

LICENSING COMMITTEE

Date: Tuesday 11 July 2023

Time: 5.30 pm

Venue: Rennes Room, Civic Centre, Paris Street, Exeter

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Sharon Sissons, Democratic Services Officer (Committees) on 01392 265115 or email sharon.sissons@exeter.gov.uk

Entry to the Civic Centre can be gained through the rear entrance, located at the rear of the Customer Service Centre, Paris Street.

Membership -

Councillors Asvachin (Chair), Warwick (Deputy Chair), Begley, Bennett, Ellis-Jones, Fullam, Foale, Holland, Parkhouse, Rees, Sheridan, Snow, Vizard and Wood

Agenda

Part I: Items suggested for discussion with the press and public present

1 Apologies

To receive apologies from Committee members.

2 Minutes

To approve and sign the minutes of the meeting held on 21 March 2023.

(Pages 3 -
6)

3 Declarations of Interest

Councillors are reminded of the need to declare any disclosable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion of the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

4 Local Government (Access to Information) Act 1985 - Exclusion of Press and Public

It is not considered that the Committee would be likely to exclude the press and public during the consideration of any of the items on this agenda but, if it should wish to do so, then the following resolution should be passed: -

RECOMMENDED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for particular item(s) on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in the relevant paragraphs of Part I of Schedule 12A of the Act.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

5 Taxi Penalty Points Scheme

To consider the report of the Service Lead – Environmental Health& Community Safety. (Pages 7 - 28)

Individual reports on this agenda can be produced in large print on request to Democratic Services (Committees) on 01392 265115.

LICENSING COMMITTEE

21 March 2023

Present:

Councillor Bob Foale (Chair)
Councillors Asvachin, Ellis-Jones, Holland, Newby, Parkhouse, Rees, Snow and Wright

Apologies:

Councillors Warwick, Mitchell, K, Oliver, Vizard and Wood

Also present:

Service Lead - Environmental Health & Community Safety, Principal Licensing Officer,
Legal Advisor, Apprentice Solicitor and Democratic Services Officer (SLS)

12 **Minutes**

The minutes of the meeting held on 31 January 2023 were taken as read, approved and signed by the Chair as correct.

13 **Declarations of Interest**

No declarations of interest were made by Members.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) 1976 AND TOWN AND POLICE CLAUSES ACT 1847

14 **Exeter Licensed Vehicle Mystery Shopping December 2022 - Survey**

The Principal Licensing Officer presented the report, and referred to a series of mystery shopper test purchases commissioned by Exeter City Council, undertaken from Thursday 8 December to Sunday 11 December 2022. The survey included the hire of Hackney Carriages from ranks in Exeter and pre-booked Private Hire Vehicles made via telephone, mobile app and booking offices. The premise of the survey was to establish a snapshot of the customer experience in using Exeter's taxis. An overview of the observations from the mystery shopper exercise was attached as an appendix to the report. It was noted that the details of each test purchase undertaken would be presented as a Part 2 report, as part of the agenda.

The survey made the following observations:-

- Covid had an ongoing impact on the availability of drivers going forward;.
- the availability of both Hackney Carriage taxis on the ranks and private hire vehicles on the circuit was more restrictive than during previous surveys;
- the test purchases were made in such a way as to ensure the identity of the mystery shopper exercise was not revealed;
- a number of Hackney Carriage test purchases were for short distance journeys to verify passenger comments that drivers were reluctant to undertake shorter trips. It was noted that no requests for short distance journeys were refused, although a small number of drivers added an additional charge; and
- during one test purchase, the mystery shopper was unwilling to accept the request to share the taxi journey.

- there was one instance of a private hire test purchase trip made without pre-booking.

The Service Lead - Environmental Health and Community Safety responded to a comment on the limited number of taxi firms operating in Exeter and stated that whilst market forces prevailed, the experience in Exeter of individual private hire operators amalgamating into larger companies across a locality was reflected across the country. It was noted that currently, 64 operators were licensed with the City Council, many being sole drivers fulfilling school transport contracts for Devon County Council.

