



## HACKNEY CARRIAGE AND PRIVATE HIRE PENALTY POINTS SCHEME

### 1. Introduction

- 1.1 Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, the Town Police Clauses Act 1846, the council's byelaws and the policies and conditions of the Local Licensing Authority.
- 1.2 Currently when officers have sufficient evidence to discipline Private Hire and Hackney Carriage drivers for breaches of licensing legislation and conditions, these matters are usually dealt with by either advice (verbal or written), a simple caution, proceedings before the Courts or by referring a matter to the Licensing Committee.
- 1.3 It is considered that this system is not wholly effective in dealing with repeat offenders for minor vehicle defects and breaches of licence conditions that do not warrant heavy sanctions because these breaches are not formally cumulatively considered.
- 1.4 It is proposed that there is alternative system which has been used successfully by other authorities, a penalty points system, which if adopted could be more effective against those licensed parties who ignore their responsibilities in relation to the conditions attached to their licences.
- 1.5 The Melton Borough Council penalty point scheme provides that should it be alleged that operators or drivers of licensed vehicles have committed an offence, or breached the Council's Hackney Carriage and Private Hire Policy and/or conditions of their licence, the circumstance will be investigated. During the investigation, amongst other actions, statements may be taken from witnesses or those involved, records requested and analysed, and questions asked either informally or formally under caution. Questioning will often be in the form of telephone discussions or by e-mail or face to face discussions. However, when questions are asked in the form of an informal interview you will be able to bring someone to support you, but they will not be able to answer on your behalf. Where the interview is formal and 'under caution' you will be specifically informed and the process for this will be provided in the

communication requesting the interview. Such interviews will be carried out in accordance with the Police and Criminal Evidence Act (PACE) and the associated Codes of Practice.

Once this procedure has been 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,
- Melton Borough Council taxi licensing penalty points being given,
- a formal warning being issued,
- a referral to the Melton Borough Council Licensing Sub Committee, and/or
- prosecution, or caution.

- 1.6 Where a licence holder, either driver or operator, accumulates twelve penalty points or more, in any twelve month period, the matter will be referred to the Melton Borough Council Licensing Sub Committee for the Sub Committee to decide whether the driver is a fit and proper person. In the case of an operator the Sub Committee will decide if he is unfit to hold a licence or whether they have any other reasonable cause to suspend, revoke, or refuse to renew the licence. The Licensing Sub Committee may then decide to suspend or revoke the licence, issue a warning to the licence holder, refuse to renew, give advice, or do nothing, depending on the circumstances.
- 1.7 The aim of the penalty point scheme is to work alongside other enforcement options. It provides a formalised stepped enforcement plan that can be easily followed and monitored. The purpose of the scheme is to record misdemeanours which would not normally be recorded or processed and to act as a record of driver's and operator's behaviour and conduct to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions. It is designed as an evidence gathering tool rather than a punishment scheme.
- 1.8 The primary objective of the 'penalty points' scheme is to increase the levels of compliance and help improve the standards, which will improve the safety and protection of the travelling public.
- 1.9 Penalty points remain for twelve months. The period is on a rolling twelve month basis, any points given over twelve months from the current date will be considered as spent and therefore excluded from the running total recorded against any individual licence holder.
- 1.10 The penalty point scheme will not stop or hinder the investigation of any serious issue or allegation being immediately reported to the Licensing Committee or being considered for prosecution, or caution.

## 2 Issue of Penalty Points

2.1 For the Authority to agree and carry out this scheme it would fall within s.61 of the Local Government (Miscellaneous Provisions) Act 1976. This states that:

### 2.2 S.61

(1) Notwithstanding anything in the Act of 1847 or in this part of the Act, a District Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire on any of the following grounds:

a) That he has since the grant of the licence –

(i) Been convicted of an offence involving dishonesty, indecency or violence; or

(ii) Been convicted of an offence under, or has failed to comply with, the provisions of the Act of 1847 or of this part of the Act; or

#### **b) Any other reasonable cause**

Under s.61(1)(b) above, Melton Borough Council, may suspend, revoke, or refuse to renew a driver's taxi licence if they have a reasonable cause to believe so, a reason of which could be if they do not believe a licence holder is a fit and proper person. Receiving 12 penalty points, or more, within a 12 month period may indicate that a license holder is not a fit and proper person.

