

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

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