



AGENDA ITEM: 7

SUMMARY

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| Report for: | Licensing Health & Safety Enforcement Committee |
| Date of meeting: | 4th February 2013 |
| PART: | 1 |
| If Part II, reason: | |

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| Title of report: | Taxi enforcement – “three strikes” approach |
| Contact: | Ross Hill – Licensing Team Leader, Legal Governance |
| Purpose of report: | To outline a revised approach in the enforcement and disposal of minor infractions by licensed taxi and private hire drivers, vehicle proprietors and operators |
| Recommendations | That the Committee note the contents of this report. |
| Corporate objectives: | <p>Safe and Clean Environment</p> <ul style="list-style-type: none"> • Maintain a clean and safe environment <p>Dacorum Delivers</p> <ul style="list-style-type: none"> • Reputation and profile delivery |
| Implications: | <p><u>Financial</u> There will be a small cost in terms of revising and reprinting some licensing enforcement stationery, to be met from existing budgets.</p> <p><u>Value for Money / Risk / Equalities / Health And Safety</u> None</p> |
| Consultees: | No formal consultation, although details of the proposal have been discussed informally with the Hackney Carriage Drivers Association committee and some private hire operators. |
| Background papers: | DBC Licensing Enforcement Policy |
| Glossary of acronyms and any other abbreviations used in this report: | |

1. BACKGROUND

- 1.1. The Council has a duty to ensure that its licensed taxi and private hire drivers, vehicle proprietors and operators comply with legislation and licence terms and conditions, as well as taking appropriate enforcement action against both licensed and unlicensed persons found committing infractions and offences under the relevant legislation. Activities to detect infractions and offences take a variety of forms, ranging from informal observations by officers in and around the borough, through the investigation of complaints made by members of the public and businesses including taxi drivers and private hire firms, through to planned enforcement operations often involving the presence of multiple enforcement agencies.
- 1.2. In taking action to resolve infractions, officers have regard to the Council's Licensing Enforcement Policy adopted by the Committee in February 2013, as well as the government's Better Regulation Principles, which require any enforcement action taken by a public authority to be (among other attributes) proportionate, consistent and transparent.
- 1.3. For certain minor infractions, it would be disproportionate to take formal legal action for every incident, and as such a range of other actions are available and utilised, depending on a variety of factors including the severity of the infraction and harm caused, any history of similar infractions, and the response of the individual. Alternatives to prosecution include cautions, written or verbal warnings, written or verbal advice, referral to another agency better placed to deal with the infraction, or referral for review of the licence(s) held.
- 1.4. Committee members have commented several times in recent months about the conduct of some individuals within the licensed taxi and private hire trade, in particular noting the larger number of drivers who appeared before the Licensing, Health & Safety and Enforcement Sub-Committee in 2013 for licence reviews or application determinations. While this may in part be attributed to a more rigorous examination of licence applications and an increase in the amount of enforcement activities carried on by officers, the last year has also seen an increase in the number of complaints being made to the Licensing team in respect of taxis and private hire vehicles (up 21% compared to 2012).

2. PROPOSED CHANGES

- 2.1. At the present time, although the Enforcement Policy states that multiple or recurrent infractions may result in an escalation in the enforcement action being taken against the person responsible, it does not set out specifically how this will be achieved. In the absence of a set policy, it is generally left to the discretion of officers at which point to take further action in respect of repeat offenders, which delivers neither consistent nor transparent regulation.
- 2.2. Council and police officers involved in the control and supervision of taxis and private hire vehicles, as well as the investigation of complaints and allegations against such, have recently reported frustration that a number of drivers, after being advised of an infraction, have continued to act in the same way. In particular, a police officer who is working closely with the taxi

trade in Berkhamsted has noted that he frequently observes drivers spoken to about infractions, such as driving along a footpath or stopping on a pedestrian crossing, or using a vehicle with tyres below the permitted minimum tread depth, repeating the same action within a few hours.

- 2.3. Several councils have adopted a 'penalty points' scheme to deal with multiple and repeat infractions, under which single infractions would result in the award of a certain number of points against an individual, and upon reaching a certain threshold of points they would be referred for a review of their licence. While a good concept, in practice such schemes often become overly bureaucratic, and subject to frequent challenge over the number of points being awarded, the validity period of points, as well as the legality of the scheme as a whole. There is also concerns about the administration of such schemes, and the need to ensure that points awards are correctly recorded against the appropriate individual. It is not believed that the database system currently in use by Licensing could adequately record and report upon such a scheme.
- 2.4. As an alternative to a full penalty points scheme, officers are now proposing the use of a simpler, "three strikes" approach to dealing with multiple infractions, as detailed at Annex A.
- 2.5. Under this proposal, where officers are satisfied that an infraction from a specified list had occurred, a written warning shall be issued to the individual responsible. If that individual were to receive three such warnings for any combination of infractions within a rolling 2-year period, they would be referred to the LHSE Sub-Committee, to enable consideration as to whether they remained a fit and proper person to hold the relevant licence.
- 2.6. At hearing, the Sub-Committee would be presented with details of all applicable infractions, and the licence-holder would also be entitled to make representations. Following consideration of the relevant information, a range of actions would be available to the Sub-Committee, including dismissal of the review, administering a formal Committee warning, suspension of the licence(s) for a specified period or pending completion of certain requisites, or revocation. It is key to note that the Committee would need to consider each individual referral on its merits – it is not lawful to adopt a fixed policy specifying that certain actions will be taken at certain thresholds.¹
- 2.7. It is proposed that this approach will apply across all forms of taxi licences, including drivers, vehicle proprietors and operators, and to both hackney carriages and private hire vehicles.
- 2.8. In addition, it is also proposed to open the scheme up to enable local police officers to issue warnings for infractions which will be registered for the purposes of this scheme, as an alternative to other means of disposal for low-impact infractions. It is likely that just a small number of officers, familiar with taxis and working closely with council officers, will be involved in this.
- 2.9. Adopting this approach will not bind the Council to any particular action, and officers will retain discretion to take action after a single serious incident, or to act in ways other than those set out herein.

