

Law Commission Consultation on Taxi and Private Hire Services

Response of Bracknell Forest Council

It is recognised that reform in this area is necessary to bring the law up to date. Our response is based on this principle but with a view to the ultimate aim of protecting the public whilst recognising the system could be simplified to reduce the burden on business.

Provisional proposal 1

Regulation should continue to distinguish between taxis, which can accept pre-booked fares, be hailed on the street and wait at ranks, and private hire vehicles, which can only accept pre-booked fares.

However we would disagree with the retention of the two-tier system. We would support the view that a one-tier system should be implemented with vehicles to be licensed as 'taxis', able to ply for hire in the district where they are licensed and able to carry out pre-booked journeys anywhere in the country. Local authorities could choose to allow only wheelchair accessible vehicles to use some or all of the ranks in their district.

The retention of the two-tier system would serve, in our view, to retain a complex system which is not understood by the majority of the general public. As the purpose of regulation in this area is to ensure public safety, a one tier system would be clear and ensure that the public are not put in danger by getting into a vehicle not insured for that type of journey.

Fares could have a maximum cap as set by the local authority with the provision that the consumer can negotiate with the driver/operator for a lower fare. Rank hirings and hailings could have metered fares and fares could be negotiated for bookings as with the current system.

Provisional proposal 2

London should be included, with appropriate modifications, within the scope of reform.

Agree.

Provisional proposal 3

The regulation of taxi and private hire vehicles should not be restricted to any particular type of vehicle but should rather focus on road transport services provided for hire with the services of a driver.

Agree.

Question 4

Would there be (and if so what) advantages to restricting licensing to motor vehicles that require a driving licence?

The obvious disadvantage is that this would mean that horse-drawn carriages and pedicabs could not be licensed and therefore safety issues for these forms of transport could not be addressed.

Provisional proposal 5

Public service vehicles should be expressly excluded from the definition of taxi and private hire vehicles; and taxi and private hire vehicles should only cover vehicles adapted to seat eight or fewer passengers.

We would suggest further clarification in that PSV licences should only be available to vehicles of more than 8 passenger seats. Local authority licensing would cover vehicles which seat 8 or fewer passengers.

Provisional proposal 6

References to stage coaches charging separate fares should no-longer feature as an exclusion from the definition of taxis.

Agree.

Provisional proposal 7

The Secretary of State should consider issuing statutory guidance to the Senior Traffic Commissioner about the licensing of limousines and other novelty vehicles to assist consistency.

Agree.

Provisional proposal 8

The concept of “in the course of a business of carrying passengers” should be used to limit the scope of taxi and private hire licensing so as to exclude genuine volunteers as well as activities where transport is ancillary to the overall service.

It is recognised that it is difficult to define ‘volunteer’. It remains a concern that unlicensed vehicles and drivers are used to transport vulnerable passengers – such as children and those visiting hospital for appointments. It is not known whether such volunteers are subject to regular criminal checks. Vehicles are also not checked to ensure that they are suitable, safe for use and maintained that way. Any exemptions should be carefully defined to ensure that whilst not overly bureaucratic, unscrupulous operators do not seek to take advantage of any loopholes.

Question 9

**How, if at all, should the regulation of taxis and private hire deal with:
(a) carpooling; and (b) members clubs?**

We would not see either of these as requiring a licence unless it was in the course of a commercial business.

Provisional proposal 10

The power of the Secretary of State and Welsh Ministers to set national standards should be flexible enough to allow them to make exclusions from the taxi and private hire licensing regimes.

Agree, although exclusions ought to be the subject of thorough consultation.

Provisional proposal 11

Weddings and funerals should no-longer be expressly excluded from private hire licensing through primary legislation.

Agree. We are of the view that all vehicles carrying passengers in the course of a business and their drivers ought to be properly checked and vetted. It may be appropriate to allow such vehicles an exemption from display of the plate.

Question 12

Would there be merits in reintroducing the contract exemption, by means of the Secretary of State and Welsh Ministers' exercise of the power to set national standards? If so, what modifications could be made to help avoid abuse?

No. We are of the view that all vehicles carrying passengers in the course of a business and their drivers ought to be properly checked and vetted. Just because a contract is in place, it does not automatically follow that the public bodies involved have the resource to ensure compliance or to ensure continued fitness/suitability of the driver and vehicle.

Provisional proposal 13

Regulation of the ways taxis and private hire vehicles can engage with the public should not be limited to "streets".

Agreed – this should be any place within the district.

