



AGENDA ITEM 20 – Annex 1 and 2

Council

Wednesday, 16 December 2015

Annex 1 and 2 to agenda item 20 were not included with the main agenda papers for the meeting. Those documents are now enclosed. Apologies for the omission.

Agenda Item Number	Page	Title
20	1 - 24	LICENSING REGULATORY COMMITTEE - CONSIDERATION OF APPEALS AGAINST WARNINGS

LICENSING REGULATORY COMMITTEE

**Written Warnings – Hackney Carriage and Private Hire
Drivers and Private Hire Operators
26th November 2015**

Report of the Chief Officer (Governance)

PURPOSE OF REPORT

To enable Members to consider a referral from the previous meeting.

This report is public

RECOMMENDATION

- (1) That a new paragraph 7 be included in the Licensing Enforcement Policy, as follows, with subsequent paragraphs re-numbered:

7 Warning letters (Hackney carriage and private hire drivers and private hire operators)

A warning letter will remain on file for an indefinite period but it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period, unless there are exceptional circumstances.

For example, if a warning letter was issued in June 2013 and then no further warning letters are issued until August 2016, the warning letter issued in 2013 would not be referred to.

However, if a warning letter was issued in 2013, a further warning letter in 2014 and then a warning letter in 2015, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warning letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration.”

1.0 Introduction

- 1.1 At its meeting on the 15th October 2015, the Committee considered a report on the status and implications of a written warning issued to a hackney carriage or private hire driver or private hire operator. A copy of the report and the minute is at Appendix 1. This report enables members to consider the two proposals tabled at the meeting and referred to in the minute.
- 1.2 A copy of the current Licensing Enforcement Policy is at Appendix 2 for ease of reference.

2.0 Proposal Details

- 2.1 The first proposal was that the following (based on the content of paragraph 1.8 in the report of the 15th October) be appended to paragraph 6.1(c) of the Licensing Enforcement Policy:

“A warning letter will remain on file for an indefinite period but it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period.

For example, if a warning letter was issued in June 2010 and then no further warning letters are issued until August 2013, the warning letter issued in 2010 would not be referred to.

However, if a warning letter was issued in 2010, a further warning letter in 2011 and then a warning letter in 2012, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warning letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration.”

- 2.2 The above wording reflects the current practice with regard to warnings issued by officers, and there is no reason why it should not be included in the Enforcement Policy, although it might be clearer if it were to form a new paragraph 7, with subsequent paragraphs in the Policy being renumbered. As the wording is based on advice given in 2012, it might also be clearer to update the years used in the text – for example June 2013, August 2016 etc.
- 2.3 However, it is noted that, whilst the wording is based on that in paragraph 1.8 of the October report, the words “unless there are exceptional circumstances” have been omitted from the end of the proposed first paragraph as set out above. Officers would recommend that those words be included to ensure that, where appropriate, all relevant information can be presented to Members to determine whether a driver or operator is a fit and proper person to continue to hold a licence. This reflects the advice recently given to licensing authorities by Baroness Kramer, Minister of State for Transport: “In the interests of public safety and the reputation of the licensed trade, I encourage you to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed, and all available information is fully considered when making licensing decisions.”
- 2.4 As worded, the reference to warning letters would cover letters issued by officers, and also letters issued following consideration of a matter by the

Committee where the licence has not been suspended or revoked, but nonetheless a warning has been given by the Committee. Members are asked to consider whether they wish the three year restriction to apply to both.

