

## Appendix A



# **HACKNEY CARRIAGE AND PRIVATE HIRE DISCIPLINARY AND ENFORCEMENT POLICY**

## **FOREWARD**

This document sets out what businesses and others being regulated can expect from Melton Borough Council's Enforcement Officers. It commits the Council to good enforcement policies and procedures. It lays down the policy of the Council formerly based on the principles of good enforcement contained in the Enforcement Concordat, produced by Central Government and the new Statutory Code of Practice for Regulators (*Regulators Compliance Code*) produced by the Department for Business Enterprise & Regulatory Reform and supplemented by additional statements of enforcement policy of other service units within the Council.

The Statutory Code of Practice for Regulators is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement.

Effective and well-targeted regulation is essential in promoting fairness and protection from harm. However, in achieving these objectives, regulation and its enforcement should be proportionate and flexible enough to allow or even encourage economic progress.

The purpose of the Code is to promote efficient and effective regulatory inspection and enforcement, to improve required outcomes without imposing unnecessary burdens on regulated persons and businesses.

The Licensing Team of Melton Borough Council will make every effort to comply with the Code. However, in certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by other material factors. Any decision that is taken to depart from the Code in a material way will be properly reasoned based on relevant evidence.

In having regard to the Code we will, in particular, adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated persons to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

To that end, this document has been produced, representing Melton Borough Council policy. As such it is to be adhered to by all Licensing Staff and the Licensing Committee when discharging their regulatory licensing functions.

Following approval by Council, this document will be placed on the Council's website.

2014

## **HACKNEY CARRIAGE AND PRIVATE HIRE DISCIPLINARY AND ENFORCEMENT POLICY**

### **1.0 Introduction**

1.1 It is the function of Licensing to regulate and ensure compliance with the law across broad subject areas, including:

- Hackney Carriage and Private Hire Vehicles and Drivers
- Private Hire Operators

1.2 To enable these statutory functions to be carried out, Officers are appointed and are duly authorised to act under specified legislation. The statutory basis for hackney carriage and private hire enforcement is contained within the following legislation and documents:-

- Town and Police Clauses Act 1847
- Local Government (Miscellaneous Provisions) Act 1976
- Transport Act 1985 and 2000
- Crime and Disorder Act 1998
- Environmental Protection Act 1990
- Equalities Act 2010
- Road Traffic Acts
- Human Rights Act 1998
- Health Act 2006
- The Hackney Carriage and Private Hire Licensing Policy
- Licence Conditions and the Councils' Hackney Carriage Byelaws

In some cases, an individual's authority may be limited in scope and in others, proof of competence, in terms of relevant qualifications and/or experience, may be a pre-requisite to authorisation.

1.3 This document describes the principles upon which our enforcement approach is based, rather than the detailed internal procedures through which our regulatory functions are delivered.

1.4 In pursuance of its objective to encourage responsible Hackney Carriage and Private Hire businesses, the Melton Borough Council will operate a firm but fair enforcement and disciplinary regime, with a view to balancing the promotion of public safety with the need to permit operators and individuals to safeguard their livelihood without undue interference.

1.5 It is recognised that most people want to comply with the law, accordingly; consideration will be given to alternative action to prosecution to ensure that those regulated comply with the law. In general action and enforcement will be carried out by the Council's Enforcement Officers and/or Licensing Officer. The Council will only intervene in cases where it is deemed to be necessary and proportionate to do so. The Council seeks to promote the following objectives:

- The protection of public safety;

- The establishment of a professional and respected hackney carriage and private hire trade;
- The safety and health of drivers and the public
- Access to an efficient and effective public transport service;
- The protection of the environment.
- To encourage high standards of service and competence in the hackney carriage and private hire trade.
- To encourage a 'mixed' fleet of vehicles to meet the various needs of the public.

## **2.0 Overall Aim**

2.1 The aim of the Council is to undertake its regulatory and enforcement role in a fair, open and consistent manner. In doing this it will act in accordance with the guidance and standards set out in this policy. In particular, the Council will:-

- Consult with parties subject to regulation and enforcement by the Council about the standards it sets in undertaking this role;
- Deal fairly and proportionately with licensees, applicants and service users;
- Work with individuals and businesses to assist them in complying with their legal duties and obligations;
- Ensure its staff are appropriately trained and apply the Policy and standards professionally and consistently
- Make information about the Policy and the standards widely available to the public and businesses within the Borough;
- Consider and take enforcement action in a fair, equitable and consistent manner;
- Explain the reason for any decisions or actions taken in respect of this policy;
- Review the policy from time to time in consultation with parties subject to its application; and
- Comply with the various requirements and standards of external legislation, guidance, corporate policy and good practice.

