

Report Title:	The Use of Penalty Points to deal with Overcharging
Contains Confidential or Exempt Information?	No
Member reporting:	Councillor M. Airey, Lead Member for Environmental Services (including parking, flooding, housing and performance management)
Meeting and Date:	Licensing Panel 08 January 2019
Responsible Officer(s):	Andy Jeffs, Executive Director David Scott, Head of Communities, Enforcement and Partnerships
Wards affected:	All



REPORT SUMMARY

1. Following a test purchase operation in September a Briefing Note was provided for the Lead Member and Cabinet on 4 October 2018 about overcharging by hackney carriage and private hire drivers. The Briefing Note set out options to address the problem identified.
2. Some of these options will require changes to RBWM Policy & Conditions, this report sets out these options for Panel to agree on so that the necessary consultation can be carried out and changes to Policy made.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That the Licensing Panel notes the report and:

- i) **Authorises the Head of Communities, Enforcement and Partnerships to consult with the trade about adding the infringements listed in Appendix B and Appendix C to the Penalty Points System in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions and the Private Hire Driver and Vehicle Policy & Conditions respectively**
- ii) **Delegates authority to the Head of Communities, Enforcement and Partnerships in consultation with the Lead Member and the Chair of the Licensing Panel to implement the changes set out subject to a review of the outcomes of the consultation process.**

2. REASONS FOR RECOMMENDATIONS AND OPTIONS CONSIDERED

- 2.1 A Briefing Note to the Lead Member and Cabinet on 4 October 2018 set out how evidence from complaints received and test purchasing operations carried out suggested that some hackney carriage drivers were overcharging their customers. This was done either by charging more than the set tariff for journeys wholly within the Borough or by using the wrong tariff. Complaints had also been received that private hire drivers were charging more than had initially been quoted for a fare.

- 2.2 A report to the Licensing Panel was requested with options on how to deal with these matters
- 2.3 Where a complaint is in connection with a RBWM licenced hackney carriage the vehicle is likely to bear RBWM livery. This means that, even though the drivers are not RBWM employees, they are often seen by the public at large as “our” drivers in “our” taxis, rather than the independent individuals or businesses they actually are. This creates an immediate, negative association with RBWM.
- 2.4 The operation of RBWM licenced hackney carriage and private hire vehicles and drivers is governed by statute, bye-laws and by the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions and the RBWM Private Hire Driver and Vehicle Policy and Conditions respectively. The two RBWM policy and conditions documents can be found at https://www3.rbwm.gov.uk/info/200491/taxi_and_minicab_licensing/141/hackney_carriage_taxi_and_private_hire_licences
- 2.5 The law in this area is complex and different legislation applies to hackney carriages and private hire vehicles. A brief guide to the key differences is set out in Table 1

Table 1 Rules that relate to Hackney Carriages and Private Hire Vehicles

Vehicle Type	Applicable Rules
Hackney Carriage (taxi)	<p>Can ply for hire and be hailed on the street but the driver cannot tout for business, for example by calling out to members of the public</p> <p>The method of charging is primarily by use of a taximeter using rates set by the RBWM Licensing Panel</p> <p>Taximeters are not a requirement by law, the legal requirement is that the rate set by RBWM is adhered to for journeys within RBWM</p> <p>The rates set by the RBWM Licensing Panel are Tariff 1 for use during the day, and Tariff 2 (50% higher) for use between 23.00 and 06.00 and on bank holidays (see Appendix A)</p> <p>For journeys wholly within RBWM the driver cannot charge more than the set tariff which is primarily determined by the use of a taximeter. To do so is a criminal offence</p> <p>For journeys that begin within RBWM and end outside the Borough the driver can charge a fare higher than the set tariff as long as this fare is agreed at the outset of the journey (in such cases, as the fare is agreed at the outset the meter would not be used)</p> <p>For journeys wholly within RBWM the driver cannot, without reasonable excuse, refuse to take a fare</p> <p>For journeys that begin within RBWM and end outside the Borough, there is no legal obligation on the driver to take the fare</p>