- 2.5 The second proposal was that *“A suspected offender in receipt of a warning letter shall have the right to request within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn.”*
- 2.6 If members were to consider an appeal against a warning issued by an officer, this would make the process for taxi licensing different from that which applies to warnings across the whole range of the Council’s enforcement functions. For example for planning, the Planning and Highways Regulatory Committee has no involvement with warnings, and in areas such as food safety, health and safety, and benefit fraud, which are executive functions, there is no member involvement with informal (or indeed formal) enforcement action. The current practice reflects that in local authority enforcement generally.
- 2.7 On average, licensing officers issue about three warning letters to hackney carriage and private hire drivers and private hire operators each month, although this figure may be exceeded on occasions, especially if at any time there is a significant enforcement issue in a particular location. As Members will be aware, many of the Committee’s meetings are already lengthy, and to deal with an appeal would require thorough consideration of any evidence. Even two or three appeals at each meeting would increase the workload of the Committee significantly, and it is possible that additional meetings would be required. There would be consequent increased demands on staff resources in terms of preparing reports, publishing agendas, and attending meetings and preparing minutes. This would mean that there would be less time for staff to undertake other responsibilities. Further, time spent on the supervision of drivers is, by law, not recoverable through the licence fees and so the additional cost in staff resources could not be re-charged through the licence fees but would have to be borne by the council taxpayers.
- 2.8 Many warning are issued following complaints from members of the public. It is likely that the majority of these complainants would not be willing to attend Committee. Indeed that is sometimes why a matter is dealt with by way of warning only. Without the complainant being present to give evidence about the incident that led to the warning, it is more likely, if hearing only from the licence holder complained of, that the Committee would be minded to allow an appeal against a warning, and officers are concerned that this would mean that members of the public would lose confidence in the system.
- 2.9 Officers would also have concerns that if the Committee considered an appeal against a warning, and the driver/operator subsequently appeared before the Committee for another reason, any decision on that occasion might be open to legal challenge on the grounds that members had taken account of the earlier appeal or had not considered the second matter with an open mind.
- 2.10 For all these reasons, officers would recommend that this second proposal should not be taken forward. Should the Committee decide otherwise, the Chief Executive has indicated that he will refer the matter to full Council because any such decision would make the taxi licensing enforcement procedures different from those adopted throughout the rest of the Council.

3.0 Conclusion

3.1 Officers would support the first proposal, with the clarification referred to in paragraph 2.3 above, and as set out in recommendation 1. However, for the reasons set out in the report, officers would advise against the second proposal.

**CONCLUSION OF IMPACT ASSESSMENT
(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The purpose of licensing is to protect public safety, and it is important therefore that when a decision is taken under the “fit and proper person” test, all relevant information is available to the decision maker. Under the current enforcement policy, decisions to suspend or revoke licences are taken by the Committee and there is a right of appeal to the Magistrates. This complies with human rights legislation.

LEGAL IMPLICATIONS

The legal implications are set out in the report.

FINANCIAL IMPLICATIONS

As set out in the report for the second proposal, the referral to the Committee of appeals against warnings would place an additional burden on officer time through report writing, agenda preparation, minute writing and the servicing of meetings. The input required for each report and hearing would vary, and so it is impossible to quantify the notional cost. As this would be met from existing staff resources there would be no direct financial cost as such, but, rather, less time for officers to undertake other duties, and the cost of officer time could not be recharged through the licence fees because it would generally relate to driver enforcement.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER’S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as Chief Officer (Governance).

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor

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Ref:

LICENSING REGULATORY COMMITTEE

**The Status and Implications of a Written Warning –
Hackney Carriage and Private Hire Driver and Private Hire
Operator
15th October 2015**

Report of Licensing Manager

PURPOSE OF REPORT

To inform members of the implication and status of a written warning issued to a hackney carriage or private hire driver or private hire operator.

The report is public

RECOMMENDATIONS

The Committee is requested to note the report.

1.0 Introduction

1.1 This report has been prepared following a request from some members of LRC as a result of a complaint made by a hackney carriage driver at the recent taxi surgery.

1.2 Members asked that a report be prepared setting out the status and implications of warnings issued to hackney carriage and private hire drivers and private hire operators.

1.3 Licensing, regulatory and enforcement functions exist to protect the general public from harm across areas ranging from food safety to houses in multiple occupation, to licensed premises for entertainment. Safety is one of the principles of licensing which informs legislation. The safety of the public should be the uppermost concern of any licensing and enforcement regime: when determining policy, setting standards and deciding how they will be enforced. This is nowhere more important than in taxi licensing where sometimes vulnerable people are unaccompanied in a car with a stranger.

1.4 For the purpose of ensuring that enforcement is carried out in a transparent and consistent manner this Committee has adopted an enforcement policy, a copy of which is attached at Appendix 1 to this report.

1.5 The enforcement policy quite clearly sets out the options available to an authorised officer and the issuing of a warning letter is set out in the policy under paragraph 6 and, as indicated in the policy, this is considered to be informal action and at the lower end of the options available.

