

TAXI AND PRIVATE HIRE ENFORCEMENT

1 Purpose

- 1.1 To seek the views of Licensing Committee in relation to a review of the enforcement of taxis and private hire services in Aylesbury Vale.

2 Recommendations/for decision

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| 2.1 For Members to comment on the ideas set out in the report and make any suggestions of their own. |
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2.2 Supporting information

- 2.3 In January 2010 the Council's licensing services began implementing the current Taxi and Private Hire Policy. This includes Appendix 10 of the policy – Policy on the relevance of criminal conduct and complaints against licence holders and applicants. This is attached as Appendix 1 to this report. Over the last three years this policy has proved invaluable in informing decisions relating to the refusal of new and renewal applications and in revoking and suspending existing licences and ultimately has resulted in an unprecedented number of regulatory sanctions used.

- 2.4 However the policy, whilst successful in relation to the more serious crimes and breaches of conditions has not reduced the level of 'low level compliance' and the licensing service continue to receive a relatively high number of complaints regarding, for example standards of driving, not displaying plates correctly or drivers not wearing badges. There also continues to be evidence of unlawful plying for hire by some private hire drivers and occasional complaints that taxis are not using their meters as is required.

- 2.5 This report will make a number of recommendations and commitments that it is hoped will assist in dealing with these issues and others in a proportionate, consistent, transparent and swift manner. It is also drafted to encourage a discussion to deal with the general behaviour of the taxi and private hire trade. When setting the Council's policy on the enforcement of taxi and private controls, the Council must have regard to the Regulators' Compliance Code. This can be summarised as follows:

- Publish an enforcement policy
- Consider impact of regulatory sanctions on economic progress
- Take/cost benefit approach to regulatory intervention
- Keep regulatory interventions under review with view to considering whether removal/reduction would be appropriate
- Target efforts by taking a risk based approach
- Incentivise and reward businesses for good levels of compliance
- Ensure inspectors can interpret and apply legal requirements and enforcement policies fairly and consistently
- Hold discussions with businesses when considering formal enforcement action (except for serious/urgent cases)

- Ensure sanctions and penalties are proportionate, directed at change of behaviour and deter non-compliance
- Enforce and apply sanctions in a transparent manner
- Provide clear reasons for enforcement actions
- Measure outcomes
- Periodically justify choice of enforcement actions to interested parties

2.6 **Complaints and low level compliance**

The most common complaints received by the licensing services are unsubstantiated in that they relate to an allegation from a member of the public relating to a particular driver. Examples include driving offences, rudeness, not displaying plates or badges, use of mobile phone whilst driving. They are difficult to investigate and prove and are particularly time consuming to deal with as the complainant, quite reasonably reports the vehicle details, date and time but of course does not know the identity of the driver. A member of the licensing team then has to make enquiries with the operator as to who was using the vehicle at that particular time. Given the lack of any meaningful evidence a record is made against the driver's file. Repeated complaints, pointing to a pattern of behaviour might ultimately result in a regulatory sanction such as a suspension.

2.7 Even though many of the examples of low level compliance are offences it would be disproportionate to refer for prosecution or even impose a regulatory sanction such as a suspension, particularly for a first offence. However repeat offences would justify some kind of regulatory action. It is recommended therefore that a 'points system' be introduced whereby each breach results in a number of points and if sufficient points are accrued a review is conducted which could result in a regulatory sanction such as a suspension.

2.8 The Council's licensing team are increasingly assisted by Thames Valley Police and the Council's Civic Enforcement Officers, who routinely inspect vehicles for compliance. Any non-compliance is reported to the licensing team. A points system as described in the previous paragraph would effect this routine enforcement by these agencies into meaningful, consistent and accountable punishment.

2.9 **Unlawful plying for hire**

Despite the attempts of the Council's licensing services unlawful plying for hire is still a persistent problem. Private hire vehicles display door signs advising the public to pre-book and posters and publicity campaigns have been used to warn the public but it still prevails. Routine night time patrols by officers does disrupt this kind of behaviour but the only effective way to prosecute a case of unlawful plying for hire is to 'test purchase'. That is to say an officer would approach a private hire vehicle and ask if they were a taxi and if they were free for a journey.

