on the conduct of accident management companies.</p>
	<p>installing cameras is CCTV cameras cost</p>

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<p>ridiculous high fir taxi drivers to pay . Most of us drivers work day time driving old ladies and have no risk or very limited risk of an attack. Also the police are not interested in helping taxi drivers if we have non payment for a fare. I have had 3 non payers in 12 years and no assaults .</p>	<p>the same as a replacement set of tyres and have a number of benefits for drivers including reduced insurance premiums and improved safety. The Council has also allowed a reasonable implementation period. Having CCTV should also act as a deterrent to any non-payment of</p>
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	fares.
<p>If these standards are the same as GBC sets as its own standards, then I would agree, but it does not</p>	<p>This appears to be an unsubstantiated complaint with no details. The Council does set standards for the conduct of staff and members and has a process whereby complaints can be investigated.</p>
<p>Ref public safety we had to wrap our vecheles when you licence Uber witch is licenced in london you let the operate in Guildford no checks are made there's so many in Guildford they get away with no checks or crb checks there's something wrong</p>	<p>See above note about 'cross border hire'. Drivers and vehicles currently operating in Guildford by Uber are licensed by Transport for London who require an enhanced DBS check.</p>
<p>Don't need a dress code</p> <p>Nothing wrong with private companies continuing to use meters.</p> <p>Don't need CCTV. It's an overkill, intrusive for the passenger and breaches their personal space.</p>	<p>See above comment about dress code and CCTV.</p> <p>Removing taxi meters from private hire vehicles should mean customers are more likely to receive a more reliable quote for journeys.</p>

<p>Hi.</p> <p>I my humble opinion as a user of private hire services across the country you could do more to convince public about the quality of the service they receive from private hire drivers and introduce a mandatory training for all your private hire drivers. Chauffeur Training Academy in London could help you with that and design a bespoke training course.</p> <p>It could be as short as 1 or 2 days but would take your private hire drivers to the next level of customers services and skills as well as ensuring the public that they receive a really good, value for money professional and safe service.</p> <p>You can contact CTA at: info@chauffeur-training.co.uk</p>	<p>The Council already requires drivers to complete a Level 2 qualification, elements of which focus on the role of a professional driver and customer service.</p>
	<p>Guildford should be zero A proposal for s been</p>

<p>emission vehicles and this should be a requirement</p>	<p>made, however it is considered unreasonable to introduce a zero emissions Policy immediately due to reasons of cost and infrastructure.</p>
<p>Consider a clause to make sure interior of vehicles are clean, tidy and not littered with unnecessary notices. I have travelled in GBC taxis where there are hand written signs. Do this, do that, I don't accept £20 notes etc</p>	<p>Licence conditions already require vehicles to be clean and tidy both inside and out.</p>
<p>CCTV should be optional in care.</p>	<p>See previous comments relating to CCTV.</p>

<p>I have focused my feedback exclusively on ensuring the policy reflects the appropriate ambition on vehicle emissions (ultimately to protect the health of taxi drivers, passengers, residents and visitors). A separate document has been emailed to explore this area in more detail.</p>	<p>A separate response to the written consultation will be considered.</p>
<p>CCTV I personally think is not required if you are honest with customer you dont get trouble Except plates shouldn't have door signage at all you are investing £40k+ for a car and you are not going to do minicab work you are aiming for top end clients It also depends on your definition of what you call except which should be clarified from the beginning</p>	<p>See previous comments relating to CCTV. Vehicles with a plate exemption are not required to display door signage and exemption requirements have been improved in the Policy.</p>
<p>Would cctv being fitted in cars not be invasive of a passengers dignity.</p>	<p>See previous comments relating to CCTV. CCTV is part of daily life and should promote confidence in the service.</p>
<p>i think you should bring disabled access cars, as they will be covid safe</p>	<p>See above comment relating to accessible vehicles.</p>
<p>Dress code shouldn't be that strict. Each individual choice that's fits their personality and the clothes they feels comfortable. However needs to be clean and tidy.</p>	<p>See above comment relating to dress code.</p>
<p>Why Uber is operating in Guildford without having a license from Guildford borough council?</p>	<p>See above comment relating to 'cross border hire'.</p>
<p>Please see response sent via email.</p>	<p>This will be considered separately.</p>
<p>We are going through Covid at present as you might know. I myself have had NO WORK for probably 3or</p>	<p>The Council understands that many businesses have been impacted by the current pandemic. The Council is</p>

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<p>4 months now, could you please tell me, who is going to foot the bill for these cameras, as I can just about put food on my table at present let alone paying out for things some pen pusher is thinking what can we do next to kick taxi drivers while they are down. If you continue to keep putting pressure on drivers with all these great ideas you will find that you'll end up with NO Taxi Drivers in Guildford because they'll either leave the trade, join Uber or start up I a different Borough. Don't kill the goose that lays the golden egg!!</p>	<p>however required by the Department for Transport to consider the statutory guidance despite the pandemic, as all Licensing Authorities are required. A reasonable implementation period has been proposed in order to obtain CCTV should this be required.</p>
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Issues with licensed vehicles

The questionnaire then asked respondents views on licensed vehicles operating in the Borough.

Between 37 to 49% of respondents believed that there were significant problems with drivers, vehicles and operators licensed by the Council. Turning to the comments for specific details of issues, many of the comments centred around 'cross border hire' which in itself is not what the question asked about, or specific issues which are considered below.

Comment	Officer's Response
<p>VEHICLES SRE STILL BEING SENT FOR INSPECTION WITH SEVERAL FAULTS ie LIGHTS NOT WORKING /TYRES BELOW LIMIT/BRAKES WORN ECT</p>	<p>The vehicle test is an inspection of a vehicle to demonstrate that it is safe. The test should not be used to identify defects with a vehicle and the Council's criteria with respect of proprietors responsibilities has been updated in order to deal with this.</p>
<p>Go hassle someone else please, most drivers are mindful and do the job correctly. If a small few don't, deal with them on merit by the complaints process.</p>	<p>The Council agrees that the vast majority of drivers provide a professional service. The Policy aims to encourage all to provide a service</p>

	to the same standard.
A taxi firm in Horsley charges a minimum charge of £15 but doesn't tell you until you have started the journey. These are the kind of companies that need regulating.	Operators should provide a quote for the service in advance if asked.
Uber drivers collecting in Castle Street at restaurant close in bulk, causing traffic flow & parking issues, can we not have an allocated collection point for UBER?	This is an idea that is being progressed through developments in the town centre.

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Operators in Guildford & out of area are using out of Guildford licensed private hire vehicles to work guildford it was taught to us on betec course that private hire can do a booked job but must return to licensed area which is not happening they are parked here plying for hire taking jobs without returning to there licensed bourough .	See above comment relating to 'cross border hire'. The policy also includes an expectation on licensed operators though a new 'fit and proper' test for operators.
Uber and cross border taxis , the council have no idea who's working in the bourough . It's impossible to keep the public safe when they allow Uber and cross border taxis .	See above comment relating to 'cross border hire'.
Nothing mentioned of GBC responsibilities.	There isn't sufficient detail provided to comment on this remark.
COST	There isn't sufficient detail provided to comment on this remark.

<p>Drivers are consistently rude, don't like using contactless payment and won't bring themselves up to date. Frankly Uber provides a better service.</p>	<p>This comment is noted. Customers who experience difficulties with the licensed trade are encouraged to complain.</p>
<p>Private hair/Uber drives coming into guildford todo Uber should not be allowed as some are travel from far as Portsmouth,London.Manchester and other far towns these drivers are staying in cars over night and some stay whole week and have seen some of them urinating in places. only people should be allowed are local towns.</p>	<p>See above comment relating to 'cross border hire'.</p>
<p>Impact on local air quality</p>	<p>There is currently no Policy requirement relating to emissions. A requirement is proposed.</p>
<p>Hackney carriage drivers some are always over charging Operators are over quoting for jobs Drivers pick up others jobs and lots of drivers dont class ash vale as there borough so over charge for dropping customers off and use longest routes</p>	<p>This comment is noted. Customers who experience difficulties with the licensed trade are encouraged to complain.</p>
<p>Because big big influx of Uber drivers, the standard has dropped because people put them under the rules and regs of Guildford</p>	<p>See above comment relating to 'cross border hire'.</p>
<p>£454 to renew is alot of money with no work foreseeable future</p>	<p>£454 relates to the driver licence fee and is set to cover the Council's legally recoverable costs. We</p>

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	<p>understand the impact the current pandemic is having on the licensed trade and have signposted drivers to the support available via our</p>
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	newsletters.
All drivers are professional and trustworthy. Helps customers out of the way.	This is noted and we hope that the majority of the trade meets these standards.
Too many plates issued and private hire companies r operating from out side with their own drivers and cars	The Council removed a limit on hackney carriages many years ago and number of licensed vehicles has reduced over the past few years.
Hackney Carriages from Guildford do not return to their nearest ranks when a hire has been completed.	This comment is noted and drivers are regularly reminded about the byelaws.
Plenty of touters as always, and different Borough operators taking advantage and using completely unqualified drivers from other Boroughs and working in Guildford as official Guildford drivers..absolute joke.	See above comment relating to 'cross border hire'. The policy also includes an expectation on licensed operators though a new 'fit and proper' test for operators.

Between 42 to 53% of respondents believed that there were significant problems with drivers, vehicles and operators licensed by other Authorities. Again, the majority of the comments related to 'cross border hire' which has already been discussed in this report.

New Additions to the Policy – Vehicles

The questionnaire then asked respondents about the proposed changes to the Policy.

55% (24) respondents agreed with the proposal to install CCTV in licensed vehicles, with 48% (21) respondents agreeing that the Council should be the data controller. Considering that 64% of respondents identified themselves as a member of the licensed trade it is encouraging that despite many comments raising concerns about CCTV that there was a majority agreement for the proposal. There was however less agreement to the Council being the data controller, with a number of comments from members of the licensed trade concerned about the impact upon their privacy. The guidance from the Information Commissioner and Surveillance Camera Commissioner is that where licensing authorities mandate CCTV, they should act as the data controller.

There was strong agreement 71 to 73% (31 – 32 respondents) to the emissions

standards proposed.

There was also very strong agreement with 84% (36 respondents) agreeing with the requirement for a DBS check and standards for vehicle proprietors.

There was also strong agreement to the tightening of the 'plate exemption' requirement with 71% (31 respondents) agreeing to this proposal.

Turning to the comments made, officers would advise as follows:

Comment	Officer's Response
ALL DRIVERS AND OPERATORS TO BE GIVEN ENOUGH NOTICE BEFORE ANY CHANGES TO INSPECTION CRITERIA	Naturally any changes will be communicated to the trade with a reasonable adjustment period
As a resident of a council that has gone mandatory for CCTV with age limit of vehicles to combat public and driver safety and ultra low emissions. I can honestly say we have had nothing but positive responses from the public and drivers. Both parties feel safer in taxis knowing there being recorded and this gives drivers and passengers confidence to travel in taxis .	Comment noted. This is the aim with the current policy review.
Unbelievable. Who is going to pay for CCTV. And how is it turned off for private use with out a bad driver doing the same to commit crime. It's a private vehicle. You buy the drivers vehicle and pay all costs if you want to enforce cctv	CCTV would be paid for by the licensed trade as a business expense as required by licensing policy as with any other requirement, such as livery or taxi meters. There are many benefits to CCTV for both drivers and passengers and the draft Policy outlines how the system would be used, including circumstances for private use.
For chauffeur drive	There is not enough detail to

	comment.
Nothing about the licensing authority	There is not enough detail to comment.
EVERY VECH should have a plate so you no your getting in licenced vech	The policy aims to strengthen and clarify the plate exemption requirements so that more vehicles display plates, however recognising that there is a market for some clientele who require a 'plate exempt' vehicle.
The targets for zero emissions vehicles is too weak. Support should be given to allow all taxis to convert to zero emissions vehicles with the next 2 years	This comment is noted, however officers consider this time period unreasonable for the licensed trade to purchase the appropriate vehicle and the vehicle charging infrastructure to be implemented..
GBC has high standards already, However they do not hold other authority drivers eg uber and ola etc	See above notes about 'cross border hire'.

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to the same standard One rule for GBC drivers another for everyone else.the should be one standard for all	
Additional detail provided on emissions separately. There is plenty of scope to reasonably tighten the regulations in this area.	Comment noted.

<p>As mentioned previously no drive should be getting a e class Mercedes or similar car for exempt it should only be for S class or V class or same category cars for chauffeuring with the criteria for exempt plates it's a topic were drivers and licenses authority would need to discuss to make it a fair playing field</p>	<p>Comment noted. The criteria for plate exemption has been updated to reflect that only more 'executive chauffeur' type vehicles benefit from exemption.</p>
<p>Current standards are more than good, it's outside authority councils standards that are rubbish eg Uber, that Guildford council does nothing to regulate</p>	<p>The Council is required to review its policy following publication of the Statutory Guidance. See above notes about 'cross border hire'.</p>
<p>As a primarily operation in the chauffeur field I feel it has become more difficult to obtain a exemption.</p> <p>It is deemed unfair to ask for an exemption letter for example for a customer wishes to book a car for a special event like a wedding, as this is kind of work I do myself.</p> <p>I can totally understand the rule of exemption has been misused in Guildford borough by some firms or drivers.</p> <p>As we are now in 2020 with customer demands of a smart, professional and high end executive travel are greater.</p> <p>I believe an exemption should be considered on an individual merit. A decision solely based on contract accounts doesn't prove to be fair in the decision making.</p> <p>Now a days passengers who want a one off special car for an event</p>	<p>Comment noted. The criteria for plate exemption has been updated to reflect that only more 'executive chauffeur' type vehicles benefit from exemption.</p>

<p>shouldn't have to look outside the Guildford borough to find a car without "teal green door signs".</p> <p>The same goes for wedding car hire jobs, funeral jobs, events.</p> <p>At minimum an executive car should be Mercedes S Class or equivalent.</p> <p>Hope my views are not too strong and as a one man band who has to try and turn a profit and compete in this ever so saturated taxi market.</p> <p>Thanks</p>	
<p>Installation of CCTV in taxi and private hire is good and can increase the public safety and public trust in the trade. However audio and video control should be with the driver and local authority responsible for data. If passengers can turn off the audio it's no point to install one in. Having DBS should be mandatory but only when new/renewal of application. Sometimes you hire out your vehicle to other licensed driver or something sudden happens with car which maybe can take time as long as it's not put customers safety in risk shouldn't be an action against the proprietor.</p>	<p>Comments noted. The draft Policy outlines how the system would be used, including circumstances for private use and how audio recording is activated.</p>
<p>Every car should have plate on it</p>	<p>Comment noted.</p>

<p>I think looking at the situation we should have delayed this until the corona virus had been sorted and probably had tag meetings and could have talked about it, life is already difficult for a cab driver putting cctv in cars will drive up the cost and drivers should be given the choice not forced into putting a cctv by council the travelling public will have to suffer with the costs of the fares going up .so i think if a cab driver wants to put cctv in he should be allowed to go to Halford and put a system in which is cheap and wouldn't impact on the travelling public. On euro emissions 6 i agree but ulev in 10 years time is a long way we should wait 5 years and</p>	<p>The Council is required to review its Policy following the publication of the Statutory Guidance.</p> <p>The Council has worked hard to engage with the trade and have provided a number of opportunities to engage in online TAG meetings.</p> <p>See above comments relating to CCTV.</p> <p>There are a number of issues with a 'shop brought' CCTV system, mainly in terms of data protection.</p> <p>The ULEV proposal would be from 2030, allowing nearly 10 years for a car to be purchased.</p> <p>The aim of the Policy is to ensure drivers make sure their vehicles are maintained to a satisfactory standard</p>
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<p>then see what is happening and to vehicle presented in a defective or dangerous condition no one takes a vehicle to be tested sometimes the driver or proprietor don't realise so no one does it on purpose so i don't think they should be punished i think the policy we have is working shouldn't be changed. The dbs we have is ok it doesn't need changing and the current policy is tight and working shouldn't be changing it is hard to work as a cab driver so please don't make it harder .</p>	<p>for the purposes of public safety.</p>
<p>Please see separate response sent by email.</p>	

<p>I am not having CCTV put in my vehicle as I do school run and parents said i cant for the safe guarding purpose. Only will have CCTV if I can control when to turn of and on as use for private purpose family etc so no to CCTV.</p>	<p>See above comments relating to CCTV.</p>
<p>With CCTV in vehicles who will be responsible for the costs of implementing the systems, would be unfair on the drivers to payout on for additional expenses with decline in trade due to competition from other licensing bourghs and overall increaing costs with in the trade. secondly will the cctv be required to be in continuous use or only when transporting passengers, and it should be switched off when you're off duty.</p> <p>With the exemption of the plate, I believe if a driver has an opportunity to make an regular earning with this option it should be granted</p>	<p>See above comments relating to CCTV.</p> <p>Any decision on a plate exemption will be based upon the public safety rationale of the Policy, and the vehicle meeting the criteria, and not on the financial implications for the driver.</p>
<p>With CCTV in vehicles who will be responsible for the costs of implementing the systems, would be unfair on the drivers to payout on for additional expenses with decline in trade due to competition from other licensing bourghs and overall increaing costs with in the trade. secondly will the cctv be required to be in continuous use or only when transporting passengers, and it should</p>	<p>As above.</p>

<p>be switched off when you're off duty. With the exemption of the plate, I believe if a driver has an opportunity to make an regular earning with this</p>	
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option it should be granted	
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New Additions to the Policy – Drivers

The questionnaire then asked respondents about the proposed changes to the Policy affecting drivers.

There was strong agreement with 66 to 73% (29 to 32) respondents agreeing with proposals to require signing up to the DBS update service, the requirement to 'self report matters within 48 hours and a code of conduct.

Just over half, 52% (23) respondents agreed with the proposed introduction of a dress code to help improve the professional image of the service.

Turning to the comments made, officers would advise as follows:

Comment	Officers response
I agree to a certain degree about a uniform such as no footwear that allows bare feet to be shown. Also about a basic level of personal hygiene being followed. Other than these points I believe the driver should be able to wear whatever they like as long as it's not offensive	The current and proposed dress code provides guidelines at the same time as allowing drivers choice.
There should be a data base the police update that councils can check. Stop placing all the pressure on drivers	The DBS requirement forms part of the Statutory Standards. There is currently a national database of revocations and refusals which the Council has signed up to.
Is it becoming a police state?	Comment noted.
The DRIVER should be clean and tidy	Comment noted.
Again GBC drivers have a good standard, It's other drivers from out of town who out GBC drivers to shame Because people don't care as long	See previous comment on cross border hire.

<p>as they get a cheap taxi</p>	
<p>Again standards of full drivers are good, it outside authority drivers standards are low eg Uber again And Guildford drivers are being out into the standard which is wrong</p>	<p>See previous comment on cross border hire.</p>
<p>I feel the dress code is important. Especially for me a chauffeur company.</p>	<p>Comment noted</p>

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<p>1)DBS every six months is not realistic. It's should be when new/renewal of an application. 2) Conviction and arrest report can be reported within 72 hours. 3) Code of conduct should be fair drivers should get chance to explain and allowed to be represented legally. 4) Dress code can be the way each individual suits and feels comfortable with. However needs to be clean and tidy. If it's easy and flexible a driver can go to gym after work or walk while waiting for job.</p>	<p>See previous comment on DBS and dress code requirement. Any action taken against a licence holder needs to be proportionate and should allow for the licence holder to make representation. Any decision by the Council has a right of appeal.</p>
<p>Hi good idea for dbs check every 6 month for customers safety</p>	<p>Comment noted</p>

<p>The dbs we have is working we don't need 6 months checks a driver is ok to report any offence in 7 days and taking action against a driver code of conduct i don't agree and dress code we have is currently ok we don't need to get tough on the drivers with these policies so don't agree with some of the policies i think it's already hard at a bad times with covid to introduce or change anything.</p>	<p>See previous comment about DBS. The Council was required to review its Policy in light of publication of the Statutory Standards.</p>
<p>I wouldn't agree to any code of conduct without seeing it first.</p>	<p>The draft code of conduct formed part of the Policy and was available online for the consultation period.</p>
<p>A dress should not be compulsory like a uniform but formal and smart wear is understandable.</p> <p>In due respect drivers must 'self report' any arrest, charges or conviction within 48 hours. The notification is currently within 7 days. We propose to include these measures in the policy changes. Yes it is important that this is reported, but not all arrests are made on an honest accusation, which can cause alarm and distress to any driver who might need longer than 48 hours to Mentally recover. and most serious cases the police will intervene and report the incident to council, I personally believe that 7 Days is fair and should be kept in</p>	<p>The 48 hour reporting period is recommended by the Statutory Standards.</p>

<p>place as it is.</p>	
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<p>A dress code, should not be compulsory, yes formal or smart wear is understandable. In due respect drivers must 'self report' any arrest, charges or conviction within 48 hours. The notification is currently within 7 days. We propose to include these measures in the policy changes. Yes it is important that this is reported, but not all arrests are made on an honest accusation, which can cause alarm and distress to any driver who might need longer than 48 hours to Mentally recover. and most serious cases the police will intervene and report the incident to council, I personally believe that 7 Days is fair and should be kept in place as it is.</p>	<p>See above.</p>
<p>driving a car doesn't need a dress code but obviously presentable clothing should be worn. DBS should be done only on badge renewal and the rest unless u do school run should provide a yearly update as to no changes etc</p>	<p>See previous comments about DBS and dress code.</p>

New Additions to the Policy – Operators

The questionnaire then asked respondents about the proposed changes to the Policy affecting operators.

There was very strong agreement to most of the proposals with 71 to 86% (31 to 38) respondents agreeing with the proposed standards for operators. There was also agreement to the proposals to remove meters from private hire vehicles with 59% (26) agreeing with this suggestion, however a number of comments were made as follows:

Comment	Officer's response
Does George Orwell work at that council ?	Comment noted as not relevant.
Do GBC have the same standards?	Not sufficient detail to comment.

<p>YES BUT THE IMPLEMENTATION OF THE CHANGES MUST NOT IMPACT ON TARRIFS</p>	<p>The Council does not regulate fares for private hire vehicles with operators able to set their own fares.</p>
<p>This would cause problems and create a two tier system and increase rivalry between different taxi</p>	<p>As above.</p>

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<p>companies</p>	
<p>All vetting is done by GBC, that is why you have high standards, otherwise what's the point of the licensing team. Drivers already have good standard of pick up and drop off, it's outside of GBC drivers that don't know how to pick up and drop off Private hire should have meter to keep good standards because it gives customer choice, because they can already book a fixed price job</p>	<p>See previous comments about cross border hire.</p>
<p>Drivers should always drop off and pick up in a safe place that's basic common sense</p>	<p>Comment noted.</p>
<p>Currently I believe all standards are met,</p>	<p>Comment noted.</p>

<p>A local operators and local licensed vehicle may enter Guildford to pick up or drop off customers, the Council would not expect vehicles licensed outside of Guildford to be waiting in Guildford and be made available for bookings as this diminishes the Council's ability to set local standards and local control. Sub contracting of jobs should also be made within Guildford borough licensed operators.</p>	<p>The legislation permits subcontracting between operators licensed by different authorities.</p>
<p>If u want to finish private hire meter finish then u have to decrease Hcv meter Fare price to protect driver health hand safety otherwise drivers get in trouble because of several different low prices</p>	<p>The Council does not regulate fares for private hire vehicles with operators able to set their own fares. The Council has a set methodology for setting hackney fares which are a legal maximum with scope for drivers to charge less should they wish.</p>
<p>On getting rid of the meter in a private hire vehicle wouldn't be good the pda doesn't have reception like going under a bridge they would lose a lot of money it is already working on a meter don't change it every one is happy on a meter</p>	<p>There is no requirement to fit a PDA instead of a meter, this is one possible alternative.</p>
<p>Loading more obligations on Operators in the areas with a no response is unnecessary. Private Hire vehicles should charge a metered rate because quite often the passengers change their route, or incur excessive or unprdicted waiting</p>	<p>Operators are still permitted to have procedures to charge customers who require a service over and above that quoted for.</p>

<p>time. Additionally, passengers quite often deliberatelt mislead the operators as to the extent of their</p>	
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trip.	
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5.2 Response from Guide Dogs

The Guide Dogs response sets out that there are an estimated 4,640 people living with sight loss in the Guildford Borough Council area, which is expected to increase to 5,540 people by 2030. The response advises that the taxi and private hire trade provide an essential service for disabled people, however accessing the service can be a challenge for assistance dog owners.

