



LICENSING COMMITTEE

BURNLEY TOWN HALL

06/11/2014 at 6:00pm

Members of the public may ask a question, make a statement or present a petition relating to any matter within the remit of the Committee except those matters relating to Private Hire and Hackney Carriage licence applications and any convictions relating to individuals.

Notice in writing of the subject matter must be given to the Head of the Chief Executive's Office by 5.00pm three days before the meeting. Forms can be obtained for this purpose from the reception desk at Burnley Town Hall or the Contact Centre, Parker Lane, Burnley. Forms are also available on the Council's website www.burnley.gov.uk/meetings.

Under current legislation members of the public can film or record this meeting provided they don't disrupt the meeting.

A G E N D A

1. Apologies

To receive any apologies for absence.

2. Minutes of the Last Meeting

To approve as a correct record the Minutes of the last meeting held on 18th June 2014 also available at (www.burnley.gov.uk)

3. Additional Items of Business

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency.

4. Declarations of Interest

To receive any declarations of interest from Members relating to any item on the agenda in accordance with the provision of the Code of Conduct and/or indicate if S106 of the Local Government Finance Act 1992 applies to them.

5. Exclusion of the Public

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To determine during which items, if any, the public are to be excluded from the meeting.

6. Public Question Time

To consider questions, statements or petitions from Members of the Public.

PUBLIC ITEMS

7. Taxi Licensing Enforcement Procedure

.To consider the taxi licensing enforcement procedure as agreed by the Taxi Task Group (report enclosed)

8. Results of appeals

To inform members of the outcome of appeals in the Magistrates Court. (report enclosed).

MEMBERSHIP OF COMMITTEE

Councillors

Frank Cant
Ida Carmichael
Saeed Chaudhary
Jean Cunningham (Vice Chair)
John Fifield
Gary Frayling
Shah Hussain
Mathew Isherwood

Councillors

Arif Khan
Anne Kelly
Stephen Large (Chair)
Neil Mottershead
Tom Porter
Ann Royle
Jeff Sumner

PUBLISHED

<29 October 2014>

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REPORT TO LICENSING COMMITTEE



DATE	6th November 2014
PORTFOLIO	Environment
REPORT AUTHOR	Karen Davies
TEL NO	01282 425011 ext 7247
EMAIL	phenderson@burnley.gov.uk

Taxi Licensing Enforcement Procedure

PURPOSE

1. For Members to consider the document agreed by the Taxi Task Group to explain the Council's Taxi Enforcement Procedures.

RECOMMENDATION

2. That the Licensing Committee endorse the Taxi Licensing Enforcement Procedure for use by the Council's enforcement officers.

REASONS FOR RECOMMENDATION

3. To provide a practical operational procedure for use by officers when carrying out taxi enforcement work and address trade concerns about the fairness of enforcement activity.

SUMMARY OF KEY POINTS

4. Late last year and earlier this year the trade expressed a series of concerns about the way investigations were carried out by enforcement officers. The Taxi Licensing Enforcement Procedure (Appendix A) was developed for four main reasons:
 - To increase confidence within the trade that regulatory activity is carried out in a fair, proportionate, accountable, consistent and transparent way,
 - To provide a framework for officer actions,
 - To reassure the public that regulatory approaches adequately protect them, and
 - To provide a point of reference and information for anyone experiencing enforcement action so they know what they might expect.
5. The procedure has been developed and revised through discussion at the Taxi Task Group and was approved for submission to yourselves as an information report at the Group's meeting of 16th October. It outlines how investigations and enquiries will be conducted, what actions can arise from those enquiries and how those outcomes will be communicated to the affected individuals.
6. It is intended to publish the procedure on the Council's website and make it available via

the contact centre.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

7. None

POLICY IMPLICATIONS

8. None

DETAILS OF CONSULTATION

9 Taxi Task Group 19th August 2014 and 16th October 2014

BACKGROUND PAPERS

21 None

FURTHER INFORMATION

PLEASE CONTACT:

Karen Davies Ext 7247

ALSO:

