

APPENDIX 7



12 October 2016

Mr Paul Robinson
Chief Executive
Derby City Council
By email: paul.robinson@derby.gov.uk

REF: Licensing Consultation

Dear Sir/Madam

We write on behalf of our affiliated members in your district, the Derby Area Taxi Operators' Association, in respect of your council's current Licensing Consultation on taxi and private hire licensing matters. We understand that the deadline for responses to this consultation is 24 October; therefore we wished to ensure that this document was submitted on time. The format of our submission is in the manner of posing questions to the council as raised by our members.

Our members have several issues with the contents of the consultation; we shall set these out as follows:-

- 1. The consultation document.** We have accessed the consultation document from the council's website, and the first question our members wished to raise is: Whilst on the surface the document appears to consist of 22 pages of questions, in reality with the links provided under (2) "Making Decisions: Licensing Applications" – namely the officer-based panel guidelines, and the detail about the Derby points system – results in the entire document totalling over 67 pages.

Does the council believe that sufficient numbers of licence holders, taxi users and Derby residents will take the time and effort to read through this entire document, and to provide the council with their response?

Does the council believe that sufficient numbers of the above mentioned sections of the community whose first language is not English, will have sufficient grasp of the language to understand the consultation questions –

and in particular the extensive guidelines that accompany them – to be able to respond?

Is the consultation document available only online, or is it being produced in hard copy and distributed/made available to any parties in the district? We ask this because we are sure you are aware that, even in this day and age, not everybody has access to a computer or the internet. Readers are advised to contact the council to request a paper copy of the questionnaire, but they could not do this if they do not have internet access and thus have not been made aware of its existence. In any event, it has been established in other licensing areas that proper consultation with the trade should include distribution of hard copy documentation to every licence holder in the district.

2. **Officer-based panels.** Our members have taken great exception to the concept of doing away with a licensing committee and instead having all licensing powers delegated to a panel of officers. From recent history we understand that the reason behind this decision might well be the findings of auditors Grant Thornton in 2014, when amongst other transgressions included a recommendation to grant licenses to people with criminal records being given by a Councillor on the licensing committee. We would appreciate clarification on this point, and the council's rationale behind moving toward entirely officer-led decisions.

We attempted to research this question on the council's website; however quite frankly, we found that the website is almost totally inaccessible when it comes to finding agendas and minutes of relevant Committees. Nowhere could we find any council meeting or Committee where these proposals were discussed or put forward, or the reports behind the proposals. Perhaps you would be kind enough to enlighten us in this regard.

Quite apart from our members' concerns about personalities clouding any licensing decisions under this new type of regime, they also raise the serious question: What is the point of having elected Councillors at all - who after all have been placed in their position of responsibility by their constituents - if their powers and responsibilities are watered down or taken away entirely? The taxi and private hire licence holders in Derby, along with their families, represent some 2,500-plus voters; does this potential decision mean that they should no longer bother to vote in local council elections?

Also, our members would be particularly interested in knowing the criteria by which members of this officer panel would be chosen.

3. **Derby points based system.** The consultation document states that, if this option were implemented, there would be neither licensing sub-committees nor officer panels; decisions would be made based on a points-based system peculiar to the Derby district.

Our members' first immediate question would be: Who would make these decisions? How would this person be qualified to shoulder the serious weight of these delegated powers?

The National Association has long been against the concept of penalty points systems, for a variety of reasons best covered by the attached set of questions prepared many years ago by our lawyers. We would ask that these questions be considered by the council's legal department, and anybody else involved in the decision-making process both within this consultation, and the administration of the Derby points system in future, should that be the route the council ends up taking on licensing matters.

The main objection voiced by large numbers of members of the industry involves the concept of double jeopardy: if a licence holder is punished at Court by way of fines, DVLA licence points or other penalties, why should he/she then be punished by the council a second time, for the same offence, by way of suspension of his licence thus putting him out of work?

- 4. Right of appeal.** We have read through the entire 67 pages of this consultation document and, unless it can be pointed out otherwise, we can find nowhere in the document that states whether there is a right of appeal for a licence holder who is aggrieved by the council's decision(s) as set out under the new proposals.

This basic precept, as underpinned by sections 300-302 of the Public Health Act 1936, allows any person aggrieved by any decision of the council to appeal to the Magistrates' Court. However, as we understand it from having experienced penalty point systems in other licensing authorities, there will be no right of appeal against the setting of these penalty points in the Derby system. Does this not create a kangaroo court situation, with the officer responsible for delving out these penalty points acting as judge, jury and executioner?

The extremely complicated chart of the Derby points is enough to scare off many a potential applicant for a licence, even if they have a clean record. But the simple proposal on the question page states: "If a maximum number of points (12) is reached, a licence would be refused, suspended or revoked." Over what period of time, generally?

The document states that the points based system "would improve safety for our customers, drivers and other road users." The only way we see this improvement is through there being no taxi drivers whatsoever remaining in the district, due to this draconian points system being imposed as described. Then what happens to the council's primary remit of passenger safety?

Our members totally understand the motivation behind these new proposals, based on recent events not only in Derby but also the Rotherham CSE revelations. Our members fully appreciate, and would wish to endorse, higher safety standards for drivers, vehicles and operators in the district. But it would appear from the consultation document that Derby City Council wishes to brand every licence holder in the district with the “bad apple” label brought about by a very small minority of miscreants.