2.10 This type of operation is relatively labour intensive and experience in the past has yielded disappointing fines in the courts and not proved to be much of a deterrent. The Council's policy does permit the consideration of a short suspension of the driver's licence or even revocation. Given the persistence of this behaviour and the strong public interest in deterring it in order to protect the travelling public and other members of the public as well as prevent unfair and unlawful competition, it is suggested that the wording of this part of the policy be strengthened.

2.11 **Alternative sanctions and rewards**

At the moment the existing enforcement tools include regulatory sanctions such as refusals, suspensions and revocations of licences, written warnings and of course prosecution. Given the persistence of some offences it might be appropriate to consider some additional initiatives in an attempt to change behaviour and deter non-compliance. The use of restorative justice has been used for a number of years by the criminal courts and driving courses are offered to offenders in lieu of a higher sentence. Perhaps something similar could be devised in relation to repeat offenders or for particular breaches and it is recommended that officers investigate the use of such a scheme and bring it back for Members consideration later this year.

2.12 Up until now breaches committed by drivers have been dealt with in isolation leading ultimately to some kind of action against the individual. What is not taken into consideration is the behaviour of the licensed operator and to what extent they are managing drivers. Should a licensed operator be identified by virtue of the number of drivers operated by them committing offences, the Council's licensing team might make contact with the operator offering advice or agreeing an action plan or even a formal warning.

2.13 The conduct and behaviour of licensed operators is very influential in relation to the conduct and behaviour of drivers and yet the licensing controls of operators is relatively narrow and weak. It might be possible to agree some form of accreditation scheme to incentivise best practice. Apart from record keeping perhaps some form of self regulation could be encouraged such as adopting disciplinary procedures and complaint investigation systems. It is recommended that officers investigate some form of scheme and bring it back for Members consideration later this year.

3 **Options considered**

3.1 The objective of this report is to consider all options in relation to the enforcement of the taxi and private hire trade.

4 **Reasons for Recommendation**

4.1 To deal with 'low level enforcement' in a consistent, proportionate and accountable way.

5 **Resource implications**

5.1 Top be achieved within existing resources.

6 **Response to Key Aims and Objectives**

6.1 None specific.

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Background Documents	None

Appendix 10 - POLICY ON RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS AND APPLICANTS

1. Introduction

In exercising its discretion in carrying out its regulatory functions the Council will have regard to these guidelines. However each application or enforcement measure will be considered on its own merits.

The aim of the licensing regime to which these guidelines relate is not to punish the applicant or licensee twice for an offence (which includes a conviction, caution, reprimand, warning, fixed penalty notice or any other out of court disposal) but to ensure that public safety and confidence in the trade is not compromised. The objective of the licensing regime is to ensure that, as far as possible those licensed to drive hire cars are suitable persons to do so. Namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

These guidelines will be taken into account by the Licensing Authority when dealing with new applications as well as renewal applications for an existing private hire/hackney carriage driver's licence, private hire/hackney carriage vehicle licence and a private hire operator's licence and also when considering whether to suspend or revoke an existing licence.

Clearly, some adjustments will need to be made when applying these guidelines to operators as opposed to drivers because they carry out a different role and their contact with the public is different.

2. Criminal and other unacceptable conduct

Licensed drivers must be 'fit and proper' and a key test in evaluating this is whether they have been involved in criminal activity. Convictions, cautions, fixed penalties, speeding offences and other criminal sanctions may be relevant indicators of a person's suitability to hold a licence. The disclosure of any conviction will not necessarily prevent an applicant from being issued a licence. However all convictions, spent or live will be assessed. It should also be borne in mind that a caution is given where there is sufficient evidence for a prosecution and guilt has been admitted. Fixed penalties are issued for a wide range of traffic offences. Some are non-endorsable fixed penalties and do not result in points being imposed on a person's licence. Others are endorsable fixed penalties and allow an opportunity for an alleged offender to forgo a prosecution and accept points on their licence. Fixed penalty notices are similar to fixed penalties but are issued for a wide range of offences of an anti-social nature e.g. drunken disorderly, possession of cannabis.

