

Annex 6 - Penalty Point Scheme

1. Introduction

1.1 The key consideration of the Council and the overriding objective in the licensing of hackney carriage and private hire vehicles, proprietors, drivers and operators is the safety of the travelling public. The protection of the public; safeguarding children and vulnerable persons; and the prevention of crime are key factors of its Policy in relation to the licensing of hackney carriage and private hire vehicles, drivers, proprietors and operators.

1.2 The aim of the Penalty Point Scheme (the Scheme) is to work in conjunction with other enforcement measures to provide a stepped enforcement process for licence holders. It bridges the gap between the warning and suspension/revocation options provided by the legislation and creates a record of a licence holder's conduct thereby enabling the Council to make an informed decision as to whether a licence holder is a fit and proper person to hold a licence. The primary objective of the Scheme is to improve levels of compliance and standards within the trade to ensure the safety of the travelling public.

2. Relevant legislation and Guidance

2.1 Hackney carriage and private hire licences are issued by the Council, pursuant to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847. The 1976 Act prohibits the Council granting a licence to a person unless it is satisfied that the person is 'a fit and proper person'. Section 57 of the Act gives the Council the power to require a person to submit information about themselves so the Council can be satisfied that they are 'a fit and proper person'. Drivers, operators, vehicles and their proprietors are also subject to the Council's own licence conditions and policies.

2.2 There is an ongoing responsibility under the 1976 Act for the Council to ensure that licence holders continue to meet the 'fit and proper' test for the duration of the licence period. Sections 61 & 62 of the '1976 Act', give the Council the power to suspend, revoke or to refuse to renew a driver or operator licence. Section 60 (1)(c) of the Local Government (Miscellaneous Provisions) Act 1976 permits the Council to suspend, revoke or refuse to renew a vehicle licence.

2.3 The Council has regard to the Statutory Taxi and Private Hire Vehicle Standards in meeting its ongoing obligation to ensure that a licensee remains safe and suitable to hold a licence.

3. General Principles

3.1 The Scheme applies to all hackney carriage and private hire drivers and vehicle proprietors, including those with a registered interest in the vehicle, and operators.

Annex 6 - Penalty Point Scheme

3.2 Where an offence or breach of the rules is committed or alleged, or a complaint received, the investigation process set out in this document will be followed and may result in the issue of penalty points and/or other appropriate action.

~~3.3 The provisions set out in 3.2 above do not apply where a one-year Probationary Licence has been granted and the following condition applied –~~

~~If during the period of this probationary licence you receive any criminal or motoring convictions or any fixed penalty notices or any another form of restorative justice or do not fully comply with the Council's Hackney Carriage and Private Hire Licensing Policy, Annexes and Appendices or where complaints or intelligence are received which following a full investigation leads the Council to consider that a licence should not have been granted then the process to revoke the licence will commence.~~

~~Any breach of this probationary condition will result in the Council taking action to revoke the licence; the suspension process under this Penalty Point Scheme will not apply.~~

3.3 The penalty point process will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, regulations and its own Policy.

3.4 On occasions it may be determined not to award points but to proceed immediately to the revocation of a licence on the grounds that the Council considers that the licence holder is not fit and proper to hold a licence. In such cases the right of appeal will be direct to the Magistrates' Court.

3.5 Points issued under this Penalty Point Scheme will remain current for 12 months from the date they are issued. At the conclusion of a period of suspension 6 penalty points will remain on the licence.

3.6 The penalty points issued will be at the discretion of the investigating officer and in accordance with the penalty points' table.

3.7 If a licence holder fails to report a conviction, 4 points will be applied to the licence **under this Scheme** in addition to those that would be applied under the Council's Convictions Policy. If the conviction is reported only those points for the conviction will be applied to the licence

Please note – the failure to respond to an investigating officer's repeated attempts to make contact, in order to properly investigate a matter, or refusing to cooperate may result in points being applied without having had the licence holder's input.

Annex 6 - Penalty Point Scheme

3.8 The imposition of penalty points against a driver who is an employee will not necessarily result in the imposition of points to their employer. However, points may be issued to one or more parties for a single contravention if the circumstances warrant such action being taken i.e. where there is joint responsibility for the contravention.

3.9 Licence holders may see their penalty point record at any time. Vehicle proprietors and licensed operators may make a written request to view the penalty point record of their employees; any such request must give full reasons for the request. All such requests are subject to approval by the Licensing, Food & Safety Manager.

