

Part 1 - Hackney Carriage & Private-Hire Vehicles - Cross-Border Hiring is not the issue

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P1/1: Introduction – Where we are today in 2025

In consideration of where the private-hire trade is today, with the total loss of **Local Licensing Control** that was granted by Parliament in the '**Local Government Miscellaneous Provisions Act 1976, Part II**', and the '**Private Hire Vehicles (London) Act 1998**'. The Department of Transport, with its piecemeal approach to its 'Best Practice Guides' should now completely takeover the licensing of private-hire vehicles and private-hire drivers.

It is either that or address the major issue, which is the total loss of **Local Licensing Control** and hand it back to Local Licensing Authorities who are there for the protection of public safety without any grey areas that would be exploited.

Since the 2015 Deregulation Act, '**Cross-Border Hiring**' as it has been commonly known, has seen a huge increase in mainly private-hire vehicles/drivers predominantly working in areas other than the actual area the vehicle and driver are licensed in. However, it has been misunderstood as to what the 2015 Act was in fact about. This was mainly to clarify what is known as the '**Triple Lock**' where three specific licences must be in place for a booking to be legal.

These being: The Operator Licence, the Vehicle Licence and the Driver Licence which must all be matching the same local authority issued licences.

Some have mistakenly thought that the 2015 Deregulation Act suddenly made '**Cross-Border Hiring**' legal. This was not the case; it just defined the legal requirement for '**Sub-Contracting**' between taxi/cab companies where 'Cross-Border Hiring' between different Licensing Authorities may take place.

It must be noted however that '**Cross-Border Hiring**' has always been in place and is a natural part of transportation between areas and taxi/private-hire companies could not exist without it. In fact, the current Labour government has confirmed this point many times. So, the term '**Cross-Border Hiring**' has unfortunately been greatly misused and misunderstood and does not describe the current issue correctly.

The **2015 Deregulation Act** clarification set in place that where 'Operator 1' in one area sub-contracts to another Operator in the same or a different area that the accepting sub-contracting 'Operator 2' must only use drivers/vehicles under the same licences that it holds to fulfil that sub-contracted job.

Although very oddly, it was never set in legislation that the company that the customer originally booked with was obliged to inform the customer if and when that booking was sub-contracted to another company. This is much like ordering a MacDonalds burger on a food delivery app and being provided with a Burger King burger. Whilst both being burgers, not being the brand the customer wanted.

P1/2: Cross-Border Hiring is not the issue

The real issue is '**Predominant Out of Area Working**' or '**POAW**' which should not be confused with '**Cross Border Hiring**'.

'**POAW**' has had the effect of the total eradication of 'Local Licensing Control' that was given to local authorities by Parliament under the '1976 Local Government Miscellaneous Act' after many years of the then unlicensed private-hire trade never being licensed for Operators, drivers or vehicles. Those days have been described as being the 'Wild West'. Unfortunately, the 'Wild West' has returned.

Note that hackney carriage taxis do not need to work under an Operator as the hackney carriage vehicle licence is the Operator licence.

However, with the massive change to the tax/private-hire trade since the 2015 Deregulation Act that has primarily been caused and encouraged by Uber, local councils, as the regulator within a licensing area, can now no longer be relied on to ensure that the safety of passengers is under its power of control. **That power of control has been eradicated leaving Local Licensing Authorities disapproving and helpless.**

The passengers themselves are mostly oblivious to the situation being that the private-hire vehicle/driver they are provided with is nowadays highly likely not locally licensed in the area that the customer made the booking in.

Whether the customers care or not is subject to the consequences of trying to make a complaint and obtaining CCTV data (where available) if needed. For example, if you have a complaint in Brighton & Hove about a private-hire or hackney carriage driver one would expect to report this to Brighton & Hove Licensing as directed on the council's website.

However, if you get an Uber in Brighton & Hove for example there is only around a one-in-five chance that you will be sent a Brighton & Hove licensed private-hire driver/vehicle (with B&H council-controlled CCTV) based on the predominance of private-hire drivers/vehicles working in the city from Lewes DC, Southampton, Portsmouth, Chichester, Havant, Fareham far outnumbering the locally licensed drivers/vehicles. Are the public literally being 'Taken for ride'.

Exactly the same scenario is repeated throughout the country.

This means that such a private-hire vehicle/driver provided is not likely to be under the control of Local Licensing Enforcement in the area that the customer has ordered one in, and could in fact be licensed hundreds of miles away 'Out-of-Sight & Out-of-Mind' of the drivers/vehicle own respective Licensing Enforcement.

The 'Triple Lock' does make this legal and such a driver/vehicle remotely working hundreds of miles away from respective Local Licensing Enforcement is not currently acting illegally.

But is that beneficial to the customer?

However, with Wolverhampton famously issuing forty-thousand plus licences under its ever so efficient streamlining licensing service it can clearly be seen that there is a major problem for other local authorities where these Wolverhampton private-hire drivers/cars are predominantly working. As such local authorities have no authority over these vehicles.

Note that it has been suggested that all Licensing Authorities should have the power of authority over all private-hire vehicle/drivers with 'concordat' arrangement between Licensing Authorities in other areas. However, this is impractical as the efficiency of individual Licensing Departments greatly varies from area to area. Even to the extent that the majority of such Licensing Departments do not even have a dedicated team of Licensing Officers specifically only dealing with taxi and private-hire licensing and with odd interpretations of Legislation.

