

Licensed Private Hire Car Association

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Ms Lindsey Vallis
Transition Head of Licensing, Cemeteries & Crematoria Services
Communities Directorate Buckinghamshire Council
The Gateway, Gatehouse Road
Aylesbury
Buckinghamshire HP19 8FF

BY EMAIL

4th January 2021

Dear Ms Vallis,

Consultation on Draft Hackney Carriage & Private Hire Licensing Policy (10th November 2020)

I am writing formally as our response to Buckinghamshire Councils' ("BC") consultation on its proposed '*Hackney Carriage & Private Hire Licensing Policy*'.

The Licensed Private Hire Car Association ("LPHCA") are national private hire trade representatives, who submit this response, as an interested party and key stakeholder, on behalf of affected members and others. A non-exhaustive list of those members and others, who collectively support this submission, has been included for convenience at the end of our submission.

In addition to the submission, I would kindly ask that the LPHCA correspondence to BC of 2nd December 2020 and 11th December 2020 be entered alongside this response. You will be aware that these include references to the '**Consultation Principles 2018**'¹ which I wish to add as a reminder of the principle need for **transparency, accountability, proportionality and consistency in regulatory activities**².

We wholly appreciate the very difficult balance authorities must strike between **statutory duties to prevent crime or disorder**³ and **promote economic, social and environmental wellbeing of its area**⁴. The LPHCA supports these endeavours and is likewise committed to the overriding consideration of ensuring public safety.

In terms of constructive and not critical feedback, we are grateful for the extra 2 weeks added to make the process an 8-week consultation, but we retain our concerns about the duration, timing and regulatory impact, given the pandemic, lock-down and high-tiered status of Buckinghamshire and the Taxi and Private Hire trade. Indeed, during the consultation period itself, BC declared on 30th December 2020⁵ a "**major incident**" over the damaging effects of the virus in the county. The unprecedented pressure being exerted on Buckinghamshire businesses, and communities, must not be under-estimated, or disregarded, at this time.

Broadly the consultation and associated documentation was well set out and informative, but a number of key policy proposals like **Tinted Window** and **DVLA Penalty Points** were not covered in the online consultation response form, hence our written reply.

Our primary concerns are based on some of the proposals being **over-regulatory** and in some cases **unnecessary**, particularly at the current time.

I wish to, once again, sincerely thank BC for its assistance and, with a view to achieving **workable solutions**, welcome continued dialogue in the future. To that end, as a key trade body, we wish to seek direct dialogue with you once the consultation has been evaluated, prior to recommendations being put to the licensing committee for consideration.

Yours sincerely,

¹ 'Consultation Principles 2018'. Cabinet Office, 19th March 2018.

² Section 21 Legislative & Regulatory Reform Act 2006.

³ Section 17 Crime & Disorder Act 1998.

⁴ Section 2 Local Government Act 2000.

⁵ 'COVID-19: Buckinghamshire declares 'Major Incident' over virus cases', Buckinghamshire Council, 30th December 2020 (as found at <https://www.buckinghamshire.gov.uk/news/buckinghamshire-declares-major-incident-virus-cases/>).

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Steve Wright MBE – Chair LPHCA



(1) CCTV (Proposals 4.3(5) / Appendix 8)

The LPHCA **totally opposes** CCTV being a *mandatory* requirement for private hire vehicles. In substantiating this position, the LPHCA offers the below comments:

(a) Practical Implication/s

- (i) **The proposal imposes an ill-timed, given the pandemic, unlimited financial burden which is estimated to be upwards of £608 per vehicle for installation alone** (*'Impact Assessment'* (DfT00399), DfT, 4th February 2019).
- (ii) **The proposal imposes additional regulatory obligations on licence-holders regarding data control and the Information Commissioners Office ("ICO")** (as found at *'Notification To the Information Commissioners Office'*, Appendix 8)
- (iii) **The proposal is onerous on the driver to make decisions on the activation and / or use of the recording equipment** (as found at *'Activation of the Camera'*, Appendix 8).
- (iv) **The proposal does not appear to contain contingency plans for vehicle replacement (etc)** (as found at Appendix 8).

