

## CAMBRIDGE CITY COUNCIL

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REPORT OF: Jas Lally  
Head of Refuse and Environment

TO: Licensing Committee 30/01/2012

WARDS: All

### **HACKNEY CARRIAGE AND PRIVATE HIRE ENFORCEMENT POLICY**

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#### **1 INTRODUCTION**

- 1.1 On 24 October 2011, the Licensing Committee received a report to consider the responses to the consultation on the draft Hackney Carriage and Private Hire Licensing policy that consolidated and reviewed the existing Taxi Licensing policies. The policy resulted from changes to the way in which the service was delivered following the creation of the Customer Service Centre and also the Best Practice Guidance published by the Department for Transport in March 2010 on Taxi and Private Hire Vehicle Licensing.
- 1.2 The Committee resolved to adopt the policy save for the introduction of the requirement for vehicles to meet Euro Standards, which requires further consultation.
- 1.3 Additionally, the Committee requested that officers develop a draft enforcement management system in consultation with the Chair, Vice Chair and spokes that would be brought to a future Licensing Committee meeting for Member consideration prior to the appropriate public consultation.
- 1.4 The draft enforcement policy is attached to the report as Appendix A. Section 2 of the policy will outline the graduated steps that the Council will take when a Licence holder breaches a Licence condition or commits an offence, or when complaints are received about the conduct of a Licence holder or the condition of a vehicle. The purpose of this section is to ensure that Officers take a consistent approach with all Licence holders and also to make the Licence holders aware of what action will be taken as a result of their actions. There are two options put

forward for Section 2 of the enforcement policy and these are set out in paragraphs 3.5 & 3.6 of the report.

- 1.5 The first option is set out in paragraph 3.5 of the report. It is a penalty point scheme that lists when and how many penalty points will be allocated in each circumstance and also what action will be taken on the accumulation of penalty points. The second option is set out in paragraph 3.6 of the report. It lists the graduated enforcement steps and the circumstances under which each action will be taken.
- 1.6 Under each option for Section 2, a Licence holder will be referred to the Licensing Sub-Committee when they fall within the Council's grounds for disbarment.
- 1.7 On referral to the Licensing Sub-Committee, each case will be considered on its individual merits. It is not intended that the enforcement policy will fetter the discretion of the Licensing Sub-Committee to suspend or revoke a Licence, to refuse to renew a Licence or to take no action, as they see fit. The Members will consider the facts of the cases that resulted in the referral to Committee and any previous enforcement actions taken by Officers prior to referral (e.g. warning letters, final warnings etc.). To avoid double jeopardy, Members will only consider the facts of the case that resulted in the Licence holder being referred to the Sub-Committee.
- 1.8 On final approval of the enforcement policy (following consultation), it will be attached to the 'Taxi Guide' as Appendix 3.

## **2. RECOMMENDATIONS**

### **2.1 Members are recommended:**

To agree to consult on the draft enforcement policy (Appendix A) with the two alternatives for Section 2 of the policy as set out in paragraphs 3.5 & 3.6 of the report.

## **3. BACKGROUND**

- 3.1 Cambridge City Council must ensure that proprietors, drivers and operators are correctly licensed and that they carry out their trade in accordance with the relevant law and the conditions attached to the Licences.
- 3.2 An enforcement policy allows for a firm yet fair application of the law in a consistent and transparent way. The Council is in agreement with the

provisions of the Government's Enforcement Concordat, which is reflected in the Councils' Common Enforcement Policy. This underpins all service or topic specific enforcement policies adopted by the Council and represents a graduated approach to enforcement.

3.3 Section 1 of the enforcement policy outlines the enforcement options that are available to the Council. This section refers to the issuing of fixed penalty notices under the Health Act 2006. These are an alternative to prosecution and are included as an enforcement option in the Council's Enforcement Policy. A fixed penalty notice under the Health Act 2006 may be issued by an authorised officer who has reason to believe that a person has been smoking in a licensed vehicle or that a person has failed to display the statutory 'no smoking' sign prominently in each compartment of a licensed vehicle.

3.4 Section 2 of the enforcement policy will outline the action that Officers will take when a Licence holder breaches a Licence condition or commits an offence, or when complaints are received about the conduct of a Licence holder or the condition of a vehicle. There are two proposals put forward for this section. The first is a penalty point scheme and the second is a table of actions. Each option refers to offences under legislation that the Council enforces (e.g. Town Police Clauses Act 1847, Local Government (Miscellaneous Provisions) Act 1976). These offences are listed and described in Appendix B.

### 3.5 Option 1 – Penalty point Scheme

The Council generally will take a stepped approach to enforcement when:

- 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
- there is a combination of the above

In these cases, the Licence holder will accrue points as outlined below.