The response makes a number of recommendations which officers would comment on as follows:

Comment	Officer's Response
<p>Joint warranting: We welcome the joint working approach taken by local authorities in Surrey. We agree that this enables improved enforcement of the taxi and private hire trade across the County and improves safety within the licensed hackney carriage and private hire vehicle service operating in Surrey.</p>	<p>Comment noted.</p>
<p>Disclosure and Barring Service (DBS): Guide Dogs welcome any amendments to this policy that will allow the Borough Council to take further steps in ensuring the safety of passengers, including children and vulnerable adults.</p>	<p>Comment noted.</p>

<p>Testing: We are pleased to note that all applicants will be required to undertake disability awareness (including physical and sensory disability) training and we would ask that this includes awareness of the Equality Act 2010. We feel that the policy should be clear on how this training will be delivered and refresher training will be a requirement within a reasonable period. We would also recommend that all customer facing staff within a taxi operator are</p> <p>required to take part in such training. The inclusion of customer care training is also welcomed.</p>	<p>Comment noted. Awareness of the Equality Act features in both the Level 2 qualification required by drivers and in the Council's knowledge test. There is currently no refresher training requirement, however drivers who fail to maintain standards can be required to complete further training.</p> <p>Operators are expected to have staff training commensurate to their business, which should include the Equality Act.</p>
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<p>Medical assessment: The policy should be more specific and state that a medical exemption certificate for carrying assistance dogs will only be issued when authorised by a medical practitioner and accompanied by medical evidence, such as a blood test, a skin prick test or clinical history. The medical exemption certificates should be accompanied by features distinguishable to vision-impaired passengers, such as an embossed or raised 'E'.</p>	<p>The policy currently states that exemptions will only be granted where medical evidence is provided. We have updated this to reflect that exemptions will be confirmed by the Council's medical advisor.</p>
<p>Updating the council: Guide Dogs welcomes the requirement within the draft policy that "If a licence holder receives a conviction, caution, fixed penalty notice or is subject to arrest or criminal proceedings of any sort, then they must notify the Council within 48 hours".</p>	<p>Comment noted.</p>

<p>CCTV: We welcome the introduction of this requirement within the draft policy document. Guide Dogs are of the view that CCTV has great benefits in protecting both drivers and passengers from harm, inappropriate behaviour, abuse and poor customer service. This amendment would help to resolve disputes by providing important evidence. For example, if an assistance dog owner makes an allegation of being refused carriage by a driver, due to the person travelling with an assistance dog. As part of the proposed disability awareness training, we would ask that drivers are reminded to make blind and partially sighted passengers aware that CCTV is in operation and that passengers have can operate the system, as they are unlikely to see signs notifying them of this.</p>	<p>Comment noted.</p>
<p>Compliance and Enforcement: We note that the draft policy states that all drivers are under a duty to comply</p>	<p>Comment noted.</p>

<p>with the Equality Act 2010 to carry, free of charge, any assistance dog. We advise highlighting within the policy that this is a legal requirement under the Equality Act 2010 and failure to do so is a criminal offence.</p>	
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<p>Prosecution: The policy should state that Guildford Borough Council will use its best endeavours to investigate all reported violations of the Equality Act 2010 in a timely manner with a view to pursuing a conviction.</p>	<p>Comment noted.</p>
<p>Sample purchasing: The policy should state that the Borough Council will work together in conjunction with assistance dog owners to ensure that licensing requirements are being complied with by various means such as, but not limited to, test purchases to ensure that licensing requirements are being complied with.</p>	<p>Comment noted.</p>

5.3 Guildford Environmental Forum

The Guildford Environmental Forum response sets out the importance of controlling emission standards and makes a number of recommendations about implementation which officers would comment on as follows:

Comment	Officer's response
<p>Why it is important for tight emission standards in taxi licensing?</p> <p><i>It's good for Guildford</i></p> <ul style="list-style-type: none"> • Due to the relatively high mileage of taxis and concentration in/around the centre of Guildford, they have a disproportionately high impact on local air quality. This negatively impacts the residents, visitors and workers of Guildford, and overall attractiveness of the town • Guildford Borough Council has declared a Climate Emergency and with its licensed hackney vehicles being so visible on the streets of Guildford, a zero (or very low) emission fleet of vehicles would 	<p>Comment noted.</p>

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<p>demonstrate its commitment to tackling climate change</p> <ul style="list-style-type: none"> • As urban centres will need to ‘compete’ more for footfall and businesses, good air quality can be a positive differentiator, alongside Guildford’s inherent cultural, geographical and historical strengths • Guildford Borough Council is already asking residents and businesses to consider “...using cleaner, ultra low emission vehicles”, so strengthening the licensing policy would support this messaging <p>(https://www.guildford.gov.uk/article/19807/Air-quality-monitoring)</p> <p><i>It’s good for Taxi Drivers/operators</i> • Poor air quality impacts taxi drivers themselves</p> <ul style="list-style-type: none"> • Zero-emission vehicles have significantly lower running costs, both in terms of costs of fuel, but also in maintenance. And as higher-emitting vehicles become less popular for the general public, the depreciation of these vehicles will increase, meaning finance costs will be relatively more, as their resale values will fall • Zero emission vehicles can be more comfortable, with fewer vibrations and less noise • As more businesses and organisations aim to reduce their environmental impact, they are likely to procure transport services from low/zero-emission providers • The more local authorities can do to push for tighter emissions (both for taxi licensing and its own fleet procurement), the stronger the demand message will be heard by the OEMs, improving supply for 	
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<p>everyone, and reducing costs</p>	
<p>C. Consultation feedback <i>N.B. For simplicity, the feedback does not differentiate between hackney carriage and private hire licences, nor consider the additional</i></p>	<p>The feedback recommends reviewing the policy relating to emissions every two years. Reviewing a policy takes a significant amount of time and</p>

<i>constraints</i>	resource. The Council must also
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<p><i>which wheelchair-accessible vehicles may pose. Additionally, it does not include fuel-cell/LPG vehicles, which may be appropriate in some cases.</i></p> <p>Given the rapidly-evolving nature of zero-emission vehicle availability, charging infrastructure and UK Government support, it should be explicit in the policy that any licensing policy relating to emissions will be reviewed every 2 years.</p> <p>Proactive engagement with the trade is important, including education on availability of UK Government grants and subsidies (for vehicles, charging infrastructure, taxation, etc.)</p> <p>Guildford Borough Council must be more ambitious in setting emission-related standards for taxi licensing in the Borough. We are entering a decade of <i>unprecedented</i> change in the automotive sector, the national regulatory frameworks are aligned to this change (e.g. since this consultation was launched, the UK Government have brought forward the ban on pure diesel/petrol powered cars to 2030 and are further supporting public chargepoint infrastructure rollout), and so it must be reflected at a local level too. However, this feedback must also take account of the livelihoods of drivers (and any investment they have in an existing vehicle), and ensure there is a clear pathway for an eventual ambition of a fully-electric taxi fleet serving Guildford at the earliest possible opportunity.</p> <p>The following changes are proposed (see Appendix A for visual summary). In essence, these recommendations 'bring forward' the dates for minimum emission requirements, but also some additional incentives for any driver</p>	<p>provide the trade with the opportunity to engage and adapt to any new requirement. Officers would suggest that a policy relating to emissions, where the licensed trade would have to change their vehicle so it meets the current standard places a considerable cost implication on the trade. There is no proposal to change the planned review period but this does not prevent an interim review if appropriate.</p> <p>In addition, whilst licence fee subsidies may help uptake of a greener fleet, currently there is no funding to realise this aim. It is well documented that local authorities are facing huge financial challenges and the prospect of financing licensing fees, which enable the holder to provide a service for which they charge a fare, may not be the best use of the Council budget.</p> <p>The response also comments on provision for taxi only charge points which although is a really sensible and positive proposal, falls outside of the scope of the policy review.</p>
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<p>who exceeds the minimum:</p> <p>(as per consultation) From April 2021, any vehicle presented for licensing for the <i>first time</i> must be Euro 6 compliant, especially</p>	
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important for minimising NOx emissions from diesel powertrains. [n.b. this is effectively covered by the maximum age of new vehicles being 5 years already, as all vehicles registered from September 2015 must be Euro 6 compliant]

From April 2023, any licence renewal must be Euro 6 compliant (all vehicles registered from September 2015 are Euro 6 compliant, so this will encourage a small number of vehicles less than the 10 year age limit, but over 7.5 years and not Euro 6 compliant to be changed)

From April 2023, any vehicle presented for licensing for the first time must be at least an ULEV compliant vehicle*

From April 2021, any ULEV compliant vehicle* presented for licensing for first time or renewal will attract a reduced-rate in its licensing fees

From April 2021 until April 2023, any Driver/operator who replaces a non-Euro 6 compliant vehicle with a ULEV, will earn a one-off £1,500 scrappage cashback payment (helping accelerate the removal of most-polluting vehicles from Guildford's roads as soon as possible) **From April 2028, any vehicle presented for licensing for the first time must be Zero-emission** [n.b. pace of EV availability and cost may mean this can be brought forward]

(as per consultation) From April 2030, any vehicle presented for licence renewal must be ULEV compliant. [n.b. this means non ULEV vehicles first registered in 2021 or 2022 cannot be renewed for full ten year age policy period]

- Alongside 'raising the bar' on the *minimum* requirements, **further incentives for drivers to choose a zero-emission vehicle**

<p>(ZEV): o Priority bays in taxi ranks</p>	
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<p>(enforcement easy through recently announced green number plates) o Zero cost taxi licensing fees for first three years of registration o Additional financial incentive over and above UK Government by Council to encourage uptake of ZEVs (see Appendix A for 'ZEV Incentive Scheme')</p> <p>Additionally, to demonstrate commitment to this policy, Guildford Borough Council (and/or Surrey County Council) should provide 'taxi-only' chargepoints and/or subsidised charging costs for public chargepoints. These should be positioned in areas of frequent taxi drop-off and pick-up locations. New developments (e.g. North Street) should include provision of taxi charging in their design.</p> <p>*Note on ULEVs</p> <p>There are various definitions of the standards required to be a 'ULEV' vehicle, so this must be clear in any policy. Two aspects are relevant:</p> <ul style="list-style-type: none"> •Maximum g CO2/km; 50g CO2/km is appropriate • Minimum electric only range (miles). Plug-in hybrid electric vehicles with a very low electric-only range may never be charged in reality, so a significant electric-only range is highly recommended. 70 miles is now the standard set to support eligibility for the UK Government's Plugin Grant, and the consultation proposal of 10 miles of range is not adequate. It could be increased each year potentially for new licences? <p>Plug-in hybrids are seen as a 'stop-gap' before fully electric vehicles are the default choice, hence the necessity to update the licensing to reflect the technological change, and the additional incentives to help drivers go fully electric.</p>	
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5.4 Luxury in Motion

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Luxury in Motion are a licensed private hire operator offering chauffeuring services to clients. The response sets out a couple of concerns about vehicle emissions and replacing vehicles which officers would comment on as follows:

Comment	Officer's response
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<p>1) No. Passengers (x4)</p> <p>Given the government announcement today regarding a ban on the sale of petrol and diesel vehicles by 2030, many of us will be considering the purchase of either hybrid or fully electric vehicles over the coming years.</p> <p>There are a few key problems</p> <p>however, that they propose for the chauffeur industry, such as their current maximum range given their driver's may often conduct up to 400 miles of journeys on some days. Also, the boot space that is lost to house the battery.</p> <p>Also, when looking for an executive, long-wheel base vehicle the fully electric choice on the market at present is limited. For example, traditional Mercedes S-Class and BMW 7 Series vehicles are not available yet as fully electric options. This currently leaves options such as the Porsche Taycan which has a more generous range of circa, 240 miles and has an executive level interior, but only has two seats in the rear (three passenger seats in total in addition to the driver).</p> <p>Regarding the minimum of x4 passengers rule, I wonder whether exceptions could be made for</p> <p>licensing electric, or hybrid chauffeur vehicles with two rear seats, or with a central console and only two seats in the rear?</p>	<p>The Policy proposes a gradual change to the emissions standards of licensed vehicles, with a full implementation by 2030 by which time technology is likely to have moved on. The Policy allows applications to be treated on their merits, for example licensing a vehicle for less than 4 passengers.</p>
<p>2) Hire/replacement vehicles</p> <p>This doesn't happen often, but when a vehicle breaks down and needs a replacement part that you have to wait on it can seriously damage revenue and Client satisfaction if you can't meet Client demand for several weeks</p>	<p>It is recognised that vehicles can be off the road due to repairs. It is possible to licence another vehicle for a short term basis if it meets the criteria, or operators are permitted to sub-contract work and processes are in place to issue these applications</p>

<p>as the vehicle is off-road.</p> <p>Also, some insurance policies include replacement vehicle hire but they tend to be TFL licensed vehicles. As a regional operator this poses some temporary, but serious issues. There are reliable companies such as LCH who specifically hire vehicles to the private hire industry which are licensed with TFL and meet the same stringent conditions required by Guildford licensing. But, they cannot currently be hired for a short period of time whilst repairs take place as they are not licensed within Guildford Borough. I wonder if there could also be some leniency during such occasional scenarios to allow a hire vehicle to be used if hired from a reputable hire company and licensed by a similar authority such as TFL to ensure the vehicle meets requirements.</p>	<p>swiftly to reduce the time a driver is unable to work.</p> <p>'Dual plating' of vehicles is not permitted by Guildford as this poses licensing difficulties. For example vehicles cannot be compliant with their conditions with one authority if they are displaying licensing information of another. Case law has indicated that once a vehicle is licensed, it remains a licensed vehicle and as such must comply with its conditions.</p>
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5.5 Mark Rostron

A lengthy response was received from this respondent. The full text of the response has not been copied as it concerns largely historical and irrelevant matters, namely the decision to adopt a livery for hackney carriages in 2015. The full text is available for review in Appendix D to this report.

The respondent offers little in the way of constructive feedback to the measures proposed in the current Policy consultation and in addition the response repeats a number of accusations made against the Council which there is no reason to respond to in this report.

However the themes of the response have been listed and Officer's comments are as follows.

Comment	Officer's response
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<p>Reasonableness of setting a policy and illegality of such a policy.</p>	<p>It is well established that Licensing Authorities are able to set licensing requirements through local policy, provided they are pursuant to a legitimate aim. In this case, the Council regulates the licensed trade for the purposes of public safety, and the response also fails to acknowledge the 'shift' towards the</p>
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	<p>'public safety' rationale of licensing as described by the Statutory Guidance.</p>
<p>Decision to adopt hackney carriage livery</p>	<p>The decision to adopt a livery was taken in 2015 following consultation and was not challenged at the time by way of judicial review. As such the livery requirement remains unchanged under the current review. The response lists a number of unevdenced statements continuing disagreement with this historical decision which do not require further consideration.</p>
<p>Comfort of vehicles</p>	<p>There is no evidence provided to support the statement that some licensed vehicles are uncomfortable. The policy seeks to ensure the comfort and safety of passengers.</p>
<p>Decision to de-restrict taxi numbers</p>	<p>The decision taken to de-limit taxi numbers was taken many years ago and there is no requirement to review this decision. There are currently 125 licensed hackney carriage vehicles, compared to approximately 180 when the policy was last reviewed in 2015.</p>

<p>Cost of livery and BTEC policy</p>	<p>The arguments about cost are historical matters as the decision to adopt a livery and BTEC requirement was made in 2015. These costs are also accounted for in the taxi fare calculator which allows drivers to recover these costs via taxi fares.</p>
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5.6 Normandy Parish Council

Normandy Parish Council provided a short response advising that they had debated the proposals and fully supports their inclusion in the Policy.

5.7 Surrey Police

Inspector Wyatt, the Guildford Borough Commander issued a short note relating to CCTV in license vehicles supporting the proposal.

Comment	Officer's response
<p>I am fully supportive of CCTV being mandated in licenced vehicles and can only see this being a good thing for everyone involved. From the drivers perspective it would deter any offences committed against them</p>	<p>Comment noted.</p>

<p>such as assault or non-payment and in general provides transparency. Where offences do take place we will also be better placed to identify and deal with suspects where without CCTV, identification could be an issue.</p> <p>The users of the taxi's will also feel re assured by the presence of CCTV and allegations against drivers can be evidenced or disproved using</p>	
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CCTV.	
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5.8 Conclusion of consultation responses

In summary, there was generally agreement that the Policy was clear and sought to achieve its intended objectives of improving standards in the trade and protect the public.

There was generally support for the measures proposed, which is encouraging considering that a high proportion of respondents identified themselves as members of the licensed trade.

However some respondents, of which there was a large proportion of the licensed trade considered some of the elements unreasonable. Comments about this centred around the cost of CCTV cameras and differing standards between authorities.

The individual consultation responses offered insights into support for CCTV from the Police and some constructive suggestions about implementation of aspects of the Policy.

6. Changes to the draft Policy

6.1 Following consultation, the following changes are therefore recommended for inclusion:

6.2 The criteria used to award a medical exemption from the duties under the Equality Act 2010 have been clarified to require the applicant to provide sufficient evidence and clinical history for review by the Council's Medical Consultant.

6.3 During the consultation period a number of Private Hire Operators sought to close their premises and operate from their home address. It subsequently emerged that the process of changing operating 'base' is not as clear as it perhaps could be in the Policy. Equally, the requirement for submission of planning permission delayed the process for applicants.

As such, the draft policy has been updated so that the requirement for the appropriate planning permission is a condition of the licence and not an application requirement. This should assist applicants with the process of licensing a base. In addition, as an operator's licence is linked to an address,

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and there is no provision in the legislation to transfer a licence, the policy has been clarified so as to require a new application to update any details.

6.4 The Policy has also been updated to clarify that requests for vehicles to be exempt from the requirement to install CCTV will also be considered in genuine cases where the security and/or dignity of a client may be compromised by travelling in a vehicle where CCTV is present.

6.5 During the consultation period the UK confirmed its relationship with the EU after the end of the transition period following UK's exit from the EU. The 'right to work' section for both licensed drivers and operators has been updated with the current position.

7. Key Risks

7.1 The Statutory Standards represent a radical change in approach to taxi and private hire vehicle licensing from the current (2010) Best Practice guidance. The Standards emphasise that the taxi industry is a 'high risk' environment, with the overriding element of the role of the Council being public protection, whereas the Best Practice guidance sought to 'balance' public protection against an individual's right to hold a licence.

7.2 This approach, focused on public protection, is to be welcomed by the public who use taxis and those members of the trade who currently do their utmost to look after their passengers. However it will take some time for others involved in both the trade itself and decision makers to adjust to. Support during the Policy consultation has been offered to members of the trade via our newsletters and TAG meetings, which will continue. Officers and Members have also been offered additional training and supervision.

7.3 The Department for Transport has set out that it expects Licensing Authorities to "have regard" to the guidance and adopt the standards unless there is a compelling reason not to. As such, there is a risk that if the Council does not adopt the guidance then there will be a risk of challenge. The Department has requested that Licensing Authorities provide an update on their considerations of the guidance by January 2021 and circulated a survey to Authorities at the end of January 2021 which has been responded to.

7.4 The Committee will be aware of the legal challenges which followed the Policy update in 2015. The legal challenges were not a direct challenge to the Policy itself, but centred around the decision to adopt a livery for hackney carriages and apply a condition to a vehicle licence requiring livery. Considerable resources

were required not only to successfully defend these challenges, but also implement the livery and other requirements of the Policy as Officers spent considerable time advising licence holders on all elements of the Policy, including livery, PHV signage and driver training. There is a risk that some of the measures may be challenged by the licensed trade, by challenging the policy itself or appealing a decision based on the policy, particularly at a time when many businesses are trying to recover from the coronavirus pandemic.

7.5 The most notable changes to the Policy are CCTV in licensed vehicles, an emissions standard for licensed vehicles and higher standards for Private Hire Operators. The benefits of CCTV in licensed vehicles are clear to both drivers and passengers, and the majority of respondents supported these measures during the consultation. Many of the licensed trade have already installed CCTV and it is envisaged that should the decision to adopt CCTV be made, that the Council would have to undergo a procurement exercise for an approved system and then allow a reasonable transition period, with the proposal to have all vehicles fitted with CCTV by 1 April 2023. Similarly with respect of vehicle emissions, the current age policy means that many vehicles will currently meet Euro 6 emissions standards, with what is considered to be a reasonable adjustment period to meet the low emission criteria in future. With respect to standards for Private Hire Operators, there are a number of measures proposed which will require some operators to improve standards, with the risk of possible action taken against those that do not meet the new standards following a reasonable period of adjustment.

7.6 Implementing the changes will take considerable officer time, at a time when the Licensing resource has been reduced by the Future Guildford Programme and considerable work is also required to transition to the new organisational structure. Furthermore the Council is still responding to the Covid 19 pandemic and there is a considerable pressure on the licensing service with assisting licence holders and ensuring compliance with regularly changing regulations.

8. Financial Implications

8.1 The Council keeps the fees and charges under review annually and aims to recover as much of the cost of regulating taxi and private hire licensing services as we are legally able, through fees and charges paid by applicants and licence holders.

8.2 Any costs associated with preparing and consulting on this policy will be met from existing taxi and private hire licensing budgets. Any additional costs arising from implementing and enforcing this policy will, where possible, be met through changes to taxi and private hire licence fees and charges.

8.3 The previous policy review utilised an unmet demand survey, a company to conduct a survey with the citizens panel and sessions with the trade. It is envisaged that these measures will not be used for this review in order to keep costs down.

8.4 However, the Council has seen a decline in numbers of licence holders due to the popularity of competitors to the local trade which are not licensed by the Council. The coronavirus pandemic may have also seen numbers of licence holders leave the profession, and as such any officer time spent on developing and adopting the policy will be divided over a smaller number of licence holders with a subsequent increase in this element of the licence fee.

8.5 It is hoped however, that the measures proposed for licensed operators, together with the publication of National Standards will require other Licensing Authorities who have historically had lower standards than Guildford to implement measures

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which Guildford has done for some time, meaning there is less need for 'licence shopping' amongst the licensed trade.

8.6 Any decision to adopt CCTV in licensed vehicles may require the Council to undertake a procurement exercise. Whilst it is proposed that licence holders themselves pay for the system, the system will need to be of an approved type which satisfies data protection requirements, meaning that only the Council has access to the recording and as such it is envisaged that the trade will be directed to one supplier nominated following a procurement process.

8.7 An application for grant funding to cover the cost of some aspects of the CCTV requirement has been made to the Police and Crime Commissioner for Surrey. If successful, this could be used to subsidise some of the cost.

9. Legal Implications

9.1 A Taxi and Private Hire Licensing Policy provides the framework in which the licensing function is administered and sets out the Council's approach to assist with consistent decision-making. However a Policy does not preclude an applicant who may not meet the criteria from making an application and each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances.

9.2 The Licensing Authority must now have regard to the Statutory guidance issued under section 177 of the Policing and Crime Act 2017 when drafting its Policy and making decisions. The Council is also encouraged to publish its consideration of the guidance, which is considered in this report, and its Policy stemming from this. The draft Policy and considerations in this report are Officer's recommendations of the measures which the Council should introduce in its Licensing Policy.

9.3 A Privacy Impact Assessment considering the use of CCTV in licensed vehicles is attached to this report as Appendix E.

9.4 The Policy may be challenged by judicial review. If the policy is not challenged or is upheld following a challenge, a court hearing an appeal against any licensing decision must apply the policy as if it was standing in the shoes of the Council as per the judgement of R (on the Application of Simmonds) vs The Crown Court at Guildford.

10. Human Resource Implications

10.1 Work to review the Taxi and Private Hire Licensing Policy, together with the implementation of the measures approved following consultation will take considerable officer time.

10.2 The Future Guildford review has introduced wider changes to the Council's structure, including a reduction in the current Licensing resource, although the creation of a number of other potential resources in the Case Services or Compliance Team to potentially assist with Licensing work although it remains to

be seen what effect this will have on the effective operation of the service and

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implementation of the Policy. In addition, this work has come at a time when the Licensing Service is busy assisting with the Council's response to the coronavirus pandemic, which has seen implications for other areas of Licensing, including relaxations to alcohol licensing restrictions.

- 10.3 Paragraph 5.2 of the Statutory Guidance requires that 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.

11. Equality and Diversity Implications

- 11.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.

- 11.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.

- 11.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.

- 11.4 The Policy proposes a number of measures which improve safety and standards in the taxi and private hire trades and which would improve access to the service for customers from all groups.

- 11.5 Wide public consultation has taken place, including with taxi user groups who share protected characteristics and responses have been received from Guide Dogs and members of the Guildford Access Group which have been considered in this report.

- 11.6 An Equalities Impact Assessment has been completed and is included in this report as Appendix F.

12. Climate Change/Sustainability Implications

- 12.1 The Policy considers the introduction of emission standards for licensed vehicles in order to improve air quality.

- 12.2 The proposed introduction of vehicle licence plates without expiration dates will

also reduce the amount of single use plastic.

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13. Summary of Options

13.1 After considering the report and the consultation responses, the Committee may either:

1. Recommend that Full Council approve the draft Policy at Appendix A following public consultation, or
2. Recommend that Full Council approve the draft with amendments.

14. Conclusion

14.1 The aim of Taxi and Private Hire Licensing is to protect the travelling public, and to ensure that the highest standards within the professional licensed taxi trade are maintained so that the public have confidence to use the service.

14.2 The Council's current Policy is due for review. Following publication of Statutory Standards in July 2020, the Council is required to have regard to the Statutory Guidance issued under s.177 of the Policing and Crime Act 2017 when considering any changes.

14.3 A draft Policy was approved by Licensing Committee in September 2020 and has undergone a public consultation exercise.

14.4 The views of all those responding are presented to Licensing Committee in this report and the Licensing Committee are invited to consider the results of the consultation, together with Officer's comments.

14.5 After considering the report and consultation responses, the Committee is invited to recommend adoption of the Policy, along with any amendments considered necessary, by Full Council on 13 April 2020.

15. Background Papers

[Taxi and Private Hire Licensing Policy 2015-2020](#)

[Statutory Taxi and Private Hire Vehicle Standards \(Department for Transport, 2020\)](#)

[Taxi and Private Hire Vehicle Licensing – Steps towards a safer and more robust system \(Task and Finish Group, 2018\)](#)

[Government Response to the Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing \(Department for Transport, 2019\)](#)

[Taxi and Private Hire Vehicle Licensing: Best Practice \(Department for Transport, 2010\)](#)

[Taxi and Private Hire Vehicle Licensing: Councillor Handbook \(Local Government Association, 2017\)](#)

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[Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades \(Institute of Licensing, 2018\)](#)

[Minutes of Licensing Committee held 27 November 2019](#)

16. Appendices

Appendix A – Hackney Carriage and Private Hire Vehicle Licensing Policy for approval

Appendix B – List of Consultees

Appendix C – Online questionnaire and responses

Appendix D – Individual consultation responses received

Appendix E – Privacy Impact Assessment

Appendix F – Equalities Impact Assessment

Please ensure the following service areas have signed off your report. Please complete this box and do not delete.

Service	Sign off date
<i>Finance / S.151 Officer</i>	<i>18 February 2021</i>
<i>Legal / Governance</i>	<i>15 February 2021</i>
<i>HR</i>	<i>19 February 2021</i>

<i>Equalities</i>	<i>19 February 2021</i>
<i>Lead Councillor</i>	<i>26 February 2021</i>
<i>CMT</i>	<i>23 February 2021</i>
<i>Committee Services</i>	<i>16 March 2021</i>

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Appendix 1



Hackney Carriage and Private Hire Licensing Policy



Effective: (date)

Version 1.4 – Final draft for approval

March 2021

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Appendix 1

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Section 1 - Introduction

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- 1.1 Guildford Borough Council is the Licensing Authority under the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 responsible for regulating the hackney carriage and private hire trades operating in the Borough.
- 1.2 This policy sets out the principles we will use when dealing with hackney carriage and private hire vehicles; hackney carriage and private hire vehicle drivers and private hire operators.
- 1.3 This policy seeks to set a standard that is amongst the highest in the country with the intention of both protecting the public and building public confidence in the licensed trade. It is designed to promote improved professional behaviour amongst licence holders, to increase their awareness of safeguarding issues, and to allow those that

share the Council's commitment to a high standard of service to thrive. The policy will make it extremely difficult for disreputable individuals to operate within the licensed trade.

- 1.4 Following a number of reviews of failures in the licensing process in areas such as Rotherham, South Ribble and Oxford, the subsequent publication of the Task and Finish Group Report, government response and accompanying Statutory Guidance all highlighted the importance, amongst other things, of having effective regulatory and enforcement functions in preventing and disrupting Child Sexual Exploitation. The Taxi licensing function has a key role in this.
- 1.5 At the heart of the policy lies a commitment to the protection of the public, safeguarding children and the vulnerable and the prevention of crime and disorder. We aim to ensure that licensed drivers, operators and vehicles operating in the Borough are of the highest quality and can be held to account for their performance.
- 1.6 The Council recognises the important role that Hackney Carriages and Private Hire vehicles play in enabling people to travel around the borough. In doing so they also have a role in portraying the image of the borough. The Council also recognises that the majority of licence holders operate to a good standard and want to provide the best possible service to their customers. Drivers themselves have a key role as Ambassadors for the Borough and Customers rightly expect that in using licensed vehicles they will be transported in comfort and safety. This will help to ensure that the industry and the local economy thrive.
- 1.7 We will review this policy at least every five years or sooner in light of any significant changes to legislation or guidance and consult on any proposed amendments. If we make any changes, we will then re-publish the policy.
- 1.8 Public consultation on this policy took place between (date) and (date) and followed our consultation standards.
- 1.9 The policy was approved by the Council on (date) and is available via our website on www.guildford.gov.uk/taxi or in electronic format on request to the Licensing Team, Guildford Borough Council, Millmead House, Millmead, Guildford, Surrey, GU2 4BB.
- 1.10 In drafting this policy, we have taken into account:

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- Current legislation and case law in respect of hackney carriage and private hire licensing
- Department for Transport Taxi and Private Hire Vehicle Licensing Best Practice Guidance March (2010)
- The Freight Transport Association best practice guide to inspection of Hackney

Carriage and Private Hire Vehicles (2012)

- The Report of the Task and Finish Group (2018)
- The Government Response to the Task and Finish Group (2019)
- Statutory Guidance Issued by the Secretary of State under section 177 of the Policing and Crime Act 2017 (2020)
- Responses from those consulted on the policy
- The views expressed by the trade, public, statutory and non-statutory partners.

1.11 This policy sets out the requirements and standards that must be met. In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document. However each application or decision to take enforcement action will be considered on its own merits.

Section 2 - Principles

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2.1 The principal purpose of Hackney Carriage and Private Hire licensing is to protect the public and promote public safety. The aim of this policy is to provide a fair, open and transparent framework to ensure that hackney carriage and private hire services in Guildford Borough continuously demonstrate that they meet or exceed the standards set by the Council.

2.2 In exercising the principles of protecting the public the Council will adopt and carry out its Hackney Carriage and Private Hire licensing functions with a view to promoting the following:

- The protection of the public, safeguarding children and the vulnerable and the prevention of crime and disorder,
- To promote public confidence in the hackney carriage and private hire services through encouraging a professional hackney carriage and private hire trade, · The safety and health of the public and drivers,
- Vehicle safety, comfort and access,
- Encouraging environmental sustainability,
- Promoting the vision of Guildford as a place to live, work and visit

2.3 These aims and objectives will be taken into account by the Council when making decisions. It is recognised that the licensing function is only one means of securing the delivery of the above objectives. The Council will therefore continue to work in partnership with the industry, its neighbouring authorities, the Police, local businesses and local people towards the promotion of the aims and objectives.

2.4 When applying the policy and guidance we will have regard to the following principles:

- openness
- transparency
- consistency
- fairness
- proportionality

2.5 When we deal with hackney carriage and private hire vehicle drivers, proprietors and operators we will endeavour to be:

- courteous

- timely
- responsive
- fair

2.6 We expect all licence holders and prospective applicants to act similarly in their dealings with us. Where licence holders and prospective applicants do not uphold the expectations placed upon a professional licensed service, consideration will be given to suspending or revoked their licence, or refusing their application. Such examples of unsuitable behaviour can include, but is not limited to, licence holders who are rude and confrontational to staff; not complying in a timely manner with reasonable requests of the Council; avoiding their responsibilities; or any example of other, similar unprofessional conduct towards the Authority or others.

2.7 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing, in particular, but not exclusively to:

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- Applicants for driver, vehicle and operator licenses,
- Existing licence holders,
- Licensing Officers,
- Members of the Licensing Committee,
- The judicial system hearing appeals against local authority decisions, and
- Other Licensing Authorities

Section 3 - Definitions

Agenda item number: 5(1) Appendix 1

3.1 The Local Government (Miscellaneous Provisions) Act 1976, as amended, (“the 1976 Act”) and the Town Police Clauses Act 1847 provide the regulatory framework for Guildford Borough Council (the “Council”) as the Local authority (the “Authority”) to carry out its licensing functions in respect of Hackney Carriage and Private Hire Licensing.

