

Title: Dealing with Non-Use of Taximeters by Hackney Carriage Drivers Contains Confidential or Exempt Information?: NO - Part I
Member reporting: Councillor Grey, Licensing Panel Chair
Meeting and Date: Licencing Panel 16 January 2017
Responsible Officer(s): Simon Fletcher, Strategic Director of Operations & Customer Services. Craig Miller, Head of Community Protection & Enforcement Services
Wards affected: All

REPORT SUMMARY

1. RBWM hackney carriage drivers are legally permitted to take a fare starting within but ending outside the Borough without using the taximeter as long as a set fee is agreed with the customer at the start of the journey.
2. Fares starting and ending within RBWM can also be conducted without using the taximeter, but in these cases it is illegal for the driver to charge more than would have been charged had the meter have been used.
3. Complaints have been received indicating that some hackney carriage drivers are going "off meter" within the Borough to deliberately overcharge the customer
4. Licensing officers have the power to impose penalty points on a hackney carriage driver for a range of infringements.
5. This report seeks to add to this list of infringements the non-use of taximeters by hackney carriage drivers within RBWM where there is evidence to believe that this has been done for the deliberate purpose of overcharging the customer

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That the Licensing Panel notes the report and:

- i) **Members give authority to the Head of Consumer Protection and Enforcement Services to consult with the trade and other interested parties about adding to the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions Penalty Points System the non-use of the taximeter by a hackney carriage driver for journeys within RBWM, where the purpose of not using the taximeter can be shown to be to overcharge the customer**

- ii) **A report on the results of the consultation will come before the next Licensing Panel in April 2017**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Non-use of taximeters by RBWM hackney carriage drivers for journeys that begin within the Borough is not illegal, but the fare that can be charged is affected by whether the journey ends within or outside of the Borough.
- 2.2 When a journey begins within but ends outside of RBWM it is permissible for the driver to go "off-meter" as long as the passenger agrees to this, and the fare to be paid is agreed at the start of the journey. This fare may be more or less than would have been charged had the taximeter have been used.
- 2.3 When a journey begins and ends within the Borough it is permissible to go "off meter" but in this case it is illegal for the driver to charge more than would have been charged had the meter been used.
- 2.4 Around 10 complaints have been received since 1 April 2016 from people who have used a hackney carriage within the Borough, gone "off-meter" at the suggestion of the driver, and believe that they have been overcharged. By this they meant that they believed that they had been charged more than they would have paid had the meter been used.

(Note that a taxi cannot refuse to take someone who hails it, whether from the road or a stand, and the journey ends within RBWM).

- 2.5 This type of overcharging by hackney carriage drivers can be dealt with by way of a prosecution under the Town Police Clauses Act 1847. However any such alleged offence would be difficult to prove because the evidence would usually be verbal and one person's word against another. It would also be overly costly and time consuming, and subject to the RBWM Enforcement & Prosecution Policy which may lead to a decision not to prosecute for a first offence, meaning that in effect no action would be taken.
- 2.6 There may also be implications under trading standards legislation for deliberate overcharging by a hackney driver but this would be subject to the same evidential and other difficulties as mentioned in 2.5
- 2.7 A quicker and more effective means of dealing with this issue would be to add the non-use of the taximeter for journeys within the Borough for the purpose of overcharging to the list of infringements for which penalty points can be imposed by a licensing officer under the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions.

- 2.8 This method of enforcement is currently used by Bracknell Forest Borough Council who impose 6 penalty points to drivers found to have overcharged by going “off meter“ within their borough.
- 2.9 If Members agree to add this type of overcharging to the list of infringements in the RBWM Penalty Points System, then the number of points needs to be decided upon.
- 2.10 We currently impose 3 points for lesser infringements of a technical nature and 6 points for more serious acts, and some are considered serious enough to warrant an immediate referral to the Licensing Panel to consider the revocation of the licence. A full list of penalty point infringements is found at Appendix A.
- 2.11 Where 12 unspent penalty points are accumulated this will result in an automatic referral to the Licensing Panel. The Panel will then decide what, if any, further action should be taken (points are spent after 12 months).
- 2.12 Any imposition of penalty points would be subject to usual appeal options open to the driver receiving the points.
- 2.13 The penalty points system was last updated in 2014. Legal advice obtained as part of that process recommended that any proposed revisions should be consulted upon before adoption as drivers have a reasonable expectation of being asked for their views. Members are asked to give authority for consultation only at this stage.