2.2 The Council has a statutory duty to ensure that licensed drivers and operators are licensed correctly and carry out their trade in accordance with relevant legislation, byelaws, statutory notices and conditions attached to licences. The means by which this is achieved is through enforcement.

2.3 Any departure from this policy must be exceptional, capable of justification and be fully considered by relevant authorised officers before a decision is taken, unless officers feel that there is a significant risk to the public in delaying the decision.

## **3.0 Principles of Enforcement**

3.1 As a guiding principle, all of the enforcement activities will be in accordance with the five "Principles of Good Regulation". Identified by the Better Regulation Executive, the Principles are that Regulation should be:

- Transparent;
  - Accountable;
  - Proportionate;
  - Consistent;
  - Targeted – only at cases where action is needed.
- 3.2 Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation and will keep in mind the idea that prevention is better than cure.
- 3.3 Officers are required to regulate activities across a wide range of businesses and with every type of individual in their professional dealings. Full regard will be paid to the different abilities that are encountered and to the importance of education and help which they are able to give to achieve compliance.
- 3.4 However, the aim behind much of the officer's efforts is the protection of persons at work, the general public and the environment from harm caused by failure to comply with the safeguards provided for in law. This being the case, there will be circumstances in which enforcement is unavoidable and the Council does not shrink from using its full legal powers, including prosecution, where it is deemed necessary to do so.
- 3.5 There are two distinct aspects to enforcement, which may be taken to mean either of the following:
- a) *Enforcement for Compliance.* This ensures that the Council has programmes in place for monitoring compliance by businesses and individuals, considering the various pieces of legislation affecting each. Such programmes are *pro-active* in nature and will include, for example, routine inspections of food premises, workplaces, licensed premises and authorised processes.
- Because of the diversity of requirements under the different legislation and Guidance, no attempt is made in this document to be prescriptive about the ways in which pro-active programmes are organised and monitored.
- b) *Enforcement for Non Compliance.* In this aspect of enforcement, the options available for taking action against businesses or individuals for ignoring or otherwise failing to comply with their legal obligations are outlined in paragraph 3.5, below,
- The need for enforcement for non-compliance may result either from the pro-active programmes outlined in a), above, or alternatively from a *reactive* response, for example, to a complaint or report of non compliance. .
- 3.6 Options for enforcement action include the following:
- Prosecution

- Simple Cautions
- The service of Notices, including Suspension Notices
- Revocation, Suspension or Refusal to Renew (Permits or Licences)
- Written warnings (sometimes referred to as informal Notices)
- Penalty Points
- Advice
- A combination of the above

Enforcement action may be taken as a result of an incident, a complaint or an inspection. The options are discussed in paragraph 5.

3.7 This Policy document does not intend to provide operational or procedural detail, but some of the more important points that are covered include:

- a) A decision to prosecute will be taken by the Head of Regulatory Services or the Environmental Protection and Safety Manager in consultation with the Investigating Officer and Legal Services. During the decision making process, full consideration will be given to lesser enforcement alternatives.
- b) Any proposed prosecution must satisfy two specific tests, these being:
  - i) Evidential Test: no case will be taken unless there is the realistic likelihood of conviction and,
  - ii) Public Interest Test, by which the circumstances leading to consideration of prosecution are deemed to affect the public interest.

A number of factors, listed at Appendix (i), will determine whether or not a particular prosecution is in the public interest and a balance in favour or against will be made, between those factors that are present.

- c) Following a successful prosecution, the Council will seek to recover the costs involved in the investigation and subsequent Court proceedings.
- d) A Simple Caution will be offered only if the evidence of the case is sufficient for prosecution to have been considered as a viable option.

3.8 A large amount of legislation bears upon the conduct of investigations and of legal proceedings and these include the Police and Criminal Evidence Act 1984, the Criminal Procedures Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, and many more. All of the provisions of the above will be complied with at all times when they are relevant to a particular task.

3.9 Whenever possible, officers will work in partnership with other agencies to achieve common goals on matters of mutual concern. These Agencies may include, for example, the Vehicle and Operator Service Agency (VOSA), Leicestershire Constabulary, Trading Standards and Leicestershire County Council.