3.10 The Council may as part of its investigations into an alleged offence/complaint or similar matter request a Police National Computer check (PNC) to ensure that it has all the evidence necessary to properly investigate the matter; this evidence will be made available to the Committee to assist it in reaching its decision. This may mean that matters that formed part of a previous decision are reconsidered in the light of new evidence and may result in a licence, previously granted, being revoked.

3.11 In addition to penalty points, licence holders may also receive points for convictions etc. under the Council's Convictions Policy. These points will be added to those given under this Scheme and where 12 or more points are reached in any one year the licence holder should expect consideration to be given to the suspension or revocation of their licence. **With the exception of points given for the failure to declare a conviction or similar matter**, points will not be given under both Policies for the same offence. Points given under the Convictions Policy are not removed by a period of suspension.

4. Investigation, Committee and Appeal Procedure

4.1 The Council will deal with all genuine complaints or witnessed/alleged breaches of the legislation, licence conditions and/or policy as follows –

- a. On receipt of a complaint or where there is an alleged breach of the Council's conditions or other relevant statutory provisions, a member of the Licensing Team will assess whether they believe there is a case to answer.
- b. If it is considered there is a case to answer, a member of the Licensing Team will investigate the facts which may include interviewing the relevant individuals under caution **where an offence has been committed under the relevant legislation. Interviews under caution will not take place in relation to breaches of policy or general complaints.**
- c. Upon completion of the investigation, penalty points may be applied. Notification that points have been given will be sent in writing to the licence holder and, where appropriate, a copy will be sent to their vehicle proprietor or

Annex 6 - Penalty Point Scheme

operator within 7 days of the decision. The award of points can be appealed to the ~~Licensing Manager-Licensing Committee in the first instance~~ and this should be done within 21 days of being notified of the award of points. Appeals must be made in writing to licensing.team@colchester.gov.uk or to the Licensing, Food & Safety Manager, Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG

- ~~d. The Licensing Manager will consider the matter and confirm his decision in writing to the licence holder.~~
- ~~e. There is a further right of appeal, where points are awarded, to the Licensing Committee. The appellant may submit documentary evidence in advance of the hearing and has the right to address the Committee and/or nominate someone else to do so on their behalf. Appeals must be made in writing to licensing.team@colchester.gov.uk or to the Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG within 21 days of being notified of the Licensing Manager's decision.~~
- f. The Committee will make its decision based on the evidence presented at the hearing and may exercise its discretion to increase or reduce the number of points that are applied. The number of points may be reduced where it considers that the case has been proved by the applicant that there were genuine and mitigating circumstances.
- g. The determination of the Licensing Committee is final and there is no right of appeal to the Magistrates Court.

Please note – it is important to exercise the right of appeal if the licence holder does not believe the points should have been awarded and wishes to challenge the evidence that resulted in the award of points. If further points are awarded and the 12 point threshold is reached, the earlier impositions of points cannot be challenged at a later suspension hearing. Points must be challenged in line with the process set out above. It is important to note that the Licensing Committee, in addition to dismissing or upholding the appeal, have the discretion to award a lesser or greater number of points than displayed on the Penalty Point Table.

Suspension of a licence

4.2 Where a licence holder accumulates 12 or more points the following suspension periods apply -

- 28 consecutive days for the first occasion
- 56 consecutive days for the second occasion

Annex 6 - Penalty Point Scheme

- Revocation for any third accumulation of 12 points on the grounds that the licence holder is not fit and proper or safe and suitable to hold a licence.

4.3 In cases where the licence holder has reached the threshold for suspension, the licence holder will be notified in writing that their licence is suspended following the accumulation of 12 or more points. The award of points can be appealed to the **Licensing Committee** and this should be done within 21 days of being notified of the award of points. Appeals must be made in writing to licensing.team@colchester.gov.uk or to the Licensing, Food & Safety Manager, Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG

4.4 In cases where the licence holder has reached the threshold for revocation, the licence holder will be notified in writing that their licence is revoked following the accumulation of 12 or more points on the grounds that they are not fit and proper or safe and suitable to hold a licence. In such cases there is the right of appeal to the Magistrates Court. Appeals must be made in writing to the Clerk of the Court, Essex Magistrates' Court's, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford CM2 5PF within 21 days of having been notified of the decision. Where an appeal has been made the implementation of the revocation will be held over until the appeal has been determined unless the licence has been revoked with immediate effect.

