

AGENDA

Meeting: Licensing Committee

Place: West Wiltshire Room - County Hall, Bythesea Road, Trowbridge,
BA14 8JN

Date: Monday 2 September 2019

Time: 10.30 am

Please direct any enquiries on this Agenda to Lisa Pullin, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713015 or email committee@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Allison Bucknell	Cllr George Jeans
Cllr Trevor Carbin	Cllr Jim Lynch
Cllr Sue Evans	Cllr Leo Randall
Cllr Jose Green (Vice-Chairman)	Cllr Pip Ridout
Cllr Mike Hewitt	Cllr Ian Thorn
Cllr Peter Hutton (Chairman)	Cllr Peter Evans

Substitutes:

Cllr Clare Cape	Cllr Steve Oldrieve
Cllr Ernie Clark	Cllr Stewart Palmen
Cllr Anna Cuthbert	Cllr James Sheppard
Cllr Gavin Grant	Cllr Graham Wright
Cllr Howard Greenman	Cllr Atiqul Hoque
Cllr Nick Murry	

Recording and Broadcasting Information

Wiltshire Council may record this meeting for live and/or subsequent broadcast on the Council's website at <http://www.wiltshire.public-i.tv>. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and/or training purposes.

The meeting may also be recorded by the press or members of the public.

Any person or organisation choosing to film, record or broadcast any meeting of the Council, its Cabinet or committees is responsible for any claims or other liability resulting from them so doing and by choosing to film, record or broadcast proceedings they accept that they are required to indemnify the Council, its members and officers in relation to any such claims or liabilities.

Details of the Council's Guidance on the Recording and Webcasting of Meetings is available on request. Our privacy policy can be found [here](#).

Parking

To find car parks by area follow [this link](#). The three Wiltshire Council Hubs where most meetings will be held are as follows:

County Hall, Trowbridge
Bourne Hill, Salisbury
Monkton Park, Chippenham

County Hall and Monkton Park have some limited visitor parking. Please note for meetings at County Hall you will need to log your car's registration details upon your arrival in reception using the tablet provided. If you may be attending a meeting for more than 2 hours, please provide your registration details to the Democratic Services Officer, who will arrange for your stay to be extended.

Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

1 **Apologies/Substitutions/Membership Changes**

To receive any apologies and details of any substitutions.

To note any changes to Committee membership.

2 **Minutes** (*Pages 7 - 66*)

To confirm and sign the minutes of the meeting held on 3 June 2019 (copy attached).

3 **Chairman's Announcements**

To receive any announcements from the Chairman.

4 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Friday 23 August 2019** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Wednesday 28 August 2019**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Minutes of the Licensing Sub Committees** (Pages 67 - 98)

To receive and sign the minutes of the following Licensing Sub Committees:

Northern Area

20/05/19 Application for a Variation of a Premises Licence, in respect of The Old Lane, Lodge Road, Chippenham

Southern Area

31/05/19 Application by Wiltshire Police for a Review of the Premises Licence in respect of @Home, 5 Bridge Street, Salisbury

7 **Statement of Licensing Policy - Update** (Pages 99 - 174)

The report of Carla Adkins (Public Protection Officer – Licensing) asks the Licensing Committee to note the consultation undertaken and subsequent amendments made to the Council's draft Licensing Policy (in relation to the Licensing Act 2003) and comments the Statement of Licensing Policy to the Council for approval at its meeting on 15 October 2019.

8 **Licensing Act 2003: Film Classification** (Pages 175 - 206)

The report of Linda Holland (Licensing Manager) seeks approval from the Licensing Committee to a process and procedure to address requests for film classification in line with relevant legislation.

9 **Update from the Licensing Authority Working Group** (Pages 207 - 216)

Attached is a briefing note to update the Licensing Committee on progress made by the newly formed LAWG and provide an update in relation to the recommendations made by the late-night taxi group as endorsed by the Environment Select Committee on 08 January 2019.

10 **Review of the Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences** (Pages 217 - 356)

The report of Jo Hulbert (Fleet Compliance Officer) and Julie Anderson-Hill (Head of Culture and Operational Change) seeks to provide the Licensing Committee with the relevant information to make an informed decision on the proposed revision to Wiltshire Council's Fit and Proper Person Policy for hackney carriage and private hire licences.

11 **Update on the Licensing Service** (Pages 357 - 360)

Linda Holland (Licensing Manager) has prepared an update to the Licensing Committee of the work of the Licensing Team in 2019 and this is attached.

12 **Dates of Future Committee Meetings**

Members are asked to note the future meetings of the Licensing Committee, all to commence at 10.30am:

2 December 2019
2 March 2020.

13 **Urgent Items**

Any other items of business, which in the opinion of the Chairman, should be taken as a matter of urgency. Urgent items of a confidential nature may be considered under Part II of this agenda.

This page is intentionally left blank

LICENSING COMMITTEE

DRAFT MINUTES OF THE LICENSING COMMITTEE MEETING HELD ON 3 JUNE 2019 AT COUNCIL CHAMBER - WILTSHIRE COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.

Present:

Cllr Allison Bucknell, Cllr Sue Evans, Cllr Jose Green (Vice-Chairman), Cllr Mike Hewitt, Cllr Peter Hutton (Chairman), Cllr George Jeans, Cllr Leo Randall and Cllr Peter Evans

Also Present:

Julie Anderson-Hill (Head of Service – Culture and Operational Change, Waste and Amenity), Emma Batchelor (Public Protection Officer – Licensing), Linda Holland (Licensing Manager), Tom Ince (Amenity Partnership Team Leader), Sarah Marshall (Senior Solicitor), Lisa Pullin (Democratic Services Officer) and Peter White (Enforcement Manager)

13 **Apologies/Substitutions/Membership Changes**

Apologies were received from Councillors Trevor Carbin, Jim Lynch, Pip Ridout and Ian Thorn.

Councillor Atiquel Hoque was substituting for Councillor Pip Ridout.

Following the annual meeting of Council the following changes to the members of the Committee were noted:

Councillor John Smale off – Councillor Peter Evans on.

Councillor Atiquel Hoque on as substitute Member, Councillor James Sheppard off as substitute Member.

14 **Minutes**

The minutes of the meeting held on 11 March 2019 were presented to the Committee.

Resolved:

That the minutes of the meeting held on 11 March 2019 be approved and signed as a correct record.

15 **Chairman's Announcements**

The Chairman, Councillor Peter Hutton made the following announcements:

Thank you to all Members for their attendance at recent Sub Committee hearings. Two review hearings had resulted in Premises Licences being revoked by the Sub Committee.

You are all aware that a training session for Members is planned to follow this meeting. For clarity, the training will become the new Agenda item 8 so that the details of what training was presented is noted in the minutes.

16 **Declarations of Interest**

There were no declarations of interest.

17 **Public Participation**

No questions had been submitted to the Committee from the public prior to the meeting and no press or public were present at the meeting.

18 **Minutes of the Licensing Sub Committees**

Western Area

16/04/19 Application for a Variation to a Club Premises Certificate – Westbury Conservative Club, Alfred Street, Westbury

Resolved:

That the Minutes of the meeting detailed above be approved and signed as a correct record by the Chairman.

19 **Update from the Licensing Authority Working Group**

Julie Anderson-Hill (Head of Service for Culture and Operational Change, Waste and Environment) introduced her Team – Peter White, (Head of Enforcement). Pete explained that the hackney carriages/private hire licensing had previously been part of the Fleet Team, but this had now moved across to sit under him within the Enforcement Team. Tom Ince (Amenity Partnership Team Leader) had moved across to work under Peter. There were currently a team of 4 working on hackney carriage/private hire licensing but two of these staff had only recently commenced and would require a number of months to get them up to a suitable knowledge standard.

It was agreed that a list of Officers within these Teams in particular areas would be shared with Members following the meeting.

The Committee considered the Terms of Reference for the Licensing Authority Working Group which the Working Group had approved at their meeting on 22 May 2019. The Committee confirmed that they were in agreement to adopt these Terms of Reference.

Members asked the following questions;

Q Are the vehicle MOTs sufficient to ensure the safety of the users of taxis in Wiltshire?

A We check that MOTs are in place on the vehicles that we licence, and we do six monthly inspections. We have stricter rigorous standards which are over the current legal requirements.

Q Is there an age restriction on vehicles that are licenced in Wiltshire?

A We are reviewing our current age restrictions on vehicles as it may be that whilst a car could be older, the mileage could be lower and the vehicle could be used as a wheelchair accessible vehicle.

Q Do we have a fleet of taxis that is 100% wheelchair accessible?

A No. As mentioned earlier, we are looking at relaxing some of our age of vehicles criteria to allow older cars that are wheelchair accessible to be used.

Julie gave an update to the Committee on behalf of the Licensing Authority Working Group and highlighted the following:

- The Working Group have met on two occasions since March;
- At the first meeting a number of actions were requested of Officers and updates on progress of these were reported at the second meeting;
- Uber are NOT currently licenced as a private hire operator in Wiltshire, but this does not mean that they cannot operate their service in Wiltshire. Uber take bookings via their office in Bath, where they are licensed, or via their app and subcontract them to Wiltshire licensed hackney carriage drivers/vehicles. A hackney carriage can be used as a private hire vehicle and is not subject to the same operator's licence requirements that a private hire driver would be;
- The law allows a licensed private hire driver and vehicle to work and pick up from anywhere within the Country if the journey is pre-booked;

- The Fleet Licensing Team believe that any driver working for Uber and taking private hire bookings should hold a Private Hire Operators Licence. It is proposed to update the Council's driver and vehicle guidelines to state that any driver or vehicle operating on behalf of Uber must hold the above operator's licence. The Team have contacted the Council's Legal Team for guidance on the above and whether it can be legally implemented. A briefing note for all Members on Uber will be circulated following the meeting;
- The Fleet Licensing Team had confirmation from the Passenger Transport Team that any school contractors based outside of the County must comply with Wiltshire's licensing rules and they will also have an enhanced DBS for each driver;
- Wiltshire is a member of the National Anti-Fraud database and are looking into subscribing to the National Refusal database where they can check if drivers/operators have any suspensions/revocation of any licences;
- Officers were in the process of reviewing the safeguarding training and were working with HR and IT to look to produce an online version of the training which drivers would be requested to come in and complete at a Hub as it was thought that some training may be completed by operators on their behalf. Officers wanted to be assured that it was being completed by drivers;
- The issue of CCTV in vehicles was being looked at with advice being sought from the Council's Legal and Information Governance Teams awaited;
- The taxi tariff/fare levels had not been reviewed since they were agreed in 2014. The costs of licences had risen between 5% and 10%;
- Only one written complaint had been received about the high price of fares in Salisbury. Officers want to work with the trade to ensure that the tariffs work for them and a meeting with the trade was planned for 10 June to discuss this with them;
- Officers were committed to ensure that Wiltshire had the best taxi service for all going forward; and
- It was not yet known when the responses to the Government consultation "Taxi and private hire vehicle licencing: protecting users" that ran from February to April 2019 would be published. It was expected that there may be recommendations arising from this and that we may have already implemented some of them.

The Chairman thanked the Working Group Members for their contributions and acknowledged that there had been a lot of information to take on. He also thanked Officers for their prompt response to the actions raised. A detailed report on behalf of the Working Group would be presented to the Committee at their meeting on 2 September.

A Member expressed surprise that there had only been one complaint from Salisbury in relation to the tariff rates. He felt that Salisbury's night time economy was in decline because of the tariff rates.

Officers confirmed that some verbal complaints had been received from drivers in the Salisbury area about the tariffs and they had been asked to put these concerns in writing, but none had been forthcoming. Officers were planning to engage with the trade representatives at the trade meetings and get the message across that they welcome the views from drivers in all areas.

A Member asked if further letters of complaint were received could the tariffs be lowered, to say tariff 2?

Officers confirmed that the rest of Wiltshire went up to Salisbury's tariff in 2014. Some drivers in other areas in Wiltshire have indicated that they would like a small rise to the tariff rates which is against the Salisbury area view that the fare levels are too high. The fees have gone up, but the tariffs are only a maximum that can be charged. Officers want to work with the trade and may investigate different ways of providing transport where needed, particularly in Salisbury. It could be that Salisbury businesses could support buses that could go to the outline areas of Salisbury or the military bases?

Officers would continue to review the tariff based on evidence, they were also surprised there was only one letter of complaint, but they would need substantive information to consider lowering the tariffs as the operators will then report that they cannot run the business as it would be making a loss.

A Member asked what is stopping Uber coming into Wiltshire? Officers reported that Uber could apply to operate in Wiltshire and they would need to have a base within Wiltshire to do this.

Officers explained how the tariffs work and the charges that can be made depending on the time of the journey. Members were reminded that a journey can be pre-booked and a fare agreed without having to use the meter.

Resolved:

- 1. That the Licensing Committee adopt the Terms of Reference (as below) as recommended by the Licensing Authority Working Group.**

- i) **In relation to hackney carriage and private hire vehicles licensing for Wiltshire the Licensing Authority Working Group will consider/review the following:**
- **Wiltshire's hackney carriage maximum tariffs/fare levels**
 - **The introduction of literacy and language tests for drivers**
 - **Enhanced safeguarding for proprietors**
 - **Use of accessible vehicles for wheelchairs**
 - **Use of CCTV in hackney carriages and private hire vehicles**
 - **The use of enforcement on taxi ranks**
 - **Use of Uber within Wiltshire**
- ii). **To make any evidenced recommendations to the Licensing Committee for improvement/approval as appropriate.**
2. **That the Licensing Committee note the update from the Licensing Authority Working Group.**

20 **Continuous Professional Development for Members - Training**

A training/update session for Members was then held between 11.15 and 12:50pm.

The following Members were present:

Councillors Allison Bucknell, Trevor Carbin (from 12pm), Peter Evans, Sue Evans, Gavin Grant, Jose Green, Mike Hewitt, Atiqul Hoque, Peter Hutton, George Jeans, Leo Randal and Graham Wright.

Enforcement – Scrap Metal

Pete White (Enforcement Manager) gave details of the role of the Enforcement Team and in particular their working into scrap metal dealer licensing and enforcement. A copy of the slides referred to is attached as Appendix 1.

Temporary Events Notices

Linda Holland (Licensing Manager) gave an overview of TENS. A copy of the slides are attached as Appendix 2.

Licensing Act Hearings

Linda Holland (Licensing Manager) and Sarah Marshall (Senior Solicitor) gave an overview of Licensing Hearings. A copy of the slides are attached as Appendix 3.

Appendix 1 - Scrap Metal Licensing and Enforcement

Appendix 2 - Temporary Events Notices

Appendix 3 - Licensing Act Hearings

21 **Dates of Future Committee Meetings**

Members noted the date of future meetings of the Licensing Committee as detailed below, all to start at 10.30am

2 September 2019

2 December 2019

2 March 2020.

22 **Urgent Items**

There were no urgent items.

(Duration of meeting: 10.35 am - 12.55 pm)

The Officer who has produced these minutes is Lisa Pullin, of Democratic Services, direct line 01225 713015, e-mail lisa.pullin@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

This page is intentionally left blank

Enforcement Service

Page 95



Peter White

03 June 2019

Scrap Metal

What do we do?

- The Enforcement Team are the principal authority to investigate and prosecute identified environmental and highway offenders, including reports from the Police for resolution. Current team composition; 6 officers (2 x FTE Churchfields; 2 x FTE Kennet House; 2 x FTE Melksham)
- Principal support of all relevant legislation
- Fly-tipping investigations including; formal interviews under caution, case files, fixed penalty notices, prosecutions and covert camera surveillance operations
- Enforce littering offences
- Controlled waste duty of care documentation inspections
- Service of Statutory Notices
- Advise/educate businesses and public on their waste responsibilities

What do we do?

- Abandoned vehicles
- Unauthorised encampments
- Vehicles for sale on the highway
- Obstructions and encroachments on the highway
- Joint Intelligence/Operational partnership working
- Street trading consent
- **Scrap metal dealer licensing and enforcement**

Scrap Metal Dealers Act 2013

- Site and collectors licence valid for 3 years
- Substantially improved powers
- Licences can be refused/revoked based on suitability of applicant
- Police, EA & Council can inspect sites and prosecute for not being registered and not keeping records
- Offences for buying scrap metal for cash
- Includes someone carrying on the business as a motor salvage operator
- Scrap collectors must by law display photo licence in vehicle windscreen



Licensed Dealers

Licensed Sites & Collectors to date (Wiltshire):

Site:	25
Collectors:	16

- 3 year renewal period due October 2019
- Increase of applications received due to well publicised convictions of unlicensed dealers



Scrap Metal Enforcement Actions

Enforcement Stats July 2018 to date:

Prosecutions (unlicensed collector):	7
Fines, Costs & Victim Surcharge total:	£11,596
Pending Prosecutions (with legal):	3
Pending investigations:	4





This page is intentionally left blank

Temporary Event Notices

June 2019



What is a Temporary Event Notice?

- A temporary event notice can be used for a one off event such as a summer fete or a birthday party in a village hall.
- They can also be used to apply for an extension of hours or additional licensable activities in a premises that is already licenced.
- The event must involve no more that 499 people at any one time including staff and performers.
- The event can last no more than 168 hours (7 days) with a minimum of 24 hours between events at the same premises.

Who can apply?

- Individuals over 18.
- Personal Licence holders are able to apply for up to 50 TENS per year.
- Non-personal licence holders can apply for 5.
- Each single premises can have up to 15 TENS per year.



How many TENs did we receive last year?

2160

Applying for a TEN

- 10 clear working days before the event.

Fri 13 th	Sat 14 th	Sun 15 th	Mon 16 th	Tue 17 th	Wed 18 th	Thur 19 th	Fri 20 th	Sat 21 st	Sun 22 nd	Mon 23 rd	Tue 24 th	Wed 25 th	Thur 26 th	Fri 27 th	Sat 28 th
Day 0	*	*	Day 1	Day 2	Day 3	Day 4	Day 5	*	*	Day 6	Day 7	Day 8	Day 9	Day 10	Event Day

- The form must be completed in **black ink** and CAPITAL LETTERS.
- They are £21
- A copy of the TEN must also be sent to the police at least 10 working days before the event.
- Where the applicant is aware that there may be crime and disorder issues that the Police will wish to consider, it is suggested that additional details are provided in addition to the minimal information that the application form requires.

Applying for a Late TEN

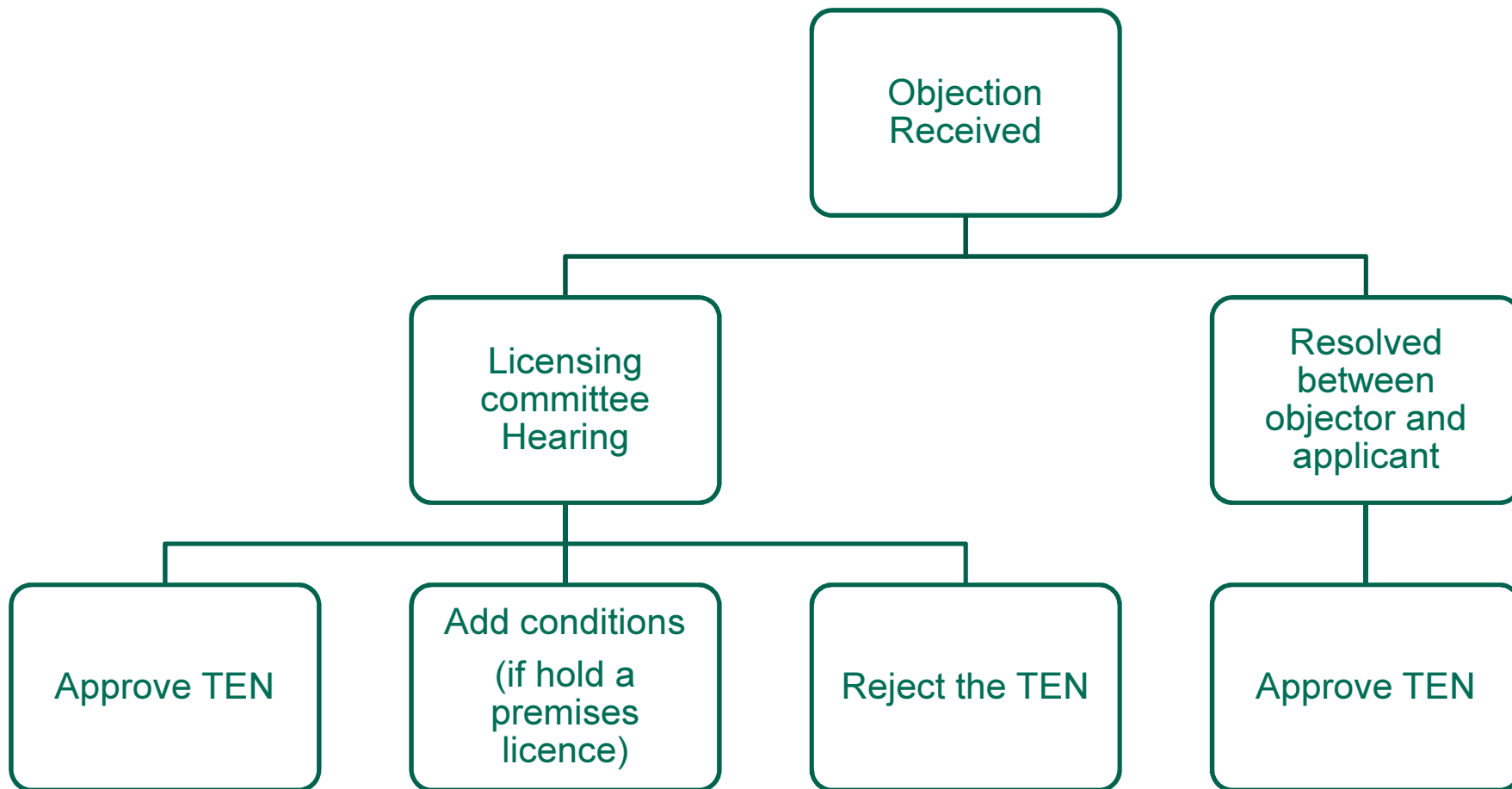
- 5 clear working days before the event (but not earlier than 9 clear working days).
- 2 late TENs per year. If you hold a personal licence, the limit is 10.
- Late TENs count towards the total number of permitted TENs.



Can anyone object?

- Both Police and Licensing Authority exercising Environmental Health functions have three working days to object
- The objection must be on the grounds of any of the four licensing objectives.
- If there are objections to late TENs a counter notice will be issued which cannot be appealed.

Objection process



Once the application is received

- The Licensing Authority can object if the number of TENS issued in any year by either the applicant, or the premises have been exceeded.
- If no objections are received then the event can take place.
- If objections are made these will either need to be resolved or taken to a hearing which will determine whether the event will be: permitted, with or without conditions (if a licence is already in place) or prohibited.
- If there are objections to late TENS a counter notice will be issued which cannot be appealed.

Withdrawing notices

- Temporary notices can be withdrawn by the applicant.
- Both the Licensing authority and the police should receive a withdrawal notice no later than 24 hours before event.

This page is intentionally left blank

LICENSING ACT 2003 Hearings




June 3rd 2019

Key Objectives

The Act is designed to meet the Government's four key **Licensing Objectives**:-

- Prevention of crime & disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Types of licenses and hearings we determine ?

Licensing Act 2003 Licence		LN/0000XXXX
ISSUING LOCAL AUTHORITY	 Where everybody matters	
PART 1 – PREMISES & LICENCE HOLDER DETAILS		
POSTAL ADDRESS OF PREMISES, OR IF NONE, ORD/ANCE SURVEY MAP REFERENCE OR DESCRIPTION		
Dog and Duck		
NAME, (REGISTERED) ADDRESS AND CONTACT DETAILS OF HOLDER OF PREMISES LICENCE		
Mr Will Beer Ale House, Bottle Lane		
REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER		
NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL		
Mr James Cann 99 Swansea Lane, Barking,		
ISSUING AUTHORITY AND PERSONAL LICENCE NUMBER HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL		
Colchester Borough Council 992365		
WHERE THE LICENCE IS TIME LIMITED - THE DATES AND TIMES		
Not Applicable		
WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND /OR OFF SUPPLIES		
ON and OFF the premises		
STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED		
Yes - The provisions of Section 145 of the Licensing Act 2003 apply		

- Premises Licences
- Personal Licences
- Licence Reviews
- Variation of Licences

Licensable Activities

- the sale by retail of alcohol



- the supply of alcohol by or on behalf of a club to a member of the club



- provision of regulated entertainment



- provision of late night refreshment



What happens next ?

- Where no representations are made the licence must be granted as applied for, subject only to the conditions consistent with the operating schedule.
- Where representations are made the applications must be referred to the Councils Licensing Committee through the area Licensing Sub Committee to be determined within the statutory timescales.

Who can make a representation ?

Responsible authorities

- Wiltshire Police
- Wiltshire Fire & Rescue
- Planning
- Enforcing agency for health & safety
- Trading Standards
- Child protection agency
- Licensing Authority
- Public Health
- Any other persons

Representations can be in favour of, or against an application

On what grounds can a representation be made?

Representations must be:-

- Made in writing clearly stating reasons for objection
- Linked to at least one of the key licensing objectives
- Specific to the premises and the application
- Within the legal consultation period (28 days)

Representations that fail to comply with the requirements of the Act cannot be considered and are deemed irrelevant and must be rejected.

Hearing Details: The Licensing Act 2003 Hearings Regulations

- **Schedule 1:** Timescales depending on the type of hearing The Licensing Act 2003 Hearings Regulations. *Where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.*
- **Schedule 2:** Persons to whom notice of hearing should be given.
- **Schedule 3:** Documentation that should be supplied with notice of hearing.

Licensing Officers have a responsibility to:

- Check validity of the representation's
- Advise applicant valid representation's received.
- Contact Democratic services to ask for a hearing to be arranged (at the earliest opportunity)
- If possible offer to mediate between the parties
- Advise all parties of date and time of hearing
- Assemble hearing report and associated documentation

Following receipt of notice of hearing

A party should advise the authority:

- Whether they intend to attend or be represented at the hearing; if they wish additional person to appear at the hearing, they must request permission for any such persons to appear.
- Whether they consider a hearing to be unnecessary
- *Prescribed time scales apply*

Hearing Report Templates

WILTSHIRE COUNCIL
NORTHERN AREA LICENSING SUB COMMITTEE
DATE OF MEETING 29th November 2012

Application for Review of a Premises Licence: WOMAD Charlton Park Estate
Charlton Park Malmesbury, Wiltshire SN16 9DG

1. Purpose of Report
- 1.1 Supplementary report to Licensing Officer's report dated 12th July 2012 to outline additional information, following two previous adjournments of this review hearing.
2. Additional Information
- 2.1 Additional papers have been submitted by Wiltshire Police on 16th November 2012 in support of their review application.
- 2.2 The previous two hearings dates have been set aside to enable ongoing negotiations / discussions between Wiltshire Police and World in the Park Limited to take place.
- 2.3 Wiltshire Police have proposed a number of additional conditions they wish to see applied to the operating schedule of World in the Park Limited licence to address their concerns, World in the park Limited have issued their own counter proposals, at the time of writing this report no agreement has been reached between the parties. However discussions are continuing.
- 3.0 The Sub Committee can take into account documentary or other information presented at the hearing with the consent of all other parties.

Report Author: Mrs Linda Holland

Senior Public Protection Officer (Licensing) North and West,
linda.holland@wiltshire.gov.uk, Tel: 01249 706410

Date of report 20th November 2012

Agenda Item 5

WILTSHIRE COUNCIL
NORTHERN AREA LICENSING SUB COMMITTEE
4TH JUNE 2013

Police and Environmental Health Authority Objection Notice: Received in
respect of Four Temporary Events Notices for WOMAD Charlton Park,
Malmesbury Wiltshire SN16 9DG

1. Purpose of Report
- 1.1 To determine the Objection Notices received from Wiltshire Police and Wiltshire Council Environmental Protection team for four Temporary Events Notices in respect of WOMAD Charlton Park Malmesbury Wiltshire.
2. Background Information
- 2.1 Four Temporary Events Notices were served on the Licensing Authority and Wiltshire Police on Thursday the 16th May 2013 in respect of WOMAD Charlton Park Malmesbury Wiltshire. The Notices were not accepted until payment was received on Friday the 17th May.
- 2.2 If the police or the Environmental Health Authority believe that allowing the premises to be used in accordance with the TEN's will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notices must be given within three working days of their receipt of the TEN's.
- 2.3 An objection notice was received by the Licensing Authority from Wiltshire Police and Wiltshire Council Environmental Protection team on Wednesday the 22nd May 2013.
- 2.4 Wiltshire Council (as the Licensing Authority) must hold a hearing to consider the objection notices.
- 2.5 In accordance with Section 105 of the 2003 Act the Licensing Authority must, having regard to the objections give a counter notice on the basis of the objection, if it considers it appropriate to do so for the promotion of a licensing objective. Alternatively, it may impose on the Temporary Event Notice one or more of conditions that are on the existing premises licence for the same premises.

Page 9

Licensing Committee

- Under the Act, Licensing Authorities must form a Licensing Committee consisting of at least 10 members but no more than 15.
- A minimum of 3 Members form a Licensing Sub-Committee to determine applications
- To be able to participate in a Licensing hearing the members are required to have training commensurate with their role

Briefings

- **NOT** a 'practice' for the licensing hearing!
- What do you need to know for the informal briefing ?
- What should be contained in the précis of the report ?



Quasi-judicial body and natural Justice

- *The LA03 Licensing Committee (or an officer when acting under delegated powers) sits as a **quasi-judicial** body , therefore the rules of natural justice must always be followed:*

- Anyone affected by a decision has a right to be heard;
- No one should be a judge in their own cause
- The Council must not fetter its discretion by pre-judging (or pre-determining) an issue
- The Committee must consider each application on its merits (even if it appears to fly in the face of the Statement of Licensing Policy)



Licensing Committee and Sub-committees - Procedures

Can decide on own procedures subject to Regulation 21

- The procedures should be laid down
- Available to all
- Followed
- Kept up to date

Wiltshire Council has adopted its own hearing procedure

Composition of the Licensing Committee

Chair of the Committee:

- Should keep order
- Should explain Committee hearing procedures and ensure that they are followed
- Should announce the decision

Officers

Licensing Officer

- Reads out a précis of the report
- Explains any technical issues
- Is **not** a prosecutor
- Should not try to influence decision making in the absence of the applicant

Legal Officer – Clerk for the Committee

- Advises the sub committee on procedure and standing orders
- Advises on legal issues and retires with committee

Committee Clerk

- Ensures all papers are in order
- Takes minutes / record of hearing
- Records decision

Determining applications

Where an application is considered by the Sub Committee, the Committee will hear evidence from the:-

- Applicant and/or his appointed Solicitor or agent
- Responsible Authorities
- Persons who have made a valid representation



Determining applications

- Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing
- Officers, responsible authorities, applicant and interested parties attending the hearing may also ask questions of persons in attendance
- Hearsay evidence is permitted but will all be given less weight than direct evidence
- Hearing is 'Inquisitorial' - to gather information
- No 'cross examination'

Closing Submissions

- The Chair will invite the applicant, and any parties making representations, or those representing any of them to briefly summarise their points if they wish.
- The Chair will confirm with each party that they are satisfied they have said all they wish to.
- The committee will disregard any information, which is not relevant to the application, representation or the promotion of the key licensing objectives

Deliberation and Decisions

- The Sub-Committee will retire to deliberate in private session
- Sub-Committee will **only** be accompanied by their Legal Advisor and their Committee Clerk

Basis of Decision Process

Each application that comes before Sub-Committee must be considered based on:

- Its own merits
- Promotion of the four licensing objectives
- Councils Statement of Licensing Policy; the Licensing Act and Regulations and any Guidance issued by the Secretary of State

Three Types Of Conditions

- **Proposed Conditions** - From a prospective licensee's or certificate holder's risk assessment which should be carried out prior to application. These are translated into steps recorded in the operating schedule.
- **Mandatory Conditions** – Included in every licence and or club premises certificate.
- **Imposed Conditions** – Discretion of licensing authority engaged following receipt of relevant representations.

Proposed Conditions

- Conditions that are necessary for the promotion of the four licensing objectives:
- Should emerge initially from a prospective licensee's or certificate holder's risk assessment.
- These are recorded in the operating schedule.
- Members will take into account the proposed conditions both during the hearing and whilst making their determination
-

Imposed Conditions

Licensing sub committee may only impose conditions that are:

- Appropriate to promote one or more of the four licensing objectives and enforceable
- Proportionate and premises specific
- Avoids duplication of other statutory provisions, however if these do not adequately address specific issues, supplementary measures may be necessary to promote the licensing objectives. i.e. to monitor noise nuisance.

Proportionality

- Licensing conditions must be tailored to size, type and characteristics and activities taking place at the premises concerned.
- Conditions must be proportionate and properly recognise significant differences between venues.

Clear wording

- Licensing Conditions must be expressed in an unequivocal and unambiguous terms to avoid legal disputes
- It must be clear to the holder of the licence or club certificate, to enforcement officers and to the courts what duty has been placed on them licence holder in terms of compliance
- When composing conditions the licensing sub-committee must consider how the condition can be enforced.

Basis of Decisions

- **All** determinations must include the **reasons** for the decision to grant or to revoke and any conditions placed upon the licence (if granted) and the licensing objective to which they relate
- Decisions will generally be given orally at the hearing and followed up in writing in a formal decision notice.

Notification of Determination

- Decision notice given in writing to all parties to the hearing within 5 working days
- Gives information on the appeal process
- Published on the Council Website

DECISION NOTICE
Northern Area Licensing Sub Committee
Decision made on 6 January 2012
In respect of an application for a Review of the
Premises Licence made by Ms L Penfold for the
Guildhall Bar, Malmesbury

Decision:
The Northern Area Licensing Sub Committee has
resolved to amend the Premises Licence for the Guildhall
Bar, Malmesbury as follows:

The Provision of Licensable Activities:

Films
Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Indoor Sporting Events
Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Live Music
Sunday to Saturday 20.00 hrs to 23.00 hrs

Recorded Music
Sunday to Saturday 20.00 hrs to 23.00 hrs

Performances of Dance
Monday to Saturday 11.00 hrs to 23.00 hrs

Appeals

- All parties have the right to appeal against the Council's decision
- Appeals must be made within 21 days of receipt of the decision notice to the magistrates court.



ANY QUESTIONS?

This page is intentionally left blank

NORTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 20 MAY 2019 AT COUNCIL CHAMBER - WILTSHIRE COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER IN RESPECT OF AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE, THE OLD LANE, LODGE ROAD, CHIPPENHAM

Present:

Cllr Allison Bucknell, Cllr Peter Evans and Cllr Ian Thorn

Also Present:

On behalf of the Applicant

Andrew Cooper – Area Manager, Marstons
Michelle Hazlewood – Solicitor, John Gaunt & Partners Solicitors
Robert Morton – Designated Premises Supervisor

Those who made a relevant representation

David Stovell

Wiltshire Council

Roy Bahadoor - Public Protection Officer – Licensing
Councillor Sue Evans (Substitute)
Sarah Marshall (Senior Solicitor)
Lisa Pullin (Democratic Services Officer)

Also in attendance

Cllr Richard Bambury – Chippenham Town Councillor

8 Election of Chairman

Nominations for a Chairman of the Licensing Sub Committee were sought and it was

Resolved:

To elect Councillor Allison Bucknell as Chairman for this meeting only.

9 **Apologies for Absence/Substitutions**

There were no apologies for substitutions.

10 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5 – 12 of the Agenda refers).

11 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

12 **Declarations of Interest**

There were no interests declared.

13 **Licensing Application**

Application by Marstons Plc in respect of a Variation of a Premises Licence at The Old Lane, Lodge Road, Pewsham, Chippenham

Roy Bahadoor (Public Protection Officer – Licensing) introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration. Mr Bahadoor highlighted the following:

- This was an application for a variation to the Premises Licence which was granted on 24 November 2005 in respect of The Old Lane, Lodge Road, Pewsham, Chippenham;
- The application sought to:
 - i) Extend the hours for licensable activities for Friday and Saturday evenings to 01:00
 - ii) Extend the opening hours of the premises to 01:30 in respect of Friday and Saturday evenings
 - iii) Add to the Licence the licensable activities of dancing and recorded music to be undertaken to the same hours as the retail sale of alcohol – Sunday to Thursday 10:00 to 00:00 and Friday and Saturday 10:00 to 01:00
 - iv) Remove the nonstandard timings which operate on Friday and Saturday of Bank Holiday weekends

- v) Extend hours under nonstandard timings for New Year's Eve so as to permit the premises to operate from opening on 31 December to closure on 1 January
 - vi) Delete and amend conditions to enhance the promotion of the licensing objectives
 - vii) Update the plan of the premises to show the changes that have been made to the layout of the premises and to extend the licensing areas within it.
- Two relevant representations were received from local residents in objection to the application. Their representations were made over concerns about public nuisance.

In accordance with the procedure detailed in the agenda, the Applicant's representative was given the opportunity to address the Sub Committee. Michelle Hazlewood from John Gaunt & Partners Solicitors highlighted the following.

- No Responsible Authorities had raised any objections to the application;
- The premises are situated on a large housing estate and there had been a number of different owners over a number of years. There had been no investment made to update the premises in some time and Marstons had taken the decision to acquire a number of community premises and so bought The Old Lane in January 2019 and commenced major refurbishment works in March 2019;
- The works were now completed, and the premises are looking lovely (photographs of the premises and menus had been circulated within Agenda Supplement 1);
- This application sought to tidy up the licence that was originally granted in 2005 and make it fit for purpose in 2019 and in line with the other Premises Licences held by Marstons;
- It was the intention to make The Old Lane a family venue and to continue to increase the food trade. Previously food sales were around 9% and they had already increased to 25% and it was hoped that they would continue to increase further;
- Marstons had been in communication with the Senior Environmental Health Officer following his concern regarding the potential impact of the variation application without offering any further measures and then offered the following condition to be added to the application;

When live or recorded music is being provided the DPS or Licence Holder is to ensure that noise from the premises is monitored outside the premises on at least three occasions. When noise is found to be at a level likely to

cause disturbance to people living in the vicinity, immediate steps are to be taken to reduce the noise level plus when regulated entertainment is undertaken all external doors and windows to be closed save for access and egress.

- The extension to the trading/opening hours to 01:00/01:30 was to ease the flow of people leaving the premises as the Licence Holder had found that patrons tended to come out later on Friday/Saturday evenings and eat and relax and if patrons didn't have to be "pushed out" at 00:00 and they were able to carry on serving past then this would enable the gradual dispersal of patrons;
- To further reduce noise disturbance the Licence Holder planned to shut down the front door as an exit route at the end of trading hours and patrons would need to exit onto the car park side of the premises, this was part of measures put in place to operate the premises in such a way to ease noise disturbance for neighbours;
- The premises were already able to play recorded music until 23:00, but wished for this to be included within the licence so it is clear for anyone viewing it and not just rely on being able to carry out this activity under the de-regulations;
- The premises did not previously have any nonstandard timings in respect of a New Years Eve extension and Marstons wished for this to be added in for clarity;
- The premises did not previously have an age verification scheme in place (other than the mandatory condition) and wished for the Challenge 21 scheme to be included within the operating schedule;
- Regarding the concerns raised by Mrs Stanley – these incidences were during the World Cup 2018 period whilst the premises were not under the management of Marstons. It was understood that the then Designated Premises Supervisor (DPS) lost control of this and the patrons spilled out onto the roundabout and surrounding areas;
- When Marstons took over the premises the decision was taken to put in place a new DPS (Mr Morton) with 31 years' experience and moving forward it was the intention for the venue to be come a dining community premises and not a "football only local". Marstons have a lot of experience in managing the showing of major sporting events at their premises and actively worked with the Police to manage events and there were no significant problem reported at Marston's premises. It was of note that there had been no reported since March 2019 when Marstons and Mr Morton were in place;

- It was Marstons intention to provide regulated entertainment, but this would not be the primary focus. It was not planned to host musicians/bands during the summer when it was hoped that the premises would stand on its own feet with the food sales. Ideally, they proposed to have some live music events from Halloween to around January or February with maybe a DJ/disco on the payday weekends;
- Repairs to the roof had been carried out with internal works to ensure there would be no noise escape from any events in the premises. Details of where the music events would be held in the premises were explained to the Sub Committee and this area had been specifically chosen for its noise attenuation;
- Marstons have good policies in place to deal with any issues that may arise, and they are confident that they and the DPS have good experience of running well managed premises; and
- The premises were not planning to become a late-night venue, more a premise to attract sporting teams (e.g. pool) to use the premises and host charity events and maybe bingo/quiz evenings.

The Sub Committee Members then asked the following questions of the Applicant:

Q You have applied to have dancing included with you licence – is it your intention to have dancing?

A Although the premises doesn't really lend itself to be a venue for dancing, it may take place when music is being played and Marstons have a belt and braces approach to include all possibilities on their licences.

Q What days/times do you intend to sell food?

A Food will be available 7 day a week from 12 noon to 9pm (last orders to the kitchen).

Q What public transport is available near to the premises – is it on a bus route and how do patrons get home?

A If requested we will call for taxis for our customers. There is a nearby bus stop, but it doesn't run late into the evening and ends at 14:00 on Saturdays. Patrons either drive, use a taxi or walk to leave the premises.

Q What is the capacity for the “function” area?

A Up to 100 or 75 if with the furniture in place so the maximum number to disperse at the end of an event would be up to 100.

Q Will the DPS remain at the premises once up and running – they sometimes don't tend to stay for long?

A It is not Marstons intention to have a high turnover for DPS's. They feel it is important for the landlord/lady having a good relationship with residents which is built up over time and Mr Morton has no plans to move from this premises for a good number of years.

Q Is it the intention for the premises to be a sports bar?

A We do have screens in the bar area and our intention is to broaden the interest in sport and show other sporting events that would attract families to watch whilst they are dining in the premises. Marstons intend to use their food offer to drawn in families.

Mr David Stovell (who had made a relevant representation) was then given the opportunity to ask questions of the Applicants. At this point he made the following statement:

The area you are proposing to hold events in is where it was previously and where my property is situated I will still be affected by noise from the property.

Mrs Philippa Stanley who had made a relevant representation was not present at the meeting.

Mr Stovell was then given the opportunity to address the Sub Committee and highlighted the following:

- We live across the roundabout from the premises. I leave for work at 7am and so I need to be able to sleep, it is important for us and others in the area to get our rest;
- When bands have played before at the premises we can hear a dull thud in our living room and in the back bedrooms of our property. The risk to me and my family is that music will be playing to 00:00/01:00 and will disturb our sleep;
- I take into account the plans for the premises to extend the timings to allow for patrons to leave the premises gradually, but I would like for the music to stop at 23:00 so that we can sleep; and
- I was surprised to hear from a school mum that her husband came home after 00:30 from the premises last night when no extension has been granted yet.

The Sub Committee Members then asked the following questions of Mr Stovell:

Q Have you got double glazing at your property?

A Yes.

Q When you have heard noise from the property – is it that you are hearing the bass and not the actual music?

A Yes, it is mostly a bass noise I hear.

The Applicant's representatives were when given the opportunity to ask questions of Mr Stovell:

Q You said that you heard a bass noise previously. We have been told about incidents of youths playing music in the car park, could that have been what you had heard?

A What I heard was definitely from a band playing.

The Applicant's stated that this should not happen in the future by the way the premises bass bins are situated, and Mr Morton has experience of managing noise. It may have been the type of music that had played previously. Mr Morton doesn't have "rock" bands at his premises and it was the intention to have a family feel pub. At music events Mr Morton would monitor the noise himself and if it was too loud he would turn it down. The new sound system installed automatically gets switched off at 23:00 and this is the same for all Marstons premises and cannot be overridden. We don't intend to have rock bands and would be looking at local singers/groups. If you had a problem during an event and gave me a call I would turn the music down if it was a problem for you.

Mr Bahadoor (Public Protection Officer – Licensing) asked the Applicant's representatives the following questions:

Q Have you booked any music events?

A No not yet.

Q Since the refurbishment works have been completed have you completed any noise checks?

A No as we have only had on the background music or sport on TV's. Marstons wish for this to become a food and craft beer venue with maybe hosting a pool league. We have had no entertainment so far as we feel this will be more important in the winter months. If the changes were to be allowed there would be a level of internal policy to manage the premises.

Councillors asked the following questions of the Applicant's representatives:

Q You say that you will put controls in place when there is live music on – how do you intend to manage this?

A On at least 3 occasions I will be checking the noise levels around the premises and keep checking and will reduce the noise if it is too loud. Happy for the condition to be added that we will go out and check the noise levels at events.

Mr Stovell stated that the levels are noise are subjective and that he was concerned at the levels the volume could go up to. What should be a db. limit?

Mr Bahadoor reported that whilst he was not a noise expert he understood it was difficult to get a correct db. limit for a premise.

Mr Stovell did not wish to make any further points in summation.

Michelle Hazlewood on behalf of the Applicant's made the following points in summation:

- We accept that the premises are in a noise sensitive area, but we would say that the improvement works that have been carried out will have reduced the likelihood of noise escaping from the premises;
- No events have been booked at the premises yet and a good experienced DPS is now in charge of the premises. The telephone number of the DPS has been offered for residents to contact if there are concerns to report;
- At events the monitoring of noise will be logged and if there are problems these logs can be reviewed – we will this is an appropriate and reasonable response to control the possible public nuisance;
- Environmental Health have not made a representation;
- You will be aware that under the Secretary of State's guidance that you can impose conditions that you feel are necessary to promote the Licensing Objectives, but these should not be burdensome on the premises; and
- Marstons have heavily invested in the premises to change the feel of the venue and changed the DPS swiftly to ensure that the premises are run to Marstons standard and level. They want this to become a place that is important to the community.

The Sub Committee then adjourned at 12:10 and retired with the Solicitor and the Democratic Services Officer to make a decision on the licensing application.

The Hearing reconvened at 12:25.

Following the deliberations of the Sub Committee Members, it was

RESOLVED THAT:

The Northern Area Licensing Sub Committee resolved to GRANT the application for a Variation of a Premises Licence as follows:

1. Layout

The amendments to the layout of the premises as identified on the attached plan (JMDA1468/116) are agreed by the Sub-committee in order to bring both the patio areas and the pub garden within the licensed areas of the premises. The external area is limited to retail sale of alcohol and late-night refreshment.

2. Licensable activities/Hours

Licensable Activity	Timings	Days
Films (indoors)	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Indoor sporting events	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Live music (indoors)	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Recorded music (indoors)	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Performance of dance (indoors)	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Late night refreshment	23:00 – 00:00 23:00 – 01:00	Sun to Thurs Fri & Sat
Sale of Alcohol (ON and OFF sales)	10:00 – 00:00 10:00 – 01:00	Sun to Thurs Fri & Sat
Hours premises open to the public	07:00 – 00:30 07:00 – 01:30	Sun to Thurs Fri & Sat

a) The Sub Committee agreed that the nonstandard timings and seasonal variations for live music, late night refreshment (on and off sales), and the sale of alcohol (on and off sales) to be 10:00 to 01:00 on the dates of 1 January, 25 January, 14 February, 1 March, 17 March, 31 October, 26 – 30 December inclusive and 10:00 to 02:00 on 24 December.

b) Grant the extension of hours in respect of New Year's Eve in order to permit the premises to operate from opening on 31 December to closure on 1 January.

3. Amendment to Conditions – Annex 2b Operating Schedule

a) PREVENTION OF PUBLIC NUISANCE

- Notices are to be prominently displayed at all exits from the premises requesting that patrons respect the needs of people living in the area and to leave the area quietly.
- When live or recorded music is being provided the DPS or Licence Holder is to ensure that noise from the premises is monitored outside the premises on at least three occasions. The monitoring data should be logged and retained for a minimum of 30 days and made available on request. When noise is found to be at a level likely to cause disturbance to people living in the vicinity, immediate steps are to be taken to reduce the noise level plus when regulated entertainment is undertaken all external doors and windows to be closed save for access and egress.

b) PROTECTION OF CHILDREN FROM HARM

- The premises to operate a Challenge 21 scheme.
- Staff to be trained in respect of underage sales on an annual basis and such training records to be retained and made available for inspection by the Licensing Authority and Police.
- No adult entertainment is permitted at these premises.
- Children under the age of 16 are not permitted to enter the premises after 22:00 hours unless attending a pre-booked function or dining.

c) PREVENTION OF CRIME AND DISORDER

- Sufficient door staff as determined by a Risk Assessment of the premises will be employed.
- The Designated Premises Supervisor will actively participate and support local Pubwatch Scheme so long as the same exists.
- A Closed-Circuit Television recording system shall be installed at the premises and the number and position of cameras determined by a risk assessment of the premises.
- The CCTV shall be maintained in full working order and used at all times when any licensable activity is taking place.
- Recordings taken from the CCTV system are to be kept for a minimum of 28 days and are to be made available to any authorised officer of

the Licensing Authority, Police or Weights and Measure Authority upon request.

The Sub Committee considered that the re-writing of the operating schedule will significantly enhance the promotion of the licensing objectives and the proposed conditions will provide a more readily understandable framework for compliance by staff going forward particularly through the removal of references to those conditions which are now covered by the mandatory conditions.

4. Reasons

The Sub Committee have considered the written evidence presented in the agenda, together with the oral evidence given at the hearing from the Applicant's representatives, Council Officers, and those that made relevant representations.

Those concerns related to the perceived public nuisance arising from increased music noise to the proposed extension of licensed hours and the perceived increase of anti-social behaviour due to the proposed extension of the licensed hours.

The Sub Committee noted the concerns of a resident who had made a relevant representation regarding noise from a previous live music event and accepted that a degree of noise disturbance had likely occurred when the premises was under control of the previous owners.

The Applicant's representative confirmed to the Sub Committee that their vision for the future of the premises was to be a community premises with food and entertainment, suitable for families, such as bingo, quizzes and charity events.

The Applicants accepted that the premises were located in a noise sensitive environment and that live music was only expected to take place once a month during the winter months. A new sound system with automatic shutdown had now been installed at the premises. Additionally, there had been changes to the management of the Premises including a new Designated Premises Supervisor with the experience of managing premises successfully.

The Sub Committee welcomed the addition of a condition for the DPS or Licence Holder to monitor noise from the outside of the premises on at least 3 occasions when live or recorded music is being provided and agreed that these findings should be logged and retained for inspection upon request.

In reaching its decision the Sub Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 18); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of the written decision. Any person has the right to request a Review of the Licence, in accordance with the provisions of section 51 of the Licensing Act 2003.

(Duration of meeting: 11.15 am - 12.30 pm)

The Officer who has produced these minutes is Lisa Pullin, Tel 01225 713015 or email committee@wiltshire.gov.uk, of Democratic Services

Press enquiries to Communications, direct line (01225) 713114/713115

SOUTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 31 MAY 2019 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU IN RESPECT OF AN REVIEW HEARING - SALISBURY

Present:

Cllr Trevor Carbin, Cllr Jose Green and Cllr Ian Thorn

Also Present:

Paul Taylor – Senior Legal Officer
Lisa Moore – Democratic Services
Hannah Hould – Licensing Officer
Esther Bisgrove (Observer) – Legal Officer
Linda Holland – Licensing Manager
Vicky Brown – Environmental Health Manager
Sue Thurman-Newell - Police Licensing Officer
PC Jack Billington – Wiltshire Police
Nigel Connor - JD Wetherspoons Legal Officer
Rob Gibson – JD Wetherspoons Area Manager
Ami Pryce - JD Wetherspoons Hotel Manager
Louella Adamson – License Holder
Leo Charalambides - Legal counsel for License Holder
Mr Adamson – Observer
Salisbury Journal - Observer

1 **Election of Chairman**

Nominations for a Chairman of the Licensing Sub-Committee were sought and it was

Resolved:

To elect Councillor Ian Thorn as Chairman for this meeting only.

2 **Apologies for Absence/Substitutions**

There were none.

3 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 1 – 6 of the Agenda refers).

4 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

5 **Declarations of Interest**

There were no interests declared.

6 **Licensing Application**

Review Application made by Wiltshire Police in respect of @Home, 5 Bridge Street, Salisbury, SP1 2ND

The Chairman explained that the Police had made a request to hold part of the hearing in a closed session.

The Panel discussed the request, and it was noted that it was made from an ongoing criminal investigation point of view. Part of the evidence contained confidential CCTV footage, and therefore so not to undermine the evidence and to protect the anonymity of the children and family involved in the investigation that part of the hearing was required to be held in closed session.

Mr Leo Charalambides acting as Legal counsel on behalf of the License holder Miss Louella Adamson noted his concern in relation to any new undisclosed evidence being presented for consideration, without he and his client being able to consider it first.

He had no objection to the CCTV footage of the family being shown in the closed session. He drew attention to para 11.15 which detailed the requirement for the applicant and representative to have all evidence provided to them. He asked the Police to provide a clear out line of what evidence other than the CCTV footage they proposed to rely on.

PC Billington, who had been the Officer on duty, on the night of the incident, explained the sensitivity of the CCTV footage, and confirmed that it was only that part of the hearing where he would present the evidence, which would be taken in closed session.

Mr Charalambides supported this request, and the representatives from JD Wetherspoon's also confirmed that they did not wish to be party to the closed session.

At 9.45am the Chairman postponed the hearing until 10am to enable the License Holder and her Legal counsel time to confer and consider the case evidence.

At 10.00am the Hearing re-convened.

The Licensing Officer Hannah Hould introduced the purpose and scope of the Review application, the premises to which it related and the key issues for consideration.

She noted the License Holder's failure to comply with the Licensing Objectives, and detailed significant breaches of the conditions which had resulted in a failure to promote the Objectives, namely the Prevention of Crime and Disorder and the Protection of Children from Harm.

Three representations had been received. These were from two Relevant Authorities (Licensing Authority & Environmental Health) and one Interested Party (JD Wetherspoon's).

The original license had been held since 6 August 2018, as detailed within P19 – 26 of the agenda.

There had also been a Variation application submitted by the License Holder, which was on hold pending the Review hearing outcome.

Questions

- The application for a variation was submitted correctly on what authority did you make the decision to defer it?
Answer: Paul Taylor – There were some discussions with your client regarding the two applications. I will get that information and feedback at a later date.
- There were 43 letters of support, which had not been included, one mentioned that @Home was a safe premises which was suitable for young children. The writers of those letters had been excluded as they were not invited to this hearing. The section 102 guidance clarifies the requirement, so why were they all ignored?
Answer: It was decided that the letters of support did not relate to the licensing objectives. Each person was written to and no one responded to me. They did relate to the license holder and her character, so it was deemed that we would share them with members. They have been provided to the Panel ahead of the meeting electronically.

- It is normal for Wiltshire Council (WC) to share them with the Committee as letters of support of the character?
Answer: Yes

- It is quite clear that this venue supports older people, those with disabilities, vulnerable and LGBT members of the community. I refer you to the legislation that requires you to consider these issues with an open mind. Public Sector Equalities Duty - Providing a service to people with disabilities.
Answer: The Panel noted this information.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities, those who had made a Relevant Representation and the License Holder were given the opportunity to address the Sub Committee.

Review Applicant – Wiltshire Police

Susan Thurman Newell (STN) Police Licensing Officer, presented her case.

It was explained that originally, @Home had opened without a premises license, as Miss Adamson had intended the business to be an arts and crafts based venue with alcohol to be incidental. To cover the sale of alcohol, from July 2018 TENs were applied for until August 2018.

On 26 August (20 days after the license was granted) at 21:20 hrs an incident occurred in relation to homophobic slurs. A youth event was being run at the venue with 30 – 40 people in attendance, with music and soft drinks.

Two males who attended the event became disruptive and caused minor damage to a table football game. A remark was made to another attendee which resulted in him becoming upset. The matter related to a public order offence.

Mr Keens had been the previous Designated Premises Supervisor (DPS) until Ms Adamson took over in that role.

Telephone calls to @Home from the Police were answered in the name of the 'Truth' bar.

Miss Adamson had called the Police on one occasion to report that someone was 'kicking off', she noted it was a homeless person who stated he had left his belongings in the building. On this occasion the man urinated in the building and scratched someone on the face.

On 21 Sep Miss Adamson reported another disorder, which was due to another banned person who was outside causing a disturbance. Other nearby premises' bar security staff were asked by the Police if they had seen anyone matching the given description, however they had not.

At a meeting on 30th Oct we went through the conditions attached to the licence as we wanted to ensure that Miss Adamson understood them. At that time, we were made aware that £30K of funding had been agreed from the Arts Council to support a programme of events. We were not however made aware that other funders had rejected the bids for funding. Funding refusals received in July 2018, were not made aware to us.

With the loss of funding the business model had to change but Police not notified. We believed that @Home would be run as a community project during the hours of 18:00 to 22:00, and that the premises did not open during day time due to a lack of funding.