- 1.6 The policy sets out that the circumstances in which informal action may be appropriate including:-
- a) Where it is considered that informal action will achieve compliance based on the offender's past history.
 - b) Where confidence in the management of the licensed activity or the licensee is high.
 - c) Where the consequences of non-compliance will not pose a significant risk to the physical, financial or emotional well-being of the public, or is of a minor technical nature.
 - d) Where it is considered that informal action will be more effective than formal.
- 1.7 The use of warning letters is common across all the Council's regulatory functions, for example environmental health, planning and housing, as well as licensing, and indeed across all local authorities.
- 1.8 In March 2012, the following advice was given in a licensing newsletter: "Under the current procedure, a warning will remain on your file for an indefinite period; however it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning was issued within that period, unless there are exceptional circumstances. For example if a warning was issued in June 2010 and then no further warnings are issued until August 2013, the warning issued in 2010 would not be referred to. However, if a warning was issued in 2010, a further warning in 2011 and then a warning in 2012, all 3 warnings would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which warnings had been issued but omitted from the report, those warnings would then be disclosed to members for their consideration" This procedure is still adhered to.
- 1.9 It is appropriate that relevant warnings and for that matter, any other relevant information available should be considered by members when making a decision in relation to whether a person is a fit and proper person to be granted or to continue to hold a licence. Case law has prescribed that an incident cannot be looked at in isolation, as the "fit and proper person" test is multi-faceted. In exercising their function of determining whether or not to revoke or suspend a licence, Members should consider what weight they should attach to any previous warnings or any additional information. Any driver or operator aggrieved by any decision made by the Licensing Regulatory Committee to suspend or revoke a licence would have a right to appeal to the magistrate's court.
- 1.10 It should be noted that the Rotherham report criticised licensing officers for not submitting previous relevant complaints and warnings to the panel before decisions were made in relation to whether a driver was a fit and proper person to continue to hold a licence.

Conclusion

- 2.1 The 'fit and proper person' test is multi-faceted. It includes things like moral character, risk of bad behaviour, health, driving ability, appreciation of the duties and obligations that the law and the council licence conditions impose.
- 2.2 Case law and more recently the Rotherham report has prescribed that all information available should be considered by members when determining whether a driver is a fit and proper person to continue to hold a driver's licence.
- 2.3 Warning letters are issued by officers in line with the Council's enforcement policy and are considered to be informal action. They are held on file and would only be referred to in accordance with paragraph 1.8 above should any further infringements occur.
- 2.4 The report is for noting.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing) It is important that effective enforcement is carried out in line with the enforcement policy to ensure that members of the public including those that are vulnerable are protected and to ensure that members of the public can have confidence in the licensing regime and the Council.	
FINANCIAL IMPLICATIONS There are no financial implication	
LEGAL IMPLICATIONS The Council is responsible for ensuring that the legislation in relation to hackney carriage and private hire licensing is enforced.	
BACKGROUND PAPERS None	Contact Officer: Wendy Peck Telephone: 01524 582317 E-mail: wpeck@lancaster.gov.uk Ref: WP

Resolved:

That the application to renew a Sex Shop Licence in respect of Sin-Til-Late, Morecambe be renewed as applied for.

42 THE STATUS AND IMPLICATIONS OF A WRITTEN WARNING - HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER AND PRIVATE HIRE OPERATOR

The Committee received the report of the Licensing Manager to inform Members of the implication and status of a written warning issued to a hackney carriage or private hire driver or private hire operator. The report had been prepared following a request from some members of the Committee as a result of complaint made by a hackney carriage driver at the recent taxi surgery.

It was reported that the Committee had adopted an enforcement policy to ensure that enforcement was carried out in a transparent and consistent manner.

Members were advised that the issuing of a warning letter was considered to be informal action and at the lower end of the options available. The use of warning letters was common across all the Council's regulatory functions. The advice given in a licensing newsletter for the trade regarding the implications of a warning letter was set out in the report.

It was reported that case law, and more recently the Rotherham report, had prescribed that all information available should be considered by Members when determining whether a driver was a fit and proper person to continue to hold a driver's licence. Any driver or operator aggrieved by a decision of the Licensing Regulatory Committee had a right of appeal to the Magistrates' Court.

