



TAXI LICENSING ENFORCEMENT PROTOCOL

1 Introduction

- 1.1 The City Council's principal aim is to protect the public, and in particular those people who use hackney carriages and private hire vehicles. We will also seek to protect members of the taxi trade and others (e.g. other road users) as part of our work.
- 1.2 The purpose of this protocol is to provide guidance for both licence-holders and Council officers on how taxi licensing legislation and the Council's licence conditions will be applied within the Derby City Council area.
- 1.3 The City Council has a statutory duty to enforce the provisions of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 relating to the licensing of hackney carriage/private hire vehicles, drivers and operators. The Council also enforces licence conditions made under this legislation, and local Hackney Carriage Byelaws.

2 Enforcement Principles

- 2.1 This protocol should be read in conjunction with the Environmental Health and Trading Standards Division's Enforcement Policy, which sets out the Division's overall approach to enforcement issues. This is based on the principles set out in the Enforcement Concordat (agreed by the Government and local authorities); these are:
 - 2.1.1 Proportionality - any enforcement action the Council takes will be directly proportional to the risks to public safety and health identified or to the seriousness of any legal infringement
 - 2.1.2 Consistency - the Council will aim to ensure that enforcement decisions are always consistent and fair. They will relate where possible to accepted standards that will adequately protect members of the public using hackney carriages or private hire vehicles. We will promote a consistent approach by liaison and benchmarking with other licensing authorities and consulting licence-holders and other stakeholders on general policy issues.
 - 2.1.3 Transparency - Licence-holders (and new applicants for licenses) will be informed what the Council is expecting from them. Clear guidance on licensing requirements and copies of licence conditions will be provided to all applicants. Officers will adhere to the actions and procedures contained within this protocol

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- 2.1.4 Targeting - the Council will routinely check licensed vehicles, licensed drivers and Operator's premises/records to ensure that legal requirements and licence conditions are being met. Those drivers, vehicle proprietors and operators who regularly fail to meet the required standards and who therefore present a greater risk to public safety, will be checked more frequently than those who have a good record of compliance.
- 2.2 In carrying out its enforcement duties, the Council will adhere to the requirements of the Police and Criminal Evidence Act Codes of Practice and the Regulation of Investigatory Powers Act 2000.
- 2.3 Some enforcement situations will require immediate action by the Enforcement Officers, such as the service of a legal notice to suspend a vehicle licence. Such notices will normally be served on the vehicle proprietor at the time of inspection. If this is not possible, it would be delivered to their home address. Enforcement Officers may also need to contact drivers/proprietors at very short notice in respect of other enforcement issues. This may also require a visit to their home address or taxi/private hire base.
- 2.4 Because of the 24-hour nature of taxi trade operations, enforcement activity may take place at any time of the day or night. It may involve routine checks by Council officers, surveillance operations (which may be covert) or exercises carried out in partnership with other enforcement agencies.
- 2.5 In carrying out their enforcement duties, officers will not victimise particular members of the trade. Officers will act as fairly and as courteously as possible.
- 2.6 The Council's Licensing Section will continue to consult with Hackney Carriage and Private Hire trade representatives on major policy issues including enforcement policy.

3 Enforcement Options

- 3.1 In carrying out their enforcement duties, officers will use one or more of the following options:
 - 3.1.1 Help and Advice - Officers will seek to help members of the trade and the public by giving information, support and advice either in person or in writing. Officers in the Licensing Section have considerable experience and expertise and can give valuable advice on good practice and legal requirements.
 - 3.1.2 Informal Action - this will normally relate to minor infringements or vehicle defects where the officers are satisfied that an oral or written warning/request for action will be acted upon by the licence-holder. Such action would not be appropriate where the problem is more serious or where the licence-holder has a poor record of compliance.

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- 3.1.3 Report to the Council's Licensing Committee - this is likely to be used where there have been repeated breaches of licence conditions, or convictions, or inappropriate behaviour towards the public or Council officers. The Licensing Committee has the options of taking no further action, issuing a warning and suspending or revoking drivers' or operators' licenses.
- 3.1.4 Formal Caution - this can be used where an offence has been committed but a prosecution would not serve the public interest. A caution will ensure a formal record of legal contraventions is made and can still be referred to court if similar offences are committed in the future. The advice of Home Office Circular 59/1990 on formal cautions will be used and each case looked at on its merits.
- 3.1.5 Prosecution - this sanction will generally only be taken against persons who put public safety at risk by disregarding the law and/or licence conditions to a significant extent.

