

Report for: ACTION
Item Number:



Contains Confidential or Exempt Information	Part 1 Excluding Appendix B which is Part II – not for publication by virtue of Paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972
Title	Amending RBWM’s Hackney Carriage and Private Hire Penalty Points System
Responsible Officer(s)	Craig Miller - Community Protection and Enforcement Lead
Contact officer, job title and phone number	Steve Johnson – Enforcement Principal 01628 683555
Member reporting	Cllr Asghar Majeed
For Consideration By	Licensing Panel
Date to be Considered	31 st July 2014
Implementation Date if Not Called In	October 2014
Affected Wards	All
Keywords/Index	Taxi; Hackney Carriage; Private Hire; Penalty Points

Report Summary

This report is concerned with a proposed amendment to RBWM’s Penalty Points System for Hackney Carriage and Private Hire drivers.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
Members are being asked to authorise consultation only at this stage – but if eventually adopted the proposed amendment would increase the safety and wellbeing of the public, as well as improving the ‘street scene’ environment and transport flow across the Borough.	October 2014 - if the proposed amendment is approved.

1. Details of Recommendations

RECOMMENDATION:

That members give authority to the Community Protection and Enforcement Lead to consult with the trade about adding waiting, other than on a Hackney Carriage rank, to the list of infringements covered by the Penalty Points System – and to make other necessary amendments to the System. A report on the results of the consultation will come before the next Panel.

2. Reason for Recommendation and Options Considered

- 2.1 RBWM's Policies and Conditions for Hackney Carriage and Private Hire drivers both include a Penalty Points System, intended to provide an effective enforcement process for Licensing Officers in respect of drivers who are found to be in breach of conditions such as failing to display the vehicle identification plate, failing to notify the Licensing Officer of being involved in an accident, and so forth. Drivers who accrue a total of 12 penalty points are referred to the Licensing Panel to decide whether the driver should continue to be licensed. A copy of the current infringements covered by the System is attached as Appendix A
- 2.2 In recent months there have been issues with, primarily, Hackney Carriages over-ranking and illegally parking. This has occurred in and around both Windsor & Maidenhead town centres. Complaints have been received from residents and those representing businesses in the areas concerned.
- 2.3 Particular complaints have been received about too many Hackney Carriages being parked on the rank in Thames Street, Windsor which is designed to hold approximately 9 vehicles. Earlier this year the traffic regulation order for this area was re-drafted so as to introduce a loading ban. This means that the Borough's civil enforcement officers can now issue fixed penalty notices to those drivers who are parking on double yellow lines rather than on the rank, something which had previously provided practical difficulties.
- 2.4 In addition, RBWM's byelaws provide that vehicles arriving at a rank which is fully occupied should move on to another rank. However, the current penalty for a breach would be a prosecution. This is unwieldy and disproportionate for the offence.
- 2.5 At a Licensing Panel earlier this year members discussed a report that recommended that the Penalty Points System should be updated to include parking breaches (which are not currently included) so that Licensing Officers can have the option to give penalty points on the spot for that type of breach.
- 2.6 Members authorised consultation on that proposed change - and a consultation process was indeed commenced.

- 2.7 However, subsequent legal advice was obtained on the current wording of the overall Penalty Points System – and that advice recommended a revision of the policy in a number of aspects. That legal advice is attached as a Part II document at Appendix B (confidential - although the authoring counsel has given his permission for it to be shared with Members) and the recommended revisions are set out in Paragraph 8 of the advice note.
- 2.8 Appendix C contains a draft of the proposed revised Penalty Points System, taking into account this legal advice.
- 2.9 Members will see also that Paragraph 9 of the advice note recommends that the revisions should be consulted upon before adoption – hence the wording of the Recommendation above.

Option	Comments
1. Carry out the Recommendation	Consultation is the first step towards giving Licensing Officers an additional tool by which to ensure that Hackney Carriage and Private Hire vehicles within the Borough do not park illegally or without care.
2. Do nothing	This would leave matters as they currently are, with Licensing Officers having no real ability to deal with the issue of illegally or carelessly parked Hackney Carriage or Private Hire vehicles.

