

Appendix D

Hackney Carriage and Private Hire Enforcement Management System

It is the policy of Cambridge City Council to ensure that proprietors, drivers and operators are licensed and carry out their trade in accordance with both the relevant law and the conditions attached to the licences. This will ensure a safe and secure Hackney Carriage and Private Hire Service.

In relation to private hire operators' licences and both hackney carriage and private hire drivers' licences the Council cannot grant or renew a licence unless they are satisfied that the applicant is a fit and proper person to hold the licence.

The enforcement management system is intended to fairly and firmly enforce the law in a consistent and transparent way.

The City Council has a duty to enforce a wide range of statutes relating to:

- ☐ public health and safety,
- ☐ quality of life,
- ☐ preservation of public and residential amenity
- ☐ maintenance of the environment and
- ☐ protection of public funds.

All of these activities will be carried out having regard to the general principles of good enforcement practice outlined in our Corporate Enforcement Policy.

The Council's graduated approach to enforcement is based on the principles of:

- ☐ Courtesy and Helpfulness
- ☐ Clear Standards and Practices
- ☐ Consistency
- ☐ Openness
- ☐ Proportionality; and
- ☐ Training of drivers, proprietors and operators

Achieving and maintaining a consistent approach to making decisions about taxi licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, the guidelines must be considered and followed. Enforcement action will be related to the seriousness of the breach and the

possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.

When making enforcement decisions, Authorised officers will take this enforcement management system into account. Any departure from this must be fully considered, exceptional, capable of justification, and must be endorsed by the Commercial & Licensing Manager or more senior officer before the decision is implemented.

1. Enforcement Options

Licence application and enforcement decisions must always be consistent, balanced, proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the:

- ☐ seriousness of any offences
- ☐ driver, proprietor or operator's past history
- ☐ consequence of non-compliance
- ☐ likely effectiveness of the various enforcement options
- ☐ public safety

Having considered all relevant information and evidence, the choices for action are applicable to:

a) Licence Applications:

- ☐ Grant licences subject to the Council's Hackney Carriage and Private Hire Licensing Policy requirements and such conditions as the Council deems necessary and proportionate; or
- ☐ Refuse to grant or renew a licence.

b) During the life of a Licence:

Enforcement action:

No action

In instances where a complaint has been received from an anonymous source or insufficient information is given.

Informal action

Includes offering advice, verbal or informal written warnings, interviews, and the use of letters to secure compliance with legislation/policy.

Such 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
- ☐ It can be reasonably expected that informal action will achieve compliance, perhaps by taking into account the individual driver, proprietor or operator's past history
- ☐ Confidence in the operator's management is high
- ☐ The consequences of non-compliance will not pose a significant risk to the safety of the public

Suspension or revocation of a driver's licence

In instances where the Council is satisfied that a driver poses a significant immediate risk to public safety then the Environmental Health Manager has the delegated authority to issue an immediate suspension or revocation to the driver in question by the powers provided by Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.

Suspension or revocation of a vehicle licence

The Council may issue a suspension or revocation of a vehicle licence under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 for any of the following grounds:

- ☐ That the hackney carriage or private hire vehicle is unfit for use
- ☐ Any offence under, or non-compliance with, the provisions of the 1847 or 1976 Acts
- ☐ Any other reasonable cause.

Any decision to suspend or revoke a vehicle licence will be accompanied by notification in the form of a letter to the licence holder.

The licence holder can appeal a decision to suspend or revoke a vehicle licence by applying to the Magistrates' Court within 21 days of the decision be made.

Immediate vehicle suspension notice

Under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976 an authorised officer can issue a suspension notice to any hackney carriage or private hire vehicle deemed to be 'unfit'.

If the authorised officer is not satisfied as to the fitness of the vehicle or the accuracy of the taximeter, the officer may give notice in writing to require the proprietor of the vehicle to make the vehicle available for further inspection and testing at such reasonable time and place as specified in the notice, and suspend the licence until such time as the officer is satisfied that the vehicle or meter is again fit for purpose. This may involve the affixing of a non-removable 'Licence Suspended' sticker to the licence plate of the vehicle.

