

**Report to:** Licensing Committee  
**Date of meeting:** 18 March 2014  
**Report of:** Head of Community and Customer Services  
**Title:** Hackney Carriage and Private Hire Vehicle Policies

The Chair agreed that this report could go 'to follow'. This was to ensure compliance of the enforcement proposals within the delegation of the constitution.

## 1.0 SUMMARY

- 1.1 After a consultation exercise last year with licensed hackney carriage and private hire drivers, it became apparent that some of the current controls helping to maintain standards within the trade were misunderstood and were perhaps in need of review and updating. The purpose of the review was to maintain safety for the public whilst ensuring effective support for the trade to enable compliance that does not reduce standards. It is intended that the outcomes will ensure requirements are not over-burdensome or causing difficulties in compliance and enforcement, which in some cases can prevent businesses from developing.
- 1.2 Officers have since undertaken a more exhaustive consultation exercise with licence-holders to identify a set of prioritised specific concerns. This report documents an overview of the findings of the consultation programme and sets out three initial policy changes to be considered by the Committee prior to formal consultation.

## 2.0 RECOMMENDATIONS

- 2.1 (1) That officers consult with the hackney carriage and private hire licence-holders, operators and other stakeholders about the emerging policy recommendations, with any amendments by the Committee at paragraph 3.37 of the report.
- (2) That after consulting as above the Head of Service is authorised to implement the policies in consultation with the Chair of the Licensing Committee unless any substantial changes to the policies are proposed in which case the policies will be referred back to the Committee for further consideration.

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

## 3.0 DETAILED PROPOSAL

- 3.1 In 2013, officers conducted a consultation exercise with hackney carriage and private hire drivers licensed by the Council on proposed changes to the penalty point scheme

which forms part of the enforcement and compliance regime for those licences.

- 3.2 Responses to the proposals indicated that further consultation was needed on a wider number of issues than the penalty point scheme alone. Officers subsequently held eight workshops last December and January attended by around 80 licence-holders, and received a small amount of correspondence as well. These workshops were designed to encourage debate and discussion, to increase understanding between the council and the trade and to develop suggestions for improvements to the licensing regime that both support the vast majority of professional and compliant drivers, but also ensure we maintain suitable standards to ensure public safety and tackle any drivers that bring the reputation of the trade into disrepute.
- 3.3 Licence-holders were invited to list out their current concerns about issues affecting their businesses in Watford, and were then asked to prioritise them. They were then asked to think about possible solutions to address those concerns and discuss the viability of these with officers. Officers found these workshops beneficial in helping us to understand the trade's perspective and exploring more effective ways of regulating. The feedback from attendees was also generally positive and certainly they welcomed an open discussion recognising not all their issues could be solved immediately or perhaps at all. What was clear however, was that there was a commitment on both sides to maintain and improve standards, to improve working relationships and to ensure a high standard was provided to customers and residents of Watford.
- 3.4 The issues raised varied but some clear priorities emerged. The issues can be split into four general categories:
- a) procedural issues that can be addressed by the licensing team in consultation with the Chair;
  - b) issues that are outside the direct control of the Council but which we could attempt to influence where appropriate;
  - c) issues that are within the control of the Council and partners but are not directly linked to the licensing regime and are therefore for officers to take forward in consultation with the Chair and those other service areas / organisations; and
  - d) policy issues that require the Committee's consideration.

This report gives an overview of all the issues raised in Appendix 1. Its main purpose is to ask members to consider the recommendations for changes to policy developed by officers to address some of the issues raised under point (d) above. These proposals will then be taken for formal consultation to the trade and other stakeholders, along with responses and proposals to the other issues raised. A feedback and consultation session is set for April with the trade. The proposals do not address all the policy issues raised by the trade, these are the ones that have been prioritised for consideration.

- 3.5 The policy issues for consideration are:
- (a) the Penalty Points scheme and our general method of enforcement;

(b) repeat Driving Standards Agency tests; and

(c) vehicle age limits.

This is all within the context of a sea change in the relationship between the trade and the Council in line with the corporate objective of promoting growth and reducing regulatory burdens.

### 3.6 **Penalty Points scheme and approach to enforcement**

#### 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.

3.7 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.

