

## **Explanatory Notes**

Where there are options or alternatives, they are highlighted in green and the explanation is detailed in footnotes. Once the decision has been made and the document altered, the footnote can be deleted.

# **Cumberland Council**

## **Hackney Carriage and Private Hire Policy**

This policy shall apply to existing licence holders and new applicants.

Parts of this policy will be phased in for existing licence holders. Please refer to each relevant section for details.

This policy will take effect from 1<sup>st</sup> April 2025.

### **Definitions**

#### **Applicant**

Person or business who has submitted an application for either a grant or renewal of a licence.

#### **Application**

A completed application made by an individual (or individuals) for the grant or renewal of a licence.

#### **Assistance Dog**

- a dog which has been trained to guide a blind person;
- a dog which has been trained to assist a deaf person;
- a dog which has been trained by a prescribed charity to assist certain disabled persons.

#### **Authorised Council Officer**

A Council officer who is authorised by the Council to exercise powers and duties conferred by legislation.

#### **Badge**

Issued to all licensed drivers and must be worn at all times when working as a licensed driver.

#### **Byelaws**

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Locally adopted laws applicable to Hackney Carriages and drivers. Breach is a criminal offence.

**Code of Conduct**

A behaviour code for drivers.

**Conditions**

Conditions of licence applied by the Council to a driver's licence, an operator's licence, or a vehicle licence. Non-compliance will lead to penalty points being imposed or action against the licence.

**Controlled District Boundary**

Area of a local authority which has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1976. This is the area of Cumberland District/Borough/City Council.

**Conventional partnership**

An arrangement where 2 or more people are in business together, but which is not a Limited Liability Partnership.

**Council**

The Cumberland District/Borough/City Council

**Councillor**

A councillor who is a member of the Cumberland District/Borough/City Council.

**Date of First Registration**

The date of first registration on the vehicles V5 log book issued by DVLA.

**DBS**

Disclosure & Barring Service

**DfT**

Department for Transport

**District**

This is the terminology used in the Local Government (Miscellaneous Provisions) Act 1976 to refer to the area of the Council.

**Door Signage**

Council issued door signage which must be affixed to the rear doors of all licenced vehicles.

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**Driving licence**

Full UK driving licence issued by DVLA, Northern Ireland driving licence, EEA driving licence or exchangeable driving licence as defined in section 108 of the Road Traffic Act 1988.

**DVLA**

Driver and Vehicle Licensing Agency

**DVSA**

Driver and Vehicle Standards Agency (which replaced VOSA in 2014)

**Equality Act**

Equality Act 2010 as amended

**Guidance**

Guidance published or issued by the Government via the Department for Transport or any other Government Department.

**Hackney Carriage Vehicle**

A vehicle licensed under the Town Police Clauses Act 1847 often referred to as a taxi.

**Hirer**

Any person or persons who from time-to-time hires or books the vehicle.

**HMRC**

His Majesty's Revenue and Customs

**ICO**

Information Commissioners Office

**IoL**

Institute of Licensing

**LGA**

Local Government Association

**Legislation**

Acts of Parliament, Secondary legislation and decisions of the senior courts, Supreme Court, European Court of Justice and European Court of Human Rights.

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**Licensing Authority**

The licensing function within Cumberland ~~District/Borough/City~~ Council.

**Licensed Driver**

A driver licensed under the Town Police Clauses Act 1847 to drive a Hackney Carriage vehicle and under the Local Government (Miscellaneous Provisions) Act 1976 to drive a Private Hire vehicle.

**Licensed Operator**

A person, persons or company holding a licence to operate private hire vehicles issued pursuant to Section 55 of the Local Government (Miscellaneous Provisions) Act 1976. A private hire operator's licence is required to enable a person to accept or invite bookings for private hire vehicles.

**Licensee(s)**

The person(s) or company/firm named in the licence.

**Licence Plate**

The plate that licensed vehicles must display showing the licence number, maximum number of persons to be carried, expiry date, vehicle registration number, and make and colour of vehicle.

**Licensed Vehicle**

Vehicle licensed under Town Police Clauses Act 1847 as a Hackney Carriage or licensed under the Local Government (Miscellaneous Provisions) Act 1976 as a private hire vehicle.

**Limited Company**

A company registered with Companies House.

**Limited Liability Partnership**

An incorporated partnership registered with Companies House.

**Member**

See councillor. The terms “councillor” and “member” are effectively interchangeable.

**NR3S**

A database of refusals, revocations and suspensions for drivers' licences.

**Officer**

An employee of the Cumberland ~~District/Borough/City~~ Council or another individual acting in the same capacity as an employee e.g. an independent contractor.

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**Operator**

See licensed operator.

**Policy**

This policy document and all associated documents

**Private Hire Vehicle**

A vehicle licensed by Cumberland District/Borough/City Council under the section 48 Local Government (Miscellaneous Provisions) Act 1976.

**Proprietor**

Registered owner or part owner of a vehicle

**PSV**

Public Service Vehicle

**Public Place**

An area that the public can have access to at anytime day or night.

**Regulatory Committee**

The committee which determine taxi licensing matters as set out in the Cumberland District/Borough/City Council constitution.

**Road Traffic Acts**

Road Traffic Act 1988 and all associated legislation.

**Stretched Limousine**

Any vehicle that has been modified after manufacture with an additional body section, extending the vehicle length.

**Table of Fares**

A card which must legally be displayed in Hackney Carriage vehicles that are fitted with a taximeter which indicates the maximum authorised fare to be charged for distance travelled, waiting time and additional charges determined by the Council. ~~under s65 and the licence plate number.~~ This is issued by the Council.

**Taximeter**

Device used for calculating the fare to be charged for the journey by measuring distance travelled plus any time waiting. This must be fitted in all Hackney Carriage vehicles and may be fitted in private hire vehicles.

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**The 1847 Act**

The Town Police Clauses Act 1847 as amended and all associated legislation and the provisions within.

