APPENDIX F

Institute of Licensing
Incorporating the National Association of Licensing and Enforcement Officers

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Suitability Guidance

Guidance on determining the suitability of applicants and licensees in the taxi and private hire industry.

2024
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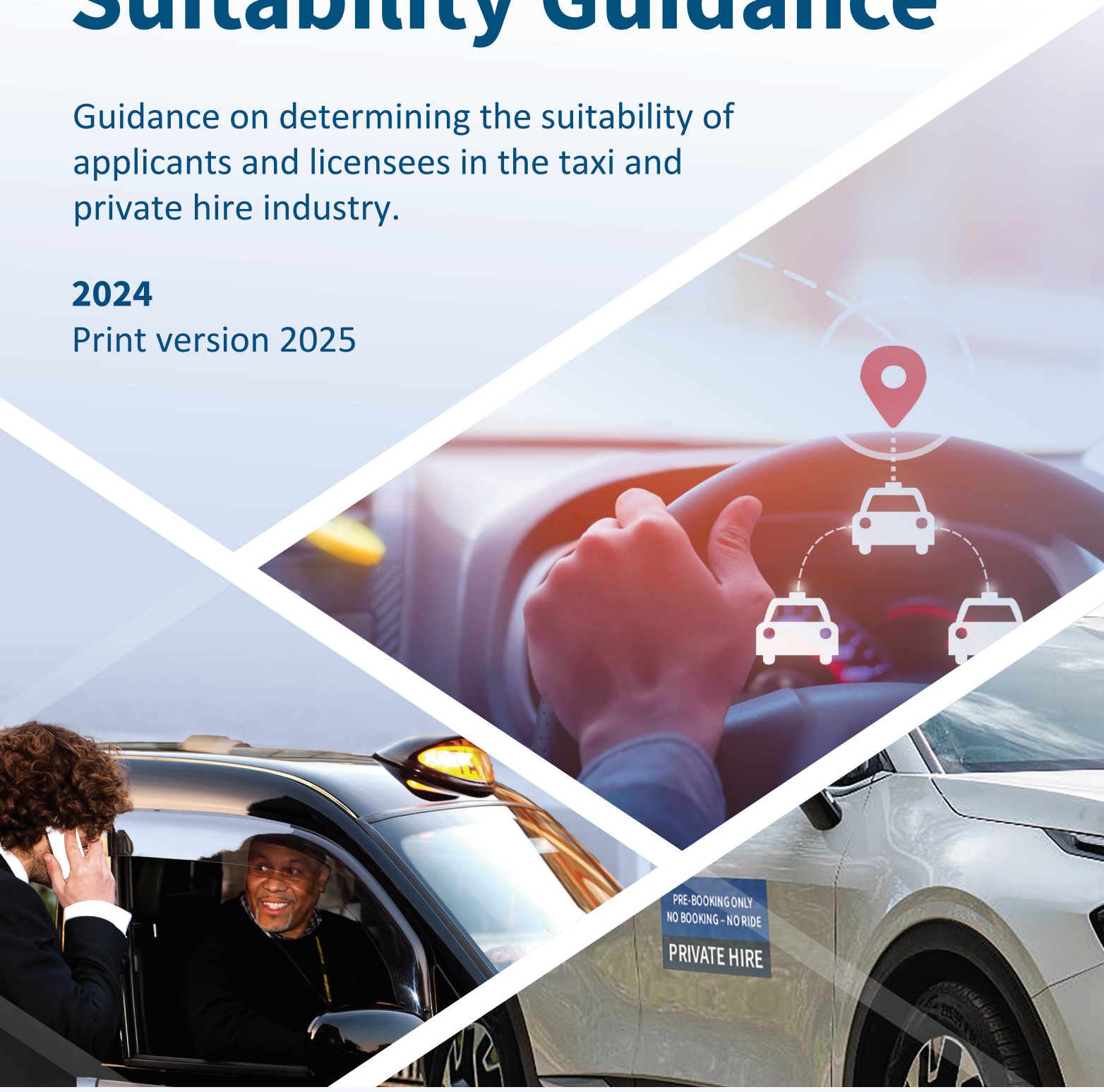

Produced by the Institute of Licensing in partnership with:

LLG
Lawyers in Local Government

Foreword

Taxi licensing began in 1635, when King Charles I limited the numbers of hired coaches in London. Charles II seemed disinclined to abandon regulation. He issued more licences, set fees and standards.

The present licensing system has its roots in the Town Police Clauses Act 1847 which declared "Hackney carriages to be licensed". Although the requirement for licensing was national, standards and enforcement were local, through Commissioners, and taxi licensing has been determinedly local ever since.

The first – and most recent - edition of this Guidance was published in April 2018. It noted that there had been "no recent Statutory or Ministerial Guidance as to how decisions should be approached or what matters are relevant or material to such a decision".

In my work as Chair of the Independent Inquiry into Telford Child Sexual Exploitation, I heard lacerating accounts from children sexually exploited by taxi drivers. I further heard that it was essentially impossible for the Borough to enforce local standards as over the years different – even neighbouring - authorities had maintained different approaches to drivers' characters and behaviours, as to required driver training and even as to vehicle condition.

The first edition of this Guidance contained advice as to each of those elements, and detailed consideration of the effect of particular types of offending on suitability, all of which plainly **influenced the Department for Transport's subsequent Statutory Guidance. Since then, the Taxis and** Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 has mandated the use of the NR3S database by English local authorities.

The progress is plainly welcome, and this thoughtful and comprehensive second edition of the Guidance will no doubt influence the debate as its predecessor did. But while this Guidance sets a goal of consistency, as long as the system allows drivers to choose their licensing authority by price, rather than by the area in which they operate, it is the low-cost, lighter touch regulators that will thrive and those (like Telford) who have put in place thoughtful suitability criteria, including high quality training, that will struggle for custom. It seems to me that is not only an odd result of something deemed "localism", but also one profoundly not in the public interest.

In 2018 a government report[1] recommended legislation for national minimum standards for taxi and PHV licensing; the Government agreed[2], and said that it would take forward legislation "when time allows". Perhaps, after almost 400 years, an Act in the reign of Charles III might finish the job his predecessors began.

TOM CROWTHER KC
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[1] https://assets.publishing.service.gov.uk/media/60085e35e90e073ecce20064/taxi-and-phv-working-group-report-document.pdf
[2] https://assets.publishing.service.gov.uk/media/5f76f9308fa8f55e36671b26/taxi-task-and-finish-gov-response.pdf

Stephen Turner 1953 - 2025

The “Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire industry” owes its existence to Stephen Turner.

He chaired the Suitability Working Group that drafted the first edition of this guidance. That work commenced in 2015 and culminated in the publication of the guidance in 2018.

It had always been intended to keep the guidance under review and with that in mind, the Group reconvened in 2022 following the publication of the statutory taxi and private standards by the Department for Transport in 2020 (and delayed by the pandemic).

Once again Stephen rose to the challenge of chairing that Group, and the current document was published in November 2024. It is a testament to the work of the group and Stephen’s skill as a chairman that to date there has been no criticism of the revised guidance from any quarter.

On both occasions it was his drive, determination, ability and humour that enabled a varied group of professionals to work together to create such a useful and important document. He overcame any problems, setbacks or obstacles with aplomb and kept the group focused and effective.

This document stands as a tribute to all that Stephen contributed to the field of licensing, and it was a privilege, and above all a pleasure, to work with him.

James T H Button
President, Institute of Licensing

Acknowledgements

The IoL originally published its *Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades* in April 2018. The original Guidance was the result of many months of work by a dedicated group of individuals who formed the Suitability Working Group.

The April 2018 publication was formally endorsed by the Local Government Association, Lawyers in Local Government, and the National Association of Licensing and Enforcement Officers. It was gratifying when Chapter 4 of the original guidance was closely mirrored in the annex at s 10 of the Department of Transport's Statutory taxi and private hire vehicle standards, published in 2020.

The Guidance was and is intended to assist local licensing authorities in considering their own local licensing policies on determining the suitability of applicants and licence holders for taxi and private hire licensing. It was well received among such authorities generally, with many updating or reviewing their policies by incorporating the guidance in part or in whole, ahead of or subsequent to the publication of the DfT standards. The Guidance has been successfully cited in courts where it has been so incorporated by authorities and as a stand-alone reference.

The Suitability Working Group had an informal review planned for 2021. Work started in 2022 (delayed from 2021 due to the pandemic), with an initial consultation (round 1) in 2022 on the effectiveness and level of adoption of the guidance. The Working Group assessed the round 1 consultation responses but opted to pause the work pending the then anticipated imminent publication of the DfT's *Best Practice Guidance* which eventually followed in November 2023.

The draft revised Guidance was subject to a further consultation (round 2), which closed on 30 September 2024, following which all the consultation responses were carefully reviewed in producing this revised Guidance.