(b) Legal Consideration/s

- (i) **The proposal fails to broadly establish it is "*reasonably necessary*"** (within the meaning of *section 48(2) Local Government (Miscellaneous Provisions) Act 1976*).
- (ii) **The proposal, in mandating, exceeds the Department for Transport ("DfT") recommendation** (at para. 7.7-7.13, *'Statutory Taxi & Private Hire Vehicle Standards'*, DfT, 2020).
- (iii) **The proposal does not appear to have been directly considered by the ICO or Surveillance Camera Commissioner ("SCC")** (pursuant to, amongst others, *Southampton City Council v The Information Commissioner EA/2012/0171*).
- (iv) **The proposal does not appear to have been subject to a Data Protection Impact Assessment ("DPIA")** (pursuant to *section 64 Data Protection Act 2018* and *'Blog: Continuous CCTV in Taxis – Where Do Councils Stand?'*, ICO August 2018).
- (v) **The proposal does not appear to have considered Competition & Markets Authority ("CMA") guidance on licensing conditions which "...may restrict or distort competition, potentially resulting in...higher fares or...lower quality of service..."** (as recommended in *'Guidance on the Impact of Taxi & Private Hire Licensing on Competition & Consumer Welfare'*, CMA, June 2017).
- (vi) **The proposal does not appear to have been subject to a Competition Impact Assessment ("CIA")** (as recommended in *'Regulation of Taxis & Private Hire Vehicles: Understanding the Impact on Competition'*, CMA, April 2017).
- (vii) **The proposal does not account for the right to privacy of potential public personalities, and vulnerable passengers, who may request, or require, a higher level of discretion** (within the meaning of *Schedule 1, Article 8, Human Rights Act 1998*).
- (viii) **The proposal has, in respect of private hire vehicles, only been adopted by 4% of licensing authorities in England** (*'Taxi & Private Hire Vehicle Statistics, England: 2020'*, DfT, 16th December 2020).
- (ix) **The proposal ignores DfT advice to "...support local economies and to limit any long-term impacts on the sector..." during these "...challenging times..."** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020).

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The incorporation of a CCTV licence condition remains a difficult and controversial matter. **We totally oppose mandatory CCTV and, in the alternative, submit use of CCTV should continue to be a subjective decision for each private hire vehicle owner or driver.**

(2) English Language Test/s (Proposal 3.7)

The LPHCA has **concern** as to the final criteria for the assessment, the cost and strategic timing of implementing such a requirement.

In substantiating this position, the LPHCA offers the following comments:

(a) Practical Implication/s

- (i) **The proposal imposes an ill-timed, given the pandemic, fee burden** (as found at Proposal 3.7).
- (ii) **The proposal does not appear to specify the exact parameters, or qualification, requirement** (as found at Proposal 3.7 and at Proposal 6, 'Taxi & Private Hire Licensing Policy – Summary of Key Draft Policy Proposals', BC, 10th November 2020).
- (iii) **The proposal does not identify acceptable alternative qualifications which may already be held** (as found at Proposal 3.7).
- (iv) **The proposal may prevent, or otherwise stall, the licensing of new drivers which could lead to "...shortages of supply..."** (Taxi & PHV Licensing – Supporting The Sector...', Stephen Fidler, DfT, 10th September 2020).