**The 1976 Act**

The Local Government (Miscellaneous Provisions) Act 1976 and the provisions within.

**WAV**

Wheelchair Accessible Vehicle. Certain Hackney Carriages and private hire vehicles can be suitable for carrying wheelchair-bound passengers.

**Working day**

Any day other than a Saturday, a Sunday, Christmas day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

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## Introduction

- 1.1 This policy has been published and adopted by the Council to inform and assist the discharge of its functions in relation to Hackney Carriage and private hire licensing under the powers and duties contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 and all associated and related legislation. This includes byelaws in relation to Hackney carriages. The Council is responsible for the licensing of Hackney Carriage and private hire vehicles, drivers and operators.
- 1.2 In common with all other Council documentation, this policy is written in plain English, as far as possible. Where technical terms are used they will be explained clearly, and there is a list of definitions at the beginning. Any reference to external material (legislation, guidance, court decisions etc) will be clear and should be easily accessible.
- 1.3 This policy has been drawn up with reference to<sup>1</sup> e.g.  
...
- 1.4 This will place further strains on transport systems and Hackney Carriage and private hire use is expected to remain important and integral to the infrastructure of the District.
- 1.5 This policy has been adopted by the Council following consultation and reference to the Regulatory committee and the executive. Responsibility for Hackney Carriage and private hire licensing is split between the Council and the executive. Council functions are delegated to the regulatory committee and officers: executive functions are delegated to officers, in both cases in accordance with the Council's Constitution.

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<sup>1</sup> The authority will need to insert the relevant matters here. Examples include:

### Council's Plan:

- Environment - Protect and enhance our environment and keep ... a great place to live
- Community - Strengthen communities to ensure everyone lives well and safely together
- Economy - Support an economy which builds on the District's strengths and resources

"Standard" explanation of the area of the authority

Details of the District including anticipated growth

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## 1.6 Table of delegations

<b>Authorised by</b>	Colin Cox, Director of Public Health and Communities
<b>Date last updated</b>	

<b>Delegated Matter</b>	<b>Officer Level</b>
To authorise persons to enter premises under any enactment or power for which the Director of Public Health and Communities is responsible.	Assistant Director Regulatory Services Manager Head of Public Protection
To appoint inspectors and authorised officers (including for the issue of fixed penalty notices) as required by legislation for the purposes of public protection and health.	Assistant Director Regulatory Services Manager Head of Public Protection
Following consultation with the Chief Legal Officer, to institute proceedings under any of enactment or power for which the Director is responsible.	Assistant Director Regulatory Services Manager Head of Public Protection
<p><b><u>Licensing</u></b></p> <p>Functions in respect of all licensing matters, including the service of any notice or order, the exercise of any powers of entry and the taking of any other action, but only to the extent that they have not been reserved to Council, Leader and Executive or a Committee:</p> <p>To deal with all matters, and exercise every function, and power, including enforcement, as prescribed under the Town Police Clauses Act 1847 (as amended), Local Government (Miscellaneous Provisions) Act 1976 (as amended) and other relevant legislation, relating to hackney carriage, private hire drivers, proprietors and vehicles, and private hire operators, including:</p> <ul style="list-style-type: none"> <li>To Licence (first grant and renewal) all hackney carriage and private hire related licences (drivers, vehicles and operators) – where the application is in compliance with HC &amp; PH Policy</li> </ul>	Assistant Director Regulatory Services Manager Head of Public Protection Licensing Manager Senior Licensing and Land Charges Officer Senior Specialist - Licensing & Compliance

Delegated Matter	Officer Level
<ul style="list-style-type: none"> <li>• To refuse (first grant and renewal) all hackney carriage and private hire related licences (drivers, vehicles and operators) – where application does not comply with the HC &amp; PH Policy</li> <li>• To suspend or revoke all hackney carriage and private hire related licences but only on the grounds of public safety.</li> </ul>	

- 1.7 This policy will be kept under review and revised as necessary. The **Director of Public Health** is authorised to make minor amendments to the policy. In addition, amendments to this policy may be authorised by the Council without consultation.
- 1.8 In carrying these functions, the Council will comply with the law and also have regard to this policy document and any relevant Guidance published by the Department for Transport and any other relevant Guidance issued by any Government Department. In any situation where the Council departs from this policy, clear reasons will be given for doing so. In any case where a situation or matter is not covered by this policy, the matter will be considered from first principles i.e. as if this policy did not exist, and the decision will be based on the Councils’ interpretation of the law and Guidance.
- 1.9 The Council is committed to ensuring that members and officers involved in Hackney Carriage and private hire licensing are fully trained, and such training is regularly updated.
- 1.10 This policy contains “bright lines”. These are firm statements of intent which may appear to be absolute. Such statements are lawful and allow the Council to provide robust guidance to itself, applicants, licensees and citizens on the approach that will be taken. They do not fetter the discretion of the Council because each case will be considered on its merits but in the light of this policy.
- 1.11 Where this policy differs from the previous policy, consideration will be given by the Council to licences that were granted or renewed before this policy was adopted. There is no guarantee that any licence will be renewed and the Council will consider all new and renewal applications in the light of this policy. The fact that a licence has been granted in the past will be taken into account
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and will be a relevant consideration, but there is no legitimate expectation that any Hackney Carriage or private hire licence will be renewed (See *R. (on the application of Wilcock) v Lancaster City Council* [2014] L.L.R. 388 CA). This policy will also be used to inform action that may be taken against any existing licence.