3.2 This document sets out the policy that the Council will apply when making decisions about new applications and licences currently in force. This policy applies to:

- Hackney Carriages; being a vehicle available to transport the public with no

- more than 8 passenger seats, which is licensed to ply for hire. This means that it may stand at ranks, be hailed in the street by members of the public, or undertake pre-booked work

- Private Hire vehicles: licensed to carry no more than 8 passengers but must be booked in advance by customers through an operator and cannot ply for hire in the street.

- Private Hire operators

- Hackney Carriage and Private Hire drivers

3.3 In undertaking its licensing function, the Council will comply with relevant legislative requirements including:

- Town Police Clauses Act 1847 and 1889

- Local Government (Miscellaneous Provisions) Act 1976

- Transport Act 1985 and 2000

- Crime and Disorder Act 1998

- Environmental Protection Act 1990

- Equality Act 2010

- Road Traffic Acts

- Health Act 2006

- Human Rights Act 1998

- Immigration Act 2016

- The Police and Crime Act 2017

- 3.4 The Council will also have regard to other strategies, policies and guidance in its decision making. The Council will also have regard to wider considerations affecting visitors, employers and residents in line with the expectations of a town with the Purple Flag accreditation. These include: the availability of Hackney Carriage and Private Hire transport at all times; public nuisance; pollution; crime; and the capacity of the trade to cope with customer demand, particularly at times of peak demand.
- 3.5 The Council will also have regard to the Climate Change emergency declared on 23 July 2019 in formulating this Policy.

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Section 4 - General Principles

4.1 Policy guidance

This policy statement sets out the Council's approach to making licensing decisions. It will only be deviated from in exceptional circumstances based upon the merits of those particular circumstances and provided that the overall principles of the Policy are not undermined.

4.2 Submission and processing of applications

The Council aims to process applications as efficiently as possible. However there may be occasions where there are peaks in demand or other pressures placed upon the service.

Applicants and licence holders are expected to allow 10 working days (starting with the first working day after) the submission of a complete, valid application for licences to be processed and issued.

New driver applicants should allow a minimum of 20 working days as additional checks are required. Where the Council has to check an applicant's right to live and work in the UK, the applicant should allow an extra month for this check on top of the timescales above, and be aware no decision will be made until the right to live and work check has been completed.

Applicants can take advantage of the pre-application advice service offered by the

Council should they wish to.

The Council will not be held responsible for any delays or periods of expiration associated with the incomplete or late submission of applications.

4.3 Decision making

Except where indicated in the guidance, Officers will normally make decisions under delegated authority whether to grant, refuse, suspend or revoke a licence, or grant any form of exemption.

In cases where revocation of a licence is considered, there will be a clear separation between the investigation of licensing concerns and the management of the licensing decision making process. In addition, the Council has made arrangements for dealing with serious matters that may require the immediate revocation of a licence by delegation of these powers to a senior officer/manager with responsibility for the licensing service.

4.4 Appeals

Where a decision made by the Licensing Authority is appealed, the Council will normally defend the decision and seeks its costs of doing so in full from the appellant.

4.5 Licence Fees

Licence fees will be reviewed annually. Fees will be calculated using the methodology approved by Licensing Committee with the aim of ensuring full cost recovery.

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All applications must be accompanied by the appropriate fee.

We will not refund any part of the licence fee if a licence is surrendered, suspended or revoked.

4.6 Hackney Carriage Fares

Hackney Carriage Fares will be set in accordance with the Hackney Carriage Fare Calculator and we will run the fare calculator annually in June, however we may run it more frequently in appropriate circumstances such as significant increases or decreases in fuel prices.

The Lead Councillor for Licensing has delegated authority to approve the costs input into the Calculator, and to consider any objections received during the statutory consultation.

4.7 Hackney Carriage Stands

The Council provides hackney carriage stands at the following locations: · Bedford Road – Parking bays adjacent to Bedford Road Surface Car Park for a distance of 36 meters: 7 spaces (18.00 to 08.30 daily)

· North Street – Taxi rank outside the Friary Centre: approx. 14 spaces (24 hour operation)

· North Street – Length of single yellow line outside Cinderella’s Lounge Night Club and TGI Friday for a distance of 50 meters: 11 spaces (24 hour operation) · North Street – Outside Marks and Spencer and Paperchase for a distance of 30 meters: 6 spaces (24 hour operation)

· High Street (Lower end) – Parking Bays, outside Vision Express Opticians for a distance of 19 meters: 4 spaces (18.00 to 08.30 daily)

· Upper High Street – Parking bays outside Pizza Express and Oxfam for a distance of 26 meters: 5 spaces (18.00 to 08.30 daily)

· Millbrook (A281) – Bus Stop on north-bound carriageway outside the Legion nightclub for a distance of 19 meters: 4 spaces (22:30 to 04:30 daily)

Further additional spaces are available to permit holders at:

· Guildford Railway Station (approx. 10 spaces)

· Guildford (London Road) Railway Station (3 spaces)

Provision of Hackney Carriage Stands was reviewed comprehensively in 2016 with the creation of approximately 30 new spaces. Provision of stands will be reviewed again when there are significant changes to town centre development, or as any other pressing need is identified.

4.7 Vehicle Accessibility

We will encourage the provision of accessible vehicles through financial incentives in vehicle application fees. There will be a separate fee set for wheelchair accessible hackney carriage vehicles and published in the fees and charges book.

4.8 Numbers of vehicles

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We do not limit the maximum number of hackney carriage or private hire vehicles. 4.9

Interim Licences

We will not issue an ‘interim’ licence (ie a licence pending the determination of your application) unless there are exceptional circumstances which cause a delay in processing your application. Any departure from this policy will be determined on a

case by case basis by the Licensing team following a written submission. In all cases the licensing officer's decision is final.

4.10 Implementation and review

This Policy will remain in existence for a period of five years from the date of adoption, but will be kept under review and where necessary revised in accordance with paragraph 1.7.

The Regulatory Services Manager, in consultation with the Lead Member for Licensing may make minor amendments to the guidance set out in this policy to reflect administrative changes and will keep a record of those changes. When a full review or any substantive amendments are proposed, these will be considered by the Licensing Committee.

4.11 Whistleblowing

The purpose of this Policy is to protect the wider public using taxis and PHVs. However, it is in the application of these policies (and the training and raising of awareness among those applying them) that protection will be provided. Where there are concerns that policies are not being applied correctly, it is vital that these can be raised, investigated and remedial action taken if required. It is therefore recommended that any staff follow the Council's Whistleblowing procedures to raise concerns so that these can be dealt with openly and fairly.

Members of the licensed trade are also encouraged to report concerns relating to public safety, and will not face licensing action for bringing concerns to the authorities' attention.

The failure of a member of the trade to report incidents which they are aware of may however call into question their suitability to hold a licence.

4.12 Joint Warranting Arrangements

The Council have delegated the Taxi and Private Hire enforcement functions under the legislation set out below to the other 11 Surrey local licensing authorities, in addition to retaining those functions within the Borough and has similarly received the delegated Taxi and Private Hire enforcement functions from those local authorities.

This enables improved enforcement of the taxi and private hire trade across the County and improves safety within the licensed hackney carriage and private hire vehicle service operating in Surrey

Functions delegated to the Surrey Local Licensing Authorities:

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- Local Government (Miscellaneous Provisions) Act 1976
- Section 53(3)(a): Driver to produce his licence for inspection
- Section 58: Return of identification plate or disc on revocation
- Section 60: to suspend and revoke vehicle licences
- Section 61: to suspend and revoke drivers' licences
- Section 68: fitness of private hire vehicles
- Section 73: obstruction of authorised officer

The Surrey Local Authorities named below have delegated (or will delegate) the same functions to Guildford Borough Council. Those authorities have also retained the ability to exercise these functions.

The Surrey Local Authorities:

- Elmbridge Borough Council
- Epsom and Ewell Borough Council
- Mole Valley District Council
- Reigate and Banstead Borough Council
- Runnymede Borough Council
- Spelthorne Borough Council
- Surrey Heath Borough Council
- Tandridge District Council
- Waverley Borough Council
- Woking Borough Council

4.13 Cross Border Hire

The Council firmly believes in the principle of localism in the licensing of the hackney carriage and private hire trades. As such, the Council believes that the licensed trade operating in the Guildford Borough should be licensed by Guildford Borough Council as Parliament intended.

Through being able to set high standards for the trade operating in the Guildford area and being able to take effective and timely enforcement action without having to rely on others, the Council aims to ensure public safety and confidence in the licensed trade.

This Policy contains the following measures to support this aim:

- Licensed Drivers

All licensed drivers are subject to a condition that they are not to wait for bookings outside the Council's licensed area. As such, drivers may travel to any destination to pick up a booking, or receive a booking whilst they are travelling between destinations, however they cannot wait outside of the Borough to receive bookings.

· Licensed Vehicles

All licensed hackney carriage and private hire vehicles are required to display strong identification requirements so that customers recognise these as being licensed by Guildford.

· Private Hire Operators:

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Any private hire operator making provision for the invitation or acceptance of bookings in Guildford needs to hold a private hire operator's licence with Guildford. The Council expects Operators licensed by the Council to utilise vehicles and drivers licensed by Guildford so as to ensure that the licensed trade working in Guildford conform to the standards set by the Council and can be subject of local compliance.

In addition, as part of the Council's 'fit and proper' test, it would not expect an operator to obtain a licence in Guildford to simply make vehicles licensed by another authority available for booking via sub-contracting on a regular basis. As such whilst any licensed vehicle may enter Guildford to pick up or drop off customers, the Council would not expect vehicles licensed outside of Guildford to be waiting in Guildford and be made available for bookings as this diminishes the Council's ability to set local standards and local control. As such, any Operator acting to deliberately reduce the Council's ability for local control would not meeting the required public safety objectives and standards expected of a professional, licensed, fit and proper private hire operator, and may have their licence to make provision to invite or accept bookings in Guildford revoked.

4.14 Lost Property

It is a licence condition that property left in licensed vehicles is handed to the Council.

Any lost property handed to the Council will be dealt with using the procedure in Appendix 12.

Section 5 - Driver Requirements

Agenda item number: 5(1) Appendix 1

All drivers must satisfy the Council that they are fit and proper people to be granted a drivers' licence and must then remain a fit and proper person for the duration of that licence. The fitness and propriety of a driver will be monitored and assessed throughout the period that the licence is held.

Applicants are expected to act with honesty and integrity throughout the application process. Existing licence holders are always also expected to act professionally at a time a licence is held and consequently both applicants and existing licence holders must therefore fully and accurately disclose any information that is requested. This includes information regarding previous convictions, warnings and reprimands, arrests, current investigations and pending criminal and civil proceedings.

The Council aims to ensure that Private Hire and Hackney Carriage services delivered within the Borough are of a good standard. The application and compliance procedures are designed to ensure these standards are maintained, monitored for compliance and appropriately enforced.

The sections below, therefore, apply equally to Private Hire and Hackney Carriage drivers unless indicated.

5.1 Fit and proper test

The Council considers that licensed drivers are in a position of trust, and therefore the Council must ensure that applicants / licence holders are and remain fit and proper to hold a licence. This requirement is contained within Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II).

The term "Fit and Proper Person" for the purposes of taxi and Private Hire licensing is not legally defined. However, in determining whether a person is fit and proper to hold a licence, those tasked with determining licences / applications are effectively asking the following question of themselves:

"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?"

If the answer to the question is an unqualified 'yes', then the person can be considered to be fit and proper. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether a licence should be granted to that person.

Licensing authorities have to make difficult decisions as to whether a licence should be granted (or retained) but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probabilities. This means that **an applicant or licensee will not be 'given the benefit of the 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.

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In order to assess the suitability of an applicant (and to inform decision makers when answering the question above), the Licensing Authority will undertake whatever checks and apply whatever processes it considers necessary to ensure that licences are not issued to, or used by, unsuitable people. In assessing the suitability of an applicant or licence holder, the Council will take into consideration the following factors:

- Criminality
- Period of holding a driver's licence
- Number of endorsed driving licence penalty points
- Right to work
- Medical fitness
- Standard of driving / driving ability
- General conduct / standards of behaviour including online behaviour · The conduct as an individual holding a licence, including but not limited to complaints and other information received during the application process or course of the licence
- The conduct of the applicant in making the application (e.g. whether they have acted with honesty and integrity during the application process).
- The previous licensing history of existing / former licence holders (including honesty and integrity).
- Whether the applicant has had a licence suspended, refused or revoked by another licensing authority.
- Theoretical knowledge of issues and matters related to the work of a licensed driver.

In addition, the Council will also consider further information sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards, other licensing authorities and statutory agencies, and other information/complaints received.

If a driver, acting in their capacity as the holder of a different licence (for example vehicle proprietor's licence or private hire operator's licence) fails to comply with the byelaws or conditions attached to that licence, or has that licence revoked for reasons

of being unsuitable to hold that licence, the Council will consider this to reflect on their character as a licensed driver and they should expect to have their licence to drive a vehicle suspended or revoked.

5.2 Application process

This Council issues licences that enable:

- the driving of both Hackney Carriages and Private Hire Vehicles (dual licence), or
- the driving of Private Hire Vehicles only.

The type of licence applied for or held will be determined by which of the Council's knowledge tests the applicant has passed.

Licences will be issued for a maximum period of 3 years but the Council can grant licences for a lesser period if deemed appropriate. This will usually be when the applicant has time limited 'right to work' status with the licence only being granted in line with the time limits dictated by the applicant's immigration status.

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Applicants must have a minimum of 1 year of holding either a full driving licence issued in the UK, the European Community (EC) or one of the other countries in the European Economic Area (EEA). In addition to the above, licensed drivers who hold an EC/EEA driving licence should obtain a UK DVLA licence within 1 year of residency. If this document is required it must be produced before the initial licence is issued

The Council may directly access the DVLA records of applicants, or alternatively will employ the services of a third party to do this.

In addition, a third party service may be used to obtain information on the suitability of applicants and licence holders based on their general behaviour whilst using the internet (in particular social media sites) for the Council's assessment, with the Council likely to consider suspension or revocation should unsuitable behaviour be observed.

Applicants shall provide proof that they have a statutory right to work in the UK and any applicant that has a limited right to work will not be issued a driver licence for a period longer than that limited period.

The information submitted as part of the application process will be shared, when applicable, with other Council Departments and external statutory bodies including but not limited to Police, HM Revenue and Customs and other licensing authorities.

An individual will not be considered fit and proper to hold a licence if there is any evidence of dishonesty or inappropriate behaviours, and/or it can be shown that an applicant or existing licence holder has misled, or attempted to mislead, the Council (either officers or members of the Licensing Committee) as part of any process

associated with the administration or determination of a licence.

5.3 Disclosure and Barring Service (DBS)

A criminal record check on a driver is seen as an important safety measure. Enhanced Disclosure through the Disclosure and Barring Service is required as these disclosures include details of live and spent convictions, police cautions and other relevant information that indicates that a person poses a risk to public safety.

Both Hackney Carriage and Private Hire drivers are included as “exceptions” within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the “Exceptions Order”). Accordingly all drivers will be asked to disclose on their application form any caution or conviction even if it is spent for other purposes and those will be revealed on the DBS certificate.

All applicants for the grant or renewal of a licence requiring a DBS check will be responsible for the costs of obtaining the DBS certificate.

The Council will only accept DBS certificates which are applied for through Guildford Council’s Licensing Service or nominated third party provider. However, DBS certificates that are issued to other local authorities for the same type of role will be accepted if it has been printed within the previous four weeks, is to an enhanced level and has been processed in relation to the child and adult workforce employment position (as specified on the certificate).

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All new applicants must declare on the application form any convictions, cautions or fixed penalty notices they have received. All licence holders shall notify the Council of any convictions or cautions received during their licence period. Failure to inform the Council of any convictions, arrest, current investigations, cautions and fixed penalty notices during the licence period may result in suspension or revocation of the licence.

A licence will not be granted or renewed in the absence of a current Enhanced DBS Disclosure Certificate.

All licence holders must subscribe to the Disclosure and Barring Service Online Update Service, this will be required by a condition placed on the licence. Any costs associated with maintaining this subscription must be met by the licence holder. If a licence holder fails to sign up to the update service, or fails to maintain subscription during the period that the licence is in force, then the licence will be suspended or revoked.

The licence holder must give permission for the council to undertake checks of their DBS status should the council consider it necessary to do so, which will be at a frequency of not less than once every six months. The council will use the update service to monitor the criminal record of licence holders. The update service can be used when a licence is renewed – if there are no changes recorded on the DBS

certificate then a full DBS check will not be required. In all other cases a full Enhanced DBS check will be required before a licence is renewed.

If an applicant or current licence holder has spent three continuous months or more overseas since the age of 16, the Council will need to see evidence of a criminal record check from the country / countries lived in / visited covering the period that the applicant was overseas. This includes any time spent overseas during the course of a licence.

Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Council will need to ensure that sufficient background checks are conducted for those applicants that have lived overseas. For EU nationals (including UK citizens) suitable checks should be available. For those countries for which checks are not available, the Council will require a certificate of good conduct authenticated by the relevant embassy or consulate based in the UK for the country in which they were living. The date of the letter must be within three months of the date of the application. Certificates are required to be translated and certified as a correct translation at the cost of the applicant.

5.4 Relevance of Convictions and Cautions etc.

The Council is committed to ensuring that the licensed trade are fit and proper, this will entail periodic audits of licensed drivers to ensure that material changes are identified and acted upon.

In relation to the consideration of convictions, cautions, warnings, arrests, reprimands and other 'relevant information', the Council has adopted the policy set out in Appendix 2. The terms of this policy will have immediate effect.

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The policy at Appendix 2 will be used to determine the suitability of an existing licence holder should it be necessary to consider action in relation to the licence during the licence period.

5.5 Knowledge Testing

Applicants for a driver's licence are required to have passed the Council's knowledge test. This test will ensure that the applicant has sufficient knowledge in relation to:

- Literacy and numeracy
- Child / adult safeguarding awareness
- Disability awareness (including physical and sensory disability)
- Road Safety and the Highway Code
- Basic vehicle maintenance

- Customer care / customer awareness
- Local knowledge

Applicants must pass the relevant Guildford taxi or private hire driver's knowledge tests not more than 3 months prior to a fully completed application being submitted.

The Council does not limit the number of times applicants can take the test, however each attempt at the test must be paid for separately, in advance. If applicants fail successive knowledge tests they will be advised although not required, to wait a further month before attempting the test again so that they can undertake the necessary revision.

Any applicant cancelling the test with less than 24 hours' notice will not be refunded the fee.

5.6 Medical Assessment

The Council recognises that licensed drivers should be subject to more stringent medical standards than those applicable to normal car drivers because they carry members of the public who have expectations of a safe journey; they are on the road for longer hours than most car drivers; and they may have to assist disabled passengers and handle luggage. It therefore requires Group 2 Standards of Medical Fitness as applied by the DVLA to the licensing of lorry and bus drivers, as the appropriate standard for licensed Hackney Carriage and Private Hire drivers.

Applicants shall provide a completed medical examination form supplied by the Council and completed by their own General Practitioner on first application and every 5 years thereafter until aged 65 years when annual examinations are required. Licence holders with certain medical conditions (for example certain neurological or cardiovascular conditions) may also be required to submit annual forms and adhere to additional requirements in order for them to retain their driver's licence.

Holders of Public Service Vehicle (PSV) and / or Large Goods Vehicle (LGV) Licences, where the holder is able to produce proof of current medical examination less than 3 months old, will not be required to undergo a medical examination on first application.

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Licence holders must advise the Council of any deterioration or other change in their health that may affect their driving capabilities within 48 hours of the change occurring.

Where there is any doubt as to the medical fitness of the applicant, the Council may require the applicant to undergo and pay for a further medical examination by a Medical Doctor appointed by the Council. No licence will be issued, or remain in force until medical confirmation that the DVLA Group 2 standards have been met has been received.

Licensed drivers are under a legal duty to carry guide, hearing and other prescribed assistance dogs in their vehicles without additional charge. Drivers who have a medical condition which is aggravated by exposure to dogs may apply to the Council for exemption from the duty on medical grounds. If an application is successful they will be issued with an exemption certificate, and also be issued with a notice of exemption. The notice of exemption must be exhibited in the vehicle by fixing it, facing outwards, either on the windscreen or in a prominent position on the dashboard.

Licensed drivers are under a legal duty to provide assistance to wheelchair users, including loading/securing/unloading the wheelchair and assisting the user in and out of the vehicle, and carrying luggage at the request of the hirer, without additional charge. Drivers who have a medical condition which prevents them from offering this assistance may apply to the Council for exemption from the duty on medical grounds. If an application is successful they will be issued with an exemption certificate, and also be issued with a notice of exemption. The notice of exemption must be exhibited in the vehicle by fixing it, facing outwards, either on the windscreen or in a prominent position on the dashboard.

Any application for exemption will need to be supported by medical evidence including the appropriate tests and clinical history (provided by the applicant) and confirmed by the Council's medical advisor.

5.7 Right of driver to work in the UK

The Council is mandated under the Immigration Act 2016 to require all applicants to provide documentary evidence to confirm that they may legally work in the UK. Examples of documents that maybe provided include:

- A UK passport confirming that the holder is a British Citizen,
- Documentation confirming the applicant is an EEA national who has status under the EU Settlement Scheme, or status under the points-based immigration system,
- Passport or other travel document endorsed to show that the holder is allowed to stay in the United Kingdom and undertake paid employment,
- Full UK Birth / Adoption Certificate,
- An Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the United Kingdom and undertake paid employment,
- A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency when produced in combination with either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to undertake paid employment.

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This list is not exhaustive, and other documents may be accepted – further information

will be provided by the Licensing Office on request.

Where an applicant is subject to immigration controls, a licence will not be issued for longer than the period that the applicant has permission to undertake paid employment in the United Kingdom.

5.8 Driving Assessment

The Council recognises that licensed drivers should be subject to a more stringent driving assessment than the standard applicable to the normal driving test because they carry members of the public who have expectations of a safe journey and they are on the road for longer hours covering more mileage than most other drivers.

Therefore both private hire and hackney carriage driver's applicants must have passed a driving assessment approved by the Council. A list of assessment providers is available on the Council's website.

The assessment should be no more than 12 months old when first applying to the Council.

5.9 Qualifications

The Council believes all passenger transport drivers whose role demands high standards in driving and customer service would benefit from a nationally recognised qualification that includes customer care, meeting the needs of people with disabilities, road safety, the handling of emergencies and how to defuse difficult situations and manage conflict. Such qualifications equip drivers with the necessary skills for their role so that they can meet the standards the public expect of them.

As such, all applicants for a drivers licence will be required to provide evidence of the following qualifications / skills to the Council before a licence will be issued:

· Level 2 Certificate (BTEC or NVQ) in the Introduction to Role of the Professional Taxi and Private Hire Driver.

Alternative qualifications may be accepted provided that they are to an equivalent standard and have a comparable syllabus. Any certificate must have been awarded within the last three years. In cases where the certificate was awarded more than 3 years ago, the certificate holder must demonstrate that they have undertaken a suitable refresher / CPD course – the content of which will be determined by the council.

Existing licence holders will have been required to complete the qualification by 1 January 2019. Any licence holder who does not provide evidence of attaining this qualification upon submitting an application to renew their licence will not have their licence renewed.

The Council reserves the right to refuse to accept a qualification certificate as evidence of the qualification if it is not satisfied as to the authenticity of the certificate or the quality and/or reliability of any part of the process that led to the certificate being issued.

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· **Satisfactory completion of an approved training / awareness raising course in relation to safeguarding children and vulnerable people.** On 7 February 2018 The Council approved a requirement for mandatory safeguarding awareness training for all drivers as part of the Surrey Safeguarding Children Board Child Sexual Exploitation Strategy and action plan.

All new hackney carriage or private hire drivers must pass the Council's Approved safeguarding awareness training before a licence is granted. Existing licence holders were required to complete the Council's Approved CSE awareness training by 1 May 2019.

5.10 Application Procedure

Information on how to make an application is available on the Council's website or from the Council's Customer Service Centre.

An application will need to be accompanied by the following documents before it can be accepted:

- a completed application form
- payment of the relevant fee (by debit or credit card only)
- full DVLA driver's licence and DVLA mandate
- evidence of right to live and work in the United Kingdom
- evidence of current address and history of residence for the last five years including the month and year that you started living at each address
- medical form, completed by the applicant's registered doctor less than 3 months before application.
- a certificate showing completion of the relevant approved driving assessment(s) within the last 12 months.
- a certificate showing completion of each of the required qualifications within the timescales identified for each
- a criminal record check and/or a letter of good conduct from the Embassy or Consulate for the country of residence (if living outside the United Kingdom for a continuous period of three months or more since the age of 16) The date of the documents must be within three months of the date of application, and any documents not in English need to be accompanied by a translation that has been certified as a true translation of the original document.
- An enhanced level DBS certificate with adult and child barred list checks, completed for the required role of working with vulnerable adults and children in the capacity as a taxi driver, issued within the past 3 months

- Completed DBS update service mandate allowing the Council to access this record during the course of the licence
- a digital photograph to passport standards.

5.11 Renewing a licence

Information on how to apply to renew a licence is available on the Council's website or from the Council's Customer Service Centre.

It is the driver's responsibility to apply in good time so their application can be determined before their existing licence expires. A completed, valid renewal application

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should be submitted no less than 10 working days, but no sooner than 8 weeks before the expiry date.

An applicant making an application to renew a hackney carriage or private hire driver's licence must:

- still have the right to live and work in the United Kingdom
- still meet the current medical standards for DVLA Group 2 licence holders · have not been convicted of a relevant criminal offence, relevant driving offence or cautioned for a relevant offence during the term of their licence
- have complied with licensing conditions and licensing policy, including meeting the expectations of licence holders in terms of conduct
- if applicable, a letter of good conduct from the Embassy or Consulate if the licence holder has spent more than 3 months outside the UK during the period of their licence.
- have not received any motoring endorsements on their DVLA driving licence during the term of the licence
- have a current enhanced level DBS certificate which the Council is able to access via maintained subscription to the DBS update service
- hold the required qualifications

Licence holders are advised to check the Council's website or contact the licensing team if they are in any doubt about whether they satisfy the above requirements.

5.12 Making our decision

Once the Council has received a completed application and the results of the various checks/tests, we will then make a decision about your application.

We aim to inform an applicant of our decision within 10 working days from the date we receive all required information. In certain circumstances an application may be referred to the Licensing Regulatory Sub-Committee for determination. It will be for officer's to use their discretion as to whether to refer an applicant to Committee.

If an applicant (or licence holder) has any convictions, cautions, endorsements or additional other relevant information, we will consider these in line with the guidance in this Policy and this may delay the decision.

Where there is any doubt as to the medical fitness of the applicant, the Council may require the applicant to undergo and pay for a further medical examination or have their medical records reviewed by a doctor appointed by the Council. The doctor's recommendation will be final.

5.13 Granting your application

If we grant an application, we will usually issue a licence for three years from the date of our decision. If a licence holder is subject to immigration controls as detailed below, we will issue a licence for a shorter period:

If a licence holder's current right to live or work in the UK expires during the three year period beginning on the date their application was determined, we will issue a licence until the date their current right to live or work in the UK expires.

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If the Home Office is currently determining a licence holder's right to live or work in the UK, and they are entitled to live and work in the UK pending final determination of that application, we will issue a licence for a maximum of 6 months from the date of our decision.

Under section 51(2) of the Local Government (Miscellaneous Provisions) Act 1976, the Council may attach conditions that it considers 'reasonably necessary' to private hire driver's licences. This includes dual licensed hackney carriage and private hire driver's, as well as holders of private hire driver (only) licences. Applications are normally granted subject to the Council's Standard Licence Conditions contained within this Policy, however further, additional conditions may be attached on a case by case basis.

The decision to attach conditions to a licence may be appealed to the Magistrates Court.

5.14 Refusing your application

If an applicant does not satisfy all the above requirements or the application is incomplete we will normally refuse the application.

A Licensing Regulatory Sub-Committee or an officer with the appropriate delegation will

make the decision.

The Council will make a record of the reasons for our decision and will provide the applicant with a copy of that document.

Any decision to refuse an application may be appealed to the Magistrates' Court within 21 days of our decision. If applicants intend to appeal the Council's decision, we strongly suggest that they seek legal advice.

The Council will normally defend any appeal and look to recover the full costs of doing so from the appellant.

5.15 The National Register of Revocations and Refusals

The Council will check all new and renewal applications against the national register.

If a licence holder has been refused/revoked by another authority, this will not debar an applicant from holding a licence, however the Council will give weight to the decision made by that authority in considering the application. Additionally, if an applicant has had another licence refused/revoked which is not declared to the Council, this will raise concerns about the honesty and integrity of the applicant and is likely to lead to refusal.

