

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

14 FEBRUARY 2018
ALL WARDS

**PENALTY POINTS SYSTEM FOR LICENSED DRIVERS AND VEHICLE
PROPRIETORS**

1. Summary
- 1.1 Hackney Carriage, Private Hire Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, The City Council's Byelaws and the Conditions set by the Licensing and Public Protection Committee.
- 1.2 Should 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.
- 1.3 The outcome of investigations may result in no further action being taken, a formal warning, referral to the Licensing (sub) Committee and/or prosecution.
- 1.4 There are a number of low level breaches which are continually being identified by officers and other enforcement agencies or reported by members of the public which represent infractions of conditions attached to licences issued in respect of hackney carriage and private hire vehicles.
- 1.5 We currently have no way of dealing with these minor 'offences' and the sanctions of prosecution, cautioning or the suspension or revocation for a single transgression would in these circumstances seem as unduly harsh.
- 1.6 The aim of a penalty point scheme is to work in conjunction with other enforcement options.
- 1.7 The primary objective of the penalty point scheme is to improve the levels of compliance and help improve the standards, safety and protection of the travelling public.

2. Recommendations

- 2.1 That Committee approves in principal the introduction of a penalty points system for licensed drivers and vehicle proprietors.
- 2.2 That Committee instruct Licensing Enforcement to consult with the trade and the wider public for a period of six weeks, to consider a penalty points system as outlined in Appendix 1.
- 2.3 A final version with comments from the consultation to be brought back to committee for ratification and to agree an implementation date.

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3. Background

- 3.1 Under the Local Government (Miscellaneous Provisions) Act 1976 a Council must satisfy itself that all applicants for hackney carriage and private hire drivers licences are “fit and proper persons”, and as a licensing authority our aim is to protect fare paying passengers and members of the public and to improve the safety and standards of services provided by licence holders across the City.
- 3.2 During on-going road side compliance checks Licensing Enforcement continue to identify high levels of non-compliance regarding required signage and safety issues with licensed vehicles.
- 3.3 The primary objective of the penalty points system is to improve the levels of compliance and help improve standards, safety and ultimately the protection of the travelling public. It is intended to work in conjunction with other enforcement options and provides a formalised stepped enforcement plan. It does not prejudice the Council's ability to take other actions.
- 3.4 The proposed system would record a wide range of breaches, some of which in themselves may not be individually serious, but if added together, demonstrate a clear pattern of poor standards or behaviour that collectively warrant some type of action, such as the suspension or revocation of a licence.
- 3.5 Other matters identified may significantly impact on the safety of a vehicle and indicate the driver is failing to regularly inspect or maintain a vehicle.
- 3.6 As Licensing Authority the Council need to reinforce compliance with the conditions attached to the licences it issues and to promote the high standards expected of licence holders. We want residents and visitors to the City to feel safe when they use a hackney carriages or private hire vehicles so it is crucial that standards of licensed drivers and vehicles are consistently high.

- 3.7 The proposed penalty points system is intended as a means of recording repeated non-compliance, or activity that is other than in accordance with the standards expected of licensed hackney carriage and private hire drivers.
- 3.8 It should be stressed that the proposed penalty points system is intended to be used in the majority of cases where minor breaches are detected but in more serious cases the option of immediate suspension, revocation, simple caution or prosecution will still be retained.
- 3.9 It should also be noted that the proposed scheme has no impact on the conditions applied to licences or drivers, vehicles or operators.

4. Current Practice

- 4.1 There are a number of matters which fall the under remit of the Police or other enforcement agencies, or are matters that are dealt with at the scene as part of everyday enforcement activities which are currently not recorded but on reflection should be taken into account when considering if a licence holder is a "fit and proper person"
- 4.2 There are a number of matters which CAN result in the temporary suspension of a vehicle licence which are recorded but no further action taken e.g. a driver working with a tyre tread below legal limit, which is changed at the scene, missing signage, faulty lights etc. Because the matters are resolved at the scene or shortly after the suspension is issued no further action is taken against the driver or vehicle proprietor concerned.
- 4.3 Even though it is evident that some drivers and vehicle proprietors are failing to maintain their vehicle(s) to the standard expected, and thereby potentially putting members of the public and other road users at risk. The Department currently has no effective means to deal with these matters and it is a contributory factor in the continuing poor compliance rates especially in respect of the private hire trade.