With sincere thanks to the Suitability Working Group:

- Stephen Turner, Solicitor at Hull City Council (Working Group Chair)
- Phil Bates, Licensing Manager, Southampton City Council
- Ellie Birch, IoL Executive Assistant
- James Button, James Button & Co Solicitors
- Linda Cannon, former Licensing Manager, Basingstoke Council
- Yvonne Lewis, Licensing Manager, City & County of Swansea
- John Miley, former Licensing Manager (Broxtowe Council) and National Chair for NALEO
- Sue Nelson, IoL Director of Policy and Stakeholder Engagement
- Professor James Treadwell, Professor of Criminology, Staffordshire University

Suitability Guidance Preface

Chapter 1: Introduction is an introduction to the Suitability Guidance. It refers to the importance of the licensing regime in protecting public safety and sets out the legislative position that a licensing authority must be satisfied has been met by an applicant before deciding if they are a fit and proper person to hold a licence.

Chapter 1 refers to policies having a "bright line approach" and explains the position in this regard. Finally, Chapter 1 sets out some of the approaches taken in later chapters of the Suitability Guidance, which will be looked at in turn.

Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview, has been extensively reviewed. It looks at patterns of behaviour for offenders, and aims to assist licensing authorities in considering previous convictions and non-conviction information (complaints etc) alongside time factors (time elapsed), trends and the nature of behaviours in order to make a reasoned judgement of suitability when there are matters of concern.

While considering all criminal behaviour, this chapter looks in detail at sexual offences, which are naturally of key concern when considering an individual's suitability to hold a licence. It underlines the role of licensing as a form of safeguarding and risk management of activities, recognising that licensees are in positions of trust, and have the opportunity to take advantage of potentially vulnerable passengers on a daily basis.

Chapter 3: Taxi and Private Hire Licensing Overview provides an overview of taxi and private hire licensing law, including the legislative framework, and the principal objective of the licensing regime (to protect the public).

The chapter looks at the licence types under the regime, and considers the application and decision-making processes and key considerations in each case, including the legal thresholds which apply (for example the need for the local authority to be satisfied that an individual is a fit and proper person before granting a licence). It emphasises the need for reasoned decisions and clear records of decisions to be maintained. There are references to relevant parts of the DfT's Statutory taxi and private hire standards and the system of recording refusals, suspensions and revocations on the NR3S database (mandated in England and wholly adopted in Wales).

Chapter 3 acknowledges that the vast majority of applicants and licence holders are decent, law-abiding people who work hard to provide a good service to their customers and the local community. They are an essential part of our communities, and many local residents rely heavily on them. The licensing regime, when working correctly, should exclude those who are not safe and suitable from the profession, protect licensees as a whole by increasing public confidence, and uphold the professionalism of the industry.

Chapter 4: Guidance on Determination has been subject to much discussion and review. The overriding principle of listing categories of offending rather than listing specific offences has been maintained. This is essential as consideration is not confined to conviction information - non-conviction information is relevant and must be considered alongside convictions. In addition, a list of specific offences would be too narrow, and become superseded by new offences, or arguments that a particular offence was "different" from a listed one.

Some categories have been expanded. For example, "exploitation" now includes "criminal harassment"; "offences involving violence" includes fear of violence and violence against property, animals and the State; and "sex and indecency offences" includes a reference to the "Sex Offenders' Register" and "barred" lists.

Additional categories have been included: "alcohol misuse or dependency", in addition to "drugs misuse" (which now includes "dependency"), and a further category of "discrimination". There is also a section on behaviours which looks at non-criminal behaviours which would be a potential cause for concern.

Motoring offences have been an area which has been subject to intense discussion. This was the main area of feedback on the original Guidance, in particular the reference to minor traffic or vehicle related offences. The "motoring offences" section sets out the guidelines in relation to motoring offences and the reasoning behind them.

Chapter 4 maintains the view set out in the original guidance, that the considerations under each category should be applied when considering applicants and licensees for driver, operator and vehicle proprietor licences.

Version history

- 28th October 2024 – Formally approved
- 13th November 2024 – First published
- 20th November 2024 – WLGA endorsement added (Chapter 1, para 1.1)
- 4th August 2025 – Tribute to Stephen Turner added, cover title amended to replace 'hackney carriage' with 'taxi', and IoL logo updated to include current version which represents the merged IoL /NALEO organisation (effective April 2025)

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Terminology

This Guidance follows the approach to terminology used by the Department for Transport (DfT) in its Best Practice Guidance:

> Vehicles licensed under section 37 of the Town Polices Clauses Act 1847 and section 6 of the Metropolitan Carriage Act 1869 are referred to in that legislation as 'hackney carriages'. This term is also used in older regulations. In more recent legislation the term 'taxi' is used.

In this document 'taxi' means a hackney carriage. It does not include private hire vehicles (PHVs).

When referring to both types, the term "taxi and private hire" is used.

Chapter 1: Introduction

1.1 This document was originally published by the Institute of Licensing in April 2018 and this revised edition follows extensive consultation and review. As previously, it has been produced by the Institute working in partnership with the Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO). We are grateful to all those organisations for their contributions and endorsement. The Guidance has also been endorsed by the National Anti-Fraud Network (NAFN) and the Welsh Local Government Association (WLGA).

1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Taxi or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Taxi and Private Hire services. It is a regulated activity, and the purpose of regulation is to ensure, so far as possible, that those engaging in this activity are suitable persons to do so. Entry requirements are necessarily high to ensure the safety of the public, and the reputation of those who are themselves licensed.[3]

1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications.[4] The onus lies with the applicant or licensee to satisfy the licensing authority that they are or remain a fit and proper person.[5] It is a key part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgement as to their fitness and propriety.

1.4 If a licensee falls short of the fit and proper standard at any time after grant, the licence should be revoked or not renewed on application to do so.

1.5 There is some Statutory and non-statutory guidance as to how such decisions should be approached or what matters are relevant or material to a decision contained in the DfT "*Statutory Taxi and Private Hire Vehicle Standards*", *"Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England"* and the Welsh Government's *"Taxi and private hire vehicles: licensing guidance",* but it is not comprehensive. This document complements that guidance as does the LGA's Taxi and Private Hire

[3] See paras 3.2 of "*Statutory Taxi and Private Hire Vehicle Standards"* Department for Transport 2020 (available at https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards and 3 of "*Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England"* Department for Transport revised in 2023 (available at https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance) and the Welsh Government Guidance Document *"Taxi and Private Hire Vehicles: licensing guidance"* revised in September 2024' (available at https://www.gov.wales/taxi-and-private-hire-vehicles-licensing-guidance-html)

[4] Except vehicle proprietors. In those cases, there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

[5] This was confirmed by the High Court in *R v Maidstone Crown Court, ex p Olson* [1992] COD 496 QBD

Licensing Councillor's Handbook and any further Government guidance. It is gratifying and seen as an endorsement of the previous edition of this document that the DfT accepted the suggested convictions guidance in Chapter 4, almost in its entirety.

1.6 Local authorities in England should be complying with the requirements of the Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 which requires use of the NR3S database hosted by the National Anti-Fraud Network. Such use is currently advisory in Wales.

1.7 Chapter 4 of this document provides licensing authorities and their decision makers with guidance on determining suitability, taking into account the character of the applicant or licensee. Licensing authorities are encouraged to adopt this guidance within their own Taxi and Private Hire policies. In particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it should not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case. Any departure from the adopted policy should be the exception, rather than the rule.

1.8 A licensing authority can say "never" in a policy, known as taking a 'bright line approach', but it remains a policy, and as such does not amount to any fetter on the discretion of the authority. This approach was endorsed by the High Court in *R (on the application of Nicholds).*[6] Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will only happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. Full and detailed reasons must be provided to the applicant or licensee for every decision, including the reasons for any departure from the Council's policy.

1.9 In Chapter 2 this document explores the current academic thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraphs 1.7 and 1.8 and Chapters 3 and 4.

1.10 Chapter 3 of this document sets out in overview form the Institute's view of the current law, practice and procedure relating to Taxi and Private Hire licensing. Neither Chapter 3 nor any other part of this document constitutes formal legal advice which licensing authorities should obtain for themselves where required.

1.11 The guidance in Chapter 4 contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by a licensing authority's policy or guidance as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should

[6] [2006] WHC (Admin), [2007] 1 WLR Admin Crt

lead to differentiation. In each case, appropriate weight should be given to the evidence provided.

1.12 The guidance in Chapter 4 cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national standards.

1.13 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Taxi and Private Hire Trades, Academics, the Probation Service, NAFN, National and Local Governments, interested Charities and the Police.

Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview

2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public.[7] With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.

2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour. While all offending behaviour can be considered when it comes to fitness and propriety, the unique position that licensed taxi and private hire drivers occupy in terms of their occupation and the opportunities and risks that come with such employment mean that some focus and understanding of the nature and character of violent and sexual offences is valuable. Such offences are often important as indicators that an individual might present a risk of serious harm to other people.

2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining potential future behaviour as well as culpability, it is essential that the decision maker(s) considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed. The wider and broader the evidence base that can be considered, the better the judgement is likely to be.