The Council will record all decisions to refuse and revoke a driver's licence on the National Register, and will provide details of the reasons for each decision to another licensing authority following receipt of the necessary data sharing request.

5.16 Conditions and Byelaws

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The Council may attach such conditions to a Private Hire / Hackney Carriage driver's licence as are considered reasonably necessary. The Council's standard conditions are set out in Appendix 3.

The Council has also made byelaws that are specifically applicable to Hackney Carriage drivers / proprietors. The existing Hackney Carriage byelaws are set out in Appendix 1. These byelaws will be reviewed from time to time.

Drivers are expected to familiarise themselves with licence conditions and comply with the requirements associated with being a professional licence holder. Drivers who do not comply with byelaws / conditions can expect to have their licences suspended or revoked.

5.17 Dress Code

It is recognised that the taxi trade, both Hackney Carriage and Private Hire, play an important role in portraying a positive image of a professional licensed transport

service, and Guildford in general. Anything that serves to enhance the professional image of the Hackney Carriage and Private Hire trade, and promotes the concept that drivers of licensed vehicles are professional vocational drivers is to be welcomed.

To ensure that not only are the above objectives met but, also that driving is carried out safely, a Dress Code for licensed drivers has been set. This is provided in Appendix 4. It is a condition of the licence that all drivers adhere to this policy.

Employees working for companies operating their own dress codes will still be required to comply with the Council's standard.

5.18 Driver Code of Conduct

It is essential that all customers (including young, elderly and other vulnerable people), are safeguarded and protected whilst being transported in a licensed vehicle. It is also important that other road users and other individuals who interact with the licensed trade are dealt with in a professional manner and with courtesy.

Accordingly a specific Code of Conduct for drivers has been adopted and must be complied with. This is provided at Appendix 5. It is a condition of the licence that all drivers adhere to this policy.

The hackney carriage byelaws require a hackney carriage driver to behave in a civil and orderly manner, and the code of conduct helps to define the Council's understanding of what a civil and orderly manner entails. If a hackney carriage driver is not complying with the code of conduct they will be considered as not acting in a civil and orderly manner.

5.19 Updating the Council

It is essential that the Council has up to date contact details for licence holders. It is also vital that the Council is notified of any change in circumstances which may compromise the applicant's suitability at the earliest opportunity.

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If a licence holder changes their name, address, other contact details (including telephone number or email address) or operator during the term of their licence, they must inform the licensing team in writing within seven days.

If a licence holder receives a conviction, caution, fixed penalty notice or is subject to arrest or criminal proceedings of any sort then they must notify the Council within 48 hours.

If a licence holder's medical status changes then they must notify the Council within 48

hours.

Licence holders who fail to keep the Council up to date as required are likely to be considered unsuitable to continue to hold a licence.

5.20 Display of driver's identification

It is a legal requirement that licensed drivers wear their drivers badge in a conspicuous position where it can be seen by passengers. The Council has provided lanyards for this purpose.

Drivers will be issued with an identification 'badge' and paper counter part. Drivers will also be issued with a second 'driver identification notice' which must be displayed in a clearly visible, safe position in the vehicle for customers to see.

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Section 6 - Hackney Carriages and Private Hire Vehicles

6.1 Vehicle requirements

The Council will consider all applications for vehicle licences based on vehicles meeting the specifications in this Policy. Upon application and renewal, applicants for vehicle licences will be expected to show:

- the vehicle meets the Council's Age/Emissions Policy
- the vehicle complies with the Council's livery policy for hackney carriages, and signage policy for private hire vehicles.
- the vehicle is capable of safely carrying a minimum of 4 passengers, but no more than 8.
- the vehicle is right-hand drive
- the vehicle has a minimum 1400cc engine. Any hybrid/LPG, electric or other alternatively powered vehicle must have an equal power output to a 1400cc engine:
 - a purpose built full hybrid, or plug in hybrid must have a minimum range of 16km (10 miles) using battery power only
 - a full electric vehicle must have a minimum range of 112km (70 miles).
- if the vehicle is a saloon/estate type it has four side opening doors · if the vehicle is a minibus, transit or people carrier type it has at least three doors, not including any tailgate or rear door
- the vehicle has a useable seatbelt for each passenger. Each seat belt must be fully compliant with Euro NCAP standards
- the vehicle's seating and interior dimensions offer suitable accommodation for passengers and their luggage to ride in comfort and safety
- the vehicle's windscreen and front side windows comply with national legal tint specifications. All other windows let enough light through for a person 20 meters away to be able to see the number of passengers in the vehicle in daylight and have no additional 'tint' applied
- the vehicle has sufficient means by which any person in the vehicle may communicate with the driver
- the vehicle has not been written off

6.2 Making your application

Information on how to make an application is available on the Council's website or from the Council's Customer Service Centre.

Any application will need to be accompanied by the following documents before it can be accepted. The application must be made on the correct application form and all supporting documents completed in full.

- a fully completed application form
- payment of the relevant fee (by debit or credit card)
- a written HPI check for the proposed vehicle. This check shows whether a vehicle has been stolen, written-off or has outstanding finance as well as offering a mileage check
- a valid certificate of motor insurance or a cover note for the proposed vehicle covering the appropriate licence type for carrying of passengers for hire and

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reward. The policy must be valid for the date that the licence is due to commence.

- a certificate showing the vehicle has been inspected at a centre nominated by the Council and has passed the vehicle test
- photographic identification for each proprietor. We will only accept a passport or DVLA driving licence
- a basic DBS certificate for each proprietor dated within the last 12 months, if the proprietor is not a licensed driver with the Council
- the V5C DVLA registration document (logbook) for the proposed vehicle. At least one of the proprietors must be the registered keeper of the proposed vehicle. If you have recently bought the vehicle and you do not have a V5C, we will accept the tear off slip. If the vehicle is to be licensed as a hackney carriage, the V5C should state the colour of the vehicle as 'turquoise'.
- a valid MOT certificate (if you are applying for a private hire vehicle licence and the vehicle is more than three years old) or
- a valid MOT certificate (if you are applying for a taxi vehicle licence and the vehicle is more than 12 months old).

In addition:

- Any vehicle not manufactured with European Whole Vehicle Type Approval will be required to undergo Single Vehicle Approval (SVA) testing and evidence of that testing and the vehicle having obtained SVA produced to the licensing office.

6.3 Suitability test for proprietors

The Council considers that licensed vehicle proprietors are in a position of trust, by virtue of the fact that they are responsible for ensuring the maintenance of vehicles which are used to transport members of the public. Licensed vehicles can also travel with a considerable degree of inconspicuousness and as such can be used as cover for illegal transportation. Therefore the Council must ensure that applicants / licence holders are suitable persons that will ensure that they will maintain their vehicles so

that they are roadworthy at all times, and not allow the vehicle to be used for criminal or other unacceptable purposes.

In determining whether a person is suitable to hold a vehicle proprietor's licence, those tasked with determining applications are effectively asking the following question of themselves:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”

If the answer to the question is an unqualified 'yes', then the person can be suitable. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether a licence should be granted to that person.

Licensing authorities have to make difficult decisions as to whether a licence should be granted (or retained) but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the Page 74

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balance of probabilities. This means that **an applicant or licensee will not be 'given the benefit of the doubt'**. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is suitable to hold a licence having considered the above test, they should not hold a licence.

Vehicle licences may be applied for by a company or partnership and as such the above test will be applied to each of the directors or partners in that company or partnership.

In order to assess the suitability of an applicant for a vehicle licence (and to inform decision makers when answering the question above), the Licensing Authority will undertake whatever checks and apply whatever processes it considers necessary to ensure that licences are not issued to, or used by, unsuitable people. In assessing the suitability of an applicant or licence holder, the Council will take into consideration the following factors:

- Criminality
- Right to work
- General conduct / standards of behaviour including online behaviour · The conduct as an individual holding a licence, including but not limited to complaints and other information received during the application process or course of the licence
- The individual's history of vehicle maintenance, including passing of MOT and vehicle test without initial failures
- The conduct of the applicant in making the application (e.g. whether they have acted

with honesty and integrity during the application process).

- The previous licensing history of existing / former licence holders (including honesty and integrity).
- Whether the applicant has had a licence suspended, refused or revoked by another licensing authority.

In relation to the consideration of convictions, cautions, warnings, arrests, reprimands and other 'relevant information', the Council has adopted the policy set out in Appendix 2. The terms of this policy will have immediate effect.

The policy at Appendix 2 will be used to determine the suitability of an existing licence holder should it be necessary to consider action in relation to the licence during the licence period.

However, it is important to acknowledge that in many cases individuals that license a vehicle may already be licensed as a driver. As the Council undertakes DBS checks for drivers it will not require those licensed drivers seeking to licence a vehicle to provide a basic DBS check as part of the application process and instead will 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 DBS certificate should be required immediately.

Similarly in cases where a proprietor exercises their right to transfer a vehicle a licence, the Council will require the new proprietor to obtain a basic DBS certificate, if they are not already a licensed driver.

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If a proprietor, acting in their capacity as the holder of a different licence (for example a driver's licence or private hire operator's licence) fails to comply with the byelaws or conditions attached to that licence, or has that licence revoked for reasons of being unsuitable to hold that licence, the Council will consider this to reflect on their character as a licensed proprietor and they can expect to have their proprietors licence suspended or revoked.

6.4 Grant of licences

If vehicles and/or proprietors meet the Council's requirements, vehicle licences will be issued for a one year period, commencing on the date that the licence is issued.

If vehicles and/or proprietors do not satisfy the requirements we will refuse the application.

We will grant vehicle licences for hackney carriages with the standard conditions at Appendix 6. The Council has also made byelaws that are specifically applicable to

Hackney Carriage drivers / proprietors. The existing Hackney Carriage byelaws are set out in Appendix 1.

We will grant licences for private hire vehicles with the standard conditions at Appendix 7.

Proprietors are expected to familiarise themselves with licence conditions and comply with the requirements associated with being a professional licence holder. Proprietors who do not comply with the conditions can expect to have their licences revoked.

6.5 Renewal of Licences

Information on how to apply to renew a licence is available on the Council's website or from the Council's Customer Service Centre.

It is the proprietor's responsibility to apply in good time so their application can be determined before their existing licence expires. A completed, valid renewal application should be submitted no less than 10 working days, but no sooner than 8 weeks before the expiry date.

An applicant making an application to renew a hackney carriage or private hire vehicle licence must provide:

- a completed application form
- payment of the relevant fee by debit or credit card
- a valid certificate of motor insurance or a cover note for the vehicle covering the start date of the new licence
- a certificate showing the vehicle has passed our vehicle test no more than 8 weeks before the date of expiry of the existing licence
- the V5C DVLA registration document (logbook) for the vehicle. At least one of the proprietors must be the registered keeper of the proposed vehicle
- a valid MOT certificate (if you are applying for a taxi vehicle licence) · a valid MOT certificate (if you are applying for a private hire vehicle licence and the vehicle is more than three years old)

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6.6 Refusal of applications

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If we refuse your application, we will make a record of the reasons for our decision and we will provide the applicant with a copy of that document.

An applicant may appeal the Council's decision (within the statutory time period) to:

- the Magistrates' Court (for refusal of private hire applications, or refusal to renew hackney carriage vehicles), or
- Crown Court (for refusal to grant a new hackney carriage).

We would recommend that appellants seek legal advice.

The Council will normally defend the decision and seek full recovery of its costs from the appellant.

6.7 Updating the Council

It is essential that the Council has up to date contact details for licence holders. It is also vital that the Council is notified of any change in circumstances which may compromise the applicant's suitability at the earliest opportunity.

If a licence holder changes their name, address, other contact details (including telephone number or email address) or operator during the term of their licence, they must inform the licensing team in writing within seven days.

If a licence holder receives a conviction, caution, fixed penalty notice or is subject to arrest or criminal proceedings of any sort then they must notify the Council within 48 hours.

Licence holders who fail to keep the Council up to date as required are likely to be considered unsuitable to continue to hold a licence.

6.8 Other Types of Application

6.8.1 Temporary Vehicle Licence

The Council will issue a temporary 3 month licence for a hackney carriage or private hire vehicle. The vehicle must still meet the criteria and application process for licensed vehicles as laid out in this policy.

6.8.2 Transfer of Interest

If an existing proprietor sells (or transfers) a hackney carriage or private hire vehicle currently licensed by the Council, they must notify us of the name and address of the new proprietor within 14 days of the date of transfer.

6.8.3 Change of Vehicle

If an existing proprietor wishes to change their licensed vehicle, please check that it complies with the pre-application requirements above before completing a purchase. The Council is not responsible for applicants purchasing vehicles which are unsuitable.

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You will then need to make an application to change your vehicle, following the above process for a new application.

6.9 Accidents in vehicles

If at any time the vehicle is involved in an accident, however minor, the proprietor must inform the Council of this fact as soon as possible and in any event in writing within 72 hours. An accident report form will then need to be completed and submitted to the Council within this timeframe.

If a vehicle is still being used following an accident, it will normally be required to be presented for inspection at the Council's authorised testing station as soon as possible after the accident has taken place. The appointment must be arranged and paid for by the proprietor. Failure to present the vehicle for inspection following an accident may result in the vehicle's licence being suspended until such time as the vehicle is presented for examination. Vehicles with only very minor bodywork damage, such as small dents/scratches may only need to be seen by a licensing officer rather than being tested. If the licensing officer has any concerns that the damage is anything more than very minor the vehicle will have to be tested as detailed above.

If the vehicle is so damaged that it cannot be driven, then the vehicle proprietor must inform the Council via the accident form and provide photographic evidence of the vehicle's condition that clearly illustrates the reasons why the vehicle cannot be driven / presented for examination. The proprietor must advise the Council once it is repaired and being used again, supplying proof that the vehicle has been repaired to the required standard by providing the necessary receipts/reports.

If the vehicle is not going to be repaired, the proprietor is responsible for removing the external plate, internal plate and door stickers for private hire, and returning these to the Council. If the vehicle is a taxi the proprietor is responsible for removing the wrap and supplying proof of this to the Council.

6.10 Lost, stolen or damaged licences

If a proprietor loses a paper licence or the vehicle plate, or the plate has been stolen or damaged they will need to notify the Council within 48 hours of discovery, and request a replacement. There is a fee which must be paid before a replacement is issued.

6.11 Display of vehicle licence plates

The Council issues a vehicle licence plate which must be securely fitted to the rear of the vehicle by means of a screw, bolt or bracket secured by the same means. This will be required by condition of the licence and means that the plate must be fixed to the vehicle at all times.

White plates are issued to hackney carriage vehicles. White plates with a red trim are issued for private hire.

The plate always remains the property of the Council and must be returned upon expiry, surrender, suspension or revocation of the licence. Should the vehicle be changed or the plate lost, a fee will be charged for a replacement.

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The Council also issues internal vehicle licence plates which must be displayed inside the windscreen on the top of the near side (passenger side).

Failure to abide by the requirement to display a plate correctly, or failure to return a plate upon request may lead to sanction, including a consideration as to the licence holder's suitability.

From 1 April 2021 the Council intends to issue plates without an expiry date. The plate will display the make/model/colour of vehicle, the number of passengers which the vehicle is licensed for, and the licence number of the vehicle.

6.12 Exemption from displaying a private hire licence plate

The Licensing Authority recognises operators may wish to cater for an 'exclusive' or important corporate client base and provide a vehicle of a prestige model and specification without the display of a licence plate or vehicle signage. An operator may apply for an exemption to the requirement to display a licence plate for the following approved work only:

- Exclusive chauffeured work where the dignity or security of the person would be affected if they were to be seen in a plated licensed vehicle, or
- Other 'special' journeys where the client specifically requests a vehicle of a prestige make and specification at the time of booking and pays a recognisably higher fee for that service compared to that charged for a non exempt vehicle displaying corporate identity.

For clarification the Policy requires that in order to be considered for a 'plate exemption' the vehicle must carry out exclusively chauffeured or other special work and as such there is a distinguishing feature between 'chauffeured' work and taking a business person to the airport for example.

To apply for an exemption you must supply the following documents:

- completed private hire vehicle plate exemption application form, detailing the reasons for exemption
- letters from clients demonstrating the vehicle is required for chauffeured work and why the display of a plate (and door signs) would be detrimental to the client, for example a discreet service required by a well-known person seeking as much anonymity as possible.
- three months of booking records for all operators the driver works for,

demonstrating that the vehicle is primarily used for chauffeured work (for new applications, three months of booking records must be provided after the plate exemption has been given).

- invoices for each named client who has supplied a letter in support of your application for the same period as the booking records (for new applications, three months of booking records must be provided after the plate exemption has been given)

The Council will also consider factors such as the list price of the vehicle, specification of vehicle and volume of exclusive or chauffeured work as detailed in section 7.19.

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An exemption will only be granted where the Council is satisfied that the vehicle will be used exclusively or primarily for 'chauffeured' private hire work. It is expected that 'primary use' means at least 90% of the work, as evidenced via booking records. The Council may undertake an audit of booking records at any point during the exemption to ensure that the vehicle is being used for chauffeured work.

Exemptions may be withdrawn at any time by the Council and if the licence holder cannot prove that the vehicle is used exclusively or primarily for 'chauffeured' private hire work.

Exemptions are subject to annual review and licence holders must reapply each year.

If an exemption request is refused or withdrawn, the operator may ask for the Council to reconsider the decision by providing new, relevant information within 21 days of that decision. The Council aims to reconsider any such application within 10 working days of receipt.

An officer with delegated authority will consider the information before making a final decision.

The Council will make a record of the reasons for the decision and provide the operator with a copy of that document. There is no right of appeal to the Magistrates' Court.

If we grant an exemption, we will issue your licence subject to the additional conditions at Appendix 8.

6.13 Vehicle Testing

All vehicles must pass the vehicle test as detailed in Appendix 9 no more than eight weeks before the grant or renewal of the licence.

A second vehicle test must be passed no less than five months and no more than seven months before the expiry date of the licence.

If the vehicle has not passed the vehicle test it cannot be used as a licensed vehicle even during the duration of an existing licence and any existing licence will be suspended.

If the vehicle is changed during the course of the licence an additional vehicle test may be required if the duration of the licence is more than six months.

6.14 Failure of vehicle tests

Vehicle tests are necessary to ensure that licensed vehicles remain safe, roadworthy and compliant with the Council's Policy and licence conditions. Vehicle tests should not be used as a mechanism for identifying faults to be rectified. As such, the Council takes a serious view of proprietors who fail to present their vehicle for inspection in a satisfactory condition.

If the vehicle fails an inspection due mid-term or upon renewal, this will demonstrate to the Council that the proprietor is not complying with vehicle maintenance and

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8.6 Taxi And Private Hire Vehicle Licensing: Best Practice Guidance
March 2010 by the Department for Transport

**TAXI AND PRIVATE HIRE VEHICLE
LICENSING:

BEST PRACTICE GUIDANCE**

March 2010

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

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INTRODUCTION

1. The Department first issued Best Practice Guidance in October 2006 to assist those local authorities in England and Wales that have responsibility for the regulation of the taxi and private hire vehicle (PHV) trades.
2. It is clear that many licensing authorities considered their licensing policies in the context of the Guidance. That is most encouraging.
3. However, in order to keep our Guidance relevant and up to date, we embarked on a revision. We took account of feedback from the initial version and we consulted stakeholders in producing this revised version.
4. The key premise remains the same - it is for individual licensing authorities to reach their own decisions both on overall policies and on individual licensing matters, in the light of their own views of the relevant considerations. This Guidance is intended to assist licensing authorities but it is only guidance and decisions on any matters remain a matter for the authority concerned.
5. We have not introduced changes simply for the sake of it. Accordingly, the bulk of the Guidance is unchanged. What we have done is focus on issues involving a new policy (for example trailing the introduction of the Safeguarding Vulnerable Groups legislation); or where we consider that the advice could be elaborated (eg enforcement); or where progress has been made since October 2006 (eg the stretched limousine guidance note has now been published).

THE ROLE OF TAXIS AND PHVs

6. Taxis (more formally known as hackney carriages) and PHVs (or minicabs as some of them are known) play an important part in local transport. In 2008, the average person made 11 trips in taxis or private hire vehicles. Taxis and PHVs are used by all social groups; low-income young women (amongst whom car ownership is low) are one of the largest groups of users.
7. Taxis and PHVs are also increasingly used in innovative ways - for example as taxi-buses - to provide innovative local transport services (see paras 92-95)

34. THE ROLE OF LICENSING: POLICY JUSTIFICATION

8. The aim of local authority licensing of the taxi and PHV trades is to protect the public. Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services, because of the part they play in local transport provision. Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications.

9. For example, it is clearly important that somebody using a taxi or PHV to go home alone late at night should be confident that the driver does not have a criminal record for assault and that the vehicle is safe. But on the other hand, if the supply of taxis or PHVs has been unduly constrained by onerous licensing conditions, then that person's safety might be put at risk by having to wait on late-night streets for a taxi or PHV to arrive; he or she might even be tempted to enter an unlicensed vehicle with an unlicensed driver illegally plying for hire.

10. Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address; or, to put it another way, whether the cost of a requirement in terms of its effect on the availability of transport to the public is at least matched by the benefit to the public, for example through increased safety. This is not to propose that a detailed, quantitative, cost-benefit assessment should be made in each case; but it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve.

35. SCOPE OF THE GUIDANCE

11. This guidance deliberately does not seek to cover the whole range of possible licensing requirements. Instead it seeks to concentrate only on those issues that have caused difficulty in the past or that seem of particular significance. Nor for the most part does the guidance seek to set out the law on taxi and PHV licensing, which for England and Wales contains many complexities. Local licensing authorities will appreciate that it is for them to seek their own legal advice.

36. CONSULTATION AT THE LOCAL LEVEL

12. It is good practice for local authorities to consult about any significant proposed changes in licensing rules. Such consultation should include not only the taxi and PHV trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, or Chambers of Commerce, organisations with a wider transport interest (eg the Campaign for Better Transport and other transport providers), womens' groups or local traders.

37. ACCESSIBILITY

13. The Minister of State for Transport has now announced the way forward on accessibility for taxis and PHVs. His statement can be viewed on the Department's website at: <http://www.dft.gov.uk/press/speechesstatements/statements/accesstotaxis>. The Department will be taking forward demonstration schemes in three local authority areas to research the needs of people with disabilities in order to produce guidance about the most appropriate provision. In the meantime, the Department recognises that some local licensing authorities will want to make progress on enhancing accessible taxi provision and the guidance outlined below constitutes the Department's advice on how this might be achieved in advance of the comprehensive and dedicated guidance which will arise from the demonstration schemes.

14. Different accessibility considerations apply between taxis and PHVs. Taxis can be hired on the spot, in the street or at a rank, by the customer dealing directly with a driver. PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps to make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet. The Department has produced a leaflet on the ergonomic requirements for accessible taxis that is available from: <http://www.dft.gov.uk/transportforyou/access/taxis/pubs/research>

15. The Department is aware that, in some cases, taxi drivers are reluctant to pick up disabled people. This may be because drivers are unsure about how to deal with disabled people, they believe it will take longer for disabled people to get in and out of the taxi and so they may lose other fares, or they are unsure about insurance arrangements if anything goes wrong. It should be remembered that this is no excuse for refusing to pick up disabled people and that the taxi industry has a duty to provide a service to disabled people in the same way as it provides a service to any other passenger. Licensing authorities should do what they can to work with operators, drivers and trade bodies in their area to improve drivers' awareness of the needs of disabled people, encourage them to overcome any reluctance or bad practice, and to improve their abilities and confidence. Local licensing authorities should also encourage their drivers to undertake disability awareness training, perhaps as part of the course mentioned in the training section of this guidance that is available through Go-Skills.

16. In relation to enforcement, licensing authorities will know that section 36 of the Disability Discrimination Act 1995 (DDA) was partially commenced by enactment of the Local Transport Act 2008. The duties contained in this section of the DDA apply only to those vehicles deemed accessible by the local authority being used on "taxibus" services. This applies to both hackney carriages and private hire vehicles.

17. Section 36 imposes certain duties on drivers of “taxibuses” to provide assistance to people in wheelchairs, to carry them in safety and not to charge extra for doing so. Failure to abide by these duties could lead to prosecution through a Magistrates’ court and a maximum fine of £1,000.

18. Local authorities can take action against non-taxibus drivers who do not abide by their duties under section 36 of the DDA (see below). This could involve for example using licence conditions to implement training requirements or, ultimately, powers to suspend or revoke licences. Some local authorities use points systems and will take certain enforcement actions should drivers accumulate a certain number of points

19. There are plans to modify section 36 of the DDA. The Local Transport Act 2008 applied the duties to assist disabled passengers to drivers of taxis and PHVs whilst being used to provide local services. The Equality Bill which is currently on its passage through Parliament would extend the duties to drivers of taxis and PHVs whilst operating conventional services using wheelchair accessible vehicles. Licensing authorities will be informed if the change is enacted and Regulations will have to be made to deal with exemptions from the duties for drivers who are unable, on medical grounds to fulfil the duties.

i Duties to carry assistance dogs

20. Since 31 March 2001, licensed taxi drivers in England and Wales have been under a duty (under section 37 of the DDA) to carry guide, hearing and other prescribed assistance dogs in their taxis without additional charge. Drivers who have a medical condition that is aggravated by exposure to dogs may apply to their licensing authority for an exemption from the duty on medical grounds. Any other driver who fails to comply with the duty could be prosecuted through a Magistrates’ court and is liable to a fine of up to £1,000. Similar duties covering PHV operators and drivers have been in force since 31 March 2004.

21. Enforcement of this duty is the responsibility of local licensing authorities. It is therefore for authorities to decide whether breaches should be pursued through the courts or considered as part of the licensing enforcement regime, having regard to guidance issued by the Department.
<http://www.dft.gov.uk/transportforyou/access/taxis/pubs/taxis/carriageofassistancedogsinta6154?page=2>

ii Duties under the Part 3 of the DDA

22. The Disability Discrimination Act 2005 amended the DDA 1995 and lifted the exemption in Part 3 of that Act for operators of transport vehicles. Regulations applying Part 3 to vehicles used to provide public transport services, including taxis and PHVs, hire services and breakdown services came into force on 4 December 2006. Taxi drivers now have a duty to ensure disabled people are not discriminated against or treated less favourably. In order to meet these new duties, licensing authorities are required to review any practices, policies and procedures that make it impossible or unreasonably difficult for a disabled person to use their services.

23. The Disability Rights Commission, before it was incorporated into the Equality and Human Rights Commission, produced a Code of Practice to explain the Part 3 duties for the transport industry; this is available at

http://www.equalityhumanrights.com/uploaded_files/code_of_practice_provision_and_use_of_transport_vehicles_dda.pdf. There is an expectation that Part 3 duties also now demand new skills and training; this is available through GoSkills, the sector skills council for road passenger transport. Go-Skills has also produced a DVD about assisting disabled passengers. Further details are provided in the training section of this guidance.

24. Local Authorities may wish to consider how to use available courses to reinforce the duties drivers are required to discharge under section 3 of DDA, and also to promote customer service standards for example through GoSkills.

25. In addition recognition has been made of a requirement of basic skills prior to undertaking any formal training. On-line tools are available to assess this requirement prior to undertaking formal training.

VEHICLES

iii Specification Of Vehicle Types That May Be Licensed

26. The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.

27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering MultiPurpose Vehicles, or to license them for fewer passengers than their seating capacity

(provided of course that the capacity of the vehicle is not more than eight passengers).

29. The owners and drivers of vehicles may want to make appropriate adaptations to their vehicles to help improve the personal security of the drivers. Licensing authorities should look favourably on such adaptations, but, as mentioned in paragraph 35 below, they may wish to ensure that modifications are present when the vehicle is tested and not made after the testing stage.

iv Tinted windows

30. The minimum light transmission for glass in front of, and to the side of, the driver is 70%. Vehicles may be manufactured with glass that is darker than this fitted to windows rearward of the driver, especially in estate and people carrier style vehicles. When licensing vehicles, authorities should be mindful of this as well as the large costs and inconvenience associated with changing glass that conforms to both Type Approval and Construction and Use Regulations.

v Imported vehicles: type approval (see also “stretched limousines”, paras 40-44 below)

31. It may be that from time to time a local authority will be asked to license as a taxi or PHV a vehicle that has been imported independently (that is, by somebody other than the manufacturer). Such a vehicle might meet the local authority’s criteria for licensing, but the local authority may nonetheless be uncertain about the wider rules for foreign vehicles being used in the UK. Such vehicles will be subject to the ‘type approval’ rules. For

passenger cars up to 10 years old at the time of first GB registration, this means meeting the technical standards of either:

- a European Whole Vehicle Type approval; - a British National Type approval; or - a Individual Vehicle Approval.