Vehicle Type	Applicable Rules
Private Hire Vehicle (minicab)	<p>Cannot be hailed on the street, must be pre-booked. The driver cannot tout for business, for example by calling out to members of the public</p> <p>The booking must be made by a licenced operator and cannot be taken directly by the driver. The fares charged by private hire operators / drivers are not regulated.</p>

2.6 Action that can currently be taken against hackney carriage drivers in relation to overcharging is set out in Table 2

Table 2 Offences and consequences

Activity / Offence	Consequences
Within the Borough, a hackney driver charging more than the fare based on the set tariff	<p>this is a criminal offence under s58 of the Town Police Clauses Act 1847 punishable by a Level 3 fine (£1000)</p> <p>six penalty points can be imposed on the driver by virtue of the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
Within the Borough, a hackney driver using an incorrect tariff	<p>this is a criminal offence under s58 of the Town Police Clauses Act 1847 punishable by a Level 3 fine (£1000)</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
Within the Borough, a hackney driver refusing to take a fare without reasonable cause	<p>this is a criminal offence under s53 of the Town Police Clauses Act 1847 punishable by a Level 2 fine (£500)</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
A hackney carriage driver failing to comply with the by-laws contained in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions	<p>this is a criminal offence under the RBWM Hackney Carriage Bye-laws and Requirements, made under s68 of the Town Police Clauses Act 1847, punishable by a Level 2 fine (£500)</p> <p>the Licensing officer may suspend, revoke or refuse to renew a licence if any of the conditions in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions are not complied with</p> <p>the Licensing officer may suspend, revoke or refuse to renew a licence for "Any other reasonable cause" as defined in the Local Government (Miscellaneous Provisions) Act of 1976,</p>

- 2.7 There are no conditions relating to fares in the RBWM Private Hire Driver and Vehicle Policy and Conditions. There is a general requirement to comply with the Policy and Conditions and failure to do so can result in the suspension, revocation or refusal to renew of the licence.
- 2.8 A private hire licence can be suspended, revoked or refused for renewal for “any other reasonable cause” as defined in the Local Government (Miscellaneous Provisions) Act 1976
- 2.9 As can be seen from Table 2, six penalty points can be imposed on a hackney carriage driver for the infringement “Within the Borough, a hackney driver charging more than the metered fare”. None of the other infringements listed in Table 2 currently attract penalty points
- 2.10 As explained in the Briefing Note for the Lead Member and Cabinet the costs of mounting a prosecution for any of the offences listed in Table 2 would be so disproportionate to the sums involved in any overcharge that it is unlikely that it would be in the public interest to proceed unless all other options had been exhausted, or unless there were contributing factors such as a repeat offender.
- 2.11 The use of a Simple Caution for such offences can and will be used in appropriate circumstances in the future but another way of dealing with these issues is to amend the RBWM Hackney Carriage Driver & Vehicle Policy & Conditions to make the use of penalty points consistent across this range of infringements, and to consider increasing the number of points issued per offence to reflect the seriousness of the infringement
- 2.12 The options for amending the Policy in relation to hackney carriages are set out in Appendix B. Essentially these amount to;
- Making the fitting of a taximeter compulsory in all motor hackney carriages
 - Making the use of the taximeter compulsory for all hackney carriage journeys wholly within RBWM
 - Adding a penalty point infringement in relation to using the incorrect tariff so as to overcharge
 - Adding a penalty point infringement in relation to refusing to take a fare without reasonable cause
 - Looking at the number of points that are imposed for certain infringements to ensure that they are consistent and reflect the seriousness of the breach
- 2.13 To deal with the issue of a private hire driver charging more than the fare originally quoted, without reasonable cause (such as an agreed change to the journey once underway), an addition to the list of infringements could be added to the RBWM Private Hire Driver & Vehicle Policy and Conditions, as set out in Appendix C
- 2.14 All changes to Policy are required to be consulted on with the trade. If the options set out in Appendix B or Appendix C are accepted by Panel then that consultation can be carried out and final decisions can be reviewed by the Head of Communities, Enforcement and Partnerships in conjunction the Lead Member and Chair of the Panel, and then be implemented unless serious and valid reasons are raised.

