

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

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

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