#### Licence Conditions

	Points
Breach of a Hackney Carriage or Private Hire Vehicle Licence condition, or a Private Hire Driver Licence condition	3

## Offences

	Points
A conviction for an offence under the 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.	8
A simple caution for an offence under the 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 or Chapter 1 of Part 12 of the Equality Act 2010.	6
Committing an offence under the 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 or Chapter 1 of Part 12 of the Equality Act 2010, where legal proceedings are not instigated.	4
A conviction of any of the following: <ul style="list-style-type: none"><li>• An offence of a sexual nature,</li><li>• An offence involving possession, supply of drugs or related offence</li><li>• An offence involving dishonesty</li><li>• An offence involving violence</li><li>• An offence relating to alcohol and motor vehicles</li></ul> Or two convictions within 5 years of an offence related drunkenness	12
A road traffic offence committed that resulted in 1-5 points being attached to a drivers licence	6
A combination of road traffic offences committed that resulted in a total of 6 or more points being attached to a drivers licence within the past 1 year	6
Any combination of road traffic offences committed that resulted in more than 9 points being attached to a drivers licence	6
A road traffic offence committed that resulted in 6 or more points being attached to a drivers licence	12

## Complaints

	Points
Substantiated complaint regarding the conduct of the Licence holder (other than an offence) or the condition of a vehicle	4

A second or subsequent unsubstantiated complaint of a similar nature to the first in a 12-month period, regarding the conduct of the Licence holder (including an offence) or the condition of a vehicle**	3
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*\*\*With regard to the first unsubstantiated complaint, the complaint will be investigated and the Licence holder will be invited to provide comments in writing, but in the absence of sufficient evidence to substantiate the complaint, no points will be accrued.*

#### Offences witnessed by an Officer

	Points
Road traffic offence witnessed by an Officer (e.g. driving whilst using a mobile phone)	3

#### Outcome

If any incident covers a number of areas (e.g. breach of statutory obligation and breach of Licence condition), the maximum number of points accrued will be capped at whichever area has the highest number of points. E.g. if a Licence holder is found to be breaching 2 conditions of a Licence, the number of points would be capped at 3 instead of 6 points being allocated.

The enforcement action that will be taken will generally be as follows:

Number of Points accrued in a rolling 12-month period	Action
3	Letter of warning and invitation to provide a formal response in writing
4-7	Interviewed by an Officer of the Licensing section and reminded of conduct expected
8-11	Interviewed by an Officer of the Licensing section and a final written warning given
12+	Referred to the Licensing Sub-Committee to consider the revocation or refusal to renew the relevant Licence.

Points will only cease to apply on the passing of 12 months from the date of the action by the Licence holder that resulted in the accrual of the points (i.e. date of offence, date of incident that resulted in complaint

etc). If a Licence holder is referred to the Licensing Sub-Committee but no action is taken, the points will remain effective and the incident will again be considered if further points are accrued.

The above table 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 the above in order to take the appropriate enforcement action.

### 3.6 Option 2 – Table of Enforcement Actions

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

- 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
- there is a combination of the above

<b>I</b>	<p><b>Letter of warning and invitation to provide a formal response in writing for any of the following:</b></p> <ul style="list-style-type: none"> <li>i) A Licence condition is breached;</li> <li>ii) A road traffic offence is witnessed by an Officer of the Licensing section (e.g. driving whilst using a mobile phone);</li> <li>iii) Two unsubstantiated complaints of a similar nature in a 12-month period**; or</li> <li>iv) Any road traffic offence or combination of offences that resulted in the accrual of penalty points except where the number of points accrued means that the Licence holder falls within IV.</li> </ul>
<b>II</b>	<p><b>Interviewed by an Officer of the Licensing section and reminded of expected standards for any of the following:</b></p> <ul style="list-style-type: none"> <li>i) A simple caution for an offence under the 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;</li> <li>ii) Substantiated complaint regarding the conduct of the Licence holder (other than an offence) or the condition of a vehicle;</li> <li>iii) An offence under the 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</li> </ul>

	<p>Act 2006, Chapter 1 of Part 12 of the Equality Act 2010 where legal proceedings are not instigated;</p> <p>iv) Two Licence conditions are breached or two road traffic offences are witnessed by an Officer of the Licensing section (e.g. driving whilst using a mobile phone), or one of each occurs within a 12 month period; or</p> <p>v) Three unsubstantiated complaints of a similar nature in a 12-month period.</p>
<b>III</b>	<p><b>Interviewed by an Officer of the Licensing section and a final written warning given for any of the following:</b></p> <p>i) A conviction for an offence under the 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;</p> <p>ii) The Licence holder commits an action resulting in them falling under li)-ii) or lli)-iii) where they have been interviewed by an Officer of the Licensing section in the previous 12-month period and reminded of expected standards.</p> <p>iii) Four unsubstantiated complaints of a similar nature within a 12-month period.</p>
<b>IV</b>	<p>Referred to the Licensing Sub-Committee to consider the revocation or refusal to renew the relevant Licence for any of the following:</p> <p>i) The Licence holder commits an action resulting in them falling under li)-ii) or lli)-iii) where they have been interviewed by an Officer of the Licensing section in the previous 12-month period and a final written warning has been given; or</p> <p>ii) Five unsubstantiated complaints of a similar nature within a 12-month period; or</p> <p>in accordance with the Council's grounds for disbarment</p> <p>iii) An unspent conviction of any offence of a sexual nature; or</p> <p>iv) An unspent conviction of any offence involving possession, supply of drugs or related offence; or</p> <p>v) An unspent conviction of any offence involving dishonesty; or</p> <p>vi) An unspent conviction for any offence involving violence; or</p> <p>vii) A second conviction within 5 years of an offence related drunkenness; or</p> <p>viii) An unspent conviction of any offence relating to alcohol and</p>

