

Part A

Report to: Licensing Committee

Date of meeting: Thursday, 8 July 2021

Report author: Business Compliance Officer

Title: Urgent amendment to the Environmental Health and Licensing Services Compliance Policy 2016 – 2021

1.0 Summary

1.1 The Community Protection section is responsible for ensuring compliance with legislation relating to areas such as anti-social behaviour, environmental protection, housing, food safety, licensing and health and safety at work. The Council approves, and from time to time reviews, policies on how the section should approach compliance and how legislation should be enforced in a proportionate and consistent manner. The current compliance policy is under review and a new draft policy is proposed for consultation between 12 July and 23 August 2021 and is on this committee agenda.

1.2 This report sets out an urgent amendment to the current policy ahead of the consultation and full review. This amendment is necessary for reasons of public safety related to the licensing of hackney carriage and private hire drivers and vehicles.

2.0 Risks

2.1

Nature of risk	Consequence	Suggested Control Measures	Response (treat, tolerate, terminate or transfer)	Risk Rating (combination of severity and likelihood)
Licence holders have committed offences and the licensing team are	Serious risk to public safety where a driver has been convicted of an offence since the grant of the licence.	Amend current EH&L Services Compliance Policy to allow for suspension of licences whilst checks are	Treat	12

unaware of these issues.		undertaken where necessary.		
Licence holders have failed to provide documentation required by condition of any licence, for example an up to date medical check, vehicle MOT or Insurance, registration with the ICO	Serious risk to public safety.	Amend current EH&L Services Compliance Policy to allow for suspension of licences whilst checks are undertaken where necessary.	Treat	12

3.0 Recommendations

- 3.1 That paragraph 6.10.6 be amended with immediate effect, until the Compliance Policy revision is agreed, to read:

6.10.6 Where deemed appropriate we may suspend or revoke a licence. Where a suspension of the licence is deemed a proportionate response to the offence, the suspension will be for a maximum of two days. The only exception to this time period is where a licence holder has failed to provide a document or check required to maintain their licence. In such cases the licence will be suspended until its expiry or a satisfactory document or check is provided or undertaken, at which point the suspension will be lifted immediately.

In all instances, except where a document or check is not provided/completed, the licence holder's previous history will be taken into account when making this decision along with other factors such as the attitude of the licence holder, the impact of the offence etc.

Action may also be taken in accordance with the council's Guidelines for the grant, suspension and revocation of hackney carriage and private hire drivers and operators licences.

Further information:

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Report approved by: Justine Hoy, Head of Community Protection

4.0 Detailed proposal

4.1 Background

Since the start of the pandemic there has been an increase in the numbers of drivers and vehicle proprietors that have failed to provide up to date documents or checks when the previous check has expired.

For driver licences these documents are:

- Medicals
- Criminal record checks

For vehicle licences these documents are:

- Insurance
- MOT
- Proof of being registered with the ICO as a Data Controller (where CCTV is fitted to the vehicle)

4.2 Whilst measures have been put in place to assist those parts of the trade that have been unable to work during the pandemic, meaning that they can reapply for expired licences and are not chased for documents or checks; the requirements upon the holders of driver and vehicle licences who continue to work are still essential to ensure safety. For all situations described above, the team have been in contact with licence holders and have reminded them about their obligations, unfortunately though not all have responded in accordance with their legal obligations. This has resulted in a section of the licensed trade currently having valid licences in their possession without this authority being able to fulfil its responsibility to ensure that those drivers and vehicles are safe.

4.3 As members will be aware, the primary function of the hackney carriage and private hire regime is ensuring public safety. The level of assurance cannot be maintained when interim checks, for either drivers or vehicles, are not kept up-to-date.

4.4 Under the current Compliance Policy suspensions can only be issued for a maximum period of two days:

6.10.6 Where deemed appropriate we may suspend or revoke a licence. Where a suspension of the licence is deemed a proportionate response to the offence, the suspension will be for a maximum of two days. The licence holder's previous history will be taken into account when making this decision along with other factors such as the attitude of the licence holder, the impact of the offence etc.

Action may also be taken in accordance with the council's Guidelines for the grant, suspension and revocation of hackney carriage and private hire drivers and operators licences.

- 4.5 This stops the use of suspensions to address failure to produce the required documents. If a licence were suspended for two days, and in that time the required documents or checks were not supplied, the suspension would end and the licence would be valid again.
- 4.6 Once a licence has been suspended it cannot then be revoked for the same reason meaning that there would be no further action the authority could take to gain compliance.
- 4.7 Therefore under the current compliance policy the only available option is to revoke the licences in these circumstances. This would seem a draconian measure for a check that could simply and quickly be provided and would leave the authority open to such revocations being successfully appealed.
- 4.8 The immediate amendment of the Compliance Policy would allow the Licensing Team to quickly deal with those instances when, despite the team's best efforts, a licence holder cannot be contacted, or despite contact, they have failed to provide the required document or undertake a check. Where a licence was suspended the team would be able to lift the suspension as soon as a satisfactory document or check was supplied/undertaken.
- 4.9 This change would give the authority and the public increased assurance that:
- All licensed drivers have up-to-date medicals and criminal record checks; and
 - All licensed vehicles are roadworthy and insured.
- 4.10 Members are reminded that we still have exceptional options in place for drivers should they wish to effectively "suspend" their vehicle licences as the covid situation continues.

5.0 **Implications**

5.1 **Financial**

- 5.1.1 The Shared Director of Finance comments that any financial implications can be met from existing budgets

5.2 **Legal Issues** (Monitoring Officer)

5.2.1 The Group Head of Democracy and Governance comments that the legal implications are contained within the report.

5.3 **Equalities, Human Rights and Data Protection**

5.3.1 As this is a change to an existing policy leading to a change in service delivery, an equalities impact analysis has been undertaken. The analysis is attached as Appendix 1 to this report. The main conclusions of that analysis are:

The change to the policy is likely to disproportionately impact upon persons with the protected characteristic of race and sex.

The change may have negative impact if large numbers of drivers have licenses suspended for non-compliance with the requirement to undergo a DBS check.

The change is necessary and proportionate to ensure continued public confidence in the safety of licensed drivers in Watford. This should have a positive impact on the trade and therefore a positive impact on persons with the protected characteristic of race and sex.

Human Rights

Suspension or revocation of a licence is an interference with a person property. However, the Right to property is a qualified right and the removal of that property in circumstances where the removal is justified, necessary and proportionate is permitted. Providing the correct measures are taken in each case of suspension or revocation there should be no interference with a person's Human Rights.

Data Protection Impact Assessment

Having had regard to the council's obligations under the General Data Protection Regulation (GDPR) 2018, it is considered that officers are not required to undertake a Data Processing Impact Assessment (DPIA) for this report.

5.4 **Staffing**

5.4.1 None

5.5 **Accommodation**

5.5.1 None

5.6 **Community Safety/Crime and Disorder**

5.6.1 This policy directly supports the aims of the council in reducing crime and disorder.

5.7 **Sustainability**

5.7.1 None

Appendices

Appendix 1 - Equality Impact Assessment

Background papers

No papers were used in the preparation of this report.