

ESSENTIAL REFERENCE PAPER 'C'

Good morning Oliver/Robin.

Further to our e-mail 13/01/16 commenting on the proposed convictions policy we revise our comments as follows:-

We do not believe that any existing EHC licensed driver should have his EHC licence automatically suspended or revoked for minor traffic offences ("minor" being defined and we can provide the accepted definitions if required) if under the totting up procedures the total number of current (non-lapsed) minor points is 11 or less. If under the totting up procedures the total of current (non-lapsed) minor points is 12 and above but a disqualification (driving ban) is not incurred then The Council MAY suspend the EHC licence for not more than 30 days AND MAY require the driver to re-sit the DVSA Test. If under the totting up procedures the total number of (non-lapsed) minor points is 12 and above AND the driver incurs a driving disqualification of his/her driving licence the Council WILL suspend the EHC licence for the duration of that disqualification AND MAY require the driver to re-sit the DVSA Test.

Two separate parallel forms of words would need to be included to take account of totting up where intermediate driving offences and/or serious driving offences are concerned.

NOTE: the above is broadly consistent with the major metropolises of London, Manchester and Birmingham and very many small and large authorities including for eg Watford, Luton and North Lincs. We believe and anticipate that there will be a convergence with a 12 point threshold across the country as there will be legal challenges at every level where there is inconsistency with National Legislation and EU Legislation.

Please note that the above comments are made on a Corporate basis on behalf of our Companies trading as Associated Taxis, Kwik Cars and Sawbridgeworth Cars as well as the 6 (six) EHC drivers whose names were supplied earlier. Please also note we have and are encouraging our circuit drivers to review the consultation document. **A number of those drivers have already authorised us in writing to represent them in presenting their views consistent with ours.** Before the close of the consultation we will provide a list of names and DD numbers of those drivers and their views and we will make available for inspection their individual written authorities.

We'll be in touch again shortly, kind regards, John Doherty and also representing:

Insofar as we have been able to contact in writing drivers currently operating on our circuit, we have asked and encouraged them all to review the consultation document and to make their own comments, if any, directly to you by using the link provided.

With particular and specific regard to "OTHER TRAFFIC OFFENCES" (i.e. those not involving loss of life) we hold written authority from the **31 (thirty one)** drivers listed below to present to you the collective view which follows. By separate e-mail we will forward to you three sample authorities from drivers and you may on request examine all of the original authorities which are held at our offices:-

Proposed suggested amendments to the Policy as it relates to "Other Traffic Offences"

- i. Points Totting Up Policy to be restricted to **MINOR** traffic offences defined as those that incur not more than three points (plus any mandatory fine)
- ii. Points will be considered only if remaining on the Drivers Licence

- iii. **NEW** drivers will not be considered if they have 7 (seven) or more current points on their licence.
- iv. **EXISTING** drivers (to include drivers at licence renewal) will be required to retake and pass a DSA Test within 90 days of reaching 9 Points. This condition will carry over in the event that a licence is renewed (all other conditions being met) during the 90 day period. The licence will be suspended for a period of 60 days if the DSA is not passed within the initial 90 day period and will be revoked if the DSA Test is not passed during the period of suspension.
- v. **EXISTING** drivers who reach 10 points or more will be suspended until they have a) passed a new DSA Test and b) the total number of current points falls to 9 or below. If licence renewal falls before BOTH of these conditions are met then the licence will not be renewed.
- vi. Any **EXISTING** driver who is unable to renew his licence or has his licence revoked under iv) or v) above but is able to complete those conditions with the 6 month period of the revocation or (failed) renewal may reapply and in which case the application will be considered as a Renewal Application.

