



Transport for London
Taxi and Private Hire Enforcement Policy

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Taxi and Private Hire Enforcement Policy

I. Introduction

The Mayor of London in September 2016 set out his vision for the future of the taxi and private hire trades and his determination to drive up standards for the benefits of customer safety and quality service provision in his Taxi and Private Hire Action Plan. This Plan makes clear that the Mayor's wants to see driver safety standards rigorously enforced across both industries and a greater intensity of enforcement and compliance activity across the capital.

To deliver the Mayor's vision, TfL has recruited 250 on-street Compliance Officers. Additional officers are already providing widespread coverage across the capital, around the clock, with regular high visibility patrols at key locations - identified as hot spots for non-compliance by taxi and private hire trade representatives - such as Heathrow, King's Cross St Pancras, Paddington and the West End.

TfL has also reviewed how non-compliance is best addressed and listened to the calls from the taxi and private hire trades to strengthen its approach to illegal and non-compliant activity. This policy statement is one result of that review and contributes to the Mayor's commitment to rigorous enforcement of taxi and private hire offences and to bring greater transparency to enforcement and compliance activity.

The legislation and regulations governing taxi and private hire industries in London creates a number of offences. TfL will make greater use of its existing powers to take enforcement action against a wider range of offences by taking a proactive, hard-hitting approach to non-compliance. TfL will improve customer confidence and public safety, which in turn will support the law-abiding taxi and private hire industry to thrive.

This document sets out TfL's enforcement policy for the taxi and private hire industry. It describes how we will approach enforcement activity including how enforcement will be robust, fair, consistent, proportionate, timely and effective. Our policy is to make greater use of existing powers for prosecution of taxi and private hire offences, in order to:

- i. Ensure the safety of taxi and private hire passengers in London
- ii. Enhance public confidence in the taxi and private hire trade
- iii. Promote accessible and inclusive travel through compliance with Equalities legislation
- iv. Promote compliance with taxi and private hire legislation and regulations
- v. Provide an effective deterrent to non-compliant and illegal taxi and private hire activity
- vi. Highlight the consequences of non-compliant and illegal activity through publicising penalties and sanctions, amplifying the deterrent effect

The procedure contained in this policy provides guidance to TfL staff in deciding the appropriate course of action to take. It will also support Customers and their legal advisers understand the enforcement approach being taken where appropriate.

2. Guiding Principles to Enforcement Decisions

Each case is unique and will be considered on its own facts and merits. However, these guiding principles will inform the way in which TfL officers approach each case.

TfL staff will be fair and objective. They will not let personal views about ethnic origin, gender, religion, political beliefs, sexual orientation or age play any part in the consideration of any matter. They will not be affected by improper or undue influence.

TfL will ensure that the right offender is identified and given an opportunity to provide mitigations or explanations.

TfL will review, provide advice and prosecute cases when a decision to prosecute has been made. It will seek to rely on relevant and admissible evidence, having regard to matters of disclosure, in accordance with the provisions of the Criminal Procedure and Investigations Act 1996 and the Attorney General's Guidelines on disclosure of evidential materials.

TfL is bound by the provisions of the Human Rights Act 1998 and will have regard to the principles of the European Convention on Human Rights in accordance with the Act.

TfL will comply with the Data Protection Act 1998 and the GDPR in relation to all aspects of investigations and prosecutions. Personal data will not be disclosed to third parties except in accordance with the provisions of the Act.

TfL recognises that the decision to prosecute is a serious one and will ensure all relevant mitigating factors are taken into consideration before any decision to prosecute is taken.

TfL may share details of offenders with licensing authorities for intelligence against persistent offenders.

