

Colchester Borough Council – 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, 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 provide 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

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'. Drivers, operators and vehicles 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 and Sections 61 & 62 of the '1976 Act', gives the Council the power to suspend, revoke or to refuse to renew a driver or operator licence.

3. General Principles

1.2 The Scheme applies to all hackney carriage and private hire drivers and vehicle proprietors and operators.

2.2 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.

2.3 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 and regulations.

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2.4 Points issued under this scheme will remain current for 12 months from the date they are issued. At the conclusion of a period of suspension 6 points will remain on your licence.

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

2.6 The Council will advise drivers, proprietors and operators in writing when their points accumulation for any relevant period exceeds 6 points.

2.7 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.

2.8 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 and Safety Manager.

Please note – 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 the total exceeds 12 in any one year the licence holder should expect consideration to be given to the suspension or revocation of their licence.

3. Investigation procedure

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

- 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.
- In the event 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.
- 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 operator within 7 days of the decision.

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- If following completion of the investigation there are matters of significant concern and/or the number of points to be issued results in the accumulation of 12 or more points the matter will be reported to the Licensing, Food & Safety Manager (the Manager) with a recommendation that the licence be suspended. Notification of the Manager's decision will be sent in writing to the licence holder and, where appropriate, a copy will be sent to their vehicle proprietor or operator within 7 days of the decision.
- Where a licence holder accumulates 12 or more points in a 12 month period the following **suspension periods** apply -
 - 28 consecutive days for the first occasion of the accumulation of 12 or more points within a 12 month period.
 - 56 consecutive days for the second occasion of the accumulation of 12 or more points within a twelve month period.
 - Revocation for any third accumulation of 12 points within a twelve month period.
- There is a 21 day period in which to **appeal** the award of points and suspension/revocation of the licence. This period runs from the day after the date of the letter notifying of the award of penalty points or suspension/revocation. Appeals must be made in writing, within the appeal period, to licensing.team@colchester.gov.uk or by writing to the Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG.
- If the right of appeal is exercised the Licensing Committee will consider the facts of the case and make its determination.
- There is a further right of appeal to the Magistrates Court only in cases of suspension/revocation of a licence; there is no further right of appeal in relation to the imposition of penalty points. Any such appeal must be made in writing, within 21 days from the date of the decision/notification of the decision, to the Clerk of the Court, Essex Magistrates' Courts, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford, Essex, CM2 5PF.
- Where an appeal has been made the implementation of any suspension or revocation will be held over until the determination of the appeal.

Please note – Appeals should only be made if you wish to dispute the evidence that resulted in the award of points or other enforcement action. If you committed the offence, points will be applied in accordance with the penalty points table. Any disputes regarding the number of penalty points applied will

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be referred to the Licensing Committee who will have the discretion to award a greater number of points than displayed on the table, if your appeal is dismissed.

Penalty Point Table

<p style="text-align: center;">Town Police Clauses Act 1847</p> <p style="text-align: center;">Matters list below are direct contraventions of the legislation and may result in prosecution in addition to any points penalty incurred</p>					
No.	Offence/Breach of Conditions	Maximum Points applicable	Driver	Vehicle Owner	Operator
1	S40 - Giving false information on a hackney carriage licence application	6	x	x	-
2	S44 – Failure to notify the Council of a change of address on a hackney carriage licence 1 st offence 2 nd offence	3 9	x	x	-
3	S45 – Plying for hire without a hackney carriage licence 1 st offence 2 nd offence	9 12	x x	- -	- -
4	S47 – Driving a hackney carriage without a hackney carriage driver's licence	12	x	-	-
5	S47 - Lending or parting with a hackney carriage driver's licence.	9	x	-	-
6	S47 – Hackney carriage proprietor permitting or employing an unlicensed driver to drive a hackney carriage vehicle	12	x	x	-

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7	S48 – 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	S48 - 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	-
9	S52 – Failure to display a hackney carriage plate	4	x	-	-
10	S53 – Refusal to take a fare without a reasonable excuse	4	x	-	-
11	S54 - Charging more than the agreed fare	6	x	-	-
12	S55 – Obtaining more than the legal fare (including failure to refund)	6	x	-	-
13	S56 – Travelling less than the lawful distance for an agreed fare	6	x	-	-
14	S57 – Failure to wait after a deposit to wait has been paid	6	x	-	-
15	S58 – Charging more than the legal fare	6	x	-	-
16	S59 – Carrying persons other than with the consent of the hirer	6	x	-	-
17	S60 – Driving a hackney carriage without the proprietor's consent	12	x	-	-

