

APPENDIX A

Responses to Statutory Taxi & Private Hire Guidance

Austin Blackburn

Encouraging drivers to sign up to the DBS online service.... Again a good idea. Unfortunately we were not encouraged and found out too late. As checks are now every 6 months do we have to go through this all again now? Do you send out reminders?

I welcome replacement of the confusing safeguarding test. Searching I found EQUO of Lowestoft doing discrimination training for taxi's. Their course fee is £30 per person, why are you proposing £66 assuming it is the same?

Officer Comments:

It is proposed to implement the 6 monthly DBS checks when individual drivers are next due their 3 yearly DBS check. This is to ensure no additional financial burden will be placed upon drivers who have recently undertaken this process. We will notify each driver when he is due to undertake his next DBS check and this will be done for a fee of £40 (which is the fee charged by the DBS) in the normal way. Each driver will then be expected to register with the DBS update service. Following this, if a driver does not register with the DBS update service, then 6 monthly manual checks will be undertaken which will incur the additional administrative fee of £50 (on top of the DBS fee of £40).

The cost of the EQUO training we propose to implement covers 4 modules : Disability / Child Sexual Exploitation / Equality / and Safeguarding with added overhead costs for the use of rooms and officers time. The fee of £66 allows the candidate 10 attempts.

Denise Mason

I fully support a national database for the purpose of safeguarding and protecting the public from criminal behaviour and the requirement to join the update system is overdue in my view and a sensible decision. I do have the following observations to make regarding the current draft standards and any procedures that are built upon this framework.

1. Retaining data for 25 years - I would question the legality of retaining All refusals for 25 years. With the requirement to adopt a legitimate reason for assessing the need to retain for 25 years and refusals unrelated to risks of serious harm to the public, 25 years I suspect would breach GDPR rules on storage and retention. In a former life I worked in the Probation Service and we couldn't retain the majority of offender files for 25 years, from recollection 10 years was the maximum following the end of the sentence and that was for the most dangerous.

2. Has a privacy assessment been completed prior to producing these standards ?
3. Section 5.14 - Assessing suitability - assessing risks of harmful behaviour is complex and requires a measured and comprehensive trained approach? the Standards refer to making decisions based on the balance of probability. The process for assessment needs to be a well documented, unbiased and evidence based. Decisions taken on the balance of probability must still be evidenced based, the standards seem to be rather dismissive of what must be a repeatable unbiased process. *"If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence".* "Fit and proper" is subjective and open to unconscious bias and prejudice. Central government are good at publishing national standard frameworks which leave areas open to interpretation and implementation at a more local level. This risks multiple variations and on this particular subject impositions and sanctions could be far too variable across a national picture to be deemed fair and open to challenge with serious consequences on business owners and potential victims if wrong/unfair decisions are later overturned. Training should include understanding diversity to reduce risks of unconscious prejudice and training should not be done just the once which is so often the case.
4. This brings me to the next point; there should be an appeal process for decisions made at local levels particularly as decisions maybe left in the balance of probability. I couldn't see an appeal process.
5. *section 8.15 "Private hire vehicle operators have a duty under data protection legislation to protect the information they record. The Information Commissioner's Office provides comprehensive on-line guidance on registering as a data controller and how to meet their obligations."* I wrote to Micheal Moss in March last year regarding concerns I had following my registration with the ICO as an operator when I undertook my own searches of their register. I informed Micheal that there appeared to be a number of licensed operators in Sevenoaks who had not registered with the ICO. In particular I could not find several companies who advertised their school run services. I called the ICO to discuss this issue and they were fully aware there were many taxi operators who were not registered and they too had concerns about this. As a former information security officer in my previous job I noted my surprise that Sevenoaks did not publish in their documentation to license holders this requirement. It is dissapointing the standards are only signposting the ICO for guidance rather than stipulating the legal obligations.
6. Further to this point I fully understand the justification in the standards for the requirement of just a basic DBS for an operator. However, there is only a recogniton in the standards that an operator maybe a driver also. This is the case in my situation but I note there is no recognition that an operator may have access to data relating to children and vulnerable adults. This could easily occur in an administrative role and the standards needs to be clearer with reference to requirements for information security policies which clearly identify roles and responsibilities which evidences an operator has adequately assessed the risks and protects information for safeguarding purposes.

7. The standards makes some reference to generating an awareness of the public on the difference between Private Hire/hackney carriage and PCV drivers. In my experience since driving as a Private Hire driver for my own business I have noticed the majority of the public are oblivious to licencing rules and regulations and how they are meant to benefit and protect them. More specifically the use of the word Taxi is a generic word the general public will always use when booking a private hire car with me. I learned that Sevenoaks licensing department changed their rules on vehicle signage for Private Hire operators, imposing a restriction of the use of Taxi on their vehicles. As a new and small operator it is apparent I face an unfair disadvantage against those operators who have been allowed to continue to adopt 'Taxi' on their vehicles. When the wording 'Private Hire' stands alone it holds other connotations and the lay person normally considers this in the context of a self drive hire car not a 'taxi' as they know it. It only becomes more obvious when the licence plate becomes visible to the observer. If the decision was based on ensuring the public was not misinformed or it is a legal requirement, allowing operators to continue to use taxi in their signage will not meet that objective.
8. As an independent operator promoting my services I need to be able to be clear to the public about what I am offering and the industry restrictions should make it an equal playing field. Legal jargon shouldn't prevent me from informing customers I am providing an advanced booking, private hire taxi service. A review of this local ruling where decisions are based on a clear objective would be helpful and fair if it was more transparent in the policy.