It is common that many Licensing Departments deal with the numerous various aspects of licensing from sex shops to poodle parlours with private-hire/taxi licensing thrown in and dealt with on a casual part-time basis. Where Wolverhampton has 'streamlined' the licensing process can either be regarded as diminishing Local Licensing Enforcement or being extremely efficient in its processing system. It can be viewed either way depending on one's view and whether one is directly affected.

A good illustration of where this situation causes a problem, and using Wolverhampton again as a prime example, is where Wolverhampton does not have compulsory CCTV and has left the installation of CCTV to the decision of the proprietor of the vehicle. It should be noted that the proprietor of the vehicle in this case is then the Data Controller and not Wolverhampton council and the driver/proprietor has full access to the recorded data. This is the same where other councils, including London, have not made CCTV a compulsory condition of licence,

In the case of Brighton & Hove and other areas where CCTV is a compulsory condition of licence, the ICO (Information Commissioners Office) has deemed that any council that makes CCTV a condition of licence will be the Data Controller of the CCTV system and not the proprietor of the vehicle. This means that the driver/proprietor has no access to the recorded data.

Licensing Authorities such as Brighton and Hove have had compulsory council-controlled CCTV for many years and in place for the safety of the passengers and the drivers. This in reality means that a Wolverhampton of TfL private-hire vehicle could currently predominantly work in Brighton & Hove without compulsory CCTV.

But is that beneficial to the customer? Is that fair to the locally licensed drivers/proprietors in Licensing Authorities that have CCTV as a compulsory condition of licence who have spent £700 (which is ongoing) for CCTV systems?

So, different licensing authorities have different conditions of licensing which may or may not include a topographical 'Knowledge Test' or perhaps a weaker one or where one Licensing Authority has compulsory CCTV, but the LA next door does not as previously explained. Other examples could be where there is a lower standard vehicle requirement or where a specific vehicle livery is in place.

Very certainly there are 'out of town' private-hire vehicles predominantly working in Brighton & Hove that the local Licensing Department would refuse to licence based on size and age.

In the example of Brighton & Hove where a private-hire proprietor wants to have a five-seater+ vehicle, the conditions are that this must be a wheelchair accessible vehicle (WAV) and these are very expensive. Yet there are many five-seater+ 'out-of-town cars' that predominantly work there that do not have such a condition of licence.

There is also the condition of vehicle licence that a Brighton & Hove private-hire vehicle may not be white so not to be confused with a Brighton & Hove hackney carriage which is also white in colour (albeit with aqua boots and bonnets). Yet there are many 'out-of-town' private-hire vehicles working under Uber that are white.

This is the undermining of Local Licensing Control. Is that fair to the local licensed drivers in Brighton & Hove?

The current situation where private-hire drivers/vehicles predominantly, and one could say blatantly, work in an area other than their respective licensing area has not only undermined Local Authorities, but is now having the effect of fewer local licences being applied for in areas of higher licensing requirements based on the principle of 'Why bother attaining a higher requirement for a licence in Area 'A' when I can get a licence

elsewhere much easier in Area 'B' and then predominantly work in Area 'A'. There is also the added bonus of not have respective Licensing Enforcement breathing down one's neck!

In very recent years the Brighton & Hove taxi/private hire trade have submitted nearing two-hundred reports to the Lewes, Chichester, Portsmouth, Southampton & Havant Licensing Departments for breaches of respective licensing conditions. Such infringements as missing rear licence plates/door signs of those private-hire vehicles predominantly working in the city including using taxi ranks.

This is an ongoing weekly event of reports as those councils are unable to provide remote Licensing Enforcement on their licensed drivers and vehicles, a situation that will continue until such drivers and vehicles are prohibited from predominantly out of area working. No doubt such breaches of local licensing conditions are the same throughout the country.

P1/3: Gatwick Airport - TfL drivers and the two Acts

The situation at Gatwick Airport is quite ludicrous as private-hire drivers/cars licensed by 'Transport for London'(TfL) predominantly work there specifically making themselves available for hire within the Uber provided waiting areas, as encouraged by Uber.

This is ludicrous as these TfL private-hire drivers/cars are under the control of the '**Private Hire Vehicles (London) Act 1998**' and yet are predominantly working at Gatwick and other areas where the '**Local Government Miscellaneous Provisions Act 1976**' is in force.

It has also been reported that Wolverhampton private-hire drivers/cars that are controlled under the '**Local Government Miscellaneous Provisions Act 1976**' are predominantly working in London making themselves available for hire where the '**Private Hire Vehicles (London) Act 1998**' is in force.

Is 'ludicrous' even adequate to describe this situation?

P1/4: What about using existing legislation?

Absolutely! The issue however is that whilst there is legislation in place that ultimately protects localism, being the right for local authorities to have full control over the activities of licensed drivers & vehicles, to date...no local authority has had the courage, and indeed the pockets deep enough to go to court to protect their residents... and quite frankly shame on all two-hundred & sixty-odd of them... including my own LA Brighton & Hove.

Gerrard Gouriet KC is a leading barrister advising and appearing in court for applicant and objectors, resident associations, local authorities and the police stated in an 2018 interview:

"Even in circumstances that are otherwise lawful, a PHV operator who knowingly sends drivers in his fleet to work in remote areas exclusively or predominantly, is vulnerable to having his licence revoked or refused renewal under section 62(1)(d) of the 1976 Act, on the ground that he undermines local licensing control. The threat to public safety (let alone the affront to local control) in the use of drivers who 'shop' to be licensed by authorities that demand only the lowest standards, so that they can work in an area where standards are higher but licences more difficult to obtain, is ample demonstration of "reasonable cause". At least one PHV operator has been known to steer potential drivers to licensing authorities with minimal licensing criteria and low licensing fees."