(b) Legal Consideration/s

- (i) **The proposal, subject to clarification, is unclear on whether it is the least onerous test for the intended purpose** (*R (Uber London Limited & Others) v Transport for London [2017] EWHC 435 (Admin)*).
- (ii) **The proposal does not appear to have considered CMA guidance on licensing conditions which "...may restrict or distort competition, potentially resulting in...higher fares or...lower quality of service..."** (as recommended in 'Guidance on the Impact of Taxi & Private Hire Licensing on Competition & Consumer Welfare', CMA, June 2017).
- (iii) **The proposal does not appear to have been subject to a CIA** (as recommended in 'Regulation of Taxis & Private Hire Vehicles: Understanding the Impact on Competition', CMA, April 2017).
- (iv) **The proposal may act as a bar for individuals to enter the trade and constitute a socio-economic disadvantage** (*section 1 Equality Act 2010*).
- (v) **The proposal, it is noted, is a public function subject to the public sector equality duty** (*section 149 Equality Act 2010*).
- (vi) **The proposal ignores DfT advice to "...support local economies and to limit any long-term impacts on the sector..." during these "...challenging times..."** (Taxi & PHV Licensing – Supporting The Sector...', Stephen Fidler, DfT, 10th September 2020).

The incorporation of an English Language Requirement, it is acknowledged, is an appropriate and necessary measure.

We are concerned, and maintain, that the test should be appropriate, inexpensive and scheduled appropriately given the current pandemic impact on drivers. **Moving forward, and insofar as possible,**

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we ask that BC mirror the useful base parameters proposed within the recent Greater Manchester consultation⁶.

We have a great deal of experience in the delivery of appropriate English tests and would be pleased to have further dialogue with BC on this area.

(3) Age of Vehicle Restriction (Proposal 4.6)

The LPHCA believes that arbitrary age policy is ineffective and is not the best way to establish a vehicle's safety and suitability. In substantiating this position, the LPHCA offers the below comments:

(a) Practical Implication/s

- (v) The proposal imposes an ill-timed, given the pandemic, substantial costs burden** (as found at Proposal 4.6 and Proposal 3, '*Taxi & Private Hire Licensing Policy – Summary of Key Draft Policy Proposals*', BC, 10th November 2020).
- (i) The proposal may prevent, or otherwise stall, the licensing of vehicles which could lead to "...shortages of supply..."** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020).

(b) Legal Consideration/s

- (i) The proposal ignores DfT best practice which suggests it may be "...arbitrary and in appropriate..."** (at para. 32, '*Taxi & Private Hire Vehicle Licensing: Best Practice Guidance*', DfT, March 2010).
- (ii) The proposal does not appear to have considered the DfT best practice alternative of "...greater frequency of testing..."** (at para. 32, '*Taxi & Private Hire Vehicle Licensing: Best Practice Guidance*', DfT, March 2010).
- (iii) The proposal, subject to clarification on intended application, could be interpreted as a fettering of discretion** (Para. 8.110, '*Button on Taxis: Licensing Law & Practice*', J.Button, 4th Edition, Bloomsbury, 2017).
- (iv) The proposal does not appear to have considered CMA guidance on licensing conditions which "...may restrict or distort competition, potentially resulting in...higher fares or...lower quality of service..."** (as recommended in '*Guidance on the Impact of Taxi & Private Hire Licensing on Competition & Consumer Welfare*', CMA, June 2017).
- (v) The proposal does not appear to have been subject to a CIA** (as recommended in '*Regulation of Taxis & Private Hire Vehicles: Understanding the Impact on Competition*', CMA, April 2017).
- (vi) The proposal may act as a bar for individuals to enter the trade and constitute a socio-economic disadvantage** (*section 1 Equality Act 2010*).
- (vii) The proposal ignores DfT advice to "...support local economies and to limit any long-term impacts on the sector..." during these "...challenging times..."** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020).

A vehicle's age cannot determine its condition, nor its air quality credentials, nor its safety. Furthermore, age policy necessitates exceptions and exemptions for a variety of good reasons.

⁶ Page 10, '*Greater Manchester Taxi & Private Hire Minimum Licensing Standards Consultation*', Greater Manchester, 8th October 2020 (as found at www.gmtaxistandards.com/wp-content/uploads/2020/10/GM-Minimum-Licensing-Standards-consultation-document-online-1.pdf).

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These include vehicle cost, vehicle function - like Special Educational Needs and Disabilities (SEND) and environmental credentials, its structure and in some cases important and expensive conversion criteria.