3. Our approach

When TfL receives a report from a customer or compliance officer that an offence may have been committed, this will be investigated and the most appropriate course of action will be taken in accordance with this policy document. Evidence gathered will be reviewed by a trained, specialist team, based in TfL's Compliance, Policing and On-street Operations Directorate. This method provides an independent review of the evidence before a decision

is made. The evidence review will be undertaken in a timely fashion and the outcome of the evidential review will be a decision of:

- no further action (no offence committed, insufficient evidence or not in the public interest to proceed)
- warning *in lieu* of prosecution
- Fixed Penalty Notice
- Prosecution
- Referral to the Licensing Authority with a recommendation to conduct a Licensing Review.
- Or a combination of the above.

When determining the appropriate outcome, TfL will consider factors such as the seriousness of the offence, previous history and whether it was a first time offence. For the vast majority of first time offenders suspected of less serious offences the likely outcome will be a warning (or training) if they admit the offence. A tougher stance will be taken on repeat offenders and those offences that TfL consider to have serious public safety implications. Any action taken against a licence holder will be noted on the licensing record. A more serious view will be taken if an offender is unlicensed at the time of the offence.

All decisions will be subject to audit or inspection at any time by TfL's legal department and will follow any guidance, advice or instruction from TfL's in-house lawyers.

As set out in the Mayor's Taxi and Private Hire Action Plan, TfL is lobbying for powers to offer Fixed Penalty Notices (FPNs) in lieu of prosecution for a number of additional common offences. Failure to pay an FPN may result in prosecution. If additional FPN issuing powers are formally authorised by the Secretary of State for Transport, it will support TfL's overall position that the costs of non-compliance should fall fully on offenders.

As the Licensing Authority TfL also has the power to consider whether to take regulatory action against a licence holder with regard to the question of whether the individual is fit and proper to hold a licence. Applicants for a licence may be refused if considered not fit and proper to hold such a licence. Regulatory action is separate and distinct from the decision to prosecute and both of these options may be considered either in parallel or sequentially, depending on the circumstances of each case. For example, TfL will prosecute a licensed driver found touting, and the Licensing Authority will revoke that driver's licence upon their conviction unless exceptional circumstances are put forward and agreed by the Licensing Authority.

The list of offences where prosecution will be considered can be found at Appendix A. **This is not an exhaustive list and TfL may decide to revise this list at any time.**

4. Transparency

Aggregated data of action taken by TfL will be published on a quarterly basis. This data will not include the name of any licence holder who has had enforcement action taken against them.

Upon conviction of a criminal offence following enforcement action being taken there will be a presumption of naming that Operator in any publication on public interest grounds. There may be exceptional circumstances in which it is not appropriate to name a PHV Operator and this will be decided on a case-by-case basis.

Taxi and Private Hire Prosecutions Procedure

5. Decision to Prosecute

The decision to prosecute an offence is an important and serious one and TfL will only prosecute if:

- a) The evidence shows that there is a realistic prospect of conviction; and
- b) It would be in the public interest and in the interest of justice

The Evidential Test

In deciding whether there is a realistic prospect of conviction, TfL will have regard to the following:

- a) Relevance and admissibility of available evidence.
- b) Reliability of evidence relating to the offence.
- c) Reliability of any observation or comment made by the alleged offender.
- d) Reliability of any admissions and confessions including comments recorded by TfL.
- e) Reliability of Prosecution Witnesses.

Public Interest and Interest of Justice

Even where the evidential test has been satisfied, the prosecution of an alleged offence must be in the public interest and in the interests of justice, i.e. must be seen to be appropriate, fair and properly brought. There can be no definitive guidance as to when it may not be in public interest or in the interest of justice to prosecute an alleged offence, as each case will turn on its own individual factors.

6. Prosecution Decision Criteria

TfL will have regard to the following factors in support of a decision to prosecute:

- a) The offender has committed a specified offence.
- b) The offender has a previous conviction, warning or licensing action for a specified or relevant offence.

- c) The offender has committed an offence of a serious nature or one in which the impact upon the general public is considered higher.
- d) The offender has committed any public safety offence.
- e) The offender has threatened, abused or assaulted a member of staff or a person or agency acting for and on behalf of TfL.

