



## **LICENSING COMMITTEE REPORT**

<b>Report Title</b>	<b>Review of Hackney and Private Hire Enforcement Procedures</b>
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**AGENDA STATUS: PUBLIC**

<b>Committee Meeting Date:</b>	<b>23 July 2013</b>
<b>Policy Document:</b>	<b>Hackney/Private Hire Sanctions and Procedures</b>
<b>Directorate:</b>	<b>Customers and Communities</b>

### **1. Purpose**

1.1 The purpose of this report is to formalise the system of sanctions and procedures currently imposed on Hackney and Private Hire drivers through the enforcement process.

### **2. Recommendations**

2.1 That with immediate effect the system of sanctions outlined below be formally adopted by the Northampton Borough Council as a means of dealing with non-compliant Hackney drivers, Private Hire drivers and Operators.

2.2 To delegate powers to the licensing enforcement officers to use their discretion as to when and under what circumstances sanctions are imposed.

### **3. Issues and Choices**

#### **3.1 Report Background**

3.1.1 The Borough of Northampton Licensing Department undertakes a range of enforcement activities across a number of diverse areas.

3.1.2 A number of these functions entail the making of sanction decisions, which may, in appropriate cases, include the Council prosecuting the matter through the criminal courts.

3.1.3 The Council does not however, have an obligation to prosecute in every case, even where this may appear warranted.

3.1.4 Officers may instead choose, in certain circumstances, to dispose of a matter by using various 'other means' such as a 'Simple' Caution or for very minor misdemeanours a verbal warning, this would normally be used when the public interest firmly weighs against prosecution.

3.1.5 A verbal warning, although entered on a driver's record will not carry the weight of a 'Simple Caution'.

3.1.6 A Simple Caution (previously known as a Formal Caution) is an admission of guilt to the commission of an offence for which there is a realistic prospect of a conviction; it is not a form of sentence or a criminal conviction.

3.1.7 The benefit of this form of disposal is that the offender is thereby diverted from the Criminal Justice System; the offence is recorded officially and should the individual or body re-offend, the caution, as an admission of guilt, may be cited in evidence against them in any subsequent proceedings under the provisions of the Criminal Justice Act 2003.

3.1.8 It is, however, emphasised that issuing a Caution is not to be seen as an 'easy option' to pursuing a prosecution, and must only be used where the prospects of securing a prosecution could be successful and the offender has admitted their wrong-doing.

3.1.9 It follows therefore, that if an offender refuses to agree to a Caution the matter should normally be referred for prosecution immediately.

3.1.10 Should a driver be the subject of more than two cautions in a 12 month period it may be necessary to take him/her before the Licensing Committee for a decision to be made as to whether he/she is a 'fit and proper person' to hold a Hackney or Private Hire driver's licence.

3.1.11 This Policy reflects the principles of the Cabinet Office Enforcement Concordat and officers will have due regard to these principles and to any other published and relevant guidance, including:

- The Code for Crown Prosecutors
- Home Office Circular 30/2005 (The Cautioning of Adult Offenders)

3.1.12 Northampton Borough Council has a Commitment to Principles of Good Enforcement. This document sets out what can be expected from NBC's Licensing Department and its officers. It commits the council to good enforcement policies and procedures.

3.1.13 Enforcement will be targeted, proportionate and risk-based.

3.1.14 We will adopt a risk-assessment approach to target resources where most needed.

3.1.15 In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action.

3.1.16 At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

3.1.17 We will carry out our duties in a fair, equitable and consistent manner.

3.1.18 While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency.

3.1.19 Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action.

3.1.20 Sometimes there is more than one agency that can act in response to a problem.

3.1.21 If there is a shared enforcement role with another agency, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness.

3.1.22 For example, joint working may be carried out with the Police, VOSA, Fire Service, Health and Safety Executive, Office of Fair Trading, Environment Agency, Revenue and Customs other local authorities and government departments.

3.1.23 We support and will promote arrangements for effective liaison with other agencies and carry out compliance checks making facilities available for those other agencies.

## **4.1 Choices (Options)**

4.1.1. Confirm the formal adoption of the procedure outlined.

4.1.2 Recommend an alternative system of enforcement.

4.1.3. Re-affirm the delegation of the powers as outlined in the report to officer level.

4.1.4. To recommend that an alternative system of delegation be introduced in certain circumstances.

## **5. Implications (including financial implications)**

### **5.1 Policy (Hackney and Private Hire Licensing)**

There are no new policy or financial implications .

## **5.2 Resources and Risk**

5.2.1 Resources will continue to be managed within the licensing budget.

5.2.2 We aim to apply the principles set down in the Legislative and Regulatory Reform Act 2006 to all of our regulatory activities, including, but not limited to, those that are specified in regulations made under the Act. The principles are that:

- Regulatory activities should be carried out in a way, which is transparent, accountable, proportionate and consistent;
- Regulatory activities should be targeted only at cases in which action is needed.

5.2.3 The primary function of local government regulatory activity is to protect the public, the environment, and groups such as consumers and residents.