	<p>motor vehicles; or</p> <p>ix) An offence committed that resulted in 6 or more points being attached to a drivers licence; or</p> <p>x) Any combination of offences committed that result in a total of 6 or more points being attached to a drivers licence within the past 1 year; or</p> <p>xi) Any combination of offences committed that result in more than 9 points being attached to a drivers licence; or</p> <p>xii) Two or more convictions for offences under the 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 other than those that are spent under the Rehabilitation of Offenders Act 1974.</p>
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*\*\* With regard to the first unsubstantiated complaint, the complaint will be investigated and the Licence holder will be invited to provide comments in writing, but in the absence of sufficient evidence to substantiate the complaint, no warning letter will be sent.*

The above 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 the above in order to take the appropriate enforcement action.

- 3.7 A stepped approach to enforcement will provide Licence holders with warnings prior to referral to the Licensing Sub-Committee for their consideration to suspend, revoke or refuse to renew a Licence. It is hoped that by publishing the enforcement policy, Licence holders will be encouraged to comply with the conditions attached to their Licences, the Council's byelaws and the relevant statutes.

#### **4. CONSULTATIONS**

- 4.1 It is proposed to undertake 12 weeks consultation on the draft enforcement policy in accordance with HM Government's Code of Practice on consultation. Consultation will be undertaken by a variety of means including letters to the trade, through the Taxi forum and on our website. It is envisaged that the consultation period will commence in early February.
- 4.2 The results of the consultation exercise will be presented to Members at a future Licensing Committee meeting so that the feedback from relevant stakeholders can be taken in to account when determining the final enforcement policy.



## 5. OPTIONS

5.1 The Committee may resolve to:

- i) Agree to consult on the draft enforcement policy (Appendix A) with the two alternatives for Section 2 as set out in paragraphs 3.5 & 3.6 of the report.
- ii) Amend the draft enforcement policy (Appendix A) or the two alternatives for Section 2 as set out in paragraphs 3.5 & 3.6 as deemed necessary and commence the consultation process.
- iii) Not agree consultation on the draft enforcement policy

## 6. CONCLUSIONS

- 6.1 Cambridge City Council has a duty to ensure that 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. It is considered that a published enforcement policy will allow for a fair yet firm application of the law in a consistent and transparent way.
- 6.2 By consulting on the draft enforcement policy, the views of the public and relevant stakeholders can be taken in to account prior to determining the final policy.

## 7. IMPLICATIONS

### (a) **Financial Implications**

Provision is made in the council's budget for the taxi licensing service, which is run on cost recovery basis. The cost of consultation will form a part of the administrative function.

### (b) **Staffing Implications**

Existing staff resources will carry out the consultation and apply the policy once finalised.

### (c) **Equal Opportunities Implications**

The adoption of an enforcement policy will ensure a consistently fair and transparent application of Council's statutory powers.

### (d) **Environmental Implications**

There are no apparent environmental implications resulting from the enforcement policy.

(e) **Community Safety**

Cambridge City Council has a duty to provide a safe and secure taxi service. The publication of an enforcement policy will encourage Licence holders to comply with the conditions attached to their Licences, the Council's byelaws and their statutory obligations.

**APPENDICES**

Appendix A

Draft Hackney Carriage and Private Hire enforcement policy (excluding section 2)

Appendix B

List and description of offences

**BACKGROUND PAPERS:** The following are the background papers that were used in the preparation of this report:

- [Licensing Committee Meeting Minutes from 24 October 2011](#)
- [Cambridge City Council's Enforcement Policy](#)

The author and contact officer for queries on the report is Robin Grey on extension 7899.

Report file:

Date originated: 20 January 2012

Date of last revision: 20 January 2012

## Enforcement Policy

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.

The enforcement policy is intended to fairly and firmly enforce the law in a consistent and transparent way. The Council is in agreement with the provisions of the Government's Enforcement Concordat. This is reflected in the Councils' Common Enforcement Policy, which underpins all service or topic specific enforcement policies adopted by the council. This represents a graduated approach to enforcement based on the principles of:

- Courtesy and Helpfulness
- Clear Standards and Practices
- Consistency
- Openness
- Proportionality
- Training of Staff

All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, fixed penalty notices, appearance before the committee or prosecution will primarily be based upon 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.

Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Environmental Health Manager or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).

### **1. Enforcement Options**

Achieving and maintaining a consistent approach to making decisions that concern taxi licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.