Points Considered when proposing these suggested amendments include:-

- a) HM Government set the threshold for who should/shouldn't hold a driving licence and the Council already requires a DSA Test
- b) The circumstances surrounding Minor Traffic Offences are more often than not different in nature and circumstance which is why HM Govt provides for Totting up of Minors as distinct from more serious penalties for individual majors.
- c) The major taxi licencing authorities including TFL, Manchester and Birmingham as well as very many other large and small authorities work to (and beyond) the 12 point principal
- d) There is a hidden inequity in the current position where drivers are offered speeding awareness courses in lieu of points by certain authorities but not by others.
- e) Taxi Drivers complete a significant number of miles more than the average driver so it is illogical to impose a higher threshold than HM Govt. particularly where livelihoods are at stake.
- f) There is a recognised shortage of Taxi Capacity at peak periods, commuter times, school times and weekends and this Policy may serve to discourage potential new applicants.
- g) Existing Drivers may seek alternative and or contingency work as a precaution against losing their livelihoods, working under such tight constraints introduces additional unnecessary pressures on Drivers.
- h) There are often backlogs for DSA test dates which need to be considered, also drivers retaking DSA tests may fail on a non-speed related matter which was not the primary reason for retest so some practical latitude needs to be built into the timings.

With regard to other areas of the proposed convictions policy we have already provided you with our corporate view which is supported by the individual employee drivers, to summarise:-

1. There needs to be an express "grandfather provision" so existing driver renewal application decisions are not revisited unless additional relevant information comes to light
2. Cautions should not be viewed in the same way as Convictions, also Formal and Informal cautions need to distinguished
3. Wholly Exceptional Circumstances requires an outline definition
4. Provision needs to be made for Private Hire Operators (and possibly circuit operators!) to be notified if Driver Licences are Granted (by exercise of discretion) outside of The Convictions Policy

5. A supporting Guideline needs to be produced as regards acceptable social interaction between drivers and passengers with particular regard to sexual contact. This is vital with the changing ethnic mix of the driver pool and the differing social/moral/cultural attitudes.

Self Employed Drivers (25 in total):-

DD088 Dawid Blaszczyk
DD114 Tim Kenny
DD100 Paul Attfield
DD247 Piotr Warachewicz
DD188 Lee Woods
DD007 Kris Gyls
DD067 Colin Williams
DD110 Steve Davies
DD174 Chris Barnes
DD208 Nigel Stock
DD033 Juhali Hamid
DD182 Chris Heiden
PD032 Andy Wilson
DD036 Adam Emery
DD109 Regimentas Mika
PD054 Colin Hardy
DD221 Sarunas Mika
DD282 Jason Cox
DD199 Edwin Miller
DD341 Nicky Forbes
DD122 Nigel O'Shea
DD107 Dean Lloyd
DD216 Dave Shorrocks
DD187 Damian Blaszczyk
DD322 Lloyd Oakley

Employee Drivers (6 in total):-

DD238 John Doherty
DD280 Ryan Doherty
DD140 Jack Doherty
DD051 Carmel Doherty
DD348 Chris Knaggs
DD027 Colin Knaggs

The following three additional drivers have also provided their written authority and are added to the list below:-

DD057 Gary Austin
DD124 Mike Harding
DD013 John Knight

Bringing the overall total now to **34 (thirty four)**, thanks and regards, John

AUTHORITY'S RESPONSE:

The final version of the policy has been revised to state in paragraph 12.1: For existing drivers who have accumulated 9 or more points on their DVLA driving licence, they are required to pass a driving test to DVSA standards. If this is not done within 6 calendar weeks then their drivers licence will normally be suspended until the driver has successfully undertaken the test. Such a test will be at the licence holder's expense.

East Herts considers that the accumulation of 12 penalty points indicates that a professional driver is not maintaining the standards expected and might be putting themselves, passengers and the public at risk and as such should not hold a licence. Suspension for 12 or more DVLA points does not seem appropriate and if someone is disqualified then they will not be considered fit and proper. Following the revocation of their licence they can apply for a new licence once the number of current DVLA points allows under the policy.

In regards to speeding and minor driving offences it is not appropriate to apply a lesser standard because of the hours spent on the road or distractions that may happen. As professional drivers it is reasonable to expect that a higher standard be maintained. When a court of law disqualifies a person from driving they do not take into account the number of miles that person has driven when considering what penalty should be imposed.

Point i) We are happy with the definition of minor offences in the policy. Point ii) Agreed. Point iii) The threshold for new drivers has been moved to 7 points as suggested. Point iv) Revised to 6 weeks to pass test before licence suspended. The option to revoke has not been taken. Point v) With the 9 point threshold this is not necessary. Point vi) If the licence expires we cannot give 6 weeks grace as there would be nothing to renew, we will happily use any documents that are still valid.