Gerrard Gouriet KC profile <https://tinyurl.com/gerrard-gouriet-kc>

Gerrard Gouriet 2018 interview <https://tinyurl.com/gerrard-gouriet-kc-interview>

See Index Reference

P1/5: Depriving Local Licensing Authorities of Licence Fee Income

A major issue is that the dominance of 'POAW' deprives a local authority of the licensing fees that are needed to sustain an efficient Licensing Department. That is unless the local licence fees paid by the local licensed trade are increased to make up the loss.

Is that fair to the local licence trade?

It should be noted that all Licence Fees are 'Ring Fenced' and must not be used for any other purpose.

It has been questioned as to why current legislation has not been used to prohibit licensed drivers/vehicles not working in the areas they are licensed in from predominantly making themselves available for hire in other areas?

The issue here is down to interpretation of Legislation where one side of the trade is (quite rightly) convinced that there is clear and adequate provision within existing legislation, but where to date this has not been challenged in court. That would be down to the costs involved.

Unfortunately, local councils do not have deep enough pockets or quite likely do not consider it in the public interest to prosecute a driver/operator under current Legislation that would need time and money to establish the written meaning or even possibly the fear of taking on a multi-billion-dollar global entity.

So, where the battle continues with local Licensing Authorities to take action under current legislation that is not happening..... isn't it time to now to **'Think out of the box?'**

P1/6: Knowsley V Delta 2018 – A missed opportunity

In 2018 Knowsley Council made an error in applying an 'Intended Use Policy'" to the driver Licence and not the vehicle Licence and infamously lost the case on this basis with the defending barrister famously quoting the 'Right to Roam'".

Summary by Gerald Gouriet QC

*"However Although Delta and Uber were ad idem with regards to their primary contention that Knowsley's intended use policy was ultravires, the two firms parted company on one potentially important issue – which, although it was academic in the instant case, the judge said might arise for decision in future litigation. **The issue surfaced in oral argument, which tested the limits of whether it would be lawful to import geographical considerations into PHV Licence conditions. Delta accepted that an appropriately worded condition which promotes the principle of local PHV licensing (as identified by the courts) is capable of being lawful; Uber, on the other hand, argued that such a condition would in all cases offend the principle in Padfield because it would curtail the 'right to roam'– which, it was Uber's contention, is fundamental to the legislative scheme for private hire vehicles given by the 1976 Act.***

Mr. Justice Kerr expressly demurred from deciding the point, but towards the end of his judgment he commented that he was 'fortified' by what he had heard in thinking that a fit and proper person might, in principle, be required to abide by a condition (otherwise lawful) imposed in order to meet any perceived erosion of localism.'

The interpretation of this was that an 'Intended Use Condition of Licence" could be applied to the vehicle which was conceded by Delta.

This would not affect any perceived 'Right to Roam' as a private-hire vehicle can still 'Roam' by functioning via dropping-off and picking-up, but still not predominantly working outside its respective licensing area whilst eroding local licensing control.

Keep in mind that only a very well paid Barrister would use 'Right to Roam' as a justification against Local Licensing Authorities having the right to Local Licensing Control.

It is not known as to why Knowsley did not take this avenue later after the case after being given this hint and in effect did not do the national trade any favours in not only getting it wrong but for not correcting this error and taking it forward again.

However, as shown the LGMP Act 1976 clearly states a clause that applies to a condition that may be applied to the actual vehicle licence:

48 - (2)A district council may attach to the grant of a Licence under this section such conditions as they may consider reasonably necessary:

So, a condition of 'Intended Use' is there waiting to be enforced and attached to a private-hire vehicle licence in exactly the same way as has always been available for hackney carriage vehicles.

However, as yet it is not known if any council has applied this legal right to apply such a reasonable condition for a private-hire vehicle licence, but with the chaos and ever increasing erosion of local licensing control, licensing authorities should now look at imposing a condition of licensing for an 'Intended Use Policy' for private hire vehicles using Section 48-2.

Could the proprietor of a private-hire vehicle challenge a condition of 'Intended Use' in court and succeed?

Well, it would be interesting to see what a magistrate would consider where the proprietor of licensed vehicle would be trying to support their reasons for obtaining a vehicle licence in one area with no intention of predominantly working within that area, and far away from respective Local Licensing Control.

P1/7: Hire & Reward Insurance

When a proprietor of a licensed vehicle seeks insurance cover it is usually the case that the broker or insurance company will ask where that vehicle is licensed. The purpose of this is to ascertain the premium based on local algorithms or crime/accidents and so on.

However, if that licensed vehicle then predominantly works in a completely different area then surely this should be regarded as fraud and an insurance company would have every right not to cover an insurance claim? This is much the same as someone insuring a privately used car and giving the location of where the vehicle is registered in an area assessed with less crime/accidents.

A further benefit for an 'Intended Use Policy' would also ensure that proprietors of private hire vehicles were clearly aware that licensing in one area and predominantly working in another area would invalidate the vehicles 'Hire & Reward' policy.

P1/8: Other types of businesses requiring locally issued licences - I'll have a 99 please...

