

# Brighton & Hove City Council

## Licensing Committee (Non-Licensing Act 2003)

## Agenda Item 25

**Subject:** Penalty Point System for Hackney Carriage & Private Hire Drivers, Proprietors & Operators

**Date of meeting:** 13 February 2024

**Report of:** Executive Director of Housing, Neighbourhoods & Communities

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**Ward(s) affected:** All

### For general release

#### 1. Purpose of the report and policy context

1.1 Members are asked to consider the introduction of a Taxi Penalty Points System for Drivers, Proprietors and Operators.

#### 2. Recommendations

2.1 That Committee agrees to introduce a Penalty Point System for Licensed Drivers, Proprietors and Operators.

2.2 That Committee agree that Officers review the system 12 months after implementation and make any minor changes as necessary. Officers will also update committee on how the PPS is working and any issues via the Taxi Enforcement report which is presented to each licensing committee.

#### 3. Context and background information

3.1 Hackney Carriage and Private Hire Operators, Drivers and Vehicles are principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Council's Byelaws and the Rules, Regulations and Conditions set by the Licensing Committee.

3.2 The aim of this policy is to improve the levels of compliance with licensing regulations and requirements and to help raise standards, improve safety and enhance the protection of members of the public affected by the actions of licensed drivers, operators and vehicle proprietors.

3.3 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers, operators, and vehicle proprietors. The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

- 3.4 The penalty point system works in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. Its purpose is to record misdemeanors and to act as a record of driver's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.
- 3.5 If Operators, Drivers or Proprietors of Vehicles currently commit an offence or breach rules, regulations or conditions of licence, the persons involved are asked to attend the Council offices for an interview. Once investigations are completed options include no further action, formal words of advice, warning letters, additional relevant training, suspension or revocation of licence.
- 3.6 Several neighboring authorities, including Lewes District Council, Worthing Borough Council Mid-Sussex District Council, Rother & Wealden District Council and Crawley Borough Council already have a Penalty Point Systems in place.
- 3.7 **How will it work?**

A flow chat of the complaint process can be seen in appendix 3. The process of investigating usually begins with the receipt of a formal complaint, the report may come from various sources, such as a passenger, other drivers, law enforcement agencies or members of the public or officers on enforcement duties. The complaint is evaluated to determine its credibility and seriousness. If the complaint appears to involve a potential offence or beach of regulation the investigation moves forward and further information is gathered, this may include witness statements, CCTV footage, photographs, documentation, or any other evidence that can shed light on the alleged offence. The complainant, any witnesses and the driver may then be interviewed, with the aim to gather additional details, clarify any inconsistencies, and allow the involved parties to provide their side of the story.

Based on the finding of the investigation, appropriate action is taken if the evidence supports that an offence has been committed. The specific consequences depend on the severity of the offence or breach and the applicable laws and regulations. Words of advice, warnings, additional relevant training, suspension, revocations, and legal prosecutions or the imposition of penalty points may be given.

If penalty points are deemed to be appropriate this allows officers to allocate points depending upon the nature and severity of the alleged misdemeanor

Penalty Points will remain current for 3 years for drivers and proprietors & 5 years for Operators from the date the points were issued. The period is on a roll forward basis, to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee.

Points issued to either the proprietor(s) of a vehicle, operator or a driver will be confirmed in writing.

Where a licensee accumulates 12 penalty points in a current 3-year period for drivers and proprietors & 5 years for Operators period consideration will be made as to whether the driver is a fit and proper person to hold a licence. A decision will then be made as to whether the licence should be suspended or revoked.

Appeals regarding the issuing of penalty points by Officers will be referred to the Regulatory Services Manager who has been independent of any investigation, this allows the drivers to present additional evidence or challenge the finding. The Regulatory Services Manager who will have discretion to award a lesser number of points than displayed on the tariff if the complaint is upheld. Drivers must appeal any points issued by Officers to the Regulatory Services Manager in writing within 7 days from the date of any points issued. There is no right of appeal against the awarding of points by the Regulatory Services Manager. The only recourse to a legal challenge is by way of judicial review.

