

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of the warning letter, an appeal hearing before the Licensing Regulatory Committee to ask for the warning letter to be withdrawn.”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.