The suspension notice will remain in place until such time as the Officer issuing the notice is satisfied that the grounds for suspension have been satisfactorily resolved. Written confirmation of the lifting of the suspension notice will be given. The responsibility for a replacement licence plate will fall to the licence holder.

If the Authorised Officer or constable who issued the suspension notice is not satisfied as to the fitness of the vehicle or its taximeter before the expiration of a period of two months, the licence will, by virtue of the provisions of section 68, be deemed to have been revoked.

Where a licence is deemed to be revoked, the Council will write to the proprietor of the vehicle giving notice of the grounds on which the licence has been revoked within 14 days of the deemed revocation.

The proprietor may appeal to the Magistrates' Court.

Simple cautions

A simple caution may be used as an alternative to a prosecution in certain circumstances.

The purposes of the simple caution are to:

- ☐ Deal quickly and simply with less serious offences
- ☐ Divert less serious offences away from the Courts
- ☐ Reduce the chances of repeat offences

To safeguard the suspected offender's interests, the following conditions must be fulfilled before a caution is administered:

- ☐ There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction
- ☐ The suspected offender must admit the offence
- ☐ The suspected offender must understand the significance of a simple caution and give informed consent to being cautioned

If there is insufficient evidence to consider taking a prosecution, then by implication, the criteria are not satisfied to enable the offer of a simple caution. A simple caution should also not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

Where a person declines the offer of a simple caution, it will be necessary to consider taking a prosecution.

Prosecution

The decision to prosecute is a significant one as a conviction may impact on the licence holder's future employability. Prosecution will, in general, be appropriate for circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are in a minority. The criteria on which a decision to prosecute is made should ensure a consistent approach.

When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair and objective decision to be made.

Referral to the Licensing Sub-Committee

A licence holder may be asked to appear before the licensing sub-committee to answer allegations of breaches of relevant legislation, byelaws or conditions attached to licences or a contravention of the Council's Hackney Carriage and Private Hire Licensing Policy. Prior to this, the licence holder may be provided with warnings, depending on the seriousness of the complaint or contravention. Section 2 provides a guide to the action that the Commercial & Licensing team is likely to take in response to these matters.

The Licensing Sub-Committee will consider whether, in all the circumstances of the case, including the underlying facts of the incidents, including the incidents on previous occasions, the licence holder is a fit and proper person to hold a licence. The Licensing sub-committee will consider whether there is reasonable cause to suspend or revoke a licence.

When considering an application or the standing of a licence holder the Committee may decide to take one or more of the following actions

- ☐ no action
- ☐ a formal written warning
- ☐ require the production of driving licences or other specified documentation at the Council's Office
- ☐ suspend a licence
- ☐ revoke a licence
- ☐ recommend consideration of prosecution action
- ☐ other appropriate action as deemed necessary

The Taxi Regulatory Committee Hearings Procedure can be found in Section 3.

Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

Any written documentation issued or sent will: -

- ☐ contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated
- ☐ indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen
- ☐ clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement

2. Enforcement Action

To achieve a stepped approach to enforcement, the Council will generally take the appropriate action when:

- ☐ a licence applicant falls under any of the points in the stated enforcement management table
- ☐ a licence holder breaches a licence condition
- ☐ a licence holder commits an offence
- ☐ a complaint is received about the conduct of a licence holder or condition of a vehicle; and
- ☐ there is a combination of the above

At any stage in the process, Officers may, if they consider it appropriate to do so, refer a licence applicant or holder to the Licensing Sub-Committee or Environmental Health Manager for a decision as to whether the licence holder continues to be a fit and proper person to be granted or to hold a licence.

The information below gives an indication of the likely action that the Council will take. However, each case will be considered individually and, in exceptional circumstances, the Council may deviate from this in order to take the necessary and appropriate enforcement action.