The licensing of a private hire operator is similarly controlled under s.62 of the Local Government (Miscellaneous Provisions) Act 1976 which states:

### 2.3 s.62

(1) Notwithstanding anything in this Part of this Act a district council may suspend or revoke or refuse to renew an operator's licence on any of the following grounds:

a) any offence under, or non compliance with, the provisions of this Part of the Act;

**b) any conduct on the on the part of the operator which appears to the District Council to render him unfit to hold an operators licence:**

c) Any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted;

**d) Any other reasonable cause.**

- 2.4 An operator who accumulates twelve penalty points, or more, within 12 months may indicate that he is unfit under s.62(1)(b) above or may be a reasonable cause under S.62(1)(d) above.
- 2.5 Within the list of offences and breaches of conditions is shown the maximum amount of points that can be issued for each individual offence. Points can be issued in increments of 3 dependent on the nature of the offence. Any issue of penalty points under this scheme has to be justified and evidenced.
- 2.6 Where a licence holder, either driver or operator, accumulates 12 penalty points or more in any 12 month period the matter will be referred to the Melton Borough Council Licensing Sub Committee for consideration of whether that person is fit and proper to be licensed. In the case of an operator the Sub Committee will determine whether he is fit to hold a licence or whether they have any other reasonable cause to suspend, revoke, or refuse to renew the licence.
- 2.7 The Council's Licensing Sub Committee can resolve to suspend or revoke a licence, issue a warning to the licence holder, refuse to renew, give advice, or do nothing, depending on the circumstances
- 2.8 Melton Borough Council penalty points will remain current for 12 months from the date the penalty points were issued. Points issued will be confirmed in writing within 10 working days from the discovery of the contravention.
- 2.9 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.

**3 Appeal Procedure**

- 3.1 A driver or operator who has been given penalty points under the Melton Borough Council Penalty Points Scheme may appeal within 21 days of the issue of the points to an independent head of service; Melton Borough Council's Environmental Protection and Safety Manager, who will have the discretion to remove, reduce, or increase the number of points awarded. The points awarded will be suspended on appeal and the 12 month period will run from the subsequent appeal decision date. A decision will be reached within 21 days of the submission of the appeal, the appellant being informed by letter. As this scheme is designed as an evidence gathering tool, the appeal is a paper procedure only and will be decided on the known facts and the grounds submitted by the investigating officer(s), and the facts of the appeal submitted by the person receiving the points. If a driver or operator is issued 12 points, or has accumulated 12 points within 12 months, an appeal can still be submitted. If the appeal is successful and the points are removed or reduced then they will not be referred to the Licensing Sub Committee.

Conversely if an appeal is submitted for an amount of points lower than 12, and the result of the appeal is the raising of the number of points to 12, or more, the driver or operator will be referred to the Licensing Sub Committee.

- 3.2 There is no further appeal to this procedure.
- 3.3 If, under this scheme, a driver or operator is referred to the Licensing Sub Committee, the Sub Committee will decide if the driver is a fit and proper person, or that if an operator, unfit; or whether there is a reasonable cause to suspend, revoke, or refuse to renew the relevant licence. The Sub Committee may also decide to issue a warning letter, give advice, or do nothing. Periods of suspension of a licence by the 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. Whatever the decision of the Licensing Sub Committee, the points still remain in force for 12 months from the date they were issued, if this is 12 or more, then if more are issued it will result in another referral to the Licensing Sub Committee.
- 3.4 This scheme does not interfere with a licence holders right to appeal any subsequent suspension, revocation, or refusal to renew, at the magistrates court.
- 3.5 If points are issued to a licence holder for a matter which is also a criminal offence, e.g. bald tyres, or no badge, those person(s) will not then be the subject to a separate prosecution by the Council.
- 3.6 Melton Borough Council's fleet of licensed vehicles and drivers are figureheads within Melton and surrounding areas and standards should be high in order to ensure public safety and represent Melton in a positive light. We believe that this scheme will give the necessary tools in order to ensure compliance and seek to raise the standard of our licensed vehicles and licensed drivers.

