

INTRODUCTION OF A POINTS BASED SYSTEM FOR TAXI DRIVERS

Executive Summary

Woking Borough Council's Criminal Convictions Policy covers enforcement action to be taken when there are serious or major offences committed, however there is nothing to scale and gauge the smaller minor offences (such as breaches of legislation relating to Taxi and Private Hire Licensing).

It is therefore proposed to introduce a Penalty Points system which will enable the Licensing Authority to clearly and openly identify repeat offenders and set a threshold to which, once crossed, will result in the offending driver being taken to a Licensing Sub-Committee.

Recommendations

The Committee is requested to:

RESOLVE That the Proposed Policy and Points Scheme be consulted on and presented back to the Licensing Committee in June with any necessary amendments made and accompanying feedback attached.

The Committee has the authority to determine the recommendation(s) set out above.

Background Papers: None.

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1.0 Introduction – Taxi and Private Hire Licensing as a Civil Matter

- 1.1 Matters relating to Taxi and Private hire Licensing are held to the civil standard which is on 'the balance of probabilities'.
- 1.2 It is a lower standard than the criminal standard which is 'beyond reasonable doubt'; where a tribunal has to be sure that something is the case rather than that it probably is the case.
- 1.3 As the primary function of the Licensing Authority is to ensure the safety of the travelling public, we are required to give necessary weight to complaints and statements received from the travelling public, and can therefore take necessary action upon them without there being the requirement for the higher levels of proof that may be required in a criminal matter.

2.0 Summary

- 2.1 Whilst Woking Borough Council's Criminal Convictions Policy covers action to be taken by the Licensing Authority for more serious offences, the Taxi and Private Hire Licensing Guidebook contains details of the requirements and conditions that drivers and operators are meant to follow.
- 2.2 Should licence holders commit offences, then depending on the circumstances, the licence holder may be prosecuted. In certain circumstances, it may be decided that the offence is too minor to prosecute, or the Council may decide to deal with the matter in another way.
- 2.3 For instance, in relation to driving an unroadworthy vehicle, the Council may prohibit the use of the vehicle until it is repaired. In other cases, unsatisfactory behaviour, which does not constitute an offence, for example persistently parking in inappropriate areas such as bus lanes or disabled bays, often result in little or no action being taken.
- 2.4 There have been concerns from drivers or operators committing these minor offences, such as breaching conditions, that any enforcement taken is disproportionate and inconsistent. The matters have been investigated and whilst they have not been substantiated, it is proposed, a system should be put in place that can be seen to be open and transparent.
- 2.5 At the present time there is no systematic mechanism for dealing with minor misconduct by taxi drivers. Officers decide on a case by case basis whether drivers conduct constitutes unsatisfactory behaviour. This approach leaves room for inconsistency and does not adequately address the situation in which a number of less serious matters arise within a short period.
- 2.6 A penalty points scheme for taxi drivers would be designed as a means of addressing this.

3.0 Proposal

- 3.1 It is proposed that there is alternative system which has been used successfully by other authorities, a penalty points system, which if adopted could be more effective against those licensed parties who ignore their responsibilities in relation to the conditions attached to their licences and provide a consistent approach to dealing with unsatisfactory conduct, thereby improving driving standards.
- 3.2 The scheme would act as a record of driver's behaviour and conduct so as to ascertain whether they were a fit and proper person to hold a licence.
- 3.3 Its introduction would not prejudice the Council's ability to take other action, such as prosecution where this was considered appropriate. In addition, penalty points could be taken into account when deciding the duration of a licence issued to the driver on renewal.

Introduction of a Points Based System for Taxi Drivers

- 3.4 It is proposed that the current system of enforcement would remain. At present any contravention of statutes, rules, regulations and conditions are dealt with in a number of ways. These include written notices, written warnings, suspension notices, or prosecution.
- 3.5 The proposed scheme would run separately from the current scheme of guidelines on convictions, which would continue to run in its present form.
- 3.6 Under the proposed scheme, unsatisfactory conduct would attract penalty points. These would be issued according to the agreed and published tariff.
- 3.7 Decisions would take into account all of the circumstances and be based on documentary evidence, evidence provided by enforcement staff who were present when the infringement took place or written statements from members of the public.
- 3.8 Drivers would be notified as soon as possible after the conduct being considered and would be given an opportunity to give an explanation of the circumstances of the allegations being made.
- 3.9 If a driver exceeds 12 penalty points in any three year period, they will be referred to the Licensing Sub-Committee which would consider whether the driver was a fit and proper person to retain their licence.
- 3.10 The Sub-Committee would be provided with the information which lead to the imposition of the penalty points and the driver would be given an opportunity to explain why they should still be considered a fit and proper person to hold a licence. Options available to the Committee would include revocation or suspension of the licence, imposition of additional conditions, such as further training, or to take no action.

