

Public Report
Licensing Board

Summary Sheet

Council Report

Licensing Board – 24th September 2018

Title

Licensing Enforcement Penalty Points Scheme

Is this a Key Decision and has it been included on the Forward Plan?

No.

Director Approving Submission of the Report

Tom Smith, Assistant Director of Community Safety and Street Scene

Report author(s):

Alan Pogorzelec – Licensing Manager, Regulation and Enforcement, 01709 254955,
alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

All wards

Executive Summary

The Licensing Enforcement Penalty Points Scheme is a method by which licenced drivers, operators or owners can be issued with points against their Council Licence by authorised officers of the Council.

Points would be used for less serious breaches of licence condition or legislation. The issuing of points formalises the previous practice of issuing warnings. The aim is to encourage licence holders to comply with all legislation, licence conditions and behave in an acceptable manner at all times, thereby improving the professionalism and reputation of the licensed vehicle trade. The points system would operate in addition to all existing enforcement options and would have regard to the principles of the councils 'General Enforcement Policy'.

Recommendations

- That the Licensing Board consider and approve the proposed Enforcement Penalty Points Scheme.

List of Appendices Included

- Appendix 1 - Schedule of Enforcement Penalty Points

Background Papers

- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Licensing Enforcement Penalty Points Scheme

1. Recommendations

- 1.1 That the Licensing Board consider and approve the proposed Enforcement Penalty Points Scheme.

2. Background

- 2.1 The Licensing Enforcement Penalty Points Scheme will be used as a method by which licenced drivers, operators or owners can be issued with points against their Council Licence by authorised officers of the Council.
- 2.2 Points would be used for less serious breaches of licence condition or legislation. The issuing of points formalises the previous practice of issuing warnings and is intended to provide a fast and efficient way of dealing with lesser breaches of legislation or local condition. Licensees who habitually disregard the less serious aspects of the licence regime will accumulate points. Points will be issued according to a scale developed by the council as part of the scheme. Points will accumulate on a licence until they reach the trigger level. At which time the licence holder will be referred to Licensing Board for consideration regarding the licence holder's fitness to hold a licence.
- 2.3 The points will be administered by authorised enforcement officers and recorded on the Council's licensing database. The system will be used for offences which would not normally trigger a referral to Licensing Board or Court and which are resolved by the licence holder after it is brought to their attention. Points will also be available for Licensing Board, should they wish to attach points to a licence, in addition to any warning issued. The scheme will help provide an open and transparent method of how a licence holder will be assessed in terms of the 'fit and proper person' test contained within the Council's Hackney Carriage and Private Hire Licensing Policy.
- 2.4 Points will remain on a licence for two years from the date of issue, unless they are considered by Licensing Board before that time, when the Board may exchange the points for a formal sanction or extend the period the points remain on the licence.
- 2.5 Where a licence holder accumulates the trigger level of penalty points more than once in any three year period, the Licensing Board will consider whether a licence should be revoked or suspended if they believe the accumulation of points indicates that the driver is not a 'fit and proper person'. Each case will be considered on its own merits.
- 2.6 Any licence holder who contests the issuing of penalty points may request a hearing before the Licensing Board for decision – the Licensing Board will have the discretion to reduce, remove or increase the number of points applied to the licence. A driver will retain the right to be

represented at any meeting of the Licensing Board Sub Committee either legally or otherwise, and to state any relevant mitigating circumstances.

- 2.7 The penalty points system will operate without prejudice to the Council's ability to take other action under appropriate legislation.

3. Key Issues

- 3.1 The points system aims to provide a fast and efficient way of dealing with breaches of legislation or condition. The Hackney Carriage and Private Hire Policy will be fully considered by authorised officers when determining the manner on which any breach of legislation or the requirement of the Policy are dealt with.
- 3.2 The Penalty Points Scheme will operate without prejudice to the Licensing Authorities ability to take other action under appropriate legislation or as provided for by the Policy.
- 3.3 The Penalty Points Scheme identifies a number of breaches of conditions, byelaws and/or statutory provisions. It then indicates the number of points to be invoked should the breach be proven and by whom the points can be awarded.
- 3.4 Licensees who habitually disregard the licensing regime will accumulate penalty points. Points will accumulate on the licence until either the expiry date has been reached or the licensee has reached the 'trigger' level of points. The trigger level is proposed as 12 points.
- 3.5 At the time the licence holder reaches the trigger level they will be referred to Licensing Board for consideration regarding the licence holder's fitness and propriety to hold that licence.