In this policy references to convictions or cautions includes, wherever appropriate, other criminal sanctions too.

Although this policy mainly concerns criminal conduct or activity, other unacceptable conduct, even if not criminal in nature may also justify a regulatory sanction depending as always on the facts and circumstances of the case.

3. Patterns

A series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident. A serious view will be taken when applicants show a pattern of offending. Other considerations will be the period of time over which the criminal conduct occurred and the nature, seriousness and relevance of the criminal activity.

4. Periods free from conviction

The principles of the Rehabilitation of Offenders Act 1974 do not apply to applicants for hackney carriage and private hire driver's licences. This is because the driving of taxis is listed as 'regulated occupation' in relation to which questions may be asked as to the suitability of individuals to be granted a licence. Greater or less weight will be attached to each incident depending on:

- The nature of the offence,
- The penalty imposed,
- The length of time since the offence or conviction,
- Any relevant aggravating or mitigating circumstances

5. Period following revocation / refusal or appeal

If a licence is revoked or refused it is reasonable to expect a period of time to elapse before a re-application will be entertained. That period will depend on the facts and circumstances leading to the revocation or refusal but in any case will be a minimum of three years from the date of revocation / refusal. Similarly should a revocation or refusal be appealed against and the appeal is dismissed the three year period of time before a re-application would be entertained will begin from the date of the appeal decision.

6. 'Fit and proper person'

Assessing someone's fitness to drive a licensed vehicle is ultimately a subjective decision. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind. For example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property. Examples of areas that might give rise for concern include:

- 6.1 **Honesty and trustworthiness** – any passenger would expect to be charged the correct fare for a journey and given the right change, they would expect a driver to hand in any article left by a passenger in a vehicle
- 6.2 **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour but this cannot excuse any aggressive or abusive conduct on behalf of the driver. Drivers are expected to avoid confrontation and to address disputes through the proper legal channels. Under no circumstances should they take the law into their own hands.

6.3 A good and safe driver – drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to their licences.

The overriding consideration is the protection of the public and whether regulation is required in the interests of public safety.

7. Written Warnings

In some circumstances rather than issue a formal regulatory sanction the Council may issue a written warning as to the driver's conduct. If a driver receives two or more written warnings within a period of a year, serious consideration will be given to the use of a regulatory sanction such as suspension or revocation. In some circumstances where poor driving standards are repeatedly displayed, or a driver is seen driving otherwise in accordance with the highway code, this Authority may request that the licensed driver attend the Driving Standards Agency (DSA) Taxi test. Failure to pass within a reasonable time (Usually 3 months) would result in the suspension of the licence until such time as the DSA test is successfully passed.

8. General Offences

The offences mentioned in this policy are not intended to be exhaustive. If an offence is not specifically mentioned in this policy its treatment will depend on the factors already outlined above.

9. Driving Offences

If an applicant has committed traffic offences this should not necessarily prevent them from proceeding with an application. However the number, type and frequency of offences will be taken into account.

Convictions for minor offences such as obstruction, waiting in a restricted street and, depending on the circumstances, speeding would not necessarily prevent a person obtaining a licence. If sufficient points have accrued to require a period of disqualification of an applicant's driving licence, a taxi or private hire driver's licence may be granted after its restoration depending on the facts and circumstances. However a written warning would be issued as to future conduct. A similar approach would be made in the case of an existing licensed driver accruing sufficient points to warrant a disqualification.

An isolated conviction for a more serious traffic offence such as reckless driving or driving without due care and attention or using a vehicle with defective tyres or steering or brakes would at least result in a written warning as to future conduct. Depending on the facts and circumstances it might result in refusal, suspension or revocation. More than one conviction of this type of offence within the last two years would normally warrant refusal or revocation.

Any new applicant who has more than six penalty points should expect that their application will be subject to further scrutiny and maybe granted, granted with a written warning, granted with the condition that they complete the Driving Standards Agency Taxi test, or refused.