4.0 The aim of the scheme

- 4.1 The aim of the penalty point scheme is to work alongside other enforcement options.
- 4.2 It provides a formalised stepped enforcement plan that can be easily followed and monitored.
- 4.3 The purpose of the scheme is to record misdemeanours which would not normally be recorded or processed and to act as a record of drivers and operators behaviour and conduct to ascertain whether they are a fit and proper person. It does not prejudice the council's ability to take other actions. As previously stated, it is designed as an evidence gathering tool rather than a punishment scheme.
- 4.4 The primary objective of the 'penalty points' scheme is to increase the levels of compliant and help improve the standards, which will improve the safety and protection of the travelling public.
- 4.5 The penalty points scheme would be reviewed after three years to assess whether it was achieving its objectives, whether it was working fairly, whether the points tariff for each type of offence was reasonable and whether other categories of infringement needed to be added.

5.0 Issuing of Penalty Points – the Legislative Grounds

- 5.1 For the Authority to agree and carry out this scheme it would fall within s.61 of the Local Government (Miscellaneous Provisions) Act 1976. This states that:

S.61 (1) Notwithstanding anything in the Act of 1847 or in this part of the Act, a District Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire on any of the following grounds:

Introduction of a Points Based System for Taxi Drivers

- a) That he has since the grant of the licence
 - (i) Been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) Been convicted of an offence under, or has failed to comply with, the provisions of the Act of 1847 or of this part of the Act; or
- b) Any other reasonable cause

- 5.2 Under s.61(1)(b) above, Woking Council may suspend, revoke or refuse to renew a driver's taxi licence if they have a reasonable cause to believe so, a reason of which could be if they do not believe a licence holder is a fit and proper person.
- 5.3 Receiving 12 penalty points, or more, within a 36 month period may indicate that a license holder is not a fit and proper person.
- 5.4 The licensing of a private hire operator is similarly controlled under s.62 of the Local Government (Miscellaneous Provisions) Act 1976 which states:

- S.62 (1) Notwithstanding anything in this Part of this Act a district council may suspend or revoke or refuse To renew an operators licence on any of the following grounds:
- a) any offence under, or non-compliance with, the provisions of this Part of the Act;
 - b) any conduct on the on the part of the operator which appears to the District Council to render him unfit to hold an operator's licence;
 - c) Any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted;
 - d) any other reasonable cause

6.0 Applicable Case Law

- 6.1 A judicial review, R (app Singh) v Cardiff City Council (2012) EWHC 1852 (admin), challenged the use of a similar penalty points scheme in relation to a taxi driver. This was based on a number of arguments but the principal ones were that there was no lawful power to run such a scheme, that when the maximum points were reached there was automatic revocation and therefore no application of discretion, there was a fetter on the discretion of the Authority, the scheme was irrational and the process conflicted with Article 6 of the European Court of Human Rights.
- 6.2 The Woking Borough Council Penalty Points Scheme is different to the Cardiff City Council case referred to here, as there is no 'fetter on the discretion.'
- 6.3 The Penalty Points Scheme is merely a method, amongst others, that may indicate that a driver is not a fit and proper person, or that an operator is unfit. The decision on any action, if any, to suspend, revoke or refuse to renew a hackney licence or operator's licence is the decision of the Licensing Sub Committee of elected councillors.

Introduction of a Points Based System for Taxi Drivers

- 6.4 The judge found that it was lawful to have a penalty points scheme as a means of dealing with misdemeanours. Mr Justice Singh said (at para 65)

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

- 6.5 However, there was a problem with the way in which Cardiff City implemented the policy. Its approach was that when a driver reached the maximum allocated number of points under their scheme the licence would be revoked and it appeared that on occasions, reduced numbers of points were awarded to a driver to avoid revocation of the licence. It was these elements which led to the challenges of a lack of application of discretion and fetter of the discretion.
- 6.6 As explained in the proposed Policy, The Woking Council Penalty Points Scheme has no ‘fetter on the discretion’ as there is no automatic revocation of a licence when the upper limit of 12 points is reached. This merely indicates that the driver may not be a fit and proper person or the operator is unfit, and it is to the Licensing Sub Committee to make any decisions on any action to be taken, if any.
- 6.7 The judge agreed with the claimants but in doing so explained how the process of deciding on whether action should be taken against a drivers licence should be undertaken.
- 6.8 In relation to action being taken under S.61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 ‘any other reasonable cause’, the question is whether a person remains a fit and proper person to continue to hold a taxi drivers licence. The judge said that this was not purely discretion; it required a judgement to be performed on whether the statutory question has been answered in favour of or against the relevant driver. (para 70)
- 6.9 If the answer to that judgement is against the driver (i.e. he is not fit and proper) there still exists discretion as to what action to take against the licensee.
- 6.10 The judge also questioned:

“How many penalty points does the driver have?”