Furthermore, specific consideration will be given to the points relating to license applicants by the Environmental Health Manager, and subsequently the Licensing Sub-Committee, so that they may exercise their discretion to grant or renew a licence or to suspend or revoke an existing licence.

Level 1 Enforcement

1. A breach of a Licence Condition by a licence holder.
2. A road traffic offence by a licence holder witnessed by an Enforcement Officer of Cambridge City Council, Cambridgeshire County Council or Police (e.g. driving whilst using a mobile phone).
3. Two complaints of a similar nature in a 12 month period (when a complaint concerning a licence holder is received the complaint will be investigated and the licence holder will be invited to provide comments in writing. The officer will decide whether they consider, on the balance of probabilities, that the complaint is justified) and/ or breaches of the Code of Conduct within a 12 month period.

4. Any road traffic offence or combination of offences that resulted in the accrual of penalty points except whether the number of points accrued means that the licence holder falls within Level 3 Enforcement.
5. The licence holder fails to return a Temporary Medical Exemption Notice to the Licensing and Enforcement Team within 7 days of the expiry date.
6. Where the licence holder fails to update the licensing authority on relevant information as set down in the Hackney Carriage & Private Hire Licensing Handbook or where the licence holder fails to comply with any of the requirements set down in the Handbook.
7. Any other relevant minor contravention on non-compliance identified that does not fall into one of the above categories.
8. A combination of the above in addition to one complaint received.

Action

The individual will be invited to provide a formal response in writing and appropriate action will be taken, which may include the issue of a Level 1 informal written warning to the driver reminding them of expected standards.

Level 2 Enforcement

1. The licence holder has received a simple caution for an offence under
 - ☐ Town Police Clauses Act 1847
 - ☐ Part II of the Local Government (Miscellaneous Provisions) Act 1976
 - ☐ Part IV of the Transport Act 1980
 - ☐ Part I of the Health Act 2006
 - ☐ Chapter 1 of Part 12 of the Equality Act 2010
2. A substantiated complaint has been received regarding the conduct of the licence holder (other than an offence) or the condition of a vehicle.
3. The licence holder has committed an offence under
 - ☐ Town Police Clauses Act 1847
 - ☐ Part II of the Local Government (Miscellaneous Provisions) Act 1976
 - ☐ Part IV of the Transport Act 1980
 - ☐ Part I of the Health Act 2006
 - ☐ Chapter 1 of Part 12 of the Equality Act 2010

Where legal proceedings are not instigated.

4. The licence holder breaches two licence conditions or two road traffic offences by the licence holder are witnessed by an Enforcement Officer of Cambridge City Council, Cambridgeshire County Council or the Police (e.g. driving whilst using a mobile telephone), or one of each occurs within a 12 month period.
5. The licence holder has committed an action covered in Level 1 where they have been written to by an officer of the Commercial & Licensing Team in the previous 12 month period and reminded of the expected standards.
6. The licence holder has committed any offence relating to the Policing and Crime Act 2014.

Action

The individual will be interviewed by an officer of the Licensing and Enforcement team and the appropriate action will be taken, which may include the issue of a Level 2 informal written warning.

Level 3 Enforcement

1. The licence holder has committed an action covered in Levels 1 and 2 where they have been interviewed by an officer of the Commercial & Licensing Team in the previous 12 month period and a final written warning has been given.
2. The licence holder or licence applicant has been convicted of any offence of a sexual nature which is not spent under the Rehabilitation of Offenders Act 1974.
3. The licence holder or licence applicant has been convicted of any offence involving possession, supply of drugs or a related offence which is not spent under the Rehabilitation of Offenders Act 1974.
4. The licence holder or licence applicant has been convicted of any offence involving dishonesty which is not spent under the Rehabilitation of Offenders Act 1974.
5. The licence holder or licence applicant has been convicted of any offence involving violence which is not spent under the Rehabilitation of Offenders Act 1974.
6. The licence holder or licence applicant has been convicted within the last 5 years of more than one offence of drunkenness or related.
7. The licence applicant has held their DVLA driver's licence for less than 2 years after its return as a result of suspension for any reason.
8. The licence holder or licence applicant has been convicted of any offence relating to alcohol and motor vehicles which is not spent under the Rehabilitation of Offenders Act 1974.