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:-

#### 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

- Refuse to grant or renew a licence.

b) Enforcement Action:

- Take no action;
- Take informal action;
- Issue statutory notices, (stop notices etc.);
- Issue fixed penalty notices;
- Suspend a licence;
- Revoke a licence;
- Use simple cautions;
- Prosecute
- A combination of any of the above

### 1.1 Informal Action

Informal action to secure compliance with legislation includes offering advice, verbal or written warnings and requests for action, and the use of letters.

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.

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

### 1.2 Statutory Section 68 Notices (Stop Notices)

An authorised officer may at any reasonable time inspect and test any hackney carriage or private hire vehicle licensed by the Council or the taximeter affixed to such vehicle for the purpose of ascertaining its fitness. 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.

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.

If the Authorised Officer who issued the suspension notice is not satisfied that the appropriate action has been taken to allow the suspension notice to be withdrawn within a period of two months from the date of issue, the vehicle licence shall be deemed to be revoked.

### 1.3 Fixed Penalty Notices under the Health Act 2006

An authorised officer who has reason to believe that a person has been smoking in a licensed vehicle or that a person has failed to display the statutory 'no smoking' sign prominently in each compartment of a licensed vehicle and thereby committed an offence, may give that person a penalty notice in respect of the offence. This is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty. The issuing of a fixed penalty notice is therefore an alternative to prosecution.

In deciding whether to issue a fixed penalty notice instead of prosecuting offenders, the Council will consider the seriousness of the offence, the history of the person and whether any previous fixed penalty notices have been issued to that person for similar offences. It is unlikely that more than two fixed penalty notices will be issued to a person before the Council will consider prosecuting that person for any further offences.

#### 1.4 Appearance before the Licensing Sub Committee of the Council

An offending individual or company may be summoned 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 will be provided with warnings depending on the seriousness of the complaint or contravention. See Section 2 for a guide on the action that the Licensing Section will take in response to these matters. In exceptional circumstances, the Council may deviate from the indicated course of action.

Current licence holders who report convictions or breach relevant legislation during the period of their licence may be brought before the Licensing Sub Committee. The Taxi Regulatory Committee Hearing Procedure is shown below in section 3. This contains Cambridge City Council's 'Grounds for Disbarment' that indicate when a Licence may be suspended, revoked or not renewed unless there are exceptional circumstances. The Council also has discretion to suspend, revoke, or refuse to renew a Licence for "any other reasonable cause".

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 written warning;
- require the production of driving licences or other specified documentation at the Council's Office;
- suspend a licence;
- revoke a licence;
- recommend prosecution action
- other appropriate action as deemed necessary

There is a right of appeal against any decision of the Licensing Sub Committee or authorised officers to suspend, revoke or refuse to renew a Licence, or against the imposition of conditions on the Licence. Any application to appeal against such a decision should be made to the Magistrates' Court.

Any notifications of enforcement actions will include written information on how to appeal. The suspension or revocation of a driver's licence may have immediate effect if the Council considers that the interests of public safety require the suspension or revocation of the

licence to have immediate effect. In these cases, the notice given to the driver will state that the interests of public safety require the decision to have immediate effect and it will also include an explanation of the reasons why it has immediate effect. The revocation or suspension will then be effective when the notice is given to the driver, regardless of whether an appeal is lodged with the Magistrates' Court.

A driver can also appeal against a decision to refusal to renew his driver's licence, but if his previous licence has already expired when the decision is made, he cannot continue to drive because he would no longer hold a current licence.

### 1.5 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;
- to divert less serious offences away from the Courts;
- to reduce the chances of repeat offences

To safeguard the suspected offender's interests, the following conditions should 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 is not satisfied for the use 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.

### 1.6 Prosecution

The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those 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, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards that ensure a consistent approach.

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 and the law-abiding are placed at a disadvantage to those who disregard it;
- when there appears to have been 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;
- where a particular contravention has caused serious public alarm.

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.

Before referring a matter for possible prosecution, the Head of Refuse and Environment must be satisfied that there is relevant, admissible, substantial and reliable evidence that an identifiable person or company has committed an offence. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.

In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors (November 2004), issued by the Crown Prosecution Service, provides guidance (including relevant public interest criteria) that will be considered.

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;
- identifiable victims;
- 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 party 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 cooperate;
- the willingness of the party 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. (As indicated above, advice on the public interest is contained in the
- Code for Crown Prosecutors. The general thrust of the advice contained therein is that, the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution);
- whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016/2008 would be more appropriate or effective.

## 1.7 Transparency

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.

The clear distinction between legal requirements and matters that are recommended as good practice recommendations in all enforcement action, even if only giving verbal advice, is vitally important.

## **2. Enforcement Action**

\*\*See the two proposed options\*\*

## **3. Taxi Regulatory Committee Hearings Procedure**

The purpose of the Taxi Regulatory Hearings Procedure is to provide a standardised hearings procedure for the taxi regulatory matters that are considered by the sub-committee. This procedure will provide an opportunity for all parties to have a right to a fair hearing.

The City Council, as licensing regulatory authority for Hackney Carriage and Private Hire matters within the City of Cambridge, has the responsibility to determine those things within its jurisdiction. In many cases these will involve one or more of the Grounds for Disbarment.