Some of the sessions put on at the premises included Mental Mondays, Thursday Knit and Natter sessions, and half term children's activities. There was also a plan for a tea room on the first floor, with the offer of pottery classes, and toddler sensory.

The ground floor bar was open between 19:00 to 22:00. We were informed that Miss Adamson was always on the premises on those occasions where alcohol was being sold.

Miss Adamson advised us that staff training records were in place, however I have not viewed them.

We were also advised that a front line door supervisor course was to be attended. This training has not taken place.

We were assured that there would be a Bar Manager on site every night except Mondays.

We are aware that Mr Steven Adamson who ran SP4 security services, paid passing attention to the premises, but was not employed by Miss Adamson. We are aware that Mr Adamson is Miss Adamson's uncle.

TENs are effectively a licence free of the normal conditions. I requested an email for each of the TENs with full details, but have only ever received one.

We are aware that Miss Adamson was also considering the old Allen & Sideway premises as an alternative venue.

I was notified that there had been an application for a Variation to 06:00 hrs. I responded to this.

I believe that Licensing Officer Mr Garrod did notify Miss Adamson that I would not support a request for those hours. The Voodoo bar in Salisbury did have the 06:00 license, however there had been several issues there and it had now been removed from their license.

Miss Adamson had no late-night economy experience. We did discuss trading hours, and I advised her that I would require three door staff contracted in, as I felt that the business would benefit from their experience.

Following that meeting where I had detailed all of the requirements I would like to see in place, Miss Adamson submitted further TENs applications, at a rate of approximately one a month with 2 weeks written notice. During our meeting we had discussed specific dates for TENs, however further applications were made for dates other than were discussed.

I liaised with Miss Hould regarding the TENs applications. Miss Adamson advised that one of the dates was for her own birthday party. However, this was submitted on the last possible date, rendering it out of time. We then found out that Miss Adamson had taken a booking, and it was not for her private birthday party as she had advised.

There was no TEN in place for Saturday 24 June. There was for Sunday 26 June. The front doors would need to be closed at 23:00. Capacity was 177.

We have been made aware that Miss Adamson intends to hold a private party outside of the TEN, after 22:00 tonight. We have advised Miss Adamson that no money should change hands after that time otherwise that would be a breach of the TEN. Background music may only be played up until a set time. I have asked the Inspector to pass this information to local Officers.

In early January 2019, Miss Adamson indicated she would apply for a Variation to her license, and noted that as Wetherspoons closed at 01:00 hrs, @Home got a boost in trade from that time onwards, adding that she had noticed where she could improve from a business perspective.

Miss Adamson was of the opinion she could manage the premises over the Christmas period during the late-night economy.

On 29 November she called Police to report a disorder at the premises. It was also claimed that she had got the DPS sacked at Wetherspoons for harassment. Miss Adamson noted that she had stayed in the Wetherspoons Hotel and could not hear any noise coming from the @Home venue, and suggested that Wetherspoons should install noise insulation.

We are aware that Miss Adamson intended to have a live band playing once a month.

During our meeting with Miss Adamson, Miss Hould had assisted her to complete a new application, as she indicated she did not know how to complete one.

Miss Adamson stated she did not have a noise limiter as the previous licensee had taken it, then later changed that story to say that bailiffs had taken it. It was claimed that she could not afford to buy one until the Variation was approved, as that would enable her to make more money. In addition, she had indicated that she was in debt.

Attention was drawn to a number of items in the agenda pack on pages 86 – 101 relating to the noise limiter. I was later advised that she had always had a noise limiter on the system in the premises, she just did not know what it looked like.

The variation application consultation period ended on 20 March 2019. I undertook a review of other venues to compare and liaised with Police Officers in the Community Team.

It was agreed that the Police licensing position was that it had no objection to the Monday to Thursday hours requested, however we did seek an amendment to the Friday and Saturday hours to 01.30 hrs. With a minimum of two door staff from 22:00 hrs until 30 mins after closure to assist dispersal. This would make @Home the only venue to be open late at this end of town.

In March 2019 a serious incident occurred at 23:00 hrs after a customer left the premises. I later contacted miss Adamson, however she did not respond to any of my emails or phone calls. I emailed her to ask her to attend the Police station the next day, and suggested she come in at 17.00hrs, which would be an hour before she was due to be at the premises, to discuss the incident with the Officer on duty.

Questions

There were no questions from the Committee members.

There were no questions from the Responsible Authorities.

There were no questions from the Interested Parties.

Questions from the representative of the License Holder:

- Why was that not provided earlier?
Answer: I did not withhold anything it had all been provided either in the pack or to the licence holder Miss Adamson previously.
- Where is the bundle of all of those emails?
Answer: The emails I have read out are ones I sent to Miss Adamson – she would have copies.

- Are you familiar with para 9.12 as you are the expert in your field? We have only been given all of this additional information now and not had time to consider it.

Answer: There was only a small proportion of expansion on what had been included in the pack.

At 10.50am, the Southern Area Licensing Sub-Committee:

Resolved:

To exclude the public from the meeting for the business specified in Item Numbers 14 – 17, under regulation 14 (2) of the Licensing Act 2003 (Hearings) regulations 2005 because the Sub-Committee considered that the public interest in doing so outweighed the public interest in that part of the hearing taking place in public..

The Observers, and the three attendees from JD Wetherspoons left the room to enable a closed session to take place. During that session, PC Billington provided details of the incident which included CCTV footage taken inside the @Home premises and from footage taken from Police bodycam's and from inside Bourne Hill Police Station.

The Committee and all attendees reconvened at 12:52, to continue with the hearing in open session.

Police Licensing Officer

The Police Licensing Officer explained that they had applied for a Review of this license due to their concerns over ineffective management and a number of breaches of the license, the business operation during the late-night economy and the Police visits following incidents at the premises. They were not satisfied good practice is in place.

On one occasion, when the Police Licensing Officer attended she checked for the blue notice which must be displayed as a requirement during the consultation period, as was not able to locate it. On speaking to the Bar Manager, she identified the notice was in the window near the door, it was located 12ft high where it could not be seen.

The Police are aware that alcohol was being given to people after 22:00 hrs with money taken in advance to pay for those drinks.

There was no till being used on the premises when the Police visited in March. There was a printout for the card reader and a small cashbox used for alcohol purchases. With this style of operation for sales, Miss Adamson cannot supply evidence of due diligence.

On 30 March Police received a call from the Bar Manager who was on duty, it was reported that a male had tried to damage the bar because it was closing. The suspect punched several people. The Police were informed that he was part of a group of Scottish squaddies.

Another patrol made a drive past ID run, outside the Chapel nightclub but the suspect was not seen. The victim had been pushed and punched to the face, and there were two males injured, one with a split lip.

Following further Police enquiries, a male was arrested and charged with an offence. The DPS was not on site during the incident. The Bar Manager stated that staff had not turned up and the DPS was not present. Following this the Bar Manager left her employment there.

There was a failure to comply with the conditions of the license and uphold the licensing objectives.

The Police also had concerns relating to a heavily discounted drinks promotion during Easter week, which provided 15 shots for £20. The three types of absinth on offer would be over the usual units per shots. After drinking 10-12 units of alcohol this could lead to a toxic or poisonous level of toxicity.

The Police hold no confidence that Miss Adamson would comply with the terms of her license moving forward and suggest that if the license was not removed, then a suspension of the license be imposed until the concerns that have been raised could be addressed.

The Police would require a minimum of two door supervisors between 20:00 until 30 minutes after closing on Friday's and Saturday's.

All TENs would be subject to a risk assessment.

The provision of an enhanced CCTV system should be in place, one that could provide the identification of those admitted.

Questions

Councillor Questions

Question: Who phoned the Police on the 20 March?

Answer: That was the Bar Manager.

Question: Some of the events which you have detailed were not in the paperwork.

Answer: The venue contacted the Police to ask for a Police response. They were aware that they made those calls, and an email that was referenced was between the Police and Miss Adamson, so she also has that.

The Committee then heard the Responsible Authority representations.

Linda Holland - Licensing Authority (LA)

The LA has made a representation due to the license holders lack of knowledge to operate a premises in line with the licensing conditions to maintain Licensing Objectives. A number of conditions have not been complied with.

The onus is on the owner of the license to deliver compliance. The Licensing Authority have seen that Miss Adamson is frustrated by process and the procedures that are in place. P53 onwards sets out our representation.

Throughout the period she has held a license, Miss Adamson has shown a lack of understanding of the Licensing Act and the completion of completing forms.

Officers had fulfilled their role in assisting beyond what was expected.

There had been noncompliance of a range of conditions and breaches to noise management. There was evidence of poor management of the premises and a lack of staff training.

Miss Adamson had been advised on numerous occasions to seek professional Licensing advice if she did not understand. Her dealings with Officers had often been found to be flippant.

Miss Adamson has said that she has a creative nature. The Licensing Authority are working with a regulatory framework, and have to work within the perimeters given and cannot make allowances on people's whims. There is a duty to protect children from moral and physiological harm. That Objective is not being promoted here.

The original plan put forward by Miss Adamson, was for a music hub and not for alcohol sales as a late night bar.

There are areas of real concern still prevailing and a naivety of what is required to run a late night establishment.

These outline poor management of the premises. The Licensing Act can be grey and cumbersome for some people, however the License Holder remains responsible for all sales.

Miss Adamson does not seem to understand the conditions on her license. This Authority has concerns that further issues will arise. However if members feel that a number of robust conditions in place could alleviate the concerns, then a suspension of the license would be reasonable to enable Miss Adamson to put in place all that is necessary to allow for the conditions to be carried out.

Questions

Councillor questions

Question: What conditions would you like to see imposed?

Answer: Staff training, on robustly managing alcohol sales. Further training for the DPS in the licensing objectives and what they mean.

Question: What is the training process?

Answer: A suitable Licensing Training programme like that the British Institute of Innkeepers run. Or getting in a qualified manager to assist.

Question: What level of issues has the Local Authority and the License holder faced?

Answer: Paperwork errors, and the need to return documents which are not completed correctly. Officers can only help to a certain degree. We are not license trainers. We have seen the wrong dates, wrong hours, and generally the forms are not completed correctly.

Vicky Brown – Environmental Health

Standing in for Officer Cath Fowler who wrote the report in the pack.

The Environmental Health Team support the application for a Review made by Wiltshire Police – and the compliance of the prevention of public nuisance objective.

Advice has been provided to the licensee over past months but has not been taken on board. In March Environmental Health objected to the variation application to extend the hours. Noise management was an issue at the premises, as they were unable to control the noise levels.

Environmental Health were aware that the noise created by the @Home premises was affecting the guests staying next door in the Kings Head hotel rooms. The building was not well insulated.

From June 2018 music was due to end at 22:00, Environmental Health did ask @Home for a Noise Management Plan, however to this date one has not been provided.

Environmental Health have received one complaint since that time.

A colleague visited Miss Adamson in the @Home premises, where it was found that the noise limiter had not been fitted. Miss Adamson thought that she had a unit which she stated was set at 3 decibels. That was found to be a monitor not a limiter. The monitor has a function which means you look at the scale when in use and manually turn down the volume. A noise limiter has a microphone that monitors the noise of the room and then cuts off at a set level.

Environmental Health do not believe that Miss Adamson has complied with our request to fit one.

Questions

Councillor questions

Question: There is still no noise limiter?

Answer: No

Question: What is the suitability of the building for noise reduction?

Answer: In 2016 a noise consultant provided a report to the previous licensee, on how the building could be modified to improve sound insulation. Options were to have a room within a room construction, to install silent ventilation and have a sound locked lobby.

The noise could be curable but cost would be high.

Up until 22:00 hrs we have had no complaints about noise levels, they are as a result of music after that time, up until 03:00.

Question: Would you want one or two noise limiters?

Answer: There is no door between the floors, so it is difficult to say. The installation of double glazing may be an issue as it is a listed building.

Questions from JD Wetherspoons

Question: Have you had any liaison with the premises license holder since you requested the noise limiter?

Answer: We have had liaison with Officers to advise us that no limiter was in place.

Questions from the License Holder

Question: There have been no other complaints from anyone but JD Wetherspoons?

Answer: No

Question: What are the Kings Head operational hours?

Answer: They are open until 01:30

Question: In the past the EHO had said that whatever the license holder and neighbour work out would become the condition.

Answer: Yes, however that was not ideal.

Representations from JD Wetherspoons (The Kings Head)

Nigel Connor – Legal Officer

JD Wetherspoons have operated here as the Kings Head since 2004.

There are 33 rooms in the hotel, some are directly above the @Home venue. They have had issues from this venue when it was formerly Truth bar. A review application didn't go anywhere then, and in 2018, the premises closed. The license holder surrendered the license at that time, and any future operator of those premises would have to apply for a new licence.

Mr Nettle wanted to assist with the application with Miss Adamson. At that point, Wetherspoons were told that the nature of the venue was to be mainly a community led model and would not focus on the provision of alcohol.

Wetherspoons lodged a representation, but on the basis, that it would be withdrawn if we came to some conditions after working with Miss Adamson. It was hoped that with those conditions in place and the assurances that had been given, that her business would not continue beyond 22:00 hrs, and that the previously experienced noise problems would not continue, as they had been experienced after those hours.

Following this noise continued to be an issue with the premises. P105 onwards in the agenda pack provided details.

The music levels have remained intrusive and unacceptable and continue to disturb guests, leading to complaints and refunds for the overnight stay of some guests on occasion.

As part of the TEN dates applied for by Miss Adamson, as detailed at P112, during the week ending 17 February 2019, there were 2 events that week and the music could be heard very loudly in the hotel. The Kings Head management blocked out the rooms that were closest to the noise, however it reached other rooms.

The Duty manager went to @Home to raise a complaint and made a complaint to the Council. The next night there was a noise issue again. At 02:00 hrs a guest complained and they had to refund 2 guests.

Wetherspoons have written to Miss Adamson on a number of occasions and tried to meet with her on 28 September, however she was unable to attend. There has been a willingness to engage with Miss Adamson on our behalf, but this has not been successful.

Wetherspoons are encouraging of any operator within the City, but not at the detrimental effect to our trade and reputation.

There is a condition to apply a noise limiter. Wetherspoons confirm that we have never been invited on to the site to agree a set level for the noise levels.

Miss Adamson states that she has been in the hotel and not heard any noise. There are some rooms which are affected more than others, and in the reception.

There wasn't any attempt to contact us about the variation application.

Wetherspoons are aware that the Police are dealing with other issues, from our perspective noise is the main issue.

In the provision of regulated entertainment from small premises, Section 177a of the Licensing Act which details that on the Review of the license an authority can give a condition to music, this should include a statement. In the interest of the protection to JD Wetherspoon, if license allowed to carry on Wetherspoons would ask you to make noise conditions apply to these premises.

Questions

Councillor question.

Question: Of your 33 rooms, what is the worst case of numbers affected?

Answer: Nine, but realistically eight. On a common night it's a minimum of four.

Paul Taylor – Legal Officer WC advised the Panel that there were a range of legal steps available. These were detailed on P13 of the agenda. He noted that one option had been omitted, that was to remove the DPS.

Premises License Holder case

Mr Leo Charalambides

Para 11.20 of section 102 in the guidance notes that it is expected that as far as possible you would seek to identify the cause of concerns.

This premises clearly has a valuable and positive impact on the community. That has been seen in the 44 letters of support sent to the Licensing Authority, particularly from the older members of the community, vulnerable and the LGBT community.

If the Sub-Committee were take the draconian option they would be limiting the options for those groups of the community.

Small venues with music and entertainment and a bar are quite important, as not everyone wants to go to the other types of bars available. Some people want to go to a premises where the manager feels like a mate.

The Licence Holder has presented herself as someone who is creative and she needs a bit of help. One option is to get a new DPS. The Manager needs to be trained and up to speed with the level of knowledge required. A suspension may allow for this.

When you are running a young person's LGBT venue and someone comes in and uses homophobic slurs I would expect them to call the Police.

There was an incident where this vulnerable individual mixed with the consumption of alcohol and her particular circumstance that day, made for a harrowing incident.

The deterioration of her intoxication did not peak until hours after she left the @Home venue. The issue of how to deal with intoxicated customers' needs to be addressed.

Your decision should be to remove the DPS and impose a period of suspension, during which the License Holder can undergo any necessary training.

In that period, there is a need to revisit the conditions, as they are currently inappropriate, including consideration of having a complete ban of children after say 18:30 hrs.

There is another hearing pending where the license is to be varied. If a license is to continue then these conditions need to be looked at, and considered at the variation.

The Sub-Committee should not make a ruling on 177a as it would stifle other aspects.

With regards to Public Nuisance, guidance tells us there is a common law meaning which is where one neighbour is complaining about the conduct of another. It is unlawful to engage in a private neighbour dispute

Any noise conditions should be set by the Environmental Health Team as it is the Responsible Authority that should adjudicate where the noise level should fall.

This is a grass roots movement that has had a huge impact on the community. Miss Adamson needs advice from a Licensing expert.

.

.

The operating procedure should be reviewed.

Questions

Councillor questions

Question: You emphasise the situation being parochial, like a neighbour's dispute, would you agree that 8 rooms being affected, results in bad publicity and can act like wildfire. Is this more than just a neighbour's dispute?

Answer: I am not suggesting that is the case, we have a wall separating these neighbours. We don't have anyone else saying it impacts them. The solution should come from Environmental Health. This is not a public nuisance. We should have a light touch legislation.

Question: You say that @Home makes a valuable contribution to the community, especially the LGBT. Are there other venues that support these groups?

Answer: I am not sure if other places support these groups.

Question: What is the definition of a Safe Place?

Answer: A community asset is defined in legislation. Places where alcohol is available can be a community asset. I think alcohol does have a role to play. The Safe space is a governing board that has a sticker that goes on the window. People can go in to these premises for some quiet time to relax. Employees are trained on disclosures to deal with incidents. We also operate the 'ask Angela' scheme. Homeless people come in and I give them clothes and cardboard, I work with Wiltshire creative to fill the holes they miss.

Question: This public nuisance and private nuisance matter, the pub is a public space.

Answer: Its one neighbour against another.

Question: Why has it been so difficult for the Local Authority in Licensing, Environmental Health and the Police to communicate with you effectively, why have you endangered your facility by not communicating with the responsible bodies?

Answer: There are different forms of communication from a regulator and a creative person. A review is almost like a relate service. My client is properly focused in bringing me on board, we need to look at the mechanics.

Environmental Health Noted - The definition of a public nuisance could be addressed in many ways.

JD Wetherspoon questions

Question: You didn't contact Wetherspoons to address any of the issues, did you address the Police issues?

Answer: There was some discussion in emails about changing the PLH name or the DPS name.

All parties were then invited by the Chairman to summarise their case.

Responsible Authorities

Linda Holland – Licensing

The Local Authority is not seeking to curtail the license, however it's the licensing objectives that are of concern here and Miss Adamson's ability to comply with the conditions.

Vicky Brown – Environmental Health

If we move forward and impose some conditions, there are some standard ones that could be applied.

Representations

Nigel Connor – JD Wetherspoons

If you do not revoke the license could you consider applying the noise nuisance point detailed in 2.15 of the guidance? There are concerns in respect of the suggestions put forward by the license holders legal counsel, in particular the variation sought for extended hours, it would be inappropriate to use that application to determine the outcome of this review.

There needs to be early engagement with the Local Authority, the Police and Wetherspoons to come up with a list of conditions.

It did not matter what the nature of the premises was, the question was whether many of the activities that take place needed a license. The promotion of the licensing activities and the standard should remain high despite the smaller size of the premises.

Leo Charalambides (on behalf of) - License Holder

Looking at the type of venue and the guidance set out at 2.15. the Sub-Committee are asked to consider what the premises does, how it does it and whether it contributes to the community?

The conditions do need to be looked at. The concerns and the voice of JD Wetherspoons need to be heard. The suggested road map allows these concerns to be considered this, whilst seeking to achieve the outcome that all parties want

Wiltshire Police

PC Billington

It has been mentioned that the subject of the incident was at Wetherspoons and you mentioned that she was distressed in there. I would like to reiterate that the staff and the venue had assisted the Police and had completely complied with the requests for information every step of the way.

Sue Thurman Newel – Police Licensing

Failure to comply to the conditions attached to the license and the uphold of the licensing objectives.

Going forward the matters are of significance and concern to us all. The Police would like to see the conditions revised and imposed to include additional training, safeguarding practices and specified permitted hours for children, a condition to tackle the lack of till or evidence in relation to afterhours sales, otherwise there would be scope for the same accusations moving forward. There also needs to be good training records.

The Police do promote the type of community hub Miss Adamson has tried to run, however she has not managed to do it in line with the requirements of her license.

The Chairman thanked all participants of the Review Hearing for the detailed discussion and the opportunity to ask questions throughout.

The Sub Committee members retired at 2.52pm to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 3.45pm.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

The decision of the Southern Area Licensing Sub Committee is that the Premises Licence LN/000014727 in respect of @Home, 5 Bridge Street, Salisbury held by @Home Salisbury Limited be revoked.

Reasons for the Decision

The Sub Committee determined that the Licence Holder had consistently failed to comply with its obligations in respect of all of the licensing objectives. The Sub-Committee also had no confidence that the Licence Holder would comply in future with its licence conditions.

7 **Report**

8 **Appendix 1**

9 **Appendix 2**

- 10 **Appendix 3a**
- 11 **Appendix 3b**
- 12 **Appendix 4a**
- 13 **Appendix 4b**
- 14 **Appendix 4c**
- 15 **Appendix 5**
- 16 **Appendix 6**

(Duration of meeting: 9.30 am - 3.51 pm)

The Officer who has produced these minutes is Lisa Moore 01722434560
lisa.moore@wiltshire.gov.uk, of Democratic Services, direct line 01722 434560, e-
mail lisa.moore@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

This page is intentionally left blank

Wiltshire Council

Licensing Committee

2 September 2019

Statement of Licensing Policy

Summary

This report describes the results of the public consultation of the draft Statement of Licensing Policy. This report highlights the changes that have been made since the previous version that was considered by the Licensing Committee on 11 March 2019.

Proposal(s)

It is recommended:

That the Licensing Committee notes the amendments made in the Statement of Licensing Policy update and commends the Statement of Licensing Policy (final draft) under the Licensing Act 2003 to the Council for approval at its meeting on 15 October 2019.

Reason for Proposal

The Council must review its Licensing Policy every five years. The Policy is due for review and must be consulted on and ratified by full Council prior to it coming into force. Following any proposed amendments by this Committee a final draft version of the Licensing Policy is required to be submitted to Full Council on the 15 October 2019.

David Redfern

Director Communities and Neighbourhood Services

Statement of Licensing Policy – Update

Purpose of Report

1. To ask the Licensing Committee to note the consultation undertaken and subsequent amendments made to the Council’s draft Licensing Policy (in relation to the Licensing Act 2003).

That the Licensing Committee commends the Statement of Licensing Policy under the Licensing Act 2003 to the Council for approval at its meeting on 15 October 2019.

Relevance to the Council’s Business Plan

2. “People in Wiltshire work together to solve problems locally and participate in decisions that affect them”.

“People are as protected from harm as possible and feel safe”.

Main Considerations for the Council

3. It is a statutory requirement that, at least every five years, the Council, as Licensing Authority must produce a Statement of Licensing Policy. This policy must be approved by Council as this is not a function that can be delegated to the Licensing Committee.

Background

4. Wiltshire Council is the Licensing Authority, and is required to discharge its responsibilities under the Act with a view to promoting four licensing objectives, namely:
 - The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance, and
 - The protection of children from harm

The Licensing Act 2003 was designed to be light touch legislation covering a number of “licensable activities”. Such activities are defined within the Act and broadly relate to the sale of alcohol, provision of regulated entertainment and provision of late night refreshment. This Policy provides the local implementation framework and outlines how the Licensing

Authority fulfils the Licensing Act 2003 and ensures that the licensing objectives are met.

5. In order for the Licensing Authority to discharge its licensing functions it is required to draw up a Licensing Policy or Statement of Licensing Policy under the Licensing Act. This policy is to be reviewed every five years and be the subject of a full consultation process.
6. A report of 11 March 2019 sought Members support of the draft Licensing Policy for consultation. Section 7 of the Act provides that functions in relation to the five year Licensing Policy cannot be delegated but must be approved by full Council.
7. The report advises Members of the consultation that has taken place and outlines the comments received (Appendix 2) and revisions made on the Council's draft Licensing Policy (Appendix 1).

Consultation

8. Consultation period: - 1 April – 7 August 2019. It is a requirement of the Act that consultation of the statement of licensing policy takes place over a 12 week period. The consultation period was originally 1 April – 24 June 2019, however this was extended twice; first until 7 July 2019 upon request of a licence holder who expressed concern regarding the method of notification and again until 7 August 2019, as it had been noted that Town and Parish Councils had not been directly consulted with.
 - 8.1 List of Consultees included:-
 - Wiltshire Council's Public Health department
 - Wiltshire Council's Public Protection department
 - Wiltshire Police
 - Dorset & Wiltshire Fire and Rescue
 - Wiltshire Council's Child Protection Team
 - Wiltshire Council's Planning department
 - Home Office Immigration Service
 - Pubwatch Groups
 - Town and Parish Councils
 - The draft policy was also advertised and available to download from the Council's website
 - 8.2 All statutory consultees have received a full copy of the draft Licensing Policy and notification of the draft Policy. Further, all relevant premises and specific bodies requesting information have been advised of the draft Licensing Policy and its availability. Finally, a copy of the draft Licensing Policy was also available on Wiltshire Councils website.
 - 8.3 The Licensing Policy is a draft document setting out the Council's proposals to ensure a balanced approach towards the licensing of premises which sell/supply alcohol or provide regulated forms of entertainment. The draft Policy has been based on the requirements of the

Act and includes changes as a result of either new or amended legislation, regulations or guidance issued by the Secretary of State.

- 8.4 There were 17 responses' received from the public consultation. Generally comments received related to updates in legislation. Suggestions were made with regards to information that could be included in the policy, for example an explanation on the use of "shadow licences" and the information expected to be found on plans accompanying a premises licence application. There were several comments regarding the relationship between planning and licensing and how it would be appreciated if these worked more closely together. The planning authority is a statutory consultee for all new applications and variations; however there is an expectation by respondents that these should work hand in hand as opposed to being two separate pieces of legislation. Comments were also made with regards to the style and language of the policy and requested that it was more robust as opposed to permissive. Respondents would like more detail on enforcement action to be taken by the licensing authority in order to ensure licence holders are upholding the licensing objectives.

Full responses can be found in Appendix 2.

Subsequent to the checking of this report, additional comments have been made by Public Health and Children's Safeguarding. These are highlighted in blue in Appendix 1 and referenced at the end of Appendix 2.

Safeguarding Implications

9. One of the key objectives of, the Licensing Act 2003 is 'The Protection of Children from Harm'. Wiltshire Council's Child Protection Team, are a Responsible Authority under the Licensing Act 2003. In this capacity they are required to ensure that decisions about licensing are taken with due regard to the need to safeguard and promote the welfare of children.

Public Health Implications

10. The inclusion of the health service as a responsible authority under the Licensing Act 2003, which occurred in 2012, enables health bodies to have a say in alcohol licensing. The Licensing and Public Health teams work together within the council to ensure that the health impacts of alcohol licensing are considered.

Environmental and Climate Change Considerations

11. There is minimal environmental impact of these proposals. Successful application of the licensing functions should reduce the impact of licensable activities on local communities i.e. noise and public disorder.

Corporate Procurement Implications

12. There are no Corporate Procurement implications.

Equalities Impact of the Proposal

13. The impact of these proposals is assessed as 'low' against the Council statutory responsibilities.

Risk Assessment

14. Licensing is a statutory undertaking. Should the proposals in this report not be adopted it would leave Wiltshire Council in a position of being unable to undertake its statutory responsibilities and functions under the Act.

Risks that may arise if the proposed decision and related work is not taken

15. Criticism of the Council and compromise the reputation of the Wiltshire Council.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

16. There are no particular risks identified from any of the proposals.

Financial Implications

17. There are no additional financial implications of the proposals contained within this report.

Legal Implications

18. Under the Licensing Act 2003, the Council is required to determine its policy with respect to the exercise of its licensing functions and to publish a statement of that policy. This must be done for each five year period and the current policy is due to expire at the end of this year. The Council must, therefore, now adopt a new policy. The Licensing Act requires the Council to specifically consult various organisations before adopting a new policy, in addition to more general consultation. This consultation has taken place and the view of consultees taken into account in the revised draft.
19. The Statement of Licensing Policy sets out the approach that the Council will take to the exercise of its licensing functions. The Council is required, by section 4 of the Act, to have regard to its policy, when exercising any of its licensing functions. This includes the determination of applications for new licences and reviews of existing licences.

Options Considered

20. To update the Statement of Licensing policy in response to the consultation (see blue highlighted sections in Appendix 1) including any further amendments proposed by members of the Licensing Committee
or;

To continue with draft policy as presented to the Licensing committee on 11 March 2019.

Conclusions

21. The adoption of a revised Statement of Licensing Policy by December 2019 is a statutory requirement.

Proposal

22. To ask members to note the consultation undertaken and subsequent amendments made to the Council's draft Licensing Policy (in relation to the Licensing Act 2003).

That the Licensing Committee commends the Statement of Licensing Policy under the Licensing Act 2003 to the Council for approval at its meeting on 15 October 2019.

Reason for Proposal

23. The Wiltshire Council's Statement of Licensing Policy must be reviewed every five years and be the subject of a full consultation process.

David Redfern

Director Communities and Neighbourhood Services

Report Author: Carla Adkins

Public Protection Officer – Licensing
Carla.adkins@wiltshire.gov.uk, 01249 706438

19 August 2019

Background Papers

- Licensing Act 2003
- Secretary of State Section 182 Guidance

Appendices

1. Proposed Statement of Licensing Policy
 2. Responses to consultation
-

Statement of Licensing Policy

The Licensing Act 2003

2019 – 2024 (Draft)

Please read this document carefully and retain it for future reference

Contents

1.0 Introduction

- 1.1 Purpose and scope
- 1.2 Key aims
- 1.3 Consultation
- 1.4 Licensing function
- 1.5 Licensing objectives

2.0 Prevention of crime and disorder

- 2.1 Toughened/safety Glass
- 2.2 Pubwatch
- 2.3 Information sharing and reporting incidents
- 2.4 Door supervisors/stewards
- 2.5 Dispersal policy
- 2.6 Drugs in premises
- 2.7 Immigration and modern slavery

3.0 Promotion of public safety

- 3.1 CCTV
- 3.2 Alcohol consumption
- 3.3 Alcohol harm reduction
- 3.4 Public health
- 3.5 Health and safety
- 3.6 Occupancy limits
- 3.7 Positive campaigns to promote public safety

4.0 Prevention of public nuisance

- 4.1 Odour
- 4.2 Lighting

- 4.3 Waste/litter
- 4.4 Noise
- 4.5 Entertainment
- 4.6 Disturbance from customers
- 4.7 Plant and equipment
- 4.8 Servicing
- 4.9 Fly posting, flyers and graffiti

5.0 Protection of children from harm

- 5.1 Age verification/underage sales on/off premises
- 5.2 Proxy Sales
- 5.3 Children and cinemas/theatres
- 5.4 Child Sexual Exploitation in Licensed Premises

6.0 Licensing process

- 6.1 Application for premise licence and club premises certificates
- 6.2 Licensing conditions
 - 6.2a Shadow Licences
- 6.3 Licensing hours
- 6.4 Permitted temporary activities
- 6.5 Large scale events
- 6.6 Delegation of decision making
- 6.7 Application for personal licences
- 6.8 Delegation of premises supervisors

7.0 Enforcement

- 7.1 Inspection of Licensed premises
- 7.2 Complaints regarding licensed premises
- 7.3 Reviews of licences
- 7.4 Other powers and legislation

8.0 Other licensing authority powers

8.1 Cumulative impact policy

8.2 Late night levy

8.3 Early morning restriction order

9.0 Links to strategies and plans

10.0 Further advice and guidance

11.0 Appendices

Appendix A – Premises Licence/Club Premises Certificate – New Applications

Appendix B – Premise Licence/Club Premises Certificate – Variations

Appendix Ba- Premises Licence/Club Premises Certificate – Minor variations

Appendix C – Temporary Event Notice

Appendix D – Personal Licences

Appendix E - Review Process for Licensed Premises and Club Premises Certificates

Appendix F – De-regulation Order

Appendix G – Live Music Act 2012

Appendix H - Glossary

1.1 Introduction

This statement has been prepared having regard to the guidance issued by the Secretary of State for Culture, Media and Sport under Section 182 of the Licensing Act 2003 ('the Act') and as required of the licensing authority under Section 5 of the Act.

This statement of licensing policy will be kept under review throughout its period of validity and amended as considered necessary. Any amendments will be subject to consultation.

This statement takes effect from 1 November 2019 and will be scheduled for review in 2024

The licensing regime implemented by the Act and operated by Wiltshire Council as licensing authority is about the appropriate control of licensed premises, qualifying clubs and temporary events. It also covers the people who manage these premises or hold personal licences within the terms of the Act. Applications covered by the Act and relevant to this statement include:

- personal licences
- premises licences – including provisional statements
- variations
- transfers
- interim authorities
- temporary events
- club premises certificates
- designated premises supervisors
- reviews.

1.1 Purpose and Scope

This statement sets out the policy of the licensing authority with respect to carrying out its licensing functions under the Licensing Act. These include policy formulation, administration, monitoring, and enforcement activities. The latter will include working with and sharing permitted data with other regulatory and enforcement agencies.

The following will also be relevant to the way in which the licensing authority exercises its functions under the Act:

- Each application will be determined on its own merits having regard to the licensing objectives; relevant guidance including that issued under Section 182 of the Licensing Act 2003, and local criteria.
- The solicitor to the council will ensure that the Committee in its role as a quasi-judicial Committee acts in accordance with the rules of 'natural justice' and ensure the

Committee acts and appears to act fairly and approaches all matters before the Committee with an open mind during hearings or reviews.

- The statutory right of any responsible authority or other person to make appropriate representations to an application or to seek a review in respect of a granted authorisation where appropriate is accepted.
- The impact of the activities taking, or proposed to take, place at a licensed premises on businesses or individuals who are likely to be affected by it.
- The licensing authority, on behalf of the council, may notify parties they consider appropriate such as divisional councillors, town and parish councils of relevant applications.
- There is no presumption that any application for a licence under the Licensing Act will be granted.

1.2 Key Aims

The key aims of this statement of licensing policy are for the council as the licensing authority to:

- Promote and give precedence to the licensing objectives.
- Recognise the need to assist in building a fair, vibrant, and prosperous society in Wiltshire that properly balances the rights of residential communities, the business sector and other relevant parties.
- Secure the safety and amenity of residential communities whilst facilitating a sustainable, diverse, entertainment and hospitality sector in Wiltshire.
- Integrate its aims and objectives with other initiatives that will:
 - create an attractive and vibrant area, which has a positive effect on employment
 - reduce local crime, disorder and anti-social behaviour
 - reduce alcohol harm
 - reduce the supply and use of illegal drugs in licensed premises
 - encourage the self-sufficiency of local communities
 - reduce the burden of unnecessary regulation on businesses and promote self-help
 - reduce the health impacts of alcohol misuse and dependence; reduce the impact of alcohol related incidences on **A&E services Emergency Services**
 - continue its commitment to working in partnership with other agencies and organisations through both formal and informal arrangements towards the promotion and achievement of the objectives set out in this policy
 - endeavour to reflect the diversity of Wiltshire through its blend of urban and

rural settlements

- give direction to applicants, so that they can make informed decisions in respect of their own ventures.

1.3 Consultation

In reviewing this statement the licensing authority consulted widely with all necessary bodies and relevant stakeholders. A list of those consulted is available from the licensing authority on request. The consultation process was conducted between ~~May 2019 and July 2019~~ April 2019 and August 2019 by way of an email to those identified and also via publication on the council's website. Responses received were listed on a matrix document and each point made was given due consideration.

1.4 Licensing function

The licensing authority recognises that the provision of entertainment is a major contributor to the economy of the council's area. It makes for a vibrant and attractive area, which subsequently has a positive effect on employment. The licensing authority also recognises that owners and occupiers of commercial premises have a legitimate expectation of an environment that makes and keeps their businesses sustainable.

The licensing authority welcomes the opportunity to encourage the development of the cultural, artistic, leisure and hospitality sectors in Wiltshire. It will assist all applicants in endeavouring to meet their aspirations within the law.

The licensing authority also has regard to wider considerations affecting the residential population and the amenity of any area. These include dropping litter and street fouling, noise and street crime. It is, however, recognised that the licence holder has limited control over individuals once they are away from the premises.

The licensing authority recognises that the diverse range of licensed premises throughout Wiltshire makes a major contribution to attracting both initial and repeat visitors to both the historic localities, and diverse venues.

The licensing authority acknowledges that circuses can fall on the edge of the licensing regime depending on the nature of their show. The ~~Deregulation Act 2015~~ The Legislative Reform (Entertainment Licensing) Order 2014 removed the requirement for the need of circuses to be licensed between 08.00 and 23.00, providing that the circus is of a traditional nature, i.e. it is a travelling circus which takes place within a moveable structure.

1.5 Licensing objectives

The council will carry out its statutory duties under the Licensing Act 2003 as the licensing authority and have due regard to the licensing objectives.

It is important to note that all objectives have equal importance in the implementation of this policy.

The Licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and;
- the protection of children from harm

The licensing authority expects individual applicants to address the licensing objectives in their operating schedule having regard to the type of premises, the licensable activities to be provided, the nature of the location and the impact on the local community.

Where there are no relevant representations, or they have been withdrawn at or before a hearing, the application will be granted as requested subject only to conditions which reflect the operating schedule and any mandatory conditions. Most premises do and will operate without any significant concerns to the licensing objectives. However, where there is a relevant representation, the application will usually proceed to a hearing, following which the licensing authority may take such steps as are necessary to promote the licensing objectives, as provided for in the Act.

The following sections set out the licensing authority's policy relating to the four licensing objectives. It is emphasized that these objectives are the only matters which can be taken into account by the Licensing Committee and they will pay particular attention to them at a hearing, when determining applications and applying any conditions. A hearing must be called when relevant and valid representations are made by any person or responsible authority, based upon the four licensing objectives.

2.0 Prevention of crime and disorder

The council acting as the licensing authority has a duty to act solely or with its partners to reduce crime and disorder throughout Wiltshire, consistent with its statutory duty under section 76 of the Anti-Social Behaviour, Crime & Policing Act 2014. The council as a member of the Wiltshire Community Safety Partnership will work with relevant partners to utilise legislation as required to prevent crime and disorder issues.

Applicants are required by law to set out in their operating schedule the steps they propose to promote the prevention of crime and disorder. Responsible applicants will ensure proper regard in their operating schedule to the location, character and condition of the premises, the nature and extent of the proposed use and the persons likely to be attracted to the premises.

The council expects the premises licence, or club certificate holder to take steps to control excessive consumption and drunkenness on their premises. This will reduce the risk of anti-social behaviour and violent crime occurring both on the premises and elsewhere after customers have departed. Licence holders are expected to be able to demonstrate a general duty of care to customers using their premises and others affected by their activities. The licensing authority expects all applicants to consider a number of key conditions, where relevant to the type of licensable activity being proposed:

2.1 Toughened/safety glasses

Standard annealed glass bottles and drinking containers used in the leisure and hospitality sectors to supply alcoholic and non-alcoholic drinks may be used as weapons inflicting serious harm during incidents of disorder. Police evidence indicates that incidents are particularly likely in or within the immediate vicinity of a pub, club or nightclub. It is suggested that where the application relates to the sale of alcohol on the premises, the applicant considers measures to prevent glass bottles or glasses being taken off the premises.

In particular this is expected in premises considered to be high volume vertical drinking establishments and those premises open beyond 11pm. Possible exceptions would be facilities for hotel residents and their guests or a restaurant where the bar is primarily provided for restaurant customers.

Outside licensed premises, glass containers, as well as being potential weapons, add to street debris, pose risks to street cleaners and pedestrians and generally undermine the objective to minimise public nuisance. Therefore the policy also applies to any premises where outside areas are provided for consumption of alcohol, particularly where the outside area is in or adjacent to a public place.

The licensing authority believes that the use of safer alternatives to annealed glass

i.e. polycarbonate “glasses” will help promote public safety and the prevention of crime and disorder in licensed venues.

2.2 Pubwatch

The licensing authority recognises the value of Pubwatch schemes and will therefore play a supportive role and attend meetings as appropriate. Where such a scheme is active in the locality of a premise, the applicant is strongly encouraged to become an active member of Pubwatch. As well as traditional pubs and entertainment venues, this includes premises that are licensed solely for the sale of alcohol for consumption off the premises.

Pubwatch provides a forum for sharing information, disseminating best practice and meeting with representatives of the licensing authority, the police and other responsible authorities. The licensing authority encourages all licensees to actively participate in their local Pubwatch scheme and is keen to support the development of more schemes where there is a demand.

2.3 Information sharing and reporting incidents

As well as sharing information through formalised Pubwatch schemes, licensees are encouraged to share and report incidents to relevant agencies as and when appropriate, rather than waiting for the next meeting. Licensed Premises are often favoured for criminal activities such as child sexual exploitation, modern slavery, human trafficking, drug dealing and violence. Any issues of crime and disorder should be reported as soon as possible to Wiltshire Police. If persons or property are in danger then this should be done through calling ‘999’, alternatively the ‘101’ number should be used. Incidents that occur on licensed premises should be recorded and made available to Wiltshire Police and other agencies.

Wiltshire Police and Wiltshire Council work in partnership to target those individuals who cause crime and disorder. **Drink Banning Orders (sec 1-14 Violent Crime Act 2006), Exclusion Orders (sec 1 Licensed Premises Act 1980), Anti-Social Behaviour Orders (sec 1 Crime and Disorder Act 1998), Public Space Protection Orders (sec 59-68 Anti-Social Behaviour, Crime and Policing Act 2014) and any replacement powers will be utilised to assist in the prevention perception of crime and disorder.** Information about relevant orders against persons will be shared with premises. Licence holders are also expected to assist in preventing crime and disorder by notifying Wiltshire Police of any persons who breach orders relevant to their premises.

2.4 Door supervisors/stewards

Any person engaged at licensed premises to carry out security activities including the prevention of access to or the physical ejection of a person from the same premises on behalf of the licensee must hold and display a valid current licence issued by the Security Industry Authority (SIA) or any successor system.

The licensing authority will consider representations that indicate that specific premises require door supervision for the purpose of meeting the crime and disorder or public safety licensing objectives. In such cases, the licensing authority may impose a condition that an agreed number or ratio of licensed door supervisors must be employed at the premises either at all times, or at such times as certain licensable activities are taking place.

In certain circumstances it may be appropriate to use trained stewards to provide a satisfactory level of customer care and general safety awareness. These individuals must not carry out security activities, and would not be required to hold an SIA licence. If they were employed to undertake duties involving children then the applicant should consider whether the relevant level of disclosure check is appropriate.

Front line staff should receive relevant training in conflict management and basic first aid training.

The applicant may find it beneficial in developing the operating schedule for a premises licence or certificate to have undertaken a security risk assessment in order to determine the resources necessary to meet the licensing objectives.

2.5 Dispersal policy

Every venue whether a pub, club or bar ~~will~~ **should** prepare and implement a dispersal policy working in partnership with other venues within the vicinity through mechanisms such as Pubwatch. Applicants should consider how the venue will minimise the potential for disorder and disturbance as customers leave the premises. This should be prepared in consultation with the licensing authority and police and reviewed regularly and staff should be trained in how to implement this policy.

2.6 Drugs in premises

The licensing authority recognises that the supply and use of illegal drugs by individuals is not relevant to all licensed premises but it is recognised that conditions may need to be attached to the premises licences for certain venues if representations are received. The aim will be to endeavour to reduce the availability, sale, and consumption of illegal drugs and to create a safer environment for those who may have taken them. Any conditions will take into account the relevant guidance and advice from appropriate bodies.

The licensing authority expects licensees to permit the access and use of drug dogs within the public and staff areas of the premises upon request of the licensing authority and/or police involved in such an initiative.

The licensing authority expects licensees to permit access for drugs analysis equipment and staff so that random drug tests can be carried out on the skin of persons wishing to

have access to the licensed premises, in addition to the staff and contractors employed at the premises.

Psychoactive substances are those intended for human consumption that is capable of producing a psychoactive effect. These substances prior to May 2016 were more commonly known as “legal highs” and included items such as Nitrous Oxide (NOS), Spice and Black Mamba amongst others. It is a criminal offence to produce, supply or sell psychoactive substances. The Psychoactive Substances Act 2016 amends the Licensing Act 2003, creating new powers of entry relating to any of the offences mentioned above. These offences are also considered “relevant offences” in relation to Personal licences.

It is expected that licensees have a written drugs policy for their premises or event which staff are fully trained in.

2.7 Immigration and modern slavery

Modern slavery is the recruitment, movement, harbouring or receiving of children, women or men through the use of force, coercion, and abuse of vulnerability, deception or other means for the purpose of exploitation. Individuals may be trafficked into, out of or within the UK, and they may be trafficked for a number of reasons including sexual exploitation, forced labour, domestic servitude and organ harvesting

Forced labour is a situation in which victims are forced to work against their own will under the threat of violence or some other form of punishment. Labour exploitation is placing a worker under extremely poor conditions such as very low wages, being forced to work long hours, having their movements supervised, living in very poor conditions and having their identification documents taken away to prevent them from leaving.

As of April 2017, the Immigration Act 2016 introduced a “Right to Work” test for personal licence and individual premises licence holders (where the licence permits alcohol sales and late night refreshment). The Home Office Immigration Enforcement department became a responsible authority of the Licensing Act 2003.

Premises licence holders, as employers, have a duty to ensure that their employees have a right to work in the UK. The Licensing Authority will work with Immigration Enforcement to ensure that people are not illegally brought into the UK to be exploited as cheap labour in licensed premises.

Any offences committed under the Immigration Act are considered relevant offences for the purposes of a personal licence and are notifiable to the Home Office in the same way that other relevant offences are notifiable to the Police.

3.0 Promotion of public safety

The public safety objective is concerned with the physical safety of the people performing

in and staff and customers using the relevant premises. Applicants should carefully consider how they intend to promote the public safety objective in their operating schedule.

Where applicants consider that the public safety objective could be compromised by their intended activities, they are encouraged to contact the Wiltshire Council's Health and Safety Section and/or Dorset and Wiltshire Fire and Rescue Service as the most relevant responsible authorities for guidance. Other organisations such as the Event Safety Advisory Group will be able to offer advice. Contact details for these authorities/groups are available from the licensing authority.

Wiltshire Council promotes the use of community initiatives such as Purple Flag which has been awarded to Salisbury and Chippenham. Wiltshire Council aspires to support similar schemes across the county.

3.1 CCTV

CCTV has a role to play in stopping and deterring crime and anti-social behaviour in certain hotspots and is also used as an evidence and detection tool. However, surveillance cameras should only be used if necessary and proportionate, in addition:

- When considering the use of surveillance camera systems, either as part of the conditions attached to a licence or certificate, or within an operating schedule the licensing authority or applicant must in particular have regard to Code of Practice on CCTV published by the Information Commissioner's Office. Any proposed blanket requirement to attach surveillance camera conditions to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review.
- Applications in relation to licensed premises must take into account the circumstances surrounding that application and whether a requirement to have a surveillance camera system is appropriate in any particular case. For example, it is unlikely that a surveillance camera condition would be justified for a trouble-free community pub. Where a licence or certificate is granted subject to surveillance camera system conditions, it is the responsibility of the licensee to comply with any data protection considerations that may arise from the use of such a system.
- The public must have confidence that surveillance is appropriate and proportionate, and that those who operate the camera systems, or use the images and information they capture, demonstrate integrity in doing so and can be held to account.
- CCTV recordings should be kept for a minimum of 31 days and shared with the licensing authority and Wiltshire Police upon request.

3.2 Alcohol consumption

The council expects all premises licence holders to take **all necessary** steps to control excessive consumption and drunkenness on **relevant their respective** alcohol licensed premises. This will reduce the risk of anti-social behaviour and violent crime occurring both on and away from the premises after customers have departed. Premises licence holders are expected to be able to demonstrate a general duty of care to customers using their premises and others affected by their activities. **The premises licence holders must also be aware of the dangers of over consumption of alcohol and the risk of vulnerability to their customers.**

3.3 Alcohol harm reduction

Communities, agencies and businesses are ultimately best placed to identify and deal with alcohol-related problems in their area. It is important to maximise the benefits of partnership working, focusing and co-ordinating the efforts of local agencies, industry and the voluntary sector in tackling alcohol-related problems. Budgets and expertise can be pooled, providing the right services at the right time, making town centres safer and in doing so encourage more people to enjoy a night out, thus promoting economic growth.

Information is a powerful tool in tackling alcohol-related problems. It is vital to strengthen data sharing within local partnerships, in particular between crime and health agencies and licensing authorities.

The licensing authority will continue to work alongside their partners on a countywide and local level. Groups such as licensing tasking will continue to formulate the basis of partnership work and will have clear aims and objectives to ensure they are fit for purpose. This group will sit within the governance of Wiltshire Community Safety Partnership and will feed into local initiatives such as Pubwatch, Purple Flag, and other new schemes as and when required.

3.4 Public health

The inclusion of the health service as a responsible authority under the Licensing Act 2003, which occurred in 2012, enables health bodies to have a say in alcohol licensing. The Licensing and Public Health teams work together within the council to ensure that the health impacts of alcohol licensing are considered.

As there is not a specific licensing objective related directly to health within the current legislation, health bodies, when making a representation, are most likely to relate such representations to the objectives on public safety and protecting children from harm. This is likely to include the prevention of accidents, injuries and other immediate harms that can result from alcohol consumption, such as unconsciousness or alcohol poisoning. Anonymised data can be collected about incidents relating to specific premises or areas when representations are made.

Health bodies hold valuable information which may not be recorded by other

agencies, including analysis of data on attendance at emergency departments and the use of ambulance services following alcohol related incidents. Sometimes it may be possible to link ambulance callouts and attendance to irresponsible practices at specific premises.

The Director of Public Health is responsible for making representations and observations on applications on behalf of health bodies.

3.5 Health and safety

By law the applicant or operating company must have a health and safety policy when five or more persons are employed. This policy must be brought to the attention of those employees.

Employers must also record the results of risk assessments and ensure a robust tailor made health and safety action plan, is in place for both staff and customers. Applicants should have these documents available at the request of licensing authority or any other responsible authority.

3.6 Occupancy limits

It is recommended that the applicant or operating company assess and set occupancy limits following a risk assessment of the planned activities being carried out at the premises. The licensing authority may set an occupant capacity following representations received in order to meet the licensing objectives. It is recommended that premises assess and set limits appropriate to their premises/event.

3.7 Positive campaigns to promote public safety

The Licensing Authority will actively promote campaigns which help to reduce or remove risks to vulnerable people who visit or work in licensed premises. Examples of this would be the "Ask for Angela" scheme. The scheme aims to reduce sexual violence and vulnerability by providing customers with a non-descript phrase they can use to get the attention of staff members who can help separate them from the company of someone with whom they feel unsafe due to that person's actions, words or behavior.

Licensing Officers seek to work closely with landlords to encourage positive engagement with such campaigns and to help promote and explain the importance of keeping the public safe.

4.0 Prevention of public nuisance

Public nuisance is a broad concept, which concerns how the activity of one person (or business) affects the rights of others, for example, how noise from playing music interferes with another person's right to sleep.

The Act requires, and the licensing authority expects, applicants to demonstrate within their operating schedule how they intend to prevent public nuisance arising. This will be of particular importance where there are residential properties in the vicinity of the licensed premises.

When appropriate on application or review the licensing authority will consider the adequacy of proposed measures to remove or effectively manage the potential for public nuisance, anti-social behaviour and other crime which may impact on the promotion of the licensing objectives.

When an operating schedule does not sufficiently address the prevention of public nuisance the licensing authority will consider all reasonable conditions recommended by responsible authorities to prevent public nuisance. In some locations it may be necessary to limit opening hours or the times of other licensable activities.

Where considerations apply to late night refreshment premises, they shall only be taken to apply to their operation between the hours of 11pm and 5am when a premises licence would be required.

Applicants should carefully consider how they intend to promote the prevention of public nuisance objective in their operating schedule. This can include several considerations:

4.1 Odour

The applicant should consider any odour that maybe emitted from the premises. This can include the generation of odour from food preparation, waste, bottle storage and/or from smoking areas. Steps should be taken or proposed to be taken by the applicant to prevent odour from the premises causing nuisance.

Most commercial kitchens will require a mechanical extraction system, and the type and size will depend on the size of the cooking facility, type of food prepared and type of cooking appliances used. The applicant may need to get advice from specialist air handling engineers about controlling odour from kitchen air extraction systems.

Controlling odour from waste and bottle storage areas is entirely down to good management practice which involves using sealed waste bins big enough to hold all waste, which can be thoroughly cleaned and are regularly emptied.

When designating a smoking area outside it is important to consider who will be affected by the smoke, the possible number of persons using the area and ensuring a facility to safely dispose of lit cigarettes.

4.2 Lighting

Outdoor artificial lighting is used for a number of reasons, including work, recreation,

security, safety, advertising, display and to create a pleasant atmosphere where people gather socially. As many of the premises operating under the Licensing Act will use outdoor lighting late at night, it is important to ensure that it does not become a nuisance to others. Light 'spilling over' onto other property can cause annoyance, distraction and discomfort and may cause driving problems by glaring into drivers' eyes or competing with signs and other traffic signals.

4.3 Waste/litter

Licensed premises of all types can potentially cause public nuisance from litter and waste. There are a number of laws relating to proper waste collection and disposal, not least of which is the "duty of care" to ensure any waste is properly contained and controlled while in the operator's possession, and that it is collected by a reputable waste carrier. The Licensing Act does not duplicate these laws, but licence holders will need to apply good waste management practice in order to prevent public nuisance.

Uncontrolled litter, waste and street fouling is unsightly and can lead to a negative image of the area. It can cause offensive odour, may attract rats and insects and therefore be a public health risk, it may cause people to slip, trip and injure themselves, and it may harm the reputation of the licence holder's business.

Typical examples of litter, waste and street fouling that may cause problems include take-away packaging and food dropped by customers, wind-blown waste and litter from refuse storage areas, discarded and broken bottles, glasses and cans, promotional leaflets (flyers) and posters, cigarette ends and chewing gum discarded by customers and people who have consumed too much alcohol urinating and vomiting in the street.

4.4 Noise

Noise can come either directly or indirectly from licensed premises. Direct noise, such as that from entertainment activity, will be under the premises' direct control. Indirect noise, such as that from vehicles and customers coming to and from the premises may not be under direct control, but the premises can strongly influence it. Both direct and indirect noise will be of greater importance between 11pm and 7am. Specific types of noise each need different consideration when reducing their impact on public nuisance.

Small outdoor multiday music festivals (often where camping is also involved) can quickly become a source of public nuisance, organisers of such events are advised to contact the public protection noise team at an early stage. Organisers are encouraged to employ event management techniques similar to larger scale events to avoid public nuisance, these can include considering the suitability of the location, the geography, limiting amplifier output, duration or direction.

4.5 Entertainment

Appropriate control measures are needed for premises that operate late at night (after 11pm) and/or have regular entertainment or when the entertainment takes place in the open air or within a marquee. Steps should be taken or proposed to be taken to prevent noise and vibration from entertainment causing nuisance. This may include noise from music, human voices and other forms of entertainment whether amplified or not. Consideration should also be given to ensure noise is not audible at sensitive locations such as dwellings, hospitals, hotels and other business premises. Any noise should also not cause unreasonable disturbance to the wider public, such as passers-by and people using public facilities.

4.6 Disturbance from customers

Appropriate steps must be taken or proposed to be taken to prevent noise and disturbance from customers causing nuisance and anti-social behaviour. This may include noise and disturbance from customers on the premises and customers in outdoor areas such as terraces, beer gardens and smoking areas. It will also include noise, disturbance and obstruction from customers in the vicinity of the premises including customers congregating outside premises to smoke or drink, customers arriving, leaving or queuing outside a premises.

Particular consideration now has to be given to the potential for public nuisance arising from outside areas following the implementation of smoke free laws in July 2007. It must be noted that there is no legal requirement for licensed premises to provide an outdoor smoking area. However, Wiltshire Council encourages premises where practical to do so to minimise congestion on pavements.

Noise and disturbance from people outside can cause public nuisance even when those people are not behaving badly. This will be of more significance in areas with residential accommodation and will usually, but not exclusively, be of greater importance between 11pm and 7am. However it must be noted that noise and disturbance from customers outdoors can cause public nuisance outside of these times.

