

Hackney Carriage and Private Hire Licensing

Illegal plying for hire

1.0 Purpose

1.1 To review the Councils practice relating to the prosecution of suspected offenders.

2.0 What is illegal plying for hire

2.1 Plying for hire is the making provision of a vehicle, with driver, available for immediate hire. It is also known as public hire. Drivers of hackney carriages (taxis) can legally ply for hire, drivers of other vehicles (including private hire vehicles) cannot.

2.2 Illegal plying for hire occurs when a person driving a vehicle other than a licensed hackney carriage takes a fare that is not pre-booked (there are limited exceptions e.g. a bus on a designated route). It is irrelevant whether the driver has or hasn't a licence to drive a hackney carriage as the offence is plying for hire without a (hackney carriage vehicle proprietors) licence.

2.3 The driver of a hackney carriage can only ply for hire in the area in which they are licensed. It is illegal for them to ply for hire outside the area in which they are licensed i.e. the driver of a hackney carriage licensed by North East Derbyshire District Council would be committing an offence should he ply for hire in Sheffield and vice versa.

2.4 Illegal Plying for hire also throws up the possibility of a prosecution for no insurance. The penalty for illegal plying for hire is a maximum £2500. No insurance offences carry a minimum 6 penalty points on a drivers licence.

2.5 Enforcement observations suggest that it is very likely that a large proportion of illegal plying for hire is committed by a relatively small number of drivers. As these drivers can, and do, charge as much as they wish and they can carry out several illegal journeys each night illegal plying for hire can be very profitable for the offender.

3.0 Why is illegal plying for hire a serious offence

3.1 The greatest danger to the public is from vehicles and drivers that hold no licences at all as they will not have undergone any of the usual tests or checks. The drivers may have criminal convictions and their intentions may be solely to engage in serious criminal activity eg sexual offences, robbery against those that get into his vehicle.

3.2 With respect to private hire vehicle drivers, other than the insurance implications of Illegal plying for hire there are other, and some more serious, actual and potential consequences of this activity. These are set out below.

3.3 No legal contract. A person hiring a hackney carriage enters into a contract with the driver of that vehicle. A person booking a private hire vehicle through a licensed operator (as is the legal requirement) enters into a contract with the operator **not the driver**. It is the operator that determines the fare for the journey and is responsible, in the first instance, for resolving any problems that may arise. The lack of any legal contract deprives the passenger of those legal rights afforded to them by a contract and can have the following effects:-

- There is no control over the fare charged and the driver will demand as much as he sees fit. From complaints that have been received it seems that drivers illegally plying for hire usually charge considerably more than those working legally. This is a regular cause of disputes arising between the passengers and drivers, sometimes ending in the abandonment or assault of the passenger.
- Should a problem arise during the journey (and they often do) then there is no recourse other than a complaint to the Police or to the Council Licensing Section. As the investigation of any complaint in these circumstances will of necessity involve the criminal act of plying for hire without a licence then an aggrieved person will be asked to provide a witness statement and has to be prepared to attend court as a witness should a prosecution ensue. Unless they have suffered serious detriment it is unlikely that a passenger in a vehicle illegally plying for hire will be prepared to register a complaint.

3.4 A private hire operator is required to keep detailed records of job bookings and the vehicles dispatched to take the booking. Should a problem arise during a journey that has been properly booked then the Police and/or Licensing have immediate access to those records and will be able to identify the vehicle and driver involved within minutes. Where there is no job booking then there is no record of the journey or of the vehicle and driver involved. It is therefore often very difficult, or just not possible to correctly identify the vehicle and driver after an incident involving a driver illegally plying for hire has occurred.

There is also a difficulty in instances where the driver is not suspected of other offences as drivers are often witnesses to incidents. A driver that is himself committing an illegal act is less likely to come forward as a witness to an incident.

3.5 Most illegal plying for hire occurs at night and when often it can be difficult for the passengers to provide a useful description of either the vehicle or the driver involved. Drivers that do have criminal intentions know that the chances of them being detected are even further reduced.

Offences committed against passengers by licensed drivers in Sheffield are uncommon but in the large majority of cases the offender has picked up the passenger while illegally plying for hire.

3.6 Lost property. The loss of mobile phones, purses etc. in taxis and private hire vehicles is commonplace. The record of drivers working legally is good in terms of drivers identifying passengers to return lost goods to or handing them in to a police station. Complaints from the public about unreturned goods left in vehicles and drive-offs where a driver has taken goods (jewellery, leather jackets etc.) as surety while the passenger goes to fetch money to pay the fare usually relate to journeys that have started with an illegal ply for hire.

