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Friday, 17 January 2014

F.A.O Pippa Brown (pippaA.brown@dft.gsi.gov.uk)

Department for Transport

Great Minster House

33 Horseferry Road

London

SW1P 4DR

Dear Pippa

Taxis and private hire vehicles - informal targeted consultation.

Sent out by e-mail 7 January 2014 / Comments due 17 January 2014

Many thanks for including the Institute of Licensing in the informal consultation looking at 'Taxi and PHV proposals for feedback'.

As you are hopefully aware, the IoL's membership comprises a large number (around 2,500) licensing practitioners across England, Wales and Northern Ireland, with a growing membership in Scotland. Our members come from local authority, police, industry and legal practices giving us a broad spectrum of views to draw from when looking at consultations.

Although we realise that this is an 'informal' consultation, the 10 day response time has prevented us from consulting members. This is a concern as we believe that our members who are involved in the licensing of taxis and private hire vehicles, drivers and operators would be keen to comment on the proposals and would be concerned if the proposals were to go ahead without any formal consultation. We strongly urge the DfT to undertake a full consultation prior to any of the proposals being taken forward.

In the meantime, we are fortunate to have a Taxi Consultation Panel (TCP) comprising local authority licensing officers, legal practitioners and licensing consultants, enabling us to formulate this response to include the panel members' views.

Proposals and Questions

- 1. The first proposal is to allow PHV operators licensed in England (outside London) and Wales to sub-contract bookings to an operator licensed in a different district. London PHV operators are allowed to sub-contract to an operator licensed outside London so it would be a case of establishing a more level playing field.***

1a - Do you regard this as a measure which would reduce a burden on the PHV trade? If not, what effect do you think it would have, and why?

In general this proposal is supported and would likely be welcomed by the PH trade as it would open up business opportunities for them. The current prohibition on sub-contracting across LA boundaries seems artificial and unnecessary (what would the public safety issues be?).

Audit trails showing the contract between Operators will be important if this proposal is to be actioned.

1b – Could you provide any evidence about the impact this proposal would have, whether by reference to a single operator in a case-study type way, or by reference to a global figure of how the trade will benefit in financial terms by being able to sub-contract across borders?

No

1c – Do you see any adverse consequences arising from the proposal? If so, please explain.

Generally no. There could be implications for smaller companies where larger regional PH companies develop and in doing so squeeze out smaller operators.

Implications for PH operators could cut both ways where the sub-contracting option is used. On the one hand, where sub-contracting allows the original operator to fulfil a booking they would otherwise have been unable to fulfil, this may increase their business and standing with customers. On the other hand, where a sub-contracted company provides a lesser standard expected by an established customer of the original company, customer relations may suffer as a result.

2. The second proposal seeks to address the law as stated in the case of *Benson v Boyce*. It is to allow private hire vehicles licensed by a local authority outside London to be driven by a person (e.g. a family member) who does not hold a PHV driver licence when the vehicle is not being used for private hire work i.e. when it is “off-duty”. This is the position in London so again, it would be a case of establishing a more level playing field as between London and the rest of England and Wales.

2a - Do you regard this as a measure which would reduce a burden on the PHV trade? If not, what effect do you think it would have, and why?

The law outside London is clear – BOTH PHVs and HCs must only be driven by licensed drivers, based on

the rulings in *Benson v Boyce* for PHVs and *Hawkins v Edwards* for HCs.

Within London, it is true that there is no similar limiting requirement for PHVs, but the law indicates that HCs should only be driven by licensed HC drivers at any time (see Paras 17.16 to 17.21 of *“Button on Taxis”* 3rd Ed). However this view is not shared by TfL, and as they are the principal enforcing authority it is unlikely that any prosecution of a non-licensed driver driving a London HC will take place.

If the aim of this proposal is to create a similar situation outside London as pertains within London, then a similar relaxation of the law for HCs outside London would be required. At the same time, it would be sensible to amend the law within London to make it crystal clear that off-duty vehicles do not require a licensed driver, as with the ambiguities that exist within the law at the moment, a change of policy on the part of TfL could lead to difficulties in the future.

If it were the case that PHVs and Taxis across England and Wales were able to be driven by unlicensed drivers when not in use for licensed work, this would be a clear advantage for vehicle owners and their family members.

Having said that, we consider that this proposal would be detrimental to the licensing regime and will undermine public safety. Enforcement against illegal use of licensed vehicles would be almost impossible, and the burden on local authorities would greatly increase. Many authorities have policies governing the appearance of both taxis and PHVs to ensure that they are distinctive to the public, who will then be vulnerable to illegal pickups when the (licensed) vehicle is being driven by an unlicensed driver.

The TCP are not unanimous in this view with one member considering that the system operates in London without problems and that although the focus is on family members, the relaxation would equally apply to non family members. They suggest creating an offence which reverses the burden of proof when an unlicensed driver is carrying passengers putting the onus on the driver to prove that the passengers are not fare paying. This would be harder for taxis as they would appear to be plying for hire even where they were not.