4 The Role of Enforcement Officers in Vehicle Testing

The scope of officers' enforcement duties in relation to the testing of licensed vehicles is detailed in Appendix C.

5 Complaints Procedures

- 5.1 All complaints received about licence-holders (or illegal/unlicensed activities) will be investigated in accordance with the Complaint Investigation Procedure set out in Appendix B.
- 5.2 Where a licence-holder or member of the public wishes to complain that a council licensing officer has acted outside the scope of this Policy they should, in the first instance, contact the Principal Licensing Officer (01332 716268) or the Environmental Health Manager (01332 715214) or write to:

Environmental Health and Trading Standards
Celtic House, Heritage Gate
Friary Street
Derby
DE1 1QX

The Council also has a formal complaints procedure. Complaint forms are available from the Council House Reception, Corporation Street, Derby.

6 Examples of Likely Enforcement Action

- 6.1 In addition to the general enforcement principles set out in section 2, more detailed examples of likely enforcement actions are set out in Appendix A. The examples given do not cover all possible infringements or circumstances and deal only with the most commonly encountered problems.
- 6.2 The examples are intended to provide guidance rather than create rigid rules. On occasions the course of action taken by the Council's officers may vary from that suggested in the examples because of the particular circumstances. Each case must be determined on its merits.

Appendix A

1 Drivers' Licences

1.1 Overcharging

Any complaint of overcharging will be investigated by Enforcement Officers in accordance with the Complaint Investigation Procedure (see Appendix B). Any action taken against the driver will depend upon the findings of the investigation. Evidence of deliberate overcharging may result in prosecution and/or referral to the licensing sub-committee with a view to the revocation of the licence.

1.2 Plying for Hire (Private Hire Vehicle Drivers only)

Where there is evidence (usually from an enforcement exercise) that a Private Hire Vehicle driver has illegally 'plied for hire' (i.e. picked up and conveyed a passenger without a prior booking), the drivers will be reported for prosecution.

1.3 Parking in a 'Prominent Position' (Private Hire Vehicle drivers only)

Case Law (previous legal cases) suggest that private hire vehicles parked in a 'prominent position' can be assumed to be plying for hire. Enforcement Officers who find this taking place will normally request the driver to move on, unless he can demonstrate that he/she is waiting for a specific customer who has pre-booked. If a driver is repeatedly found to be parked in a prominent position (more than twice) he will be reported for prosecution.

1.4 Importuning for Hire (Hackney Carriage drivers only)

This offence involves a driver 'soliciting' for a fare. Any complaint about this will be investigated in accordance with the Complaints Investigation Procedure (Appendix B). If there is evidence of an offence, a driver would normally receive a written warning in the first instance. Subsequent offences involving the same driver would be reported for prosecution.

1.5 Obstruction/Failing to Comply with a Reasonable Request by an Authorised Officer

Both offences, which can cover a wide range of circumstances, generally relate to deliberate attempts to prevent authorised officers from carrying out their duties. Depending upon the nature of the incident, action taken would range from a written warning to referral to the Licensing Sub-Committee and/or prosecution.

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1.6 Abusive/Aggressive/Violent behaviour

All incidents, whether to staff or members of the public, will be fully investigated. The City Council will not tolerate violent or aggressive behaviour towards members of the public or its employees. Whilst minor incidents may result in a warning, more serious or repeated incidents will result in referral to the Licensing Sub-Committee with a view to the revocation of a driver's licence. All cases of violence towards Council officers will be reported to the Police.

1.7 Overcrowding a Hackney Carriage Stand (over-ranking) (Hackney Carriage drivers only)

This offence occurs when a hackney carriage joins on to the end of a stand/rank which is already full, thereby obstructing other parts of the highway. As an offence is likely to have been committed, Enforcement Officers will caution drivers prior to questioning them and request them to 'move on' if they 'over-rank'. They will also issue a written warning in the first instance. A second offence within a 12-month period may result in prosecution proceedings being initiated against the driver.

