

Report to: Licensing Committee
Date of meeting: 15 July 2013
Report of: Head of Community and Customer Services
Title: Licensed Driver Enforcement Policy

1.0 SUMMARY

1.1 In 2007 the Licensing Committee adopted an enforcement policy to allow officers to allocate points against hackney carriage and private hire driver licences for specific contraventions of licensing requirements. This report seeks to update and revise the scheme by:

- (1) making minor changes to the schedule of contraventions;
- (2) updating the procedure for revoking licences;
- (3) introducing a system to suspend licences for short periods in certain circumstances.

2.0 RECOMMENDATIONS

- 2.1 That officers consult with licensed drivers on the proposed changes outlined in paragraphs 3.13 – 3.22 and at appendix 1 of the report.
- 2.2 Officers to discuss and agree any minor objections and modifications to the scheme with the Chair of the Committee, with any modifications being reported to the Committee.
- 2.3 That any significant objections to the proposed changes be referred back to the Committee for further consideration.
- 2.4 That officers have delegated authority to make further minor amendments to the scheme as necessary.

Contact Officer:

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension: 8429. email: jeffrey.leib@watford.gov.uk.

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 Legislative background

The Council licences hackney carriage and private hire drivers on the basis that they are, and remain whilst licensed, “fit and proper persons” within the terms of the Local Government (Miscellaneous Provisions) Act 1976.

3.2 The Act allows that licences may (as the case may be) be suspended, revoked or not renewed where the individual concerned:

(1) has been convicted of an offence of indecency, violence or dishonesty;

(2) has been convicted of an offence under the 1976 Act, (or the Town Police Clauses Act 1847 relating specifically to hackney carriages), or failed to comply with the requirements of those Acts; or

(3) for any reasonable cause.

3.3 A driver must be notified in writing that their licence is proposed to be suspended, revoked or not renewed. The decision takes effect 21 days after they have been notified, to allow for an appeal to be lodged at the magistrates’ court by way of complaint. If an appeal is lodged, the decision to revoke or refuse the licence is “stayed” until the disposal of the appeal.

3.4 Licences may be suspended or revoked with immediate effect (notwithstanding any appeal) if it appears to the licensing authority that this is required for reasons of public safety.

3.5 How the scheme currently works

In 2004 the Licensing Committee adopted a policy that allowed penalty points to be added to driver’s licences where the circumstances in paragraphs 3.2(2) or (3) had taken place, with a driver’s licence being considered for revocation when 15 points had been acquired. This was subsequently revised to a maximum of 20 penalty points in January 2007. In August 2010 the table of contraventions was amended to include parking contraventions such as waiting on double-yellow lines and loading bays and where a Penalty Charge Notice had not been issued by a Civil Enforcement Officer.

3.6 The rationale behind the penalty point scheme is to provide an objective scale of warnings where their conduct is below the required standards. It also ensures a consistent approach is taken towards contraventions by different officers who may deal with similar contraventions by different drivers. Points may be allocated on a fixed scale for objective contraventions (such as failing to display a fare tariff) or on a sliding scale for subjective contraventions such as adopting an unpleasant manner towards a passenger or for being abusive. A number of factors will be taken into account when deciding whether to allocate points, including the driver’s history of compliance, gravity of the contravention, and any health and safety implications arising from the contravention. Drivers have the opportunity to challenge officers when points have been allocated against them by way of appeal to the Environmental Health and Licensing section head. Drivers who accrue 20 or more penalty points in a rolling 12 month period are referred to a licensing sub-committee with a recommendation that their licence is revoked.

