

# Hackney Carriage and Private Hire Licensing Enforcement Policy



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## 1 ENFORCEMENT POLICY STATEMENT

- 1.1 It is the policy of Rochford District Council to ensure that hackney carriage and private hire vehicles, drivers and operators are licensed correctly and comply with relevant legislation and the conditions attached to the licences.
- 1.2 Enforcement action, be it verbal warnings, written warnings, statutory notices, appearances before the Appeals Committee or prosecutions, will be based upon the seriousness of the breach and the possible consequences arising. Minor technical contravention of the regulations will therefore be treated on their merits and will not automatically be subject to punitive action.
- 1.3 Specific advice on the issue of licences and enforcement action is contained in this Hackney Carriage and Private Hire Licensing Enforcement Policy, which sets out the general principals to be followed when taking decisions on enforcement action involving hackney carriage and private hire licensing.

### **Authorised Officers**

- 1.4 For the purpose of the Local Government Miscellaneous Provisions Act 1976 s.80 states an "Authorised Officer" means any Officer of a District Council authorised in writing by the Council for the purposes of this part of the Act.
- 1.5 An Authorised Officer when taking enforcement decisions regarding hackney carriage and private hire licensing, will abide by the Enforcement Policy and the conditions of licensing set by the Council. Departure from the Enforcement Policy should be exceptional, justified and fully considered before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 1.6 Authorised Officers must be fully acquainted with the requirements of this Enforcement Policy and appropriate training will be provided where required.
- 1.7 Authorised Officers will be authorised by the Head of Planning and Transportation to take enforcement action that is relevant and appropriate.

## 2 ENFORCEMENT OPTIONS

- 2.1 To achieve and maintain a consistent approach to making decisions, which concern hackney carriage and private hire licensing, it is of paramount importance to achieve and maintain consistency and it is vital that the Policy is always considered and followed where appropriate.
- 2.2 Licence applications and enforcement decisions must always be consistent, balanced, fair, and relate to common standards, which ensure that the public is adequately protected. In reaching any decisions the following criteria should be considered, including the:-

- Seriousness of any offences/breaches;
- History of previous offences/breaches;
- Consequence of non-compliance;
- Likely effectiveness of the various enforcement options; and
- Danger to the public.

2.3 Having considered all relevant information and evidence, the options for action are set out below.

**For new applications for licences:**

- Grant licence subject to the Council's Licence Conditions; or
- Refuse to grant a licence in accordance with the Council's Licence Conditions and the Enforcement Policy.

An applicant aggrieved by a decision of the Council to refuse the grant of a licence has a right of appeal to the Magistrates Court.

**Enforcement action for existing licence holders:**

- Take informal action;
- Issue a Deferred Statutory Vehicle Notice;
- Issue a Statutory Suspension Vehicle Notice; or
- Authorise Immediate Suspension of the licence.

Depending on the seriousness of the breach, the Council may decide to invite a licence holder to an Appeals Hearing, proceed directly to prosecution or refer the matter to the Police for prosecution. It should be noted that in cases where a licence holder is convicted of a criminal offence, which results in a custodial sentence, the Council will automatically revoke all licences.

A licence holder aggrieved by a decision of the Council may appeal firstly to the Appeals Committee and then to the Magistrates Court.

2.7 Detailed information about each possible course of action is set out below.

**3 INFORMAL ACTION**

3.1 Informal action to secure compliance with legislation includes offering advice, verbal and written warnings and requests for action. It also includes requiring the production of documents at the Hackney Carriage Office when requested or at renewal.

3.2 Informal enforcement action may be appropriate in any of the following circumstances:-

- The act or omission is not serious enough to warrant more formal action;
- The individual driver, proprietor or operator's previous good conduct could provide confidence that informal action will achieve compliance; or
- The consequences of non-compliance will not pose a significant risk to the safety of the public.

3.3 Even where some of the above criteria are not met, there may be circumstances where an informal approach will be more effective than formal action.

#### **4 DEFERRED STATUTORY VEHICLE NOTICE**

4.1 An Authorised Officer may issue a Deferred Statutory Vehicle Notice to a hackney carriage or private hire vehicle when a repair is required or there has been a failure to comply with the Council's Vehicle Licence Conditions. The notice must state the requirements and the date by which the vehicle must comply and be re-presented for inspection at the Council Offices. This notice will be served having had due regard to the condition or compliance of the vehicle.