Response to a-h: The Council's main consideration is the safety of the public so it can impose the threshold that it sees fit. What other authorities choose to do is their decision and all are open to challenge in court. We have no way of being notified of speed awareness courses so even if we required people to notify us we would not know if they didn't. The courts do not take into account mileage when considering motoring offences and as professional high mileage drivers we would expect them to exhibit higher standards than others. Case law means that we are not allowed to consider the impact on a driver or his dependants of having or not having a drivers licence as it is not relevant to the 'fit and proper' test. The need for more taxis does not over rule the consideration of public safety). If a driver considers that they are likely to get caught speeding and possibly lose their livelihood the policy will hopefully encourage them to take more care and avoid the situation. This would promote public safety and is the point of the taxi licensing regime. We have decided to give 6 weeks to pass the DVSA test and if a driver fails on a non-speed related matter then they should not be driving a licensed vehicle until they pass.

Response to 1-5: It is our specific intention to not provide any "grandfather provision", this new, higher standard will be applied to all applicants as defined in paragraph 1.12. Cautions are an admission of guilt so should be treated the same. Wholly exceptional circumstances cannot be defined as each case is considered on its own merits, to define it would fetter discretion. We have said how this will be decided in paragraph 2.2. Due to the nature of the matters being considered we are unable to notify operators of the grant of a licence outside of the policy. As a driver needs to notify us regarding which operators they will/do work for it is likely they will know if such matters are being considered. We will be reviewing all our taxi policies in the near future and a code of conduct will be included but will not form part of this policy.

I accept that you have sought advice on paragraph 1.12 but it causes me concern.

Darlington BC v Kaye [2005] RTR 14 established that changes to policies in respect of licensing requirements can be applied to existing drivers as well as new applicants although that applied to the DVSA driving test. The ruling basically states that a local authority is entitled to change its policy in relation to its interpretation of 'fit and proper' and apply it to all applicants whether new or renewals which I can understand – I'm actually relying on it to introduce safeguarding training for all drivers.

My concern is that if an existing driver was previously found to be 'fit and proper' despite a conviction(s) that were not deemed sufficiently serious to refuse a licence at the time and that driver has been driving for a number of years without any further issues (who knows he/she may even be a model driver!), how can an authority suddenly change their mind on his/her suitability without further evidence – indeed the only further evidence available would be that there were no issues whilst driving? I know it's probably unlikely, but say a convicted one-off time kerb-crawler was licensed many years ago, is now happily married with kids and has driven for 10 years without any further issues, your policy now says his application will be refused.

Just my initial thoughts!

Regards,

Steve Cobb
Licensing Manager

AUTHORITY'S RESPONSE:

Thanks for the response regarding the draft convictions policy. Having gone out to consultation and got Jim Button's thoughts I can respond to those that took the time to comment.

With regards to your email this is a point we looked into from an early stage of drafting. The advice we have received is that the legislation and case law allows for the higher standard to be imposed both for new applicants and at renewal. As you will appreciate the safety of the public is the principle focus of taxi licensing and the new policy has this at its core.

Overall, I think you have pretty much nailed it. My only suggestion would be that you might like to add a paragraph about the Human Rights Act:

- Article 6 (Right to a fair trial):
- Article 8 (the right to respect for private and family life: and
- Protocol 1, Article 1 (Protection of Property)

Pick whichever you think are appropriate.

Regards,

*Robert Cox
Licensing Officer
Stevenage Borough Council*

AUTHORITY'S RESPONSE:

The taxi convictions policy I drafted has been finalised after finally receiving Mr Button's opinion so I can respond to all the comments on the draft. Thank you for yours and it resulted in the policy being amended to say:

1.13 In drafting this policy and considering responses to the consultation consideration has been given to the Human Rights Act 1998, particularly in relation to:

- Article 6 (right to a fair trial);
- Article 8 (the right to respect for private and family life); and
- Protocol 1, Article 1 (protection of property)

1.14 All decisions taken under this policy will be taken in accordance with the Human Rights Act.

Sirs

Whilst I applaud anything that will keep on raising standards within the taxi trade, in my short time of being a driver I have only been left with the feeling that the Council is dumbing down the requirements as and when the main Companies, in the main towns, claim to have a shortage of Drivers and this feeling is common amongst taxi drivers.