10. Motor Insurance Offences

The Council takes a serious view of motor insurance offences. An isolated incident in the past should not necessarily bar a new applicant from being issued a licence but their application will be subject to particular scrutiny. More than one conviction or caution for these offences should raise serious doubts as to an applicant's suitability to hold a hackney carriage or private hire licence. In this instance, at least three years should elapse (after restoration of the DVLA driving licence) before an applicant who has been disqualified from driving for insurance offences, is considered for a hackney carriage or private hire licence. Should that person not have been disqualified, at least three years should elapse from the date of the last conviction.

Should an existing licence holder commit a motor insurance offence they should expect for the matter to be investigated and the possible outcomes maybe that no further action is taken, they are given a written warning, their licence is suspended normally for a period of one month or the licence is revoked.

11. Sexual Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers, any new applicants with convictions, or cautions, for any sexual offence should expect their application to receive particular scrutiny. New applicants will normally be refused a licence until they can show a substantial period (usually between seven and twelve years) free from conviction. However in the case of some sexual offences the Licensing Authority may refuse to licence an applicant regardless of the period of time elapsed after the date of conviction. Any current licence holder who commits a sexual offence will be subject to investigation which may result in no further action, a written warning, a suspension or the revocation of the licence.

Licence holders should also be aware that if the Licensing Authority receive notification from the police that a driver is being investigated for a serious sexual offence, their licence may be suspended immediately depending on the facts and circumstances. An allegation of a sexual offence whilst a driver is on duty and/or involves an abuse of a position of trust will usually be considered serious.

12. Drunkenness Offences

12.1 With a Motor Vehicle

The Council views driving or being in charge of a vehicle whilst under the influence of alcohol as a serious offence. Although an isolated incident will not necessarily debar an applicant, a single conviction for any drink driving offence will normally require a period of two years to elapse after the date of conviction or the restoration of their DVLA licence, whichever is the latter, before being considered for a licence. More than one incident should raise grave doubts as to future behaviour and the applicant's fitness to hold a licence.

In relation to existing drivers the Council considers the safety of the public to be paramount and will not tolerate existing drivers committing drink driving offences particularly if committed whilst on duty. Existing licence holders who commit drink driving offences should expect to have their licence revoked except in exceptional circumstances.

If a driver has been disqualified from driving by a court for offences relating to drink driving, then any application to renew a hackney carriage or private hire driver's licence should not be considered until a period of two years from the restoration of their DVLA licence has elapsed.

12.2 Without a motor vehicle

An isolated incident of drunkenness not associated with a motor vehicle will not necessarily result in an application not being granted, however any new applicant or current licensee should expect their application/licence be subject to particular scrutiny. One or two convictions, cautions and/or fixed penalty notices for disorder and/or drunkenness not confined to a year should result in a written warning as to future conduct. Two convictions, cautions and/or fixed penalty notices for disorder for drunkenness within a year, then a current licence might be suspended to enable the Licensing Authority to make further enquiries. Where the Licensing Authority receive a new application in these circumstances, it may be refused or granted with a written warning. In relation to three or more convictions, cautions and/or fixed penalty notice for disorder for drunkenness, then any current licence will normally be revoked except in exceptional circumstances. Any new application should be refused until a period of twelve months free of conviction.

In all cases more than one conviction, caution and/or fixed penalty notice for disorder and/or drunkenness or refusal to provide a specimen may indicate a medical problem and the applicant/licence holder may be asked to submit to a medical examination by a medical practitioner nominated by the Council at the applicant's/licence holder's own expense. If the examination shows the person to be an alcoholic, a period of five years should elapse after treatment is complete before a further application is considered.

13. Drug Offences

A serious view is taken of any drug related offence. An applicant who has committed a drug related offence (including supplying or trafficking of drugs) should be required to show a period of at least three years free of convictions before an application is considered.

If the applicant was required to undergo detoxification treatment, a period of five years free from conviction is required after the end of treatment. More than one conviction and/or caution for a drugs related offence should prevent a successful application for at least seven years from the date of the most recent conviction. In both instances before a further application is considered, a specialist medical examination will be required with negative urine screen for drugs.