#### **5 STATUTORY VEHICLE SUSPENSION NOTICE**

5.1 An Authorised Officer may suspend a vehicle licence until such time as they are satisfied with the condition of the hackney carriage or private hire vehicle. In such circumstances, a Statutory Vehicle Suspension Notice will be issued stating the reasons the vehicle has been suspended. This action will only be taken when there are reasonable grounds to suspect that the condition of the vehicle is an immediate danger to passengers and/or other road users.

#### **6 IMMEDIATE SUSPENSION**

6.1 The Council has the powers to immediately suspend a licence where they are of the opinion that the interest of public safety requires such action to be taken. There must be recorded evidence and reasons for this action.

#### **7 APPEALS COMMITTEE HEARING**

7.1 An offending individual or company may be asked to attend an Appeals Committee to answer allegations of any breach of the relevant legislation, regulations or conditions attached to licences. Types of breaches may include:-

- Failing to demonstrate continuous insurance cover;
- Failing to produce documents when requested following a previous written warning;

- Failing to maintain appropriate operator records following a previous written warning;
- Failing to comply with the regulations and conditions of the licence following a previous written warning;
- More serious complaints regarding the licence holders fitness and proprietary; and
- Any other reason that brings the licence holders fitness and proprietary into question.

7.2 Current licence holders who report driving or criminal convictions and therefore no longer meet the qualifying criteria to be a licence holder or breach relevant legislation during the period of their licence, will be brought before the Appeal Committee for hearing, to determine their fitness and proprietary to continue to hold a licence.

7.3 The Committee may decide to take one or more of the following actions:-

- No action;
- Issue a formal written warning;
- Attach additional conditions to the licence
- Suspend a licence;
- Revoke a licence;
- Recommend that the Council takes prosecution action; and
- Recommend that the matter be referred to the Police for prosecution.

## **8 NO ACTION**

8.1 The Appeals Committee may decide that no further action is required if the licence holders' breach or offence is minor and unrelated. They may after careful consideration feel that it is an isolated offence or breach that is out of character, or if the licence holder was cautioned or convicted when protecting his property the Committee may feel that further punishment is not necessary.

## **9 FORMAL WRITTEN WARNING**

9.1 Following the decision of the Appeals Committee to issue a formal written warning the licence holder will be informed of the action to be taken as soon as possible; this will include:

- All the information necessary to explain the offence;
- Indicate the legislation or conditions contravened and what will enable compliance with the legal requirements;

- Point out, where appropriate other means of achieving the same effect if appropriate;
- Clearly indicate any recommendations of good practice;
- Clarify that failure to comply could result in the suspension or revocation of the licence; and
- Explain that if brought before the Committee/Authorised Officer again, this formal written warning may be taken into account and may result in a more severe punishment.

## **10 ATTACH ADDITIONAL CONDITIONS**

- 10.1 Committee may decide to attach additional conditions to the licence for example for the licence holder to present the licensed vehicle, their DVLA licence or other specified documents for inspection at the Hackney Carriage Office, every three months, for a twelve-month period (or other specified time).
- 10.2 This option may be justified for breaches in conditions or failure to comply with the pre-licensing criteria, when a suspension of a licence or refusal to grant a licence is not justified.
- 10.3 The decision to attach additional conditions to the licence can be in addition to a formal written warning or suspension of the licence and must relate to the particular breach.

## **11 SUSPENSION**

- 11.1 The Committee may alternatively decide, after taking all matters into consideration, to suspend the licence for a specified period. The licence holder will be informed of the decision at the hearing and in writing, and given twenty-one days notice of the commencement of the suspension period or to lodge an appeal to the Magistrates Court, against the Councils decision. Further information on suspensions is covered in item 23 of the Policy.

## **12 REVOCATION**

- 12.1 The Committee may decide after taking all matters into consideration to revoke the licence if they feel the licence holder is no longer a fit and proper person to hold such a licence. The licence holder will be informed of the decision at the hearing and in writing, and given twenty-one days notice of the revocation or to lodge an appeal to the Magistrates Court, against the Councils decision. Further information on revocations is covered in item 23 of the Policy.

## **13 APPEALS AGAINST DECISIONS**

- 13.1 Any notifications of enforcement action, including suspensions and revocations, will include written information on the appeal process. This will

explain how, when and within what period an appeal may be brought and on what grounds.

