**Hackney Carriage and Private Hire Licensing Enforcement Policy**

Licensing Section

Governance and Regulatory Services Directorate

Carlisle City Council

Civic Centre

Carlisle

CA3 8QG

October 2018

**1.** **Introduction**

* 1. Licensed Hackney Carriage Drivers and Proprietors; Private Hire Drivers, Proprietors and Operators are principally governed by the Town and Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976 and the Council’s own byelaw conditions and policies set by the Regulatory Panel.
	2. The principle of Hackney Carriage and Private Hire Licensing is to protect the public and promote safety.
	3. The Council aims to provide the delivery of efficient, targeted and proportionate regulatory services to provide a positive approach to those regulated.
	4. A range of tools and powers, including test purchasing, to ensure compliance, will be used. Compliance assessment is ultimately to ensure that the driver, vehicle proprietor or operator is a “fit and proper” person to hold a licence and/or the vehicle is safe. The safety of passengers, pedestrians and other road users is paramount.
	5. Where appropriate referrals will be made to other Agencies such as Police, HM Customs and Excise, DVSA and Child and Adult Safeguarding Teams.
	6. The Council will respond to complaints made by the public and referrals from other Agencies. In addition Officers will undertake proactive inspections and testing as either day to day activity or as part of programmed operations.
	7. Any breach of the required standards, policies and conditions may lead to suspension and/or revocations of licences or the issuing of penalty points on a licence or even prosecution.
	8. This policy provides guidance for officers, licence holders, prospective license holders and the general public on the way that we will exercise our enforcement powers to achieve compliance with legislation, bylaws and conditions.
	9. Authorised officers will have regard to this policy when exercising powers; however each matter will be considered on its individual merits and circumstances. Nothing in the policy shall bind the council to a particular action, or otherwise affect the Council’s discretion to take legal or other enforcement action, in light of the circumstances of a particular case, where this is considered to be in the public interest.
1. **Penalty Points Scheme**
	1. Should operators, drivers or proprietors of vehicles commit an offence or breach rules, regulations or conditions of a licence, persons involved will be required to attend the offices for an interview and then once the investigations are completed, letters will be sent out detailing the outcome, with 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 Regulatory Panel, and /or
* Prosecution.
* A combination of the above
	1. 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 drivers, vehicle proprietors and operator’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.
	2. The primary objective of the penalty point’s scheme is to improve levels of compliance and help improve the standards, safety and protection of the travelling public.
	3. Penalty points remain on the licensee’s record for two years. The period is 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.
1. **Issuing of Penalty Points**
	1. Complaints from the public concerning significant breaches of conduct will be subject to investigation by officers and may be reported to the Regulatory Panel for the issue of discretionary points.
	2. Where a licensee accumulates 12 or more penalty points in any 24 month period, the matter will be referred to the Council’s Licensing Panel for the Regulatory Panel to decide whether the licensee remains a fit and proper person. The Regulatory Panel may then suspend or revoke a licence, or issue a warning to the Licensee, depending on 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.
	3. 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, operator or a driver will be confirmed in writing normally within 10 working days of the conclusion of the investigation into the contravention.
	4. 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.
	5. Any disputes regarding the issuing of penalty points will be referred to the Regulatory Panel who will have the discretion to award a greater number of points than displayed on the tariff, if the complaint is upheld. Drivers or Operators must appeal **against points awarded by officers**to the Regulatory Panel within 21 days of them being issued.
	6. The Regulatory Panel will have the discretion to reduce, remove or increase the number of points applied to the licence or take other appropriate decision. A licence holder will retain the right to be represented at any meeting of the Panel either legally or otherwise and to state any mitigating circumstances.
2. **Penalty Points Tariff**
	1. The scheme will cover a range of offences, breaches and misdemeanours.
	2. The full list together with the number of points to be applied is set out at Appendix A. Where a range of points are available (e.g. 3-6), the number of points given will depend on the individual circumstances.
3. **Appeals**
	1. In respect of suspension, revocations and refusals to grant or renew license the aggrieved person has the right to appeal within 21 days by way of a complaint to the Magistrates Court.
	2. When a decision has been taken against a driver’s licence on the grounds of safety the decision will have immediate effect. There will be no right to continue driving during any appeal period.
4. **Immediate Suspension and Revocation Decisions**
	1. Where an allegation or information is received about a licensed driver, and is of such a nature that a real and reasonable concern is raise in terms of public safety or crime and disorder about the suitability of that driver to continue to hold a Local Authority driver licence for the time being, then consideration will be given to the suspension of that licence.[[1]](#footnote-1)
	2. Under the Council’s constitution the Corporate Director of Governance and Regulatory Services and the Licensing Manager have the authority to suspend private hire and hackney carriage drivers and operators who contravene the conditions of licence or other relevant legislation until the next meeting of the Regulatory Panel.[[2]](#footnote-2)
	3. Due to the impact on a licensed driver, the decision to issue an immediate suspension notice should not be taken lightly and only those drivers who have the following should have an immediate suspension or revocation imposed:
* Committed a serious offence
* Are alleged to have committed a serious offence
* Are in breach of the requirement place upon that type of licence within primary legislation
* Where there is intelligence provided which raises a significant concern and it is necessary to immediately remove that potential risk.
	1. A licence holder will at the first opportunity, and in accordance with any legal requirement, be provided in writing with the details of the allegation and the reasons why an immediate suspension is being imposed. In many circumstances the licence holder would be invited for a formal interview prior to such a decision being made.
1. **Section 68 Notices**
	1. Licensed vehicles are required to be mechanically tested by the Council’s Garage every 6 months for vehicles under 5 years and every 4 months for vehicles over 5 years.
	2. Section 68 of the 1976 Act provides a power for the inspection and testing of vehicles and their taximeters and the suspension of licences if they are found unsatisfactory.
	3. Under this power suspensions remain in place until the vehicle has been re-inspected and found to be satisfactory. The licence shall be deemed to have been revoked if such re-inspection has not been completed within a period of two months from the initial inspection.
	4. Alongside periodical mechanical tests, licensed vehicle will be subject to roadside vehicle inspections by Licensing Officers. Inspections will also be organised with Cumbria Police and/or VOSA.