Question 14

Is there a case for making special provision in respect of taxi and private hire regulation at airports? In particular, where concessionary agreements are in place should airports be obliged to allow a shuttle service for passengers who have pre-booked with other providers, or to the closest taxi rank?

The airport should ensure that there is adequate provision for customers who have booked a vehicle to be collected without undue delay wherever possible.

Provisional proposal 15

The defining feature of taxis, the concept of "plying for hire", should be placed on a statutory footing and include:

- (a) references to ranking and hailing;**
- (b) a non-exhaustive list of factors indicating plying for hire; and**
- (c) appropriate accommodation of the legitimate activities of private hire vehicles.**

Agree, although we would suggest this would be very difficult to create and would suggest the reconsideration of a single tier licensing system would address this issue.

Provisional proposal 16

The concepts of hailing and ranking should not cover technological means of engaging taxi services.

Any new legislation ought to consider how future technological advancements could arise in this field, and look to the benefit of the consumer provided there is no compromise to safety.

Question 17

Would there be advantages to adopting the Scottish approach to defining taxis in respect of "arrangements made in a public place" instead of "plying for hire"?

We do not see any particular advantage, and would reiterate the simplicity of a one-tier licensing system.

Provisional proposal 18

The concept of compellability, which applies exclusively to taxis, should be retained.

There is an error in the consultation as taxis are not currently compelled to accept a booking when hailed. We would agree that compellability should remain for rank hirings with the driver able to refuse with reasonable cause.

Provisional proposal 19

Pre-booking would continue to be the only way of engaging a private hire vehicle and cover all technological modes of engaging cars. This is without prejudice to the continued ability of taxis to be pre-booked.

Agree, although we would reiterate the simplicity and clarity of a one-tier licensing system.

Provisional proposal 20

Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved.

This proposal is likely to make enforcement more difficult and remain unsure how the contrary would be proved. It is presumed that the burden of proof would be on the driver.

Provisional proposal 21

The Secretary of State and Welsh Ministers should have the power to issue statutory guidance in respect of taxi and private hire licensing requirements.

This could assist, although Guidance is just that and is often open to different interpretations.

Provisional proposal 22

Reformed legislation should refer to “taxis” and “private hire vehicles” respectively. References to “hackney carriages” should be abandoned.

Agree, although we would reiterate the simplicity and clarity of a one-tier licensing system. The terms ‘taxi’ and ‘minicab’ would be clearer.

Question 23

Should private hire vehicles be able to use terms such as “taxi” or “cab” in advertising provided they are only used in combination with terms like “pre-booked” and did not otherwise lead to customer confusion?

If using the terms ‘taxi’ and ‘minicab’ then a clear distinction must remain, to avoid confusion for members of the public. Again, we would reiterate the simplicity and clarity of a one-tier licensing system.

Provisional proposal 24

Taxi and private hire services should each be subject to national safety requirements.

Agree. Any such standards should be subject to full consideration with a technical panel including bodies such as VOSA. These safety standards should be distinguished from suitability and address frequency and standards of testing/inspection of vehicles. The same standards ought to apply to all licensed vehicles. There should be no distinction between types of licensed vehicle.

Provisional proposal 25

National safety standards, as applied to taxi services, should only be minimum standards.

We would support the implementation of minimum national safety standards to encourage consistency. We would however suggest that these standards be the same for all licensed vehicles. We would also suggest that the licensing authority should be able to apply proportionate and reasonable additional requirements as they feel appropriate, such as signage on vehicles or livery policies.

Provisional proposal 26

National safety standards, as applied to private hire services, should be mandatory standards.

As above, we would support the implementation of minimum national safety standards to encourage consistency. We would however suggest that these standards be the same for all licensed vehicles.

We would also suggest that the licensing authority should be able to apply additional requirements as they feel appropriate, such as signage on vehicles or livery policies.

Provisional proposal 27

Private hire services would not be subject to standards except those related to safety. Requirements such as topographical knowledge would no-longer apply to private hire drivers.

We would agree that suitability standards could be set nationally, although this must be at an appropriate level. As an example, the DSA practical driving assessment should be used to ensure competent driving skills. There should also be disability awareness training as the safety of a disabled passenger could be at risk. Navigational skills and basic numeracy and English communication skills should also be taken into account. For this reason we would suggest that local authorities retain the ability to carry out their own topographical tests as it is reasonable to check that an applicant has a basic knowledge of key locations in the area.

Returning to the single tier argument, this would allow for national standards but local discretion in respect of local knowledge testing.