3.8 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 a complaint. If an appeal is lodged, the decision to revoke or refuse the licence is “stayed” until the disposal of the appeal.

3.9 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.

### 3.10 **Penalty points scheme**

The penalty points scheme was approved by the Licensing Committee on 29 March 2007 with the aim of introducing an out-of-court, consistent, evidence-based approach for officers dealing with non-compliance with driver and vehicle licence conditions. The scheme has been amended from time to time but the general principle has been that the accrual of a specific number of points over a given time period could lead to a driver’s licence being revoked or not renewed (as the case may be). Criteria exist to justify the imposition of points, including evidence to demonstrate that the contravention took place and consideration of the licence-holder’s history of compliance. Currently the criteria is set at twenty points within a rolling twelve month period, and last year’s proposal was for that to be reduced to fifteen points. The use of penalty points is designed to act as a warning that licence-holders risk losing their licences - rather than as a punishment in its own right - with licence-holders able to appeal internally against the imposition of points. Only two drivers have accrued the requisite number of points to justify reconsideration of their entitlement to a licence.

- 3.11 Officers receive a number of complaints each year about drivers' conduct which are currently covered by the penalty points scheme, the most frequent of which are:
- (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.
- 3.12 The first three examples above are criminal offences under the Council's byelaws and attract a maximum penalty upon conviction of £500. The penalty point 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.
- 3.13 Feedback from 44 drivers at the workshops indicated the scheme was viewed in different ways from the original intention, particularly by hackney carriage drivers. Many drivers saw the imposition of penalty points as punitive rather than advisory or as a deterrent. Several reported that it appeared to be ineffective in dealing with the more serious breaches such as when passengers are over-charged, or drivers refuse to carry passengers for short distances – two specific examples which damage their business reputation. This view was also particularly true for points given for contraventions arising from misuse of taxi ranks and parking spaces, when hackney carriage drivers believe there is insufficient available rank space. From officer's perspective, the Penalty Points system has led to some bureaucracy in administration given the various categories and ranges of points. It has also at times seemed to hinder our ability to tackle the very small number of drivers who repeatedly flout the law, but possibly do so in a way that means with the 12 month rolling period they never get considered for further action.
- 3.14 Licence-holders proposed a number of alternative approaches such as:
- defining and separating minor contraventions from major contraventions and

having a separate approach in dealing with each

- abolishing penalty points for some categories of contravention, eg parking, over-ranking
- replacing penalty points with financial penalties (eg fixed penalty notices) for some offences
- suspending licences for periods from two days to weeks
- introducing a “three strikes” scheme
- issuing strong warnings before revoking (or not renewing) a licence
- only issuing points for serious or proven offences
- revoking the licences of repeat offenders
- call in offenders for a stern face-to-face warning.

3.15 There was strong support at the workshops for licensing powers to be used in some specific cases, such as licence-holders refusing to carry passengers or over-charging. Several participants were in favour of quite strong penalties in those circumstances, including licences being suspended for lengthy periods or financial penalties being imposed. The Council does not currently have the power to issue fines as there is no lawful authority for doing so.

3.16 Officers have given careful consideration to these proposals. All enforcement action by the licensing team is guided by the Environmental Services Enforcement Policy, which Members approved in June 2011 (and which will be revised again in June 2014). This lays down a framework for dealing with all licensing contraventions using:

- warnings and advice
- licensing powers (imposing conditions on some categories of licences, suspension, revocation, review or non-renewal of some licences and the penalty points scheme at present).
- formal enforcement powers (cautions and prosecutions).

This policy guides all enforcement activity for all businesses in the town such as food hygiene, health and safety at work and waste disposal etc.

3.17 Officers suggest that the time is now right for the penalty point scheme to be revoked and that contraventions should be dealt with by following the Enforcement Policy’s principles and guidelines in the same way that any other business is dealt with. It is however proposed that the policy be amended to include the introduction of a new formal “licence review” and an “Driver Standards Committee” that will give some clarity and detail in relation to taxi enforcement. Minor contraventions would, as now, result in warnings and advice and more significant contraventions would result in the use of appropriate licensing or formal enforcement powers. The principles of this new way of

working are set out in Appendix 2. If the decision is taken to consult on this reviewed enforcement approach, and it is found to be the right decision to take it forward, the new Enforcement Policy will be brought for approval to Members later this year

### 3.18 Repeat driving assessments

The council's policy is that applicants must pass the specialist hackney carriage/private hire driving assessment administered by the Government's Driving Standards Agency (DSA) when they first apply for their drivers' licence. Drivers who attended the workshops and officers think it is right to continue to require this assessment at first application.