4.7 Plant and equipment

Steps should be taken or proposed to be taken to prevent noise and vibration from plant or equipment causing nuisance. This includes noise and vibration from ventilation, air conditioning and refrigeration equipment.

4.8 Servicing

Steps should be taken or proposed to be taken to prevent noise from servicing of the premises causing nuisance. This may include noise from deliveries, collections and the onsite disposal of bottles and other waste or recyclable materials.

4.9 Fly posting, flyers and graffiti

Steps should be taken to prevent fly posting and litter problems arising from the distribution

of flyers advertising the premises or events at the premises. The applicant should endeavour to reduce the use of promotional leaflets and only hand flyers directly to the public. Flyers should not be left on vehicle windscreens. Ensure a litter bin is near to the distribution point and clear discarded flyers afterwards. The applicant should also remove any graffiti and fly posting from their surfaces as soon as it appears.

5.0 Protection of children from harm

For the purposes of this policy the licensing authority considers anyone less than 18 years of age to be a child or young person unless otherwise agreed.

The policy aims to work alongside the principles set out in the Wiltshire Safeguarding Children Board and Wiltshire Children and Young People's Trust revised Multi-Agency Thresholds for Safeguarding Children (can be found by following this link: <http://www.wiltshirepathways.org.uk>).

The licensing authority expects that, whether or not alcohol is supplied or proposed to be supplied on or in the vicinity of the premises, operating schedules will identify:

- the extent to which it is proposed that children be admitted to the premises;
- whether it is proposed that unaccompanied children will be admitted;
- if they are, the type of regulated entertainment provided whilst children are present;
- The specific steps undertaken to ensure the safety of children and to further ensure that no products or services are sold to children that are not appropriate for their use or consumption.
- That an unaccompanied young person (i.e. somebody under the age of 16 who is not accompanied by a person over the age of 18) must not be allowed into any premises which are "exclusively or primarily used for the supply of alcohol for consumption on the premises".
- That staff are aware of their responsibility to ensure that an adult should not become over intoxicated if accompanied by a young person or child as to inhibit their ability to safeguard that young person.

Whether or not premises with a mixed use are "exclusively or primarily used" is a matter of judgment and will depend upon the particular circumstances of the case. The guidance makes it clear that this does not mean that where the supply of alcohol is not the exclusive or primary use then young people should automatically be given access.

Where it is appropriate and permissible within the law the Licensing Committee should impose conditions that restrict young people from entering all or part of any premises licensed to supply alcohol:

- at certain times of the day and/or;
- when certain licensable activities are taking place and/or;
- where there is an age limitation (over 18);
- unless accompanied by an adult
- where there is a history of crime and disorder
- where the premises are in a high risk area e.g. close to school; in an area with a history of underage sales; in an area with anti-social and criminal behaviour linked to persons under 18.

Applicants, who propose to admit children, particularly where they would not require them to be accompanied by a responsible adult, should be especially careful in ensuring they meet the requirement that their schedule fully and clearly sets out the nature of the activities for which permission is sought. Further, the schedule should specify in sufficient detail the measures and management controls proposed to protect children from harm.

The licensing authority expects that staff are trained and aware of their responsibility for ensuring that customers are old enough to purchase alcohol. This requirement is particularly relevant for bar staff working at premises where door supervisors control entry to a premise. Particular care and appropriate measures should be in place for venues that, due to the nature of the events, attract both over and under 18 year-old patrons.

5.1 Age verification underage sales on/off premises

There is now a mandatory condition on all premises licenses (in the case of alcohol supply) to have adequate age verification systems in place. This could be through the use of a Challenge scheme i.e. “challenging anyone who looks under 25 to prove their age by use of an approved means of identification”; such a scheme to be advertised and enforced on the premises.

The licensing authority supports and may condition an appropriate age policy in licensed premises. Licensees will need to demonstrate that their staff receive regular and adequate training on the law and practice relating to age restricted sales (including challenging purchasers and checking identification). The training provided should be properly documented so that there is an adequate audit trail and records are available for inspection.

The following are examples of identification used:

- Passport

- Photo-card driving licence
- PASS card
- Official identity card issued by HM forces

Details of training provided to members of staff to prevent underage sales should be recorded in a log. Additionally, when a retailer does refuse the sale of alcohol this should be recorded in a 'refused sales log'. These documents should be kept available for inspection by a police officer or authorised officer of the licensing authority.

5.2 Proxy sales

Adequate procedures must be in place to ensure that all members of staff working at the premises are routinely trained and regularly reminded of their responsibilities in relation to the issue of proxy sales of alcohol, and shall ensure that all reasonable steps and procedures are in place and implemented to prevent adults purchasing alcohol for those underage.

Steps must be in place to ensure that any designated premises supervisors and members of staff involved with the delivery of alcohol to residential addresses are made fully aware of their responsibilities to ensure that no alcohol is sold to persons underage

5.3 Children and cinemas/theatres

The licensing authority will expect licensees or clubs to include in their operating schedules their arrangements for restricting children from viewing age restricted films according to the recommendations of the British Board of Film Classification (BBFC) or the licensing authority itself. In the event that the licensing authority is asked to stipulate an age category for a film, video etc. that has not been dealt with by the BBFC, the licensing sub-committee or its delegated officers may view the film etc. and use the BBFC published guidelines on categorisation as a 'bench mark' in reaching their decision, which will then become a condition.

In considering any application, the licensing authority will take into account any evidence that age restrictions for cinema exhibitions are not being properly observed.

Where performances are for unaccompanied children in theatres and cinemas and relevant representations are received in response to an application/review, the licensing authority may impose conditions requiring an adequate ratio of adult attendants (over 18 years and relevant criminal record check).

5.4 Child Sexual Exploitation (CSE)

Licensed Premises are often used as a place to exploit and abuse victims of CSE. They provide an ideal environment for the grooming and sexual exploitation of children and young people. As part of the grooming process adults may meet young people or take them to licensed premises, to develop a relationship of trust and make them feel special by giving them 'treats' such as meals or alcohol, or by involving them in adult parties. A

premise could be misused for this kind of activity by the people who are socialising or working there.

Under the Licensing Act 2003, premises licence holders and designated premises supervisors have a legal responsibility to make sure that children and young people are protected from harm at their premises.

It is expected that licence holders will take all reasonable steps to promote safeguarding from CSE in their premises. Such steps may include but are not limited to; having a written children and young person's risk assessment to be used in conjunction with the premises operating schedule. It is important for staff to be mindful of areas that are not always supervised or covered by CCTV, for example toilets, beer gardens and play areas. For premises that provide a delivery service (e.g. a takeaway under a licence for late night refreshment), licence holders should enforce a code of conduct to promote safeguarding when deliveries are made to unaccompanied children.

Staff should be trained on how to recognise indicators of CSE and be confident in their knowledge on how and what to report to the Police.

It is expected that any incidents or suspicions are also recorded by the licence holder or their managers in the premises' incident book if appropriate to do so.

It should be noted that not all exploitation of children in licensed premises is of a sexual nature and children and young people may also be exploited criminally, which could involve children being coerced or manipulated into criminal activity such as drug dealing. Licence holders can find more information regarding child exploitation in Wiltshire Community Safety Partnership's "Child Exploitation and Missing Children Strategy for 2019-2021"

6.0 Licensing process

A licensing committee, sub-committee, or licensing officers acting under delegated authority, may carry out the powers of the licensing authority under the Act, in accordance with the council's scheme of delegation.

Many of the licensing procedures are largely administrative with no perceived areas of contention. In the interests of efficiency and effectiveness licensing officers generally carry these out.

The licensing authority ensures that all officers and members who deal with applications have received adequate training for their role under the Licensing Act 2003.

A sub-committee of the licensing authority deals with applications and the review of a licence, where there are relevant representations.

When determining applications the licensing authority has regard to any guidance issued by the relevant government department. In particular, account is taken of the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community as a whole. If representations are made concerning the potential for limited disturbance in a particular neighbourhood, the licensing authority's consideration

will be balanced against the wider benefits to the community e.g. single or multiple day events at outdoor event arenas in Wiltshire. Any conditions imposed on licences do not seek to discourage such entertainment, but are aimed solely at promoting the licensing objectives.

6.1 Application for premises licences and club premises certificates

The licensing authority will expect individual applicants to address the licensing objectives in their operating schedule having regard to the location and type of premises, the licensable activities to be provided, and the operational procedures.

Applicants should make themselves aware of the council's statement of licensing policy, in particular the issues that will need to be addressed in formulating the operating schedule.

Applicants will be encouraged to make themselves aware of any relevant planning policies, tourism, cultural or local crime prevention, alcohol reduction strategies; and to have taken them into account, where appropriate, when formulating their operating schedule.

When determining applications the licensing authority will have regard to Section 182 (of the act) and other relevant guidance issued.

Prospective holders of new premises licences and those seeking variations to existing premises licences are advised to consult with the council's licensing team and the various responsible authorities early in the planning stages in order to reduce the risk of confusion and disputes arising. The licensing authority will endeavour to work in full co-operation with licensees and applicants to minimise the number of disputes that may otherwise arise in this area.

The Section 182 guidance 8.35-8.37 makes reference to outdoor spaces and whether they are used for off sales or on sales. There is no requirement to show consumption areas for off sales on the plan of the premises, but it must be on the application form. For consideration by all parties it is recommended that all areas of consumption are marked on the plans. Areas used but not marked on the plans could have the potential for undermining the prevention of public nuisance.

6.2 Licence conditions

Licensing relates to the control of licensed premises, and other events within the terms of the Act. As part of this control, conditions may be attached to licences, and the various other permissions, which focus on matters falling within the control of individual licence holders.

Any conditions will relate to the premises and other places being used for licensable

activities, and the impact of those activities in the vicinity. In this regard the licensing authority primarily focuses on the direct impact of any activities taking place on those living, working, or otherwise engaged, in the area concerned.

The licensing function is not a mechanism for the control of anti-social behaviour by individuals once they are beyond the direct control of the licence holder of any premises concerned. Conditions attached to licences must only seek to impact on the behaviour of customers on, or in the immediate vicinity of the premises as they seek to enter or leave.

The licensing authority may impose conditions following a hearing. These conditions must not be disproportionate or over burdensome. The licensing authority does not implement any standard conditions. Conditions may be attached as appropriate given the circumstances of each individual case. Conditions will not be attached where adequate legislative control exists.

6.2a “Shadow” Licences

Nothing within the 2003 Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person. (section 2, Licensing Act 2003).

The s.182 Guidance further provides at paragraph 8.19, “There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held.”

When granting a licence on a premises that already holds a premises licence, the responsible authorities may seek to add conditions to the additional licence, that mirror the current premises licence. It must be clear which licence is in play at any one time; you cannot have two individuals trading within the same licensed area at the same time, under different premises licences.”

6.3 Licensing hours

The licensing authority deals with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with hours extending beyond 11pm, higher standards of control generally need to be included in operating schedules in order to promote the licensing objectives, especially for premises, which are situated in, or near, residential areas or in areas where crime and / or anti-social behaviour takes place. There is no presumption within the legislation for longer opening hours.

In considering all licence applications, the licensing authority takes into account the adequacy of the measures proposed to deal with the potential for nuisance and/or public disorder and has regard to all the circumstances of the case.

Where no representations are received an application is approved as applied for. Where a hearing or a review takes place the licensing authority may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area. In addition the licensing authority may in the case of an application refuse to grant a licence and at a review, revoke an existing licence. Throughout the application process consultation with relevant partners is welcomed and encouraged.

The licensing authority recognises that having fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people leave licensed premises at the same time. The licensing authority aims, through the promotion of the licensing objectives, to reduce the potential for concentrations of people and thus achieve a slower dispersal of people from licensed premises through longer opening times when appropriate.

The licensing authority does not seek to adopt fixed terminal hours in designated areas (known as “zoning”), as this can lead to the significant movement of people across boundaries in search of premises opening later.

Shops, stores and supermarkets are generally permitted to sell alcohol for consumption off the premises during their normal trading hours, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

6.4 Permitted temporary activities (TENS)

The Licensing Act 2003 provides for certain occasions when small-scale events (where no more than 499 people at a time attend and last for up to 168 hours) do not need a licence if advance notice (temporary events notice) is given and no relevant objections are received.

The licensing authority recommends that at least one month’s notice be given to hold these events to allow it to help organisers plan their events safely. Any significantly longer period than this may mean that organisers do not have all the details available at the time of submitting the notice. Any lesser time means that planning may be rushed and haphazard. The minimum legal timescale may be less than this period.

Event organisers are encouraged to make contact for advice at the earliest opportunity when planning their community events. Persons intending to use premises under a TEN are encouraged to discuss their proposals with the community that may be affected before submission.

The police or environmental health may issue an Objection Notice where they consider that any of licensing objectives may be undermined. In such circumstances, the Licensing Sub- Committee will consider the objection by way of a hearing. If the objection notice relates to a “late TENS” a Counter Notice will be issued making the TENS notice invalid.

6.5 Large scale events

These are events that are temporary but more than 499 people are expected to attend. Much larger crowds may be attracted to large-scale events and the risk to public safety and to crime and disorder, as well as public nuisance, may be considerable. The licensing authority and all other statutory consultees, should be given at the earliest opportunity, notice of such major events to discuss operating schedules with the organiser, prior to a formal application being submitted. It is the responsibility of the event organizer / applicant to provide the licensing authority and all other statutory consultees, at the earliest opportunity, notice of such major events. This will enable discussion about operating schedules prior to a formal application being submitted.

It is expected that the applicant will consider how their event will take place safely and how it will impact on the surrounding area. For large events such as festivals the licensing authority will expect to receive an event management plan to be submitted with their application for a licence. An event management plan should be a working document to include information which outlines how the premises will be run during the event. Details should be provided of (although not limited to):

- Roles and responsibilities of the event organiser
- Crowd management
- Contractor management
- Electrical, gas and water supply
- Temporary structures
- Fire safety
- Medical and first aid provision
- Site accessibility
- Traffic Management (including blue routes)
- Security staff/stewards/marshals
- Incident management
- Health and Safety management for members of the public
- Welfare provision for members of the public

The licensing authority requires they are given at least six months' notice to allow for a sufficient lead in time. Failure to consult in sufficient time may result in an objection on the grounds that insufficient time has been allowed to properly assess and consult to ensure that, in particular, public safety is not undermined.

Wiltshire Council has an established Events Safety Advisory Group (ESAG). This includes relevant council officers, representatives of the emergency services and the voluntary first aid sector. ESAG's aim is to advise on safety at public events held throughout Wiltshire, regardless of whether or not a premises licence or a temporary event notice is required. Event organisers are encouraged to make contact with the Licensing team for advice at the earliest opportunity when planning their community events.

6.6 Delegation of decision making

One of the major principles underlying the Licensing Act 2003 is that the licensing functions contained within the Act should be delegated to an appropriate level so as to ensure efficient and cost effective service delivery.

The Act itself requires that applications be granted unless a representation or objection is raised. Where a function is delegated to an officer they will be responsible for liaising with the applicant, interested parties and the responsible authorities to ensure that any licence granted is subject to proportionate and necessary conditions. Where objections/representations are made, the officer will liaise with the applicant, those making the representation and the responsible authorities to see if a settlement is possible to overcome the representations without the need for the matter to go before the licensing subcommittee. Only where issues are raised which cannot be agreed will the application be referred through to the licensing sub-committee for determination.

Whilst contested licensing applications are quasi-judicial in nature, the licensing subcommittee will try to keep the proceedings as informal as possible. However, some degree of formality is needed to ensure that all parties receive a fair hearing. The procedures are designed to ensure that all parties are able to express their views openly and fairly. The procedure is inquisitorial rather than adversarial and, whilst applicants, individuals and businesses who may be affected, and responsible authorities are entitled to bring legal representation with them if they wish, this is not a requirement.

Whilst the licensing sub-committee usually meets in public, it does have power to hear certain applications in private and to receive legal advice similarly. A decision is made publicly when the matter has been determined.

The licensing sub-committee will determine each case on its individual merits whilst taking into consideration the terms of this policy document. Where the licensing sub-committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.

The licensing authority will expect the applicant to have had due regard to the contents of this policy and the attached appendices that provide guidance only.

A decision of the licensing authority can be the subject of an appeal at the magistrates' court. As a consequence the licensing authority will record full reasons for any decision(s) made. The refusal of an application does not prevent a further application being made, but the licensing authority would expect the applicant to carefully consider the issues of concern before doing so.

6.7 Application for personal licences

The Police and Home Office Immigration will have the right to object to a person applying for a personal licence if that person has a relevant unspent conviction (at the time of application) or if they obtain a relevant conviction during the application period of their licence.

An individual may seek a personal licence regardless of whether or not they have current employment or business interests associated with the use of the licence. Applications cannot be made in the name of a corporate body.

The licensing authority must grant a personal licence if the applicant:

- is aged 18 years or over
- is in possession of a relevant licensing qualification or is a person of a prescribed description
- has not forfeited a personal licence in the previous five years, beginning with the day the application was made
- has not been convicted of any relevant offence under Schedule 4 of the Act, or a foreign offence
- has the right to work in the UK
- has paid the appropriate fee to the licensing authority

Applicants with unspent criminal convictions for the relevant offences set out in the Licensing Act 2003 are encouraged to first discuss their intended application with the police and licensing authority before making an application.

In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, applicants will be required to produce a relevant criminal record office basic disclosure certificate, with the application form, together with a signed disclosure form by them.

The licensing authority and police may arrange a joint interview with a prospective personal licence holder(s) to discuss the circumstances surrounding their conviction(s). Ultimately, the police may be minded to object to the grant of the personal licence. In these circumstances, the applicant is entitled to a hearing before the licensing sub-committee. The application will be refused, based on the police's objection, if the licensing authority considers it appropriate for the crime prevention objective to do so.

Wiltshire licensing authority will be the 'relevant licensing authority' for all personal licences, regardless of the subsequent place of residence of the holder. It will maintain all notified changes of address on its database.

The Policing and Crime Act 2017 amended the Licensing Act 2003 to allow the Licensing Authority to suspend, for up to 6 months, or revoke a Personal Licence upon a Personal Licence Holder being convicted of a Relevant Offence.

6.8 Delegation to premises supervisors

The designated premises supervisor need not be physically on the premises at all times when there is a supply or sale of alcohol but the licensing authority expects that there will be an appropriate authorisation system in place in line with the Section 182 (or other) guidance regarding the sale of alcohol at the licensed premises.

Where a designated premises supervisor is to be newly specified, the premises licence holder will apply to the licensing authority (including an application for immediate effect) and show that the individual concerned consents to taking on this responsible role, and notify the police of the application.

The police are able to object to the designation of a new premises supervisor where in exceptional circumstances, they believe the appointment would undermine the crime prevention objective. Similarly, the police are able to object where a designated premises supervisor is first appointed or transfers to a particular premises, and this combination gives rise to exceptional concerns; such as where a personal licence holder who has been allowed by the courts to retain their licence, despite convictions for selling alcohol to minors transfers to premises which has a degree of notoriety for underage drinking.

The Act provides that the applicant may apply for the individual to take up the post of designated premises supervisor immediately, and in such cases the issue would be whether the individual should be removed. The licensing sub-committee considering the matter must confine their consideration to the issue of crime and disorder. They will give comprehensive reasons for their decision and either party would be entitled to appeal if their argument is rejected.

7.0 Enforcement

The licensing authority will seek to work actively with the police in enforcing licensing legislation. It expects the police (subject to public interest immunity) to share relevant information about licensees and licensed premises under the Crime and Disorder Act 1998 and its common law powers, and to consult closely with the licensing authority when any enforcement action may be required. A joint enforcement protocol is in place with the police and other statutory agencies. These protocols provide for the targeting of agreed problem and high risk premises, but with a lighter touch being applied to those premises which are shown to be well managed and maintained.

The licensing authority have a well-established licensing forum 'Licensing Tasking' for the representatives of relevant organisations to meet on a regular basis to discuss licensing matters related to the four licensing objectives.

The licensing authority recognises that balancing the interests of owners, employees, customers and neighbours of pubs, clubs and off-licences will not always be straightforward, but it will always have regard to the licensing objectives.

The licensing authority will promote 'good practice' in relation to the operation of licensed premises. It will work closely with stakeholders so as to achieve on-going improvements in standards over reasonable periods of time, in the belief that this is in the long term interests of owners, operators, employees, customers and neighbours alike.

In general, action is taken in accordance with agreed enforcement principles and in line with the enforcement policies of the licensing authority and all responsible authorities. The key principles of consistency, transparency and proportionality are acknowledged. Any government advice or requirement in relation to enforcement will be taken into account.

A graduated response is affected where there is evidence of contravention of licensing legislation or licence conditions. Whilst an isolated or minor breach might be dealt with by way of an oral or written warning, more serious breaches and consistent lower level pattern of continued problems are likely to attract prosecution and/or a review of the licence.

Where contraventions or concerns as to compliance with regulations enforced by other agencies are identified during enforcement activities, these matters will be reported to the relevant agency. Complaints against licensed premises, allegations of unlicensed activities, and the breach of licence conditions will be investigated by Public Protection Officers

The licensing authority will refer to the Public Protection Enforcement Policy when considering enforcement. This policy is reviewed every two years and can be found on the council's website: www.wiltshire.gov.uk.

Under the Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011 the licensing authority must suspend a premises licence or club premises certificate if the holder has failed to pay the authority the annual fee. This does not apply if the failure to pay the fee when it was due was because of administrative error or the holder informed the authority in writing at or before the fee was due that they were disputing liability.

7.1 Inspection of licensed premises

The licensing authority aim to inspect premises on a risk based approach to secure compliance with the Licensing Act and to promote the licensing objectives.

Authorised officers will have the discretion as to which premises require a 'during performance' inspection and the frequency when they are undertaken. Where appropriate, joint visits will take place encompassing a number of relevant agencies.

Licensed premises will be risk-rated by the licensing authority so as to develop a proportionate and targeted inspection program.

7.2 Complaints regarding licensed premises

The licensing authority will investigate or refer to other relevant agencies/council services complaints received against licensed premises where appropriate, normally providing that the complainant's personal details and the nature of the issue(s) must be provided from the outset. For certain matters the complainant may be encouraged to raise the issue of concern directly with the licensee.

In exceptional circumstances the personal details referred to above may not be required, whilst the facts of the complaint are referred onto the police.

7.3 Reviews of licences

The Act sets out the arrangements to enable a review of a premises licence where it is alleged that the licensing objectives are not being promoted. This arrangement will follow an application from a responsible authority or any other person. The Section 182 guidance will be used to ensure that all matters for review are considered appropriately. The process shall not be subject to abuse by disaffected parties. Matters for consideration must be relevant, and not vexatious, frivolous or repetitious. However, matters involving the following may be considered as serious shortcomings by the licensing sub-committee at their hearings:

- use of licensed premises for the sale and distribution of Class A drugs and/or the laundering of the proceeds of drug crimes
- use of licensed premises for the sale and/or distribution of firearms
- evasion of copyright in respect of "pirated" films and music
- underage purchase and/or consumption of alcohol

- use of licensed premises for prostitution or the sale of unlawful pornography
- use of licensed premises for unlawful gaming
- use of licensed premises as a base for organised criminal activity
- the closure of the premises by a senior police officer, or an environmental health officer due to noise nuisance
- use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks
- use of licensed premises for the sale of smuggled tobacco or goods
- the use of licensed premises for the sale of stolen goods
- where the police are frequently called to attend to incidents of disorder
- prolonged and/or repeated instances of public nuisance
- where serious risks to public safety have been identified, and the management is unable or unwilling to correct those
- where serious risks to children have been identified e.g. repeat underage sales
- significant or repetitive breaches of licence conditions/licensing law
- failure to act on previous warnings/advice/uncooperative attitude towards authorised officers.

In a hearing to determine an application for a licence or consider a review application, the overriding principle adopted by the licensing authority is that each application will be considered on its own individual merits. Licence conditions applied at such a hearing will be tailored to the individual premises and activities and only those necessary to meet the licensing objectives will be applied.

Upon review of a premises licence, the licensing authority must, having regard to the application for review and any relevant representations, take such steps as it considers necessary for the promotion of the licensing objectives. Such steps might be:

- the modification of the conditions of the licence
- the exclusion of a licensable activity from the scope of the licence
- the removal of the designated premises supervisor
- the suspension of the licence for a period not exceeding three months
- the revocation of the licence.

7.4 Other powers and legislation

A senior police officer, of the rank of superintendent or higher, or an inspector of weights and measures, may issue a closure notice where there is evidence that a person has committed the new offence of persistently selling alcohol to children at the premises in question, and he considers that the evidence is such that there would be a realistic prospect of conviction if the offender was prosecuted for it. A closure notice will prohibit sales of alcohol at the premises in question for a period not exceeding 48 hours; and will offer the opportunity to discharge all criminal liability in respect of the alleged offence by the acceptance of the prohibition proposed in the notice. The premises licence holder will have fourteen days to decide whether or not to accept the proposed

prohibition or to elect to be tried for the offence. Where the licence holder decides to accept the prohibition, it must take effect not less than fourteen days after the date on which the notice was served at a time specified in the closure notice. Closure notices may be served by police officers, trading standards officers and community support officers.

~~Anti-Social Behaviour Act 2003~~ Anti-Social Behaviour, Crime and Policing Act 2014 permits an authorised officer acting on behalf of the council, to require the immediate closure, for a period of up to 24 hours of any licensed premises if it is considered that noise emanating from within its curtilage is causing a public noise nuisance. The 'test' is a lesser one than required to determine a statutory noise nuisance and the statutory defence of 'best practicable means' is not available.

The licensing authority also recognises that there are other tools and powers at their, and their partner agencies', disposal. All powers are subject to change and amendments, in particular by the Anti-Social Behaviour, Crime and Policing Act 2014. More details can be made available on request to the licensing authority.

Other statutory requirements and opportunities for control, for example relating to planning, building regulations, fire safety, nuisance and health and safety, may apply to the provision of any regulated activities at a premises and the responsibility for compliance lies with the licence holder. Advice may be obtained from the appropriate enforcing authority or from the licensing authority's Licensing Officers.

In general, premises referred to in an application for a licence or certificate should have planning permission granted for that use and be compliant with, or have arrangements in place to be compliant with any conditions attached to the planning permission. It is however recognised that licensing applications should not be a re-run of a planning application and the two regimes are entirely separate.

The licensing team will liaise with the relevant planning authority as appropriate.

The Immigration Act 2016 amends the Licensing Act 2003 to provide Immigration Officers enforcement powers. An Immigration Officer will be able to issue an "illegal working closure notice" for up to 48 hours if he or she is satisfied, on reasonable grounds, that an employer operating at the premises is employing a person who does not have the correct work status.

The closure notice prohibits access to the premises unless authorised in writing by the immigration officer.

An application to the Court for a compliance order must be made by the immigration officer and heard within 48hrs after service of the closure notice. The Court may issue the compliance order if satisfied, on the balance of probabilities, that an illegal worker was working on the premises and that it is necessary to make the order to prevent the employer at the premises from employing illegal workers.

The Court can make an order which includes, prohibiting the access to the premises; requiring right to work checks to be carried out; requiring right to work documents to be produced and specifying times for an immigration officer to enter the premises. A compliance order can have effect for a maximum of 12 months, but the immigration officer may apply for this to be extended.

The Court will notify the licensing authority of the order and the licensing authority must then review the premises licence.

If an offence is committed in relation to the compliance order, the court can impose a prison sentence for up to 51 weeks or a fine.

The licensing authority will have regard to the European Convention on Human Rights particularly:

- Article 6- entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal and
- Article 8 - the right to respect for home and private life; and
- Article 1 of the First Protocol - that every person is entitled to the peaceful enjoyment of their possessions, as they may interface with the licensing objectives.

8.0 Other licensing authority powers

8.1 Cumulative impact policy

In the Secretary of State's Section 182 guidance on the Licensing Act 2003, 'Cumulative Impact' is defined as 'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'. The number, type and density of licensed premises within an area may be such as to give rise to serious problems of crime, disorder and/or public nuisance.

The locality within which licensed premises are, or may be, located is a major consideration in determining whether a licence should be granted and what conditions should be attached to it. Primary consideration will be given to the direct impact of the licensed activity on those living, working or enjoying the local environment.

Licensing law is not a mechanism for the general control of any anti-social behaviour being displayed by patrons once they have left the curtilage of the licensed premises. Other more specific legislation should be used. However when issues can be linked to customers from a particular premise or area then the licensing authority may consider it relevant to the licensing framework.

In some areas there may be concentrated numbers of licensed premises that can lead to problems with the licensing objectives in the area itself or even some distance away. In such circumstances the impact of those premises when taken as a whole can be far greater than that arising from individual premises. It may not be possible to distinguish individual premises as being the sole cause, or even a major contributory factor to, a particular problem; it is the cumulative impact of all the premises that causes problems for a wider area.

All applications will be considered on their own merits, and no restriction of numbers will be imposed by this policy.

However the licensing authority may receive representations from a responsible authority or an interested party that the cumulative impact of the existing licensed premises or the granting of new licences will lead to an area becoming 'saturated' to the detriment of the locality because of impact on the licensing objectives over and above the impact of the individual premises. In these circumstances the licensing authority may consider that it needs to have a special policy in place.

8.2 Late night levy

Following the introduction of the Police Reform and Social Responsibility Act 2011 the licensing authority may introduce a late night levy. The levy would relate to a late night supply period which begins at or after midnight and ends at or before 6am. Any premises which are not subject to an exemption who supply alcohol during the supply

period on any night of the year would be required to pay the late night levy, the level of which is based on rateable value.

After a night out, members of the public will often migrate to premises offering late night refreshment on their way home. The culmination of over-intoxicated people in a small space often leads to public nuisance from people fighting, shouting and dropping litter. Under the Policing and Crime Act 2017, the government can implement legislation to bring late night food venues into the scope of late night levies. Late night levies are a means through which local councils and police forces can raise funds to help pay for additional enforcement required to deal with increased public nuisance around these premises.

The late night levy will not be introduced without the required consultation as detailed in the legislation and accompanying guidance.

8.3 Early morning restriction order (EMRO)

Following the introduction of the Police Reform and Social Responsibility Act 2011, if the licensing authority considers it appropriate for the promotion of the licensing objectives they can make an early morning alcohol restriction order.

An order would mean that any premises licence, club premises certificate or temporary event notice that authorises the sale of alcohol during the period specified in the order would not have effect. The period specified must begin no earlier than midnight and end no later than 6am.

9.0 Links to strategies and plans

The Wiltshire Community Safety Partnership is a statutory partnership, which includes a number of local partners. Together the partnership oversees the development of various Wiltshire strategies, in particular:

- ~~Wiltshire Drug Strategy~~
- ~~Wiltshire Alcohol Strategy~~
- ~~Wiltshire Drugs and Alcohol Strategy~~
- ~~Wiltshire Children and Young People's Substance Misuse Strategy~~
- ~~Wiltshire Anti-Social Behaviour Strategy~~
- Health and Wellbeing Strategy
- Joint Strategic Needs Assessment
- ~~Wiltshire Anti-Social Behaviour Strategy 2016 - 2020~~
- ~~Wiltshire Violent Crime Strategy Strategy to prevent and tackle serious violence~~
- Wiltshire Domestic Abuse Strategy.

To obtain a copy of any of these documents please contact the licensing authority.

10.0 Further advice and guidance

Can be obtained from Wiltshire Council's Licensing Team and on the licensing pages of the council's website.

www.wiltshire.gov.uk

Government information on the Licensing Act 2003 and other relevant legislation is available on:

www.gov.uk/government/organisations/home-office

NHS guidance on Units of alcohol and recommended drinking levels:

<http://www.nhs.uk/Livewell/alcohol/Pages/Alcoholhome.aspx>

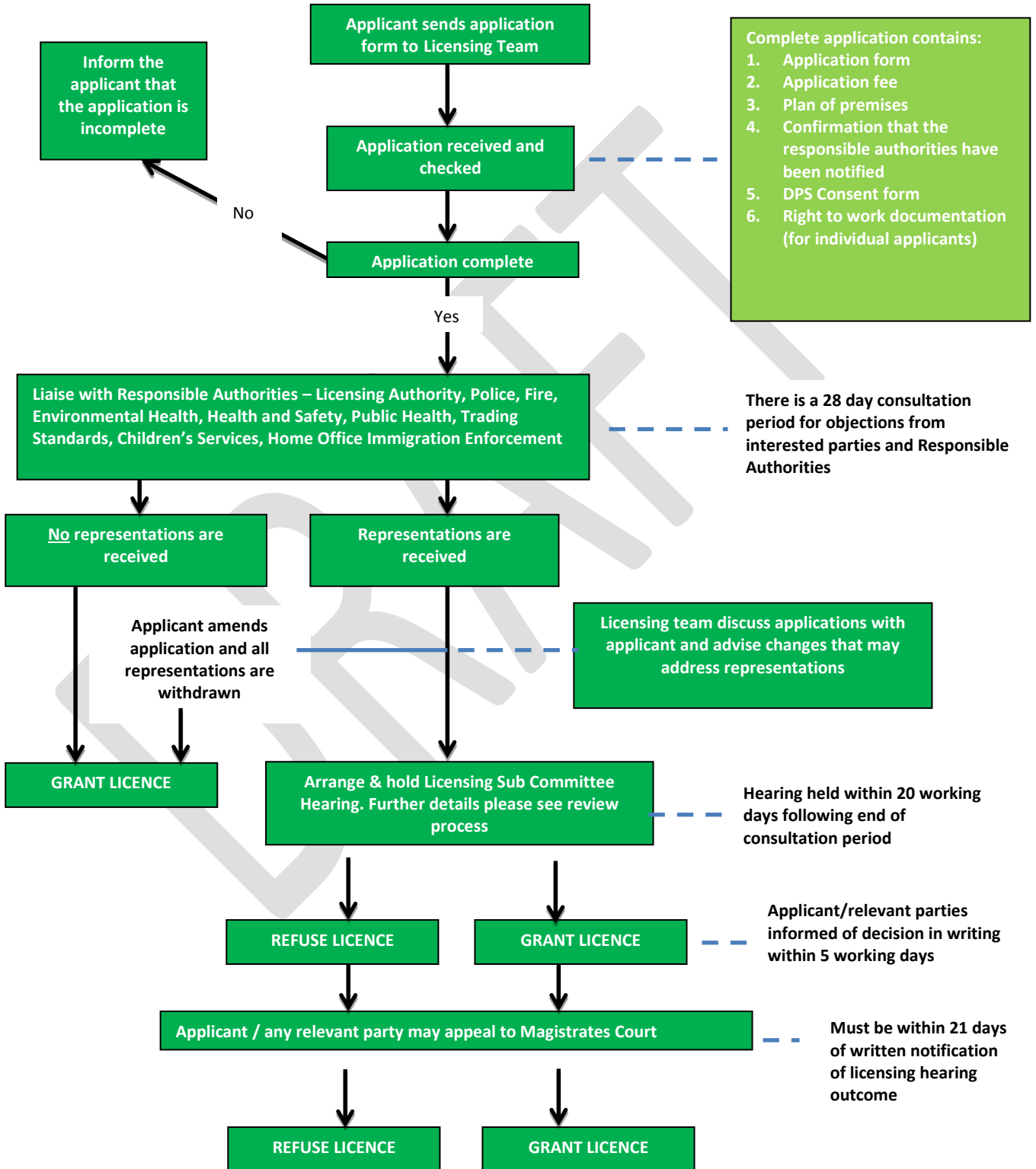
<https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-alcohol/2019>

<http://www.wiltshire.gov.uk/community-safety-safer-communities>

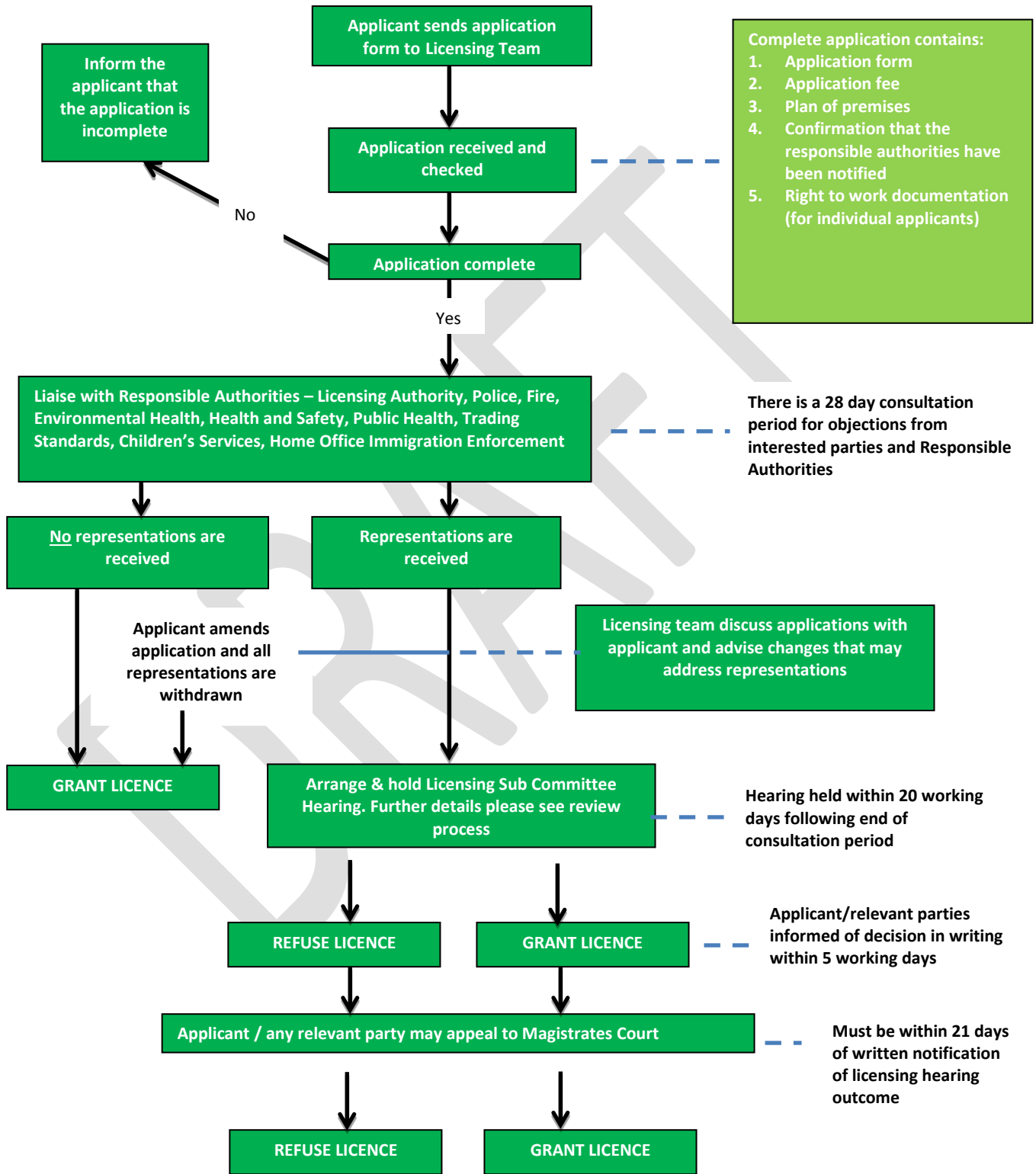
<http://www.wiltshirescb.org.uk/child-sexual-exploitation-professionals/>

11.0 Appendices

APPENDIX A – Premises Licence/Club Premises Certificate – New Applications

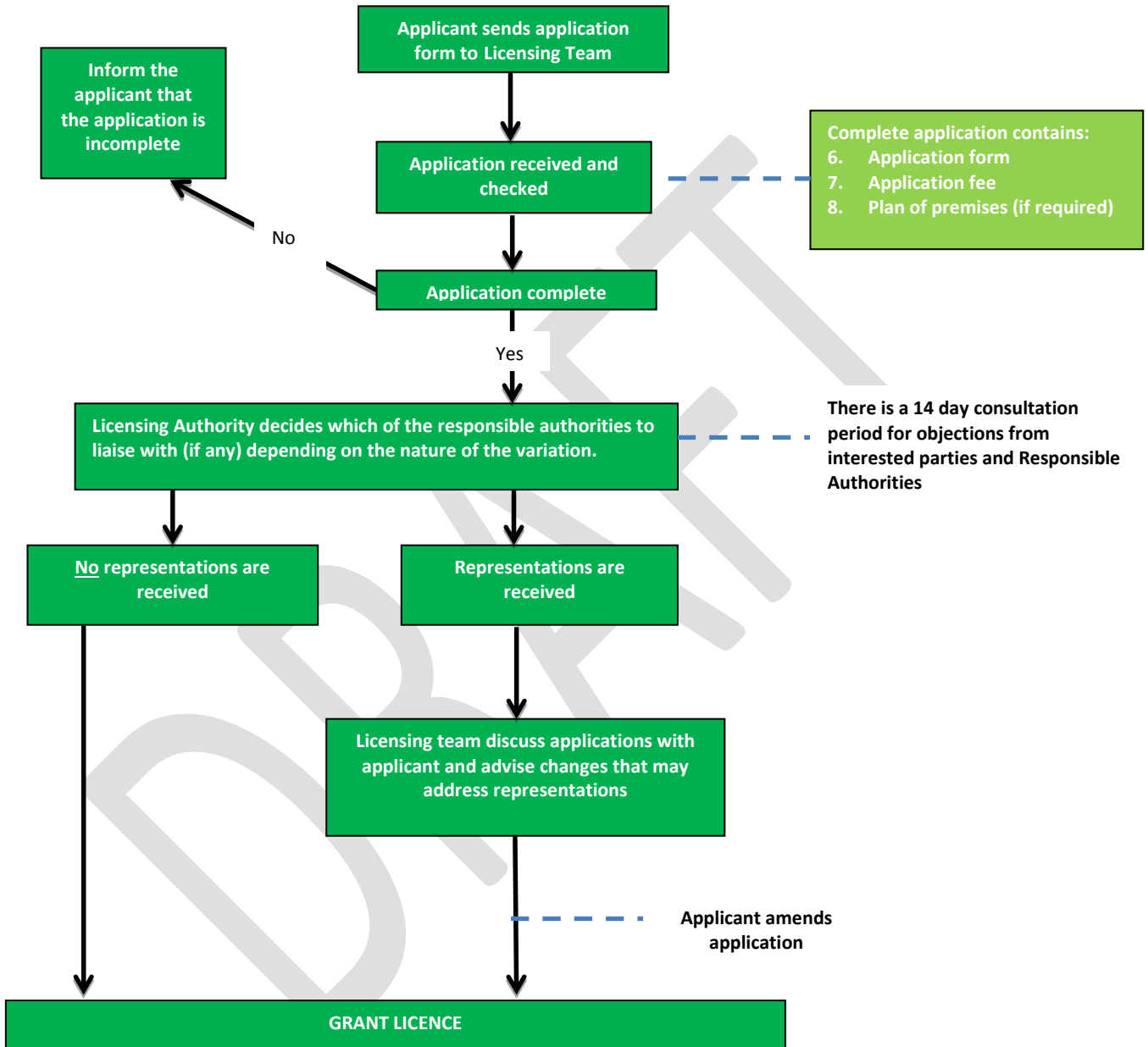


APPENDIX B – Premises Licence/Club Premises Certificate – Variations



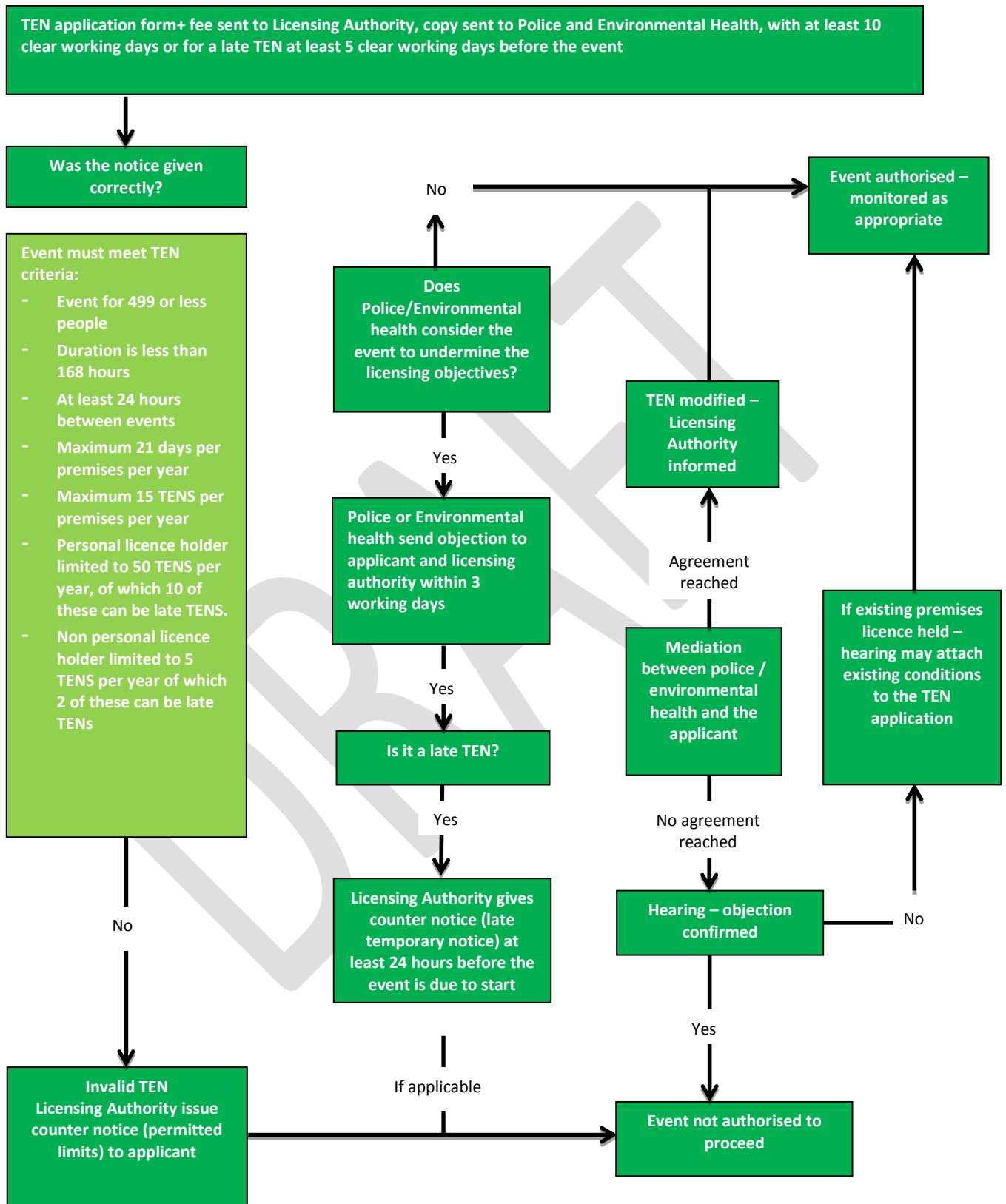
If the request is to substantially change the original licence – a new application must be submitted. Variations of name, address or DPS are covered by a separate process.

APPENDIX Ba – Premises Licence/Club Premises Certificate – Minor Variations

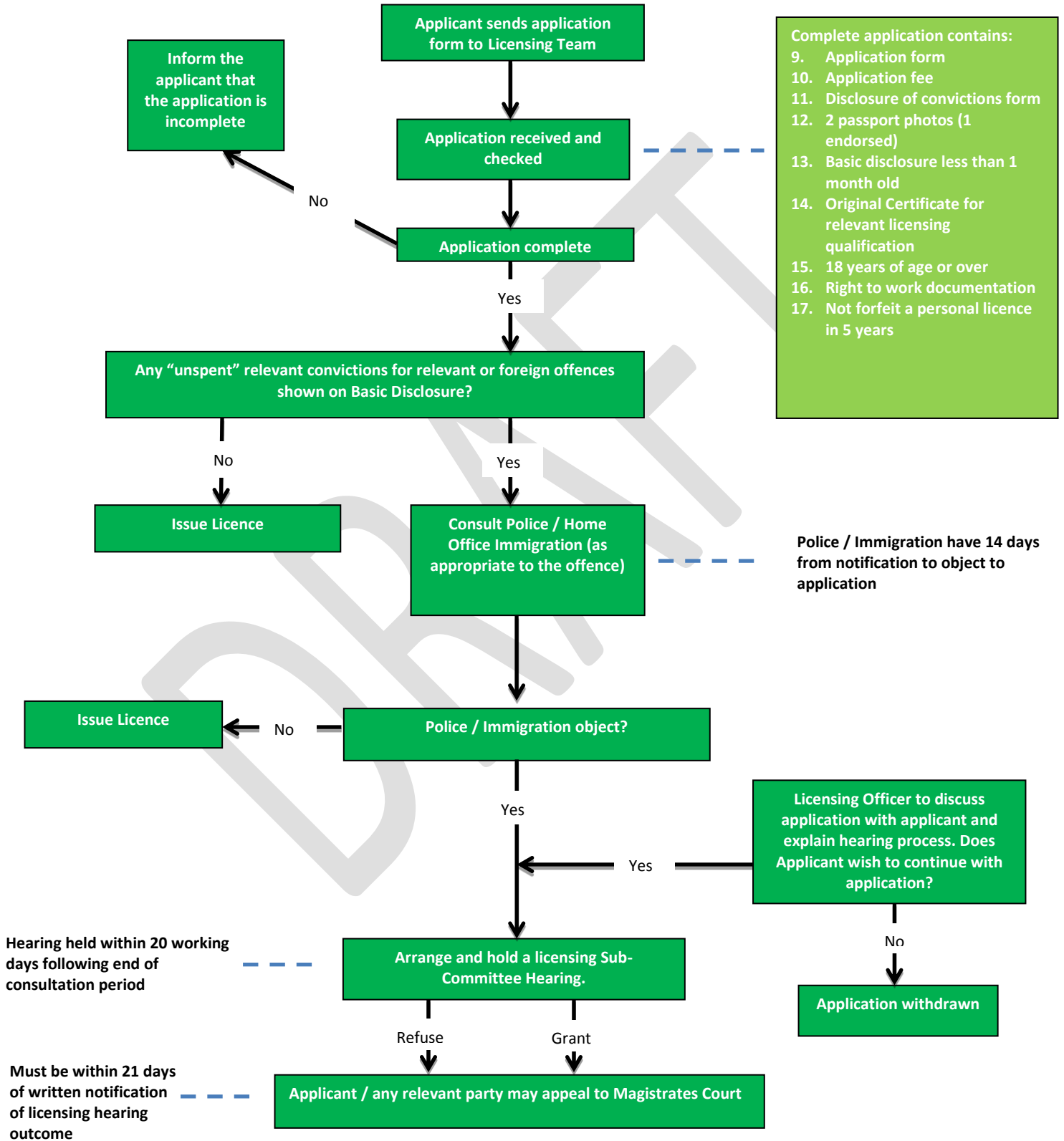


It is important to note that there is no hearing process for minor variations; however Licensing Officers should give regard to any representations received.

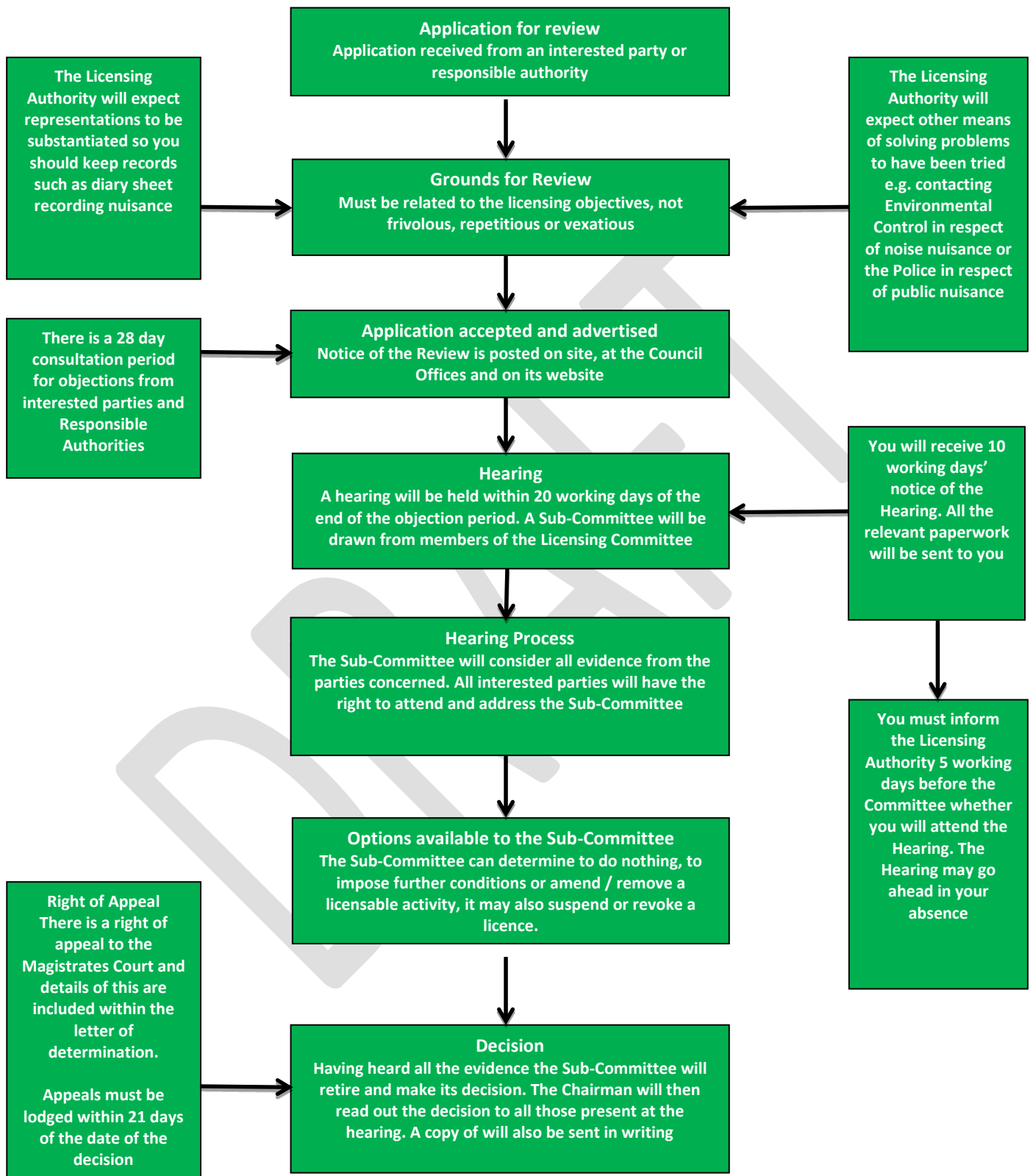
APPENDIX C – Temporary Event Notice



APPENDIX D – Personal Licence – New Applications



APPENDIX E – Review Process for Licensed Premises and Club Premises Certificates



APPENDIX F – The Legislation Reform (Entertainment Licensing) Order 2014

In April 2015 the Legislation Reform Order was introduced to remove the regulatory burden of the Licensing Act 2003 so that certain entertainment activities in defined circumstances no longer require a licensing authority to have granted an authorisation before they can take place. As such the Licensing Act 2003 was amended to deregulate the following entertainment:

Live music in relevant alcohol licensed premises and workplaces

The audience limit for a performance of live amplified music in relevant alcohol licensed premises or in a workplace between 08.00-23.00 on the same day will be raised from 200 to 500.

Recorded music in relevant alcohol licensed premises

Any playing of recorded music in relevant alcohol licensed premises will be deregulated (on a conditional basis) when it takes place between 08:00-23:00 on the same day for audiences of up to 500.

Live and recorded music exemptions

- Local authorities, health care providers and schools will be exempt from entertainment licensing when making their own defined premises available to third parties for live and recorded music activities between 08:00-23:00 on the same day for audiences of up to 500.
- Community premises not licensed to supply alcohol will be exempt from entertainment licensing requirements for live and recorded music between 08:00-23:00 on the same day for audiences of up to 500

Travelling circuses

Travelling circuses will be exempt from entertainment licensing in respect of all descriptions of entertainment, except an exhibition of a film or a boxing or wrestling entertainment, where the entertainment or sport takes place between 08:00-23:00 on the same day, with no audience limit.

Greco-Roman and freestyle wrestling

Greco-Roman and freestyle wrestling will be deregulated between 08:00-23:00 for audiences of up to 1000 people.

Cross-activity exemption

The provision of regulated entertainment by or on behalf of local authorities, health care providers, or schools on their own defined premises will be exempt from entertainment licensing between 08.00-23.00 on the same day, with no audience limit.