It was proposed by Councillor Mace and seconded by Councillor Edwards:

"That the following (based on the content of paragraph 1.8 in the report) be appended to paragraph 6.1(c) of the Licensing Enforcement Policy:

~~"Under the current procedure, A warning letter will remain on file for an indefinite period; however-but it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period. unless there are exceptional circumstances.~~

For example, if a warning letter was issued in June 2010 and then no further warning letters are issued until August 2013, the warning letter issued in 2010 would not be referred to.

However, if a warning letter was issued in 2010, a further warning letter in 2011 and then a warning letter in 2012, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warnings letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration."

It was then proposed by Councillor Gardiner and seconded by Councillor Metcalfe that the following words be additionally appended to paragraph 6.1(c) of the Licensing Enforcement Policy:

"A suspected offender in receipt of a warning letter shall have the right to request within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn."

Officers advised that both proposals should be deferred and should be the subject of a report to the following meeting of the Committee to allow officers to give due consideration to them.

Councillor Mace accepted the advice of officers and withdrew his proposal.

Councillors Gardiner and Metcalfe requested that Members vote on whether to consider Councillor Gardiner's proposal at the meeting. Upon being put to the vote, 3 Members voted in favour of considering the proposal at the meeting and 5 against, with 1 abstention, whereupon the Chairman declared the proposal to be lost.

Councillor Mace then proposed that a report be presented to the next meeting of the Licensing Regulatory Committee that considered the implications of the two proposals tabled by himself and Councillor Gardiner. The proposal was seconded by Councillor Edwards.

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be carried.

Resolved:

That a report be presented to the next meeting of the Licensing Regulatory Committee that considers the implications of the two proposals tabled by Councillors Mace and Gardiner.

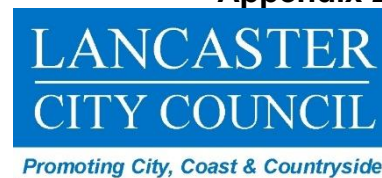
Councillor Redfern left the meeting at this point.

43 MULTI-AGENCY VEHICLE INSPECTION OPERATION

The Committee received the report of the Licensing Manager to inform Members of the outcomes of a recent multi-agency vehicle inspection operation.

Members were advised that licensing officers had carried out a multi-agency vehicle inspection operation with officers from the Lancashire Constabulary and the Vehicle and Operators Services Agency (VOSA) on 15th and 16th September 2015 at Salt Ayre Leisure Centre.

During the two days, 259 vehicles had been inspected. Of the 259 vehicles inspected, 32 defect notices had been issued. Seven of those had been issued in relation to hackney carriage vehicles and 25 in relation to private hire vehicles. In addition, seven vehicles had been suspended with immediate effect. Two of the vehicles had been hackney carriage vehicles and the other five were private hire vehicles.



LANCASTER CITY COUNCIL

GOVERNANCE - LICENSING

LICENSING ENFORCEMENT POLICY

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LANCASTER CITY COUNCIL

LICENSING ENFORCEMENT POLICY

1 BACKGROUND

- 1.1 The purpose of this document is to set out the general principles that the Council's Licensing Service will apply when undertaking licensing enforcement work. Enforcement does not only mean deciding whether to prosecute an alleged offender. Rather, it includes a wide range of issues including communicating effectively, acting fairly and acting consistently when using statutory enforcement powers. It includes undertaking inspections of licensed premises, vehicles and activities and giving advice to enable licensees to meet minimum legal standards as well as higher standards and good practice.

2 POLICY STATEMENT

- 2.1 This Policy was written having regard to the Government's "concordat on Good Enforcement" which Lancaster City Council formally adopted. Officers will therefore have regard to and implement the 4 principles of enforcement set out in the Policy.
- 2.2 Where there is specific guidance on enforcement action, for example, statutory guidance, or Codes of Practice and guidance issued for example by the Better Regulation Delivery Office or the Local Government Association (formerly Local Authorities Co-ordinators of Regulatory Services (LACORS)), these will be followed.
- 2.3 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action is taken in strict accordance with the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.
- 2.4 The Council recognises that the particular interests of different consumers within the District will need to be taken account of to ensure that legislation is enforced fairly. Interpreters will be used where there is difficulty in understanding the English language. Where possible, translated advisory leaflets will be made available. Any visits that are required out of hours will be undertaken as necessary.
- 2.5 All enforcement action will be based on risk to health and safety and in accordance with this policy. Any departure from this policy will be justified to the Legal Services Manager or the Licensing Manager. The reasons for any departure will be fully documented and retained on the relevant file.