#### **4 Applicable Case Law**

- 4.1 A judicial review, *R (app Singh) v Cardiff City Council (2012) EWHC 1852 (admin)*, challenged the use of a similar penalty points scheme in relation to a taxi driver. This was based on a number of arguments but the principal ones were that there was no lawful power to run such a scheme, that when the maximum points were reached there was automatic revocation and therefore no application of discretion, there was a fetter on the discretion of the Authority, the scheme was irrational and the process conflicted with Article 6 of the European Court of Human Rights. The Melton Borough Council Penalty Points Scheme is different to the Cardiff City Council case referred to here, as

there is no 'fetter on the discretion'. The Penalty Points Scheme is merely a method, amongst others, that may indicate that a driver is not a fit and proper person, or that an operator is unfit. The decision on any action, if any, to suspend, revoke, or refuse to renew a hackney licence or operators licence is the decision of the Licensing Sub Committee of elected councillors.

- 4.2 The judge found that it was lawful to have a penalty point's scheme as a means of dealing with misdemeanours. Mr Justice Singh said (at para 65)

*In my view, there is nothing wrong in principle with the defendant authority such as the present, adopting the policy, which seeks, both in fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgement of the local authority, a person is not a proper person to continue to enjoy the relevant licence.*

- 4.3 However, there was a problem with the way in which Cardiff City implemented the policy. Its approach was that when a driver reached 10 points under their scheme the licence would be revoked and it appeared that on occasions, reduced numbers of points were awarded to a driver to avoid revocation of the licence. It was these elements which led to the challenges of a lack of application of discretion and fetter of the discretion. As explained in 4.1 the Melton Borough Council Penalty Points Scheme has no 'fetter on the discretion' as there is no automatic revocation of a licence when the upper limit of 12 points is reached. This merely indicates that the driver may not be a fit and proper person or the operator is unfit, and it is to the Licensing Sub Committee to make any decisions on any action to be taken, if any. The judge agreed with the claimants but in doing so explained how the process of deciding on whether action should be taken against a drivers licence should be undertaken.

- 4.4 In relation to action being taken under S.61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 'any other reasonable cause', the question is whether a person remains a fit and proper person to continue to hold a taxi drivers licence. The judge said that this was not purely discretion; it required a judgement to be performed on whether the statutory question has been answered in favour of or against the relevant driver. (para 70)

If the answer to that judgement is against the driver (i.e. he is not fit and proper) there still exists discretion as to what action to take against the licensee.

The judge also questioned:

*How many penalty points does the driver have?*

As opposed to

*Whether there is any reasonable cause, in other words whether in all circumstances of the case a driver is a fit and proper person to continue to enjoy licence. (para 77)*

- 4.5 It can therefore be seen by the above that Council penalty points schemes are lawful provided there is a mechanism to enable an offending licence holder to be brought before a delegated decision maker (the Licensing Sub Committee) which will then consider the question of fitness and propriety in the light of the evidence and then determine what sanction, suspension or revocation, if any, should be applied.
- 4.6 Taxi licensing penalty points schemes are widely used throughout England including some in Leicestershire. Once embedded they work well and are popular with taxi drivers and operators as it does not affect lawful and well run businesses and appropriately behaved drivers, but tends to weed out the ones that continue to offend and ignore the rules.