Revocation

4.5 If following completion of the investigation (set out in 4.1 a and b above) there are matters of significant concern requiring urgent action, which the Policy indicates should result in the revocation of the licence, the following process will be followed –

- a. The matter will be reported to the Licensing, Food & Safety Manager (the Manager) for determination.
 - b. The Manager will consider the matter and confirm his decision in writing to the licence holder. Depending on the nature of the offence the decision may be either to revoke the licence but allow the licence holder to operate until the appeal has been determined or revoke with immediate effect and not permit operation.
 - c. **There is no right of appeal to the Licensing Committee in the case of revocation. The right of appeal is to the Magistrates' Court as set out in Paragraph 4.4 above.**
-

Annex 6 - Penalty Point Scheme

Examples of how the scheme will operate

a. A driver may be given 6 points for failing to report an accident within 72 hours. These points will stay on their hackney carriage/private hire driver's licence for 12 months from the date they are given. If the driver also has 3 points on their licence from a previous conviction they will carry 9 points for the duration of that year. After this time the 6 points will be removed and the points for the conviction will reduce in line with the Convictions Policy.

b. If a driver already has 3 points under the convictions policy and then receives 9 points for plying for hire without a hackney carriage licence the driver should expect a 28 day suspension of the licence.

~~c. A new applicant with convictions will be assessed in accordance with the Convictions Policy. They will be advised of the likely success of their application in line with the 'traffic light' system and can then choose whether or not to proceed with their application. If they determine to proceed but are then refused on the grounds that they are not fit and proper to hold a licence there is a right of appeal to the Magistrates Court.~~

Annex 6 - Penalty Point Scheme

Penalty Point Table

No.	Offence/Breach of Conditions	Points Applicable	Driver	Vehicle Owner	Operator
1*	Giving false information a licence application	6	x	x	x
2*	Failure to notify the Council of a change of address 1 st offence 2 nd offence	3 6	x x	x x	-
3*	Plying for hire without a hackney carriage licence 1 st offence 2 nd offence	9 12	x x	- -	- -
4*	Driving a licensed vehicle without a hackney carriage / private hire driver's licence	12	x	-	-
5*	Lending or parting with a hackney carriage / private hire driver's licence.	9	x	-	-
6*	Employing or permitting an unlicensed driver to drive a licensed vehicle	12	x	x	x
7*	Failure of a proprietor to retain in his/her possession copies of any hackney carriage driver's licence that permits them to drive their vehicle	3	-	x	-
8*	Failure of a proprietor to produce on request by an authorised officer any hackney carriage driver's licence for whom he has permitted to drive his/her vehicle	3	-	x	-

Annex 6 - Penalty Point Scheme

9*	Failure to display a hackney carriage or private hire identification plate	4	x	-	-
10*	Refusal to take a fare without a reasonable excuse	4	x	-	-
11*	Charging more than the agreed or legal fare	6	x	-	-
12*	Obtaining more than the legal fare (including failure to refund)	6	x	-	-
13*	Travelling less than the lawful distance for an agreed fare	6	x	-	-
14*	Failure to wait after a deposit has been paid	6	x	-	-
15*	Carrying persons other than with the consent of the hirer	6	x	-	-
16*	Driving a licensed vehicle without the proprietor or operator's consent	12	x	-	-
17*	Allowing a person to drive a licensed vehicle without the proprietor or operator's consent	12	x	-	-
18*	Driver leaving a hackney carriage unattended on a rank	4	x	-	-
19*	Hackney carriage driver obstructing other hackney carriages	4	x	-	-
20*	Breach of Byelaws	4	x	x	-

Annex 6 - Penalty Point Scheme

21*	A licensed driver using an unlicensed vehicle for private hire purposes	12	x	-	-
22*	Operating a private hire vehicle without a private hire operators' licence	9	-	-	x
23*	Operating an unlicensed vehicle as a private hire vehicle	12	x	x	x
24*	Operating a private hire vehicle when the driver is not licensed as a private hire driver	12	x	x	x
25*	Failure to notify the transfer of a vehicle licence	3	-	x	x
26*	Failure to present a hackney carriage or private hire vehicle for inspection upon request	6	x	x	x
27*	Failure to inform the Council where a hackney carriage or private hire vehicle is stored, if requested	3	x	x	x
28*	Failure to report an accident to the Council within seventy two hours	6	x	x	x
29*	Failure to produce the vehicle and/or insurance upon request	6	x	x	x
30*	Failure to produce a driver's licence upon request	6	x	-	-
31*	Failure to wear a driver's badge	3	x	-	-
32*	Failure of a private hire operator to keep proper records of all bookings and driver and vehicle licences, or	4	-	-	x

