

Licensing Enforcement

1.0 Introduction

1.1 The purpose of these guidelines is to set out the Enforcement Strategy for the Licensing Section, on behalf of Calderdale Metropolitan Borough Council (CMBC). The guidelines sets out what you can expect from CMBC's Licensing Department for investigating and resolving breaches of licensing control.

1.2 The guidelines are in place to ensure that Enforcement decisions are always consistent, impartial, fair and relate to common standards to ensure that the general public of the Borough are equally protected whilst ensuring the best possible level of service.

1.3 There are two main strands to licensing enforcement:

Reactive Enforcement – Investigating complaints about alleged breaches of licensing conditions and breaches of licensing legislation

Pro-active Enforcement – Monitoring licensed premises/people to ensure compliance with existing licences and attached conditions.

1.4 The Licensing Enforcement team deal with unauthorised licensable activities as well as breaches of existing licences and conditions. Proactive monitoring of licences also takes place. As part of investigations and proactive work officers will work in co-operation with other relevant council officers for example, Environmental Health Officers, Building Control Surveyors, Highways Engineers as well as working with other external agencies such as The Police, Fire brigade, community groups, etc.

2.0 The Legal Context

2.1 The Government has implemented various pieces of licensing related legislation which Calderdale MBC Licensing Section follows, these are:

- Part 1 Chapter 1 Health Act 2006 (the restriction of smoking in enclosed public premises, enclosed public places and work vehicles in England)
- The Smoke-free (Exemptions and Vehicles) Regulations 2007
- The Smoke-free (vehicle Operators and Penalty Notices) Regulations 2007
- Licensing Act 2003
- Gambling Act 2005
- Miscellaneous Provisions Act 1982
- Town Police Clauses Act 1847
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Regulatory and Investigative Powers Act 2000
- Rehabilitation of Offenders Act 1974
- Freedom of Information Act 2000

- House to House collections Act 1939
- Marriage Act 1949, 1954, 1986, 1994
- Hypnotism Act 1952
- Charities Act 1992
- Vehicles (Crime) Act 2001
- Scrap Metal Dealers Act 2013
- Local Government Act 1972
- Police, Factories (Misc.) provisions Act 1916 and any other regulations made under the Health Act 2006 covered by the Officers duties and delegated to the Head of Customer Services and Communications
- Animal Boarding Establishments Act 1963
- Animal Health Act 1981
- Animal Welfare Act 2006
- Breeding of Dogs Acts 1973 and 1991
- Breeding and Sale of Dogs Acts 1973 and 1991
- Breeding and Sale of Dogs (Welfare) Act 1999
- Caravan Sites Act 1968
- Caravan Sites and Control of Development Act 1960
- Clean Air Act 1993
- Dangerous Wild Animals Act 1976
- Performing Animals (Regulations) Act 1925
- Pet Animals Act 1951
- Zoo Licensing Act 1981
- Data Protection Act 1998

3.0 The Principles of Enforcement

3.1 The principles that the Authority will work to are:

- i. **Proportionality**
- ii. **Consistency**
- iii. **Transparency**
- iv. **Targeting**

3.2 Proportionality – the Licensing Authority will ensure that any action required is proportionate to the risks. As far as the law allows the Authority will take account of the circumstances of the case when considering action. Some incidents or breaches of the regulatory requirements may cause or have the potential to place health and safety at serious risk. Other breaches may interfere with people’s enjoyments or rights and/or the Authorities ability to carry out its activities. The Licensing Authority’s initial response must be to prevent that risk from occurring or continuing. Therefore, the enforcement action taken will be proportionate to the risks posed and to the seriousness of any breach of the legislation.

3.3 Consistency – the Licensing Authority will take a similar approach in similar circumstances to achieve similar ends. The aim is to provide consistency in advice given, the response to alleged offences and the use of powers and decisions to take formal enforcement action. Things that will be considered are; the history and seriousness of previous incidents or breaches. The Authority will continue to develop consistency, including effective arrangements for liaison with other council services and enforcement authorities.

3.4 Transparency – this is important in maintaining public confidence in the service and its ability to regulate. It is about helping those regulated and others, to understand what is expected of them and why; as well as what they should expect from the Licensing Section. It includes making it clear why an officer intends to take or has taken enforcement action, or why enforcement action may not be necessary. It also means distinguishing between statutory requirements and advice/guidance about what is desirable/good practice but not compulsory.

