



Safeguarding loopholes in taxi licensing

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Overview

- How criminals are getting licences
- How people who are refused a licence in the place they want to work are working there anyway
- How people who have had their licences revoked are continuing to work in the same area and for the same company; *and*
 - *What can be done about it*

The purpose of taxi licensing

- To keep people safe... *but how do we do this?*
 - It is an offence to do something that requires a licence without first having that licence
 - Councils can only issue licences to people where they are satisfied the person is 'fit and proper' to hold that licence

Drivers Operators Vehicles

Vehicles

- Private Hire Vehicles – Section 48 LG(MP) Act 1976 –
 - suitable in type, size and design for use as a PHV
 - not of such design and appearance as to lead any person to believe that the vehicle is a Hackney Carriage
 - in a suitable mechanical condition
 - safe
 - comfortable
 - Insured
- Section 80 –
 - Fewer than nine passengers
 - Not a Hackney Carriage, PSV, ‘London cab’ or tramcar
- Hackney Carriages – Section 37 Town Police Clauses Act 1847 –
 - [Councils can license] carriages of any kind or description (adapted to the carriage of persons) as they think fit
- In both cases – *nothing about the proprietor being ‘fit and proper’*

Drivers

- McCool v Rushcliffe Borough Council

“[T]his licensing regime ... is plainly intended ... to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience; sober; mentally and physically fit; honest; and not persons who would take advantage of their employment to abuse or assault passengers”

Checking driver suitability

- Right to live and work in the UK (statutory)
- Driving licence for at least 12 months (statutory)
- Medical?
- Enhanced DBS check?
- Criminal record check if lived overseas?
- DVLA check?
- CSE awareness training?
- Disability awareness training?
- Locality test?
- Practical driving assessment?
- Able to read and communicate effectively in English?
- Able to count, give correct change, etc?

Drivers

- But...
 - Not all Councils require all of these checks, or to a consistent standard / frequency
 - A person can lawfully get a licence in one area where they would not meet the eligibility criteria elsewhere
 - That person can then work in an area where they would not get a licence –
 - Under a Private Hire subcontract; or
 - Using a Hackney Carriage for pre-booked work

Drivers

- Case study 1

- *Sunday Times* report on the 8th January 2017

- Nasser Hussain and Nisar Abbas - Private Hire licences revoked by Southend Council for dishonestly sharing penalty points to avoid driving bans

- Applied to TfL, licensed

- Found to be driving again in Southend, through Uber

- <http://www.thetimes.co.uk/edition/news/criminals-dodge-council-ban-to-drive-for-uber-ntzqc73vn>

Drivers

- Case study 2
 - Amir Azad – licence revoked by South Tyneside Council in 2014 after ploughing into a car that was waiting at traffic lights and leaving a four year old girl brain damaged, paralysed down her right side and having to have part of her skull removed
 - Appealed; revocation upheld at Magistrates' Court
 - Licensed as a Private Hire Driver by Newcastle City Council in 2015

<http://www.dailymail.co.uk/news/article-3828474/Cabbie-left-girl-4-brain-damaged-granted-taxi-licence-again.html#ixzz4XWqvBV6U>

Operators

- “Operators are the lynchpin of the current private hire vehicle licensing scheme”

(Law Commission Consultation Paper 203, May 2012, paragraph 2.15)

- “The patent intention of the Act is to impose a regulatory scheme which is focused on operators ... in part because, no doubt, enforcement against a relatively few operators is easier than enforcement against relatively more drivers. As part of that enforcement obligation, *it is for that authority to ensure that those operating private hire vehicle services from their area do so from their area, using only vehicles and drivers licensed by them; and to enable dissatisfied or concerned customers to complain about an operator to that authority, as the first and primary port-of-call*”

(Mr Justice Hickinbottom, Blue Line (Newcastle) Ltd v Newcastle City Council (2012), paragraph 12)

Operators

- However
 - Many Private Hire Operators use Hackney Carriages and Public Service Vehicles interchangeably with Private Hire Vehicles
 - Many Councils 'allow' this because section 80 of the 1976 Act excludes Hackney Carriages and PSVs from the scope of 'Private Hire Operation'
 - Hackney Carriages and PSVs can be used for pre-booked journeys (anywhere in England and Wales)
 - But do Councils *have* to allow Private Hire Operators to use them, where doing so defeats the safeguards in the Operator's licence?