#### 4.0 **General Considerations**

- 4.1 When enforcement action is necessary it will be undertaken without fear or favour and without consideration of the race, ethnic background, age, faith, social status, disability, colour, gender or sexual orientation of any persons involved.
- 4.2 If any person exerts undue or improper pressure in an attempt to influence a decision concerning enforcement, it will be reported through line management without delay.
- 4.3 As a general rule and where there may be options, the level of enforcement contemplated will be the minimum at which a satisfactory solution is considered to be achievable.

#### 5.0 **Scope of Enforcement Procedures**

- 5.1 This policy applies to all types of licensing enforcement operations and includes, not exhaustively:
- Undertaking routine inspections and checks of licensees, licensed vehicles and premises to determine compliance with licence conditions
  - Undertaking pro-active inspections and checks of licensees, licensed vehicles and premises, sometimes in co-operation with other agencies.
  - Providing advice about the licensing and licensing enforcement organisation and systems.
  - Responding to requests for service and allegations of breaches of legislation, policy and conditions.
  - Taking enforcement action where it is deemed necessary.
- 5.2 Vehicles, Drivers and Operators will be subject to formal and informal enforcement checks, which will be carried out regularly. The Council will seek to minimise the need to carry out enforcement activity by providing advice and guidance in all aspects of the trade. Officers will usually identify themselves, and deal with all enquiries efficiently and courteously. The Council will occasionally work with other agencies, including the Police and VOSA, to ensure compliance with legal requirements.
- 5.3 The Council will minimise the cost of compliance for the trade by ensuring that any action required is necessary and proportionate to the aims of public safety, the protection of the rights of others, compliance with the conditions of the licence or the prevention or detection of crime. As far as the law allows, the Council will take into account the circumstances of the case and attitude of the individual when considering action.
- 5.4 The Council will carry out its duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to ensure consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the National Association Licensing and Enforcement Officers.

5.5 **Prevention** – The first step will always be to help prevent contravention of the law and conditions by raising awareness and promoting good practice.

5.6 **Informal Action** - Informal action to secure compliance with legislation includes offering advice, verbal and written warnings, issuing penalty points, requests for action and the use of letters. Such informal enforcement action may be appropriate in any of the following circumstances:-

- the act or omission is not serious enough to warrant more formal action;
- it can be reasonably expected that informal action will achieve compliance, perhaps by taking into account the individual driver or operator's past history;
- confidence in the operator's management is high;
- the consequences of non-compliance will not pose a significant risk to the safety of the public.

Even where some of the above criteria are not met there may be circumstances in which informal action will be more effective than a formal approach.

Where it is discovered that an operator or a driver has committed a breach, they can be issued with penalty points in line with the Melton Borough Council Hackney Carriage and Private Hire Penalty Points Scheme. Points given under the scheme will remain on a driver's record for 12 months from the date of issue. Where an operator or driver has been given twelve or more points in a 12 month period, they will be required to appear before the Council's Licensing Committee.

Where a driver/operator is given a written warning on three or more occasions within a 12 month period that license holder can be required to appear before the Council's Licensing Committee.

5.7 **Appearance before the relevant Committee of the Council** – An authorised officer may report a breach of any relevant legislation, bye-law, condition/s attached to a licence or a contravention of the Licensing Policy to the Licensing Committee or Licensing Sub-Committee, where the offending individual or company may be requested to appear before the Committee to answer the allegations of breaches.

The Committee may decide to take one or more of the following actions:-

- no action;
- issue a verbal or written warning;
- require the production of driving licences or other specified documentation at the Council's Office;
- suspend a licence;
- revoke a licence;
- recommend prosecution action;
- other appropriate action as deemed necessary.



In circumstances where it is deemed necessary that a driver's licence should be suspended immediately for reasons of public safety, a notice under the provisions of s.61(2)(B) can be served. A driver receiving such notice will have to cease licensed activities immediately upon the receipt of the notice.

- 5.8 **Section 68 Notices** - An authorised officer may serve notice in writing for a hackney carriage or private hire vehicle or the taximeter affixed to such vehicle to be examined at one of the Council's appointed garages. This notice must only be served having had due regard to the condition of the vehicle or with reasonable grounds to suspect the accuracy of the taximeter.

An authorised officer may, alternatively/in addition to requiring the vehicle to be tested, suspend/delay the suspension of a vehicle licence until such time as they are satisfied with the condition of the hackney carriage or private hire vehicle. This action will only be taken when they have reasonable grounds to suspect that the condition of the vehicle does not meet the conditions of the Licensing Policy.