A licence to sell or supply alcohol would still be required, and any controls in place in relation to the alcohol licence would remain. Furthermore, the exemptions will not extend to adult entertainment. The background and policy position on adult entertainment was set out in the 2011 consultation, and there was a strong consensus in the consultation responses that existing restrictions on sexual entertainment should be maintained.

APPENDIX G – Live Music Act 2012

The Live Music Act took effect from 1 October 2012, and since 6th April 2015 now applies to recorded music, and covers larger audiences.

The Act disapplies live music related conditions if the following criteria are satisfied:

- There is a premises licence or club premises certificate in place permitting 'on sales';
- The premises are open for the sale or supply of alcohol for consumption on the premises;
- Live or recorded music is taking place between 8am and 11pm;
- If the live music is amplified or recorded, the audience consists of no more than 200 people

Live music also ceases to be classed as regulated entertainment under the Licensing Act 2003 if the above criteria are satisfied.

"Live Music" includes vocal and instrumental music and also karaoke singing. Pre-recorded videos played on karaoke machines are likely to require authorisation for "Films" but if only the words to the song are displayed then no authorisation is required.

The Act also creates a general exemption that live unamplified music provided anywhere shall not be regarded as the provision of regulated entertainment under the Licensing Act 2003 if it takes place between 8am and 11pm, regardless of the number of people in the audience.

There are a number of mechanisms for the protection of residents and these are:

- Upon a review of the premises licence the Licensing Authority can determine that conditions on the premises licence relating to live or recorded music will apply even between 8am and 11pm;
- If the Premises Licence doesn't presently authorise live or recorded music the Licensing Authority can add conditions to the Premises Licence as though the live or recorded music were regulated entertainment authorised by that Premises Licence, again to apply between 8am and 11pm
- The Licensing Authority can determine that live or recorded music at the premises is a licensable activity and live or recorded music can no longer be provided without permission on the Premises Licence or a Temporary Event Notice
- Other noise legislation, for example in the Environmental Protection Act 1990, will continue to apply. The Live Music Act does not allow licensed premises to cause a noise nuisance

The Live Music Act removed the need to licence entertainment facilities completely - regardless of time or audience size. This means that dance floors, microphone stands, pianos made available for use by the public etc. will not be licensable once the Act comes into effect. Health & safety law will of course continue to apply.

The Live Music Act does not remove the requirement for permission to play live and recorded music from PPL PPR.

APPENDIX H – Glossary

The following comprises a glossary of terminology used within the statement of licensing policy. Terms defined at length within the Licensing Act 2003 have generally not been included.

Alcohol harm reduction strategy

A strategy issued by the Government aimed at identifying initiatives and priorities, which may help in the promotion of the licensing objectives.

Appropriate representations

See 'Relevant Representation'.

Basic disclosure check

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged to become the Disclosure and Barring Service (DBS). CRB checks are now called DBS checks. A DBS check may be needed for certain jobs or voluntary work particularly when working with children.

Club premises certificate

A certificate authorising the use of premises by a qualifying club for one or more club activities.

Crime and Disorder Reduction Partnership-Community Safety Partnership

A partnership comprising relevant sections of the council, the police and other interested parties, established to develop a strategy for the reduction of crime and disorder in the area.

Cumulative impact

The potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

Designated premises supervisor

The individual specified in the premises licence as the premises supervisor.

High volume vertical drinking establishments

A licensed premise that targets, persons wishing to consume a number of drinks, often with minimal seating to maximise room for customers.

LACORS/TSI code of best practice on test purchasing

The Code of Best Practice on Test Purchasing issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Trading Standards Institute (TSI). The code gives guidance as to the test purchasing of alcohol by trading standards officers.

Licensing committee

The committee established by the licensing authority to discharge the licensing functions of the

authority.

Licensing hours

The hours during which authorised licensable activities, take place.

Licensing tasking

A Wiltshire based multi-agency meeting where premises causing issues are raised, discussed and actions decided.

Natural justice

In English Law this is the technical term for a rule against bias and the right to a fair hearing.

Operating schedule

A prescribed document which must accompany any application for a premises licence or a club premises certificate, setting out the nature of the proposed licensable activities, the proposed trading hours, and the steps envisaged promoting the licensing objectives, amongst other things.

Personal licence

A licence which authorises an individual to supply or authorise the supply of alcohol in accordance with the premises licence.

Premises licence

A licence authorising premises to be used for one or more licensable activities.

Proportionality

The principle under which, in the licensing context, only appropriate conditions can be imposed on licensable activities, taking specific account of the size, style, and characteristics of such activities taking place at the premises concerned.

Pubwatch scheme

An agreement reached by a group of licence-holders in a particular locality to counter, on a collective basis, those who threaten damage, disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing not to admit or serve individuals who cause such problems.

Purple Flag

Purple Flag is the “gold standard” for town centres at night, it aims to raise standards and improve the quality of our towns and cities between 5pm and 5am.

Qualification approved by DCMS

A licensing qualification accredited by the Secretary of State.

Quasi-judicial

Is an entity or a function, generally of a public administrative agency, which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action.

Relevant offence

Any offence listed in Schedule 4 of the Licensing Act 2003.

Relevant representation

A representation regarding the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives.

Responsible authorities

The public bodies that must be fully notified of applications and that are entitled to make relevant representations to the licensing authority in relation to the grant, variation or review of a premises licence. ~~These include as at 1 April 2014:~~ **1 April 2019:**

- the chief officer of police
- the local fire and rescue authority
- the local authority with responsibility for public health
- the local enforcement agency for the Health and Safety at Work etc. Act 1974
- the local authority with responsibility for environmental health
- the local planning authority
- a body that represents those who are responsible for or interested in matters relating to the protection of children from harm
- the local weights and measures authority (trading standards)
- **the Home Office Immigration Service**
- the relevant licensing authority and any other licensing authority, in whose area part of the premises are situated.

Safer clubbing

Guidance issued by the Home Office giving advice to nightclub owners, dance event promoters and local authority licensing departments on how to ensure the health and safety of persons attending dance events.

Special policy

A policy setting up a rebuttable presumption that applications for new premises licences or club premises certificates will normally be refused whenever relevant representations are received as to the cumulative impact on the licensing objectives.

Terminal hours

The times at which authorised licensable activities should cease.

Zoning

The adoption of fixed terminal hours in designated areas.

February 2019

Respondent	Response	Comment
Public Health – Vulnerable Communities	<p>Section 2.3 <i>“Anti- Social Behaviour Orders (sec 1 Crime and Disorder Act 1998), Public Space Protection Orders (sec 59-68 Anti-Social Behaviour, Crime and Policing Act 2014) and any replacement powers will be utilised to assist in the prevention of crime and disorder.”</i></p> <p>These are no longer used and so should be amended to read as:</p> <p><i>Drink Banning Orders (sec 1-14 Violent Crime Act 2006), Exclusion Orders (sec 1 Licensed Premises Act 1980), Public Space Protection orders (sec 59-68 Anti-Social Behaviour Crime and Policing Act 2014 and any replacement powers will be utilised to assist in the perception of crime and disorder</i></p> <p>Section 7.4</p> <p>We think: Anti-Social Behaviour Act 2003 permits an authorised officer acting on behalf of the council, to require the immediate closure, for a period of up to 24 hours of any licensed premises if it is considered that noise emanating from within its curtilage is causing a public noise nuisance. Should be: Anti-Social Behaviour, Crime and Policing Act 2014</p> <p>Section 9.0</p> <p>Delete the following:</p> <ul style="list-style-type: none"> ● Wiltshire Drug Strategy ● Wiltshire Alcohol Strategy ● Wiltshire Children and Young People’s Substance Misuse Strategy <p>And replace with:</p> <ul style="list-style-type: none"> ● Health and Wellbeing Strategy ● Joint Strategic Needs Assessment ● Wiltshire Anti-Social Behaviour Strategy 2016-2020 	<p>All amendments highlighted in Statement of Licensing Policy (Appendix 1)</p> <p>Further comments from Public Health have requested that there should be reference to the “Wiltshire Drugs and Alcohol Strategy” within this policy and also to remove “Wiltshire Anti-Social Behaviour Strategy 2016-2020” as this is due to expire in March 2020 and will not be renewed.</p> <p>The wording for the Violent Crime strategy should actually be “Strategy to prevent and tackle serious violence”</p>

	<p>Glossary Change: Crime and Disorder Reduction Partnership to Community Safety Partnership</p>	
Public Protection - Licensing	<p>1.1 Should the department now be Digital, Culture, Media and Sport? Remove blank page/space after 'The solicitor to the council..' point</p> <p>1.4 Deregulation Act 2015 quoted for circuses – should this be the Legislative Reform (Entertainment Licensing) Order 2014?</p> <p>2.5 Perhaps change 'will' prepare a dispersal policy to should or advised to?</p> <p>3.2 Alcohol consumption, this makes reference to ASB and violent crime, could we add vulnerability into this?</p> <p>4.6 Last sentence – change 'out of doors' to outdoors</p> <p>6.1 Could we add in an expectation for all areas of consumption of alcohol to be added to the plans accompanying an application? S.182 guidance 8.35-8.37 makes reference to outdoor spaces and whether they are used for off sales or on sales. It mentions that there is no requirement to show consumption areas for off sales on the plan of the premises, but it must be on the application form. I think for consideration by all parties it should be expected/recommended that all areas of consumption are marked on the plans. Areas used but not marked on the plans could have the potential for undermining the prevention of public nuisance.</p> <p>6.2 Should we add the operating schedule/steps to promote into this section as well as imposed conditions?</p> <p>6.7 Should we add the new(ish) LA powers regarding Personal Licences?</p>	<p>Amended</p> <p>This is the Legislative Reform Order 2014 - Amended</p> <p>Amended</p> <p>Amended</p> <p>Added to policy</p> <p>Added to Policy</p>

	<p>Appendix B – Add an s to Premise (in heading)</p> <p>Appendix G –Is this section all from the Live Music Act rather than the LRO?</p>	<p>This is the Live Music Act – no change required</p>
<p>Public Protection - Environmental Health</p>	<p>Could the following be added to the list in section 6.5 – or something of that nature</p> <ul style="list-style-type: none"> • health and safety management for members of the public • Welfare provision for members of the public 	<p>Added to policy</p>
<p>Salisbury Licence holder</p>	<p>Section 1.2</p> <p>Recognise the need to assist in building a fair, vibrant, and prosperous society in Wiltshire that properly balances the rights of residential communities, the business sector and other relevant parties. <i>While keeping the economic success of our town and city centres at the heart of our decision making.</i></p> <p>reduce the health impacts of alcohol misuse and dependence; reduce the impact of alcohol related incidences on A&E services <i>Completely agree. Proper data should be gathered and shared with relevant parties</i></p> <p>Section 1.3</p> <p>The consultation process was conducted between May 2019 and July 2019 by way of a direct letter to those identified and also via publication on the council's website. Responses received were listed on a matrix document and each point made was given due consideration. <i>Not on the consultation portal and not easy to find. Not sent to the Pubwatches and the 2 week extension doesn't allow for discussion. Not sure if sent to parish councils or area boards.</i></p> <p>Section 1.5</p> <p>Where there are no relevant representations, or they have been withdrawn at or before a hearing, the application will be granted as requested subject only</p>	<p>This policy is for the whole of Wiltshire not just town and city centres.</p> <p>This data can be found on the NHS website, which is subject to regular updates. The link to this website has been added to Section 10 of the policy (Further advice and Guidance)</p> <p>This wording is from the previous statement of licensing policy and has been amended. Please see section 9 of this report for consultation. The statement of licensing policy was sent to all Pubwatches on 1st April 2019 and was also available to view on Wiltshire Council's website from this time.</p>

to conditions which reflect the operating schedule and any mandatory conditions.

Is this just for applications and so isn't worded right?

Section 2.0

The council as a member of the Wiltshire Community Safety Partnership will work with relevant partners to utilise legislation as required to prevent crime and disorder issues. ***More understanding of this partnership and its work would be appreciated***

Section 2.1

It is suggested that where the application relates to the sale of alcohol on the premises, the applicant considers measures to prevent glass bottles or glasses being taken off the premises. ***Suggest this should include risk assessment of event and expected clientele as this sentence doesn't cover incidents within a venue or in the garden.***

In particular this is expected in premises considered to be high volume vertical drinking establishments and those premises open beyond 11pm. ***I think police logs would show that events in high turnover (non local clientele) pubs and bars have a high incidence. More data to inform?***

The licensing authority believes that the use of safer alternatives to annealed glass i.e. polycarbonate "glasses" will help promote public safety and the prevention of crime and disorder in licensed venues. ***efficient use of the risk assessment process would inform licensees of the appropriate use of glass#***

Section 2.2

Where such a scheme is active in the locality of a premise, the applicant is strongly encouraged to become an active member of Pubwatch. As well as traditional pubs and entertainment venues, this includes premises that are licensed solely for the sale of alcohol for consumption off the premises. ***and late night food premises where they are an integral part of the late night***

More information regarding this can be found on the Safer Communities pages of Wiltshire Council's website

<http://www.wiltshire.gov.uk/community-safety-safer-communities>

This link has been added to Section 10 of the Policy (Further Advice and Guidance)

	<p>economy</p> <p>Section 2.5</p> <p>Applicants should consider how the venue will minimise the potential for disorder and disturbance as customers leave the premises. This should be prepared in consultation with the licensing authority and police and reviewed regularly and staff should be trained in how to implement this policy. An understanding of the Late Night Taxi Tariff rationale would be good here</p> <p>Section 2.6</p> <p>The licensing authority expects licensees to permit access for drugs analysis equipment and staff so that random drug tests can be carried out on the skin of persons wishing to have access to the licensed premises, in addition to the staff and contractors employed at the premises. Licensees should actively welcome these activities as they assist in the prevention of crime. The licensing authority should be aware of the difficulties in the current partnerships with this proactive work and be part of the solution in combatting drug harms</p> <p>It is expected that licensees have a written drugs policy for their premises or event which staff are fully trained in. It would be good for the licensing authority to have some standard form policies on dispersal and drugs and to work with the venues and Pubwatches in personalisation and implementation of these</p> <p>Section 3.3</p> <p>Information is a powerful tool in tackling alcohol-related problems. It is vital to strengthen data sharing within local partnerships, in particular between crime and health agencies and licensing authorities. Do these data sharing partnerships include Pubwatches?</p> <p>Groups such as licensing tasking will continue to formulate the basis of partnership work and will have clear aims and objectives to ensure they are fit</p>	<p>Hackney Carriage/Private Hire is covered by different legislation and does not form part of the Licensing Act 2003. However a working group has been set up with regards to the Hackney Carriage Tariff within Wiltshire – details can be found on the Wiltshire Council Website</p> <p>Each individual licensed premises will operate differently and should have a policy which is unique to them. Building design, staffing rates, type of business, client base will all have an impact on the policy.</p> <p>Licensing Officers and Police attend at the invitation of Pubwatch groups when practicable. Best practice is shared where</p>
--	---	--

	<p>for purpose. This group will sit within the governance of Wiltshire Community Safety Partnership and will feed into local initiatives such as Pubwatch, Purple Flag, and other new schemes as and when required. <i>How does this work in practice?</i></p> <p>Section 3.4</p> <p>Health bodies hold valuable information which may not be recorded by other agencies, including analysis of data on attendance at emergency departments and the use of ambulance services following alcohol related incidents. <i>This data is relevant to designated premises supervisors to help in their role in preventing crime. No information, anonymised or otherwise is shared with venues</i></p> <p>Section 3.6</p> <p>The licensing authority may set an occupant capacity following representations received in order to meet the licensing objectives. It is recommended that premises assess and set limits appropriate to their premises/event. <i>Surely essential not recommended?</i></p> <p>Section 6.1</p> <p>Applicants will be encouraged to make themselves aware of any relevant planning policies, tourism, cultural or local crime prevention, alcohol reduction strategies; and to have taken them into account, where appropriate, when formulating their operating schedule. <i>This is a big area for the High Street teams, economic development and encouragement of entrepreneurial initiatives. Working with BIDs, Chambers, PF groups, Pubwatches, Parishes or Licensing and planning officers. More help needed.</i></p> <p>Prospective holders of new premises licences and those seeking variations to existing premises licences are advised to consult with the council's licensing team and the various responsible authorities early in the planning stages in</p>	<p>appropriate.</p> <p>This information can be found online at:</p> <p>https://digital.nhs.uk/data-and-information/publications/statistical/statistics-on-alcohol/2019</p> <p>This web address has been added to section 10 of the policy</p>
--	--	---

	<p>order to reduce the risk of confusion and disputes arising. The licensing authority will endeavour to work in full co-operation with licensees and applicants to minimise the number of disputes that may otherwise arise in this area. <i>So important - and to work hand in hand with the planning officers.</i></p> <p>Section 9.0</p> <p>The Wiltshire Community Safety Partnership is a statutory partnership, which includes a number of local partners. Together the partnership oversees the development of various Wiltshire strategies, in particular:</p> <ul style="list-style-type: none"> • Wiltshire Drug Strategy • Wiltshire Alcohol Strategy • Wiltshire Children and Young People’s Substance Misuse Strategy • Wiltshire Anti- Social Behaviour Strategy • Wiltshire Violent Crime Strategy • Wiltshire Domestic Abuse Strategy. <p><i>We are only linking public protection strategies here. We should be also linking economic, tourism, High Street, loneliness, health and cultural policies?</i></p> <p>Section 11.0 APPENDIX A – Premises Licence – New Applications <i>Liaison with planning (pre app) would best be made at these early stages. Economic teams or BID/Parishes may lead on these?</i></p> <p>APPENDIX B – Premise Licence – Variations - <i>same as above if the variation affects the vitality of the area</i></p>	<p>The Planning authority is a statutory consultee under the Licensing Act for all new applications and variations.</p> <p>Please see changes suggested above by Public Health – Vulnerable communities</p> <p>Appendix A and B set out the statutory requirements of the Licensing Act 2003 for processing applications.</p>
Public Protection - Licensing	<p>Page 48 copy sent to Immigration service.</p> <p>In Appendix A and B should Club certificate be included as well and a separate Appendix for Minor variations?</p>	<p>Responsible Authorities list amended to add Immigration Service</p> <p>Amend policy to add Club premises Certificate to Appendix A& B</p> <p>Appendix added for Minor Variations</p>

		(temporarily at Appendix Ba)
Malmesbury Town Council	I have read over the draft policy changes, I think the changes are understandable, for the right reasons.	
Public Protection - Licensing	<p>I have come up with some wording to add to the licensing policy below, in relation to 'shadow' licences. Feel free to add/amend.</p> <p>“Nothing within the 2003 Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person. (section 2, Licensing Act 2003). The s.182 Guidance further provides at paragraph 8.19, “There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held.” When granting a licence on a premises that already holds a premises licence, the responsible authorities may seek to add conditions to the additional licence, that mirror the current premises licence. It must be clear which licence is in play at any one time; you cannot have two individuals trading within the same licensed area at the same time, under different premises licences.”</p> <p>Would we want to state that the 'shadow' licence would be reviewed should the original licence be reviewed?</p>	<p>Section added into the policy for “shadow” licences (temporarily labelled 6.2a – however all sections will be renumbered to accommodate this. Current numbering system unchanged so as not to cause confusion with comments/responses)</p> <p>- This would be a policy decision?</p>
Durrington Town Council	Durrington Town Council has reviewed the Licensing Act and changes to it. It has one comment to make with regards to the consultation with the public over Licensing Applications. This year we commented on an application which we were informed about via email from Wiltshire Council. Through this process we learned that local residents, near to where the application was for were not aware of the application and therefore had not had the opportunity to comment on the application. Having contacted Wiltshire Council we found that there is no requirement to make neighbours aware, rather it is advertised in a local paper and a notice is also placed on the premises where the application is being made. The Town Council feels that these applications should be dealt with in a more transparent manner, similar to that of routine Planning Applications, whereby local residents, neighbouring the property where the application is for are informed by letter,	<p>It is a requirement of the Licensing Act that all applicants for a new licence or variation must:</p> <ul style="list-style-type: none"> - Display a blue notice on the premises so that it can be read from the outside for no less than 28days - Publish a notice in a locally circulating publication <p>In addition to this the Licensing Authority publishes a notification on Wiltshire Councils website and as a courtesy informs the local Town or Parish Council.</p>

	<p>so are offered the opportunity to comment. Likewise signs are placed on local posts near to the property/premise. We are hoping this is something that can be considered.</p>	<p>The Licensing Authority have recently changed its procedure to add more information onto their website with regards to applications for a new or to vary a licence.</p>
<p>Corsham Town Council</p>	<p>Corsham Town Council considered the Consultation - Statement of Licensing Policy 2019-2024 at its Council (Planning) Meeting last night. It was</p> <p><i>Resolved that the following comments be made:</i></p> <p>(i) <i>Clause 6.5 could impact on local events. The Town Council felt that this clause covered too wide a spectrum of events and that less stringent rules should apply to events that were expected to attract less than 3000 people and had a duration of less than 12 hours. For these types of events the six-month notification period could be reduced and the event management plan could consist of a risk assessment and indicative layout.</i></p> <p>(ii) <i>The Town Council welcomes the increase in the number of TENS from 12 to 15 per year.</i></p>	<p>Members to advise if they require any changes to the policy</p>
<p>Member of Public (Devizes)</p>	<p>Since I moved to [REDACTED], Devizes, with my 80yr-old mother, we have been perturbed by the loud and unruly behaviour of customers in the [REDACTED]. This internal courtyard is nestled within a residential conservation area, bordering several houses directly, and it seems wholly inappropriate for the [REDACTED] to have a license to sell alcohol until 1am. The noise is extremely bothersome at the weekend, but in particular (and almost without exception) on a Thursday. It is quite intolerable that I am unable to simply go to sleep in my own house – in order to get up and work on a Friday morning – before 1am. The noise rising from the courtyard is so strong and distasteful that it constitutes a disturbance of the peace. It has also become increasingly common for loud music to be played until 1am.</p>	<p>Respondent has been contacted and the details of this complaint have been forwarded to both the Licensing Officer and Environmental Health Officer for the area. A meeting has been sent up with the Licence holder and the public protection officers from environmental health and licensing. This relates to one specific premises.</p>

	<p>I hope my comments can be taken into account in the present consultation on the Wiltshire Statement of Licensing Policy. This states under section 4.6:</p> <p style="padding-left: 40px;">‘Appropriate steps must be taken or proposed to be taken to prevent noise and disturbance from customers causing nuisance and anti-social behaviour. This may include noise and disturbance from customers on the premises and customers in outdoor areas such as terraces, beer gardens and smoking areas. ...</p> <p style="padding-left: 40px;">Noise and disturbance from people outside can cause public nuisance even when those people are not behaving badly. This will be of more significance in areas with residential accommodation and will usually, but not exclusively, be of greater importance between 11pm and 7am.’</p> <p>This applies directly to [REDACTED], where no steps have been taken to prevent such anti-social behaviour and public nuisance. I would recommend that licenses for pubs set deep in residential areas should not extend beyond 11pm. It is the outrageous disturbance into the early hours of the morning that is unacceptable.</p>	
Calne Town Council	The policy states the intention to use polycarbonate “glasses” rather than glass to address safety issues; however, it was suggested that this be amended to multi-use plastic.	Propose members agree to this change
Melksham Parish Council	Melksham Without Parish Council considered the Licensing Policy consultation documentation and felt that a problem area in the current process was that the applicant for a TENS (temporary licence) did not have to	TENS applications are submitted to Police and Environmental health for consultation. If there has been a history of public

be the licence holder of a particular venue. This proved to be an issue back in May when [REDACTED] held an event and residents complained about the noise level. The Public Protection Officer came out whilst the event was on and agreed that the noise level was too high, but was unable to take enforcement action or impose sanctions on the licence holder of the [REDACTED] as a third party had taken out the licence for this event. This was not only an issue with regard to the noise levels, but also with the traffic management plan submitted for this event. Where an event venue has a permanent licence (such as a sports club, village hall, public house, etc) the Parish Council feel that the policy should be that the licence holder for this venue should be the person who applies for a TENS, not a third party, this would enable enforcement action or sanctions to be imposed should breaches of the licence conditions take place.

Please see the extract below from the Parish Council's Planning committee meeting held on the 20th May 2019 where they discussed this issue following the complaints from residents after an event held at [REDACTED]

[REDACTED] Licence Issues: Noise Complaint following event at [REDACTED]
[REDACTED]: The members noted correspondence from a resident of Bowerhill Lane wishing to report the level of noise coming from this event. The Clerk reported that Wiltshire Council Licencing Officer concurred that the noise level was significant and she was investigating this issue with the Public Protection Officer. One of the issues which had subsequently come to light was that the event plan, which covered the traffic management and noise plan for the event, had not been submitted by the licence holder, but a third party, and therefore the licence holder was not the person in control of the event. It was felt that this was something to be taken into consideration when the Parish Council was asked to comment on future applications.

Thank you for consulting us.

nuisance or crime and disorder at a premises then these bodies may object to future TENS applications.

Anybody can apply for a TEN, the local authority cannot refuse applications if they have been made correctly, however advice can be given to event organisers.

It is for land owners or premises owners to take responsibility for events which take place on their own land and this includes who should apply for the necessary licence if required.

<p>Member of Public (Devizes)</p>	<p>Comments on <i>The Statement of Licensing Policy 2019 - 2024 (Draft)</i></p> <p>We are writing to comment on <i>The Statement of Licensing Policy 2019 - 2024 (Draft) (SLP Draft)</i> document.</p> <p>Our contention is that the document is not sufficiently robust in its drafting to ensure that the Licensing Objectives are met. The language and style of the document are permissive, and lack the rigour required to ensure compliance with its provisions; for example the word requires should, as a general rule, be used instead of the word expects.</p> <p>As a way of illustrating this, we shall take as an example the conditions under which [REDACTED], Devizes, a pub close to our house, appears to be operating in respect of a number of the provisions in the <i>SLP Draft</i>.</p> <p>It is not easy to comment on the document as the paragraphs within the headed Sections are not numbered.</p> <p>1.3 Consultation</p> <p>This paragraph states that “In reviewing this statement, the licensing authority consulted widely with all necessary bodies and relevant stakeholders....by way of a direct letter...and via consultation on the Council’s website.”</p> <p>We live very close to [REDACTED] We would regard ourselves as “relevant stakeholders” by virtue of that proximity and would therefore expect to be informed by letter that a consultation was taking place. <i>We were not so informed.</i> Furthermore, there would be no reason for us to look at the Council’s website to make ourselves aware that a consultation on <i>SLP</i> was taking place.</p>	<p>Respondent has been contacted and the details of this complaint have been forwarded to both the Licensing Officer and Environmental Health Officer for the area. A meeting has been sent up with the Licence holder and the member of public.</p> <p>To meet this request, Wiltshire Council would need to write to every household in the county.</p>
-----------------------------------	--	---

1.4 Licensing function

Paragraph 3 of this Section states “The licensing authority has regard to wider considerations affecting the residential population and the amenity of any area. These include dropping litter and street fouling, noise and street crime.”

██████████ is situated in a sensitive part of Devizes’ conservation area which is largely residential. St John’s Court, a pedestrianized thoroughfare leading from the Town Hall to St John’s Parish Church and churchyard is a very important part of the street scene of Devizes, is often photographed, and is a pathway for the newly married to take from the Church into the town.

██████████ operating schedule permits it to serve alcohol and play music seven nights a week until 1am. It is a music venue for the Folk Club on a Monday, for karaoke on a further night and for live or amplified recorded music on at least one further night extending beyond 11pm.

The seven ancient residential properties in the High Street, St John’s Court and St John’s Churchyard which directly abut ██████████ and its open rear courtyard are at risk of being left empty (two are already empty because the late night noise from music was intolerable through their walls) and will then deteriorate and may be lost to the street scene.

2.0 Prevention of Crime and Disorder

Paragraph 2 of this Section reads “Responsible applicants will ensure proper regard in their operating schedule to the location, character and condition of the premises”.

Paragraph 3 states “Licence holders are expected to be able to demonstrate a general duty of care to customers using their premises and others affected by their activities”.

On Thursday 25 July, one of us went to ██████████ shortly after midnight to enquire at what time the loud music would stop. The rear courtyard, which

A review process is available to any person or responsible authority who believes that a licensed premise is not upholding the four licensing objectives.

accommodates smokers, was very crowded.

Although under Section **3.6 Occupancy Limits** “It is recommended that the applicant...set occupancy limits...appropriate to their premises/event”, it is not clear how this is or can be enforced on any particular occasion except where a gross infringement occurs resulting in a public order offence.

It cannot be safe to permit a small courtyard completely enclosed by ancient houses to be filled to capacity with late night drinkers and smokers on a hot night. The surrounding buildings have exposed wooden beams and in at least one case wooden panelling ([REDACTED] currently unoccupied) which must pose a serious fire risk.

4.0 Prevention of public nuisance

Paragraph 1 begins “Public nuisanceconcerns how the activity of one person (or business) affects the rights of others, for example how noise from playing music interferes with another person’s right to sleep.”

Paragraph 2 continues “The Act requires, and the licensing authority expects, applicants to demonstrate within their operating schedule how they intend to prevent public nuisance arising. This will be of particular importance where there are residential properties in the vicinity of the licensed premises.”

Section **4.4** acknowledges that “Both direct and indirect noise will be of great importance between 11pm and 7am.”

Section **4.5** says “Appropriate control measures are needed for premises that operate late at night (after 11pm) and /or have regular entertainment...This may include noise from music, human voices or other forms of entertainment whether amplified or not. Consideration should also be given to ensure noise is not audible at sensitive locations such as dwellings...”

The main ‘control measure’ used ‘to ensure noise is not audible at sensitive

locations such as dwellings' is as stipulated in Annex 3 'Conditions Attached After a Hearing by the Licensing Authority' in respect of [REDACTED] 'All doors and windows to be closed except for access or egress during the playing of live or recorded music.'

[REDACTED] is a small pub. On our last late night visit, after midnight, disturbed by loud music and singing in the courtyard, all doors and windows were open. Because the pub was very crowded, no occupancy limit apparently having been applied, shutting all doors and windows would have dangerously restricted the air available. Shutting the courtyard would have led to smokers in the High Street creating a new source of disturbance. A further problem is that, despite windows and doors being closed, the noise passes through the party walls of the adjoining properties.

It is extraordinary that [REDACTED] has an operating schedule which permits it to operate at all after 11pm, let alone play amplified music after that hour, when it is physically closely connected to seven residential properties in a largely residential area. Public nuisance interfering with the right to sleep is inevitable.

4.8 Servicing

"Steps should be taken....to prevent noise from servicing of the premises causing nuisance....this may include noise from....the disposal of bottles and other recyclable materials."

Household recyclable waste is collected from the north end of St John's Court fortnightly on Monday mornings.

Quantities of glass are brought from [REDACTED] for this collection, sometimes late on a Sunday night, on one occasion at 11.40pm, being spilt in transit, with consequent disturbance.

We have described above, using as an example [REDACTED] our

experience where Wiltshire's Licensing Authority is supposedly applying the provisions of the *SLP* to a pub in a mainly residential part of Devizes' conservation area close to the town centre.

Sections **6 Licensing process and 7 Enforcement** of the *SLP* describe the considerations which apply in granting a licence, determining any conditions and deciding hours of operation. Set out below are those considerations which are most relevant to the problems which have arisen in relation to the case of [REDACTED] which further illustrate the weakness of measures in the *SLP* document as operated by the licensing authority.

6.2 Licensing conditions

Paragraph 2 states "Any conditions will relate to the premises and other places being used for licensable activities, and the impact of those activities in the vicinity. In this regard, the licensing authority primarily focuses on the direct impact of any activities taking place on those living, working, or otherwise engaged, in the area concerned."

6.3 Licensing hours

Paragraph 1 reads "The licensing authority deals with the issue of licensing hours on the individual merits of each application. *However, when issuing a licence with hours extending beyond 11pm, higher standards of control generally need to be included in operating schedules in order to promote the licensing objectives, especially for premises which are situated in, or near, residential areas.....There is no presumption within the legislation for longer opening hours.*" (our italics).

Paragraph 3 reads "Where no representations are received an application is approved as applied for."

It is astonishing that, despite the statement in **6.2 para 2** that "*the licensing authority primarily focuses on the direct impact of any activities taking place*

on those living, working, or otherwise engaged in the area concerned”; and despite 6.3 para1 “when issuing a licence with hours extending beyond 11pm, higher standards of control generally need to be included.....especially for premises which are situated in, or near, residential areas”, there is a presumption in favour of granting a licence without further conditions:

6.3 para 3 “Where no representations are received an application is approved as applied for”.

The effect of this policy is to allow a licence, without conditions, even in areas which are clearly sensitive, until complaints are received. The licensing authority’s Licensing objective of the **prevention of public nuisance** suggests that a proactive policy is required to ensure that public nuisance does not occur. It is likely that local residents will have suffered considerable nuisance before complaints are made, received and dealt with. This has been the experience of those living in properties in the vicinity of [REDACTED] *Inn* as described above.

7.0 Enforcement

Despite suffering the forms of public nuisance described above, there is no clear guidance in the *SLP* to assist those who have or are suffering nuisance as to the correct course of action to take. There seems to be no requirement for pub premises clearly to display their licensing conditions; nor are they available on the internet, either on the Wiltshire Council website or on pubs’ own websites; nor, in our case, were they available from the landlord [REDACTED]. It is thus impossible to know whether infringements are taking place.

Clearly, in the case of substantial street disorder in the vicinity of a pub, the Police should be contacted. But in the case of noise from inside a pub, are disturbed neighbours, perhaps elderly, expected to enter a crowded pub after midnight to complain? Are they expected in the middle of the night to search for the right course of action?

There is reference to where the public protection enforcement protocol can be found on the website, however perhaps this needs to be expanded upon within the policy? i.e. what action the licensing authority may take to ensure licence holders adhere to their licence conditions etc.

	<p>Conclusion</p> <p>The paragraphs above have attempted to describe the practical result of the policies of the <i>SLP</i> in relation to a pub, [REDACTED], situated in a mainly residential part of the conservation area close to the town centre of Devizes.</p> <p>We argue strongly for a proper and adequate measure of consultation in respect of the <i>SLP</i> to take place.</p> <p>We should like the <i>SLP Draft</i> document and Wiltshire Council's policies to be amended in the following ways:</p> <ol style="list-style-type: none"> 1. The whole document to be written in a manner which robustly enforces the Licensing Authority's objectives. Thus words such as expects and aims should be replaced by requires and will. 2. Full licensing conditions for all public houses to be clearly displayed in all premises; and all to be easily available on Wiltshire Council's website. 3. As part of the advertisement of conditions in pubs and also on Wiltshire Council's website, contact details to be available for all matters where the public need advice or wish to make a complaint in relation to the enforcement of the licensing conditions of any premises. 	<p>We are currently undergoing a software review with an expectation that the new provider will be able to facilitate the downloading and displaying of current licences and their conditions on the Council's website</p>
Westbury Town Council	<p>Response to Wiltshire Council 06.08.19 Statement of Licensing Policy – Draft for Consultation</p> <p>Section 1.2 – Key Aims</p> <ul style="list-style-type: none"> • <i>Reduce the impact of alcohol related incidences on A&E services. I would like this to be changed from A&E services to emergency services, as the town council frequently sees the impact of alcohol misuse on police resources</i> 	

	<p>Section 2.6</p> <ul style="list-style-type: none"> It is expected that licensees have a written drug policy for premises or event in which staff are fully trained. <i>This policy should be available on demand to the licensing authority or police</i> <p>Section 3</p> <ul style="list-style-type: none"> Contact Details are available from the licensing authority <i>It would be helpful to add a generic email address for the ESAG on the relevant pages of the Wiltshire Council website</i> <p>Section 3.7</p> <ul style="list-style-type: none"> No comment, although text includes vulnerable people, consider including reference to both mental health and dementia <p>Section 6.5</p> <ul style="list-style-type: none"> Consider if a terrorism/bomb threat policy should be submitted with the EMP Should this now include the expectation of a drugs policy submitted with the EMP rather than just a headline in the EMP Evidence that the applicant has considered and where appropriate trained staff in identifying child sexual exploitation and promoting the safety of vulnerable people See also comment in 8.2 <p>Section 8.2</p> <ul style="list-style-type: none"> No comment – but should the late-night levy also apply to 6.5 large scale events 	<p>Many pubs/late night drinking establishments have a condition on their licence which states a drug policy must be in place and must be made available to the licensing authority or police. This is not applicable for every type of premises.</p> <p>This is often discussed with applicants and indeed encouraged for large scale events. It also forms part of the ESAG process.</p> <p>Wiltshire Council do not currently implement a Late-Night Levy.</p>
<p>Amesbury Town Council</p>	<p>Overall, we appreciate that most of the updates reflect the changes to legislation that have occurred since the last review, there is therefore no comment to be made on those changes. We welcome the improved diagrams which will enable greater understanding of the licensing requirements. We have made a few comments on the remainder.</p>	

	<p>Section 6.5 Large Scale Events</p> <p>We welcome the confirmation of the current practice of creating a management plan for large scale events. In addition, it would be helpful to include requirements for traffic control and signage and the requirement to employ trained and competent persons. It was always a believe that untrained persons could man a diversion route to assist drivers and give direction but not control traffic; this needs clarification.</p> <p>Section 8.2 Late Night Levy</p> <p>The late night levy would appear to only encompass premises offering late night refreshment. Can this be expanded to include assemblies of intoxicated people outside licenced premises, unless of course that a late night levy is already in force. But despite frequent complaints in Amesbury there doesn't seem to be a levy in place. Perhaps Wiltshire Council need to be more active in raising the levy, this would encourage the Police to take further action to deal with increased public nuisance around these premises.</p> <p>There does appear to be some inaccuracies in the draft document.</p> <p>Section 3.0, the correct name of the service is "Dorset and Wiltshire Fire and Rescue Service".</p> <p>Section 3.5, a health and safety policy is required when 5 or more persons are employed, not "more than 5".</p> <p>We assume the document will be proof read to remove the occasional typo (6.5 marshall - only one L and in 3.7 behaviour not "behavior")</p>	<p>Event Management Plans are quite often forwarded to the Highways team. The Highways team are also invited to attend Event Safety Advisory Groups (ESAGs) so that they can discuss any concerns with event organisers.</p> <p>Wiltshire Council currently do not implement a Late Night Levy, however it is included in the Statement of Licensing Policy as it may be utilised in the future.</p> <p>Amended</p> <p>Amended</p> <p>Amended</p>
Chippenham Town Council	<p>Members of the Town Council's Planning, Environment & Transport Committee considered the draft Statement of Licensing Policy for 2019-24 at its meeting last evening.</p> <p>I am pleased to report that they raised no objections.</p>	

Luckington and Alderton Parish Council	On behalf of Luckington and Alderton Parish Council the Councillors would like to respond supporting the proposed draft policy and its incorporated principles and changes.	
Additional comments further to report being sent for checking		
Public Health	See comments in Public Health section at the top of this table.	
Child Protection	References to general "child exploitation" to be added as opposed to focusing on "child sexual exploitation"	

This page is intentionally left blank

Wiltshire Council

Licensing Committee

2 September 2019

Licensing Act 2003: Film Classification

Summary

1. The Licensing Act 2003 places a mandatory condition on premises authorised to show films that restricts the admission of children to the exhibition of any film unless it has been classified either by;
 - (a) a film classification body (the British Board of Film Classification (BBFC)), or
 - (b) such other classification as recommended by the licensing authority.
2. This condition may require the licensing authority to classify previously unclassified films, consider appeals by distributors against the British Board of Film Classification's decisions, or determine requests to reclassify films. As the Council's responsibilities in relation to film classification are now incorporated in the Licensing Act 2003 it is necessary for the Licensing Committee to adopt a procedure to deal with these matters.
3. A draft procedure is attached to this report as Appendix 1.

Proposal(s)

1. To approve the procedure as set out in Appendix 1 for dealing with film classification matters which are the responsibility of Wiltshire Council, as the Licensing Authority.
2. To delegate the licensing authority's responsibility for film classification to a Licensing Sub Committee.
3. To arrange the classification of a film following a request from Bradford on Avon Film Society to show a film in October 2019 that does not have a British Board of Film Classification.

Reason for Proposal

A request to classify a film that has not been age certified by the British Board of Film Classification has been received from Bradford on Avon Film Society.

The Licensing Authority is required to put in place a process and procedure to address this and any future requests in line with relevant legislation.

Presenter name: Linda Holland - **Title:** Licensing Manager

Licensing Act 2003: Film Classification

Purpose of Report

1. A request to classify a film called “Marcello, Marcello”, which has not been age certified by the British Board of Film Classification (BBFC), has been received by the Licensing Authority from Bradford on Avon Film Society for a film to be shown in October 2019.
- 1.1 This report proposes a process and procedure to address future requests for film classification in line with relevant legislation.

Relevance to the Council’s Business Plan

2. The Wiltshire Council Business Plan 2017- 2027 sets out the vision to create strong communities, with priorities for growing the economy and protecting the vulnerable and where people are protected from harm and feel safe.

Main Considerations for the Council

3. The Licensing Authority can be required to classify previously unclassified films consider appeals by distributors against BBFC’s decisions or determine requests to reclassify films. The Council’s responsibilities in relation to film classification are now incorporated in the Licensing Act 2003 it is necessary for the Licensing Committee to adopt a procedure to deal with these matters.

Background

4. There are statutory powers in relation to showing of films and classification under Section 20 of the Licensing Act 2003 (the Act) which places a mandatory condition on all premises licences or club premises certificates authorising the public exhibition of films. This section restricts the admission of children (defined in the Act as “persons aged under 18”) to the exhibition of any film unless it has been classified either by a film classification body or, if the licensing authority does not agree with that recommendation, to such other classification recommended by the licensing authority.
- 4.2. The Act also exempts certain types of film from the above condition such as those exhibited for the purposes of advertisement, information, education etc. Films exhibited in a museum or art gallery that consist of or form part of an exhibit are also exempt.

British Board of Film Classification (BBFC)

5. The BBFC is an independent, non-government, not-for-profit, co-regulatory body.
- 5.1 Statutory powers on film remain with the local councils, which may overrule any of the BBFC's decisions, passing films we reject, banning films we have passed, and even waiving cuts, instituting new ones, or altering categories for films exhibited under their own licensing jurisdiction.
- 5.2 All classification decisions are based on the BBFC's published and regularly updated Guidelines. The Guidelines are the product of extensive public consultation, research and the accumulated experience of the BBFC over many years. They reflect current views on film, DVD and video game regulation. A copy of its guidelines is attached as **Appendix 2**.

Licensing Policy

6. Whilst Wiltshire Council's Statement of Licensing Policy acknowledges the BBFC's role as the national film classification body, the Council, as the Licensing Authority, is the classification body for the public exhibition of films shown in the County by virtue of the Act, and as such has the overriding right to classify films that are shown in licensed premises such as cinemas, hotels, village halls, clubs and public houses.
- 6.1. There are several possible scenarios where the Council may be requested to exercise its responsibilities, for example;
 - a. Request to classify a film that has not been classified by the BBFC, a typical example of this would be a locally made film to be shown at a film festival within the county, or a foreign film not already classified in Britain.
 - b. A distributor of a film or other party may appeal to the Council against a decision of the BBFC and request that the film is reclassified for local screening. This right seems to be rarely used by distributors because any decision taken by the Council only affects the showing of that particular film in the County. A distributor who disagrees with the BBFC's classification may, in any case, appeal against it directly to the BBFC so is more likely to use that process as the outcome of the appeal will affect the showing of the film across the country.
- 6.2 Under the Act, the Council must carry out its functions with a view to promoting the licensing objectives which are:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- 6.3 In terms of film exhibitions, the most relevant licensing objective is the protection of children from harm.

Recent request

7. A request has been received from the Bradford on Avon Film Society to classify a film that they wish to show in October 2019. The film “Marcello, Marcello” has been distributed around Europe but has never been put on release in the United Kingdom so has not been given an age certification by the BBFC.
 - 7.1. The film is a romantic comedy, directed by Denis Rabaglia and runs to about 95 minutes. It has received classification in Europe which is the equivalent of a PG certificate.

Safeguarding Implications

8. Where appropriate, ensuring films are correctly classified before viewed by the public seeks to safeguard children from viewing inappropriate material.

Public Health Implications

9. None

Environmental and Climate Change Considerations

10. None

Corporate Procurement Implications

11. None

Equalities Impact of the Proposal

12. None

Risk Assessment

13. There are no significant risks arising from adoption of the procedure.

Risks that may arise if the proposed decision and related work is not taken

14. Wiltshire Council will not able to demonstrate it has a procedure in place to address film classification under the Licensing Act 2003.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

15. None

Financial Implications

16. This process does not attract a statutory fee and therefore the cost of carrying out any film classifications will need to be met from within the existing licensing budget.

Legal Implications

17. There are no legal implications arising from this report.

Options Considered

18. The options are very limited as the function in respect to film certification is required under the Licensing Act 2003.

Licensing Act guidance

19. In the Secretary of State's Guidance issued under Section 182 of the Act it is recommended that "Licensing Authorities should not duplicate the BBFC's work by choosing to classify films themselves. The classifications recommended by the BBFC should be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role". The Licensing Committee must therefore ensure that it has in place procedures to deal with any requests such as those mentioned in paragraph 6.1.

Proposal

20. The Licensing Committee is asked to:
- Approve the adoption of Film Classification procedure as set out in Appendix 1,
 - Delegate the Licensing Authority's responsibility for film classification to the Licensing Sub Committee,
 - Arrange for a Licensing Sub Committee to view the film "Marcello Marcello" as requested by Bradford on Avon Film Society, and for the Sub Committee to reach an agreement on its classification.

David Redfern
Director Communities and Neighbourhoods (Acting)

Report Author: Linda Holland

Licensing Manger Public Protection. Tel: 01249 706410
linda.holland@wiltshire.gov.uk

Background Papers

Appendices

1. Procedure for the classification of films
2. British Board of Film Classification ratings guidelines 2019

This page is intentionally left blank

PROCEDURE FOR THE CLASSIFICATION OF FILMS

1. Occasionally Wiltshire Council can receive requests from local cinemas, film producers and /or distributors to show small production unclassified films that due to their small scale production and limited distribution will not go through the BBFC system. To be screened within the Council area, these films must be presented to the council's licensing authority so that a classification can be awarded before they can be shown to the public.
2. Such requests will require an undertaking from the applicant that they have satisfied themselves after proper enquiry that no matter to be exhibited contravenes the current interpretation of the Obscene Publications Acts 1959, and 1964 the Copyright Design and Patents Act 1988 or any other relevant legislation and has not been created through the commission of a criminal offence. The licensing authority shall not be liable for any material that has been created through the commission of a criminal offence.
3. The licensing authority can also be requested to classify films that have already been classified by the BBFC under the following circumstances:
 - (a) Where at least three members of the Council give notice to the Head of Public Protection of their wish to call-in a film for classification by the licensing authority; or
 - (b) Where a distributor of a film appeals a decision of the BBFC and requests that the licensing authority classifies the film.
4. Any request to classify a film under the circumstances referred to in paragraphs 1 or 2 above shall be referred to and determined by the Licensing Sub Committee, on behalf of the licensing authority.
5. Any request to classify a film made under paragraph 2(a) above must be accompanied by reasons for calling-in the film. Such requests will be dealt with as expeditiously as possible bearing in mind that films are generally only shown in cinemas for relatively short periods.
6. In order to avoid the appearance of bias or predetermination, any Member who called-in the film for classification may not sit on the Licensing Sub Committee for that purpose.

7. All requests submitted under the circumstances referred to in paragraphs 1 and 2(b) must:
 - (a) be accompanied by a synopsis of the film and a full copy of the film in DVD format; and
 - (b) give a minimum of 28 days' notice of the proposed screening, and the licensing authority will seek to classify the film within that time period.
8. Where requests are submitted under the circumstances referred to in paragraph 2(a) it is not expected that a copy of the film will be provided by the Members. It is also accepted that it may not be possible to give 28 days' notice before the proposed screening.
9. A report containing a synopsis of the film and other relevant information will be submitted to the Licensing Sub Committee. The Sub Committee will view the entire film, assess it against the latest BBFC Guidance, and issue the appropriate classification. When considering classification requests, the Sub Committee must do so with a view to promoting the relevant licensing objective(s).
10. The distributor and/or the party requesting the classification together with the premise's licence/club premises certificate holders of all relevant premises licensed for the exhibition of films will be notified of the Sub Committee's decision in writing, which will include reasons for the decision.

The British Board of Film Classification (BBFC) is the independent regulator of the film and the video industry in the UK. All films that have been classified by the BBFC are given a rating.

The Universal Film Classifications are: **Uc | U | PG | 12A | 12 | 15 | 18 | R18**



Uc and U Classification

It is impossible to predict what might upset any particular child. But a 'U' film should be suitable for audiences aged four years and over. U films should be set within a positive moral framework and should offer reassuring counterbalances to any violence, threat or horror.

Videos classified 'Uc' are particularly suitable for pre-school children and normally raise no issues of concern.

'PG' Parental Guidance Classification

Suitable for general viewing, but some scenes may be unsuitable for young children

Unaccompanied children of any age may watch. A 'PG' film should not disturb a child aged around eight or older. However, parents are advised to consider whether the content may upset younger or more sensitive children.

12A Classification

Suitable for 12 years and over. No-one younger than 12 may see a '12A' film in a cinema unless accompanied by an adult. No-one younger than 12 may rent or buy a '12' rated video or DVD. Responsibility for allowing under-12s to view lies with the accompanying or supervising adult.

'15' Classification

Suitable only for 15 years and over. No-one younger than 15 may see a '15' film in a cinema. No-one younger than 15 may rent or buy a '15' rated video or DVD.

'18' Classification

Suitable only for adults. No-one younger than 18 may see an '18' film in a cinema. No-one younger than 18 may rent or buy an '18' rated video.

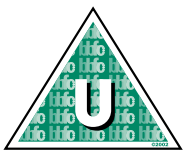
'R18' Classification

Films rated R18 are to be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to adults of not less than 18 years.

The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex between adults. Films may only be shown to adults in specially licensed cinemas, and videos may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order.

This page is intentionally left blank

bbfc View what's
right for you



Classification Guidelines

Contents

4	Introduction	24	15
7	Guiding principles	26	18
8	General classification considerations	28	R18
10	Specific classification considerations	31	Intervention
14	Other matters	32	Engagement with the public
16	The classification categories	34	Appeals, advice viewings and feedback
18	U	36	Annexe – legal considerations
20	PG		
22	12A/12		

The British Board of Film Classification (BBFC) is an independent, non-governmental, not-for-profit, co-regulatory body. Our classification function is funded through fees charged to those who submit films and video works for classification.

We classify:

- films, trailers and advertisements on behalf of local authorities who license cinemas under the Licensing Act 2003¹
- video works distributed on physical media under the Video Recordings Act 1984
- video works which are distributed over the internet under a voluntary, self-regulatory service
- commercial and internet content distributed via mobile networks under a voluntary, self-regulatory service

In addition to our classification functions, we are designated as the age-verification regulator under Part 3 of the Digital Economy Act 2017. The BBFC's responsibilities under this Act include:

- making sure that online commercial pornography services carry age-verification controls
- providing guidance on what kind of age-verification arrangements will ensure that these services comply with the law
- taking enforcement action against online pornographic services that do not carry effective age-verification and/or those that contain extreme pornographic material (as defined under UK law) which is illegal to possess

Our Classification Guidelines follow an extensive public consultation to which more than 10,000 people contribute across the UK, as well as other research, expert advice and our accumulated experience over many years. The Guidelines, and our practice in applying them, pay particular attention to changes in public taste, attitudes and concerns, and changes in the law. They also take account of new evidence from research and expert sources. The Guidelines are reviewed every four to five years, and how we apply them is reviewed when necessary.

We take responsibility for the Guidelines and for their interpretation. This responsibility is subject to the normal considerations of fairness and reasonableness.

Here, and throughout the Guidelines, video works are taken to include films and programmes released on DVD or Blu-ray, or distributed by means of download or streaming on the internet.

The Guidelines cannot be a comprehensive account of everything that may at any time be of concern. If issues arise which are not specifically covered here, they will be dealt with by us on their merits and in line with the standards expressed and implied in these Guidelines. The Guidelines are not a legal document and should be interpreted in the spirit of what is intended as well as in the letter.

We will provide guidance on the interpretation of these Guidelines on request and their application to particular films.

¹Since 31 March 2016 the BBFC has sub-contracted the assessment of cinema advertisements for commercial goods and services to the Cinema Advertising Association, while retaining responsibility for classifying all feature films, trailers, public information films and charity campaigns.





Guiding principles

Our guiding principles are:

- to protect children and vulnerable adults from potentially harmful or otherwise unsuitable media content.
- to empower consumers, particularly parents and those with responsibility for children, to make informed viewing decisions.

We fulfil these roles chiefly by providing age classifications and publishing advice (known as ratings info) for individual films and videos. Ratings info gives a detailed breakdown of the issues that result in a particular classification, as well as other issues likely to be of relevance to viewers.

Our extensive research into public opinion guides us as we seek to ensure that classification decisions generally reflect public sensibilities and expectations as these change over time. We seek to ensure that films and videos reach the widest audience that is appropriate for their theme and treatment.

While media effects research and expert opinion can provide valuable insights, it can be inconclusive or contradictory on issues of suitability and harm. In such cases we must rely on our own experience and expertise to make a judgement as to the suitability of a work for classification at a particular age category, taking into consideration whether the availability of the material, to the age group concerned, is clearly unacceptable to broad public opinion.

We do this without infringing the right of adults to choose what they view provided that it remains within the law and is not potentially harmful.

In relation to harm, we will consider whether the material, either on its own, or in combination with other content of a similar nature, may cause any harm at the category concerned. This includes not just any harm that may result from the behaviour of potential viewers, but also any moral or societal harm that may be caused by, for example, desensitising a potential viewer to the effects of violence, degrading a potential viewer's sense of empathy, encouraging a dehumanised view of others, encouraging anti-social attitudes, reinforcing unhealthy fantasies, or eroding a sense of moral responsibility. Especially with regard to children, harm may also include impairing social and moral development, distorting a viewer's sense of right and wrong, and limiting their capacity for compassion.

We will not classify material which is in conflict with the criminal law, and we will have regard to whether the material has arisen from the commission of an unlawful act.

We act as a regulator across the United Kingdom. However, the United Kingdom does not have a single legal system, and so we take account of the different legal systems that coexist in the UK. Further details about the applicable legislation can be found in the Annexe – legal considerations.

General classification considerations

There are general factors that may influence a classification decision at any level and in connection with any issue. These factors are of particular importance when a work lies on the borderline between two age categories.

Context

We consider the context in which an issue (such as sex, language or violence) is presented within a film or video. In doing this we take account of factors such as the setting of a work (historical, fantasy, realistic, contemporary); the manner of presentation (for example, an aggressive and directed use of bad or discriminatory language may result in a higher classification than a light-hearted and self-referential use of the same term); the apparent intention of the film; the original production date of the work (for example, outdated attitudes might be considered less offensive, and consequently classified at a lower category, in an old, obviously dated, work); the expectations of the likely audience; and any special merits of the work.

Theme

Classification decisions will take into account the theme of a work, but will depend significantly on the treatment of that theme, and especially the sensitivity of its presentation. The most challenging themes (for example, sexual violence, paedophilia and suicide) are unlikely to be appropriate at the lowest levels of classification (U or PG). However, there is no reason in principle why most themes, however difficult, could not be presented in a manner which allows classification at 18 or even, where suitable, at lower levels. Classification decisions are likely to be less restrictive where difficult themes are handled in a reassuring and age appropriate manner, or where there is a positive outcome. Classification decisions are likely to be more restrictive where difficult themes are handled in a manner likely to create or reinforce anxiety.

Tone and impact

The overall tone of a work may also affect the classification decision. While the presentation of specific issues, such as sex and violence, may not be problematic at a particular category, a work with a dark or unsettling tone may receive a higher classification. Other tonal considerations which might have an influence on classification include the extent to which the work presents a despairing view of the world, or the extent to which transgressive or harmful behaviour is condoned or made to appear normal.

We take into account the impact of a work (i.e. how it makes the audience feel), for example the presentation of credible real world scenarios about which viewers, especially younger viewers, are likely to be anxious (e.g. terrorism, abduction, suicide, self-harm). We also take account of audience expectations regarding genre, for example in relation to horror films where threat may be more significant than the level of violence, or in the case of action films, where viewers are likely to have certain expectations regarding the type of highly choreographed and unrealistic violence they are likely to contain.

Where multiple classification issues are present in the same work, this may produce a cumulative impact that makes a higher classification more appropriate.



Specific classification considerations

This section of the Guidelines identifies concerns which apply, to a greater or a lesser degree, at all classification levels, and sets out the general approach that we take. The concerns are listed in alphabetical order.

