

7. AMENDMENT TO THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY TO INCORPORATE A FIXED PENALTY POINT SCHEME

REPORT OF: Tom Clark, Head of Regulatory Services

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Wards Affected: ALL

Key Decision No

Report to: Council

Purpose Of Report

1. To seek Council's approval the introduction of a Penalty Points Scheme for all Hackney Carriage and Private Hire Drivers; Private Hire Operators and licensed vehicle owners.

Summary

2. The Council are seeking to amend the Mid Sussex District Council Taxi Licensing Policy by introducing a Penalty Points Scheme for the Licensed Taxi and Private Hire trade. The primary objective of the penalty point scheme is to improve the levels of compliance and the standards of the trade and for the safety and protection of the travelling public.
3. 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.

Recommendations

4. **The Council is recommended to approve the introduction of Penalty Points Scheme and incorporate the scheme into the Hackney Carriage And Private Hire Licensing Policy at Appendix 1 with effect from the 1st May 2017.**
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Background

5. Following consideration by the Licensing Committee in July 2016 and endorsement by the Scrutiny Committee for Leisure and Community on the 11th October 2016 the scheme was published for an eight week public consultation.
6. The Council received responses from the following:
 - Sussex Police
 - Ardingly Parish Councils
 - East Grinstead Town Council
 - Haywards Heath Town Council
 - Mid Sussex Taxi Association
7. All responded positively to the introduction of a penalty point scheme but further clarification was required by MSTTA on technical and practical matters. This resulted in a small number of minor changes to the final document.

How the scheme will work?

8. 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. 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 Sub Committee A.
9. The penalty point system allows officers to allocate points depending upon the nature and severity of the alleged misdemeanour. The misconduct offences listed in the scheme are breaches of existing licence conditions. An investigation will still take place. All options referred to above will still exist.
10. Penalty Points will remain current for 24 months 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 24 month anniversary of points being awarded the numbers are re set. 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.
11. 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 (twelve in twenty-four months) the driver/operator is reported to Licensing Committee for members to ask 'is he/she still a fit and proper person ' The current system does not adequately incorporate this.
12. 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.
13. The current system caters 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. These points will be awarded against the current 24 months tally.
14. 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.
15. There is no right of appeal against the awarding of points by the Licensing Committee. The only recourse to a legal challenge is by way of judicial review. 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.
16. 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.

17. Mid Sussex District Council Taxi Licensing Policy will be amended to incorporate the new scheme detailed in Appendix 1.

Policy Context

18. The Licensing Policy is produced pursuant to powers conferred by the Local Government (Miscellaneous Provisions) Act 1976 as amended, which places a duty on the Council to carry out its licensing functions in respect of hackney carriage and private hire vehicles.

Equality and customer service implications

19. None identified.

Background Papers

None

Mid Sussex District Council
Taxi and Private Hire Licensing, Penalty Points Scheme

Introduction

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.

Mid Sussex DC are consulting about the introduction of a Penalty Points Scheme for Taxi Drivers.

The aim of a penalty point scheme is to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme 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.

The primary objective of the penalty points scheme is improve the levels of compliance and help improve the standards, safety and protection of the travelling public.

How will it work?

If Operators, Drivers or Proprietors of Vehicles commit an offence or breach rules, regulations or conditions of licence, the persons involved are asked to attend the Council offices for an interview and then once investigations are 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, penalty points being awarded, a formal warning, referral to the Licensing Committee and/or prosecution.

Penalty points remain for twenty four months. 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.

Penalty Points will remain current for 24 months from the date the penalty points were issued. 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.

Where a licensee accumulates 12 penalty points in any 24 month period, the matter will be referred to the Council's Licensing Committee for it to consider whether the driver is a fit and proper person. 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

Disputes regarding the issuing of penalty points 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.

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.

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.

	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 (as per vehicle licence conditions)	4	✓	✓
9	Private hire vehicle – No door signs displayed	3	✓	
10	Failure to undergo the 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	Drivers must not eat or drink whilst carrying passengers	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 (as per driver licence conditions)	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' 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 on time and attendance at a vehicle inspection	6	✓	✓
49	Failure to comply with any other driver and vehicle licence condition.	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	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	12	✓	✓