- 1.12 Hackney Carriage and private hire law is long overdue for wholesale revision, but the Government has indicated that at present it has no intentions of embarking on that task, although some limited developments have been announced. As and when these become law the policy will be amended to take account of their effects. In recent years there have been a number of minor amendments to the legislation, and other legislation that impacts upon Hackney Carriage and private hire licensing.
  - 1.13 In 2015 the Deregulation Act of that year introduced some amendments to the Local Government (Miscellaneous Provisions) Act 1976, the most significant of which was the ability for a private hire operator to subcontract to another private hire operators licensed anywhere in England, Wales, Scotland or Greater London.
  - 1.14 The introduction in 2016 of more of the provisions relating to Hackney Carriages and private hire vehicles contained within the Equality Act 2010, and the additional amendments introduced by the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 has improved the access to and use of these vehicles for those with disabilities, and the Council works actively to support both those who require and provide such transport. Again the effect of this legislation is considered in detail in part?? below
  - 1.15 ~~The policy, refers to guidance that is available to applicants, drivers and operators and proprietors to assist them with the application processes and the running of their business under their licence. This guidance, application forms and current fees are available on the Council's Website.~~
  - 1.16 Council staff involved in Hackney Carriage and private hire licensing and other associated functions will always be polite, courteous, civil and professional. The same standards of behaviour are expected from applicants and licensees and the Council has a policy of zero tolerance to any abuse, bullying, violence or similar behaviour towards staff or councillors. Any such behaviour on the part of an applicant or licensee will be taken into account when considering whether a licence should be granted, or whether action should be taken against any existing licence.
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- 1.17 The Council recognises its duties and responsibilities under the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679. Full details of the privacy policy and the specific policy for taxi licensing are detailed on the Council's website.
- 1.18 Any legislation is pointless without enforcement of its provisions, and in doing so the Council will have regard to its enforcement policy.
- 1.19 *The Council also has reciprocal arrangements with other local authorities to enable action to be taken in relation to vehicles and drivers licensed elsewhere, and Cumberland vehicles and drivers being used elsewhere.<sup>2</sup>*

### **Council Service Standards**

- 1.20 Subject to unforeseen circumstances beyond the control of the Council, the Council will endeavour to maintain the following service levels:
- 1.21 Licensees and applicants should be able to contact the licensing team by email, through the website, by appointment in person, or by phone. However, the preferred method of contact is via email to reduce the need for licence holders to travel to the Council offices and to allow the team to deal with enquiries as effectively as possible.
- 1.22 The Licensing section can be contacted by phone on 0300 373 3730 **Insert Telephone Number** between the following times, **Insert Office Times** on Mondays to Fridays. They can also be contacted by email at: **Insert email address**
- 1.23 The Council will always aim to issue a licence within 28 days from receipt of a valid application, but will always attempt to issue them more quickly. A valid application means the complete application, all relevant documents and the fee. If any referrals are made to the Regulatory Committee then the timescale will exceed 28 days.
- 1.24 If you have any concerns or complaints about the service you have received, please contact the Licensing Section on 0300 373 3730 **Insert Telephone Number** or by email at **Insert email address**. If you are still not satisfied, please use the Council complaints procedure, details of which can be found here [www.cumberland.gov.uk](http://www.cumberland.gov.uk) **Insert appropriate website address**

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<sup>2</sup> Where such reciprocal arrangements exist (officers of authority A authorised by authority B and vice versa) this will need to be included.

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## **Background**

- 1.25 Hackney Carriage and private hire vehicles have an important role to play in the transport system. They are able to provide services in situations where local public transport is either not available (for example in rural areas, or outside "normal" hours of operation such as in the evenings or on Sundays), and/or for those with mobility difficulties.

## **Practice, guidance & legislation**

- 1.26 The Department for Transport (DfT) has national responsibility for Hackney Carriage and private hire legislation and policy in England. They also provide guidance for local licensing authorities. Their principal document is *the 'Taxi and Private Hire Vehicle Licensing best practice guidance for licensing authorities in England'* (referred to as "Best Practice Guidance" in this Policy<sup>3</sup>). This is supplemented by the *'Statutory taxi and private hire vehicle standards'* (referred to as "Statutory Standards" in this Policy<sup>4</sup>). They have been taken into account in preparing this policy.
- 1.27 The DFT guidance recognises and emphasises that licensing authorities can reach their own decisions both on overall policies and on individual licensing matters, in the light of their own circumstances.
- 1.28 This policy takes account of the law which forms the basis of the Council's taxi licensing functions. The principal pieces of legislation are the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 both as amended. In addition the Senior Courts (High Court and Court of Appeal) have handed down judgments which explain and interpret this legislation.
- 1.29 Reference will also be made to the Institute of Licensing (IoL) guidance.

## **Purpose of Hackney Carriage & Private Hire Licensing**

- 1.30 The sole consideration in relation to the licensing of Hackney Carriage and private hire vehicles is public safety (See DfT Best Practice Guide ~~Chapter 3 and Statutory Standards Para 3.2~~). Public safety includes the safety of drivers, operators, vehicle proprietors and their staff as well as the users of Hackney Carriage and private hire vehicles, and the wider public. The public must have confidence in the safety of Hackney Carriages and private hire vehicles as a

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<sup>3</sup> Available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>. This dates from 2023

<sup>4</sup> Available at <https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>. This dates from 2020

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form of transport and as a consequence the highest standards will be expected from all applicants and licensees.

- 1.31 Public safety includes safeguarding which also includes prevention of child sexual abuse and exploitation (CSAE). All licensees will be expected to demonstrate an understanding of public safety and safeguarding and ensure that their actions do not infringe those requirements at any time. Any member of the public, licensee, officer or member who becomes aware of any safeguarding issues, or any other criminal behaviour related to Hackney Carriage and private hire licensing should inform the Council and be secure in the knowledge that the Council's whistleblowing policy will be used to take all reasonable steps to protect them.

### **Policy objectives & aims**

- 1.32 As already stated, this policy is intended to enable the Council to provide a robust licensing regime which enables the Hackney Carriage and private hire trades to provide the best possible service to the public with the overriding aim of maintaining and improving public safety.