Any new applicant who has served a custodial sentence for a period of five years or more for supplying controlled drugs and has submitted an application should not be considered for a licence.

The Council consider the safety of the public as paramount and will not tolerate existing drivers committing any drug-related offence. Existing licence holders who commit drug related offences will be subject to investigation and, if sufficiently serious their licence will be revoked except in exceptional circumstances. In serious cases, at least seven years should elapse from conviction before a new application by that person will be considered.

14. Violence Offences

As hackney carriage and private hire drivers maintain close contact with the public any previous convictions and/or cautions for violence will be taken seriously by the Council. Any new applicants with convictions or cautions for any violence offence should expect their application to receive particular scrutiny. Depending on the seriousness of the offence and the facts and circumstances new applicants are likely to be refused unless they can show a substantial period (usually five to ten years) free from conviction. Any current licence holder who commits a violence offence will be subject to investigation which may result in no further action, a written warning, a suspension or the revocation of the licence. A particularly serious view will be taken where the victim of a violence offence is a public official such as a Council Officer or Police Officer as a result of carrying out their duties.

An application will be refused or existing licence revoked where the applicant has received a conviction for any of the following offences, regardless of the period of time lapsed after the date of conviction:

- Murder and attempted murder
- Manslaughter
- Causing death by reckless driving
- Rape

The guidelines above are applicable to new applicants and existing licence holders who have committed one offence. If a new applicant or existing licence holder has committed two or more violence related offences, the licence should normally be revoked or refused. If an applicant has a history of violence (three or more offences of any type of violence) their application will be refused, or in the case of an existing driver their licence will be revoked.

15. Dishonesty

Drivers of hackney carriages and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to cheat or defraud the public, for example by demanding more than the legal fare or giving incorrect change. Similarly any customer can be defrauded by a driver taking them by any other than the shortest route or by retaining any lost property left in their vehicle. Members of the public entrust themselves to the care of drivers both for their safety and for fair dealing. For these reasons a serious view is taken of any offences involving dishonesty. A new application would normally be refused or an existing licence revoked where a person has committed an offence of:

- Theft
- Burglary
- Fraud
- Benefit Fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining property and/or services by deception

16. Guidelines for dealing with licensing offences or breaches of conditions of licence

Breaches of the relevant legislation or conditions attached to driver, operator and vehicle licences may come to light following complaints, enforcement actions or investigations. The action to be followed in response to such matters will be determined on their own merits. The licensee has the right to appeal to the Magistrates' Court any decision to suspend or revoke a licence. Set out below are the general principles which are to be followed

All Criminal offences committed under The Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, The Transport Act 1980 or any other relevant legislation will fall within this category. The following guidelines will apply but will not be a fetter to any decision to prosecute. This list is not intended to be exhaustive.

Failure to comply with a lawful requirement or instruction from an authorised officer of the council or a Police Officer

The holders of licences are legally obliged, under the relevant legislation, to comply with a number of requirements or instructions given to them by an authorised officer of the Council or a Police Officer. These would include, for example, the production of licences, vehicle inspection reports and insurance certificates or the surrender of licences or plates following suspension or revocations or failure to attend a pre-booked appointment without a reasonable excuse. Where the offender has failed to produce a document on time but subsequently does so, the Licensing Authority will normally issue a written warning. Where, however the offender does not produce the documents, despite reasonable attempts to make him do so the Licensing Authority may suspend, revoke or refuse to renew the licence.

17. Failure to display plates, door signs or badges

In relation to badges, depending on the circumstances, on the first occasion this maybe dealt with informally by the roadside. It should also be noted that it is an offence for a private hire driver not to wear the badge issued to him/her without reasonable excuse. A failure to comply with this requirement on two or more occasion may therefore result in both regulatory and/or criminal sanctions.

In the case of missing or inappropriately fitted plates or missing door signs, the vehicle licence will be suspended until such time as the matter is rectified. Refusal to rectify or repeat breaches may lead to revocation.

