

## **Guidance for Private Hire Operator licence holders.**

### **INTRODUCTION**

All licences issued by the Council in connection with the driving and operation of Private Hire Vehicles are issued in accordance with the provisions of Part 2 of the Local Government (Miscellaneous Provisions) Act 1976.

Operators, Drivers and Proprietors should be familiar with this Act, the provisions of the Town Police Clauses Act 1847 and the Equality Act 2010 as it affects Private Hire Drivers and Operators.

Exceptions to vary conditions will be recorded on the licence with the reason for the variance.

### **Background**

The Local Government (Miscellaneous Provisions) Act, 1976 (LGMP) serves to provide a licensing framework within which conditions can be placed upon drivers, vehicles and operators making private contracts for the hire of a vehicle with a driver. The primary purpose of the legislation is to protect the interests and safety of the travelling public. At the time of its inception, Private Hire was primarily concerned with the provision of domestic vehicles to undertake relatively short local journeys.

The Private Hire sector has grown and extended significantly and there is now a much wider range of vehicles and services and newer technology continues to provide ever more innovative ways of booking those services.

The Road Safety Act, 2006, along with best practice guidance issued by the Department for Transport (dft) has caused Birmingham City Council to consider licensing a wider range of vehicles and services, including limousines and novelty vehicles. This guidance applies to the more standard types of saloon, hatchback, people carrier, or wheelchair accessible vehicles.

The operation of a business involving Private Hire vehicles is subject to the same business, legal and public safety principles as other areas of activity licensed by the Local Authority.

Public safety is always paramount and it is very important to Birmingham City Council that Operators fit comfortably into their environment and are not the cause of nuisance in residential areas. Operators should contribute positively to the image of the City and take ownership of their civic responsibilities.

Operators can make a significant contribution to public safety by ensuring that they and their drivers adhere to this guidance and the various conditions of licence by which they are bound.

The aim of the guidance is to increase professionalism within the trade through business improvements and best practice; encouraging improvements to customer service and public safety.

## **Customer focus, business improvements and best practice**

### **Corporate clothing (shirt or outer garment)**

There are distinct benefits to be gained in terms of enhanced safety for customers and improving the image of the private hire trade across the city. There appears to be a positive link between supplying a uniform style shirt with the company logo on it and improved customer satisfaction, along with a perception of an Operator having a more professional outlook. Whilst it is considered to fall outside the remit of The Licensing Service to require Operators to introduce corporate clothing for their drivers, it is recommended as best practice.

### **Staff training and public access to private hire operator premises and health and safety considerations**

It is good practice for all Private Hire Operators employing call handling staff to ensure they have all received:

- Accredited customer service training
- Data protection training
- Have been subject to a DBS check

DBS disclosure is considered important because of the amount of personal and secure information that can be collected. The practice of using totally unqualified and untrained staff is not best practice and may have a detrimental effect on customer perceptions of an Operator's professionalism. It may also contribute to perceptions that within the trade, people are 'employed' outside the normal scope of employment law, HM Revenue and Customs arrangements and minimum wage legislation.

The Data Commissioner retains responsibility for monitoring the Private Hire Operator in the role of 'data controller'. However, in the event of data security breaches, the Licensing Authority reserves the right to take compliance or other formal action against a private hire operator to reduce the risk of crime or danger to public safety. Where there is a public waiting area, measures must be in place to keep all personal audio and written data private and secure.

An Operator is responsible for the safety of staff and the public on the premises and Operators are advised to undertake a full review by an appropriately qualified health and safety officer. Other areas of business may fall under the remit of HM Revenue and Customs or the Health and Safety Executive and Licensing Officers may inform the appropriate regulatory body if they have concerns, especially where public safety issues are identified.

### **Record of driver hours**

In contrast to the regulation of hours worked by a PSV or HGV driver, the average self-employed Private Hire Driver is under no such legal restriction. Where they are subject to a contract of employment with a Private Hire Operator there is a restriction of 48 hours per week averaged over a 17 week period, but that is the only legal constraint. The consequences of driver fatigue are identified all too often following a serious road traffic collision and whilst the driver may be held accountable for any subsequent serious injury or fatality, it is an issue that the Private Hire Operator

should be aware of. There are many full time drivers but also others who use their Private Hire driver's licence as a secondary form of income.

This issue requires awareness on the part of Private Hire Operator and it would be best practice for Operators to be alert to the signs of tiredness and exhaustion. Operators are in a position to identify drivers who work excessively long hours for their companies and may wish to consider their own potential liability if they fail to take full account of such issues when entering into a contractual arrangement with a customer..

### **Fare awareness**

This is often the subject of complaint by the travelling public and is frequently a cause of arguments. That situation can be improved by providing clearer information at the time of booking, displaying a notice showing how fares are calculated on Private Hire Operator web-sites and making similar provision in public waiting areas. It would be helpful if it was pointed out "fares can be agreed before the journey". Where a vehicle uses a meter, this should be clearly explained as should any occasion when it is not used (pre-arranged contract fares, out of Licensing District fares etc.).