2.4 Crime tends to emerge in teen years, and many people commit offences but do not find themselves persistently involved in crime and criminality. Those who do become more frequent offenders tend to share several risk factors: associations with delinquent peers; school/employment problems; family problems; certain types of mental health problems; and alcohol/substance abuse are the most important predictors of persistence in crime. The predictors of persistence in crime highlight the multiple causes of persistent antisocial behaviour, and how antisocial behaviour and attitudes can be quite deep rooted. While people who commit crime can and do change and reform, there is also useful predictive value in previous conduct, as past behaviour is often a good indicator of underlying attitudes and potential future conduct.

2.5 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years, offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. While this is true, such points should not be used to downplay the vital role that disbarring people of bad character from roles and occupations which provide heightened opportunity for them to harm plays. What can be done, is to examine each case on its

[7] DfT 'Taxi and Private Hire Licensing – Best Practice Guidance, Section 3

individual merits, and look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.

2.6 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is public protection. This includes assessing the risk of re-offending and the risk and scale of harm.[8] Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences in the criminal justice system. Local Authorities are not always privy to this information, so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

2.7 Flaud[9] noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place.[10]

2.8 In the Criminal Justice system, His Majesty's Prison and Probation Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards both static and dynamic factors. While no risk assessment can be infallible, there has been a growing recognition for the need to make justifiable and defensible decisions based on public protection.

2.9 Understanding the person, their history (including any offending) and their patterns of behaviour and establishing both risk factors related to future offending and protective factors which reduce the risk of future offending is at the centre of managing risk. Risk Factors are aspects of an individual offender's life that have inclined them towards harmful behaviour. Protective factors are the features of an individual's life that may incline them away from harmful behaviour.

2.10 Static factors are historical and do not change such as age, and previous convictions. These can be used as a basis for actuarial assessments and are core in considering an individual's potential to reoffend in future.[11] For example, about half imprisoned adults are reconvicted within two years of release from custody. It is also widely accepted that persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous convictions.[12] In 2022 adults

[8] Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press
[9] Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! Criminology, 34, 557-607.
[10] Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! Criminology, 34, 557-607.
[11] Craig, L. A. and Browne, K. B (2008). Assessing Risk in Sex Offenders: A Practitioner's Guide Paperback.
[12] Ministry of Justice (2015): Transforming Rehabilitation: a summary of evidence on reducing reoffending. London: Ministry of Justice.

released from custody or starting a court order had a proven reoffending rate of 33.4% within a year of their conviction in court or release from prison.[13]

2.11 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity.[14] Behaviour can also be a factor in assessing risk, and behavioural changes can be used in making risk assessments. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated or is a risk, it is important to have regard towards the motivation behind their offending, and the dynamic risk factors present at the time of offences against the steps taken to address such factors, thus reducing the risk of re-offending.

2.12 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population.[15] Many of these factors are interlinked and embedded in an individual's past experiences. These factors can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed. However, we also ought to recognise that, and at core, known previous behaviour is the best predictor of future behaviour bar none. Good risk assessment is evidence based and uses statistical evidence, understands offence type and risk factors, but also is individualised and takes account of factors that can reduce or increase an individual's risk. It is also holistic and takes account of behaviour in a range of contexts and a good understanding of the whole person at the centre of the assessment. It also requires a somewhat critical and sceptical attitude and doubt towards emotional claims and assertions of change. Often persistent offenders will claim that they have stopped offending only to be reconvicted. These are assertions from the subject that are challenged by contradictory behaviours.

2.13 Whether a person who has offended is a risk in the future is a complex debate and has given rise to extensive publications, theories and changes in legislation, with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described in criminal justice as "any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual's ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time".[16]

2.14 Kurlychek, in her study noted that "a person who has offended in the past has been found to have a high probability of reoffending, but this risk is highest in the time period

[13] Proven reoffending statistics: April to June 2022 - GOV.UK (www.gov.uk)
[14] McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. Philosophical Transactions of the Royal Society B: Biological Sciences, 363(1503), 2577-2597
[15] Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.
[16] National Offender Management Service (20160. Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age".[17] In contrast though, one of the few long-term studies (The Sheffield Desistance Study)[18] which examined the lives of 113 men aged 19–22 years over four years. Their subsequent convictions over the next ten years generally demonstrate a pattern of continuing convictions, but with major crime-free gaps suggesting with some very persistent offenders, desistance, if seen as continuing cessation from crime, may not be fulfilled.

2.15 A consistent finding in criminological literature is that many male offenders tend to desist from crime over time, and risk of offending even for those previously convicted reduces once individuals reach the aged 30 years and over.[19] It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationship.[20] Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females is 14 compared to 19 for males.[21] It is true that generally many people do age out of crime, but we should be careful not to count all crime as the same. Serious sexual and violent offences may not be the same as acquisitive offences.

2.16 Some people are convicted of crime and will not be further convicted. The Rehabilitation of Offenders Act 1974 aims to help some offenders re-enter the workforce and makes some convictions spent after a determined period. For people who have been involved in persistent and more serious offending, it is a difficult and complex process, likely to involve lapses and relapses. Some criminal convictions, especially those attracting lengthy prison sentences are not considered spent. Some individuals may never desist from crime.[22] As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low risk of re-offending. Often the only way of achieving this is through lapse of significant time.

2.17 Typically, the longer the time elapsed since an offence has been committed, the more likely the individual has desisted from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance.[23] Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that "individuals who have offended in the distant past seem less likely to re-offend or offend again than individuals

[17] Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

[18] Bottoms, A.E. & Shapland, J. (2016) Learning to desist in early adulthood: the Sheffield Desistance Study. In: J. Shapland, S. Farrall & A.E. Bottoms (Eds.) Global perspectives on desistance: reviewing what we know, looking to the future. Abingdon: Routledge or Shapland, J. (2022) Once convicted? The long-term pathways to desistance. *The Howard Journal of Crime and Justice*, 61, 271–288. https://doi.org/10.1111/hojo.12473

[19] Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

[20] Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

[21] Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

[22] Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

[23] Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

who have offended in the recent past".[24] This is likely substantively true, and yet there are some categories of crime, and some crime types, perhaps particularly sexual offences, where caution is very much needed, because those crimes are so much less frequently taken through the justice system successfully and the offence may illustrate more complex attitudinal and behavioural and thinking patterns. For general offences (not violence and sexual offences), some academics have suggested that a period of around seven years is when the risk of offending for convicted offenders and non-convicted population becomes the same. [25]

2.18 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual's previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when deciding whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person's ability to sustain such change. This can be a long process that can only be achieved over time.

2.19 Offences where taxi and private hire drivers are victims are much more frequent than offences by such drivers. Taxi and private hire drivers are often in situations where they can face victimisation in terms of violence, threat, assault and false allegations. It must be recognised that taxi and private hire drivers have access to people who are vulnerable because of their situation, very often as a sole individual unsupervised in a vehicle. A small minority of people may seek to abuse their positions, or even secure positions because of the potential to take advantage of passengers' trust and vulnerability.

2.20 It is estimated that 23.5 per cent of males in England and Wales in the age range 10 – 52 in 2006 had had a previous a conviction. For adult males aged between 18 and 52 the figure is 28.2 per cent. Almost a third of all adult males in the UK have a criminal conviction. However, often individuals will come to light and be recognised because of patterns of behaviour, not always criminal behaviour. It ought to be remembered that a great deal of criminal behaviour in some categories may never come to be known about by authorities, and it is widely accepted that, for example, violence against women and girls, domestic violence and sexual crimes tend to be the most under reported and least convicted.

2.21 According to ONS crime statistics for England and Wales,[26] 20% of women (1 in 5) and 4% of men will experience sexual violence in their lifetime. It is vital that it is recognised that a great deal, and likely most, of the sexual abuse may never be reported. It has been suggested that some 40% of adults who are raped will not report, and unreported childhood cases are likely much higher. The Crime Survey for England and Wales (CSEW)

[24] Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

[25] Soothill, K and Francis, B (2009) *When do ex-offenders become like non-offenders?* Howard Journal of Criminal Justice, 48 (4). pp. 373-387. ISSN 0265-5527

[26] https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2023#overall-estimates-of-crime

estimated that 1.1 million adults aged 16 years and over experienced sexual assault in the year ending March 2022 (798,000 women and 275,000 men).

2.22 It is claimed that only some 10-15% of sexual offences are reported to the police in any year, and even when reported, sexual crimes are amongst the hardest to prove. In 2018 less than 1 in 65 reports of rape (1.5%) resulted in a charge or summons. However, according to CSEW statistics for the year ending March 2022, sexual offences recorded by the police were at the highest level recorded. In May 2021, there were 95,844 people on the sex offenders register in England and Wales, yet based on the accessing of Child Sexual Exploitation material the UK's National Crime Agency estimate that there could be between some 550,000 and 850,000 people in the UK who pose varying forms of sexual risk to children. While there is no consensus about the pathways between non-contact and contact offending, it seems sensible to consider even one incidence of possession of child sexual exploitation material must be seen as a risk flag.