3. Key Implications

What does success look like, how is it measured, what are the stretch targets

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
A sufficient level of feedback received from the Hackney Carriage and Private Hire trade	0% - 24% of Hackney Carriage and Private Hire traders respond to the consultation	25% - 49% of Hackney Carriage and Private Hire traders respond to the consultation	50 – 90% of Hackney Carriage and Private Hire traders respond to the consultation	91% – 100% of Hackney Carriage and Private Hire traders respond to the consultation	October 2014 – the matter will be reported back to the next Licensing panel in October 2014

4. Financial Details

None

5. Legal Implications

Conditions can be attached to vehicle licenses by virtue of Sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976. Hackney Carriage drivers have special bylaws to govern their behaviour and Private Hire drivers can have conditions imposed under Section 51.

6. Value for Money

Not relevant at this stage.

7. Sustainability Impact Appraisal

None

8. Risk Management

Identify any potential risks associated with the options and the proposed course of action. If none, say so.

Risks	Uncontrolled Risk	Controls	Controlled Risk
Judicial Review or appeal conditions	The proposed policy could be judicially reviewed or challenged by way of individual appeals to the magistrates court	The process in determining the policies is considered fair and reasonable and balances the needs of the applicants with the duty to protect the public	Medium

9. Links to Strategic Objectives

This links to work for safer and stronger communities. Having clear, strong and fair conditions means that the travelling public will be safe and secure, and that transport flow across the Borough will be improved.

Our Strategic Objectives are:

Residents First

- Support Children and Young People
- Encourage Healthy People and Lifestyles
- Improve the Environment, Economy and Transport
- Work for safer and stronger communities

Value for Money

- Deliver Economic Services
- Improve the use of technology
- Increase non-Council Tax Revenue
- Invest in the future

Delivering Together

- Enhanced Customer Services
- Deliver Effective Services
- Strengthen Partnerships

Equipping Ourselves for the Future

- Equipping Our Workforce
- Developing Our systems and Structures
- Changing Our Culture

10. Equalities, Human Rights and Community Cohesion

A full EQIA is not anticipated at this stage.

11. Staffing/Workforce and Accommodation implications:

None

12. Property and Assets

None

13. Any other implications:

None

14. Consultation

Authority for consultation is being sought at this stage.

15. Timetable for Implementation

It is envisaged that the results of the consultation will be reported back to the October 2014 Licensing Panel for Members to consider.

16. Appendices

Appendix A	The current RBWM Penalty Points System
Appendix B	Legal Advice (Confidential)
Appendix C	Proposed new RBWM Penalty Points System

17. Background Information

Sections 47, 48 & 51 Local Government (Miscellaneous Provisions) Act 1976

18. Consultation (Mandatory)

Name of Consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Burbage	Leader of the Council	28/07/2014	28/07/2014	
Cllr Cox	Lead Member	21/07/2014	24/07/2014	
Cllr Majeed	Licensing Panel Chairman	21/07/2014	25/07/2014	
Cathryn James	Strategic Director of Operations	21/07/2014		
Roxana Khakinia	Shared Legal Services	23/07/2014	28/07/2014	

Report History

Decision type:	Urgency item?
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Non-key decision	No
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Full name of report author	Job title	Full contact no:
Steve Johnson	Enforcement Principal	01628 683555

APPENDIX A

PENALTY POINTS SYSTEM

The introduction of the Penalty Points System is to provide an effective enforcement process for Licensing Officers in respect of Hackney Carriage and Private Hire Driver and Vehicle Licence holders, as well as Private Hire Operators who are found to be in breach of local or national conditions and policies relating to the licensing functions.

The emphasis of the Penalty Points System is to increase and ensure the safety and wellbeing of members of the public as well as compliance with legal requirements.

The system is only intended to ensure compliance by those licence holders who it is **proved** have breached or are in breach of the rules and regulations that they should be complying with.