Transparency is an integral part of the role of Enforcement and liaison officers. Staff are trained and procedures are in place to ensure that:-

- i. Where action is required, it is clearly explained (either verbally or in writing) why that decision has been made and why the action is necessary.
- ii. Written explanation is given of any rights of appeal against any formal enforcement action at the time the action is being taken.

3.5 Targeting – this means ensuring that the regulatory effort is directed mainly towards those activities that give rise to the most serious risk or where risks are less well controlled. Action will be focused on those directly responsible for the risk, i.e. the licence holders.

Repeated incidents or breaches of licensing control which are related may be an indication of an unwillingness to change behaviours or cooperate.

4.0 Enforcement and Prosecution Guidelines

4.1 Within the Licensing Section there are 4 possible outcomes of an investigation or inspection these are:-

- i. To take no action
- ii. To take informal action
- iii. To use a formal caution
- iv. To prosecute

4.2 No Action – the decision to taken no action can only be considered when full compliance of current legislation has been achieved, or when the breach is considered minor and does not warrant further investigation.

4.3 Informal Action – this includes issuing warnings in writing, giving advice and requests for action to be completed to ensure compliance with the legislation to be completed in a reasonable period of time. There are circumstances where the use of informal action may be appropriate, however, the list below is not exhaustive and each case should be considered on its own individual merits:-

- i. From the licensees/individuals/organisations past history it can be reasonably expected that informal action will achieve compliance
- ii. The issue is not serious enough to warrant any type of formal action
- iii. Circumstances may dictate whether informal action would be more appropriate or effective than taking a formal approach.

When it is established that an informal approach is used to ensure compliance it is important that any written documentation sent contains:-

- i. Information necessary to understand what work is required and the reason why it is necessary
- ii. Indicate the legislation or regulations that are being breached and to specify what is needed to ensure that compliance is achieved
- iii. A clear definition between the legal requirements and the recommendations of good practice in verbal and/or written advice.

4.4 Cautions – these may in certain circumstances be issued as an alternative to prosecution. They should only be considered if there is sufficient evidence for the matter to proceed by way of prosecution. The following conditions must be fulfilled before a caution is administered and must be approved by an officer with delegated authority:-

- i. There must be a realistic prospect of conviction if the matter was to proceed to prosecution.
- ii. The suspected offender must admit the offence
- iii. The suspected offender must understand the significance of a caution then give an informed consent to being cautioned
- iv. If there is insufficient evidence to consider prosecution then the conditions will not satisfy a caution. It is inappropriate to use a caution if an offender does not make a clear reliable admission of the offence.
- v. There is no legal obligation for any person/organisation to accept a caution

4.5 Prosecutions – there are two main factors that are taken into consideration when deciding whether a prosecution should be pursued by the Licensing Authority:-

- i. The evidential test - a prosecutor must be satisfied that there is enough evidence to provide a 'realistic prospect of a conviction', the defence case must be considered and how this is likely to affect the prosecution case. It must be considered whether the evidence can be use and that it is reliable.

- ii. The public interest test – a prosecution will only take place when it is in the interest of the public to do so. Listed below are some common factors in favour of prosecution. The more serious the offence the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:-
- The defendant's previous convictions or cautions are relevant to the present offence
 - There are grounds to believe that the offence is likely to be continued or repeated, for example the history of recurring breaches of the terms and conditions of his/her licence.
 - The defendant was in a position of authority and trust
 - There is evidence that the offence was premeditated
 - The evidence clearly shows that the defendant was a ringleader or organiser of the offence
 - There is evidence that the offence was carried out by a group
 - If the offence, although not serious in itself, is widespread in the area where it was committed
 - A weapon was used or violence was threatened during the commission of the offence
 - The offence had the potential to endanger public safety
 - The offence is serious

This list is not exhaustive and each case should be assessed on its own merits.

Listed below are some common interest factors against prosecution. A prosecution is less likely needed if:-

- The court is likely to impose a nominal penalty
- The harm can be described as minor and was the result of a single incident, particularly if it was caused by misjudgement
- A lengthy delay between the offence taking place and the date of trial
- A prosecution is likely to have a detrimental effect on the victims physical/mental health, always bearing in mind the seriousness of the offence
- The defendant has put right the harm that was caused
- The defendant is elderly or is/was at the time of the offence suffering from significant mental or physical ill health, unless the offence is serious and there is a real possibility that it may be repeated

Again this list is not exhaustive and each case must be judged on its own merits.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The investigating officer must decide how

important each factor is in the circumstances of each individual case and proceed to make an overall assessment and recommendation to the delegated officer who will make decision to refer the matter to the Local Authority's prosecution solicitor.

