

Body: General Licensing Committee
Date: 9th January 2017
Subject: Hackney Carriage and Private Hire Penalty Points Scheme
Report Of: Claire Groves, Senior Specialist Advisor
Ward(s) All
Purpose To assist the Council in improving standards by considering the introduction of a Penalty Points Scheme

Recommendation:

- (1) That members endorse the scheme as outlined in this report.**
- (2) Approve consultation process and if no adverse comments are received in the consultation process to delegate to Head of Customer First to take the necessary steps to introduce the scheme. If adverse comments are received as part of the consultation process then a report will be brought back to the Committee prior to making a final determination on whether to implement the scheme.**

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1.0 Introduction and Background

- 1.1 Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provision) Act 1976, Town Police Clauses Act 1847, Council Byelaws and the Rules, Regulations and Conditions set by the Council.
- 1.2 Members will be aware that currently when officers have sufficient evidence to penalise Operators, Drivers or Proprietors of Vehicles for breaches of licensing legislation and conditions, these matters are usually dealt with by either advice (verbal or written), written warning, an official caution, proceedings before the Court or the Council General Licensing Committee.
- 1.3 This system is not satisfactory in dealing with repeat offenders for minor vehicle defects and breaches of licence conditions because these breaches are not formally cumulatively considered.

2.0 Penalty Points Scheme

2.1 The Primary objective of implementing a penalty point scheme must be to improve the levels of compliance within the trade which would subsequently help improve the standards, safety and protection of the travelling public. An issue highlighted in the Department for Transport 'Taxi and Private Hire Vehicle Licensing: best practice guidance', which states:

"Well-directed enforcement activity by local licensing authority benefits not only the public but also the responsible people in the taxi and PHV trades. Indeed, it could be argued that the safety of the public depends upon licensing authorities having an effective enforcement mechanism in place".

2.2 Members are asked to consider the following alternative system, which if adopted would be more effective against those Operators, Drivers or Proprietors who see fit to ignore their responsibilities.

2.3 The scheme aims to provide a formalised stepped enforcement plan which is easy for drivers and proprietors to understand. The purpose being to record misdemeanours and to act as a record of the driver's behaviour and conduct so as to ascertain whether they remain a fit and proper person to hold the relevant licence.

2.4 The operation of the scheme ensures that the most serious cases are referred to Members for a decision to be taken. However, serious offences or breaches may remain liable to prosecution.

2.5 The scheme will be subject to a 3 month consultation. Whilst the Private Hire and Hackney Carriage trade will be specifically notified, the consultation document will be placed on the Council's website so that everyone will be able to get involved in the process to gain a more balanced view.

2.6 If at the end of the consultation period no adverse comments are received the Head of Customer First will take the necessary steps to introduce the scheme. If adverse comments are received then a report will be brought back to the Committee prior to making a final determination on whether to implement the scheme.

2.7 A copy of the proposed Penalty Point Scheme is attached at Appendix 1.

3.0 Operation of the Scheme

3.1 Full details of how the scheme will operate are detailed in the Penalty Point Scheme document, attached at Appendix 1.

3.2 It should be noted that the issue of these penalty points are completely different to those issued as a result of prosecutions undertaken or fixed penalty notices issued by the police and therefore have no effect on a DVLA driving licence.

4.0 Conclusion

4.1 A penalty point scheme can be used as an internal mechanism to record minor infringements. The scheme itself acts as a means of recording evidence for potential further action but is not a condition of the driver, vehicle or operator licence.

4.2 The scheme will allow the Council to demonstrate that it operates a fair and transparent administrative system for all its drivers.

5.0 Recommendations

5.1 Members are asked to consider the details in the report and approve the introduction of the scheme following consultation with the trade.

6.0 Financial Implications

6.1 There are limited financial implications due to the likely need to hold additional Licensing Sub-Committee meetings. These will be factored into the overall costs of running the service, with the objective of the service to balance income against expenditure over the course of a 3 year period.

7.0 Legal Implications

7.1 The Council's Legal section have considered this report.

8.0 Human Rights

The provisions of the Human Rights Act 1998, must be borne in mind by the Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property, and Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory.

Appendix 1
Eastbourne Borough Council - Penalty Points Scheme

	Details of the misconduct	Points Applicable	Driver	Vehicle Owner or Operator
1	Providing false or misleading information on licence application form / failing to provide relevant information or pay the relevant fee (including dishonoured cheques)	6	✓	✓
2	Failure to notify, in writing, the Council of a change of address within 7 calendar days	3	✓	✓
3	Refusal to accept hiring without reasonable cause	6	✓	
4	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓	
5	Plying for hire by Private hire drivers or Hackney Carriage drivers plying for hire outside the district	9	✓	✓
6	Private hire vehicle parking or waiting on a taxi rank	9		✓
7	Inappropriate behaviour at a taxi rank,	1-12*	✓	
8	Leaving a taxi unattended at a rank	4	✓	
9	Using unlicensed vehicle or using a licensed vehicle without insurance or without a valid VST	12	✓	✓
10	Failure to produce relevant documents within timescales when requested by an Authorised Officer	4	✓	✓
11	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓
12	Failure to undergo the 6 monthly VST on time	6		✓
13	Failure to provide proof of insurance cover when requested	6	✓	
14	Failure to produce Hackney Carriage or Private Hire vehicle for re-testing when required	4		✓
15	Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12	✓	✓
16	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
17	Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓
18	Carrying more passengers than stated on the vehicle licence	6	✓	
19	Failure to display external/internal licence plate in a fixed position or failure to display appropriate door signs	6	✓	✓
20	Carrying an offensive weapon in the vehicle	12	✓	
21	Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer	4		✓
22	Failure to carry fire extinguisher	4		✓
23	Failure to carry first aid kit	3		✓

