



**Communities Directorate**

6 December 2016

## **Licensing and Control Committee A**

<b>Date:</b>	<b>15 December 2016</b>
<b>Time:</b>	<b>6:30pm</b>
<b>Venue:</b>	<b>Gordon Room, Stoke Abbott Road</b>

**Committee Membership:** Councillors Paul High (Chairman), Diane Guest (Vice Chairman), Paul Baker, Keith Bickers, Joan Bradley, Callum Buxton, Edward Crouch, Lionel Harman, Joshua High, Susan Jelliss, Jane Sim, Bob Smytherman, Paul Westover, Steve Wills, Tom Wye

## **Agenda**

### **Part A**

#### **1. Declarations of Interest / Substitute Members**

Members and officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such as an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

#### **2. Confirmation of Minutes**

To approve the minutes of the Licensing and Control Committee A meeting of held on the 28 November 2016, copies of which have been previously circulated.

### 3. Public Question Time

To receive any questions from Members of the public in accordance with Standing Order 11.2

*(Note: Public Question Time will operate for a maximum of 30 minutes.)*

### 4. Exclusion of the press and Public

In the opinion of the Proper Officer the press and public should be excluded from the meeting for consideration of the following item. Therefore the meeting is asked to consider passing the following resolution:

‘that under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting from the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12 A to the Act indicated against the item.’

### 5. Review of Penalty Point system for Hackney Carriage and Private Hire licences

To consider a report by the Director for Communities, copy attached as item 5

## Part B - Not for publication - Exempt Information Reports

### 6. Local Government (Miscellaneous Provisions) Act 1976 Determination of a new application for a Private Hire Driver Licence

To consider a report by the Director for Communities, copy attached as item 6

### 7. Local Government (Miscellaneous Provisions) Act 1976 Determination of a review of a Private Hire Driver Licence

To consider a report by the Director for Communities, copy attached as item 7

For Democratic Services enquiries relating to this meeting please contact:	For Legal Services enquiries relating to this meeting please contact:
Chris Cadman-Dando Democratic Services Officer 01903 221364 chris.cadman-dando@adur-worthing.gov.uk	Caroline Perry Solicitor 01903 221086 caroline.perry@adur-worthing.gov.uk

**Duration of the Meeting:** Four hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.



## **Review of Penalty Point system for Hackney Carriage and Private Hire licences**

### **Report by the Director for Communities**

#### **1. Recommendation**

- 1.0 Members are invited to review the revised Hackney Carriage & Private Hire Licensing Penalty point system. Members are requested to consider the document and adopt the document including any amendments considered required.

#### **2.0 Background**

- 2.1 At the Licensing Control Committee on the 26 September 2016 the penalty point system was reviewed as part of the replacement Hackney Carriage & Private Hire Licensing Handbook.
- 2.2 The Committee requested the allocation of points on the points system to be reviewed further and the decision was made to defer the point system. **Appendix A**

#### **3.0 Proposals**

- 3.1 The Committee members are invited to make a decision on the amended points system that will form part of the approved Hackney Carriage & Private Hire Handbook. **Appendix B**
- 3.2 Members are invited to review all the information detailed on this report and are requested to consider any matters they feel relevant.
- 3.3 The point system, will allow the licensing authority to deal with licence holders unable to comply with the conditions of licence and those that continually breach the conditions, in a fair and transparent manner in accordance with best practise. The object being to use it as an educational tool in the first instance and thereafter accumulation would require the Committee to consider the matter and make a decision.

#### **4.0 Representations**

- 4.1 Representation in the point system was made during the consultation period of the proposed handbook from the 9 May -1 August 2016.