2.23 There are a range of crimes that can be considered as sexual offences, including non-consensual crimes such as rape or sexual assault, crimes against children including child sexual abuse or grooming, and crimes that exploit others for a sexual purpose, whether in person or online. Crimes can occur between strangers, friends, acquaintances, current or ex-partners, or family members. The passage of time does not prevent the effective prosecution of sexual offences, and an increasing number of cases referred to the CPS by police feature allegations of a non-recent nature.

2.24 There is also complexity added to the category of sexual offences as there can be a sexual component in offences that may not be categorised primarily as a sexual offence, and the category runs a full gambit from sexually motivated homicides to non-contact internet offending in the form of possession of Child Sexual Exploitation material.

2.25 Sexual offences are prosecuted as part of the CPS Violence Against Women and Girls (VAWG) Strategy. This is an overarching framework to address crimes that have been identified as being committed primarily but not exclusively by men against women, but we ought not forget that men also commit sexual offences against men and boys. Reynhard Sinaga, a postgraduate student jailed for life in 2020 is who is thought to be the UK's "most prolific rapist"[27] was convicted of 136 rapes in Manchester and is believed by police to have assaulted over 200 men. There is a huge variation in sexual offenders, and there is a range of complex factors in their offending, which can vary hugely and significantly. Some historic crimes are no longer crimes due to changes in legislation since their conviction. For example, alterations in the age of consent that existed for gay men.

2.26 There is no singular type when it comes to sexual offending, and there are many gaps in knowledge. We know that most sexual offenders are men. Sex offenders constitute a diverse population of individuals and can be classified into types based upon characteristics and motivations of offending. The most common classification systems are those differentiating between types of rapists, child molesters, female sex offenders, juvenile sex offenders and cyber-sex offenders. There is also sometimes a division

[27] https://www.judiciary.uk/wp-content/uploads/2020/12/McCann-Sinaga-Shah-judgment-111220.pdf

between non-contact (online) and contact offending, and discussions about whether the former is a pathway to the latter. It is often said that reoffending amongst sexual offenders is lower than that of general offenders, but we need to be careful to also frame that with the general knowledge we have about the complexity and difficulty in securing convictions for sexual offences generally.

2.27 Sex offenders constitute a similarly diverse group of individuals who begin offending for a range of reasons. Many offenders do not fit into discrete categories. Like violent offenders, sexual offenders have unique personal and criminal histories, and the attitudes and beliefs that support their deviant behaviour can vary. There is no clear-cut profile of a sex offender. Some offenders were sexually abused as children, but others have no such history. Some are unable to function sexually with adult partners and so prey on children, while others also have sexual relations with adults. Research shows that sexual offenders exhibit a variety of characteristics. Abusive people, including sexual offenders, typically think they are unique, they are different from other people, they have a sense of entitlement and do not have to follow the same rules as everyone else. Rather than being unique, abusers and sexual offenders often have a lot in common with one another, including their patterns of thinking and behaving. They are also often highly manipulative of other people and situations and will employ a range of tactics that can include lying, upsetting others or intimidating them with threats. Equally, they may attempt to charm people, engender feelings of sympathy to manipulate, feign interest or concern, or attempt to elicit sympathy. Sex offenders when compared to other offenders generally:

- Are more likely to deny their behaviour and guilt, can lack empathy (and victim) empathy and ability to understand or see things from the point of view of others.
- Have inappropriate or be very fixed in attitudes and character, including attitudes to sex.
- Put themselves in places and situations where vulnerable victims are present. (Offenders may frequent an amusement arcade or join a social media site or gaming platform where they will regularly be engaging with youth on a peer level or attempt to become a taxi or private hire driver" as referred to in the Telford report).[28]
- The motivations to sexually offend can vary from offender to offender and offence to offence, but the specific deviant sexual motivations including paraphilias (a persistent and recurrent sexual interests, urges, fantasies, or behaviours of marked intensity involving objects, activities, or even situations that are atypical in nature) are often apparent. However sexual offenders will commit nonsexual offences.

2.28 Like sexual offenders, violent offenders are a diverse population, whose offences generally tend to be either expressive (a loss of control and anger) or instrumental (violence that is used to acquire or gain something, including some forms of acquisitive violence). We know that men commit far more violent offences than women and a very small group (less than

[28] Para 4.193 Report of the Independent Inquiry Telford Child Sexual Exploitation available at https://www.iitcse.com/

5% of the male population tend to commit around 50-70% of violent crime.[29] Often the most persistent violent offenders commence offending early in life and are characterised by criminal versatility, but because of their overt nature, much violence (with exceptions around domestic and intimate partner violence) has tended to be detected and prosecuted. Serious violence tends to result in conviction.

2.29 The risk of harm is not always linked to the offences committed previously, as persistent and repeat offenders often escalate or fluctuate in terms of the severity of crimes and the type of offences that they commit, and offenders often are not specialist and do not restrict themselves to one sort of crime.

2.30 Criminal versatility and a diversity of criminal offence types can also be indicative of underlying antisocial attitudes. Previous behaviour is a good indicator of future risks. Any conviction for a serious violent or sexual offence suggests at a degree of risk to the public that is heightened over those who have no convictions.

2.31 Beyond a very narrow core of hard cases, there are issues in both the boundaries of what constitutes the kind of behaviour that can be considered dangerous, which is open to dispute, and to what degree of likelihood of future risk should be required before an individual can be said to present a danger of future offending and subject to restrictions?

2.32 What is vital when considering violent and sexual offences are the access and opportunity that the offender requires to attempt to commit any offence. This is the focus of situational and administrative criminology. Situational crime prevention (SCP) is an applied criminological paradigm founded on two distinct, complementary conceptions of criminal situations. The first is the rational choice and the second is the routine activities perspectives.[30]

2.33 SCP approaches consider criminal situations and understand that crime occurrences are essentially 'opportunities' that arise when an already motivated or criminally disposed offender, having rationally weighed up in terms of effort, risk, and reward decides to commit an offence. All else being equal, a crime is more likely to be committed when it requires little effort, when the would-be offender judges that there is a low risk of that crime being detected and punished, and when they anticipate they will meet their intended outcome. Core to the crime is a suitable target being available, there is the lack of a suitable guardian to prevent the crime from happening, and a motivated offender is present.

2.34 Licensing is a form of safeguarding and risk management. By virtue of the role and function of what opportunities and privileges a taxi or private hire drivers' licence affords, there can be a great deal of opportunity to access people who are situationally vulnerable, particularly those in the night-time economy. John Worboys (also known as John Radford)

[29] Moffitt, T. E. (1993). Adolescence-limited and life-course-persistent antisocial behaviour: A developmental taxonomy. *Psychological Review, 100*(4), 674–701. https://doi.org/10.1037/0033-295X.100.4.674

[30] Cornish, Derek B., and Ronald V. Clarke. "Crime as a rational choice." Criminological theories: Bridging the past to the future (2002): 77-96, and Social Change and Crime Rate Trends: A Routine Activity Approach, Lawrence E. Cohen and Marcus Felson Vol. 44, No. 4 (Aug., 1979)

the British convicted serial sex offender, known as the Black Cab rapist, was convicted in 2009 for attacks on 12 women committed between 2007 and 2008. In 2019, he was convicted for attacks on four more women, the earliest of which took place in 2000. Police say he may have had more than 100 victims while operating in London and Dorset.

2.35 The taxi trade and licensing has also featured as part of the backdrop of discussions of Child Sexual Exploitation in a number of English towns. These crimes have frequently been discussed as the product of 'grooming gangs'. While this term has been controversial, the night-time economy (NTE) and particularly take aways, taxi and private hire companies and children's homes all also featured as part of the situational and social context of offending across a number of English towns such as Telford, Rotherham, Bradford, Luton, and Rochdale. Specifically vulnerable, young white females were predominately the victims of Bangladeshi and Pakistani male perpetrators', some of whom were employed as taxi drivers.

2.36 While the term 'grooming gangs' has become a contentious one bringing often unhelpful claims and counterclaims, the reality is that much Child Exploitation (CE), including Child Sexual Exploitation and Child Criminal Exploitation happens when vulnerable young people (under the age of 18) are encouraged, forced or manipulated into criminal or sexual acts. While not all victims of CE and CSE are vulnerable by virtue of factors other than age, many victims have a range of heightened vulnerabilities. These can include problems at home, statutory care experiences, trauma, emotional and physical neglect, experiences with a family member with mental health or substance use disorders, experiences of domestic violence and abuse, poverty, experiences or racism and discrimination and experiences of violence in the community. Those in the taxi and private hire trades can also gain useful local knowledge and insight around concerns about exploitation and can be extremely useful in crime prevention and encouraging and promoting community safety.

2.37 Individuals applying for or renewing taxi and private hire driver's licences are subject to an enhanced DBS with barred lists check. There are debates as to whether taxi and private hire driving should become a regulated activity within the provisions of the Safeguarding Vulnerable Groups Act 2006.