Annex 6 - Penalty Point Scheme

	failure to produce them upon request of an authorised officer of the Council or a police officer within reasonable time / or time specified				
33*	Failure of a private hire operator to produce his licence upon request	4	-	-	x
34*	Making a false statement or withholding information to obtain a hackney carriage/private hire driver's	12	x	-	-
35*	Failure to return a plate after notice has been given following expiry, revocation, or suspension of a hackney carriage or private hire vehicle licence	6	x	x	x
36*	Failure to surrender a driver's licence or badge on or after suspension, revocation, or refusal to renew	6	x	-	-
37*	Permitting a private hire vehicle to wait on a hackney carriage rank	6	x	-	-
38*	Hackney Carriage charging more than the meter fare for a journey ending outside the District, without prior agreement	8	x	-	-
39*	Hackney Carriage charging more than the meter fare when a hackney carriage is used as a private hire vehicle	8	x	-	-
40*	Unnecessarily prolonging a journey	8	x	-	-

Annex 6 - Penalty Point Scheme

41*	Interfering with a private hire taxi-meter with intent to mislead	12	x	x	x
42*	Obstruction, failure to give information or assistance or failure to comply with a requirement of an authorised officer of the Council or a police officer	6	x	x	x

Matters marked with a * are direct contraventions of either the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976 and may result in prosecution in addition to any penalty points incurred.

Licensing Policy

No.	Offence/Breach of Conditions	Points applicable	Driver	Vehicle Owner	Operator
43	Failure to ensure the safety of passengers	12	x	x	x
44	Concealing or defacing a vehicle licence plate	6	x	x	x
45	Failure to attend or attend on time for a pre- arranged appointment at the request of the Council without reasonable cause	4	x	x	x
46	Conveying a greater number of passengers than permitted	6	x	-	-
47	Failure to give reasonable assistance with passengers luggage	3	x	-	-

Annex 6 - Penalty Point Scheme

48	Private Hire soliciting for hire or accepting a fare that is not pre-booked	6	x	-	-
49	Operating/using a vehicle that is not properly maintained internally /externally 1 st offence 2 nd offence	6 12	x	x	x
50	Driving without the consent of the proprietor	12	x	-	-
51	Drinking or eating in the vehicle whilst carrying passengers	3	x	-	-
52	Smoking in the vehicle, including the use of electronic cigarettes, at any time 1 st offence 2 nd offence 3 rd offence	 3 + FPN 12 + FPN 12 + P	x	-	-
53	Causing excessive noise from any radio or sound-reproducing equipment which annoys anyone either in or outside the vehicle	3	x	-	-
54	Playing of a music radio or other sound producing equipment without the express permission of the passenger(s)	3	x	-	-
55	Sounding the horn to signal that the vehicle has arrived and so causing a potential disturbance	3	x	-	-

Annex 6 - Penalty Point Scheme

56	Allowing a private hire vehicle to stand in such a position as to suggest that it is plying for hire or using a hackney carriage stand	6	x	-	-
57	Using a non-hands free mobile telephone whilst driving / engine running 1 st offence 2 nd offence	6 + FPN 12 + FPN	x	-	-
58	Failure to advise of a relevant medical condition	12	x	-	-
59	Failure to provide a receipt for a fare when requested	3	x	-	-
60	Failure to operate the meter from the commencement of the journey and /or charging more than the fixed charge for hire of a hackney carriage	8	x	x	-
61	Failure to notify the Council of relevant change to licence details within the time specified in the associated licence conditions	3	x	x	x
62	Failure to produce a hackney carriage or private hire licence upon request	3	x	x	x
63	Failure to show a private hire driver's licence to the private hire operator at the commencement of employment	3	x	-	-
64	Failure of a private hire operator to request and	3	-	-	x

Annex 6 - Penalty Point Scheme

	keep a copy all driver's licence in his employ at the beginning of employment				
65	Failure of a licence holder to disclose convictions within 7 days of the conviction	4 plus the points for the actual offence as set out in the Convictions Policy	x	x	x
66	Failing to deal with lost property in an appropriate manner 1 st offence 2 nd offence	6 12	x	-	-
67	Failure to report an accident within 72 hours	6	x	-	-
68	Failure to comply with requirements for the safe carrying of a wheelchair	6	x	x	-
69	Operating a vehicle that does not comply with the Council's licensing policy or relevant legislation where such a breach of policy/legislation is not otherwise specified herein	3-12	-	x	x
70	A Private Hire driver using a Hackney Carriage vehicle without a Hackney Carriage driver licence	12	x	-	-
71	Failure to carry and/or maintain an approved operational fire extinguisher, where fitted	3	x	x	-