Peter Henderson Ext 7262

TAXI LICENSING ENFORCEMENT PROCEDURE

1 Enforcement Policy Statement

- 1.1 This policy is in place to:
- Protect public safety
 - Protect the commercial interests of the Borough's taxi licence holders
 - Deliver fair, consistent, transparent, accountable and proportionate regulation across the taxi service
 - Target action at those cases where it is needed.
- 1.2 The policy assists Burnley Borough Council to ensure that taxi drivers and operators provide a service to customers that is compliant with both the relevant law, and the conditions attached to the various licences.
- 1.3 All regulatory and enforcement action, be it the refusal of licences, verbal/written warnings, appearance before the Licensing Committee, use of statutory notices, suspension, revocation or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Regulation and enforcement action will therefore constitute a proportionate and balanced approach in order to meet a legitimate aim. It will not be unnecessarily punitive in relation to isolated minor technical contraventions of legislation or conditions.
- 1.4 Authorised officers will have regard to this policy when making enforcement decisions. Any departure from the policy must be justified and be endorsed by the Principal Licensing Officer or the Senior Solicitor as appropriate before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 1.5 All regulatory actions will be recorded by the Council for future reference.
- 1.6 Enforcement Officers satisfying competency requirements will be authorised by the Head of Service (People, Law And Regulation) to take enforcement action.

2 Enforcement Options

- 2.1 A consistent approach to decision making is important. To achieve and maintain consistency, the policy guidelines must be considered and followed where appropriate.
- 2.2 Licence application and enforcement decisions must always be proportionate, balanced, fair and relate to common standards, which ensure that the public is adequately protected. In reaching any decision the criteria to be considered include:
- Risk to the public
 - Safeguarding responsibilities
 - Seriousness of any breaches/offences
 - Extent of any breaches/offences
 - Impact of breach/offence on community

- Impact of breach/offence on trade
- Relevance of the breach/offence to enforcement priorities
- Licence holder's previous history

2.3 Having considered all relevant information and evidence, the options for action are:

- Take no further action
- Grant a licence (subject to the Council's Conditions)
- Refuse to grant/renew a licence
- Take informal action (verbal/written warnings & letters)
- Place the matter before Licensing Committee or Sub-Committee
- Use statutory notices
- Suspend a licence
- Revoke a licence
- Prosecute
- Use simple cautions

2.4 This policy document provides guidance applicable to the various options for enforcement action.

3 Investigation of Breaches of Licence Conditions and Offences

3.1 Alleged Breaches of Conditions will be fully investigated by Council Officers who will obtain relevant evidence to substantiate a breach before the evidence is put to the licence holder. **Investigations into Breaches of Conditions are not subject to the provisions of the Police & Criminal Evidence Act 1984 (PACE)** and so these procedures need not be applied in these circumstances. Often these contacts arise out of the regular work of officers whilst on site and are not planned. However whenever direct quotes are inserted into officers notebooks, the person making the comment will be invited to sign the book.

3.2 Where there are grounds to suspect that a criminal offences may have been committed then any investigation into those offences **are subject to PACE**. Therefore the PACE procedures will be implemented by officers in any situation where legal proceedings may arise. In circumstances where an interview is necessary the provisions of PACE will apply to any interview conducted at Council Offices or elsewhere. An "interview" is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences. Appropriate advice will be given in advance of any interview including the licence-holders rights and any representation. Council Officers have no powers of arrest. In addition to PACE the Criminal Procedures & Investigations Act will apply in relation to any disclosure for legal proceedings.

3.3 All investigations will afford the licence holder with an opportunity to respond to an allegation made, or evidence obtained. This may be via telephone call, letter, in person, by formal interview or by Committee hearing. Any representations received from the licence-holder will be taken into consideration when determining what enforcement action should follow. The licence holder will be informed of any action or decision arising from the investigation. Any correspondence issued to the

licence-holder will clearly distinguish between those matters which are required to be implemented, and any other matters recommended for action.

4 Informal Action

4.1 Informal action will be implemented at the discretion of Officers in relation to alleged breaches/offences by licence holders. Compliance will be sought by offering advice, issuing verbal and written warnings and letters to request action.

4.2 Informal action may be appropriate in any of the following circumstances:

- Where the breach is an isolated occurrence
- Where the breach does not pose a significant risk to the safety of the public
- Where the breach has limited impact on the community or trade
- Where the breach is not serious enough to warrant more formal action
- Where the licence holder's past history indicates that informal action will achieve compliance

5 Appearance before the Licensing Committee/Sub-Committee

5.1 An applicant or licence holder may be asked to appear before the Licensing Committee or Sub-Committee in order for the Committee to determine an appropriate course of action. Referral to Committee would normally take place when:

- A licence holder is charged or is convicted of an offence during the period of a licence (except where the offence indicates a serious public safety issue)
- Officers have evidence indicating a licence holder may no longer meet the fit and proper person test
- The issue requiring decision is not covered by, or departs from, recognised policy (including convictions/exceptional condition/age restriction/vehicle safety etc)

5.2 The Committee may decide to take one or more of the following actions:

- No further action
- Issue a written warning/instruction
- Suspend a licence - with or without immediate effect
- Revoke a licence - with or without immediate effect

6 Vehicle testing, suspension and revocation- s 60 and 68 LGMPA 76

6.1 Where the condition of a vehicle, or the accuracy of a taximeter are suspected to be unsatisfactory an authorised officer may serve a s68 notice that requires the vehicle or the taximeter to be examined at the Council's appointed garage at a time specified in the notice.