The system will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, byelaws, and regulations. However, if points are issued to a proprietor/driver for a matter which is also a criminal offence, e.g., bald tyres, no badge, those persons(s) will not then be the subject of a prosecution by the Council.

- 3.8 The penalty point system allows officers to allocate points depending upon the nature and severity of the alleged misdemeanor. Where there is a scale of points the number of points issued will depend on the seriousness of the offence such as giving a false address, false names, Date of Birth, not declaring previous revocations or having been arrested as. An investigation will still take place. All options referred to above will still exist including, suspension, revocation or refusal.
- 3.9 Penalty Points will remain current for 3 years for drivers and proprietors & 5 years for Operators from the date the points were allocated. The period is on a roll forward basis, so as to allow any older points to be considered as spent and therefore excluded from the running total recorded against any individual licensee. In effect on the 3 year or 5 year anniversary of points being awarded the numbers are re set.
- 3.10 The majority of drivers who come to the notice of the council do so only the once. This system will act as an evidence gathering tool to identify a pattern of behaviour which will be taken into account when deciding if a person is a fit & proper person to hold a licence. Upon reaching the limit of allowed points (proposed to be 12 in 3 years for drivers and proprietors and 12 in 5 years for operators) the driver/operator is reported consideration will be made as to whether 'is he/she still a fit and proper person'.
- 3.11 Disputes regarding the issuing of penalty points by officers will be referred to the Regulatory Services Manager. Drivers must appeal any points issued by Officers to the Regulatory Services Manager within 21 days of the points being issued.
- 3.12 On the 17 November 2023 the Department for Transport published its updated Taxi and private hire vehicle licensing best practice guidance for licensing authorities in England. [Best Practice Guidance](#)
- 3.13 The Best Practice Guidance refers to points-based systems such as the one proposed.

#### *5.5 Points-based enforcement systems*

*To increase compliance with licensing requirements some licensing authorities operate a points-based system, which allows minor breaches of the rules to be recorded and considered in context, while referring those with persistent or serious breaches to the licensing committee (or other bodies charged with reviewing). Such systems can provide greater consistency in enforcement and make better use of the licensing committee's time. Authorities that operate a points-based enforcement system should make clear to licensees that these are separate to the 'penalty points' (endorsements) that the courts can put on a motorist's licence. As set out at 5.1, licensing authorities that use a points-based system should ensure that licensees are aware of the policies to which they must adhere, are properly informed of what is expected of them, and the repercussions for failing to do so - the points for specific breaches should be clearly set out.*

*Where a points-based enforcement system is in operation points incurred should remain on the record for a fixed period. The usual duration of a driver and private hire vehicle operator licence is 3 and 5 years respectively. To ensure that all past behaviour is taken into account when considering whether to grant a new licence, the department recommends that points should remain on the record from the date of the incident for a minimum of 3 years for drivers and a minimum of 5 years for private hire vehicle operators.*

*It should be noted that reaching a points limit must not result in an automatic action but should be used to trigger a review of the conduct of the licensee and whether further action is necessary to address any concerns. Such action might be undertaking additional training not just a suspension or revocation. Licensing authorities should however consider whether a review is undertaken in situations where points are incurred within a short period but have not reached a review point; for example, a rapid accumulation of points may indicate deteriorating standards or increasingly unsatisfactory conduct.*

- 3.13 In July 2020 the Government published the Statutory taxi and private hire vehicle standards [Statutory taxi and private hire vehicle standards \(updated November 2022\)](#) These standards also recommends a penalty point system.

## *9.2 Setting expectations and monitoring*

*Licensing authorities should ensure that drivers are aware of the policies that they must adhere to and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points-based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.*

*The provision of a clear, simple and well-publicised process for the Public to make complaints about drivers and operators will enable authorities to target compliance and enforcement activity. This will provide a further source of intelligence when considering the renewal of licences and of any additional training that may be required. It is then for the licensing authority to consider if any intelligence indicates a need to suspend or revoke a licence in the interests of public safety.*