The Principal Licensing Officer also responded to the following questions:-

- the Member suggestion of the increased demand for taxis, could relate to the post Covid and Brexit experience, and the poor bus service in the city was noted;
- a separate report which included driver statistics was being prepared for the Department of Transport (DfT) and had identified 362 active licenced vehicles operating;
- although not relevant to Exeter, the mystery shop survey still included a reference to on line taxi operators, Ola who no longer had a presence and similarly Uber who had never operated in Exeter, as part of a national format;
- both male and female mystery shopper operatives were used. All taxi drivers were required to undertake safeguarding training within 12 months of driving with a further requirement to renew every five years. The training included awareness for vulnerable passengers and particularly lone females;
- Hackney carriages could be hailed, both from the street and the rank, an illuminated roof light indicating their availability;
- Devon County Council Highways Authority have sought the Licensing team's support to coordinate consultation with the taxi trade to upgrade or reinstate a number of taxi ranks in the city;
- Taxi Marshalls helped manage queues on the ranks during the busy Saturday evening; and
- recent initiatives including the installation of CCTV had improved standards in Hackney Carriages and future legislation may make this a requirement in Private Hire Vehicles.

The Service Lead - Environmental Health and Community Safety agreed that passenger safety and safeguarding was an important matter and both licensed taxi drivers, and other partners had a part to play in a contribution particularly in the night time economy. The Safety of Women at Night Charter (SwaN) was about to be relaunched, and the Licensing team would continue to work with representatives of the taxi trade.

A Member's comment that passengers may wish to use a taxi for varying reasons, including vulnerability was noted. All taxi drivers were invited to take part in Equality and Diversity training and he extended an invitation to Licensing Committee Members.

RESOLVED that the report be noted.

15 **Local Government (Access to Information) Act 1985 - Exclusion of Press and Public**

RESOLVED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of the following item on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part I, Schedule 12A of the Act.

16 **Exeter Licensed Vehicle Mystery Shopping December 2022 - Survey Results**

The Principal Licensing Officer presented the report and stated that although a number of issues were raised, there were also many examples of good service offered by the taxi trade in Exeter.

The Chair also welcomed the report and agreed with fellow Members, that whilst there were a small number of issues to address, the taxi trade should be thanked for the service provided. The Principal Licensing Officer would pass on Members' comments.

RESOLVED that the report be noted.

The meeting commenced at 5.30 pm and closed at 6.20 pm

Chair

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REPORT TO LICENSING COMMITTEE

Date of Meeting: 11 July 2023

Report of: Service Lead - Environmental Health & Community Safety

Title: Introduction of Taxi Penalty Points Scheme

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 The purpose of this report is to seek Licensing Committee's views on the introduction of a Taxi Penalty Points Policy for Exeter City Council following a consultation carried out from 20 February until 30 April 2023 (10 weeks).

1.2 In July 2020, the Government issued Statutory Taxi and Private Hire Vehicle Standards. On 27 October 2020, the Licensing Committee resolved to set up a working group to consider a number of elements of the guidance, including whether to introduce a points based disciplinary system. The working group has been discussing the merits of introducing such a system, which has led to the proposals being put forward in this report.

2. Recommendations:

That following consultation with the taxi trade, Licensing Committee approve the introduction of a Taxi Penalty Points Policy, with the following amendments, namely

2.1 Licensing Committee amend Point 31 to read "Eating whilst a passenger is in the vehicle" and

2.2 Remove Point 59 as it contradicts the proposed policy document.

3. Reasons for the recommendation:

3.1 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.

3.2 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.

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

4 What are the resource implications including non-financial resources.

- 4.1 There are no quantifiable financial implications arising as a result of this report, although the impact upon staffing requirements of administering the new scheme would need to be monitored.

5 Section 151 Officer comments:

- 5.1 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 licensing regime and would not therefore impact on the Council Taxpayer.

6 What are the legal aspects?

- 6.1 The Council may lawfully adopt a penalty points scheme for taxis, hackney carriages and private hire vehicles, in accordance with the decision in *R (on the application of Singh) v Cardiff City Council (2012) [2012] EWHC 1852 (Admin)*, so long as the scheme does not permit the automatic revocation or suspension of a taxi licence. Upon a driver reaching the permitted limit of points, the decision to suspend or revoke the taxi licence must be referred to the Licensing Sub-Committee.

- 6.2 Two statutes create offences relating respectively to hackney carriages and private hire vehicles:

The Town and Police Clauses Act 1847 (as amended)

The Local Government (Miscellaneous Provisions) Act 1976 (as amended)

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 - Suspension and revocation of drivers' licences.

- (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—
- (a) that he has since the grant of the licence—
 - (i) been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
 - (b) any other reasonable cause.
- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him in accordance with section 54 of this Act.
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

- (2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.
- (2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2) (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.
- (3) Any driver aggrieved by a decision of a district council under subsection (1) of this section may appeal to a magistrates' court.

7 Monitoring Officer's comments:

- 7.1 This report raises no issues for the Deputy Monitoring Officer.