	Details of the misconduct	Maximum* Points Applicable	Driver	Vehicle Owner or Operator
24	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle	3		✓
25	Failure to use authorised roof light	4	✓	
26	Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day	4		✓
27	Failure to produce on request records of drivers' work activity	4		✓
28	Using a non-approved or non-calibrated taximeter (HC)	6	✓	✓
29	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	12	✓	✓
30	Evidence of smoking in vehicle	3	✓	✓
31	Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage	6		✓
32	Using a vehicle, the appearance of which suggests that it is a Taxi	6		✓
33	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	✓
34	Driver not holding a current DVLA licence	12	✓	✓
35	Failure to have the driver's badge clearly displayed	4	✓	
36	Failure to notify, in writing, a change in medical circumstances	6	✓	✓
37	Unsatisfactory appearance of driver	4	✓	
38	Failure to observe rank discipline (HC)	3	✓	
39	Failure to maintain proper records of private hire vehicles	3		✓
40	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6		✓
41	Misleading use of the words 'Taxi' or 'Cab' on advertising materials	3		✓
42	Failure to issue receipt on request .	6	✓	✓
43	Using a licensed vehicle in a dangerous condition	9	✓	✓
44	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓
45	Unsatisfactory behaviour or conduct of a driver.	1-12*	✓	
46	Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence	6	✓	✓

47	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute.	1-12*	✓	✓
	Details of the misconduct	Maximum* Points Applicable	Driver	Vehicle Owner or Operator
48	Failure to provide reasonable assistance to a passenger	1-12*	✓	✓
49	Failure to display a correct up to date fare card (HC)	3	✓	✓
50	Carrying two or more separate fares without the appropriate consent	9	✓	
51	Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel	4	✓	✓
52	Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓
53	A licensed vehicle with a bald or dangerous or defective tyre	4 per tyre	✓	✓
54	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓
55	Failure to display an applicable fare card AND the Councils valid fare card together	3	✓	✓
56	Waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle	3	✓	
57	Driving whilst using a mobile phone	9	✓	
58	Appeal of points by way of Licensing Sub-Committee	4-12*	✓	✓

Notes:

*- discretionary points up to a maximum of 6 points can be issued by officers, but greater awards of points can only be issued by the Licensing Sub-Committee.

Officers may refer any mandatory award of points to Members where there are aggravating features to any case.

The Maximum points applicable refers to points issued by Officers. If the matter is referred to the Licensing Sub-Committee the Sub-Committee may impose up to 12 points.

Ticks indicate potential recipients of points for infringements, but are not limited to those only. Certain cases may result in drivers and/or proprietors and/or operators receiving penalty points. Points may be awarded to one or several persons depending upon the circumstances of the case, but each case will be considered on its individual merits.

Penalty Point Scheme

Introduction

- 1.0 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, Councils Byelaws and the Rules, Regulations and Conditions set by the Licensing Committee.
- 2.0 Should operators, drivers or proprietors of vehicles commit an offence or breach those rules, regulations or conditions of licence, persons involved are asked to attend the offices for an interview and then once investigations are completed, letters are sent out detailing the outcome and a permanent record kept on the persons' file. The outcome of investigations may result in no further action being taken, penalty points being awarded, a formal warning, referral to the Licensing Panel and /or prosecution.
- 3.0 The aim of a penalty point scheme is to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme is to record misdemeanours and to act as a record of drivers, vehicle proprietors and operator's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.
- 4.0 The primary objective of the penalty point's scheme is to improve levels of compliance and help improve the standards, safety and protection of the travelling public.
- 5.0 Penalty points remain on the licensee's record for twelve months. The period is a roll forward basis, so as to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee.

Issue of Penalty Points

- 6.0 Complaints from the public concerning significant breaches of conduct will be subject to investigation by officers and may be reported to the Licensing Sub-Committee for the issue of discretionary points.
- 7.0 Where a licensee accumulates 12 or more penalty points in any 12 month period, the matter will be referred to the Council's Licensing Sub-Committee for the members to decide whether the licensee remains a fit and proper person. The Licensing Sub-Committee may then suspend or revoke a licence, or issue a warning to the Licensee, depending on the circumstances. Periods of suspension of a licence by a Sub-Committee will be dependent on the nature of the breaches of the legislation/conditions and the compliance history of the individual. Suspension periods will normally vary between 7 to 31 days.
- 8.0 Penalty Points will remain current for 12 months from the date the penalty points were issued. Points issued to either the proprietor of a vehicle, operator or a driver will be confirmed in writing normally within 10 working days of the conclusion of the investigation into the contravention.

- 9.0 The system will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, byelaws and regulations.
- 10.0 Any disputes regarding the issuing of penalty points will be referred to the Licensing Sub-Committee who will have the discretion to award a greater number of points than displayed on the tariff, if the complaint is upheld. Drivers or Operators must appeal against points awarded by officers to the Licensing Sub-Committee within 21 days of them being issued.
- 11.0 If points are issued to a proprietor/driver or operator by the Council for a matter which is also a criminal offence, e.g. bald tyres, no badge, those person (s) will not be the subject of a prosecution for that offence by the Council.