

Committee: Licensing & Environmental Health

Agenda Item

Date: 5 March 2014

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Title: Proposed Amendment To The Licensing Policy Of Uttlesford District Council Relating To The Hackney Carriage And Private Hire Trades

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Item for decision

Summary

1. This report is to suggest a minor amendment to the Licensing Policy adopted by the council in March 2013.

Recommendations

2. Members agree to vary the Licensing Policy as follows:
 - In the policy document amend clause 2 by inserting a new clause 2.8 (the remaining paragraphs to be renumbered) as follows. “The Assistant Chief Executive – Legal may refer a driver or operator to the committee at any time for the committee to consider the revocation of a licence where in the opinion of the Assistant Chief Executive – Legal there are grounds to consider that the driver may not be a fit and proper person. The Assistant Chief Executive – Legal may take such action notwithstanding the fact that the driver meets the licensing standards set out in appendix A to this policy.
 - Paragraph 7 of appendix A be amended to read “No official cautions (save for cautions administered by Uttlesford District Council) for any offences within the last 12 months”.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	ULODA have been notified of the proposed amendment to the policy but have not been formally consulted as the proposed amendments to the policy merely state the existing position and the amendment to the
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	standards does not adversely affect members of the trade.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. The council adopted a Licensing Policy relating to the hackney carriage and private hire trades in March 2013.
7. Prior to the adoption of the policy where a driver had committed a minor offence this was generally dealt with by way of a short suspension of the driver's licence under delegated powers, rather than by way of a prosecution.
8. The policy contained a change of approach in such circumstances. At paragraph 6.8 the policy states that "without detracting from the delegated powers and discretion of the Assistant Chief Executive – Legal, it is the policy of the council that where the matter complained of constitutes an offence under the legislation the offender should usually be the subject of a formal caution or prosecution and that a suspension would only be given as an alternative in exceptional circumstances."
9. Consistent with this change of policy, where drivers have been found to have committed minor offences (typically failing to wear their badge) they have been interviewed under caution and following their admission of the offence a formal caution has been administered by the council.
10. Unfortunately, being cautioned for an offence immediately takes the driver outside of the council's licensing standards paragraph 7 of which provides that a driver should have "no official cautions for any offences within the last 12 months". A driver who has received a caution therefore inevitably has to appear before the committee to satisfy members that the driver remains a fit and proper person to hold a licence.
11. In practical terms, it is highly unlikely that the committee would take any action with regard to a driver who has failed to wear his or her badge on one occasion. Paragraph 6.16 of the policy states that "with regard to drivers, operators and proprietors, where a matter has been dealt with through the criminal justice system it is the view of the council that a suspension of the licence would rarely be suitable. Any punishment which the offender deserved would have been imposed by the

courts and a further punishment by way of suspension (which would cause loss of income) would be inappropriate. However, the Licensing and Environmental Health Committee should consider whether in the light of a conviction or a caution the driver or operator remains a fit and proper person to hold a licence. If the committee is not satisfied that the driver or operator does remain a fit and proper person then the licence should be revoked ...”

12. The suggestion therefore is that to avoid members of the committee sitting to hear cases in circumstances where no action would be the inevitable consequence a council imposed caution should not automatically take a driver outside of licensing standards.
13. With regard to the proposed amendment to the policy, whilst strictly this is not necessary as I can refer a driver to the committee at any time if I consider it appropriate to do so it is desirable to make this change so that drivers are not taken by surprise if following a caution from the council they are in a particular case referred to the committee for consideration. In practice I consider it unlikely that this will occur as if a matter is sufficiently serious to warrant consideration by the committee it will probably be too serious to warrant a caution and a prosecution would therefore be brought.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
A person who is not considered fit and proper is allowed to retain his or her licence.	1, where there is any doubt as to whether a driver remains a fit and proper person it has always been the practice to refer such a driver to the committee for consideration.	4, licensing unsuitable drivers may lead to damage to property, personal injury or even death.	None required in the context of this report.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.