Simon Copper – Deputy Monitoring Officer

8 Report details:

- 8.1 The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 8.2. The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breaches or infringements, which in isolation are not serious enough to warrant prosecution, suspension or revocation of a licence.
- 8.3 Penalty points may be awarded against anyone holding a hackney carriage licence; a private hire driver licence; a private hire operator licence or a vehicle proprietor.
- 8.4 A detailed explanation and breakdown of how the policy will be administered and is operated is contained in the policy at Appendix A.
- 8.5 The policy was put out to public consultation for a ten week period. This period ran from 20 February until 30 April 2023 (10 weeks). Two responses were received to the consultation and are set out below:-

A response from the General Manager of Apple Taxis is set out below in italics:-

Below are some points from the recent proposal along with a couple of queries/concerns for the next forum meeting.

Firstly Apple completely back the new points system although we do feel the operator points should be withheld until the policy is properly in place. Although the majority of offences/misconducts are backed, below are a couple that have raised concerns and feel either require removing or updating.

Point 31. Evidence of food or drink in the Vehicle - If a driver is keeping their vehicle clean, are they not able to carry their lunch or a coffee on board? This seems unreasonable.

Point 57. Waiting or stopping on double yellow lines - Although law, the majority of the city has double yellow lines or loading bays... this rule has concerned a lot of drivers, especially with the lack of access to Queen Street ext. It seems the wardens are targeting Private Hire vehicles in particular recently. We've had a driver ticketed at the back of Boots for setting down a blind passenger as the driver left the vehicle to open the door. (Concerns of disability cases or discrimination.)

A second response to the consultation was in the form of a petition received on behalf of the Exeter St David's and the Exeter Taxi Association and signed by 64 drivers, between the 31 March and the 11 April 2023. The petition sets out their concern that the proposed point system could not be enforced until such time as there was the opportunity to meet and discuss with the Chair of the Licensing Committee. The petition made reference to *what can action could be taken for out of town taxis working in Exeter; in Point 59, that there should be access to a meeting of Licensing Sub-Committee, and the right of appeal above the Environmental Manager; and that a driver should be able to eat or drink inside the cab when the taxi is stationary on the rank.*

8.6 Both responses raise issues that were not the subject of this consultation. For the purposes of this report the matters raised that were the subject of this particular consultation relate to points 31, 57 and 59 of the proposed penalty points policy.

8.7 Point 31 relates to evidence of food or drink in the vehicle. It has rightly been raised that drivers need to eat or drink whilst working. This is accepted and litter from food and drink in the vehicle would be covered by Point 11 which relates to unsatisfactory condition of a vehicle both inside and out. It is therefore proposed that point 31 be amended to eating whilst passengers are present in the vehicle.

8.8 Point 57 relates to waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle. This is a road traffic regulation with an exemption to allow passengers to board or alight from a vehicle. We would not be seeking to penalise drivers who are legitimately dropping off or picking up passengers under the exemption. The points system would penalise those drivers who repeatedly ignore road traffic restrictions and park where they are not permitted to. It is proposed that Point 57 remains as written.

8.9 Point 59 relates to the appeal of points issued by way of a sub-committee. Members have been clear throughout this process that appeals against points issued by officers should be to the Environmental Health and Community Safety Manager or in his/her absence the Service Lead – Environmental Health and Community Safety, who, will have the discretion to:

- i. uphold the Council Officer's decision – retain the number points on the 'penalty points notice'; or
- ii. cancel the issue of the "penalty points notice" to the licensee.

Members will only hear cases where 12 or more points have been accrued or where it is proposed that 7 or more points are likely to be issued. It is therefore proposed that Point 59 can be removed.

8.10 The above points at 8.7, 8.8 and 8.9 were discussed and explained at the recent Taxi and Private Hire Forums, extracts from the Minutes of both meetings on the 19 April 2023, which included the Chair and Deputy Chair of Licensing Committee, representatives of the respective taxi trades and Licensing Officers are set out below:-

Minute Extract Taxi Forum (Hackney Carriage)

The Principal Licensing Officer provided an update on the proposed Taxi Penalty Points Policy. The Licensing Committee at its meeting held on 31 January 2023, had agreed to undertake a 12 week consultation between 20 February and 30 April 2023. As part of the consultation process, the draft policy had been sent to the Hackney Carriage and Private Hire Trades for discussion at the Taxi Forum before a final policy is presented to the Licensing Committee.