2.38 When making decisions around individuals being 'fit and proper' it is important that too much weight is not placed on individual testimony or evidence that cannot be substantiated. Rather, a focus should be on:

- What further offence(s) might the individual commit or exhibit?
- Would they cause serious harm?
- Who might the victim(s) be? Can they be accessed via occupational role?
- What features might contribute to serious harm (the risk factors)?
- What might protect against serious harm (the protective factors) and are they able to be guaranteed?
- How probable is a high-risk scenario (likelihood)?

- How quickly could a further serious harm take place (imminence)?

2.39 Focusing on questions of access and opportunity and seeing licensing as a mechanism of safeguarding is vital when deciding if someone should be -licensed. While refusal of a licence is a restriction for the individual, it is also a method of situational safeguarding that can serve to prevent future victims.

Chapter 3: 'Taxi' and Private Hire Licensing Overview

3.1 Taxis and private hire vehicles are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi or private hire driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.

3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for taxi and private hire licensing.

3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi and private hire licensing is detailed in the DfT *"Taxi and Private Hire Licensing best practice guidance for licensing authorities in England"* para 3. which states:

> "The primary and overriding objective of licensing [the taxi and PHV trades] must be to protect the public."

Supported by para 3.2 of the DfT Statutory Taxi and Private Hire Vehicle Standards which states:

> "When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public."

And acknowledged in part 1 of the Welsh Government Guidance document "Taxi and Private Hire Vehicles: Licensing Guidance" which states:

> "The licensing regime needs to be updated to remedy the current problems; ensure that the taxi and PHV licensing system is fit for modern Wales; and promote public safety."

3.4 Within the two licensing regimes, there are 5 types of licence: taxi vehicle; private hire vehicle; taxi driver; private hire driver and private hire operator.

3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, [31] there are no national standards.[32]

3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).

3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.

3.8 In each case, it is for the applicant or licensee to satisfy the licensing authority that they are "fit and proper", not for the authority to prove that they are not.

3.9 The authority has powers to grant or refuse a licence, renew or refuse to renew it on application and, during the currency of the licence, suspend or revoke it.

3.10 What is the role of these powers, and how do authorities determine an application, or take action against a licence? Each Licensing Authority should adopt a cohesive Taxi Licensing Policy.[33] If a matter or situation is not addressed or covered by the Policy, that does not mean that matter cannot be taken into account by the Authority: in such circumstances the Authority will have to consider the issue from first principles, as if it had not adopted any policy on this topic.

3.11 Whenever a decision is made by a licensing authority (whether that is by Councillors or Officers), full and detailed reasons for that decision must be given.[34] This requirement is not just for refusals. It is important that all decisions are recorded correctly, and reasons given. This will include grants (on first application and renewals), addition of conditions, suspension, revocations and refusals. To assist decision makers, Appendix 1 contains guidance on recording decisions against NR3S criteria and Appendix 2 contains an example of a Decision Notice, both of which are adaptable for a council's own purposes.

[31] *"Statutory Taxi and Private Hire Vehicle Standards"* Department for Transport 2020 (available at https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards and 3 of *"Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England"* Department for Transport revised in 2023 (available at https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance)]

[32] The Government has stated that it will introduce national standards for taxi and private hire licences. However, at the time of writing (May 2024) this will be after the next General Election. In Wales, Welsh Government has consulted on new legislation, but again this is awaited.

[33] see Para 3.1 Dft Statutory Standards

[34] This was made clear by the Court of Appeal in R (app Hope and Glory Public House Ltd) v Westminster City Magistrates' Court [2011] EWCA Civ 31, [2011] 3 All ER 579, CA.

Taxi & Private Hire Drivers

3.12 There are two different occupations: taxi drivers and private hire drivers. In each case there are identical statutory criteria to be met before a licence can be granted. Some authorities grant separate taxi or private hire licences whilst others grant "dual" or "combined" licences to cover both occupations. Some authorities also issue "restricted" licences to drivers who only wish to perform home to school transport (H2S) work. Irrespective of the type or purpose of the licence, the decision making criteria remain the same.

3.13 An applicant must hold a full DVLA or equivalent driver's licence, have the right to work in the UK, comply with tax conditionality requirements and be a "fit and proper" person.[35]

3.14 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.

3.15 An applicant must have the right to remain, and work in the UK.[36] Again, this is ultimately a question of fact, and the local authority should follow the guidance issued by the Home Office.[37]

3.16 The tax conditionality rules require any driver applying to renew their licence to demonstrate they are registered for tax with HMRC; new applicants must acknowledge that they will be required to register with HMRC.[38]

3.17 Those requirements are all questions of fact. It is the whole issue of "fit and proper" that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain.*[39] Silber J said:

> "'... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers."

[35] Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers taxi drivers.
[36] Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of taxi drivers.
[37] "Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales" - Home Office, June 2024 available at https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks
[38] https://www.gov.uk/guidance/complete-a-tax-check-for-a-taxi-private-hire-or-scrap-metal-licence
[39] [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt

3.18 This is reflected in a test suggested by the DfT Statutory guidance (although it is not a statutory test):

> 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?'[40]

3.19 It is suggested that the expression "safe and suitable" person to hold a driver's licence is a good interpretation which neither adds nor removes anything from the original term of "fit and proper" but brings the concept up to date.

3.20 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?

3.21 The local authority has the power to require an applicant to provide:

> "such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence."[41]

This "information" can include any pre-conditions or tests that they consider necessary

3.22 Some of these are mandatory, such as Proof of right to work, Tax conditionality on renewal, NR3S search (conducted by the licensing authority, but this is only advisory in Wales). Others are universally required such as medical assessments.[42] Some authorities may require further information such as:

- Enhanced DBS Certificates (recommended although widely regarded as mandatory),
- sign-up to the DBS update service;
- Knowledge tests;
- Driving tests;
- Disability awareness/training;
- Periodic signed declarations;
- Spoken and written English tests;
- CSAE (child sexual abuse and exploitation) awareness/training;
- County lines awareness/training.
- Relevant taxi qualifications

3.23 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the

[40] https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards/statutory-taxi-and-private-hire-vehicle-standards#decision-making:~:text=5.4%20Fit%20and%20proper%20test
[41] Local Government (Miscellaneous Provisions) Act 1976 s57(1)
[42] See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.

3.24 In making the decision, as to whether an applicant is, or remains a fit and proper person, the licensing authority can take into account any information which is relevant to determining that question. This can include information obtained by the LADO (the Local Authority Designated Officer). The LADO is a statutory appointment under the Children Act 1989 whose role is to oversee and manage investigations following allegations being made against individuals who work or come into contact with children regularly. Their role is described in detail in Working Together to Safeguard Children 2023. The basis of the lawfulness of the sharing of LADO information is that it is being used by the Licensing Authority for the same purpose as it was obtained by the LADO, namely safeguarding.

3.25 Both taxi and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no "spent" convictions and that any and all criminal convictions (apart from "protected convictions" and "protected cautions" where they have been declared[43]) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker.[44]

3.26 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Adult and Children Barred Lists checks[45] and to provide this to the Licensing Authority. This must be for "other workforce"+ "taxi". Where a driver undertakes home to school contract work for an Education Authority (EA), they must obtain a different, separate Enhanced DBS Certificate to provide to the Education Authority, because that activity is" regulated activity" within the meaning of the Safeguarding Vulnerable Groups Act 2006, whereas general or day to day "private hire and taxi driving is not. The EA Enhanced DBSs is for" Child Workforce". A Licensing Authority cannot accept a Child Workforce DBS, and an Education Authority cannot accept an Other Workforce + Taxi DBS.[46] Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence. Some licensing authorities issue" restricted" licences solely for home to school transport use.

[43] "Protected convictions" and "protected cautions" are generally minor and elderly matters that do not appear on any DBS Certificates.
[44] See *Adamson v Waveney District Council* [1997] 2 All ER 898 QBD
[45] "For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children's Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2" - para 6.2 *"Statutory Taxi and Private Hire Vehicle Standards"* Department for Transport 2020 (available at https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards).
[46] This is because School Transport is "regulated activity "within the Safeguarding Vulnerable Groups Act 2006, whilst general taxi and private hire driving is not.

3.27 If any new applicant has spent 6 months or more (whether continuously or in total), while aged 18 or over residing outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.[47] Where an applicant is unable to provide a satisfactory criminal record check, a licence will not be granted because the licensing authority cannot be satisfied as to their fitness and propriety.

3.28 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability.[48] This may be 'never' due to the type of offence/behaviour and the risk of re-offending capability as a taxi driver.

3.29 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a fit and proper person to hold such a licence.

3.30 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.

3.31 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and their family is not a consideration that can be taken into account.[49] This then leads to the question of whether the stance taken by some local authorities is robust enough to achieve that overriding aim of public protection.