As opposed to

“Whether there is any reasonable cause, in other words, whether in all circumstances of the case a driver is a fit and proper person to continue to enjoy the licence.” (para 77)

It can therefore be seen by the above that Council penalty points schemes are lawful provided there is a mechanism to enable an offending licence holder to be brought before a delegated decision maker (the Licensing Sub Committee) which will then consider the question of fitness and propriety in the light of the evidence and then determine what sanction, suspension or revocation, if any, should be applied.

- 6.11 Taxi licensing penalty points schemes are widely used throughout England including some in Surrey. Once embedded they work well and are popular with taxi drivers and operators as it does not affect lawful and well run businesses and appropriately behaved drivers, but tends to weed out the ones that continue to offend and ignore the rules.

7.0 Authority Points Analysis

- 7.1 As stated, Penalty Point Schemes are popular in many Authorities in the UK.
- 7.2 There are roughly 314 Local Authorities in the UK, of which we have been able to identify and analyse the Points Systems of 36 of them – which gives us just over 11% of the total number of Authorities and therefore has been deemed a reasonable cross section of which to get an overview.
- 7.3 In analysing the Penalty Points Scheme we have analysed how many points each Authority give to a specific offence, as these can vary from Authority to Authority, and presented an average / mean amount of points to try and be as close to the “norm” as possible.
- 7.4 A copy of this spreadsheet is attached as Appendix 1
- 7.5 This spreadsheet also shows how many Authorities have that specific offence, thus showing how popular the specific offence is. The spreadsheet has been ranked in accordance of most-to-least popular. You will notice that some authorities have area specific issues or have added offences to their points schemes that are odd (for example, sleeping on the rank). Whilst it can be argued that some of these are not relevant, the Licensing Authority feels that there is no harm in having too many items on the list of offences– as long as the offence is an actual problem, then it is worth including.

8.0 Future Review Timescales

- 8.1 It is suggested that Points systems are reviewed in line with their points time frames. As such – the policy and the system would be due for review in three years time from the implementation. However – it is suggested that for the first three years, the policy be reviewed on an annual basis in order to prevent any long term issues.
- 8.2 Ultimately the points system will merely result in the driver being brought in front of a Licensing Sub-Committee, so the Licensing Committee will be able to assist in analysing and helping adapt and modify (where required) at future reviews.

9.0 Implications

Financial

- 9.1 There are no quantifiable financial implications arising as a result of this report, although the impact upon staffing requirements of administering the new scheme would need to be monitored.

Community Safety

- 9.2 It is believed that the introduction of a Points System will assist in improving the safety of the travelling public by removing those who choose not to comply with the national and local legislation.

10.0 Conclusions

- 10.1 It is now proposed to take the Penalty Points Policy (as seen in Appendix 3) and the Penalty Points Schedule (as seen in Appendix 2) to a consultation. Once the consultation is completed, any necessary amendments will be made and any relevant comments taken into consideration and the proposal will be presented to the Licensing Committee in June 2020.

REPORT ENDS

Introduction of a Points Based System for Taxi Drivers

Appendix Title

Appendix 1 - Spreadsheet of data accumulated in order to compare other Local Authorities point schemes.

Appendix 2 – Proposed Point Scheme to be adopted by Woking Borough Council, based on the spreadsheet seen in Appendix 1

Appendix 3 – Proposed Penalty Points Policy.