The areas checked include but is not restricted to;

* + Tyres
	+ Brakes
	+ Steering
	+ Lights
	+ Engine Transmission
	+ Interior Condition
	+ Bodywork Conditions
	+ Driver and Vehicle Badges
	+ Meters (Hackney carriage vehicles)
	+ Fire Extinguisher and First Aid Kit
	+ Rear Plates and Door Signs (Vehicle identifiers)
	+ Advertising
	+ CCTV

**7.5** Authourised Officers can issue Rectification Notices and Section 68 Suspension Notices for minor and major faults respectively.

1. **Prosecution**
	1. Circumstances where the Council may consider a prosecution include but are not limited to the following:
* the alleged offence is a flagrant breach of the law and the health, safety or wellbeing of any person has been put at risk;
* the failure to correct a serious potential risk which has been identified and the person responsible has been given a reasonable opportunity to comply with the legislation;
* there is a history of non-compliance or offences.
	1. In cases where prosecution is under consideration, a file containing all the relevant evidence and information will be submitted by the Licensing Department to the Legal Services Manager for a decision to be made in accordance with the Code of Crown Prosecutors.
	2. Should the Council depart from this policy, in exceptional circumstances, the reasons will be recorded.
1. **Test Purchasing**
	1. It is recognised that the majority of licence holders are professional, approachable and a credit to their trade. The Council does, however, receive complaints from members of the public and the trade itself about a small minority of licence holders who do not always act in a professional manner. The Council also responds to allegations of unlicensed vehicles and drivers operating within the Carlisle District.
	2. In such matters it could be deemed appropriate that the Council, in partnership with other agencies, seek to carry out test purchasing in order to gather the necessary evidence to prove a breach.
	3. If sufficient evidence is gathered indicating further action is necessary, the case will be referred to the Regulatory Panel for the consideration of instigating legal proceedings through the Magistrate’s Court as detailed above.
2. **Complaints**
	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.
	1. 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.
	2. The outcome of the investigation will be implemented in accordance with this Enforcement Policy.
	3. Disputes between licensees should be resolved between themselves and not though 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.
1. **Complaints about the service**
	1. Any dissatisfaction with the actions of an Officer of the Council will be dealt with under the Council’s Corporate Complaints Policy , copies of which are available from offices of the Council, by accessing the Council’s website (www.carlisle.gov.uk) or by telephoning the Council on 01228 817200

