

9. Taxi Licensing Penalty Point Scheme

REPORT OF: Tom Clark, Head of Regulatory Services (and Monitoring Officer)
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Wards Affected: All
Key Decision Yes/No

Purpose Of Report

1. Following its consideration by Licensing Committee on 13th July, to seek the endorsement of the Scrutiny Committee for Leisure and Community to the introduction of a Penalty Point Scheme for the licensed taxi and private hire trade. The objective of the scheme is to improve the levels of compliance and the standards of the trade and for the safety and protection of the travelling public
2. If Committee is content with the proposed scheme it will be put out to public consultation for an eight week period prior to full Council considering the proposal at its meeting on 1st February 2017

Recommendation

3. The Committee is recommended to endorse the proposed Penalty Point Scheme set out in this report as an amendment to the Taxi Licensing Policy.
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Background

4. Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Council's Byelaws and the Rules, Regulations and Conditions set by the Licensing Committee.
5. The penalty point scheme works in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. Its purpose is to record misdemeanours and to act as a record of driver's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.
6. On 13th July 2016 the Licensing Committee discussed the scheme. They support the scheme and suggested that the period for points to remain valid be extended from 12 months to 24 months from the date the first points were incurred.

The Scheme

7. If Operators, Drivers or Proprietors of Vehicles currently commit an offence or breach rules, regulations or conditions of licence, the persons involved are asked to attend the Council offices for an interview. Once investigations are completed options include no further action, formal words of advice, warning letters or attendance before Licensing Committee A.
8. The penalty point system allows officers to allocate points depending upon the nature and severity of the alleged misdemeanour. An investigation will still take place. All options referred to above will still exist.

9. Penalty Points will remain current for a period from the date the points were allocated. The period is on a roll forward basis, so as to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee. In effect on the anniversary of points being awarded the numbers are re set.
10. Where a driver or operator incurs 12 points over 24 months they will be placed before the Licensing Committee.
11. 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.
12. The majority of drivers who come to the notice of the council do so only the once. This system will allow a pattern of behaviour to be taken into account. It is an evidence gathering tool. Upon reaching the limit of allowed points the driver/operator is placed before the Licensing Committee for Members to ask 'is he/she still a fit and proper person'.
13. The Committee may then suspend or revoke a licence, or issue a warning to the Licensee, depending upon the circumstances. Periods of suspension of a licence by a Panel 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.
14. The current system allows for some offenders to be brought straight before the Licensing Committee. This will continue to be the case under the penalty point scheme. The Committee will retain the powers it has at present i.e. Revocation, suspension, warning, no further action. In addition, it will be able to award points against the driver/operator as a sanction.
15. Disputes regarding the issuing of penalty points by officers will be referred to the Licensing Committee who will have discretion to award a greater number of points than displayed on the tariff, if the complaint is upheld. Drivers must appeal any points issued by Officers to the Licensing Committee within 21 days.
16. 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.
17. If points are issued to a proprietor/driver for a matter which is also a criminal offence, e.g. bald tyres, no badge, those person(s) will not then be the subject of a prosecution by the Council.
18. A list of offences and points to be awarded against them is attached in Appendix 1.
19. Since December 2015 the Licensing Team have been running a 'pilot' penalty point system in an effort to gauge what a real time system would resemble. This has purely been an information gathering exercise. Points have been awarded against offences. Disciplinary sanctions are not taken as a result of this 'pilot' system and the drivers are not informed. An analysis shows that forty nine drivers have accumulated points. Of these, two have reached twelve points with two others on ten and nine respectively.
20. This scheme will form part of the Taxi Licensing Policy. It will not be a condition on drivers or operators licences.

21. The projected time table for consideration and implementation is:

17 th Oct -12 th Dec 2016	Public and Trade Consultation
1 st February 2017	Council for adoption
1 st April 2017	Implementation and Taxi Licensing Policy amended

Policy Context

22. The legality of Penalty Point Schemes was dealt with in 2012 in; R (on the application of Singh) v Cardiff City Council:

Para 65 of the judgement “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 judgment of the local authority, a person is not a proper person to continue to enjoy the relevant licence.