Rank	Offence Details	Local Authority																										Average																						
		Arun	Broadlands	Cheshire East	Corby	Crawley	Denbighshire	Dover	East Hampshire	East Northamptonshire	Elmridge	Epsom & Ewell	Gloucester	Gosport	Herefordshire	Leicester	Mansfield	Medway	Merton	Newcastle Staffordshire	Plymouth	Preston	Reading	Rother	Rushcliffe	Sevenoaks	South Cambridgeshire		South Gloucestershire	South Somerset	Spelthorne	Swaile	Tunbridge Wells	Waverley	Wealden & Rother	Wiltshire	Windsor & Maidenhead	Gravesham												
35	Failure to display the vehicle licence plate in the appropriate position on the vehicle or defacing/concealing the plate	5	4	4	4	4	2	6	4	4	2	6	4	4	2	3	6	4	3	6	3	6	3	6	6	4	4	6	6	4	9	4	4	6	3	3	6	4												
35	Failure to wear or produce driver ID badge	4	3	3	4	4	2	12	4	6	2	6	4	4	4	3	3	3	3	4	4	6	3	4	3	6	4	4	6	4	9	4	4	4	3	3	3	6	4											
34	Failure to notify the Council in writing of any motoring or criminal convictions within 7/21 days of cautions or convictions or endorsements during period of current licence.	6	6	6	6	4	12	8	7	6	6	4	4	4	4	4	3	8	6	6	6	3	3	3	6	3	12	4	12	6	12	12	4	6	6	3	6	12	6	12										
34	Failure to notify an accident to the authority with 72 hours or damage to a licenced vehicle	6	6	4	3	4	4	12	4	6	4	6	4	4	4	3	6	3	4	6	3	4	6	3	4	3	8	6	6	4	9	6	4	4	4	3	3	6	3	6	5									
34	Failure to notify a change of name or address within 7/14 calendar days	3	3	3	3	3	4	6	3	3	2	6	4	3	2	3	2	3	3	3	3	3	3	3	3	3	3	3	2	6	3	3	5	2	3	3	3	3	2	3	2									
32	Failure of a private hire operator to keep proper records / logs of all bookings; or failure to produce them upon request of an authorised officer of the Council or a police officer	4	3	4	6	6	2	12	6	8	5	6	6	6	3		6	6	6	6	6	6	6	6	6	6	6	6	6	4	9	6	6	4	9	6	6	6	3	6	6									
31	Carrying more passengers that the vehicle is licenced to carry	12	12	6	6	12	9	6	4	6	4	6	12	6	4	12	6	12	6	6	6	6	6	6	6	6	6	6	6	6	12	6	12	6	6	6	6	6	6	6	6	12	6	12						
30	Unreasonable prolongation of journeys or any misconduct relating to charging of fares	6	3	6	4	6	4	12	12	6	7	6	6	6	4		12	12	6	8	6	6	6	6	6	6	12	8	8	6	12	12	6	6	12	12	6	6	6	6	6	6	6	12	6	12				
29	Providing false or misleading information on a licence application form / failing to provide relevant information or pay the relevant fee (including dishonoured cheques)	6	9	6	6	6	12	12	12	12		12	12	6	4	6	12	6	6	6	6	6	6	6	6	6	6	6	6	6	12	12	6	12	12	6	6	6	6	6	6	6	6	6	12	6	12			
29	Unsatisfactory / Unclean/ unfit interior / exterior of vehicle (including mechanical condition, unsatisfactory or unacceptable)	3	6	4	4	4	4	4	3	1	6	4	4	2	3	3	3	4	4	3	4	4	3	4	4	6	3	6	2	4	3	4	5	3	4	5	3	4	4	6	4	6	6	6	6	6				
28	Plying for hire by Private Hire Driver (including accepting a fare that is not pre-booked)	9	9	9	9	6	12	8	4	12	9	4	12	12	9	4	12	9	9	9	9	9	9	9	9	9	9	9	9	12	9	12	12	9	12	12	12	9	12	12	9	12	12	12	12	12	12	12		
27	Refusal to drive any person without reasonable cause / refusal to accept hiring without reasonable cause	6	6	6	6	4	12	6	7	6	12	4	5	3	8	12	6	6	6	6	6	6	6	6	6	6	6	6	6	6	12	12	6	12	12	8	4	12	8	6	6	6	6	6	6	6	12	6	12	
27	Failure to afford reasonable assistance with luggage or passengers (including disabled) into or out of the vehicle without good cause or exemptions certificate	3	3	3	3	2	12	7	6	12	2	3	3	6	12	4	3	6	12	4	3	6	12	4	3	12	3	3	2	3	4	5	3	3	4	5	3	3	4	5	3	3	12	2	4	4	4	5		
27	Failure to provide the vehicle or insurance when requested	5	3	6	4	4	6	6	6	7	4	2	3	3	4	3	3	4	3	3	4	3	3	4	3	4	3	4	3	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	12	6
27	Inappropriate conversation, gestures, dress or attire, unsatisfactory appearance or turnout / hygiene of driver	6	6	4	3	2	12	4	6	4	3	2	6	4	3	2	6	4	3	2	3	4	3	3	4	3	4	3	2	4	2	5	2	3	4	3	2	5	2	3	4	3	4	3	4	3	4	3	4	