## Consultation

4. Consultation has been undertaken through the Brighton & Hove Hackney Carriage and Private Hire Consultation Forum, including meetings and submissions from representatives from the Taxi Forum, all licensed Drivers, Vehicle Proprietors and Operators as well as lead Councillors. Prior to the formal consultation Officers also held meetings with the trade where the system was discussed and amended as agreed
- 4.1 The initial consultation was for Penalty Points to remain current for 2 years for drivers and proprietors & 2 years for Operators from the date the points were allocated. However, the Best Practice Guidance published after the consultation started recommends that points should remain on record for 3 years for drivers and 5 years for operators. Driver licences are granted for 3 years and Operator licences for 5 years. Officers have decided to bring the Brighton & Hove system in line with this recommendation.
- 4.2 The draft policy was emailed to all 1363 drivers, proprietors and operators for consultation which was open from the 02 October 2023 until 19 November 2023. This was later extended to the 01 December 2023. A total of 69 responses were received.
- 4.3 The results of the consultation can be seen at Appendix 2. 5 were in favour of the system and 64 were against a large proportion of objections were identical. The biggest objection seems to be that drivers from other authorities would not be subject to the system. It should be noted that other local authorities in the vicinity of Brighton & Hove have their own penalty point systems.

### Sample of Consultation Responses – Objections

- *Driver Shortage: We are facing a shortage of new taxi drivers joining the Brighton & Hove taxi trade (they prefer to join Uber with fewer rules), and imposing penalty points could discourage individuals from entering or staying in the profession.*
- *Unfairness: With the cross borders being in place, the Hackney Carriage officers have no enforcement powers over any cars coming from outside the city, allowing these outside drivers to get away with violations BH drivers will be punished for. This is unfair, and this proposal will only create more resentment towards the outside-the-city drivers, conflict and unfair treatment for the local taxis. This can also lead to disappointed customers who might think it is BH drivers who provided dissatisfactory service, when in reality it was out-of-city drivers.*
- *Privacy infringement: Under The Proposal, the officers can stop any BH Hackney / Private Hire car at any time. As per the vehicle insurance, our cars can be used for private use (time with our families etc) and the vehicle can get messy (we might eat there or move furniture etc). During this time we are private citizens, and should be treated as such.*
- *Complex Violations: Some violations by taxi drivers may involve complex circumstances or disputes, that are better addressed through arbitration or mediation, rather than a straightforward penalty points system.*

- *Economic Impact: Considering the current economic impact on taxi drivers and the Council itself, The Proposal will cost money to implement, plus the excessive use of penalty points could lead to financial hardship for drivers.*
- *Focus on Core Issues: The Council may prioritise addressing more significant issues in the taxi industry, such as safety concerns, vehicle standards, or customer service, and may choose to allocate resources accordingly.*
- *Enhancing vehicle standards: By applying a Vehicle suitability test every 6 months, rather than waiting for the driver to commit an offence and issuing him a penalty point.*
- *It is already implemented in British Law: If a driver commits a driving offence, he will be issued with penalty points by the Police and if it is serious, the driver will lose his driving licence and the taxi licence at the same time.*
- *Blue Book: Brighton and Hove taxi trade rule book, aka 'The Blue Book' already requires a high level of performance from the Taxi Drivers, which sets us apart from the rest of the UK.*
- *Monitoring and Improvement: The Council may opt for continuous monitoring and improvement programs for taxi services, where they work closely with drivers to identify and rectify issues without resorting to penalty points.*
- *Educate and do not prosecute: Educating taxi drivers effectively through training courses, communication, online seminars and support as prevention, instead of waiting until the driver makes a mistake to be prosecuted.*
- *Inconsistent Enforcement: The current application of penalty points (as per the Blue Book) appears to be inconsistent and sometimes arbitrary. Drivers often receive points for minor infractions that do not necessarily pose a threat to passenger safety.*
- *Viability: There have been no viability studies or any statistical figures that have been raised by the Council to reflect that we have a problem that warrants this proposal.*
- *Increased anxiety and stress: as professional drivers who spend our work shift behind the wheel, we already face more pressure than regular drivers; we ferry rowdy, drunk or ill passengers in all weather conditions, day or night, as well as navigating traffic and ever-changing roadworks. Coming to work worrying about receiving penalty points would make drivers more anxious and stressed, and this could lead to more accidents.*