3.32 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that those making these decisions, whether they are Councillors or Officers, recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the

[47] There are considerable discrepancies between Government guidance across England and Wales about the timescales when overseas information is required. In Wales the Taxi and Private Hire Vehicles: Licensing Guidance refers to 6 or more continuous months spent outside the UK since the applicant's 10th birthday. The Home Office Guidance on the application process for criminal records checked overseas referred to in the DfT Statutory taxi and private hire vehicle standards requires criminal record checks where you have lived for 12 months or more (whether continuous or in total), in the last 10 years before the application, while aged 18 or over.
This paragraph has been revised having regard to these recommendations.
https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants/guidance-on-the-application-process-for-criminal-records-checks-overseas
https://www.gov.wales/taxi-and-private-hire-vehicles-licensing-guidance-html

[48] See para 5.15 *"Statutory Taxi and Private Hire Vehicle Standards"* Department for Transport 2020 (available at https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards)

[49] *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin), [2012] RTR 15 Admin Crt

matter, is the baseline for acceptability. The policy should only be departed from in exceptional circumstances and for justifiable reasons which should be carefully and comprehensively recorded. Licensing Authorities should monitor their decisions on an annual basis and examine how often they depart from the policy.[50]

3.33 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour. Predators want taxi drivers' licences as it gives them easy access to victims.[51] It should be noted that a licensing authority cannot prevent a person who has been refused a licence (or had it revoked) from re-applying to that, or any other, authority.

3.34 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. There should be a high standard of acceptability to enter the taxi industry. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. It also undermines the position and reputation of the vast majority of professional licensed drivers. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.

3.35 Licensees are expected to demonstrate appropriate professional conduct at all times, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.

3.36 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they

[50] See para 3.5 of DfT Statutory Standards

[51] Telford report volume 3 para 4.193: '*That is in my view a significant result and one which is more likely to be attributable to some feature of the job which is attractive to perpetrators, rather than to chance. The obvious feature that a CSE perpetrator would find attractive is that taxi drivers hold a position of responsibility to the public; people tend to trust them. It also shows why an effective system of licensing and enforcement is vital, and why the public must know about the standards they are entitled to expect: they must know how to complain and must be able to make a complaint easily and quickly.*' Report of the Independent Inquiry Telford Child Sexual Exploitation available at https://www.iitcse.com/

are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.

3.37 As a society, we need to ask the question "who is driving my taxi or private hire vehicle?" and be secure in the knowledge that the answer is "a safe and suitable person". The vast majority of drivers are decent, law-abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public's confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi and private hire drivers. This is detrimental to all involved.

3.38 In England, when any action is taken in relation to a drivers' licence: refusal to grant or renew, revocation or suspension, the authority must apply the legal test to determine if this action must be entered by that authority on the NR3S database in accordance with the Taxi and Private Hire Licensing (Safeguarding and Road Safety) Act 2022. It is recommended in DfT Guidance that this action is also undertaken in Wales. When considering any new application, the name or names of the applicant must be checked against the NR3S database. There is no mechanism for a driver to surrender or hand in their licence, or to withdraw an application to avoid suspension, revocation or refusal, and thus avoid such an entry being made. In such circumstances, licensing authorities must make decisions to revoke, suspend or not renew. This will ensure the NR3S Database is accurate.[52] A failed applicant for a licence cannot avoid the recording of a refusal.

Private Hire Operators

3.39 A private hire operator ("PHO") is the person who takes a booking for a private hire vehicle ("PHV"), and then dispatches a PHV driven by a licensed private hire driver ("PHD") to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same authority.[53] A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK, on renewal meets the HMRC Tax Conditionality requirements, and is a fit and proper person.[54]

3.40 As with taxi drivers the role of the PHO and their staff goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information.

[52] See Journal of Licensing (2019) 24 JoL 46
[53] See *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 QBD
[54] Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

e.g. periods away from home, destinations, regular journeys. It is therefore vital that a PHO and their staff are as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Taxis can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a taxi driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.

3.41 How then does a local authority satisfy itself as to the "fitness and propriety" or "safety and suitability" of the applicant or licensee?

3.42 The decision is made by the licensing authority. Each authority can decide by whom those decisions are made under their Scheme or Schedule of Delegations (contained in the Council's Constitution). Decisions can be made by Councillors sitting on a Committee or delegated to Sub-committee, or officers.

3.43 Spent convictions, but not protected convictions, can be taken into account when determining suitability for a licence, and these must be declared on the application form. In addition, the applicant (or licensee on renewal) should be asked to obtain and then provide a Basic Disclosure from the Disclosure and Barring Service.

3.44 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.

3.45 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and in the absence of a DfT test, this is suggested:

> "Without any prejudice, and based on the information before you, would you be comfortable providing sensitive information such as holiday plans, movements of your family or other information to this person, and feel safe in the knowledge that such information would not be used or passed on for criminal or unacceptable purposes?"[55]

3.46 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. A condition should be imposed on a PHO licence requiring them to have a policy to undertake checks on those they engage (whether as employees, workers or independent contractors) within their business to satisfy themselves that they are fit and proper people to undertake that task using the same criteria as the licensing authority used in relation to the PHO. The PHO must then retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

[55] This is a slightly modified version of the suggested test in Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

3.47 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation.[56] Only by so doing can a decision be made as to the fitness and propriety of the operating entity. In these circumstances, a condition should be imposed on the PHO licence requiring notification to the licensing authority of any changes in membership any partnership or directors or secretary of a limited company. Such notification must be made within 7 days of the alteration and be accompanied by a Basic DBS for every new person.

Vehicle Proprietors

3.48 Similar considerations apply to the vehicle proprietors, both taxi and private hire. Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver's licence), they clearly have an interest in the use of the vehicle. That is to say all of those named on the licence as proprietor or part proprietor.[57] They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety. Where any insurance replacement vehicle is involved, special considerations may apply.

3.49 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or who may be at risk of being, or are being, abused, exploited or enslaved.

3.50 In relation to both taxis and private hire vehicles, the local authority has an absolute discretion over granting the licence[58] and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself.

3.51 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions (but not protected convictions or protected cautions) on initial application and every subsequent renewal. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs. This will not be required for proprietors who are already licensed as drivers and are registered with the DBS update service.

[56] See s57(1)(c) of the 1976 Act.
[57] "Proprietor" is defined in s80 Local Government (Miscellaneous Provisions) Act as: ""Proprietor" includes a part proprietor and, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement."
[58] S37 of the 1847 Act in relation to taxis; section 48 of the 1976 Act to private hire vehicles.

3.52 in the absence of a DfT test, this is suggested as a suitable test:

> "Without any prejudice, and based on the information before you, would you 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 they would not allow it to be used for criminal or other unacceptable purposes, and be confident that they would maintain it to an acceptable standard throughout the period of the licence?"[59]

[59] This is a slightly modified version of the suggested test in Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

4.1 This Guidance is not binding on licensing authorities. They are all independent bodies, and it is for them to determine their own standards. This Guidance is intended to encourage greater consistency in decision making where it concerns the suitability of applicants for taxi and private hire licences.

4.2 This Guidance is also intended to enable licensing authorities, as the regulators of taxi and private hire drivers, vehicles and operators, to set standards that protect the public, and uphold the reputation of the trade and those licensed to work in it. As with any regulated activity, absolute certainty of safety cannot be achieved, and there will always be a tension between those regulated, and the regulators. The aim of this Guidance is to enable regulators to protect the public, whilst not preventing the vast majority of decent, law-abiding applicants and licensees to obtain and retain those licences. The 'public' is not restricted to passengers. It encompasses everyone: passengers, other road users and, of course, drivers.

4.3 As is clear from the Chapter 2: Offenders, Offending, Re-offending and Risk of Harm - An Overview above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk may reduce over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.

4.4 Many members of our society use, and even rely on, taxis and private hire vehicles to provide transportation services. This is especially true of disabled and vulnerable people. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.

4.5 Ideally, all those involved in the taxi and private hire trades (taxi and private hire drivers, taxi and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.

4.6 It is essential those making decisions (whether Councillors or officers) undertake regular (annual) training in the legislation relative to licensing and the purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

Pre-application requirements

4.7 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

Vehicles:

- Basic DBS checks and overseas checks for the vehicle proprietor;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space, comfort and any similar considerations
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.
- Electric Vehicles may have additional considerations

Drivers:

- Enhanced DBS checks (Other Workforce + Taxi) with update service and overseas checks;
- Checks made to the National Anti-Fraud Network NR3S database on refusals, revocations, and suspensions of taxi and private hire licences;
- Medical checks (Group 2 Standard as a minimum);
- Knowledge of the geographic area (for taxi and dual licences);
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation, county lines and safeguarding training;
- Right to work checks;
- Tax conditionality checks.

It should be noted that records only remain on the NR3S database for a period of 11 years after which they must be removed under S 4(3)(b) of Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022. This means that there will no longer be any record of whatever caused the entry to be made. This is unsatisfactory because any subsequent search after 11 years have elapsed from the date of entry will not reveal anything and is therefore worthless. It is believed that the period is set at 11 years to prevent a conviction that has become protected being revealed. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (SI 2013/1198) contains a long list of offences that will never become protected so it is some comfort that they will be disclosed on an Enhanced DBS in the normal way.