- 13.2 Appeals against the Council's decisions must be made to the Magistrates' Court within twenty-one days of receipt of the written decision. If an appeal is lodged with the Courts within the specified time, the enforcement action, suspension or revocation will not take place until the outcome of the appeal is known.

## **14 PROSECUTION**

- 14.1 The decision to prosecute is a significant one. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate instructions of the Council are not followed or where the public are put at serious risk. Such circumstances are, however in a minority. It is important that the criteria on which a decision to prosecute is made, provide for a common standard, in order to ensure a consistent approach.
- 14.2 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following:
- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial;
  - When there appears to have been a reckless disregard for the safety of passengers or other road users;
  - Where there have been repeated breaches of legal requirements;
  - Where a particular type of offence is prevalent; and/or
  - Where a particular contravention has caused serious public alarm;
- 14.3 When circumstances have been identified that may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair and objective decision to be made.
- 14.4 Before referring a matter to the Head of Planning and Transportation Services for possible prosecution, the Transportation Manager together with the Council's Head of Legal Services, must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction, with sufficient evidence to prosecute. The prosecution must also be in the public interest. The Head of Legal Services will have regard to the Code of Crown Prosecution.
- 14.5 When a decision is being taken on whether to prosecute, the factors to be considered may include: -
- The seriousness of the alleged offence;

- The risk or harm to the public;
  - Failure to comply with a Statutory Notice served for a significant breach of legislation;
  - Disregard of safety for financial reward;
  - The previous history of the licence holder concerned;
  - Offences following a history of similar offences;
  - Failure to respond positively to past warnings;
  - The ability of any important witnesses and their willingness to co-operate;
  - The willingness of the licence holder to prevent a recurrence of the problem;
  - The probable public benefit of a prosecution and the importance of the case e.g. whether it might establish a legal precedent; and
  - Whether other action would be more appropriate or effective.
- 14.6 Once a decision has been made that prosecution is the most appropriate course of action to take, the matter will be referred, without delay, to the Council's Head of Legal Services.

## **15 DECISION-MAKING AUTHORISATIONS**

- 15.1 Prosecution may be recommended or authorised (including referral to the Police) by:
- Head of Planning and Transportation;
  - Head of Legal Services; or
  - The Appeals Committee.
- 15.2 Before a decision to prosecute is reached, the following persons will be consulted:
- Transportation Manager;
  - Hackney Carriage Officer;
  - Hackney Carriage Enforcement Officer;
  - Head of Planning and Transportation; and
  - Head of Legal Services.

## **16 REFERRAL TO OTHER REGULATORS**

- 16.1 In some cases, where there is a wider regulatory interest, the matter under investigation may merit referral to other regulators. In such cases the Officer dealing with the matter should seek guidance from the Transportation Manager as soon as is practicable.
- 16.2 The Transportation Manager will determine whether other referrals need to be made in light of their professional judgement and any appropriate statutory requirements or other codes of practice.
- 16.3 A record of all such referrals will be kept on the relevant departmental file.

## **17 REFERRAL TO OTHER COUNCIL DEPARTMENTS**

- 17.1 In some cases it may be necessary to refer an issue to other Council Departments for action; where this is the case, details must also be recorded on the relevant departmental file.

## **18 POLICY GUIDELINES FOR THE LICENSING OF NEW HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS, VEHICLES AND OPERATORS**

- 18.1 Each application is to be determined on its own merits. However, listed below are some general principles relating to the determination of applications for hackney carriage and private hire, vehicles, drivers and operators, which are to be followed. An Authorised Officer will make decisions on new applicants and only when an applicant fails to meet the conditions and wishes to proceed with the application, will the matter be referred to the Appeals Committee for hearing.

### **CONVICTIONS FOR MINOR TRAFFIC OFFENCES**

- 18.2 Applications, which include declared minor traffic offences (offences that remain on a DVLA Licence for four years, but are spent after three years) should not prevent the issuing of a licence.
- 18.3 Isolated convictions for minor traffic offences (e.g. obstruction, speeding, construction and use, etc) should not prevent the issuing of a licence. However, three or more current offences will mean that the application will be refused until only two current minor offences remain on the DVLA licence.