- 4.2 Twenty nine Hackney Carriage drivers objected to the penalty points system on the grounds that it undermines the integrity and operation of the profession
- 4.3 The amended penalty points system was circulated on the 14 October 2016 to the 29 objectors to the original proposal, Chair of the Hackney Carriage Association, Wortax and Arrow Private Hire operator
- 4.4 One objection received by email on the 15 November 2016 **Appendix C**

## **5.0 Legal**

- 5.1 The Council has a statutory duty when considering applications for hackney carriage and private hire driver's licences under the Local Government (Miscellaneous Provisions) Act 1976 to not grant a unless it is satisfied that the applicant is a fit and proper person to hold a driver's licence.
- 5.2 A district council may attach to the grant of a licence such conditions as it may consider reasonably necessary to ensure drivers are fit and proper and vehicles are safe.
- 5.3 When determining licensing policies and applications, the principles of the Human Rights Act 1998 must be taken into consideration. The convention rights of both individuals and members of the public as a whole will be given due weight. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the "general interest".
- 5.4 All policies, guidance and applications, before Committee, must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities
- 5.5 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all licensing matters. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and authorities particularly the Police.

## **6.0 Other Implications**

- 6.1 No significant race relations or equal opportunities implications have been identified.

## **7.0 Recommendation**

- 7.1 That the Committee consider the draft Penalty points system and any representations received.
- 7.2 That Members adopt the penalty point system to form part of the handbook for use by the local industry, new applicants, council officers and members when considering Hackney Carriage & Private Hire Licensing matters.
- 7.3 That Members give reasons for their decision.

**Mary D'Arcy**  
**Director for Communities**

## **Local Government Act 1972**

### **Background Papers:**

- **Appendix A** – Appendix M original - 1st proposal of penalty point system
- **Appendix B** - Appendix M Revised proposal of Penalty point system
- **Appendix C** - Copy of Email Objection

### **Contact Officer:**

#### **Principal Author & Contact Officer:**

**Teresa Bowley**

Licensing Officer

Commerce Way

Lancing, BN15 8TA

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 Licensing of taxi and private hire drivers is directly related to public safety Issues.

### **2.0 Specific Action Plans**

- 2.1 Matter considered and no issues identified.

### **3.0 Sustainability Issues**

- 3.1 Matter considered and no issues identified.

#### **4.0 Equality Issues**

- 4.1 Dealt with in the body of the report.

#### **5.0 Community Safety Issues (Section 17)**

- 5.1 The Council is not obliged to issue a Hackney Carriage or Private Hire Driver's licence to any person unless the Council is satisfied that that person is a 'fit and proper person' to hold that licence. Hackney Carriage Driver's convey the fare-paying public and expected to comply with all legislative requirements

#### **7.0 Reputation**

- 7.1 The Committee must balance the rights of the individual against and the potential risk to the Council's reputation if it should transpire that the wrong decision has been taken.

#### **8.0 Consultations**

- 8.1 From 14 September until 30 November 2016 the amendments were circulated to the trade representative, operators and the 29 persons who objected to the first penalty points system proposal,.
- 8.2 The consultation received 1 objection against the the point system.

#### **9.0 Risk Assessment**

- 9.1 Matter considered and no issues identified.

#### **10.0 Health & Safety Issues**

- 10.1 Matter considered and no issues identified.

#### **11.0 Procurement Strategy**

- 11.1 Matter considered and no issues identified.