Proposed Points System for Woking Borough Council

Points relating to driver behaviour

Carrying any article which would reasonably be considered an offensive weapon in the vehicle (including imitation firearms)	12
Driver not currently holding a current or valid DVLA licence	12
Driving a Licenced vehicle whilst not in possession of a valid drivers licence (including allowing an unlicensed driver to drive a licenced vehicle)	12
Permitting the vehicle to be used for any illegal or immoral purposes	12
Serious misconduct or behaviour of a licensee (e.g. use of physical violence)	12
Driver in possession of drugs while in charge of a licenced vehicle or evidence of alcohol or illegal drugs in the vehicle	12
Under influence of drink and/or drugs while in charge of a licensed vehicle	12
Behaving in a sexually offensive manner towards passengers	12
Having sexual intercourse, or sexual contact, including intimate kissing, touching of private parts, or similar activity, with passengers whilst on duty in a licenced vehicle	12
Engaging in any discussion of a sexual nature or about a sexual relationship with a passenger, be in past, present or future relationship	12
Fighting and/or aggressive behaviour towards the public or other licensed drivers	12
Obstructing an officer / Police officer wishing to examine a licenced vehicle	11
Plying for hire by a Private Hire Driver (including accepting a fare that is not pre-booked)	10
Failure / Refusal to carry an assistance dog	10
Failure to comply with the requirement of an authorised officer or a Police officer	10
Obstruction of officers / failure to provide information and assistance to Authorised officers / Police Officers	9
Overcharging - including turning the meter off, not using the meter, adding on authorised extras, refusing to refund, attempting to charge more than the fare agreed with the customer by the operator or anything of a similar nature	9
Failing to behave in a civil and orderly manner being verbally abusive or aggressive to any member of public or driver, or bringing the trade into disrepute	9
Driving, or allowing someone to drive, a Licenced vehicle without the proprietors consent	9
Collusion or interfering with evidence, victims or witnesses, when Officers of the Council are carrying out an investigation	9
Unreasonable prolongation of a journey	8
Failure to immediately notify, in writing, the Licensing Section of a change in medical circumstances that may affect your ability to drive or the safe transportation of passengers (including eyesight).	8
Using a non hands-free mobile phone or PDA whilst driving (Driving without due care and attention)	8
Use of rude or offensive language or behaviour, failing to behave in a civil or professional manner	8
Using insulting or threatening words or behaviour towards any officer of the Council, failing to behave in a civil and orderly manner towards an officer of the Council	8
Touting i.e. calling out for business, this includes flashing of lights, waving of phones, or any other active attempt to signal which may be deemed to be touting.	8

Failure to ensure that all wheelchairs being carried in a licensed vehicle have been correctly loaded, secured and unloaded/a designated wheelchair accessible vehicle refusing or failing to comply with S165 of The Equality Act 2010	8
Failure to notify the Licensing Authority of any Cautions convictions or endorsements within the requisite timeframe	7
Refusal to drive any person without reasonable cause / refusal to accept hiring without reasonable cause	7
Lending or parting with a hackney carriage drivers licence	7
Poor or Dangerous Driving	7
Failure to disclose previous convictions, cautions or endorsements when renewing a licence	6
Failure to comply with the conditions applicable to drivers of school transport vehicles and the code of conduct for drivers of school transport vehicles (School transport drivers only)	6
Failure to afford reasonable assistance with passengers or their luggage (including disabled people) into or out of the vehicle without good cause or exemption certificate, failing to take precautions to ensure safety of passengers entering / exiting or travelling in the vehicle	5
Failure to issue a receipt on request	5
Failure to provide a DVLA licence when requested	5
Failure to produce a fitness to drive group 2 Medical Certificate or medical assessment	5
Failure to submit a licence renewal application until after the expiry date of an existing one, without reasonable cause.	5
Urinating or defecating in a public place	5
Failure to wear the Drivers ID badge or produce when requested	4
Inappropriate dress or attire, unsatisfactory appearance or turnout / hygiene of driver	4
Failure to attend punctually at an appointed time or place without sufficient cause (i.e. at a booked appointment or vehicle inspection)	4
Driver of a vehicle failing to provide his licence(s) to his Private Hire Operator before commencing employment	4
Obstructing other hackney carriages	4
Failure to notify the Licensing Authority of a change of name or address in writing within the requisite timeframe	3
Littering	3
Failing to inform the Licensing Authority / the Operator in writing of any medical condition that may preclude from carrying an assistance dog or wheelchair user	3

Points relating to a Vehicle licence

Using an unlicensed vehicle for hire/reward work (including using a vehicle for hire/reward where the licence has been suspended / revoked)	12
Using a vehicle without valid or inadequate (i.e. private/public hire) insurance	12
Interfering or tampering with a Meter	10
Failing to wait after a deposit has been paid	10
Starting the meter fare before the hirer enters the vehicle without prior agreement / before the commencement of the journey	9
Carrying more passengers than the vehicle is licenced to carry	8