2.15 The Panel is asked to consider the options set out in Appendices B and C to go out to consultation with a view to implementing them.

3. KEY IMPLICATIONS

3.1 The adoption of these new penalty point infringements will provide a quick, efficient and proportionate enforcement tool for dealing with illegal practices by hackney carriage and private hire driver drivers. It will improve the reputation of RBWM licenced vehicles and protect the good reputation of the vast majority of honest drivers by providing a level playing field.

4. FINANCIAL DETAILS / VALUE FOR MONEY

4.1 The use of penalty points to deal with the infringements discussed in this report will be substantially cheaper than mounting a prosecution. However prosecuting offenders must remain as an option in appropriate circumstances, such as when dealing with repeat offenders or where there are other contributing factors.

5. LEGAL IMPLICATIONS

5.1 Conditions can be attached to vehicle licenses by virtue of sections 47 & 48 of the Local Government (Miscellaneous Provisions) Act 1976.

5.2 Legal advice on making the fitting of meters in motor hackney carriages (as against horse drawn hackney carriages), and making the use of the meter compulsory for journeys wholly within the Borough, has been sought.

5.3 The advice received is that there is no legal objection to this in principle as under s47 (1) of the Local Government (Miscellaneous Provisions) Act 1976 hackney carriage vehicles' licences can have any condition attached that the council deems reasonably necessary.

5.4 The advice goes on to say that the condition may be appealed to the Magistrates as well being open to judicial review. However the advice also states that such a condition is common and so, subject to the results of the consultation (that the legal advice also stresses the importance of), the chances of a judicial review appears remote.

6. RISK MANAGEMENT

6.1 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 to residents and visitors to RBWM 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 Any new condition attached to our policies is in theory subject to challenge or judicial review, see 5.4, above.

7. POTENTIAL IMPACTS

7.1 No EQIA is anticipated at this stage.

8. CONSULTATION

8.1 Legal advice provided in 2014 recommended that any proposed revisions to Policy should be consulted upon before being adopted as drivers have a reasonable expectation of being asked for their views. This has been reinforced

by the legal advice taken in drawing up the proposals in this paper. Members are therefore asked to give authority for a consultation to be undertaken.

9. TIMETABLE FOR IMPLEMENTATION

9.1 If Members agree to go out to consultation on these matters, consultation would take place over a four week period, and unless serious and valid reasons were received objecting to the proposals the changes will be implemented under the delegation to the Head of Service. If a follow up report is required, a report will be brought to the next Panel meeting in April 2019. That meeting could then consider the issues raised and make a final decision on the recommended changes to Policy which could then be brought into force immediately

10. APPENDICES

- Appendix A – Hackney Carriage Tariff
- Appendix B – Options for Amending Policy – Hackney Carriages
- Appendix C – Options for Amending Policy – Private Hire Vehicles

11. BACKGROUND DOCUMENTS

None.

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Airey	Lead Member for Environmental Services, Including Parking	19/12/18	
Cllr Cox	Chair of the Licensing Panel	19/12/18	
Russell O'Keefe	Acting Managing Director	14/12/18	
Andy Jeffs	Executive Director Communities Directorate	14/12/18	17/12/18
David Scott	Head of Communities, Enforcement and Partnerships	14/12/18	14/12/18