3 PRINCIPLES OF ENFORCEMENT

- 3.1 The Council believes in firm but fair enforcement of licensing law and the relevant byelaws or licence conditions. Underlying this belief are the principles of **proportionality** in applying the law and securing compliance, **consistency** of approach, **transparency** about how the Licensing Service operates and what those regulated may expect from the Service and **targeting** of enforcement action.

3.2 PROPORTIONALITY

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcement authorities to achieve compliance should be proportionate to any risks to public health and safety and the seriousness of any breach.

3.3 **CONSISTENCY**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. There is a right to expect consistency from an enforcing authority whether they are: responding to requests for service, issuing advice, using statutory notices, or deciding to prosecute.

3.4 **TRANSPARENCY**

Transparency means helping duty holders and individuals to understand what is expected of them and what they should expect from the enforcing authorities. It also means making it clear to duty holders and individuals, not only what they have to do, but also, where relevant, what they do not. This means distinguishing between statutory requirements and recommendations or advice that is desirable, but not compulsory.

3.5 **TARGETING**

Targeting means making sure that enforcement is targeted primarily on those situations where activities give rise to the most serious risks, or where the hazards are least well controlled. The Licensing Service will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

4 STATUTORY OBLIGATIONS

- 4.1 The Licensing service administers a wide range of licences and permits which may be mandatory, where the local authority must license particular activities, or adoptive where the Council has elected to control certain businesses, activities or individuals through the issue of licences and the imposition of licence conditions.
- 4.2 The main purpose of licensing enforcement is to:
- a) Secure the health, safety and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way.
 - b) Deal immediately with serious risks.
 - c) Promote and achieve sustained compliance with the law.

5 ENFORCEMENT OPTIONS

- 5.1 External agencies including Lancashire Police, Lancashire Fire and Rescue Service, Lancashire County Council also have an interest in the enforcement of licensing legislation. Where there is a shared enforcement role, the Council's Licensing service will liaise with the appropriate body to ensure effective co-ordination. Protocols will be established between the enforcement agencies to ensure clarity in their respective roles.
- 5.2 Enforcement officers must seek to secure compliance with the law. Most of the time this will be conducted informally, by offering information, advice and support, both verbally and in writing. They may also use formal mechanisms, as set out in law,

including the service of notices, suspension of vehicle licences, or ultimately prosecution.

5.3 In arriving at a decision, the Licensing Service will consider:

- a) The seriousness of the offence;
- b) The individual or duty holder's past history;
- c) Confidence in management;
- d) The requirements of the legislation;
- e) The consequences of non-compliance; and
- f) The likely effectiveness of the various enforcement options.

5.4 Where enforcement is being considered, the Licensing service can choose one or more of the following options:

- a) Take no action;
- b) Take informal action;
- c) Take statutory action;
- d) Use formal cautions;
- e) Prosecution.

6 INFORMAL ACTION

6.1 Informal action will include the following:-

- a) offering advice
- b) verbal warnings and requests for action
- c) the use of warning letters setting out the potential consequences of any future non-compliance.

6.2 The circumstances in which informal action may be appropriate include:-

- a) Where it is considered that informal action will achieve compliance based on the offender's past history.
- b) Where confidence in the management of the licensed activity or the licensee is high.
- c) Where the consequences of non-compliance will not pose a significant risk to the physical, financial or emotional well-being of the public, or is of a minor technical nature.
- d) Where it is considered that informal action will be more effective than formal action.