The more information that can be made available to passengers, the better it is for your driver, your business reputation and of course the public. Being 'upfront' with fares and pricing information can help reduce the risk of escalating arguments and create a safer environment for drivers.

### **Vehicles operated under the licence – planning regulations**

Planning legislation has primacy and responsibility for enforcing breaches of planning rests with that department and cannot be undertaken by Licensing Officers. However Licensing Officers will support communities where complaints are made in assisting enforcement by planning and other Regulatory Officers and by seeking an early resolution to problems through contact with the relevant Private Hire Operator.

### **Safety standards of licensed vehicles under the operating licence**

To increase public safety and reduce the risk of prosecution to themselves, Private Hire Operators are strongly advised to maintain a monthly record of vehicle inspections carried out by them on their operating licence to ensure checks on tyres, Council livery, accident damage, condition of interior etc., as prescribed by the Council and a check list of expiry dates of the Private Hire driver licence, Private Hire vehicle licence and MOT expiry dates. The personal responsibility of the licensed Private Hire Operator for the safety of their customer is inescapable and each Private Hire Operator should be able to demonstrate their commitment to road safety.

### **TRADING NAME**

It is a pre-requisite to the grant of a Private Hire Operator licence to ensure that any potential confusion is removed when a preferred operating name is put forward. This would also apply to those names which might conflict with operating names already in use within a neighbouring Local Authority.

The Licensing Service reserves the right to refuse the grant or renewal an Operator's licence where the business name is either changed or made up from a collection of other Operator names operating within the boundaries of this Council or any other neighbouring Local Authority.

It is not intended to put restrictions on the appropriate or innovative naming of a Private Hire businesses, but attempts to take advantage of the good name and reputation of existing businesses in Birmingham and in surrounding areas have been a regular source of frustration to the trade and officers alike. Similarly, there are examples of a Private Hire Operator selling a business only to attempt to open another with a very similar name almost immediately. Sometimes this has not been dealt with adequately within the contractual arrangements and can lead to confusion for the public and ill will within the trade.

### **PSV VEHICLES, DRIVERS & RECORDS**

If you operate vehicles having in excess of 8 passenger seats (PSVs) for undertaking private hire bookings then you must ensure that you have the appropriate Operators Licence issued by VOSA.

You must ensure that your PSV vehicles display the discs issued by VOSA and your drivers have the appropriate licences to drive such vehicles. You must also comply with driver's hours regulations and ensure vehicles are properly equipped with tachometers. The Licensing Service is not responsible for your PSV operation, but officers will co-operate with VOSA inspectors, particularly where public safety problems are identified.

### **PRIVATE HIRE VEHICLE FLEET POLICIES**

Operators using vehicles under a fleet policy should ensure that details of each Private Hire Vehicle are listed on the insurance certificate, the schedule, or the policy itself.

### **ASSISTANCE DOGS & WHEELCHAIR USERS**

**The Equality Act 2010** brings together a number of existing laws into one place so that it is easier to use. It sets out the personal characteristics that are protected by the law and the behaviour that is unlawful.

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics including disability. The act gives examples of unacceptable behaviour whilst the Equality Commission web site ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)) gives examples of best practice.

You must not refuse to accept the hiring of a vehicle merely because the passenger is accompanied by an assistance dog.

You must not make any additional charge for the carriage of an assistance dog, the conveyance of a wheelchair, or other equipment required by a person suffering from a disability.

### **SUBCONTRACTING BOOKINGS**

The **Deregulation Act 2015** introduced provisions allowing an Operator to sub-contract a booking to another Licensed Operator outside the Controlled District of Birmingham. Both Operators must

keep a record of the booking and the contract and responsibility for the booking remains with the Operator who took the original booking from the hirer. **Operators cannot pass bookings directly to drivers from other areas even if they work for the same company.**

For example, a Birmingham Operator can pass a job to his licensed base in Solihull, which in turn can pass the job to a Solihull licensed driver. A Birmingham operator cannot pass a job directly to a Solihull licensed driver, even if the driver works for the Solihull branch of the same company. Where such practice happens, both operator and driver are committing offences and could be prosecuted.

## **TOUTING**

The operator shall not:

- a) Tout or solicit any person to hire or be carried for hire in any private hire vehicle;
- b) Cause or procure any other person (a marshal for instance) to tout or solicit any person to hire or be carried for hire in any private hire vehicle

see Criminal Justice and Public Order Act 1994 s167

## **Licensed Premises**

With the event of 'app' technology there may be no necessity for potential customers to visit an Operator base. Accordingly the previous requirement has been adjusted to reflect new operating practices.

Where the facility for customers to visit the premises to book does exist, Private Hire Operators are reminded of the best practice guidance under 'Staff training and public access to Private Hire Operator premises'. The premises shall be kept clean, adequately illuminated, heated and ventilated and shall conform to any other relevant legal requirements.