¹ R (on application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)

ANNEX A

GUIDANCE EXPLAINING “THREE STRIKES” APPROACH

Licensing, Dacorum Borough Council, Civic Centre, Marlowes, Hemel Hempstead, HP1 1HH



Taxi enforcement “Three strikes” approach

Due to an increase in complaints against Dacorum taxi and private hire drivers, we are reviewing the way in which we take action in respect of individuals against whom allegations are upheld.

Where complaints are substantiated for an applicable infraction, we may consider issuing a formal written warning, particularly if it would be disproportionate or inappropriate to take formal legal action for the infraction. Such warnings shall be issued only in situations where the investigating officer is satisfied that the infraction was committed, such as if they personally observed the infraction being committed, or if the results of the investigation into a complaint indicate on the balance of probabilities that the infraction was committed.

If a single driver, operator or vehicle proprietor should receive three warnings for any combination of applicable infractions within a period of two years, they shall be referred to the council's Licensing Sub-Committee, which will conduct a review hearing into that individual's suitability to continue to hold the relevant licence.

In conducting such reviews, the Sub-Committee will take account of all of the pertinent facts, and of any representation made by the driver, operator or proprietor before considering what action, if any, would be appropriate to take. The Sub-Committee may also have regard to any previous warnings or Committee determinations in reaching a decision. The options available to the Sub-Committee, depending upon the severity of the infractions and any previous record of misconduct, will typically be: to take no further action; to warn the licensee as to their future conduct; to suspend the licence for a specified period, or until such time as certain conditions have been satisfied; or to revoke the licence.

The existence of this guidance does not bind the Council, its officers or members to act in accordance with it, and if the circumstances of a particular case support doing so it shall be open to the Council to select a different course of action in respect of that case, such as prosecution for a single infraction, or issuing an informal warning which does not count towards the total.

The following lists of applicable infractions are non-exhaustive, and similar infractions may be regarded in the same way, even if not explicitly listed below.

Applicable infractions – drivers / vehicle proprietors

- Failing to declare convictions / cautions / motoring endorsements
- Failing to report accident
- Failing to produce vehicle/driver licence on request
- Failing to wear driver badge
- Failing to produce vehicle insurance certificate on request
- Failing to return licence plate / badge (following expiry, suspension or revocation)
- Using vehicle which is mechanically unsound / unsafe / excessively soiled
- Using vehicle at a time when it would not satisfy compliance standards
- Charging more than metered fare / use of incorrect tariff / previously agreed fare
- Non-display of fare card
- Prolonging journeys
- Tampering with taximeter seal, altering taximeter with intent to mislead
- Meter, radio or other equipment installed in dangerous position
- Non-display / incorrect display of licence plates
- Non-display of roof sign / door signs
- Display of roof/taxi sign on vehicle other than a hackney carriage
- Failure to carry first aid kit / fire extinguisher in vehicle
- Abusive/improper behaviour

- Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct
- Driver improperly attired
- Touting
- Misuse of taxi ranks (obstructing or hindering other driver, preventing hiring)
- Hackney carriage driver refusing fare from taxi rank
- Private hire vehicle stopping on taxi rank
- Leaving hackney carriage unattended in public place
- Refusing to carry disabled passenger
- Refusing to carry assistance dog
- Carrying excessive number of passengers
- Failing to deliver lost property to police station
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Applicable infractions – operators

- Failing to declare convictions / cautions
- Failing to produce operator licence on request
- Failing to maintain operators records, or to produce on request
- Sub-contracting of booking to out-of-borough operator
- Touting of hire car services
- Abusive/improper behaviour by operator or staff
- Use of unapproved door signs on vehicles
- Refusing to accept booking to carry disabled passenger with assistance dog
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Police infractions

In addition to work undertaken by Dacorum council officers, Hertfordshire Constabulary officers may issue warnings which will have the same effect under this policy, for any of the above infractions, or for the following general violations:

- Minor offences under Road Traffic Acts in respect of a hackney carriage or private hire vehicle
- Minor offences under the Road Vehicles (Construction and Use) Regulations in respect of a hackney carriage or private hire vehicle
- Minor public order offences in the course of use of a hackney carriage or private hire vehicle

In all cases, issue of a warning under this scheme by a police officer shall represent an alternative disposal option, and police shall retain the right to instead utilise any other disposal method (e.g. fixed penalty notice or legal proceedings) for any applicable offence where deemed appropriate.

Excluded offences

The following offences are deemed sufficiently serious that they will be excluded from this scheme, with prosecution or Committee referral likely to result from a single incident:

- Plying for hire without HCV licence (or driving or standing for hire)
- Using an unlicensed vehicle for private hire
- Driving a licensed vehicle without a valid HC/PH driver's licence
- Employing an unlicensed driver to drive a licensed vehicle
- Operating unlicensed vehicles, or operating vehicles without an operator's licence

N.B. Licences issued by any other council do not permit any person to drive, use or operate any vehicle as a hackney carriage or private hire vehicle within Dacorum, and persons doing so are 'unlicensed' in the above.