5.0 The Decision to Pursue Formal Enforcement Action

5.1 The decision to pursue formal Enforcement Action will generally be against those who blatantly disregard the legislation, refuse to take advice or fail to communicate with the Authority, who refuse to achieve even the most basic legal standard even after previous contact with the Authority and those who put people at risk.

5.2 When taking the decision on the appropriateness for legal proceedings there are a number of criteria that the breach of licensing control should fall in to:-

- i. Flagrant Breach of the Legislation – a blatant breach of the law that could cause harm.
- ii. Failure to comply with lawful requirements – when a licensee fails to comply with the conditions of their licence, having been advised on previous occasions.
- iii. History of non-compliance
- iv. Public Benefit and sufficient evidence gathered to seek the prosecution.

6.0 Compliance with the Policy

6.1 All staff working within the Licensing team will be responsible for ensuring that the requirements of the policy and additional procedure guidelines have been followed. The post holder with delegated authority will then be authorised to recommend that the appropriate course of action be implemented in accordance with these guidelines.

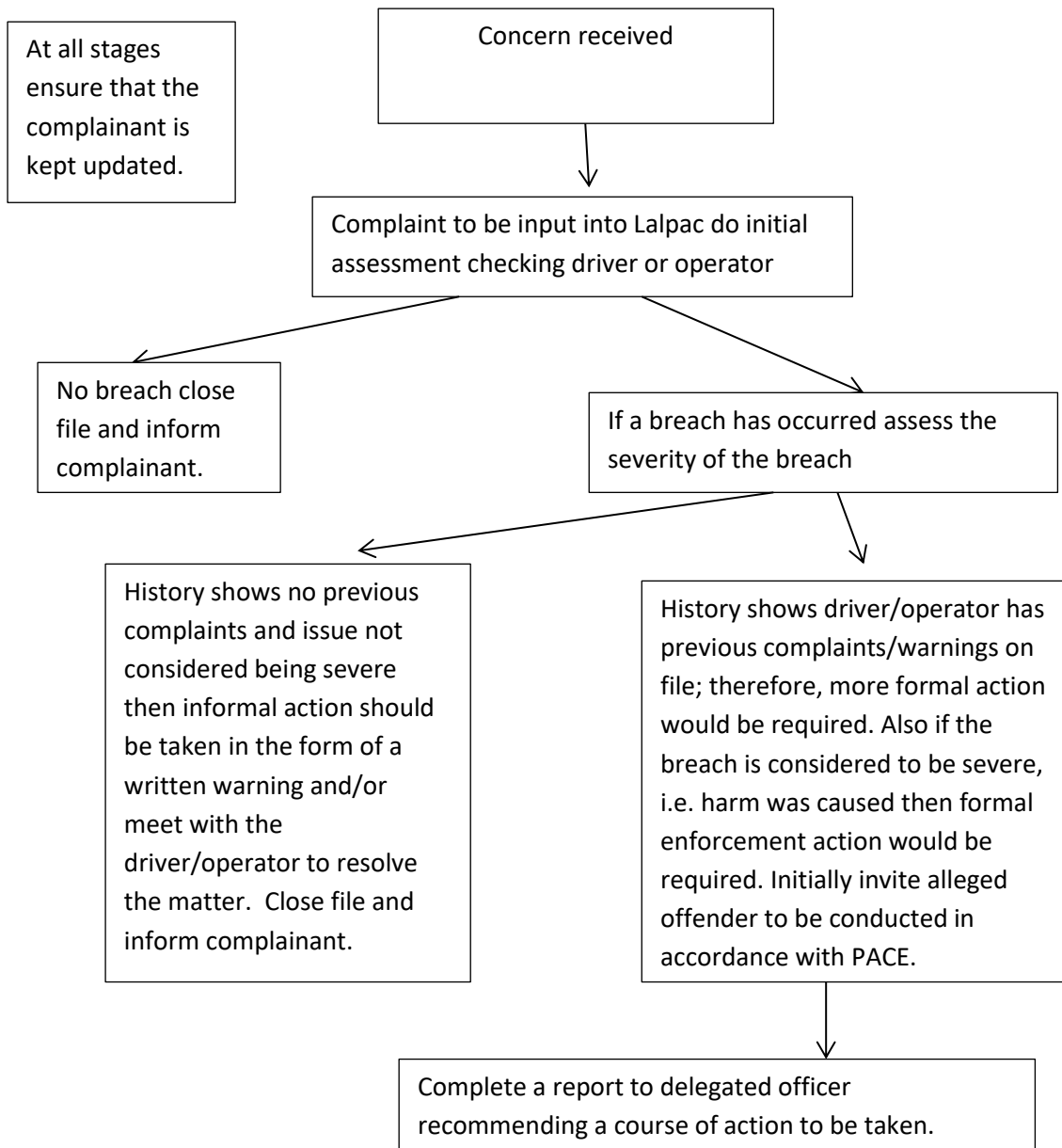
7.0 Complaints

7.1 All complaints received about the service will be investigated by the internal complaints department in accordance with their adopted policy and procedures and they will report their findings to the complainant.

Licensing Enforcement Processes

Reactive Enforcement:-

Complaints



Proactive Enforcement

All licences issued are to be proactively monitored following a timetable which is agreed by the manager at the beginning of the year. To monitor licences the officer must use the conditions attached to the licence to ensure compliance. If the licence holder is not complying with one or more of the conditions attached an Enforcement Investigation will commence regarding the non-compliance of the conditions and the Enforcement Process will be followed.

If a Licence is revoked due to an ongoing Police Investigation

If a licence is revoked due to the licence holder being arrested and charged for an offence and the licence holder is subsequently found not guilty for the offence that he/she is charged with. The licensing authority **may** allow for a fast track application to issue a new license for the same term as the revoked license. The fast track application would mean that the applicant would not be required to fulfil all of the requirements of a new application, and will not be required to:-

- Have another medical examination
- Provide another Photograph (1 x without a hat)
- Retake the DSA Driving Test
- Retake the DSA wheelchair test (if driving hackney carriage accessible vehicle) - Pass
- Redo the Professional Standards Training

However applicants will be required to submit an online Disclosure and Barring Service Enhanced Disclosure only.

If the licence that had been revoked had expired then the former licence holder will have to follow the new application process.

