

CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 16th July 2013
Report of: Miss Kim Evans – Licensing Team Leader
Subject/Title: Penalty Points System for Hackney Carriage and Private Hire Licensing
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services Portfolio Holder

1.0 Report Summary

1.1 This report seek Members approval on a draft policy concerning a penalty points scheme for Hackney Carriage and Private Hire Licensing

2.0 Recommendation

2.1 That Members consider the results of the consultation exercise and

- i. Resolve to approve the Policy at appendix 1 without amendment and confirm that it will apply to all licence holders with effect from the 1st September 2013
OR
- ii. Resolve approve the Policy at appendix 1 with any appropriate amendments and confirm that it will apply to all licence holders with effect from the 1st September 2013

3.0 Reasons for Recommendations

3.1 In accordance with the Council's Constitution the Licensing Committee is authorised to determine such matters.

3.2 Members of the Committee have previously asked Officers to provide information concerning a Penalty Points System and produce a draft policy and procedure.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 N/A

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 None identified

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 If Members were minded to implement a Penalty Points Scheme this would be used to record breaches of legislation or conditions and be a trigger for a referral to the Council's General Licensing Committee.

8.2 Section 46 of the Town Police Clauses Act 1847 provides local authorities the power to issue Hackney Carriage driver's licences. Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') provides the authority to issue licences to drive private hire vehicles.

8.3 The provisions of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the 1976 Act state that a council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.

8.4 Section 60, 61 and 62 of the Act enable the Council to suspend or revoke a vehicle licence, a driver's licence or an operator's licence.

8.5 A Penalty Points system would provide a means for breaches to be noted and recorded prior to a formal consideration of a suspension or a revocation. There is no legal requirement to have such a system, but it does offer an effective means of dealing with breaches of the Licensing Legislation or Licence terms and conditions, which do not necessarily in themselves reach the threshold for a possible suspension or revocation, and when a matter is brought before the Sub-Committee the points provide evidence to the Sub-Committee of whether someone is still a fit and proper person to hold a licence.

8.6 The Council cannot fetter its discretion in respect of decision making. Therefore each case must be considered on its merits, even when a licence holder reaches the trigger point for consideration by the Sub-Committee.

9.0 Risk Management

9.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions.

9.2 Members must also be mindful that consultation should be undertaken when matters are at a formative stage rather than at the end of a process.

9.3 It should also be noted that the system is designed to be a referral system to the Council's General Licensing Sub-Committee. It is not intended that the

Committee will be required or directed to take a particular action. The Committee will determine each case on its own merit and if any action should be taken.

- 9.4 Any action to suspend, revoke, or refuse to renew a licence taken by the General Licensing Sub-Committee would be subject to a licence holder having a right of appeal. Any appeal would be made to the Magistrates' Court by way of complaint.

10.0 Background

- 10.1 Currently, the Licensing Team does not always record minor breaches or misdemeanours. It is therefore possible for non-compliant drivers, operators, or proprietors to fall through our enforcement procedures and remain licensed when they may not be fit and proper persons.
- 10.2 The provisions of the 1976 Act make it clear that a licence should not be granted to a driver where they are not a fit a proper person. It is therefore necessary to have a robust system of recording breaches.
- 10.3 The Policy is designed to give licence holders a clear indication of what is expected of them. It is also intended to give them an indication of what action the Council will take in respect of breaches of legislation, Conditions, or Byelaws.
- 10.4 The Council is mindful of its requirements to ensure public safety and it is hoped that the instigation of this system will affirm the public's confidence in the licensed trade.
- 10.5 Members should also note that the system will be used to raise compliance with in the trade and identify licence holders whose actions fall short of what is expected or have caused the safety of the public to be undermined.
- 10.6 Following the meeting of the Licensing Committee on the 14th January 2013, where the Committee approved the draft content, the Licensing Team conducted a consultation exercise with the licensed trade and more widely via the Council's website. The exercise ran for 12 weeks and any responses received are set out at appendix 2.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

Name: Miss Kim Evans
Designation: Licensing Team Leader
Tel No: 0300 123 5015
Email: kim.evans@cheshireeast .gov.uk