	<b>OFFENCE/BREACH OF CONDITION</b>	<b>MAXIMUM POINTS APPLICABLE</b>	<b>DRIVER</b>	<b>VEHICLE OWNER OR OPERATOR</b>
1.	Failure to notify in writing the Council of changes of address within 7 working days.	3	✓	✓
2.	Failure to produce relevant documents within a reasonable time (usually 14 days) when requested by an authorised officer	3	✓	✓
3.	Unsatisfactory condition of vehicle – Interior or Exterior	3	✓	✓
4.	Failure to produce Hackney Carriage or Private Hire vehicle for testing or inspection when required	3	✓	✓
5.	Misuse of taxi rank	3	✓	
6.	Failure to report to an authorised Officer within 72 hours an accident or damage to a licensed vehicle which would cause a vehicle to breach the licence conditions	3	✓	✓
7.	Failure to display external or internal licence plate or signs as required	3	✓	✓
8.	Failure to notify transfer of Hackney Carriage or Private Hire Licence	3		✓
9.	Failure to carry appropriate fire extinguisher	3	✓	✓
10.	Failure to carry an approved first aid kit	3	✓	✓
11.	Displaying unsuitable or inappropriate sited signs or advertisements in or on the vehicle	3		✓
12.	Failure to use authorised roof light	3	✓	
13.	Failure to maintain records in a suitable form from the commencement to the cessation of work of each driver each day	3		✓
14.	Failure to produce on request records of drivers work activity	3		✓
15.	Failure to maintain proper records of Private Hire	3		✓



	vehicle within 21 days			
16.	Evidence of smoking in vehicle	3	✓	
17.	Failure to wear drivers badge	3	✓	
18.	Unsatisfactory appearance of driver	3	✓	
19.	Failure to observe rank discipline	3	✓	
20.	Misleading use of the words "Taxi" or "Cab" on advertising materials	3		✓
21.	Failure to return vehicle licence plate within 7 days after due notice, following expiry, revocation or suspension of such licence	3		✓
22.	Failure to display fare/tariff card	3	✓	✓
23.	Fail to attend punctually to a fare at appointed time and place without sufficient cause	3	✓	✓
24.	Unlawful waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission)	3	✓	
25.	A licensed vehicle with a bald tyre	3 per tyre	✓	✓
26.	Providing false or misleading information to Regulatory Services of Melton Borough Council.	6	✓	✓
27.	Failure to undergo the vehicle interim compliance test	6		✓
28.	Failure to provide proof of insurance within 7 days	6	✓	✓
29.	Unsatisfactory behaviour or conduct of driver	6	✓	
30.	Using a non approved or non-calibrated taximeter	6	✓	✓
31.	Displaying any feature on Private Hire vehicle that may suggest that it is a taxi	6		✓
32.	Using a vehicle the appearance of which suggests that it is a taxi	6		✓
33.	Failure to keep or produce records of Private Hire bookings or other	6		✓

	documents required to be kept or produced			
34.	Failure to notify the Council, in writing, of any motoring or criminal convictions within 21 days of conviction or cautions during period of current licence	6	✓	✓
35.	Failure to submit a licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓
36.	Failure to give assistance, when requested, with loading/unloading luggage to or from any building or place	6	✓	
37.	Plying for hire by Private Hire vehicle	9	✓	✓
38.	Driving whilst using a mobile phone	9	✓	
39.	Refusal to accept hiring without reasonable cause e.g. drunk or rude customer	12	✓	
40.	Using unlicensed vehicle or vehicle without insurance	12		✓
41.	Using a vehicle subject to a suspension order issued by an Authorised Officer or a Police Officer	12	✓	✓
42.	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
43.	Carrying an offensive weapon in the vehicle	12	✓	
44.	Obstruction of an Authorised Officer or Police Officer wishing to examine a licensed vehicle	12	✓	✓
45.	Failure to carry an assistance dog without requisite exemption	12	✓	✓
46.	Driver not holding a current DVLA licence	12	✓	✓
47.	Failure to issue receipt on request	12	✓	
48.	Failure to behave in a civil and orderly manner	12	✓	✓
49.	Unreasonable prolongation of journeys or any misconduct regarding the	12	✓	

	charging of fares			
50.	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	12	✓	
51.	Carry more passengers than stated on the vehicle licence	12	✓	

Changes of number of points

Offence 29. Now 6 points was 12 points.

Offence 50. Now 12 points was 6 points.

Offence 51. Now 12 points was 6 points.