

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.