- 3.7 There are currently 484 drivers licensed by the Council. Penalty points have been issued to 43 drivers (just under 9% of the total) in the twelve months to April 2013; one driver has been considered for revocation in the last 12 months and only three drivers have been referred to a licensing sub-committee since 2007.
- 3.8 Rationale for change
On 19 March 2012 the Committee adopted the Driver and Vehicle Action Plan in tandem with re-imposing a limit on the number of hackney carriage vehicle drivers. An element of the Plan was to conduct a review of the driver conviction and penalty point policies with the intention that tougher policies would make it clear that drivers who failed to meet our standards will not be considered fit and proper to hold licences.
- 3.9 Officers receive a number of complaints each year about drivers' conduct, the most prolific of which are from:
- (1) passengers complaining about hackney carriage drivers over-charging, particularly for short journeys from Watford Junction during the day or for journeys from the Rickmansworth Road rank at night;
 - (2) passengers complaining about hackney carriage drivers refusing to carry passengers short distances within the Borough, particularly from the above two locations;
 - (3) Members, the public, local residents, businesses and the police complaining about hackney carriage drivers misusing the Clarendon Road and Rickmansworth Road taxi ranks;
 - (4) businesses, the public and the Parking Service complaining about hackney carriages parking in inappropriate places in the High Street, Clarendon Road, Shady Lane and Westland Road (e.g. on loading bays, pay-and-display bays and on yellow lines);
 - (5) residents and the Parking Service complaining about hackney carriages and private hire vehicles parking in inappropriate places in King Street and Smith Street; and
 - (6) passengers and other road-users complaining about the behaviour of hackney carriage and private hire drivers.
- 3.10 The first three examples above are criminal offences under the Council's byelaws and attract a maximum penalty upon conviction of £500. The penalty scheme offers an alternative, cheaper and faster out-of-court disposal which builds up an objective picture of a driver's conduct to help defend future decisions to revoke a licence on the basis that the individual is no longer a fit and proper person to hold the licence.
- 3.11 In the year to April 2013, officers logged just over 120 specific complaints relating to licensed drivers. The table below shows the number of service complaints received relating to taxis/private hire vehicles in the previous five financial years:

<i>Year</i>	<i>Number of service complaints</i>
2007 - 2008	75
2008 – 2009	82
2009 – 2010	91
2010 – 2011	80
2011 – 2012	98
2012 – 2013	120

3.12 Proposed changes

One of the scheme's principles is to provide drivers with a clear warning that their conduct has not reached the required standards and that their licence may in due course be in jeopardy should future contraventions come to light. In order to reinforce the Council's desire for higher standards to be maintained, officers recommend that a revocation ought to be considered when a driver has accrued 15 points (in line with the original scheme). Few drivers achieve 20 points and a lower threshold will help drive up standards amongst the large number of drivers currently working in the town.

3.13 In addition, a few changes are recommended to the scale of contraventions, namely:

- (1) failure to properly display a door sign on a licensed vehicle in the position specified by officers – 3 points;
- (2) using a licensed vehicle to ply for hire or be made available for hire when in an unsafe and/or unroadworthy condition – 3 to 12 points;
- (3) charging or attempting to charge passengers with disabilities a greater fare than would otherwise be charged to a passenger contrary to the Equalities Act 2010 – 12 points;
- (4) unspecified behaviour or misconduct – increased in range of points from 3 – 6 points to 3 – 12 points;
- (5) refusing without reasonable excuse to carry passengers within the Borough – 12 points. This would be in line with similar contraventions relating to fares and over-charging;
- (6) physical abuse towards any person – this would be reduced from a range of 10 – 20 points to a range of 10 – 15 points in line with the reduction of the total number of points that could be allocated.

3.14 Officers would also recommend a change to the process by which points are allocated, as follows:

- (1) licensing officers or the licensing enforcement officer investigates contraventions and issues points with reasons to a driver;
- (2) drivers have the opportunity to challenge the points within ten working days either in writing or at a meeting with the licensing manager or section head. At the meeting the hearing officer will give reasons for their decision and will have the discretion to:
 - (a) allow the appeal;

- (b) dismiss the appeal;
- (c) substitute the level of penalty points for another amount where the scheme allows for a range of points;
- (d) authorise some other appropriate sanction, such as written advice, formal warnings, a simple caution or referral to the Council's legal team for consideration for prosecution.