2b – Could you provide any evidence about the impact this proposal would have, whether by reference to a single owner-driver who, for example, had to acquire a second vehicle as the family car or by reference to a global figure of how the trade will benefit in financial terms by being able allow others to use their vehicle when it is “off-duty”?

No.

It is important to recognise that PHVs and HCs are all "working vehicles". Their primary purpose is to transport members of the public, and any additional use for non-working/family transport must be seen as incidental to that primary use. As previously mentioned, enforcement against illegal use would be much more difficult with the local authority having to first prove that the vehicle was being used for hire and reward rather than social and domestic purposes. Of more concern would be the potential for a member of the public to be picked up by an unscrupulous individual purporting to be a legitimate driver in a licensed vehicle.

If this proposal is to be taken forward, we would strongly urge that there is some provision requiring a visual indicator that the vehicle is 'off duty'. This might include removal of vehicle signage and plates for example.

The Dft have not provided evidence that the current system is causing problems and as such we would question the need for this proposal. If consistency with London is seen as important, this would be an instance where a more appropriate course of action would be to introduce the requirements in London for both Taxis and PHVs, bringing London in line with the rest of England and Wales.

While it may (or may not) be seen as burdensome for other family members to obtain the appropriate licence, the overriding issue must be the safety of the public and any potential for an increase in 'unlicensed drivers' must be considered very seriously.

2c – Do you see any adverse consequences arising from the proposal? If so, please explain.

Yes. Enforcement against PHVs and drivers is already difficult. If unlicensed drivers can legitimately drive PHVs, there will be significant problems with unlicensed drivers using PHVs for private hire purposes. At present the safeguarding is that as only licensed drivers can drive PHVs, whether they are being used to carry passengers or not, when passengers are being carried the driver will have been vetted.

If this proposal is taken forward, that safeguard will be lost and public safety will be put at risk by unscrupulous PHV owners who are prepared to risk unlicensed drivers carrying passengers.

2d – Do you have any feel for what proportion of PHV owners currently own second cars? If the legislation was changed in this way, how many would no longer want to have a second car – i.e. how many would use the PHV as the “family car”?

No. We have no reliable data on this although local knowledge of licensing officers on the panel suggest that a high number of PHV owners own separate unlicensed cars. This may be particularly true for larger operators who rent out licensed PHVs to licensed drivers/ operators.

- 3. *The third proposal is to make it explicit in the legislation applying to taxis and PHVs outside London that taxi and PHV driver licences should be issued for a standard period of three years (and PHV operator licences five years) and licences should only be granted for shorter periods in the circumstances of an individual case (e.g. probation/monitoring or where the driver asks for a short-term seasonal licence).***

3a - Do you regard this as a measure which would reduce a burden on the taxi and PHV trades? If not, what effect do you think it would have, and why?

Clearly a requirement to renew a licence every 3 or 5 years will reduce the burden on licensees where

hitherto licences have been required to be renewed annually.

As it is arguable that the licence fee charged by the local authority for HC and PH drivers' licences can only cover the costs of 'issue and administration', there should be no reduction for a short-term licence. Accordingly it is pointless having any form of seasonal licence as the costs should remain the same.

With regard to probationary periods, although these are used by some local authorities, the test of whether or not somebody should be granted a drivers licence is whether they are a fit and proper person. If they're not, they should not be granted a licence. If they are, they can be. Accordingly it is difficult to see the rationale for probationary periods.

It is also the case that some drivers close to retirement age, or even those who are unsure whether they will have employment beyond a year, may not wish to have a three-year licence. The same is the case with operator licences. In such cases this proposal would restrict driver/operator choice.

On balance and for the reasons outlined above and in response to the remaining questions below, we consider that this is an area best left to local authorities as at present. In any case, a full consultation and impact assessment considering existing arrangements should be undertaken before any changes are taken forward.

Again views are not unanimous in relation to this question. One member of the TCP suggests that this is an area of the existing regime which could be radically reformed with much longer licence durations, coupled with increased enforcement powers for local authorities and the ability to apply conditions to taxi driver licences all taken into consideration.

3b – Could you provide any evidence about the impact this proposal would have, particularly in terms of cost-savings for drivers and operators?

In the absence of any information about how many authorities grant annual licences as opposed to 3 or 5 year licences, it is difficult to say. However clearly one fee for issue and administration every 3 or 5 years would be less than one fee for issue and administration on an annual basis.

It is not possible in the time frame to provide any evidence regarding cost-savings for LA's, as this has to be off-set against the likely increase in administration costs.

3c – Do you see any adverse consequences arising from the proposal? If so, please explain.

This area in particular is likely to be a cause for concern amongst our local authority members who currently issue licences for shorter periods due to their own local authority policies.