Pages 18 to 28 of the Guidelines provide specific guidance for U through to R18 with regard to such concerns. This should be read together with the General classification considerations.

Page 100

Dangerous behaviour

Classification decisions will take into account any detailed portrayal of criminal and violent techniques, and glamorisation of easily accessible weapons, such as knives. Works which portray anti-social behaviour (for example, bullying) uncritically are likely to receive a higher classification. Works which, taken as a whole, actively promote illegal behaviour may be cut or refused a classification.

Portrayals of potentially dangerous behaviour (especially relating to suicide, self-harm and asphyxiation) which children and young people may potentially copy, will be cut if a higher classification is not appropriate. The relative ease and likelihood of imitation are also considered.

Classification decisions may be less restrictive where the risks of any dangerous behaviour are likely to be obvious to the intended audience, or where material is intended to educate younger viewers about dangers. Classification decisions will be more restrictive where novel information is presented (for example, about specific suicide techniques), where harmful behaviour is glamorised, or where risks are not made clear.

Discrimination

Potentially offensive content relating to matters such as race, gender, religion, disability or sexuality may arise in a wide range of works, and the classification decision will take account of the strength or impact of their inclusion. The context in which such content may appear also has a bearing. Works with such content may receive a lower category where discriminatory language and behaviour is implicitly or explicitly criticised; or the work has a historical setting within which outdated attitudes or outmoded expressions would be expected; or the work is obviously dated, with little or no appeal to children; or the work seeks to challenge discriminatory attitudes and assumptions. Works with such content may receive a higher category where discriminatory language and behaviour is accompanied by threat or violence; or where there is a clear power imbalance; or where such behaviour is left unchallenged; or where discriminatory attitudes and assumptions are normalised. Where discriminatory language or behaviour occurs this will normally be indicated in ratings info.

Drugs

No work taken as a whole may promote the misuse of drugs and any detailed portrayal of drug misuse likely to promote the activity may be cut. Works which normalise or glamorise drug misuse are likely to receive a higher classification than works which show drug misuse while emphasising the dangers.

Where smoking, alcohol abuse or substance misuse feature to a significant extent in works which appeal to children, this will normally be indicated in ratings info. Classification decisions will also take into account any promotion or glamorisation of such activities.

Language

Language which people may find offensive includes the use of expletives with a sexual, religious or racial association, derogatory language about minority groups and commonly understood rude gestures. The extent of offence may vary according to age, gender, race, background, beliefs and expectations brought by viewers to the work as well as the context in which the word, expression or gesture is used.

For these reasons, it is impossible to set out comprehensive lists of words, expressions or gestures which are acceptable at each category. The advice at different classification levels, therefore, provides general guidance taking account of the views expressed in public consultation exercises.

Nudity

Nudity with no sexual context is in principle acceptable at all classification levels, but will not generally occur more than occasionally at U.

Nudity with a sexual context will receive a higher classification. Where the principal purpose of depicting nudity is to sexually arouse it will usually only be passed at the adult categories (18 or R18).



Specific classification considerations continued

Sex

The portrayal of sexual activity can range from kissing to detail of unsimulated sex. The normalisation of overtly sexualised behaviour is a concern at the junior categories (U, PG and 12A/12). The classification system allows progressively stronger portrayals of sexual behaviour as the categories rise.

Sex works (works whose primary purpose is sexual arousal or stimulation) will only be passed at 18 or R18.

We will apply these Guidelines in relation to sex to the same standard regardless of sexual orientation of the activity portrayed.

Sexual violence and sexual threat

Depictions of the stronger forms of sexual violence, including rape, are not permitted at the junior categories.

When considering scenes of sexual violence, aggravating factors include:

- the presence of a gang dynamic (e.g. a 'gang rape' scene)
- a focus on the victim being overpowered or powerless
- prolonged, detailed or gratuitous depiction
- an emphasis on nudity
- an emphasis on the pleasure of the attacker

- a strong emphasis on the distress and fear of the victim
- a credible 'real world' setting
- a protracted build-up of sexual threat

Mitigating factors include:

- brevity and lack of detail
- a clear educational message aimed at young people
- a strong narrative justification

We may refuse to classify content which makes rape or other non-consensual sexually violent behaviour look appealing or acceptable, reinforces the suggestion that victims enjoy such behaviour, or invites viewer complicity in such behaviour.

References to sexual violence are likely to be treated less restrictively than depictions of sexual violence, although any references at the junior categories will generally be oblique or undetailed.

Sexual threat and abusive behaviour are not permitted at the lowest levels of classification and will only be permitted at 12A/12 if brief and negatively presented.

Threat and horror

Where films are targeted at a younger audience, classification decisions will take into account factors such as the frequency, length and detail of scary or otherwise unsettling scenes as well as factors such as the impact of music and sound, and whether there is a swift and reassuring outcome.

The classification of threat and horror will take account of the general tone, impact, realism and supernatural elements of a work as well as the level of detail in individual scenes. Fantasy settings or the inclusion of humour may be mitigating factors. The presentation of 'real world' issues and fears may be an aggravating factor.

Violence

Classification decisions will take account of the degree and nature of violence in a work.

Works which feature the following are likely to receive a more restrictive classification:

- portrayal of violence as a normal solution to problems
- heroes who inflict pain and injury
- callousness towards victims
- the encouragement of aggressive attitudes
- characters taking pleasure in pain or humiliation
- the glorification or glamorisation of violence
- gratuitous violence
- violence presented in a credible and realistic context (e.g. gang violence, domestic violence)

Works which feature the following are likely to be treated less restrictively:

- violence in a historical context
- violence in an action or fantasy context
- violence that lacks detail
- violence that looks unreal, fake or overly staged
- comic violence
- violence that is challenged or punished
- violence in a context where it is likely to be expected by the intended audience

We are unlikely to classify content which is so demeaning or degrading to human dignity (for example, it consists of strong abuse, torture or death without any significant mitigating factors) that it may pose a harm risk.

Other matters

Education videos

When classifying an education video, including a sex education video, for use in schools, we will take account of the educational purpose of the video and the context in which it is to be viewed (for example in the classroom mediated by a teacher).

Music videos

In addition to the usual issues, the classification of a music video will take account of any elements which are of particular concern to parents, including glamorisation of behaviour which they consider inappropriate such as drug misuse or sexualised behaviour. Where music videos are short and self-contained, material may be less likely to be justified by context.

Photo or pattern sensitivity, motion sickness and reactions to low frequency sound

A small number of viewers are sensitive to flashing and flickering light, or some shapes and patterns, and may experience seizures or other serious physical effects. Some viewers experience feelings of motion sickness or other symptoms when viewing works which feature hand held or otherwise moving camerawork, or which feature very low frequency sounds.

It is the responsibility of film makers and distributors to identify works in which such issues arise and to ensure that, when required, appropriate warnings are given to viewers. However, if it is obvious during viewing that the work contains strong examples of such imagery

or sounds, we will advise the distributor of the need to ensure that appropriate warnings are in place. Where necessary, we may require assurances regarding the display of appropriate warnings as a condition of classification.

Release format

Classification decisions may be stricter on video works than on film. This is because of the increased possibility of under-age viewing as recognised in the Video Recordings Act (see Annexe), as well as the increased possibility of works being replayed or sections viewed out of context. Accordingly, a video work (either packaged or online) may occasionally receive a higher classification than on film, or require new or different cuts. (Video works may also receive a higher classification because they contain additional content.)

The screen format or visual presentation of a submission may also alter a classification, for example, if the image has been processed in the 3D format, or is shown with an altered aspect ratio such as on an IMAX screen, or if the work is experienced as a piece of immersive linear VR (virtual reality).

Titles

We will require changes as a condition of classification if the title of a work incites racial or religious hatred, or other criminal behaviour, or encourages an interest in abusive or illegal sexual activity.

If the title of a work is likely to cause significant offence to a significant number of people if displayed in a public place, we will advise the distributor to consider carefully the places in which it is likely to be seen and to take appropriate action, for example, by obscuring certain words on packaging or marketing materials. (This advice is not given in relation to video works classified R18 as such works may only be supplied or offered for supply in a licensed sex shop.)

Trailers and advertisements

Audiences may choose to see a full-length feature based on expectations of the particular genre at the given classification and on the published ratings info. In contrast, audiences have no choice, and often no expectation, about the accompanying trailers or advertisements which may be very different in tone and content to the film the audience has chosen to view. In addition, because trailers and advertisements are short and self-contained, material is less likely to be justified by context and more likely to cause offence.

For these reasons, classification decisions for trailers and advertisements may be more restrictive than for equivalent material in a main feature. Strong language will not be allowed in trailers at the U, PG and 12A/12 categories. Strong language may be permitted in trailers at 15, unless significantly aggravated by other factors. Infrequent very strong language may be permitted in trailers at 15 but usually only where there are mitigating factors such as a comic context.

The more restrictive approach set out above may be relaxed where an advertisement is part of a public information campaign or has a charitable purpose.

Cinemas are responsible for the exhibition of cinema trailers and advertisements, and we have no involvement in deciding which films they precede. Questions or complaints about the exhibition of trailers or advertisements should be directed to the cinema management in the first instance.

Video games

With a few limited exceptions we do not classify video games. We consider for classification those video games contained on discs which feature primarily linear video content and any pornographic video games.

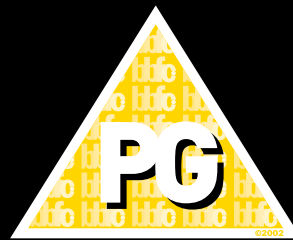
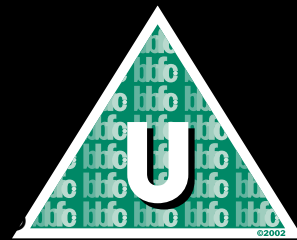
We also advise the video games authority on the classification of linear video footage contained in games which is not integral to the game. This includes, for example, rewards and video content in games which is designed to be viewed in its own right, without taking forward the narrative drive of the game.

Virtual reality

The BBFC is responsible for classifying linear VR (virtual reality) content whereas the video games authority is responsible for classifying non-linear VR content.

The classification categories

We endeavour to classify submitted works in one of the following categories:

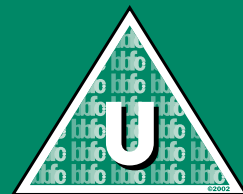


The following pages set out guidance on how the specific classification considerations (for example, sex and violence) are applied from U through to R18. The criteria should be read in combination with the general approach set out earlier under 'Guiding principles', 'General classification considerations' and 'Specific classification considerations'.

Because works from time to time present issues in ways which cannot be anticipated, these criteria will not be applied in an over-literal way if such an interpretation would lead to an outcome which would confound audience expectations.

Universal

Suitable for all



A U film should be suitable for audiences aged four years and over, although it is impossible to predict what might upset any particular child. U films should be set within a positive framework and should offer reassuring counterbalances to any violence, threat or horror.

Dangerous behaviour

Potentially dangerous or anti-social behaviour which young children may copy must be clearly disapproved of or be presented unrealistically. No emphasis on realistic easily accessible weapons.

Discrimination

Discriminatory language or behaviour is unlikely to be acceptable unless clearly disapproved of.

Drugs

References to illegal drugs or drug misuse must be infrequent and innocuous, or have a clear educational purpose or anti-drug message suitable for young children.

Language

Infrequent use only of very mild bad language.

Nudity

Occasional nudity, with no sexual context.

Sex

Only very mild sexual behaviour (for example, kissing) and references to such behaviour.

Threat and horror

Scary or potentially unsettling sequences should be mild, brief and unlikely to cause undue anxiety to young children. The outcome should be reassuring.

Violence

Violence will generally be very mild. Mild violence may be acceptable if it is justified by context (for example, comedic, animated, wholly unrealistic).



Parental Guidance

General viewing, but some scenes may be unsuitable for young children



A PG film should not unsettle a child aged around eight or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger or more sensitive children.

Dangerous behaviour

No detail of potentially dangerous behaviour which young children are likely to copy, if that behaviour is presented as safe or fun. No glamorisation of realistic or easily accessible weapons such as knives. No focus on anti-social behaviour which young children are likely to copy.

Discrimination

Discriminatory language or behaviour is unlikely to be acceptable unless clearly disapproved of, or in an educational or historical context, or a particularly dated work with no likely appeal to children. Discrimination by a character with whom children can readily identify is unlikely to be acceptable.

Drugs

References to illegal drugs or drug misuse must be innocuous or carry a suitable anti-drug message.

Language

Mild bad language only. Aggressive or very frequent use of mild bad language may result in a work being passed at a higher category.

Nudity

There may be nudity with no sexual context.

Sex

Sexual activity may be implied, but should be discreet and infrequent. Mild sex references and innuendo only.

Threat and horror

Frightening sequences or situations where characters are in danger should not be prolonged or intense. Fantasy settings and comedy may be mitigating factors.

Violence

Violence will usually be mild. However, there may be moderate violence, without detail, if justified by its context (for example, history, comedy or fantasy).



12A/12

Suitable for 12 years and over



Films classified 12A and video works classified 12 contain material that is not generally suitable for children aged under 12.

No one younger than 12 may see a 12A film in a cinema unless accompanied by an adult. Adults planning to take a child under 12 to view a 12A film should consider whether the film is suitable for that child. To help them decide, we recommend that they check the ratings info for that film in advance.

No one younger than 12 may rent or buy a 12 rated video work.

Dangerous behaviour

No promotion of potentially dangerous behaviour which children are likely to copy. No glamorisation of realistic or easily accessible weapons such as knives. No endorsement of anti-social behaviour.

Discrimination

Discriminatory language or behaviour must not be endorsed by the work as a whole. Aggressive discriminatory language or behaviour is unlikely to be acceptable unless clearly condemned.

Drugs

Misuse of drugs must be infrequent and should not be glamorised or give detailed instruction.

Language

There may be moderate bad language. Strong language may be permitted, depending on the manner in which it is used, who is using the language, its frequency within the work as a whole and any special contextual justification.

Nudity

There may be nudity, but in a sexual context it must be brief and discreet.

Sex

Sexual activity may be briefly and discreetly portrayed. Moderate sex references are permitted, but frequent crude references are unlikely to be acceptable.

Sexual violence and sexual threat

There may be verbal references to sexual violence provided they are not graphic. The stronger forms of sexual violence, including rape, may only be implied and any sexual threat or abusive behaviour must be brief and negatively presented.

Threat and horror

There may be moderate physical and psychological threat and horror sequences. Although some scenes may be disturbing, the overall tone should not be. Horror sequences should not be frequent or sustained.

Violence

There may be moderate violence but it should not dwell on detail. There should be no emphasis on injuries or blood, but occasional gory moments may be permitted if justified by the context.



15

Suitable only for 15 years and over



No one younger than 15 may see a 15 film in a cinema.

No one younger than 15 may rent or buy a 15 rated video work.

Dangerous behaviour

Dangerous behaviour (for example, suicide, self-harming and asphyxiation) should not dwell on detail which could be copied. Whether the depiction of easily accessible weapons is acceptable will depend on factors such as realism, context and setting.

Discrimination

The work as a whole must not endorse discriminatory language or behaviour, although there may be racist, homophobic or other discriminatory themes and language.

Drugs

Drug taking may be shown but the work as a whole must not promote or encourage drug misuse (for example, through detailed instruction). The misuse of easily accessible and highly dangerous substances (for example, aerosols or solvents) is unlikely to be acceptable.

Language

There may be strong language. Very strong language may be permitted, depending on the manner in which it is used, who is using the language, its frequency within the work as a whole and any special contextual justification.

Nudity

There are no constraints on nudity in a non-sexual or educational context. Sexual nudity may be permitted but strong detail is likely to be brief or presented in a comic context.

Sex

Sexual activity may be portrayed, but usually without strong detail. There may be strong verbal references to sexual behaviour. Repeated very strong references, particularly those using pornographic language, are unlikely to be acceptable. Works whose primary purpose is sexual arousal are unacceptable.

Sexual violence and sexual threat

There may be strong verbal references to sexual violence but any depiction of the stronger forms of sexual violence, including rape, must not be detailed or prolonged. A strong and sustained focus on sexual threat is unacceptable.

Threat and horror

There may be strong threat and horror. A sustained focus on sadistic threat is unlikely to be acceptable.

Violence

Violence may be strong but should not dwell on the infliction of pain or injury. The strongest gory images are unlikely to be acceptable. Strong sadistic violence is also unlikely to be acceptable.



18

Suitable only for adults



**No one younger than 18 may see an 18 film in a cinema.
No one younger than 18 may rent or buy an 18 rated video work.**

Adults should be free to choose their own entertainment. Exceptions are most likely in the following areas:

- where the material is in breach of the criminal law, or has been created through the commission of a criminal offence
- where material or treatment appears to us to risk harm to individuals or, through their behaviour, to society. For example, the detailed portrayal of violent or dangerous acts, or of illegal drug use, which may cause harm to public health or morals. This may include portrayals of sadistic violence, rape or other non-consensual sexually violent behaviour which make this violence look appealing; reinforce the suggestion that victims enjoy rape or other non-consensual sexually violent behaviour; or which invite viewer complicity in rape, other non-consensual sexually violent behaviour or other harmful violent activities
- where there are more explicit images of sexual activity in the context of a sex work (see right)

In the case of video works, which may be more accessible to younger viewers, intervention may be more frequent than for cinema films.

Sex works at 18

Sex works are works whose primary purpose is sexual arousal or stimulation. Sex works containing only material which may be simulated are generally passed 18. Sex works containing clear images of real sex, strong fetish material, sexually explicit animated images, or other very strong sexual images will be confined to the R18 category. Material which is unacceptable in a sex work at R18 is also unacceptable in a sex work at 18.



R18

To be shown only in specially licensed cinemas, or supplied only in licensed sex shops, and to adults only

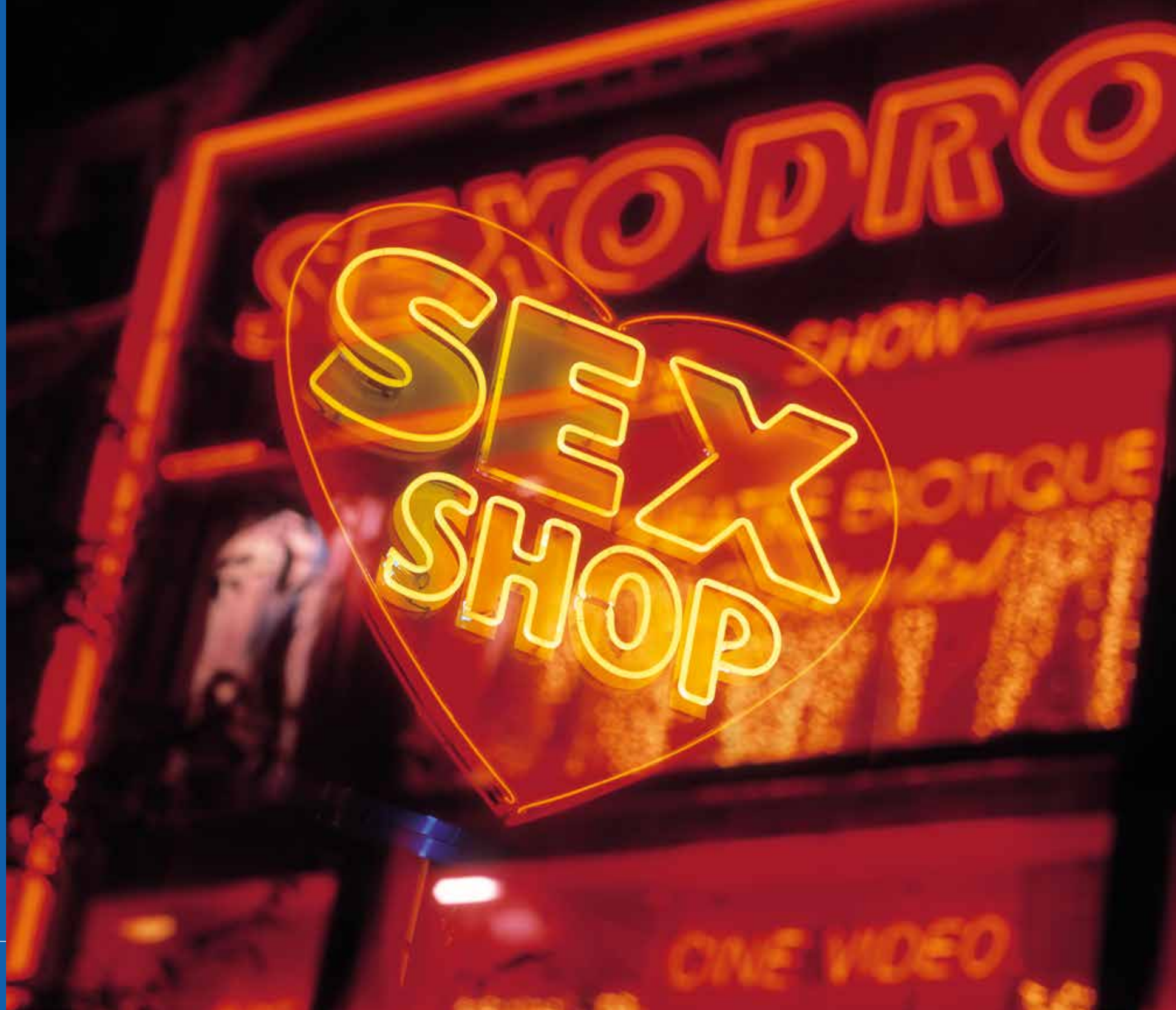


The R18 category is a special and legally-restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. R18 video works may not be supplied by mail order.

The following content is not acceptable:

- material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959 (see Annex – legal considerations)
- material (including dialogue) likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults
- the portrayal of sexual activity which involves real or apparent lack of consent. Any form of physical restraint which prevents participants from indicating a withdrawal of consent
- the infliction of pain or acts which are likely to cause serious physical harm, whether real or (in a sexual context) simulated. Some allowance may be made for non-abusive, consensual activity
- penetration by any object likely to cause physical harm
- sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game

Page 199



Intervention

Where possible we will carry out our responsibilities through appropriate use of the classification categories, particularly in order to protect children from any potential harm.

If necessary, however, we may cut or even refuse to classify a film or video work.

In some cases, we require assurances, cuts or other changes (for example, the addition of warning captions) as a condition of classification, or as a condition of classifying at a particular category. In some circumstances we may refuse to classify a work at any category. We publish details of all interventions on our website.

Cuts for category

If the submitted work is suitable for classification, but only at a category higher than that requested by the customer, we will consider whether a lower category could be achieved through relatively minor or simple changes. If so, we may offer the customer a choice of accepting either the higher or lower category (the latter with defined changes as necessary).

Cuts for category are unlikely to be available if the required changes would be very extensive or complex, or would not address for example, a tonal or thematic issue running throughout the work.

Compulsory cuts

If a submitted work raises issues or concerns that cannot be addressed by classification at a particular age category, we may require cuts or other changes as a condition of classification. Such intervention is most likely when the submitted work contains:

- material which may promote criminal activity
- material which is obscene or otherwise illegal
- material created by means of the commission of a criminal offence
- portrayals of children in a sexualised or abusive context
- material which makes rape, other non-consensual sexually violent behaviour, or sadistic violence look appealing

- graphic images of real injury, violence or death presented in a salacious or sensationalist manner which risks harm by encouraging callous or sadistic attitudes
- material which reinforces the suggestion that victims enjoy rape or other non-consensual sexually violent behaviour
- material which invites viewer complicity in rape, other non-consensual sexually violent behaviour, or other harmful violent activities
- sex works which contain material listed as unacceptable at R18

When the issue relates to the circumstances of filming (for example, in relation to animal cruelty or public indecency) the customer will normally be given an opportunity to present evidence before a final decision is reached.

Refusal to classify

As a last resort, the BBFC may refuse to classify a work, in line with the objective of preventing non-trivial harm risks to potential viewers and, through their behaviour, to society. We may do so, for example, where a central concept of the work is unacceptable, such as a sustained focus on rape, other non-consensual sexually violent behaviour or sadistic violence. Before refusing classification we will consider whether the problems could be adequately addressed through intervention such as cuts. In deciding whether to refuse to classify, we will keep in mind the inherent difficulty of using behavioural research to draw conclusions about real world risks, and will have regard to the full range of available evidence, including the views of the public and our own knowledge and experience.

Engagement with the public

We publish detailed information about the content we classify, which we call ratings info. It's a helpful guide, particularly for parents, that gives a summary of how and why a film or video was given its age rating.

Ratings info includes:

- a short description of the issues contained in a film or video, and this appears on the black card shown on the cinema screen before a film starts, for example:



strong violence, sex, language, drug misuse

- we publish a longer, fuller version on our website and app

All content classified since the early 2000s has a short line of ratings info, and content classified more recently also has a longer version, giving you a detailed idea of what issues – bad language, drugs, sex and violence, or the use of discriminatory language or behaviour, for instance – you're likely to find in the film. It also raises any other issues that may be of concern, such as divorce or bereavement.

We try to avoid giving away major plot points. When ratings info does contain plot spoilers we always post a warning. Occasionally, the longer version of ratings info describes full sequences in a film – for example, it might describe a specific fight scene to give you a flavour of the sort of violence in the film and how strong it looks and feels – so be aware of this.

We publish ratings info the moment a film or video is classified, but the longer version may not be available until 10 days before the film opens. Sometimes, we classify films many weeks or even months before they are due to open, which is why not all films listed on our website will have a link to the longer ratings info yet. We encourage viewers to check ratings info when they are choosing content for children and for themselves.

bbfc.co.uk

Our website provides a comprehensive database of all the content we classify, including ratings info and information about cuts. You can read the Classification Guidelines, search through our press releases, research and Annual Reports. We also publish case studies on films, including many set film texts for Film Studies courses in the UK, a timeline of key events in our history and regular podcasts.

cbbfc.co.uk

Content for younger children, including the chance to rate trailers for children's films and learn more about our work, can be found on CBBFC, our website for children. Parents can also find advice about choosing content for children on VoD platforms and information about our education programme.

BBFC app

Our free app for iOS and Android devices lets you check the latest film classifications and ratings info, watch trailers and read our Guidelines.

Twitter – @BBFC

We update our Twitter account, @BBFC, with all our news and latest film classification decisions. You can ask us quick questions there too. For more detailed questions, you can email us on feedback@bbfc.co.uk

Newsletters

We produce a regular newsletter about our latest classification decisions, podcasts and news. Our education team sends a newsletter to teachers once a term, focussing on our outreach programme, partnerships and resources, including case studies. For industry we send a regular update on our services, news and classification turnaround times each quarter. You can sign up to receive any of these newsletters on our website, bbfc.co.uk

Podcasts

You can stream and download our regular short podcast on our website, Soundcloud and iTunes. Each episode focuses on a particular theme, film or TV series, and their age rating, highlighting key issues we took into account and any interesting facts about the classification process, for example any advice we gave, or reductions made by the film maker or distributor to secure a particular age rating.



Appeals, advice viewings and feedback

Appeals

We offer a formal reconsideration procedure which is open to any customer dissatisfied with the determination made in respect of their work. The reconsideration is free of charge and will normally take fewer than 10 working days.

A customer may also appeal directly to an independent authority. Such an appeal may take place following, or instead of, our reconsideration. In the case of films, the customer (or any member of the public) may address itself to the local authority which licenses cinemas in a particular area. In the case of video works a customer may appeal to the Video Appeals Committee. The VAC is independent of the BBFC and can be contacted by post as follows:

The Secretary
The Video Appeals Committee
3 Soho Square
London
W1D 3HD

Customers should note that a reconsideration or an appeal involves looking at the issues afresh. This means that the outcome could, in some circumstances, be more restrictive than the original determination.

Advice viewings

A customer may submit works for advice at any stage of the production process. We will inform them of the likely classification a work will receive, and where appropriate any changes required to achieve the customer's preferred classification. However, advice given in such circumstances is not binding and we reserve the right to reach a different decision when the final version of the work is submitted formally for classification. If the final version of the work submitted for classification differs in any significant respect from that seen for advice, and if those changes appear to reflect advice we have given, then details of the changes will appear on our website.

Feedback

If you want to send us any feedback about our age ratings or classification decisions, please don't hesitate to email us at feedback@bbfc.co.uk or write to us at:

Chief Executive's Office
BBFC
3 Soho Square
London
W1D 3HD



Annexe – legal considerations

The following legislation is not listed according to chronology or importance. Instead, it reflects a useful way of explaining the structure of the legal framework that applies to our work.

The Licensing Act 2003

England and Wales

Cinemas (Northern Ireland) Order 1991

Northern Ireland

Cinemas Act 1985

Scotland

Cinemas require a licence from the local authority in which they operate. The licence must include a condition requiring the admission of children (anyone under 18) to any film to be restricted in accordance with our recommendations or those of the licensing authority. One of the key reasons for the licensing requirement is the protection of children, including from potentially harmful content in films.

The Video Recordings Act 1984

Video works (including films, TV programmes and some video games) which are supplied on a disc, tape or any other device capable of storing data electronically must have a BBFC classification unless they fall within the definition of an exempted work.

When considering whether to award a certificate to a work, or whether a work is suitable at a particular category, we are required by the Act to have special regard to the likelihood of works being viewed in the home, and to any harm that may be caused to potential viewers or, through their behaviour, to society by the manner in which the work deals with:

- criminal behaviour
- illegal drugs
- violent behaviour or incidents

- horrific behaviour or incidents
- human sexual activity

In considering these issues we have in mind the possible effect not only on children but also on other vulnerable people.

The Obscene Publications Acts 1959 & 1964

England and Wales

The Civic Government (Scotland) Act 1982

Scotland

The Obscene Publications Act 1857

Northern Ireland

It is illegal to publish a work which is obscene. A work is obscene if, taken as a whole, it has a tendency to deprave and corrupt a significant proportion of those likely to see it. Under the Obscene Publications Act 1959, no offence is committed if publication is justified as being for the public good on the grounds that it is in the interests of science, art, literature or learning or other objects of general concern.

In Scotland, case law implies a similar test would be applied. In Northern Ireland, while there is no express defence of “public good” it is likely that English law would be taken into consideration.

Criminal Justice and Immigration Act 2008

England, Wales and Northern Ireland

Criminal Justice and Licensing (Scotland) Act 2010/Civic Government (Scotland) Act 1982

Scotland

It is illegal to be in possession of an extreme pornographic image. Under the Criminal Justice and Immigration Act 2008 an extreme pornographic image is one which is pornographic and grossly offensive, disgusting or otherwise of an obscene character, which features an apparently real person, and which portrays, in an explicit and realistic way, an act which:

- threatens a person’s life
- results, or is likely to result, in serious injury to a person’s anus, breasts or genitals
- involves sexual interference with a human corpse
- involves intercourse or oral sex with an animal
- involves non-consensual penetration of a mouth, vagina or anus with a penis or non-consensual sexual penetration of a vagina or anus by anything

Under the Civic Government (Scotland) Act 1982 an extreme pornographic image is one which is pornographic and obscene, and which depicts in an explicit and realistic way, an act which:

- takes or threatens a person’s life
- results, or is likely to result, in a person’s severe injury
- involves rape or other non-consensual penetrative sexual activity

- involves sexual activity involving (directly or indirectly) a human corpse
- involves sexual activity between a person and an animal

Works we classify under the Video Recordings Act are excluded from the scope of the offence across the UK.

The Protection of Children Act 1978

England and Wales

Civic Government (Scotland) Act 1982

Scotland

Protection of Children (Northern Ireland) Order 1978

Northern Ireland

It is illegal to make, distribute, show or possess indecent photographs or pseudo-photographs of a child. It is also illegal to make, distribute, show or possess indecent images of children which have been derived from a photograph or pseudo-photograph (for example, by tracing). Offences relating to the possession of such images are contained within the Criminal Justice Act 1988 (England, Wales and Scotland), and the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988. A child is defined as a person under the age of 18.

The Coroners and Justice Act 2009

England, Wales and Northern Ireland

The Criminal Justice and Licensing Act 2010

Scotland

It is illegal to be in possession of a prohibited image of a child. A prohibited image of a child is a non-photographic or non-pseudo-photographic image which is pornographic and grossly offensive, disgusting, or otherwise of an obscene character, and which focuses solely or principally on a child's genitals or anal region, or which portrays specified sexual acts by, of, or in the presence of a child, including masturbation, oral sex or penetration, including sexual acts with animals. A child is defined as being under 18 and an image of a child or other person can include imaginary representations. Works we classify under the Video Recordings Act are excluded from the scope of the offence unless images have been extracted from such works for the purpose of sexual arousal.

The Sexual Offences Act 2003

England and Wales

Sexual Offences (Scotland) Act 2009

Scotland

The Sexual Offences (Northern Ireland) Order 2008

Northern Ireland

It is illegal to expose oneself with intent to cause alarm or distress – this offence augments the common law misdemeanour of indecent exposure. It is also prohibited for a person to record the private act of another, where the intention of the recording is for the sexual gratification of himself or a third party and where the recorded party has not consented to so being filmed.

The Criminal Justice and Courts Act 2015

England and Wales

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

Scotland

Justice Act (Northern Ireland) 2016

Northern Ireland

It is an offence to disclose a private sexual photograph or film without the consent of any individual who appears in the photograph or film, if it is done with the intention of causing that individual distress (or causing them fear, alarm or distress in Scottish law).

The Public Order Act 1986

England, Scotland and Wales

The Public Order (Northern Ireland) Order 1987

Northern Ireland

It is illegal to distribute, show or play to the public a recording of visual images or sounds which are threatening, abusive or insulting if the intention is to stir up racial hatred or hatred on the grounds of sexual orientation, or if racial hatred or hatred on the grounds of sexual orientation is likely to be stirred up. It is also illegal to distribute, show or play to the public a recording of visual images or sounds which are threatening if the intention is to stir up religious hatred.

In Northern Ireland the relevant group of persons may be defined not only by colour, race, nationality or ethnic or national origins, but also by “religious belief” or “sexual orientation” or “disability”.

The Cinematograph Films (Animals) Act 1937

England, Scotland and Wales

It is illegal to show any scene “organised or directed” for the purposes of the film that involves actual cruelty to animals. This Act applies to the exhibition of films in public cinemas but we also apply the same test to video works. For the purposes of this legislation and The Animal Welfare Act 2006, only vertebrates which are domesticated or otherwise under the control of man are defined as “animals”.

The Animal Welfare Act 2006

England and Wales

The Welfare of Animals Act (Northern Ireland) 2011

Northern Ireland

The Animal Health and Welfare (Scotland) Act 2006

Scotland

It is illegal to supply, publish, show or possess with intent to supply a video recording of an “animal fight” that has taken place within the UK since 6 April 2007.

The Tobacco Advertising and Promotion Act 2002

It is illegal, in the course of a business, to publish a tobacco advertisement.

Blasphemy

In Scotland and Northern Ireland, the common law crime of blasphemy exists but has not been utilised for prosecution in modern times. The offences of blasphemy and blasphemous libel under the common law of England and Wales were abolished in The Criminal Justice and Immigration Act 2008.

Human Rights Act 1998

The Act permits such restrictions on freedom of expression as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Digital Economy Act 2017

Under Part 3 of the Act it is unlawful to make pornographic material available on the internet to persons in the United Kingdom, on a commercial basis, other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18. The BBFC is the designated age-verification regulator under Part 3 of the Act. The BBFC may take enforcement action against non-compliant pornographic services and/or where a service makes extreme pornographic material, as defined by the Criminal Justice and Immigration Act 2008, available on the internet to persons in the United Kingdom.

Other unlawful material

In carrying out its responsibilities the BBFC will have regard to whether the material itself appears to be unlawful in the United Kingdom, or has arisen from the commission of an unlawful act.



Get more info on our app

bbfc.co.uk/app

British Board of Film Classification

3 Soho Square,
London,
W1D 3HD

T 020 7440 1570

bbfc.co.uk/about-bbfc/contact-us

BBFC Classification Guidelines 2019

This page is intentionally left blank

Briefing Report

Licensing Committee

2 September 2019

Update on the work of the Local Authority Working Group (LAWG) in relation to taxi licensing

1.0 Purpose

- 1.1 The purpose of this briefing note is to update the Licensing Committee on progress made by the newly formed LAWG and provide an update in relation to the recommendations made by the late-night taxi group as endorsed by the Environment Select Committee on 08 January 2019.

2.0 Background

- 2.1 A task group was originally established by the Environment Select Committee on 26 June 2018 to review the late-night taxi tariffs as part of the Salisbury recovery plan. This followed a request from the Cabinet Member for Adult Social Care, Public Health and Public Protection for a scrutiny review of the current schedule of late-night tariffs for Hackney Carriages as adopted by the Licensing Committee in 2014.
- 2.2 The late-night taxi group report was presented to the Environment Select Committee on 8 January 2019 where it was resolved to endorse four recommendations made in the report.
 - **Late Night Tariffs - Undertake a review of the late-night tariffs across the County to ensure they are appropriate including the Tariff for 5 & 8 seat vehicles**
 - **BTEC Qualification - Evaluate the requirement for drivers to have a BTEC qualification in the role of the professional taxi and private hire driver.**
 - **CCTV – Consider whether the introduction of CCTV in vehicles as a mandatory requirement for Wiltshire taxis is appropriate.**
 - **Wheelchair Accessible Vehicles – Calculate the total number of taxis in Wiltshire that are available for disabled passengers (other than those used under contracts) and act to increase if required.**
- 2.3 To ensure delivery on the above recommendations the Licensing Committee accountable for the work established the LAWG and an inaugural meeting was held on 2 May 2019.
- 2.4 The initial LAWG brief was to look at the wider safeguarding issues that impact the taxi industry and produce a schedule of work that took a holistic view of the service and enhance all areas of the taxi licensing process. This would help to bring the Council in line with the proposals set out in the national consultation by the Department for Transport (DfT) on safeguarding within the taxi industry, with the objective of improving safeguarding

standards within the taxi industry of which Wiltshire Council were active participants. This national consultation ended on 22 April 2019.

- 2.5 Wiltshire Council responded to the national consultation and had already implemented several measures suggested within its policies. The outcome of the national consultation is not known at this point. The DFT will produce a best practice document that they will expect Local Authorities to adopt once the outcome of the consultation is known.
- 2.6 A separate report on an updated Fit & Proper Person policy (FPP) is being presented to the Licensing Committee on 2 September 2019. The new policy has taken guidance from the Institute of Licensing and reflects several of the recommendations recently proposed in the DFT consultation. Local Authorities must ensure licensed drivers are of suitable character to be granted a licence and can be trusted with the public's safety. An authority can refuse to licence an individual if they believe they are not of the right character and pose a risk or threat to the public. The new policy enforces more rigorous standards on drivers and provides the Council with more power to remove those drivers it feels should not be licensed. Introduction of the new FPP will also allow the team to update both their driver and vehicle guidelines to ensure they are more robust.
- 2.7 The taxi licensing team have completed 358 driver licence applications and renewals in the 3 months from April 19, an increase of 84% on the same period in 2018. This work has been largely completed with 50% of the resource levels of the previous year. Two new recruits have been employed to replace staff who have left and are in the process of being trained. The increase in licence volumes is largely down to the introduction of a 3-year licence in 2015/16 which are now coming up for renewal. Volumes for the team are expected to be high for the rest of 2019.
- 2.8 There are currently 868 licensed hackney carriage drivers and 172 private hire drivers, in Wiltshire, all of whom will be affected by the changes proposed. 38% of hackney carriage drivers are based in the South zone, 29% in the West, 21% in the North and 13% in the East.
- 2.9 The Council currently licenses 930 vehicles in Wiltshire, 674 hackney carriage vehicles and 256 private hire vehicles. 8.6% of the 930 vehicles licensed are currently wheelchair accessible.
- 2.10 The wider reaching work under taken by the LAWG resulted in additional recommendations being proposed. These are shown below:
- **UBER - Provide a briefing note on UBER and the situation in Wiltshire, to include their offer of wheelchair accessible vehicles.**
 - **Safety standards for school contract drivers based outside of Wiltshire – Confirm all drivers are subject to the same level of checks as those in Wiltshire.**
 - **GDPR - Investigate if GDPR issues exist with sharing information with neighbouring authorities.**
 - **Evaluate use of the National Refusal Database (NRD) for Taxi Licensing.**
 - **Determine if taxi drivers in Wiltshire must have a full British driving licence.**
 - **Ensure medical disclosures are notified to Wiltshire Council within 48 hours.**

- Review the current safeguarding training and ensure it is fit for purpose.
- Introduce an English test as part of the taxi licensing application process.
- Re- establish trade representative meetings.
- Ensure Wiltshire Council's application forms request a driver to declare if they are licensed by another authority.
- Ensure complaint notices are visible in all taxis.
- Analyse the impact of a 6 monthly DBS check on all drivers.
- Establish a new process with the Multi Agency Safeguarding Hub (MASH) to cover adults.
- Introduce basic DBS checks for all staff that take bookings and work for operators.
- Share our existing policies with our neighbouring authorities.

Update on Actions & Recommendations

3.0 Late Night Tariffs and Tariff for 5 & 8 seat Vehicles

3.1 The taxi licensing team met with trade representatives from all areas on 10 June 2019 and discussed the proposal to review all tariffs and fares across the County. The fares and tariffs have not been reviewed since 2014 and over the same period the Council's fees for licences have risen 7% for a new driver application and 25% for a driver renewal. Vehicle licence fees have risen 41% for an initial application and 34% for a renewal. In view of this the reps agreed to review fares and tariffs.

3.2 Representative from the trade were advised that the Council was committed to having one schedule of tariffs and fares across the whole County, but rather than impose this on drivers the representatives were asked and agreed to survey all the drivers within their areas and put forward a proposal for any new tariff and fare structure to the taxi licensing team for consideration. Representatives were advised that any new proposals would have to be agreed by the whole trade and each would be required to sign up to any revised proposal.

Action: A deadline of 10 December 2019 was set for the trade representatives to put forward any new proposals on fares and tariffs to the Council. A meeting with the trade is scheduled for September 2019 to track progress. The Council will review any proposal received from the industry and will draft a report in consideration for the next Licensing Committee to approve.

4.0 BTEC Qualification Plus Safeguarding training

4.1 Research has been undertaken to evaluate the requirement for drivers to hold a BTEC Level 2 qualification in the role of the Professional Taxi and Private Hire Driver. Initial indications are that the BTEC Level 2 Certificate as a mandatory requirement would cost approx. £300 pp.

- 4.2** In addition to the above the team are exploring the development of an in-house course to tackle the specific issues faced in Wiltshire. The taxi licensing team have initiated a review of the current safeguarding training to ensure it is fit for purpose. This has been extended to work collaboratively Passenger Transport and Organisational Development. Discussions are ongoing in relation to the method of delivery. One option being considered is to deliver an on-site training package which would include updated safeguarding training, knowledge and topographical tests. The training package would involve drivers attending the office for a half-day session so compliance officers can be sure that the driver has completed the training themselves. Feedback has suggested that the current online training option although achieving 100% compliance is being abused by some drivers who request others to complete the training on their behalf.

Action: To evaluate the external BTEC training offer versus an inhouse training option and put to the trade representatives in September 2019 a proposal for consideration. On receipt of the views from the trade to report the outcome to the Licensing Committee in Spring 2020 for approval.

5.0 CCTV

- 5.1** Explore the option of making CCTV a mandatory requirement for all taxis within Wiltshire. The primary concern for the Council is that Wiltshire Council would become the data owner if the requirement is made mandatory. The implications for the Council would be that responsibility for all data and the management of said data would rest with the authority, even though the data would not be within the Council's control. The Council's Information Governance Team and Legal Team are very clear that the Council would not want to be responsible for this data and have recommended that CCTV is not made a mandatory requirement.
- 5.2** There are several other issues around privacy and cost that would make a mandatory scheme difficult to administer. At present, there are only a small number of local authorities that have CCTV as a mandatory requirement for taxi licensing due to the issues highlighted above.
- 5.3** The other main cause of such a low level of take up on mandatory CCTV schemes by authorities is that the local authority must demonstrate to the Information Commissioners Office that sufficient issues exist to warrant the introduction of CCTV, e.g. Rotherham. Several authorities have been challenged in court by the industry when trying to implement a mandatory CCTV system and have lost the case, as they could not justify the requirement for it within their area. At present the level of complaints received by the council indicates that it would be difficult to justify a need within Wiltshire.
- 5.4** CCTV is however, an area currently under review within the DfT consultation and the Council will await the outcome of this consultation to inform future policy.

Action: It is recommended that CCTV is considered best practice and a further update will be provided to the Licensing Committee once the outcome of the national consultation by the DfT is known.

6.0 Wheelchair Accessible Vehicles

- 6.1** Current records show that 8.6% of vehicles are wheelchair accessible in Wiltshire. Feedback from the trade representatives meeting on 10 June 2019

indicated that the demand for these types of vehicles does not exist as most service users are now purchasing their own. The taxi licensing team are researching the requirement for 100% of hackney carriage vehicles to be wheelchair accessible. Initial feedback from the trade representatives is not supportive.

Action: Further research from the industry, service users and relevant groups will be undertaken to assess the feasibility of this approach to include improving the overall ease of use for those who require Wheelchair Accessible Vehicles, as well as ensuring drivers are compliant and understanding of their legal requirements as highlighted by Section 165 of the Equality Act 2010. A further update will be provided to the Licensing Committee on this issue in due course.

6.2 Uber

6.3 The LAWG was provided with a briefing note on UBER and the implications for Wiltshire in May 2019. This briefing note was shared with the Licensing Committee at the Committee meeting on 03 June 2019.

Action: Complete

7.0 Safety checks for drivers based outside of Wiltshire.

7.1 The Passenger Transport Unit has confirmed that drivers working on Wiltshire Council contracts and based outside of Wiltshire must fulfil the same requirements as Wiltshire licensed drivers to be engaged.

Action: Complete

8.0 GDPR Issues with Sharing Driver Data

8.1 The taxi licensing team have established via the Council's Information Governance Team that information on drivers cannot be shared with neighbouring authorities at present. The correct process for sharing driver information would be via the National Anti-Fraud Network (NAFN), as outlined below.

Action: Complete

9.0 National Refusal Database

9.1 The National Anti-Fraud Network (NAFN) operates a National database of named taxi drivers who have had their **licenses refused, suspended or revoked**. Wiltshire Council is a member of NAFN and the system is used by many of the Council's Enforcement teams to share intelligence nationally. However, the taxi licensing team do not currently use the system but clearly it would be advantageous to do so.

9.2 Currently driver data is not shared with any third party except for the Police in criminal cases. For the taxi service to be included in NAFN the taxi licensing team would need to change how the Council utilises driver/operator data. This would require updating the 'Council's Driver and Operator Guidelines' as well as changes to the application and renewal forms. In addition, 'Subject & Privacy Notices' will need to be added to all forms to ensure that drivers and operators are clear on how the Council is using their data. All changes once approved will be communicated to drivers through the Trade Representative group.

Action: These amendments would need Licensing Committee approval as they are considered a major change. A report setting out the proposal for change, along with a timeline for updating the 'Council's Driver and Operator Guidelines', the application and renewal forms will go to the Licensing Committee.

10.0 Establish if Wiltshire Licensed drivers must have a British Driving Licence

10.1 Wiltshire Council's current guidelines confirm all licensed drivers must hold a British driving licence.

Action: Complete

11.0 UBER & Wheelchair Vehicles

11.1 The team have established that UBER currently have an app called UBERWav that offers users the chance to book a wheelchair accessible vehicle through their mobile phone or computer. This information will be considered when drafting a report regarding the overall use of WAV in Wiltshire.

Action: To include reference to UBERWAV in the WAV in Wiltshire report to Licensing Committee.

12.0 Ensure Medical Disclosures are notified within 48 Hours

12.1 All Wiltshire Council application forms have now been updated to reflect the requirement for all medical disclosures to be made within 48 hours.

Action: Complete

13.0 Introduce an English Test

13.1 The taxi licensing team is investigating the requirement for an English test for all drivers to ensure they reach a minimum standard and can communicate in the event of an emergency. Several providers offer English tests, most centre on The Common European Framework of Reference for Languages: Learning, Teaching, Assessment (CEFR). This is a guideline used to describe achievements of learners of foreign languages across Europe and, increasingly, in other countries.

13.2 The Council also has its own guidance on English fluency for all staff which also centres on the CEFR measuring scale:
<http://thewire.wiltshire.council/hrdirect/recruitmentandstarters/guidanceformanagersfluentenglish.htm>

13.3 The taxi licensing team are working jointly with Organisational Development to design an English test specifically aimed at taxi drivers to ensure it deals with the scenarios they may be faced with. It should be noted that TfL introduced an English test requirement for drivers on 14 October 2016. This test was subsequently suspended on 12 March 2019 following advice from the Licensed Private Hire Car Association (LPHCA) and with the support of the Mayor of London, Sadiq Kahn. The tests were suspended so the industry can set out and agree realistic English Language requirements for PHV & Taxi drivers nationally going forward.

Action: To continue with the guidance outlined above and await the outcome of the DfT National Consultation to provide more guidance on a standard to implement nationally.

14.0 Establish Trade Representative Meetings

14.1 The re-establishment of the trade representative is an important element to the success of future changes taking place within the industry. A meeting took place on 10 June 2019 with representatives from all areas taking part. It was agreed at that meeting that more representation was required as at present there are 1,040 licensed drivers and only 5 trade representatives to historically represent previous geographical areas.

Action: The Council agreed it would create a role description for a trade representative. This has been drafted and will be circulated to trade representatives for feedback. Options for incentivising representatives is also being considered and a suggestion to the group of increasing the co-hort of representatives from 5 to 10.

15.0 Ensure Wiltshire Council establishes if a driver is licensed by another authority

15.1 All applications forms have been updated to collect this information.

Action; Complete

16.0 How to Complain Notices in Taxis

16.1 Notices advising users of taxis how to complain and relevant contacts is already in place. Notices can be found in all taxis on the inside of the windscreen on the passenger side of the vehicle. This is checked by the vehicle inspectors as part of the licence renewal process. In addition how to make a complaint is located on the councils website below:

<http://www.wiltshire.gov.uk/taxicomplaintform.htm?action=setoutside&cookieid=157860&cookieidg=reject>

Action: The Taxi Licensing team will continue to work with the trade to seek alternative methods for reporting incidents and is on the agenda for the next meeting of Industry working group scheduled for September 2019.

17.0 Analyse the impact of a 6 monthly DBS check

17.1 At present the Council charge drivers and operators £66 for a DBS check which is completed every three years. Increasing this to 6 monthly would increase the costs for drivers and operators significantly. The additional work required for the taxi licensing team would be difficult to resource at present, however research undertaken by the team confirms has identified a possible solution that would benefit both parties.

17.2 The DBS update service is an online service that an individual can sign up to for £13 per year. Membership of the service allows an approved organisation such as Wiltshire Council to perform a DBS check on the individual at any time as the DBS certificate will be continually kept up to date. Drivers signing up to the service will find it cheaper than the current £66 charge levied on them by Wiltshire Council for each check.

- 17.3** By signing up to the service drivers and operators will save time by not having to present certificates at council offices. This will also enable a timelier check which may put an end to periods of time where a driver has been unable to work due to an invalid DBS certificate not being in place. The taxi licencing team have produced a one-page summary in relation to the DBS service offer which is currently being consulted on with all drivers.

Action: A proposal to make DBS membership for all drivers mandatory along with feedback from the taxi trade will be presented to the Licensing Committee for approval.

18.0 Establish a new Safeguarding process for adults

- 18.1** An efficient safeguarding process exists via the Multi Agency Safeguarding Hub (MASH) for children and vulnerable adults but no process exists to capture adults. An initial meeting was held on 21 June 2019 with the Team Manager within MASH. Work is on-going between various departments to establish a new process to capture adults. A temporary process has been agreed whereby the taxi licensing team can make referrals via the MASH team who will put them in contact with the relevant officer in Wiltshire Police. More work is required to implement a complete process.

Action: The Licensing team will continue to work with the Safeguarding Adults Board who are in the process of agreeing a People in a Position of Trust Policy, to manage allegations.

19.0 Introduce Basic DBS checks for taxi operator staff taking bookings

- 19.1** The taxi licensing team are currently investigating with the Council's Legal Department if this DBS check can be imposed for operator staff. If agreed it is proposed that operators would be provided with a six-month period of grace to get all of their staff DBS checked.

Action: If the Council's Legal Team confirm this is possible a report will be produced for the Licensing Committee to approve this change to the taxi licensing process.

20.0 Sharing our existing policies with neighbouring authorities

- 20.1** The taxi licensing team have drafted and updated a more robust 'Fit and Proper Person Policy' which is due for review and approval by the Licensing Committee on 02 September 2019. When approved, this policy will drive changes in our existing driver and vehicle guidelines.

Action: Policies will be shared if approved at the Licensing Committee on 2nd September 2019.

21.0 Summary

- 21.1** The taxi licensing team have several work streams ongoing at present which will lead to further reports being submitted to future Licensing Committee meetings. These will be presented at the following:

The actions outlined above will be scheduled for one of the following meetings and future committee meetings in 2020 dates yet to be agreed:

Date and Location of Meeting @ 10.30am
2 September 2019 West Wilts Room
2 December 2019 West Wilts Room
2 March 2020 TBC

:

Briefing Note produced by:

Julie Anderson-Hill, Head of Service Julie.Anderson-Hill@Wiltshire.Gov.Uk
Tom Ince Compliance and Enforcement Team Leader Tom.ince@wiltshire.gov.uk

This page is intentionally left blank

Wiltshire Council

Licensing Committee

2 September 2019

Review of the Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences

Summary

Wiltshire Council has a statutory responsibility under the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976 and the Transport Act 1985 to licence the hackney carriage and private hire services. Under this legislation the council shall not grant a hackney carriage driver, private hire driver or private hire operator's licence unless it is satisfied that the applicant is a '**Fit and Proper Person (FPP)**'.

To protect and safeguard the travelling public in Wiltshire, the Council is required to have a robust policy for determining the suitability of applicants for hackney carriage and private hire licences.

A review of these policies has been undertaken and one consolidated policy produced which takes into account all five types of licence issued by Wiltshire Council. These are: 1) *hackney carriage driver*, 2) *private hire driver*, 3) *hackney carriage vehicle proprietor*, 4) *private hire vehicle proprietor* and 5) *private hire operator's licences*.

Current legislation, views of the hackney carriage and private hire industry, and professional advice was taken from the 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' document. This is produced by the Institute of Licensing (IOL) in partnership with National Association of Licensing & Enforcement Officers (NALEO), LGA and the Lawyers in Local Government (LLG) and was taken into consideration when drafting the new proposed Fit and Proper Person policy.

The Department for Transport (DfT) announced a consultation on 12 February 2019 on the guidelines for local authorities issuing taxi licences. This was aimed at protecting the public and introducing more stringent checks as part of the taxi licensing process. The consultation closed on 22 April 2019 and Wiltshire Council awaits the outcome of any proposals to change current policy and guidance.

Wiltshire Council currently has two policies in place regarding the relevance of convictions; one for ***new applicants*** and one for ***existing hackney carriage and private hire drivers and private hire operator's licences***. These were last updated in November 2010.

Proposal

It is proposed that the Licensing Committee, considers and approves adopting Option 2 below, detailed within this report under Section 13:

To adopt the revised policy set out in Appendix A. This option will replace the two existing policies regarding the relevance of convictions for new applicants, existing hackney carriage and private hire drivers licence holders and will form the basis of the authority's new Fit and Proper Person check.

If approved this policy change will apply to all new applications and renewals that are received from 01 October 2019 and thereafter.

Reasons for Proposal

- To ensure the safety of the travelling public in Wiltshire, by raising the standard required for hackney carriage and private hire licence holders
- To update the council's current policies into one new policy in line with current legislation and guidance, meeting Government requirements for more stringent checks on taxi operators and drivers
- To safeguard communities, vulnerable adults and children
- To safeguard against the risk of child sexual exploitation

Parvis Khansari
Director, Highways, Transport & Waste

Review of the Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences

1.0 Purpose of Report

- 1.1 To provide Wiltshire Council's Licensing Committee with the relevant information to make an informed decision on the proposed revision to Wiltshire Council's Fit and Proper Person Policy for hackney carriage and private hire licences.