- (3) where drivers have accrued 15 or more points (after any internal appeals have been disposed with), the licensing manager advises the driver that their licence will be considered for revocation and that they have 15 working days in which to make representations;
- (4) (a) where drivers do not make representations against their licence being revoked within 15 working days, the licensing manager or section head will confirm that the licence will be automatically revoked and the driver will be entitled to their statutory 21 days to appeal;

(b) where drivers do wish to make representations, a meeting will be arranged with the section head or head of service, within 10 working days of the end of the 15 day period for making representations,. Officers will at that stage consider any representations as to the driver's fitness to continue holding a licence but the meeting will not be an opportunity to reconsider the original points leading to the proposed revocation. If officers decide to revoke the licence, the driver will be notified accordingly and informed within five working days of the meeting of their right to appeal to the magistrates' court.

3.15 Other revocation powers

The 1976 Act allows for licences to be revoked, suspended or not renewed if a driver has been convicted of indecency, dishonesty or violent offences. In those circumstances, the conviction can be assessed against the Council's policy for previous convictions and an appropriate decision taken.

- 3.16 Action can be taken where a driver has been convicted of an offence under the licensing legislation, failed to comply with a requirement under the licensing legislation, or for any other reasonable cause.

- 3.17 In these circumstances, that are not covered by the penalty point scheme, drivers would be referred for consideration by the Licensing Sub-Committee (Drivers Appeal Panel) along the lines set down in paragraph 3.14 and the existing sub-committee protocol. Drivers would have 15 days in which to make representations, with a hearing convened within a further 10 working days of that date. The sub-committee would consider all of the drivers' history as well as any representations as to their fitness before determining whether the licence should have penalty points imposed, suspended, not renewed or revoked. The Licensing Committee may wish to decide whether there should be any temporal limits on the sub-committee's powers of suspension, as there are in paragraph 3.19 below.

3.18 Licence suspensions

The Council's existing and long-standing policy has been to only use the power to suspend driver licences in order to allow serious allegations against drivers to be investigated (normally by other law enforcement agencies).

- 3.19 In May 2012 the High Court held¹ that the true construction of the relevant power meant that licence suspension could not be used as interim measure to assess a person's fitness and propriety to hold a licence but as a lesser sanction short of revocation.
- 3.20 Officers believe that the introduction of short periods of suspensions for the more prevalent offences would raise awareness amongst drivers of the need to comply with their licensing obligations and raise standards generally.
- 3.21 Where officers are satisfied one of the following contraventions had occurred, a drivers' licence could be suspended for 72 hours :
- (1) failing to comply with the Council's byelaws relating to hackney carriage ranks, and after any previous warnings or points have been issued (whether or not those pre-date this policy);
 - (2) rude, abusive or inappropriate behaviour towards any person, when viewed from the perspective of the complainant. (Officers would still have to be satisfied that the conduct complained of had actually taken place);
 - (3) over-charging passengers in a hackney carriage;
 - (4) refusing without reasonable excuse to carry a passenger within the Borough;
 - (5) plying for hire as a private hire vehicle driver.
- 3.22 Drivers who have had three periods of suspensions within 12 months will be considered no longer a fit and proper person and their licence revoked along the lines outlined in paragraph 3.14.
- 3.23 Drivers have 21 days in which to bring appeals to the magistrates' court against a decision to suspend their licence.
- 3.24 Regulators' Compliance Code
The Council is required to have regard to the statutory Regulators' Compliance Code² (2007) when publishing or reviewing policies. The most specific obligations under the code are set out below together with the Council's view in relation to the penalty point scheme.
- 3.25 ***"Hampton Principle: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.***
- Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to provisions [of the Code] when determining general policies or principles or when setting standards or giving general*

¹ The Queen (on the application of Singh) v Cardiff City Council [2013] EWHC 1852 (Admin)

² <http://www.berr.gov.uk/files/file45019.pdf>

guidance about the exercise of regulatory functions.”