### **DISQUALIFICATION UNDER THE TOTTING UP PROCEDURE**

- 18.4 Applicants who have had their DVLA Licence reinstated after disqualification under the totting up procedure will be required to wait twelve months from the date the DVLA Licence has been reinstated, before making an application. In addition, the applicant will be required to report at intervals of three months for the duration of the first year of the licence to an Authorised Officer for examination of the DVLA Licence.
- 18.5 Applicants with Isolated offences for driving without due care and attention may be granted a licence, but would normally merit a written warning as to the

future driving standards, and to report at intervals of three months for the duration of the first year of the licence to an Authorised Officer. However, any further offences would result in referral to the Appeals Committee.

### **FAILURE TO DISCLOSE MINOR TRAFFIC OFFENCES ON THE APPLICATION FORM**

- 18.6 Where an applicant has failed to disclose one or more driving offences on their application form and such offences are subsequently uncovered during a DVLA check, the applicant will be refused a licence, as it is considered that there was a premeditated intent to deceive.

### **SERIOUS DRIVING OFFENCE**

- 18.7 Convictions for serious driving offences (offences that remain on a DVLA Licence for eleven years, but are spent after ten years)
- 18.8 An applicant with a conviction for a serious driving offence such as causing death by careless driving, dangerous driving or drink driving will not be considered for licensing for three years from the date of conviction or in the case of disqualification, three years from the date the DVLA licence is reinstated. Each case will be dealt with on its own merits.

### **DRINK DRIVING OFFENCE**

- 18.9 An applicant convicted of drink driving on the first occasion will not be considered for licensing for three years from the date the DVLA licence is reinstated.
- 18.10 An applicant with more than one offence for drink driving should raise doubts as to the applicant's suitability to hold a licence. At least five years should elapse from the date the DVLA licence is reinstated before an application is considered.
- 18.11 If there is any suggestion or reason to believe that the applicant is an alcoholic, the application should be refused. An applicant must be able to show at least three years of no alcohol dependency or continued misuse. A full medical examination from the applicants own General Practitioner confirming they have completed the appropriate treatment, must be produced before an application can be considered.

### **CONVICTION FOR DRIVING WITHOUT INSURANCE**

- 18.12 Applicants with a conviction for driving with no insurance will not be considered for licensing for three years from the date of the conviction.

### **CAUTIONS**

- 18.13 An applicant who has received a caution from the Police for committing a criminal offence would not be considered for licensing for period of at least twelve months.

### **CONVICTIONS FOR DRUNKENNESS (NOT IN A MOTOR VEHICLE)**

- 18.14 An applicant with a conviction for an alcohol related offence should be required to show a period of at least three years free of such a conviction before an application is considered.
- 18.15 If there is any suggestion or reason to believe that the applicant is an alcoholic, the application should be refused. An applicant must be able to show at least three years of no alcohol dependency or continued misuse. A full medical examination from the applicants own General Practitioner confirming they have completed the appropriate treatment, must be produced before an application can be considered.

### **CONVICTIONS FOR DRUG RELATED OFFENCES**

- 18.16 An applicant with a conviction for a drug related offence should be required to show a period of at least three years free of such a conviction before an application is considered.
- 18.17 If there is any suggestion or reason to believe that the applicant is addicted to drugs, the application should be refused. An applicant must be able to show at least three years of no drug dependency or continued misuse. A full medical examination from the applicants own General Practitioner confirming they have completed the appropriate treatment, must be produced before an application can be considered.

### **CONVICTIONS FOR INDECENCY**

- 18.18 Hackney carriage and private hire drivers often carry unaccompanied children and vulnerable passengers. Applicants with convictions for minor sexual offences for example, indecent exposure, importuning or other less serious sexual offences, should be refused a licence until they can show a period of at least five years free of such convictions, depending on the sentence.
- 18.19 Applicants with convictions for serious sexual offences, whether spent or unspent, will be refused a licence no matter what time has passed since the conviction.

### **CONVICTIONS FOR VIOLENCE**

- 18.20 Hackney carriage and private hire drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for actual bodily harm, grievous bodily harm, wounding or assault. At least three to seven years free of such convictions will be required before an application is considered, depending on the sentence.

### **CONVICTIONS FOR DISHONESTY**

- 18.21 Hackney carriage and private hire drivers are expected to be persons of trust. An applicant with a conviction for dishonesty or theft should be refused a licence until they can show a period of at least three to five years free of such convictions depending on the sentence.