Whilst the consultation process was still underway, the Licensing Authority had received a written submission from the Chair of the Exeter St David's Taxi Association, supported by Hackney Drivers, with the following concerns:-

How could Taxis licenced by authorities outside of the city, continue to work in Exeter using a Private Hire App, which was considered to be illegal. The proposed Taxi Penalty Points Policy, needed to ensure that there was quicker access to holding a Licensing Sub Committee hearing, for any right of appeal to the Service Lead - Environmental Health & Community Safety. The point relating to preventing drivers from eating or drinking inside a taxi whilst stationary needed to be addressed.

The Principal Licensing Officer addressed the point raised on out of town drivers operating in the city. He clarified that despite the frustrations it caused, it was legal to do so. He also confirmed that there was nothing the Council's Licensing Authority could do to prevent it. He requested that the taxi representatives acknowledge that until the law was changed, the Licensing Authority was powerless on this matter.

Members advised that they were in support of the Licensing Authority on this matter and asked representatives to note that this matter was outside of the Council's control.

Representatives spoke on this matter, and the following points were made:-

Thanks were given to the Licensing Authority for their continuing support to the taxi trade. However, it was felt that Taxi Forum meetings needed to be held more frequently to address issues of drivers and operators.

The Licensing Authority needed to write to Apple Taxi's to request the number of operators from outside of Exeter who worked in the city and to enquire about the fares they set. Cross boundary cooperation was needed to address key issues by the various local authorities in Devon. East Devon District Council had made provisions for preventing the use of the term 'Taxi' on Private Hire Vehicles in their area to ensure that there was a clear distinction between the trades.

All drivers needed to undertake knowledge tests to ensure they know the local area whilst ensuring passenger safety.

Door signs and appropriate colour schemes needed to be introduced to support distinguishing between Hackney and Private Hire vehicles. Work had been previously been undertaken on signs and needed to be picked up.

Vehicle door signs needed to use stickers rather than magnetic signs. This would be advantageous for areas such as St David's Ward, where there were a number of vehicles requiring enforcement on this issue.

In response to questions and points raised during the discussion, the Principal Licensing Officer advised:-

Providing that Private Hire fares from other areas did not exceed meter fare rates on Hackney Carriages, they were operating legally. The onus was on the relevant authority who issued plates to determine the fares.

The proposed penalty point policy had been shared with other local authorities, but there was a discrepancy across the region, however, final approval of the policy would be made by the Council through its Members.

Although work on door signs for Private Hire vehicles had been undertaken previously, the DFT was currently undertaking a consultation on this matter. When the details of its findings were made available, work on this matter could be looked at again.

Any costs for any door signs would be included as part of the Taxi fees set by the Council; Any penalty points which exceeded 12 points would be determined by a Licensing Sub Committee, and was open to appeal.

The representatives were also advised by Councillors, that there was still a lot of work to be undertaken before Members considered the matter for approval. There were limited resources available for officers and work had to be prioritised. Work on door signs would be looked at in due course.

The Chair summarised the three points raised, and requested the Hackney Carriage representatives to:-

note and agree that it was legal for out of town taxis to work in Exeter. The Council would commit to working with other authorities in relation to issues raised on insurance and fares to find a unified way forward.

The Council would also look at progressing signs on vehicles to clearly identify them and work with other authorities accordingly.

note that a Licensing Sub Committee could only be convened, on the authority of the Service Lead - Environmental Health & Community Safety, Chair of Licensing Committee or by the Principal Licensing Officer.

note that drivers were allowed to eat and drink in their vehicles, however the vehicle must remain clean and presentable for passengers, and there must be no evidence of food in the vehicle, which included odour from cooked foods.

The Chair also advised that the Taxi Forum wasn't a decision making body and all issues raised would be picked up by the Licensing Authority.

The Principal Licensing Officer agreed to discuss the issue of insurance and fares of drivers plated at Teignbridge District Council with the legal team. He highlighted that Exeter didn't have the power to stop out of town drivers and could only request the relevant authority to pick up any enforcement matters.

The Chair in response to further questions raised by a representative, advised that:- signs on vehicles and would be implemented following any decision made by the Licensing Committee; and

issues relating to closed offices and advertising would be addressed following the publication of the DFT findings.

Members thanked the representatives for their contributions.

Minute Extract Taxi Forum (Private Hire)

The Principal Licensing Officer advised that Apple Taxi had submitted their apologies for the meeting, but had submitted some points in relation to the proposed Penalty Points system and other matters for consideration as follows:-

Apple Taxi's were supportive of the new points system, but felt that operator points should be withheld until the policy was fully in place.

A point of concern was on the issues of evidence of food or drink in vehicles and whether it was reasonable to prevent drivers having food in vehicles.

Another point of concern was on waiting or stopping on double yellow lines for disabled passenger collections. There were concerns about possible disability discrimination cases if passengers couldn't be picked up or dropped off.