1.8 Failure to Wear a Badge

The licence 'badge' issued by the Council must be worn in a prominent position at all times whilst the driver is at work
In particular:

- a) A licensed driver found working and not wearing a badge will be cautioned (see 1.7 above) and asked to stop working until he has found it and is wearing it. He may be asked to show this badge to officers before he resumes work.
- b) If a licensed driver who is found working without his badge claims to have lost it, he will be asked not to work until he has obtained a new one.

In both cases the driver will be cautioned (see 1.7 above) for the offence and a written warning issued. A second or subsequent incident(s) would normally be reported for prosecution.

- c) If a driver is wearing his badge, but not in a 'prominent position', he will be asked to re-position it. If the driver commits a second offence he would receive a written warning; further offences within a 12-month period would result in prosecution or referral to the Licensing Sub-Committee.
- d) Damaged/defaced badges

Where a badge appears to have been damaged, defaced or tampered with, the driver's details will be taken and the matter referred for further investigation. The driver will be required to obtain a new badge. Deliberate tampering with a badge may result in referral to the Licensing Sub-Committee.

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1.9 Driving without a Licence

All incidents/complaints about unlicensed drivers of hackney carriages or private hire vehicles will be fully investigated. Where evidence of an offence is obtained, prosecution proceedings will be initiated against the driver.

2 Vehicle Licences

2.1 Legislation and Council Licence Conditions/Specifications require both hackney carriages and private hire vehicles to be 'fit for the purpose' (in terms of design, construction, size, appearance etc) and to be safe, clean and comfortable for passenger (and driver) use.

2.2 In addition to the annual licensing inspection, all hackney carriages and private hire vehicles may also be subject to routine checks by Enforcement Officers, to ensure that vehicles are being maintained to the required standard. In addition to this, other enforcement agencies such as the Police, Ministry of Transport and the DVLA may also carry out checks on licensed vehicles. (The Council's licensing officers will usually be asked to participate in these exercises).

2.3 Where Enforcement Officers have reason to suspect that the condition of a vehicle has (or may have) fallen below the standard expected by the Council, they must take action to secure the required improvements. The nature and severity of any defects found will dictate the action taken and the officers will use their discretion having regard to balancing the need to protect the public (the Council's principal aim) and the impact upon the driver's/proprietor's business.

2.4 Vehicle Defects

These will usually fall into one of three categories

a) Serious defects

These are defects that:

- Impact upon the safety of the vehicle for the passenger, driver or other road users
- May cause imminent failure of a system or component
- Render the vehicle in breach of road traffic legislation

b) Non-serious defects

These are defects that cause the vehicle to fall below the Council's Standard, but are not sufficiently serious to warrant suspension of the vehicle licence. They may include minor mechanical defects or 'cosmetic' items.

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c) Advisory Defects

These are relatively minor items that present no immediate or short-term risk to the safety or comfort of the vehicle. Some advisory defects will be indications of future or potential problems. Identifying these will enable a proprietor to address the item before it becomes a more serious problem.

When considering whether a mechanical defect is 'serious' the tests should have regard to the potential public safety consequences of total failure of that particular component and the likelihood of such a failure.

2.5 Enforcement Options

Where an Enforcement Officer has reason to suspect that a vehicle has (or may have) defects he will usually take the following action:

- a) Where there are serious defects a legal notice will be served (under Section 68 of the Local Government (Miscellaneous Provisions) Act 1976), which:

- Suspends the vehicle licence
- Requires the vehicle to be submitted for a 'spot check' (key safety features check) at one of the Council's specified testing stations.

When this notice is served the vehicle cannot be used for public/private hire until it has been deemed 'fit' (i.e. there are no serious defects) by a testing station.

Where examiners find only non-serious defects the suspension will be lifted, but the vehicle will be required to attend for a re-test within 7 days, to ensure that all defects are rectified.

Note: Whilst the cost of the initial spot check will be met by the Licensing Section, any re-test costs have to be met by the proprietor.

- b) Where only non-serious defects are noted by Enforcement Officers, a notice will be served that does not suspend the licence, but still requires the vehicle to attend a testing station for a spot check.

Alternatively, the Enforcement Officer may request the proprietor/driver to re-present the vehicle at Celtic House (where the Licensing Section is based) for a further (more detailed) inspection by the Enforcement Officer prior to deciding whether a spot check is necessary.