Table 1: Options for Licensing Panel Members

Option	Comments
1. Agree to a consultation on the proposed addition to the existing Penalty Points System; “Hackney carriage drivers not using their taximeter for a journey wholly within RBWM so as to inflate the cost of the journey” - 3 Points	3 penalty points is for lesser infringements of a technical nature
2. Agree to a consultation on the proposed addition to the existing Penalty Points System; “Hackney carriage drivers not using their taximeter for a journey wholly within RBWM so as to inflate the cost of the journey” - 6 Points This is the recommended option	6 penalty points would better reflect the deliberate act by the driver of knowingly inflating the cost of a journey
3. Agree to a consultation on the proposed addition to the existing Penalty Points System; “Hackney carriage drivers not using their taximeter for a journey wholly within	This may be considered to be a disproportionate response to the infringement

Option	Comments
RBWM so as to inflate the cost of the journey” - Referral to Licensing Panel to consider revocation of licence	
4. Do not agree to a consultation on amendments to the Policy in respect of the non-use of meters by hackney carriage drivers	This would deprive licensing officers of an effective and proportionate enforcement tool

3. KEY IMPLICATIONS

3.1 If Members agree to a consultation on the proposed addition to the existing Penalty Points System, the trade will be encouraged to respond, either individually or via their representatives. The consultation will be considered a success based on the targets in Table 2, below.

3.2 Any other interested parties will also be encouraged to respond

Table 2:

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
A sufficient level of feedback is received from the Hackney Carriage and Private Hire trade	0% - 24% response	25% - 49% response	50 – 90% of response	91% – 100% response	April 2017 – the matter will be reported back to the next Licensing panel in April 2017

4. FINANCIAL DETAILS / VALUE FOR MONEY

4.1 None

5. LEGAL IMPLICATIONS

5.1 Section 58 of the Town Police Clauses Act 1847 contains the offence of overcharging by going “off –meter” within the Borough (see below).

5.2 The existence of this provision may result in a challenge to penalty points being imposed where the law already provides a means for dealing with this illegal activity.

5.3 However by virtue of sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976 a licensing authority is entitled to impose whatever

reasonable conditions it sees fit, and the imposition of penalty points for the purposes set out in this report are considered reasonable and proportionate.

5.3 Legal advice obtained when the Penalty Points System was updated in 2014 was that there is nothing unlawful about the Penalty Points System even if it encompasses misconduct that could also give rise to criminal proceedings.

5.4 Legal advice has been sought as to whether it is an offence for a hackney carriage driver to go “off meter” for the purpose of overcharging where the journey begins within but ends outside of the Borough. The advice is that this is not an offence.

“If Parliament has decided to allow a taxi driver and passenger to agree a set amount that may be greater than the metered fare (*when leaving the borough*) then RBWM cannot interfere with that.”

Section 58 of the Town Police Clauses Act 1847

Overcharge by hackney coachmen, &c..

Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorized by any byelaw made under this or the special Act shall be liable to a penalty not exceeding [F1level 3 on the standard scale],

6. RISK MANAGEMENT

6.1 As described in Table 4, below

Table 4:

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

7. POTENTIAL IMPACTS

7.1 No EQIA is anticipated at this stage.

8. CONSULTATION

8.1 Authority for consultation is being sought at this stage.

9. TIMETABLE FOR IMPLEMENTATION

9.1 As described ion Table 5, below

Table 5:

Date	Details
April 2017	It is envisaged that the results of the consultation will be reported back to the April 2017 Licensing Panel for Members to consider

10. APPENDICES

10.1 Appendix A - List of current penalty points infringements for hackney carriage drivers

11. BACKGROUND DOCUMENTS

11.1 None

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Cox / Cllr Grey	Lead Member/ Chair of the Licensing Panel		
Alison Alexander	Managing Director		
Simon Fletcher	Strategic Director of Operations & Customer Services		
Craig Miller	Head of Community Enforcement & Protection Services		
Neil Allen	SLS Legal Solutions		

REPORT HISTORY

Decision type: Non-key decision	Urgency item? No
Report Author: Greg Nelson, Trading Standards & Licensing Lead 01628 683561	

Appendix A
List of Current Penalty Points Infringements for Hackney
Carriage Drivers

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	6 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 driver licence or vehicle licence within the correct time (unless extenuating circumstances apply)	3 Points
Unlawfully plying for hire in Private Hire Vehicle	Referral to Licensing Panel to consider revocation of Licence
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
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
Causing or permitting a Hackney Carriage to wait on double yellow lines, other than to allow passengers to board or alight or other than applying for hire on a Hackney Carriage rank.	3 Points
Causing or permitting a Private Hire Vehicle to wait on double yellow lines, other than to allow passengers to board or alight	3 Points
Causing or permitting a Private Hire Vehicle or Hackney Carriage to wait on a single yellow line, in contravention of the notices displayed, other than to allow passengers to board or alight	3 Points