

MEETING:	REGULATORY SUB COMMITTEE
DATE:	25 APRIL 2013
TITLE OF REPORT:	FITNESS OF VEHICLE H088 FOLLOWING VOSA INSPECTION – CARRYING OVER 8 PASSENGERS – AND REVIEW OF PENALTY POINTS
PORTFOLIO AREA:	LICENSING - ENVIRONMENTAL HEALTH AND TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To determine if the proprietor and vehicle remain suitable to be licensed.

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT Committee:

- (a) Issue 4 further Penalty Points for making alterations to the vehicle without consent (adding a seat into vehicle);**
- (b) and issue a final warning, that if the vehicle is found to be defective or altered in the future the licence will be revoked and the vehicle will not be able to be licensed in Herefordshire in the future;**
- (c) and issue a final warning, that if further Penalty Points are issued the matter will be referred back to Members who will consider revocation of the licence.**

Key Points Summary

- Vehicle proprietor is Lyndsay Oakley-Davies
- Inspections carried out by VOSA and West Mercia.
- The vehicle had nine passenger seats in it.

Further information on the subject of this report is available from
Claire Corfield Licensing Manager 01432 383324

- 18 penalty points issued for breaches identified during vehicle inspection.
- Further consideration regarding the fitness of the proprietor to retain the licence.
- 4 further points issued for altering the vehicle without consent.
- The matter was deferred from the 26 March 2013 meeting for clarification.

Alternative Options

- 1 **Revoke the vehicle licence – Advantages – ensures compliance with the statutory requirement to only licence vehicle up to 8 passenger seats. Disadvantages – the proprietor could Appeal the decision to revoke.**

Suspend the vehicle licence as the proprietor has accrued more than the permissible penalty points.

Defer the decision – Advantages – will allow further information to be supplied if it is deemed necessary. Disadvantages – further delays the decision

Reasons for Recommendations

- 2 The recommendation has been made as the proprietor claims he was unaware of the additional seat being put into the vehicle. Mr Oakley-Davies further added that the additional seat had been added at the request of the school and made directly to the driver. The penalty points were accrued on one occasion when the vehicle was inspected following the VOSA failure, most of the points issued were for not having the hackney appropriately fitted out with meter etc, this does not affect the safety of the vehicle.

Background Information

- 3 The vehicle is owned by Lindsay Oakley-Davies and has been owned by him since January 2009.

VOSA and West Mercia undertook a joint vehicle check at Blackmarsden School on 6/3/2013. During the inspection a number of vehicles were found to have defects or other problems. H088 CN51 EYG was found to be carrying **nine** passengers. The legislation only allows the Local Authority to licence vehicle up to **eight** passengers. The test certificates were inspected and at the time of inspection, the vehicle only contained **eight** passenger seats.

The vehicle was requested to be presented at Bath Street Offices for inspection. The vehicle was driven in by Lee Perkins. The vehicle was found to have **eight** passenger seats and the driver confirmed that sometimes there is an extra seat put in and indicated the two positions where it can be located.

Mr Oakley-Davies was telephoned following the inspection and he indicated that his investigation of the matter found that the additional seat had been requested by the school to accommodate one more passenger, the driver was not the normal driver and agreed to this being done, Mr Oakley-Davies was unaware of this request.

Following the inspection a number of other matters were identified and are listed:-

No meter
No roof sign
No door signs

No tariff sheet displayed

Plate not affixed to rear of vehicle but displayed in back window

The passenger step was rusty and fixed in the closed position. The driver did manage to get the step out but it was very difficult to do so.

The above matters were requested to be rectified as soon as possible and accumulated 18 penalty points. A further 4 points are recommended which will mean the proprietor has accrued 22 points which is over his allowed points of 12 plus 1 for each additional vehicle = 16 owned by Mr Oakley-Davies.

Due to the fact that the vehicle is being used for transporting children, it was felt that the matter was serious and warranted a referral to Regulatory Sub Committee for determination.

The matter was deferred from the last meeting on 26 March 2013 as the Members wanted clarity on the Penalty Points issued.

Key Considerations

- 4 On the balance of probabilities, is the vehicle proprietor able to retain the licence and maintain control of the vehicle. Is there a risk that he will once again add extra seating in the licensed vehicles?

Community Impact

- 5 Mr Oakley-Davies operates four other licensed vehicles 3 are 8 seaters and 1 car. His company undertakes a number of school and other contracts for the Council therefore drives some of the County's most vulnerable people around on school taxi contracts and bus runs. The most recent VOSA and Police inspection was carried out at Blackmarsden School.

Financial Implications

- 6 There are no financial implications for the Council only for the vehicle proprietor.

Legal Implications

- 7 The maximum number of passengers that can be carried in a vehicle for it to be capable of being licensed as a hackney carriage is 8. Any vehicle which carries more than 8 is classified as a public service vehicle (PSV) under the Public Passenger Vehicles Act 1981.

S60 (1) of the TPCA 1847 states

- 8 A district Council may suspend or revoke a vehicle licence on the following grounds:-
 - b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the proprietor or driver; or
 - c) any other reasonable cause

Risk Management

- 9 There is a reputational risk to the Council as it awards contracts for transport services, which covers school transport. If the vehicles are not licensed or are not operated within the Regulations the insurance will be voided and the passengers will be travelling without any cover. A claim could be made against the Council if the vehicle was not adequately insured

defective or not operated within the statutory requirements.

Consultees

10 Not applicable

Appendices

11 Copy of West Mercia e-mail

Background Papers

- None identified.