TfL will have regard to the following factors against prosecution:

- a) Insufficient evidence.
- b) Where there has been a genuine mistake of fact.
- c) Where, owing to circumstances beyond the offender's control, commission of the offence was unavoidable.
- d) Where a medical report provided by a specialist indicates that a prevailing medical condition may have contributed to the commission of the offence.
- e) If the offender has previously been prosecuted successfully but continued to offend (in such cases a referral to the licensing authority for regulatory action may be more appropriate)

TfL will have regard to the following factors in the decision to discontinue proceedings:

- a) New and compelling evidence which is likely to undermine the Prosecution's case or assist the Defendant's case
- b) Where the continuance of proceedings is likely to lead to an abuse of the process of the courts.
- c) Where continued proceedings are likely to be deemed malicious or prejudicial to TfL's interest.
- d) Where regulatory action has already been taken with regard to the same offence by the licensing authority.

In no circumstances should a case be withdrawn for the purposes of seeking payment in lieu of prosecution. In cases where proceedings have already been commenced but withdrawn due to late evidence or information provided by the Defendant, TfL may seek to recover the wasted costs incurred. Costs in these circumstances may be agreed between parties and ratified by the court.

7. Alternative Disposal

Where an alleged offender admits to committing an offence; TfL may also, in appropriate cases, dispose of any matter by way of a *Warning in lieu* of prosecution. What is deemed to be appropriate will be decided on a case-by-case basis taking into account all circumstances, including the seriousness of the offence, whether previous warnings or sanctions issued and relevant TfL guidelines.

Warnings may be offered and issued *in lieu* of a prosecution. If a Warning offer is rejected by an alleged offender, TfL reserves the right to consider prosecution.

Warnings will be held on TfL records in line with TfL's data retention policy and will be taken into account in the case of re-offending or future regulatory misconduct.

8. Enquiry Letters

When considering prosecution, TfL may send an Enquiry Letter to all those suspected of an offence. The Enquiry Letter invites the alleged offender to provide an explanation under caution for the alleged offence or to provide any comments about the alleged incident.

Any explanation/comments given by the alleged offender will be taken into account before deciding to prosecute.

The alleged offender will have a period of 14 days in which to respond to the Enquiry Letter.

9. Investigations

TfL Taxi and Private Hire authorised on-street Compliance Officers and Investigators will 'caution' any suspect in accordance with the Police and Criminal Evidence Act 1984 (PACE), where questions put to the suspect are likely to result in admissions or confessions prejudicial to the suspect's case.

Please note that questions merely establishing facts and relating only to a suspect's identity, address, occupation or licence are unlikely to trigger a caution within the meaning of PACE.

In administering the caution to a suspect, the TfL Taxi and Private Hire Compliance Officer will read out the caution, and ensure that the suspect understands. Any reply to the caution must be recorded in the Compliance Officer's notebook or any other recording medium used for this purpose. For every investigative interview, TfL will also advise the suspect that he is entitled to independent legal advice not provided by TfL and that if the option is taken; another interview date will be fixed.

Any interviews will be conducted with due regard to Code C of the Code of Practice to the Police and Criminal Evidence Act 1984 (PACE).

This policy is evidence of TfL's commitment to the Regulators Code and our compliance with the principles of good enforcement set out in the Enforcement Concordat and we will endeavour to abide by these guidelines and good practice.

10. Disclosure

TfL will have regard to the Criminal Procedure and Investigations Act 1996, as amended by the Criminal Justice Act 2003 and the associated Code of Practice in the disclosure of prosecution materials.

TfL Prosecutors will endeavour to retain and preserve all evidence that may be relevant to a prosecution, whether or not that evidence is to form part of the prosecution case.

TfL will adopt a consistent approach to disclosing prosecution materials in advance of any hearing and in any event in accordance with the Criminal Procedure Rules whether being heard in a Magistrates' Court or Crown Court.

