

## Appendix G

### **PRIVATE HIRE AND HACKNEY CARRIAGE LICENSING ENFORCEMENT POLICY**

#### **1 ENFORCEMENT POLICY STATEMENT**

1.1.1 It is the policy of Sandwell Metropolitan Borough Council Taxi Licensing to ensure that, Private Hire Drivers, Hackney Carriage Drivers, Private Hire Operators, Private Hire Vehicles / Licence holders and Hackney Carriage Vehicles / Licence holders are licensed correctly and carry out their trade in accordance with both the relevant law, policy and the conditions attached to the licences.

1.1.2 The principal purpose of Private Hire and Hackney Carriage licensing is to protect the public and promote public safety.

1.1.3 All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, appearance before the Licensing Sub Committee or Licensing Management Panel or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.

1.1.4 This Enforcement Policy forms part of the Council's Private Hire and Hackney Carriage Licensing Policy.

1.1.5 Authorised officers (as authorised by the Scheme of Delegations), when making enforcement decisions, will abide by this Policy. Any departure from the Policy must be exceptional, capable of justification, be fully considered and be endorsed at management level or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).

1.1.6 Authorised officers will be fully acquainted with the requirements of the Policy and appropriate training will be provided where required.

1.1.7 Officers will be authorised by The Scheme of Delegations to take enforcement action which is relevant and appropriate.

1.1.8 When creating this Enforcement Policy, we have had regard to The Legislative and Regulatory Reform Act 2006 which requires us to carry out regulatory activities in a way which is transparent, accountable, proportionate and consistent and further that regulatory activities should be targeted only at cases in which action is needed. We have also had regard to the Regulator's Code in determining this Policy and will take this Code into account when considering any enforcement action.

1.1.9 The Regulators Code was introduced in April 2014 and can be read on [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

Policies and procedures to be read in conjunction with the Code are:-

- Sandwell Metropolitan Borough Council's Private Hire and Hackney Carriage Licensing Policy.
- Sandwell Metropolitan Borough Council's Corporate Complaints Procedure.
- Sandwell Metropolitan Borough Council's Data Protection Act and Freedom of Information Act Policy.
- Sandwell Metropolitan Borough Council's Private Hire and Hackney Carriage List of Fees and Charges.

## 1.2 ENFORCEMENT OPTIONS

1.2.1 Achieving and maintaining a consistency of approach to making all decisions, which concern enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that this policy is always considered and followed where appropriate.

1.2.2 A range of tools and powers, including test purchases, to ensure compliance with legislation and conditions of licences will be used. Compliance assessment is ultimately to ensure that the driver or operator is a "fit and proper" person to hold a licence and/or the vehicle is safe. The safety of passengers, pedestrians and other road users is paramount.

1.2.3 Where appropriate referrals will be made to other agencies such as the Police, HM Customs & Excise and both Adult and/or Child safeguarding teams and Home Office (Immigration).

1.2.4 The Council will respond to complaints made by the public and referrals from other agencies & bodies. In addition officers will undertake proactive inspections and testing as either, day to day activity or as part of programmed operations.

1.2.5 Enforcement decisions must always be consistent, balanced, fair and relate to common standards which ensure that the public is adequately protected. In reaching any decision the following will be considered which includes the:-

- seriousness of any offences;
- driver, licence holder or operator's past history;
- consequence of non-compliance;
- likely effectiveness of the various enforcement options;
- danger to the public

**This is not an exhaustive list.**

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

- take no action;
- take informal action (advice, warning, education);
- use statutory notices;
- suspend a vehicle licence;
- suspend a driver's licence;
- revoke a driver's licence;
- referral to the Licensing Sub Committee;
- referral to Licensing Management Panel;
- use formal cautions;

- prosecute.

1.2.7 In certain circumstances more than one choice of action may be appropriate. For example it may be appropriate to refer a matter to the Licensing Sub Committee or Licensing Management Panel who may revoke the licence. The matter may then be considered appropriate for Prosecution or vice versa. A suspension may be linked to an educational or a rehabilitation requirement such as a further driving test or a drugs awareness course.

1.2.8 An officer may give a verbal or written warning. If this is not accepted the matter will be referred to the Licensing Sub Committee or Licensing Management Panel to consider whether the warning was merited or not. The Licensing Sub Committee can issue warnings based on fact in accordance with the section on convictions in this Policy. For example if a licensed driver has 9 penalty points, sanctions could range from a strong written warning to revocation of the licence. They may lose their DVLA Licence under “totting up” should they be convicted of another driving related offence.