**Penalty Points Scheme**

**Appendix A**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **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 | 6 | ✓ | ✓ |
| 2 | Failure to notify, in writing, the Council of a change of address within 7 calendar days | 3 | ✓ | ✓ |
| 3 | Refusal to accept hiring without reasonable cause  | 6-12 | ✓ | ✓ |
| 4 | Unreasonable prolongation of journeys or any misconduct regarding the charging of fares | 6 | ✓ |  |
| 5 | Plying for hire by Private hire drivers or Hackney Carriage drivers plying for hire outside the district | 9 | ✓ | ✓ |
| 6 | Private hire vehicle parking or waiting on a taxi rank | 9 | ✓ | ✓ |
| 7 | Inappropriate behaviour at a taxi rank,  | 1-12\* | ✓ | ✓ |
| 8 | Leaving a taxi unattended at a rank | 4 | ✓ |  |
| 9 | Using unlicensed vehicle or using a licensed vehicle without insurance or without a valid periodical vehicle test | 12 | ✓ | ✓ |
| 10 | Failure to produce relevant documents within timescales when requested by an Authorised Officer | 4 | ✓ | ✓ |
| 11 | Unsatisfactory condition of vehicle, interior or exterior | 4 | ✓ | ✓ |
| 12 | Failure to undergo the Council’s periodic vehicle test on time | 6 |  | ✓ |
| 13 | Failure to provide proof of insurance cover when requested | 6 | ✓ | ✓ |
| 14 | Failure to produce Hackney Carriage or Private Hire vehicle for re-testing when required | 4 |  | ✓ |
| 15 | Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer | 12 | ✓ | ✓ |
| 16 | Using a vehicle for which the licence has been suspended or revoked | 12 | ✓ | ✓ |
| 17 | Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions | 4 | ✓ | ✓ |
| 18 | Carrying more passengers than stated on the vehicle licence | 6 | ✓ |  |
| 19 | Failure to display external licence plate in a fixed position or failure to display appropriate door signs | 6 | ✓. | ✓ |
|  | **Details of the misconduct** | **Maximum\*****Points****Applicable** | **Driver** | **Vehicle Owner or Operator** |
| 20 | Carrying an offensive weapon in the vehicle | 12 | ✓ |  |
| 21 | Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer | 4 |  | ✓ |
| 22 | Failure to carry fire extinguisher | 4 |  | ✓ |
| 23 | Failure to carry first aid kit | 3 |  | ✓ |
| 24 | Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle | 3 | ✓ | ✓ |
| 25 | Failure to use authorised roof light | 4 | ✓ | ✓ |
| 26 | Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day | 4 |  | ✓ |
| 27 | Failure to produce on request records of drivers’ work activity | 4 |  | ✓ |
| 28 | Using a non approved or non-calibrated taximeter (HC) | 6 | ✓ | ✓ |
| 29 | Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle | 12 | ✓ | ✓ |
| 30 | Smoking or evidence of smoking in vehicle | 4 | ✓ | ✓ |
| 31 | Evidence of food or drink in Vehicle | 3 | ✓ | ✓ |
| 32 | Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage | 6 | ✓ | ✓ |
| 33 | Using a vehicle, the appearance of which suggests that it is a Taxi | 6 | ✓ | ✓ |
| 34 | Failure to carry an assistance dog without requisite medical exemption certificate | 12 | ✓ | ✓ |
| 35 | Driver not holding a current DVLA licence | 12 | ✓ | ✓ |
| 36 | Failure to have the driver’s badge clearly displayed | 4 | ✓ |  |
| 37 | Failure to notify, in writing, a change in medical circumstances | 6 | ✓ | ✓ |
| 38 | Failure to observe rank discipline (HC) | 3 | ✓ |  |
| 39 | Failure to maintain proper records of private hire vehicles | 3 |  | ✓ |
| 40 | Late payment of periodical vehicle test fee without prior agreement | 3 |  |  |
|  | **Details of the misconduct** | **Maximum\*****Points****Applicable** | **Driver** | **Vehicle Owner or Operator** |
| 41 | Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced | 6 |  | ✓ |
| 42 | Misleading use of the words ‘Taxi’ or ‘Cab’ on advertising materials | 3 |  | ✓ |
| 43 | Failure to issue receipt on request. |  6 | ✓ | ✓ |
| 44 | Using a licensed vehicle in a dangerous condition | 9 | ✓ | ✓ |
| 45 | Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence | 4 |  | ✓ |
| 46 | Unsatisfactory behaviour or conduct of a driver. | 1-12\* | ✓ |  |
| 47 | Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence | 6 | ✓ | ✓ |
| 48 | Failure to behave in a civil and orderly manner, or bringing the trade into disrepute. | 1-12\* | ✓ | ✓ |
| 49 | Failure to provide reasonable assistance to a passenger | 1-12\* | ✓ | ✓ |
| 50 | Failure to display a correct up to date fare card (HC) | 3 | ✓ | ✓ |
| 51 | Carrying two or more separate fares without the appropriate consent | 9 | ✓ |  |
| 52 | Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel | 4 | ✓ | ✓ |
| 53 | Failure to attend punctually at appointed time and place without sufficient cause | 4 | ✓ | ✓ |
| 54 | A licensed vehicle with a bald or dangerous or defective tyre | 4 per tyre | ✓ | ✓ |
| 55 | Waiting or stopping on a double yellow area, bus stop or private land (without the owner’s permission) unless requested by a paying customer present in the vehicle | 3 | ✓ |  |
| 56 | Driving whilst using a mobile phone | 9 | ✓ |  |
| 57 | Appeal of points by way of Regulatory Panel | 4-12\* | ✓ | ✓ |

\*- discretionary points up to a maximum of 6 points can be issued by officers, but greater awards of points can only be issued by the Licensing Panel

Officers may refer any mandatory award of points to Members where there are aggravating features to any case

Ticks indicate potential recipients of points for infringements, but are not limited to those only. Certain cases may result in drivers and/or proprietors and/or operators receiving penalty points. Points may be awarded to one or several persons depending upon the circumstances of the case, but each case will be considered on its individual merits.

1. Section 61(2) Local Government (Miscellaneous Provisions ) Act 1976 [↑](#footnote-ref-1)
2. Constitution of the Carlisle City Council, Section 2B, para 3.1.2 [↑](#footnote-ref-2)