Could the Council consider using holographic stickers for the front screen of all private hire cars?

There needed to be a push to ensure Operators had a manned commercial operating base, with fixed landlines.

Private Hire operators would like to undertake a joint operation managed by the Licensing Authority, to monitor drivers in the city.

There needed to be a bigger incentive to increase the number of wheelchair accessible vehicles in the city.

Private Hire vehicles needed access to the High Street in the evenings, using bus lane stickers, to support the safety of women walking alone at night, under the Safety of Women at Night Charter.

The new knowledge test for Private Hire drivers would be welcomed.

A representative from Devon County Council was needed to join the Taxi Forum to address a variety of importance matters.

The Principal Licensing Officer, advising on the submitted points, addressed each point as follows:-

Matters relating to stopping or waiting on double yellow lines had been discussed with Devon County Highways in relation to ensuring there was a level of reasonableness for disabled passenger work. Highways had confirmed that there was no issue with loading/unloading passengers, but drivers should not remain on double yellow lines for any longer period of time.

Apple Taxis would need to contact Devon County Highways to arrange access to Queen Street and other Hackney routes. A DCC contact number could be made available on request.

Private Hire Vehicles already had stickers and plates to identify them to the public.

There was no legislation or policy that would prevent an operator working from home, from a vehicle, or be required to have a fixed line.

Should Apple Taxi organise any operation to address drivers in the city, they would need to coordinate this event. The Licensing Authority would provide support as required.

Incentives to increase the number of wheelchair accessible vehicles in the city could be considered as part of the planned policy changes, going forward.

Although the membership to Safety of Women at Night Charter (SWAN) was important, passengers should continue to be directed to well-lit areas around the city, monitored by CCTV, such as by the library.

A Devon County Council representative would be invited to attend a future meeting, to address a number of matters.

In response to questions, the Principal Licensing Officer explained:-

Apple Taxis had recently started using new door signs using the term 'Taxi' which was their business name. They had been advised of the new DFT guidance in relation to Private Hire vehicles and it was likely they would have to remove the word from their signs and logo. It could take up to six months for a supplier to print new stickers and then issue the stickers to Private Hire drivers for use.

A Devon Licensing Officer meeting was held each month to enable officers from various authorities to meet and discuss cross boundary matters. Issues relating to fares from Teignbridge drivers and journey rates could be raised there;

He would contact Teignbridge District Council to find the number of licenced drivers who operated in Exeter; and

Drivers involved with the mystery shopper exercise would be written to, and be provided with the outcome of the recent exercise.

The Chair thanked the Principal Licensing Officer for the responses on the submitted points. He confirmed that the points raised by Apple had been noted and considered. It was important to highlight that some of the points raised were outside the control of the Licensing Authority.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The appropriate and robust enforcement of Hackney Carriage and Private Hire licensing will contribute to a healthy and safe city, and lend support to a robust, business friendly economy.

10. What risks are there and how can they be reduced?

10.1 There are no risks identified with this proposal.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

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

13. Are there any other options?

13.1 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.

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

The Town Police Clauses Act 1847

Local Government (Miscellaneous Provisions) Act 1976

Contact for enquires:

Democratic Services (Committees)

Room 4.36

01392 265115

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1. Introduction

- 1.1. This document details the Penalty Point procedure proposed by Exeter City Council to deal with minor breaches, infringements of legislation or unacceptable behaviour committed by those licensed as drivers and operators and vehicle proprietors in much the same way that points can be attached to a DVLA driving licence.

2. Policy statement

- 2.1. 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.
- 2.2. 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.
- 2.3. The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

3. Purpose of the procedure

- 3.1. The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators and vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 3.2. The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence or the prosecution of a licence holder where they commit an offence under the above legislation. There is no system in place to deal with minor breaches or infringements which in isolation are not serious enough to warrant prosecution suspension or revocation of a licence.

4. Who is covered by the procedure?

- 4.1. Penalty points may be awarded against anyone holding a hackney carriage licence, a private hire driver licence, a private hire operator licence or a vehicle proprietor.

5. How will the scheme operate?

- 5.1. Before penalty points are issued there must be sufficient evidence to prove on the balance of probabilities the offence or breach of licensing requirements.
- 5.2. If there is evidence the offence or breach and it is considered appropriate to do so the licence holder will be issued with a penalty point notice.
- 5.3. The penalty point notice will describe the infringement or breach, date and time it took place, and how many points have been issued to the licence holder.
- 5.4. The issuing of penalty points is not a formal sanction in its own right; it is merely an open and transparent method of dealing with unsatisfactory conduct, thereby improving driving standards. The scheme would act as a record of driver's behaviour and conduct, so as to ascertain fitness and propriety.