- 3.26 The interventions recommended in this policy are reasonable, measured, proportionate and targeted. The Council’s penalty point scheme is a quick, low-cost enforcement mechanism which avoids the inconvenience, cost, delay and stigma of using court procedures that might otherwise hinder economic progress. Licence suspensions are limited to a specific range of the most common examples of non-compliance. The most significant intervention – revocation – will only occur either in the most extreme cases or when a number of prior warnings had been ignored. In those situations there is also a risk to the economic development of the trade generally as evidence of bad or poor standards is likely to deter passengers from using local taxi/private hire services.
- 3.27 **“Hampton Principle:** *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*
- Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to provisions [of the Code] when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.”*
- 3.28 The Code suggests that regulators ought to pay regard to past compliance records and potential future risks; the existence of good systems for managing risks; evidence of recognised external accreditation; and management competencies and willingness to comply. Regulators should regularly review and consult on their risk methodologies with regulated businesses and other interested parties.
- 3.29 The data in paragraph 3.11 shows that there are still areas of non-compliance and officers’ experience is that is perhaps inevitable in a trade that effectively offers a one-to-one personal service with limited regulatory oversight. However the Council has adopted a softer approach of targeting penalty points at non-compliant drivers rather than more instantly draconian measures, partly in recognition that individual taxi businesses should regulate their own standards and partly in recognition that many drivers have also achieved a professional industry standard in terms of an NVQ or similar qualification. The overall scheme is kept under regular review and consultations conducted when significant changes are being proposed.
- 3.30 **“Hampton Principle:** *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the provisions [of the Code] when determining general policies or principles or when setting standards or giving general guidance on the exercise of*

compliance and enforcement functions.”

- 3.31 The Code suggests that sanctions and penalties policies should:
- (a) aim to change the behaviour of the offender;
 - (b) aim to eliminate any financial gain or benefit from non-compliance;
 - (c) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - (d) be proportionate to the nature of the offence and the harm caused;
 - (e) aim to restore the harm caused by regulatory non-compliance, where appropriate;
And
 - (f) aim to deter future non-compliance.
- 3.32 Officers would suggest that the penalty points and suspension scheme meet all of those criteria, in particular:
- (a) by eliminating financial gains or benefit from non-compliance by short periods of suspension from those business activities;
 - (b) being responsive and appropriate by allowing for prosecution to be considered in appropriate cases in line with the Environmental Services enforcement policy;
 - (c) is proportionate in terms of either being a sequence of measured warnings – the penalty points – or limited periods of suspension; and
 - (d) aims to deter future non-compliance by other drivers.
- 3.33 The Code also suggests that regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties. If Members wish to adopt the proposals in this report officers will consult with the trade. Any minor objections will sought to be resolved with the Chair of the Committee and reported to Members, and any significant objections brought back to the Committee for further deliberation.
- 3.34 Best Practice Guide
The Department for Transport’s Taxi and Private Hire Vehicle Licensing: Best Practice Guide (2010) contains no specific mention of penalty point schemes or licence suspensions, other than noting that local authorities are best placed to use their discretion when an immediate suspension is justified on public safety grounds.

4.0 IMPLICATIONS

4.1 Financial

4.1.1 The Head of Strategic Finance comments that there are no financial implications to the Council arising from this report.

4.2 Legal Issues (Monitoring Officer)

4.2.1 The Head of Legal and Property Services comments that the key issues are dealt with in the main body of the report. A new feature is the use of a long-standing power to suspend licences for non-compliance. This is arguably an interference with an individual's property rights under article 1 to protocol 1 of the European Convention on Human Rights and Fundamental Freedoms. As such, it is only justified if in accordance with established legal principles and if it is in the public interest. The Convention talks about deprivation of property, and these proposals amount to a very limited interference with property rights within an established statutory framework where there is the opportunity of appeal to an independent and impartial tribunal.

4.3 Equalities

An impact assessment has been prepared to analyse the effects of this policy.

4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Judicial review challenge to the scheme	1	4	4
Inconsistent application of enforcement by not using the scheme	2	4	8

Appendices

Appendix 1 – proposed amendment to penalty point scheme

Background Papers

No papers were used in the preparation of this report.

File Reference

Driver licences/penalty point scheme