9. The licence holder or licence applicant has been convicted within the past 3 years of any offence which has resulted in 6 or more points being attached to their DVLA driver's licence.
10. The licence holder or licence applicant has been convicted within 1 year of any combination of offences which has resulted in more than 6 points being attached to their DVLA driver's licence.
11. If at the time of application (for grant, renewal or during the life of an existing licence) the licence holder or licence applicant has more than 9 points attached to their DVLA driver's licence.
12. If the licence holder or licence applicant has one or more convictions relating to
 - ☐ Town Police Clauses Act 1847
 - ☐ Part II of the Local Government (Miscellaneous Provisions) Act 1976
 - ☐ Part IV of the Transport Act 1980
 - ☐ Part I of the Health Act 2006
 - ☐ Chapter 1 of Part 12 of the Equality Act 2010

Which is not spent under the Rehabilitation of Offenders Act 1974.

13. If the licence holder or licence applicant is found to be living or working in the UK without the required authorisation, or if they have committed any offences arising from Asylum & Immigration matters.
14. If the licence holder or licence applicant fails the initial or refresher safeguarding training test paper on three occasions or fails to complete the training as required by the Council.
15. If the licence holder or licence applicant presents a medical assessment (or makes a declaration) for consideration but does not declare them unfit to drive.
16. Upon the application for or the duration of a licence, if there is intelligence, supplementary information or any other reasonable cause where officers have concerns about the grant or the continuation of a licence.
17. Historical convictions on DBS certificates will be part of a retrospective review following the adoption of the Department for Transport's 'Statutory Taxi and Private Hire Standards'.
18. An applicant who has been suspended/refused/revoked by Cambridge City Council or another Local Authority may not be considered "fit and proper" for a period of at least 10 years from the date of the suspension/refusal/revocation. This period may be extended depending on the circumstances.

Action

The individual will be referred to the Licensing Sub Committee or the Environmental Health Manager to consider whether the licence holder or licence applicant is a fit

and proper person to hold a licence; action that may be taken includes refusal to grant a licence or the revocation, suspension or refusal to renew an existing licence.

3. Taxi Regulatory Committee Hearings Procedure

The purpose of this section is to provide a standardised procedure for hearings of taxi regulatory matters that are considered by the sub-committee. The procedure allows for all parties to exercise their right to a fair hearing.

The City Council, as licensing authority for Hackney Carriage and Private Hire matters within the City of Cambridge, has a responsibility to determine those matters within its jurisdiction. In many cases these will involve one or more of the elements in the Enforcement Management System.

All decisions regarding breaches of the Enforcement Management System will be determined by the Licensing Sub-Committee with a right of appeal to the Magistrates Court.

In certain circumstances the authority will hold a hearing. It is considered good practice that a recognised procedure is followed and that parties involved in hearings should be advised of that procedure, in advance.

An overview of the procedure is given below:

1. Information received that raises referral to the Licensing Sub-Committee:

Initial investigations by Case Officer (CO) including collating of supporting evidence and contact with any complainants for statements.

2. Interview of applicant/licence holder:

Individual invited to give statement, recorded by CO and submit any supporting evidence.

3. Preparation of report

Submitted to Licensing and Enforcement Manager and Environmental Health Manager for approval and subsequent review by Legal Services.

4. Date of hearing confirmed by Committee Services

Applicant/ licence holder informed of date of hearing and sent a copy of the report

5. Taxi Licensing Sub Committee Hearing

The case is heard by the Licensing Sub Committee who decide what action, if any, to take.

3.1 Referral to the Licensing Sub Committee

Following investigation and where the LEO considers it appropriate to do so, the LEO will prepare a report for the Sub-Committee setting out the relevant law, Council policy and the powers of the Sub-committee. The LEO will also submit any information obtained as a result of the investigation, the source of that information and any matters in dispute.