Financial Implications

23. A decision made by the Committee is subject to appeal at the Magistrates Court by the applicant or those making representations

Equality and customer service implications

24. None identified.

Background Papers

Minutes of the Licensing Committee on the 13th July 2016

<http://mid-sussex.cmis.uk.com/mid-sussex/MeetingsCalendar/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1656/Committee/42/Default.aspx>

Appendix 1

	Details of the misconduct	Points Applicable	Driver	Vehicle Owner or Operator
1	Providing false or misleading information on licence application form / failing to provide relevant information or the relevant fee (including dishonoured cheques)	6-12	✓	✓
2	Failure to notify, in writing, the Council of change of address within 7 calendar days	3	✓	✓
3	Refusal to accept hiring without reasonable cause e.g. Drunk or rude customer (may be referred to the Sub-Committee)	3-12	✓	
4	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓	
5	Plying for hire by Private hire drivers	12	✓	
6	Using unlicensed vehicle or vehicle without insurance	12		✓
7	Failure to produce relevant documents with timescale when requested by an Authorised Officer	4	✓	✓
8	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓
9	Private hire vehicle – No door signs displayed	3	✓	
10	Failure to undergo the 6 monthly Fitness Test on time	12		✓
11	Failure to provide proof of insurance cover when requested or have a current copy in vehicle at all times	6	✓	
12	Failure to produce Hackney Carriage or Private Hire vehicle for testing when required	4		✓
13	Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12	✓	✓
14	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
15	Failure to report within 72 hours, any accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓
16	Carrying more passengers than stated on the vehicle licence	6	✓	
17	Failure to display external/internal licence or plate	4	✓	
18	Carrying an offensive weapon in the vehicle	12	✓	
19	Failure to notify transfer of Private Hire or Hackney Carriage vehicle licence	4		✓
20	Failure to carry fire extinguisher	4	✓	✓
21	Failure to carry first aid kit	4	✓	✓

22	Displaying unauthorised or inappropriate sited signs or advertisements in or on the vehicle	3		✓
23	Failure to use authorised roof light	3	✓	
24	Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day	4		✓
	Offence/Breach of Condition	Points Applicable	Driver	Vehicle Owner or Operator
25	Failure to produce on request records of drivers' work activity	4		✓
26	Using a non approved or non-calibrated taximeter (HC)	6	✓	✓
27	Obstruction of an authorised officer or police officer	12	✓	✓
28	Evidence of smoking in vehicle	3	✓	
29	Evidence of food or drink in Vehicle	3	✓	
30	Displaying any feature on private hire vehicle that may suggest that it is a taxi (Private Hire)	6		✓
31	Using a vehicle, the appearance of which suggests that it is a Taxi	6		✓
32	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	
33	Driver not holding a current DVLA licence	12	✓	✓
34	Failure to wear driver's badge	3	✓	
35	Failure to notify, in writing, a change in medical circumstances	6	✓	
36	Unsatisfactory appearance of driver	3	✓	
37	Failure to observe rank discipline (HC)	3	✓	
38	Failure to maintain proper records of private hire vehicles and drivers	6		✓
39	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6		✓
40	Misleading use of the words 'Taxi' or 'Cab' on advertising materials	3		✓
41	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓
42	Failure to notify the Council in writing, of any motoring or criminal convictions within 7 days or conviction or cautions during period of current licence	6	✓	✓
43	Failure to behave in a civil and orderly manner (may be referred to Sub-Committee)	1-12	✓	✓

44	Failure to display a correct tariff card (HC)	3	✓	✓
	Offence/Breach of Condition	Points Applicable	Driver	Vehicle Owner or Operator
45	Failure to carry legal spare wheel and tools or other approved run flat device	4	✓	✓
46	Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓
47	A licensed vehicle with a defective tyre	4 per tyre	✓	✓
48	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓
49	Failure to comply with any other conditions	3	✓	✓
50	Waiting or stopping on double yellow lines, or stop on private land (without the owner's permission) unless requested by a paying customer present in the vehicle	3	✓	
51	Driving whilst using a non-hands free mobile phone	12	✓	
52	Leaving vehicle unattended on Taxi rank	3	✓	
53	Private hire vehicle parking on a Hackney Rank or within line of sight of a Hackney Rank or Railway Station when not picking up or dropping off passenger	3	✓	
54	Not having a current MOT Test Certificate	6	✓	✓