

Appendix Q

ENFORCEMENT POLICY

HACKNEY CARRIAGE DRIVERS AND VEHICLES PRIVATE HIRE DRIVERS, OPERATORS AND VEHICLES

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1.0 Introduction

Rossendale Borough Council has a statutory duty to ensure that licensed vehicles, drivers and operators are properly licensed and that they carry out their business in accordance with the law, byelaws and conditions attached to their licences.

The Council must ensure that all enforcement action occurs in strict accordance with the Police and Criminal Evidence Act 1984 (as amended), Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, Criminal Procedure and Investigations Act 1996, Criminal Justice Act 1982 and other relevant legislation and guidance.

1.1 Purpose and Policy Statement

Any enforcement action taken by the Council will be risk-based, proportionate, targeted and flexible making sure the Council is efficient and effective in carrying out its duties, without imposing any unnecessary burdens on those it regulates. Whether it is advice, oral or written warnings, licence determinations, simple cautions or prosecutions, the action taken will be the most appropriate disposal of the breach or offence and it will take into account any possible consequences arising out of it. It will not represent a punitive response to minor technical contraventions of legislation.

Enforcement activities will be targeted at the most effective areas. Effective assessment of the risks to their regulatory outcomes will be made and a risk assessment will precede and inform all aspects of our approaches to regulatory activity.

When considering enforcement action we will only adopt a particular approach if the benefits of this justify the costs.

Authorised Officers will be authorised by the Council's Director of Business to take suitably appropriate enforcement action. Officers will exercise the principles of openness, helpfulness, proportionality and consistency when deciding on the correct enforcement approach.

In all circumstances enforcement officers shall be fair, independent and objective. They will not let any personal views about ethnic or national origin, sex, religious beliefs, political views or sexual orientation influence their judgement or approach.

1.2 Powers and Duties

There is legislation which the Council must either have a regard to or places a duty on the Council to carry out its licensing functions in respect of hackney carriage

drivers and vehicles and private hire operators, drivers and vehicles. Some of this is listed below:

- Criminal Justice and Public Order Act 1994
- Criminal Procedures and Investigations Act 1996
- Data Protection Acts 1984 and 1998
- Deregulation (Taxis and Private Hire Vehicles) Order 1998, SI 1998/1946
- Disability at Work Act 1994
- Disability Discrimination Act 1995
- Freedom of Information Act 2000
- Health and Safety at Work etc. Act 1974
- Highways Act 1980 (as amended)
- Human Rights Act 1998
- Licensed Taxis (Hiring at Separate Fares) Order 1986, SI 1986/1386
- Local Government Act 1972
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- LOLER Regulations 1998
- New Roads and Street Works Act 1991
- Police and Criminal Evidence Act 1984
- Private Hire Vehicles (Carriage of Guide Dogs etc) Act 2002
- Protection from Harassment Act 1997
- Public Passenger Vehicle Act 1981
- Regulation of Investigatory Powers Act 2000
- Regulatory Enforcement and Sanctions Act 2008
- Rehabilitation of Offenders Act 1974
- Road Traffic Act 1972 & 1988
- Road Traffic Regulation Act 1984
- Road Traffic Regulation (Special Events) Act 1994
- Smoke-free (Premises and Enforcement) Regulations 2006
- Smoke-free (Signs) Regulations 2006
- Taximeters (EEC Requirements) Regulations 1979
- The Measuring Instruments (Taximeters) Regulations 2006
- Town Police Clauses Act 1847
- Town Police Clauses Act 1889
- Transport Acts 1968 and 1985
- Transport Act 1980, 1981 & 1985
- Workplace (Health Safety and Welfare) Regulations 1992

1.3 Inspection and other visits:-

All inspections and other visits, such as compliance or advice visits, will only occur in accordance with a risk assessment methodology, except where visits are requested or where we act on relevant intelligence. Where two or more inspectors, whether

from the same or different regulators, undertake planned inspections of the same business, arrangements will be made to reduce burdens on the regulated business through joint or coordinated inspections, and through data sharing.

1.4 General Policy

We will aim to:

- change the behaviour of the offender
 - eliminate any financial gain or benefit from non-compliance
 - be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
 - be proportionate to the nature of the offence and the harm caused
 - restore the harm caused by regulatory non-compliance, where appropriate
- and;
- deter future non-compliance

We will ensure that clear reasons for any formal enforcement action are given to the person or business against whom any enforcement action is being taken at the time the action is taken.

Licence holders must immediately report, in writing, all criminal convictions, police cautions and major motoring offences, which occur during the term of their licence to this Authority. In addition, breaches of the relevant legislation or conditions attached to driver, operator and vehicle licences may come to light following complaints and enforcement action or investigations. The action to be followed in response to such matters will be determined on its own merits.