#### **12.0 Partnership Working**

- 12.1 Matter considered and no issues identified



## Penalty Points Scheme

### 1. The Scheme

- 1.1 Any breach of legislation or the requirements of this Licensing handbook will be fully considered by authorised officers when determining the use of the penalty point system. Where it is decided that the penalty point system is appropriate, the points will be issued in accordance to this appendix. If this appendix allows a range of points for the particular incident, the authorised officer will determine the appropriate number of points proportionate to the offence.
- 1.2 Before penalty points are issued, there must be sufficient evidence to prove, on the balance of probabilities, the offence or breach of licensing requirements. The licence holder will be given the opportunity to provide any mitigating circumstances to be considered. The issuing of penalty points is not a formal sanction in its own right; it is merely an open and transparent method of how a driver will be assessed in terms of the 'fit and proper person' test. The points system is predominately an internal management tool for ensuring that licence holders who repeatedly contravene regulations and/or this Policy are assessed.
- 1.3 Points issued will be confirmed in writing within ten working days from the discovery of the contravention or the conclusion of an investigation into a complaint.
- 1.4 The maximum number of points that can be imposed in respect of any particular matter is 10 but it is possible for one incident or inspection to result in more than one set of points being issued.
- 1.5 If a licence holder accumulates 10 points or more within a rolling period of 12 months then their licence will be subject to a review by the Licensing Committee.
- 1.6 The penalty point system will operate without prejudice to the Council's ability to take other action under appropriate legislation
- 1.7 There is no right of appeal against the award of penalty points by an Authorised Officer of the Council as this is not a formal sanction in its own right. As stated in paragraph 1.2 above, the licence holder's penalty offences will be considered in light of any mitigating circumstances that the licence holder wishes to offer.
- 1.8 The following tables list the breaches of legislation, bye laws and conditions of licence that attract penalty points.

Reference to HC is Hackney Carriage and PH is Private Hire.

## Private Hire

<b>A Offences under the Local Government (Miscellaneous Provisions) Act 1976</b>		
<b>Points</b>		
1	Vehicle not displaying plates. (Sec.48(6)(a))	<b>5</b>
2	Failure to notify vehicle transfer. (Sec.49(1))	<b>5</b>
3	Failure to present vehicle for inspection. (Sec.50(1))	<b>5</b>
4	Failure to inform Authority where the vehicle is stored. (Sec.50(2))	<b>5</b>
5	Failure to report an accident.(Sec.50(3))	<b>5</b>
6	Failure to produce a vehicle licence and insurance certificate.(Sec50(4))	<b>5</b>
7	Failure to wear driver badge.(Sec.54(2))	<b>10</b>
8	Failure by Operator to keep records of bookings.(Sec.56(2))	<b>10</b>
9	Failure by Operator to keep records of vehicles.(Sec.56(3))	<b>10</b>
10	Failure to produce a PH Operators licence.(Sec56(4))	<b>5</b>
11	Making false statement or withholding information to obtain a licence.(Sec.57(2))	<b>10</b>
12	Failure to return vehicle plate after notice given.(Sec.58(2))	<b>5</b>
13	Failure to surrender driver licence after suspension.(Sec.61(2))	<b>5</b>
14	Charging more than the meter fare when HC used as a PH.(Sec.67)	<b>10</b>
15	Unnecessarily prolonging a journey.(Sec.69)	<b>10</b>
16	Obstruction of an authorised officer or constable.(Sec.73(1)(a))	<b>10</b>
17	Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	<b>10</b>
18	Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	<b>10</b>
<b>B Offences under the Transport Act 1980</b>		
<b>Points</b>		
<b>Section</b>		
64 (2) (a)	Driving a vehicle with a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of another word	<b>10</b>
64 (2) (b)	Causes or permits a vehicle to have a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of another word.	<b>10</b>
<b>C Conditions of licence</b>		
All breaches of licence conditions shall attract 5 penalty points.		

## Hackney Carriage

<b>A Offences under the Local Government (Miscellaneous Provisions) Act 1976</b>		<b>Points</b>
1	Failure to notify vehicle transfer (Sec.49(1))	5
2	Failure to present vehicle for inspection. (Sec.50(1))	5
3	Failure to inform Authority where the vehicle is stored. (Sec.50(2))	5
4	Failure to report an accident.(Sec.50(3))	5
5	Failure to produce a vehicle licence and insurance certificate.(Sec50(4))	5
6	Failure to produce HC driver licence.(Sec.53(3))	5
7	Making false statement or withholding information to obtain a licence.(Sec.57(2))	10
8	Failure to return vehicle plate after notice given.(Sec.58(2))	5
9	Failure to surrender driver licence after suspension.(Sec.61(2))	5
10	Charging more than the fare shown on the meter for a journey ending outside the district without prior agreement	10
11	Charging more than the meter fare when HC used as a PH.(Sec.67)	10
12	Unnecessarily prolonging a journey.(Sec.69)	10
13	Obstruction of an authorised officer or constable.(Sec.73(1)(a))	10
14	Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	10
15	Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	10
<b>B Offences under the town Police Clauses Act 1847</b>		
<b>Section</b>	<b>Offence</b>	<b>Points</b>
48	Failure by HC Proprietor to hold a copy of HC driver licences of persons who use the vehicle	10
59	Carrying other person than the hirer without consent	10
<b>C Offences under the Byelaws</b>		
All breaches of hackney carriage byelaws shall attract 5 penalty points.		
<b>D Conditions of Licence</b>		

