

Report Title:	The Use and Effectiveness of Penalty Points
Contains Confidential or Exempt Information?	No
Member reporting:	Councillor Grey, Lead Member for Environmental Services (including Parking and Flooding)
Meeting and Date:	Licensing Panel 03 July 2018
Responsible Officer(s):	Andy Jeffs, Executive Director David Scott, Head of Communities, Enforcement and Partnerships
Wards affected:	All



REPORT SUMMARY

1. The Licensing Panel meeting of 4 April 2017 unanimously agreed a one year trial period for five new infringements for which hackney carriage and private hire drivers could receive penalty points under the respective driver and vehicle policies.
2. This report provides information on how these penalty points have been used and makes a recommendation for their future use.
3. Drivers receiving penalty points have a right of appeal. The appeals process has been examined and a recommendation made as to how appeals should be heard in the future.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That the Licensing Panel notes the report and:

- i) **Members agree that the penalty point infringements introduced in April 2017 for a one year trial period are added to the respective hackney carriage and private hire policies permanently.**
- ii) **Members agree to consider amending the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively such that appeals against the imposition of penalty points are heard by a Senior Officer of RBWM instead of an Appeals Panel made up of elected Members from the Licensing Panel**

2. REASONS FOR RECOMMENDATIONS AND OPTIONS CONSIDERED

- 2.1 It was reported to the Licensing Panel of 4 April 2017 that licensing officers had received complaints about a number of illegal or anti-social driving practices being perpetrated by hackney carriage or private hire drivers over which no direct action could be taken. This was because these practices were not

included in the extant list of infringements for which penalty points could be imposed under the respective hackney carriage and private hire policies.

- 2.2 This meant that there was no effective action that licensing officers could take to deal with these activities and complainants could not be provided with a satisfactory response to their grievances.
- 2.3 Members agreed to add to the respective policies, initially for a one year trial period, five new infringements for which penalty points could be imposed, subject to their being sufficient evidence to do. The trade was consulted on this matter.
- 2.4 A list of the infringements that were introduced is set out at Appendix A.
- 2.5 Since that time a number of penalty points have been imposed on hackney carriage and private hire drivers. The details are set out in Appendix B.
- 2.6 The issuing of penalty points for the “new” infringements and the consistent use of the ones in place before April 2017 have provided officers with a quick and effective means of cracking down on illegal and anti-social driving practices. They have also allowed officers to provide complainants with a swift and satisfactory outcome which shows that proportionate action has been taken to address a matter of immediate concern.
- 2.7 No driver has received penalty points on more than one occasion (although one driver was issued with two sets of points at the same time, for waiting on a double yellow line and not displaying his plate). This suggests that this is an effective enforcement tool, offenders learn their lesson and they do not reoffend.
- 2.8 Members are now asked to decide whether the infringements introduced in April 2017 should be permanently added to the respective hackney carriage and private hire policies. The options are set out in Table 1.

Table 1: Options for Licensing Panel Members

Option	Comments
<p>Members agree that the penalty point infringements introduced in April 2017, as set out in Appendix A, are permanently added to the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively.</p> <p>This is the recommended option</p>	<p>Having penalty points available to deal with activities which are knowingly carried out and are of immediate concern, inconvenience or annoyance to local residents and road users has proved very useful and effective as far as licensing officers are concerned.</p> <p>No driver has received more than one set of penalty points so it would appear that they are having the desired effect.</p> <p>Drivers who act professionally and responsibly, which accounts for the vast majority, have nothing to fear from these penalties.</p>

Option	Comments
<p>Members agree that only some of the penalty point infringements introduced in April 2017, as set out in Appendix A, are permanently added to the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively.</p> <p>Not the recommended option</p>	<p>Members may wish to give permanent status only to some, rather than all of the infringements listed in Appendix A.</p>
<p>Members do not agree that the penalty point infringements introduced in April 2017, as set out in Appendix A, are permanently added to the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively.</p> <p>Not the recommended option</p>	<p>This will mean that no quick and effective action can be taken against drivers who knowingly indulge in the specific illegal or anti-social practices identified.</p> <p>This will leave officers effectively powerless and unable to satisfy complainants.</p>

- 2.9 One matter that has arisen from the use of penalty points is the right of drivers to appeal against them. This right has existed in the hackney carriage and private hire policies as long as penalty points have been available to officers as an enforcement tool. It allows a driver who has received penalty points to appeal that decision to an appeals panel, that panel being a sub-committee of the Licensing Panel made up of three Members.
- 2.10 An appeal requires a report to be written by a licensing officer and the input of Democratic Services to organise the appeal. It then requires the attendance of the three Members on the Panel, the licensing officer, a Democratic Services officer and a legal advisor. This makes the process time consuming and costly.
- 2.11 Since April 2017 an appeals panel has been convened for this purpose on just one occasion, to hear appeals by two drivers against the issuing of penalty points against them. Unfortunately neither appellant turned up. The appeals were rejected and the penalty points upheld.
- 2.12 This has prompted the question, should the right of appeal against penalty points be granted automatically?
- 2.13 A legal opinion on this has been sought. The question asked was whether a driver has a legal right to an appeal when penalty points (PP) are imposed. The answer given was:
“.... yes, even though the imposition of PP do not have an immediate effect on their licence. The reason is that under the Regulators Compliance Code, which covers taxi licences, there is an expectation that where any sanction is imposed by a Regulator and no statutory right of appeal exists then there should be some form of internal, impartial appeal and that the route to that appeal should be clearly set out”.