In the last two years, the Bishop's Stortford Companies have used a plethora of 'P' plate driver/vehicles and many of these drivers have been hardly able to speak English, have picked up off the street and are curt/rude to customers. This I have seen and heard first hand and evidenced the Council with photographic proof.

With specific regard to the consultation document, I would only take issue with traffic offences. It should be paramount to investigate all NEW applications for traffic offences, frequency of such and if duplicated offences. As this quite strongly reflects their approach to safety etc. However, once given a taxi licence then penalties issued onto someones licence are inflicted by the Court or Police. Therefore to jeopardize ones sole income for 9 points is excessive. It is possible to accumulate 12 points for minor infringements not necessarily related to driving and therefore is nonsensical. The suggestion could inflict total loss of earnings from minor factors and non of which could be attributal to actual driving thus doing another driving test achieves nothing.

Whilst writing, I would suggest that if a new recruit to taxiing wishes to drive under a 'P' plate, then they should be kept on this for a minimum of a year and thereafter, after completion of the tests for Hackney Carriage Licence only then obtain the standard licence.

To knowingly omit from the Council any data that could affect the ability to hold a licence should prevent a new driver from holding a taxi licence for a minimum of 2 years not until 'resolved'.

In closing the Council could review metre rates as it has been 5 years since the last change although fuel prices may have dropped recently, the running costs of servicing, tyres etc is continuing to increase year by year.

Look forward to receiving your comments.

Regards
Adrian Andrews

AUTHORITY'S RESPONSE:

Firstly let me apologise for the delay in responding to your email but we have considered all the responses, amended the policy where it is necessary and then sought independent legal opinion. I will address your points regarding traffic offences

We appreciate that you feel you cannot agree with some of the proposed changes but the point of taxi licensing is to protect the public, not just the customers but pedestrians, other road users etc. The steps proposed are viewed as necessary to ensure high standards are maintained. The authority considers that it is important that the standard of both new and existing drivers is the same; it would be unfair to apply a different standard to each group.

As professional drivers it is reasonable to expect that a higher standard be maintained so accumulating points for speeding may indicate that a person is not 'fit and proper' to hold a licence. Case law has shown that the financial impact on a driver or his dependants of having or not having a

licence is not relevant when considering an individual's fitness and propriety. Although the authority can empathise with drivers this is not a matter that we are legally allowed to consider.

Your point about 'p' plates is not relevant in the context of the convictions policy consultation but I will still answer it. The legislation does not allow us to limit which licences individuals can apply for so your suggestion of a minimum of time as private hire is not possible.

With regards to knowingly omitting information the final policy states: 4.8 It is an offence for any person knowingly or recklessly to make a false statement or to omit any material particular in giving information required by the application for a licence. Where an Applicant has made a false statement or a false declaration or omission on their application for the grant or renewal of a licence, the licence will normally be refused. Further applications for licences will be refused for a period of five years from the date that the lie or omission came to light. This goes beyond what you have suggested in your email.

We are currently working on implementing the new convictions policy and will keep you updated with regard the time line. Thank you for taking the time to respond to the consultation.



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17th February 2016

To the Members of the East Herts Licencing Committee

Having reviewed the proposed changes to Licencing legislation, as a company owner and licenced driver's leaves us with grave concerns. We have reviewed Taxi licencing convictions policy dated 8th January 2016 and to a point we agree with the points on public safety.

- 1 Violence
- 2 Sexual Offences
- 3 Substance Abuse
- 4 General Public safety

Where we cannot agree with proposed changes to the licencing procedure, we feel that your licencing policy already covers a drivers driving standard, as any new applicant has to pass a driving proficiency test set by and tested with the DVLA. Having sat in on a few driving proficiency tests over the last few years passing is not easy as it considered by any and all who have passed it to be nothing but a full DVLA driving test.