The CO will write to the applicant or licence holder, and the witnesses to tell them when and where the Sub-Committee meeting will be held.

Evidence can be given in writing or orally, by the LEO, the applicant or licence holder, or by their witness(es). There are no legal restrictions in terms of the kind of evidence that can be heard or the form in which it must be presented.

The applicant or licence holder can give evidence about her/his character in any way she/he thinks fit, e.g. by letters of reference or by calling witnesses

The CO will send the applicant or licence holder a copy of the report at least 5 working days before the hearing to give her/him the opportunity to comment on it or, if she/he chooses, to submit further written representations or additional evidence.

When presenting the report to the Sub-Committee the LEO will inform the Sub-Committee of any comments, representations or additional evidence submitted by or on behalf of the applicant or licence holder.

At any stage the applicant or licence holder may instruct someone (such as a solicitor, a friend or relative, an employer or a member of a trade organisation) to act as her/his representative. The applicant or licence holder can be represented at the hearing regardless of whether the individual attends the hearing.

If the applicant or licence holder fails to attend the hearing the Sub-Committee may decide to continue in her/his absence.

Any references in this note to an applicant or licence holder should be taken to include her/his representative.

3.2 The Hearing

Present at the hearing will be members of:

- ☐ The Taxi Regulatory Sub-Committee
- ☐ The Case Officer
- ☐ A Legal Officer (who will be the Sub-Committee's legal adviser); and
- ☐ A Committee Manager

At the start of the hearing the Chair of the Sub-Committee will open the meeting introduce the members of the committee and officers present and explain the procedure to be followed.

The committee members will decide whether members of the press and public should be excluded from the remainder of the hearing.

If a member of the Taxi Regulatory Sub-Committee becomes aware of a possible conflict of interest before or during the hearing she/he should raise this with the Head of Legal Services.

Members should not take part in hearing a case if they have a personal interest or involvement with it or the issues raised by it might be seen as affecting their impartiality, e.g. if they know the applicant / licence holder or a complainant, or they have been previously involved with the case or a closely related case in another capacity.

The LEO will outline the report and present any witnesses in support of the CO's case.

Members may ask any relevant questions of the officer or witnesses.

The Chair will invite the applicant / licence holder or her/his representative to ask questions of the Officer or witnesses. The Chair will then invite the applicant / licence holder or a representative to put their case to the committee. This will include calling any witnesses. Witnesses will be allowed into the hearing only when giving their evidence.

Members may ask any relevant questions of the applicant / licence holder and/or her/his witnesses.

When all the evidence has been offered, the Chair will invite all parties to summarise their points if they wish before confirming whether any parties have anything else they wish to say

The Chair will invite the Legal Adviser to the Sub-Committee to give any legal advice that the advisor considers to be appropriate.

The Sub-Committee will withdraw to another room to consider their decision in private. The Sub-committee may invite the Legal Advisor to join them. Any legal advice given to the Sub-Committee when they are withdrawn will be reported back to the hearing before the Chair resumes it.

The Sub-Committee may reconvene the meeting in order to seek clarification of the facts.

When the decision has been made the Chair will announce this to the applicant or licence holder.

3.3 The applicant or licence holder

Following the hearing the Council will write to the driver with formal notification of the decision of the sub-committee and inform the applicant or licence holder of the right of appeal to the Magistrates Court and the time within which appeals must be submitted.

A suspension or revocation of a licence will take effect at the end of the period of 21 days beginning with the day on which written notice of the Sub-Committee decision was given to the licence holder. The only exception to this is in the case of the suspension or revocation of a Driver Licence where the Sub-Committee have decided that the interest of public safety require the suspension or revocation to have immediate effect. The letter notifying the driver of the Sub-Committee's decision will include a statement that this is so and an explanation why. The suspension will then take effect when the letter notifying the decision is given to the driver.

Please note: In urgent cases, the Environmental Health Manager has delegated power to suspend or revoke a driver or vehicle licence.