



MELTON BOROUGH COUNCIL

HACKNEY CARRIAGE AND PRIVATE HIRE PENALTY POINTS SCHEME

Introduction

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 bylaws and the policies and conditions of the Local Licensing Authority.

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 using a range of sanctions depending on the severity of the breach. Actions can be:

- by providing advice (verbal or written);
- Issuing a formal warning (verbal or written);
- an simple caution;
- by referring a matter to the Licensing Committee; or,
- proceedings before the Magistrate's Court.

It is considered that this current system, whilst effective, is flawed when dealing with repeat offenders for minor vehicle defects and breaches of licence conditions that do not warrant heavy sanctions. This is because these breaches are not being formally considered in a cumulative way.

It is proposed that there is a method of dealing with such matters which has been used successfully by other authorities. This is the use of a penalty point system, similar to the points system used for matters on a drivers license. If adopted, such a scheme could be more effective against those licensed parties who regularly ignore their responsibilities in relation to the conditions attached to their licences.

It is proposed that a penalty point scheme would run alongside the usual enforcement tools. Allegations of, or discovered breaches, would be investigated in the usual way by enforcement officers. Whereas currently if officers discovered a minor technical breach of conditions they would simply request rectification of the breach or offer words of advice, use of penalty point scheme would enhance this by

permitting recording of the breach, the issuing of a number of points depending on the severity of the matter and also require the rectification of the issue. Letters would be issued confirming the outcome of the investigation and a kept on the licensed persons file.

Where a licence holder, either driver or operator, accumulates twelve penalty points or more, in any twelve month period, they will then be reported to the Licensing Committee. The Committee would be apprised of the reasons for the points given and the background to the investigations and requested to resolve whether further sanctions would be considered necessary if they deem that the operator/driver was a fit and proper person. Also, in the case of an operator the Committee will decide if he is unfit to hold a licence. The Committee may then decide whether to suspend or revoke a licence, issue a warning to the licence holder, or do even nothing depending on the circumstances of the issue of the points.

The aim of the penalty point scheme is to work alongside other enforcement tools, not replace them. It would provide a formalised stepped enforcement plan that can be easily followed and monitored, recording misdemeanours which would not normally be recorded or processed and to act as a record of driver's and operator's behaviour and conduct. It would not prejudice the Council's ability to take other actions.

The primary objective of the penalty point's scheme is to increase the levels of compliance and help improve the standards, which will improve the safety and protection of the travelling public.

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.

It is proposed that points would remain on the licensed person's record for twelve months from the date of issue. This would be on a rolling twelve month basis and any points given over twelve months prior to the current date will be considered as spent and therefore excluded from the running total recorded against any individual licence holder.

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.

Relevant Legislation and Case-law

The use of a penalty point scheme must be supported by legislation.

For the authority to carry out a scheme in respect of a driver or operator, such would fall within s.61 and s.62 of the Local Government (Miscellaneous Provisions) Act 1976, which state:

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 do so. A reason of which could be if they do not believe that a licence holder is a fit and proper person. Receiving twelve penalty points within a twelve month period may indicate that a licence 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:

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.

Similar to a driver, an operator who accumulates twelve penalty points within 12 months may indicate that he is unfit under s.62(1)(b) above or there may be a reasonable cause under S.62(1)(d).

The Council is fortunate that a similar scheme has been challenged through the High Court and we can learn from the judgment given.

A judicial review, *R (app Singh) v Cardiff City Council (2012) EWHC 1852 (admin)*, challenged the use of a similar 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 number of points were reached there was automatic revocation of the license 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.

In the end, the judge resolved that it was lawful to have a penalty point scheme as a means for a licensing authority to deal with transgressions. 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.

However, there was a problem with the way in which the Council implemented their policy. Their approach was that when a driver reached 10 points, under their scheme the licence would be revoked. It also appeared that, on occasions, reduced points were issued to a driver to avoid the revocation of their licence. It was these elements which led to the challenges of a lack of application of discretion and fetter of the discretion. In this area 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.

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)

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 Committee) which will then consider the question of fitness and propriety in the light of the evidence and then determine what sanction, if any, should be applied.

Issuing Points

Where it is found that, following investigation, breaches have occurred, the operator/driver will be issued relevant points in line with the table of points. Points issued will be confirmed in writing within 10 working days from the discovery of the contravention.

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 policies.

Parties receiving penalty points would be able to appeal the issue of those penalty points to the Council's Environmental Protection and Safety Manager within 21 days of them being given. Any disputes regarding the outcome of such an appeal would be referred to an independent Head of Service and/or an independent panel of 3 Officers who will have the discretion to remove, reduce or indeed increase the number of points awarded if the complaint is dismissed.

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 Licensing Committee for consideration of whether that person is fit and proper to be licensed by the Council. In the case of an operator the 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.

The Council's Licensing Committee can resolve to suspend or revoke a licence, issue a warning to the licence holder, or do nothing, depending on the circumstances. Periods of suspension of a licence by a Panel will be dependent on the nature of the breaches and the compliance history of the individual. Suspension periods will normally vary between 7 to 31 days.

Melton Borough Council penalty points will remain current for 12 months from the date the penalty points were issued.

This scheme does not interfere with a licence holders right to appeal any subsequent suspension or revocation attributing to the use of the penalty points scheme at the magistrates court.

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.

Consultation on the adoption of such a scheme will be carried out with all drivers and operators licensed by Melton Borough Council. Responses to the consultation will be taken into consideration.

Melton Borough Council's fleet of licensed vehicles and drivers are figureheads within Melton and surrounding areas and standards should be kept 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.