- 2.14 The legal opinion goes on to say that the requirement for an appeals process does not stipulate that the appeal must be heard by panel of elected members. It could instead be heard by an impartial senior officer, such as the Head of Communities, Enforcement and Partnerships.
- 2.15 Officers believe that this would be a better use of resources. This can be researched further but if this is to be implemented it would require amendments be made to the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively. It would also require consultation with the trade.
- 2.16 Members are asked to consider the following options, as set out in Table 2.

Table 2.

Option	Comments
<p>Members agree that research is completed and the trade consulted on amending the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively, such that appeals against the imposition of penalty points are heard by a Senior Officer of RBWM instead of an Appeals Panel made up of elected Members on the Licensing Panel.</p> <p>This is the recommended option</p>	<p>This will lead to a change in the appeals process such that appeals by drivers against the imposition of penalty points will be heard by a senior officer within RBWM instead of a Sub Committee of the Licensing Panel made up of three Members.</p>
<p>Members do not agree to any changes to the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions in respect of appeals against the imposition of penalty points.</p> <p>Not the recommended option</p>	<p>This will maintain the status quo and allow Members on the Licensing Panel to continue to be responsible for hearing appeals the imposition of penalty points.</p>

3. KEY IMPLICATIONS

- 3.1 Permanently adopting the five infringements in Appendix A will ensure that complaints received about these practices can be quickly and effectively addressed when there is sufficient evidence to do so.
- 3.2 Not adopting the infringements will mean that no action can be taken in response to complaints regarding these practices from residents, businesses and other road users.

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 The only cost implications are those connected to the appeals process discussed in paragraphs 2.9 to 2.15. Otherwise the activities discussed in this report are covered by existing budgets.

5. LEGAL IMPLICATIONS

- 5.1 Conditions can be attached to vehicle licenses by virtue of sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976.
- 5.2 Byelaws can be made under Section 68 of the Town Police Clauses Act 1847 and Section 171 of the Public Health Act 1875, by the Council of the Royal Borough of Windsor & Maidenhead with respect to hackney carriages in the area of the Royal Borough of Windsor & Maidenhead.

6. RISK MANAGEMENT

- 6.1 Any new condition attached to our policies is in theory subject to challenge or judicial review.
- 6.2 The use of penalty point systems by local licensing authorities has been examined by the courts who held that such a system is in principle lawful. The infringements that are the subject of this report are matters of immediate concern, annoyance or inconvenience to residents and the use of penalty points is a reasonable and proportionate response. Points are only issued when there is the evidence to do so and there is a right of appeal.
- 6.3 The possibility of any challenge to the permanent adoption of these infringements is therefore extremely remote.

7. POTENTIAL IMPACTS

- 7.1 No EQIA is anticipated at this stage.

8. CONSULTATION

- 8.1 The trade was consulted when the five new penalty point infringements were introduced. The infringements were added to the RBWM Hackney Carriage Driver and Vehicle Policy and the RBWM Private Hire Driver and Vehicle Policy in April 2017 at the start of the trial period so as to give them legal status.
- 8.2 If Members agree to add the five infringements to policies permanently no changes to those policies will be required and no further consultation will be needed.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 If Members agree to add the five infringements to policies permanently they will come into force immediately.

10. APPENDICES

Appendix A – List of Infringements Introduced in April 2017

Appendix B – Breakdown of Penalty Points Issued from April 2017 to 31 May 2018

11. BACKGROUND DOCUMENTS

None.

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Grey	Lead Member for Environmental Services, Including Parking	21/06/18	22/06/18
Cllr Cox	Chair of the Licensing Panel	21/06/18	24/06/18
Alison Alexander	Managing Director	12/06/18	15/06/18
Andy Jeffs	Executive Director Communities Directorate	12/06/18	12/06/18
David Scott	Head of Communities, Enforcement and Partnerships	12/06/18	21/06/18

REPORT HISTORY

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

Appendix A
List of Infringements Introduced in April 2017

Private Hire Driver or Hackney Carriage Driver waiting in a marked disabled bay	6 Points
Private Hire Driver or Hackney Carriage Driver waiting in a bus stop	6 Points
Private Hire Driver or Hackney Carriage Driver waiting in any other restricted space	3 Points
Private Hire Driver or Hackney Carriage Driver driving erratically and / or without due care and attention to pedestrians or other road users	6 Points
Private Hire Driver or Hackney Carriage Driver blocking the driveway or entrance of any residence, business, school or any other public building or space	3 Points

Appendix B

Breakdown of Penalty Points Issued 04/04/2017 to 31/05/2018

Infringements Introduced in April 2017

Infringement	No of Sets of Points Imposed
Private Hire Driver or Hackney Carriage Driver waiting in a marked disabled bay	5
Private Hire Driver or Hackney Carriage Driver waiting in a bus stop	1
Private Hire Driver or Hackney Carriage Driver waiting in any other restricted space	1
Private Hire Driver or Hackney Carriage Driver driving erratically and / or without due care and attention to pedestrians or other road users*	2
Private Hire Driver or Hackney Carriage Driver blocking the driveway or entrance of any residence, business, school or any other public building or space	2
Total	11

* The evidence used to impose points for driving erratically and / or without due care and attention to pedestrians or other road users was:

- "dash- cam" footage from a member of the public showing them being cut up on a roundabout, and
- CCTV from a school where the driver was doing a three point turn in the school bus stop despite the area being crowded with children

Infringements Already in Existence in April 2017

Infringement	No of Sets of Points Imposed
Driver failing to notify they have received DVLA points	1
Not displaying plate properly	16
Failing to notify of change of address	2
Waiting on double yellow lines	14
Not using the meter so as to inflate the fare	2
Total	35