### 3.19 The DSA assessment includes:

- a manoeuvre where drivers are asked to turn their vehicle to face the opposite direction
- around 10 minutes of driving without being given turn-by-turn directions by the examiner
- stops at the side of the road as if a passenger is getting in or out
- related questions, eg what to do if a passenger leaves property in the vehicle
- questions from the Highway Code and identifying traffic signs and road markings

Drivers might also be asked to do an emergency stop. The assessment is passed if the driver makes 9 or less faults, but will fail if they make a serious or dangerous fault.

3.20 Drivers who have six or more current penalty points endorsed on their standard Driver and Vehicle Licensing Agency (DVLA) license are required to re-take the test. This is designed to act as a warning that a driver is potentially at risk of losing their DVLA licence if they accrue a further six points typically within the following two years, to reinforce good driver behaviour and as a means of providing an independent assessment of their continued fitness to drive members of the public. If a driver fails to present a pass certificate to officers within three months of being required to re-take the test they have their WBC licences revoked. They may be renewed, but only after they re-take the Knowledge Test and DSA test again.

3.21 The trigger level was reduced from nine to six points in the face of opposition from the trade in 2012. At the time the council made a commitment to review the lower trigger level after a year.

3.22 Thirteen drivers have been required to re-take the test since May 2012 due to the following endorsements on their DVLA licences. One of those drivers subsequently did not take the test. The remaining twelve drivers re-passed the test without their licences being revoked.

No of DVLA POINTS	REASON FOR ENDORSEMENT
9	<ul style="list-style-type: none"> <li>• failing to comply with traffic signal</li> <li>• exceeding statutory speed limit</li> </ul>

9	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> </ul>
9	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> </ul>
9	<ul style="list-style-type: none"> <li>• not recorded</li> </ul>
9	<ul style="list-style-type: none"> <li>• using a vehicle with defective tyres</li> <li>• exceeding statutory speed limit</li> <li>• failing to comply with traffic signal</li> </ul>
9	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> </ul>
9	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> <li>• failing to comply with traffic signal</li> <li>• using mobile phone etc whilst driving</li> </ul>
9	<ul style="list-style-type: none"> <li>• using mobile phone etc whilst driving</li> <li>• exceeding statutory speed limit</li> </ul>
6	<ul style="list-style-type: none"> <li>• using vehicle without third-party insurance</li> </ul>
6	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> </ul>
9	<ul style="list-style-type: none"> <li>• using mobile phone etc whilst driving</li> <li>• failing to give information as to identify of driver</li> </ul>
6	<ul style="list-style-type: none"> <li>• driving without due care and attention</li> </ul>
6	<ul style="list-style-type: none"> <li>• exceeding statutory speed limit</li> <li>• failing to comply with traffic signal</li> </ul>

3.23 Feedback from the vast majority of drivers at the workshops was the DSA re-test did not necessarily change the driver's behaviour, as they tend to "drive to the test". They noted that the majority of points were accrued through speeding in areas they knew and drove frequently. Furthermore they felt that as this did not bring about behaviour change, this was not an effective deterrent. They stated the deterrent is the risk of the loss of their DVLA licence and so the DSA retest can be viewed as a further punishment that costs them approximately £80 to £112 as well as lost working time.

3.24 It could be argued that the DSA test is an appropriate tool to re-examine most of the contraventions in the above table – speeding, using mobile phones whilst driving, failing to comply with traffic signals and driving without due care and attention. There is also an argument that it is not appropriate when a driver has used an uninsured vehicle or failed to give information about a driver of their vehicle suspected of an offence.