The system operates in line with penalty points endorsed on a driving licence and that where **12** unspent penalty points are accumulated this will result in automatic referral to the Licensing Panel.

Where a referral is made to the Licensing Panel, it will be that Panel's decision on what further action if any should be taken.

Where penalty points are administered by a Licensing Officer and the licence holder wishes to dispute the matter, the licence holder may request for the matter to be referred to the Council's Appeals Panel.

Any licence holder has the right to appeal against a Licensing Panel decision to the Magistrates Court within **21** days of notification of the Panel's decision.

Failing to have a Private Hire Driver or Hackney Carriage Driver badge in his possession	3 Points
Not having a fire extinguisher and/or first aid kit	3 Points
A vehicle issued with Dispensation and not having the plate in the vehicle or the Dispensation Certificate in the vehicle	3 Points
Failing to notify the Licensing Officer of any points or conviction being imposed by the Courts	3 Points
Failing to notify a change of address within 7 days	3 Points
Driving an unlicensed vehicle as a Private Hire Vehicle	6 Points
Failing to renew Private Hire Driver Licence or Private Hire Vehicle Licence within the correct time	6 Points
Unlawfully plying for hire in a Private Hire Vehicle	3 Points
Failing to display an identity plate on the vehicle	3 Points
Failing to notify the Licensing Officer of being involved in an accident	3 Points
Private Hire Operators failing to notify the Licensing Officer of any complaints received	3 Points
Failing to attend the Town Hall when direct by the Licensing Officer	Licence to be suspended until licence holder attends as required
Allowing more passengers to be carried in the vehicle than authorised by the Private Hire Vehicle Licence	6 Points

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Penalty points become spent 12 months from the date of being administered.

Licensing Officers reserve the right to refer cases straight to a Licensing Panel, rather than imposing points, where they consider the seriousness of the case merits doing so.

Where a referral is made to the Licensing Panel, it will be that Panel's decision on what further action if any should be taken – such action could include the suspension or revocation of the licence.

The Licensing Panel will allow the licence holder the opportunity to challenge the imposition of individual sets of penalty points.

Where penalty points are administered by a Licensing Officer and the licence holder wishes to dispute the matter, the licence holder may request for the matter to be referred to the Council's Appeals Panel.

Such an appeal must be submitted to the Council in writing, stating the grounds for appeal, within 21 days of administration of the penalty points.

Any licence holder also has the right to appeal against a Licensing Panel or Appeals Panel decision to the Magistrates Court within 21 days of notification of the decision.

Failing to have a Private Hire driver or Hackney Carriage driver badge in his possession	3 Points
Not having a fire extinguisher and/or first aid kit in the vehicle	3 Points
A vehicle issued with dispensation and not having the plate in the vehicle or the dispensation certificate in the vehicle	3 points

Failing to notify the Licensing Officer of any points or convictions being imposed by the Courts	3 Points
Failing to notify a change of address within 7 days	3 Points
Driving an unlicensed vehicle as a Private Hire vehicle	6 Points
Allowing an unlicensed driver to drive a Private Hire vehicle	6 Points
Failing to renew a Hackney Carriage or Private Hire Vehicle drivers licence or vehicle licence within the correct time (unless extenuating circumstances apply)	3 Points
Unlawfully plying for hire in a Private Hire Vehicle	Referral to Licensing Panel to consider revocation of licence
Failing to display an identify plate on the vehicle	3 Points
Failing to notify the Licensing Officer of being involved in an accident	3 Points
Private Hire operators failing to notify the Licensing Officer of any complaints received	3 Points
Private Hire operators failing to maintain their records in the correct format	3 Points
Failing to attend the Town Hall when directed by the Licensing Officer	Referral to Licensing Panel to consider revocation of licence
Allowing more passengers to be carried in the vehicle than authorised by the private hire vehicle licence	6 points
A vehicle waiting other than on a Hackney Carriage or Private Hire rank (as appropriate).	3 points