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18	S60 – Allowing a person to drive a hackney carriage without the proprietor's consent	12	x	-	-
19	S62 – Driver leaving a hackney carriage unattended	4	x	-	-
20	S64 – Hackney carriage driver obstructing other hackney carriages	4	x	-	-
21	S68 – Breach of Byelaws	3-6	x	x	-

Local Government (Miscellaneous Provisions) Act 1976

Matters listed below are direct contraventions of the legislation and may result in prosecution in addition to any points penalty incurred

No.	Offence/Breach of Conditions	Maximum Points applicable	Driver	Vehicle Owner	Operator
22	S46 (1)(a) – A licensed driver using an unlicensed vehicle for private hire purposes	12	x	-	-
23	S46(1)(b) - Driving a private hire vehicle without a private hire driver's licence	12	x	-	-
24	S46(1)(c) - Proprietor of a private hire vehicle permitting or employing an unlicensed driver to drive a private hire vehicle	12	-	x	-
25	S46(1)(d) - Operating a private hire vehicle without a private hire operators' licence	9	-	-	x

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26	S46(1)(e) - Operating an unlicensed vehicle as a private hire vehicle	12	x	x	x
27	S46(1)(e) - Operating a private hire vehicle when the driver is not licensed as a private hire driver	12	x	x	x
28	S48(6) - Failure to display a private hire vehicle plate.	4	x	x	x
29	S49 – Failure to notify the transfer of a vehicle licence	3	-	x	x
30	S50(1) - Failure to present a hackney carriage or private hire vehicle for inspection upon request	6	-	x	-
31	S50(2) - Failure to inform the Licensing Authority where a hackney carriage or private hire vehicle is stored, if requested	3	-	x	-
32	S50(3) - Failure to report an accident to the Licensing Authority within seventy two hours	6	x	x	-
33	S50(4) - Failure to produce the vehicle and/or insurance upon request	6	x	x	-
34	S53(3) Failure to produce a driver's licence upon request	6	x	-	-
35	S54(2) Failure to wear a private hire driver's badge	3	x	-	-
36	S56(2) - Failure of a private hire operator to keep proper records of all bookings, or failure to produce them upon	4	-	-	x

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	request of an authorised officer of the Licensing Authority or a police officer within reasonable time / or time specified				
37	S56(3) - Failure of a private hire operator to keep proper records of all private hire vehicle licenses and driver licenses, or failure to produce them on request of an authorised officer of the Licensing Authority or a police officer within reasonable time / or time specified	4	-	-	x
38	S56(4) - Failure of a private hire operator to produce his licence upon request	4	-	-	x
39	S57 - Making a false statement or withholding information to obtain a hackney carriage/private hire driver's	12	x	-	-
40	S58(2) - 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	-
41	S61(2) - Failure to surrender a driver's licence or badge on or after suspension, revocation, or refusal to renew	6	x	-	-
42	S64 - Permitting a private hire vehicle to wait on a hackney carriage rank	6	x	-	-
43	S66 - Hackney Carriage charging more than the meter fare for a journey ending	8	x	-	-

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	outside the District, without prior agreement				
44	S67 - Hackney Carriage charging more than the meter fare when a hackney carriage is used as a private hire vehicle	8	x	-	-
45	S69 - Unnecessarily prolonging a journey	8	x	-	-
46	S71 - Interfering with a private hire taxi-meter with intent to mislead	12	x	x	-
47	S73(1)(a) - Obstruction of an authorised officer of the Licensing Authority or a police officer	6	x	x	x
48	S73(1)(b) - Failure to comply with a requirement of an authorised officer of the Licensing Authority or a police officer	6	x	x	x
49	S73(1)(c) - Failure to give information or assistance to an authorised officer of the Licensing Authority or police officer	6	x	x	x

Licensing Policy					
No.	Offence/Breach of Conditions	Maximum Points applicable	Driver	Vehicle Owner	Operator
50	Failure to ensure the safety of passengers	12	x	x	x

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51	Concealing or defacing a vehicle licence plate	6	x	x	x
52	Failure to attend on time for a pre- arranged appointment at the request of the Licensing Authority without reasonable cause	4	x	x	x
53	Conveying a greater number of passengers than permitted	6	x	-	-
54	Failure to give reasonable assistance with passengers luggage	3	x	-	-
55	Private Hire soliciting for hire or accepting a fare that is not pre-booked	6	x	-	-
56	Operating/using a vehicle that is not properly maintained internally /externally 1 st offence 2 nd offence	6 12	x	x	x
58	Driving without the consent of the proprietor	12	x	-	-
59	Drinking or eating in the vehicle whilst carrying passengers	3	x	-	-
60	Smoking in the vehicle at any time 1 st offence 2 nd offence 3 rd offence	3 + FPN 12 + FPN 12 + P	x	-	-
61	Causing excessive noise from any radio or sound-reproducing equipment which annoys anyone either in or outside the vehicle	3	x	-	-