## **OTHER OFFENCES AND SPECIAL CIRCUMSTANCES**

- 18.22 If an applicant has declared any other offences not listed above or the circumstances of the case justify it, an Authorised Officer may refuse the application. However, if considered appropriate, the application may be referred to the Appeals Committee for consideration.
- 18.23 When determining the rehabilitation periods for new applicants or existing licence holder who have criminal convictions or received Police cautions, the Council refer to the Rehabilitation of Offenders Act 1974 for guidance.
- 18.24 An applicant aggrieved by the refusal of a District Council to grant a licence may appeal against the Council decision to the Magistrates Court.

## **19 GUIDELINES FOR DEALING WITH OFFENCES COMMITTED DURING THE TERM OF A LICENCE**

- 19.1 The holder of a hackney carriage or private hire vehicle, driver or operators licence must report, to an Authorised Officer, in writing or in person within seven days details of all criminal convictions and driving offences, which occur during the duration of their licence.
- 19.2 Breaches of the relevant legislation or conditions attached to vehicle, driver, and operator licences may come to light following complaints, enforcement action or investigations. The action to be followed in response to such matters will be determined on their own merits, but set out below are some general principals which may be followed.
- 19.3 An Authorised Office may deal directly with less serious and first breaches or contraventions without referring the matter to the Appeals Committee. The Transportation Manager may choose to take no action or may issue a written warning.
- 19.4 The Transportation Manager may deal with the following matters:
- First contraventions or breaches to the licence conditions and regulations;
  - Less serious complaints received with regard to the licence holder;
  - Conflict between licence holders;
  - Conduct towards Council Officers; and
  - Failing to produce documents.

## **CONVICTIONS FOR MINOR TRAFFIC OFFENCES**

- 19.5 In the case of a single conviction no action will normally be warranted. However, if more than one offence is declared, and the DVLA Licence shows three or more offences in the previous three years, then a written warning as to future driving standards will be issued and the licence holder will be

required to present their DVLA Licence to an Authorised Officer at intervals of three months for a period of twelve months.

- 19.6 Council Licence Conditions state that a Licence Holder must not have been convicted of three or more motoring offences in the previous three years.

### **CONVICTIONS OF A SERIOUS TRAFFIC OFFENCE**

- 19.7 If a licence holder is convicted of a serious offence including no insurance, causing death by careless or dangerous driving and the DVLA licence is not disqualified the matter will be referred to the Appeals Committee. The actions taken by the Appeals Committee will be dependent on the facts of the case and the representations made.
- 19.8 A formal written warning with the imposition of the three-month document inspection at the Council Offices may be an appropriate decision. However, if the offence is particularly serious, or a written warning was issued previously, or if the circumstances warrant it, a suspension or revocation of the licence may be imposed.
- 19.9 The Appeals Committee may decide to revoke if after due consideration it is decided that there is a possibility of further offences being committed, then revocation of the licence may be justified. On the other hand if the offence was thought to be isolated and out of character a lesser penalty such as a suspension of the licence may be imposed.
- 19.10 If the DVLA Licence is disqualified the hackney carriage or private hire drivers licence must be revoked. If a driver wishes to re-apply for a hackney carriage or private hire driver's licence they will be treated as a new applicant and will not be considered for licensing until three years has elapsed since the reinstatement of the DVLA licence.
- 19.11 Council Licence Conditions state that a licence holder must not have been convicted of a serious motoring offences, in the previous three years.

### **DISQUALIFICATION FROM DRIVING FOLLOWING THE 'TOTTING UP' PROCEDURE**

- 19.12 When a driver is disqualified under the totting up procedure and therefore ceases to have a valid DVLA Licence, the hackney carriage or private hire driver's licence must be revoked.
- 19.13 When the DVLA Licence has been reinstated the driver will be treated as a new applicant and will be required to meet the qualifying criteria.
- 19.14 Council Licence Conditions state that a licence holder must not have been convicted of three or more motoring offences or a serious motoring offence in the previous three years.