Most registration certificates issued since late 1998 should indicate the approval status of the vehicle. The technical standards applied (and the safety and environmental risks covered) under each of the above are proportionate to the number of vehicles entering service. Further information about these requirements and the procedures for licensing and registering imported vehicles can be seen at www.businesslink.gov.uk/vehicleapprovalschemes

vi Vehicle Testing

32. There is considerable variation between local licensing authorities on vehicle testing, including the related question of age limits. The following can be regarded as best practice:

- **Frequency Of Tests.** The legal requirement is that all taxis should be subject to an MOT test or its equivalent once a year. For PHVs the requirement is for an annual test after the vehicle is three years old. An annual test for licensed vehicles of whatever age (that is, including vehicles that are less than three years old) seems appropriate in most cases, unless local conditions suggest that more frequent tests are necessary. However, more frequent tests may be appropriate for older vehicles (see 'age limits' below). Local licensing authorities may wish to note that a review carried out by the National Society for Cleaner Air in 2005 found that taxis were more likely than other vehicles to fail an emissions test. This finding, perhaps suggests that emissions testing should be carried out on ad hoc basis and more frequently than the full vehicle test.

- **Criteria For Tests.** Similarly, for mechanical matters it seems appropriate to apply the same criteria as those for the MOT test to taxis and PHVs*. The MOT test on vehicles first used after 31 March 1987 includes checking of all seat belts. However, taxis and PHVs provide a service to the public, so it is also appropriate to set criteria for the internal condition of the vehicle, though these should not be unreasonably onerous.

*A manual outlining the method of testing and reasons for failure of all MOT tested items can be obtained from the Stationary Office see

<http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&Action=Book&From=SearchResults&ProductID=0115525726>

- Age Limits. It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles - for example, twice-yearly tests for vehicles more than five years old.
- Number Of Testing Stations. There is sometimes criticism that local authorities provide only one testing centre for their area (which may be geographically extensive). So it is good practice for local authorities to consider having more than one testing station. There could be an advantage in contracting out the testing work, and to different garages. In that way the licensing authority can benefit from competition in costs. (The Vehicle Operators and Standards Agency – VOSA – may be able to assist where there are local difficulties in provision of testing stations.)

33. The Technical Officer Group of the Public Authority Transport Network has produced Best Practice Guidance which focuses on national inspection standards for taxis and PHVs. Local licensing authorities might find it helpful to refer to the testing standards set out in this guidance in carrying out their licensing responsibilities. The PATN can be accessed via the Freight Transport Association.

vii Personal security

38. The personal security of taxi and PHV drivers and staff needs to be considered. The Crime and Disorder Act 1998 requires local authorities and others to consider crime and disorder reduction while exercising all of their duties. Crime and Disorder Reduction Partnerships are also required to invite public transport providers and operators to participate in the partnerships. Research has shown that anti-social behaviour and crime affects taxi and PHV drivers and control centre staff. It is therefore important that the personal security of these people is considered.

39. The owners and drivers of vehicles will often want to install security measures to protect the driver. Local licensing authorities may not want to insist on such measures, on the grounds that they are best left to the judgement of the owners and drivers themselves. But it is good practice for licensing authorities to look sympathetically on - or actively to encourage - their installation. They could include a screen between driver and passengers, or CCTV. Care however should be taken that security measures within the vehicle do not impede a disabled passenger's ability to communicate with the driver. In addition, licensing authorities may wish to ensure that such modifications are present when the vehicle is tested and not made after the testing stage.

40. There is extensive information on the use of CCTV, including as part of measures to reduce crime, on the Home Office website (e.g.

<http://scienceandresearch.homeoffice.gov.uk/hosdb/cctv-imaging-technology/CCTV-andimaging-publications>) and on the Information Commission's Office website

(www.ico.gov.uk). CCTV can be both a deterrent to would-be trouble makers and be a source of evidence in the case of disputes between drivers and passengers and other incidents. There is a variety of funding sources being used for the implementation of security measures for example, from community safety partnerships, local authorities and drivers themselves.

41. Other security measures include guidance, talks by the local police and conflict avoidance training. The Department has recently issued guidance for taxi and PHV drivers to help them improve their personal security. These can be accessed on the Department's website at: <http://www.dft.gov.uk/pgr/crime/taxiphv/>.

In order to emphasise the reciprocal aspect of the taxi/PHV service, licensing authorities might consider drawing up signs or notices which set out not only what passengers can expect from drivers, but also what drivers can expect from passengers who use their service. Annex B contains two samples which are included for illustrative purposes but local authorities are encouraged to formulate their own, in the light of local conditions and circumstances. Licensing authorities may want to encourage the taxi and PHV trades to build good links with the local police force, including participation in any Crime and Disorder Reduction Partnerships.

i Vehicle Identification

38. Members of the public can often confuse PHVs with taxis, failing to realise that PHVs are not available for immediate hire and that a PHV driver cannot be hailed. So it is important to distinguish between the two types of vehicle. Possible approaches might be:

- a licence condition that prohibits PHVs from displaying any identification at all apart from the local authority licence plate or disc. The licence plate is a helpful indicator of licensed status and, as such, it helps identification if licence plates are displayed on the front as well as the rear of vehicles. However, requiring some additional clearer form of identification can be seen as best practice. This is for two reasons: firstly, to ensure a more positive statement that the vehicle cannot be hired immediately through the driver; and secondly because it is quite reasonable, and in the interests of the travelling public, for a PHV operator to be able to state on the vehicle the contact details for hiring;

- a licence condition which requires a sign on the vehicle in a specified form. This will often be a sign of a specified size and shape which identifies the operator (with a telephone number for bookings) and the local licensing authority, and which also has some words such as 'pre-booked only'. This approach seems the best practice; it identifies the vehicle as private hire and helps to avoid confusion with a taxi, but also gives useful information to

the public wishing to make a booking. It is good practice for vehicle identification for PHVs to include the contact details of the operator.

- Another approach, possibly in conjunction with the previous option, is a requirement for a roof-mounted, permanently illuminated sign with words such as 'pre-booked only'. But it can be argued that any roof-mounted sign, however unambiguous its words, is liable to create confusion with a taxi. So roof-mounted signs on PHVs are not seen as best practice.

ii Environmental Considerations

39. Local licensing authorities, in discussion with those responsible for environmental health issues, will wish to consider how far their vehicle licensing policies can and should support any local environmental policies that the local authority may have adopted. This will be of particular importance in designated Air Quality Management Areas (AQMAs). Local authorities may, for example, wish to consider setting vehicle emissions standards for taxis and PHVs. However, local authorities would need to carefully and thoroughly assess the impact of introducing such a policy; for example, the effect on the supply of taxis and PHVs in the area would be an important consideration in deciding the standards, if any, to be set. They should also bear in mind the need to ensure that the benefits of any policies outweigh the costs (in whatever form).

iii Stretched Limousines

40. Local licensing authorities are sometimes asked to license stretched limousines as PHVs. It is suggested that local authorities should approach such requests on the basis that these vehicles – where they have fewer than nine passenger seats - have a legitimate role to play in the private hire trade, meeting a public demand. Indeed, the Department's view is that it is not a legitimate course of action for licensing authorities to adopt policies that exclude limousines as a matter of principle and that any authorities which do adopt such practices are leaving themselves open to legal challenge. A policy of excluding limousines creates an unacceptable risk to the travelling public, as it would inevitably lead to higher levels of unlawful operation. Public safety considerations are best supported by policies that allow respectable, safe operators to obtain licences on the same basis as other private hire vehicle operators. The Department has now issued guidance on the licensing arrangements for stretched limousines. This can be accessed on the Department's web-site at <http://www.dft.gov.uk/pgr/regional/taxis/stretchlimousines.pdf>.

41. The limousine guidance makes it clear that most operations are likely to fall within the PHV licensing category and not into the small bus category. VOSA will be advising

limousine owners that if they intend to provide a private hire service then they should go to the local authority for PHV licences. The Department would expect licensing authorities to assess applications on their merits; and, as necessary, to be proactive in ascertaining whether any limousine operators might already be providing an unlicensed service within their district.

42. Imported stretched limousines were historically checked for compliance with regulations under the Single Vehicle Approval (SVA) inspection regime before they were registered. This is now the Individual Vehicle Approval (IVA) scheme. The IVA test verifies that the converted vehicle is built to certain safety and environmental standards. A licensing authority might wish to confirm that an imported vehicle was indeed tested by VOSA for IVA before being registered and licensed (taxed) by DVLA. This can be done either by checking the V5C (Registration Certificate) of the vehicle, which may refer to IVA under the "Special Note" section; or by writing to VOSA, Ellipse, Padley Road, Swansea, SA1 8AN, including details of the vehicle's make and model, registration number and VIN number.

43. Stretched limousines which clearly have more than 8 passenger seats should not of course be licensed as PHVs because they are outside the licensing regime for PHVs. However, under some circumstances the SVA regime accepted vehicles with space for more than 8 passengers, particularly where the precise number of passenger seats was hard to determine. In these circumstances, if the vehicle had obtained an SVA certificate, the authority should consider the case on its merits in deciding whether to license the vehicle under the strict condition that the vehicle will not be used to carry more than 8 passengers, bearing in mind that refusal may encourage illegal private hire operation.

44. Many councils are concerned that the size of limousines prevents them being tested in conventional MoT garages. If there is not a suitable MoT testing station in the area then it would be possible to test the vehicle at the local VOSA test stations. The local enforcement office may be able to advise (contact details on <http://www.vosa.gov.uk>).

b QUANTITY RESTRICTIONS OF TAXI LICENCES OUTSIDE LONDON

45. The present legal provision on quantity restrictions for taxis outside London is set out in section 16 of the Transport Act 1985. This provides that the grant of a taxi licence may be refused, for the purpose of limiting the number of licensed taxis 'if, but only if, the [local licensing authority] is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet'.

46. Local licensing authorities will be aware that, in the event of a challenge to a decision to refuse a licence, the local authority concerned would have to establish that it had, reasonably, been satisfied that there was no significant unmet demand.

47. Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice. Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public - that is to say, the people who use taxi services. What benefits or disadvantages arise for them as a result of the continuation of controls; and what benefits or disadvantages would result for the public if the controls were removed? Is there evidence that removal of the controls would result in a deterioration in the amount or quality of taxi service provision?

48. In most cases where quantity restrictions are imposed, vehicle licence plates command a premium, often of tens of thousands of pounds. This indicates that there are people who want to enter the taxi market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. This seems very hard to justify.

49. If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.

50. As to the conduct of the survey, the Department's letter of 16 June 2004 set out a range of considerations. But key points are:

- the length of time that would-be customers have to wait at ranks. However, this alone is an inadequate indicator of demand; also taken into account should be...
- waiting times for street hailings and for telephone bookings. But waiting times at ranks or elsewhere do not in themselves satisfactorily resolve the question of unmet demand. It is also desirable to address...
- latent demand, for example people who have responded to long waiting times by not even trying to travel by taxi. This can be assessed by surveys of people who do not use taxis, perhaps using stated preference survey techniques.
- peaked demand. It is sometimes argued that delays associated only with peaks in demand (such as morning and evening rush hours, or pub closing times) are not

‘significant’ for the purpose of the Transport Act 1985. The Department does not share that view. Since the peaks in demand are by definition the most popular times for consumers to use taxis, it can be strongly argued that unmet demand at these times should not be ignored. Local authorities might wish to consider when the peaks occur and who is being disadvantaged through restrictions on provision of taxi services.

- consultation. As well as statistical surveys, assessment of quantity restrictions should include consultation with all those concerned, including user groups (which should include groups representing people with disabilities, and people such as students or women), the police, hoteliers, operators of pubs and clubs and visitor attractions, and providers of other transport modes (such as train operators, who want taxis available to take passengers to and from stations);
- publication. All the evidence gathered in a survey should be published, together with an explanation of what conclusions have been drawn from it and why. If quantity restrictions are to be continued, their benefits to consumers and the reason for the particular level at which the number is set should be set out.
- financing of surveys. It is not good practice for surveys to be paid for by the local taxi trade (except through general revenues from licence fees). To do so can call in question the impartiality and objectivity of the survey process.

51. Quite apart from the requirement of the 1985 Act, the Department’s letter of 16 June 2004 asked all local licensing authorities that operate quantity restrictions to review their policy and justify it publicly by 31 March 2005 and at least every three years thereafter. The Department also expects the justification for any policy of quantity restrictions to be included in the Local Transport Plan process. A recommended list of questions for local authorities to address when considering quantity controls was attached to the Department’s letter. (The questions are listed in Annex A to this Guidance.)

c TAXI FARES

52. Local licensing authorities have the power to set taxi fares for journeys within their area, and most do so. (There is no power to set PHV fares.) Fare scales should be designed with a view to practicality. The Department sees it as good practice to review the fare scales at regular intervals, including any graduation of the fare scale by time of day or day of the week. Authorities may wish to consider adopting a simple formula for deciding on fare revisions as this will increase understanding and improve the transparency of the process. The Department also suggests that in reviewing fares authorities should pay particular regard to the needs of the travelling public, with reference both to what it is reasonable to expect people to pay but also to the need to give taxi drivers sufficient

incentive to provide a service when it is needed. There may well be a case for higher fares at times of higher demand.

53. Taxi fares are a maximum, and in principle are open to downward negotiation between passenger and driver. It is not good practice to encourage such negotiations at ranks, or for on-street hailings; there would be risks of confusion and security problems. But local licensing authorities can usefully make it clear that published fares are a maximum, especially in the context of telephone bookings, where the customer benefits from competition. There is more likely to be a choice of taxi operators for telephone bookings, and there is scope for differentiation of services to the customer's advantage (for example, lower fares off-peak or for pensioners).

54. There is a case for allowing any taxi operators who wish to do so to make it clear – perhaps by advertising on the vehicle – that they charge less than the maximum fare; publicity such as ‘5% below the metered fare’ might be an example.

d DRIVERS

i Duration Of Licences

55. It is obviously important for safety reasons that drivers should be licensed. But it is not necessarily good practice to require licences to be renewed annually. That can impose an undue burden on drivers and licensing authorities alike. Three years is the legal maximum period and is in general the best approach. One argument against 3-year licences has been that a criminal offence may be committed, and not notified, during the duration of the licence. But this can of course also be the case during the duration of a shorter licence. In relation to this, authorities will wish to note that the Home Office in April 2006 issued revised guidance for police forces on the Notifiable Occupations Scheme. Paragraphs 62-65 below provide further information about this scheme.

56. However, an annual licence may be preferred by some drivers. That may be because they have plans to move to a different job or a different area, or because they cannot easily pay the fee for a three-year licence, if it is larger than the fee for an annual one. So it can be good practice to offer drivers the choice of an annual licence or a threeyear licence.

ii Acceptance of driving licences from other EU member states

57. Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 as enacted stated that an applicant for a taxi or private hire vehicle (PHV) driver's licence must

have held a full ordinary GB driving licence for at least 12 months in order to be granted a taxi or PHV driver's licence. This requirement has subsequently been amended since the 1976 Act was passed. The Driving Licences (Community Driving Licence) Regulations 1996 (SI 1996 No 1974) amended sections 51 and 59 of the 1976 Act to allow full driving licences issued by EEA states to count towards the qualification requirements for the grant of taxi and PHV driver's licences. Since that time, a number of central and eastern European states have joined the EU and the EEA and the

Department takes the view that drivers from the Accession States are eligible to acquire a taxi or PHV driver's licence under the 1976 Act if they have held an ordinary driving licence for 12 months which was issued by an acceding State (see section 99A(i) of the Road Traffic Act 1988). To complete the picture, the Deregulation (Taxis and Private Hire Vehicles) Order 1998 (SI 1998 No 1946) gave equal recognition to Northern Ireland driving licences for the purposes of taxi and PHV driver licensing under the 1976 Act (see section 109(i) of the Road Traffic Act 1988, as amended).

iii Criminal Record Checks

58. A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable. Taxi and PHV drivers can be subject to a Standard Disclosure (and for those working in “Regulated Activity” to an Enhanced Disclosure) through the Criminal Records Bureau. Both levels of Disclosure include details of spent and unspent convictions, cautions reprimands and final warnings. An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations. An Enhanced Disclosure is for those working in Regulated Activity and the Government has produced guidance in relation to this and the new

“Vetting and Barring Scheme” which is available at [\[gov.org.uk/default.aspx?page=402\]\(http://gov.org.uk/default.aspx?page=402\). \[The Department will issue further advice as the new SVG scheme develops.\]](http://www.isa-</p></div><div data-bbox=)

59. In considering an individual’s criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

60. Local licensing authorities will also want to have a policy on background checks for applicants from elsewhere in the EU and other overseas countries. One approach is to require a certificate of good conduct authenticated by the relevant embassy. The Criminal

Records Bureau website (www.crb.gov.uk) gives information about obtaining certificates of good conduct, or similar documents, from a number of countries.

61. It would seem best practice for Criminal Records Bureau disclosures to be sought when a licence is first applied for and then every three years, even if a licence is renewed annually, provided drivers are obliged to report all new convictions and cautions to the licensing authority.

iv Notifiable Occupations Scheme

62. Under this Scheme, when an individual comes to the notice of the police and identifies their occupation as a taxi or PHV driver, the police are requested to notify the appropriate local licensing authority of convictions and any other relevant information that indicates that a person poses a risk to public safety. Most notifications will be made once an individual is convicted however, if there is a sufficient risk, the police will notify the authority immediately.

63. In the absence of a national licensing body for taxi and PHV drivers, notifications are made to the local licensing authority identified on the licence or following interview. However, it is expected that all licensing authorities work together should they ascertain that an individual is operating under a different authority or with a fraudulent licence.

64. The police may occasionally notify licensing authorities of offences committed abroad by an individual however it may not be possible to provide full information.

65. The Notifiable Occupations Scheme is described in Home Office Circular 6/2006 which is available at

[http://www.basingstoke.gov.uk/CommitteeDocs/Committees/Licensing/20070710/3%20yr%20licencesupdate%20on%20hants%20constab%20procedures%20re%20Home%20office%20ci rc%](http://www.basingstoke.gov.uk/CommitteeDocs/Committees/Licensing/20070710/3%20yr%20licencesupdate%20on%20hants%20constab%20procedures%20re%20Home%20office%20ci rc%206;2006-%20Appendix%202.pdf)

206;2006-%20Appendix%202.pdf. Further information can also be obtained from the

Criminal Records Team, Joint Public Protection Information Unit, Fifth Floor, Fry Building, 2 Marsham Street, London SW1P 4DF; e-mail Samuel.Wray@homeoffice.gsi.gov.uk.

v Immigration checks

66. The Department considers it appropriate for licensing authorities to check on an applicant's right to work before granting a taxi or PHV driver's licence. It is important to note that a Criminal Records Bureau check is not a Right to Work check and any enquires about the immigration status of an individual should be addressed to the Border and Immigration Agency. Further information can be found at

www.bia.homeoffice.gov.uk/employingmigrants. More generally, the Border and

Immigration Agency's Employers' Helpline (0845 010 6677) can be used by licensing staff to obtain general guidance on immigration documentation, although this Helpline is not able to advise on individual cases. The authority can obtain case specific immigration status information, including whether a licensing applicant is permitted to work or details of work restrictions, from the Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR9 2BY . Further details on the procedures involved can be obtained by contacting the Unit (020 8196 3011).

vi Medical fitness

67. It is clearly good practice for medical checks to be made on each driver before the initial grant of a licence and thereafter for each renewal. There is general recognition that it is appropriate for taxi/PHV drivers to have more stringent medical standards than those applicable to normal car drivers because:

- they carry members of the general public who have expectations of a safe journey;
- they are on the road for longer hours than most car drivers; and
- they may have to assist disabled passengers and handle luggage.

68. It is common for licensing authorities to apply the "Group 2" medical standards – applied by DVLA to the licensing of lorry and bus drivers – to taxi and PHV drivers. This seems best practice. The Group 2 standards preclude the licensing of drivers with insulin treated diabetes. However, exceptional arrangements do exist for drivers with insulin treated diabetes, who can meet a series of medical criteria, to obtain a licence to drive category C1 vehicles (ie 3500-7500 kgs lorries); the position is summarised at Annex C to the Guidance. It is suggested that the best practice is to apply the C1 standards to taxi and PHV drivers with insulin treated diabetes.

vii Age Limits

69. It does not seem necessary to set a maximum age limit for drivers provided that regular medical checks are made. Nor do minimum age limits, beyond the statutory periods for holding a full driver licence, seem appropriate. Applicants should be assessed on their merits.

viii Driving Proficiency

70. Many local authorities rely on the standard car driving licence as evidence of driving proficiency. Others require some further driving test to be taken. Local authorities will want to consider carefully whether this produces benefits which are commensurate with the costs involved for would-be drivers, the costs being in terms of both money and broader obstacles to entry to the trade. However, they will note that the Driving Standards Agency provides a driving assessment specifically designed for taxis.

ix Language proficiency

71. Authorities may also wish to consider whether an applicant would have any problems in communicating with customers because of language difficulties.

x Other training

72. Whilst the Department has no plans to make training courses or qualifications mandatory, there may well be advantage in encouraging drivers to obtain one of the nationally-recognised vocational qualifications for the taxi and PHV trades. These will cover customer care, including how best to meet the needs of people with disabilities. More information about these qualifications can be obtained from GoSkills, the Sector Skills Council for Passenger Transport. GoSkills is working on a project funded by the Department to raise standards in the industry and GoSkills whilst not a direct training provider, can guide and support licensing authorities through its regional network of Regional Managers.

73. Some licensing authorities have already established training initiatives and others are being developed; it is seen as important to do this in consultation with the local taxi and PHV trades. Training can cover customer care, including how best to meet the needs of people with disabilities and other sections of the community, and also topics such as the

relevant legislation, road safety, the use of maps and GPS, the handling of emergencies, and how to defuse difficult situations and manage conflict. Training may also be considered for applicants to enable them to reach an appropriate standard of comprehension, literacy and numeracy. Authorities may wish to note that nationally recognised qualifications and training programmes sometimes have advantages over purely local arrangements (for example, in that the qualification will be more widely recognised).

Contact details are:

GoSkills, Concorde House, Trinity Park, Solihull, Birmingham, B37 7UQ.

Tel: 0121-635-5520

Fax: 0121-635-5521

Website: www.goskills.org e-mail: info@goskills.org

74. It is also relevant to consider driver training in the context of the 2012 Olympic and Paralympic Games which will take place at a number of venues across the country. One of the key aims of the Games is to “change the experience disabled people have when using public transport during the Games and to leave a legacy of more accessible transport”. The Games provide a unique opportunity for taxi/PHV drivers to demonstrate

their disability awareness training, and to ensure all passengers experience the highest quality of service.

xi Topographical Knowledge

75. Taxi drivers need a good working knowledge of the area for which they are licensed, because taxis can be hired immediately, directly with the driver, at ranks or on the street. So most licensing authorities require would-be taxi-drivers to pass a test of local topographical knowledge as a pre-requisite to the first grant of a licence (though the stringency of the test should reflect the complexity or otherwise of the local geography, in accordance with the principle of ensuring that barriers to entry are not unnecessarily high).

76. However, PHVs are not legally available for immediate hiring in the same way as taxis. To hire a PHV the would-be passenger has to go through an operator, so the driver will have an opportunity to check the details of a route before starting a journey. So it may be unnecessarily burdensome to require a would-be PHV driver to pass the same ‘knowledge’ test as a taxi driver, though it may be thought appropriate to test candidates’ ability to read a map and their knowledge of key places such as main roads and railway

stations. The Department is aware of circumstances where, as a result of the repeal of the PHV contract exemption, some people who drive children on school contracts are being deterred from continuing to do so on account of overly burdensome topographical tests. Local authorities should bear this in mind when assessing applicants' suitability for PHV licences.

e PHV OPERATORS

77. The objective in licensing PHV operators is, again, the safety of the public, who will be using operators' premises and vehicles and drivers arranged through them.

i Criminal Record Checks

78. PHV operators (as opposed to PHV drivers) are not exceptions to the Rehabilitation of Offenders Act 1974, so Standard or Enhanced disclosures cannot be required as a condition of grant of an operator's licence. But a Basic Disclosure, which will provide details of unspent convictions only, could be seen as appropriate, after such a system has been introduced by the Criminal Records Bureau. No firm date for introduction has yet been set; however, a feasibility study has been completed; the Criminal Records Bureau is undertaking further work in this regard. Overseas applicants may be required to provide a certificate of good conduct from the relevant embassy if they have not been long in this country. Local licensing authorities may want to require a reference, covering for example the applicant's financial record, as well as the checks outlined above.

ii Record Keeping

79. It is good practice to require operators to keep records of each booking, including the name of the passenger, the destination, the name of the driver, the number of the vehicle and any fare quoted at the time of booking. 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 6 months is generally appropriate as the length of time that records should be kept.

iii Insurance

80 It is appropriate for a licensing authority to check that appropriate public liability insurance has been taken out for premises that are open to the public.

iv Licence Duration

81. A requirement for annual licence renewal does not seem necessary or appropriate for PHV operators, whose involvement with the public is less direct than a driver (who will be alone with passengers). Indeed, a licence period of five years may well be appropriate in the average case. Although the authority may wish to offer operators the option of a licence for a shorter period if requested.

v Repeal of the PHV contract exemption

82. Section 53 of the Road Safety Act 2006 repealed the exemption from PHV licensing for vehicles which were used on contracts lasting not less than seven days. The change came into effect in January 2008. A similar change was introduced in respect of London in March 2008. As a result of this change, local licensing authorities are considering a range of vehicles and services in the context of PHV licensing which they had not previously licensed because of the contract exemption.

83. The Department produced a guidance note in November 2007 to assist local licensing authorities, and other stakeholders, in deciding which vehicles should be licensed in the PHV regime and which vehicles fell outside the PHV definition. The note stressed that it was a matter for local licensing authorities to make decisions in the first instance and that, ultimately, the courts were responsible for interpreting the law. However, the guidance was published as a way of assisting people who needed to consider these issues. A copy of the guidance note can be found on the Department's web-site at: <http://www.dft.gov.uk/pgr/regional/taxis/rsa06privatehirevehicles> As a result of a recent report on the impact of the repeal of the PHV contract exemption, the Department will be revising its guidance note to offer a more definite view about which vehicles should be licensed as PHVs. The report is also on the Department's web-site at: <http://www.dft.gov.uk/pgr/regional/taxis/phvcontractexemption/>.

f ENFORCEMENT

84. Well-directed enforcement activity by the local licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades. Indeed, it could be argued that the safety of the public depends upon licensing authorities having an effective enforcement mechanism in place. This includes actively seeking out those operators who are evading the licensing system, not just licensing those who come forward seeking the appropriate licences. The resources devoted by licensing authorities to enforcement will vary according to local circumstances, including for example any difficulties with touting by unlicensed drivers and vehicles (a problem in some urban areas). Local authorities will also wish to liaise closely with the police. Multi-agency enforcement exercises (involving, for example, the Benefits Agency) have proved beneficial in some areas.

85. Local licensing authorities often use enforcement staff to check a range of licensed activities (such as market traders) as well as the taxi and PHV trades, to make the best use of staff time. But it is desirable to ensure that taxi and PHV enforcement effort is at least partly directed to the late-night period, when problems such as touting tend most often to arise. In formulating policies to deal with taxi touts, local licensing authorities might wish to be aware that the Sentencing Guidelines Council have, for the first time, included guidance about taxi touting in their latest Guidelines for Magistrates. The Guidelines, which came into effect in August 2008, can be accessed through the SGC's web-site - www.sentencing-guidelines.gov.uk.

86. Some local licensing authorities employ taxi marshals in busy city centres where there are lots of hirings, again perhaps late at night, to help taxi drivers picking up, and would-be passengers queuing for taxis.

87. As part of enforcement, local licensing authorities will often make spot checks, which can lead to their suspending or revoking licences. They will wish to consider carefully which power should best be used for this purpose. They will note, among other things, that section 60 of the Local Government (Miscellaneous Provisions) Act 1976 provides a right of appeal for the licence-holder, whereas section 68, which is also sometimes used, does not; this can complicate any challenge by the licence-holder.

88. Section 52 of the Road Safety Act 2006 amended the Local Government (Miscellaneous Provisions) Act 1976 such that local authorities can now suspend or revoke a taxi or PHV driver's licence with immediate effect on safety grounds. It should be stressed that this power can only be used where safety is the principal reason for suspending or revoking and where the risk justifies such an approach. It is expected that in the majority of cases drivers will continue to work pending appeal and that this power will be used in one-off cases. But the key point is that the law says that the power must be used in cases which can be justified in terms of safety. The Department is not proposing to issue any specific guidance on this issue, preferring to leave it to the discretion of licensing authorities as to when the power should be used.

g TAXI ZONES

89. The areas of some local licensing authorities are divided into two or more zones for taxi licensing purposes. Drivers may be licensed to ply for hire in one zone only. Zones may exist for historical reasons, perhaps because of local authority boundary changes.

