

## **Minutes of the meeting of the Licensing Committee held on 13 July 2016 from 7.00 pm to 7.44 p.m.**

**Present:** Jim Knight (Chairman)  
Ginny Heard (Vice-Chairman)

Richard Cherry  
David Dorking  
Bruce Forbes\*  
Steven Hansford  
Christopher Hersey

Margaret Hersey  
Jacqui Landriani\*  
Anthea Lea  
Gary Marsh

Howard Mundin  
Geoff Rawlinson\*  
Peter Reed\*  
Mandy Thomas-Atkin

\* Absent

**Also Present:** Councillor Norman Webster.

### **5. TO NOTE SUBSTITUTES IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 4 – SUBSTITUTES AT MEETINGS OF COMMITTEES ETC.**

The Committee noted that in accordance with Council Procedure Rule 4, Councillor Mockford replaced Councillor Reed, Councillor Wyan replaced Councillor Landriani and Councillor Coote replaced Councillor Forbes.

### **6. TO RECEIVE APOLOGIES FOR ABSENCE.**

Apologies were received from Councillor Rawlinson.

### **7. TO RECEIVE DECLARATION OF INTERESTS FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.**

None.

### **8. TO CONFIRM THE MINUTES OF THE MEETING OF THE COMMITTEE HELD ON 9 DECEMBER 2015 AND 11 MAY 2016.**

The Minutes of the meeting of the Committee held on 9 December 2015 and 11 May 2016 were confirmed as a correct record and signed by the Chairman.

### **9. TO CONSIDER ANY ITEMS THAT THE CHAIRMAN AGREES TO TAKE AS URGENT BUSINESS.**

None.

### **10. CONSIDERATION OF TAXI LICENSING REPORT.**

Jon Bryant, Licensing Officer for Mid Sussex District Council introduced the report. He summarised that it was a plan to introduce penalty points for taxi and private hire vehicles, and it was a chance for the Licensing Committee to comment on the report before it goes to the Scrutiny Committee for Leisure and Sustainability. The objective of the report is to improve compliance and safety in conjunction with the other enforcement plans the Council has available. He reassured Members that the introduction of penalty points does not prejudice the Council's ability to take action in other ways if deemed necessary.

The Chairman of the Committee decided it best to organise proceedings by debating separately:

- i) Whether there is a need for a penalty points system,
- ii) The period of time penalty points are valid, and,
- iii) The individual offences that points can be issued for.

i) The need for a penalty points system

Members agreed that a penalty points system was long overdue as it was already being used by neighbouring districts, including Rother and Wealden. In response to a Member's question, the Licensing Officer confirmed that there were 520 licensed taxi and private hire vehicles in Mid Sussex. A Member noted that in item 4.15 that 49 drivers had accrued points which was approximately 10% of the total number of drivers, this was deemed too high. The Licensing Officer reminded Members that the Penalty Points accrued thus far were from a trial run which had been ongoing for seven months, and that no points were actually issued. Instead, the infringements had been noted and tallied with the corresponding penalty points which could be issued in the future if the penalty points scheme were to be implemented.

A Member enquired as to what happens to a driver after they receive 12 points. The Licensing Officer confirmed that a driver will automatically go before the Committee if they accrue 12 points and that the Committee decides on an individual basis. A Member stated that the policy should explicitly state the procedures put in place for when someone accrues a certain amount of points and this should not be on an ad-hoc basis. The Licensing Solicitor, Franca Currall, agreed that the document should provide certainty and clarity.

One Member wished to know who else uses a penalty points system similar to this. The Licensing Officer explained that many districts throughout the whole country use similar systems, including neighbouring districts such as Wealden.

The Chairman took the Committee to vote on the need for a penalty points system which was agreed unanimously.

**AGREED**

That the Committee agrees the need for a penalty points system.

ii) Period of time the penalty points are valid.

The Committee moved on to discuss the length of time that penalty points should remain valid. It was clarified by the Chairman that the points were valid for one year in Wealden and three years for the UK DVLA.

One Member suggested that 10% of drivers having penalty points from the trial was too high and that the points should stay on their licence for at least two years to prevent people from reoffending after their points had expired. Another Member agreed with this and suggested that three years would be more suitable as it was in line with the DVLA. He also explained to Members that for new drivers the DVLA suspended their Licence after accruing six points in their first two years.

The Licensing Officer continued by stating the vast majority of points accrued in the trial had been for minor infringements, such as nondisclosure of a change of address.

After receiving words of advice, many of the drivers do not commit these offences again. He clarified that he had spoken to one driver three times and explained to the driver that he would have to stand before the Licensing Committee. The Licensing Officer expressed to the Members that the main point of a penalty points system is to encourage compliance and not to punish. He reminded that punishment was for the Licensing Sub-Committee to administer.