Other types of businesses requiring local licensing with local conditions of licensing such as pubs, clubs, restaurants, off-licences and such like are subject to Local Licensing Enforcement. Enforcement Officers can at any time carry out checks to ensure that such businesses are conforming to trading requirements.

This is an example to illustrate the major issue of where such static businesses are easily checked via Enforcement for compliance compared to licensed vehicles that predominantly work many miles away out of reach of respective Local Licensing Enforcement.

The only comparable similarity of a licensed vehicle as that of an ice-cream van and ironically there appears to be more control over ice-cream vans under a local council issued 'Street Trading' licence than licensed vehicles with regards to remote working. This is in-as-much that an ice-cream van vendor/ licensed to trade in Brighton & Hove for example could not trade in Eastbourne under the Brighton & Hove issued licence. The proprietor would have to gain an Eastbourne 'Street Trading' licence. Both licences could have very different conditions of licensing. However, both Brighton & Hove Council and Eastbourne Council would each receive a licensing fee.

P1/9: Are MP's aware? They should be...

MPs should be fully aware of how the Licensing Authorities in the areas they served are being undermined through licensed vehicles Predominantly Out Of Area Working (POAW)

MPs should be fully aware that under 'POAW' Local Licensing Control and the Enforcement that comes with it, granted by two the Acts of Parliament has been destroyed.

MP's should be fully aware that it is not actually an Uber issue *pe se*, but the general Predominant Ot of Area Working (POAW) of private-hire vehicles, although factually encouraged by Uber.

P1/10: Summary

It is not the intention to have an 'Intended Use Policy' as proposed to act as a restraint of trade since anyone can apply to any local authority for a private-hire vehicle/driver licence, or an Operator licence, in whichever area they intend to predominantly undertake work under whatever conditions may be applied in that area.

It is not the intention to bring to the end the natural transportation of cross-border hiring in its purest form.

It is not the intention to stop the perceived 'Right to Roam' as dropping-off and picking-up pre-booked jobs in other areas will continue.

It is the intention to stop a vehicle licensed in one area predominantly and intently working in a completely different area out-of-sight and out-of-mind of its respective Local Licensing Enforcement with the driver and Operator of the vehicle then making provision for the vehicle to then be available to be hired.

It is the intention to give back Local Licensing Control to Licensing Authorities and their Officers as granted via Parliament in the two Acts.

It is the intention to stop predominant working out-of-area for private-hire vehicles and hackney carriages.

It is the intention to ensure that Local Licensing Authorities maintain the required level of income of (ring-fenced) licensing fees to finance their Licensing Departments. Such licensing fees that have been taken away with drivers, proprietors and Operators seeking easier licenses elsewhere but then returning to predominantly work in such areas without needing to worry about respective Local Licensing Enforcement.

Lastly.....

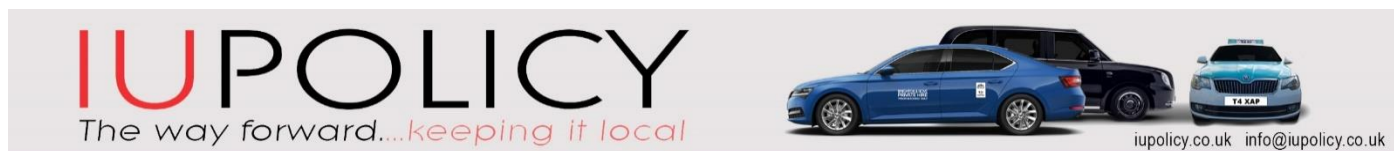
Can there really be any argument about giving back Local Licensing Authorities the right to fully control the activities of licensed vehicles and drivers that predominantly work in their areas as granted to them under the two Acts of Parliament?

If there is no such argument..... then who is that the government would then be protecting?

AP - April 2025

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Download: iupolicy.co.uk/iup-v1.pdf



Part 2 – The Intended Use Policy for Hackney Carriages, Private-Hire Vehicles & Operators

P2/1: Intended Use Policy – Purpose & Intention

P2/2: Current application of an 'Intended Use Policy' as applied to hackney carriages

P2/3: Intended Use Policy for hackney carriages and private-hire vehicles – Basic Draft - To be agreed

P2/4: Intended Use Policy Operator Licence - Basic Draft - To be agreed

P2/5: Attaching reasonable conditions of Licensing

P2/1: Intended Use Policy – Purpose & Intention

The simple solution to the current issue is for councils to be able to legally apply an '**Intended Use Policy**' (**IUP**) for private-hire vehicles in the same way that some councils apply an 'IUP' for hackney carriage vehicles. An 'IUP' should also be applied to an Operator's licence.

It must be noted that:

- 1: An 'IUP' would only apply to the vehicle and not to the driver licence.
- 2: There is absolutely no intention to stop Cross-Border Hiring in its established natural form.
- 3: There is no intention to stop the perceived 'Right to Roam' as the 'Right to Roam' to pick-up or drop-off in another area would still apply under the natural transportation of 'Cross-Border Hiring'.
- 4: Compared to the ABBA* system it is the path of least resistance.

The only intention is to ensure that if a proprietor of a vehicle wishes to predominantly use such a vehicle to work in a specific area, then the vehicle must have a licence in that area complying with all the local requirements needed. Any driver of that vehicle must then also be licensed accordingly.