5. Proposed New Procedure

- 5.1 It is evident that if we wish to improve standards of safety and services provided by licence holders we need to ensure such individuals are made aware they will be held accountable for all matters relevant to their licences and the test as to whether they are and continue to be a "fit and proper person" to hold the licence granted to them.
- 5.2 A penalty points system has a number of benefits:
- penalty points system is seen as a proportionate response in respect of minor infractions;
 - because the points are acquired before any major sanctions such as the suspension, or revocation of a licence are taken the licensee is

- clearly able to see the points tally accumulated and thereby given fair warning they could face a possible sanction;
 - as a licensee accumulates points, the nearer they get to the set points total resulting in a potential sanction they have a clear incentive and deterrent not to commit any further breaches; and
 - such a system is in accordance with the Government's Principles of Good Regulation.
- 5.3 The scheme proposed follows the examples of several other licensing authorities who currently deal with such matters, by means of a penalty points system. Attached as appendix 1 is an initial draft of a points system to demonstrate the types of issues regularly identified in relation to licensed vehicles.
- 5.4 The first table in the proposed scheme focuses on those matters identified on stop check exercise with the second table being a list of other potential addition to the scheme that occur on a regular basis, but are not identified on a stop check exercise.
- 5.5 Where a licensee accumulates more than 12 penalty points in any 12 month period, the matter will be referred to a Licensing Sub-committee to decide whether the driver is a fit and proper person. The Sub-committee may then suspend or revoke a licence, or issue a warning to the Licensee, depending upon the circumstances.
- 5.6 Periods of suspension of a licence will be dependant on the nature of the breaches of the legislation/conditions and the compliance history of the individual.
- 5.7 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 or a driver will be confirmed in writing normally within 10 working days from the discovery of the contravention.
- 5.8 Attached at appendix 2 is a summary of vehicle inspections carried out since April 2017; the table shows the number and type of non-compliance matters identified during stop check exercises.
- 5.9 This shows that on initial inspection only approximately 30% of private hire vehicles and 70% of Hackney Carriage vehicles are fully compliant with the conditions of licence.
- 5.10 However apart from the inconvenience of re-presenting the vehicle for further inspection in a compliant state, there is no other incentive for drivers/proprietors to maintain the vehicle such that it complies with the conditions set by this Committee.
- 5.11 The process of refusing, suspending or revoking a licence can take time and allows the licensee to appeal the matter to the Magistrates' Court. If an appeal is lodged then, in most cases, the suspension/revocation is held in abeyance until the appeal has been determined.

- 5.12 A penalty points system would clearly show the principals of proportionality and fairness of any decisions made and would also provide good evidence of this fact in any subsequent appeal to the Magistrates Court.

6. Consultation

- 6.1 It is proposed that should this Committee be minded to approve the introduction of a penalty points system in principle then consultation will be carried out with trade representatives.

7. Implications for Resources

- 7.1 There is likely to be an initial additional cost resulting from the change to inspection forms and the creation of a recording system.

- 7.2 It is expected that this will be included in the new computer recording system due to be introduced to replace Sopra and so additional costs can be met within the current budget.

- 7.3 It is likely, at least initially, that this scheme will result in more drivers needing to appear before committee and this will have an additional burden on the number and/or frequency of sub-committees and officers that deal with the processing of reports to those committees.

8. Implications for Policy Priorities

- 8.1 The contents of this report are consistent with the Regulation and Enforcement Mission Statement - locally accountable and responsive fair regulation for all – achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors.

9. Implications for Equality and Diversity

- 9.1 The scheme proposed in this report seeks to improve the standards of vehicles that are used for the transport of the public and it will be applied to all drivers and vehicle proprietors.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: None