- c) For advisory defects, the Enforcement Officer will give advice to the driver/proprietor on site, but no further inspection will be required. In some cases the Enforcement Officer will make a 'diary note' to look at the vehicle at a time in the future to monitor the condition of the defect(s).

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2.6 Appeals Procedure

Where a vehicle proprietor disagrees with the opinion of an examiner at a Specified Testing Station he should, after informing the testing station of his intention to appeal, contact the Taxi Licensing Section and request that another test (of the same component as that in question) is arranged as soon as possible at another one of the Council's Specified Testing Stations. Full details of this procedure can be found in Appendix D.

2.7 Use of Unlicensed Vehicles

All complaints/reports of the use of unlicensed vehicles will be fully investigated. Where evidence of this offence is obtained, legal proceedings will be initiated against the driver/proprietor.

2.8 Accident Damage

All accident damage that affects the safety, comfort or appearance of a licensed vehicle must be reported to the Licensing Section within 72 hours of the incident. Failure to do this may result in immediate suspension of the licence (pending a spot check) and prosecution of the proprietor.

2.9 Inaccurate Taxi Meters

Enforcement Officers will investigate all circumstances where there is reason to believe that a taximeter is inaccurate. In most cases this will involve the Enforcement Officer being driven over the measured mile by the driver. Where there is any remaining doubt about the accuracy of the meter, the vehicle licence will be suspended and it will be sent for a spot check. Where a meter seal is found to be missing the vehicle licence will always be suspended and the vehicle sent for a 'spot check'.

2.10 Failure to display signs

This will be dealt with informally by Enforcement Officers, who will request proprietors to replace/re-fix any missing signs or stickers. Failure to comply with this request may result in suspension of the vehicle licence.

2.11 Advertising on Vehicles

If vehicles are found displaying unapproved advertising, or displaying advertising in unapproved positions, they will be asked to remove it as soon as possible. A warning letter will be sent by Enforcement Officers to confirm this breach of licence conditions. Repeated breaches or failure to comply with the request will result in referral to the Licensing Sub Committee.

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2.12 Using an Uninsured Vehicle

Where Enforcement Officers have reason to believe that a vehicle used as a hackney carriage or private hire vehicle is/was uninsured they will carry out a full investigation. Where evidence of this offence is obtained the Council will initiate prosecution proceedings against the driver/proprietor. Any subsequent conviction will be reported to the Licensing Sub Committee with a view to action against the driver's licence.

3 Private Hire Operators Licences

3.1 Maintenance of Records

Where Enforcement Officers find that records are not being kept in accordance with the licence condition requirements, they will in the first instance, give advice. Failure to improve the record keeping or a further breach will result in a written warning. Subsequent significant breaches will result in referral to the Licensing Sub Committee.

3.2 Poor Health and Safety Standards

If Licensing Enforcement Officers believe that the standard of health and safety (for staff and customers) at a private hire office is poor, they will advise the proprietor of this. If standards do not improve they will request an authorised Health and Safety Officer from the Council to visit the premises.

3.3 Failure to Attend at the Required Time

Where, following a complaint from a customer, Enforcement Officers are satisfied that an operator has failed to attend a booking, the company will be issued with a written warning. Repeated failures to attend bookings will be referred to the Licensing Sub Committee for consideration of action against the Operator's licence

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APPENDIX B

TAXI LICENSING - COMPLAINT INVESTIGATION PROCEDURE

1. Complaint received from public/Councillor/officer (phone, letter, personal visit) and entered onto complaint form.
2. Details of Complaint entered in record book/computer system.
3. Complaint form passed to Principal Licensing Officer (PLO).
4. PLO allocates complaint to Enforcement Officer.
5. Preliminary assessment:
 - a) Enforcement Officer contacts complainant to:
 - i) verify complaint details (if necessary)
 - ii) obtain details of driver/vehicle/operator involved (if necessary)
 - iii) obtain details of any witnesses to the incident (if necessary)
 - iv) advise on procedure

This contact may be by phone, email or letter.

- b) Enforcement Officer contacts other parties if necessary.
 - c) Enforcement Officer evaluates whether complaint warrants full investigation (e.g. is it justified, is there sufficient info, is it the Division's responsibility etc)


If NO: Go to 10.

