

## **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 he deems 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 its 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