#### Sample Consultation Responses – Supportive

- It seems like a good idea but it would only fair if it applies to all drivers I mean to say the amount of out of city cars are operating in Brighton they outnumber Brighton registered vehicles, If it doesn't apply to them then it is unfair. The way they drive in Brighton it is disrespectful I have seen them smoking in there vehicles I do agree the attitude of a very few drivers in Brighton are not up to standard this comes from the passengers I had picked which can only be true.
- Will there be a Scale off thee offence minor offence \*1 point as to severity off offences 1 point, 2 points, 3 points And so on. With severity off offence rather than making points up as you go along as each HCO officer may have there own opinion on points TO ISSUE. LIKE THE IDEA
- I agree with the Penalty point scheme overall. I think dress code should be a part of the scheme you want to see some of them out there. I also agree that you have got to put up license fees. But more important than anything is you (we) have got to get these out-of-town cars out of Brighton some are Just taking the p.

As I keep saying get them out of the bus lanes for a start If we go to London we are not allowed to go in bus Lanes Surely you must be able to talk to LEWES district Council about when they license these cars they ask where they're going to work because all they are doing is licensing them and they're coming straight into Brighton. I don't even mind about Uber Just as long as all the cars that work for them in Brighton are Brighton licensed. Sorry to be a pain But we have all got to be under the same umbrella

- I believe this is a golden opportunity for enforcement at the front of Brighton station. There is no reason whatsoever why we can't insist on one of the penalty point offences being ranking at the front of Brighton station. It has already been specifically for bitten by HCO VIA THE LETTER SENT OUT TO EVERY DRIVER. I appreciate it has been difficult to enforce. Maybe two or three points penalty for ranking at the front of the station would be an easy enforcement method

4.4 Despite objections officers believe that the system should be implemented to increase compliance with licensing requirements to allow minor breaches of the rules to be recorded and considered in context, while referring those with persistent or serious breaches for a review of their licence. Officers believe that the system would provide greater consistency in enforcement and make better use of Officer time. The system will help to uphold professional standards within the taxi trade fostering a sense of accountability among drivers and passengers alike. Overall the penalty point system would play a crucial role in regulating and maintaining the integrity of the taxi trade making it a valuable tool promoting public safety and driver professionalism.

4.5 Officers have also amended the list of offences and suggested points to be awarded against them following the consultation process. The final table can be seen at Appendix 1

## **5. Analysis and consideration of alternative options**

5.1 The Licensing Committee could decide to just rely on the enforcement of the statutory legislation in relation to Hackney Carriages and Private Hire. However due to the age and prescriptive nature of this legislation this would be resource intensive and it is suggested should only be used in the most serious cases.

## **6. Conclusion**

6.1 The aim of this policy is to improve the levels of compliance with licensing regulations and requirements and to help raise standards, improve safety and enhance the protection of members of the public affected by the actions of licensed drivers, operators and vehicle proprietors as recommended in the Governments Best Practice Guidance and Statutory Guidance.

6.2 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers, operators and vehicle proprietors.

6.3 The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

## **7. Financial implications**

7.1 There are no immediate financial implications contained in this report. Members should note that any additional resourcing issues requiring funding would have to be funded through the taxi licensing regime and would not therefore impact on council tax payers.

Name of finance officer consulted: Michael Bentley Date consulted: 22/01/24

## **8. Legal implications**

Penalty Point schemes are recognised in the Department for Transport Best Practice Guidance as well as caselaw and are used by other authorities. The proposed scheme is in line with the Best Practice Guidance.

Name of lawyer consulted: Rebecca Sidell Date consulted (15/01/24)

## **9. Equalities implications**

9.1 Under the Equality Act 2010, Section 149 of the Equality Act 2010, a public authority must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act,
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 An Equalities impact assessment regarding the scheme has been undertaken.

## **10. Sustainability implications**

10.1 No direct carbon/environmental impacts arising from the recommendations.

## **11. Other Implications**

### **Crime & disorder implications:**

11.1 The aim of this policy is to improve the levels of compliance with licensing regulations and requirements and to help raise standards, improve safety and enhance the protection of members of the public affected by the actions of licensed drivers, operators and vehicle proprietors.

## **Supporting Documentation**

### **1. Appendices**

1. Penalty Point System



2. Consultation Responses
3. Flow Chart