Question 28

Should local standard-setting for private hire services be specifically retained in respect of vehicle signage? Are there other areas where local standards for private hire vehicles are valuable?

We believe that there should be a national standard for signage on licensed vehicles to aid the general public in identification of licensed vehicles and to ensure consistency. Continuation of the two-tier system makes this even more important.

The single tier option would, of course, remove the need to distinguish between the two types of vehicle which would be an even greater benefit to the consumer.

We would support a discretion for local authorities to issue exemptions for certain types of vehicles - such as executive vehicles only carrying out 'chauffeur' work on account. This would best be achieved by the local authority being able to set a condition on a particular vehicle licence.

Question 29

What practical obstacles might there be to setting common national safety standards for both taxis and private hire vehicles?

A common set of national safety standards which apply to any kind of licensed vehicle should result in greater consistency. The key is that a consumer should be just as safe irrespective of the type of licensed vehicle they are travelling in.

Question 30

Should national conditions in respect of driver safety be different for taxi services compared with private hire services?

We would have no objection to the setting of a driver safety standard as we recognise that drivers can be vulnerable to crimes committed by passengers and the general public. We would support any installation of equipment designed to ensure driver or public safety.

However any such proposals should be subject to full consultation to ensure that they are workable. We see no reasons why there should be differences between the types of licensed vehicle other than reasons of practicality.

Provisional proposal 31

The powers of the Secretary of State and Welsh Ministers to set standards for taxis and private hire vehicles should only cover conditions relating to safety.

We would see safety as being a wide-ranging remit which could look at the fitness and suitability of the vehicle and driver but also disability awareness, navigational skills, customer care, etc. National guidelines would be useful but without clarification of what would be included it is impossible to comment further.

Provisional proposal 32

The powers of the Secretary of State and Welsh Ministers to set national safety standards should be subject to a statutory consultation requirement.

Agree.

Question 33

What would be the best approach for determining the content of national safety standards? In particular should the statutory requirement to consult refer to a technical advisory panel?

A technical advisory panel could create a draft which is then subject to consultation with all stakeholders.

Provisional proposal 34

Licensing authorities should retain the power to set standards locally for taxis provided above the minimum national standards.

We are of the view that local authorities should as a minimum be able to set appropriate fares for the taxis operating in their area.

As mentioned previously, whilst we support the introduction of minimum national standards, we believe that the local authority is best placed to determine whether it would be appropriate to set certain local standards or conditions. We do however accept that there is a need to ensure consistency wherever possible.

Question 35

Should there be statutory limits to licensing authorities' ability to set local taxi standards?

We cannot comment in full without knowledge of what is proposed for inclusion within the national minimum standards. We do however accept that there is a need to ensure consistency wherever possible.

Question 36

Should licensing authorities retain the power to impose individual conditions on taxi and private hire drivers or operators?

We cannot comment in full without knowledge of what is proposed for inclusion within the national minimum standards. We do however accept that there is a need to ensure consistency wherever possible, whilst recognising that power to impose individual conditions can assist with flexibility for exceptional cases.

Question 37

Should the powers and duties of licensing authorities to cooperate be on a statutory footing or is it best left to local arrangements?

We are unsure how a statutory requirement for co-operation would work in practice and we are unsure why this would be necessary.

Provisional proposal 38

Neighbouring licensing authorities should have the option of combining areas for the purposes of taxi standard setting.

Agree.

Provisional proposal 39

Licensing authorities should have the option to create, or remove, taxi zones within their area.

Agree, as this may assist in the provision of taxi services in more rural areas.

Question 40

Would it be useful for licensing authorities to have the power to issue peak time licences which may only be used at certain times of day as prescribed by the licensing authority?

We do not see how this would work in practice as it would be almost impossible to enforce and control.

Provisional proposal 41

Private hire operators should no longer be restricted to accepting or inviting bookings only within a particular locality; nor to only using drivers or vehicles licensed by a particular licensing authority.

We would not agree with this proposal.

How would a licensed operator using a driver/vehicle licensed by another authority know if that driver or vehicle licence had been revoked by that authority? The local authority revoking the licence would not be aware which operator(s) the driver/vehicle worked for if they were not licensed by that same authority, so they would not be able to make the operator aware. This has huge implications in respect of the safety of passengers.

If this proposal was to be implemented, there would be a need for a national register of drivers, vehicles and operators which would be very costly and time consuming. Who would ensure the register is kept up to date and remove lapsed licences, etc? Operators would need to be able to search the register to check licences so there are data protection issues.

Provisional proposal 42

We do not propose to introduce a “return to area” requirement in respect of out-of-area drop offs.