Operators

- PSVs have seating for 9 – 16 passengers
- PSV drivers are licensed by the DVLA - not Councils
- They are not subject to criminal record checks
- There are numerous examples of PHV / Hackney Carriage Drivers whose licences have been revoked because they are not fit and proper to drive a PHV / Hackney Carriage, and who are continuing to drive for the same Operator in a PSV *outside the Council's control*
- The only reason they are able to do this is the size of the vehicle that they pick passengers up in

Operators

PHV or PSV ?



Operators

Example –

- Two passengers phone an Operator at the same time to make bookings
- The Operator dispatches the blue vehicle to Passenger A
 - *This is a licensed PHV, driven by a licensed PHV driver*
 - *The Operator is obliged to make a booking record, and to provide it to the Council if required*
- The Operator dispatches the grey vehicle to Passenger B
 - *This is a PSV*
 - *The driver used to drive the blue PHV, but his licence was revoked after inappropriate sexual advances to passengers*
 - *Now, because the grey vehicle has one more seat than the blue vehicle, there is no requirement under the Operator's licence to make a booking record; and the Council has no enforcement powers - because the Operator was not 'operating' under their licence when they dispatched the PSV*
- How do the passengers know whether or not the Operator is 'operating' when they make their booking?

The Passenger 'Assurance'

- Should someone who makes a booking with a licensed Private Hire Operator be able to trust that –
 - The vehicle that is dispatched will be roadworthy, safe and suitable?
 - The driver has been checked, vetted and is suitably aware?
 - The Operator is obliged to keep and to provide booking records if anything goes wrong?
- The loopholes being exploited by Operators and drivers mean this is not the case

What can be done?

- Amend the legislation

This has to happen if we are to close the loopholes that are being increasingly exploited



A complete overhaul, or a quick fix?

- New section 50(6) LG(MP)A 1976 –

“Subject to the provisions of this Part of this Act and the Act of 1847, a district council shall, on the receipt of an application from any person for the grant to that person of a private hire vehicle or hackney carriage licence, grant to that person a proprietor’s licence provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold a proprietor’s licence”

- Section 56(1) -

“[E]very contract for the hire of a ~~private hire~~ vehicle licensed under this Part of this Act ~~or the Act of 1847~~ shall be deemed to be made with the operator who accepted the booking for that vehicle whether or not he himself provided the vehicle”

- Section 56(2) -

“Every [Operator] shall keep a record ... of every booking of a private hire vehicle ~~or Hackney Carriage~~ invited or accepted by him... and shall produce such record on request to any authorised officer of the council or to any constable for inspection”

- Section 80 1976 Act –

“‘Private hire vehicle’ means a motor vehicle constructed or adapted to seat fewer than ~~nine~~ ~~seventeen~~ passengers, other than a hackney carriage ~~licensed in the same controlled district as the Private Hire Operator~~ ~~or public service vehicle or a London cab or tramcar~~, which is provided for hire with the services of a driver for the purpose of carrying passengers”

What can Councils do *now*?

- Authorise cross-border enforcement; and (so far as possible) harmonise licence conditions, frequency of checks, etc?

To avoid people seeking an advantage by being licensed outside their 'home' area

- Allow Private Hire Operators to only invite and accept bookings for Private Hire Vehicles

Through licence conditions – see Blue Line (Newcastle) Ltd v Newcastle City Council

- National database?

So Councils can check if someone has held / holds a licence elsewhere, whether they have breached their conditions, if the licence was revoked – why?



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