11. Owner/Custodian

This policy is sponsored and owned by the TfL Director of Compliance, Policing and On-street operations.

12. Policy Review

This policy will be reviewed periodically to reflect any changes in the law, regulations, or any other TfL policies. Any amendments will be reflected in the policy and published as appropriate.

A copy of this policy will be published on the TfL website

Appendix A – List of Offences

This list of offences includes those that are already prosecuted by TfL (e.g. touting or plying for hire, driver refusing an assistance dog); public safety offences and offences where the trade has asked TfL to take more robust action. It is not an exhaustive list and may be subject to change.

Act/Instrument	Enactment	Description of offence	Justification
Criminal Justice & Public Order Act 1994	Section 167(1)	Touting	Public safety
Equality Act 2010	Section 165(1)	Hackney Carriage (TAXI) driver refusing/charging more/failing to carry safely, a passenger in wheelchair or a person who is accompanied by a person in a wheelchair	Accessibility
Equality Act 2010	Section 165(2)	Private Hire Driver (PHD) refusing/charging more/failing to carry safely, a passenger in wheelchair or a person who is accompanied by a person in a wheelchair	Accessibility
Equality Act 2010	Section 168(2)(a)	Hackney Carriage (TAXI) driver refusing or failing to carry an assistance dog	Accessibility
Equality Act 2010	Section 168(2)(b)	Hackney Carriage (TAXI) driver charging more to carry an assistance dog	Accessibility
Equality Act 2010	Section 170(1)	PHO refusing to accept a PH booking to carry an assistance dog	Accessibility
Equality Act 2010	Section 170(2)	PHO charges more for assistance dog	Accessibility
Equality Act 2010	Section 170(3)	PHD refusing or failing to carry an assistance dog	Accessibility
London Cab Order 1934	Article 15	Withholding relevant information to obtain a licence (TAXI)	Public safety
London Cab Order 1934	Article 21	Fail to return expired TAXI licence	Regulatory

Act/Instrument	Enactment	Description of offence	Justification
London Cab Order 1934	Article 28	Failing to produce/carry Copy Licence - Hackney Carriage (TAXI)	Public safety
London Cab Order 1934 (as amended by The London Cab Order 2012)	Article 28A(a)	Hackney Carriage (TAXI) Failing to display identifiers	Public safety
London Cab Order 1934	Article 29(1)	Fail to retain or preserve TAXI driver's licence appropriately, or to inform TfL of loss/damage	Regulatory
London Cab Order 1934	Article 29(2)	Fail to return TAXI driver's licence	Regulatory
London Cab Order 1934	Article 31(1)(ii)	Hackney Carriage (TAXI) Plying outside area	Public safety
London Cab Order 1934	Article 33(1)	Hackney Carriage (TAXI) Carrying excess passengers	Public safety
London Hackney Carriage Act 1831	Section 35	Hackney Carriage (TAXI) refusal to accept hiring	Public safety
London Hackney Carriage Act 1843	Section 17	Hackney Carriage (TAXI) driver failing to produce badge	Public safety
London Hackney Carriage Act 1843	Section 17	Hackney Carriage (TAXI) driver failing to wear badge	Public safety
London Hackney Carriage Act 1843	Section 28	Misbehaviour by insulting language or gesture (TAXI)	Public safety
London Hackney Carriage Act 1843	Section 33	Hackney Carriage (TAXI) loitering / wilful misbehaviour / obstruction	Roads reliability
London Hackney Carriage Act 1843	Section 33	Hackney Carriage (TAXI) Plying for hire elsewhere	Trade request
London Hackney Carriage Act 1853	Section 17(3)	Licensed driver (TAXI) plying for hire with unfit vehicle	Public safety
Metropolitan Public Carriage Act 1869	Section 7	Unlicensed Hackney Carriage (TAXI)	Public safety