Issuing of points.

- 3.6 Where it is decided that the use of the Penalty Points Scheme is appropriate, the points will be issued in accordance with the Schedule.
- 3.7 The issuing of penalty points against a driver who is an employee will not necessarily result in the additional issuing of points to his/her operator. However the Licensing Authority will issue penalty points to drivers, proprietors, driver / proprietors and operators for a single contravention if the circumstances warrant it, i.e. the breach is one against all these licences and is considered joint responsibility is held.
- 3.8 Points issued to a driver, proprietor or operator will be confirmed in writing within 10 working days of the completion of enquiries into the contravention or upon discovery of the breach.
- 3.9 Points issued to a licensee will be recorded on the Council's licensing database within the licensees file.

- 3.10 Points will be imposed upon licences by either Licensing Officers or the Licensing Board Sub-Committee.
- 3.11 The Authority may cancel points issued to a licence and replace them with a formal sanction, if additional information becomes available subsequent to the issuing of points which would persuade the Authority that the severity of the issue warrants a more formal approach.
- 3.12 Penalty points will remain on the licence in accordance with Appendix S of the Private Hire and Hackney Carriage Licensing Policy. The length of time is currently set at two years from the date of issue, unless the licence holder is considered at licensing board before that time, when board may exchange the points for a formal sanction or extend the period the points are on the licence for. Licensing board can impose penalty points alongside other sanctions and warnings.
- 3.13 Where a licence holder accumulates the 'trigger' level of penalty points more than once in a 3 year period, the licensing board will consider whether a licence should be revoked if they believe the accumulation indicates the driver is not a 'fit and proper' person. Each case will be considered on its own merits.
- 3.14 A schedule giving an indication of the points that will be awarded for various matters is attached to this report as Appendix 1.

Appeals

- 3.15 Should a licence holder wish to dispute the issuing of penalty points made by an officer, then they have the right to appeal. This appeal will be by way of a hearing before the Licensing Board who have the discretion to reduce, remove or increase the number of points applied to a licence, subject to the maximum points identified in the Schedule. Each case will be considered on its own merits.
- 3.16 The licence holder will retain the right to be represented at any hearing of the Licensing Board either legally or otherwise, and to state any mitigating circumstances.

4. Options considered and recommended proposal

- 4.1 Only one option is proposed, and this is the recommended proposal.

5. Consultation

- 5.1 This introduction of a Penalty Points Scheme was considered as part of the general consultation process during the development and implementation of the Council's Hackney Carriage and Private Hire Licensing Policy in 2015.
- 5.2 The detail in relation to the scheme will be provided to representatives of the licensed trade in Rotherham, however there will be no further consultation in relation to the implementation of the scheme.

6. Timetable and Accountability for Implementing this Decision

6.1 Subject to working procedures being developed, the scheme will be introduced with immediate effect.

7. Financial and Procurement Implications

7.1 All proposals within this report will be delivered within the service's existing budgets.

7.2 There are no anticipated procurement implications introduced as a result of the proposals within this report.

8. Legal Implications

1.1 All legal implications are detailed elsewhere in this report.

2. Human Resources Implication

2.1 There are no HR implications arising from this report.

3. Implications for Children and Young People and Vulnerable Adults

3.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.

3.2 The introduction of the enforcement penalty points scheme will have a positive impact on the effective enforcement of licensing requirements.

4. Equalities and Human Rights Implications

4.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.

4.2 The scheme will facilitate a consistent and fair approach in relation to the way that breaches of licensing requirements are handled.

5. Implications for Partners and Other Directorates

5.1 There are no implications anticipated for partners or other Directorates.

6. Risks and Mitigation

6.1 Failure of the Council to effectively discharge its licensing enforcement functions may compromise public safety. This scheme will assist in transparent and consistent decision making regarding enforcement of licensing requirements.

6.2 In addition, compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation might be at risk.

6.3 The Licensing Service Performance Management Framework includes measures that are designed to demonstrate that the correct enforcement actions are being taken by officers during investigations. Any deviations from the policy will be addressed directly with the member of staff concerned.

7. Accountable Officer(s)

7.1 Alan Pogorzelec – Licensing Manager, Regulation and Enforcement, 01709 254955, alan.pogorzelec@rotherham.gov.uk

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