1.2.9 This Policy provides detailed guidance applicable to the various options for enforcement action.

### 1.3 INFORMAL ACTION

8.3.1 Informal action to secure compliance with legislation includes offering advice, verbal and written warnings and requests for action.

1.3.2 Such informal enforcement action may be appropriate in any of the following circumstances:-

- the act or omission is not serious enough to warrant more formal action;
- from the individual licence holder’s past history it can be reasonably expected that informal action will achieve compliance;
- confidence in the licensed operator’s management is high;
- the consequences of non-compliance will not pose a significant risk to the safety of the public.

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

#### 1.4 STATUTORY NOTICES

1.4.1 Under Section 68 of the Local Government (Miscellaneous) Provisions Act 1976, an authorised officer may serve notice in writing for a Hackney Carriage or Private Hire Vehicle or the Taximeter affixed to such vehicle to be examined at the Council's testing station at a time specified in the notice. This notice will only be served having had due regard to the condition of the vehicle or with reasonable grounds to suspect the accuracy of the taxi meter.

An authorised officer may, in addition to requiring the vehicle to be tested, suspend the vehicle licence until such time as he is satisfied with the condition of the Hackney Carriage or Private Hire Vehicle.

1.4.2 Under Section 60 of the Local Government (Miscellaneous) Provisions Act 1976, an authorised officer may suspend or revoke, or refuse to renew a vehicle licence on any of the following grounds—

- that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
- any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or
- any other reasonable cause.

1.4.3 Where an authorised officer suspends, revokes or refuses to renew any licence under this section they shall give to the licence holder of the vehicle, notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew the licence within 14 days of such suspension, revocation or refusal. Any licence holder aggrieved by such a decision may appeal to a magistrates' court.

1.4.4 Under Section 50 of the Local Government (Miscellaneous Provisions) Act 1976 an authorised officer may by notice in writing inspect a vehicle, licence or insurance policy.

1.4.5 Under Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976 an authorised officer may suspend or revoke a private hire driver or hackney carriage driver's licence with immediate effect in the interests of public safety.

## 1.5 APPEARANCE BEFORE THE LICENSING SUB COMMITTEE

1.5.1 A Licence holder may be required to appear before the Licensing Sub Committee or Licensing Management Panel to answer allegations relating to breaches of relevant legislation, Bye-laws or conditions attached to licences.

1.5.2 Current licence holders who report convictions or breach of relevant legislation during the period of their licence may be referred to the Licensing Sub Committee or Licensing Management Panel.

1.5.3 The guidance for determining matters referred to the Licensing Sub Committee is contained within the Council's Private Hire and the Hackney Carriage Licensing Policy – The Policy and the Private Hire and Hackney Carriage Determination of Matters Policy Guidelines.

1.5.4 The Licensing Sub Committee or Licensing Management Panel may take appropriate action which may include, but is not limited to:-

- take no action;
- issue a written warning;
- suspend a licence;
- suspend a licence with immediate effect
- place additional conditions on a licence
- require the applicant/licence holder to undergo additional tests
- refuse to renew a licence

- revoke a licence;
- revoke a licence with immediate effect.

## 1.6 APPEALS

1.6.1 The right of appeal against decisions of the Licensing Sub Committee and the Licensing Management Panel will be outlined in writing to the licence holder or applicant.

1.6.2 Any notifications of enforcement action will include written information on how to appeal where appropriate. This information will explain how, where and within what time period an appeal must be lodged.

## 1.7 USE OF SIMPLE CAUTIONS

1.7.1 Sandwell Metropolitan Borough Council has based this Policy on the guidance on formal cautions issued by the Ministry of Justice. It must be applied to all decisions relating to simple cautions from the date it comes into effect, regardless of when the offence was committed. The guidance issued by the Ministry of Justice on the use of Simple Cautions will be considered alongside this policy.

1.7.2 The Ministry of Justice Guidance can be found at <https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

1.7.3 The aims of the Simple Caution scheme are:

- To offer a proportionate response to low-level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings, on criminal records or other similar checks;
- To reduce the likelihood of re-offending;

- To increase the amount of time police officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

1.7.4 A Simple Caution is a formal warning that may be given to persons aged 18 or over who admit to committing an offence. The Simple Caution scheme is designed to provide a means of dealing with low-level, mainly first-time, offending without a prosecution. A Simple Caution may only be given where specified criteria are met.

