

A.5 THREE STAGE WARNING PROTOCOL FOR THE HACKNEY CARRIAGE/PRIVATE HIRE TRADE

(Report prepared by Alan Tolmie)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To report on the effectiveness of the three stage warning protocol introduced by the Committee in September 2009.

EXECUTIVE SUMMARY

At your meeting held on 3 September 2009 the Committee adopted a three stage warning protocol for the Hackney Carriage and Private Hire trade in order that the Licensing (General Purposes) Sub-Committee could deal with minor repetitive breaches of Drivers Licence Conditions in a fair and equitable way. It was also agreed that the success or otherwise of the new protocol would be reviewed after approximately 12 months of operation. This report concludes that the protocol has been successful and recommends its adoption on a permanent basis.

RECOMMENDATION

That Members note the contents of the report and agree to the continued use of the protocol as set out in the appendix to item A5 of the Report of the Head of Legal Services and Monitoring Officer.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The continued use of this protocol supports the Council's priority of providing a safe environment for residents and visitors.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are no financial implications

Risk

If the protocol were not to be continued, this could lead to an adverse impact on our ability to deal with breaches of licence conditions particularly in relation to illegal ranking. The protocol also demonstrates to Magistrates that when drivers appeal against a decision of the authority we have taken a fair and proportionate approach to dealing with repetitive breaches of conditions.

LEGAL

The proposed action is within the Council's discretionary powers. Any driver whose licence is suspended or revoked has a right of appeal to the Magistrates' Court under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.
Crime and Disorder/Equality and Diversity/Consultation/Public Engagement.

CRIME AND DISORDER

Discontinuation of this protocol could lead to an increase in Crime and Disorder.

EQUALITY AND DIVERSITY

An Equality Impact Assessment was undertaken before the protocol was introduced which confirmed that there were no implications arising that directly affect equality and diversity issues.

AREA/WARDS AFFECTED

All wards

CONSULTATION

The protocol was introduced at the request of the Tendring District Taxi Association (TDTA) who were consulted and approved of the protocol prior to its inception.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Because of persistent abuse of the taxi ranks in Tendring, particularly the rank in Old Road, Clacton (Waterglade), the Tendring District Taxi Association requested that this Authority adopt a Penalty Points System to deal with the problem. Members adopted a protocol whereby, if within a six month period, drivers were found guilty of minor breaches of the conditions attached to their Hackney Carriage/Private Hire Drivers' Licences they would firstly be given an informal warning, then a formal interview and warning for a second offence and on the third occasion be brought before the Licensing (General Purposes) Sub-Committee for Members to decide what further action, if any, to take. Members decided that the matter would be revisited after 12 months, in order that they could evaluate its effectiveness. A copy of the Protocol is set out in the attached appendix.

CURRENT POSITION

Excluding the "normal" offences such as speeding, using mobile phones etc, in the period from January 2008 to September 2009, prior to the implementation of the protocol only one driver was brought before Members for a breach of condition attached to their licence. Since the adoption of the protocol in September 2009 your officers have issued 85 informal warnings, of which 25 progressed to a formal interview and warning. Of those 25, nine drivers further transgressed and were brought before the Licensing (General Purposes) Sub-Committee. As drivers have exercised their right of appeal against Member decisions the protocol has been tested and upheld at Crown Court.

From the Officers point of view the protocol has been seen as an effective and fair way of dealing with persistent offenders and its continued use is recommended.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDIX

Three stage warning protocol

**TENDRING DISTRICT COUNCIL
DRAFT WARNING PROTOCOL FOR
HACKNEY CARRIAGE DRIVERS/VEHICLES OWNERS AND OPERATORS**

Brief Introduction

If drivers, operators or vehicle owners receive three written warnings for clear and proveable breaches of conditions and/or traffic offence within a rolling six month period they are to be brought before the Licensing (General Purposes) Sub-Committee for Members to determine whether they are fit and proper and the action (if any) that should be taken which could include suspension or revocation of their licences.

The Three Steps System

Step 1 Informal Warning Letter sent to the licence holder for a first time offence. This letter will outline the offence which has occurred and list all details including the date and time of the offence. This letter will include a warning of what action might be taken if further breaches occur during a rolling period of six months. Where considered appropriate general advice on how to prevent the same or similar offences occurring will be included in the letter.

Step 2 Second and Formal Warning Letter sent to the licence holder if a second offence has occurred during a rolling period of six months. This letter will outline the offence which has occurred and list all details including the date and time of the offence. The licence holder will be requested to attend the Licensing Office for an interview regarding the two current offences. This letter will include a warning of what action might be taken if a third breach occurs during a rolling period of six months. Further advice/guidance will be given in appropriate cases.

Step 3 If a third offence has occurred during a rolling period of six months a letter will be sent to the licence holder which outlines the offence which has occurred and lists all details including the date and time. The licence holder will be informed in writing that it will now be necessary for them to attend a meeting of the Licensing (General Purposes) Sub-Committee to enable Members to determine whether they are fit and proper and the action (if any) that should be taken. The date of the Sub-Committee meeting will be given to them as soon as possible.

The decision of the Sub-Committee along with their rights to appeal against any action taken by the Sub-Committee will be notified to them in writing.

Types of Offences

- Failing to comply with any of the conditions noted on their driver, vehicle or operator licences.
- Failing to produce relevant documents within timescale when requested.
- Failing to produce a vehicle for mechanical test when required.
- Overloading of licensed vehicle (including exceeding the licensed number of passengers).
- Late application for renewal on expiry of a licence.

This list is not proscriptive and may be added to at the discretion of the Licensing Committee.

Options available to Licensing (General Purposes) Sub-Committee when considering cases of this type

After taking into account all the evidence submitted by the Head of Legal Services and Monitoring Office or her representative and any comments made by the licence holder, Members will determine whether they consider the licence holder is fit and proper to hold a driver, vehicle or operator licence and the action (if any) that should be taken which could include suspension or revocation of their licences.

Appeals against Member decisions

The licence holder has a right of appeal to the Magistrates' Court within 21 days of receipt of the decision letter.