Officer Comments:

- 1 & 2 The National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3) was commissioned by the Local Government Association (working with Central Government) and went live in 2018. Guidance has been developed setting out the steps Local Authorities need to take to use the register in a way that complies with the Data Protection requirements, as well as with human rights law - which also includes a Data Protection Impact Assessment. All aspects of the implementation of the use of this register have been assessed and approved by the Sevenoaks District Council Data Protection Officer.
3. Sevenoaks District Council Officers dealing with the Taxi and Private Hire trade undertake continued professional development training through nationwide recognised licensing bodies: such as the Institute of Licensing / Poppleston Allen / Kings Chambers, London .. to name but a few. This regular training and networking allows officers to access current case-law and good practice. Sevenoaks District Council has a Hackney Carriage and Private Hire Licensing Policy which outlines how it will deal with offences, complaints and convictions both during the application process and the duration of any licence issued.

4. The Local Government (Miscellaneous) Provisions Act 1976 has provisions for District Council decisions to be appealed to a Magistrates Court.
5. With regard to Private Hire Operators registering with the ICO; I have discussed this matter with Michael Moss at some length. Registering with the ICO is for every organisation or sole trader who processes personal information (unless exempt) to comply. Failure to comply is a criminal offence which is enforced by the Information Commissioner's Office. As a Local Authority, it would be very difficult for us to sign-post prospective applicants and licence holders to ALL the regulatory responsibilities under the various Acts they may fall foul of which we do not enforce (these can include health & safety, employment law, data protection, equal opportunities, right to work ..to name but a few). We will, of course, work with the ICO should they approach us with regard to particular organisations who are not registered with them. Information on how to set up a taxi/private hire business would probably be better disseminated through nationwide bodies, such as the National Private Hire & Taxi Association or the National Taxi Association.
6. I understand your thoughts behind this comment; the standards have been consulted upon and are in force, so it will fall to individual Operators to ensure appropriate weight is given to any disclosures beyond those shown on a basic DBS, as well as any disclosed on a basic DBS and that they are all taken into consideration. This can only be seen as a move in the right direction : up until now - no checks were made. Drivers who undertake enhanced DBS checks will, obviously, not be required to also undertake a basic DBS check if they apply, or are, licensed Operators.
7. I have recently sent the Sevenoaks District Council Comm's Team draft guidance for members of the public on the difference between a Hackney Carriage and a Private Hire, and how to recognise a licensed Sevenoaks district Council vehicle. This information will hopefully be in the locally circulated Council publication soon. I totally agree with the comments you have made .. I was also completely ignorant to the complexities surrounding hackney carriage and private hire licensing until I became a licensing officer. We are, unfortunately, still working under legislation written in 1847 - with an update in 1976 - but still over 40 years old !! .. when a private hire ignored me waiving frantically from the side of the road - I would just think he/she was rude not picking me up. Various attempts have been made over the years to get Central Government to amend and update taxi legislation, but unfortunately this hasn't been taken up to date (with the exception of a few 'tweaks')
8. It is hoped that item 7 above, will educate the public in how to distinguish between a Hackney Carriage (Taxi) and a Private Hire Vehicle. Having a two-tier system requires clear rules regarding the way in which the respective taxi and private hire services should be permitted to describe themselves. Using the phrase 'Hackney Carriage' is somewhat dated and it is widely accepted that 'Taxis' are Hackney Carriages. The term 'private

hire' is a more modern term and accurately describes the service it relates to.

Graham Powell

Thank you for your e mail the contents of which I note

Whilst I am in favour of this initiative as it appears to me that it will promote professionalism within the ranks of licensed drivers, I need some reassurance about the security of the personal data which will appear on the register

Please advise me regarding the person(s) who will have access to this data and the provisions for its security

Many thanks

Officer Comments:

The National Anti Fraud Network - NAFN (the organisation holding this register) will only be supplied with limited personal driver details of those refused or revoked drivers. **No driver information will be uploaded if there hasn't been a refusal or revocation.**

NAFN is recognised as an expert provider of data services by the Interception of Communications Commissioner's Office, the Home Office, the DWP and the DVLA - amongst others, and they act as a single point of contact to access a wide range of information using robust legal gateways and processes meeting the highest standard of legislative compliance.

The limited data uploaded to the register can only be accessed by other local authorities signed up by the NR3 data sharing agreement with NAFN - it will then be for those local authorities concerned to make contact with each other under Schedule 2 of the Data Protection Act 2018 for further relevant details relating to the refusal or revocation of a licence to be released.