Changes to existing licenced drivers on renewal are unfair and ill conceived, we ask for a longer period of consultation with the trade on this issue, as there has to be a better solution to this proposal. Whilst we are not condoning speeding or other minor driving offences we believe that due to the amount of hours a hackney carriage driver spends on the road on a day to day basis in unfamiliar surroundings with other distractions other drivers are not subjected to e.g. (customers chatting, questioning routes and price of fair, giving bad directions and telling you to turn right at the last moment) these a but a few of the daily problems a taxi driver has to contend with.

Whilst we are considered professional drivers we are also human beings and will make mistakes and errors from time to time six points can easily be accumulated over a three-year period for what is considered to be minor offences.

Your proposed changes will put drivers under more pressure within their daily working environment, this will make their jobs more stressful than they already are, whilst we understand that you as a licencing body must make amendments towards licencing policy, we believe that these should be for major driving offences and complaints made against the driver, we feel that this will benefit public safety more.

Suspending or revoking a licence due to two minor offences which would accumulate to six points could be seen as restriction of trade to both Taxi companies and individual licenced drivers, if a driver losses his or her licence what are the consequences for that individual with their loss of income, it's a very hard and difficult trade to be in at the moment where for some the loss of a few days unable to work because their car has broken down or have been involved in an accident has very serious financial consequences for that individual, these are some of the problems that this proposed change to licencing legislation will cause if a driver has his licenced revoked what are they to do become? Another national statistic!

We at Omega and its 44 licenced drivers feel very strongly about the legislation changes, this letter has been written for and on behalf of both parties, after talking extensively with them over the last month, we felt that

high lighting a few of the problems and consequences of this proposed change would be beneficial to your selves at this time.

Yours Sincerely

Company Director
Jason Sanders

Company Director
Julian Sanders

AUTHORITY'S RESPONSE:

We appreciate that you feel you cannot agree with some of the proposed changes but the point of taxi licensing is to protect the public, not just the customers but pedestrians, other road users etc. The steps proposed are viewed as necessary to ensure high standards are maintained. The authority considers that it is important that the standard of both new and existing drivers is the same; it would unfair to apply a different standard to each group. Every member of the licensed trade was written to or emailed at the start of the consultation and a six week consultation is deemed as appropriate as we are dealing with matters of public safety.

In regards to speeding and minor driving offences it is not appropriate to apply a lesser standard because of the hours spent on the road or distractions that may happen. As professional drivers it is reasonable to expect that a higher standard be maintained. When a court of law disqualifies a person from driving they do not take into account the number of miles that person has driven when considering what penalty should be imposed.

In the final version of the policy the accumulation of 6 points on a DVLA drivers licence has been raised to 7 avoiding the issue you describe where a driver has two 'minor' traffic offences. Case law has shown that the financial impact on a driver or his dependants of having or not having a licence is not relevant when considering an individual's fitness and propriety. Although the authority can empathise with drivers this is not a matter that we are legally allowed to consider.

We are currently working on implementing the new convictions policy and will keep you updated with regard the time line. Thank you for taking the time to respond to the consultation.

Oliver

Have you got conditional discharge mentioned in your draft policy? We have just had an issue arise around this. I am interested to see that you will not allow an individual to hold an operator's licence in they have 12 DVLA points. If the operator is also a driver then the 12 points will apply to that licence but an operator does not have to hold a driver's licence so may never get points?

Regards

Jamie Mackenzie
Business Compliance Officer
Watford Borough Council

AUTHORITY'S RESPONSE:

Thank you for taking the time to respond to the consultation and for bringing this point to my attention. Conditional discharges were not included but I will add a section to the final draft as shown below:

18 Conditional discharge

18.1 Applicants are required to notify the Council of any conditional discharge or absolute discharge and these will be considered on a case by case basis. As the court can use these options in a variety of cases it is not possible to give any guidelines regarding the likely outcome of their consideration by the Council.

18.2 If an offence is committed during the period of a conditional discharge the courts may re-sentence an offender for the offence for which the conditional discharge was given. At this point the Council may consider that offence under this policy.

With regards to DVLA points and operator's licence holders and I agree that it is not a requirement for an operator to hold a DVLA licence so it is not appropriate to prohibit them from holding a licence on this basis. Paragraph 12.4 of the policy has been modified as shown below:

12.4 No driver will be allowed to hold a Hackney Carriage and / or Private Hire Driver Licence if they have 12 or more current points on their DVLA licence.