### **Objectives**

- 1.33 The objectives of this policy are:
- a) the protection of the public
  - b) the maintenance and development of professional and respected Hackney Carriage and private hire trades
  - c) enabling access to an efficient and effective local transport service
  - d) the protection of our local environment.
  - e) to support all Hackney Carriage and private hire businesses by ensuring a consistent and fair approach

### **Aims**

- 1.34 The Council will aim to achieve these objectives in the following ways:
- a) by ensuring that licensed drivers are safe and suitable fit and proper persons and achieve and maintain the highest standards of professional practice
  - b) by ensuring that licensed vehicles are safe for passengers, drivers and other road users, and properly insured
  - c) by ensuring that licensed vehicles comply with all Council standards at all times
  - d) by checking all documents provided as part of an application for authenticity, including contacting the maker of the document and other tests.
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- e) by specifying emissions standards and encouraging the use of low polluting vehicles
- f) by encouraging the use of more vehicles that are accessible to disabled people
- g) by ensuring that licensed vehicles are comfortable
- h) by working across the Council to ensure that Hackney Carriages and private hire vehicles form part of wider strategic transport and local transport plans
- i) by working in partnership with a variety of other agencies to support the Council's objective in relation to both the public and the trade
- j) by reducing the frequency with which licence holders are required to attend the Council offices
- k) by ensuring online accessibility to allow remote application by new and existing licence holders, so far as is permissible under the legislation
- l) by utilising electronic and mobile communication methods ~~including the use of SMS messaging~~ and other technological methods including web sites

## **Methods**

- 1.35 The methods the Council will use to achieve this will include (but this is not an exhaustive list)
- a) working with the Hackney Carriage and private hire trades to deliver continuing improvements, encourage innovation, and deal with emerging issues
  - b) setting the standards for the licensing of vehicles, drivers and operators
  - c) use of the NR3s database (The National Register of Refusals, Revocations and Suspensions)
  - d) assessing knowledge of the District, highway code and licensing policy as well as driving ability (at the time of application)
  - e) annual licensing and routine inspection of vehicles, with appropriate follow-up action including enforcement
  - f) routine inspection of documents, with appropriate follow-up action including enforcement
  - g) routine checks of driver's medical fitness and criminal record history during the time the licence is in force
  - h) timely investigation of complaints with appropriate follow-up action
  - i) liaison with the **Cumbria Constabulary** and other constabularies as required. Neighbouring local authorities and other agencies concerning issues of concern relating to public safety
  - j) robust enforcement (taking account of the Regulators Code) including, monitoring of contraventions, suspension or revocation of licences for breach of conditions or legislation and prosecution
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- k) regular training and development of Council officers and members
- l) meeting continuing performance and efficiency targets for the service
- m) provision of information to licensees about good practice and what to expect from any inspection or assessment
- n) provision of mandatory training (not necessarily at no cost) for applicants and licensees when considered necessary
- o) promotion of training courses and information for licensees,
- p) promotional activities to inform and encourage and maintain high standards

1.36 To achieve this the Council will actively cooperate with, assist and provide and obtain advice from a wide range of agencies including (but not limited to):

- a) The Police and other constabularies including British Transport Police
- b) Driver and Vehicle Standards Agency
- c) Other local authorities
- d) Town and Parish Councils
- e) National Rail and other railway companies
- f) Disclosure and Barring Service
- g) Department for Transport
- h) Driving and Vehicle Licensing Agency
- i) Home Office
- j) Department for Work and Pensions
- k) Other relevant agencies and departments

### **Uniformity**

1.37 The Council will conduct its functions in relation to Hackney Carriage and private hire licensing in a consistent and uniform manner and will take a reasonable and proportionate approach to enforcement action.

### **Applications and licences**

1.38 Hackney Carriage and private hire licences can be granted for a maximum period of time. Those maximum periods are

- Hackney Carriage vehicle - 1 year;
- Private hire vehicle - 1 year;
- Hackney Carriage driver - 3 years;
- private hire driver - 3 years;
- private hire operator - 5 years.

and in general licences of those durations will be granted.

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- 1.39 The Council will issue dual or combined drivers' licences. This will constitute a licence to drive both a Hackney Carriage and a private hire vehicle.
- 1.40 Applicants for licences must submit a complete application. A complete application means that the application form has been properly completed, with all required information provided, all supporting documentation that is required has been submitted, **and the fee has been paid**<sup>5</sup>.
- 1.41 If a renewal application is made which is not complete, the applicant will be contacted and given an opportunity to rectify the problems. Any such application will be held on file for 3 1 month during which time additional and/or updated information can be provided to enable the application to proceed. After 3 1 month a new application would need to be made in its entirety.
- 1.42 Applications for renewals of licences must be received before the expiry of the current licence. Any application received after that date will be treated as a new application. This will extinguish any grandfather rights and the applicant will have to comply with all requirements for a new licence.
- 1.43 As part of the application process for drivers, they will have to attend certain appointments at the Council Office. If the date and time provided is inconvenient, the applicant should contact the Council as soon as possible to arrange an alternative date and time. Failure to attend an appointments without having notified the Council within 24 hours prior to the appointment ~~in advance~~ will may lead to the entire application being cancelled and a fresh application will may have to be commenced.
- 1.44 The Council will aim to issue a licence within 28 days of a completed application being received, but this may be delayed due to circumstances beyond the control of the Council. Where an application has to be considered by the Regulatory Committee this will extend this timescale. Temporary licences will not be issued.
- 1.45 Licensees must ensure that they notify the Council immediately of any change of address, change of name, or alterations to means of contact (change of telephone numbers or email addresses). Failure to do this may lead to

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<sup>5</sup> In relation to fees, as the fee is payable for the grant of the licence in all cases, it is worth considering not levying the fee until the application has been processed and a decision has been made to grant the licence. The fee can then be paid before the licence is issued. The advantage of this approach is that there is only one payment to process. If the fee is taken on application, there must be a full refund made if the licence is not granted, which involves 2 payment processes when no income is derived from that particular licence.

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important communications not being received which in turn may lead to licences expiring or action being taken against licences without the knowledge of the licensee. Any notice required to be served by the Council under this licence or under any statutory provision shall be deemed to have been properly served if sent by pre-paid post to, or left at the last known address of, the holder of the licence.

- 1.46 All information held on files and databases about an applicant is confidential, under the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679. However, this information can be used (“processed”) by the Council as part of the application process and used within the Council. This will include communicating information to relevant officers and members who are involved in any decision-making process. In addition, the Council is under a duty to protect the public and to protect the public funds it administers, and may use any information provided by an applicant for this purpose. This may include sharing this information with other agencies where that is lawful.
- 1.47 The legislation requires the Council to maintain Public Registers, which will be available for inspection at Council offices and also via the Council’s website. That duty overrides any data protection protections.
- 1.48 Full details of the Council’s privacy policy and the specific privacy policy for Hackney Carriage and private hire licensing can be found here [www.cumberland.gov.uk](http://www.cumberland.gov.uk) ~~Insert website address~~.
- 1.49 It is a privilege to hold a Hackney Carriage or private hire licence and licensees have responsibilities to their passengers (drivers) and customers (drivers, operators and proprietors), other road users (drivers and vehicle proprietors) and the public generally. The requirement to satisfy the Council that the applicant is a safe and suitable fit and proper person continues throughout the duration of the licence. If at any time a licensee falls below the standards expected of a new applicant, the Council will consider taking action against that licence. This could be suspension, revocation or refusal to renew that licence.
- 1.50 Licensees must be aware of this and be familiar with the requirements placed upon them by the legislation, the conditions of their licence and this policy.

### **Fees for Licences**

- 1.51 The Council can charge a fee for each of these licences. Those fees are calculated in accordance with the legislation, and there are 2 fee levying powers, depending on the particular licence in question.
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- 1.52 Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 covers drivers' licences, and section 70 covers private hire and Hackney Carriage vehicle licences, and private hire operators licences.
- 1.53 Fees are calculated on a cost recovery basis, so far as the law allows that to occur.
- 1.54 The costs include the costs of:
- a) processing applications;
  - b) issuing licences;
  - c) providing badges and vehicle plates (as required);
  - d) providing additional vehicle signage;
  - e) ensuring compliance with the requirements of the licence.
- 1.55 Additional costs will apply to various pre-application requirements. The requirements are detailed at the relevant chapters below. The details of any situations in which refunds can be made are detailed in each section below.
- 1.56 **All licence fees must be paid by credit/debit card or Bank Transfer on application/when the decision to grant the licence has been made.<sup>6</sup>**
- ~~1.57 In exceptional cases payment by cash may be considered, but applicants and licensees wishing to pay with these methods should contact the Licensing section in writing with reasons for the request so that this can be considered on a case by case basis. Strict money-laundering checks will be applied in such circumstances.~~
- 1.58 If a licence is surrendered, revoked or suspended, no refund of the licence fee will be made.

### **Appeals**

- 1.59 There are statutory rights of appeal contained within the legislation. These are against decisions to refuse an application, refuse to renew a licence, suspension or revocation of a licence and also against any conditions that the Council has attached to a licence. The rights will be detailed on any decision notice which is issued where there is such a right of appeal.
- 1.60 In almost every case the right of appeal is to the magistrates' court and contact should be made with that court for details on how the appeal is commenced.

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<sup>6</sup> Depending on whether the fee is levied on application or grant, this will need to be amended.

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The one exception to that is a refusal to grant a new Hackney Carriage proprietors licence where the right of appeal is directly to the Crown Court. Again, in those circumstances contact should be made with the court for details on how the appeal is commenced.

- 1.61 The appeal period is 21 days from the date on which the written notice of the Council's decision was received. That period cannot be extended so anybody who is considering appealing should ensure that the appeal is lodged with the court as soon as possible.
- 1.62 Such appeals are fresh hearings with the court in the position that the Council was, and the court will reconsider the decision. In such appeals, the Council will resist the appeal as they have already made a decision on the matter. As part of the appeal, the court will take account of the decision that the Council made, but other evidence can be presented by both the appellant and the Council. The court will come into its own independent decision but should not readily overturn the Council's decision. If the appeal is unsuccessful the Council will make an application to the court for its full costs to be paid by the unsuccessful appellant. If the appeal is successful, the Council will resist any application that is made to the court for an award by the appellants that the Council should pay their costs (This follows the ruling of Supreme Court in Competition and Markets Authority v Flynn Pharma Ltd [2022] LLR 668 SC).

### **Suitability of applicants**

- 1.63 The legislation makes it quite clear that the Council cannot grant a drivers' licence or a private hire operators' licence unless they are satisfied that the applicant is a safe and suitable ~~fit and proper~~ person. It is for the applicant to prove that they are a safe and suitable ~~fit and proper~~ person, and not for the Council to prove that they are not.
- 1.64 In relation to a Hackney Carriage or private hire vehicle (proprietors) licence there is no statutory requirement for the Council be satisfied that the applicant is a safe and suitable ~~fit and proper~~ person. However the Council has an absolute discretion as to whether or not to grant such a licence and in addition to considering the vehicle itself, the Council will also take into account the suitability of the applicant.
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- 1.65 The Council has taken guidance produced by the Institute of Licensing into account in producing this policy<sup>7</sup>. This suggests that the phrase “fit and proper” can be explained and be more easily understood by using the term “safe and suitable”. This is the term that the Council will use throughout this document and it should be read to mean fit and proper.
- 1.66 That guidance also contains guidelines on suitability which are almost identical to the DfT guidance in “Statutory Standards”. These have been incorporated into this policy and form the basis of the previous convictions policy. This is contained at ~~annex~~ section 3.
- 1.67 Ideally, all those involved in the Hackney Carriage and private hire trades (Hackney Carriage and private hire drivers, Hackney Carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 1.68 However it is recognised that some applicants and licensees will have criminal convictions or other matters in their personal history which may affect the safety and suitability to hold a Hackney Carriage or private hire licence.
- 1.69 The previous convictions policy at ~~annex~~ section 3 provides guidance in some cases. These standards will be used in relation to all licences: driver, operator and proprietor. This is to ensure that the standards are maintained across the trades, and to reassure the public that only safe and suitable people are licensed for any role in the Hackney Carriage or private hire vehicle industry.
- 1.70 In all cases every application will be considered on its own merits, but in the light of the previous convictions policy. If the previous convictions policy does not cover the particular matter then a decision will be made from first principles where the question will be whether, in the light of that information the Council can be satisfied that the applicant is a safe and suitable ~~or fit and proper~~ person to be granted that licence.
- 1.71 The decision as to whether or not a licence should be granted is made on the facts at the time of that decision, but the Council has powers to take action

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<sup>7</sup> “Guidance on determining the suitability of applicants & licensees - hackney & private hire trades” Institute of Licensing 2018 available at <https://www.instituteoflicensing.org/Publications.aspx>

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against any licence that has been granted (the licence can be suspended, revoked, or the Council can refuse to renew it). It is vitally important that licensees understand that the test of safety and suitability is not simply to be met when the application has been granted: it is a continuing requirement and if at any time during the currency of the licence the behaviour or conduct of the applicant falls below that which would be acceptable for a new applicant, the Council will consider whether or not action should be taken against that licence.

1.72 At all times the sole consideration will be public safety.

### **Behaviour of licensees**

1.73 All licensees (drivers, operators and vehicle proprietors) are professionals undertaking a highly responsible activity which protects and ensures the safety of their passengers, customers, other road users and the public at large.

1.74 The highest standards of integrity and behaviour are expected, and these must be maintained at all times. The Council is concerned with the overall character of licensees, and not simply when the licence is being used. As a result, any behaviour at any time which falls short of the standards expected will lead to the Council considering whether that licensee should be allowed to retain their licence.

1.75 Where unacceptable behaviour occurs in connection with the use of the licence, that will be regarded as an aggravating feature, and behaviour which is not connected with the use of the licence will not be seen as less serious.

1.76 The overall aim of this policy is to ensure that the Hackney Carriage and private hire trades continue to provide a safe and satisfactory service to the public, and actions or behaviour that affect or reduce those standards will not be tolerated by the Council.

### **Enforcement**

1.77 In any situation where there has been non-compliance with any requirement, or behaviour which falls short of the requirement to remain a safe and suitable person to hold a licence, the council will consider enforcement action. In addition, action will be taken in respect of vehicles that do not comply with either the council's requirements or road traffic laws. Any enforcement action will be guided by the council's enforcement policy, and may result in one or more of the following (this is not an exhaustive list):

- a) Take no action
  - b) Issue a warning letter
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- c) Issue penalty points
- d) Use statutory notices (suspension of a vehicle licence using section 68 Local Government (Miscellaneous Provisions) Act 1976)
- e) Suspension of a licence
- f) revocation of a licence
- g) issue of a simple caution in respect of criminal offences
- h) Prosecution in respect of criminal offences

1.78 The councils penalty points scheme, mentioned above, is detailed in Appendix??

### **Decision Making**

1.79 Decisions on applications and action against licences are made by the Council. *Usually that will be a decision made by an officer acting under delegated powers but where an application is outside policy or action needs to be taken in relation to an existing licence the matter may be referred to a subcommittee of the regulatory committee.*<sup>8</sup>

1.80 There is no difference in the decision-making process between an officer and a committee. In both cases the applicant or licensee will be given an opportunity to make representations to the officer or committee and those will be taken fully into account. There may be occasions when a very short timescale will be provided for representations to be made: this is likely to occur where action needs to be taken quickly in relation to a driver's licence. In those circumstances the licensee will be contacted by all practicable means to be informed of the date and time of the decision and given an opportunity to attend. If however the licensee cannot be contacted or does not attend, then the decision will be taken in their absence.

1.81 In all cases the matter will be considered entirely on its own merits, in the light of this policy and any guidance issued by the Department of Transport.

1.82 Full and detailed reasons for all decisions will be provided to the applicant or licensee, together with details of the rights of appeal.

### **Equality of treatment and discrimination**

1.83 The Council will treat all applicants and licensees equally and fairly. There will be no discrimination on any ground and each and every application and subsequent decision will be considered on its merits in the light of the legislation, guidance and this policy.

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<sup>8</sup> This may need to be amended depending on the constitution and schemes of delegation

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- 1.84 The Council will not accept or tolerate any discriminatory behaviour on the part of any applicant or licensee. This includes any discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation, but that is not an exhaustive list.
- 1.85 All licensees must at all times treat people courteously, civilly and decently.
- 1.86 Any complaints that are received by the Council that indicate that the licensee has failed to uphold the standards will be investigated thoroughly, and if substantiated will lead to action being taken against that licence.

### **Safeguarding**

- 1.87 The Council is committed to safeguarding and promoting the welfare of children, young people, adults at risk, vulnerable persons and all other members of society. We take our responsibilities seriously and expect all our licensed drivers, proprietors and operators to share this commitment.
- 1.88 Licensed driver, proprietors and operators must consider the safety, security and welfare of their passengers, customers and the public generally when determining what safeguarding measures they should put in place in relation to their activities as a licensee.
- 1.89 All new applicants for taxi driver licences, private hire operator licences and Hackney Carriage and private hire proprietors (vehicle) licences will be required to attend and successfully pass a safeguarding course and test, as required by the Council, in order to obtain a pass certificate. There is no limit for the number of attempts to complete the test, to be undertaken at the applicant's own expense, however no licence will be issued until the applicant provides a valid certificate showing they have passed the safeguarding course.
- 1.90 All existing licensed drivers, proprietors and operators will be required to attend and successfully pass a safeguarding course and test, as required by the Council, in order to obtain a pass certificate which must be produced within 1 calendar year of adoption of this policy or on renewal whichever is sooner. Failure to do so may result in suspension of the licence until successful completion of the test.
- 1.91 As part of the licence renewal application process renewal applicants will be required to submit a current safeguarding certificate, no older than 3 months, issued by a provider approved by the Council. That must be provided:
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- Every 3 years for drivers
- Every 3 years for vehicle proprietors
- Every 5 years for private hire operators

1.92 It is the duty of the applicant to ensure that they have completed the course and passed the test in sufficient time before applying for a renewal licence. There is no limit for the number of attempts to complete the test, to be undertaken at the applicant's own expense, however no licence will be issued until a certificate is produced.

### **Equality Act and Disability Discrimination**

1.93 All licensees must ensure that they comply with their statutory duties in relation to disabled people under the Equality Act 2010 as amended which includes not charging disabled people any more for a particular journey than an able-bodied person would be charged.

1.94 Drivers of vehicles designated by the Council in the list of wheelchair accessible vehicles must

- a) be able to carry the passenger while in the wheelchair;
- b) not make any additional charge for doing so;
- c) if the passenger chooses to sit in a passenger seat, be able to carry the wheelchair;
- d) take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
- e) give the passenger such mobility assistance as is reasonably required.

1.94.1 Mobility assistance is assistance—

- a) to enable the passenger to get into or out of the vehicle;
- b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- c) to load the passenger's luggage into or out of the vehicle;
- d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

1.94.2 This does not apply if the driver has a certificate of exemption, and the specified notice is displayed in the vehicle at the time.

1.94.3 Those holding an exemption certificate should not drive wheelchair accessible vehicles.

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- 1.95 Drivers of all Hackney carriage and private hire vehicles must carry any disabled passenger without any additional charge being made (by the driver in the case of a hackney carriage, or by the operator or driver in the case of a private hire vehicle) and:
- a) if the passenger is in or has with them a wheelchair, to carry the wheelchair;
  - b) if the passenger has with them any mobility aids, to carry the mobility aids (anything apart from a wheelchair the passenger uses to assist their mobility);
  - c) to take such steps as are reasonable to ensure that the passenger is carried in safety and reasonable comfort;
  - d) to give the passenger such mobility assistance as is reasonably required;
- 1.95.1 Mobility assistance means providing assistance:
- a. to enable the passenger to get into or out of the vehicle;
  - b. to load the passenger's luggage, wheelchair or mobility aids into or out of the vehicle.
- 1.95.2 This does not apply if the driver has a certificate of exemption, and the specified notice is displayed in the vehicle at the time.
- 1.96 Drivers of Hackney Carriages must carry an assistance dog and allow it to remain with their owner unless they have a certificate of exemption issued by the Council. They must not make any additional charge for doing so. When an assistance dog is being carried, the driver must allow it to be carried wherever the owner requires i.e. the driver cannot insist on the dog being separated from the owner or the owner and dog sitting in a particular seat (Section 168 Equality Act 2010). The same requirements apply to drivers of private hire vehicles when the operator has accepted a booking for a passenger with an assistance dog (whether or not the driver is aware of the existence of the dog) unless they have a certificate of exemption issued by the Council. The operator cannot make any additional charge for the carriage of the dog.

### **Complaints about licensees**

- 4.97 If any person has any complaint about the behaviour or actions of a licensee (taxi driver, private hire operator or vehicle proprietor) they should contact the licensing department at **Insert email address** or to Licensing Section, **Cumberland Council, Insert postal address**. ~~Complaints can be made by email, letter or via the Council's website.~~
- 1.98 To enable a complaint to be investigated that person must provide their name, address and contact details to the Council but these will not necessarily be passed on to the licensee. The licensing officers will consider all complaints. If the complaint is taken forward by the Council there will be full discussion with
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the complainant and agreement as to whether or not their identity can be revealed to the licensee. Depending on the outcome of the investigation, the council may take appropriate action against the licensee. The Council will keep complainants informed of the progress of the investigation, any subsequent action taken and outcome of any subsequent court proceedings.

### **Hackney Carriage and private hire driver licences**

- 1.99 ~~The Council issues combined drivers' licences. That means that the licence is~~ Drivers licences are issued under both section 46 of the Town Police Clauses Act 1847 to drive a Hackney Carriage, and section 51 of the Local Government (Miscellaneous Provisions) Act 1976 to drive a Hackney Carriage. In both cases the vehicle must be licensed by the Council.
- 1.100 To be licensed as a driver, the following requirements must be met by the applicant. Full details are contained in appendix 4
- a) must be aged at least 21;
  - b) must have held a full (not provisional) valid driver's licence for at least 3 years. This must be a UK, Northern Ireland, EU or exchangeable licence. In the case of an exchangeable driving licence this can only be used in the UK for a maximum of one year, after which it must be exchanged for a UK licence;
  - c) must have the right to live and work in the UK;
  - d) must be registered for tax with HMRC (in the case of a renewal) or acknowledge that they must register for tax with HMRC (in the case of a new application);
  - e) Must pass the approved driver skills assessment (this applies to all new applicants and all existing drivers who on renewal cannot demonstrate that they have passed any previous test to the same standard);
  - f) provide a medical certificate from their own GP or medical practitioner who have access to all medical records;
  - g) pass the Councils approved English communication skills test;
  - h) attend the Council approved child sexual exploitation and safeguarding training;
- 1.101 The applicant must obtain an enhanced DBS certificate with a check of both the adult and child barred lists. ~~This is applied for in conjunction with the Council.~~ The application must be made within one month of the date on the certificate. The certificate must state the position as "taxi driver" and XXXXX the "other workforce".
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- 1.102 A completed application must have been received by the Council, the application must have been processed, and the Council must be satisfied that the applicant has the right to remain and work in the UK, is either registered for tax with HMRC or acknowledges that they must be, holds a valid driving licence (and has done so for at least 1 year) and is a safe and suitable fit and proper person (as required by sections 51(1)(a)(i) and 59(1)(a)(i) of the Local Government (Miscellaneous Provisions) Act 1976.
- 1.103 As part of that process the Council will check the National Register of Refusals, Revocations and Suspensions (NR3S<sup>9</sup>), if information is revealed, checks will be undertaken with the relevant authority. ~~(undertake checks with DVLA, and where an applicant lives outside Cumberland . . . District, contact will also be made with the authority in whose area they ordinarily resident.~~ In addition, information may be shared with other departments of the Council, other local authorities, HMRC, the police and immigration services. As a user of the NR3S, the Council will check the name of every applicant for a drivers licence against the database, and will add the details to the database of any driver whose licence application is refused, suspended or whose licence is revoked.
- 1.104 Once a valid application has been made, the test the Council will apply to determine whether an applicant is a safe and suitable person to be granted a drivers' licence is:  
“Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?”
- 1.105 *Applicants can complete the application form, satisfy the immigration checks, provide the DBS certificate and provide the medial certificate without undertaking the driving test or, safeguarding training if they wish. This is referred to as a provisional application and will enable them to be satisfied that the Council will regard them as being a safe and suitable fit and proper person, subject to the additional requirements. This will save expenditure on the part of the applicant in situations where there is doubt as to whether or not a licence will be granted based upon their previous convictions<sup>10</sup>*

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<sup>9</sup> Full details are available at <https://www.local.gov.uk/topics/licences-regulations-and-trading-standards/national-register-taxi-and-private-hire-licence>

<sup>10</sup> This approach is regarded as helpful by some authorities.

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- 1.106 Full details of the policy including the application process can be found at appendix 4.
- 1.107 This also includes copies of the byelaws and the Code of Conduct.
- 1.108 The Council does not attach conditions to a taxi driver's licence. Although the legislation allows conditions to be attached to a private hire driver's licence, they cannot be attached to a Hackney Carriage driver's licence. To ensure that the standards of behaviour are the same when drivers are driving either type of vehicle, the Council has decided to adopt a Code of Conduct. These are not conditions attached to the licence: rather this is the standard of behaviour expected from all taxi drivers.
- 1.109 If there is any non-compliance with this Code of Conduct, or the driver's behaviour falls short of these requirements, the Council will then consider whether or not that person remains a safe and suitable person to hold a licence. The consequences of not complying with the Code of Conduct include penalty points being awarded; suspension of the licence; revocation of the licence or nonrenewal of the licence.

### **Hackney Carriage vehicle (proprietor) licences**

- 1.110 Once a vehicle has been licensed as a Hackney Carriage, it retains that status all day every day for the duration of that proprietors (vehicle) licence. That means that it can only be driven by a person who holds a Cumberland ~~dual/combined~~ taxi driver's licence entitling them to drive a Hackney Carriage licensed by the Council. The exception to this is when the vehicle is being tested.
- 1.111 Full details of the policy including the application process can be found at appendix??.
- 1.112 Applicants for a Hackney Carriage proprietor's licence must provide a basic DBS at the time of first application and on every renewal. This does not apply if a proprietor is a licensed driver with the Council and already holds a valid enhanced DBS certificate and subscribes to the update service.
- 1.113 Once a valid application has been made, the test the Council will apply to determine whether an applicant is a safe and suitable person to be granted a Hackney carriage vehicle (proprietor's) licence is:
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“Without any prejudice, and based on the information before you, would you be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that they would not allow it to be used for criminal or other unacceptable purposes, and be confident that they would maintain it to an acceptable standard throughout the period of the licence?”

1.114 The council sets fares for Hackney carriages. The mechanism for doing so is contained in section 65 Local Government (Miscellaneous Provisions) Act 1976. A fare review/increase can be initiated by the council or by the Hackney carriage trade. **It will not be an automatic process e.g. annually.<sup>11</sup>** The minimum timescale between reviews will be 12 months. The request must be made in writing.

### **Private Hire Vehicle (proprietor) licences**

1.115 Once a vehicle has been licensed as a private hire vehicle, it retains that status all day every day for the duration of that proprietor’s (vehicle) licence. That means that it can only be driven by a person who holds a Cumberland ~~and~~<sup>combined</sup> taxi driver’s licence entitling them to drive a private hire vehicle licensed by the Council. There is no exception to this, even when the vehicle is being tested.

1.116 Full details of the policy including the application process can be found at section ~~appendix??~~.

1.117 Applicants for a private hire proprietor’s licence must provide a basic DBS at the time of first application and on every annual renewal. This does not apply if a proprietor is a licensed driver with the Council and already holds a valid enhanced DBS certificate and subscribes to the update service.

1.118 Once a valid application has been made, the test the Council will apply to determine whether an applicant is a safe and suitable person to be granted a private hire vehicle (proprietor’s) licence is:

“Without any prejudice, and based on the information before you, would you be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing

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**<sup>11</sup> Some authorities have annual fare reviews. This will need to be amended according to the authority's policy.**

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suspicion, and be satisfied that they would not allow it to be used for criminal or other unacceptable purposes, and be confident that they would maintain it to an acceptable standard throughout the period of the licence?”

### **Private Hire Operator Licences**

- 1.119 A private hire vehicle must be booked via a private hire operator before the journey carrying passengers (the hiring) commences. A Cumberland private hire operator can only operate (i.e. dispatch) a private hire vehicle driven by a private hire driver, both licensed by the Council.
- 1.120 A Cumberland operator can subcontract to another operator licensed anywhere in England (including Greater London but excluding Plymouth), Wales or Scotland, and can also accept a subcontract from any other operator. When discharging a subcontract, the vehicle and driver used must be licensed by the Council.
- ~~4.121~~ A Cumberland licensed operator can advertise their services anywhere, not only within the area of the Council. ~~District/City/Borough/County.~~
- 1.122 Full details of the policy including the application process can be found at section ~~appendix??.~~
- 1.123 Applicants for a private hire operator’s licence must provide a basic DBS at the time of first application annually thereafter. This does not apply if a proprietor is a licensed driver with the Council and already holds a valid enhanced DBS certificate and subscribes to the update service.
- 1.124 Once a valid application has been made, the test the Council will apply to determine whether an applicant is a safe and suitable person to be granted a private hire operators licence is:
- “Without any prejudice, and based on the information before you, would you comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information would not be used or passed on for criminal or unacceptable purposes?”
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