Whilst the vast majority of HC & PH drivers and PH operators are persons of high integrity, it is unfortunately the case that the industry does attract a small percentage of unsuitable persons. Annual licensing of drivers and operators is the only realistic way to keep track of their behaviour and take

remedial or preventative action when required.

Although most local authorities impose conditions on PH drivers licences and PH operators licences requiring them to report criminal convictions and changes to medical status within a specified period of time, this is often ignored. It should also be borne in mind that there is no mechanism to impose a similar requirement on HC drivers as no conditions can be imposed on a HC drivers licence.

Whilst driving a HC or PHV is a Notifiable Occupation, holding a PH operators' licence is not. Even in relation to drivers' licences, where the police are supposed to inform the local authority of any recordable convictions (and have a discretion to inform the local authority of minor matters) information sharing is haphazard. Some local authorities get information directly from their local constabulary, but there are very, very few instances of information being received from a constabulary not covering the local authority area.

To illustrate this, in Manchester figures from Jan – December 2013 reveal that 31 renewal applications were considered at hearings and 46 licences were reviewed, in relation to convictions (criminal and motoring). A percentage of these only being revealed following a DBS certificate return or a check with DVLA (the shortage of time is not adequate to provide the percentage figures).

As a consequence, it is only the annual renewal process which enables the local authority to ensure that licensees have remained fit and proper for the duration of their licence. If that was extended to 3 years (or 5 years in the case of operators) a great many unsuitable and potentially dangerous persons would remain licensed for longer.

It must be borne in mind that the 'public safety' is the main concern and any move to a three year licence must take this into consideration.

If a three year licence is the preferred choice then a requirement for annual DBS checks would greatly assist, particularly now that DBS checks can be done online where the individual is signed up for annual checks – some compellability in relation to the annual DBS checks would be necessary and local authorities would have to recover their annual costs within the 3 year licence fee. Drivers should be legally required to provide information when appropriate (change of address, convictions etc), and there should be sanctions in place for failing to do so.

In addition a number of local authorities conduct DVLA checks for drivers and in order to process this, the DVLA require a paper copy of the mandate form which then allows the Council to do an on-line licence check. There is an administration burden for the local authority in ensuring drivers submit the mandate forms. There is a similar situation in relation to medical certificates (see below), and also DBS certificates where the driver is not signed up to annual checks, as the results are now only sent to drivers.

In addition to DBS and DVLA checks, drivers are required to submit medical certificates and most local authorities will require that the applicant meets the DVLA Group 2 medical standards. Again drivers are required to notify local authorities of any changes to their medical circumstances but often fail to do so, meaning such changes will not be picked up until the licence renewal. Again, an annual renewal allows local authorities to ask specific questions in relation to any changes in medical circumstances in the last year and will likely be concerned at extending this period.

3d – If you are in a position to offer any information about licence durations and licence fees, it would be helpful if you could fill out the following table

The IoL is well placed to gather this type of information however we do not have it to hand and the extremely short timescale for responding means it is not possible to gather the information.

Having said that we are aware that of the 22 local authorities in Wales, 1 offers a 3 year licence and one offers a 2 year licence. The remaining 20 require annual renewals.

	Current licence length	Current licence fee
Driver licence		
Operator licence		

If proposal 3 was brought in, what proportion of licences do you anticipate would be of short term duration?

Bearing in mind the point about fitness and propriety, it is hoped that most local authorities will take the view that the applicant is either fit or proper (in which case a full duration licence is granted) or not, in which case the licence is refused. That being the case, we would not expect a significant demand for short term licences from the local authority perspective for suitability monitoring relating to criminal / behavioural backgrounds.

Shorter term 'monitoring' licences will be more appropriately used by local authorities where there are concerns over medical conditions where the existing medical health is satisfactory but there are good reasons to keep a regular check on the position. An example of this might be where the individual is diabetic but currently not requiring insulin control.

Those local authorities who currently issue licences for a shorter period will have concerns about extending the period, and the reasons will relate to the diluting of the vetting and monitoring afforded by shorter term licences as previously set out. Shorter term licence may also be a preferred option for applicants in providing a cheaper option or to cover a short term need where retirement or other factors mean the licence is not required for the full 3 year term.

One final point which we would make is that the timing of this consultation, and indeed the fact that the Dft are looking to consider amendments to the taxi and private hire licensing regime does raise the question of whether there has been any consideration by the department of the review consultation and awaited reports from the Law Commission. We would question why these amendments are being considered prior to the publication of the Law Commission final report and recommendations.

I hope these comments are of assistance to the Dft. As previously set out, the IoL would **strongly suggest that a full consultation should be undertaken before any of these proposals are taken forward**. The IoL would be happy to work with the Dft in relation to this or any other licensing proposals going forward.

Yours sincerely

A handwritten signature in black ink that reads "Sue Nelson". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Sue Nelson
Executive Officer