2.0 Background

- 2.1 Wiltshire Council has a statutory responsibility under the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976 and the Transport Act 1985 to licence the hackney carriage and private hire service. Under this legislation the council shall not grant a hackney carriage driver, private hire driver or private hire operator's licence unless it is satisfied that the applicant is a 'Fit and Proper Person'.
- 2.2 Current legislation and Wiltshire Council policy does not require the proprietor of a hackney carriage or private hire vehicle licence to be assessed against such a policy. It should be noted that the Department for Transport announced a consultation on 12 February 2019 to look at introducing more robust checks on taxi proprietor's and license holders with a view to protecting the public.
- 2.3 This revised policy will bring the council's existing policy in line with current legislation and professional advice, including the application process for hackney carriage and private hire driver, hackney carriage/private hire vehicles and private hire operator's licences. The proposed revised Fit & Proper Person policy is attached as **Appendix A**.
- 2.4 Wiltshire Council currently issues licenses for:
- 875 hackney carriage and private hire drivers (dual licences)
 - 173 private hire only drivers
 - 674 hackney carriage vehicles
 - 251 private hire vehicles
 - 110 private hire operators.
- 2.5 On average Wiltshire Council issues 100 new hackney carriage driver and private hire driver licences, 160 new hackney carriage vehicles, 90 new private hire vehicles and 29 private hire operator licences per annum, in addition to the renewal of existing licenses both yearly or 3 yearly.
- 2.6 As a licensing authority, the council is empowered to set standards which are in excess of the minimum laid out in law. In the case of licensees who

are vehicle proprietors only, the current policies allow potentially unsuitable applicants to obtain a licence from Wiltshire Council. The revised policy would mitigate the risk by setting a standard to which all licensees will be held. The recommended policy aligns with the draft guidance issued by the Department for Transport in its consultation document see **Appendix B**.

2.7 The new policy, should it be adopted, will apply to the following licences:

- Hackney carriage and private hire driver (dual licence)
- Hackney carriage vehicle proprietor
- Private hire driver
- Private hire vehicle proprietor
- Private hire operator.

Hackney carriages vehicles are often called taxis or cabs and are licenced to pick people up from the roadside, i.e. those hailing a cab or waiting at a rank. Private hire vehicles are only permitted to pick up people who have made pre-arranged bookings and are not permitted to pick people up from the side of the road or to park on a taxi rank. Private hire vehicles must be booked through a private hire operator.

2.8 Wiltshire Council approved a scheme of delegated powers at its full council meeting held on 1 December 2009, the latest version of which came into effect on 20 December 2013. The scheme of delegation provides that powers to grant licences for hackney carriage and private hire licences are delegated to Compliance Officers.

2.9 The current Fit and Proper Person Policy was last considered at the Licensing Committee meeting held on 30 November 2010. Members then approved the policies on the relevance of convictions for hackney carriage drivers, private hire drivers and private hire operators for both new applicants and existing licensees.

2.10 A comprehensive review of the guidelines for determining the suitability of applicants of hackney carriage and private hire licences has been undertaken utilising guidance from:

- The Institute of Licensing (IOL) - These guidelines are attached at **Appendix C**.
- The Department of Transport (DfT) - Ministers Taxi Working Party Report on Taxi and Private Hire Vehicle Licensing (attached as **Appendix D**).
- The Rotherham Steering Group - This was set up in response to sexual exploitation issues in the area. These recommendations are attached at **Appendix E**.

3.0 Relevance to the Council's Business Plan

3.1 The process of controlling and licensing hackney carriage and private hire licensees assists the council in achieving a number of the outcomes in the Business Plan 2017-2027. Adoption of the updated policy would assist these outcomes by:

- **Growing the economy** - increased confidence in hackney carriage and private hire licensees which may drive up the number of users in Wiltshire ensuring that the public utilise this transport means and access good services
- **Building strong communities** - That all members of the public feel safe and the most vulnerable can access services with confidence.
- **Protecting those who are most vulnerable** - ensuring that the council has robust checks in place to manage licensed individuals and all hackney carriage and private hire drivers receive online training in safeguarding children and vulnerable adults which will ensure that vulnerable persons are protected when using hackney carriage and private hire services
- **Demonstrating an innovative and effective council** – the council has undertaken work to introduce a more robust fit and proper person policy ahead of the DfT’s announcement on its consultation on increased checks. Taking such advice from the Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades document which is produced by the LGA in partnership with NALEO, LGA and the LLG. Making decisions that are robust, open, inclusive, flexible and responsive maintains the safeguarding of communities, vulnerable adults, children and safeguarding against child sexual exploitation

4.0 Main Considerations for the Council

- 4.1 Licensing authorities should have a policy in place to determine the suitability of applicants and licensees for hackney carriage driver, private hire driver or private hire operator’s licences and a clear application process for new hackney carriage driver and private hire driver, vehicle proprietors and private hire operator licences.
- 4.2 Wiltshire Council’s current policies do not cover applicants for hackney carriage or private hire vehicle licences, known as vehicle proprietors. In some cases, these applicants do not hold a hackney carriage or a private hire driver’s licence and as such do not currently go through the ‘fit and proper person’ test. Vehicle proprietors who do not hold a hackney carriage or private hire driver’s licence are not permitted to drive the vehicles, however, they are responsible for the maintenance and safety of the vehicles. It is recommended that these applicants and licensees be assessed in accordance with the revised policy to achieve consistency across hackney carriage and private hire driver, vehicle and proprietor licensing and to safeguard the public.
- 4.3 Where compliance officers have delegated powers to grant licences they will utilise the new policy when making a decision on whether to grant a licence.
- 4.4 The present policy guidelines are outdated and refer only to more serious offences. In places, they are also vague in their description, leaving the document open to interpretation. The proposed new policy gives clear guidelines that will reassure the public and give licence holders and applicants clear boundaries.

- 4.5 The main changes in the new policy are the introduction of new standards on offences involving **exploitation, possession of a weapon, discrimination**, hackney carriage and private hire offences. It should be noted that for offences involving; **drugs, drink driving, dishonesty, criminal damage, violence and traffic violations**, the periods of time for which a new applicant **or** existing driver must wait before applying for a new licence have been **increased**. Under the new policy anyone convicted of a sexual offence **will not** be considered for a licence.
- 4.6 Table 1 below provides a comparison between existing policy elements and the proposed changes, showing increased times before a new licence can be reapplied for, in line with the DfT recommendations:

Key Differences between Proposed and Current Fit and Proper Person (F & PP) Policies				
Offence	Current New Driver F&PP Policy 2010	Current Existing Driver F&PP Policy 2010	Proposed New F&PP Policy August 2019*	Proposed by DfT Consultation
Crime resulting in death	Officers discretion	Officers discretion	Refusal	Refusal
Exploitation	N/A	N/A	Refusal	Refusal
Offences involving violence	3/7 years	3/7 years	10 Years	10 years
Possession of a weapon	N/A	N/A	7 Years	7 years
Sex and indecency offences	5/7 years	5 years	Refusal	Refusal
Dishonesty	3 years	3 years	7 Years	7 Years
Drugs with intent to supply	3/5 years	3/5 years	10 Years	10 Years
Discrimination	N/A	N/A	7 Years	7 Years
Motoring offence (minor) single	6 Months	N/A	Single offence no minimum	Single offence no minimum
Motoring offence (minor) multiple	12 months	N/A	Multiple offences officer's discretion	Multiple offences officer's discretion
Drink driving/ drug driving	12 months/3 years	12 months/3 years	7 Years	7 years
Mobile phone use while driving	12 months	12 months	5 Years	5 years

*See para 4.11 below

Table 1

- 4.7 Wiltshire Council takes safeguarding responsibilities in the protection of vulnerable people seriously. It has long been recognised in case law that the hackney carriage and private hire licensees are in a unique position of trust with vulnerable members of the public; as such the potential for unscrupulous activity must be mitigated with robust and clear policies.

- 4.8 The council currently has operational application procedures in place for hackney carriage and private hire drivers, vehicle proprietors and private hire operator's licences however these have not been formally adopted by the Licensing Committee. It is recommended that these processes are now formally adopted by the Licensing Committee on behalf of the council and they have been included in the proposed Fit and Proper Person Policy for hackney carriage and private hire licences.
- 4.9 There may be existing licensees who will not meet the requirements of the proposed policy. The intention is that their applications will be reviewed when licences are being considered for renewal. The expectation is that all applicants, whether for a new licence or on renewal, will meet the new policy requirements.
- 4.10 Whilst conducting the review, legal advice was sought and whilst it is not a requirement to consult it was agreed that some consultation should take place. Hackney carriage and private hire trade representatives were sent the proposed fit and proper person policy document and consulted at the hackney carriage and private hire trade representative meeting held on 9 July 2018 and were asked for comments by 31 July 2018. During the consultation period one response was received which stated that it seemed comprehensive and it is better if there is a common policy across all taxi authorities. The consultee response is attached at **Appendix F**.

5.0 Safeguarding Implications

- 5.1 When assessing applications for all hackney carriage and private hire licences, a failure to have robust policy guidelines relating to the application of the 'Fit and Proper Person' test and other considerations of character leaves children and vulnerable people at risk.
- 5.2 The new policy places more responsibility on licensed drivers and operators to report any concerns or suspicions in relation to any safeguarding and exploitation issues. The new policy provides the council with greater powers to revoke licences should a licensed individual not report such concerns. The new policy also provides the council with greater power to refuse new applicants a licence based on previous convictions, cautions or other information available, thus ensuring the public are not exposed to any avoidable risk. The policy also allows the council to manage existing drivers and operators in a more robust manner should they receive convictions whilst licensed. It provides the council with greater powers to establish if an individual is a fit and proper person and if required to revoke their licence for inappropriate behaviour.

6.0 Public Health implications

- 6.1 A robust policy helps guard against the risk that residents, especially children and vulnerable people, are not safe when travelling by hackney carriage or private hire vehicles.

7.0 Corporate Procurement implications

- 7.1 There are no direct procurement implications arising from this report.

8.0 Environmental and Climate Change Considerations

8.1 There are no environmental or climate change considerations arising from this report.

9.0 Equalities Impact of the Proposal

9.1 The impact of these proposals is assessed as 'medium' against the council's statutory responsibilities. The adoption of a revised policy relating to determining the suitability of applicants and licensees will ensure a fair and consistent approach across Wiltshire and other local authority areas.

10.0 Risk Assessment

Risks that may arise if the proposed decision and related work is not taken:

10.1 Current policies have areas that are unnecessarily vague and subjective, leaving them open to interpretation and ambiguity. As a result, there is the potential for a lack of consistency in the licensing of new and existing drivers.

10.2 New driver applicants are currently held to a higher standard than those that already hold a Wiltshire Council licence. This lack of consistency is a risk to the council e.g. for a single minor motoring offence a new driver would have to wait 6 months before being able to re-apply but an existing driver would not – see the table para 4.6 above. The implementation of the new policy will remove this risk.

10.3 Members of the public would not receive the best possible protection from potential harm; there would be a greater risk of unsuitable people obtaining a licence issued by Wiltshire Council. The current policies are not in line with DfT proposed guidance and the proposed policy resolves a number of the issues highlighted in the DfT's consultation document.

10.4 If the policy is not reviewed regularly, the council may be open to legal challenge from interested parties on the basis that the current policy does not reflect current circumstances or requirements.

10.5 The overriding principle of licensing is the protection of members of the public. Failure to adopt this policy will increase the likelihood that an unsuitable applicant will be able to obtain a licence from Wiltshire Council.

10.6 Hackney carriage and private hire drivers hold a position of trust within society and the new policy reduces the chances of an unsuitable person obtaining a licence, abusing their position, exploiting vulnerable passengers or causing physical, emotional or financial harm to service users.

Risks that may arise if the proposed decision is taken and actions to mitigate these risks

10.7 There may be existing licensees that would not be considered suitable against the proposed policy in the event that this was the case these

current licence holders will be considered on a case by case basis to ensure a balance between fairness to the individual and the protection of the public.

- 10.8 There may be a legal challenge if existing licenses are not renewed due to the proposed policy, where they have been previously cleared under the 2010 policies. This may result in damage to the council's reputation but any risk to reputation would be outweighed by the clear and robust revised policy to ensure that all drivers, proprietors and operators operate within the new guidance for safeguarding formally put in place to protect the public.
- 10.9 There is a risk that not all existing licence holders would be aware of the adoption of the new policy. If approved the new policy will be published on the council's web site and communicated to the hackney carriage and private hire licensees, through the Hackney Carriage and Private Hire Newsletter and individual correspondence with all licensees.

11.0 Financial Implications

- 11.1 The adoption of a clear and more robust policy should reduce the likelihood of legal challenge to the council's licensing committee, thereby avoiding the cost of such challenges.
- 11.2 There are no additional costs associated with the implementation of this revised policy. The licensing process will be conducted by the existing resource within the Taxi Licensing Compliance Team.

12.0 Legal Implications

- 12.1 Approval of the revised policy will reduce the risk of legal challenge to the licensing process. The adoption of the revised guidelines is best practice against which any application for a licence can be considered. There are clear benefits for both the council and applicants in having guidelines that are consistent with those operated by other local authorities.

13.0 Options for consideration and approval

- 13.1 Two options are considered and detailed below.

Option 1

To keep the existing policies which leave room for interpretation. Wiltshire Council currently has two separate guidance policies relating to whether an applicant is a fit and proper person and currently covers hackney carriage driver, private hire driver or private hire operator's licences only.

Or

Option 2

To accept the proposals laid out in this report, which provide a revised policy in line with current industry guidelines and which resolves the issues highlighted in the DfT consultation announced on 12 February 2019. The revised policy will be creating a standardised, more robust

approach to hackney carriage and private hire licensing across the county in line with national recommendations for local authorities.

14.0 Conclusions

- 14.1 It is recommended that the council reviews policies on a regular basis to ensure that it keeps up to date with current guidance and legislation. The council's existing policies for determining whether someone is a fit and proper person in this context have not been significantly updated since 2010. Following the Rotherham case, the role which licensing authorities can have in safeguarding children, vulnerable adults and the general public is nationally recognised.
- 14.2 With the introduction of nationally revised guidelines, there is a clear requirement for the review of Wiltshire Council's existing policies relating to the application of the 'Fit and Proper Person' test and other considerations of character when determining the suitability of applicants and licensees for hackney carriage and private hire. Hackney carriage and private hire licence holders are in a position of trust with vulnerable members of the public; as such there is the potential for illegal activity.
- 14.4 To ensure the safeguarding of children, vulnerable adults and the general public the council needs to have a clear and robust policy. It is therefore proposed that the council adopts the revised 'Fit and Proper Person Policy' for hackney carriage and private hire licences.

Parvis Khansari
Director, Highways & Waste

Report Author: Jo Hulbert, Fleet Compliance Officer
jo.hulbert@wiltshire.gov.uk
Tel: 01225 770277

Julie Anderson-Hill Head of Culture and Operational Change
julie-anderson.hill@wiltshire.gov.uk

21 August 2019

The following unpublished documents have been relied on in the preparation of this report:

Appendices

Appendix A: Wiltshire Councils proposed Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences – 2019.

Appendix B: Department for Transport consultation document on protecting taxi users - published 12 February 2019.

- Appendix C: Institute of Licensing - Proposed revised guidelines relating to determining the suitability of applicants and licensees in the hackney carriage and private hire trades.
- Appendix D: Ministers Taxi Working Party Report on Taxi and Private Hire Vehicle Licensing Steps towards a safer and more robust system.
- Appendix E: Rotherham Steering Group – Licensing Suggestions for Taxi Licensing.
- Appendix F: Response received from the hackney carriage and private hire trade representative consultation on the revised policy.

This page is intentionally left blank

Proposed Wiltshire Council Fit and Proper Person Policy for Hackney Carriage and Private Hire Licences – August 2019

1.0 Introduction

1.1 Many members of our society use, and even rely on hackney carriage and private hire vehicles to provide transportation services. They are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated. A licensed hackney carriage and/or private hire driver has significant power over a passenger who places themselves, and their personal safety, in their hands. 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.

1.2 As a Unitary Authority Wiltshire Council, is responsible for hackney carriage and private hire licensing within the Council's area. Therefore, it takes public safety very seriously as the paramount consideration as part of the licensing process.

1.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in Paragraph 8 of the Department of Transport 'Taxi and Private Hire Licensing – Best Practice Guide':

"The aim of local authority licensing of the Taxi and Private Hire Vehicles (PHV) trades is to protect the public."

1.4 Within the hackney carriage and private hire licensing regime, there are 5 types of licence:

- **Hackney carriage driver and private hire driver (Dual Licence)**

A dual licensed driver:

- Can drive both hackney carriage and private hire vehicles

- **Private hire driver**

A private hire driver:

- Can only drive private hire vehicles

- **Hackney carriage vehicle**

A hackney carriage vehicle (often referred to as a Taxi):

- Can be flagged down by passengers in the street and can use designated taxi ranks
- Must be fitted with a roof sign and a meter, the meter must be calibrated to the maximum fare, which is set by the council

- **Private hire vehicle**

A private hire vehicle (sometimes referred to as a minicab):

- Must be booked in advance of the journey
- Must not have a roof sign and does not have to have a meter fitted
- The council has no control of the fare
- Bookings must be taken through a private hire operator

- **Private hire operator**

A private hire operator:

- Accepts or invites bookings for a private hire vehicle.

1.5 In relation to all licences stated above, the authority has discretion over whether to grant any such licence.

1.6 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 Section 51 and 59 in respect of drivers and Section 55 in respect of operators).

1.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion in this regard.

1.8 In each case, the authority has powers to grant a licence, renew it on application and throughout the duration of the licence, suspend or revoke it.

2.0 Policy Aim

2.1 The aim of this policy is to provide guidance on the criteria taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver, hackney carriage or private hire vehicle or a private hire operator licence.

2.2 The overriding aim of the licensing authority is to protect the safety of the public.

The licensing authority is concerned to ensure:

- That the person does not pose a threat to the public
- That the public are safeguarded from a dishonest person
- The safeguarding of children, young persons and vulnerable adults

2.3 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively to:

- Applicants for hackney carriage and/or private hire driver, hackney carriage or private hire vehicle or a private hire operator licence

- Existing licence holders having their licence reviewed
- Licensing/Compliance Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions

2.4 Where licensing/compliance officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee/panel (or other relevant decision-making body) who will also utilise these guidelines. Whilst officers and the committee/panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.

3.0 Application process for Hackney Carriage and Private Hire licences

Hackney carriage and/or private hire drivers

3.1 A driver has direct responsibility for the safety of their passengers, 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.

3.2 Applicants for a hackney carriage and/or private hire drivers' licence will need to meet the following criteria in order to obtain a licence:

- Will be required to reside at an address in the United Kingdom for at least six months (if applicants have not lived in the United Kingdom for the six months prior to application they must have a residential address in the United Kingdom to enable a DBS to be carried out)
- Applicants will also be required to complete five separate hours of driving tuition in the United Kingdom to enable familiarisation of the Highway Code and United Kingdom driving legislation. This must be completed by a driving instructor currently registered by the Driver Vehicle Standards Agency (DVSA) and a certificate of completion will be required. This certificate will need to show the name and current address of the applicant and show that their photographic driving licence has been checked and issued by the issued by Driver and Vehicle Licensing Agency (DVLA)
- Must have held a United Kingdom or equivalent driving licence for at least three years
- Driving licence must be a United Kingdom licence and in the applicant's current address
- Must not have incurred any penalty points on their driving licence within the last six months

3.3 Applicants are required to provide the following documents, all of which must be produced and dated within the last 6 months (further information is available in the driver step by step guide):

- Disclosure and Barring Service (DBS) enhanced criminal records check. If an applicant, from the age of ten years, has spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the Country/Countries covering the relevant period will be required.

Following receipt of the Disclosure and Barring Service (DBS) enhanced criminal records check certificate, applicants are advised to subscribe to the Disclosure and Barring Service (DBS) update service throughout the licence duration. (Details can be found at: www.gov.uk/dbs-update-service).

- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all applicants. To carry these out we will need to obtain, check & copy one of the following documents:
 - A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- DVLA live driving licence check, this will be checked at regular intervals throughout the duration of the licence
- Completed New Driver application form, signed by prospective employer
- Medical form - this must be on completed by a GP. You will be required to complete a medical fitness declaration and meet the DVLA's Group 2 Medical Standards of Fitness. Once a licence has been obtained, licensees will need to undergo further medical checks and meet the DVLA's Group 2 Medical Standards of Fitness at the age of 45, then every 5 years until the age of 65. After 65 you will need to have a medical every year.

- Driver Assessment form - if concerns are raised, this may be reassessed at any time throughout the licence duration
- Online Safeguarding training - refresher training will be required every three years throughout the duration of the licence
- Hackney Carriage and Private Hire Knowledge Test - if concerns are raised, this may be reassessed at any time throughout the duration of the licence
- Hackney Carriage Geographical Knowledge Test (If applicable) - if concerns are raised, this may be reassessed at any time throughout the duration of the licence

Hackney carriage/private hire vehicle proprietors

3.4 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.

- They must ensure that the vehicle is in a roadworthy condition at all times.
- They must ensure that the vehicle is maintained to the standard advised in the Wiltshire Council's Guidelines for Hackney Carriage and Private Hire Vehicles.
- They must ensure that the vehicle is not used for illegal or illicit purposes.

3.5 All applicants for a hackney carriage or private hire vehicle' licence will need to provide the following documents in order to obtain a licence:

- Completed application form
- Current insurance certificate, showing registration details of vehicle and covering it for relevant purpose
- V5C – Registration document
- MOT (this must be dated less than 28 days prior to the licensing appointment date unless it is a brand new vehicle with delivery mileage of under 500 miles)

If the applicant is not the holder of a current hackney carriage and/or a private hire drivers' licence issued by Wiltshire Council they will be required to complete the following:

- Basic DBS check (details can be obtained from www.disclosures.gov.uk). If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all applicants. To carry these out we will need to obtain, check & copy one of the following documents:
 - A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- Hackney Carriage and Private Hire Knowledge test. If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

4.0 Private Hire Operators

4.1 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.

4.3 Applicants for a private hire operators' licence will be required to provide the following documents in order to obtain a licence:

- Completed application form

If the applicant is not the holder of a current hackney carriage and/or a private hire driver's licence issued by Wiltshire Council they will be required to complete the following:

- Basic DBS check (details can be obtained from www.disclosures.gov.uk). If concerns are raised, this may be reassessed at any time throughout the duration of the licence.
- Right to Licence Check - as part of The Immigration Act 2016, The Council is required to carry out 'Right to Licence' checks on all

applicants. To carry these out we will need to obtain, check & copy one of the following documents:

- A passport showing the holder is a British Citizen, a national from an EEA country or Switzerland
 - Full birth or adoption certificate, issued in the UK with the names of at least one parent or adoptive parent TOGETHER with an official document stating the permanent national insurance number and their name issued by a government agency or previous employer
 - A permanent residence card issued to a national from an EEA country or Switzerland
 - A biometric residence card, issued by the Home Office stating that the holder is allowed to stay indefinitely in the UK
 - A current passport endorsed to show that the holder is exempt from immigration or is allowed to stay indefinitely in the UK.
- Hackney Carriage and Private Hire Knowledge test. If concerns are raised, this may be reassessed at any time throughout the duration of the licence.

5.0 Guidance on determination of licence applications

- 5.1 As public trust and confidence in the overall safety and integrity of the hackney carriage and private hire system is vital, the same standards will be applied to drivers, vehicles and private hire operators, which are outlined below.
- 5.2 '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) is 'safe and suitable' to hold the licence.
- 5.3 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 hackney carriage 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.
- 5.4 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. Fixed penalties and community resolutions will also be considered in the same way as a conviction.
- 5.5 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 or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints 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.

- 5.6 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will 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.
- 5.7 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 accordance of this policy.
- 5.8 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle; or in connection with an operator of a private hire vehicle will be viewed as aggravating features.
In addition, the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 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 licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) 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.

- 5.13 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.
- 5.14 As the direct impact on the public varies depending upon the type of licence applied for or held; it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 5.15 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. 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.
- 5.16 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use this policy as an indication of the approach that should be taken.
- 5.17 This policy does 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 this policy, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.
- 5.18 **Crimes resulting in death**
Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
- 5.19 **Exploitation**
Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.
- 5.20 **Offences involving violence**
Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 5.21 **Possession of a weapon**
Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.22 **Sex and indecency offences**

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

5.23 **Dishonesty**

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

5.24 **Drugs**

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed. Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

5.25 **Discrimination**

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

5.26 **Motoring convictions**

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

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

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

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least

5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

5.28 Other motoring offences

A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed. (A list of offences and categories can be found at: <https://www.gov.uk/penalty-points-endorsements/endorsement-codes-and-penalty-points>).

5.29 Hackney carriage and private hire offences

Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

5.30 Vehicle use offences

Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

6.0 Appeals

6.1 Any applicant refused a driver or operator's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, Section 77 (1)].

6.0 Powers

6.1 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the licensing authority to suspend, revoke or refuse to renew a drivers licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

- 6.2 Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allows the licensing authority to suspend, revoke or refuse to renew an operators' licence: if the applicant/licence holder has been convicted of any offence under, or none compliance with Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any conduct on the part of the operator which appears to render him unfit to hold an operators' licence; or 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; or any other reasonable cause.
- 6.3 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore, the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 6.4 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence, in advance, to prove that any action required to be undertaken as part of a court agreed reduction in the period of disqualification has been successfully completed.



Department
for Transport

Taxi and Private Hire Vehicle Licensing: Protecting Users

Consultation on Statutory Guidance for Licensing Authorities

Moving Britain Ahead

DfT-2019-01

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: <https://forms.dft.gov.uk>



© Crown copyright 2019

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Contents

Foreword	4
What we are consulting on	6
Consultation proposals	8
Consultation questions	9
Confidentiality and data protection	10
How to respond	11
Freedom of Information	11
What will happen next	13
Consultation principles	14

Foreword

In recent years the taxi and private hire vehicle (PHV) industry has been subject of intense scrutiny as a result of failings in taxi and PHV licensing. Some authorities failed to ensure that individuals were 'fit and proper' to be issued a taxi or PHV licence and failed to take action when concerns were raised about the involvement of licensees in the abuse and exploitation of some of the most vulnerable in our society.

Above all else the taxi and PHV services provided to the public must be safe. Government will play its part, but the importance of local government in achieving this cannot be overstated. Government enables the legislative framework but it is the licensing authorities which set the standards and requirements and crucially make the decisions that can bring about the services the public deserve.

A key element of safety is ensuring that taxi and PHV drivers are properly assessed against robust standards and that this is the case regardless of where they are licensed. The granting of a licence must however not be seen as the end of the process but the beginning; licensees must continue to adhere to the high standards or risk having their licence revoked.

The excellent work undertaken in Rotherham following the identification of its past failings evidences what can be achieved with the powers licensing authorities currently have. We have recognised that not all licensing authorities are as proactive as others in raising standards. To address this, the Policing and Crime Act 2017 enables the issuing of statutory guidance to protect children and vulnerable adults, and by extension all passengers, when using these services.

Some of the recommendations proposed in the guidance would impose additional burdens on the trade. While I would sooner that such measures were not needed, the lessons from the Casey and Jay reports and the impact on the lives of those affected by these failures must not – and will not - be forgotten. To do otherwise would compound the harm and injustice done.

I hope that all authorities will adopt the Department's recommendations and bring about high common standards, and increased sharing of information and enforcement powers. There has long been a call for national standards to achieve greater consistency in licensing and in particular with respect to safety. Government, with the collaboration of all licensing authorities, can effectively bring this about without the delay of Parliament considering new legislation.

The Department has already undertaken to monitor the adoption of the recommendations made in the final version of the statutory guidance. While the measures in the final statutory guidance issued will be recommendations, these are the result of extensive discussions with a range of stakeholders and careful consideration. I will be asking licensing authorities that do not adopt these why they have not done so.



Nusrat Ghani MP

Parliamentary Under Secretary of State for Transport

What we are consulting on

Introduction

- 1 We are seeking views on proposed recommendations contained in draft statutory guidance to taxi and private hire vehicle (PHV) licensing authorities on how their licensing powers can be exercised in order to safeguard children and vulnerable adults. The power to issue this guidance comes from Section 177 of the Policing and Crime Act 2017.
- 2 This consultation will run for 10 weeks, from 12 February 2019 until 23:45 on 22 April 2019.

Who this consultation is aimed at

- 3 Section 177 of the Policing and Crime Act requires the Secretary of State to consult the following:
 - a. the National Police Chiefs' Council,
 - b. persons who appear to the Secretary of State to represent the interests of public authorities who are required to have regard to the guidance,
 - c. persons who appear to the Secretary of State to represent the interests of those whose livelihood is affected by the exercise of the licensing functions to which the guidance relates, and
 - d. such other persons as the Secretary of State considers appropriate.
- 4 This consultation has therefore been drawn to the specific attention of the National Police Chiefs' Council, the Local Government Association, the National Association of Licensing Enforcement Officers, the Institute of Licensing, and a range of trade representative bodies and publications of which the Department is aware across the country.
- 5 This is a public consultation and we are keen to hear from any other groups or individuals with an interest.

Our approach

- 6 The recommendations in the draft statutory guidance are the result of extensive engagement and detailed discussion with a range of bodies including representatives of licensing authorities, regulators, operators and drivers, and detailed consideration by the Department for Transport.
- 7 While there is a widespread consensus amongst stakeholders that common core standards are required to regulate better the taxi and PHV sector, government does

not currently have the legislative power to introduce national standards. The Department however expects the recommendations made in the final version of this statutory guidance to be implemented by licensing authorities unless there is compelling local reason not to. This consultation does not seek to discuss the merits of statutory guidance as opposed to legislation to mandate standards. Should Parliament pass legislation in the future to enable national taxi and PHV standards, the recommendations contained in both the statutory and best practice guidance will naturally be the starting point for considering what these might be.

- 8 All local authorities and district councils that provide childrens' and other types of services have a statutory duty to make arrangements to ensure that their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children. This means that licensing authorities should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear whistleblowing procedures, safe recruitment practices and clear policies for dealing with allegations against people who work with children, as set out in the Working Together to Safeguard Children¹ statutory guidance.
- 9 **Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that this guidance might be drawn upon in any legal challenge to an authority's practice; any failure to adhere to the guidance without sufficient justification could be detrimental to the authority's defence.** This guidance does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.
- 10 The draft statutory guidance reflects the significant changes in the industry and lessons learned from experiences in local areas since the Department's best practice guidance was last updated in 2010. This includes extensive advice on checking the suitability of individuals and operators to be licensed; safeguarding children and vulnerable adults, the Immigration Act 2016, the Disclosure and Barring Service checks and Common Law Police Disclosure (which replaced the Notifiable Occupations Scheme).
- 11 This guidance replaces relevant sections of the best practice guidance issued by the Department in 2010. A consultation on revised best practice guidance, which focuses on recommendations to licensing authorities to assist them in setting appropriate standards (other than those relating to passenger safety) to enable the provision of services the public demand, will be launched at a later date.

¹ <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Consultation proposals

- 12 The draft statutory guidance accompanies this consultation document.

Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term '**taxi**' is used throughout the draft statutory guidance and consultation document and refers to all such vehicles. Taxis are able to be hired by hailing on the street or at a rank.

Private hire vehicles (PHVs) include a range of vehicles including minicabs, executive cars, chauffeur services, limousines and some school and day centre transport services. All PHV journeys must be pre-booked via a licensed PHV operator. The term **PHV** is used throughout the draft statutory guidance and this consultation document to refer to all such vehicles.

Consultation questions

- 13 The Department has carefully considered the recommendations proposed in the draft statutory guidance but these are of course subject to change following this consultation. While it is useful to have indications of the quantity of respondents that agree or disagree with these proposals, the Department wants to ensure that the final recommendations are informed by all available evidence and suggestions where these can be improved. We are specifically interested in ideas and proposals that:
 - are based on evidence
 - support the Government's aim to protect children and vulnerable adults from harm when using taxis and PHVs
- 14 There are 30 questions relating to the guidance, most of these ask for quantifiable (agree, disagree or no opinion) and qualitative (comments) responses.
- 15 Ahead of the consultation questions we would like to collect some information about you and your use of and/or role in the taxi and PHV trade. This information will be used to help to give context to the responses we receive from individuals and organisations. Only questions marked with an * are mandatory.
- 16 The consultation questions and a response form are available at:
<https://www.smartsurvey.co.uk/s/taxis-licence/>

Confidentiality and data protection

- 17 The Department for Transport (DfT) is carrying out this consultation to gather views and evidence on measures for inclusion within the statutory guidance issued to taxi and PHV licensing authorities. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.
- 18 As part of this consultation we are asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. **You do not have to give us this personal information.** If you do provide it, we will use it only for the purpose of asking follow-up questions.
- 19 We may contract a third party to analyse the responses we receive to the consultation. If you provide your contact details, we may share this information with a contractor in case they need to contact you regarding your consultation response.
- 20 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 21 DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.
- 22 Your information will be kept securely and destroyed within 12 months after the consultation has been completed. Any information provided through the online questionnaire will be moved from their system to our internal systems within 2 months of the consultation end date.

How to respond

The consultation period began on 11 February 2019 and will run until 23:45 on 22 April 2019. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact Taxis@DfT.GOV.UK if you need alternative formats (Braille, audio CD, etc.).

Please respond to the consultation at:

<https://www.smartsurvey.co.uk/s/taxis-licence/>

Alternatively, please send consultation responses to:

SG-Consultation2019@DfT.GOV.UK

Department for Transport

Buses and Taxis Division (Statutory Guidance Consultation 2019)

Great Minster House

33 Horseferry Road

London

SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure

of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing. Paper copies will be available on request.

If you have questions about this consultation please contact:

Paul Elliott

Taxis@DfT.GOV.UK

Buses and Taxis Division

Department for Transport

Great Minster House

33 Horseferry Road

London

SW1P 4DR

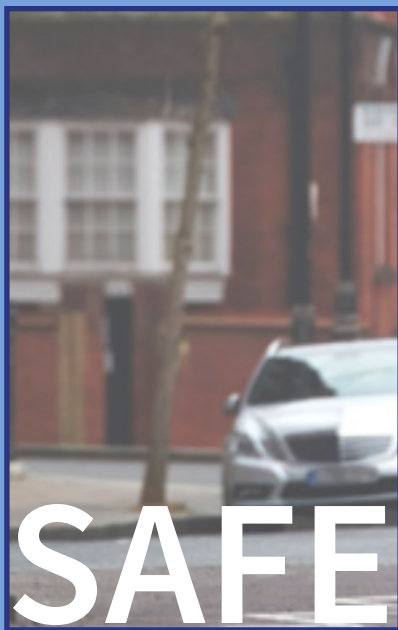
Consultation principles

The consultation is being conducted in line with the Government's key consultation principles, further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@DfT.GOV.UK

Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



Contents

Foreword	2
Chapter 1: Introduction	3
Chapter 2: Offenders and Offending - An Overview	5
Risk of re-offending:	7
Chapter 3: 'Taxi' Licensing Overview	9
Taxi Drivers	9
Private Hire Operators	13
Vehicle Proprietors	15
Chapter 4: Guidance on Determination	17
Pre-application requirements	17
Vehicles:	17
Drivers:	18
Operators:	18
Drivers	20
Crimes resulting in death	21
Exploitation	21
Offences involving violence	21
Possession of a weapon	21
Sex and indecency offences	21
Dishonesty	22
Drugs	22
Discrimination	22
Motoring convictions	22
Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving	22
Other motoring offences	23
Hackney carriage and private hire offences	23
Vehicle use offences	23
Private Hire Operators	23
Vehicle proprietors	24
Acknowledgements	25

Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 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 qualifications¹. It is the final 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 judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own 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 need 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.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

¹ Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

authority. 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 normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*².

- 1.8 In Chapter 2 this Guidance explores the current 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 paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance 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 the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance 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 minimum standards.
- 1.11 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 Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ 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.
- 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 future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 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. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 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 harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. 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.

³ DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

⁴ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud⁵ 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 place⁶.
- 2.7 The National Offender Management 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 static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. 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, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's past experiences. This 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.

⁵ 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.

⁶ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁷ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁸ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁹ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

¹⁰ 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

¹¹ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates 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 by the National Offender Management Service 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”¹².
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. 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 relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

¹² National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹³ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹⁴ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁵ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁶ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁷ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

¹⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

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 recidivate than individuals who have offended in the recent past”¹⁹.

- 2.16 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 making a decision as to 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.

¹⁹ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: 'Taxi' Licensing Overview

- 3.1 Taxis 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 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 hackney carriage 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 licensing is detailed in the DfT *"Taxi and Private Hire Licensing – Best Practice Guide"* para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage 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, there are no national standards.
- 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, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

Taxi Drivers

- 3.10 The term "taxi driver" encompasses two different occupations: hackney carriage drivers and private hire drivers. "Taxi driver" is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 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.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 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*²³. 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.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴
- 3.17 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.

²⁰ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²¹ Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

²² “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199

²⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

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

3.19 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.”²⁵

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

3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:

- Enhanced DBS certificates and sign-up to the update service;
- Knowledge tests;
- Driving tests;
- Disability Awareness;
- Signed Declarations;
- Spoken English tests.

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

3.22 Both hackney carriage 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 declared²⁷) 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 maker²⁸.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁷ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ “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” DBS email 31st August 2017.

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 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 suitability³⁰.
- 3.26 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 safe and suitable person.
- 3.27 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.
- 3.28 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 his family is not a consideration to be taken into account³¹. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 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 Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 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)

³⁰ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³¹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 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. 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. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, 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.
- 3.33 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 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.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” 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 drivers. This is detrimental to all involved.

Private Hire Operators

- 3.35 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

authority³². A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person³³.

- 3.36 As with taxi drivers the role of the PHO 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. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 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.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and 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

³² See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

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.

- 3.42 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 organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). 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. 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.
- 3.44 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 children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 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. 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.
- 3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

³⁵ See s57(1)(c) of the 1976 Act.

³⁶ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”³⁷

³⁷ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

- 4.1 As is clear from the overview of Offenders and Offending 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 reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. 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.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage 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.
- 4.4 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

- 4.5 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;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 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).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “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 partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 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 hackney carriage 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.

³⁸ 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.

- 4.11 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 conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.
- 4.12 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 or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints 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.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will 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.
- 4.14 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.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage 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 hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 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.
- 4.17 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.
- 4.18 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

³⁹ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴⁰ 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.

conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 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 licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) 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.
- 4.20 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.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. 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.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 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.

Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 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.

- 4.27 As stated above, where an applicant has more than one conviction showing 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.
- 4.28 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

Crimes resulting in death

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

Exploitation

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

Offences involving violence

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

Possession of a weapon

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

Sex and indecency offences

- 4.33 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.
- 4.34 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

Dishonesty

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

Drugs

- 4.36 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

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

Motoring convictions

- 4.39 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

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

- 4.40 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.41 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Other motoring offences

- 4.42 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

- 4.44 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Vehicle use offences

- 4.45 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Private Hire Operators

- 4.46 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.
- 4.47 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.
- 4.48 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.

- 4.49 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, which are outlined above.

Vehicle proprietors

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 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.
- 4.54 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.

Acknowledgements

In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

The Institute is also grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'.

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

Institute of Licensing
Egerton House
2 Tower Road
Birkenhead
CH41 1FN
T: 0151 650 6984
E: info@instituteoflicensing.org

 Institute of Licensing www.instituteoflicensing.org

The Local Government Association (LGA) is the national voice of local government. www.local.gov.uk

Lawyers in Local Government (LLG). www.lawyersinlocalgovernment.org

National Association of Licensing and Enforcement Officers (NALEO). www.naleo.org.uk

Taxi and Private Hire Vehicle Licensing

Steps towards a safer and more robust system

Contents

Acknowledgement	4
Foreword	5
1. List of Recommendations	7
2. Group membership and task	13
3. Market function and regulation	15
Current regulation	15
A changing industry	15
The two tier system	21
A growing industry	23
Cross-border and out-of-area working	25
Pedicab regulation in London	29
Fixed Penalty Notice for minor compliance infringements	29
Ridesharing	30
4. Safety in taxis and private hire vehicles	31
Public protection	31
CCTV	32
Background checks and information sharing	34
Training and engagement	37
Improving decision making	38
Use of Passenger Carrying Vehicle (PCV) licensed drivers	38
Language skills	39
5. Accessibility	40
The importance of the taxi and PHV market	40
Training	40
Vehicle types and access	41
6. Working conditions	45
Characteristics of employment in the sector	45
Working practices and earnings	46
The role of PHV licensing authorities	46
Working/driving hours and safety	46

Acknowledgement

In preparing this study and throughout the work of the Task and Finish Group the expertise, endeavour and understanding of its members has been exceptional.

Whilst preparing and writing this report I have been supported throughout this process by the officials at the Department for Transport; without exaggeration I conclude that none of what has been achieved would have been possible without the support of these officials who personify all that is admired about the British Civil Service.

I would like to wholeheartedly thank all those who have shared with the Group their valuable knowledge and experience in the trade and its regulation, and their views on the way forward.



Professor Mohammed Abdel-Haq

Chairman, the Task and Finish Group on Taxi and Private Hire Vehicle Licensing

Foreword

This report is about public wellbeing. Its genesis and mission were framed by the vision of the then Minister of State at the Department of Transport, the Rt. Hon. John Hayes CBE MP. In commissioning me to lead this vital work, he made clear that in his view the current regulatory regime for the taxi and private hire vehicle (PHV) sector is no longer fit for purpose.

In scoping the work together we were determined, above all, to chart a future which ensured public safety for all, a working environment for those in the trade which guaranteed fair working conditions and whilst maintaining a competitive, dynamic market, preserve the character, integrity and aesthetics of this time-honoured trade.

It is clear that the status quo whereby taxi and PHV licensing is inconsistent, ineffective and incompatible with the protection of vulnerable people must not be allowed to continue. Alongside other incidents of criminality, the events in Rotherham, Rochdale, Oxford and elsewhere have brought the fundamental flaws in the licensing regime into the sharpest possible focus; these oblige uncompromising determination to make taxis and PHVs safe for all.

Our efforts should also be informed by the Prime Minister's determination that the economy must work for all, and that those who, despite their hard work and skill, are 'just about managing' to provide for their families, must not become victims of the 'sweated economy' by those who accept little or no regard to the notion of social responsibility.

I have drawn on the insight of those who know best, and worked with a first-class group of colleagues. It is their sharp minds, commitment, professionalism and cool heads that have enabled the critical thinking and discussions that underpin my recommendations. Members of the Group have strongly held, sometimes polar opposite opinions and, while this means that it has not always been possible to reach a consensus, I am of no doubt that all have the best interests of passengers and the trade foremost in their thoughts. I am grateful to them all.

I learned from the collective wisdom of the Group that there is no single solution to the challenges facing the taxi and PHV sector. So, each aspect of this study and the consequent recommendation is dependent on others. The report aims to produce a holistic ecosystem and solution to the problems it was devised to address and, as a result, to set out a comprehensive platform for the changes necessary to protect and promote the public interests in the common good.

I would like to make it clear that it is in the public interest to allow, indeed encourage, competitive markets. The arrival of new businesses and new modes of business are the healthy expressions of a market economy. So, provided that public safety and employee working conditions are assured and that appropriate emphasis is placed on congestion, air quality and similar concerns, market change can be welcome.

Licensing conditions should be demanding, arguably to a greater degree than at present, but should not, in effect, prohibit market entry for new businesses.

As my task is now complete, the onus falls to the Secretary of State for Transport Chris Grayling, MP and his Ministers, in particular Nusrat Ghani, and Parliamentarians to take the ideas of the report further and to begin to craft the legislation that it will, in some instances, require. In other instances, I trust that Parliament and the Department will lead the cultural change which is necessary to ensure that passengers, workers, operators, and neighbouring authorities are treated fairly. I look forward to the Government's prompt response to this report in order to maintain the momentum for improvement. Undue delay would risk public safety.

Professor Mohammed Abdel-Haq

Chairman, the Task and Finish Group on Taxi and Private Hire Vehicle Licensing.

1. List of Recommendations

Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

Recommendation 2

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (**see recommendation 6**). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

Recommendation 4

In the short-term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years.

Recommendation 5

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

Recommendation 6

Government should require companies that act as intermediaries between passengers and taxi drivers to meet the same licensing requirements and obligations as PHV operators, as this may provide additional safety for passengers (e.g. though greater traceability).

Recommendation 7

Central Government and licensing authorities should 'level the playing field' by mitigating additional costs faced by the trade where a wider social benefit is provided – for example, where a wheelchair accessible and/or zero emission capable vehicle is made available.

Recommendation 8

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

Recommendation 9

All licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

Recommendation 10

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV in their area that is in breach of national minimum standards (**recommendation 2**) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (**recommendation 11**).

Recommendation 11

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHV and taxi – see **recommendation 6**) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

Recommendation 12

Licensing authorities should ensure that their licensing, administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

Recommendation 13

Legislation should be introduced by the Government as a matter of urgency to enable Transport for London to regulate the operation of pedicabs in London.

Recommendation 14

The Department for Transport and Transport for London should work together to enable the issue of Fixed Penalty Notices for both minor taxi and PHV compliance failings. The Department for Transport should introduce legislation to provide all licensing authorities with the same powers.

Recommendation 15

All ridesharing services should explicitly gain the informed consent of passengers at the time of a booking and commencement of a journey.

Recommendation 16

The Department for Transport must as a matter of urgency press ahead with consultation on a draft of its Statutory Guidance to local licensing authorities. The guidance must be explicit in its expectations of what licensing authorities should be doing to safeguard vulnerable passengers. The effectiveness of the guidance must be monitored in advance of legislation on national minimum standards.

Recommendation 17

In the interests of passenger safety, particularly in the light of events in towns and cities like Rochdale, Oxford, Newcastle and Rotherham, all licensed vehicles must be fitted with CCTV (visual and audio) subject to strict data protection measures. Licensing authorities must use their existing power to mandate this ahead of inclusion in national minimum standards.

To support greater consistency in licensing, potentially reduce costs and assist greater out of area compliance, the Government must set out in guidance the standards and specifications of CCTV systems for use in taxis and PHVs. These must then be introduced on a mandatory basis as part of national minimum standards.

Recommendation 18

As Government and local authorities would benefit from a reduction in crime in licensed vehicles both should consider ways in which the costs to small businesses of installing CCTV can be mitigated.

Recommendation 19

National standards must set requirements to assist the public in distinguishing between taxis, PHVs and unlicensed vehicles. These should require drivers to have on display (e.g. a clearly visible badge or arm-band providing) relevant details to assist the passengers in identifying that they are appropriately licensed e.g. photograph of the driver and licence type i.e. immediate hire or pre-booked only.

All PHVs must be required to provide information to passengers including driver photo ID and the vehicle licence number, in advance of a journey. This would enable all passengers to share information with others in advance of their journey. For passengers who cannot receive the relevant information via digital means this information should be available through other means before passengers get into the vehicle.

Recommendation 20

All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.

All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.

Recommendation 21

Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.

Recommendation 22

The Quality Assurance Framework and Common Law Police Disclosure Provisions must be reviewed to ensure as much relevant information of conduct as well as crimes, by taxi and PHV drivers (and applicants) is disclosed ensuring that licensing authorities are informed immediately of any relevant incidents.

Recommendation 23

All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All those cases must be recorded, and the database checked for all licence applications and renewals. Licensing authorities must record the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database (**recommendation 24**).

Recommendation 24

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

Recommendation 25

Licensing authorities must use their existing powers to require all drivers to undertake safeguarding/child sexual abuse and exploitation awareness training including the positive role that taxi/PHV drivers can play in spotting and reporting signs of abuse and neglect of vulnerable passengers. This requirement must form part of future national minimum standards.

Recommendation 26

All individuals involved in the licensing decision making process (officials and councillors) must be obliged to undertake appropriate training. The content of the training must form part of national minimum standards.

Recommendation 27

Government must review the assessment process of passenger carrying vehicle (PCV) licensed drivers and/or consideration of the appropriate boundary between taxis/PHVs and public service vehicles (PSVs).

Recommendation 28

Licensing authorities must require that all drivers are able to communicate **in English** orally and in writing to a standard that is required to fulfil their duties, **including in emergency and other challenging situations.**

Recommendation 29

All licensing authorities should use their existing powers to require that the taxi and PHV drivers they license undergo disability quality and awareness training. This should be mandated in national minimum standards.

Recommendation 30

Licensing authorities that have low levels of wheelchair accessible vehicles (WAVs) in their taxi and PHV fleet should ascertain if there is unmet demand for these vehicles. In areas with unmet demand licensing authorities should consider how existing powers could be used to address this, including making it mandatory to have a minimum number of their fleet that are WAVs. As a matter of urgency, the Government's Best Practice Guidance should be revised to make appropriate recommendations to support this objective.

Recommendation 31

Licensing authorities which have not already done so should set up lists of wheelchair accessible vehicles (WAVs) in compliance with s.167 of the Equality Act 2010, to ensure that passengers receive the protections which this provides.

Recommendation 32

Licensing authorities should use their existing enforcement powers to take strong action where disability access refusals are reported, to deter future cases. They should also ensure their systems and processes make it as easy as possible to report disability access refusals.

Recommendation 33

The low pay and exploitation of some, but not all, drivers is a source of concern. Licensing authorities should take into account any evidence of a person or business flouting employment law, and with it the integrity of the National Living Wage, as part of their test of whether that person or business is "fit and proper" to be a PHV or taxi operator.

Recommendation 34

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry drivers.

2. Group membership and task

Introduction

- 1 The Task and Finish Group was brought together between July and August 2017 by the then Minister of State for Transport the Rt Hon John Hayes CBE MP, and met for the first time in September 2017.
- 2 The Group's objectives were confirmed in the Terms of Reference agreed by its members. The Group was tasked with:
 - Considering evidence relating to the adequacy of current taxi and PHV licensing authority powers, as set out in legislation and guidance, making recommendations for actions to address any priority issues identified. Specifically:
 - Identifying the current priority concerns regarding the regulation of the sector, based on evidence of impact and scale across England;
 - Considering, in particular, the adequacy of measures in the licensing system to address those issues;
 - Considering whether it would advise the Government to accept the recommendations made in the Law Commission's May 2014 report on taxi and PHV legislative reform relevant to the issues, and;
 - Making specific and prioritised recommendations, legislative and non-legislative, for action to address identified and evidenced issues.

Chairman of the Task and Finish Group

Mohammed Abdel-Haq is a professor in Banking and a Director of the Centre for Islamic Finance at the University of Bolton. Prof Abdel-Haq has a wealth of practical experience in a long career in banking in major financial institutions including Citi Bank, Deutsche Bank, and HSBC. He is the CEO of Oakstone Merchant Bank, Director of the Centre for Opposition Studies at the University of Bolton.

Professor Abdel-Haq was a member of the Council of the Royal Institute for International Affairs (Chatham House) from 2011-2014. In 2011 Prof Abdel-Haq was appointed Chairman of the UK Ministerial Advisory Group on Extremism in Universities and FE Colleges. He was Vice President of The Disability Partnership. Several of his articles on various issues related to public life have been published. Prof Abdel-Haq is a Freeman of the City of Oxford, a member of Amnesty International, a Fellow of the Royal Society of Arts. Prof Abdel-Haq was a Prospective Parliamentary Candidate for Swansea West in the 2005 General Election.

- 3 Membership of the Task and Finish Group:
- Helen Chapman - Director of Licensing, Regulation & Charging, Transport for London
 - Rt Hon Frank Field MP - - Member of Parliament for Birkenhead
 - Saskia Garner - Policy Officer, Personal Safety, the Suzy Lamplugh Trust
 - Ellie Greenwood - Senior Adviser (Regulation), Local Government Association
 - Dr Michael Grenfell - Executive Director, Enforcement, Competition and Markets Authority
 - Anne Main MP - Member of Parliament for St Albans
 - Steve McNamara - General Secretary, Licensed Taxi Drivers' Association
 - Mick Rix - National Officer for Transport and Distribution, GMB union
 - Donna Short - Director, National Private Hire and Taxi Association
 - Steve Wright MBE - Chairman, Licensed Private Hire Car Association
- 4 To ensure that the Group heard views from a wide cross-section of the sector, it sought written evidence from a range of stakeholders, and further invited a selection of organisations to give oral evidence to the Group. The Group received submissions from 39 organisations and heard evidence from 11. Narrative summaries of the Group's early discussions and oral evidence sessions have been published alongside this report.
- 5 Secretariat functions for the Group were provided by officials in the Department for Transport.
- 6 Group members were each able to submit a short summary of their views of this report if they wished to do so; those summaries are attached at Annex A.

3. Market function and regulation

Current regulation

- 3.1 The UK Government is responsible for setting the regulatory structure within which local licensing authorities in England license the taxi and PHV trade. Regulation of taxi drivers in Scotland, Wales and Northern Ireland is devolved to the Scottish Government, Welsh Government and Northern Irish Assembly respectively. This report is focussed on the sector in England only.
- 3.2 Taxi and PHV licensing in England is decentralised; there are 293 licensing authorities. The national legislation is enabling in its nature, giving licensing authorities the discretion to set standards for drivers, vehicles and PHV operators that they deem to be appropriate. There are significant variations in both policy and practice between licensing authorities.

A changing industry

- 3.3 The Task and Finish Group heard from many stakeholders about the age of the legislation that underpins taxi and PHV licensing, and how it is no longer fit for the modern world. Taxi licensing in England outside Greater London rests on the Town Police Clauses Act of 1847, which of course pre-dates the motor car. PHV licensing outside Greater London rests on the Local Government (Miscellaneous Provisions) Act 1976; significantly less old, but still pre-dating the mobile phone and the internet, both of which are increasingly important means of booking taxis and PHVs. Greater London PHV legislation is newer still, passed in 1998, but this still pre-dates near universal mobile phone use, and smartphone apps.¹
- 3.4 Legislation has been out of date for many years now, but it seems that the rise of smartphone booking apps, in particular, has thrown the need for an urgent update on legislation into sharp focus. PHV legislation was written for a world where radio signals were unlikely to reach outside the licensing authority area, and people had to go to a local minicab office, or telephone it using a landline, to book a car. The new way of using apps to book PHVs has an ease (as well as safety features and usually value for money) that has proved very popular with passengers, but the law was not written with such technology in mind and so it can be hard to apply to what is happening in reality.
- 3.5 The effectiveness of the highly localised taxi and PHV licensing system has become unsustainable in the face of new internet and smartphone app-based technology and the public's widespread adoption of those methods of arranging taxi and PHV trips. Government, both central and local, should acknowledge such changes and manage

¹ For simplicity, this report does not describe the separate legislation that licenses PHVs in Plymouth, the Plymouth City Council Act 1975. For the level of detail in this report, it is sufficient to say that its provisions are broadly the same as those in the Local Government (Miscellaneous Provisions) Act 1976.

them to ensure that alongside the benefits being achieved, any negatives are minimised for passengers, the trade and wider communities.

- 3.6 We should also recognise that the changes in how the sector works are being driven by public demand. It is unacceptable to require the public to restrict its reasonable demands to support an outdated framework. It is the market and regulation that must adapt while maintaining high standards.
- 3.7 This report makes a number of specific recommendations about what Government and licensing authorities should do with their taxi and PHV powers, but there is an urgent overarching need to update legislation to reflect much better the reality of the way the trade is operating today. The Government implicitly acknowledged as much by asking the Law Commission to review the legislation in 2011, and it is deeply regrettable that the Government has not yet responded to the report and draft bill which the Commission subsequently published in 2014. Had the Government acted sooner the concerns that led to the formation of this Group may have been avoided.

Recommendation 1

Notwithstanding the specific recommendations made below, taxi and PHV legislation should be urgently revised to provide a safe, clear and up to date structure that can effectively regulate the two-tier trade as it is now.

- 3.8 Regardless of technological change, the Government should legislate for national minimum standards for the licensing of drivers, vehicles and operators. These minimum standards should be set at a high but still proportionate level that would in practice reduce the need (actual or perceived) for individual authorities to add their own further checks or conditions - **'minimum' should not be understood or treated as meaning 'minimal'**.
- 3.9 The current level of discretion given to local licensing authorities has resulted in very significant and unacceptable variations in standards. Failures by some authorities to uphold high standards for the assessment of drivers, for example, have contributed to the involvement of the taxi and PHV trade in well-documented sexual abuse and exploitation of hundreds of children.
- 3.10 Significant variation in standards and the application of these in the licensing of drivers provides an opportunity for individuals to 'forum shop' for licences. Although factors such as service levels and total licensing cost (i.e. inclusive of fees and training requirements) may provide the motivation for most individuals that seek to obtain a licence from an authority other than that in which they intend to predominantly work, this also enables individuals who would not be deemed 'fit and proper' by one authority to potentially obtain a licence elsewhere. The Government has a responsibility to set a national framework that enables safe and effective licensing, and local authorities have a wider responsibility towards all people both within and beyond their boundaries. Better information sharing amongst authorities is also essential, and this is discussed further in Chapter Four.
- 3.11 The Law Commission recommended that all PHV standards should be set at a national level without the ability for licensing authorities to add additional local conditions, but that taxi standards should be 'minimum standards' which could be supplemented locally. This, in the Commission's view, reflected the more localised

nature of taxi markets, particularly the ability to be hired immediately on the street and the requirement for local knowledge that this brings.