90. The Department recommends the abolition of zones. That is chiefly for the benefit of the travelling public. Zoning tends to diminish the supply of taxis and the scope for customer choice - for example, if fifty taxis were licensed overall by a local authority, but with only twenty five of them entitled to ply for hire in each of two zones. It can be confusing and frustrating for people wishing to hire a taxi to find that a vehicle licensed by the relevant local authority is nonetheless unable to pick them up (unless pre-booked) because they are in the wrong part of the local authority area. Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement. It can also promote fuel efficiency, because taxis can pick up a passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.

91. It should be noted that the Government has now made a Legislative Reform Order which removed the need for the Secretary of State to approve amalgamation resolutions made by local licensing authorities. The Legislative Reform (Local Authority Consent Requirements)(England and Wales) Order 2008 came into force in October 2008. Although these resolutions no longer require the approval of the Secretary of State, the statutory procedure for making them – in paragraph 25 of schedule 14 to the Local Government Act 1972- remains the same.

h FLEXIBLE TRANSPORT SERVICES

92. It is possible for taxis and PHVs to provide flexible transport services in a number of different ways. Such services can play a valuable role in meeting a range of transport needs, especially in rural areas – though potentially in many other places as well. In recent years there has been a significant increase in the provision of flexible services, due partly to the availability of Rural Bus Subsidy Grant and Rural Bus Challenge Support from the Department.

93. The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of taxi and PHV trade. It also should be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or

8 passenger seats) may be used for flexible services and should be considered for licensing in this context.

94. The main legal provisions under which flexible services can be operated are:

- Shared taxis and PHVs – advance bookings (section 11, Transport Act 1985):

licensed taxis and PHVs can provide a service at separate fares for up to eight passengers sharing the vehicle. The operator takes the initiative to match up passengers who book in advance and agree to share the vehicle at separate fares (lower than for a single hiring). An example could be passengers being picked up at home to go to a shopping centre, or returning from the shops to their homes. The operator benefits through increased passenger loadings and total revenues.

- Shared taxis – immediate hirings (section 10, Transport Act 1985): such a scheme is at the initiative of the local licensing authority, which can set up schemes whereby licensed taxis (not PHVs) can be hired at separate fares by up to eight people from ranks or other places that have been designated by the authority. (The authority is required to set up such a scheme if holders of 10% or more of the taxi licences in the area ask for one.) The passengers pay only part of the metered fare, for example in going home after a trip to the local town, and without pre-booking, but the driver receives more than the metered fare.

- Taxibuses (section 12, Transport Act 1985): owners of licensed taxis can apply to the Traffic Commissioner for a ‘restricted public service vehicle (PSV) operator licence’. The taxi owner can then use the vehicle to run a bus service for up to eight passengers. The route must be registered with the Traffic Commissioner and must have at least one stopping place in the area of the local authority that licensed the taxi, though it can go beyond it. The bus service will be eligible for Bus Service Operators Grant (subject to certain conditions) and taxibuses can be used for local authority subsidised bus services. The travelling public have another transport opportunity opened for them, and taxi owners have another business opportunity. The Local Transport Act 2008 contains a provision which allows the owners of PHVs to acquire a special PSV operator licence and register a route with the traffic commissioner. A dedicated leaflet has been sent to licensing authorities to distribute to PHV owners in their area alerting them to this new provision.

95. The Department is very keen to encourage the use of these types of services. More details can be found in the Department’s publication ‘Flexible Transport Services’ which can be accessed at: <http://www.dft.gov.uk/pgr/regional/buses/bol/flexibletransportservices>

96. The Transport Act 2000 as amended by the Transport Act 2008, requires local transport authorities in England outside London to produce and maintain a Local Transport Plan (LTP), having regard to any guidance issued by the Secretary of State.

The latest guidance published in July 2009 will cover the next round of LTPs from 2011. LTPs set out the authority's local transport strategies and policies for transport in their area, and an implementation programme. 82 LTPs covering all of England outside London have been produced and cover the period up to 2011. From 2011 local authorities will have greater freedom to prepare their LTPs to align with wider local objectives.

97. All modes of transport including taxi and PHV services have a valuable part to play in overall transport provision, and so local licensing authorities have an input to delivering the LTPs. The key policy themes for such services could be availability and accessibility. LTPs can cover:

- quantity controls, if any, and plans for their review;
- licensing conditions, with a view to safety but also to good supply of taxi and PHV services;
- fares;
- on-street availability, especially through provision of taxi ranks;
- vehicle accessibility for people with disabilities;
- encouragement of flexible services.

Annex A

j TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

Useful questions when assessing quantity controls of taxi licences

- Have you considered the Government's view that quantity controls should be removed unless a specific case that such controls benefit the consumer can be made?

i Questions relating to the policy of controlling numbers

- Have you recently reviewed the need for your policy of quantity controls?
- What form did the review of your policy of quantity controls take?
- Who was involved in the review?
- What decision was reached about retaining or removing quantity controls?
- Are you satisfied that your policy justifies restricting entry to the trade? • Are you satisfied that quantity controls do not:
 - reduce the availability of taxis; - increase waiting times for consumers;
 - reduce choice and safety for consumers?
- What special circumstances justify retention of quantity controls?
- How does your policy benefit consumers, particularly in remote rural areas?
- How does your policy benefit the trade?
- If you have a local accessibility policy, how does this fit with restricting taxi licences?

ii Questions relating to setting the number of taxi licences

- When last did you assess unmet demand?
- How is your taxi limit assessed?
- Have you considered latent demand, ie potential consumers who would use taxis if more were available, but currently do not?
- Are you satisfied that your limit is set at the correct level?
- How does the need for adequate taxi ranks affect your policy of quantity controls?

iii Questions relating to consultation and other public transport service provision

- When consulting, have you included etc
 - all those working in the market;
 - consumer and passenger (including disabled) groups;
 - groups which represent those passengers with special needs;
 - local interest groups, eg hospitals or visitor attractions;

- the police;
- a wide range of transport stakeholders eg rail/bus/coach providers and traffic managers?
- Do you receive representations about taxi availability?
- What is the level of service currently available to consumers (including other public transport modes)?

Annex B

k TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

i Notice for taxi passengers - what you can expect from the taxi trade and what the taxi trade can expect from you

The driver will:

- Drive with due care and courtesy towards the passenger and other road users.
- Use the meter within the licensed area, unless the passenger has agreed to hire by time.
- If using the meter, not start the meter until the passenger is seated in the vehicle.
- If travelling outside the licensed area, agree the fare in advance. If no fare has been negotiated in advance for a journey going beyond the licensing area then the driver must adhere to the meter.
- Take the most time-efficient route, bearing in mind likely traffic problems and known diversions, and explain any diversion from the most direct route.

The passenger will:

- Treat the vehicle and driver with respect and obey any notices (e.g. in relation to eating in the vehicle).
- Ensure they have enough money to pay the fare before travelling. If wishing to pay by credit card or to stop on route to use a cash machine, check with the driver before setting off.
- Be aware of the fare on the meter and make the driver aware if it is approaching the limit of their financial resources.
- Be aware that the driver is likely to be restricted by traffic regulations in relation to where s/he can stop the vehicle.

Notice for PHV passengers - what you can expect from the PHV trade and what the
ii PHV trade can expect from you

The driver will:

- Ensure that the passenger has pre-booked and agrees the fare before setting off.
- Drive with due care and courtesy towards the passenger and other road users.

- Take the most time-efficient route, bearing in mind likely traffic problems and known diversions, and explain any diversion from the most direct route.

The passenger will:

- Treat the vehicle and driver with respect and obey any notices (eg. in relation to eating in the vehicle).
- Ensure they have enough money to pay the fare before travelling. If wishing to pay by credit card or to stop on route to use a cash machine, check with the driver before setting off.
- Be aware that the driver is likely to be restricted by traffic regulations in relation to where s/he can stop the vehicle.

Annex C

TAXI AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE

1 Assessing applicants for a taxi or PHV driver licence in accordance with C1 standard

Exceptional circumstances under which DVLA will consider granting licences for vehicles over 3.5 tonnes or with more than 8 passenger seats.

Insulin treated diabetes is a legal bar to driving these vehicles. The exceptional arrangements that were introduced in September 1998 were only in respect of drivers who were employed to drive small lorries between 3.5 tonnes and 7.5 tonnes (category C1). The arrangements mean that those with good diabetic control and who have no significant complications can be treated as "exceptional cases" and may have their application for a licence for category C1 considered. The criteria are

- To have been taking insulin for at least 4 weeks;

- Not to have suffered an episode of hypoglycaemia requiring the assistance of another person whilst driving in the last 12 months;

- To attend an examination by a hospital consultant specialising in the treatment of diabetes at intervals of not more than 12 months and to provide a report from such a consultant in support of the application which confirms a history of responsible diabetic control with a minimal risk of incapacity due to hypoglycaemia;

- To provide evidence of at least twice daily blood glucose monitoring at times when C1 vehicles are being driven (those that have not held C1 entitlement in the preceding 12 months may provide evidence of blood glucose monitoring while driving other vehicles);

- To have no other condition which would render the driver a danger when driving C1 vehicles; and

- To sign an undertaking to comply with the directions of the doctor(s) treating the diabetes and to report immediately to DVLA any significant change in condition.

8.7 Statutory Taxi And Private Hire Vehicle Standards 2020 by the
Department for Transport



Department
for Transport

Statutory Taxi & Private Hire Vehicle Standards

July 2020

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1. Introduction

There is evidence to support the view that taxis and private hire vehicles are a high-risk environment. In terms of risks to passengers, this can be seen in abuse and exploitation of children and vulnerable adults facilitated and in some cases perpetrated by the trade and the number of sexual crimes reported which involve taxi and private hire vehicle drivers. Links between the trade and child sexual abuse and exploitation have been established in many areas and other investigations continue. Data on reported sexual assaults by taxi and private hire vehicle drivers evidence the risk to passengers; data from Greater Manchester and Merseyside suggest that, if similar offence patterns are applied across England, 623 sexual assaults per year are reported. These figures do not however account for the under reporting of crime which is estimated to be as high as 83 percent in the Crime Survey for England and Wales.

The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday; and the term “vulnerable individual” has the same meaning as the definition of a ‘vulnerable adult’ for the purpose of section 42 of the Care Act 2014, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):

- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
- (b) is experiencing, or is at risk of, abuse or neglect, and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

Whilst the focus of the Statutory Taxi and Private Hire Vehicle Standards is on protecting children and vulnerable adults, all passengers will benefit from the recommendations contained in it. There is consensus that common core minimum standards are required to regulate better the taxi and private hire vehicle sector, and the recommendations in this document are the result of detailed discussion with the trade, regulators and safety campaign groups. The Department therefore expects these recommendations to be implemented unless there is a compelling local reason not to.

It should be noted that as policing and criminal justice is not a devolved matter, the Statutory Taxi and Private Hire Vehicle Standards issued under the Policing and Crime Act 2017 will continue to have effect in Wales although responsibility for taxi and private hire vehicle policy was devolved to the Welsh Assembly in April 2018. Should the Welsh Government introduce legislation to regulate on these issues, the standards in this document would, cease to apply.

All local authorities and district councils that provide children’s and other types of services, including licensing authorities, have a statutory duty to make arrangements to ensure that their functions and any services that they contract out to others are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of

safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the Working Together to Safeguard Children statutory guidance.

The Statutory Taxi and Private Hire Vehicle Standards reflect the significant changes in the industry and lessons learned from experiences in local areas since the 2010 version of the Department's Best Practice Guidance. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults; the Immigration Act 2016 and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).

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

1.1.1 Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term 'taxi' is used throughout this document and refers to all such vehicles. Taxis can be hired immediately by hailing on the street or at a rank.

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

2. Consideration of the Statutory Taxi and Private Hire Vehicle Standards

The past failings of licensing regimes must never be repeated. The Department has carefully considered the measures contained in the Statutory Taxi and Private Hire Vehicle Standards and recommend that these should be put in to practice and administered appropriately to mitigate the risk posed to the public. The purpose of setting standards is to protect children and vulnerable adults, and by extension the wider public, when using taxis and private hire vehicles.

The Government set out in the Modern Crime Prevention Strategy the evidence that where Government, law enforcement, businesses and the public work together on prevention, this can deliver significant and sustained cuts in certain crimes. That is good news for victims and communities and it makes clear economic sense too. Educating the public on the risks of using unlicensed drivers and vehicles, how to identify the licensed trade and appropriate measure to take when using these services will protect help all passengers, more information is annexed to this document (Annex - Staying safe: guidance for passengers).

The Strategy committed to protect children and young people from the risk of child sexual abuse and exploitation (CSAE), by working with local authorities to introduce rigorous taxi and private hire vehicle licensing regimes. Both the Jay and Casey reports on CSAE highlighted examples of taxi/private hire vehicle drivers being directly linked to children that were abused, including instances when children were picked up from schools, children's homes or from family homes and abused, or sexually exploited.

The Casey Report made clear that weak and ineffective arrangements for taxi and private hire vehicle licensing had left the children and public at risk. The Department for Transport has worked with the Home Office, Local Government

Association (LGA), personal safety charities, trade unions and trade bodies,

holding workshops, forums, and sharing evidence and good practice with local authorities to assist in the setting of the standards.

This document is published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).

The document sets out a framework of policies that, under section 177(4), licensing authorities "must have regard" to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. "Having regard" is more than having a cursory glance at a document before arriving at a preconceived conclusion.

"Having regard" to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated. It is not a question of box ticking; the standards must be considered rigorously and with an open mind.

Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the Statutory Taxi and Private Hire Vehicle Standards might be drawn upon in any legal challenge to an authority's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in Statutory Taxi and Private Hire Vehicle Standards, and the policies and delivery plans that stem from these. The Department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).

The Statutory Taxi and Private Hire Vehicle Standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

3. Administering the Licensing Regime

1.2 Licensing policies

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.

When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. The importance of ensuring that the licensing regime protects the vulnerable cannot be overestimated. This was highlighted in the report by Dame Louise Casey CB of February 2015 on safeguarding failings.

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

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

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

Rotherham Metropolitan Borough Council (‘Rotherham Council’) provides an example of how the systematic review of policies and procedures and the implementation of a plan to drive improvements in practice can result in a wellfunctioning taxi and private hire vehicle sector that is rebuilding local confidence in the industry. The history of past failings here and elsewhere is well known, but it is the transparency and resolution that Rotherham Council has demonstrated and the high standards they now require that are rebuilding public confidence.

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.

1.3 Duration of licences

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.

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.

1.4 Whistleblowing

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.

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

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

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

The Public Interest Disclosure Act 1998 (PIDA), commonly referred to as whistleblowing legislation, provides protection for those that have a reasonable belief of serious wrongdoing, including failure to comply with professional standards, council policies or codes of practice/conduct. The PIDA is part of employment law. In the normal course of events, if a worker reveals information that his employer does not want revealed it may be a disciplinary offence. If someone leaked their employer's confidential information to the

press, they might expect to be dismissed for that. The PIDA enables workers who ‘blow the whistle’ about wrongdoing to complain to an employment tribunal if they are dismissed or suffer any other form of detriment for doing so. It is a qualified protection and certain conditions would have to be met for the worker to be protected. More information is available online for employees and employers.

1.5 Consultation at the local level

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.

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.

1.6 Changing licensing policy and requirements

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.

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.

4. Gathering and Sharing Information

Licensing authorities must consider as full a range of information available to them when making a decision whether to grant a licence and to meet their ongoing obligation to ensure a licensee remains suitable to hold a licence.

1.7 The Disclosure and Barring Service

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.

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).

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 Disclosure and Barring Service Update Service

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.

The DBS will search regularly to see if any relevant new information has been received since the certificate was issued. The frequency varies depending on the type of information; for criminal conviction and barring information, the DBS will search for updates on a weekly basis. For non-conviction information, the DBS will search for updates every nine months.

Licensing authorities are able to request large numbers of status checks on a daily basis. The DBS has developed a Multiple Status Check Facility (MSCF) that can be accessed via a web service. The MSCF enables organisations to make an almost unlimited number of Status Checks simultaneously. Further information on the MSCF is available from the DBS.

Should the MSCF advise that new information is available the DBS certificate should no longer be relied upon and a new DBS certificate requested.

1.8 Common Law Police Disclosure

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.

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.

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.

1.9 Licensee self-reporting

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.

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.

1.10 Referrals to the Disclosure and Barring Service and the Police

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.

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.

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.

1.11 Working with the Police

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 nonconviction intelligence, will assist furthering these relationships and reinforce the benefits of greater sharing of information.

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

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.

1.12 Sharing licensing information with other licensing authorities

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 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 decisionmaking. 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 nondisclosure of relevant information by applicants.

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.

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.

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.

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'.

1.13 Multi-agency Safeguarding Hub (MASH)

Multi-Agency Safeguarding Hubs are a way to improve the safeguarding response for children and vulnerable adults through better information sharing and high quality and timely safeguarding responses. MASHs (or similar models) should operate on three common principles: information sharing, joint decision making and coordinated intervention.

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

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.

1.14 Complaints against licensees

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.

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.

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.

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.

In terms of investigating complaints CCTV footage of an incident can provide an invaluable insight, providing an 'independent witness' to an event. This can assist in the decision whether to suspend or revoke a licence. The potential benefits of mandating CCTV in vehicles is discussed in paragraphs 7.7 - 7.12.

1.15 Overseas convictions

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

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 decisionmaking 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.

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.

5. Decision Making

1.16 Administration of the licensing framework

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.

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.

1.17 Training decision makers

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.

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.

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.

1.18 The regulatory structure

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.

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.

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

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

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.

Whether the structure proposed is introduced or an alternative model is more appropriate in local circumstances, the objective should remain the same - to separate the investigation of licensing concerns and the management of the licence process. Regardless of which approach is adopted, all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service.

1.19 Fit and proper test

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?

If, on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence.

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.

1.20 Criminal convictions and rehabilitation

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.

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.

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.

6. Driver Licensing

1.21 Criminality checks for drivers

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.

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.

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.

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.

1.22 Safeguarding awareness

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.

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.

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.

1.23 ‘County lines’ exploitation

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”.

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.

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.

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

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

The 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.

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.

1.24 Language proficiency

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.

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.

7. Vehicle Licensing

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.

1.25 Criminality checks for vehicle proprietors

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.

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.

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.

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.

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

1.26 In-vehicle visual and audio recording – CCTV

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.

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:

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

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.

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.

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.

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).

1.27 Stretched Limousines

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.

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.

8. Private Hire Vehicle Operator Licensing

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.

1.28 Criminality checks for private hire vehicle operators

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.

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

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 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.

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.

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.

1.29 Booking and dispatch staff

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.

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.

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.

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.

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.

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.

1.30 Record keeping

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.

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.

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.

1.31 Use of passenger carrying vehicles (PCV) licensed drivers

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.

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 licenced driver will be used who is subject to different checks and not required to have an enhanced DBS check.

9. Enforcing the Licensing Regime

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.

1.32 Joint authorisation of enforcement officers

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.

1.33 Setting expectations and monitoring

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 pointsbased 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 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.

1.34 Suspension and revocation of driver licences

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

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.

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.

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.

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.

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.

Annex – Assessment of Previous Convictions

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

Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application. Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most 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 or retain a licence.

Crimes resulting in death

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

Exploitation

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

Offences involving violence against the person

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

Possession of a weapon

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

Sexual offences

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

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

Dishonesty

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

Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the

completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

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

Motoring convictions

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

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

Drink driving/driving under the influence of drugs

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

Using a hand-held device whilst driving

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

Annex – Disclosure and Barring Service information

Table 1: Information included in criminal record checks

Information included	Type of check
Basic check	Standard DBS check
	Enhanced DBS check
	Enhanced DBS

(including barred list) check

Unspent convictions		Yes	Yes	Yes	Yes
Unspent cautions 1	Yes	Yes	Yes	Yes	
Spent convictions ²	No	Yes	Yes	Yes	
Spent cautions 1 & 2	No	Yes	Yes	Yes	
Additional police Information 3	No	No	Yes	Yes	
Barred list(s) Information 4	No	No	No	Yes	

1. Does not include fixed penalty notices, penalty notices for disorder or any other police or other out-of-court disposals.

2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not automatically disclosed on any level of certificate. Further guidance is available the DBS filtering guide.

3. This is any additional information held by the police which a chief police officer reasonably believes to be relevant and considers ought to be disclosed.

4. This is information as to whether the individual concerned is included in the children's or adults' barred lists maintained by the Disclosure and Barring Service (DBS).

Annex – CCTV Guidance

It is important to note that, in most circumstances, a licensing authority which mandates the installation of CCTV systems in taxis and private hire vehicles will be responsible for the data – the data controller. It is important that data controllers fully consider concerns regarding privacy and licensing authorities should consider how systems are configured, should they mandate CCTV (with or without audio recording). For example, vehicles may not be exclusively used for business, also serving as a car for personal use - it should therefore be possible to manually switch the system off (both audio and visual recording) when not being used for hire. Authorities should consider the Information Commissioner's view on this matter that, in most cases, a requirement for continuous operation is unlikely to be fair and lawful processing of personal data.

The Home Office 'Surveillance Camera Code of Practice' advises that government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is: • in pursuit of a legitimate aim;

- necessary to meet a pressing need;
- proportionate;

- effective, and;
- compliant with any relevant legal obligations

The Code also sets out 12 guiding principles which, as a 'relevant authority' under section 33(5) of the Protection of Freedoms Act 2012, licensing authorities must have regard to. It must be noted that, where a licence is granted subject to CCTV system conditions, the licensing authority assumes the role and responsibility of 'System Operator'. The role requires consideration of all guiding principles in this code. The failure to comply with these principles may be detrimental to the use of CCTV evidence in court as this may be raised within disclosure to the Crown Prosecution Service and may be taken into account.

The Surveillance Camera Commissioner (SCC) has provided guidance on the Surveillance Camera Code of Practice in its 'Passport to Compliance' which provides guidance on the necessary stages when planning, implementing and operating a surveillance camera system to ensure it complies with the code. The Information Commissioner's Office (ICO) has also published a code of practice which, in this context, focuses on the data governance requirement associated with the use of CCTV such as data retention and disposal, which it is important to follow in order to comply with the data protection principles. The SCC provides a self-assessment tool to assist operators to ensure compliance with the principles set of in the Surveillance Camera Code of Practice. The SCC also operate a certification scheme; authorities that obtain this accreditation are able to clearly demonstrate that their systems conform to the SCC's best practice and are fully compliant with the Code and increase public confidence that any risks to their privacy have been fully considered and mitigated.

The Data Protection Act 2018 regulates the use of personal data. Part 2 of the Data Protection Act applies to the general processing of personal data, and references and supplements the General Data Protection Regulation. Licensing authorities, as data controllers, must comply with all relevant aspects of data protection law. Particular attention should be paid to the rights of individuals which include the right to be informed, of access and to erasure. The ICO has provided detailed guidance on how data controllers can ensure compliance with these.

It is a further requirement of data protection law that before implementing a proposal that is likely to result in a high risk to the rights and freedoms of people, an impact assessment on the protection of personal data shall be carried out. The ICO recommends in guidance that if there is any doubt as to whether a Data Protection Impact Assessment (DPIA) is required one should be conducted to ensure compliance and encourage best practice. A DPIA will also help to assess properly the anticipated benefits of installing CCTV (to passengers and drivers) and the associated privacy risks; these risks might be mitigated by

having appropriate privacy information and signage, secure storage and access controls, retention policies, training for staff how to use the system, etc.

It is essential to ensure that all recordings made are secure and can only be accessed by those with legitimate grounds to do so. This would normally be the police if investigating an alleged crime or the licensing authority if investigating a complaint or data access request. Encryption of the recording to which the licensing authority, acting as the data controller, holds the key, mitigates this issue and protects against theft of the vehicle or device. It is one of the guiding principles of data protection legislation, that personal data (including in this context, CCTV recordings and other potentially sensitive passenger information) is handled securely in a way that 'ensures appropriate security', including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

All passengers must be made fully aware if CCTV is operating in a vehicle. Given that audio recording is considered to be more privacy intrusive, it is even more important that individuals are fully aware and limited only to occasions 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. As well as clear signage in vehicles, information on booking systems should be introduced. This might be text on a website, scripts or automated messages on telephone systems; the Information Commissioner's Office (ICO) has issued guidance on privacy information and the right to be informed on its website.

Annex - Staying Safe: Guidance for Passengers

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

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

Educate the public in the differences between taxis and private hire vehicles e.g.:

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

When using a private hire vehicle, passengers should always:

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

When using a taxi, passengers should where possible:

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

8.8 Ashley Bowes Cornerstone re potential Judicial Review

Mark Rostron <markgrostron@gmail.com>

Yellow cabs

Ashley Bowes < ashleyb@cornerstonebarristers.com

14 December 2015 20:56
at

To: Mark Rostron <markgrostron@gmail.com>

Thank you.

That is right, there is nothing immediately obvious that the Council have omitted in their consideration. It will take a fair bit of work to trawl through all the preliminary paperwork to build a case that would persuade a Judge to quash their decision. I would not be surprised if the Council have taken external legal advice in adopting this policy and are fully expecting a legal challenge. That is not to say a legal challenge by the GHA would be hopeless, but without doing that legwork it is hard to say whether you have a good case.

Local government is a small world and I do know Surrey officers and members well, and Guildford is no exception. I am however frequently instructed against Guildford Borough Council, and can assure you I have advised you candidly.

Kind regards, Ashley

Dr Ashley Bowes

Barrister, Cornerstone Barristers

On 14 Dec 2015, at 20:44, Mark Rostron <markgrostron@gmail.com> wrote:

Hi Ashley

I did receive your email. Thank you. The committee have been mulling over what to do next. Obviously, judicial review is one of the options.

There are a couple of issues that have been raised.

1. Concerns about your observation at the club house that nothing about GBC's actions stood out from a legal point of view.
2. Concerns about any past or continuing relationships you might have with GBC people, and whether that would have any effect on your opinion.
3. The cost of the further opinion, given that you have already had a good look at the papers.

Could you set the Committees minds at rest on these points?

I am reluctant to raise the points, but I'm sure you'll have come across these issues before.

I look forward to hearing from you, and would welcome an opportunity to discuss things if need be.

Kind regards

Mark Rostron

On 14 December 2015 at 19:06, Ashley Bowes
<ashleyb@cornerstonebarristers.com> wrote: Dear Mark,

Thank you for copying me to your emails. Just to confirm you did receive my email of the other day setting out the only remedy now is judicial review. If you did not receive it, let me know and I will resend.

If you want to chat over our options, do let me know.

Kind regards ,Ashley

Dr Ashley Bowes

Barrister, Cornerstone Barristers

8.9 Unauthorised livery meeting attendees

Justine Fuller <Justine.Fuller@guildford.gov.uk>
To: "markgrostron@gmail.com" <markgrostron@gmail.com>
Cc: Mike Smith <Mike.Smith@guildford.gov.uk>

8 January 2018 at 16:40

Dear Mr Rostron

Thank you for your query.

I confirm that there were no minutes of the meeting and the persons listed below attended:

- Councillor Gillian Harwood
- Councillor David Goodwin
- Councillor Marsha Moseley
- Councillor Graham Ellwood
- John Martin
- Justine Fuller

The query was passed to me from Customer Services.

Kind regards

Justine

Justine Fuller

Environmental Health Manager

Health and Community Care Services

Telephone: 01483 444370

Email: Justine.fuller@guildford.gov.uk

www.guildford.gov.uk

From: Mark Rostron [mailto:markgrostron@gmail.com]
Sent: 08 January 2018 11:16
To: Customer Services
Subject: Fwd: Attendees and minutes

Hi

Could someone reply urgently to this request?

And can you let me know who the first request was passed to?

Thanks

Mark Rostron

----- Forwarded message -----

From: **Mark Rostron** <markgrostron@gmail.com>
Date: 27 December
2017 at 18:08 **Subject:**
Attendees and minutes
To: customerservices@guildford.gov.uk

Dear Sirs

Could you email me with a copy of the minutes and attendees for the cross party group meeting referred to at the LICENSING COMMITTEE meeting on WEDNESDAY, 18 NOVEMBER 2015 at 7.00 pm in the following section:

5.13 A cross party group of Councillors was formed to evaluate the livery options including the formal consultation results and feedback from Surrey Coalition for

Disabled People and the Guildford Access Group.