Procedure for Non-Compliance of the Conditions of a Licence

This is a general procedure and each case will be considered on its own merits, and the local authority may still revoke a licence when considering what course of action to take.

A driver / proprietor / operator who has incurred 2 warning letters of non-compliance within 2 years shall be called to Interview by Enforcement Officers. Consideration will be given to revocation of an existing 3 year licence with a 1 year licence granted, subject to conditions e.g. training.

A driver / proprietor / operator who has incurred 3 or more warning letters of non-compliance within 2 years shall be called to Interview by Enforcement Officers. Consideration will be given to revocation of licence.

The following list of non-compliance and subsequent actions and outcomes is not an exhaustive list and where the driver / proprietor has incurred other issues of non-compliance in relation to the Local Government (Miscellaneous Provisions) Act 1976, these shall be investigated and appropriate consequences invoked.

The table below is a guidance for officers when considering breaches of the Licensing Regulations, however, it is only guidance and each case will be considered on its own merits.

Non - Compliance Trigger	Action	Predicted Outcome
Driver (PH) - Private Hire (HC) - Hackney Carriage		
Poor standard of driving	<i>Officer Interview</i>	Warning Letter. If 2 warning letters are issued for poor standards of driving, or one warning letter resulting from a single instance of a serious nature, the driver will be required to complete a DSA Test and Driver Training Module within 3 months. If not completed within three months, driver will be suspended until the test and training have been successfully completed.
Plying for Hire (PH)	<i>Officer Interview</i>	Prosecution

Forming a rank	<i>Officer Interview</i>	Warning Letter
Parking in a Hackney Carriage Rank (PH)	<i>Officer Interview</i>	Warning Letter
Failure to comply with requests from authorised officer, police, VOSA	<i>Suspension Delegated powers to Assistant Director of Neighbourhoods</i>	Suspension or Revocation
Failure to notify the Hackney Carriage and Private Hire Service of change of operator (PH) within 7 days	<i>Officer Interview</i>	Warning Letter
Failure to notify the Hackney Carriage and Private Hire Service of convictions, police cautions or motoring offences within 7 days	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	Warning Letter (Offences dealt with in line with Guidelines to Convictions, Police Cautions and Motoring Offences)
Failure to notify the Hackney Carriage and Private Hire Service of medical conditions within 7 days	<i>Officer Interview</i>	Medical to be completed within one month, if not completed within one month suspension until completion
Failure to supply a medical certificate when required	<i>Officer Interview</i>	Suspension / refusal to grant a new licence until report provided. Warning Letter
Incorrect driving licence details	<i>Officer Interview</i>	One month to change details, suspension until completed if not changed within one month. Warning Letter