## **DISQUALIFICATION FOR DRINK DRIVING**

- 19.15 If a driver is disqualified for drink driving and therefore ceases to have a valid DVLA Licence, the hackney carriage or private hire driver's licence must be revoked.
- 19.16 If a driver wishes to re-apply for a hackney carriage or private hire driver's licence they will be treated as a new applicant and will not be considered until three years has elapsed since the reinstatement of the DVLA licence.
- 19.17 Council Licence Conditions State that a licence holder must not have been convicted of a serious motoring offences, in the previous three years.

## **FAILURE TO REPORT A CONVICTION**

- 19.18 The failure to report a driving conviction within the required seven days of receiving the conviction will be dealt with by issuing a written warning by an Authorised Officer. This is in addition to any further actions, which may be warranted by the nature of the offence and the number of current offences on the DVLA Licence. The driver will be required to present their DVLA Licence to an Authorised Officer at intervals of three months for a period of twelve months.

## **FAILURE TO REPORT AN ACCIDENT**

- 19.19 Failure to report an accident, to the Council, that causes damage to the licensed vehicle within the required seventy-two hours, will normally be dealt with by issuing a written warning by an Authorised Officer.

## **DEFECTIVE VEHICLE**

- 19.20 During routine enforcement or following the investigation of a complaint, an Authorised Officer identifies a defect on a licensed vehicle that could affect the safety of that vehicle, the Authorised Officer will issue a statutory vehicle suspension notice. The notice will suspend the vehicle from use with immediate effect, until the defect is rectified and the statutory vehicle notice certified by an Authorised Officer.

## **REFUSAL TO CARRY A PASSENGER IN A HACKNEY CARRIAGE VEHICLE**

- 19.21 If a licence holder refuses to carry a passenger in a hackney carriage vehicle, he will be invited to state the reasons for his actions and if the Authorised Officer is satisfied that the licence holder had a justifiable reason to refuse the passenger, then no action will be taken. If, however, there appears to be no acceptable justification for the refusal, the matter will normally be dealt with by the issue of a written warning by an Authorised Officer. Subsequent offences will result in referral to the Appeals Committee.

### **PRIVATE HIRE VEHICLE PLYING FOR HIRE**

- 19.22 This will result in the issue of a written warning by an Authorised Officer. Subsequent contraventions will result in referral to the Appeals Committee.

### **EXCEEDING THE ALLOWED NUMBER OF PASSENGERS**

- 19.23 This will result in the issue of a written warning by an Authorised Officer. Subsequent contraventions will result in referral to the Appeals Committee.

### **OVERCHARGING**

- 19.24 This will result in the issue of a written warning by an Authorised Officer. Subsequent contraventions will result in referral to the Appeals Committee

### **TOUTING FOR BUSINESS**

- 19.25 This will result in the issue of a written warning by an Authorised Officer. Subsequent contraventions will result in referral to the Appeals Committee.

### **UNAUTHORISED ADVERTISING ON A LICENSED HACKNEY CARRIAGE OR PRIVATE HIRE VEHICLE**

- 19.26 This will result in the issue of a deferred statutory vehicle notice for the advertisement to be removed within twenty-four hours and for the vehicle to be presented for inspection at a time stated on the notice, without the offending advert. Subsequent contraventions will result in a written warning followed by referral to the Appeals Committee.

### **FAILURE TO DISPLAY A LICENCE PLATE**

- 19.27 This will result in the issue of a deferred statutory vehicle notice for the plate to be positioned in accordance with the Council's Licence Conditions and for the vehicle to be presented for inspection at a time stated on the notice. Subsequent contraventions will result in a written warning followed by referral to the Appeals Committee.

### **FAILURE TO WEAR A LICENCE BADGE**

- 19.28 This will result in three recorded verbal warnings followed by a written warning. Persistent failure to wear the licence badge will result in the referral to the Appeals Committee.

### **BREACH OF THE DRIVER'S DRESS CODE**

- 19.29 This will depend on circumstances, but would result in the issue of a written warning. Persistent contraventions will result in referral to the Appeals Committee.

## **CONFIRMED COMPLAINTS OF RUDE OR AGGRESSIVE BEHAVIOUR**

- 19.30 In less serious cases, a written warning as to the licence holder's future conduct will be given. However, if the nature or level of aggression leads an Authorised Officer to be concerned about public safety, the matter will be referred to the Appeals Committee.