Act/Instrument	Enactment	Description of offence	Justification
Metropolitan Public Carriage Act 1869	Section 7	Unattended/parked on a rank (PH)	Trade request
Metropolitan Public Carriage Act 1869	Section 7	Plying for hire in an unlicensed hackney carriage	Public safety
Metropolitan Public Carriage Act 1869	Section 8(2)	Unlicensed Hackney Carriage (TAXI) Driver	Public safety
Metropolitan Public Carriage Act 1869	Section 8(2)	Hackney Carriage (TAXI) Driver plying for hire outside area	Public safety
Private Hire Vehicles (London) Act 1998	Section 2(1)	Accepting bookings without an operators licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(1)	Accepting PH bookings at premises not specified on an operators licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(2)(a)	Licensed PH operator using unlicensed PH driver	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(2)(b)	Licensed PH operator using unlicensed Taxi driver	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(3)(a)	Failing to display PHO licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(3)(b)	Failing to keep booking records	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(3)(c)	Failed to record particulars of the booking before commencement	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(3)(d)	Failing to keep driver and vehicle records	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(3)(e)	Fail to produce records for inspection	Public safety
Private Hire Vehicles (London) Act 1998	Section 4(4)	Fail to preserve records	Public safety

Act/Instrument	Enactment	Description of offence	Justification
Private Hire Vehicles (London) Act 1998	Section 6(1)	Unlicensed PH Vehicle	Public safety
Private Hire Vehicles (London) Act 1998	Section 6(1)	Unlicensed PH Vehicle	Public safety
Private Hire Vehicles (London) Act 1998	Section 10(2)	PHD and/or PHO Failing to display PHV disc/plate	Public safety
Private Hire Vehicles (London) Act 1998	Section 10(2)	PH Vehicle Owner Failing to display PHV disc/plate	Public safety
Private Hire Vehicles (London) Act 1998	Section 12(1)	Unlicensed PH Driver	Public safety
Private Hire Vehicles (London) Act 1998	Section 12(1)	Unlicensed PH Driver	Public safety
Private Hire Vehicles (London) Act 1998	Section 14(3)	PHD failing to wear badge	Public safety
Private Hire Vehicles (London) Act 1998	Section 21(1)	Failing to produce PHD licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 21(1)	Failing to produce PHO licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 21(2)(a)	Failing to produce PHV licence	Public safety
Private Hire Vehicles (London) Act 1998	Section 21(2)(b)	Failing to produce PHV insurance	Public safety
Private Hire Vehicles (London) Act 1998	Section 22(1)	Fail to return PH Operator's Licence on expiry or revocation	Public safety
Private Hire Vehicles (London) Act 1998	Section 22(2)	Fail to return PH Vehicle Licence on expiry or revocation	Public safety
Private Hire Vehicles (London) Act 1998	Section 22(3)	Fail to return PH Driver's licence on expiry or revocation	Public safety

Act/Instrument	Enactment	Description of offence	Justification
Private Hire Vehicles (London) Act 1998	Section 22(4)	Returning PH licences on suspension	Public safety
Private Hire Vehicles (London) Act 1998	Section 27(1)	Obstruction of an authorised officer (Wilful Obstruction - PH)	Staff safety
Private Hire Vehicles (London) Act 1998	Section 27(2)	Obstruction of an authorised officer (Fail to comply/assist by providing info/assistance - PH)	Regulatory
Private Hire Vehicles (London) Act 1998	Section 27(3)	Obstruction of an authorised officer (False statement - PH)	Regulatory
Private Hire Vehicles (London) Act 1998	Section 30(3)	Prohibited Signage	Trade request
Private Hire Vehicles (London) Act 1998	Section 31	Prohibited Advertisements	Trade request
Regulations for Enforcing Order at Cab Standings in the Metropolitan Police District 1963 <i>By Virtue of S.4 of The London Hackney Carriages Act 1850</i>	Regulation 1	Unattended on a rank Hackney Carriage (TAXI)	Trade request
Road Traffic Act 1998	Section 143	Using a vehicle with no hire and reward insurance	Public Safety