We would welcome future dialogue with BC on this subject in due course.

(4) DVLA Penalty Points (Proposals 3.5 / Appendix 4)

The LPHCA **totally opposes** an automatic refusal requirement for drivers with “...7 or more penalty points on their DVLA licence...”⁷. In substantiating this position, the LPHCA offers the below comments:

(a) Practical Implication/s

- (i) The proposal imposes an ill-timed, given the pandemic, unreasonable burden** (as found at Appendix 4).
- (ii) The proposal will unfairly penalise individuals who receive penalty points, and can continue to drive by law, but lose the ability to work** (as found at Appendix 4 (and note Point (4)(b)(ii) below)).
- (iii) The proposal means 49% of current driving offence endorsements, whether minor or not, could result in loss of a licence for a single incident** (*‘Penalty Points (Endorsements)’* as found at www.gov.uk/penalty-points-endorsements).
- (iv) The proposal may prevent, or otherwise stall, the licensing of new drivers which could lead to “...shortages of supply...”** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020)

(b) Legal Consideration/s

- (i) The proposal, in specifying a points limit, exceeds DfT recommendations** (at page 36, *‘Motoring Convictions’, ‘Statutory Taxi & Private Hire Vehicle Standards’,* DfT, 2020).
- (ii) The proposal is substantively less than the statutory automatic disqualification threshold of 12 points** (*section 35 Road Traffic Offenders Act 1988*).
- (iii) The proposal may act as a bar for individuals to enter the trade and constitute a socio-economic disadvantage** (*section 1 Equality Act 2010*).
- (iv) The proposal does not appear to have considered CMA guidance on licensing conditions which “...may restrict or distort competition, potentially resulting in...higher fares or...lower quality of service...”** (as recommended in *‘Guidance on the Impact of Taxi & Private Hire Licensing on Competition & Consumer Welfare’,* CMA, June 2017).
- (v) The proposal does not appear to have been subject to a CIA** (as recommended in *‘Regulation of Taxis & Private Hire Vehicles: Understanding the Impact on Competition’,* CMA, April 2017).
- (vi) The proposal, subject to clarification on intended application, could be interpreted as a fettering of discretion** (*R (Singh) v Cardiff City Council [2012] EWHC 1852 (Admin)* and *Reigate & Banstead Borough Council v Pawlowski [2017] EWHC 1764 (Admin)*).
- (vii) The proposal ignores DfT advice to “...support local economies and to limit any long-term impacts on the sector...” during these “...challenging times...”** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020).

The Law of the land already sets out what fines and punishments are appropriate for both major and minor traffic offences, based on reason and circumstances.

⁷ See page 77, *‘Other Motoring Offences’, ‘Criminal Records & Unacceptable Behaviour Policy’,* Appendix 4.

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The LPHCA and many others believe it should not be for licensing authorities to terminate or refuse a driver's taxi or PHV licence when we have a long-standing legal 'points based' system in place for driving transgressions. A survey response⁸ found that 89.3% of responders said 'No' to the question 'Do you think Taxi and PHV drivers should face stricter rules on motoring offence penalty points than other professional drivers and regular motorists.'

We would like to have dialogue with BC on this proposal.

(5) Tinted Windows (Proposal 4.3(12))

The LPHCA **totally opposes** restrictions on use of tinted window glass on licensed vehicles. In substantiating this position, the LPHCA offers the below comments:

(a) Practical Implication/s

- (i) **The proposal imposes an ill-timed, given the pandemic, unreasonable and unlimited costs burden of £600 to £4,000** (*'Absurdity of Tinted Window Replacement...'*, Private Hire News, Issue 92, Winter 2020 / 21 (as found at privatehirenews.co.uk/magazines/issue-92/html/index.html?page=60)).
- (ii) **The proposal requires removal of manufacturer specified glass which may result in a reduction of the vehicles retail value** (*'Absurdity of Tinted Window Replacement...'*, Private Hire News, Issue 92, Winter 2020 / 21 (as found at privatehirenews.co.uk/magazines/issue-92/html/index.html?page=60)).
- (iii) **The proposal negates the environmental benefits of retaining tinted glass** (including, for example, heating / cooling vehicles) (*'Absurdity of Tinted Window Replacement...'*, Private Hire News, Issue 92, Winter 2020 / 21 (as found at privatehirenews.co.uk/magazines/issue-92/html/index.html?page=60)).
- (iv) **The proposal, in the absence of contrary evidence, is not supported by a correlation with crime prevention** (at para. 3.4, *'Consideration of The Use of Darkened Glass in Respect of Licensed Vehicles'*, Cardiff City Council, 3rd July 2018 (as found at www.cardiff.gov.uk/ENG/Business/Licences-and-permits/Taxi/Documents/Consultations/TutTuk/Darkened%20Glass%20Report.pdf)).

(b) Legal Consideration/s

- (i) **The proposal is not a DfT recommended national standard** (*'Statutory Taxi & Private Hire Vehicle Standards'*, DfT, 2020).
- (ii) **The proposal ignores DfT best practice warnings of "...large costs..." and "...inconvenience..."** (at para. 30, *'Taxi & Private Hire Vehicle Licensing: Best Practice Guidance'*, DfT, March 2010).
- (iii) **The proposal may prevent, or otherwise stall, the licensing of vehicles which could lead to "...shortages of supply..."** (*'Taxi & PHV Licensing – Supporting The Sector...'*, Stephen Fidler, DfT, 10th September 2020).
- (iv) **The proposal does not appear to have considered CMA guidance on licensing conditions which "...may restrict or distort competition, potentially resulting in...higher fares or...lower quality of service..."** (as recommended in *'Guidance on the Impact of Taxi & Private Hire Licensing on Competition & Consumer Welfare'*, CMA, June 2017).
- (v) **The proposal does not appear to have been subject to a CIA** (as recommended in *'Regulation of Taxis & Private Hire Vehicles: Understanding the Impact on Competition'*, CMA, April 2017).
- (vi) **The proposal does not account for the right to privacy of potential public personalities, and vulnerable passengers, who may request, or require, a higher**

⁸ <https://privatehirenews.co.uk/magazines/summer-2020/html/index.html?page=21&origin=reader>

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level of discretion (within the meaning of *Schedule 1, Article 8, Human Rights Act 1998*).

- (vii) **The proposal ignores DfT advice to “...support local economies and to limit any long-term impacts on the sector...” during these “...challenging times...”** (*Taxi & PHV Licensing – Supporting The Sector...*, Stephen Fidler, DfT, 10th September 2020).

Any restriction on tinted windows in our view is unnecessary, unjustified and over-regulatory. It also decreases rather than improves privacy, safety and security. **We urge BC to withdraw, this proposal and, in the alternative, utilise the standard requirements prescribed by national regulations⁹.**

LIST OF SUPPORTING LPHCA MEMBERS / BCC OPERATORS

001 Royal Cabs

24x7 Buckinghamshire Limited

24x7 Northants Ltd

Abba Cars High Wycombe Ltd

ABC Taxis

Ace Taxi South Ltd

AD Taxis

Aj Cars Aylesbury Ltd

Arrow Partnership Ltd

Bounds Taxis

Budget Cars

Budget Cars Ltd

Cabs4U

Country Cars

Crown Cabs Travel Ltd

Express Taxis and Minibuses

Express Travel UK Ltd

Falcon Taxis

Five Two's Taxis

Gilberts of Chesham

Greyhound Chauffeur Services Ltd

Greyline Chauffeurs

Jet Taxis LTD

Motts Travel

Neales Taxis Ltd

R and S Travel Limited

⁹ Regulation 32 Road Vehicles (Construction & Use) Regulations 1986.

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Rainbow Cars

Royal Cars

Swan Rider

Tiger Taxis

Transport 4 U

TWK Ltd

UK Cars (High Wycombe) Ltd