Failure to report an accident within 72 hours	<i>Officer Interview</i>	Warning Letter
Inconsiderate / disorderly conduct	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Refusing a guide dog / assistance animal without valid exemption	<i>Suspension Delegated powers to Assistant Director of Neighbourhoods</i>	Revocation
Failure to display an exemption certificate relating to assistance animals	<i>Officer Interview</i>	Warning Letter
Not assisting passengers with luggage	<i>Officer Interview</i>	Warning Letter
Not following lost property procedure	<i>Officer Interview</i>	Warning Letter
Failure to attend / lateness for hire without justifiable cause	<i>Officer Interview</i>	Warning Letter
Not conspicuously wearing driver's licence Badge	<i>Officer Interview</i>	Warning Letter or Prosecution

Carrying more passengers than allowed	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Carrying more wheelchairs than allowed	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Carrying passengers not in the approved seating configuration	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Incorrect operation of a fare meter	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training

Tampering with fare meter	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Charging more than displayed on fare meter	<i>Officer Interview</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Charging more than displayed on table of fares	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	(First occasion) Warning Letter (Second occasion) Warning Letter and revocation of existing 3 year licence, consideration to a one year licence with conditions, e.g. Training
Non-use of a fare meter (HC)	<i>Officer Interview</i>	Warning letter
Charging more than agreed before the journey (PH)	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	Revocation
Not supplying a receipt when requested to do so	<i>Officer Interview</i>	Warning letter
Vehicle (PH) – Private Hire (HC) – Hackney Carriage		

Non - compliance with requirement for vehicle colour	<i>Officer Interview</i>	Warning Letter Vehicle suspension until rectified / refusal to grant a licence
Failure to comply with obligatory vehicle signs and livery	<i>Officer Interview</i>	Warning Letter Vehicle suspension until rectified / refusal to grant a licence
Unauthorised signs / stickers	<i>Officer Interview</i>	Warning Letter Vehicle suspension until rectified / refusal to grant a licence
Dirty or unkempt vehicle	<i>Officer Interview</i>	Warning Letter and/or Vehicle suspension until rectified / refusal to grant a licence
Vehicle body / mechanical defects (when vehicle in use)	<i>Officer Interview</i>	Warning Letter Vehicle suspension until rectified / refusal to grant a licence
Non-compliance of VOSA and Council certification requirements	<i>Officer Interview</i>	Warning Letter/suspend
Failure to comply with vehicle sale / transfer procedure	<i>Officer Interview(both seller and buyer)</i>	Warning Letter
Vehicle exchange procedure not completed	<i>Officer Interview</i>	Warning Letter Suspension of vehicle until procedure completed
Unauthorised modifications	<i>Officer Interview</i>	Warning Letter and/or Suspension of vehicle until procedure completed

Operators (PH) - Private Hire (HC) - Hackney Carriage		
Failure to notify the Hackney Carriage and Private Hire Service of convictions, police cautions or motoring offences within 7 days. Operators, and Directors or Partners of Limited Companies	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	Warning Letter
Condoning or contributing to driver / vehicle non-compliance	<i>Delegated powers to Assistant Director of Neighbourhoods</i>	Suspension or Revocation
Not keeping adequate records	<i>Officer Interview</i>	Warning Letter, suspension or revocation
Not making records available for inspection as required	<i>Officer Interview</i>	Warning Letter, suspension or revocation
Premises not clean	<i>Officer Interview</i>	Warning Letter
Failure to keep order in premises	<i>Officer Interview</i>	Warning Letter
Not renewing Operator Licence in time	<i>Officer Interview</i>	Warning Letter or prosecution
Failure to comply with an authorised officer, Police or VOSA	<i>Officer Interview</i>	Warning Letter, Suspension or Revocation
Failure to notify the Hackney Carriage and Private Hire Service of change of operator details within 7 days	<i>Officer Interview</i>	Prosecution

Invalid communication radio licences	<i>Officer Interview</i>	Warning Letter
Failure to display obligatory notices and licences	<i>Officer Interview</i>	Warning Letter