Under private-hire licensing there is no restriction for anyone to apply for a private-hire driver/vehicle licence in any area. The only restriction is that an applicant of the vehicle must reach the required local standards.

Of which that opportunity is equally open to everyone.

The only possible reasons why someone may choose not to become licensed in the area that they intend to predominantly work in can surely only be:

- A) Because they would consider that they would not meet the local conditions of licensing of that area.
- C) Certain Licensing Departments are too slow, especially where there is no dedicated Licensing Department that specifically deals with hackney carriage/private-hire licensing.

Such an 'Intended Use Policy' is currently available for any council to have as a condition of licensing for hackney carriage taxis and some councils already enforce this which ensures that these vehicles stay within local Licensing Enforcement Control.

There is no reason for this to not also apply to private hire vehicles.

Department of Transport - Best Practice Guide for Taxi & Private Hire Licensing – 2023 States:**6.12 Intended use policies in respect of taxi drivers**

"Holders of taxi (hackney carriages) licences are permitted to carry pre-booked fares anywhere in England and Wales, reflecting that taxi drivers may carry passengers beyond the boundary of their licensing authority, the 'compellable area', and seek a return fare to avoid additional miles without a fare. We are aware that a number of licensing authorities have introduced a taxi 'intended use' policy when considering licence applications aimed at reducing the number of taxis working predominantly to carry prebooked fares in other areas rather than plying for hire in their licensed area."

Licensing authorities should require an applicant for a taxi driver licence to declare that they intend to work predominately within the licensing authority's area. The residential address provided by the application should be considered in assessing the likelihood of this declaration being adhered to when assessing an application for a taxi driver licence."

Again, there is no reason for this to not also apply to private hire vehicles.

An **'Intended Use Policy'** as a condition of a vehicle licence is not a restriction of trade but an essential requirement to ensure that Local Licensing Control is not undermined and can carry out its obligation of 'Local Enforcement Control' in the interest of public safety.

There is also the very grey area of insurance that must be considered where insurance companies base the insurance premium on the area that the vehicle is licensed in, which, for all intentions and purposes does not necessarily relate on where the vehicle is going to predominantly be worked. See *Sectio P1/ 7 - Hire and Reward Insurance*

An interesting and much-repeated statement was made by Transport Minister Simon Lightwood in March 2025 stating that existing legislation allows both taxis and private hire vehicles (PHVs) to accept pre-booked fares beyond their licensing authority's borders. He said this flexibility benefits passengers by increasing service availability.

Does this really benefit passengers? It would be very interesting if Mr Lightwood could explain in details what the customer benefits actually are?

Or is this ultimately benefitting Uber that has clear intentions to take over the private-hire industry? Keep in mind that Uber is a member of the Institute of Licensing and as such is right there at the top so is therefore able to be influential and is a master lobbyist. Perhaps 'Bob's Cabs' have a place at the Institute of Licensing table...

The intention is to require all Local Authorities to be compelled under legislation to set a condition of **'Intended Use'** for licensing for all three core licenses being: Hackney Carriage Vehicles, Private-Hire Vehicles and Private Hire Operators.

Local Licensing Enforcement:

This will reduce the need for Licensing Officers to have travel to far away areas to check on their respective licensed vehicles that under the current system allows those vehicles to predominantly work remotely out-of-sight and out-of-mind from their own respective Local Licensing Enforcement.

Currently, with the many thousands of private-hire licences issued by Wolverhampton, Licensing Officers from Wolverhampton do carry out regular Enforcement Operations outside of the Wolverhampton area. This of course is at a cost although the extraordinary amount generated in licensing fees from the thousands of licences issued pays for that Enforcement. However, other Licensing Authorities are being deprived of the benefit of such generated licence fees to be able to do the same as applicants continue to flock to Wolverhampton to become licensed.

Points of public safety to consider for the Local Enforcement of hackney carriage/private hire vehicles to predominantly work within their respective licensing areas as a condition of licensing:

Public Safety: Currently where a vehicle predominantly works in a differing Licensing Authority area the Local Enforcement has no idea as to whether the vehicle:

- 1: Complies with its own specific and relevant licensing conditions.
- 2: That the driver of the vehicle is a genuine licensed driver.
- 3: That the vehicle is fully insured to predominantly work outside its respective licensing area (see Section P/17 Hire & Reward insurance)

It is be important to note that many councils do not have a dedicated department that specifically deals with the licensing of operators, drivers and vehicles. A large number of councils only have a general licensing department that deals with various aspects of licensing such as sex shops, street vendors, local events and so on. As such the time allowed in such cases for the taxi trade can be limited.

An '**Intended Use Policy**' is also required on the Operator Licence as it is the Operator that controls the use of a private-hire vehicle and a local council can enforce any reasonable condition of licensing on an "Operators Licence". Surely it is very reasonable to expect Operators to ensure that the private-hire vehicles they operate do not predominantly work hundreds of miles away from local respective Licensing Enforcement?

It is reminded that the 'Triple Lock' system, of all three licenses; the Driver Licence, the Vehicle Licence and the Operator Licence must be held and issued by the same authority.

This allows for natural 'Cross-Border Hiring' to legally take place. This '**Triple Lock**' legitimised what has always taken place under natural transportation hiring, especially within neighbouring areas.

However, the mass abuse of '**Predominant Out of Area Working**' of private-hire vehicles/drivers that is actively encouraged by Uber as an Operator by enticing vehicles to be licensed in one area, and yet predominantly work hundreds of miles away, has completely eroded 'Local Licensing Control' and infinitely more worryingly, 'Public Safety'.