In certain circumstances the authority will hold a hearing. It is considered good practice that a recognised procedure is followed and that parties of such a hearing are advised in advance of the procedure to be followed at the hearing.

### **3.1 Preparation of report**

Where the Officer considers that the Taxi Regulatory Sub-Committee should decide whether an applicant for a licence is a fit and proper to hold the licence for which she/he has applied, the Officer will refer the matter to the Sub Committee.

Where the Officer has reason to believe that any of the circumstances set out in Sections 60 and 61 of the 1976 Act may apply, the Officer will conduct an investigation on behalf of the Head of Refuse and Environment.

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

The Officer will write to the applicant or Licence holder (driver, proprietor or operator) and ask her/him to say which of the witnesses she/he wants to attend the hearing to give their evidence in person. The Council 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 Officer, 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.

If a witness whose presence is requested by the applicant or Licence holder is unable or unwilling to attend and the Sub-committee does not wish to adjourn the hearing, the evidence may be given in writing instead.

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 Head of Refuse and Environment 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. For example, a driver may wish to provide evidence that they have undertaken a speed awareness or advanced driving course since accruing penalty points for speeding.

When presenting the report to the Sub-Committee the Officer 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 whether or not the applicant or Licence holder 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 Conflict of Interest

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.

### 3.3 The Hearing

Present at the hearing will be members of the Taxi Regulatory Sub-Committee, the Officer and a Legal Officer who will be the Sub-Committee's legal adviser. A Committee Manager may also be present.

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.

The Officer will outline the report and present any witnesses in support of the Officer'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.

The Officer may ask any relevant questions to clarify the evidence or information that has been given.

When all the evidence has been offered, the Chair will invite all parties to summarise their points if they wish.

The Chair will ask all parties if they are satisfied that they have had the opportunity to say everything that 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.

If the Sub-Committee wish to consider their decision in private, everyone except the members of the Sub-Committee, will be asked to leave the room; alternatively the Sub-Committee will withdraw to another room. 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 with Chair will announce this to the applicant or Licence holder.

### 3.4 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 informing 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 EXCEPT 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.

In urgent cases, the Head of Refuse and Environment has delegated power to suspend a driver or vehicle licence.

### 3.5 Referral to the Licensing Sub-Committee

Specific consideration will be given to the following convictions and the Head of Refuse and Environment, and subsequently the Licensing Sub Committee, may exercise discretion to grant or to renew a licence, or to suspend or revoke an existing Licence.

Minor traffic offences – convictions for minor offences e.g. obstruction, waiting in a restricted street, speeding etc does not prevent a person from proceeding with an application. However, the number, type and frequency/ repetition of these types of offences will be taken into account. Any new applicant must have held a full DVLA Licence for a period of twelve months.

Major traffic offences – an isolated conviction for reckless driving or driving without due care and attention etc will normally merit a warning as to future driving and advice on standards expected of licensed drivers. More than one conviction for these types of offences within the last *two years* may merit refusal and no further application will then be considered until a period of at least *three years* free from convictions has elapsed. Similarly, any conviction during the period of a council issued licence will lead to a warning as to future conduct and may lead to suspension or revocation of that licence.

Drunkenness with a motor vehicle – a serious view will be taken of convictions for driving or being in charge of a motor vehicle under the influence of alcohol. More than one conviction for these offences raises grave doubts as to the applicant's fitness to hold a driver's licence. At least *three years* will normally elapse after the restoration of the DVLA driving licence before an application can be considered for a Council issue driver's licence. A driver found guilty of driving whilst under the influence of alcohol will have their licence revoked and will be banned for holding such a licence with the Council for a minimum of *five years*. Drunkenness not in a motor vehicle – a number of convictions for drunkenness may indicate a medical problem necessitating critical examination. A conviction of this type of offence during the period of a council issued licence might warrant a warning as to future conduct with subsequent convictions possibly leading to suspension and/ or revocation of any licence held.

Drugs – an applicant with a conviction of a drug related offence may be required to show a period of at least *three years* free of convictions before an application can be made. A driver found guilty whilst under the influence of drugs or found guilty of any drug related offence will have their Council issue driver's licence suspended and/ or revoked immediately and be banned from holding such a licence with the Council for a minimum period of *five years*.

Indecency offences – as drivers often carry unaccompanied and/ or vulnerable passengers, applicants with convictions for any indecency offences will be refused a licence until they can show a substantial period free of such offences. Each case will be treated on its merits. More than once conviction of this kind precludes consideration for at least five years. In either case, if a licence is issued then a strict warning as to future conduct may be issued. A driver found guilty of indecency offences during the period of the council issued licence will have their licence suspended or revoked immediately and be banned from holding such a licence for a minimum period of *five years*.

Violence – as drivers maintain close contact with the public a firm line is taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least three years free of such convictions must be shown before an application is entertained and even then a strict warning will be administered. A driver found guilty of violence related offences will have their council licence suspended and/ or revoked immediately and be banned from holding such a licence for a minimum period of *five years*.

