

HARLOW COUNCIL

GENERAL ENFORCEMENT POLICY FOR LICENSING SERVICES

Hackney Carriage and Private Hire Licensing

Harlow District Council has a responsibility to protect the community it serves, using the legislative powers delegated by Central Government.

The ultimate priority of the Council is to ensure that drivers, operators and vehicle proprietors licensed by the Council carry out their trade in accordance with both the relevant law and the conditions attached to the licences.

Any enforcement action taken in accordance with this policy will be based on upon the seriousness of the breach and the possible consequences arising out of it.

Decision Making Process

The Council's primary duty is for the protection of public safety. In order to maintain a consistent approach, this Policy will be considered by the Council when determining whether a licence holder is "fit and proper" to hold a Private Hire Driver Licence, Private Hire Operator Licence, or Hackney Carriage Driver Licence. In reaching any decision the Council will have regard to the following:

- i. The seriousness of any offences
- ii. The licence holders past history
- iii. The consequences of non-compliance
- iv. Likely effectiveness of the various enforcement options
- v. Danger to the public

Enforcement options

Once the Council has considered all the evidence and relevant information, the following options will be considered:

- To take no action
- To provide oral advice
- To provide an advice letter
- To provide a written warning and advice
- To suspend a Licence
- To revoke a Licence
- To issue a formal caution
- To begin prosecution proceedings

Take no action: No action will be taken where the operator, vehicle or driver standards are found to be satisfactory.

Oral Advice: There will be occasions when information and advice may be provided to a licence holder during the course of an investigation but where no further action is considered necessary.

Advice Letter: Where the licensee's behaviour or an offence is not serious enough to warrant more formal action or where the consequences of non-compliance do not pose a significant risk to public safety, the Licensing Team may issue an advice letter if it can be assumed that informal action will achieve compliance.

Written Warning and Advice: In circumstances where the behaviour or offence is serious enough to warrant disciplinary action, the Licensing Team may issue a written warning clearly identifying the contravention. This may contain advice on how to remedy the matter, and may include a deadline by which this must be done. Failure to comply could result in further enforcement action being taken in the future.

The advice may include recommendations that the driver attends a driving standards assessment or tuition, local knowledge test and /or communications test, delivered by an accredited provider within a prescribed timescale to establish the competence of a driver to drive a taxi or private hire vehicle.

Suspension. Whilst each case will be taken on its own merit, generally, a suspension notice will normally be issued where the licence holder (individual or organisation) has met one or more of the following criteria:

- Breached legal obligations.
- Has been convicted of a relevant offence.
- Caused material loss to others.
- Engaged in activities that caused distress or put at risk the safety of passengers or the general public.
- Failed to provide information or details that if made available may have resulted in a licence not being granted or renewed.
- Non compliance with Council licensing procedures, licensing conditions or legislation.
- Ignored written warning(s) or failed to remedy an earlier contravention.
- Obstructed, abused, intimidated, threatened or assaulted an officer whilst undertaking his or her duties.
- Any other reasonable cause.

When issuing a suspension due consideration **must** be given to the financial outcome that the individual will be subject to as a result of this sanction.

When considering whether to suspend or revoke a licence, the Licensing Authority can use powers under S.52 of the Road Safety Act 2006 (which amends the Local Government Miscellaneous Provisions Act 1976 by inserting s.61(2A) and 2(B)) to immediately suspend or revoke a Hackney Carriage and Private Hire Drivers' Licence if 'the interest of public safety require the suspension or revocation of the licence to have immediate effect'.

Revocation. A licence may be revoked where the licence holder (individual or organisation) has met one or more of the following criteria:

- Engaged in fraudulent activity.

