

## **14. Denbighshire County Council Penalty Point Policy and Procedure**

### **14.1 Introduction**

14.1.1 This document details the Penalty Point procedure used by the Council to deal with minor breaches or infringements of legislation or unacceptable behaviour committed by those licensed as Drivers and Operators and vehicle proprietors, in much the same way that points can be attached to a DVLA driving licence.

### **14.2 Policy Statement**

14.2.1 The aim of this Policy is to improve the levels of compliance of licensing regulations and requirements and to help raise standards, safety and the protection of members of the public affected by the actions of licensed drivers and operators and vehicle proprietors.

14.2.2 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers and Operators and vehicle proprietors.

14.2.3 The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

### **14.3 Purpose of the procedure**

14.3.1 The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.

14.3.2 The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breaches or infringements, which in isolation are not serious enough to warrant the suspension or revocation of a licence.

#### **14.4 Who is covered by the procedure**

14.4.1 Penalty Points may be awarded against anyone holding a Hackney Carriage Licence; a Private Hire Driver Licence; a Private Hire Operator Licence or a Vehicle Proprietor.

#### **14.5 Issuing of Penalty Points**

14.5.1 Officers will investigate allegations of offences by licensed operators, drivers or vehicles owners. When considering what action to take the Investigating officer(s) will take into account all available and appropriate evidence, such as eye witness accounts and their reliability, the views of the licence holder who may be affected by the outcome of the investigation, etc.. The outcome of investigations may result in a wide range of potential actions against the driver and /or operator and / or proprietor. This procedure deals with the option of penalty points. For other enforcement action please refer to the relevant procedures.

14.5.2 Once the decision to issue penalty points is made, letters will be sent to all persons/organisations involved in the allegation(s) detailing the findings and decision of the Investigation officer. A record of the decision and any copies of associated documents will be kept on file (usually in secure electronic format) and retained for a period of 6 months following the expiry of the 2 year rolling period referred to at 14.5.6 below.

- 14.5.3 The points will be issued by an officer, or the Committee, to the driver and /or operator and / or proprietor depending on the circumstances, and will be confirmed in writing within 14 days of their issue.
- 14.5.4 Any penalty points incurred under this procedure are completely separate from any points which may be attached by the Police, through fixed penalty notices, or the Courts, through convictions to DVLA driving licences.
- 14.5.5 Confirmed infringements or breaches resulting in the award of penalty points will act as an ongoing record of a licensee's behaviour and conduct and may be used in determining whether they are a fit and proper person to hold a licence.
- 14.5.6 Where a licence holder accumulates 20 or more penalty points, in separate incidents, in a 24 month rolling period (a period of 24 consecutive months determined on a rolling basis with a new 24 month period beginning each day) the matter will be referred to the next available Licensing Committee. The Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- Take no action
  - Issue a warning
  - Issue additional penalty points
  - Suspend a licence as a punitive sanction
  - Suspend a licence to correct a fault, defect, or breach
  - Revoke or refuse to renew a licence
- 14.5.7 Periods of suspension will be determined by the Licensing Committee and will depend on the nature of the offence, breach, or infringement and the individual's compliance history. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.

14.5.8 Where a driver, proprietor or operator reaches the 20 points and is referred to the Committee it will not preclude all relevant information being disclosed. This will include any other penalty points, complaints, warnings, and suspensions etc. The 20 points will be a referral trigger.

14.5.9 Where an identified breach results in the issue of a single award of 20 penalty points these matters will be considered as soon as is practicable by the Head of Planning & Public Protection or in his/her absence, the Head of Legal and Democratic Services, in consultation with the Chair of the Licensing Committee, or in his / her absence, the vice Chair, for appropriate action. Any action will be considered alongside the Council's agreed document "Procedure for Suspension / Revocation of a Hackney Carriage and Private Hire Driver Licence".

#### **14.6 A breach or infringement is discovered**

14.6.1 If there is good evidence that there was a breach or inappropriate behaviour and it is considered appropriate to do so, the licence holder will be issued with a penalty point notice.

14.6.2 The penalty point notice will describe the infringement or breach, date and time it took place, and how many points have been issued to the licence holder.

14.6.3 The Council reserve the right to not impose penalties points under this scheme where in the opinion of the Officers the allegations are either frivolous, vexatious or repetitious, or made, in the Officers opinion, to further personal grievances or which are not made within a reasonable time period, to be determined by the Council depending on the individual circumstances, of the breach having occurred.

#### **14.7 How to report an infringement**

14.7.1 Any breaches of conduct will be subject to investigation by officers, and only where there is clear, verifiable evidence of an infringement e.g. a photograph of an illegally parked vehicle, will a penalty point notice be issued.

14.7.2 Infringements can be reported through the Council's website <https://www.denbighshire.gov.uk/en/resident/contact-us/contact-us.aspx>

## **14.8 Infringements/breaches covered by the Scheme**

14.8.1 A full list of infringements and breaches covered by this Scheme can be found at Appendix 1.

## **14.9 Appeals**

14.9.1 If a licensee wishes to appeal against the issue of a "penalty points notice" he/she must do so in writing, stating the reasons of the appeal, within 10 working days from the date of issue of such a notice, to the Council's Head of Planning and Public Protection or in his/her absence the Public Protection Manager, who, in consultation with the Chairman of the Licensing Committee, will have the discretion to:-

- uphold the Council Officer's decision – retain the number points on the "penalty points notice"; or
- cancel the issue of the "penalty points notice" to the licensee.

14.9.2 The Head of Planning and Public Protection or, as the case may be, the Public Protection Manager will write to the licensee informing them of the outcome within 10 working days of receiving the appeal.

14.9.3 If no appeal is lodged within 10 days from the date of issue of the Notice, then the Council will take the view that the licence holder has accepted the penalty points.

14.9.4 There is no appeal beyond the decision made by the Head of Public Protection. However, should a licensee be subsequently reported to the Licensing Committee for accumulating 20 penalty points, he/she has the opportunity to raise the validity of the points issued.

#### **14.10 Re-applying for a licence**

14.10.1 If a licence holder has had their licence revoked, they may apply for a new licence, but it is Council Policy that such an application under the Penalty Point Scheme will not be entertained until a suitable period from the date of revocation has elapsed, as detailed below:

- where the penalty points which resulted in the revocation included any infringements that attracted 10 or more points, then this period will be 24 months
- where none of the infringements individually attracted more than 10 points, then this period is reduced to twelve months.

14.10.2 It should not be assumed that an application for a new licence, following revocation under this Scheme, will automatically be granted. Any application will be subject to the Council's normal application process and consideration of whether the applicant is a fit and proper person to hold a licence.

#### **14.11 Delegation of Functions**

14.11.1 The Head of Planning and Public Protection Public Protection can delegate authority to the Public Protection Manager to issue penalty points in accordance with this policy. The Public Protection Manager can also delegate this function to an authorised Officer of the Council.

#### **14.12 Review of the Scheme**

14.12.1 This Policy will be reviewed every three years. Notwithstanding this, the policy will continue to be evaluated and may be updated at any time, subject to the appropriate consultation.