We understand that the aim of Derby’s revised licensing regime is to achieve “a more robust approach to governance”. However, surely these improved standards can be introduced in such a way as not to discourage the hundreds of licence holders who have clean records – including our members - from carrying on in the industry without the constant dread and worry of draconian licensing measures stripping them of their livelihoods.

On a final point, we wish to advise you that, once the council’s consultation period has finished, our members intend to submit a request under the Freedom of Information Act for any information available concerning those who submitted a response to the document. We are not talking about ‘who said what’, or Data Protection details; merely the numbers of responses for each tick-box, and any comments with names and particulars redacted.

We are particularly interested to learn of the kind/volume of responses you receive from the trade itself, and from the travelling public. We would hope that such major decisions as proposed by your latest document would not be taken based on a very small response rate.

Our members fully intend to send in a response from each individual member of the Derby Area Taxi Operators’ Association to each of the questions on the consultation document as set out on the website; these submissions will be sent electronically as directed before the deadline.

In the meantime, thank you for considering the contents of this document; we look forward to your reply as soon as possible, so that we may consult further with our members as to which action, if any, they may wish to take.

You will note from the email address header that we have copied Cllr Baggy Shanker, Cabinet Member for Regulatory Services, whose personal forward introduces the council’s consultation document. We are certain that Cllr Shanker will be interested in our members’ views.

Yours faithfully
For **THE NATIONAL PRIVATE HIRE ASSOCIATION**

Donna D Short

(Mrs) DONNA D SHORT
Director

Please reply to: donnadale.npha@btconnect.com

**HACKNEY CARRIAGE/PRIVATE HIRE VEHICLES/DRIVERS/OPERATORS -
PROPOSED PENALTY POINTS SYSTEM**

1. What documentary evidence is available to support the council's assertion that a penalty points system is reasonably necessary? Please provide details/copies of that evidence.
2. If the penalty points system is introduced, will the council take a signed proof of evidence from every complainant and witness(es)?
3. Will there be a written "charge" which will include all the details of the alleged misdemeanor?
4. If the penalty points system is introduced, will the council interview the licence holder in accordance with the provisions of PACE 1984?
5. Will the provisions of the PACE 1984 be adhered to, when investigating complaints of alleged misconduct and alleged criminal offences?
6. How will the gravity of the alleged misdemeanor(s) be determined?
7. Who will determine the gravity of the alleged misdemeanor(s)?
8. Will there be sub-categories of misdemeanors?
9. If alleged misdemeanor(s) are committed towards the end of years 1, 2 and 3 will the penalty points be carried forward to years 4, 5 and 6?
10. Will there be a "first hearing"? If yes, please provide details; if not, why not?
11. Who will act as Prosecutor?
12. Who will hear the complaint?
13. Who will determine the complaint?
14. Who will advise the council on legal issues during the -
 - a. Investigation?
 - b. First hearing?
 - c. Appeal to the committee?
15. Will the "Rules of Evidence" apply? If not, why not?
16. What defences will be available to the licence holder? Please provide precise details for each category of misdemeanor.

17. If a licence holder has no other alternative than to appeal to the sub-committee:-
 - a. What time period will he or she be given in which to lodge an appeal?
 - b. Will he or she be able to continue in business in the same way as under section 77 of the Local Government (Miscellaneous Provisions) Act 1976?
 - c. Will the council pay the Appellant's costs?
 - d. Will the licence holder be entitled to free legal advice from the outset?
18. Will the complainant(s) be "compellable" to attend the First/Appeal hearing, give oral evidence, and be open to cross examination? If not, why not?
19. Will prosecution witnesses be compellable to attend the First/Appeal hearing, give oral evidence, and be open to cross examination?
20. Will the investigating officer(s) be "compellable" to attend the First/Appeal hearing, give oral evidence, and be open to cross examination? If not, why not?
21. Will the council supply the licence holder or his/her legal advisers with evidence by way of advance disclosure? If not, why not?
22. What will be the Mens Rea of each alleged misdemeanor?
23. What standard of proof will be relied upon?
24. What are the "definitions" of the categories of each misdemeanor?
25. What is the council's legal basis for the imposition of such a system?
26. Can the council give assurances that the rules of natural justice will be observed? If assurances can be given, please provide details.
27. Why does the council feel it is necessary for them to perform a purely judicial function, thereby usurping the role of the courts?
28. How will potential complainants be informed that such a system operates in their area?
29. Does the council fear that there will be spurious complaints? If not, why not?
30. Please provide details of the discretion that will be entrusted to an enforcement office when deciding whether or not to issue penalty points. Will there be written criteria and/or guidelines to which he or she will have to adhere? If not, why not?
31. Is the council saying that the accumulation of ten or more penalty points is "reasonable cause" for which to suspend or revoke a licence, and not the individual offences themselves? That being the case, would not the licence holder have to appeal all of the

alleged “offences” to the magistrates court at first instance, in order to determine whether or not the council had reasonable cause to suspend, revoke or refuse to renew a licence?

32. Is there not a risk of double jeopardy? If not, why not?
33. Is there not a real likelihood of bias? If not, why not?
34. Is there not a real risk of an intermingling of functions? If not, why not?