All breaches of licence conditions shall attract 5 penalty points.

<b>Equalities Act 2010</b>		
<b>Section</b>	<b>Offence</b>	<b>Points</b>
168	Refusal to carry a guide, hearing, or other assistance dog in a hackney carriage without a valid certificate of exemption	<b>10</b>
168	Charging an additional cost for the carrying of an assistance dog in a hackney carriage	<b>10</b>
170	Refusal to carry a guide, hearing, or other assistance dog in a private hire vehicle without a valid certificate of exemption	<b>10</b>
170	Charging an additional cost for the carrying of an assistance dog in a private hire vehicle	<b>10</b>

### **Hackney Carriage and Private Hire Licensing Policy**

<b>Breach of policy requirement</b>	<b>Points</b>
Failure to wear a driver's badge	<b>4</b>
Failure to ensure the safety of passengers	<b>4</b>
Concealing or defacing a vehicle Licence Plate	<b>4</b>
Failure to attend on time for a pre-arranged booking without reasonable cause	<b>3</b>
Conveying a greater number of passengers than permitted	<b>6</b>
Failure to give reasonable assistance with passenger's luggage	<b>3</b>
Private hire vehicle soliciting for hire or accepting a fare that is not pre-booked	<b>6-10</b>
Operating a vehicle that is not clean and tidy	<b>2</b>
Driving without the consent of the proprietor	<b>5</b>
Drinking or eating in the vehicle whilst carrying passengers	<b>3</b>
Smoking in a licensed vehicle at any time	<b>4</b>
Cause excessive noise from any radio or sound-reproducing equipment	<b>3</b>
Allowing a private hire vehicle to stand in such a position as to suggest that it is plying for hire or using a hackney carriage stand	<b>6</b>
Using a non-hands free mobile telephone whilst driving	<b>4</b>
Failure to advise of a relevant medical condition	<b>6-10</b>
Failure to provide a receipt for a fare when requested	<b>2</b>
Failure to operate the meter from the commencement of the journey and/or charging more than the fixed charge for hire of hackney carriages	<b>6-10</b>
Failure to notify the Council of any amendment to the details of a licence within fourteen days	<b>3</b>
Failure to surrender a driver's licence, badge or plate upon request	<b>6</b>
Failure of a licence holder to disclose pending prosecution or convictions within seven days of notification	<b>6</b>

<b>Breach of policy requirement</b>	<b>Points</b>
Failure to take found property to the Police	<b>3</b>
Failure to report an accident within seventy two hours	<b>3</b>
Failure to comply with the requirements for the safe carrying of a Wheelchair	<b>3</b>
Operating a vehicle which is not maintained in a sound and roadworthy condition	<b>6</b>
Failure to carry an approved fire extinguisher	<b>6-10</b>
Failure to carry an approved first aid kit	<b>3</b>
Operating a vehicle which is not maintained in a clean and/or safe condition internally or externally	<b>3</b>
Modifying a vehicle without the consent of the Council	<b>4</b>
Displaying a sign or advertisement on a licensed vehicle contrary to the Policy requirements or has not been approved by the Council	<b>4</b>
Driving with no insurance or inadequate insurance for the vehicle	<b>10</b>
Failure of a private hire operator to ensure that all vehicles operated by him are adequately insured	<b>6</b>
Any other contravention of the Policy not covered above	<b>2</b>