Thanks

Mark Rostron

9 Cases and Legal Texts referred to

MICHAEL FORDHAM QC, JUDICIAL REVIEW HANDBOOK

9.1 Introduction

R (Beeson) v Dorset County Council [2002] EWCA Civ 1812 [2003] UKHRR 353 at [17] (Laws LJ , for the Court of Appeal :

“The basis of judicial review rests in the free - standing principle that every action of a public body must be justified by law, and at common law the High Court is the arbiter of all claimed justifications ”.

P16. Hard-edged questions. There are certain matters which the Court considers afresh for itself, imposing its own judgment.

Location 6451

16.1 Hard-edged review : correctness.

“Hard-edged” questions represent an important exception to the rule against the forbidden substitutionary approach. They can be thought of as questions which the public body has to decide, but is not permitted to get wrong.

In reviewing such questions, the Court does precisely what is forbidden on “soft” review : it does “substitute its own view”. That is because the role of the reviewing Court here is to ensure objective “correctness”.

16.1.1 A “hard-edged” question.

R (Homesun Holdings Ltd) v Secretary of State for Energy and Climate Change [2012] EWCA Civ 28 at [14] (Moses LJ, describing a question of vires as a “hard-edged question”);

R v Monopolies & Mergers Commission, ex p South Yorkshire Transport Ltd [1993] 1 WLR 23, 32D-F (Lord Mustill, distinguishing between “a broad judgment whose outcome could be overturned only on the ground of irrationality” and “a hard-edged question” involving “room for legitimate disagreement”), applied in R (Al-Sweady) v Secretary of State for Defence [2009] EWHC 2387 (Admin) [2010] HRLR 12 at [18] (Court needing to determine “hard-edged” questions of fact, in claim under the HRA).

16.1.2 Matters of objective judgment for the Court.

R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme [2001] 2 AC 349, 396G (“the ‘ intention of Parliament ’ as an objective concept, not subjective”);

ZT (Kosovo) v Secretary of State for the Home Department [2009] UKHL 6 [2009] 1 WLR348 at [23] (“whether or not a claim is clearly unfounded is only susceptible to one rational answer”).

16.2 Precedent fact.

The theory of a “precedent fact” (or “antecedent fact”) is that a factual question can be analysed as being a fundamental condition precedent to the proper exercise of the public body’s function, such that the body is not permitted to answer it incorrectly. Having identified a precedent fact question, the Court simply asks the question for itself, and can consider evidence which was not before the decision-maker. The idea is that a necessary “trigger” to the decision-making function needs objectively to have been met, for the body’s action to have been lawful. It may be that “precedent” is unnecessary, and a statutorily-recognised “objective” question of fact can be construed as intended to be for determination by the Court on a correctness standard.

16.3 Error of law as hard-edged review.

Errors of law are correctable by judicial review. Questions of law are therefore “hard-edged” questions, which the reviewing Court is entitled to answer for itself, substituting its own conclusion for that of the public authority. A material error of law is a ground for intervention.

16.3.1 Judicial review for error of law.

16.4 Interpretation as a hard-edged question.

In general, a question of “interpretation” (or “construction”) will be an objective legal question for the Court to decide, whereas a question of “application” will be a “soft” review.

Interpretation of legislation is a question of law, but interpretation of other materials is similarly often treated as hard-edged review, in which the Court asks whether the public body’s interpretation was “correct”.

There is no question of this court showing deference or respect to the views of the [defendants] because of the subject matter of the legislation”) (HL is [2006] UKHL 12 [2006] 2 AC 307) ;

R v Director of Public Prosecutions, ex p Kebilene [2000] 2 AC 326 (DC), 344B (Lord Bingham CJ : “In their interpretation of statutes British judges have no discretion : they must give the statutory language what they take to be its ordinary and natural meaning”) ;

R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme [2001] 2 AC 349, 396G (“the ‘ intention of Parliament ’ is an objective concept”) ;

R (Goodman) v London Borough of Lewisham [2003] EWCA Civ 140 [2003] Env LR 644 at [8] (as to “the authority’s understanding of the meaning in law of the expression used in the Regulation” : “If the authority reaches an understanding of those expressions that is wrong as a matter of law, then the court must correct that error : and in determining the meaning of the statutory expressions the concept of reasonable judgment as embodied in Wednesbury simply has no part to play”).

16.5 Procedural fairness as hard-edged review.

The basic objective standards of procedural fairness are determined directly by the Courts. What fairness demands is for the primary judgment of the Court. Public bodies do enjoy some procedural latitude in that, beyond the core minimum standards required by the Courts, procedural choices remain for the body’s judgment or discretion.

16.5.1 Requirements of fairness as a question for the Court.

R (Shoosmith) v Ofsted [2011] EWCA Civ 642 [2011] PTSR 1459 at [62] (Maurice Kay LJ : “The question is whether the procedure, taken as a whole, was objectively fair”);

Gillies v Secretary of State for Work and Pensions [2006] UKHL 2 [2006] 1 WLR 781 at [6] (“whether a tribunal ... was acting in breach of the principles of natural justice is essentially a question of law”);

R (Osborn) v Parole Board [2010] EWCA Civ 1409 [2011] UKHRR 35 at [39] (question of “fairness is ultimately one of law for the court”), [42] (to be “judged in the context of the circumstances identified and evaluated by [the defendant]”) ; R (Yusuf) v Parole Board [2010] EWHC 1483 (Admin) [2011] 1 WLR 63 at [14] (“it is for the court to decide what procedural fairness requires”);

R (Mahfouz) v General Medical Council [2004] EWCA Civ 233 at [19] (Carnwath LJ : “Where it is alleged that a lower tribunal has acted in breach of the rules of fairness or natural justice, the court is not confined to reviewing the reasoning of the tribunal on Wednesbury principles. It must make its own independent judgment ... Furthermore, the question whether there has been a breach of those principles is one of law, not fact”);

R (Refugee Legal Centre) v Secretary of State for the Home Department [2004] EWCA Civ 1481 [2005] 1 WLR 2219 at [8] (court decides whether system intrinsically unfair);

R v Panel on Take-overs and Mergers, ex p Guinness Plc [1990] 1 QB 146, 184C-E (“Of course the court will give great weight to the tribunal’s own view of what is fair, and will not lightly decide that a tribunal has adopted a procedure which is unfair ... But in the last resort “the court is the arbiter of what is fair”);

R (Brooks) v Parole Board [2003] EWHC 1458 (Admin) [34] (fairness a matter for the court but giving great weight to the tribunal’s own view);

R (A) v Lord Saville of Newdigate [2001] EWCA Civ 2048 [2002] 1 WLR 1249 at [7] (tribunal ‘ master of its own procedure ’, but reviewing Court deciding question of what fairness required).

16.5.2 Further illustrations.

R (Medway Council) v Secretary of State for Transport [2002] EWHC 2516 (Admin) at [32] (“It is for the Court to decide what is or is not fair. If a consultation procedure is unfair, it does not lie in the mouth of the public authority to contend that it had a discretion to adopt such a procedure”);

R v P Borough Council, ex p S [1999] Fam 188, 220B (“It is for the court to determine what is or is not required to satisfy the requirements of fairness”);

R v National Lottery Commission, ex p Camelot Group Plc [2001] EMLR 3 at [59] (“it is for the court to decide whether the procedure in this case was unfair, but ... in reaching that decision the court should take into account the views of the Commission as to the appropriateness of the procedure”);

R v Monopolies and Mergers Commission, ex p Stagecoach Holdings Plc The Times 23rd July 1996 (“in the vast majority of cases the court will be unlikely to regard what the MMC has reasonably believed to be fair as unfair”, but : “it is not what the MMC believed, however reasonably, to have been fair that should prevail but what was in fact fair ... [T] he court must be the arbiter of whether in any given circumstances there has been unfairness resulting in injustice and a need to intervene”);

R v Cheshire County Council, ex p C [1998] ELR 66, 73G-74B (“the court itself will decide on the relevant material whether fairness required an adjournment”);

R v Secretary of State for the Home Department, ex p Q [2000] UKHRR 386, 393G (whether decision an infringement of constitutional right to a fair trial being a question for the primary judgment of the Court);

R (Tromans) v Cannock Chase District Council [2004] EWCA Civ 1036 [2004] LGR 735 at [16] (“no real difference” between unfairness and unreasonableness here : if council did not act fairly here “it could not properly be said to have acted reasonably”).

16.5.3 Other aspects of fairness as questions for the Court.

R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme [2001] 2 AC 349, 396G (“the ‘ intention of Parliament ’ is an objective concept”);

16.6.3 Hard-edged questions and fresh evidence.

17.2.5 Material going to a ground for judicial review.

P17. Evidence and fact. Judicial review is generally conducted on written evidence and regarded as an unsuitable forum for resolving factual disputes, though this can be appropriate and necessary. > Location 6937

“where the proceedings are tainted by misconduct on the part of the minister or member of the inferior tribunal or the parties before it. Examples of such misconduct are bias by the decision-making body, or fraud or perjury by a party.

In each case fresh evidence is admissible to prove the particular misconduct alleged”);

R v Criminal Injuries Compensation Board, ex p A [1998] QB 659 (CA), 682B-C (Simon Brown LJ : “it is only in certain narrowly defined circumstances that the rule against judicially reviewing decisions by reference to fresh evidence is tempered”); R v West Sussex Quarter Sessions, ex p Albert and Maud Johnson Trust Ltd [1974] 1 QB 24

9.2 (C) FUNDAMENTAL FACTUAL ERROR.

9.3 (B) PRECEDENT FACT.

R v Secretary of State for the Environment, ex p Powis [1981] 1 WLR 584, 595H (“where the jurisdiction of the minister or inferior tribunal depends on a question of fact ... the court may receive and consider additional evidence to determine the jurisdictional fact”);

Eshugbayi Eleko v Government of Nigeria [1931] AC 662, 675 (on addressing precedent facts, Court to “give such directions as it thinks fit as to the production of other evidence, whether written or oral, and by cross-examination of deponents or otherwise”);

White & Collins v Minister of Health [1939] 2 KB 838, 847-848 (issue decided “upon the evidence before us”);

R v Secretary of State for the Home Department, ex p Momin Ali [1984] 1 WLR 663, 670H (Court required to consider “the evidence which is now available”);

R v Commissioners of Customs and Excise, ex p Lunn Poly Ltd [1999] Eu LR 653, 662B-D (questions of fact which EU law requires the domestic Court to decide for itself);

< 17.3.8 > (disputed facts and precedent fact).

9.4 (E) MISCONDUCT BY DECISION-MAKER / THIRD PARTY.

R v Mid-Glamorgan County Council, ex p B [1995] ELR 168, 179C (evidence going to whether bias and hostility at hearing);

R v Knightsbridge Crown Court, ex p Goonatilleke [1986] QB 1 (whether perjury by witness);

9.5 (F) DEFECTIVE INQUIRY.

R v Rochford District Council, ex p Ferdinando 8 September 1992 unrep. (evidence admissible “to show what could, upon proper inquiry, have been elicited ...”);

17.3 Judicial review and factual disputes.

Importantly, however, the judicial review Court may need to make findings of fact (with or without oral evidence), especially if crucial to whether a ground for intervention is made out. Where necessary, judicial review can and must be a suitable forum for deciding questions of fact, and must adopt the necessary means to do so.

17.3.12 Resolving disputed facts : bad faith.

< 52.1 > (bad faith) ;

R v Derbyshire County Council, ex p Times Supplements Ltd (1991) 3 Admin LR 241, 247G-248C (although “open to us ... to reject the contents of those affidavits in whole or in part (see Attorney General v News Group Newspapers Plc [1989] QB 110 at pages 127 and 128)”, counsel “sought and obtained [permission] to cross-examine ... the councillors who appeared before us”), 252E (“I did not believe them. The longer they were cross-examined the more manifest it became that they were implausibly endeavouring to buttress the insupportable ... their evidence ... displayed an unworthy lack of candour”);

cf. R v Bassetlaw District Council, ex p Oxby The Times 18th December 1997 (allegation of fraud against individual councillors appropriate for writ action rather than judicial review) ;

R v Tower Hamlets London Borough Council, ex p Luck [1999] COD 294 (whether bad faith allegation, to be pursued in private law action, could be sustained likely to be illuminated by disclosure).

17.4.5 Disclosure generally unnecessary given duty of candour.

R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1409 at [50] (Laws LJ : “there is no duty of general disclosure in judicial review proceedings. However there is-of course-a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide. The real question here is whether in the evidence put forward on his behalf the Secretary of State has given a true and comprehensive account of the way the relevant decisions in the case were arrived at”);

R v Secretary of State for the Home Department, ex p Fayed [1998] 1 WLR 763, 775C (Lord Woolf MR : “On an application for judicial review there is usually no [disclosure] because [disclosure] should be unnecessary because it is the obligation of the [defendant] public body in its evidence to make frank disclosure to the court of the decision-making process”), applied in R (Al-Sweady) v Secretary of State for Defence [2009] EWHC 2387 (Admin) [2010] HRLR 12 at [22]-[23] ;

R v Arts Council of England, ex p Women's Playhouse Trust [1998] COD 175 (see transcript) (Laws J, explaining that disclosure and cross-examination not automatic, but that "it is generally the duty of a public body made [defendant] in judicial review proceedings to make full and fair disclosure as necessary to assist the court").

17.4.14 When justice requires.

9.6 C. GROUNDS FOR JUDICIAL REVIEW public law wrongs justifying the Court's intervention

9.6.1 P46. Ultra vires. A body must not exceed received powers or breach duties, from higher authority, as properly interpreted. > Location 18191

9.6.2 46.1.3 Incompatibility with a related statute.

Apple Fields Ltd v New Zealand Apple & Pear Marketing Board [1991] 1 AC 344 (levy imposed under fruit marketing statute a breach of the competition guarantee in commerce legislation) ;

R v Secretary of State for Social Security, ex p Joint Council for the Welfare of Immigrants [1997] 1 WLR 275 (whether regulations inconsistent with rights reflected in subsequent Act), 293E (Waite LJ : "Subsidiary legislation must not only be within the vires of the enabling statute but must also be drawn as not to conflict with statutory rights already enacted by other primary legislation").

9.6.3 46.2 Interpretation securing validity : reading down / in.

Deciding whether one measure is compatible with a prior (superior) measure involves interpreting both. The Court may strive to uphold as valid the inferior measure by interpreting it in a particular way, to secure compatibility with the superior measure properly interpreted. This re-interpretation (reading down or in) is like trimming the spread of the impugned measure, to discard whatever would fall outside the pastry cutter of the superior source of law.

9.6.4 46.2.4 Reading in.

Elloy De Freitas v Permanent Secretary of Ministry of Agriculture Fisheries Lands and Housing [1999] AC 69, 77H ("it may be justifiable on occasion to imply words into a statute where there is an ambiguity or an omission and the implied words are necessary to remedy such a defect") ;

R (Electoral Commission) v Westminster Magistrates' Court [2010] UKSC 40 [2011] 1 AC 496 at [51] (forfeiture power "implicitly including" power to order lesser and proportionate sum).

9.6.5 P47. Jurisdictional error. A body must understand the scope and limits of its jurisdiction. Location 18347

“a condition precedent to jurisdiction was omitted”.

magistrates “would, of course, be acting ‘without jurisdiction or in excess of jurisdiction’ ... if, in the course of hearing a case within their jurisdiction they were guilty of some gross and obvious irregularity of procedure”.

Of course if one party submits to a tribunal that its powers are wider than in fact they are, then the tribunal must deal with that submission.

9.6.6 P48. Error of law. A body must not make a material error of law.

Cozens v Brutus : “The meaning of an English word is not a question of law because it does not in itself have any legal significance. It is the meaning to be ascribed to the intention of the notional legislator in using that word which is a statement of law.

R (Goodman) v London Borough of Lewisham [2003] EWCA Civ 140 [2003] Env LR 644 at [8] (a determination, “however fact-sensitive”, “is not simply a finding of fact, nor of discretionary judgment”, but : “Rather, it involves the application of the authority’s understanding of the meaning in law of the expression used in the Regulation. If the authority reaches an understanding of those expressions that is wrong as a matter of law, then the court must correct that error: and in determining the meaning of the statutory expressions the concept of reasonable judgement as embodied in Wednesbury simply has no part to play”).

P49. Error of fact. A body must not make errors of precedent fact, fundamental factual errors or findings unsupported by evidence.

< 49.2.2 > (unfair disregard of an established and relevant fact) ;

E v Secretary of State for the Home Department [2004] EWCA Civ 49 [2004] QB 1044 at [68] (“assuming the relevance of showing a mistake of fact in the Tribunal’s decision, there may need to be evidence to prove it”) ; R v Criminal Injuries Compensation Board, ex p A [1999] AC 330, 344G-345C (Lord Slynn).

9.6.7 P51. Insufficient inquiry. A body must sufficiently acquaint itself with relevant information, fairly presented and properly addressed.

9.6.8 P52. Bad faith/improper motive. A body must not act in bad faith or have an improper object or purpose.

9.6.9 P53. Frustrating the legislative purpose. A body must act so as to promote the purpose for which the power was conferred.

9.6.10 P54. Substantive unfairness. A body must not act conspicuously unfairly, nor so unfairly as to abuse its power, nor in unjustified breach of a legitimate expectation.

9.6.11 P56. Relevancy/irrelevancy. A body must have regard to all, but to only, legally relevant considerations.

9.6.12 P57. Unreasonableness. A body must not act unreasonably.

9.6.13 P60. Procedural unfairness. A body must adopt a fair procedure, giving those affected a fair and informed say.

(iii) Failure properly to marshal the evidence on which the decision should be based. For example, taking into account an immaterial factor or failing to take into account a material factor or failing to take reasonable steps to obtain the relevant information ... (iv) Failure to approach the decision in the right spirit. For example, where the decision maker is actuated by bias,

9.6.14 60.1.12 A unified fair appearances (fair-minded observer) test.

The court will not go into the likelihood of prejudice. The risk of it is enough”.

“Any unfairness, whether apparent or actual and however inadvertent, strikes at the roots of justice. I cannot be sure that the [claimants] were not prejudiced and accordingly I have no doubt that the justices’ order should be quashed”.

“It is not necessary for the [claimants] to demonstrate a real possibility that the coroner’s decision would have been different but for bias”.

9.6.15 P62. Reasons. Public Bodies are often required to give reasons, and always required to make the reasons they do give adequate.

9.6.16 63.1.2 Decision procured by fraud / collusion / perjury.

9.7 Duty of Candour

“ Counsel have a duty not only to their clients but to the court (and , I would add , to the other party) to make a professional appraisal of their case and to advise accordingly . It is not acceptable for a party to come to court when it knows that it has no legal leg to stand on in the hope that something may turn up ”

P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4806

“ In taking their decisions on behalf of the local community , members of local authorities are entitled to , and should , receive accurate advice from the council’s lawyers as to the extent of their powers ” Location 4863

10.3 Claimant’s duty of candour . 77 Judicial review claimants are under an important duty to make full and frank disclosure to the Court of material facts , and known impediments to judicial review (eg . alternative remedy , delay , adverse authority , statutory ouster) . Before the CPR , this was policed by the right to set aside , for material non - disclosure , permission (leave) granted without notice . Under CPR 54 , although the duty of candour remains , defendants and third parties are more directly protected than before , because the chance to send a pre - action letter of response and lodge a pre - permission acknowledgment of service means they can point out anything significant which has been overlooked . 10.3.1 Claimant’s duty of candour . 78 Cocks v Thanet District Council [1983] 2 AC 286 , 294G (need for “ frank disclosure of all relevant facts ”) ; R v Leeds City Council , ex p Hendry (1994) 6 Admin LR 439 , 444D (“ fundamental

Location 4889

10.3.3 Claimant candour / non - disclosure . (A) ASPECTS OF CANDOUR . R v Secretary of State for the Home Department , ex p Li Bin Shi [1995] COD 135 (duty to cite adverse authority) ; R v Cornwall County Council , ex p Huntington [1992] 3 All ER 566 , 576f - g (duty to point out existence of ouster clause in claim form) ; R v Law Society , ex p Bratsky Lesopromyshlenny Complex [1995] COD 216 (duty to identify alternative remedy) ; R v Lloyd's of London , ex p Briggs (1993) 5 Admin LR 698 , 707D (duty to point out delay and give reason to extend time) .

Highlight (yellow) - P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4901

(witness statement misleading as to facts) ; R v General Medical Council , ex p Chadha 17th May 1996 unrep . (inaccurate and misleading affidavit) ; R v Metropolitan Police Force Disciplinary Tribunal , ex p Lawrence The Times 13th July 1999 (non - disclosure of date and nature of disciplinary hearing) ; R v Secretary of State for the Home Department , ex p Beecham [1996] Imm AR 87 , 89 (discussing position where “ innocent misrepresentation ”) .

Highlight (yellow) - P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4915

10.4 Defendant / interested party's duty of candour . 79 A defendant public authority and its lawyers owe a vital duty to make full and fair disclosure of relevant material . That should include : (1) due diligence in investigating what material is available ; (2) disclosure which is relevant

9.8 P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure.

Location 4920

10.4.1 Defendant's duty of candour . 80 R (AHK) v Secretary of State for the Home Department (No . 2) [2012] EWHC 1117 (Admin) at [22] (Ouseley J , referring to “ the duty on the defendant authority to explain the full facts and reasoning underlying the decision challenged , and to disclose the relevant documents , unless in the particular circumstances of the case , other factors , including those which may fall short of requiring public interest immunity , may exclude their disclosure ”) ; Graham v Police Service Commission [2011] UKPC 46 at [18] (Sir John Laws (for the PC) : “ It is well established that a public authority , impleaded as respondent in judicial review proceedings , owes a duty of candour to disclose materials which are reasonably required for the court to arrive at an accurate decision ”) ; R (I) v Secretary of State for the Home Department [2010] EWCA Civ 727 at [50] (Munby LJ : “ Whatever may be the position at an earlier stage , once permission has been granted to apply for judicial review there is an obligation on the Secretary of State to make proper disclosure ”) ; R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1409 at [50] (Laws LJ : “ there is ... a very high duty on public authority respondents , not least central government , to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide ”) , applied in R (Al - Sweady) v Secretary of State for Defence [2009] EWHC 2387 (Admin) [2010] HRLR 12 at [22] ; Belize Alliance of Conservation Non - Governmental Organisations v Department of the Environment [2004] UKPC 6 [2004]

Env LR 761 at [86] (Lord Walker : “ A [defendant] authority owes a duty to the court to cooperate and to make candid disclosure , by way of [witness statement] , of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged in the judicial review proceedings ”) ; R v Lancashire County Council , ex p Huddleston [1986] 2 All ER 941 , 945g (judicial review “ to be conducted with all the cards face upwards on the table ”) , 947e (defendant “ should set out fully what they did and why , so far as is necessary , fully and fairly to meet the challenge ”) ; R v Secretary of State for Education , ex p S [1995] ELR 71 , 85D (“ It was of course incumbent on the Secretary of State in giving his decision to explain adequately how he has come to his conclusion ”) ; R v Kensington and Chelsea Royal Borough Council , ex p Assiter The Times 20th August 1996 (incumbent on authority to explain to the court the basis of decision) ; Fayed < 17.4.5 > : < 21.1.10 > (defendant’s duty of candour and permission stage) . 10.4.2 TSol’s Guidance on Candour and Disclosure . Treasury Solicitor’s Department : Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings (January 2010) [2010] JR 177 at [1.2] (“ The effect of [the duty of candour] is to require the public authority , when presenting its evidence in response to an application for judicial review to set out fully and fairly all matters that are relevant to the decision that is under challenge , or are otherwise relevant to any issue arising in the proceedings ”) .

(“ The duty extends to documents / information which will assist the claimant’s case and / or give rise to additional (and otherwise unknown) grounds of challenge ”) .

P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4963

Lord Chancellor [2011] EWHC 1146 (Admin) [2012] 1 WLR 838 at [5] (crucial documents “ have very properly been produced ”) ; R (Bancoult) v Secretary of State for the Foreign and Commonwealth Office [2001] QB 1067 at [63] (commending “ the wholly admirable conduct of the relevant government servants and counsel instructed for the [defendants] who have examined and then disclosed without cavil or argument all the material documents contained in the files of government departments , some of which ... are embarrassing and worse . This has exemplified a high tradition of cooperation between the executive and the judiciary in the doing of justice , and upholding the rule of law ”) ; Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 , 171G - H

P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4979

Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1409 at [55] (defendant having “ fallen short of those high standards of candour which are routinely adhered to by government departments faced with proceedings for judicial review ”) , [68] (“ the approach taken to the public decisions that had to be made fell unhappily short of the high standards of fairness and openness which is now routinely attained by British government departments ”) ; R (Rashid) v Secretary of State for the Home Department [2005] EWCA Civ 744 [2005] INLR 550 at [52] (criticising failure to cooperate and make candid disclosure of relevant facts and reasoning behind challenged decision) ; Central Broadcasting Services Ltd v Attorney General of Trinidad and Tobago [2006] UKPC 35 [2006] 1 WLR 2891 at [26] - [27] (non - disclosure of relevant facts) , [36] (“ highly regrettable ” that lower courts allowed to proceed on false premise) ; R v London Borough of Lambeth , ex p Campbell (1994) 26 HLR 618 , 622 (“ lamentable ” failure of duty “ to disclose all the facts which it ought reasonably to appreciate are relevant

to the issue or issues arising in a judicial review ”) ; Jordan Abiodun Iye v Secretary of State for the Home Department [1994] Imm AR 63 , 67 (“ unsatisfactory ” inability “ to make clear ” Secretary of State’s position) .

P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 4997

10.4.8 Due diligence duty for defendant’s legal advisers . R (DL) v Newham London Borough Council [2011] EWHC 1127 (Admin) [2011] 2 FLR 1033 at [42] (Charles J , explaining that it was not fair to place upon untrained employee of defendant authority “ the obligation of extracting all relevant material ” ; “ the exercise should be carried out or supervised by a lawyer (or other suitably trained and experienced person) by reference to the issues in the case ”) ; R (Al - Sweady) v Secretary of State for Defence [2009] EWHC 2387 (Admin) [2010] HRLR 12 at [42] (“ Secretary of State’s agents ... [duty] to carry out ... critically important and obviously highly relevant searches ” ; solicitor was required “ to take steps to ensure that their client knows what documents have to be disclosed ”) ; TSol Guidance [2010] JR 177 < 10.4.2 > at [1.3] (solicitor’s duty to investigate , explain and supervise , to go through the documents , and to ensure ongoing and prompt completeness) , [2] (roles and responsibilities) , [2.3] (Counsel’s duties to advise on disclosure , on the issues and on the nature and extent of the search to be carried out ”) , [3] (sufficiency of the search “ all - important ”) , [3.2] (relevance and proportionality) , [4.2] (public interest immunity) , [4.3] (redaction) , [6.1] (“ the case - handler should prepare and retain a statement recording : all searches made ; all decisions (by lawyers and clients) about the extent of searches ; all decisions made about the disclosability of documents ; all decisions about all actions taken in relation to the preparation of documents for inspection ”) .

P10. Cooperation & candour. The Court will expect from all parties cooperative behaviour and candid disclosure. > Location 5019

(“ The duty of candour applies as soon as the department is aware that someone is likely to test a decision or action affecting them . It applies to every stage of the proceedings including letters of response under the pre - action protocol , summary grounds of resistance , detailed grounds of resistance witness statements and counsel’s written and oral submissions ”) ; < 21.1.10 (B) > . 10.4.10 Opportunities for candour . < 19.1.5 > (letter of response) ; < 19.3 > (summary grounds) ;

9.9 46.1.7 Criminality as ultra vires.

R (Smeaton) v Secretary of State for Health [2002] EWHC 886 (Admin) [2002] 2 FLR 146 at [67] (order would be ultra vires if purporting to permit a criminal offence, because “Parliament is assumed not to have intended that statutory powers should be used to facilitate the offences”).

10 Statutes referred to

10.1 Local Government Miscellaneous Provisions Act 1976

47 Licensing of hackney carriages.

(1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.

48 Licensing of private hire vehicles.

(1) Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence:

Provided that a district council shall not grant such a licence unless they are satisfied—

(a) that the vehicle is—

(i) suitable in type, size and design for use as a private hire vehicle;

(ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;

(iii) in a suitable mechanical condition;

(iv) safe; and

(v) comfortable;

10.2 Local Government Act 2000

3 Limits on power to promote well-being.

(1) The power under section 2(1) does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).

10.3 The Legislative and Regulatory Reform Act 2006 Principles

(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.

(2) Those principles are that—

(a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

(b) regulatory activities should be targeted only at cases in which action is needed.

10.4 Regulators Code 2014.

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

10.5 Local Government Act 1974

26Matters subject to investigation.