- 3.12 However, other recommendations made in this report would restore the link between licensing authorities and PHVs operating in their area and so national minimum standards are more appropriate in this framework. Taxis and PHVs serve a range of very different localities across England, and local licensing authorities should not be prevented from applying extra conditions to their drivers or vehicles where there is an evidenced need. An example of this might be vehicle conditions, to help address local air quality challenges.

Recommendation 2

Government should legislate for national minimum standards for taxi and PHV licensing - for drivers, vehicles and operators (**see recommendation 6**). The national minimum standards that relate to the personal safety of passengers must be set at a level to ensure a high minimum safety standard across every authority in England.

Government must convene a panel of regulators, passenger safety groups and operator representatives to determine the national minimum safety standards. Licensing authorities should, however, be able to set additional higher standards in safety and all other aspects depending on the requirements of the local areas if they wish to do so.

- 3.13 In advance of national minimum standards, the Department for Transport's Best Practice Guidance should be updated; both this and the forthcoming Statutory Guidance should be more directive, to make clearer the requirements and standards that the Government considers are necessary.
- 3.14 All licensing authorities should adopt the Department's recommendations, which should be viewed as the pre-cursors to national minimum standards. Early adoption of these recommendations will therefore assist in the transition for the industry. It will also assist joint working by licensing authorities and in particular support stronger cross-border enforcement activity. The Task and Finish Group heard about current and developing best practice in areas such as Merseyside, West Yorkshire and Greater Manchester. Common standards are the keystone of effective enforcement within regions, giving enforcement officers one set of rules to check drivers and vehicles against, regardless of which authority issued the licences.
- 3.15 There are few barriers that prevent the licensing of operators and drivers in multiple areas, but this is not true for the licensing of vehicles, as requirements in different areas may be contradictory. These variations can include colour; livery; vehicle age restriction both at first licensing and maximum age; whether tinted windows are permissible; seat configuration; engine size (or if electric vehicles can be licensed); and visible signage/ID conditions. It is in the interest of licensing authorities (ease of enforcement), passengers (increased availability) and the trade (increased flexibility to meet demand) for multiple licensing to be possible.

Recommendation 3

Government should urgently update its Best Practice Guidance. To achieve greater consistency in advance of national minimum standards, licensing authorities should only deviate from the recommendations after very careful consideration and in exceptional circumstances. In this event licensing authorities should publish the rationale for this decision.

Where aspects of licensing are not covered by guidance nor national minimum standards, or where there is a desire to go above and beyond the national minimum standard, licensing authorities should aspire to collaborate with adjoining areas to reduce variations in driver, vehicle and operator requirements. Such action is particularly, but not exclusively, important within city regions.

- 3.16 In the long term, greater consistency in licensing that will result from national minimum standards raises the question of the appropriate 'level' of taxi and PHV licensing - that is, which administrative level should undertake this function.
- 3.17 The licensing regime should be rationalised. People are increasingly mobile and the licensing regime should reflect the way in which the public use taxi and PHV services. There may be significant benefits to raising the administrative level of taxi/PHV licensing in some areas, whether as part of wider reform or as a distinct proposal.
- 3.18 An example of the benefits that may accrue from raising the licensing level can be seen in the way the system operates in Greater London in comparison to other large urban areas. Transport for London licenses 108,709 vehicles and 142,199 drivers. By way of contrast, Greater Manchester has 10 authorities licensing a total of 13,392 vehicles and 18,085 drivers².
- 3.19 Without Transport for London, London's 33 local authority districts would be able to set its own policies, requirements, taxi fare rates etc. In addition, each of these would have to replicate the associated administration, likely resulting in increased licensing costs which may ultimately increase passenger fares. Importantly, this would also result in immense enforcement problems in the absence of agreements between the districts to enable their enforcement officers to take action against each other's licensees.
- 3.20 The variance in the costs of obtaining licences (fees and to meet requirements) in different licensing areas within one conurbation can be considerable, by matters of hundreds of pounds. The example of licensing in Greater Manchester was highlighted in the Urban Transport Group's report 'Issues and options for city region taxi and private hire vehicle policy'³ (see fig. 1). The time and cost it takes to obtain a licence can also vary greatly and influence licensing behaviour, exacerbating the number of 'out-of-area' drivers. It is unsurprising that a driver, who is indeed fit and proper by any measure, may still choose to license in a neighbouring authority even if the costs are higher if they will get their licence in a few months rather than two years, and therefore start earning much sooner.
- 3.21 It has not been possible within the timeframe of the Task and Finish Group to make a recommendation as to precisely which authorities (and how many) should be

² Data as of 31 March 2017 - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

³ http://www.urbantransportgroup.org/system/files/general-downloads/UTG%20Taxi%20Policy%20Report_FINALforweb.pdf

responsible for taxi/PHV licensing across the country. However, direct electoral accountability must be maintained to ensure that the needs of all residents in any expanded licensing areas are considered.

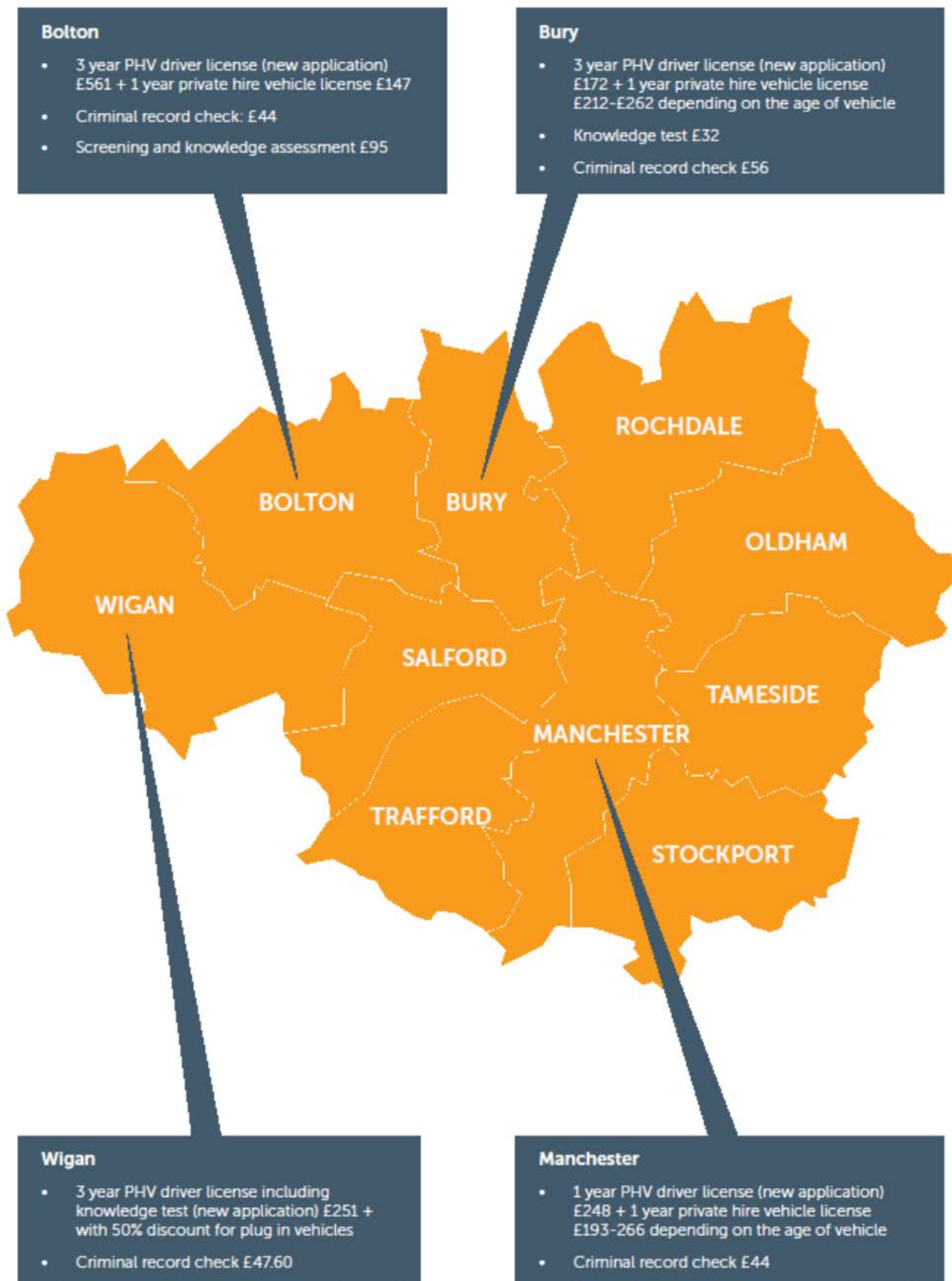
- 3.22 There seems a clear case that large urban areas, particularly those with Metro Mayors, should each be covered by one taxi and PHV licensing authority. Outside those areas, Government should strongly encourage much greater collaboration and joint working between neighbouring authorities, and subsequently review over time whether formal consolidation of more licensing areas is needed.
- 3.23 Where taxi licensing is concerned, larger licensing authorities areas could still retain more localised requirements of taxi regulation, such as quantity restrictions, fare setting, local knowledge testing at the same granular level as now (if deemed beneficial) through the use of taxi zones as are already used in a number of licensing authority areas.

Recommendation 4

In the short term, large urban areas, notably those that have metro mayors, should emulate the model of licensing which currently exists in London and be combined into one licensing area. In non-metropolitan areas collaboration and joint working between smaller authorities should become the norm.

Government having encouraged such joint working to build capacity and effectiveness, working with the Local Government Association, should review progress in non-metropolitan areas over the next three years

Figure 1 - Licensing in Greater Manchester ⁴



⁴ <http://www.urbantransportgroup.org/resources/types/reports/analysis-and-options-city-region-taxi-and-private-hire-vehicle-policy>

The two tier system

- 3.24 Only taxis are available for immediate hire, be it hailed in the street or at a designated rank. Nevertheless, the potentially very short gap between booking a PHV via an app and getting in the vehicle, may appear similar to members of the public to getting a taxi. Indeed the speed and convenience of using an app might be an easier and more attractive option in some circumstances than hailing a taxi.
- 3.25 This increased ease and speed of PHV hiring has significantly eroded the differentiation in service and the potential additional earnings that taxis' ability to ply for hire can provide. The regulation of the sector has not adapted to reflect this erosion. The Task and Finish Group unanimously agreed that there is still merit in the two-tier taxi and PHV system. For example, the setting of maximum fare tariffs for taxis provides an important element of passenger protection, as people are not able to research fares with alternative providers when hiring immediately. This can protect both visitors to an area, who may have no notion of the distance of their journey and what this might reasonably cost, and also local residents who are protected from the charging of excessively high fares when demand is high. At the same time, the unregulated fares of PHVs enable price competition to the benefit of many consumers.
- 3.26 The Group received many submissions which requested that a statutory definition of 'plying for hire' and 'pre-booked' should be introduced to make clearer the different services that taxis and PHVs can provide.
- 3.27 The Law Commission deliberated whether 'plying for hire' should be defined as part of its work, and ultimately recommended that different terms should be defined. In my view, if we are to be supportive of the two-tier system, it is inevitable that we must be able to effectively distinguish those two tiers. Defining 'plying for hire' is essential to that.

Recommendation 5

As the law stands, 'plying for hire' is difficult to prove and requires significant enforcement resources. Technological advancement has blurred the distinction between the two trades.

Government should introduce a statutory definition of both 'plying for hire' and 'pre-booked' in order to maintain the two-tier system. This definition should include reviewing the use of technology and vehicle 'clustering' as well as ensuring taxis retain the sole right to be hailed on streets or at ranks.

Government should convene a panel of regulatory experts to explore and draft the definition.

- 3.28 Taxi 'radio circuits' or taxi smart phone apps undertake a similar function as PHV operators but are not subjected to a 'fit and proper test' as they do not require a licence. PHV operators are under an obligation to ensure that the drivers and vehicles used are licensed by the same authority and that vehicles are insured and in a suitable condition.
- 3.29 A freedom of information request found that in in the 12-month period running from 08 January 2016 to 07 January 2017, 1,290 Transport for London licensed taxis were reported for not having a second MOT test, six months from the date the taxi licence

was granted. However, it is unknown whether any of these vehicles were used for 'taxi radio circuit' work. Transport for London's data for the period April to December 2017 indicated that 27.1% of PHVs and 35.8% of taxis stopped were non-compliant⁵. In both cases, the total number non-compliant vehicles may be higher as these vehicles were identified as a result of 'on-street' enforcement.

- 3.30 It is true, of course, that unlike PHVs where there must be an operator to take a booking for the transaction to be legal, taxis are able to ply for hire. The booking recording function of a PHV operator evidences that a journey has been pre-booked and is essential in ensuring compliance and preventing a PHV from working illegally as a taxi. However, data from Transport for London's Black cabs and Minicabs Customer Satisfaction Survey (Q3 2016/17) evidence that a decreasing proportion of taxi journeys are engaged by hailing or at a rank, down from 83% in 2013 to 66% in 2016. This trend suggests that it is now appropriate for these intermediaries to be regulated in the same way as PHV operators are.

Recommendation 6

Government should require companies that act as intermediaries between passengers and taxi drivers to meet the same licensing requirements and obligations as PHV operators, as this may provide additional safety for passengers (e.g. though greater traceability).

- 3.31 Central Government and local regulators must acknowledge that new technology has fundamentally changed the market and act if the two-tier system is to remain viable. The competition between taxis and PHVs has increased, but taxis are often subject to additional regulation and, where purpose built vehicles are required, significantly higher costs than their PHV counterparts. If the benefits of a two tier system (e.g. there is a higher proportion of wheelchair accessible vehicles (WAVs) in the taxi fleet) are to be maintained, regulators should consider ways to support the taxi trade. The way to do this is not by 'punishing' the PHV trade, but by reducing the additional cost burden that WAV owners face.
- 3.32 Central Government has already recognised the different costs the two sectors can face; the maximum Plug-in-Taxi Grant (for the purchase of wheelchair accessible zero-emission capable (ZEC) purpose-built taxis) is £7,500, compared to the £4,500 maximum Plug-in-Car Grant available for other vehicles; this kind of approach should be explored further. Government and licensing authorities should explore additional financial assistance that could be provided to off-set the additional costs of WAV and/or ZEC vehicles.
- 3.33 There are various mechanisms that could encourage more rapid adoption of ZEC vehicles in area where air quality is or may become an issue; Transport for London's delicensing scheme, for example, provides a payment of up to £5,000 to delicense older (10+ years old) vehicles. All new taxis licensed by Transport for London must now be ZEC.
- 3.34 Taxis, particularly in London, are perceived by the public as reliable "work horses" on the roads for long hours every day. This perception could be at the forefront of changing opinions and attitudes towards electric vehicles, in general, and specifically

⁵ <https://tfl.gov.uk/cdn/static/cms/documents/phv-licensing-compliance-and-enforcement-january-2018.pdf>

as viable options for commercial and small goods vehicles. The wider benefits of supporting drivers to get such vehicles on the roads could be considerable.

- 3.35 Funding could be allocated to subsidise a tiered taxi and PHV licensing structure that exempts or reduces fees for zero emission capable vehicles and/or those which are wheelchair accessible. This would assist those who make the additional investment to use wheelchair and/or accessible vehicles such as the 'black cab' and reflect the additional benefits these would provide the public.

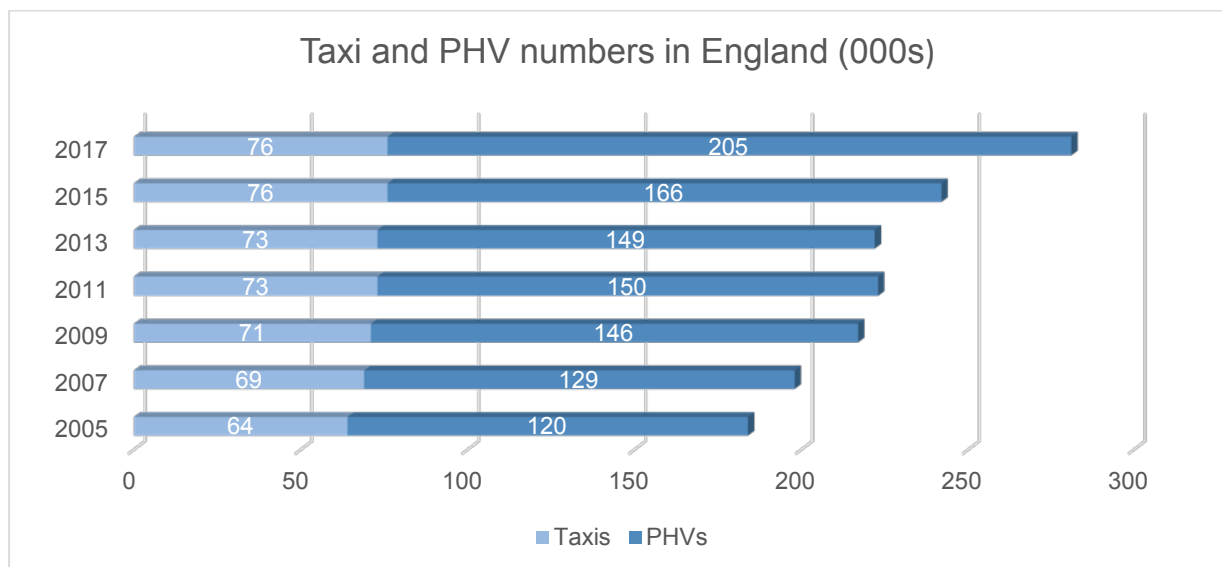
Recommendation 7

Central Government and licensing authorities should 'level the playing field' by mitigating additional costs faced by the trade where a wider social benefit is provided – for example, where a wheelchair accessible and/or zero emission capable vehicle is made available.

A growing industry

- 3.36 The sector has seen rapid growth in recent years. The total number of licensed taxis and PHVs in England reached record levels in 2017, increasing by 26% since 2011 to 281,000⁶. This growth has not been uniform across the two tiers, but was driven by the 37% increase in PHVs over the period, compared to the 3% increase in taxis. In 2017, 73% of all licensed vehicles in England were PHVs; in 2011 this proportion was 67%.
- 3.37 The increase in licensing numbers is also inconsistent across England; to give just some examples, the number of PHVs licensed by Transport for London increased by 39% between 2011 and 2017 to 87,400; in the same period, the number of PHVs licensed by Wolverhampton City Council increased by 434% to 2,949; but decreased by 37% in Tandridge District Council to just 46.

Figure 2 - Taxis and PHVs in England (DfT survey 2017)⁷



⁶ <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/44561/taxi-private-hire-vehicles-2017.zip

- 3.38 Currently, licensing authorities outside Greater London have the ability to restrict the number of taxis they license. As of 31 March 2017, 183 English authorities do, to balance the supply and demand of services. Legislation does not currently allow PHV licences to be restricted in such a way, and the Group received a number of submissions arguing in favour of changing this.
- 3.39 Granting licensing authorities the power to cap the number of PHVs could give them an extra tool to help reduce levels of congestion in areas where high numbers of PHVs operate and thereby address in part air quality issues. To use the power for those purposes would require a public interest approach, not merely the "unmet demand" test currently applied to allow the limiting of taxi numbers.
- 3.40 There are potential drawbacks to licence restriction, including administrative burden, restriction of competition and restriction of work opportunities for drivers. Carrying out a clear, well evidenced and considered public interest test before a numbers restriction can be applied would enable an authority to weigh up those factors and make a balanced decision.
- 3.41 This matter was considered as part of the Law Commission's review, albeit in the case of taxis rather than PHVs, but their consideration of what a public interest test should include could equally apply to both segments of the trade. Any test should include matters such as:
- the interests of taxi and PHV users, particularly those of disabled people
 - the interests of licensees
 - the need to avoid traffic congestion, and
 - the need to preserve the environment
 - and for taxis, the need to avoid excessive queues at ranks

Recommendation 8

Government should legislate to allow local licensing authorities, where a need is proven through a public interest test, to set a cap on the number of taxi and PHVs they license. This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions.

Cross-border and out-of-area working

Background

- 3.42 Although taxis and PHVs are locally licensed, the passenger journeys they can carry out are not restricted solely to their licensed area.

Cross-border / out of area working: a simplified summary

- **Taxis** can only ply for hire (to be flagged down or hired from a rank) in their licensed area, but can generally undertake pre-booked work anywhere.
- A **PHV** driver, vehicle and operator must all be licensed in the same area for a journey to be carried out legally - but the journey itself does not need to be in that licensed area: e.g. a London-licensed vehicle and driver can be booked through a London-licensed operator to carry out a passenger journey that takes place entirely in St Albans.
- A **PHV** booking can also be sub-contracted: e.g. a St Albans-licensed operator could take a booking, and arrange for another operator to carry it out: this could be another St Albans-licensed operator, or an operator licensed by any other authority, who would need to fulfil the booking using a driver and vehicle licensed by the same authority as they are.

- 3.43 The ability for a PHV journey to take place anywhere, so long as the driver, vehicle and operator are all licensed by the same authority, comes from the original licensing legislation (the 1998 Act for London, and the 1976 Act elsewhere). It was always possible for a PHV operator to sub-contract a booking to an operator licensed in the same area. Greater London operators have always been able to sub-contract bookings to operators in other areas, and that ability was extended to PHV operators outside Greater London by Section 11 of the Deregulation Act 2015.
- 3.44 Although all PHV operators have always been able to accept bookings regardless of the start and end point of a journey, in practice the advertising of their services and the ability of operators to maintain contact with drivers reduced the likelihood of booking requests from distant locations being received.

The issue

- 3.45 New technology has changed the landscape. The members of the public who use apps for booking PHVs carry with them the ability to request a vehicle anywhere. It is not necessary for the subcontracting process to be undertaken to facilitate the dispatching of an out of area driver to fulfil a booking. An operator could currently, if it chose to, operate nationally on a single licence. It is unlikely that this is what was intended when the legislation was drawn up, and it underlines that it is no longer fit for purpose.
- 3.46 Not all 'cross-border' work is a concern: many journeys will naturally start within one licensing authority and end in another, and the framework should allow this. In areas near to the boundaries of licensing authorities, and particularly in city and urban locations with multiple authorities, there will be high levels of cross-border working. Operators will sometimes fulfil bookings out of their licensing area to reduce dead

mileage, or meet vehicle type requirements (e.g. wheelchair accessible vehicles) when none are available locally. A passenger may have confidence in the safety and quality of a service that a particular operator provides and would prefer to use that favoured operator regardless of the start and/or end points of their journey. This is perhaps more likely in the executive and chauffeur segment of the PHV market.

- 3.47 However, the Group have heard from many sources about the increasing numbers of drivers who now work entirely at (sometimes considerable) distance from the authority that licensed them. The Group saw no evidence of precise numbers but anecdotal evidence is that it is widespread, particularly of drivers licensed by Transport for London but living in cities far away making it highly unlikely that they would travel to London before working. Figure 3 show a map of the home addresses of Transport for London licensed drivers by postcode.
- 3.48 It is difficult for licensing authorities to be effective in monitoring the activities of drivers who are working in this way. The enforcement officers of one authority cannot undertake enforcement action against taxis or PHVs licensed by other authorities. An authority could send its enforcement officers to carry out checks in known 'hot-spots' for its drivers, but while this seems reasonable for an adjoining licensing area, it seems an inefficient solution when the distances involved can be so great. In conjunction with the earlier recommendation on national minimum standards, all licensing authorities should have the powers to take enforcement action against those standards regardless of where a specific driver or vehicle is licensed. So, for example, a Bristol City Council licensing enforcement officer should be able to stop and question any taxi or PHV driving in Bristol regardless of which authority issued the licence. The Group heard evidence that taxis and PHVs can carry passengers across different boundaries and nobody can monitor their compliance or question them. This is simply wrong.

Recommendation 9

All licensing authorities should use their existing powers to make it a condition of licensing that drivers cooperate with requests from authorised compliance officers in other areas. Where a driver fails to comply with this requirement enforcement action should be taken as if the driver has failed to comply with the same request from an officer of the issuing authority.

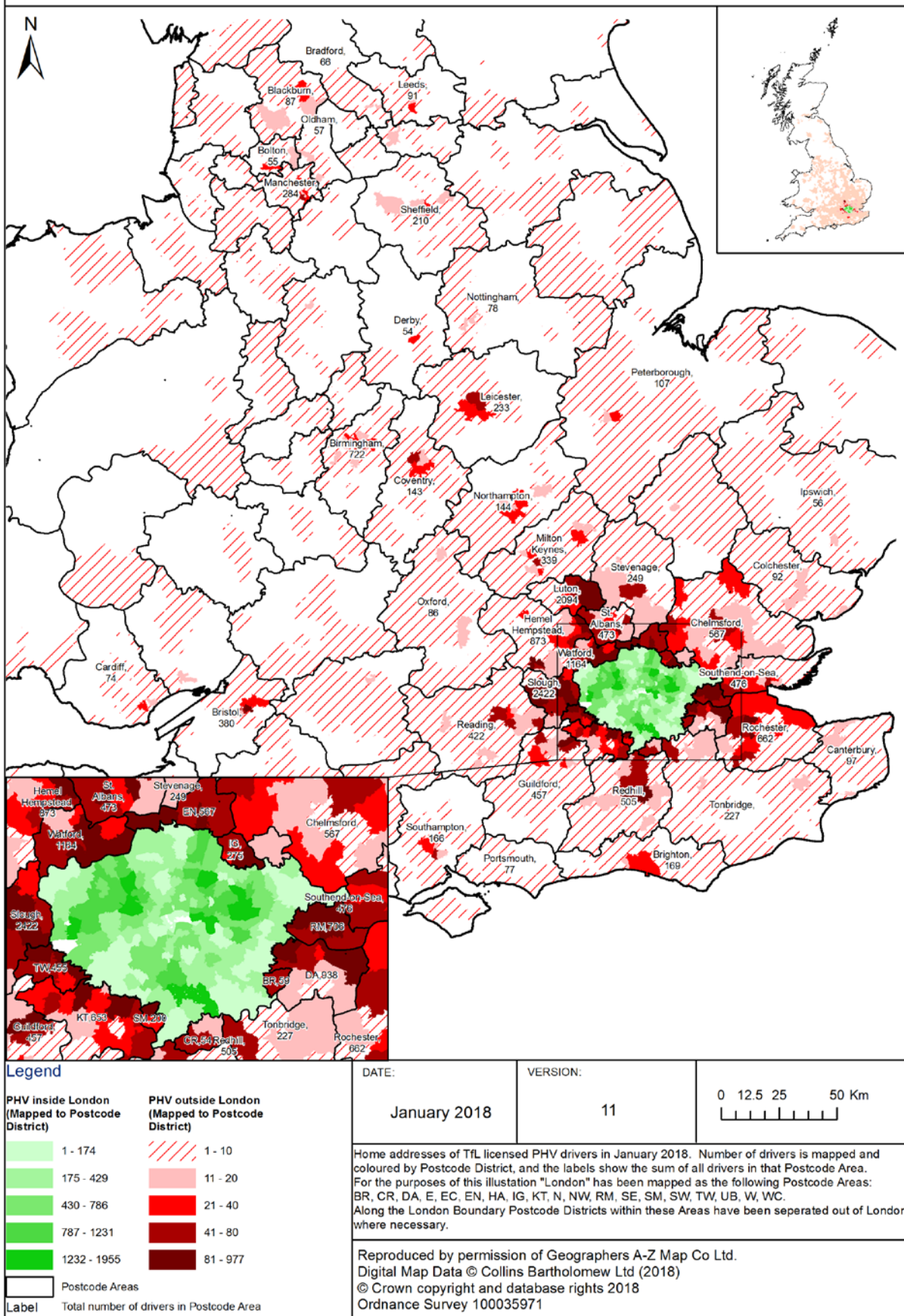
Recommendation 10

Legislation should be brought forward to enable licensing authorities to carry out enforcement and compliance checks and take appropriate action against any taxi or PHV in their area that is in breach of national minimum standards (**recommendation 2**) or the requirement that all taxi and PHV journeys should start and/or end within the area that issued the relevant licences (**recommendation 11**).

- 3.49 This report has already recommended that licensing authorities should be able to restrict the number of taxi and PHV licences they issue. However, without a method to prevent vehicles licensed in other areas from working within the "capped" area, any restriction could be easily circumvented by someone licensing elsewhere and simply working remotely within the "capped" area.

Figure 3 - Home postcodes of active Transport for London licensed PHV drivers, January 2018

Figure 4: Prevalence of active London-licensed private hire drivers with home addresses outside London



- 3.50 A number of submissions to the Group supported a proposed restriction that taxi and PHV journeys should only be permitted where the start and/or end point are within the licensing area of the driver, vehicle and (for PHVs) operator. This was primarily proposed to address concerns over the drivers operating predominantly or exclusively outside of the area in which they are licensed.
- 3.51 That proposal is the most effective on the table. There would be a need to carefully consider any flexibilities that may be needed to allow for specific destinations to continue to be served without disruption (e.g. airports), business models to continue (e.g. in the chauffeur / executive hire sector), or specific services for the disabled to not be disrupted.
- 3.52 All those matters would need careful further work, to reduce the risk of causing damage legitimate business models and passenger choice. The potential negative aspects of the proposed restriction would be greatest in inner-city areas which have many boundaries. Without the reduction of licensing authorities proposed in recommendation 4, and the resulting larger areas, all parties would be detrimentally affected. With small geographic areas and more borders, passengers in these areas may no longer be able to use their favoured PHV operator even if these were the closest but simply as a consequence of being the wrong-side one of the many boundaries.
- 3.53 Rationalising the number of licensing areas in these locations would have benefits in its own right, but would also significantly reduce the negative impacts of a start/end point restriction.

Recommendation 11

Government should legislate that all taxi and PHV journeys should start and/or end within the area for which the driver, vehicle and operator (PHVs and taxis – see **recommendation 6**) are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross-border.

Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.

Licensing fee income

- 3.54 Taxi and PHV licensing fees must be set on a cost recovery basis. They should reflect the true costs of the regime, and should not be used by licensing authorities to make profit or be subsidised by the council tax payer. Licensing authorities should ensure that the administration, compliance and enforcement of taxi and PHV licensing is sufficiently funded to enable an efficient process.
- 3.55 Resourcing functions based on revenue received approaches the issue the wrong way around. Licensing authorities should of course aim to deliver value for money by working efficiently, but that is not the same as at the lowest possible cost. Licensing authorities should first establish what resources are required to adequately administer and enforce the regime and set the licensing fees based on this. For example, the Group received evidence of how the funding of a police intelligence liaison officer can significantly improve cooperation and the flow of information. The resourcing of initiatives such as this may be beneficial but prove prohibitive for some

of the smaller licensing authorities, the restructuring proposed in recommendation 4 would result in authorities operating at a scale which enable them to resource these activities but removing administrative duplication and spreading the costs across a wider pool of licensees.

Recommendation 12

Licensing authorities should ensure that their licensing, administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

Pedicab regulation in London

- 3.56 One result of having different taxi legislation applicable to London and the rest of England is that pedicabs (sometimes called rickshaws) cannot be regulated in the former. Case law has established that they are classed as "stage carriages" in the context of London taxi law, and therefore out of scope of taxi regulation. While there should be a place for a safe and responsible pedicab trade, particularly in Central London, there has been much justified criticism in recent years of rogue pedicab operators taking advantage of tourists with excessive charges and absence of safety checks.
- 3.57 It is not acceptable that Transport for London is unable to regulate pedicabs to ensure a safe service; the Government announced in 2016 that it would rectify this, and the legislation should be brought forward as soon as possible.

Recommendation 13

Legislation should be introduced by the Government as a matter of urgency to enable Transport for London to regulate the operation of pedicabs in London.

Fixed Penalty Notice for minor compliance infringements

- 3.58 The enforcement of minor licensing infringements can be excessively burdensome on licensing authorities and frustrates their efforts to raise standards within their area. There are important benefits to setting a culture where licensees know that they must adhere to the basics or else face sanctions, freeing up officials and enabling them to focus on more serious matters.
- 3.59 Transport for London has proposed that it should be enabled to issue Fixed Penalty Notices to PHV drivers as it already is to taxi drivers who have breached minor licensing requirements such as failing to wear their badge. Transport for London's view is that this immediate financial deterrent would expand the enforcement options available to them to increase compliance and reduce the need to resort to more expensive measures that ultimately increase licensing fees for the majority of drivers that are compliant. The Local Government Association's initial submission to the working Group also called on licensing authorities to have modern enforcement tools such as Fixed Penalty Notices and stop notices.

3.60 Transport for London has elected not to make use of the powers it currently has to issue Fixed Penalty Notices until it is able to apply the same to PHVs. As stated elsewhere in this report, the two tiers of the trade should as far as practicable be treated equitably. Elsewhere in this report the case has been made for greater consistency in regulation across England in part to underpin national enforcement powers of national standards. Therefore it would be appropriate for the powers to issue Fixed Penalty Notices to be available to all licensing authorities, for both taxis and PHVs.

Recommendation 14

The Department for Transport and Transport for London should work together to enable the issue of Fixed Penalty Notices for both minor taxi and PHV compliance failings. The Department for Transport should introduce legislation to provide all licensing authorities with the same powers.

Ridesharing

- 3.61 Ridesharing services in this context refers to the sharing of taxis or PHVs for hire by individuals that are unknown to each other prior to the beginning their trips. This form of service may provide members of the public with cheaper fares as costs are shared, and better utilise the capacity of vehicles, thereby reducing congestion and pollution. But there are potentially increased risks, too.
- 3.62 The limited time available to the Group has required that attention was focussed on key areas of urgent concern. While the issue of ridesharing has not been considered in depth, it should be clear to all that use these services that that they consent to sharing a confined space with people that are unknown to them. Operator and drivers should be required to make this clear when booking and at the start of a journey.
- 3.63 Where a taxi or PHV is no longer used entirely for exclusive private hire, the arguments in favour of mandating CCTV are enhanced; the argument that CCTV may represent an invasion of privacy is reduced greatly if not entirely negated, as there can be no argument that the vehicle is a private space. The use of CCTV is discussed further in Chapter Three.

Recommendation 15

All ridesharing services should explicitly gain the informed consent of passengers at the time of the booking and commencement of the journey.

4. Safety in taxis and private hire vehicles

Public protection

- 4.1 One of the most important considerations of any regulatory system is safety. It is of paramount importance that passengers using taxis or PHVs can get into a vehicle knowing that their driver has been rigorously checked and deemed to be a suitable person to carry passengers. The enclosed nature of a taxi or PHV affords a potential opportunity to a person who wishes to take advantage of the vulnerable. It is important to recognise that in different circumstances, it may be either the passenger or the driver who is vulnerable.
- 4.2 The vast majority of licensed taxi and PHV drivers in the UK are decent and law-abiding people. Nevertheless, there have been recent and numerous cases of licensed drivers participating in, or enabling, child sexual exploitation as well as isolated opportunistic attacks on passengers. Following these horrendous offences, many licensing authorities have acted to address the failings that contributed to enabling these incidents. The lessons from the Casey and Jay reports and the impact on the lives of those affected by these and other failures must not be forgotten. To do otherwise would compound the harm and injustice done to the victims. No licensing authority should consider that the lessons learned do not apply to them merely because there have not been significant reports of such activity in their area: many of the previous offences in these cases have only become known many years after the event. Neither central government nor licensing authorities can provide absolute assurances of safety, but licensing authorities have the powers to mitigate the risks now. In the long term it is for central government to act to enable the mandating of standards to force any complacent authorities to act.
- 4.3 The Policing and Crime Act 2017 gave the Government the power to issue Statutory Guidance to local licensing authorities on the way taxi and PHV licensing powers should be used to protect children and vulnerable adults. That guidance should ultimately form the core of the national safety standards for both the taxi and PHV sector, and it should be issued as soon as possible.
- 4.4 Until national minimum standards for the taxi and PHV sector are introduced, the Statutory Guidance provides an opportunity to take a significant step towards in greater consistency in how the safety elements of the 'fit and proper' test are applied.

- 4.5 The application of high standards with regard to safety would provide increased public confidence in the sector and mitigate the potential for drivers to seek out areas where standards are applied less rigorously.

Recommendation 16

The Department for Transport must as a matter of urgency press ahead with consultation on a draft of its Statutory Guidance to local licensing authorities. The guidance must be explicit in its expectations of what licensing authorities should be doing to safeguard vulnerable passengers. The effectiveness of the guidance must be monitored in advance of legislation on national minimum standards.

- 4.6 Under the current highly devolved regulatory framework, local licensing authorities have a pivotal role in the effectiveness of guidance. Once the guidance has been issued, licensing authorities should play their part and give it due consideration. The Department for Transport should also monitor the overall effect of the guidance; the policies outlined will only be as successful as their implementation.
- 4.7 Until such time as the Government brings forward legislation to mandate national minimum standards, licensing authorities should work collectively to increase consistency. As the recommendations made in the Statutory and Best Practice Guidance are the Government's views, it is reasonable to assume that these would be considered as the basis for national minimum standards. As noted earlier in this report, licensing authorities would not be acting in the long-term best interests of the trade to divert far from the recommendations, as this may result in a period of significant change in standards and requirements at a later date.

CCTV

- 4.8 The Group received a number of submissions and heard from witnesses about the benefits of having CCTV in taxis and PHVs. There were numerous positive comments regarding the potential benefits that CCTV might provide to both passengers and drivers. The vast majority of taxi and PHV passengers receive a good and safe service but the few drivers that abuse their position of trust undermine public confidence in passenger safety. CCTV can reaffirm or increase passenger confidence.
- 4.9 CCTV would not just protect passengers. In England and Wales, approximately 53% of taxi and PHV drivers are non-white, a much higher than average percentage of the workforce. The Group heard from the United Private Hire Drivers that 50% of drivers it surveyed had been threatened or assaulted and that 57% had been racially abused while working.
- 4.10 Where both cameras and audio recording is used, those who verbally and physically abuse drivers would do so knowing that the attack would be recorded, providing invaluable evidence to enforcement agencies. There are also incidents of false allegations being made against drivers, and CCTV evidence can protect drivers from potentially losing their licence and their livelihood.

4.11 Only a small number of licensing authorities in England currently require CCTV in their licensed vehicles⁸; however, there is a strong case for having CCTV in taxis and PHVs, and licensing authorities which do not already mandate CCTV should do so. The concern most commonly raised is the costs of installing and maintaining CCTV systems. These do not however appear to be unreasonable for owners of licensed vehicles to bear given an assumed operational life of a system and the potential for reduced damage to the vehicle. The majority of taxis and PHV are owner driven - these could benefit from reduced abuse and assaults by passengers, reduced fare evasion and potentially increased passenger usage through greater confidence in the sector.

Recommendation 17

In the interests of passenger safety, particularly in the light of events in towns and cities like Rochdale, Oxford, Newcastle and Rotherham, all licensed vehicles must be fitted with CCTV (visual and audio) subject to strict data protection measures. Licensing authorities must use their existing power to mandate this ahead of inclusion in national minimum standards.

To support greater consistency in licensing, potentially reduce costs and assist greater out of area compliance, the Government must set out in guidance the standards and specifications of CCTV systems for use in taxis and PHVs. These must then be introduced on a mandatory basis as part of national minimum standards.

4.12 It is however not just the driver and passenger that CCTV can benefit. Licensing authorities are better able to make an informed decision whether to take no action, suspend or revoke a licence following a complaint. This evidence can be used at court should the driver appeal a decision, and it may even prevent the driver guilty of misconduct from launching an appeal. Society as a whole benefits from increased protection from crime.

4.13 Yet mandating CCTV in vehicles will incur extra cost for many small businesses, the vast majority of drivers currently consider as such. Recognising the benefits to society, ways of helping with individual and small business costs should be seriously explored.

Recommendation 18

As Government and local authorities would benefit from a reduction in crime in licensed vehicle both should consider ways in which the costs to small businesses of installing CCTV can be mitigated.

4.14 Technology has advanced rapidly in recent years and what may once have been an expensive and difficult to achieve is now common place. GPS has provided an accurate and reliable way to track vehicles for many years now. These advances can further public safety (driver and passengers) by recording the movements of vehicles and provide valuable evidence in proving or disproving an allegation. As part of the

⁸ <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2017> (Table 0106)

work that will be required to set an appropriate minimum standard for CCTV systems in taxis and PHVs, the Government should also consider whether and how GPS tracking could also be included.

- 4.15 As discussed previously in this report, the public often view taxis and PHVs as providing identical services. Plying for hire by PHVs and unlicensed vehicles is illegal and should not be tolerated under any circumstances. However, when the public see a licensed PHV they may attempt to hire this immediately through confusion between the two-tiers of the system. Raising public awareness of the differences between taxis and PHVs protects all parties; passengers use the appropriately insured and licensed drivers and vehicles, taxi drivers receive the benefits of their exclusive right to 'ply for hire' in recognition of meeting the relevant requirements and law-abiding PHV drivers will not face confrontation from refusing to carry passengers that have not pre-booked.

Recommendation 19

National standards must set requirements to assist the public in distinguishing between taxis, PHVs and unlicensed vehicles. These should require drivers to have on display (e.g. a clearly visible badge or arm-band providing) relevant details to assist the passengers in identifying that they are appropriately licensed e.g. photograph of the driver and licence type i.e. immediate hire or pre-booked only.

All PHVs must be required to provide information to passengers including driver photo ID and the vehicle licence number, in advance of a journey. This would enable all passengers to share information with others in advance of their journey. For passengers who cannot receive the relevant information via digital means this information should be available through other means before passengers get into the vehicle.

Background checks and information sharing

- 4.16 To enable licensing authorities to make the best decisions on applications they receive, and to support greater consistency, they should have as complete as possible a picture of the applicant's background. It is welcomed that all licensing authorities require an enhanced Disclosure and Barring Service (DBS) check for all drivers⁹; however, only 77% report that they currently also check the barred list for both taxi and PHV drivers, and there is no reason why this should not be 100%. This can be carried out at no extra charge.

⁹ Department for Transport's 2017 Taxi and Private Hire statistics <https://www.gov.uk/government/collections/taxi-statistics>

- 4.17 The DBS update service is an online subscription that allows individuals to keep their standard or enhanced DBS certificate up to date and allows employers and regulators to check a certificate online. This subscription service therefore allows taxi and PHV drivers licensing authorities (as a nominee with the individual's consent) to check the status of a certificate online at any time. Subscription to the service removes the need for repeat checks, reduces the administrative burden and mitigates potential delays in relicensing. This will more cheaply and easily allow licensing authorities to undertake checks other than at first application or renewal. Drivers are licensed for three years and vehicles usually on year however vehicles are routinely checked every 6-12 months to ensure they continue to meet the standards required. Interim checks on the continued suitability of driver does not therefore seem disproportionate.

Recommendation 20

All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.

All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should must be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.

Recommendation 21

Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.

- 4.18 There is a concern that critical information about the risk posed by a driver is not always being shared with licensing authorities by the police, under the Common Law Police Disclosure (CLPD) provisions. It is vital that licensing authorities have access to this 'soft intelligence'; patterns of behaviour such as complaints against drivers (regardless of whether they were working) even when these do not result in arrest or charge may be indicative of characteristics that raise doubts over the suitability to hold a licence. Provision of this helps authorities to build a fuller picture of the potential risks an individual may pose. This information may tip the 'balance of probabilities' assessment that licensing authorities must undertake.
- 4.19 The CLPD provisions enable new information obtained by the police to be rapidly passed on to licensing authorities, rather than information becoming known to them through a DBS check some time after an incident. However, a survey carried out by the Institute of Licensing of its local authority members in 2017 shows that less than 25% of respondents consider that the current data sharing agreements are satisfactory. This process can be of huge benefit to protecting the safety of

passengers and it is imperative that the maximum protection this provides is being delivered.

Recommendation 22

The Quality Assurance Framework and Common Law Police Disclosure Provisions must be reviewed to ensure as much relevant information of behaviours as well as crimes by taxi and PHV drivers (and applicants) is disclosed to and to ensure licensing authorities are informed immediately of any relevant incidents.

- 4.20 The current efforts of the Local Government Association to create a register of drivers who have been refused or revoked taxi or PHV driver licences, in conjunction with the National Anti-Fraud Network (NAFN), are to be welcomed. It was disappointing to see that the Private Members Bill brought by Daniel Zeichner MP, which would have made use of such a register mandatory, failed to pass its Second Reading in the House of Commons on 2 February when the bill was "talked out".
- 4.21 Without that Bill, it is hoped that all licensing authorities will use the register as only complete coverage will make the most of the benefits. It is unacceptable that a driver could have a licence refused or revoked on safety grounds by one authority, but gain a licence in an another authority by virtue of not disclosing that history. A DBS check may not provide the cause for a refusal or revocation by another authority; this would depend, for example, on whether the decision was based on previous convictions or on 'soft-intelligence' received. The register will enable past revocations or refusals to be flagged, and the authority considering an application to seek further information from the refusing authority.
- 4.22 Even with that information, decisions must still be made in accordance with the policies of the authority that is handling the application - a refusal in one area must be fully understood and should not be an automatic bar to a licence being issued elsewhere; for example, if one refusal has been made on the basis of a conviction, but sufficient time has now passed during which the applicant has demonstrated continued good character to comply with the authority's convictions policy. The system will provide an extra safeguard for the public, not a blacklist of drivers; licensing authorities will continue to make independent judgements whether, on the balance of probabilities, an individual is fit and proper. The purpose of this database is to assist licensing authorities in this assessment by enabling as fully a picture of an individual as possible to be considered.

Recommendation 23

All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All refusals and revocations must be recorded, and the register checked for all licence applications and renewals. Licensing authorities must retain the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database (**recommendation 24**).

- 4.23 In addition, a broader national database of all taxi and PHV licences, for drivers vehicles and operators should be introduced. This would be a significant aid to cross-border enforcement, complementary to the national enforcement powers recommended. In the current absence of such powers, it would still improve the ability of authorities to be able to identify where driver and vehicles are licensed in order to report concerns or issues to the "home" licensing authority, or indeed the police.

Recommendation 24

As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement.

Training and engagement

- 4.24 It is important that drivers are equipped with the skills and knowledge they need to identify situations where vulnerable passengers may be at risk. Over half of licensing authorities currently require their drivers to undertake child sexual abuse and exploitation (CSAE) awareness training, and this is good practice that all licensing authorities should follow. It is not sufficient to wait for evidence of a 'problem' within a licensing area before doing this.
- 4.25 As part of that training, and their wider engagement with drivers, licensing authorities should remember that their network of checked and trained, professional drivers can be an important source of intelligence about signs of abuse and neglect amongst their passengers. Poorly checked and trained drivers may pose risks, but well trained and supported drivers can be an important part of the solution. An example of the positive contribution the trade can play is that of Cherwell District Council driver Satbir Arora, whose awareness prevented a 13-year-old girl from meeting a 24-year-old male who was convicted of attempted abduction and the distribution and making of indecent images.

Recommendation 25

Licensing authorities must use their existing powers to require all drivers to undertake safeguarding/child sexual abuse and exploitation awareness training including the positive role that taxi/PHV drivers can play in spotting and reporting signs of abuse and neglect of vulnerable passengers. This requirement must form part of future national minimum standards.

Improving decision making

- 4.26 Implementing national standards, including those on the consideration of convictions, will be a huge step toward greater consistency in licensing decisions. There have been examples of individuals that have been issued licences despite convictions for serious offences. However all licensing decisions are ultimately made by individuals, not policy documents. It is essential therefore that those involved in the determination of licensing matters have received sufficient training to discharge their duties effectively and correctly. This training should cover licensing procedures, natural justice, understanding the risks of child sexual exploitation, consideration of 'soft intelligence', and disability and equality, in addition to any other issues deemed appropriate. Training should not simply relate to procedures, but should also cover the making of difficult and potentially controversial decisions.

Recommendation 26

All individuals involved in the licensing decision making process (officials and councillors) must have to undertake appropriate training. The content of the training must form part of national minimum standards.

Use of Passenger Carrying Vehicle (PCV) licensed drivers

- 4.27 Driving a Public Service Vehicle (a vehicle that can carry 9 or more passengers e.g. a minibus or bus) for hire or reward requires a PCV licence. PCV driver licences are issued by the Driver and Vehicle Licensing Agency (on behalf of Traffic Commissioners). Unlike taxi or PHV drivers, applicants for a PCV licence are not subject to any routine DBS checks (neither basic nor enhanced).
- 4.28 Applicants for a licence to drive passenger minibuses and buses must complete an application form and declare any convictions for non-driving offences as well as those relating to driving hours, roadworthiness or loading of vehicles as well as any.
- 4.29 The declaration of any offences will result in the DVLA notifying the relevant Traffic Commissioner so the applicant's suitability to hold the licence, in relation to their conduct, may be reviewed. Traffic Commissioners may grant refuse, suspend or revoke driving entitlement, taking into account passenger safety.
- 4.30 However, a number of areas have experienced issues whereby individuals whose taxi or PHV licence or application have been refused or revoked have applied to the Driver and Vehicle Licensing Agency and obtained a PCV licence, and these individuals have then carried passengers driving a minibus. In some cases, people who have had their licence revoked have even continued to work for the same operator.
- 4.31 This is an issue that has clear implications for passenger safety. Although it may technically be outside the scope of taxi and PHV licensing, there are evidently clear overlaps in practice. It is not acceptable that individuals that are deemed to be unfit to carry passengers in a vehicle that seats fewer than nine passengers are able to do under a different licensing system, simply because there are additional seats in a vehicle.

Recommendation 27

Government must review the assessment process of passenger carrying vehicle (PCV) licensed drivers and/or consider the appropriate licensing boundary between taxis/PHVs and public service vehicles (PSVs).

Language skills

4.32 It is important that drivers are able to converse effectively, and particularly so in emergency situations. Drivers should be able to:

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

Recommendation 28

Licensing authorities must require that all drivers are able to communicate **in English** orally and in writing to a standard that is required to fulfil their duties, **including in emergency and other challenging situations.**

5. Accessibility

The importance of the taxi and PHV market

- 5.1 As an introduction to this chapter, from the following quote from the evidence received from the Disabled Persons' Transport Advisory Committee (DPTAC) sets the scene appropriately:

'For those who cannot use public transport, either due to the nature of their conditions or because they live in areas with a poor public transport service, taxis can be the key element allowing them to live independently.'

Submission from DPTAC, November 2017

- 5.2 Evidence received by the Group highlighted that consideration of accessibility needs is essential in any reform of the sector. If the Government enacts national standards, accessibility considerations should be an integral part of their development, not a mere add-on. In the short term, it is important that licensing authorities use the powers they already have to improve access and passenger experience.

Training

- 5.3 The 2017 taxi and private hire statistics show that only 38% of licensing authorities in England require their taxi drivers to undertake disability equality training, and 35% require it for their PHV drivers. This training should be a national requirement as part of national standards, but licensing authorities have the power to require it now and should do. It is important that drivers working in a sector that can be a lifeline for those unable to use public transport understand that position, and how they can best support their passengers.

Recommendation 29

All licensing authorities should use their existing powers to require that their taxi and PHV drivers undergo disability equality and awareness and equality training. This should ultimately be mandated as part of national minimum standards.

Vehicle types and access

- 5.4 As can be seen in figures 4 and 5, the proportion of vehicles licensed by different authorities that are wheelchair accessible varies considerably. The 2017 statistics show that 63% of authorities require their taxi fleets to be a wheelchair accessible vehicle (WAV). These figures show that in England (excluding London) 41% of taxis are WAVs but this is only part of the story; in over a quarter of authorities, 5% or fewer of taxis are accessible. The situation is even worse for PHVs - nearly two-thirds of authorities have a fleet in which 5% or fewer of PHVs are wheelchair accessible.
- 5.5 Standard (non-WAV) vehicles remain important too: most disabled people do not use wheelchairs, and many people will find saloons easier to get in and out of. Mixed fleets are important, reflecting the diverse needs of passengers, but nonetheless, levels of WAV PHVs in particular (given the significant increase in PHVs in recent years) appears low in even the most populous areas. I have outlined one way in which licensing authorities can seek to increase availability in paragraph 3.35.

Recommendation 30

Licensing authorities that have low levels of wheelchair accessible vehicles (WAVs) in their taxi and PHV fleet should ascertain if there is unmet demand for these vehicles. In areas with unmet demand licensing authorities should consider how existing powers could be used to address this, including making it mandatory to have a minimum number of their fleet that are WAVs. As a matter of urgency the Government's Best Practice Guidance should be revised to make appropriate recommendations to support this objective.

- 5.6 It is welcome that in 2017, the Government brought sections 165 and 167 of the Equality Act 2010 into force, ensuring that drivers of wheelchair vehicles that a licensing authority designates for this purpose cannot charge wheelchair users more than non-wheelchair users, and must provide appropriate assistance.

Recommendation 31

Licensing authorities which have not already done so should set up lists of wheelchair accessible vehicles (WAVs) in compliance with s.167 of the Equality Act 2010, to ensure that passengers receive the protections which this provides.

- 5.7 It is illegal for a taxi or PHV driver to refuse to carry an assistance dog, unless the driver has obtained a medical exemption certificate from their licensing authority. Despite this, a recent campaign by the Guide Dogs for the Blind Association indicates that nearly half of guide dog owners surveyed had experienced an access refusal in the past year. This is unacceptable, and licensing authorities should ensure that strong action is taken when instances are reported. Driver awareness is also

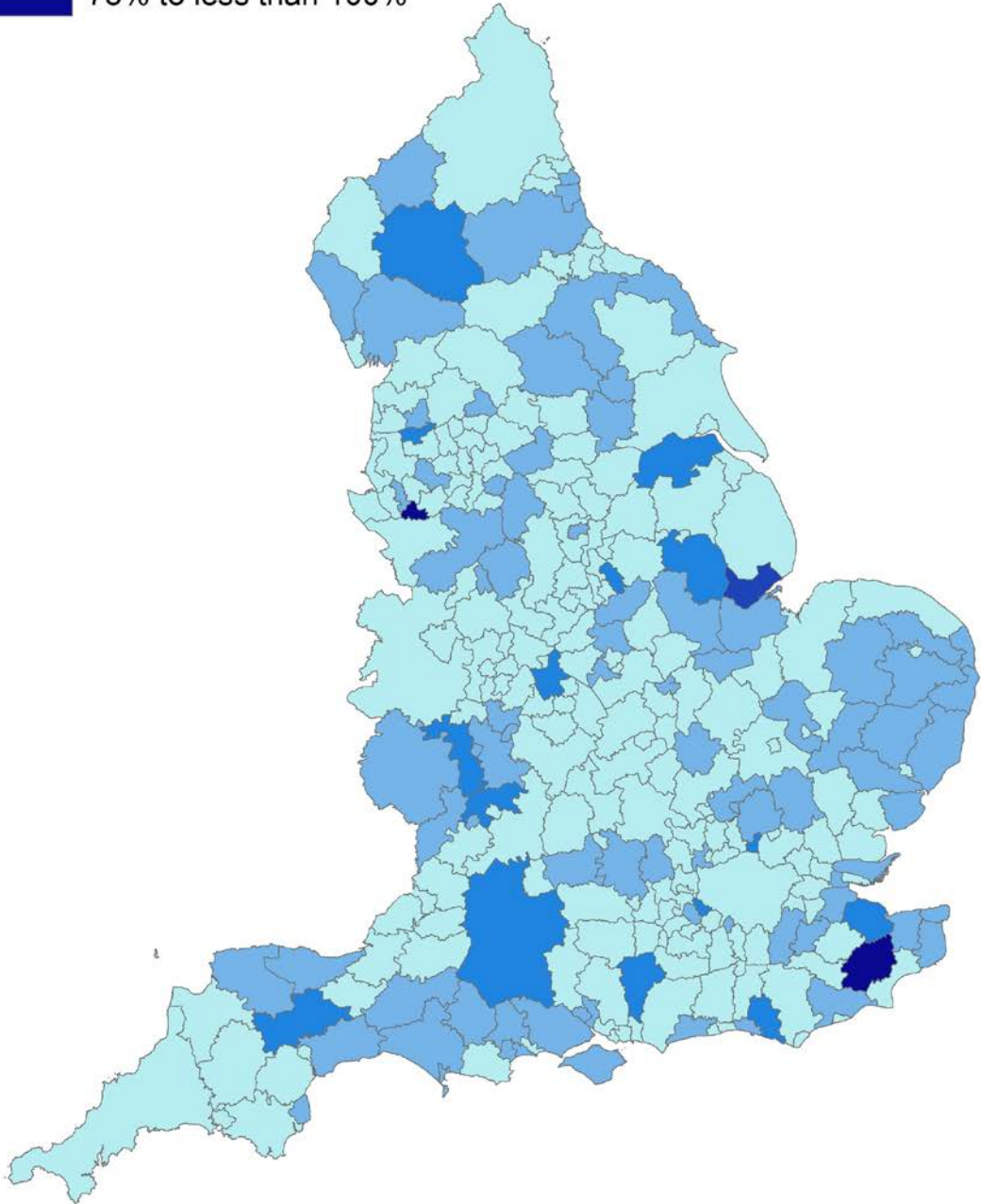
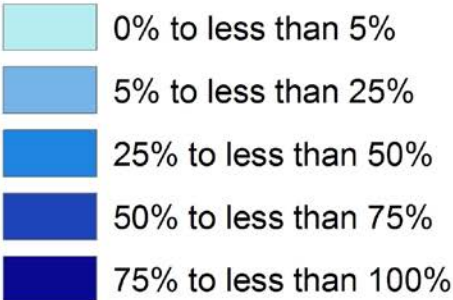
critical, and the earlier recommendation in favour of mandatory disability equality training would address this.

