

**LICENSING COMMITTEE
(NON LICENSING ACT 2003
FUNCTIONS)**

Agenda Item 8

Brighton & Hove City Council

Subject: Hackney Carriage & Private Hire Driver Enforcement
Date of Meeting: 30 June 2016
Report of: Acting Director of Public Health
Contact Officer: Name: **Martin Seymour** Tel: **29-6659**
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Wards Affected: All

1. SUMMARY AND POLICY CONTEXT:

To advise members on driver enforcement.

2. RECOMMENDATIONS:

2.1 That committee notes the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The council licenses hackney carriage and private hire vehicles, drivers and operators. Hackney Carriages can ply for hire in the streets and at taxi ranks (referred to as “stands” in legislation) whilst Private Hire Vehicles can only accept bookings made through a Private Hire Operator.

3.2 Passengers that have booked a taxi through a taxi operator and have a complaint about their journey, such as the route taken, the driver's attitude or the fare charged, should in the first instance speak to the taxi operator if not satisfied with the response from the taxi operator, or have a complaint about a taxi operator, should contact the Hackney Carriage Office using the taxi service complaint form available on the councils web site. This form can also be used if the customer has hailed a taxi off the street or from a rank and the complaint is about:

- a driver's behaviour
- the vehicle
- the driver not taking the direct route
- the meter being incorrect
- overcharging
- the driver refusing to take a wheelchair user or not strapping a wheelchair in the vehicle, or refusing an assistance dog

Complaints about:

- antisocial driving
- unsafe driving/speeding

- using mobile phones while driving
- moving traffic offences
- road rage
- ignoring traffic signs and signals

Should be reported to Sussex Police via Operation Crackdown.

Complaints such as assault, verbal abuse or suspected theft by the driver should be reported to Sussex Police as soon as possible for an investigation.

Complaints about illegal parking should be reported to the parking enforcement team.

Officers can only investigate identifiable drivers and vehicles such as the vehicle licence number, which is displayed on the rear passenger doors or on the plate at the rear of the vehicle.

- 3.3 Legislation in relation to the Town Police Clauses Act 1847 Local Government (Miscellaneous Provisions) Act 1976 which applies to both hackney carriages and private hire vehicles is enforced by the local authority. Non criminal enforcement can also be effected by means of action taken against the licence held by the person who has transgressed.
- 3.4 The council can suspend, revoke or refuse a hackney carriage or private hire vehicle and/or driver licence. However, a driver licence cannot be suspended and then revoked at a later date such as at the conclusion of a prosecution. Other actions are available to officers such as verbal or written warnings can be applied in line with the Councils [Licensing Enforcement Policy](#)
- 3.5 Appeals against suspension or revocation of private hire vehicles are by way of the Magistrates Court and hackney carriage vehicles the Crown Court. Driver appeals are made through the Magistrates Court.
- 3.6 Following an appeal in the High Court relating to the revocation of a drivers licence by the Council and subsequently upheld by the Magistrates the High Court ruled that it was for the Council to prove that a driver is not a “fit and proper” person rather than the driver proving that they are. This was a significant change in the way that the law was interpreted. It is based upon the idea that once a licence is granted (where the driver has to establish that they are ‘fit and proper’), then any interference with the licence changes the position so that the licencing authority has to establish that they are not fit and proper.
- 3.7 This case was in relation to an accident between a private hire vehicle and a cycle where the driver cut across the path of the cyclist knocking her off the bike. He then drove off at speed without checking if the cyclist was injured or offering any assistance. The taxi driver then did a job before going to report the accident to the Police. The Council revoked his licence believing that he was not a fit and proper person. He was also prosecuted by the Police and pleaded guilty of failing to stop and was found guilty of careless driving. On initial appeal Magistrates agreed with the Council that the driver

was not a fit and proper person but following the High Court appeal ruling at a rehearing of the appeal the District Judge ruled in favour of the driver.

- 3.8 The routes of appeal are statute defined. They apply across the board whether civil or criminal (in this case it is considered Civil and thus the standard of proof is 'on the balance of probability'). Either way the judicial system is set up in part to prevent repetitive and endless appeal. People often will appeal not because they are innocent but because they will not accept their guilt. So there has to be some brake system in place. That brake system is to limit appeals to errors in law. However as interpretation of facts is much more subjective the Courts have to prevent the system from being overloaded by making the Judges word final. They are independent arbiters of fact. This limits the right of appeal to where there is an error in the interpretation of the law. In the case above the High Court had hand down its decision and so on that basis the Judge had to decide on the revised balance of proof. On the facts she decided to reinstate the licence.
- 3.9 The Council did discuss an appeal with Counsel who was of the view that we would not succeed. It should also be noted that the Magistrates did not award costs against the Council. It can do so when it concludes that a decision of the Council was manifestly unreasonable. Clearly the Court did not decide that the actions of the Council were unreasonable but rather that on the facts she felt that we had not established to her satisfaction that the conduct of the driver was such as to make him not fit to hold a licence.

4 Related Issues

4. None

5. CONSULTATION

- 5.1 Enforcement is a standing item on the Hackney Carriage and Private Hire Consultation Forum. Members include the members of the hackney carriage and private hire trade, Unions, Sussex Police, Disability Groups, Brighton & Hove Bus Company and Officers of the Council.

6. FINANCIAL & OTHER IMPLICATIONS:

This report is for information purposes only, so there are no financial implications.

Finance Officer Consulted: Mike Bentley
Legal Implication

Date: 18/05/16

- 6.2 These are dealt with in the body of the report. The lawyers have been consulted in the drafting of this report and confirm that the above commentary is correct.

Further as this is an explanatory report rather than a for action report no further advice is required.

Equalities Implications:

6.3 None

Sustainability Implications:

6.4 None

Crime & Disorder Implications:

6.5 Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

Risk and Opportunity Management Implications:

6.6 The transport industry should be safe, profitable and be a positive experience for residents and visitors.

Corporate / Citywide Implications:

6.7 Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the night time economy.

SUPPORTING DOCUMENTATION

Appendices: None