It would not be an understatement that in some areas, out-of-town private-hire drivers/vehicles are the dominate force.

This is a very serious point that the DfT and Grant Shapps the then Secretary for State Transport ignored in the 2020 published 'DfT Statutory Taxi & Private Hire Standards'.

It is fully accepted that most council apply six monthly Enhanced DBS checks. But where the vehicle works many miles away in different areas, even daily enhanced DSB checks are worthless as who is to know if the driver is the actual licensed driver of that vehicle. Who is checking this? Certainly not the Local Enforcement of those vehicles that are being worked out-of-sight and out-of-mind many miles away.

Under an '**Intended Use Policy**' a driver could still carry out that return from an area that the private hire vehicle has just dropped in. But it would stop that vehicle from predominantly and purposely loitering or staying in that area for the purpose of making a provision to be hired and defying local licensing control and being 'out-of-sight and out-of-mind' of the vehicle's own local authority enforcement.

An '**Intended Use Policy**' equally applied to the Operator Licence would ensure that the full responsibility of private-hire vehicles would be under the control of the Operator knowing full well that such private-hire vehicles **should not be predominantly placed** and used out of area for the purposed of being hired, but would still allow for the natural transportation of Cross-Border Hiring that has always taken place.

However, where drivers of private-hire vehicles 'Muti-App' (working across different Apps) this would only apply at the time where an Operator has dispatched a booking to a driver of a private-hire vehicle that has predominantly placed the vehicle outside of the vehicle's licensing area.

It would be down to the Operator to ensure that all drivers of private-hire vehicles adhere to conditions of licensing prior to onboarding them to their system. Any driver of a private-hire vehicle that the Operator knows the driver is breaching conditions of licence should remove that driver and private-hire vehicle from its system.

P2/2: Current application of an 'Intended Use Policy' as applied to hackney carriages

Under current legislation all Licensing Authorities can already have an '**IUP**' for hackney carriage vehicles. This means that if a hackney carriage vehicle is predominantly used outside of its licensing authority that Licence could be revoked.

It has to be questioned as to why an '**IUP**' has always been specifically available to local licensing authorities for hackney carriage vehicles and in some areas that condition is in enforced.

The principal answer to this is '**Local Licensing Control and Enforcement**' that was granted by Parliament many years ago.

This is because when a hackney carriage vehicle is licensed in Local Authority '**A**' but predominantly works in Local Authority '**B**', which could be many miles away, Local Licensing Control in Licensing Authority '**B**' is undermined and Local Authority '**A**' is unable to fulfil its obligation to carry out Local Licensing Enforcement.

It is a statutory requirement that under '*Model Bylaws for Hackney Carriages*' that a hackney carriage must return to the nearest available council stand (Taxi Rank) in its own area.

Local Councils should now be applying an 'Intended Use Policy' on all hackney carriages by default.

Even before any possible change in Legislation to enforce an '**Intended Use Policy**' for all three Licences it is now time for Local Licensing Authorities to be proactive and look at introducing an 'Intended Use Policy' for their Hackney Carriage vehicles even though it may not be perceived as a current issue. This is because it sets the standard expected and also encourages neighbouring Local Licensing Authorities to also take action.

P2/3: Intended Use Policy for hackney carriages and private-hire vehicles – Basic Draft - To be agreed

A hackney carriage vehicle or private hire vehicle licensed in one local authority can, from time-to-time be used to fulfil pre- booked hirings in another local authority. At all times it remains hackney carriage remains a hackney carriage.

However, hackney carriage vehicle licence / private-hire vehicle licence shall have an 'Intended Use' policy applied as a condition of licensing to ensure that such vehicles do not predominantly* make provision for hire and reward outside of respective local licensing control and to ensure the immediate availability for inspection of respective conditions of licensing under local licensing Enforcement Control.

In order that the Council may retain local control over its own licensed vehicles applicants will be asked as part of the application process which area they intend to entirely or predominantly operate from for the purposes of fulfilling pre-booked hirings.

It will be incumbent upon the applicant to demonstrate to the council's satisfaction that they intend to predominantly undertake work with the council's licensed vehicle within the local authority area. If the applicant indicates that they will not predominately use the councils licensed vehicle within the licensing authority area the applicant would normally be refused

If the applicant is subsequently found to be predominately using the vehicle outside the licensing authority area the vehicle Licence could be revoked.

In order to ensure that the councils Local Enforcement is not impeded in its duty, a licensed vehicle may not remain in an area where the vehicle licence is not held for the purpose of making a provision for future hiring.

The penalty incurred for a breach of the condition of licensing may initially incur a written warning followed by revocation of licence following concordant action between Licensing Authorities

An 'Intended Use' condition of licence shall not impede the 'Right to Roam' to drop-off or pick-up a pre-booking in another controlled licensing area.

It is not the intention to hinder the natural transit of cross-border hiring but to ensure that licensed vehicles are not 'Predominantly Out of Area Working' (POAW) for the purpose of being hired beyond respective Licensing Enforcement Control.

It is not the intention for an 'Intended Use Policy' to act as a restraint of trade since applicants may make applications to any local authority in whichever area they intend to predominantly undertake work under whatever conditions may be applied.