Appendix 2

Using a mechanically unfit or unsound vehicle or with any defects (brakes, seat belts, steering, suspension, doors, windscreen, bodywork, lights, wipers, washers, exhaust, horn, battery, or other relevant defect that may warrant a failure at either MOT or Council Vehicle inspection, presenting a vehicle for testing that is in an unsafe or dangerous condition	8
Travelling less than the lawful distance for an agreed fare	8
Charging for the carrying of a wheelchair or assistance dog	8
Allowing a hackney carriage vehicle to stand in a position, not being a hackney carriage stand, to suggest that is plying for hire.	8
Private Hire Vehicle parking, stopping, waiting or making use of a designated Hackney Carriage Rank	7
Allowing others to be carried without the consent of the hirer	7
Driving/Causing/permitting a Private Hire Vehicle or Operating with an appearance that might suggest it is a hackney carriage, including displaying any feature on a private hire vehicle or Operators signage that may suggest that it is a taxi.	6
Failure to undergo the mid-year "six month" vehicle inspection	6
Failure to undergo an MOT in the required timeframe	6
Failure to present a vehicle for inspection when requested by an officer	6
Failure to use an approved and calibrated meter, using a defective meter	6
Failure to comply with a 14 day notice or advisory notice for the repair of a vehicle	6
Installation of a taximeter in a Private Hire Vehicle	6
Failure to notify the Licensing Authority of an accident, or damage to a Licenced vehicle, in writing and/or within 72 hours	5
Failure to provide vehicle insurance when requested	5
Evidence of smoking in a Licenced Vehicle (even when not working) or allowing a passenger to smoke in a Licenced vehicle	5
Failure to observe rank discipline or etiquette (i.e. failure to move up, waiting on pavements nearby or at the end of the rank)	5
A licenced vehicle found with bald, dangerous or defective tyre (points awarded per tyre)	5
Using an untaxed vehicle	5
Failure to display the vehicle licence plate in the appropriate position on the vehicle (as per the Licence Conditions) or defacing / concealing the plate	4
Unsatisfactory/Unclean condition of the vehicle	4
Unapproved or inappropriate advertising or signs in or on a vehicle (including on the window)	4
Failure to notify where the vehicle is kept	4
Failure to notify of a vehicle transfer (this can apply to both parties involved in the transfer)	4
Failure to carry a working Fire Extinguisher	4
Leaving a Hackney Carriage unattended on the rank	4
Failure to carry a first aid kit	4
Improper / Unauthorised signage (including a failure to use Operators door signs)	4
Failure to display or correctly use the roof light on a Hackney Carriage	4

Failing to comply with the requirements of the Highway Code or Traffic Order - i.e. Parking / Stopping / Waiting / Leaving your vehicle unattended on a double yellow area, waiting or stopping on a bus stop, disabled bay, double yellow area, or private land (without the owners permission), failure to comply with the conditions/use of bus lanes, parking, waiting or stopping in a disabled bay longer than the permitted time, parking, waiting, becoming stationary or stopping your vehicle in a parking bay (without a valid ticket), causing an obstruction to traffic, parking in a dangerous position (i.e. double parked, parked closed to a road junction) or on a footway, blocking the driveway or entrance of any residence, business, school or any other public building or space, or contravening any section of the highway code, traffic laws, regulations, orders or guidance.	4
Failure to deal with lost property in the appropriate manner	4
Failing to cause the seats to be properly cushioned or covered.	4
Dashboard warning light illuminated	4
Failure to display a valid fare chart or other approved notices	3
Food or drink waste in the vehicle or drinking/eating in a licenced vehicle with passengers on board	3
Sounding the vehicle horn to announce arrival, cause distress/alarm, display anger or in any way not permissible by S112 of the Highway Code	3
Conveying animals belonging to the proprietor or driver of the vehicle	3
Failure to report the loss of a licence / plate / badge / door sign as soon as the loss becomes known	3
Failure to display in a licenced vehicle "no smoking" signage as prescribed in the Health Act 2006	2
Causing excessive noise from any radio or sound-reproducing equipment	2

Points relating to an Operator Licence

Operating as a Private Hire Operator whilst not in possession of a valid Private Hire Operators Licence	12
A Private Hire Operator operating a vehicle for hire and reward where the vehicle or driver does not hold a valid licence	12
Failure of a Private Hire Operator to ensure that all vehicles operated by him are adequately insured.	9
Failure of a Private Hire Operator to keep and display public liability insurance for the operating premises if the public are allowed access	9
Failure of an Operator to keep records / logs of all bookings in accordance with the conditions of the licence, or failure to produce within a reasonable timeframe upon the request of an authorised officer of the Council or a Police Officer	6
Operator failing to keep a register of details of all vehicles operated by them, as per the Conditions of the licence.	5
Failure of a private hire operator to request and keep a copy of all driver's licences in his employ at the beginning of employment.	4
Failure to provide an Operators Licence on request	4
Failure of a private hire operator to ensure that every driver employed by him has a private hire licence and badge and compliant with the conditions of their licences	4