- 5.5. The Council's taxi policies will be fully considered by an authorised officer when determining the manner in which any breach of legislation or the requirements of this policy are dealt with.
- 5.6. Where it is decided that the use of the penalty points system is appropriate, the points will be issued in accordance with this appendix. It is to be noted that whilst the appendix shows the recommended amount of points, officers will have discretion to decide on the points given based on circumstances. If more than one offence takes place the points will be added consecutively to the individual's file.
- 5.7. The Council reserve the right to not impose penalties points under this scheme where in the opinion of the Officers the allegations are either frivolous, vexatious or repetitious, or made, in the officer opinion, to further personal grievances or which are not made within a reasonable time period, to be determined by the Council depending on the individual circumstances, of the breach having occurred.
- 5.8. Once the decision to issue penalty points is made, letters will be sent to all persons / organisations involved in the allegation(s) detailing the findings and decision of the Investigation officer. A record of the decision and any copies of associated documents will be kept on file (usually in secure electronic format) and retained for record in line with the retention of the licence.
- 5.9. A maximum of twelve penalty points will be issued on any one occasion. This means that if on any occasion when it is proposed to impose penalty points, a licence holder has committed more than one offence or breach of licence conditions, no more than twelve points will be imposed.
- 5.10. The imposition of penalty points against a driver who is an employee will not necessarily result in additional imposition of points to his/her employer or operator. However, the Council retains the discretion to issue penalty points to drivers, driver/proprietors and operators for a single contravention if the circumstances warrant it i.e. the breach is one against all these licences and it is considered joint responsibility is held.
- 5.11. Any penalty points incurred under this procedure are completely separate from any points which may be attached by the Police, through fixed penalty notices, or the courts, through convictions to DVLA driving licences.
- 5.12. When issued, the penalty points will remain 'live' for a rolling period of 36 months from the date they were imposed.
- 5.13. Points issued to a licence holder will be confirmed in writing within ten working days from the discovery of the contravention or the conclusion of an investigation into a complaint.
- 5.14. There is no financial penalty associated with the system, and the licensee may continue to work.
- 5.15. Confirmed infringements or breaches resulting in the award of penalty points will act as an ongoing record of a licensee's behaviour and conduct and may be used in determining whether they are a fit and proper person to hold a licence.
- 5.16. If 12 penalty points are imposed on an individual licence in any one 36-month rolling period, the driver will appear in front of the Licensing Sub Committee where appropriate action will be taken in accordance with this policy.

- 5.17. Where a licence holder is brought before the Committee, the Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- i. Take no action
 - ii. Issue a warning
 - iii. Issue additional penalty points
 - iv. Suspend a licence as a punitive sanction
 - v. Suspend a licence to correct a fault, defect, or breach
 - vi. Revoke or refuse to renew a licence
- 5.18. A driver will always have the right to be represented at any meeting, either legally or otherwise, and to state any mitigating circumstances they deem necessary.
- 5.19. The length of the period of suspension of a licence will be dependent on the nature of the breaches of the legislation or the requirements of this Policy and the compliance history of the licence holder. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.
- 5.20. More than one accumulation of penalty points in excess of the twelve point threshold in any three year period will normally result in the Committee revoking a licence where they believe the person not to be a 'fit and proper' person.
- 5.21. Once the matter has been dealt with:
- i. points will be removed if a suspension or revocation is imposed;
 - ii. If a written warning is given the points will remain live for the normal two year period;
 - iii. If the live period is extended the points will remain live for the time determined by the Committee.
- 5.22. Any driver, vehicle, proprietor or operator subject to suspension has the right of appeal to the Magistrates Court against the suspension. Suspensions will normally be subject to a 21-day appeals period prior to implementation to allow for the formal appeals process, except where the relevant legislation allows for a suspension to take place with immediate effect.
- 5.23. Any driver, vehicle, proprietor or operator subject to revocation has the right of appeal to the Magistrates' Court against the revocation.
- 5.24. The penalty points system will operate without prejudice to the Council's ability to take other action under appropriate legislation or as provided for by this policy.
- 5.25. The penalty points system outlined below identifies a number of breaches of conditions, byelaws and/or statutory provisions. It then indicates the number of points to be invoked should the breach be proven.