***Predominantly** – *The majority of work undertaken over a period of time as a licensed vehicle of a time period determined by Local Licensing Enforcement from any Licensing Authority at any time.*

It would not be considered reasonable for such a time period to be based on one or two days, but a period that would be recognised as being reasonable in court should an appeal be lodged by the vehicle proprietor.

P2/4: Intended Use Policy Operator Licence – Basic Draft - To be agreed

An Operator licensed in one local authority can undertake to fulfil pre-booked hirings in another Local Authority providing the 'Triple-Lock' is in force being:

The Driver – The Vehicle – The Operator... all being licensed under one licensing authority.

However, in order that the Council may retain local control over those vehicles undertaking such work in another area on behalf of the Operator, the applicant for a licence to Operate will be asked as part of the application process as to which area they intend to entirely or predominantly operate for the purposes of fulfilling pre-booked hirings and supplying vehicles licensed by the council.

An 'Intended Use Policy' shall be a condition of an Operator's licence to ensure that Operators do not predominantly* use respective private-hire vehicles in areas where there is no Operators licence in force. This does not affect 'Sub-Contracting' as defined under the 'Triple Lock'.

It is not the intention to hinder the natural transit of cross-border hiring but to ensure that hackney carriages**/private-hire vehicles do not predominantly work out of area for the purpose of being hired away from their respective Licensing Enforcement.

It will be incumbent upon the applicant to demonstrate to the council's satisfaction that the Operator intends to predominantly only fulfil pre-booked hirings with vehicles licensed by the council within the Licensing Authority that the Operator holds the Licence.

If the applicant indicates that they will be using vehicles licensed by the council outside the Local Authority area the application will normally be refused.

In order to ensure that the councils Local Enforcement is not impeded in its duty, if the applicant is found to be placing vehicles licensed by the council outside the councils licensing area for the provision to undertake future hirings booked or not yet booked in another Local Authority area, the Operator Licence could be revoked.

This section is not intended to act as a restraint of trade since applicants may make applications to any local authority in whichever area they intend to predominantly undertake work as a licensed Operator using private-hire drivers/vehicles licensed in the same area under whatever local conditions that may be applied.

Where licensed vehicles 'Multi-App' the onus of conformity shall remain with the proprietor of the licensed vehicle. However, a condition of an Operator's licence shall have an imposed agreement between the proprietor of the licensed vehicle and the Operator that the licensed vehicle shall not be predominantly used out-of-area.

The penalty incurred for a breach the condition of licensing where is if found that the Operator has aided a licensed vehicle to predominantly work out-of-area may initially incur a written warning followed by revocation of licence following concordant action between Licensing Authorities

****Predominantly*** – *The majority of work undertaken over a period of time as a licensed vehicle of a time period determined by Local Licensing Enforcement from any Licensing Authority at any time. It would not be considered reasonable for such a time period to be based on one or two days, but a period that would be recognised as being reasonable in court should an appeal be lodged by the vehicle proprietor.*

*****Hackney Carriages do not need to work under a separate Operator licence.***

P2/5: Attaching reasonable conditions of Licensing

Miscellaneous Provisions Act 1976 – Private Hire Vehicles – Conditions of Licensing

The 1976 Act has always had provision to apply any condition of licensing that a local authority wishes to impose.

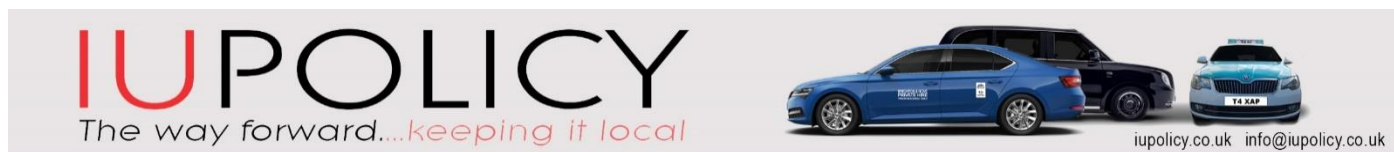
48 Licensing of private hire vehicles.

(2) A district council may attach to the grant of a Licence under this section such conditions as they may consider reasonably necessary including, without prejudice to the generality of the foregoing provisions of this subsection, conditions requiring or prohibiting the display of signs on or from the vehicle to which the Licence relates.

It is not unreasonable for a Licensing Authority to have full Enforcement Powers on all its respective licensed drivers and vehicles. However, this cannot be achieved where such vehicles and drivers are predominantly working out of area. So it is then not unreasonable to enforce an 'Intended Use Policy'

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Index: Reference

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Summary: cross border hiring & localism



“Cross border hiring” is a portmanteau expression covering a miscellany of different activities, some of which are lawfully undertaken, others unlawfully. There is no case law to the general effect that cross border hiring of PHV drivers is per se lawful; and PHV licences may be conditioned so as to prevent cross border hiring from undermining local licensing control.

The ‘Right to Roam’

The licensing requirements of PHV drivers and their vehicles, and the exemptions therefrom, are different from those made of PHV operators. The so-called ‘right to roam’ (insofar as it is a right) applies to PHV drivers and vehicles – not operators.

PHV drivers and vehicles

Outside Greater London the owner of a vehicle may not use it as a private hire vehicle in a controlled district unless the vehicle is licensed under section 48 LGMPA 1976: section 46(1)(a). Nor may the vehicle be driven otherwise than by someone licensed under section 51: section 46(1)(b). It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: 46(1)(c).