Failure of a Private Hire Operator to ensure that office staff act in a civil and courteous manner at all times	3
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Points relating to all licences

Providing false or misleading information on a licence application form or failing to provide relevant information (including failing to pay the relevant fee upon request)	9
Failure to return any licence upon suspension or revocation or upon request	7
Failure to provide prompt, efficient or reliable service	3

1. Definition of poor driving behaviour:
 - a. Careless driving – if the driver is not exercising the degree of care and attention that a reasonable and prudent driver would exercise in those circumstances
 - b. Driving without reasonable consideration – deliberate act of behaviour is considered irresponsible and inconsiderate to others e.g. deliberately driving through a puddle to splash pedestrians or cutting into traffic at the last minute.
2. Definition of dangerous driving
 - a. The way that a person drives falls below what would be expected of a competent and careful driver; and
 - b. It would be obvious to a competent and careful driver that driving in that way would be dangerous.

Draft Policy for the Penalty Points Scheme

1. Introduction

- 1.1. This document details the Penalty Point procedure used by the Council to deal with minor breaches or infringements of legislation or unacceptable behaviour committed by those licensed as Drivers and Operators and vehicle proprietors, in much the same way that points can be attached to a DVLA driving licence.

2. Policy statement

- 2.1. The aim of this policy is to improve the levels of compliance of licensing regulations and requirements and to help raise standards, safety and the protection of members of the public affected by the actions of licensed drivers and operators and vehicle proprietors.
- 2.2. The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers and Operators and vehicle proprietors.
- 2.3. The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

3. Purpose of the procedure

- 3.1. The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 3.2. The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breaches or infringements, which in isolation are not serious enough to warrant the suspension or revocation of a licence.

4. Who is covered by the procedure?

- 4.1. Penalty Points may be awarded against anyone holding a hackney carriage licence; a private hire driver licence; a Private Hire Operator Licence or a Vehicle Proprietor.

5. The details of how the scheme will be operated are as follows:

- 5.1. Before penalty points are issued, there must be sufficient evidence to prove, on the balance of probabilities, the offence or breach of licensing requirements.
- 5.2. If there is good evidence that there was a breach or inappropriate behaviour and it is considered appropriate to do so, the licence holder will be issued with a penalty point notice.
- 5.3. The penalty point notice will describe the infringement or breach, date and time it took place, and how many points have been issued to the licence holder.
- 5.4. The issuing of penalty points is not a formal sanction in its own right; it is merely an open and transparent method of how a Private Hire Driver, Private Hire Operator or Hackney Carriage Driver, system is

predominately an internal management tool for ensuring that licence holders who penalty offences will be re-considered in the light of any mitigating circumstances the licence holder wishes to be considered.

- 5.5. The Council's Taxi Policies will be fully considered by an authorised officer when determining the manner on which any breach of legislation or the requirements of this Policy are dealt with.
- 5.6. Where it is decided that the use of the penalty points system is appropriate, the points will be issued in accordance with this appendix. It is to be noted that whilst the appendix shows the recommended amount of points, officers will have discretion to decide on the points given based on circumstances. If more than one offence takes place the points will be added consecutively to the individual's file.
- 5.7. The Council reserve the right to not impose penalties points under this scheme where in the opinion of the Officers the allegations are either frivolous, vexatious or repetitious, or made, in the Officers opinion, to further personal grievances or which are not made within a reasonable time period, to be determined by the Council depending on the individual circumstances, of the breach having occurred.
- 5.8. Once the decision to issue penalty points is made, letters will be sent to all persons / organisations involved in the allegation(s) detailing the findings and decision of the Investigation officer. A record of the decision and any copies of associated documents will be kept on file (usually in secure electronic format) and retained for record in line with the retention of the licence.
- 5.9. A maximum of twelve penalty points will be issued on any one occasion. This means that if on any occasion when it is proposed to impose penalty points, a licence holder has committed more that one offence or breach of licence conditions, no more than twelve points will be imposed.
- 5.10. The imposition of penalty points against a driver who is an employee will not necessarily result in additional imposition of points to his/her employer or operator. However, the Council retains the discretion to issue penalty points to drivers, driver/proprietors and operators for a single contravention if the circumstances warrant it i.e. the breach is one against all these licences and it is considered joint responsibility is held.
- 5.11. Any penalty points incurred under this procedure are completely separate from any points which may be attached by the Police, through fixed penalty notices, or the Courts, through convictions to DVLA driving licences.
- 5.12. When issued, the penalty points will remain "live" for a rolling period of 36 months from the date they were imposed.
- 5.13. Points issued to a licence holder will be confirmed in writing within twelve working days from the discovery of the contravention or the conclusion of an investigation into a complaint.
- 5.14. There is no financial penalty associated with the system, and the licensee may continue to work.
- 5.15. Confirmed infringements or breaches resulting in the award of penalty points will act as an ongoing record of a licensee's behaviour and conduct and may be used in determining whether they are a fit and proper person to hold a licence.
- 5.16. If 12 penalty points are imposed on an individual licence in any one 36 month rolling period, the driver will appear in front of the Licensing Sub Committee where appropriate action will be taken in accordance with this policy.