3.25 Officers have considered whether driver refresher education would be more productive than the DSA re-assessment. A suitable alternative might be the Drive Check Plus assessment conducted by the Institute of Advanced Motorists (IAM), the nationally recognised road safety charity which is quality-assured by the DSA. This consists of an informal session with an approved IAM examiner (serving or retired police advanced drivers) to support most best practise driving procedures with a 60-minute on-road general assessment. At the end of the drive the driver is given a written assessment form. Drivers may then be encouraged to prepare for the IAM's Advanced Driving Test, which brings many other benefits to them. The assessment is more tailored to the individual driver and the fee (currently £35) is less than the DSA fee.

3.26 Officers have considered the purpose and apparent outcome of the current policy and would request members consider two options of which either or both could be put forward for further consultation:

- (1), that the DSA test is replaced by the IAM assessment when drivers accrue 9 points

on their DVLA licence; or

(2) that Members remove the requirement for a DSA retest in all circumstances and allow the deterrent of the loss of the DVLA licence to be sufficient control, and any offences relating to driving standards can be considered as part of any review of a driver's licence if necessary.

### 3.27 **Vehicle age limits**

The council has set a policy concerning vehicle age limits which it has revisited in relation to hackney carriages in July 2013 and previously in relation to hackney carriages and private hire vehicle in July 2010. The current policy is that:

- no vehicle will be licensed for the first time as a hackney carriage if it is more than four years old at the time of licensing
- no London-style or purpose-built vehicle will be licensed as a hackney carriage if it is more than 20 years old
- no other type of vehicle will be licensed as a hackney carriage if it is more than 13 years old
- no mini-buses will be licensed as private hire vehicles if it is more than three years old at the time of first licensing
- no multi-purpose vehicle will be licensed for the first time as a private hire vehicle if it is more than three years at the time of first licensing.

3.28 The vast majority of attendees at the workshops thought that the initial four-year age limit was too restrictive and made buying replacement vehicles too expensive meaning they may be less likely to replace their vehicles as soon / often. They have suggested that modern vehicles are made to a very high standard but there can be a considerable price difference between a second-hand four-year old car and a second-hand six or seven year-old car. There was also support for abolishing the upper (20 year and 13 year) age limits. Hackney carriage drivers argued that those changes would make it more likely vehicles would be replaced more frequently. There is an argument that as all licensed vehicles have to pass the MOT and meet the Council's vehicle conditions that the standards should not drop but accepting that the fleet will potentially appear less modern if cars aren't replaced as regularly.

3.29 There are presently 292 licensed hackney carriages, of which the average age is 6.74 years. Around a quarter are younger than four years old. Furthermore:

- two London-style or purpose-built taxis are seventeen years old, but none are at the current maximum of twenty years old
- there are no saloon, estate or MPVs that are thirteen years old, (the current policy maximum)
- there is currently one vehicle that is eleven years old which would be required to be replaced within the next two years under the current policy.



3.30 In comparison, the average of the 188 private hire vehicles is 6.95 years, with six vehicles being less than two years old. Sixty-six vehicles are less than seven years old and fifty-two more than seven years old.

3.31 Non-statutory guidance from the Department of Transport<sup>1</sup> suggests that

“It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles - for example, twice-yearly tests for vehicles more than five years old.”

3.32 Many local authorities require vehicles more than five, seven or ten years old to be re-tested twice yearly. Officers are not convinced that this is necessary for Watford. All licensed vehicles have an annual independent MOT and then have annual compliance checks by officers so standards can be maintained for non-MOT features such as seating covers, signage, paintwork, non-structural rusting etc. More frequent testing is also more of an administrative burden on licence-holders and the council. It is not necessarily risk-related, particularly if a newer vehicle for example covers a much greater annual mileage than an older vehicle.

3.33 Officers conclude that the age policy is more about quality rather than safety. The Committee may wish to take a view on whether it wants a hackney carriage fleet that is relatively new and regularly renewed with “younger” vehicles. The existing policy would achieve that aim, by restricting only newer vehicles onto the fleet and setting a specific end-of-life date. However officers would ask Members to consider the suggestions from the licence-holders at the workshops to increase the age of vehicles when first licensed and to remove the maximum age requirement.

3.34 Officers propose that the new policy states no vehicle will be licensed for the first time as a hackney carriage if it is more than seven years old at the time of licensing.