Recommendation 32

Licensing authorities should use their existing enforcement powers to take strong action where disability access refusals are reported, to deter future cases. They should also ensure their systems and processes make it as easy as possible for passengers to report disability access refusals.

Figure 4 - Wheelchair accessible PHVs in England¹⁰

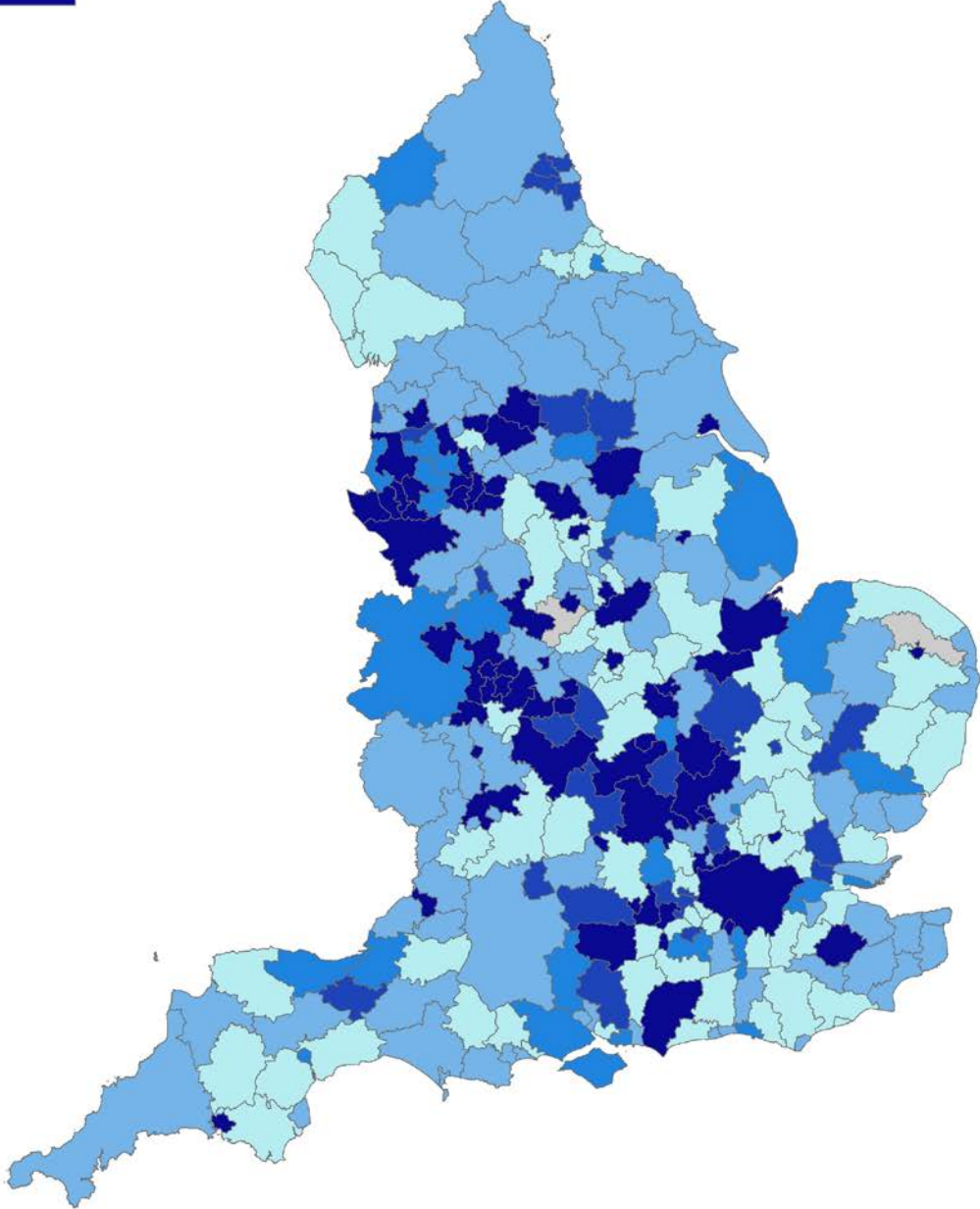
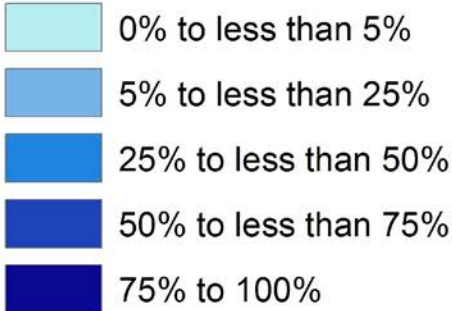
Percentage of accessible PHVs



¹⁰ Information provide by licensing authorities - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

Figure 5 - Wheelchair accessible taxis in England¹¹

Percentage of accessible taxis



¹¹ Information provide by licensing authorities - <https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicles-statistics-england-2017>

6. Working conditions

Characteristics of employment in the sector

- 6.1 Traditionally a large proportion of taxi and PHV drivers have been self-employed. In the PHV sector, the 'traditional' working model is largely based on drivers paying a fee to the operator to gain a place on its list of drivers. Although this does not guarantee an income, drivers are able to decide whether to renew this relationship at the end of the period, or in the interim should they not receive what they consider sufficient fares.
- 6.2 This absence of guaranteed income is now being repeated in the 'gig economy' PHV model, the difference being that the fee(s) paid to the operator is usually taken as a percentage of each fare. The 'gig economy' was defined as 'the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis' in the Department for Business, Energy and Industrial Strategy's [2018] research paper¹².
- 6.3 However, even in the 'gig economy' PHV model, the relationship between the PHV operator and driver has changed very little from the 'traditional' model. Drivers still require an operator to act as the intermediary between them and the passenger. This means that PHV operators have control over the fare levels and the number of journeys a driver may receive.
- 6.4 The introduction of new technology in the private hire market has enabled new ways for the PHV operator to bring together drivers and passengers. This experience is not unique to this sector nor is the use of such technology unique to new entrants. There are many long-established companies that now use apps both in the PHV and taxi markets. At the same time I am aware that there are a number of ongoing legal disputes regarding the legal status of individuals that work in the PHV trade. While the reporting of these cases has focused on those involving app-based PHV operators the relationship between driver and operator appears similar in both the established and disruptive operator business models
- 6.5 On 7 February the Government's 'Good Work'¹³ document, which was published in response to the 2017 'Good Work – The Taylor Review of Modern Working Practices'¹⁴, acknowledged Taylor's seven point plan was important to achieve the overarching ambition that all work in the UK should be decent and fair. The second of the points is focused on seeking clarity in the gig economy. It acknowledges that platform-based working offers opportunities for genuine two-way flexibility, and that these should be protected. However, it also recognises the importance of ensuring fairness both for those who work in this way and those who compete with them. It

¹² <https://www.gov.uk/government/publications/gig-economy-research>

¹³ <https://www.gov.uk/government/news/governments-response-to-the-taylor-review-of-modern-working-practices>

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

proposes that 'worker' status should be maintained but it should make it easier for individuals and businesses to distinguish 'workers' from those who are legitimately self-employed.

- 6.6 While it was not in the remit or expertise of the Group to decide the employment status of drivers, it did hear about and consider working practices in the sector. In particular, concerns were raised about the balance of risk and reward for PHV drivers and the effects this has on their welfare and, potentially for public safety.

Working practices and earnings

- 6.7 The Group heard concerns that drivers, of both taxis and PHVs, are working longer hours to maintain existing incomes due to the increasing numbers of drivers. Of particular concern was the suggestion that drivers may be working excessively long periods without adequate breaks and the possible consequences of this for public safety.
- 6.8 All operators must meet their statutory obligations to drivers. Where drivers are 'workers' or employees, operators must ensure that none takes home less than they are entitled under National Living Wage legislation. Operators however should have a duty of care to support their drivers regardless of their employment status. Such an approach would obviously benefit drivers but it is also in operator's interests to support good working environments. It can support the retention of good drivers and lead to benefits for passengers; a driver who is content with their relationship with the operator may provide a better service and lead to repeat custom.

The role of PHV licensing authorities

- 6.9 It is outside the expertise and scope of a local licensing authority to determine the employment status of drivers working with its licensed PHV operators. However, licensing authorities do have a responsibility to ensure that operators are 'fit and proper'. If a licensing authority has evidence of an operator persistently flouting employment law (for example, making no changes in response to an employment tribunal that is not being appealed, or can be appealed no further), that should legitimately be seen as casting doubt on whether that operator is "fit and proper", and would be worthy of thorough consideration.

Recommendation 33

The low pay and exploitation of some, but not all, drivers is a source of concern. Licensing authorities should take into account any evidence of a person or business flouting employment law, and with it the integrity of the National Living Wage, as part of their test of whether that person or business is "fit and proper" to be a PHV operator.

Working/driving hours and safety

- 6.10 As already noted, the Group heard the view from some stakeholders that erosion in drivers' earnings has resulting in drivers working for increased, and potentially excessive, hours to maintain their income. It is self-evident that, at some threshold,

tiredness and long hours of driving in any vehicle poses a risk to public safety through reduced alertness and response times. The Group did not see independent evidence of how many hours drivers are working however it heard from industry experts that the taxi and PHV industry is one which has historically lent itself to long working hours generally.

- 6.11 At present, taxi and PHV drivers are not subject to the Road Transport (Working Time) Regulations 2005¹⁵. Drivers can therefore choose the hours they work, and there are no rules that limit the number of hours they can work in a day or week.
- 6.12 That appears potentially problematic. A minibus driver has limits on how long they can work and when they must take rest breaks. There is no logical reason why a taxi or PHV driver (possibly the same person as the minibus driver) should be permitted to carry paying passengers in a car for an unlimited length of time. A taxi/PHV driver still needs to be aware of the road and environment around them and be able to respond in a timely way to changes.
- 6.13 However, there are many questions of detail which it has not been possible to consider in full for this report. The European Union rules on drivers' hours and working time are complex, as the scenarios detailed in the Department's guidance¹⁶ illustrates. The appropriateness of these rules for the taxi and PHV sector is also open to debate; for example, limiting the number of driven hours may seem more appropriate than including times when a person is available and waiting for work. By its nature, the periods when taxis and PHVs are "available to answer calls to start work" (referred to as 'period of availability' in the guidance) would contribute to working hours but could not be considered as a rest period for the purposes of calculating driving hours according to the current rules.
- 6.14 The biggest challenge is how any limit(s) would be monitored and enforced; monitoring may require a tachograph system such as that used in buses and HGVs to be fitted to all taxis and PHVs. This may record the working/driving hours but consideration would need to be given to whether licensing authorities would monitor compliance or whether this would be done by the Traffic Commissioners (as for buses and HGVs). Despite these issues, this report favours driving time restrictions in principle if evidence indicates this is required on safety grounds and if a workable and proportionate way of doing so can be found. I think that Government should look at these issues in much greater detail than we reasonably can be done here.

Recommendation 34

Government should urgently review the evidence and case for restricting the number of hours that taxi and PHV drivers can drive, on the same safety grounds that restrict hours for bus and lorry driver.

- 6.15 In the meantime, it is worthwhile noting again that local licensing authorities have a key role to play in maintaining safety. Drivers have a responsibility to themselves, their passengers and the public to ensure they are fit to drive, and this requires drivers to be open and honest with licensing authorities (as well as the DVLA) on any health issues that may mean they should not be driving. Where concerns about the operation of taxis and PHVs are brought to the attention of licensing authorities they could – and should – take immediate action against drivers and operators if there is

¹⁵ <http://www.legislation.gov.uk/uksi/2005/639/contents/made>

¹⁶ <https://www.gov.uk/government/publications/eu-rules-on-drivers-hours-and-working-time>

any evidence of unsafe activity. A fit and proper operator should neither encourage nor condone excessive working or driving hours.

Annex A- Comments by Group Members

Helen Chapman

Director of Licensing, Regulation & Charging, Transport for London

Transport for London (TfL) is the largest taxi and private hire licensing authority in England with almost a quarter of a million taxi and private hire licensees. In London, like many parts of the rest of the UK and globally, we have seen significant change in the taxi and private hire sector in recent years which we anticipate will continue to change in line with consumer needs.

Regulation is required to ensure the safety of passengers engaging with taxi and private hire services but it is right that this regulation is reviewed and modernised to reflect the modern world and the changing needs of passengers.

On behalf of the Mayor of London and TfL I am grateful for the opportunity to have formed part of the Department for Transport Working Group. It has been a worthwhile and rewarding experience to work as part of a group looking at regulatory practices to meet the needs of a changing world while remaining focussed on passenger safety and convenience. I would like to thank the Chair for his efforts in navigating a course through the often strongly held views of the Group and invited guests to produce a report of real substance with the safety of passengers at its heart.

We agree wholeheartedly with many of the recommendations put forward by the report which, if adopted, will deliver fundamental improvements in public safety and improvements in delivering a world class two tier taxi and private hire service. Many of these recommendations for primary legislative change have previously been raised by the Mayor and TfL and, indeed, many London based taxi and private hire stakeholders and we are delighted to have these views shared by the Chair of the Working Group.

Proposals within the report, in particular a solution to address the common practice referred to as cross border hiring, national minimum standards, national enforcement capabilities and statutory definitions to define the two tier system will produce a model of licensing and regulation that helps to enhance passenger safety and is not only fit for today but is also future-proofed and flexible to meet the changing demands of passengers.

We remain ready to support Government in implementing these recommendations, particularly those that require national legislation. As the largest licensing authority we can provide expert support and guidance to any panels that are formed to take forward these sensible recommendations.

We would like to comment on a number of recommendations from a TfL perspective:

Recommendation 2 – we strongly support the introduction of national minimum standards and that these minimum standards should be set at a high level for safety.

We would like to thank the Chair for the common sense approach in recommending that licensing authorities can go further than the minimum, where required, to meet local needs. This is particularly important in London to retain the ability to set standards to meet air quality challenges and to continue to deliver the Knowledge of London for taxi drivers.

Recommendation 5 – The two tier system has worked well in London for many years and London’s taxis are frequently voted the best in the world. Recommending a statutory definition for plying for hire and pre-booked services is sensible and long overdue. We would like to formally register our interest in joining the panel of regulatory experts to help draft appropriate definitions.

Recommendation 8 – we welcome the Chair’s recommendation to allow local licensing authorities to set a cap on the number of taxi and private hire vehicles. The growing number of private hire vehicles in the capital is causing significant challenges in tackling congestion, air quality and appropriate parking controls. However, we note and strongly agree that there should be a proven need to set a cap by having a public interest test so monopolies cannot be formed. Once again, we remain ready to assist Government in defining an appropriate public interest test.

Recommendation 11 – cross border hiring has been commonplace in the industry for many years but with the introduction of app based services in the industry and the expansion in the number of private hire drivers and vehicles, it requires an urgent solution so as not to undermine public safety and confidence in using private hire services. TfL explored this issue in detail and in February 2018 we published a detailed policy paper with proposals to address this issue. The paper was presented to the Working Group and we are delighted to see this is being taken forward as one of the key recommendations for change.

Recommendations 25 and 29 we are fully supportive of these two proposals, however, we believe that an assessment is the more appropriate “minimum standard”. As a licensing authority our role is to assess the fitness of an applicant rather than to train them to be fit. However, for some authorities they may wish to provide this training above and beyond the minimum standard and this flexibility could be accommodated.

Recommendation 30 - All taxis in London are Wheelchair Accessible and we recognise the need to enhance the provision for Wheelchair Accessible Vehicles in the private hire fleet. However, this recommendation, as written, will be difficult to achieve as vehicles are licensed separately to private hire operators and therefore it isn’t easy to introduce a minimum quota of wheelchair accessible vehicles.

We look forward to working with the Government to see these recommendations brought forward and ensure a modern, sustainable and two-tier taxi and private hire system for the future.

Rt Hon Frank Field MP

Member of Parliament for Birkenhead

Mohammed Abdel-Haq has written a superb report. It follows a thorough, comprehensive evidence-gathering process conducted by the Working Group under his chairmanship.

The House of Commons debate, in which the Minister announced the creation of the Working Group, centred on the pay, working conditions and living standards of taxi and private hire drivers.

This report addresses each of those important points. In doing so, it puts forward sound recommendations to restore the integrity of the National Living Wage – the cornerstone of the Government’s labour market policy – while ensuring adequate rates of pay and decent working conditions for drivers are put at the heart of what it means to be a ‘fit and proper’ operator.

The implementation of those recommendations, alongside many others in this report, will perform the crucial role of constructing minimum standards upon which the taxi and private hire industry can continue to thrive and innovate.

Saskia Garner

Policy Officer, Personal Safety, the Suzy Lamplugh Trust

Suzy Lamplugh Trust would like to commend the Chair on the completion of this final report and express our thanks for being included in the Task and Finish Group. We are delighted that most of the recommendations from our research report, *Steering Towards Safety in Taxi and Private Hire Licensing*, have been included in the report. We fully endorse the content of the report, with the exception of the comments below, which should not defer from our recognition of what has been achieved.

We have no position on **Recommendation 4** which recommends combining licensing areas. This is because we think the problems of inconsistency between neighbouring licensing authority policies would be resolved with the introduction of national minimum standards.

We would like to emphasise, in relation to **Recommendation 8**, the importance of the public interest test to determine whether a cap on numbers will increase or reduce personal safety. Our concern would be a situation where a cap resulted in demand out-weighting supply, which may put passengers at risk if they are unable to hire a licensed vehicle for their journey.

We do not support **Recommendation 11** as we do not believe there is a personal safety reason for limiting the start and end-point of a journey. We believe that the current practice of drivers choosing which licensing authority to obtain their licence from based on less stringent safety checks would be resolved by the introduction of national minimum standards.

In point 3.8 of the report we would request that the word 'proportionate' be defined, to ensure that the high standards set are in no way compromised by this stipulation.

In addition to what has been included in the report, Suzy Lamplugh Trust would like to recommend the addition of the following recommendations:

Inclusion of taxi and PHV drivers as a regulated activity

This would enable the offences under the Safeguarding Vulnerable Groups Act 2006, relating to a barred individual working or seeking to work in regulated activity, to apply.

No deregulation of licensing

Suzy Lamplugh Trust is also concerned about the proposed deregulation of licensing requirements for PHV drivers as set out in the 2016 Tourism Action Plan. This would effectively allow individuals to have access to members of the public including vulnerable adults and children in a private vehicle, without any prior safety checks. There should therefore be no de-regulation of existing laws that protect personal safety within taxi and PHV licensing.

Prohibition of taxis or PHVs for use by non-taxi/PHV licensed drivers

The prohibition of PHVs and taxis for personal use by non-PHV or taxi-licensed drivers must be introduced in London. This is to prevent drivers who do not hold a PHV or taxi licence, and who therefore have not been subject to safety checks, from picking up passengers who may assume they do hold a PHV or taxi licence as they are driving a licensed vehicle. While we are aware that PHVs should always be pre-booked, research carried out by the Suzy Lamplugh Trust in September 2017 showed that one in five people (21%) think that minicabs can be hailed on the street, and a quarter of people (26%) believe minicabs can take passengers who approach

them while parked. In addition, our research showed that over half (57%) have taken a taxi or minicab without asking to see the driver's ID badge first.

Ellie Greenwood

Senior Adviser (Regulation), Local Government Association

As the organisation representing licensing authorities, the Local Government Association (LGA) is pleased to have been part of this working group. The LGA is supportive of the vast majority of recommendations in this document, many of which we have been actively calling for over several years, and the objectives underpinning them. Encouragingly, it has been clear throughout the process of the working group how much consensus there is on key issues including updating the legislation, a strengthened and consistent approach to safeguarding standards and the need to address out of area working.

The LGA has worked closely with its members in recent years to support them to strengthen taxi and PHV licensing; producing guidance, running training events and, most recently, commissioning the development of the national register of licence refusals and revocations. The focus of all this work has been to ensure authorities are doing all that they can to safeguard people using taxis and PHVs.

In doing this, we have also consistently urged Government to take the much needed step of modernising outdated taxi and PHV legislation.

It is to be hoped that the report of an independent Chairman marks a turning point on this, and that Government now moves swiftly to take it forward and introduce new legislation. The report recognises that the taxi and PHV market has changed beyond recognition since the existing framework was introduced. As we said in our original submission to the working group, this has too often left councils and Transport for London on the front line of competing, costly legal challenges as to whether new business models fit within an obsolete framework. It is ultimately Government's responsibility to ensure we have a regulatory framework that is fit for purpose and protects people, and it must now do so.

The LGA and its members recognise and accept that as markets change and develop, so too regulation and regulators themselves must adapt. But we believe that local authorities must continue to be central to the licensing process and are pleased that the report recognises the importance of retaining local flexibility in taxi / PHV licensing, in terms of the ability to set local conditions (alongside national minimum standards) and the proposal for a power to set local caps.

There is a strong case to be made for greater collaboration across licensing authorities: on local policies, standards and enforcement of taxi and PHV licensing. The LGA urges all of its members to move forward on this cooperatively and quickly.

In some places, there may be also be a good case for reviewing licensing authority borders. But licensing authorities need to reflect local areas, economies and taxi / PHV markets, and will therefore look different in different places, as they do currently. Any process of revising licensing authority boundaries needs to be led from the bottom up, based on functional economic geography, and should in the first instance be encouraged as a voluntary approach.

It should also be linked to the fact that, beyond the licensing function, the map of local government is evolving. Combined authorities, metro mayors and proposed reorganisation in two tier areas may impact the way in which licensing authorities are structured and operate. These developments should provide the foundation for any changes to the map of licensing authorities, to help maintain the local democratic accountability that the report highlights, while also ensuring that licensing authorities do not become remote from the communities that they serve and seek to safeguard.

It is positive that the report envisages a voluntary approach on this issue, and recognises that Government can help to encourage this – for example, through funding for licensing authorities to develop new models and legislation enabling authorities to form shared licensing areas.

A particular issue for many local areas and licensing authorities has been the growth in out of area working over recent years. The LGA believes that drivers should operate predominantly in the areas where they are licensed, and welcomes the recognition of this issue in the report. We are also pleased that the report recognises the concerns that the LGA and its members have raised about the very limited oversight of drivers of PCVs. It is vital that this safeguarding issue is addressed quickly, building on the work the LGA is doing to develop the national register of refusals and revocations.

Finally, we would caution that while undoubtedly desirable, there may be practical and financial barriers to local licensing authorities introducing some of the report's recommendations, such as mandating minimum numbers of wheelchair accessible vehicles, or (in particular) mitigating additional costs faced by the trade (on zero emission or wheelchair accessible vehicles, or CCTV). However, we look forward to working with Government to explore the options available in these areas.

Dr Michael Grenfell

Executive Director, Enforcement, Competition and Markets Authority

The Competition and Markets Authority has a statutory duty to promote competition for the benefit of consumers. This draws on the insight that, generally, consumers benefit from choice and also from the effect of competitive pressures on suppliers of services and goods, giving those suppliers an incentive to provide their services and goods to a high standard of quality, at a competitive price and with a desire to innovate; where there is effective competition, that is the only way that suppliers can win and retain business.

Applying this to the taxi and private hire vehicle (PHV) sector, competition provides operators with the incentive to give passengers value for money, by way of higher service standards, affordable fares and innovativeness in service provision.

The CMA recognises the need for robust regulation to protect passengers where market competition cannot wholly do this – for example, as regards safety standards. But we consider that such regulation should be proportionate and should be no more onerous than is necessary, with the concern that excessive or unnecessary regulation can create barriers to competition and new market entry, which would be counterproductive for the interests of passengers, depriving them of the benefits of competition (described above) as regards quality standards, price and innovation.

The benefit of price competition – affordability of taxi and cab fares for millions of ordinary people, and particularly the less affluent – should not be regarded as merely a ‘nice-to-have’ add-on. It is extremely important, including for some of the most vulnerable citizens in our society. It is also relevant to safety considerations; if people are unable to afford a taxi or cab fare (for example, after an evening out), they might well choose ways of transport that are considerably less safe – such as unlicensed vehicles, or themselves driving under the influence of alcohol – endangering themselves and others.

Having regard to these considerations, representing the CMA I have sought to engage with the serious work of the Group in what I hope has been in a constructive and cooperative spirit. As the Chairman says in his Foreword, there have been *‘strongly held and sometimes polar opposite opinions’* among members of the Group, and this is surely almost inevitable given the diverse range of interests and perspectives represented on the Group. It has been the Chairman’s task to draw useful insights from the range of expertise in the Group and produce a series of practical recommendations – designed to improve the sector and be workable – even if there is not complete consensus or unanimity about these.

My view is that the Chairman has been very successful in this.

I am happy to endorse the vast majority of the recommendations.

The only significant qualifications that I would wish to put on record are:

- As regards **Recommendation 8**, I am concerned that a numerical cap on the number of providers of taxi/PHV services risks having the effect of artificially and unnecessarily constraining competition, to the detriment of passengers – depriving them of the best prospect of high service standards, value for money and innovation in service provision.

I welcome the report’s recognition, in paragraph 3.40, of the risks of this and the consequent need to carry out *‘a clear, well-evidenced and considered public interest test before a number of restrictions can be applied’*.

Nevertheless, I am not convinced that the case for any kind of cap or numbers has been adequately made out.

In any event, I would urge that, even if there were to be such a cap, the factors taken into account in a public interest test should at least include, in addition to those listed in paragraph 3.41:

‘the effects on competition, including on service standards and affordability of fares, bearing in mind that the absence of affordable fares can induce people to travel by less safe modes of transport’.

- As regards **Recommendation 11**, I am concerned that limiting taxi and PHV operations to the area of pick-up or destination where the provider is licensed narrows the choice available to passengers and weakens competitive pressures, to the potential detriment of passengers (as described above).

Nevertheless, I fully recognise the concern that this recommendation is designed to address – namely, the risk of ‘forum shopping’ by providers, undermining regulatory safeguards applied by licensing authorities.

The report proposes some mitigating measures, specifically:

- Larger licensing areas (as proposed in Recommendation 4); I think that giving effect to this is a necessary precondition to Recommendation 11.
- The notion that operators should not be restricted from applying for and holding licences with multiple authorities, subject to meeting both national standards and any additional requirements imposed by the relevant licensing authority; in my view, this will be effective so long as the cost of multiple licensing is not so onerous as to represent a barrier to operators taking it up.

Finally, I should like to record that, in spite of the differences of opinion between members of the Group, it has been a huge privilege to work alongside such talented and well-informed individuals, who have brought their particular expertise and skills to bear on these difficult issues, and have consistently done so with a view to advancing the public interest, improving the sector and protecting the position of passengers and drivers.

I am in addition impressed by, and grateful for, the secretariat of officials from the Department for Transport who provided support and advice to the Group with admirable efficiency and professionalism.

As for our Chairman, Professor Mohammed Abdel-Haq, he had, as I have noted, the unenviable task of bringing together these disparate perspectives to form a coherent and workable set of recommendations; he is to be warmly commended on his achievement in doing so, and on conducting the Group’s meetings throughout in a spirit of courtesy and good humour. It has been an honour to be a member of his Group.

Anne Main MP

Member of Parliament for St Albans

It has been a pleasure to serve on the working group set up to advise and contribute to debate on the future of Taxi and Private Hire Vehicle licensing. The group has worked on this issue for a considerable period of time and there has been healthy debate throughout the process.

It is a considerable achievement that Professor Mohammed Abdel-Haq has been able to compile a report that has received backing from the many different viewpoints represented on the group.

Whilst I endorse almost all of the recommendations made in the report, I do want to share my concerns about three of the more contentious issues that we have not been able to find consensus on during our meetings;

Recommendation 8

I am concerned with the proposed power for local authorities to cap taxi and PHV vehicle licences. Whilst I appreciate that a public interest test will mitigate the potential issues with this proposal, I am still not convinced that it will benefit public safety or competition in the industry.

One of the issues that this seeks to address is ‘forum shopping’ by drivers who seek PHV licences from those authorities that are seen as easier, quicker and cheaper to get a licence from. The structure of the report suggests a significant strengthening of the licensing requirements across all local authority areas which I feel reduces any need for capping powers.

Combined with a more effective method of reducing drivers licensing in one area and working predominately in another, along with considerably higher licensing standards for all authority areas then I do not believe there is a requirement for a cap. Which I believe would reduce competition and do little to protect passenger safety.

Recommendation 11

I am still not convinced, based on evidence we have heard and read from many different stakeholder groups, that this is the best way to effectively license taxi and PHVs going forward. Although many firms will be totally unaffected by this, I believe there will be considerable implications for smaller PHV companies who regularly operate across several invisible local authority boundaries.

The aim of this recommendation is to prevent drivers being licensed in one part of the country from working predominately somewhere else. I had hoped we would have found a more creative way of reducing this problem whilst still retaining local autonomy, as I fear this recommendation is overly burdensome and is not a practical solution that fits in with passengers’ demands in the modern PHV industry.

I hope that the government will consult on this particular issue widely and seek to find a better and more creative solution that will protect the integrity of local authority licensing and retain healthy competition across boundaries that passengers have come to expect.

Recommendation 17

I do not believe the case has been made for the mandatory enforcement of CCTV in all taxis and PHVs. I support the aims of this recommendation, CCTV will be helpful for the prevention and conviction of crime involving taxi and PHV journeys.

However, I believe that local authorities should have the autonomy to decide on whether or not mandatory CCTV is required for the area in which they cover. I also remain concerned about the financial implications for drivers and small PHV companies who will bear the cost for installation, maintenance and recording of the footage in a data compliant manner.

I do believe the case has been made for drivers or companies choosing to have CCTV. This could form part of proposals for drivers to choose to license themselves at a higher level for passenger safety. A suggestion would be that if drivers choose to have CCTV installed, and license themselves at a higher level, this could allow them to operate across different LA boundaries other than the one they are licensed in.

I hope the government give careful consideration to the recommendations in this report. I believe there is a need to modernise the legislation governing the taxi and PHV industry and there are many sound proposals within this report that should be acted upon.

I would like to register my thanks to Professor Abdel-Haq and the team at the Department for Transport who have worked very hard to pull together this excellent report. I am also grateful to the other working group members who have contributed to a lively and informed debate.

Steve McNamara

General Secretary, Licensed Taxi Drivers' Association

The Licensed Taxi Drivers' Association agrees with the need to stop some drivers, particularly PHV drivers working through apps, from working excessively. However, we are concerned that the proposed measures set out in this report, especially the installation of tachographs, are neither practical nor proportionate and will prove to be very costly for both regulators and drivers.

For those PHV drivers who use apps for all their business it would be relatively easy to introduce restrictions on how long they are logged into the app. However, it would be much harder to regulate the hours of taxi drivers. The installation of tachographs has previously been discussed to try and control the hours of taxi drivers but each time the relevant regulator has deemed it an excessive measure, as well as intrusive and costly.

The best way to tackle excessive driving hours is to remove the need for drivers to work these hours in order to make ends meet. The LTDA believes that if all PHV operators paid their drivers at least the national minimum wage the hours those drivers feel the need to work would fall substantially.

Mick Rix

National Officer for Transport and Distribution, GMB union

The report attempts to address in a number of key areas enhanced public safety provisions with national minimum standards.

The issues around cross border working, plying for hire are issues which have blighted the trade for a number of years. The report recommendations are serious attempt to address these concerns and tackle head on what is a serious problem.

The recommendations on workers rights being placed into license conditions for operators if adopted will be another nail in the coffin for those who seek to exploit drivers for their own gain.

GMB urges the report recommendations to be adopted by our law makers and that legislation should be brought forward as quickly as possible.

Finally I would like to thank our Chair, who along with his good humour and humility, kept everyone focussed. It was a pleasure to work with him.

Donna Short

Director, National Private Hire and Taxi Association

Firstly I would like to echo the sentiments of every member of this group and commend the Chair of the group, Professor Mohammed Abdel-Haq, for a very comprehensive, detailed and easy to read report to the Minister. It is my belief that the report reflects accurately and succinctly the thoughts and views of the majority of the group's members on most of the points raised during the meetings held over the past few months.

This has been an arduous task, given the complexity of existing taxi and private hire legislation – and its archaic and user-unfriendly state, which was the prime motivation for Transport Minister John Hayes MP to have set up the group in the first place. In that regard I would also wish to thank the officers of the Department for Transport for their administrative support and input into the production of the report, and indeed the entire process of hosting and overseeing all the group meetings.

There is no need for me to put down each recommendation and comment on all of them, as in reality I am in agreement with most of the recommendations. What is most important is for the Minister to consider each of the recommendations' aims and goals, and whether they would pass the test of "Is this really what Parliament intends if/when they revise the legislation?"

This presupposes that the current Minister will approve and "sign off" the report at the earliest possible opportunity, so that Government can start work on those recommendations that may be activated immediately without having to depend upon new primary legislation - which we have all been advised would not be feasible for this industry during the current session of Parliament.

May I give a huge personal thumbs-up to **Recommendations 17/18** (CCTV in all licensed vehicles, with a funding boost; the debate is as to voluntary or mandatory) and Recommendation 26 (the training of council officers and emphatically, Councillors on licensing committees).

There are some recommendations however which will certainly be more controversial than others; none more so than **Recommendation 11** concerning all journeys – both taxi and private hire – having to start and/or finish within the area in which all three elements (driver, vehicle and operator) are licensed.

Given that there would be concessions made for certain segments of the industry, this only slightly eases the blow of what would otherwise cause a serious restraint of trade. In my opinion such a fundamental ring-fencing of licensing restriction would stifle competition, stunt the growth of some of the larger companies and conglomerates, and possibly put some of the smaller private hire operations out of business.

In practical terms, hundreds of operations that depend almost entirely on airport transfers (these operations are not exclusively chauffeur/executive, but often cater for a mix of upmarket and "ordinary" private hire passengers), would be severely hampered in particular, as often their drivers are dispatched to pick up or drop off regular customers at any of the major airports from, say, the driver's own home without having set foot in his licensing area during that journey.

Above all, there could be severe risks posed to public safety, as the recommended ABBA [that all taxi and PHV journeys should start and/or end within the area for

which the driver, vehicle and operator are licensed] restriction limits customer choice to the extent that some passengers may end up stranded, often late at night, merely because their potential transport has the wrong plate on the vehicle. This cannot be right, nor in the best interests of the travelling public.

We understand that the practice of many drivers and operators at the present time of working entirely remotely from their own licensing district is not what Parliament intended in any existing legislation; nor is it safe for the public in all its ramifications; nor is it anything but damaging to bona fide firms that “do it right”. There must be some way to curtail this pandemic abuse of licensing practice; however I do not believe that Recommendation 11 is the way to accomplish this.

Unfortunately any potential alternatives are scuppered by two recent pieces of case law: that of **Skyline Taxis v Milton Keynes Council** from November 2017 (where the necessity of a “physical presence” of a private hire operator base in each district was discarded), and **Knowsley MBC v Delta and Uber** from March 2018 (which rules out the concept of “intended use policy” for private hire). This entire topic requires intense investigation.

The other recommendation which seems to have caused a great deal of controversy is **Recommendation 8**: to set a cap on the number of private hire vehicles. At present there are entirely too many licensed vehicles now in operation, and this on the surface has caused severe competition, longer drivers’ hours, congestion and air quality issues.

However, it is my view that a cap on private hire numbers at this time is a “closing the stable door after the horse has bolted” scenario: it is too late to have the desired effect of correcting the above problems, as numbers have already skyrocketed and the vehicles that are currently licensed cannot be taken off the road purely on numerical grounds.

There is still a perceived need for more drivers and vehicles in some districts, whilst there is an over-supply in others. To limit PHV numbers across the board would possibly endanger passengers in those areas where supply is short, to the extent that those passengers could seek transport in unlicensed vehicles, drive their own vehicle when over the alcohol limit, or even attempt to walk to their destination and put themselves at risk on the street during night time hours.

If national standards are brought in at the level whereby (a) licence-shopping outside the district becomes less attractive; (b) reciprocal implementation of authority by officers allows for stricter enforcement across borders; and (c) the standards for both drivers and vehicles preclude volumes of casual licensing of substandard vehicles, these factors in themselves would limit further numbers of licensed vehicles flooding the market.

It is my belief that market forces will prevail without an artificial ceiling; supply and demand of PHVs must be allowed to continue in the name of fair competition and public safety.

As for driver training (**Recommendation 25**), this is an area that needs serious consideration: there is no longer a Sector Skills Council to sanction and implement future training programmes; there is no longer a current structure of updated BTEC (underpinning knowledge) and NVQ (assessment) that could be applied nationally; and crucially there is little funding in place to assist applicants to gain this very important and necessary training. The situation needs careful examination, new funding sources and constructive reform as soon as possible.

Within **Recommendation 30** (wheelchair accessible vehicle provision) the most important criterion must be clarity: it must be stressed that the Government position favours a mixed fleet of both saloon and wheelchair taxis. If it is not possible to have a set percentage of WAVs agreed across the entire country, then there must be another way to provide such provision without making WAVs compulsory across the entire taxi fleet in any one district. This policy is discriminatory against ambulant disabled passengers: arthritics, stroke victims, partially blind passengers, as they often have great difficulty getting into and out of WAVs.

There are perceived practical difficulties in implementing **Recommendation 34**, the restriction of taxi and PHV drivers' hours. Government will have to come up with an alternative to tachographs in every licensed vehicle, which is the current method of tracking drivers' hours in the bus, coach and logistics industries.

My only concern in respect of a possible omission within the recommendations is any mention of medical standards for drivers. I appreciate that this may fall under the category of "fit and proper" (which still needs defining); however in our experience the DVLA Group 2 criteria for medical fitness to drive are not being adhered to, either in terms of the exam itself or its correct frequency of intervals, by far too many licensing authorities. This poses a serious risk to the travelling public, and should be addressed with some urgency.

The motto, credo and remit of this Association from its inception has always been "to raise standards in the trade, both actual and as perceived by the public". The view of members of the group, and indeed the report itself, mirror(s) those desires and sentiments, and it has been an honour and a privilege for me to have been chosen and to have taken part in the group meetings and discussions.

Time is of the essence if this industry is to be rescued from its current state of chaotic lack of coherence and direction. I cannot emphasise strongly enough that this report encapsulates and addresses in great detail and insight the difficulties currently at hand, and – unlike previous attempts at reforming the industry - it must be acted upon with alacrity and determination.

Steve Wright MBE

Chairman, Licensed Private Hire Car Association

The views below are based on known policy and positions of LPHCA members alongside the discretionary judgement I am constitutionally afforded as LPHCA Chairman.

Given there were so many different and interested parties providing input, I feel the quality of the Report and the proposal outcomes, are in the main excellent and I'd like to congratulate and commend the Chair, DfT Officials and Group Colleagues for the hard work, professionalism and spirit of collaboration, widely shown.

Inevitably there are a few areas of non-agreement and unless referenced below, the LPHCA fully endorses the proposals and more generally the superb quality of the report.

Recommendation 8

We cannot agree with recommendation 8 because it is, in our view, anti-competitive, protectionist, un-environmentally friendly and safety compromising, furthermore it would be extremely costly, as well as difficult to enforce and regulate.

We do not accept that the proposal should help authorities to solve challenges around congestion, air quality and parking, which can be resolved outside of Taxi & PHV licensing. Nor do we accept that it would ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions, which again is a matter that in our view is wholly outside of Taxi & PHV licensing.

This proposal, if adopted, could bring about shortage of supply and make it very difficult for hire and replacement vehicle companies to operate. This in turn could leave consumers at risk of being stranded because of volatile and unpredictable demand factors, such as the weather and seasonal demands (e.g. during, Diwali, Christmas & New Year periods).

This proposal also lacks any tangible safety benefits and in our view, it would compromise rather than enhance safety.

Recommendation 11

We cannot agree with recommendation 11 because it is anti-competitive, protectionist, un-environmentally friendly and safety compromising, furthermore it would be extremely costly, as well as difficult to enforce and regulate. It would also increase dead mileage, make the industry far less efficient, increase costs and potentially lead to demand outstripping supply, which has serious safety implications.

The notion that Operators could hold multiple licenses is unsound, unnecessary and cost-prohibitive. Some operators would need to hold scores and possibly hundreds of licenses to operate as they do now, the cost and administrative burden would take the Private Hire Industry into an area that we believe has no place in a modern economy.

This proposal, in our view, is also out of kilter with the Law Commission's recommendations, government policy and fair, progressive competition. It will be, without doubt, vehemently opposed by the Private Hire Industry and will badly let down consumers if taken forward. National standards, compliance and enforcement proposed by the Chair elsewhere will eradicate many of the current inhibiting factors

on Local Authorities to deliver 'fit for purpose' regulations, without such inhibitive measures.

This proposal looks to be borne out of so called 'Cross-Border hiring', something which has always been undertaken by PHVs without problem until the arrival of large 'App-Only' companies whose drivers show themselves publicly outside of the area they are licensed in.

The proposal, as drafted, would not solve 'Out of area working' as the entities that have caused this anomaly, will simply licence in every licensing authority, which will be beyond the scope of the vast majority of PHV operators in England.

A viable solution may be to only allow pre-booked and corporate journeys to be undertaken out of area, with PHV drivers only able to show their position / availability in the area they are licensed in.

This could be enshrined in the future definition of Plying for Hire recommended elsewhere, by establishing a clear distinction between Public and Private Hiring of PHV's and Taxis.

The notion that specialist services such as chauffeur and disability transport services could continue to operate cross border under exemption is problematic as defining what a chauffeur is would be difficult.

Nearly every PHV carries elderly, disabled, special needs and vulnerable passengers and many PHVs are not specialist vehicles, but nevertheless they are the preferred mode of door-to-door transport for such passengers. This proposal would have a negative impact on such passengers.

We therefore cannot endorse the proposal and point out there are far better ways to deal with 'cross-border' / 'out of area operation'. We believe safety would in fact, be compromised, rather than improved.

Recommendation 12

We agree that Licensing Authorities should ensure that their licensing administration and enforcement functions are adequately resourced, setting fees at an appropriate level to enable this.

We must however ensure that such fees are proportionate, distributed appropriately and set at reasonable levels. Such fees should also be applicable to taxi & PHV drivers and operators and not have commercially inhibiting factors in the fees structure.

Recommendation 17

We accept that CCTV has a great role to play regarding both passengers and driver safety. We have undertaken research with consumers, operators and drivers on both the merits and issues that CCTV can bring.

We accept 'in principle' the spirit of what is being sought by way of safety, but personal privacy, uncertainty of costs, who has access to the data and how this would affect entities that provide hire-cars for drivers when either broken down or following an accident are significant issues.

We therefore cannot agree with mandating CCTV across the board and would like government to undertake a full-blown regulatory impact assessment and have considerable dialogue with trade representatives and others, so we can get the right balance for CCTV to go forward in a viable way.

Recommendation 28

We agree that Licensing Authorities must require that all drivers are able to communicate in English orally and in writing to a standard that is required to fulfil their duties, including in emergency and other challenging situations.

A problem area however comes within any written element, which in our view in London has been set way above the standard that is required for a PHV driver to fulfil their duties. We would like a fixed national standard of English to be in place that enshrines an oral test, the ability to plan a route and use an atlas & satnav. Good tests are already available and in use by some Local Authorities.

The level needed for written English is low because the only writing that most taxi or PHV drivers will need to do in the course of work is to write out a receipt. Since the introduction of English Language testing in London, there have been legal challenges, trade protests, heavily signed petitions, alongside the changing of requirements and implementation dates.

Proposed exemptions have been dropped and a great deal of hardship, unnecessary stress and cost has also been the consequence, alongside serious unresolved issues for dyslexic drivers. The British Dyslexia Association are in contact with TfL and the LPHCA on very real problems that the written element is causing.

TfL's current English Language requirements has caused the Mayor of London to have two meetings with Trade Representatives to date. The requirement date has been moved back several times (now to 30th April 2019) and the Mayor has stated that further dialogue could be needed in 2019 to get things right.

As well as the above, taxi drivers in London are exempted, whilst PHV drivers are not, which is something we are looking at on the basis of equality and discrimination. It is also very questionable why someone who has been working in the PHV industry for many years needs to be retrospectively tested for their English.

It should be remembered that every PHV driver in London has passed a driving test and for many years all PHV drivers have undertaken a TfL approved topographical assessment.

We propose that an agreed pan-England standard of assessment is needed, rather than every Local Authority doing its own thing, at differing costs and standards.

Recommendation 30

We are very supportive of measures that improve disabled vehicle provision but around 90% of disabled passengers are not wheelchair bound and rely on normal PHVs for their transport, with many actually preferring non-wheelchair accessible vehicles.

Mandating fleet quotas would bring considerable problems for PHV Operators as well as many drivers who are majoritively self-employed and now move between fleets. We would therefore like government to facilitate dialogue with PHV trade representatives and disabled groups like the Disabled Persons Transport Advisory Committee (DPTAC) to discuss how Private Hire can play a greater role in providing appropriate vehicles.

SUMMARY

The LPHCA believes that following the Law Commission Review and Professor Mohammed Abdel-Haq's excellent report, a number of these recommendations could

be brought in fairly quickly as there appears to be wide ranging consensus on key areas.

We also feel that for certain recommendations like English Language, enhanced DBS and barred lists checks, use of the National Anti-Fraud Network (NAFN) database, etc., that an absolute standard should be put in place. This would ensure that inconsistency, which has traditionally been the root cause of licensing problems, is eradicated.

LICENSING SUGGESTIONS

CREATED BY ROTHERHAM STEERING GROUP

CONTACT: INFO -

RSG1400@MAIL.COM

JESSICAJANE1400@ICLOUD.COM

STEERING GROUP AGAINST CHILD SEXUAL EXPLOITATION ROTHERHAM

We are a locally recognised Rotherham Steering Group consisting of victims, survivors and families of all forms of abuse. We are not professional experts in CSE, but collectively, we have gained expertise from first-hand experience of abuse and the devastating effects it has on victims and extended family.

We are a unique group who are about moving forward by educating and sharing our experiences with agencies and other professionals so that abuse can be significantly reduced on a national scale.

Our status has been recognised by:

- Alexis Jay Report August 2014
- Louise Casey February 2015
- A private meeting with PM David Cameron
- Support of Sarah Champion, MP
- Consultations with Rotherham Commissioners Malcolm Newson and Mary Nay.
- Consultations with funders from the private sector who have been awarded £3.1million to Barnardo's, from KPMG, RMBC and DFE.
- Training and awareness sessions with church leaders, Voluntary sector, Foster carers and other professionals in support agencies
- Supported the development of the commissioned services
- Meetings with various Councillors in Rotherham
- A survivor from the group has taken part in a video to be shown in training sessions for professionals in the NHS country wide
- Consultations with leaders and head of children's services at Rotherham Council.
- Esmee Fairburn foundation
- Significant media representation
- Nspcc workshop speaker
- Advisor for SYP and Crime Commissioner panel

Rotherham is a testimony that Child Sexual Exploitation has reached alarming proportions in the UK. Many believe that this is a phenomenon unique to Rotherham. However, historical and recent reports show that CSE does not recognise geographical boundaries nor does it respect creed, race or standing. It spreads easily across Localities like a cancer, devouring our children, their families and their communities.

We would like you to join in our fight to stop and eradicate CSE and all forms of abuse from escalating in your location. We aim to do this by embracing certain policies and practices to move forward in a positive way to help safeguard our children. We, as a Steering Group are proud to be a part of supporting Rotherham to move forward and make this a National Project.

Taxi Licensing

1. All taxis to be installed with CCTV and audio devices.
2. All taxis to be installed with tracking devices
3. All taxis to be installed with shield glass separating the driver from passengers
4. All children to travel in the back seat
5. Taxi drivers to use the vehicle for work purposes only and not for personal use
6. All drivers to be enhanced DBS checked
7. All drivers to report to base when not carrying a fare
8. Cars should only be used by the registered driver.
9. National data base to respond to intelligence as well as evidence against all taxi drivers
10. Regular, random drug tests on all drivers
11. Training in CSE awareness and reporting for all drivers
12. Mandatory for owner of company to keep correct complaints procedure
13. All job vacancies for staff to go through job centre

Any costs incurred from any of the above to be covered by the driver!
These costs will be tax deductible as the drivers are self-employed.

This page is intentionally left blank

From: [David Thompson](#)
To: [Fleet.Licensing](#)
Subject: Re: Trade Representatives - Response to proposed Fit & Proper policy
Date: 27 July 2018 18:33:13

Hi, seems comprehensive, is better if there is a common policy across all taxi authorities.

Regards, David Thompson

From: Fleet.Licensing <Fleet.Licensing@wiltshire.gov.uk>
Sent: 13 July 2018 11:32
To: Fleet.Licensing
Subject: Trade Representatives - Response to proposed Fit & Proper policy

Dear Trade Representative

Thank you for attending Mondays meeting.

As discussed, please could you send any comments on the following agenda item by 31st July 2018 for consideration:

Agenda Item 4: Fit and Proper Policy review – Proposed policy attached

The Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation has set out a policy for determining the suitability of applicants and licensees in the hackney carriage and private hire trades for consideration by licensing authorities to provide a clear and consistent approach across all local authorities. Wiltshire Council are looking at adopting this policy, please see attached document for information.

Regards

Fleet Compliance Team

Environment Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Direct Dial: 01225 770271
e-mail: fleet.licensing@wiltshire.gov.uk

This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

Update on the Licensing Service: September 2019

To update the Committee on the work of the Licensing Team in 2019.

Since the introduction of the new Animal Welfare Regulations in October, which was replaced by a number of outdated animal welfare legislation; all existing licences have now been inspected and granted giving star ratings to these premises as outlined in the new regulations.

There have also been many new animal activity applications submitted due to the changes, especially for Dog Breeding and Exhibition of Animals.

Animal Activity	Number of Premises Licensed	Number of premises & Star Rating awarded	
Catteries	26	1 Star	2
		2 Star	3
		3 Star	4
		4 Star	0
		5 Star	17
Dog Breeding	17	1 Star	1
		2 Star	5
		3 Star	2
		4 Star	3
		5 Star	6
Dog Day Care	8	1 Star	0
		2 Star	0
		3 Star	1
		4 Star	0
		5 Star	7
Exhibition of Animals	12	Not Star Rated (3 year licence)	
Hiring out Horses	14	1 Star	1
		2 Star	2
		3 Star	2
		4 Star	1
		5 Star	8
Home Boarding for Dogs	117	1 Star	3
		2 Star	28
		3 Star	22
		4 Star	20
		5 Star	44
Arrangers	6	Various of star rating depending on the host carer	

Kennels	25	1 Star	4
		2 Star	4
		3 Star	4
		4 Star	1
		5 Star	5
Pet Shops	20	1 Star	1
		2 Star	1
		3 Star	7
		4 Star	0
		5 Star	5

All licensed premises issued under the new Animal Welfare Regulations 2018 can be viewed on the public register on the Wiltshire Council website <http://www.wiltshire.gov.uk/licences-permits-animal>

All Licensing Officers are now currently undertaking unannounced inspections to all the higher risk premises awarded a 1 and 2 star rating. On a few of these inspections, visits are discovering issues and concerns, which in turn are leading to further enforcement such as warnings, suspensions and possible revocations.

As part of the new regulations, all inspectors must be suitably qualified by October 2021 to carry out animal activity inspections; in August three licensing officers attended a five day residential course for professional programme in inspecting licensable activities involving animals. This course was carried out in London by The Pet Industry Federation to enable them to achieve a level 3 certificate or equivalent, by a body recognised and regulated by the Officer of Qualifications and Examinations Regulations.

Officers have also been proactive with investigating possible unlicensed Dog Breeders and Pet Shops by requesting Data Access from outside agencies advertising pets for sale such as Gumtree, Pets4Homes and Pre-Loved. Information provided to us, enables the team to build a bigger picture of businesses selling puppies without the appropriate licence.

Festivals and large scale events

Due to being a rural county with lots of large outdoor spaces, Wiltshire is a popular venue for festivals and other large scale events. Prevention of harm is a key element when planning an event; Licensing Officers are involved in considerable pre event work guiding organisers in managing their own event to lessen the impact on the local community and emergency services of Wiltshire. By early intervention and positive engagement we seek to guide and educate organisers around managing alcohol consumption levels, drug prevention, antisocial behaviour, and the wellbeing of all at events.

Some events are supported through the Event Safety Advisory Group (ESAG). This is a forum where the organisers of events meet with the responsible authorities including the emergency services to discuss details of the event and any potential issues, and are offered multi-agency advice. The aim of these meetings is to promote well-run, safe events in Wiltshire.

Some of our high profile events include, Chalke Valley History Society in Broad Chalke in June, WOMAD at Charlton Park in July. A three day Armed Forces event and the OVO cycle race both in Salisbury have both triggered ESAG meetings.

In 2018 there were over 55 festivals and events in Wiltshire. Many of these will be held again this year along with a number of new events planned.

Partnership Working

As the summer months have drawn near, this means an increased number of alcohol licensed premises making use of the beer gardens; which increases more outdoor events in these areas.

The Licensing Team have undertaken several joint visits to licensed premises with officers from the Noise Team due to receiving many noise complaints from increased activity.

Licensing Applications

To give the Committee an update on the work of the Licensing Team, the table below details some the licensing applications in the 2018 and 2019 calendar years

Licence Applications: 2018 / 2019

Year comparison	2017	2018	2019
Temporary Events Notices	1703	1715	1718
Late Temporary Events Notices	395	448	453
Licensing Applications (New /variation/minor variation/Variation of DPS/Transfer)	1171	1145	981
Personal Licences	338	295	303
Lotteries/Renewals	534	536	460
Gambling Permits (Gaming Machines)	28	31	26

Hearings

Last year we have held 12 licensing hearings. To date in 2019, 7 hearings have been held.

One of the hearings this year was for a review of a premises licence in Salisbury made by Wiltshire Police. The grounds for review were that the premises have been conducted in such a manner as to prejudice the Licensing Objectives; The Prevention of Crime & Disorder, The Protection of Children from Harm and Public Safety.

After hearing all the evidence provided by all parties, the Licensing Sub Committee decided to revoke the licence.

Gambling Act 2005

The Gaming Machine (Miscellaneous Amendments and Revocation) Regulations 2018 were made on the 20th December 2018 and come into force on the 1st April 2019.

The widely publicised changes will see the maximum permitted stake for category B2 gaming machines (Fixed Odds Betting Terminals) reduced from £100 to £2.

Guidance aimed at protecting children and young people

The Committee of Advertising Practice issued revised guidance on the 13th February 2019.

The aim is to assist advertisers' agencies and media owners with their interpretation of the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) gambling rules (Codes), as they relate to the protection of children and young people.

It applies to marketing communications appearing in all media, including online channels such as social media.

The revised guidance will come into force on 1st April 2019 and supports the Advertising Codes, which require that marketers take all reasonable steps to:

- Ensure that advertising is not targeted at under-18's, either through the selection of media or the advertisement's content; and
- Prevent advertising being directed at adult audiences posing a risk to under-18.

The revised guidance provides greater detail on the approaches that are likely to be considered unacceptable by the Advertising Standards Authority in individual marketing communications.

Licensing Officers (Map of their areas to follow)

Carla Adkins	01249 706438	carla.adkins@wiltshire.gov.uk
Roy Bahadoor	01249 706439	roy.bahadoor@wiltshire.gov.uk
Emma Batchelor	01249 706414	emmaA.batchelor@wiltshire.gov.uk
Teresa Bray	01249 706413	teresa.bray@wiltshire.gov.uk
Ian Garrod	01722 432484	ian.garrod@wiltshire.gov.uk
Lisa Grant	01380 826332	lisa.grant@wiltshire.gov.uk
Hannah Hould	01722 434414	hannah.hould@wiltshire.gov.uk
Jemma Price	01249 706436	jemma.price@wiltshire.gov.uk

Technical Support Officers

Lesley Elven	01249 706435	publicprotectionnorth@wiltshire.gov.uk
Julie Macey	01225 716681	publicprotectionwest@wiltshire.gov.uk
Sue Lewis	01249 706555	publicprotectionnorth@wiltshire.gov.uk
Megan Mouny	01249 706424	publicprotectionwest@wiltshire.gov.uk