

# Response

## Department for Transport consultation

## Taxi and private hire vehicle licensing: protecting users

### About Unlock

Unlock is an independent, award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. Our focus is predominantly on people in England and Wales.

Firstly, **we help people**. We provide information, advice and support to people with convictions to help them to overcome the stigma of their criminal record. This includes running an information site which has over 1 million visitors a year, and a confidential peer-run helpline that helps around 8,000 a year. This work is charitably funded; we do not deliver government-contracted services. We help practitioners support people with convictions by providing criminal record disclosure training. We support employers, universities and others to develop and implement fair and inclusive policies and procedures that enable the recruitment of people with convictions and that treat people with criminal records fairly.

Secondly, **we advocate for change**. Every year we hear from thousands of people who are unnecessarily held back in life because of their criminal record. We work at policy level to address systemic and structural issues. We listen to and consult with people with criminal records, undertake research and produce evidence-based reports to inform policy makers and the public. We challenge bad practice, influence attitudes and speak truth to power. We co-founded and support the Ban the Box campaign and we are pushing to wipe DBS checks clean of old/minor criminal records. We have a track record of constructive engagement with government, the DBS and employers in working towards a fairer and more inclusive approach.

### About this response

Unlock welcomes the opportunity to provide a response to the Department for Transport's consultation on taxi and private hire vehicle licensing. Our response is focused on the recommendations made in 'Taxi and Private Hire Vehicle Licensing: Steps towards a safer and more robust system', specifically those that relate to the use of criminal records checks in making licensing decisions.

In principle we agree that licensing authorities should conduct enhanced and barring checks. Guidelines for decision makers can provide clarity and consistency, which is of benefit to licensing authorities, passengers and applying drivers. However, the guidelines for withholding licenses depending on offence type are overly broad and appear not to be based in evidence. We would welcome the opportunity to work with the Department to refine this guidance before a final version is published.

## Responses to questions

**Recommendation 20: All drivers must be subject to enhanced DBS and barred lists checks. Licensing authorities should use their existing power to mandate this ahead of inclusion as part of national minimum standards.**

**All licensing authorities must require drivers to subscribe to the DBS update service and DBS checks should be carried out at a minimum of every six months. Licensing authorities must use their existing power to mandate this ahead of inclusion as part of national standards.**

We agree that all drivers should be subject to an enhanced Disclosure and Barring Service (DBS) check for individuals applying for or renewing taxi and PHV driver licences. Subscribing to the update service is beneficial to both drivers and licensing authorities. We note that most local authorities currently require enhanced checks but just under 80% require barring checks. If a role is not regulated activity, it should not involve a barred list check as such a check would be unlawful.

We note also that the Task and Finish report included the additional recommendation from the Suzy Lamplugh Trust that taxi licensing come under the definition of regulated activity. We agree that there are similarities with regulated activities: children, vulnerable adults and those rendered vulnerable by circumstances such as intoxication or ill-health are all likely PHV users. Indeed, all passengers are placing their trust in the driver when they enter the vehicle. However, there is an element of choice that means PHV licensing falls short of regulated activity, and we therefore support the use of enhanced checks but consider that the fact that someone is barred from regulated activity does not automatically make them unsuitable for a PHV licence. Instead, consideration should be given to the offences, the context, the time frame and the relevance of all of that to PHV licensing. We support enhanced checks alongside a framework for decision making to ensure consistency and confidence across local authorities.

**Recommendation 21: Government must issue guidance, as a matter of urgency, that clearly specifies convictions that it considers should be grounds for refusal or revocation of driver licences and the period for which these exclusions should apply. Licensing authorities must align their existing policies to this ahead of inclusion in national minimum standards.**

The Department for Transport appears to have issued guidance that specifies convictions that should be grounds for refusal, along with exclusion periods for offence types. This guidance appears to replicate that published in 2018 by the Institute of Licensing - although it does not reference it. It is not clear from either the DfT guidance or the Institute of Licensing publication how these offence categories or exclusion periods were decided upon. We note that the Task and Finish Group membership did not include expertise in criminal law or desistance from crime. We have particular concerns about the blanket approach to both.

1. The categories are somewhat idiosyncratic – they do not reflect the criminal law in a recognisable way - and the broad terms used, for example 'dishonesty' - mean almost every single offence type could result in a lengthy exclusion, regardless of the circumstances or the age of the conviction.
2. It is unclear whether there is any evidence base for these exclusion periods and there are some anomalies. Effectively, a person convicted of possession of a firearm will be refused a licence for the same minimum period as a person who over-claimed benefits. Is that proportionate?
3. Where an offence might fall into more than one category, it is not clear which exclusion period should apply. For example, are offences of violence involving a weapon to be treated as weapons offences or violent offences?

4. The minimum exclusion periods are long and are not scaled according to the circumstances of the particular offence.
  - a. Violence: The range of violent crimes is wide – common assault is an incident in which the victim sustains no injury. On this guidance, that would be treated the same as a serious assault in which a victim required surgery. Is that proportionate?
  - b. Sex and indecency: Offences of indecency include indecent exposure (which could result from urinating in public), or sexual intercourse in public view (public view can include the person's own home). Are these really in the same category as rape, or sexual assault? This category would also include the crime of soliciting, for which many victims of Child Sexual Abuse or Exploitation have been convicted, before they were properly recognised as victims of abuse. A blanket ban or long exclusion for sexual offences could inadvertently prevent women who were victims of abuse obtaining a license.
  - c. Dishonesty: A vast array of crimes are covered by dishonesty, from shoplifting to perjury. Is it proportionate to treat them all the same?
  - d. Drugs: In addition to a single minimum exclusion period, the guidance recommends drug testing for applicants with a conviction or caution for possession. Is it proportionate to require someone with, say, a 20-year-old caution for cannabis to undergo drug testing? If testing for substance misuse is a condition of licensing, could it sensibly be applied to all drivers?
  - e. Motoring convictions: What constitutes a 'minor motoring conviction'? It is somewhat surprising that motoring convictions are to be treated so leniently, given the nature of the role. One might consider that motoring offences are more relevant than convictions for drug-related crimes.
  - f. There are a number of crimes not referenced here – terrorism, criminal damage, arson, animal cruelty, environmental crime, HSE offences? Are these considered irrelevant to licensing decisions?

In principle, Unlock supports a universal framework for decision making by licensing authorities. Provided it is evidence based and made available to applicants, a framework can ensure consistency and fairness and means applicants know what to expect. The current guidance is not sufficient to achieve consistency, fairness or certainty and we would not consider that the guidance, in its current form, meets Recommendation 21.

***Recommendation 24: As a matter of urgency Government must establish a mandatory national database of all licensed taxi and PHV drivers, vehicles and operators, to support stronger enforcement***

The value of any database is dependent on the quality, relevance and timeliness of the information recorded. Some of the problems identified by the Task and Finish group are a result of information not being sought, or not being updated. Before a national database is established, clear terms of reference should be established – who is the data controller, who has access and what mechanisms will be put in place to ensure it is used appropriately and what role will the database play in supporting 'stronger enforcement'?

## Conclusion

In conclusion, Unlock broadly supports the recommendations detailed above but consider that the practical application of these recommendations needs to be further refined to ensure that the safety of the public is effectively achieved alongside a fair approach to licensees with previous convictions.

## More information

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