If YES: EO begins full investigation (Go to 6)
6. Investigation. Enforcement Officer will:
 - a) interview driver/vehicle proprietor/operator complained about
 - b) examine relevant records and take copies where necessary
 - c) examine vehicle(s) if appropriate and take necessary action
 - d) interview any witnesses
 - e) discuss any legal issues with Legal Services
 - f) maintain notes/records of all actions
 - g) carry out any necessary observations or monitoring

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7. Enforcement Officer will advise complainant of progress during the investigation, particularly of any anticipated delays or specific 'milestones'.
 8. On completion of the investigation the Enforcement Officer will discuss the findings with the Principal Licensing Officer and agree a course of action. This will fall into one of the following categories:
 - No action against the person complained about, e.g. due to a lack of evidence
 - Advice to the person complained about, e.g. how to prevent a recurrence of a minor problem
 - Warning – confirmed in writing
 - Referral to Licensing Sub Committee. The Sub Committee has powers to suspend or revoke driver and operator licences.

Note: The Enforcement Officer is authorised to suspend vehicle licences where serious defects are found

 - Formal Caution
 - Prosecution - this action would need to be approved by the Assistant Director (EH & TS) and Legal Services
- less
serious
- 
- more
serious
9. The Enforcement Officers will confirm the course of action in writing with the person complained about. A copy of the complaint and all relevant notes will be retained on file. The Enforcement Officers will update any computer records.
 10. The Enforcement Officer will advise the complainant of the outcome of the investigation in writing.
 11. The Enforcement Officer will pass the completed complaint record to the PLO for signing-off prior to filing.

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Appendix C

ROLE OF ENFORCEMENT OFFICERS IN VEHICLE TESTING

The following role is envisaged for Enforcement Officers in relation to the testing of licensed vehicles:

1. Training of Vehicle Examiners at Specified Testing Stations (¹).
2. Monitoring/auditing of testing standards (²).
3. Providing advice to vehicle examiners on the interpretation of the Supplementary Testing Manual.
4. Maintain a regular dialogue with Testing Station proprietors and vehicle examiners to discuss vehicle testing issues.
5. Investigate incidents/complaints related to vehicle testing. These may be complaints from “the trade” about the testing station or complaints by the testing station about specific proprietors.
6. Monitoring compliance by the testing station with the terms and conditions of the testing contract.
7. Participate with Licensing Managers in an annual review of each station’s performance.

Notes

1. The training of vehicle examiners will principally apply to new staff at existing testing stations or when new testing stations are appointed to the “Specified” list. There may also be the need to carry out refresher training for examiners from time to time when a particular need is identified.

Each Specified Testing Station will identify in writing those examiners appointed to carry out vehicle examinations on behalf of the council. A register of all vehicle examiners will be kept by the Council. Only examiners named on this list will be approved to carry out testing for the Council. Examiners who repeatedly fail to carry out testing to the required standard will be removed from the list and testing stations will be required to nominate replacement examiners.

2. The Enforcement Officer will make routine visits to each specified testing station each week. The purpose of the visit will be to maintain a dialogue with proprietors and examiners about testing issues and resolve any issues that have arisen.

The Enforcement Officer will also carry out a periodic formal audit of testing at each testing station and prepare a report for consideration by Licensing Managers and the proprietor.

Appendix D

APPEALS PROCEDURE

1. The vehicle is tested at a specified Council testing station. Following the failure of the vehicle, the vehicle proprietor should query with the testing station manager or supervisor, any failure item(s) that he disagrees with, who will then provide a second opinion.
2. If still not satisfied, the vehicle proprietor must tell the testing station that he intends to appeal. The testing station will then ensure that the components in question are marked to prevent the possibility of replacement or tampering.
3. The vehicle proprietor then contacts the Taxi Licensing Section to request an appeal inspection. The Taxi Licensing Station will make arrangements to book a test at another specified testing station of the proprietor's choice. The vehicle proprietor will meet the cost of this test.
4. The vehicle is then subjected to testing by the second testing station. The decision of the second testing station will be binding on both the Council and the vehicle proprietor. Should the vehicle fail, and/or reveal any additional faults, the vehicle proprietor must rectify these, in addition to those identified in the first test. The vehicle proprietor will bear all the costs of any subsequent retests and work required.

N.B. There must be no communication between testing stations regarding any particular vehicle whilst it is subject to the appeal process. Evidence of such communication may lead to the testing station concerned being called before the Licensing Sub Committee to account for its actions.