We would suggest that under the one-tier licensing system, a licensed taxi could only ply for hire, accept hailings and use ranks in their home authority. However they could accept pre-booked work outside the area, in which case we would agree with the proposal.

Provisional proposal 43

Licensing authorities should retain the ability to regulate maximum taxi fares. Licensing authorities should not have the power to regulate private hire fares.

Agree. However it would be even clearer for the consumer if all licensed vehicles had meters and they knew that for rank/hailed bookings the meter should be used, with pre-booked journeys either agreed in advance or metered.

Question 44

Should taxis be allowed to charge a fare that is higher than the metered fare for pre-booked journeys?

It would be clearer for the consumer if all licensed vehicles had meters and they knew that for rank/hailed bookings the meter should be used, with pre-booked journeys either agreed in advance or metered.

Question 45

Should national driver safety standards such as the requirement to be a “fit and proper person” be either:

(a) set out in primary legislation; or

(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions?

Improved guidance on suitability of persons to be licensed with clear guidelines would aid consistency; however there is a danger that setting out such matters in primary legislation would reduce the ability to be flexible. 45(b) would be the preferred option

Provisional proposal 46

Vehicle owners should not be subject to “fit and proper” tests and the criteria applied would relate solely to the vehicle itself.

Agree.

Question 47

Should national vehicle safety standards be either:

(a) set out in primary legislation; or

(b) included within the Secretary of State and Welsh Ministers’ general powers to set national safety conditions?

As per question 45, there is a need to ensure that flexibility is retained in order to make changes quickly as required. 47(b) would be the preferred option

Provisional proposal 48

Operator licensing should be retained as mandatory in respect of private hire vehicles.

Agreed; this is key to ensure that bookings are properly recorded.

Question 49

Should operator licensing be extended to cover taxi radio circuits and if so on what basis?

If a third party is taking bookings, we are of the view that they should be appropriately licensed.

Provisional proposal 50

The definition of operators should not be extended in order to include intermediaries.

If the intermediary is dealing only with licensed operators, then they would not require an operator licence, however where the intermediary is dealing directly with the driver of a vehicle then they should require an operator licence.

Question 51

Should “fit and proper” criteria in respect of operators be retained?

Yes, as operators are privy to personal information about their customers including knowledge of when they are on holiday. All staff working for a licensed operator should also be vetted, for the same reasons.

Provisional proposal 52

Operators should be expressly permitted to sub-contract services.

Agree, and they should be required to keep a record of the operator to whom they sub-contract the booking. The original terms of the contract with the customer should be maintained, for example the quoted fare.

Question 53

Where a taxi driver takes a pre-booking directly, should record-keeping requirements apply?

Drivers should keep a log of all bookings in case there are complaints or allegations that need to be investigated.

Provisional proposal 54

Licensing authorities should no longer have the power to restrict taxi numbers.

Agree.

Question 55

What problems (temporary or permanent) might arise if licensing authorities lost the ability to restrict numbers?

No limit applies in the Bracknell Forest area so we have no comment.

Question 56

Should transitional measures be put in place, such as staggered entry to the taxi trade over a scheduled period of time, if quantity restrictions are removed?

No limit applies in the Bracknell Forest area so we have no comment.

Question 57

Should there be a separate licence category for wheelchair accessible vehicles? This could involve:

- (1) a duty on the licensee to give priority to disabled passengers; and**
- (2) a duty on the licensing authority to make adequate provision at ranks for wheelchair accessible vehicles.**

This proposal needs to be clarified. It is unclear how a licensee would be able to give priority to disabled passengers, given there are a wide range of types of disability. How would the licensee know that the passenger was disabled, if it wasn't visually obvious?

For example, if taxis are required to give priority to wheelchair users, does that mean they have to allow wheelchair users to jump the queue at ranks? This could cause friction with others in the queue and embarrassment to the wheelchair user. In respect of phone bookings taken by either an operator or a hackney carriage directly, will they be required to cancel other bookings to fulfil that of the wheelchair user?

We would suggest licensing authorities are best placed to determine whether there is adequate provision at ranks for all of their licensed vehicles – including wheelchair accessible vehicles. Circumstances will vary greatly between different local authority areas. Certain ranks could be reserved for accessible vehicles (either permanently or at key times during the day/night).

Question 58

Should licensing authorities offer lower licence fees for vehicles which meet certain accessibility standards?