No offence under sections 46(1)(a), (b) or (c) is committed in respect of the use of a vehicle in controlled district A if a driver's licence and a vehicle licence issued in controlled district B are in force: section 75(2). All three licences, however, (operator's, driver's and vehicle), must be issued by the same authority: *Dittah v Birmingham City Council* [1993] RTR 356.

The so-called “right to roam” of PHV drivers and vehicles derives from section 75(2). The right is not unqualified: PHV drivers and vehicles may not ply for hire, and may only fulfil a booking accepted by an operator licensed by the same authority as licensed them: *Dittah*.

PHV operators

Section 80(1) LGMPA 1976 provides:

“operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.

An operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: LGMPA section 46(1)(d), applying section 80, subsections (1) & (2).

Section 75 of the LGMPA 1976 does not provide an exemption for operators (from section 46(1)(d)), equivalent to that which it provides for drivers and vehicles (from sections 46(1)(a), (b) & (c)). Thus, whilst drivers and vehicles may lawfully undertake journeys “which ultimately have no connection with the area in which they are licensed” (per Latham LJ in *Shanks v North Tyneside BC* [2001] LLR 706), lawful provision for the invitation or acceptance of bookings is anchored to the controlled district in which the operator is licensed.

Unlawful provision for invitation of bookings by PHV drivers

Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases –

“It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings”: *Kingston Upon Hull City Council v Wilson* (1995) WL 1082181, per Buxton J.

“There could well be provision for invitation of bookings in one place and for acceptance in another”: *East Staffordshire BC v Rendell* (1995) WL 1084118, per Simon Brown LJ.

“As the authorities clearly show, the main question is not where the act of accepting any particular booking or bookings take place, but where the provision is made”: *idem*

“The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general”: *Windsor and Maidenhead v Khan* [1994] RTR 87, per McCullough J.

If a PHV operator makes arrangements for drivers in his fleet to go to remote areas (i.e. other than the area of the authority that licensed the operator/drivers/vehicles) it may well be that, on the facts of a particular case, he is unlawfully making provision for the invitation of PHV bookings. If he has organised dedicated parking areas and pick up points for his drivers, and the means to let the public know they are waiting there and available for hire, it may be difficult to conclude otherwise.

Erosion of localism: revocation or refusal to renew licence

Section 62(1) of the Local Government (Miscellaneous Provisions) Act 1976 give a licensing authority power to refuse to renew (or revoke) an operator’s licence on the grounds that he has committed an offence under the 1976 Act (or an immigration offence)

; is otherwise not fit and proper to hold the licence

;there is a material change of circumstances: or

or any other reasonable cause.

Even in circumstances that are otherwise lawful, a PHV operator who knowingly sends drivers in his fleet to work in remote areas exclusively or predominantly, is vulnerable to having his licence revoked or refused renewal under section 62(1)(d) of the 1976 Act, on the ground that he undermines local licensing control. The threat to public safety (let alone the affront to local control) in the use of drivers who ‘shop’ to be licensed by authorities that demand only the lowest standards, so that they can work in an area where standards are higher but licences more difficult to obtain, is ample demonstration of “reasonable cause”. At least one PHV operator has been known to steer potential drivers to licensing authorities with minimal licensing criteria and low licensing fees.

Erosion of localism: licence conditions

The Courts have said that “the hallmark of the licensing regulatory regime is localism”[1], and that “that the authorities responsible for granting licences should have the authority to exercise full control” over “all vehicles and drivers being operated ... within its area.” [2]

In *The Queen on the application of Delta Merseyside Limited and Uber Britannia Limited v Knowsley BC* [2018] EWHC 757, Kerr said –

“I refrain from expressing any view on the point, but I am fortified in my conclusion in this case by the consideration that, in principle, a condition on a licence could be imposed which, if otherwise lawful, would require a fit and proper person who is a licence holder to abide by whatever restrictions are contained within

a condition that are considered reasonably necessary to meet any perceived erosion of localism in the governance of PHV licensing.”

Conclusions

Summary by Gerald Gouriet QC

Although correction of the abuses of what may lawfully be done by way of cross border hiring may, as has frequently been said, require national legislative change, it is only necessary to enforce existing law to address some of the widespread concerns about unlawful cross border operations and the erosion of localism by minicab firms and their drivers.

*“However Although Delta and Uber were ad idem with regards to their primary contention that Knowsley’s intended use policy was ultravires, the two firms parted company on one potentially important issue – which, although it was academic in the instant case, the judge said might arise for decision in future litigation. **The issue surfaced in oral argument, which tested the limits of whether it would be lawful to import geographical considerations into PHV Licence conditions. Delta accepted that an appropriately worded condition which promotes the principle of local PHV licensing (as identified by the courts) is capable of being lawful;** Uber, on the other hand, argued that such a condition would in all cases offend the principle in Padfield because it would curtail the ‘right to roam’– which, it was Uber’s contention, is fundamental to the legislative scheme for private hire vehicles given by the 1976 Act.*

Mr. Justice Kerr expressly demurred from deciding the point, but towards the end of his judgment he commented that he was ‘fortified’ by what he had heard in thinking that a fit and proper person might, in principle, be required to abide by a condition (otherwise lawful) imposed in order to meet any perceived erosion of localism.’

AP- The interpretation of this was that an 'Intended Use Condition of Licence" could be applied to the vehicle which was conceded by Delta.

Gerrard Gouriet 2018 interview <https://tinyurl.com/gerrard-gouriet-kc-interview>