7 STATUTORY ACTION AND DECISION MAKING PROCESSES

7.1 Such action may involve the suspension, revocation or the refusal to grant or vary a licence.

7.2 In certain circumstances, authority to suspend the licence of hackney carriage/private hire vehicles, hackney carriage/private hire drivers and private hire operators may be delegated to authorised officers (See Appendix 1). The criteria for the suspension of such licences is as follows:-

- a) Hackney Carriage/Private Hire Vehicles

A licensed hackney carriage or private hire vehicle may be suspended if an authorised officer is not satisfied as to the vehicle's fitness (Sections 60 & 68 Local Government (Miscellaneous Provisions) Act 1976).

b) Hackney Carriage/Private Hire Drivers

A licence may be suspended by an authorised officer, if since the grant of a licence the driver has been convicted of an offence involving dishonesty, indecency or violence, or for any other reasonable cause (Section 61, Local Government (Miscellaneous Provisions) Act 1976). In these circumstances, consideration will also be given whether the interests of public safety require the suspension to take immediate effect.

c) Private Hire Operators

A licence may be suspended by an authorised officer, in the event of there being any offence under, or non-compliance with the private hire legislation, or for any other reasonable cause. (Section 62 Local Government (Miscellaneous Provisions) Act 1976)

7.3 However, in the majority of cases involving drivers' and operators' licences any consideration to suspend, revoke or refuse to grant/renew a licence will normally be dealt with by the Council's Licensing Regulatory Committee under established procedures. Similarly, the Licensing Act Sub-Committees and Gambling Act Sub-Committees will normally deal with contentious matters associated with premises licences issued under the Licensing Act 2003 and the Gambling Act 2005 respectively.

7.4 Any person aggrieved by a decision taken to suspend, revoke or refuse to grant/vary a licence has a right of appeal to the Magistrates' Court.

8 FORMAL CAUTIONS

8.1 Enforcement Officers will consider issuing a formal caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not require a prosecution, a formal caution may be an appropriate course of action. The Ministry of Justice Guidance on Simple Cautions for Adult Offenders (November 2013) states that the purpose of a formal caution is to:

- a) Offer a proportionate response to low level offending where the offender has admitted the offence;
- b) Deliver swift, simple and effective justice that carries a deterrent effect;
- c) Record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- d) Reduce the likelihood of re-offending
- e) Increase the amount of time officers spend dealing with more serious crime and reduce the amount of time completing paperwork and attending court, whilst simultaneously reducing the burden on the courts

8.2 The use of formal cautions will be in accordance with the Ministry of Justice Guidance referred to above.. The following conditions must be fulfilled before a caution is administered:

- a) There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of a conviction;
- b) The suspected offender must admit the offence; and

- c) The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

8.3 Before proceeding with a formal caution, the enforcement officer must discuss the proposed action with their line manager. Where a formal caution is refused, the officer must re-consider all the evidence, which may result in a prosecution or other action being taken. Where formal cautions are accepted, they must be registered with Legal Services.

9 PROSECUTION

9.1 The following circumstances may warrant prosecution:

- a) The offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk; or
- b) The offence involves a failure by the offender to correct an identified serious potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer; or
- c) The offence involves a failure to comply in full or in part with the requirements of a statutory notice; or
- d) There is a history of similar offences on the part of the alleged offender; or
- e) The obstruction or assault of an authorised officer; or
- f) False or misleading information is provided to an authorised officer.

9.2 The officer must be satisfied, before a prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. If there is insufficient evidence, other formal action such as a formal caution will not be an alternative.

9.3 The officer and their manager must decide whether it is in the public interest to undertake a prosecution, following the guidance in the current Code for Crown Prosecutors. The 2013 edition of the Code indicates that prosecutors should consider each of the following questions:

- a) How serious is the offence committed?
- b) What is the level of culpability of the suspect?
- c) What are the circumstances of and harm caused to the victim?
- d) Was the suspect under the age of 18 at the time of the offence?
- e) What is the impact on the community?
- f) Is prosecution a proportionate response?
- g) Do sources of information need protecting?

The Code provides that these questions are not exhaustive, and that not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

9.4 Once a decision to prosecute has been made, the procedure should be implemented without undue delay. The requirements of PACE and CPIA will be adhered to.

9.5 The criterion for deciding whether to prosecute or issue a formal caution is shown at Appendix 2.

10 **LEGISLATION**

- 10.1 The legislation under which authorised officers have the authority to act is shown at Appendix 3.