Dishonesty – drivers are expected to be persons of trust. A serious view will be taken of any convictions involving dishonesty. In general a period of at least three years free of any convictions will be required before considering an application. Any existing driver convicted of offences of dishonesty will have their council licence suspended and/ or revoked immediately and be banned from holding such a licence for a minimum of *five years*.

### 3.6 Grounds for Disbarment

Unless there are exceptional circumstances it is unlikely that an individual will be granted a licence if they have:

1. Been convicted of any offence of a sexual nature which is not spent under the Rehabilitation of Offenders Act 1974
2. Been convicted of any offence involving possession, supply of drugs or related offence not spent under the Rehabilitation of Offenders Act 1974
3. Been convicted of any offence involving dishonesty not spent under the Rehabilitation of Offenders Act 1974
4. Been convicted of any offence involving violence not spent under the Rehabilitation of Offenders Act 1974
5. Been convicted within the last 5 years of more than one offence of drunkenness or related (see item 7 below)
6. Held their DVLA drivers licence for less than 2 years after its return as a result of suspension for any reason
7. Been convicted of any offence relating to alcohol and motor vehicles which is not spent under the Rehabilitation of Offenders Act 1974
8. Been convicted within the past 3 years of any offence which resulted in 6 or more points being attached to their drivers licence
9. Been convicted within the past 1 year of any combination of offences relating in 6 or more points being attached to their drivers licence
10. If at the time of application (for grant, renewal or during the life of an existing licence) have more than 9 points attached to their drivers licence
11. If they have more than 1 conviction relating to 'taxi' law which is not spent under the Rehabilitation of Offenders Act 1974

The table below provides the rehabilitation period for offences. A conviction is deemed 'spent' under the Rehabilitation of Offenders Act 1974 once the rehabilitation period has expired.

<b>Sentence</b>	<b>Rehabilitation Period</b>
Two and a half years (30 months) imprisonment and over whether the sentence was suspended or not.	Never Spent
Six month imprisonment and over but under 30 months whether the sentence was suspended or not.	10 years
Under six months imprisonment/ youth custody whether the sentence was suspended or not.	7 years
A fine or community service order.	5 years
Conditional discharge, bound over or probation order. Also includes fit person, supervision and care orders.	One year or period of probation sentence, whichever is longer
Absolute discharge	6 months
Disqualification, disability or prohibition	Period of sentence unless a long period as above e.g. Disqualification and a fine five years
For applicants aged under 17 when they were convicted; The fixed rehabilitation periods for imprisonment or a fine are halved.	
For convictions which can only be passed on young offenders; they remain fixed and cannot be halved i.e.	
Borstal	7 years
Six months – two years detention in a place determined by the Secretary of State	5 years
Six months detention and less as above	3 years
Detention Centre Orders	3 years

All penalty points are normally spent for totting up purposes after three years from the date of offence. Exceptions to this are, for example, disqualifications for drink driving (10 years).

The periods of time that must elapse in other cases before the conviction becomes spent vary considerably according to the nature of the offence and other circumstances.

## **Information on Offences Relating to Hackney Carriage & Private Hire Vehicle Proprietors And Drivers, And Private Hire Operators**

Licence holders are subject to certain statutory obligations. The Licensing section will investigate the offences detailed below and will consider enforcement action if it is established that any offence has been committed.

### Offences under the Town Police Clauses Act 1847

#### Section 40

An application for a Hackney Carriage vehicle Licence shall detail the name, surname and place of abode of the person applying for the Licence and of every proprietor, part proprietor or person involved solely or in partnership with any other person in the keeping, employing or letting to hire of such carriage. It is an offence for any person applying for the Licence to omit the details of such a person from the application form and also an offence for them to include a person who is not a proprietor, part proprietor or involved in the keeping, employing or letting to hire of the vehicle.

#### Section 44

It is an offence for any person named on a Hackney Carriage Vehicle Licence to neglect or wilfully omit to give notice of any new address to the Council in writing within 7 days of any change in his place of abode.

#### Section 45

It is an offence for any person to ply for hire otherwise than with a licensed Hackney Carriage or without having the Licence number corresponding to the carriage openly displayed on the vehicle. It is also an offence for any proprietor or part proprietor of any vehicle other than a licensed Hackney Carriage to permit the vehicle to be used as a Hackney Carriage plying for hire.

#### Section 47

It is an offence for any person to act the driver of any licensed Hackney Carriage without first obtaining a Hackney Carriage Driver Licence.

#### Section 48

Where the proprietor of a Hackney Carriage permits or employs any licensed driver, the proprietor shall require and retain in his possession the paper part of the Hackney Carriage Driver's Licence. If the proprietor is summoned to produce the driver, then he shall also produce the driver's Licence. It is an offence for any proprietor to fail to require and retain such a Hackney Carriage Driver's Licence or to refuse or neglect to produce the Licence as so required.

#### Section 49

The proprietor shall return the Driver Licence upon the driver leaving the service of the proprietor by whom he is employed, unless the driver is guilty of any misconduct in which case it will be for the proprietor to give notice of the complaint to the driver and summon the driver to appear before any justice for the matter to be resolved.