Operators:

- Basic DBS checks and overseas checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area;
- CSAE and County Lines Training for operator and staff
- Right to work checks;
- Tax conditionality checks.

4.8 The licensing authority sets its own application requirements which will be detailed in its licensing policy.

4.9 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.

4.10 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).

4.11 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a taxi or private hire proprietor's licence.

4.12 "Fit and proper" means that the individual (or in the case of a private hire operator's licence, the limited company together with its directors and secretary, or all members of a partnership[60]) is "safe and suitable" to hold the licence.

4.13 In determining safety and suitability, the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the taxi or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament. The categories of behaviours described below are introduced as "offences" which may or may not lead to convictions. Any such behaviours will be taken into account, whether or not it resulted in convictions or other sanctions.

4.14 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction.[61] Fixed penalties and community resolutions will also be considered in the same way as a conviction.[62]

[60] Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.
[61] This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.
[62] This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

4.15 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute, police decide on no further action (NFA), bailed, released under investigation or where an investigation is continuing) can and will be taken into account by the licensing authority.[63] In addition, complaints and or investigations where there was no police involvement will also be considered. Within this document, any reference to “conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.

4.16 In the case of any new applicant who is under investigation or has been charged with any offence and is awaiting trial, the determination may be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.

4.17 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.

4.18 Any offences committed, or unacceptable behaviour reported whilst driving a taxi or private hire vehicle, concerning the use of a taxi or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the taxi and private hire trades will not be seen as mitigating factors.

4.19 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.

4.20 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.

4.21 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

4.22 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The

[63] See *R v Maidstone Crown Court, ex p Olson* [1992] COD 496, QBD; *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, QBD; and *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Crt.

licensing authority has powers to take action against the holder of all types of licence (drivers, vehicles and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.

4.23 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.

4.24 Although the direct impact on the public varies depending upon the type of licence applied for or held, to maintain public confidence in the integrity of the taxi and private hire licensing regimes, it is suggested that the same standards are applied to all licences, except motoring convictions in relation to a private hire operator.

4.25 This Guidance suggests minimum periods of time that should elapse between the date of conviction or completion of the sentence (whichever is later) and the grant of a licence. Those periods are for single convictions. Where a person has more than one conviction, and can be seen as a persistent offender, this will raise serious questions about their safety and suitability. Convictions do become less important over time (hence the time periods) but multiple convictions or continued offending over any period of time will always be of significant concern to a licensing authority. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.

4.26 Where an applicant/licensee is convicted of an offence, or has evidence of unsuitable behaviour, which is not detailed in this guidance, the licensing authority will take that conviction and/or behaviour into account and use these guidelines as an indication of the approach that should be taken.

4.27 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual. It must be remembered that these are guidelines. It is for each authority to determine and adopt its own previous convictions policy, and then determine applications in the light of that policy.

4.28 It must always be borne in mind that these are Guidelines, not fixed periods, and if there are "truly exceptional circumstances"[64] the time periods can be reduced in individual cases. Such instances should only be for "truly exceptional circumstances" and not frequent occurrences. The decision makers must consider each case on its own merits, taking into account all factors, including the need to protect the public, the circumstances

[64] DfT Statutory Standards Guidance para 5.15

and effect of the offence, and any mitigation that has been offered. However, the conviction itself cannot be reconsidered.[65]

Drivers

4.29 As the criteria for determining whether an individual should be granted or retain a taxi driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.

4.30 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

4.31 As stated above, where an applicant persistently offends, which shows a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.

4.32 In relation to single convictions, the time periods detailed in the following paragraphs should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted. For motoring offences see the paragraphs headed 'Motoring Offences' below.

4.33 As stated above, the categories of behaviours described below are introduced as "offences" which may or may not lead to convictions. Any such behaviours will be taken into account, whether or not it resulted in convictions or other sanctions.

Barred lists

4.34 A licence will not be granted to a person who is on any barred list.

Offences resulting in death

4.35 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.

Offences involving exploitation and criminal harassment

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

[65] *Nottingham City Council v Farooq (Mohammed) Times, October 28, 1998 QBD*

psychological, emotional or financial abuse, stalking without violence, but this is not an exhaustive list.

Offences involving violence against persons, property, animals or the State

4.37 Violence includes situations where the victim is put in fear, alarm or distress without any physical contact. It is accepted that the concept of "violence" is wide, but any such behaviour will be of concern. This Guidance does not differentiate between different levels of violence. It will be for the licensing authority to determine whether there is any justification for departing from this time period, dependant of the facts of a particular case.

4.38 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed. Where the offence of violence was committed against a child or vulnerable adult a licence will never be granted.

Offences involving Public Order

4.39 Where an applicant has a conviction for a public order offence or similar that is not in itself an act of violence, a licence will not be granted for a period of 5 years.

Offences involving Possession of a weapon

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

Offences involving Sex, indecency or obscene materials

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

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

Offences involving Dishonesty

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

Offences involving Alcohol abuse, Misuse or Dependency

4.44 Where an applicant has any conviction for, or related to drunkenness not in a motor vehicle, a licence will not be granted until at least 5 years have elapsed since the completion of the sentence imposed. If the applicant has a number of convictions for drunkenness and or there are indications of a medical problem associated with possible abuse, misuse of, or dependence on alcohol, the applicant will also be subject to additional medical testing/assessment before the application is considered. If the applicant was found to be dependent on alcohol, a licence will not be granted unless at least 5 years have elapsed since the dependency ceased.

Offences involving Drugs abuse Misuse or Dependency

4.45 Where an applicant has any conviction for, or related to, the production, import, trade in or 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.

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

4.47 If there are indications that an applicant or licensee has, or has had a history of, a medical problem associated with possible abuse, misuse or dependence of drugs, the applicant will also be subject to additional medical testing/assessment before the application is considered. If the applicant was found to be dependent on drugs, a licence will not be granted unless at least 5 years have elapsed since the dependency ceased.

Offences involving Discrimination

4.48 Where an applicant has a conviction involving or connected with discrimination in any form, including non-compliance with the Equality Act 2010, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed. This includes e.g. refusals to carry assistance dogs or to provide mobility assistance.

Offences involving Regulatory non-compliance

4.49 Regulatory crimes include local authority offences, licensing matters, and other offences prosecuted by other authorities. It also includes matters relating to the administration of justice such as failing to surrender to bail, and any other matter where regulations or requirements have been ignored or broken. These offences demonstrate a lack of compliance with legal requirements which would clearly be a worry in relation to taxi and private hire licensees. Serious consideration would need to be given as to whether they are a safe and suitable person to hold a licence.

Motoring Offences

4.50 Taxi and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction can demonstrate a lack of professionalism and will be considered seriously. A single occurrence of a minor traffic offence may not prohibit the grant of a licence or result in action against an existing licence. Subsequent convictions suggest the fact that the licensee may not take their professional responsibilities seriously and may therefore not be a safe and suitable person to be granted or retain a licence.

4.51 Where an applicant has a conviction for drink driving or driving under the influence of drugs or failing to provide a specimen in relation to a driving matter, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. With drug offences, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

4.52 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any disqualification imposed, whichever is the later.[66]

4.53 Penalty points applied to a DVLA driving licence remain active for either 3 or 10 years, which may be from the date of the offence or the date of conviction depending upon the offence as detailed in "Penalty points (endorsements)".[67] They may be removed from the licence after 4 or 11 years. That action does not negate the offence that led to the points being imposed. Penalty points (and the underlying offence) will be relevant and taken into consideration for 4 or 11 years from the date of the conviction. or the date of the offence depending on the type of offence (see "Penalty points (endorsements)".[68]

4.54 By attaining 7 or more penalty points on their DVLA licence a driver is demonstrating they may not be fit and proper and the authority should assess their suitability. It is suggested part of the assessment is to undertake a driver awareness course and/or pass a driver assessment, with no more than 8 minor infringements, within 2 months of notice from the authority they are considering the suitability of the licence holder. Failure to do so strongly suggests the driver is not fit and proper and not be licensed until a period of 12 months has passed with no further convictions and has passed a driver assessment since the last conviction.

4.55 Any offence which resulted in injury to any person or damage to any property (including vehicles), or any insurance offence then a licence will not be granted until at least 7 years have elapsed since the completion of any sentence.

[66] Research shows driving while using a handheld device is potentially more dangerous than driving under the influence of alcohol: https://www.trl.co.uk/news/transport-select-committee-road-safety-enquiry-on-the-use-of-mobile-phones) Using an electronic device which is 'hands free' or 'factory fitted' does not constitute an offence on its own but drivers need to maintain proper control of the vehicle at all times. Any behaviour or activity other than driving may be considered an offence where control of the vehicle is compromised.