- 3.7 The largest problem in Sheffield in recent years has been the large number of North East Derbyshire and Rotherham licensed private hire vehicle drivers illegally plying for hire. In addition to the usual problems there are also problems with them frequently not knowing where they are going. This is known to have been the cause of disputes arising between the driver and passengers and the abandonment of passengers in areas that they do not know and/or assaults.
- 3.8 The other benefit to drivers is that any fare gained is “tax free” as no record is made of this work and it is not traceable. They are also at liberty to charge any fare they desire for this hiring.
- 3.9 The effect on legitimate services and drivers is considerable. The obvious loss is to hackney carriage drivers. Drivers of hackney carriages invest significant amounts of money into purpose built vehicles that are designed to carry in reasonable comfort citizens of and visitors to Sheffield including those that have various forms of disability. These vehicles also have a separate passenger compartment that offers security to both the passenger and the driver. Fares from people that hail them on the street form a significant part of their income. Illegal plying for hire deprives them of income and reduces the incentive for others to invest in such vehicles.
- 3.10 A less obvious, but just as serious, consequence is in relation to properly licensed private hire vehicle drivers that are trying to work legally. Customers book a private hire vehicle through a licensed operator and the operator dispatches a vehicle to undertake the booking. At night in the city centre there is a fair chance that when the (legitimate) driver arrives his fare will have already been picked up by a driver illegally plying for hire. That leaves the legitimate driver with no fare to pick up. This could occur to a private hire vehicle driver several times in any night and as they are only paid for completed journeys a “no pick up” means time and fuel lost for no income. The result is that some drivers will decide to illegally ply for hire themselves and some operators will not accept job bookings in the city centre. The effect on the public is that if they want to hire a private hire vehicle to take them from the city centre at busy times they will have some difficulty doing so and may well decide to flag down a vehicle that is not licensed.
- 3.11 There is a restriction on the number of hackney carriage vehicle licences that Sheffield Council will issue. This has in the past with considerable less numbers of hackney’s formed part of the defence of a driver in some cases.

4.0 Public attitudes

- 4.1 Public attitudes to the dangers of illegal plying for hire are a significant problem. Most will accept that there are risks involved in getting into a vehicle that is not a taxi or a pre-booked private hire vehicle and yet late at night, particularly after visiting a pub or club, many people seem to be prepared to jump into any vehicle that comes their way.

Licensing Officers have, on occasions, intervened to warn unaccompanied women not to get into unlicensed vehicles, unfortunately, the most common response is that they don’t care – they just want to go home, a not uncommon response is abuse.

- 4.2 Some members of the public seem to think that Licensing Officers are on the streets in the early hours of the morning for no purpose other than to prevent them getting home. These can be unhelpful, abusive and on occasions threatening.

- 4.3 Some members of the public seem to think (wrongly) that it is far cheaper to get in a private hire vehicle, illegally plying for hire then to get a hackney carriage.
- 4.4 There have been a number of publicity campaigns to inform the public about safe travel home using taxis and private hire vehicles and of the dangers of getting into unlicensed vehicles. These seem to have had little impact on the problem except for short periods following a serious incident e.g. a sexual assault on a passenger in a vehicle illegally plying for hire.

Officers will, however, continue to take advantage of any opportunities that arise to publicise this issue.

5.0 Enforcement Activity

- 5.1 Enforcement takes on many guises and officers can now use many ways and different types of enforcement.
- 5.2 The best results gained come from the use of covert passengers, these being either Sheffield Licensing Officers or fellow officers from neighbouring Councils who we have good working relationships.
- 5.3 Video and CCTV evidence have been previously used with some affect.

6.0 Financial implications

- 6.1 The cost of enforcement is a necessary cost in relation to the statutory duties of the Council. These costs are recovered through the charging of fees to licensees and applicants for licences.
- 6.2 The costs associated with the securing of a conviction can, and usually are, quite high. If full costs are not awarded to the Council on the securing of a conviction then it is some of the "victims" i.e. those licensed drivers that are trying to work legally that actually pay through the fees that they are charged.
- 6.3 The usually running time for a person who pleads not guilty to this sort of offence from date of offence to hearing date is between six and nine months.
- 6.4 There are no additional costs to the Council arising from this report.

7.0 Consultation

- 7.1 A draft of this report was circulated to representatives of the trades associations at the scheduled consultation meeting 22nd May 2012 of the 3 trades associations and the Principal Licensing Officer.
- 7.2 Any correspondence received in respect of this report is attached.

8.0 Recommendation

8.1 That Members confirm that:

- i) Because of the potentially serious consequences of the offence, offenders will be prosecuted (where there is considered to be sufficient evidence to secure a conviction and it is in the public interest to do so);
- ii) Officers must endeavour to recover the costs of prosecutions from those convicted in order to reduce the financial burden on licensed drivers who work within the law;
- iii) Officer's refer any current licensed drivers to the Licensing Board at the point that there is sufficient evidence for the Officers to submit a file for legal proceedings to be brought against that driver.
- iv) Unless there are exceptional circumstances offenders should expect to have any licences they hold revoked and/or any application for a licence refused.
- v) Councillors' confirm that they deem that this offence is a matter of public safety and any revocation of a licence would be done under Section 52 Road Safety Act 2006, which amends Section 61 of the Local Government (Miscellaneous Provisions) Act 1976. This means any revocation would be with immediate effect.
- vi) The use of officers as covert passengers be endorsed as a method of enforcement, and instruct Chief Licensing Officer to carry on conducting enforcement activity against this illegal activity.
- vi) A copy of this report and the resulting resolution is made available to the Courts when relevant cases are being considered.

Steven Lonnia
Chief Licensing Officer
Licensing Service
12th June 2012

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