The notice will remain in place until such time as an authorised officer is satisfied that the grounds for delayed suspension/suspension have been satisfactorily resolved and written confirmation of the lifting of the suspension notice has been given. Until such time as written confirmation of the lifting of the delayed suspension/suspension notice has been received, the notice will remain active.

If an Authorised Officer is not satisfied that the appropriate action has been taken to allow the delayed suspension/suspension notice to be withdrawn within the period that has been stated in writing from the date of issue, the vehicle licence shall be deemed to be revoked, unless the authorised officer is satisfied that there are extenuating circumstances why the notice has not been fully complied with and a further date for compliance has been set.

- 5.9 **Appeals** - Appeals against decisions of the Licensing Committee or an authorised officer may be made to the Magistrates' Court. Any notifications of enforcement actions will include written information on how to appeal. An appeal to the Magistrate's Court will stay the Council's action pending the determination of the appeal.

Where the Council suspends or revokes a driver's licence under the provisions of s61(2B) of the Local Government (Miscellaneous Provisions) Act 1976 where it is deemed that such action is necessary in the interests of public safety, the revocation or suspension will take place immediately on service of the notice on the driver and continue to be of effect regardless of the fact that the driver may have made an appeal against the decision to the Magistrates' Court.

A driver can also appeal against a refusal to renew his driver licence, but as his previous licence would have already expired he cannot continue to drive as he would no longer hold a current licence.

- 5.10 **Prosecution** - The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded,

legitimate requirements of the Council are not followed and/or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.

When a decision is being taken on whether to prosecute, the factors to be considered may include:-

- the seriousness of the alleged offence;
- the risk of harm to the public;
- identifiable victims;
- failure to comply with a statutory notice served for a significant breach of legislation;
- where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it;
- when there appears to have been reckless disregard for the safety of passengers or other road users;
- where there have been repeated breaches of legal requirements;
- where a particular type of offence is prevalent;
- where a particular contravention has caused serious public alarm;
- disregard of safety for financial reward;
- the previous history of the party concerned;
- offences following a history of similar offences;
- failure to respond positively to past warnings;
- the ability of any important witnesses and their willingness to cooperate;
- the willingness of the party to prevent a recurrence of the problem;
- the probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent. (As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general thrust of the advice contained therein is that, the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution);
- whether other action, such as issuing a simple caution would be more appropriate or effective.

When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made.

Before referring a matter to the Council's Solicitor for possible prosecution, the Head of Regulatory Services as well as the Environmental Protection and Safety Manager and the investigating officer must all be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare *prima facie* case will not be sufficient to progress through to prosecution. With insufficient evidence to prosecute, the issue of a simple caution will not be an alternative.

In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.

5.11 **Simple Cautions** - A simple caution may be used as an alternative to a prosecution in certain circumstances. The purposes of the simple caution are:-

- to deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts;
- to reduce the chances of repeat offences

To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered:-

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of a conviction;
- the suspected offender must admit the offence;
- the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.

If there is insufficient evidence to consider taking a prosecution, then by implication, the criteria will not be satisfied for the use of a simple caution. A simple caution should also not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable; for example, it may be considered that a written warning would be appropriate.

## 6.0 Complaints

6.1 The public are able to make complaints to the Council about the conduct and/or service received from licensees and the Council will adhere to the following procedure:-

- Ascertain the facts regarding the complaint and decide if actionable;
- Register the complaint and refer to an investigating officer;
- Contact the complainant within 5 working days;
- Investigate the complaint;
- Make a decision; and
- Inform all parties of that decision.

6.2 Licensees who are the subject of a written complaint will be informed of the nature of the complaint, including date, time and location of the incident and, if necessary, given sufficient notice to attend any interview.

6.3 The outcome of the investigation will be implemented in accordance with this Enforcement Policy.

6.4 Disputes between licensees should be resolved between themselves and not through this procedure. If there is evidence relating to alleged serious criminal offence, such as threats of violence, assault etc, this will be referred to the Local Police Constabulary.

## **7.0 Complaints about the Service**

7.1 Any dissatisfaction with the actions of an Officer of the Council will be dealt with under the Council's Complaints Procedure, copies of which are available from offices of the Council, by accessing the Council's website ([www.melton.gov.uk](http://www.melton.gov.uk)) or by telephoning the Council on 01664 502502.

## **8.0 Access to the Policy**

8.1 This Enforcement Policy is available on the Council's websites (shown above) and in hard copy on request through the above contact numbers or by writing to the Licensing Officer.