In addition, it is an offence not to display a hackney carriage or private hire vehicle plate and therefore a failure to comply may result in both regulatory and/or criminal sanctions. The use of an 'executive vehicle' other than in accordance with the rules for 'executive vehicles' will automatically constitute an offence and may also result in the exemption being removed and the vehicle having to comply with standard conditions on door signs and display a plate.

18. Refusal to carry a passenger in a Hackney Carriage

In these circumstances the driver will be invited to state the reasons for his action and if the Licensing Authority is satisfied that the driver had a justifiable reason then no action will be taken. If, however, there appears to be no acceptable justification for the refusal, the issue of a written warning will normally deal with the matter. Any further offences within a twelve-month calendar period could result in suspension, revocation or refusal to renew the licence.

19. Failure to report a conviction, caution, warning, fixed penalty notice, arrest.

All drivers and operators are required to notify the Council of not only convictions, cautions, fixed penalty notices, warnings and arrests. But also if they have been charged with a criminal offence, arrested or even if they are the subject of a criminal investigation. Failure to do so in writing within seven days will normally be dealt with by issuing a written warning in addition to any further actions which may be warranted by the nature of the offence. Depending on the severity of the offence, or alleged offence, this breach of a licence condition will be taken into consideration in respect to any decision to subsequently suspend or revoke a driver's or operator's licence. Even if a failure to report an offence, or alleged offence, itself does not result in any enforcement action, if part of a pattern of breaching conditions over a period of time, it could result in suspension, revocation or refusal to renew the licence.

20. Disqualification from driving following the 'totting up' procedure or for drink driving

There are numerous reasons why a DVLA licence might be revoked or become invalid. If a driver ceases to have a valid DVLA licence, then the hackney carriage or private hire driver's licence is also invalid. Depending on the facts and circumstances the Licensing Authority may revoke the hackney carriage or private hire licence or simply require the badge to be returned immediately.

21. Confirmed complaints of rude or aggressive behaviour

In less serious cases a written warning as to future conduct will be given by the Licensing Authority. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety this may result in the suspension of the driver's licence pending further investigation and may subsequently result in revocation of the licence.

22. Defective Vehicle

If during routine enforcement work or following the investigation of a complaint, the Licensing Authority identify a defect on a licensed vehicle that could affect safety (such as a worn tyre) then the licence will be suspended with immediate effect. This will stop the vehicle being used as a hackney carriage or private hire vehicle until the defect is repaired.

23. Exceeding the allowed number of passengers

This will normally result in the issue of a written warning by the Licensing Authority. Any subsequent breach of conditions may result in suspension, revocation or refusal to renew the licence.

24. Illegal or non approved advertising on vehicles

This will normally result in the issue of a written warning. Any subsequent breach of condition within a twelve-month period of the original may result in suspension, revocation or refusal to renew the licence. The offending advertisement must be immediately removed.

25. Failure to report an accident

The failure to report an accident involving a licensed vehicle to the Licensing Authority will normally be dealt with by issuing a written warning. Any subsequent failure may result in a suspension, revocation or refusal to renew the licence.

26. Hackney Carriage Driver overcharging a passenger

It is relatively easy for a driver to defraud the public because of the nature and complexity of the tariff system. Overcharging should, therefore, be considered a serious breach of trust that should be dealt with by imposing a significant penalty. A suspension or even revocation of a licence will, therefore, generally be justified.

27. Private Hire drivers plying for hire

In the case of a first offence the driver would normally be offered a simple caution or prosecuted depending on the circumstances. In the case of a second offence the Council would more readily prosecute. In both cases the Licensing Authority will consider the necessity of a short suspension of the driver's licence or alternatively revocation. Depending on the facts and circumstances, the Licensing Authority reserve the right to suspend or revoke a driver's licence without the need to prosecute or even caution.

28. Touting for Business

In the case of a first offence the driver would normally be offered a simple caution or prosecuted depending on the circumstances. In the case of a second offence the Council would more readily prosecute. In both cases the Licensing Authority will consider the necessity of a short suspension of the driver's licence or alternatively revocation. Depending on the facts and circumstances, the Licensing Authority reserve the right to suspend or revoke a driver's licence without the need to prosecute or even caution.