Achieving and maintaining a consistency of approach to making all decisions that concern hackney carriage and private hire 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, and fair 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 offences;
- history of the licence holder;
- consequence of non-compliance;
- effectiveness of options; and
- danger to the public

2.0 Enforcement Options

Having considered all relevant information and evidence, the options for action are:-

2.1 Licence Applications:

- grant licences
- refer the licence for a determination; and
- refuse to grant a licence

2.2 Enforcement Action:

- take no action;
- take informal action;
- issue statutory notices;
- re-sit of DSA test;
- review a licence;
- suspend a licence;
- revoke a licence;
- simple caution; and
- prosecution

2.3 Informal Action:

Informal action such as offering advice (which can be written) or issuing oral and written warnings is generally used by authorised officers to secure good conduct by licence holders following:-

- complaints made by the general public;
- convictions for minor traffic offences; and
- contraventions of the dress code

Such informal enforcement action taken by authorised officers shall be appropriate in any of the following circumstances:-

- if the behaviour or offence does not warrant more formal action;
- consideration of the history of the licence holder results in a reasonable expectation that informal action will achieve compliance;
- confidence in the licensed Operator is high; and
- consequences of non-compliance will not pose a significant risk to public safety

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

2.4 Statutory Notices:

Serious offences in respect of the condition and safety of licensed vehicles shall be dealt with by the issue of statutory notices by authorised officers and include:-

- vehicle defect notices; and
- vehicle suspension notices

2.5 Practical Driving Test

When a licensee accumulates 6 or more points on their DVLA driving licence the licensee may be required to take, or retake, the Practical Driving test and must pass within 3 months of being notified of the requirement and shall report the results of all such tests to the Council within one month of the test being taken. Failure to achieve a pass as required above will result in their licence being reviewed and may result in revocation of that licence. Where a person has been required to retake their Practical Driving test more than twice as a result of the policy they may have their licence reviewed and this may result in their licence being revoked. An application to be re-licensed following such a revocation shall not normally be considered until a period of twelve months has elapsed from the date of revocation of their licence.

2.6 Licence Review:

Licence holders can also find their licences are subject to review, usually so it can be considered whether an appropriate disciplinary measure should be imposed on an individual basis. This may arise in several ways but is usually because the Council has received some relevant information, for example:-

- the receipt of a conviction or police caution;
- the history;
- complaints or offences;
- penalty points; and
- DVLA driving licence acquiring 12 or more points.

If a licence is reviewed one or more of the following actions may be taken:-

- no action;
- issue an oral or written warning;
- undertake the Practical Driving test;
- suspend a licence; or
- revoke a licence;

2.7 Immediate Suspension of Driver Licence

The Council has the power to suspend a driver's licence with immediate effect if we are of the opinion that the interests of public safety require such a course of action.

Examples of why we may decide to take such action include:

- a driver who is being investigated for a sexual offence;
- a driver who is being investigated for an offence of dishonesty;
- a driver who is being investigated for a violent offence; or
- a driver who is being investigated for any offence whereby the Council reasonably believes he is a risk to public safety

2.8 Immediate Revocation of Driver Licence

The Council has the power to revoke a driver's licence with immediate effect if we are of the opinion that the interests of public safety require such a course of action.

Examples of why we may decide to take such action include:

- a driver who has been convicted of a sexual offence;
- a driver who has been convicted of an offence of dishonesty;
- a driver who has been convicted of a violent offence; or
- a driver who is convicted of any offence whereby the Council reasonably believes he is a risk to public safety

2.9 Suspension of Vehicle Licence

The Council may suspend a vehicle licence for failing to comply with licence conditions. This is usually if the proprietor has failed to provide documented evidence such as evidence that the vehicle is currently insured or they have failed to produce the 6 monthly MOT certificate in accordance with the vehicle licence conditions.

If, following an inspection, an authorised officer is not satisfied as to the fitness of a vehicle; and / or the accuracy of the taximeter, the authorised officer will suspend the vehicle with immediate effect until such time as an authorised officer is satisfied as to the fitness of the vehicle; and / or the accuracy of the taximeter

2.10 Revocation of Vehicle Licence

If after 2 months, an authorised officer is not satisfied that the reasons the vehicle has been suspended have been satisfactorily rectified, the licence will be deemed to have been revoked and subsections (2) and (3) of S.60 of the Local Government (Miscellaneous Provisions) Act 1976 will apply.

2.11 Simple Cautions

A simple caution may be used as an alternative to a prosecution in order to:-

- deal quickly and simply with less serious offences;
- divert less serious offenders away from the Courts; and
- reduce the likelihood of re-offending

To safeguard the suspected offender's interests, the following conditions should be fulfilled before a simple 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; and
- 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 simple caution.

Where a person declines the offer of a simple caution, it shall be necessary to consider taking alternative enforcement action.