Annex 6 - Penalty Point Scheme

72	Modifying a licensed vehicle without the consent of the Council	6-12	-	x	x
73	Failure to display or maintain external plates as issued by the Council or displaying them incorrectly	4	x	x	-
74	Affixing or displaying a roof sign on a private hire vehicle or failure to affix a roof sign to a Hackney Carriage Vehicle	4	x	x	-
75	Displaying a sign or advertisement on a licensed vehicle that does not satisfy the policy requirements or has not been approved by the Council	6	-	x	x
76	Using a taxi-meter that does not conform to Council requirements	6	x	x	x
77	Using a licensed vehicle with no insurance or inadequate insurance for the vehicle	12	-	x	x
78	Permitting the vehicle to be used for any illegal or immoral purposes	12	x	x	x
79	Failure of a private hire operator to ensure that office staff act in a civil and courteous manner at all times	3	-	-	x
80	Failure of a private hire operator to keep the operating premises in	3	-	-	x

Annex 6 - Penalty Point Scheme

	accordance with Council requirements				
81	Failure of a private hire operator to ensure that all vehicles operated by him are adequately insured	9	-	-	x
82	Failure of a private hire operator to obtain public liability insurance for the operating premises if the public are allowed access	6	-	-	x
83	Driving or allowing a hackney carriage vehicle to be driven with tinted windows which do not conform to licence conditions	3	x	x	-
84	Driving or allowing a hackney carriage or private hire vehicle to be driven without displaying the door signs or attaching the signs other than in accordance with the Council's Policy	6	x	x	x
85	Allowing a hackney carriage vehicle to be driven with a top sign that is in breach of the licence conditions	3	-	x	-
86	Illegal ranking	6	x	-	-
87	Failure to comply with Council Livery	6	x	x	x
88	Smoking or allowing smoking in an operator's premises	6	-	-	x
	1 st offence	12	-	-	x
	2 nd offence				

Annex 6 - Penalty Point Scheme

89	Driver allowing a customer to smoke, including the use of an electronic cigarette, in a licensed vehicle	6	x	-	-
90	Failure to carry an assistance dog without an exemption certificate	12	x	x	x
91	Failing to conform to statutory road signs	4	x	-	-
92	Illegal or inappropriate parking such as to cause an obstruction to pedestrians and /or other road users	4	x	-	-
93	Unacceptable standard of driving, witnessed by authorised officer or police officer	6	x	-	-
94	Late application for the renewal of a licence	6	x	x	x
95	Failure to display internal licence plates	4	x	x	x
96	Failure to produce the tariff or advise of charges when requested by the hirer	3	x	x	x
97	Unsatisfactory appearance of the driver or not conforming to the dress code	4	x	-	-
98	Providing false or misleading information on a licence application form, or failing to provide relevant information	6	x	x	x

Annex 6 - Penalty Point Scheme

99	Failure of private hire operator / driver to honour a booking without a reasonable excuse	6	-	-	x
100	Dropping off or picking up a fare in an inappropriate place such as to cause an obstruction or nuisance to other road users	4	x	-	-
101	Failure to carry plate exemption notice in the vehicle	6	x	-	-
102	Failure to notify the Council of having being arrested, cautioned or charged for an offence or being the subject of a criminal investigation within 7 days of the said action	6	x	x	x
103	Failure to comply with the Highway Code	6	x	-	-
104	Failure to have a valid MOT	6	x	x	x
105	Failure to notify the Council of a change in contact details where such failure results in the Council being unable to contact you directly 1 st offence 2 nd offence 3 rd offence	 3 6 9	 x	 x	 x
106	Allowing an engine to idle in one of the Borough's air quality management areas	3	x	-	-
107	Failure to provide a DBS when requested	6	x	x	x
108	Charging more than the agreed fare	6	x	x	X
109	Failure to notify the Council	6	-	X	-

Annex 6 - Penalty Point Scheme

	of a named driver				
110	Failure to supply to the Council insurance for a named driver	6	-	X	-
111	Refusing a wheelchair fare without reasonable cause	4	X	-	-
112	Unacceptable behaviour or conduct by a licensed driver , licence holder e.g. language	6	X	X	X
113	Carrying food and or drinks in a vehicle as part of a separate delivery without the express consent of the hirer	4	X	-	-

Please note –

FPN – Fixed Penalty Notice

P – Prosecution

Authorised Officer - means a member of the Council authorised under its scheme of delegation to carry out matters relating to the enforcement of legislation and the Council's policy in relation to hackney carriage and private hire drivers, operators, proprietors and vehicles.

Implementation of the Scheme - The Scheme will be monitored and reviewed on a regular basis. Any proposed significant changes will be subject to full consultation; minor amendments which do not affect the substance of the Scheme may be made without consultation.