- Provided false information to obtain a licence.
- Breached legal obligations.
- Been convicted of a relevant offence.
- Put at risk the safety or wellbeing of persons.
- Caused material loss to others.
- Engaged in activities that caused distress or put at risk the safety of passengers or the general public.
- Failed to provide information or details that if made available may have resulted in a licence not being granted or renewed.
- Breached Council licensing procedures or conditions.
- Where a licence has previously been suspended.
- Obstructed, abused, intimidated, threatened or assaulted an officer whilst undertaking his or her duties.
- Any other reasonable cause.

When considering whether to suspend or revoke a licence, the Licensing Authority can use powers under S.52 of the Road Safety Act 2006 (which amends the Local Government Miscellaneous Provisions Act 1976 by inserting s.61(2A) and 2(B)) to immediately suspend or revoke a Hackney Carriage and Private Hire Drivers' Licence if 'the interest of public safety require the suspension or revocation of the licence to have immediate effect'.

Formal Caution: A formal caution may be issued by the Licensing Authority as an alternative to prosecution in order to deal quickly and simply with less serious offences and/or where the use of a caution will reduce the likelihood of re-offending and where it would be in the public interest to do so.

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

- There must be evidence of the offender's guilt to give a realistic prospect of conviction;
- The offender must admit the offence, and
- The offender must understand the significance of a formal caution and give informed consent to being cautioned.

Where a person declines to accept a formal caution, alternative enforcement action will be considered. There is no right of appeal against a formal caution.

Prosecution. Discretion will be used in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote compliance more effectively but there are circumstances where prosecution without prior warning and recourse to alternative sanctions may be appropriate.

Prosecution will be considered in circumstances where:

- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;

- There has been a reckless disregard of the law, bylaws or condition of licence;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- An activity has been carried out without or in serious non-compliance with an appropriate licence;
- A licence holder's standard of operation and activity is found to be far below what is required by law and condition and to be giving rise to significant risk;
- There has been a repetition of a breach that was subject to a formal caution;
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- An officer has been intentionally obstructed in the lawful course of his/her duties.

The decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors. The Environment and Licensing Manager may recommend legal proceedings to prosecute offenders where it is considered there is sufficient evidence to provide a realistic prospect of conviction. .

Licensing Subcommittee

Current Licensees may be referred to the Licensing Subcommittee for a review of their licence. The Licensing Subcommittee may consider appropriate disciplinary measures on a case by case basis. A referral may take place in the following circumstances:

- Where a licensee has received a criminal conviction, police caution or, major motoring conviction,
- Relevant history of the licence holder,
- Where the Licensing Team has received a complaint(s) about the actions or conduct of a licence holder,
- Where a licensee has accumulated DVLA penalty points for motoring convictions;
- Where the licensee has breached licensing conditions,
- Where the Council has received non-conviction information which gives cause for concern that a licensee is not a fit and proper person.

The Subcommittee may decide to take one or more of the following actions:

- No action,
- Issue an advice letter or written warning,
- Suspend a licence,
- Revoke a licence.

Where cases are referred to the Licensing Subcommittee, the Licensing Team will:

- Give sufficient notice of the date on which the matter is to be considered
- Give proper notice to the licence holder of the allegations against them
- Give notice to other affected parties with a right of appearance
- Allow the licence holder the opportunity to address the Subcommittee to present his/her case and provide supporting evidence

- Ensure the matter is determined in an impartial manner in accordance with the rules of natural justice
- Provide a written notice of the decision with reasons, and details of any right of appeal.

In situations where immediate action is required to secure public safety, and the Licensing Authority are unable to convene a Licensing Subcommittee within a reasonable time, the Environment and Licensing Manager shall under delegated authority and in consultation with the Chair or Vice Chair of the Licensing Committee take action to suspend a licence.

Appeals

Appeals against decisions of the Licensing Subcommittee may be made to the Magistrates Court. Written notification of enforcement actions will include written information on how to appeal, if applicable. This will explain how, where and within what period an appeal may be brought.

Version 1
Version 2
Version 3
Version 4
Version 5
Version 6

September 2006
September 2007
November 2008
January 2009
16 October 2014
January 2018

DRAFT