(1)For the purposes of section 24A(1)(b), in relation to an authority to which this Part of this Act applies, the following matters are subject to investigation by a Local Commissioner under this Part of this Act—

- (a)alleged or apparent maladministration in connection with the exercise of the authority's administrative functions;
- (b)an alleged or apparent failure in a service which it was the authority's function to provide;
- (c)an alleged or apparent failure to provide such a service.
- (d)an alleged or apparent failure in a service provided by the authority in pursuance of arrangements under section 7A of the National Health Service Act 2006;
- (e)an alleged or apparent failure to provide a service in pursuance of such arrangements.]]

10.6 Police Protocol of GBC

Protocol between Guildford Borough Council and Surrey Police regarding the investigation of alleged criminal conduct by Borough Councillors and Parish Councillors

Introduction

This Protocol applies to Guildford Borough Council (“the Council”) and to Surrey Police (“the Police”) in the handling and investigation of Complaints which identify alleged criminal offences by Councillors, when acting in their capacity as Councillors. These Complaints may specifically relate to Disclosable Pecuniary Interests (DPIs), as created by Section 34 of the Localism Act 2011. Complaints could also allege other types of criminal offence that fall outside the scope of Section 34, where they relate to conduct committed while the individual was acting in his/her capacity as a Councillor.

This Protocol will assist in the reporting and investigation of potential criminal offences either arising from the failure of an elected member or co-opted member to register or declare DPIs or from speaking and voting where a member has a DPI and has not first sought a dispensation. This Protocol will also assist in the reporting and investigation of any other type of potential criminal offence by a Councillor acting in such a capacity.

This protocol is not relevant to other criminal offences (i.e. not DPI or those not committed while the individual was acting in his / her capacity as a Councillor) that are suspected to have been committed by an individual who happens to be a Councillor.

Please refer to Appendix 1 for definitions.

Purpose

- 1 The purpose of this Protocol is to:
 - (a) Provide guidance and clarify the role of the Monitoring Officer and the Police in the handling of Complaints that allege a criminal offence committed by a Councillor acting in that capacity;
 - (b) Provide guidance on the initial investigation and handling by the Police, of such alleged criminal offences;
 - (c) Assist the Police and its staff in identifying and correctly categorising alleged DPI offences;
 - (d) Avoid prejudicing any prosecution and/or continuing investigation into alleged DPI and other criminal offences.

DPI Offences (Section 34 Localism Act 2011)

- 2 DPI Offences are summary only, and a prosecution has a time limit of 12 months, beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge, provided this is no later than three years from the date the offence was committed and if proven, could result in the disqualification of the person concerned as well as the imposition of a fine.
- 3 The Investigating Officer should note that whilst these are summary only offences, they require the consent of the Director of Public Prosecutions to proceed. There is therefore a level of seriousness attached to DPI offences.
- 4 As only Councillors commit DPI Offences, police officers should be mindful of the need for impartiality to political parties and the potential for media impact on the issues surrounding such offences. For example, where a Complaint relates to the Council's planning committee dealing with an application, there will be local interest. Police officers should consider the need to carry out a community impact assessment.
- 5 Police officers should also be mindful of both local and national elections taking place around the date of the Complaint. During Purdah and elections, Police should take care when approaching any witnesses or suspects about the matter to avoid an interpretation of favouring one party or candidate over another.

Classes of persons reporting to the Police

- 6 It is expected that alleged criminal offences by Councillors may be reported to the Police from any of the following classes of persons, though this list is not exhaustive:
 - (a) Councillor;
 - (b) Council ex-employee;
 - (c) Council's Monitoring Officer;
 - (d) Member of the public;
 - (e) Member of the press;
 - (f) Persons who feel aggrieved by a recent Council decision

Such reports may present as verbal reports or written reports by e-mail, letter or telephone.

Council's Initial Jurisdiction Test for alleged misconduct

7 If the Complaint is direct to the Council, the Monitoring Officer will first assess the Complaint using the Initial Jurisdiction Test. This complies with the Council's Code of Conduct for Councillors. If the test is not met, for example because there has been no breach of the code or the conduct alleged is not a DPI then the Monitoring Officer may decide to take no further action.

If the allegation refers to a crime other than a DPI, the Monitoring Officer will refer the Complaint to the Police Designated Officer.

8 If the Complaint is directed to the Police due to it being a criminal allegation, the Police will contact the Monitoring Officer to inform them of the Complaint should it be a DPI offence or other offence allegedly committed by a Councillor whilst they were acting in their capacity as a Councillor.

9 However the Complaint is submitted, if the Complaint relates to DPI Offences the Monitoring Officer will confirm to the Police that:

- (a) The alleged conduct took place after the commencement of Section 34 of the Localism Act 2011;
- (b) The Subject Member was a member of the Council or Parish Council at the time of the alleged conduct;
- (c) The Subject Member was acting in an official capacity as a Councillor at the time of the alleged conduct;
- (d) The Subject Member was not acting as a member of another authority at the time of the alleged conduct;
- (e) If the facts are capable of establishment as a matter of evidence, the alleged conduct could constitute a breach of the Code of Conduct; and
- (f) That the complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

Once the Police receive the assurances set out above, they will then review the matter to ascertain whether an investigation is appropriate in line with this Protocol and established police procedures. The Subject Member may be informed of the allegation prior to an interview under PACE. (This must be decided by the Police).

If the alleged DPI Offence was committed before the commencement of the Localism Act 2011 or is an expression of dissatisfaction with the Council's decisions or the matter relates to a different authority, the Complainant should be informed. If the matter relates to a different authority, the Monitoring Officer will refer it to the other authority.

Allocation to and appointment of Police Investigating Officer

- 10** If the Complaint includes an alleged crime, it is assessed in accordance with police policies and procedures and if appropriate, allocated to an officer of such rank as the police deem appropriate for investigation.
- 11** The Police will contact the Monitoring Officer who will confirm the outcome of their assessment of the Initial Jurisdiction Test and whether the allegation is a potential breach of the Council's Code of Conduct and/or a DPI Offence.

Initial Investigation by Investigating Officer

- 12** The Investigating Officer must make early contact with the Monitoring Officer outlining the nature of the allegation and, in respect of DPI offences, this should be done as soon as practicable, as there are time limits on the prosecution of these offences. The Monitoring Officer will provide assistance where deemed appropriate. The Monitoring Officer will notify and consult with Council Officers as appropriate and subject to consent and advice from the Investigating Officer.
- 13** The Investigating Officer should request the following from the Monitoring Officer:
 - (a) That the Subject Member's register of interests (if relevant to the offence) be checked and minutes of relevant council meetings be made available or be sign posted to their whereabouts;
 - (b) Any other relevant material or information on the alleged offence, those persons and witnesses involved or the circumstances surrounding the alleged offence;
 - (c) Any other information held by the Council relating to the Complaint;
 - (d) If the allegation relates to a DPI, whether it is possible through the circumstances complained of, that the Subject Member or another party has benefited by the failure to disclose the DPI.

Conflict of Interest

- 14** Any officer or member of the Police who investigates a Complaint must follow Surrey Police Conflicts of Personal Interest procedure. This instructs the Police on how to protect themselves from allegations of bias.
- 15** Surrey Police expects all staff to deal fairly, consistently and without bias with other members of staff and the public during their daily activities.

- 16** Surrey Police expects all individuals to declare any conflict of personal interest(s) that has, or could reasonably be perceived to have, a detrimental impact on their ability to act in an objective manner. Declaring the interest should protect the individual and the organisation from allegations of bias.

Crime Recording

- 17** Offences under Section 34 Localism Act 2011 are not notifiable – ie a crime report is not required for Home Office National Crime Recording Standards purposes. A crime report is created where an Investigating Officer identifies a more serious notifiable offence, for example fraud offences.

Powers to obtain evidence regarding DPI Offences

- 18** It is noted that DPI Offences are summary only offences and therefore, the power to obtain warrants under Section 8 of the Police and Criminal Evidence Act is not available to police officers.

Suspect Interviews

- 19** These should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice and applicable legislation.
- 20** The Investigating Officer should bear in mind that an early account from the suspect of these alleged offences might be helpful, depending on the circumstances. Early consultation with the Monitoring Officer may assist with correctly ascertaining the circumstances that gave rise to the Complaint.

Case Resolution for alleged DPI Offences and other alleged criminal offences

- 21** The Police will liaise regularly with the Monitoring Officer in confidence to discuss progress of any investigation of a criminal offence and seek to resolve any conflicts.
- 22** Where the investigation reveals prima facie evidence of a criminal offence having been committed, then this should be pursued, investigated and an appropriate method of disposal agreed. Whenever appropriate, the case file will be submitted to the Crown Prosecution Service for consideration under the Code for Crown Prosecutors or some other form of resolution.
- 23** If the Police should become aware that the victim has exercised their right to challenge the decision on whether or not to prosecute, the Police will notify the Monitoring Officer as soon as possible.

- 24 If the matter proceeds to prosecution, the Monitoring Officer and the Complainant will be notified accordingly. The Monitoring Officer will take no further action. The results of the prosecution will be notified to the Monitoring Officer and the Complainant.
- 25 If the matter does not proceed to prosecution, the Monitoring Officer and Complainant will be notified accordingly. The Monitoring Officer may, based on the Investigating Officer's report, consider what, if any action, to take under the Council's Code of Conduct and Arrangements.
- 26 It must be borne in mind by the Council and the Police that the conclusion of a Complaint may attract adverse publicity and potentially call into question the reputation of the Council and the Police. It is therefore important that all reasons for decisions taken are clearly recorded.
- 27 A more senior Police officer will review closure of the investigation prior to formal closure of the case.

Freedom of Information Requests and Data Protection

- 28 The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. Members of the public can request information held by the Council. Where information falls within one of the exemptions, public bodies are not obliged to comply with the duty of disclosure, however, they can choose to do so in the interests of transparency.
- 29 Information held for the purpose of investigations is exempt under Section 30 FOIA. Such information held at any time for such purposes is exempt, although the public interest in maintaining the exemption must outweigh that of disclosure.
- 30 Information which is not exempt under s.30 but relates to law enforcement is covered by the exemption at Section 31 FOIA (prejudice to the prevention or detection of crime). Section 31 is prejudice-based – ie before the information can be withheld, the public authority must demonstrate that disclosure would, for example, prevent a crime from being detected, or prevent an offender from being apprehended. Again, there is a requirement to conduct a public interest test.
- 31 Any information relating to an investigation under this Protocol need not be disclosed. However, the Reviewing Officer should consider appropriate releases of information and conduct a public interest review with regard to all the circumstances of each case.
- 32 No data should be released that would prejudice any person's right to a fair trial at court.

- 33** The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 apply to the personal data processed by the Council, including the personal data of customers, borough residents, employees, Councillors, Parish Councillors and Co-opted members.
- 34** The GDPR does not apply to certain activities, including processing covered by the Law Enforcement Directive, processing for national security purposes and processing carried out by individuals purely for personal/household activities.
- 35** The Police should seek advice from its Data Protection Team in relation to information sharing with the Council, in particular the Monitoring Officer.

Appendix 1 Definitions

Definitions

“Arrangements” means the arrangements which the Council has put in place under the Localism Act 2011, section 28 (6) and (7) under which allegations that a Councillor has failed to comply with the relevant code of conduct (a) can be investigated and (b) decisions made on such allegations.

“Community Impact Assessment” is a means of measuring the mood (actual or anticipated) of any group of people as a result of an incident, event, or pattern which is likely to cause concerns or tensions. It is used to inform police and partnership interventions through the National Intelligence Model tasking and coordination process, usually post-event, to restore tranquility to the area or group affected. Successful community impact assessment demands strong and sustained professional relationships with key individual networks and must be contextualised within the current social and political climate

“Complaint” means a complaint regarding an elected member or co-opted member, acting in that capacity, reported to the Council or the Police. This complaint may allege that a criminal offence has been committed. The criminal offence alleged may include DPI Offences under Section 34 Localism Act 2011.

“Complainant” means a person who has submitted a complaint as defined above either to the Police or the Council.

“Councillors” means any elected member or voting co-opted member of Guildford Borough Council or Parish Council within the Borough of Guildford.

“Code of Conduct” means the relevant code of conduct adopted by the Council or relevant Parish Council under the Localism Act 2011, section 27 (2).

“Designated Officer” means the officer designated by the Police for the purpose of sharing information under this Protocol. This person will be whoever the DCI of Crime for West Surrey is at the time of the Complaint.

“Disclosable Pecuniary Interest” (DPI) means an interest within the prescribed descriptions set out within the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

“DPI Offence” means any one or more of the offences created by the Localism Act 2011, section 34 as follows:

If, without reasonable excuse, a Councillor:

- (a) **Sections 30(1)** – Fails to notify the Monitoring Officer before the end of 28 days beginning with the day on which he/she becomes an elected member or voting co-opted member, of any DPI which he/she has at the time when the notification is given.
- (b) **Section 31(2)** – Fails to disclose the DPI at Council meetings where the interest is not entered in the Council’s Register of Members’ Interests.
- (c) **Section 31(3)** – Fails to notify the Monitoring Officer of a DPI before the end of 28 days beginning with the date of disclosure at a Council meeting, if the interest is not entered in the Council’s register of Members’ Interests and is not the subject of a pending notification.
- (d) **Section 31(4)** – Takes part in the discussion or votes, or further discussions or votes, at a Council meeting on matters which are being considered at the meeting in which he/she has a DPI.
- (e) **Section 31(7)** – Fails to notify the Monitoring Officer of a DPI before the end of 28 days beginning with the date when he/she becomes aware that he/she has such an interest in a matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a council function.

False or misleading information – it is also a criminal offence to knowingly or recklessly provide false or misleading information in any of the disclosures or notifications under Sections 30(1), 31(2), 31(3) or 31(7).

“Initial Jurisdiction Test” is an assessment by the Monitoring Officer, to determine whether or not, based on information supplied by the Complainant, if the matter were proven, it could or would amount to a breach of the Council’s Code of Conduct. No Council investigations or hearings are conducted at this stage.

“Investigating Officer” means the person appointed by the Police to undertake a review of the complaint alleging a criminal offence. The Investigating Officer and the Designated Officer can be the same person.

“Monitoring Officer” means the statutory officer appointed by the Council under the Local Government Act 1989, sections 5 and 5A. References to Monitoring Officer in the Protocol include the Deputy Monitoring Officer.

“Parish Council” means any of the 23 parish councils within the Borough of Guildford.

“Purdah” is the pre-election period in the United Kingdom, specifically the time between the announcement of an election and the final election results, which affects civil servants. Purdah prohibits central and local government from making announcements about any new or controversial government initiatives (such as modernisation initiatives or administrative and legislative changes) which could be seen to be advantageous to any candidates or parties in the forthcoming election. Where a court determines that actual advantage is given to a candidate, this may amount to a breach of Section 2 of the Local Government Act 1986.

“Subject Member” means an elected or co-opted member of the Council or any elected or co-opted member of any Parish Council within the Borough.

“the Council” means Guildford Borough Council.

“the Police” means Surrey Police.

“the Reviewing Officer” means the officer at the Council or the Police dealing with the request for information under the Freedom of Information Act 2000, the GDPR, the Data Protection Act 2018 or any other data protection legislation or regulation that may be enacted.

This Protocol was adopted by:

Surrey Police, acting by:

Signature:



Name and rank:

Gavin Stephens, Chief Constable

Guildford Borough Council, acting by:

Signature:



Diane Owens
Principal Solicitor
Property, Contracts and Procurement

Authorised Officer (name and position):

10.7 Human Rights Act 1998 Article 6

Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

11 Duty of Candour

PLP JUDICIAL REVIEW TRENDS AND FORECASTS 2017 THE

DUTY OF CANDOUR: WHERE ARE WE NOW?

Iain Steele, Blackstone Chambers

DEFENDANT’S DUTY OF CANDOUR

1. The duty: A public authority defendant in judicial review proceedings has a duty “to co-operate and to make candid disclosure by way of affidavit of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged”: *Belize Alliance of Conservation NonGovernment Organisations v Department of the Environment* [2004] UKPC 6 at §86. Put another way, the public authority must assist the court with full and accurate explanations of all facts relevant to the issue the court must decide: *R (Quark Fishing Ltd) v SSFCA* [2002] EWCA Civ 1409 at §50.

2. The underlying principle is that a public authority’s objective should not be to win the case at all costs, but to assist the court in its role of ensuring the lawfulness of the decision under challenge, with a view to upholding the rule of law and improving standards in public administration. It must therefore fairly and fully disclose all relevant information, including that which is harmful to its own case. See *R v Lancashire County Council, ex parte Huddleston* [1986] 2 All ER 941 at 945:

“This development [i.e. the remedy of judicial review and the evolution of a specialist administrative or public law court] has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration. ... The analogy is not exact, but just as the judges of the inferior courts when challenged on the exercise of their jurisdiction traditionally explain fully what they have done and why they have done it, but are not partisan in their own defence, so should be the public authorities. It is not discreditable to get it wrong. What is discreditable is a reluctance to explain fully what has occurred and why. ... Certainly it is for the applicant to satisfy the court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it to be unjustified. But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority’s hands.”

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3. The duty's importance "*is impossible to overstate*" and every failure on the part of the executive "*is inimical to the rule of law*": *R (Saha) v Secretary of State for the Home Department (Secretary of State's duty of candour)* [2017] UKUT 17 (IAC) at §§47-48.
4. **Trigger:** The duty "*endures from the beginning to the end of the proceedings*": *R (Bilal Mahmood) v SSHD* [2014] UKUT 439 at §23. But when do "the proceedings" begin?
5. According to TSol's 2010 Guidance⁴ (§1.2), the duty applies as soon as the relevant body is aware that someone is likely to test a decision or action affecting them. It applies "*to every stage of the proceedings including letters of response under the pre-action protocol, summary grounds of resistance, detailed grounds of resistance, witness statements and counsel's written and oral submissions*". It is an ongoing duty and must therefore be kept under review as the case progresses: "*For example, if after service of evidence, further relevant information comes to light, that information must be disclosed to the other parties to the proceedings and put before the Court at the earliest possible opportunity*".
6. CPR PD54A §12 By contrast, in April 2016 the Lord Chief Justice published a Discussion Paper⁵ which proposed that "clarification" of the duty should be provided by amending CPR PD54A §12 to provide: "*12.2 A defendant should, in its detailed grounds or evidence, identify any relevant facts, and the reasoning, underlying the measure in respect of which permission to apply for judicial review has been granted.*" It was suggested that this wording reflects existing case law, although the point was left open in *I v SSHD* [2010] EWCA Civ 727 at §50. No change has yet been made to CPR PD54A.
7. **Documents / information:** The duty is not solely or specifically a duty to disclose documents. As the TSol Guidance notes, the duty is information-based and is not restricted to documents. A public authority must explain its decision-making process, not simply disclose documents created in that process. In particular, it may not suffice to provide "*a pile of undigested documents*", particularly in a document heavy claim, without an explanation of the full significance of a document: *R (Khan)*

⁴ Treasury Solicitor's Department, "Guidance on discharging the duty of candour and disclosure in judicial review proceedings" (January 2010).

⁵ "Defendant's duty of candour and disclosure in judicial review proceedings: A discussion paper" (28 April 2016). The paper was written by Cranston and Lewis JJ.

v SSHD [2016] EWCA Civ 416 at §46. Further, the obligation to serve relevant material is not displaced or diminished by the fact that material may be publicly available online: *UB (Sri Lanka) v SSHD* [2017] EWCA Civ 85 at §21.

8. **Relationship with disclosure:** The existence of the duty of candour explains why there is no general duty of disclosure in judicial review proceedings. See CPR PD54A §12.1: “Disclosure is not required unless the court orders otherwise.” This means that standard disclosure under CPR Part 31 does not ordinarily apply. The idea is that standard disclosure would generally be unnecessary because the defendant will in any event have discharged its duty of candour. See e.g. *R v SSHD, ex p Fayed* [1998] 1 WLR 763 at 775 per Lord Woolf MR. Standard disclosure is also viewed as unnecessary since the focus of judicial review is on the lawfulness of the decision under challenge, rather than on determining disputed issues of fact.
9. Disclosure of documents nevertheless has an important role in judicial review.
10. First, the voluntary provision of copies of documents may be a method of discharging the duty of candour: see for example *R (Sustainable Development Capital LLP) v SSBEIS* [2017] EWHC 771 (Admin) at §80.
11. Secondly, disclosure of documents (and not merely a précis in a witness statement) is required where it is necessary for fairly and justly disposing of an issue. This is generally more likely in HRA cases involving issues of proportionality: *Tweed v Parades Commission for Northern Ireland* [2006] UKHL 53, [2007] 1 AC 650 at §§3, 32, 57; *R (Al-Sweady) v SSD* [2009] EWHC 2387 (Admin) at §§24-29.
12. Disclosure may also be needed where there is a “hard-edged” question of fact in dispute, in particular a “jurisdictional” or “precedent” fact such as whether a person is a child for the purposes of entitlement to services under the Children Act 1989. See *R (A) v Croydon LBC* [2009] UKSC 8, [2009] 1 WLR 2557 at §33 per Lady Hale: “[It is argued that the] only remedy available is judicial review and this is not well suited to the determination of disputed questions of fact. This is true but it can be so adapted if the need arises... That the remedy is judicial review does not dictate the issue for the court to decide or the way in which it should do so.”

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13. Further, where a private law claim is brought as part of a judicial review (as permitted by CPR 54.3(2)), the ordinary CPR Part 7 procedures employed for resolving substantial disputes of fact will apply: *R (MH) v SSHD* [2009] EWHC 2506 (Admin) at §7 (a judicial review challenge to the lawfulness of immigration detention in which a claim for damages for false imprisonment was also pleaded).
14. It is in any event good practice for a public authority to exhibit a document on which it relies as significant to its decision, and a claimant seeking sight of a document whose effect has been summarised in witness evidence does not need to suggest some inaccuracy or incompleteness in the summary – “[i]t is enough that the document itself is the best evidence of what it says”: *Tweed* (cited above) at §4.
15. In *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154, Sedley LJ emphasised at §49 that the best evidence rule “is not simply a handy tool in the litigator’s kit [but] a means by which the court tries to ensure that it is working on authentic materials. What a witness perfectly honestly makes of a document is frequently not what the court makes of it. In the absence of any public interest in non-disclosure, a policy of non-production becomes untenable if the state is allowed to waive it at will by tendering its own *précis* instead.”
16. Scope of the duty: A key issue concerns the extent to which the duty of candour requires a public authority to reveal features of the decision-making process which do not bear on the grounds of challenge currently advanced by the claimant, but which could potentially be relied on in support of additional grounds.
17. Some of the older case law suggested that the courts would not expect that once a claimant has been granted permission “he is entitled to demand from the authority a detailed account of every step in the process of reaching the challenged decision in the hope that something will be revealed which will enable him to advance some argument which has not previously occurred to him”: *Huddleston* (cited above) at p.947 per Parker LJ. Sir John Donaldson MR agreed at p.946: “the grant of [permission] does not constitute a licence to fish for new and hitherto unperceived grounds of complaint”.
18. However, there is a clear tension between the undesirability of allowing a claimant to “fish” for new grounds of challenge – echoed by Lord Brown’s comment in *Tweed* that even post-HRA “the court should continue to guard against what appear to be merely ‘fishing

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expeditions' for adventitious further grounds of challenge" (§56) – and the simple fact that a claimant will often not know the facts that might support a new ground of challenge unless and until the defendant reveals those facts.

19. Perhaps for that reason, the TSol Guidance states that the duty extends to documents/information which will assist the claimant's case and/or give rise to additional (and otherwise unknown) grounds of challenge, citing *R v Barnsley Metropolitan Borough Council, ex p Hook* [1976] 1 WLR 1052. *Hook* in fact addressed a related but distinct point, namely that if the material filed by the defendant does happen to reveal additional grounds, "*the court can inquire into them without being bound by the grounds stated in the original statement [of grounds]"* (p.1058).
20. *Hook* does not state in terms that there is a duty on the defendant in the first place to file material that reveals additional grounds. However, there is recent support at the highest level for the proposition that the duty of candour includes the need to give "*disclosure which is relevant or assists the claimant, including on some as yet unpleaded ground"*: *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 4)* [2016] UKSC 35, [2016] 3 WLR 157 at §183 per Lord Kerr.
21. **Duty of non-participating defendant:** Even where a defendant decides not to take an active part in the proceedings, for example where it considers that an interested party is able to defend the claim, it nevertheless owes a duty to assist the court.
22. In *R (Midcounties Co-Operative Ltd) v Forest of Dean DC* [2015] EWHC 1251 (Admin), the defendant's grant of planning permission was challenged and it informed the court that while it would not defend the claim due to financial constraints, it did not concede it and supported the developer's opposition to it. Singh J held that the defendant at least needed to consider whether it had complied with its duty of candour by disclosing all relevant documents, whether the duty required it to file a witness statement to assist the court, whether it should file an acknowledgement of service and summary grounds even if only in outline form to explain the gist of why it maintained that its decision was lawful, and whether a representative (not necessarily a lawyer) should be present in court at any hearing so the authority knew what was going on and could deal with any points that arose.

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23. **Consequences of breach:** A variety of adverse consequences may arise where the duty of candour is breached by a defendant. The court can use its case management powers to remedy the deficiency in information provided by the defendant, for example by ordering it to provide disclosure of documents or further information about its case, or requiring its witnesses to attend for cross-examination. The court could stay proceedings pending such steps, and order indemnity costs: e.g. *R (AlSweady) v SSD* [2009] EWHC 1687 (Admin).
24. **Lack of candour may allow the court to draw adverse inferences of fact.** “[T]he court might simply decide that the [claimant] has made out a prima facie case and that, the authority having produced no sufficient answer, relief should be granted”: *Huddleston* (cited above) at p.947. “If the court has not been given a true and comprehensive account, but has had to tease the truth out of late discovery, it may be appropriate to draw inferences against the [defendant] upon points which remain obscure”: *Quark* (cited above) at §50.
25. Where a defendant fails to file evidence to explain its decision-making process and the reasoning underlying the decision, “[t]he basis for drawing adverse inferences of fact against the [Defendant] will be particularly strong” given the stringent duty of candour: *R (Das) v SSHD* [2014] EWCA Civ 45, [2014] 1 WLR 3538 at §80.

11.1 Claimant’s duty of candour

26. **The duty:** It is not only a public authority defendant that owes a duty of candour. A claimant is similarly obliged, throughout the course of a claim for judicial review, to make full and frank disclosure of (a) all relevant facts of which he is aware, including those which are or appear to be adverse to his case, and (b) all such facts as he would have known had appropriate inquiries been made: *Cocks v Thanet DC* [1983] 2 AC 286 at 294G; *R (Khan) v SSHD* [2016] EWCA Civ 416 at §§35-37, 71.
27. **Scope:** The duty may require a claimant: (1) to disclose relevant documents (*Khan*, cited above, §37); (2) to cite adverse authority (*R v SSHD, ex p Li Bin Shi* [1995] COD 135); (3) to identify alternative remedies (*R v Law Society, ex p Bratsky Lesopromyshlenny Complex* [1995] COD 216); (4) to inform the court of other ongoing cases in which the same issues of law have been raised (*R (ICI) v HMRC* [2016] EWHC 279 (Admin) at §21); (5) to point out any relationship between himself and other unsuccessful

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previous challengers, as well as any issue of delay (*R v Lloyd's of London, ex p Briggs* (1993) 5 Admin LR 698); and (6) to point out any relevant ouster clause (*R v Cornwall County Council, ex p Huntington* [1992] 3 All ER 566 at 576).

28. **Ongoing duty:** The duty is a continuing one. A claimant must reassess the viability and propriety of a challenge in light of the material filed by the defendant, and must keep the court informed about material changes in circumstances that may mean judicial review is no longer required or appropriate: *R (Tshikangu) v Newham LBC* [2001] EWHC 92 (Admin) at §23; *Khan* (cited above) at §48.
29. **Consequences of breach:** If there has been a failure to comply with the duty of candour, permission may be set aside: *Tshikangu* (cited above); *Huntington* (cited above). Alternatively, (1) an injunction may be discharged (*R (MS (A Child)) v SSHD* [2010] EWHC 2400 (Admin) at §1; (2) the court may decline to order costs (*R v Liverpool City Council ex p Filla* [1996] COD 24); (3) relief may be refused (*R v Leeds City Council, ex p Hendry* (1994) 158 LG Rev 621); and (4) wasted costs may be ordered (*R v SSHD, ex p Shahina Begum* [1995] COD 176).

Interested Party's duty of candour

30. The duty of candour applies to all parties to judicial review proceedings, not merely the claimant and the defendant. Thus, for example, in *Belize Alliance of Conservation Non-Government Organisations* (cited above), the interested party developer which was in effect the defendant's partner in the relevant public works project was under "a duty to make candid disclosure to the court" (§87).

Iain Steele, Blackstone Chambers, 6 October 2017