APPENDIX 1

AUTHORITY FOR OFFICERS TO ACT

DECISION MAKING AREA	OFFICERS AUTHORISED TO ACT	OFFICERS WHO MUST BE CONSULTED FOR AUTHORITY TO ACT
Informal action and formal letters	Chief Officer (Governance) Legal Services Manager Licensing Manager Licensing Enforcement Officer	
Statutory Action a) Suspension of hackney carriage/private hire vehicle licence b) Suspension of hackney carriage/private hire drivers licence c) Suspension of private hire operators licence	Chief Officer (Governance) Legal Services Manager Licensing Manager Licensing Enforcement Officer Chief Officer (Governance) Legal Services Manager Licensing Manager Chief Officer (Governance) Legal Services Manager Licensing Manager	Licensing Manager Chief Officer (Governance) or Legal Services Manager Chief Officer (Governance) or Legal Services Manager
Formal Caution	Chief Officer (Governance) Legal Services Manager Licensing Manager	Chief Officer (Governance) or Legal Services Manager
Prosecution	Chief Officer (Governance) Legal Services Manager	Chief Officer (Governance) or Legal Services Manager

APPENDIX 2

DECISION WHETHER TO PROSECUTE OR ISSUE A FORMAL CAUTION

CRITERION	PROSECUTE	OFFER CAUTION
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending?	Yes	No/Unknown
Is the offending willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Is the case likely to establish a legal precedent?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes
TOTAL		

Note:

Ring the appropriate response to each criterion and then total the number of rings in each column.

The decision will be based on the total number of rings.

Recommendation of Investigating Officer: Formal Caution

Prosecution*

Signed:

Date:

Decision of Licensing Manager : Agree

Disagree*

Signed:

Date:

Decision of Legal Services Manager Agree

Disagree*

Signed:

Date:

***Delete as appropriate**

APPENDIX 3

RELEVANT LEGISLATION

Animal Boarding Establishments Act 1963
Breeding of Dogs Acts 1973 and 1991
Breeding and Sale of Dogs (Welfare) Act 1999
Caravan Sites and Control of Development Act 1960
Dangerous Wild Animals Act 1976
Gambling Act 2005
Game Act 1831

Game Licences Act 1860
Health Act 2006
House to House Collections Act 1939
Hypnotism Act 1952
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982

Pet Animals Act 1951
Pet Animals (Amendment) Act 1983
Police, Factories etc (Miscellaneous Provisions) Act 1916
Public Health Act 1936
Riding Establishments Acts 1964 and 1970
Scrap Metal Dealers Act 2013
Town Police Clauses Act 1847
Transport Act 1985
Vehicles (Crime) Act 2001
Zoo Licensing Act 1981

Please note that the above list is not exhaustive and may be amended from time to time.

Minute 50 of the Licensing Regulatory Committee 26 November 2015

The Committee received the report of the Chief Officer (Governance) to enable Members to consider a referral from the previous meeting.

It was reported that at its meeting on 15th October 2015, the Committee had requested that a report be presented to the next Committee meeting that considered the implications of two proposals tabled by two Members at that meeting.

The first proposal contained in the report was that the following be appended to paragraph 6.1(c) of the Licensing Enforcement Policy:

“A warning letter will remain on file for an indefinite period but it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period.

For example, if a warning letter was issued in June 2010 and then no further warning letters are issued until August 2013, the warning letter issued in 2010 would not be referred to.

However, if a warning letter was issued in 2010, a further warning letter in 2011 and then a warning letter in 2012, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warning letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration.”

The report indicated that officers supported the proposal, subject to the addition of the words “unless there are exceptional circumstances” at the end of the first paragraph. Officers also recommended that the dates in the second paragraph be updated, and that the new words would be clearer if they were to form a new paragraph 7 in the Enforcement Policy.

The second proposal was that:

“A suspected offender in receipt of a warning letter shall have the right to request, within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn.”

It was reported that if Members were to consider an appeal against a warning issued by an officer, this would make the process for taxi licensing different from that which applied to warnings across the whole range of the Council’s enforcement functions.

Members were advised that Licensing Officers issued an average of three warning letters to hackney carriage and private hire drivers, and private hire operators each month. This figure could be exceeded on occasions.