6.2 The officer may, in addition to requiring the vehicle to be tested, suspend the vehicle licence until such time as he is satisfied that the vehicle meets the condition of fitness or revoke the licence.

7 Driver Suspension & Revocation – s61 LGMPA 76

- 7.1 In circumstances where it is in the interests of public safety to suspend or revoke a driver's licence with immediate effect then the Scheme of Delegation permits officers to take this decision. This decision will be taken following careful consideration of the evidence and will be reserved for matters where there is an immediate and compelling risk to the safety of the public.
- 7.1 All other suspension or revocation issues would normally be taken before Licensing Committee/Sub-Committee for decision.
- 7.3 In all circumstances a decision notice will be issued that explains the reason for the decision.

8 Operator Suspension & revocation – s62 LGMPA 76

- 8.1 Operator suspensions and revocations will be determined by Licensing Committee/Sub-Committee.

9 Appeals

- 9.1 Appeals against decisions of the Council to grant, renew, suspend or revoke a licence are provided for in legislation, and may be made to the Magistrates' Court. Wherever this provision applies information will be provided that outlines how, where and within what period an appeal may be brought and on what grounds. It will also confirm whether or not the effect of the decision is suspended pending the outcome of the appeal.

10 Prosecution

- 10.1 The decision to prosecute is a very significant one. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate instructions of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards that ensure a consistent and proportionate approach.
- 10.2 The circumstances that are likely to warrant prosecution may be characterised by one or more of the following:
- Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it
 - When there appears to have been reckless disregard for the safety of passengers or other road users
 - Where there have been repeated breaches of legal requirements
 - Where a particular type of offence is prevalent
 - Where a particular contravention has caused serious public alarm

- 10.3 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a proportionate and objective decision to be made.
- 10.4 The Principal licensing Officer and Council's Senior Solicitor must be satisfied that there is sufficient admissible evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction and the issue of a simple caution is not an alternative when it is deemed that there is insufficient evidence to prosecute. The final decision rests with the Senior Solicitor.
- 10.5 When a decision is being taken on whether to prosecute, the factors to be considered may include:
- The seriousness of the alleged offence
 - The risk of harm to the public
 - Identifiable victims
 - Failure to comply with a statutory notice served for a significant breach of legislation
 - Disregard of safety for financial reward
 - The previous history of the party concerned
 - Offences following a history of similar offences
 - Failure to respond positively to past warnings
 - The ability of any important witnesses and their willingness to cooperate
 - The willingness of the party to prevent a recurrence of the problem
 - The probable public benefits of a prosecution and the importance of the case e.g. whether it might establish a legal precedent. (As indicated above, advice on the public interest is contained in the Code for Crown Prosecutors. The general thrust of the advice contained therein is that, the graver the offence, the less likelihood there will be that the public interest will allow anything other than a prosecution)
 - Whether other action, such as issuing a simple caution in accordance with the Home Office Circular 18/1994 would be more appropriate or effective

11 Simple Cautions

- 11.1 A simple caution may be used as an alternative to a prosecution in certain circumstances.
- 11.2 Home Office Circular 18/1994 states that the purposes of the simple caution are:
- To deal quickly and simply with less serious offences
 - To divert less serious offences away from the Courts
 - To reduce the chances of repeat offences
- 11.3 To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered.

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction
- The suspected offender must admit the offence
- The suspected offender must understand the significance of a simple caution and give informed consent to being cautioned

11.4 If there is insufficient evidence to consider taking a prosecution, then by implication, the criteria is not satisfied for the use of a simple caution. A simple caution should also not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

11.5 Simple cautions must be used in accordance with the Home Office Circular and may only be issued by a Burnley Borough Council Solicitor.

11.6 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will probably mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.

Licensing Committee

REPORT FOR INFORMATION



DATE	6 th November 2014
PORTFOLIO	Environment
REPORT AUTHOR	Peter Henderson
TEL NO	01282 425011 ext 7262
EMAIL	phenderson@burnley.gov.uk

PURPOSE

1. To update the Committee of the results of appeals in Magistrates Court that relate to Hackney Carriage Drivers and Private Hire Drivers

SUMMARY OF KEY POINTS

1. Appeal results for the period 26th September 2013 to 21st October 2014 are detailed in the table attached at Appendix 'A'

Decisions made by Officers or members in relation to applications for hackney carriage and private hire driver's licences, together with suspension or revocation of those licences are sometimes challenged by way of appeals to the Magistrates Court.