## **FAILURE TO COMPLY WITH A LAWFUL REQUIREMENT, OR INSTRUCTION FROM AN AUTHORISED OFFICER OF THE COUNCIL OR POLICE CONSTABLE**

- 19.31 The licence holder is legally obliged, under the relevant legislation, to comply with a number of requirements or instructions given to them by an Authorised Officer of the Council or a Police Constable. These would include, for example the production of licences, and insurance certificates, MOT test certificate, medical certificates or the surrender of licences or plates following suspensions or revocations.
- 19.32 Where the licence holder has failed to produce a document on time, but subsequently does so, the Authorised Officer will issue a written warning.
- 19.33 Where the licence holder does not produce the documents, despite reasonable requests to ensure they do so, the matter will be referred to the Appeals Committee.
- 19.34 Where a driver or proprietor has failed to return a licence plate following a suspension or revocation of a licence, the only course of action open is to recommend prosecution.

## **OBSTRUCTING AN AUTHORISED OFFICER OF THE COUNCIL OR A POLICE CONSTABLE IN THE EXECUTION OF HIS DUTIES**

- 19.35 If the licence holder has, obstructed an Authorised Officer of the Council or a Police Constable in carrying out their duties under the statutes, it will be considered very serious, the matter will be referred to the Appeal Committee and may result in a prosecution, if the evidence supports it.

## **20 MATTERS TO BE DEALT WITH BY THE APPEALS COMMITTEE**

- 20.1 The Committee will be asked to deal with the more serious breaches in licence conditions, legislation, regulations and offences and will determine the most appropriate action.
- 20.2 The Committee will also deal with matters where further offences/breaches have occurred within two years of the issue of a written warning or other informal action by an Authorised Officer.
- 20.3 Whilst it is not possible to cover every conceivable offence/breach, listed below are those specific matters, which will be referred to the Appeals Committee. The Committee may decide to take any of the actions open to them dependent on the facts of each particular case, however, also listed below are some general suggestions as to appropriate actions to take.

## **PERSISTENT FAILURE TO COMPLY WITH THE CONDITIONS OR INSTRUCTIONS FROM AN AUTHORISED OFFICER OF THE COUNCIL OR A POLICE CONSTABLE**

- 20.4 In circumstances where a licence holder has failed to comply with a lawful requirement of an Authorised Officer of the Council or Police Constable, despite all reasonable requests, the matter will be referred to the Appeals Committee who will decide what action to take having regard to any reasons made for such failure. This may involve either a suspension or revocation of a licence.

## **OTHER CONTRAVENTIONS NOT SPECIFICALLY MENTIONED**

- 20.5 Any offence/breach, which, in the opinion of the Transportation Manager, is best dealt with by the Appeals Committee, may be brought before them. Such cases, which may include those where requirements have been persistently breached and where warnings have not been heeded, will be decided in the light of the facts of the case and the representations made.
- 20.6 Any penalty imposed must be proportionate to the seriousness of the offence and the over riding requirement to ensure public safety, this may involve the suspension or revocation of a licence.

## **POLICE CAUTION**

- 20.7 If the licence holder accepts a Police caution the matter must be referred to the Appeals Committee who will carefully consider the facts of the case and decide whether the licence holder is a fit and proper person to continue to hold such a licence
- 20.8 If after due consideration it is decided that there is a possibility of further offences being committed, then revocation of the licence may be justified.
- 20.9 On the other hand if the offence was thought to be isolated and out of character a lesser penalty such as a short suspension or a formal written warning may be imposed.
- 20.10 Council Licence Conditions state that a licence holder must not have been cautioned by the Police for a criminal offence in the previous twelve months.

## **CONVICTION**

- 20.11 A licence holder that is convicted of an offence will be referred to the Appeals Committee who will carefully consider the seriousness of the offence and the sentence imposed. They must consider the facts of the case and decide whether the licence holder is a fit and proper person to continue to hold such a licence.
- 20.12 In most cases, a conviction of a criminal offence should result in the revocation of the licence, however, if the offence was less serious, unrelated and out of character a lesser penalty including a suspension or a formal written warning may be sufficient.

20.13 Council Licence Conditions state that a licence holder must not have been convicted of an offence in the previous three years.

20.14 Council Licence Conditions state that a licence holder must not have been convicted of a serious offence in the previous seven years.