To deal with an appeal would require thorough consideration of evidence, and increase the workload of the Committee significantly. It was possible that additional meetings would be required. There would be an increase in demands on staff resources in terms of preparing reports, publishing agendas, and attending meetings and preparing minutes. This would mean that there would be less time for staff to undertake other responsibilities. Further, the time spent on supervision of drivers was, by law, not recoverable through licence fees, and

consequently the additional cost in staff resources could not be re-charged through the licence fees, but would have to be borne by the council taxpayers.

It was reported that many warnings were issued following complaints from members of the public, who might not be willing to attend Committee, which was why a matter was dealt with by way of warning only. Without the complainant being present to give evidence about the incident that led to the warning, it was more likely that the Committee would be minded to allow an appeal against a warning. Members of the public could therefore lose confidence in the system.

Officers were concerned that if the Committee considered an appeal against a warning, and the driver/operator subsequently appeared before the Committee for another reason, any decision on that occasion might be open to legal challenge on the grounds that Members had taken account of the earlier appeal or had not considered the second matter with an open mind.

It was therefore recommended that the second proposal should not be taken forward. Should the Committee decide otherwise, the Chief Executive would refer the matter to full Council because any such decision would make the taxi licensing enforcement procedures different from those adopted throughout the rest of the Council.

It was proposed by Councillor Mace and seconded by Councillor Guilding:

“That a new paragraph 7 be included in the Licensing Enforcement Policy, as follows, with subsequent paragraphs renumbered:

7.0 *Warning Letters (Hackney Carriage and Private Hire Drivers and Private Hire Operators)*

7.1 *A warning letter will remain on file for an indefinite period, but it will not be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period.*

For example, if a warning letter was issued in June 2013 and then no further warning letters are issued until August 2016, the warning letter issued in 2013 would not be referred to.

However, if a warning letter was issued in 2013, a further warning letter in 2014, and then a warning letter in 2015, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warning letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration.

7.2 *A suspected offender in receipt of a warning letter shall have the right to request, within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn. If, in the opinion, of the Licensing Regulatory Committee, the appeal was vexatious, this shall be recorded and the warning letter, which was the subject of the appeal, shall remain available for reference in a subsequent report of the Licensing Regulatory Committee for 5 years from the date of the appeal hearing.”*

It was then proposed by Councillor Hamilton-Cox and seconded by Councillor Novell, by way of amendment, that the words 'normally' and 'unless there are exceptional circumstances' be reinstated in the first paragraph in paragraph 7.1, as set out in the officer recommendation. After a lengthy debate, the amendment was accepted by Councillors Mace and Guilding as a friendly amendment.

Upon being put to the vote, 8 Members voted in favour of the proposition and 1 against, whereupon the Chairman declared the proposal to be carried.

Resolved:

That a new paragraph 7 be included in the Licensing Enforcement Policy, as follows, with subsequent paragraphs renumbered:

7.0 Warning Letters (Hackney Carriage and Private Hire Drivers and Private Hire Operators)

7.1 A warning letter will remain on file for an indefinite period, but it will not normally be referred to in any subsequent report to the Licensing Regulatory Committee if a period of 3 years has lapsed since it was issued and no other warning letter was issued within that period, unless there are exceptional circumstances.

For example, if a warning letter was issued in June 2013 and then no further warning letters are issued until August 2016, the warning letter issued in 2013 would not be referred to.

However, if a warning letter was issued in 2013, a further warning letter in 2014, and then a warning letter in 2015, all 3 warning letters would be referred to in any subsequent report to the Licensing Regulatory Committee to show a pattern of behaviour. If a person uses previous good character as a defence before the Committee, and refers to an earlier period during which one or more warning letters had been issued but omitted from the report, those warning letters would then be disclosed to Members for their consideration.

7.2 A suspected offender in receipt of a warning letter shall have the right to request, within 21 days of receipt of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn. If, in the opinion, of the Licensing Regulatory Committee, the appeal was vexatious, this shall be recorded and the warning letter, which was the subject of the appeal, shall remain available for reference in a subsequent report of the Licensing Regulatory Committee for 5 years from the date of the appeal hearing.