6. Appeals

- 6.1. If a licensee wishes to appeal against the issue of a 'penalty points notice' he/she must do so in writing, stating the reasons of the appeal, within 10 working days from the date of issue of

such a notice, to the Environmental Health and Community Safety Manager or in his/her absence the Service Lead – Environmental Health and Community Safety, who, will have the discretion to:

- i. uphold the Council Officer's decision – retain the number points on the 'penalty points notice; or
 - ii. cancel the issue of the "penalty points notice" to the licensee.
- 6.2. The Environmental Health and Community Safety Manager or, as the case may be, the Service Lead- Environmental Health and Community Safety will write to the licensee informing them of the outcome within 10 working days of receiving the appeal.
- 6.3. If no appeal is lodged within 10 days from the date of issue of the notice, then the Council will take the view that the licence holder has accepted the penalty points.
- 6.4. There is no appeal beyond the decision made by the Environmental Health and Community Safety Manager or, as the case may be, the Service Lead- Environmental Health and Community Safety.

7. Reapplying for a licence

- 7.1. If a licence holder has had their licence revoked, they may apply for a new licence, but it's Council policy that such an application under the Penalty Point Scheme will not be entertained until a suitable period from the date of revocation has elapsed, as detailed below:
- i. where the penalty points which resulted in the revocation included any infringements that attracted 10 or more points, then this period will be 24 months
 - ii. where none of the infringements individually attracted more than 10 points, then this is reduced to twelve months
- 7.2. should not be assumed that an application for a new licence, following revocation under this scheme, will automatically be granted. Any application will be subject to the Council's normal application process and consideration of whether the applicant is a fit and proper person to hold a licence.

8. Review of the scheme

- 8.1. the first three years of the implementation of the scheme, it will be reviewed on an annual basis. On the third year of reviewing the licence, the Licensing Committee will ascertain whether annual reviews are still a requirement or whether it can be extended to a triennial time frame (i.e reviewed once every three years).
- 8.2. Notwithstanding this, the policy will continue to be evaluated and may be updated at any time.

	Details of the Misconduct	Points Applicable	Driver	Vehicle Owner or Operator
1	Providing false or misleading information on licence application form / failing to provide relevant information or pay the relevant fee	6	✓	✓
2	Failure to notify, in writing, the Council of a change of address within 7 calendar days	3	✓	✓
3	Refusal to accept hiring without reasonable cause	6	✓	
4	Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓	
5	Plying for hire by Private hire drivers or Hackney Carriage drivers plying for hire outside the district	9	✓	✓
6	Private hire vehicle parking or waiting on a taxi rank	9	✓	✓
7	Inappropriate behaviour at a taxi rank	1-12	✓	
8	Leaving a taxi unattended at a rank	4	✓	
9	Using unlicensed vehicle or using a licensed vehicle without insurance or without a valid MOT	12	✓	✓
10	Failure to produce relevant documents within timescales when requested by an Authorised Officer	4	✓	✓
11	Unsatisfactory condition of vehicle, interior or exterior	4	✓	✓
12	Failure to undergo the MOT on time	6		✓
13	Failure to provide proof of insurance cover when requested	6		✓
14	Failure to produce Hackney Carriage or Private Hire vehicle for testing when required	4		✓
15	Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12	✓	✓
16	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
17	Failure to report, in writing, within 72 hours, accident or damage to licensed vehicle, which would cause the vehicle to breach licence conditions	4	✓	✓
18	Carrying more passengers than stated on the vehicle licence	6	✓	
19	Failure to display external/internal licence plate in a fixed position or failure to display appropriate door signs	6	✓	✓
20	Carrying an offensive weapon in the vehicle	12	✓	
21	Failure to notify a transfer of Private Hire or Hackney Carriage vehicle licence within 14 days of transfer	4		✓
22	Failure to carry fire extinguisher	4		✓