5.2.4 However, it is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those subject to regulation and those on whose behalf enforcement is carried out are aware of the Council's policy on enforcement.

5.2.5 This Enforcement Procedure helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on those subject to regulation.

5.2.6 This Policy has been developed with due regard to the Principles of Good Enforcement set out in the following guiding documents:

- The Regulators' Compliance Code, a code issued under the Legislative and Regulatory Reform Act 2006 in respect of certain specified Council regulatory functions
- The Code for Crown Prosecutors issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985

In certain circumstances we may conclude that a provision contained in one or more of these codes is either not relevant or is outweighed by another provision or relevant factor.

5.2.7 We will ensure that any decision to depart from relevant policy guidelines will be properly reasoned and based on material evidence.

## **5.3 Legal**

5.3.1 The Local Government (Miscellaneous Provisions) Act 1976, allows the Local Authority to impose sanctions in respect of drivers licences for both Hackney carriages and Private Hire Vehicles, drivers and operators.

5.3.2 The Licensing Act 2003 and Gambling Act 2005 allows the local authority to take action over a number of non-compliance issues relating to Licensed Premises.

5.3.3 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the Council's statutory obligations.

5.3.4 Council enforcement officers should act within the scope of their delegated authority and with due regard to all relevant legislation, such as:

- The Police and Criminal Evidence Act 1984,
- The Criminal Procedure and Investigations Act 1996
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Criminal Justice and Police Act 2001
- Criminal Justice Act 2003
- The Legislative and Regulatory Reform Act 2006

and legislation designed to tackle discrimination and promote equality.

5.3.5 Officers will have due regard to any relevant formal procedures and codes of practice made under such legislation and will be guided in their work by the principles laid down in legislation and underpinning this policy.

## **5.4 Equality**

5.4.1. An equality impact assessment has been undertaken and no equalities issues were identified as being likely to have a negative impact on the trade.

5.4.2 By endorsing a formal process it will ensure that all licence holders are treated fairly.

5.4.3 In line with the Council's published equalities policy, we will use positive action in how we provide services, including the provision of appropriate translation and interpretation services.

## **5.5 Consultees (Internal and External)**

5.5.1. Legal

## **5.6. Background Papers**

5.6.1. Local Government (Miscellaneous Provisions) Act 1976. (Relating to Hackney and Private Hire vehicles and drivers).

5.6.2 Licensing Act 2003

5.6.3 Gambling Act 2005.

5.6.4 The Legislation listed at 5.3.2.

5.6.5 Taxis-Licensing Law and Practice – James Button

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## **APPENDIX A.**

### **Offences dealt with having regard to judicial process.**

Formal Action - Criteria for deciding on action to be taken on Suspected Offences:

- The Council will ensure an independent and consistent approach is taken to prosecution decisions. In most cases where the investigating officer recommends prosecution the Council's Legal Services will make the decision whether or not to begin such proceedings. In those minority of cases where other Council officers are responsible for making the decision advice provided by Legal Services will be taken into account.
- In all cases the appropriate course of action to take is decided having regard to relevant policies and the Code for Crown Prosecutors, which involves a two-stage decision making process:
  - I. Firstly, an evidential test to ensure that there is enough evidence to provide a 'realistic prospect of conviction'.
  - II. Secondly, a public interest test, which will determine whether it is in the public interest to prosecute.

The following is a table of offences and how they could be dealt with the list is not exhaustive:

<b><u>Prosecution/Caution</u></b>	<b><u>Warning/Advice</u></b>
Illegal Plying for Hire (Flagging)	Failure to notify vehicle transfer
Driving a vehicle without valid insurance	Failure to report an accident
Refusing to carry a passenger with a disability	Failure to return vehicle plate after notice given
Refusing to carry an assistance dog	Failure to wear driver badge
Unauthorised alteration of a Taximeter	Failure to notify vehicle transfer
Exceeding the number of passengers permitted	Unnecessarily prolonging a journey
Refusal to carry a passenger without reasonable cause	Failure to surrender driver licence after suspension
When there appears to have been reckless disregard for the safety of passengers or other road users	Failure by Operator to keep records of bookings
Where there have been repeated breaches of legal requirements	Failure by Operator to keep records of vehicles
Where a particular type of offence is prevalent	Obstruction of an authorised officer or constable
Where a particular contravention has caused serious public alarm	Failure to produce a vehicle licence and insurance certificate
Failure to comply with a statutory notice served for a significant breach of legislation	Failure to comply with requirement of an authorised officer or constable
Offences following a history of similar offences	Failure to notify change of name or address

Vehicle not displaying plate	
Making false statement or withholding information to obtain a licence	

Any licensed driver or operator that has been the subject of a high number of complaints or incidents, whether substantiated or not, shall be required to have their licence reviewed by the Regulatory Committee. This decision shall be taken by the Senior Licensing officer or above. Each case will be determined on its individual merits.

Those offences subject to statutory control will be prosecuted under those Acts and Statutes as appropriate.