- 5.17. Where a licence holder is brought before the Committee, The Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- i. Take no action
 - ii. Issue a warning
 - iii. Issue additional penalty points
 - iv. Suspend a licence as a punitive sanction
 - v. Suspend a licence to correct a fault, defect, or breach
 - vi. Revoke or refuse to renew a licence
- 5.18. A driver will always have the right to be represented at any meeting, either legally or otherwise, and to state any mitigating circumstances he deems necessary.
- 5.19. The length of the period of suspension of a licence will be dependent on the nature of the breaches of the legislation or the requirements of this Policy and the compliance history of the licence holder. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.
- 5.20. More than one accumulation of penalty points in excess of the twelve point threshold in any three year period will normally result in the Committee revoking a licence where they believe the person not to be a 'fit and proper' person.
- 5.21. Once the matter has been dealt with:
- i. points will be removed if a suspension or revocation is imposed;
 - ii. If a written warning is given the points will remain live for the normal two year period;
 - iii. If the live period is extended the points will remain live for the time determined by the Committee.
- 5.22. Any driver, vehicle, proprietor or operator subject to suspension has the right of appeal to the Magistrates Court against the suspension. Suspensions will normally be subject to a 21-day appeals period prior to implementation to allow for the formal appeals process, except where the relevant legislation allows for a suspension to take place with immediate effect.
- 5.23. Any driver, vehicle, proprietor or operator subject to revocation has the right of appeal to the Magistrates Court against the revocation.
- 5.24. The penalty points system will operate without prejudice to the Council's ability to take other action under appropriate legislation or as provided for by this policy.
- 5.25. The penalty points system outlined below 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.

6. Appeals

- 6.1. If a licensee wishes to appeal against the issue of a "penalty points notice" he/she must do so in writing, stating the reasons of the appeal, within 10 working days from the date of issue of such a notice, to the Council's Legal Services Manager or in his/her absence the Senior Licensing Officer, who, in consultation with the Chairman of the Licensing Committee, will have the discretion to:-
- i. uphold the Council Officer's decision – retain the number points on the "penalty points notice"; or
 - ii. cancel the issue of the "penalty points notice" to the licensee.

- 6.2. The Legal Services Manager or, as the case may be, the Senior Licensing Officer will write to the licensee informing them of the outcome within 10 working days of receiving the appeal.
- 6.3. If no appeal is lodged within 10 days from the date of issue of the Notice, then the Council will take the view that the licence holder has accepted the penalty points.
- 6.4. There is no appeal beyond the decision made by the Legal Services Manager. However, should a licensee be subsequently reported to the Licensing Committee for accumulating 12 penalty points, he/she has the opportunity to raise the validity of the points issued.

7. Re-applying for a Licence

- 7.1. If a licence holder has had their licence revoked, they may apply for a new licence, but its Council Policy that such an application under the Penalty Point Scheme will not be entertained until a suitable period from the date of revocation has elapsed, as detailed below:
 - i. where the penalty points which resulted in the revocation included any infringements that attracted 10 or more points, then this period will be 24 months
 - ii. where none of the infringements individually attracted more than 10 points, then this period is reduced to twelve months
- 7.2. It should not be assumed that an application for a new licence, following revocation under this Scheme, will automatically be granted. Any application will be subject to the Council's normal application process and consideration of whether the applicant is a fit and proper person to hold a licence.

8. Review of the scheme

- 8.1. For the first three years of the implementation of the scheme, it will be reviewed on an annual basis. On the third year of reviewing the licence, the Licensing Committee will ascertain whether annual reviews are still a requirement or whether it can be extended to a triennial time frame (i.e reviewed once every three years).
- 8.2. Notwithstanding this, the policy will continue to be evaluated and may be updated at any time.