The appeal hearing is a 'hearing de novo' which means that new evidence and information may be introduced into the hearing by either party.

Members may wish to note that none of the appeals listed has resulted in costs being awarded against the Council

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

2. None

POLICY IMPLICATIONS

3. None

DETAILS OF CONSULTATION

4. N/A

BACKGROUND PAPERS

5. N/a

FURTHER INFORMATION

PLEASE CONTACT: Peter Henderson ext. 7262

ALSO: David Talbot ext. 7141

APPENDIX A

TAXI APPEALS IN THE MAGISTRATES' COURT

SCHEDULE OF RESULTS

DATE	NAME	BRIEF DETAILS	RESULT	OFFICERS COMMENTS
06/11/13	U.U	Revocation of private hire driver's licence due to cannabis caution	Dismissed. Costs of £100 awarded to council	<p>Mr U's main contention, was that the police had followed incorrect procedures at the time Mr U was given a cannabis warning on 8th June. The appellant's submission therefore was that it was inappropriate for the council, or the court, to rely on the cannabis warning in any way. Mr U testified that he did not have any knowledge of the presence of the cannabis with a view to then arguing that there was no substantial grounds for revocation of the licence.</p> <p>Under cross examination, however, Mr U made two admissions. Firstly, he admitted that he had "some idea" of what might be in the bag that had been found in his car. Secondly, he admitted that he had himself been a user of cannabis as recently as April 2013.</p>
07/10/13	O. T.	Refusal to grant private hire driver's licence	Appeal withdrawn at court	

10/10/13	M H	Revocation of private hire driver's licence due to motoring convictions	Allowed. No costs against council	Conviction-free period served prior to court hearing
12/12/13	M. A	Revocation of private hire driver's licence for plying for hire	Allowed. No costs against council	<p>The Magistrates' found that there were special reasons for departing from the Council's convictions policy in this case because::</p> <ul style="list-style-type: none"> (i) Mr A was an experienced driver, having been licensed for over 11 years. (ii) He was of previous good character (iii) The mitigating circumstances surrounding the offence that had been committed were reflected in the relatively low fine (£130) that had been imposed by the Court at trial. (iv) The offence itself had been committed very nearly 12 months ago and during that time the consequences had impacted on both Mr A and his family. <p>In the circumstances the Court found that revocation was disproportionate.</p>
07/02/14	M. A.	Revocation of private hire operator's licence for operating defective vehicles	Allowed. No costs against council	<p>Court found that faults to vehicle were result of poor repair work and not directly the fault of the operator. All faults listed as dangerous would not have been visible to a driver. The operator had a system in place for drivers to carry out checks immediately before morning and afternoon shifts. Court was satisfied that Mr A had done all he could to ensure roadworthiness of vehicles.</p>

23/05/14	F. T.	Suspension with immediate effect. Sexual harassment	Dismissed. No costs	Although the appeal was dismissed, the District Judge criticised the Council for not imposing the suspension for a specified period
01/08/14	M C	Revocation of private hire operator's licence for operating defective vehicles	Allowed. No costs	Court satisfied that the Council's decision had been correct on the basis of the evidence that was available to the Committee at the time. However, the court felt that since that time the operator had taken sufficient steps to ensure that vehicles would be roadworthy
07/08/14	Z. A.	Revocation of private hire operator's licence for operating defective vehicles	Allowed. No costs	Court satisfied operator was fit and proper because: (i) He had held a licence for 10 years during which time he had not appeared before the committee; (ii) He had always previously co-operated with the Council; (iii) Although things had gone wrong starting in June 2013, Mr A. has since improved his systems and the court were satisfied that this would ensure that his vehicles would be roadworthy.
29/08/14	S. M.	Licence application refused	Dismissed. Council awarded costs £50 at £5 per week.	
18/08/14	S. M.	Sexual activity	Allowed. No costs against council	Mr. M accepted that the incident was a terrible error of judgment. The activity was, however, consensual

				and legal. He was of previous good character and the court felt that his right to earn a living should not lightly be taken away. It was an isolated incident that was not likely to be repeated.
17/10/14	Z. N.	Refusal to grant private hire driver's licence (Officers decision following plying for hire)	Dismissed. Council awarded costs of £325	This was an appeal prior to conviction. The allegation of plying for hire was denied. This was tried as a preliminary hearing and the Court found in favour of the Council on the evidence put before it. The Court felt the refusal was a reasonable and correct decision of the Council.