## **21 APPEAL COMMITTEE DECISIONS**

21.1 The Appeals Committee must ensure that the decision made when determining the suitability of new applicants for licensing who fail to meet the Council's pre licensing criteria, are appropriate, fair and consistent.

21.2 The Appeals Committee must ensure that the decisions made when determining the suitability of existing licence holder, for no longer meeting the qualifying criteria or failing to comply with the regulations and legislation, are appropriate, fair and consistent.

21.3 Matters to be taken into consideration when determining the suitability of a new applicant or existing licence holder are:

- Nature of conviction or offence;
- Penalty imposed by the Police or Court;
- Previous record;
- Seriousness of breach or contravention;
- Whether the breach, contravention or offence was out of character;
- Whether the breach, contravention or offence was isolated;
- Conduct and manner at the Appeal Committee Hearing;
- Whether there has been a clear disregard of the conditions attached to the licence;
- Whether there was a monetary gain from the breach or contravention;
- Whether there was an intension to deceive the Council to obtain or retain a licence;
- Whether there is any risk to the travelling public; and
- Whether the applicant or the licence holder is a fit and proper person to hold or continue to hold a licence.

21.4 When all these matters are taken into consideration the Appeals Committee have a number of options open to them. Previous decisions made by the Appeal Committee, with background information on each case for guidance, will be available to the Committee at each Appeal Hearing.

## **22 NEW APPLICANTS**

- 22.1 New applicants appealing to Committee for licensing will attend a hearing and present their case for determination. Committee will refer to the Council's pre-licensing conditions and decide whether the applicant is a fit and proper person to hold a licence.
- 22.2 The Committee may either refuse to grant the licence or issue the licence subject to meeting any other conditions of the licence, for example passing a medical examination and a knowledge test.
- 22.3 If the Committee grant the licence they may attach additional conditions that are reasonable and justified, for example that the DVLA licence be produced to an Authorised Officer every 3 months for the first twelve months of the licence.
- 22.4 Refusal by the Appeal Committee to grant the licence or attach conditions to that licence gives the applicant a right of appeal to the Magistrates court.

## **23 EXISTING LICENCE HOLDERS**

- 23.1 Existing licence holders appealing to Committee to retain their licence for a breach in conditions or legislation or for a serious complaint or obtaining a Police caution, conviction or offence, will be required to present their case before the Committee for determination.
- 23.2 The decisions open to the Appeals Committee when determining the suitability of existing licence holders are set out in item 6 of this Policy.
- 23.3 Committee may attach reasonable conditions to the licence, for example if the licence holder has received complaints regarding the standard of their driving, the Committee may decide to send the licence holder on a Driving Standard Agency driving test.
- 23.4 When the Committee decides to suspend or revoke a licence they must first determine what licence or licences are held by the licence holder and which licence is the most appropriate to suspend or revoke. This could be one or more of the licences held by the licence holder. These could be:
- Hackney carriage drivers licence;
  - One or more hackney carriage vehicle licences;
  - Private hire drivers licence;
  - One or more private hire vehicle licences; and/or
  - Private hire operators licence.
- 23.5 The Committee must determine the relevance of the breach, contravention or offence in relation to the licence. The following paragraphs are intended as general guidance.

- 23.6 If the matter relates to the maintenance of the licensed vehicle, failure to produce vehicle documents or continuous vehicle documents, the Committee may decide to suspend or revoke the licence holders hackney carriage or private hire vehicle licence or licences. In these circumstances the licence holder may retain his hackney carriage or private hire drivers licence and continue to drive for another licensed proprietor.
- 23.7 If the matter relates to complaints about the licence holder's driving ability, conduct or breaches in the regulations or driver licence conditions, the Committee may decide to suspend or revoke the licence holder's hackney carriage or private hire driver's licence. In these circumstances if the licence holder has a licensed vehicle they may appoint a licensed driver to drive that vehicle.
- 23.8 If however, the matter relates to a serious complaint or breach in conditions or if the licence holder has been cautioned by the Police, or has been convicted of a criminal offence since the licence was issued, Committee may decide to suspend or revoke all licences held. Committee should only consider the revocation of all licences held if it is determined that the licence holder is no longer a fit and proper person to continue to hold such licences.
- 23.9 If the matter refers to the operation of a private hire business in relation to failing to maintain records, failing to comply with conditions of licence or breaching the legislation, the Committee may decide to suspend or revoke the private hire operators licence.