Licence holders need to be acutely aware of the risks associated with children or young people frequenting premises for non- business purposes and there can be no compromise in the necessity of the Private Hire Operator to intervene and stop such activity.

Licensed premises may be targeted by criminals using drivers to facilitate the grooming of children, trafficking, or to supply drugs or contraband tobacco etc.

It is expected the assistance of the Police will be sought if an Operator becomes aware of such activity taking place on his premises. However, that does not diminish the responsibility of the Private Hire Operator to tightly control and prevent such occurrences. With such strong cautionary advice issued alongside the licence, Private Hire Operators need to consider how failure to take reasonable measures to guard against such criminal activity taking place on their premises might be used in any criminal proceedings.

The licence is granted in respect of the address notified to the Licensing Office at the time of application. You can only operate from the address specified on your licence. If you intend to change the business address of the operation, you must first obtain written consent from the Licensing Office and if approved you must return your original licence for amendment. Consent will

only be granted in respect of premises for which planning permission for the use of a Private Hire Operators business has already been granted.

### **Advertisements**

There are some restrictions regarding the words that may be used in your trading names and advertisements. Any trading name or advert for a Birmingham PHV business cannot include the words 'taxi', 'taxis', 'cab' or 'cabs', or any word so closely resembling any of those words as to be likely to be mistaken for it. This includes using such words in website addresses.

You can use the word 'minicab', 'mini-cab' or 'mini cab' (whether in the singular or plural) in your adverts.

While the following list is not exhaustive, an advert includes:

- business cards, letter headed paper, compliment slips and posters,
- signage, including on shop fronts, other premises (e.g. supermarkets, hospitals, nightclubs etc) and licensed private hire vehicles
- email addresses – e.g. digbethcabs@google.co.uk could not be used as an email address for your passengers to make bookings but you could use digbethminicabs@google.co.uk
- websites and website addresses – e.g. www.digbeth-taxis.co.uk could not be used but you could use www.digbeth-minicabs.co.uk. You must also make sure that photos or animations on websites do not show taxis/black cabs or give the impression that a taxi/black cab service is provided.
- telephone numbers – e.g. if your telephone number is 0845 222 1234 you could not advertise this as 0845 CAB 1234
- recorded telephone messages and answer machine messages – e.g. your message should not say 'Thank you for calling Digbeth Cabs' however you could say 'Thank you for calling Digbeth Cars'.

In short, any advert that you issue must make it clear that you are providing a private hire service. Some examples of phrases that you may use in your adverts are:

- Mini-cab service
- Executive car hire
- Private hire service

You should also be aware that most customers will want to verify that you are licensed before they use your services. Your adverts should therefore contain sufficient information for potential customers to be able to identify you.

### **Information on your website**

To prove that you are a bona fide operator, you should consider displaying the following information on your website:

- your company name;
- the trading names that are specified on your operator's licence;
- your trading address(es);
- the telephone number for accepting bookings;
- your VAT registration number (if applicable);
- your email address;
- your licence number;
- the fact that you are licensed by BCC and BCC's contact details; and
- if the business in question is incorporated as a company, its registered number, the address of its registered office and the part of the UK in which it is registered.

For other types of adverts (e.g. business cards), you should at least specify your trading name and your operator's licence number.

### **Smoke Free Legislation**

Private Hire Vehicles and 'Taxis' are smoke free vehicles and nobody may smoke within these vehicles at any time. Appropriate 'No Smoking' signage must be displayed in the vehicle.

Any enclosed premises used as a workplace or used by the public, for example to make bookings, must be smoke-free. Failing to prevent smoking in a smoke free place can lead to prosecution and a maximum fine of £2,500 being imposed on whoever manages or controls the smoke-free premises or vehicle. For further advice and guidance on this matter please go to [www.smokefreengland.co.uk](http://www.smokefreengland.co.uk)

### **Consumer Protection from Unfair Trading Regulations 2008**

Under the provisions of the above legislation, any licensed Operator marketing a product (including comparative advertising) that creates confusion with any products, trade names or other distinguishing marks of a competitor may be committing an offence.

### **Sale of Alcohol**

Sale of alcohol is a licensable activity under the Licensing Act 2003. Sale of alcohol is prohibited on a moving vehicle. If a sale of alcohol is made as part of a booking arrangement that sale must be authorised in accordance with the Licensing Act 2003. For further advice and guidance please contact the Licensing Office on 0121 303 8222, or visit [www.culture.gov.uk](http://www.culture.gov.uk)

### **Safety of Drivers**

Operators are responsible for taking clear and accurate details of a passenger's booking and passing those details to their drivers to ensure they can identify and pick up the correct passenger(s). Failure to record and pass on clear instructions to drivers may put their personal safety at risk and leave them vulnerable to breaches of legislation in their own right.