

**ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS**

<b>1.</b>	<b>Meeting:</b>	<b>Licensing Board</b>
<b>2.</b>	<b>Date:</b>	<b>Wednesday 3<sup>rd</sup> September 2014</b>
<b>3.</b>	<b>Title:</b>	<b>Introduction of a Points Based Enforcement Scheme for the Hackney Carriage/Private Hire Trade</b>
<b>4.</b>	<b>Directorate:</b>	<b>Neighbourhoods and Adult Services</b>

### **5. Summary**

To start formal consultation on the possible introduction of a points based enforcement scheme for vehicles, drivers and operators licensed by the Licensing Authority.

### **6. Recommendations**

**Its recommended that the Licensing Board agree to:**

- 6.1 Commence consultation on the possible introduction of a points based enforcement scheme for the Hackney Carriage/Private Hire Trade, and**
- 6.2 Require a further report detailing the outcome of consultation at a future Licensing Board**

## 7. Proposals and Details

### 7.1 Background

The Council, as Licensing Authority, has a duty to regulate certain types of passenger carrying vehicles. The main objective being to protect the travelling public and maintain the quality and safety of the licensed trade. In doing this it aims to ensure that all licensed individuals operate to conditions to protect the reputation and fair competition within the trade.

Where serious breaches of legislation or licence condition occur, the issue can either be presented to the Magistrates' Court or to the Licensing Board (Sub Committee). This provides an effective legal remedy for the more serious offences whereby suspension or revocation of licences can be considered.

The position, however, for minor breaches of licence condition / legislation is limited in the outcome, in that, current minor breach interventions provide either a verbal or written officer reprimand. These minor breaches represent a reduction for the quality of the service offered to the public and helps create a culture of neglect within the trade.

The introduction of a points based approach would allow these minor breaches to be formally recognised, whereby drivers, operators or owners would be issued with points by authorised officers of the Council. It would provide a fast and efficient way of dealing with the minor breaches with offenders, and those, who habitually disregard the less serious aspects of the licence regime, would accumulate points which would, therefore, reflect their compliance record.

The points system would be in addition to all existing enforcement options available to the Council and 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 law.

This proposal has been discussed with both Private Hire and Hackney trade representatives. It is proposed that a wider consultation with all licensed drivers and businesses will underpin consideration of the scheme. This would be done by letter.

### 7.2 Proposal

It is proposed that Licensing Enforcement Officers would operate the following scheme:

#### **a. Issuing:**

- Points issued to a Licence holder will be confirmed in writing within ten working days from becoming aware of the contravention or at the conclusion of an investigation into a complaint.
- 3 Points will be issued per incident and will accumulate on a licence until they reach the "trigger level" of 12 points. At this "trigger level" the licence holder will be referred to Licensing Board Sub Committee for consideration.

- The system will be administered by the Community Protection Unit. The system will be used for offences or breach of license condition, where the circumstances of that breach are of a minor nature and are admitted and resolved by the license holder. This type of breach would not normally trigger a referral to Licensing Board Sub Committee or Court.
- Points could be used for any contravention if the circumstances dictate it appropriate; however points will not normally be issued where the offence presents a safety risk to the traveling public.
- To ensure consistency of application of the points system, authorised Enforcement Officers will meet weekly with their manger to monitor the circumstances where points are issued.
- The points will be recorded on the licensing holders personal record held on the Council's specialist licensing database (LALPAC).
- Points will also be available for Licensing Board Sub Committee, should the Committee wish to attach points to a licence, in addition to any warning issued.

**b. Period of validity**

- Points will remain on a licence for two years from the date of issue, unless they are considered in that period by the Licensing Board Sub Committee. In considering the matter the Sub Committee may replace the points for a formal sanction or extend the period the points remain on the licence.
- Where a licence holder accumulates the "trigger level" more than once in any three year period, the Licensing Board Sub Committee will consider whether they believe the accumulation of points indicate that the driver is not a 'fit and proper person'. Each case will be considered on its own merits.
- The Council 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 Council that the severity of the issue warrants a more formal approach.

**c. Appeal**

- Any licence holder who contests the issuing of penalty points may request a hearing before the Licensing Board Sub Committee for consideration and determination. 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.

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

## **8. Finance**

This proposal is an enforcement policy & associated procedural change and represents, other than the consultation cost, no additional operational cost so can be accommodated within the existing revenue budget of the Community Protection Unit.

## **9. Risks and Uncertainties**

The points based system has been successfully operated by a number of other local authorities.

A judicial review into the use of a points based enforcement regime has been heard and the use of a penalty points system recognised. The key issue in the judgement was that all the facts should be considered by the Board ie not only the most recent incident leading to the Board hearing but also the ones which had led to previous penalty points being issued. The final decision on the licence should then be made in light of the statutory “fit and proper” test and not by the simple totting up of points. The Judge also recognised it was good practice to have a policy to demonstrate how the Council exercises its discretion in relation to the revocation or suspension of a driver. The system proposed for Rotherham ensures that this principal and that the points systems only provides a “trigger” to bring the driver before the Board.

## **10. Policy and Performance Agenda Implications**

Following the consultation and subject to Licensing Board approval, the Council's Enforcement Policy would require amending. The Council will re-issue and publicise its ‘Hackney Carriage and Private Hire Enforcement Guidance’, explaining how enforcement procedures relate to the the Hackney Carriage/Private Hire Trade.

Enforcement of the hackney carriages/private hire trade in Rotherham contributes to the Council's Corporate Plan priority of ensuring all areas of Rotherham are safe, clean and well maintained and contributes, by ensuring that standards are complied with to provide a consistent and transparent level playing field, to help stimulate the local economy.

## **11. Background Papers and Consultation**

- Taxi and Private Hire Vehicle Licensing: Best Practice Guidance – Department of Transport, March 2010
- Initial consultation with the Hackney Carriage/Private Hire trade
- Consultation with Legal Services – Ian Mashed

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