REPORT HISTORY

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

Appendix A

Hackney Carriage Tariff

Royal Borough of Windsor and Maidenhead Hackney Carriage Tariff	
Tariff One 6am to 11 pm	Tariff Two 11pm to 6am and Bank Holidays (50% above the normal rate or fare)
<p>For the first 927 yards (847m) or part thereof £2.80</p> <p>For each additional 174 yards (159m), 40 seconds or part thereof 20p</p>	<p>For the first 927 yards (847m) or part therefore £4.20</p> <p>For each additional 174 yards (159m), 40 seconds or part thereof 30p</p>
<p>WAITING TIME</p> <p>For each period of 40 seconds or uncompleted part thereof provided that where a hiring by distance terminates at the place at which it commenced, the rate of fare for which the proprietor or driver shall be entitled to demand and take for the hiring shall be three quarters of the rate or fare prescribed by the foregoing table.</p>	<p>Soiling Interior of Vehicle £80.00</p> <p>Soiling Exterior of Vehicle £20.00</p> <p><i>None of the stated fares will apply if the hirer at the commencement of the hiring expresses his desire to engage by time.</i></p>
<p>EXTRA CHARGES</p> <p>Booking Fee</p> <p>For each hiring under Section 67 of the Local Government (Miscellaneous Provisions) Act 1976 £1.00</p>	<p><i>Where a Hackney Carriage furnished with a taximeter is hired by distance the driver is not entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for extra charges authorised by the above table which may not be recorded on the face of the taximeter.</i></p>
<p>LUGGAGE</p> <p>For each package carried outside the vehicle 20p</p>	<p>Any complaints or other communications should be sent to Licensing, Town Hall, St Ives Road, Maidenhead, SL6 1RF</p>
<p>EXTRA PASSENGERS</p> <p>Extra Passengers for Each Person Carried Above the Number of Two for the Whole or Part of the Distance 20p</p>	
NOVEMBER 2016	

Appendix B

Options for Amending Policy – Hackney Carriages

Option	Comments
<p>1. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make taximeters compulsory for motor hackney carriages.</p> <p>This is a recommended option</p>	<p>This will not add costs to the drivers as all vehicles already have a meter fitted, but it would allow the next Option to be brought into force</p> <p>As with all Policy and Conditions amendments this would need to be consulted on with the trade.</p>
<p>2. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make the use of the taximeter compulsory for all journeys wholly within RBWM</p> <p>This is a recommended option</p>	<p>As with all Policy and Conditions amendments this would need to be consulted on with the trade who may have some strong views on the subject</p> <p>Making the use of the meter compulsory for journeys wholly within the Borough would make it easier to explain to the public what their rights are when using a RBWM licenced hackney carriage</p>
<p>3. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make the failure to comply with Option 2 subject to penalty points in line with Option 4</p> <p>This is a recommended option</p>	<p>This will make sure that consistent penalties are imposed for serious infringements</p>
<p>4. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to increase the number of penalty points for drivers not using their taximeter for a journey wholly within RBWM so as to inflate the cost of the journey.</p> <p>This is a recommended option</p>	<p>The number of points currently imposed for this infringement is 6. This could be increased to 9 or 12.</p> <p>12 points would trigger an immediate referral to the Licensing Panel for them to consider the fitness of the driver to hold a licence and any further penalty that should be imposed.</p>
<p>5. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to add an infringement such that penalty points may be imposed for “using the incorrect tariff so as to inflate the cost of the journey”.</p> <p>This is a recommended option</p>	<p>The points imposed for this infringement should be the same as those imposed for overcharging by not using the meter as the aim and result, ie to deliberately overcharge, is the same for both infringements</p>

Option	Comments
<p>6. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to add an infringement of “For journeys wholly within RBWM, without reasonable excuse refusing to take a fare”</p> <p>This is a recommended option</p>	<p>Complaints have been received that drivers are refusing to passengers because they think that the fare would be too small to justify losing their place in the rank. It is a fundamental and historical obligation on hackney carriage drivers that they carry local people on local journeys and the refusal to do so can leave passengers without any means of transport.</p> <p>Members will need to consider the number of points to impose if this is added to the list of infringements for which points can be imposed.</p>

Appendix C

Options for Amending Policy – Private Hire Vehicles

<p>1. Agree to a consultation on amending the RBWM Private Hire Driver & Vehicle Policy and Conditions so as to add an infringement of “Without reasonable cause, charging more for a fare than was quoted at or before the outset of the journey”</p> <p>This is a recommended option</p>	<p>This would provide a quick and effective means of dealing with the very small minority of drivers who carry out this practice</p> <p>.</p> <p>Members will need to consider the number of points to impose if this is added to the list of infringements for which points can be imposed.</p>
---	--