Any discount offered against the licence fee is likely to be a small amount when compared with the cost of purchasing a vehicle. As the licensing authority sets the licence fee with a view to covering the cost of administering the licensing regime (including inspections and enforcement), and any discount would effectively pass the cost on to either the tax payer or the other licensed vehicles.

Question 59

Do you have any other suggestions for increasing the availability of accessible vehicles, and catering for the different needs of disabled passengers?

Local authorities should have the ability to reserve prime (or all) ranks for accessible vehicles. Education and training of drivers is also key as many licensed drivers lack awareness and confidence so mandatory training could address this.

Different age restrictions for accessible vehicles could be appropriate provided safety standards are not compromised. Bracknell Forest also publishes a register of accessible vehicles in the area which can help to promote the availability of such vehicles.

There could be alternatives to funding through subsidies from central government, free/reduced cost road tax.

Licensing authorities should have clear enforcement powers so they can deal with drivers who fail to offer reasonable assistance to disabled passengers, with more appropriate penalties for offences.

Provisional proposal 60

We do not propose to introduce national quotas of wheelchair accessible vehicles.

Agree.

Provisional proposal 61

National standards for drivers of both taxis and private hire vehicles should include recognised disability awareness training.

Agree.

Provisional proposal 62

In order to better address concerns about discrimination, taxis and private hire vehicles should be required to display information about how to complain to the licensing authority.

Agree (this is already the case in Bracknell Forest).

Question 63

What would be the best way of addressing the problem of taxis ignoring disabled passengers seeking to hail them? Could an obligation to stop, if reasonable and safe to do so, in specified circumstances, help?

It is unclear how this could be enforced, given the driver may not be aware that the person hailing them is disabled. It would seem more reasonable to suggest that taxis should be obliged to stop for all persons who hail them in their district, provided they are available for hire and it is safe to do so. Clearly the driver must retain the option to refuse the fare for a reasonable cause.

Question 64

Should authorised licensing officers have the power to stop licensed vehicles?

There are practical problems associated with this proposal, as we see no safe method for licensing officers to stop licensed vehicles in the way that a police officer can. We would suggest that a licensing officer should have powers to direct vehicles to a particular location to be checked/tested or to remain stationary.

Question 65

What more could be done to address touting? Touting refers to the offence “in a public place, to solicit persons to hire vehicles to carry them as passengers”.

Under a single tier system, all vehicles would be able to be hailed without the need for a prior booking, so this would remove the issue of touting. Where a third party is taking bookings, they should be licensed as an operator.

Question 66

Would it be desirable and practicable to introduce powers to impound vehicles acting in breach of taxi and private hire licensing rules?

This may be desirable in respect of unsafe or unlicensed vehicles, although the powers should be exercised in conjunction with either a police officer or authorised VOSA officer. There should be clear guidelines to ensure that the powers are only used proportionately.

Question 67

Should licensing authorities make greater use of fixed penalty schemes and if so how?

Fixed penalties could be used as a simple method for dealing with offences such as not wearing the badge or displaying the plate, as taking prosecutions can take a great deal of time and money. The offence would have to be clear and guidelines should be set to clarify this.

Provisional proposal 68

Enforcement officers should have the powers to enforce against vehicles, drivers and operators licensed in other licensing areas.

This could be possible in respect of matters covered under national standards or legislation. However there should be a requirement to make the 'home' authority aware of any action taken either prior to or immediately after that action is taken.

Question 69

Should cross-border enforcement powers extend to suspensions and revocation of licences? If so what would be the best way of achieving this?

It is difficult to see how this would work in practice. It would seem more sensible for the 'home' authority to take action in respect of their own licences - although there would be no concerns about the issue of fixed penalties for certain clear-cut offences.

Provisional proposal 70

The right to appeal against decisions to refuse to grant or renew, suspend or revoke a taxi or private hire licence should be limited to the applicant or, as appropriate, holder of the relevant licence.

Agree.

Provisional proposal 71

The first stage in the appeal process throughout England and Wales, in respect of refusals, suspensions or revocations should be to require the local licensing authority to reconsider its decision.

This does not seem a sensible, unless there has been a material change in circumstances. The Council makes a decision based on the relevant delegated powers and any re-consideration could be viewed as biased, and would also create additional cost for the authority and delay for the applicant who may prefer to appeal directly to the Magistrates' Court.

Provisional proposal 72

Appeals should continue to be heard in the magistrates' court.

Agree. This should include appeals against refusals to grant hackney carriage vehicle licences which currently go to the Crown Court.

Question 73

Should there be an onward right of appeal to the Crown Court?

No; as for other cases, an appeal to the Magistrates' Court should be sufficient.