## Penalty Points Scheme

### 1. The Scheme

- 1.1 Any breach of legislation or the requirements of this Licensing handbook will be fully considered by authorised officers in the Public Health and Regulations and or the Head of Wellbeing, when determining the use of the penalty point system. Where it is decided that the penalty point system is appropriate, the points will be issued in accordance to this appendix. If this appendix allows a range of points for the particular incident, the authorised officer will determine the appropriate number of points proportionate to the offence.
- 1.2 Before penalty points are issued, there must be sufficient evidence to prove, on the balance of probabilities, the offence or breach of licensing requirements. The licence holder will be given the opportunity to provide any mitigating circumstances in writing to be considered. The issuing of penalty points is not a formal sanction in its own right; it is merely an open and transparent method of how a driver will be assessed in terms of the 'fit and proper person' test. The points system is predominantly an internal management tool for ensuring that licence holders who repeatedly contravene regulations and/or this Policy are assessed.
- 1.3 Points issued will be confirmed in writing within ten working days from the discovery of the contravention or the conclusion of an investigation into a complaint.
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- 1.8 The following tables list the breaches of legislation, bye laws and conditions of licence that attract penalty points.

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<b>Points</b>		
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2	Failure to notify vehicle transfer. (Sec.49(1))	5
3	Failure to present vehicle for inspection. (Sec.50(1))	5
4	Failure to inform Authority where the vehicle is stored. (Sec.50(2))	5
5	Failure to report an accident.(Sec.50(3))	5
6	Failure to produce a vehicle licence and insurance certificate.(Sec50(4))	5
7	Failure to wear driver badge.(Sec.54(2))	5
8	Failure by Operator to keep records of bookings.(Sec.56(2))	5
9	Failure by Operator to keep records of vehicles.(Sec.56(3))	5
10	Failure to produce a PH Operators licence.(Sec56(4))	5
11	Making false statement or withholding information to obtain a licence.(Sec.57(2))	5
12	Failure to return vehicle plate after notice given.(Sec.58(2))	5
13	Failure to surrender driver licence after suspension.(Sec.61(2))	5
14	Charging more than the meter fare when HC used as a PH.(Sec.67)	5
15	Unnecessarily prolonging a journey.(Sec.69)	5
16	Obstruction of an authorised officer or constable.(Sec.73(1)(a))	5
17	Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	5
18	Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	5
<b>B Offences under the Transport Act 1980</b>		
<b>Points</b>		
<b>Section</b>		
64 (2) (a)	Driving a vehicle with a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of another word	5
64 (2) (b)	Causes or permits a vehicle to have a sign above its roof which consists or includes the word "taxi" or "cab" whether alone or part of another word.	5
<b>C Conditions of licence</b>		

All breaches of licence conditions shall attract 5 penalty points.

## Hackney Carriage

<b>A Offences under the Local Government (Miscellaneous Provisions) Act 1976</b>		<b>Points</b>
1	Failure to notify vehicle transfer (Sec.49(1))	5
2	Failure to present vehicle for inspection. (Sec.50(1))	5
3	Failure to inform Authority where the vehicle is stored. (Sec.50(2))	5
4	Failure to report an accident.(Sec.50(3))	5
5	Failure to produce a vehicle licence and insurance certificate.(Sec50(4))	5
6	Failure to produce HC driver licence.(Sec.53(3))	5
7	Making false statement or withholding information to obtain a licence.(Sec.57(2))	5
8	Failure to return vehicle plate after notice given.(Sec.58(2))	5
9	Failure to surrender driver licence after suspension.(Sec.61(2))	5
10	Charging more than the fare shown on the meter for a journey ending outside the district without prior agreement	5
11	Charging more than the meter fare when HC used as a PH.(Sec.67)	5
12	Unnecessarily prolonging a journey.(Sec.69)	5
13	Obstruction of an authorised officer or constable.(Sec.73(1)(a))	5
14	Failure to comply with requirement of an authorised officer or constable.(Sec73(1)(b))	5
15	Failure to give information or assistance to an authorised officer or constable.(Sec.73(1)(c))	5
<b>B Offences under the town Police Clauses Act 1847</b>		
<b>Section</b>	<b>Offence</b>	<b>Points</b>
48	Failure by HC Proprietor to hold a copy of HC driver licences of persons who use the vehicle	5
59	Carrying other person than the hirer without consent	5
<b>C Offences under the Byelaws</b>		
All breaches of hackney carriage byelaws shall attract 5 penalty points.		
<b>D Conditions of Licence</b>		



All breaches of licence conditions shall attract 5 penalty points.