3.35 Private hire vehicles generally have never been subject to age limits. Quality control is also exercised more vigorously by the operators on whose circuits the private hire drivers work. Officers therefore recommend that the current policies in relation to mini-buses (of which there are have only been a handful) and multi-purpose vehicles used for private hire be abolished.

### 3.36 **Regulators’ Code**

The Committee is required to have regard to the Regulators’ Code published under section 23 of the Legislative and Regulatory Reform Act 2006 when developing policies and operational procedures that guide its regulatory activities. The relevant extracts appear below:

#### ***1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow***

1.1 Regulators should avoid imposing unnecessary regulatory burdens through

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<sup>1</sup> Taxi and Private Hire Vehicle Licensing: Best Practise Guidance (Department for Transport, 2010): see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212554/taxi-private-hire-licensing-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf).

their regulatory activities<sup>1</sup> and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities;
- minimising the costs of compliance for those they regulate;
- improve confidence in compliance for those they regulate; and
- encourage and promote compliance.

1.3 Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.

***2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views***

***3. Regulators should base their regulatory activities on risk***

3.1 Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.

3.2 Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.

***5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply***

***6. Regulators should ensure that their approach to their regulatory activities is transparent***

**3.37 Summary of recommendations**

Following any amendments by the Committee, officers will consult with licence-holders on the following proposals:

1 Enforcement regime

That the penalty point scheme for licensed drivers introduced on 29 March 2007 be

revoked and that the Environmental Services Enforcement Policy be updated to include the principles set out in appendix 2 including “Case Reviews” and “Driver Standards Committee”.

## 2 DSA assessments

(1) That the policy adopted on 29 March 2007 of requiring licence-holders to re-take the DSA hackney carriage/private hire drivers’ assessment in certain circumstances be revoked; and, if Members wish to introduce a new requirement:

(2) that licence-holders whose DVLA licences are endorsed with nine or more current points are to be required to produce at their own cost within three months of being required to do so a written Drive Check Plus assessment (or equivalent as may from time to time be offered) from the Institute of Advanced Motorists. Licence-holders who are unable to produce such assessments without good cause will have their licences revoked until they have produced such evidence and fulfilled all the Council’s current criteria for the grant of a licence.

## 3 Vehicle age limits

(1) All existing policies, conditions and requirements relating to the age of hackney carriages and private hire vehicles be revoked.

(2) That from the date of approval no vehicle shall be first licensed as a hackney carriage if at the time of licensing it has been registered at DVLA for seven or more years

## 4.0 **IMPLICATIONS**

### 4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no additional financial implications arising from this report. The policy of suspending driver licences that can be challenged in the magistrates’ court may lead to an increase in the number of appeals against the council but officers estimate no more than one additional appeal a year. Costs of unsuccessful appeals may usually be recovered from the appellant.

### 4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that there are no legal issues arising from the changes in policy to the vehicle age limits and this can be adopted if the Committee think they are reasonable, proportionate and justified.

The Environmental Services Enforcement Policy already sets out the basis of how the council makes enforcement decisions., Members have previously endorsed this. The use of the power to suspend drivers’ licences is not a local decision, it is the use of an existing statutory power that this Council has not previously used.

The High Court has ruled that it is lawful for local authorities to require drivers to pass the DSA test before renewing their licence as it amounted to a lawful request for information in order for it to assess whether the applicant was a fit and proper person.<sup>2</sup> By extension it is argued that requiring licence-holders to provide details of an independent assessment during the currency of a licence is a lawful request in order to assess their continuing fitness and propriety when evidence of poor driving (shown by endorsements on the DVLA licence) has come to light.

#### 4.3 Equalities

4.3.1 No new evidence has emerged that the changes in policies would have any adverse impact on the protected characteristics listed in the Equalities Act.

#### 4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Judicial challenge to any of the policies	1	4	4
Older and less reliable vehicles if no vehicle age limits are applied	4	2	8
Appeals against suspension of driver licences	4	1	4
<i>Those risks scoring 9 or above are considered significant and will need specific attention in project management. They will also be added to the service's Risk Register.</i>			

#### Appendices

Appendix 1 – Results from driver workshops

Appendix 2 – Principles to be included in Environmental Service Enforcement Policy

#### Background Papers

As listed in the footnotes within the report

#### File Reference

Driver workshops 2014

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