	Details of the Misconduct	Points Applicable	Driver	Vehicle Owner or Operator
23	Failure to carry first aid kit	3		✓
24	Displaying unsuitable or inappropriate sited signs or unauthorised advertisements in or on the vehicle	3		✓
25	Failure to use authorised roof light	4	✓	
26	Failure to maintain records in a suitable form of the commence and cessation of work of each driver each day	4		✓
27	Failure to produce on request records of drivers' work activity	4		✓
28	Using a non-approved or non-calibrated taximeter	6	✓	✓
29	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	12	✓	✓
30	Evidence of smoking in vehicle	3	✓	✓
31	Evidence of food or drink in Vehicle	3	✓	✓
32	Displaying any feature on private hire vehicle that may suggest that it is a Hackney Carriage	6		✓
33	Using a vehicle, the appearance of which suggests that it is a Taxi	6		✓
34	Failure to carry an assistance dog without requisite medical exemption certificate	12	✓	✓
35	Driver not holding a current DVLA licence	12	✓	✓
36	Failure to have the driver's badge clearly displayed	4	✓	
37	Failure to notify, in writing, a change in medical circumstances	6	✓	
38	Unsatisfactory appearance of driver	4	✓	
39	Failure to observe rank discipline	3	✓	
40	Failure to maintain proper records of private hire vehicles	3		✓
41	Failure to keep or produce records of Private Hire bookings or other documents required to be kept or produced	6		✓
42	Misleading use of the words 'Taxi' or 'Cab' on advertising materials	3		✓
43	Failure to issue receipt on request	6	✓	✓
44	Using a licensed vehicle in a dangerous condition	9	✓	✓
45	Failure to return vehicle licence plate within 7 days after due notice following expiry, revocation or suspensions of such licence	4		✓
46	Unsatisfactory behaviour or conduct of a driver	1-12	✓	
47	Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or conviction or cautions during period of current licence	6	✓	✓

	Details of the Misconduct	Points Applicable	Driver	Vehicle Owner or Operator
48	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute	1-12	✓	✓
49	Failure to provide reasonable assistance to a passenger	1-12	✓	✓
50	Carrying two or more separate fares without the appropriate consent	9	✓	✓
51	Failure to display a correct up to date fare card	3	✓	✓
52	Failure to carry a legal spare wheel (or appropriate alternative) and the necessary tools to fit the spare wheel	4	✓	✓
53	Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓
54	A licensed vehicle with a bald or dangerous or defective tyre (4 points per tyre)	4	✓	✓
55	Failure to submit licence renewal application including documents and attendance at a vehicle inspection	6	✓	✓
56	Failure to display an applicable fare card AND the Councils valid fare card together	3	✓	✓
57	Waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle	3	✓	
58	Driving whilst using a mobile phone	12	✓	
59	Appeal of points by way of Licensing Sub-Committee	4-12	✓	✓

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Equality Impact Assessment: Penalty Points Scheme

The Equality Act 2010 includes a general duty which requires public authorities, in the exercise of their functions, to have due regard to the need to:

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

In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

Authorities which fail to carry out equality impact assessments risk making poor and unfair decisions which may discriminate against particular groups and worsen inequality.

Committee name and date:	Report Title	Decisions being recommended:	People with protected characteristics potentially impacted by the decisions to be made:
Licensing Committee 11 July 2023	Penalty Points Scheme	Licensing Committee agree the proposed Penalty Points Policy as contained in Appendix A subject to amendment's suggested at 2.1 and 2.2 of the report.	

Factors to consider in the assessment: For each of the groups below, an assessment has been made on whether the proposed decision will have a **positive, negative or neutral impact**. This must be noted in the table below alongside brief details of why this conclusion has been reached and notes of any mitigation proposed. Where the impact is negative, a **high, medium or low assessment** is given. The assessment rates the impact of the policy based on the current situation (i.e. disregarding any actions planned to be carried out in future).

High impact – a significant potential impact, risk of exposure, history of complaints, no mitigating measures in place etc.

Medium impact – some potential impact exists, some mitigating measures are in place, poor evidence

Low impact – almost no relevancy to the process, e.g. an area that is very much legislation led and where the Council has very little discretion

Protected characteristic/ area of interest	Positive or Negative Impact	High, Medium or Low Impact	Reason
Race and ethnicity (including Gypsies and Travellers; migrant workers; asylum seekers).	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Disability: as defined by the Equality Act – a person has a disability if they have a physical or mental impairment that has a substantial and long-term	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.

Protected characteristic/ area of interest	Positive or Negative Impact	High, Medium or Low Impact	Reason
adverse impact on their ability to carry out normal day-to-day activities.			
Sex/Gender	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Gender reassignment	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Religion and belief (includes no belief, some philosophical beliefs such as Buddhism and sects within religions).	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Sexual orientation (including heterosexual, lesbian, gay, bisexual).	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Age (children and young people aged 0-24; adults aged 25-50; younger older people aged 51-75/80; older people 81+; frail older people; people living with age related conditions. The age categories are for illustration only as overriding consideration should be given to needs).	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Pregnancy and maternity including new and breast feeding mothers	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.
Marriage and civil partnership status	neutral	low	There is no evidence to suggest that the proposed policy would have a potential impact on this characteristic.

Actions identified that will mitigate any negative impacts and/or promote inclusion

- **None.** The proposed policy would apply equally to all of the groups identified above, and are considered to have a neutral impact in all cases.

Officer: Nigel Marston
Date: 08 June 2023