1.7.5 Whether an offender is suitable for a Simple Caution is an operational decision for the Sandwell Metropolitan Borough Council Legal Team based on the specific circumstances of the individual case.

1.7.6 A Simple Caution may only be issued when:

- The offender has made a clear and reliable admission to the offence
- The offender agrees to the issue of a Simple Caution
- There is sufficient evidence to provide a realistic prospect of conviction if the offender were to be prosecuted

1.7.7 The admission of guilt does not need to be made within a formal interview under Police and Criminal Evidence Act 1984 (PACE). However, the method for obtaining and recording the admission must be PACE compliant.

1.7.8 Simple Cautions form part of an offender's criminal record and may be referred to in future legal proceedings and, in certain circumstances, may be revealed as part of a criminal record check. Offenders must be made aware of this before agreeing to accept a simple caution. A record of the Simple Caution will be retained by Sandwell Metropolitan Borough Council Taxi Licensing and may also be shared with other Local Authority Licensing Teams.

1.7.9 There is no formal right of appeal against the administration of a Simple Caution once it has been accepted by the offender and administered by the Local Authority. However, it may be challenged



by way of a complaint against the Local Authority that administered it and by way of a claim for judicial review.

1.7.10 In deciding whether a Simple Caution is appropriate a decision-maker must apply the Full Code Test, as set out in the Code for Crown Prosecutors which is explained further in this Policy below in paragraph 2. The Code for Crown Prosecutors can be found at [www.cps.gov.uk/publication/code-crown-prosecutors](http://www.cps.gov.uk/publication/code-crown-prosecutors)

1.7.11 An assessment of the seriousness of the offence is the starting point for considering whether a Simple Caution may be appropriate. The more serious the offence, the less likely it is that a Simple Caution will be appropriate.

1.7.12 Before a Simple Caution is authorised and administered, an Authorised Officer of the Council seeking to do so must ensure the offender understands the implications of accepting a Simple Caution and consents to receiving it.

1.7.13 If the decision is made to administer a Simple Caution, it will be administered by an Authorised Officer of the Council. A written notice will be prepared for the Licence holder to read and sign which will include details of the offence, date of the offence and the fact that the matter was admitted.

## 1.8 PROSECUTION

1.8.1 The decision to prosecute is a very significant one. Cases will be prosecuted where there is sufficient evidence and it is in the public interest to do so.

1.8.2 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following:-

- where there is a blatant disregard for the law;
- when there appears to have been reckless disregard for the safety of passengers or other road users;
- where there have been repeated breaches of licensing conditions;
- where a particular type of offence is prevalent.

1.8.4 When circumstances have been identified which may warrant a prosecution, all relevant evidence must be considered, to enable a consistent, fair and objective decision to be made.

1.8.5 Before referring a matter to Legal Services for prosecution, an Authorised Officer of the Council must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. The issue of a caution is not an alternative where there is insufficient evidence to prosecute.

1.8.6 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, there must be a positive decision, based on the relevant criteria, that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance, which will be considered by Legal Services.

1.8.7 When a decision is being taken on whether to prosecute, the factors to be considered may include:-

- the seriousness of the alleged offence;
- the risk of harm to the public;
- identifiable victims;
- failure to comply with a notice served;
- disregard of safety for financial reward;
- licensing history;
- history of similar offences;
- failure to adhere to past warnings;
- vulnerabilities of any key witnesses;
- the willingness of the party to take steps to prevent an issue reoccurring;
- the benefit of a prosecution and the importance of the case;

- out of court disposals

1.8.8 Once a decision has been taken that prosecution is the most appropriate course of action, the matter will be referred, without undue delay, to the Council's Legal Services. Legal Services will assess the evidence in accordance with the Code for Crown Prosecutors and take the action that they deem appropriate.

## 1.9 TRANSPARENCY

1.9.1 Following the receipt of a notification of a conviction, an allegation of a serious offence or an adverse vehicle inspection, the licence holder will be informed of the action intended to be taken as soon as possible.

1.9.2 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

1.9.3 Any written documentation will contain all the information necessary to understand the offence, any rectification actions if required and any applicable timescales. It will also confirm the legislation or conditions contravened and measures needed to comply.

## 2. DECISION MAKING – AUTHORISATIONS

### 2.1 Persons who may authorise a prosecution:

Please see the most recent Scheme of Delegations which is published on the Council's website.