A Member agreed that three years could be seen as a punishment and enquired whether a driver could undertake a judicial review against the Council's policy. The Licensing Solicitor explained to Members that a judicial review could be undertaken if the decision or policy is considered irrational. She explained that it was a very expensive process and would gain a lot of publicity, and therefore was unlikely to happen.

In response to a Member's question, the Licensing Officer confirmed that they undertake spot-checks in conjunction with other districts. However, recently, Sussex Police have moved their traffic division out of Haywards Heath to Arundel which has meant they aren't available as much to conduct checks. He confirmed that he still personally goes out and does checks on approximately 15-20 vehicles a month, checking both hackney carriages and private hire vehicles.

The Licensing Officer clarified to Members that the points would expire on a rolling basis from the date of the points being issued (after the investigation is complete).

The Chairman took the Committee to vote on period of time penalty points should remain valid:

One year – 1 vote  
Two years – 11 votes  
Three years – 2 votes

## **AGREED**

That the Committee recommend penalty points should be valid for two years.

### **iii) Individual offences for which points can be issued**

A Member brought the Committee's attention to misconduct numbers 20 (failure to carry a fire extinguisher) and 21 (failure to carry a first aid kit) and believed they should be higher than 4 points. The Licensing Officer confirmed that when the points were decided, they were cross-referenced with other districts and misconducts 20 and 21 are only 3 points in the Wealden District.

Another Member queried why numbers 20 and 21 did not also apply to the vehicle owner or operator and believed the onus on carrying a first aid kit and fire extinguisher should be on the vehicle's owner as well. The Licensing Officer agreed that numbers 20 and 21 should also apply to vehicle and vehicle operator but also stressed that many taxi and private hire drivers are professional drivers who they have the same responsibility as the owner to check that their car is safe to drive before setting off- which includes checking if it has a fire extinguisher and first aid kit.

The Licensing Officer also reminded Members that the Council has other disciplinary actions it can take, and that if he encountered a taxi driver without a fire extinguisher the car would be suspended immediately until the driver returned with one. If the driver did not have one he could be brought before the Committee as well. If the

offence was also illegal under the Road Traffic Act 1988, the Council also has powers to prosecute. For example, if a driver had a defective tyre the Council would suspend the vehicle straight away and would also gather evidence for a prosecution under the Road Traffic Act. It was also noted that if the police had not been able to gather sufficient evidence for a prosecution the Council is sometimes in a better position to do this.

One Member queried why the points for number 54 (Not having a current MOT Test Certificate) were not applicable to the vehicle owner or operator. The Licensing Officer agreed this should be the case and would be changed, and the points issued should be increased to 12. It was also agreed that number 51 (driving whilst using a mobile phone) should go up to 12 points.

Another Member believed that number 29 (evidence of food or drink in the vehicle) was not explicit enough and queried whether a driver would receive points for a bottle of water in his vehicle. The Licensing Officer reminded Members that points were not automatically given out and that there was an investigation beforehand. In every case the circumstances would be taken into account and it was highly unlikely points would be issued in this case.

Regarding offence number 10 (Failure to undergo the 6 monthly Fitness Test on time), it was agreed that the number of points issued could be a maximum of 12, and the individual circumstances and length of time the Fitness Test was out of date would be taken into account. Furthermore, one Member raised that issue that number 51 states "driving whilst using a phone" as an offence and this should be clarified to mean driving whilst using a non-hands-free phone.

In response to a question asking whether offence number 4 (unreasonable prolongation of journeys or any misconduct in the charging of fares) was fraud, the Licensing Solicitor said that it was likely the driver would go straight to the Licensing Committee. One Member stated it would be hard to get evidence of fare prolongation, to which the Licensing Officer explained that there would have to be corroboration such as CCTV. It was noted that the future use of GPS technologies in taxis may also aid the prosecution for this offence.

As there were no further questions, The Chairman took the Committee to the recommendation to take the proposed Taxi Licensing Report to the Scrutiny Committee for Leisure and Community with the following amendments:

- i) Misconduct number 10: Failure to undergo the 6 monthly Fitness Test on time should have a penalty of 6-12 points, depending on the individual circumstances of the driver and the length of time the Fitness Test has been out of date.
- ii) Numbers 20 and 21 (failure to carry a fire extinguisher and first aid kit) should also apply to the vehicle owner and operator.
- iii) Number 51 (driving whilst using a mobile phone) should be clarified to say using a non-hands-free mobile phone and the maximum points applicable should be increased to 12.
- iv) Number 54 (not having a current MOT certificate) should also apply to the vehicle owner or operator, and should have a penalty of 12 points.

**RESOLVED**

That the Committee notes the Taxi Licensing Report with amendments to be taken to the Scrutiny Committee for Leisure and Sustainability.

**11. QUESTIONS PURSUANT TO COUNCIL PROCEDURE RULE 10.2 DUE NOTICE OF WHICH HAS BEEN GIVEN.**

None.

Chairman.