#### Section 52

It is an offence for the proprietor of any Hackney Carriage to permit the vehicle to be used, employed or let to hire without having exhibited on the vehicle a plate upon which is stated (in legible words that are clearly distinguishable from the colour of the plate) the maximum number of persons authorised by the Licence to be carried in the vehicle. It is also an offence for the driver of any Hackney Carriage to refuse to carry this number or any lesser number of passengers.

#### Section 53

It is an offence for any driver of a Hackney Carriage whilst standing at any taxi rank or in any street to refuse or neglect (without reasonable excuse) to drive the Hackney Carriage to any destination within the Council's administrative district as directed by the person wishing to hire the vehicle.

#### Section 54

If a fare is agreed in advance of the hiring of a vehicle that is less than the fare set out in the Hackney Carriage Table of Fares, it is an offence for any proprietor or driver of a Hackney Carriage to demand more than that fare.

#### Section 56

It is an offence if the proprietor or driver of a Hackney Carriage agrees to carry any person for a distance for which a sum is agreed upon and then carry the person for a lesser distance than that to which they were entitled to be carried for the sum so agreed upon.

#### Section 57

At the request of a hirer of a Hackney Carriage for the driver to wait for a specific period with the vehicle, the driver may demand and receive from the hirer the fare that is equal to the sum of the fare for driving to the destination and also the fare for waiting for such time period as determined by the Hackney Carriage Table of Fares. It is an offence, however, for a driver to take such a deposit and then refuse to wait or leave before the expiration of the agreed time period or to fail to account for the deposit on the final discharge of the Hackney Carriage.

#### Section 59

It is an offence for any proprietor or driver of a Hackney Carriage that has been hired to permit any person to be carried in the vehicle during such hire without the express consent of the person hiring the vehicle.

#### Section 60

It is an offence for a driver authorised by the proprietor of a Hackney Carriage to act as such, to suffer any other person to act as the driver of the vehicle without the consent of the proprietor. It is also an offence for any person to act as the driver of a Hackney Carriage without the consent of the proprietor.

#### Section 62

It is an offence for the driver of any Hackney Carriage to leave it in any street or at any place of public resort or entertainment (whether hired or not) without some one proper to take care of it. Any constable may drive away such a Hackney Carriage and deposit it at some place of safe custody.

#### Section 64

It is an offence for any driver of a Hackney Carriage to cause the vehicle to stand for hire across any street or alongside any other Hackney Carriage. It is also an offence for the

driver of a Hackney Carriage to refuse to give way to any other carriage or to obstruct the driver of any other carriage in taking up or setting down any person or to wrongfully prevent or attempt to prevent the driver of any other Hackney Carriage from being hired.

#### Offences under Part II of the Local Government (Miscellaneous Provisions) Act 1976

##### Section 46

It is an offence for the proprietor of any vehicle (other than a licensed Hackney Carriage or London cab) to use or allow the vehicle to be used as a Private Hire Vehicle without having a Private Hire Vehicle Licence for that vehicle.

It is an offence for any person to drive a Private Hire Vehicle unless they are licensed as a Private Hire Driver by the Local Authority that licensed the vehicle.

It is an offence for the proprietor of a Private Hire Vehicle to employ a person as the driver of the vehicle unless they are licensed as a Private Hire Driver by the same Local Authority that licensed the vehicle.

It is an offence for a person to operate a Private Hire Vehicle unless they are licensed as a Private Hire Operator by the same Local Authority that licensed the vehicle.

It is an offence for a Private Hire Operator to operate any vehicle as a Private Hire Vehicle:

- i) unless the vehicle is licensed as a Private Hire Vehicle by the same Local Authority that granted the Operator Licence and
- ii) unless the driver is licensed as a Private Hire Driver by the same Local Authority that granted the Operator Licence.

##### Section 48

It is an offence for a person to use a licensed Private Hire Vehicle unless the Private Hire Licence plates are exhibited on the vehicle.

##### Section 49

It is an offence for the proprietor of a Hackney Carriage or a Private Hire Vehicle to fail to notify the Council in writing of any transfer of his interest in the vehicle to another person within 14 days of transferring his interest. Such a notice must specify the name and address of the person to whom the Hackney Carriage or Private Hire Vehicle has been transferred.

##### Section 50

It is an offence for the proprietor of any Hackney Carriage or Private Hire Vehicle to fail to present the vehicle for inspection and testing by or on behalf of the council within such period and at such place within the area of the Council as required by notice.

It is an offence for the proprietor of a Hackney Carriage or Private Hire Vehicle that is licensed by the Council or in respect of which an application has been made for a Licence to be granted to fail to respond to a notice requiring them to state in writing the address of every place where the vehicle is kept when not in use. It is also an offence to fail to provide facilities as may be reasonably necessary to enable the vehicle to be inspected and tested at those addresses.