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62	Playing of a music radio or other sound producing equipment without the express permission of the passenger(s)	3	x	-	-
63	Sounding the horn to signal that the vehicle has arrived. disturbing residents	3	x	-	-
64	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	-	-
65	Parking a hackney carriage vehicle or private hire vehicle illegally so as to cause an obstruction to other road users	4	x	-	-
66	Using a non-hands free mobile telephone whilst driving / engine running 1 st offence 2 nd offence	6 + FPN 12 + FPN	x	-	-
67	Failure to advise of a relevant medical condition	12	x	-	-
68	Failure to provide a receipt for a fare when requested	3	x	-	-
69	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	-
70	Failure to notify the Licensing Authority of relevant change to licence details within the time specified in the associated licence conditions	3	x	x	x

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71	Failure to produce a hackney carriage or private hire licence upon request	3	x	x	x
72	Failure to show a private hire driver's licence to the private hire operator at the commencement of employment	3	x	-	-
73	Failure of a private hire operator to request and keep a copy all driver's licence in his employ at the beginning of employment	3	-	-	x
74	Failure of a licence holder to disclose convictions within 7 days of the conviction	12	x	x	x
75	Carrying any animal other than a guide, hearing or other prescribed assistance dog or those owned by bone-fide fare paying passengers	6	x	-	-
76	Failing to deal with lost property in an appropriate manner 1 st offence 2 nd offence	6 12	x	-	-
77	Failure to report an accident within 72 hours	6	x	-	-
78	Failure to comply with requirements for the safe carrying of a wheelchair	6	x	x	-
79	Operating a vehicle that does not comply with the Licensing Authority's licensing policy or relevant legislation where such a breach of policy/legislation is not otherwise specified herein	3-12	-	x	x

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80	A Private Hire driver using a Hackney Carriage vehicle without a Hackney Carriage driver licence	12	x	-	-
81	Failure to carry and/or maintain an approved operational fire extinguisher, where fitted	3	x	x	-
82	Modifying a licensed vehicle without the consent of the Licensing Authority	6-12	-	x	x
83	Failure to display or maintain external plates as issued by the Licensing Authority or displaying them incorrectly	4	x	x	-
84	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	-
85	Displaying a sign or advertisement on a licensed vehicle that does not satisfy the policy requirements or has not been approved by the Licensing Authority	6	-	x	x
86	Using a taxi-meter that does not conform to Licensing Authority requirements	6	x	x	x
87	Using a licensed vehicle with no insurance or inadequate insurance for the vehicle	12	-	x	x
88	Permitting the vehicle to be used for any illegal or immoral purposes	12	x	x	x
89	Failure of a private hire operator to ensure that office staff act in a civil and	3	-	-	x

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	courteous manner at all times				
90	Failure of a private hire operator to keep the operating premises in accordance with Licensing Authority requirements	3	-	-	x
91	Failure of a private hire operator to ensure that all vehicles operated by him are adequately insured	4	-	-	x
92	Failure of a private hire operator to obtain public liability insurance for the operating premises if the public are allowed access	6	-	-	x
93	Driving or allowing a hackney carriage vehicle to be driven with tinted windows which do not conform to licence conditions	3	x	x	-
94	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	3	x	x	x
95	Allowing a hackney carriage vehicle to be driven with a top sign that is in breach of the licence conditions	3	-	x	-
96	Illegal ranking	6	x	-	-
97	Failure to comply with Council Livery	6	x	x	x
98	Smoking or allowing smoking in an operator's premises 1 st offence	6	-	-	x

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	2 nd offence	12	-	-	x
99	Driver allowing a customer to smoke in a licensed vehicle	6	x	-	-
100	Failure to carry an assistance dog without an exemption certificate	12	x	x	x
101	Failing to conform to statutory road signs	4	x	-	-
102	Illegal or inappropriate parking such as to cause an obstruction to pedestrians and /or other road users	4	x	-	-
103	Failing to accept travel tokens for a legitimate journey	3	x	x	x
104	Unacceptable standard of driving, witnessed by authorised officer or police officer	6	x	-	-
105	Late application for the renewal of a licence	6	x	x	x
106	Failure to display internal licence plates	4	x	x	x
107	Failure to produce the tariff or advise of charges when requested by the hirer	3	x	x	x
108	Unsatisfactory appearance of the driver or not conforming to the dress code	4	x	-	-
109	Providing false or misleading information on a licence application form, or failing to provide relevant information	6	x	x	x
110	Failure to private hire operator / driver to honour a booking	6	-	-	x

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	without a reasonable excuse				
110	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	-	-

FPN – Fixed Penalty Notice

P - Prosecution