#### Equalitys Act 2010

Section	Offence	Points
168	Refusal to carry a guide, hearing, or other assistance dog in a hackney carriage without a valid certificate of exemption	10
168	Charging an additional cost for the carrying of an assistance dog in a hackney carriage	10
170	Refusal to carry a guide, hearing, or other assistance dog in a private hire vehicle without a valid certificate of exemption	10
170	Charging an additional cost for the carrying of an assistance dog in a private hire vehicle	10

#### Hackney Carriage and Private Hire Licensing Policy

Breach of policy requirement	Points
Failure to wear a driver's badge	5
Failure to ensure the safety of passengers	5
Concealing or defacing a vehicle Licence Plate	5
Failure to attend on time for a pre-arranged booking without reasonable cause	5
Conveying a greater number of passengers than permitted	5
Failure to give reasonable assistance with passenger's luggage	5
Private hire vehicle soliciting for hire or accepting a fare that is not pre-booked	5
Operating a vehicle that is not clean and tidy	5
Driving without the consent of the proprietor	5
Drinking or eating in the vehicle whilst carrying passengers	5
Smoking in a licensed vehicle at any time	5
Cause excessive noise from any radio or sound-reproducing equipment	5
Allowing a private hire vehicle to stand in such a position as to suggest that it is plying for hire or using a hackney carriage stand	5
Using a non-hands free mobile telephone whilst driving	5
Failure to advise of a relevant medical condition	5
Failure to provide a receipt for a fare when requested	5
Failure to operate the meter from the commencement of the journey and/or charging more than the fixed charge for hire of hackney carriages	5
Failure to notify the Council of any amendment to the details of a licence within fourteen days	5
Failure to surrender a driver's licence, badge or plate upon request	5

Failure of a licence holder to disclose pending prosecution or convictions within seven days of notification	<b>5</b>
<b>Breach of policy requirement</b>	<b>Points</b>
Failure to take found property to the Police	<b>5</b>
Failure to report an accident within seventy two hours	<b>5</b>
Failure to comply with the requirements for the safe carrying of a Wheelchair	<b>5</b>
Operating a vehicle which is not maintained in a sound and roadworthy condition	<b>5</b>
Failure to carry an approved fire extinguisher	<b>5</b>
Failure to carry an approved first aid kit	<b>5</b>
Operating a vehicle which is not maintained in a clean and/or safe condition internally or externally	<b>5</b>
Modifying a vehicle without the consent of the Council	<b>5</b>
Displaying a sign or advertisement on a licensed vehicle contrary to the Policy requirements or has not been approved by the Council	<b>5</b>
Driving with no insurance or inadequate insurance for the vehicle	<b>10</b>
Failure of a private hire operator to ensure that all vehicles operated by him are adequately insured	<b>5</b>
Any other contravention of the Policy not covered above	<b>5</b>

From: [REDACTED]  
Date: 15 November 2016 at 11:36  
Subject: Re: Fwd: points system  
To: Licensing

hello

i am writing this email in the reply to your email regarding the points system now as far as i am aware all of us hackney drivers did not want the points system in the first place and we all signed a piece of paper each and i am sure you would have it with you along with our signature name and badge number. second thing is that we were never informed or at least i was never emailed, called, texted or a written letter about the points system and the meeting with committee etc. i knew it after the day it happened by word of mouth and you had only one hackney driver present at the meeting. i am totally against the points system.  
kind regards.  
[REDACTED]