[67] Available at : https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence

[68] Available at : https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence

4.56 Any driver who has accumulated 12 or more points on their DVLA licence and has not been disqualified under the totting up procedure by a court as a result of making exceptional hardship arguments shall not be able to advance such arguments before the licensing authority as they are not a relevant consideration in determining what action the authority should take. Any such driver will not be licensed for a period of 5 years from the date of the accumulation of 12 or more points.

4.57 Any driver who has been disqualified as a result of "totting-up", which erases the points when the licence is restored, will not be licensed for a period of 5 years from the date of the disqualification. Other disqualifications will need to be investigated, the reasons ascertained, and a decision will be based on the results of that investigation.

4.58 Drivers who commit parking, obstruction and other such motoring offences that do not attract penalty points are not displaying a professional approach to their work. Persistent offenders should be reported to their licensing authority who may consider a period of suspension depending on the severity and frequency of the incidents reported.

Behaviours

4.59 Driver behaviours that fall short of criminal behaviour but are indicators of more sinister behaviour need to be addressed to maintain confidence in the taxi trades and to stop unwanted behaviours before they evolve into criminal acts.

4.60 Behaviours such as

- Asking a passenger for their contact or social media details
- Asking personal or intimate questions
- Inappropriate physical contact with passengers or invade their personal space
- Inappropriate conversations, questions or behaviour

This is more important if the passenger is a lone vulnerable individual.

4.61 Except in the most serious of cases, drivers should be given a warning in the first instance, if appropriate sent on refresher safeguarding training and explained how the behaviour maybe perceived by a vulnerable passenger.

4.62 If the behaviour, on the balance of probability, is repeated and considered to be predatory in nature then any applicant should not be licensed.

4.63 Where an applicant or licence holder has a conviction for an offence contrary to any legislation relating to taxi or private hire activity not covered elsewhere, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Private Hire Operators

4.64 A private hire operator ("an operator") does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others or used by the operator or their staff for criminal or other unacceptable purposes.

4.65 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.

4.66 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority's overall criteria, that will lead to the operator's licence being revoked.

4.67 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, except motoring offences to recognise the operator is not connected with the use of a vehicle, which are outlined above.

Vehicle proprietors

4.68 Vehicle proprietors (both taxi and private hire) have two principal responsibilities.

4.69 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.

4.70 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.

4.71 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.

4.72 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

Appendix 1 - Guidance on Recording Decisions, Reasons and NR3S Criteria for reporting purposes

It is important all decisions including reasons are recorded (see example Decision Notice in Appendix 2). The following template may assist in preparing to report a decision to NR3S when appropriate and for the council's internal records.

Directorate:	The Directorate or department that oversees licensing matters in your authority.
Decision Maker	This will be either the committee/ sub-committee or officer under delegated powers
Subject	Name of licence holder
Delegated Powers Reference	If decision under delegated authority quote relevant section of the scheme here.
Decision	State in simple terms the decision and whether immediate effect. e.g. Revoked with immediate effect
Detail	Provide the facts in this section, not your views or thoughts. List the evidence you considered
Reason	Now explain your findings here, where there are conflicting accounts explain here the account you prefer and the reasons why. Refer to your policy and how you have applied it. Cover all of the options open to you and why others were discounted and why the option was chosen. Demonstrate consideration of the pieces of legislation listed in the 'Other' section below Include consideration whether the action is to have immediate effect and explain the reasons for this.
NR3S	The Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 imposes a duty on councils in England, and it is advisory in Wales, to record details on the NR3S Register, of any refusal, revocation and/or suspension of a driver's licence where the reasons meet one or more of the following criteria (tick all that apply):- ☐ has committed a sexual offence (whether or not the person was charged with, prosecuted for or convicted of the offence); ☐ has harassed another person; ☐ has caused physical or psychological harm to another person;

	☐ has committed an offence that involves a risk of causing physical or psychological harm to another person (whether or not the person was charged with, prosecuted for or convicted of the offence); ☐ has committed an offence under section 165, 168 or 170 of the Equality Act 2010 (whether or not the person was charged with, prosecuted for or convicted of the offence); ☐ has done anything that, for the purposes of the Equality Act 2010, constitutes unlawful discrimination or victimisation against another person; ☐ has threatened, abused or insulted another person; ☐ poses a risk to road safety when driving; ☐ may be unsuitable to hold a driver's licence for other reasons relating to— ☐ the safeguarding of passengers, or ☐ road safety. The Act also imposes a duty on council's to search NR3S Register before making a decision on a person's application for, or for the renewal of, a driver's licence. Further information can be found at www.nafn.gov.uk
Other	I have fully considered the relevant legislation including The Equality Act, Crime and Disorder Act, Human Rights Act, the Local Government (Miscellaneous Provisions) Act 1976 (this is not an exhaustive list). I am duly authorised to make this decision.

Declared Officer / Member Interests				
Details of consultation undertaken if appropriate		Yes	No	Date
	Director			
	Chair of Regulatory Committee			
	Senior Solicitor			
Contact Person		**Contact No**		
Authorised Signatory		**Date**		

Appendix 2 – Example Decision Notice

NB: This is not a prescribed form and should be adapted for a council's own purposes

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976
Section 60/61/62

NOTICE OF [GRANT / REFUSAL / SUSPENSION / REVOCATION / RENEWAL / NON-RENEWAL/] of [LICENCE TYPE] LICENCE

TO: _____

OF: _____

LICENCE NO. _____

NOTICE IS HEREBY GIVEN that [Council], has today [granted / refused / suspended / revoked / renewed/not renew] [licence type] licence, [with immediate effect / with effect from XXXX / for the period from XXXX until XXXX] on the ground(s) and for the reason(s) indicated and stated below:

You are a fit and proper person to hold such a licence / You are not a fit and proper person to hold such a licence

Vehicles – Section 60
The vehicle is unfit for use / you are unsuitable to hold a proprietor's licence / on the following grounds

(a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;

(b) any offence under, or non-compliance with, the provisions of the Act of 1847, or of this Part of this Act by the operator or driver; or

(c) any other reasonable cause

Drivers – Section 61
You are no longer a fit and proper person to hold the licence on the following ground(s):

(a) That you have since the grant of the licence:

(i) been convicted of an offence involving dishonesty, indecency or violence, and/or

(ii) been convicted of an offence under or failed to comply with the provisions of the Town Police Clauses Act 1847 or of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or

(aa) That you have 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

Operators - **Section 62**
You are no longer a fit and proper person to hold the licence on the following ground(s):

(a) any offence under, or non-compliance with, the provisions of this Part of this Act;

(b) any conduct on the part of the operator which appears to the council to render him unfit to hold an operator's licence;

(c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted;

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

(d) any other reasonable cause.

Reason(s):

[INSERT FULL AND DETAILED REASONS]

This decision does not take effect until 21 days have elapsed after receipt of this notice, except where the decision is to have immediate effect.

NOTICE IS FURTHER GIVEN that in accordance with section 61 and supplementary provision contained in section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976, [Council] is satisfied that it is both proportionate and in the interests of public safety that the [suspension/ revocation] of your driver's licence takes effect immediately on receipt of this notice.

The effect of this part of the decision is that you cannot continue to drive a licensed vehicle (hackney carriage or private hire vehicle) pending the outcome of any appeal to the Magistrates' Court. You are required, in accordance with section 61(2)(a) of the Local Government (Miscellaneous Provisions) Act 1976, to return immediately your driver badge number [BADGE NO] to the Licensing Department, [COUNCIL ADDRESS]. Failure to do so is an offence at law.

DATED XXXX

Signed on behalf of [Council]

RIGHT OF APPEAL

Sections 60(3), 61(3) and 62(3) of the Local Government (Miscellaneous Provisions) Act 1976 provides that any applicant, proprietor, driver or operator aggrieved by the decision of this council to suspend, revoke or refuse to renew a licence may appeal to the Magistrates Court. The appeal must be submitted to the Court within 21 days of the date of service of this Notice. You are advised to take legal advice to ensure that your appeal is correctly submitted to the Court together with the required Court fees, for which you may be liable.

If you choose to appeal and do so within the time limit you may continue to drive until your appeal is determined except where this decision has immediate effect.

In the event that you choose to appeal and are unsuccessful, the council may seek costs against you. If you are successful, the council will resist any application for costs made by you.

Any correspondence with the council must be addressed to [NAME AND ADDRESS OF THE COUNCIL].

Contact Us

General Enquiries

01749 987333
info@instituteoflicensing.org

Team Contact details

Sponsorship enquiries
sponsorship@instituteoflicensing.org

Training and event enquiries
events@instituteoflicensing.org

Membership enquiries
membership@instituteoflicensing.org

To advertise job vacancies
jobs@instituteoflicensing.org

News articles
news@instituteoflicensing.org

Financial queries
accounts@instituteoflicensing.org

IoL membership is available to any person or organisation with an interest in licensing

Email us via membership@instituteoflicensing.org to find out more.

Institute of Licensing
Incorporating the National Association of Licensing and Enforcement Officers

www.instituteoflicensing.org

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The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK.