

DEPARTMENT OF ENVIRONMENT AND LEISURE

ORIGINATING SECTION: PUBLIC PROTECTION SERVICE

REPORT TO: LICENSING COMMITTEE 21st SEPT 2015

TITLE : PROPOSED PENALTY SCHEME FOR HACKNEY CARRIAGE AND PRIVATE HIRE OPERATORS AND DRIVERS

1. PURPOSE

To inform members of the feedback received from the proposal to introduce a penalty point scheme for dealing with breaches of law or conditions attached to Hackney Carriage and Private Hire vehicle, driver and Private Hire operator licences.

2. RECOMMENDATIONS

That Members note the report and make recommendations to the Executive Member for Environment on the adoption of a penalty point scheme.

3. KEY ISSUES

Members will be aware that currently when officers have sufficient evidence to warrant action being taken with Private Hire and Hackney Carriage drivers for breaches of licensing legislation or licence conditions, these matters are usually dealt with by way of advice (written or verbal), simple cautions, proceedings before the Courts or referral to the General Licensing Sub Committee.

It is felt that this system is not totally effective in dealing with drivers who repeatedly flout responsibilities on items which may in isolation be considered minor. By dealing with cumulative breaches on a more formal footing it may re-enforce the need for drivers and vehicle owners to take their responsibilities seriously. Examples of these breaches could be failing to wear their badge or display fare tables.

The Licensing Committee were therefore asked to consider a penalty point system, which if adopted would be more effective against those drivers and proprietors who repeatedly ignore their responsibilities in relation to the conditions attached to licences and potentially put public safety at risk.

It is important to clarify the nature of the penalty point system proposed. The scheme is not intended to replace the normal mechanisms of referral to the licensing committee or prosecution for individual, serious offences. The scheme will enable officers to hold data on observed breaches of licence conditions or issue of Fixed Penalty Notices (FPNs), usually issued on specific operations, by the Police for vehicle defects which render vehicles unfit for the road. The FPN is issued rather than a prosecution taken but with a pattern established over time would lead the committee to consider the issue of a person's fit and proper status.

The scheme involves penalty points being issued for minor breaches to drivers or proprietors. When they have accrued a set maximum (20 points in any 12 month period) number of points they would be referred to the General Licensing Sub-Committee for consideration. The panel members have the authority to impose a range of sanctions dependant on the circumstances. This could range from a warning to in more severe cases a revocation of licence.

At the moment the public protection service issue verbal or written warnings. This scheme would enable this to continue but with a more systemised approach which would create clarity for all concerned.

Serious offences or breaches will still remain liable to prosecution.

A preliminary meeting was held with trade representatives on 30th June. The group thought that if a scheme was to be implemented, then there should be a trial period of 12 months to assess the suitability of the scheme.

At the Licensing Committee meeting in July, Members recommended that the proposed scheme was to be consulted widely with the taxi and private hire trade to gather feedback. This was undertaken and the feedback received is detailed in appendix 1.

A special meeting of a taxi forum sub group was held on 26th August 2015 to review the feedback and certain amendments to the scheme were suggested. These include introducing a "retraining programme, where drivers can attend a course instead of having the penalty points awarded against them; separating the operator and driver breaches; the wording of some breaches have been amended to reflect the comments. The changes are detailed in appendix 2

A petition signed by 186 drivers was received on 3rd September; this is detailed in appendix 3. Informal comments from the drivers conclude that they are very worried that the cumulative 20 points which would trigger a review of licence would be very easy to reach. The scheme the council is proposing to adopt is almost identical to a neighbouring authority with similar numbers of drivers and vehicles; no drivers were referred to their Licensing Committee in 14/15 and only 2 drivers have been referred this year 15/16

The scheme was an item for discussion at the Taxi Forum on 17th September an update will be provided to Members at the committee meeting.

4. RATIONALE

The Public Protection Service believes that a Penalty Point Scheme will be a valuable tool in safeguarding members of the public and improving the taxi service offered by licensed individuals across the Borough.

Hackney carriage and private hire operators, drivers and vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Council's Byelaws and the Rules, Regulations and Conditions set by the Council.

Penalties will only be applied when witnessed by a public protection officer; or when there is clear evidence of a breach; or where the licensee admits the offence.

Officers will take a common sense approach and not set out to repeatedly catch licensees committing offences. There will be an appeal procedure for any disputed points. In the first instance this appeal will be to the head of service. The appeal must be made in writing within 14 days of the penalty point notice being issued.

In serious cases, where an individual progresses through to suspension or revocation of a licence by the General Licensing Sub Committee, the licensee would have the right of appeal to a magistrate's court.

Feedback from other authorities that use similar systems states that these schemes improve the compliance of the trade, and overall standards are raised. If points are issued, the licensee will not be affected financially, but will be put "on notice" to improve. If there are further breaches and the licensee is referred to the General Licensing Sub Committee, the scheme will show the graduated approach that has been taken with the licensee.

5. POLICY IMPLICATIONS

Any penalty point scheme would be subject to approval by the Executive Board. The Councils' current conviction policy would need an addendum to reflect the proposed scheme.

6. FINANCIAL IMPLICATIONS

There are no financial implications associated with this report

7. LEGAL IMPLICATIONS

The Council has an ongoing duty to ensure its licensed drivers are "fit and proper persons" as required under the Local Government (Miscellaneous Provisions) Act 1976.

The Penalty Points Scheme would be one of a range of mechanisms available to the Council to fulfil this duty.

8. RESOURCE IMPLICATIONS

There are no resource implications associated with this scheme.

9. CONSULTATIONS

As detailed in key issues; a 28 day consultation with the trade ended on 21st August 2015, The Taxi Forum have been fully informed and involved with the proposed scheme.

10 . CONTACT OFFICER

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APPENDIX A – PENALTY POINTS SCHEME

1. The Scheme

- 1.1 Points will be issued by authorised officers of the Authority to licence holders who are found to be in breach of legislation, byelaws, this policy or conditions of licence.
- 1.2 The maximum number of points that can be imposed in respect of any particular matter is 10 but it is possible for one incident or inspection to result in more than one set of points being issued.
- 1.3 If a licence holder accumulates 20 points or more within a rolling period of 12 months then their licence will be subject to a review by the General Licensing Sub-Committee.
- 1.4 Any licence holder aggrieved by the imposition of penalty points on their licence may appeal to the Head of Service, where they will have the opportunity to explain why the points should not have been imposed.
- 1.5 Notice of the appeal must be submitted in writing to the Authority within **14 days of receiving** the penalty points notice **accompanied with a fee of £50 refundable if the appeal is won. (this fee will not apply)**
- 1.6 The tables below list the breaches of legislation that attract penalty points.
- 1.7 The issue of some points will be applicable to both the driver and vehicle proprietor or operator for example where a vehicle is found with illegal tyres, points will be issued to both the driver and the vehicle owner.

Private Hire

A.	<u>Offences under the Local Government (Miscellaneous Provisions) Act 1976</u>	<u>Penalty Points</u>
1.	Vehicle not displaying plates. (Sec.48(6)(a))	10
2.	Failure to notify vehicle transfer within 14 days. (Sec.49(1))	10
3.	Failure to present vehicle for inspection. (Sec.50(1))	5
4.	Failure to notify Authority of any convictions	10
5.	Failure to inform Authority where the vehicle is stored. (Sec.50(2))	5
6.	Failure to report an accident within 72 hours.(Sec.50(3))	10
6.	Failure to produce a vehicle licence and insurance certificate. Upon written request (Sec50(4))	5
7.	Failure to produce Private Hire driver licence.(Sec.53(3))	5
8.	Failure to wear or have driver badge visible inside vehicle.(Sec.54(2))	10
9.	Failure by Operator to keep records of bookings.(Sec.56(2))	10
10.	Failure by Operator to keep records of vehicles.(Sec.56(3))	10
11.	Failure to produce a Private Hire Operators licence.(Sec56(4))	5
12.	Making false statement or withholding information to obtain a licence.(Sec.57(2))	10
13.	Failure to return vehicle plate within 7 days after notice given.(Sec.58(2))	5
14.	Failure to surrender driver licence after suspension.(Sec.61(2))	5
15.	Charging more than the meter fare when HV used as a PV.(Sec.67)	10
16.	Unnecessarily prolonging a journey.(Sec.69)	10
17.	Obstruction of an authorised officer or constable.(Sec.73(1)(a))	10
18.	Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	10
19.	Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	10
20.	Major vehicle defects e.g. illegal tyre	10
21.	Driver smoking in the vehicle	5
22.	Driver using a handheld mobile phone, handheld two way radio, eating or drinking	5

B. <u>Offences under the Transport Act 1980</u>		
<u>Section</u>	<u>Offence</u>	<u>Penalty</u>
64 (2) (a)	Driving a vehicle with a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of another word	10
64 (2) (b)	Causes or permits a vehicle to have a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of	10

C. Policy and Conditions of Licence

All non-compliance with the policy and breaches of licence conditions shall attract 10 penalty points.

HACKNEY CARRIAGE

A. <u>Offences under the Local Government (Miscellaneous Provisions) Act 1976</u>	<u>Penalty Points</u>
1. Failure to notify vehicle transfer (Sec.49(1))	10
2. Failure to present vehicle for inspection. (Sec.50(1))	5
3. Failure to inform Authority where the vehicle is stored. (Sec.50(2))	5
4. Failure to report an accident.(Sec.50(3))	10
5. Failure to produce a vehicle licence and insurance certificate. Upon written request (Sec50(4))	5
6. Failure to produce HD driver licence.(Sec.53(3))	5
7. Making false statement or withholding information to obtain a licence.(Sec.57(2))	10
8. Failure to return vehicle plate within 7 days after notice given.(Sec.58(2))	5
9. Failure to surrender driver licence after suspension.(Sec.61(2))	5
10. Charging more than the fare shown on the meter for a journey ending outside the district without prior agreement (Sec.66)	10
11. Charging more than the meter fare when HV used as a PH.(Sec.67)	10
12. Unnecessarily prolonging a journey.(Sec.69)	10
13. Obstruction of an authorised officer or constable.(Sec.73(1)(a))	10
14. Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	10
15. Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	10
16. Major vehicle defects e.g. illegal tyre	10
17. Driver smoking in the vehicle	10
18. Driver using a handheld mobile phone, handheld two way radio, eating or drinking	10

B. <u>Offences under the Town Police Clauses Act</u>		
<u>Section</u>	<u>Offence</u>	
48	Failure by HC proprietor to hold a copy of HC driver licences of persons who use the vehicle	10
	Carrying other person than the hirer without consent	10
C. <u>Offences under the Byelaws</u>		
	All breaches of hackney carriage byelaws shall attract	10
D. <u>Policy and Conditions on Licence</u>		
	All non-compliance with the policy and breaches of licence conditions shall attract	10

Draft

Please sign the petition below to object to the proposed penalty point system outlined in
Blackburn by Blackburn with Darwen Council.

Signed below by Private Hire and Hackney Drivers