It is an offence for the proprietor of a licensed Hackney Carriage or a Private Hire Vehicle to fail to report to the Council as soon as reasonably practicable (but no later than 72 hours) any accident causing damage materially affecting the safety, performance or appearance of the vehicle or the convenience of persons carried in the vehicle.



It is an offence for the proprietor of a licensed Hackney Carriage or a Private Hire Vehicle to fail to produce the vehicle licence or certificate of the policy of insurance to an authorised Officer of the Council.

#### Section 53

It is an offence for any driver of a Hackney Carriage or Private Hire Vehicle to fail on request of any authorised Officer or the Council or any constable to produce for inspection their driver Licence either forthwith or within 5 days beginning on the following day.

#### Section 54

It is an offence for the driver of a Private Hire Vehicle to fail to wear their Private Hire Driver Licence badge in such position and manner as to be plainly and distinctly visible.

#### Section 56

It is an offence for a licensed Private Hire Operator to fail to keep a record in such form as the Council may prescribe by way of condition attached to the Licence, to fail to enter before the commencement of each journey particulars of every booking accepted by him, and to fail to produce the record on request to any authorised officer or any constable for inspection

It is an offence for any Private Hire Operator to fail to produce their Operator Licence on request by an authorised officer or constable for inspection

#### Section 57

It is an offence for a person to knowingly or recklessly make a false statement or omit any material in giving information as part of an application for a Driver or Vehicle Licence.

#### Section 58

It is an offence for the proprietor of a vehicle to fail without reasonable excuse to comply with a notice issued by the Council to require the return of the Vehicle Licence plate.

#### Section 64

It is an offence for any person to cause or permit any vehicle other than a Hackney Carriage to wait on any stand for hackney carriages without reasonable excuse during any period for which that stand has been appointed.

#### Section 66

It is an offence for a Hackney Carriage driver to undertake a journey for any hirer ending outside the district in respect of which no fare or rate of fare was agreed before the hiring was effected and for the driver to charge more than the fare indicated on the taxi as set by the Council's Hackney Carriage Table of Fares

#### Section 67

It is an offence for any person to use a Hackney Carriage under a contract for private hire except at a rate of fares or charges not greater than that fixed by the Hackney Carriage Table of Fares.

#### Section 69

It is an offence for any licensed Hackney Carriage or Private Hire Driver to unnecessarily prolong (in distance or time) without reasonable excuse, a journey for which the vehicle has been hired.

### Section 71

It is an offence for any person to tamper with any seal on a taximeter, to alter any taximeter, or to use a private hire vehicle with a meter installed in the vehicle unless the meter has been tested and approved by or on behalf of the Council.

### Section 73

It is an offence for any person to wilfully obstruct an authorised officer or constable, to fail to comply with any requirement properly made by such an officer or constable or to fail to give such officer or constable any other assistance or information which he may reasonably require of such person for the performance of his functions.

## Offences under Part IV of the Transport Act 1980

### Section 64

It is an offence for any person to knowingly drive a vehicle (other than a Hackney Carriage) or permit a vehicle (other than a Hackney Carriage) to be driven if there is displayed on or above the roof of the vehicle which is used for carrying passengers for hire or reward any sign which consists or of includes the word "taxi" or "cab" whether in the singular or plural, or "hire" or any word of similar meaning or appearance to any of those words whether alone or as part of another word. It is also an offence to display any sign, notice, mark, illumination or other feature on such a vehicle, which may suggest that the vehicle is a Hackney Carriage.

## Offences under Part 1 of the Health Act 2006

### Section 6

It is an offence for any person who occupies or is concerned in the management of smoke-free premises to fail to ensure that statutory no-smoking signs are displayed in those premises. Hackney Carriages and Private Hire Vehicles are deemed smoke-free places at all times during which the Licence has effect and a no-smoking sign must be prominently displayed in each compartment of the vehicle at all times.

### Section 7

It is an offence to smoke in a smoke-free place. Hackney Carriages and Private Hire Vehicles are deemed smoke-free places at all times during which the Licence has effect.

### Section 8

It is an offence for any person who controls or is concerned in the management of smoke-free premises to fail to prevent any person there to stop smoking.

## Offences under Chapter 1 of Part 12 of the Equality Act 2010

### Section 168

It is an offence for the driver of a Hackney Carriage that has been hired by or for a disabled person who is accompanied by an assistance dog, or by another person who wishes to be accompanied by a disabled person with an assistance dog to fail to carry the disabled person's dog and allow it to remain with that person or to make any additional charge for doing so, unless an exemption certificate from the requirement to carry assistance dogs has been issued by the Council and that Certificate is displayed within the vehicle.

## Section 170

It is an offence for the operator of a private hire vehicle to fail or refuse to accept a booking for the vehicle if the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and the reason for the failure or refusal is that the disabled person will be accompanied by an assistance dog. The operator also commits an offence if they make an additional charge for carrying an assistance dog which is accompanying a disabled person.

It is an offence for the driver of a private hire vehicle to fail or refuse to carry out a booking accepted by the operator of the vehicle if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog, unless an exemption certificate from the requirement to carry assistance dogs has been issued by the Council and that Certificate is displayed within the vehicle.