2.12 Prosecution:

In circumstances where justified within this policy, authority may institute proceedings to prosecute offenders.

Licence holders shall be prosecuted for serious breaches of legislation such as:-

- illegally plying for hire;
- driving a motor vehicle without valid insurance;
- refusing to carry a guide, hearing or other assistance dog (if not exempted);
- unauthorised alteration of a taximeter;
- exceeding the number of passengers permitted; and
- refusal to carry a passenger without reasonable cause

The decision to prosecute is a very significant one. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate instructions of the Authority are not followed and /or the public is put at serious risk. Such circumstances are, however are in a minority. The criteria on which a decision to prosecute is made provides common standards, which ensures 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; and
- 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. In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on the relevant criteria that it is in the public's interest to prosecute.

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 of 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
- whether other action, such as issuing a formal caution would be more appropriate or effective

2.13 Appeals

Appeals against decisions of the Council may be made to the Magistrates' Court. Any notifications of enforcement actions will include written information on how to appeal. This will explain how, where and within what period an appeal may be brought and on what grounds and will confirm that the enforcement action is suspended pending the outcome of the appeal. In cases of danger to the travelling public, suspension can be immediate whether or not an Appeal is either lodged or contemplated.

2.14 Complaints:

The general public are able to make complaints to the Council about the conduct

and/or service received from licensed drivers and operators and the Authority shall adhere to the following procedure;

- ascertain facts regarding complaint and decide if actionable;
- register the complaint and refer to investigating officer;
- complainant contacted within 5 working days;
- complaint investigated;
- decision made; and
- all parties informed of that decision

Licensed drivers and operators subject of a written complaint shall be informed of the nature of the complaint, including date, time and location of the incident and if necessary given sufficient notice to attend an interview. Interviews with licence holders shall not be carried out under the Police and Criminal Evidence Act 1984 (P.A.C.E) code of practice, unless the licence holder is suspected of an offence. Licence holders can attend an informal interview with a support person who shall not be permitted to speak at the interview but merely to support by physical presence. If the complaint is unsubstantiated then it is likely that no further action will be taken against the licence holder. It may be necessary to issue written advice to a licence holder but this does not infer that the licence holder was found to have acted wrongly.

Substantiated complaints that breach byelaws or conditions of licence can result in the offender being issued with penalty points. Substantiated complaints of a serious nature relating to public safety, dishonesty or violence shall result in the matter being referred for a licence review.

Complaints received containing allegations of serious criminal offences shall be referred directly to Lancashire Constabulary.

Disputes between licensed drivers should be resolved between themselves and not through this procedure. If there is evidence relating to an alleged serious criminal offence, such as threats of violence, assault etc, then this should be submitted to Lancashire Constabulary. Alleged breaches of byelaws and licence conditions should be submitted to the Authority.

A licensed driver or operator that has been the subject of a high number of complaints, whether substantiated or not, may be required to have their licence reviewed.

3.0 Interviews under Caution:

3.1 Introduction

If the Council has asked you to attend an Interview under Caution because it believes that there are grounds to suspect that you may have committed an offence. This does not mean that the Council believes that you are guilty.

The interview is held in order to give you the opportunity to provide an explanation of the events that have occurred, although should evidence emerge during the

interview that you have committed an offence, you may be faced with criminal proceedings or alternative action may be taken against you.

3.2 What happens at the Interview?

The purpose of the interview is to establish the facts relating to the suspected offence. An Interview under Caution is part of the investigation process. We will normally record the interview and it will be conducted in accordance with the Police and Criminal Evidence Act 1984 Code of Practice. The Code of Practice will be available at the interview should you wish to refer to it.

Interviews under Caution conducted by Council Officers are:

- conducted in accordance with the Police and Criminal Evidence Act 1984
- to enable you to offer an explanation of the facts, though should evidence of an offence emerge, you may be prosecuted

3.3 What happens after the Interview?

We will use the facts gained from the interview, and other associated evidence, to decide what further action the Council will take.

3.4 No further action / written advice

If, following the interview we are satisfied that no offence has been committed then we will notify you that the investigation has ended. We may also issue written advice at this time

3.5 Written Warning

If, following the interview we are satisfied that the matter is either relatively minor, or simply a mistake, then we will likely notify you that the investigation has ended and issue a written warning

4.0 List of policies, procedures and schemes relevant to this policy

Below are the details of policies, procedures and schemes relevant to this policy document as they represent requirements applicable in all cases and are included here for completeness. Failure to comply with these is a criminal offence:

- Policy Statement on guidelines to convictions including statement of policy about relevant convictions
- Byelaws relating to hackney carriages
- The Rossendale Test Standards
- Policy for the Licensing of Hackney Carriage Drivers and Vehicles and Private Hire Operators, Drivers and Vehicles

