

REPORT TO LICENSING COMMITTEE

Date of Meeting: 11 July 2023

Report of: Service Lead - Environmental Health & Community Safety

Title: Introduction of Taxi Penalty Points Scheme

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 The purpose of this report is to seek Licensing Committee's views on the introduction of a Taxi Penalty Points Policy for Exeter City Council following a consultation carried out from 20 February until 30 April 2023 (10 weeks).
- 1.2 In July 2020, the Government issued Statutory Taxi and Private Hire Vehicle Standards. On 27 October 2020, the Licensing Committee resolved to set up a working group to consider a number of elements of the guidance, including whether to introduce a points based disciplinary system. The working group has been discussing the merits of introducing such a system, which has led to the proposals being put forward in this report.

2. Recommendations:

That following consultation with the taxi trade, Licensing Committee approve the introduction of a Taxi Penalty Points Policy, with the following amendments, namely

- 2.1 Licensing Committee amend Point 31 to read "Eating whilst a passenger is in the vehicle" and
- 2.2 Remove Point 59 as it contradicts the proposed policy document.

3. Reasons for the recommendation:

- 3.1 The aim of this policy is to improve the levels of compliance with licensing regulations and requirements and to help raise standards, improve safety and enhance the protection of members of the public affected by the actions of licensed drivers, operators and vehicle proprietors.
- 3.2 The Council is committed to ensure that only fit and proper persons become, and remain, as hackney carriage and private hire drivers, operators and vehicle proprietors.
- 3.3 The procedure also seeks to improve the level of transparency and consistency in which the licensing system is administered and enforced.

4 What are the resource implications including non-financial resources.

- 4.1 There are no quantifiable financial implications arising as a result of this report, although the impact upon staffing requirements of administering the new scheme would need to be monitored.

5 Section 151 Officer comments:

- 5.1 There are no immediate financial implications contained in this report. Members should note that any additional resourcing issues requiring funding would have to be funded through the licensing regime and would not therefore impact on the Council Taxpayer.

6 What are the legal aspects?

- 6.1 The Council may lawfully adopt a penalty points scheme for taxis, hackney carriages and private hire vehicles, in accordance with the decision in *R (on the application of Singh) v Cardiff City Council (2012) [2012] EWHC 1852 (Admin)*, so long as the scheme does not permit the automatic revocation or suspension of a taxi licence. Upon a driver reaching the permitted limit of points, the decision to suspend or revoke the taxi licence must be referred to the Licensing Sub-Committee.

- 6.2 Two statutes create offences relating respectively to hackney carriages and private hire vehicles:

The Town and Police Clauses Act 1847 (as amended)

The Local Government (Miscellaneous Provisions) Act 1976 (as amended)

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 - Suspension and revocation of drivers' licences.

- (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—
- (a) that he has since the grant of the licence—
 - (i) been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
 - (b) any other reasonable cause.
- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him in accordance with section 54 of this Act.
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

- (2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.
- (2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2) (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.
- (3) Any driver aggrieved by a decision of a district council under subsection (1) of this section may appeal to a magistrates' court.

7 Monitoring Officer's comments:

- 7.1 This report raises no issues for the Deputy Monitoring Officer.

Simon Copper – Deputy Monitoring Officer

8 Report details:

- 8.1 The penalty point procedure is designed to work in conjunction with other enforcement options, identifying those drivers, operators or vehicle proprietors who repeatedly behave in a manner which, if taken as a whole, indicates that they are not fit and proper persons to hold a licence.
- 8.2 The Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (the relevant legislation covering such licences), only allows for the suspension or revocation of a licence, or the prosecution of a licence holder where they commit an offence under the above legislation. Therefore there is no system in place to deal with minor breaches or infringements, which in isolation are not serious enough to warrant prosecution, suspension or revocation of a licence.
- 8.3 Penalty points may be awarded against anyone holding a hackney carriage licence; a private hire driver licence; a private hire operator licence or a vehicle proprietor.
- 8.4 A detailed explanation and breakdown of how the policy will be administered and is operated is contained in the policy at Appendix A.
- 8.5 The policy was put out to public consultation for a ten week period. This period ran from 20 February until 30 April 2023 (10 weeks). Two responses were received to the consultation and are set out below:-

A response from the General Manager of Apple Taxis is set out below in italics:-

Below are some points from the recent proposal along with a couple of queries/concerns for the next forum meeting.

Firstly Apple completely back the new points system although we do feel the operator points should be withheld until the policy is properly in place. Although the majority of offences/misconducts are backed, below are a couple that have raised concerns and feel either require removing or updating.

Point 31. Evidence of food or drink in the Vehicle - If a driver is keeping their vehicle clean, are they not able to carry their lunch or a coffee on board? This seems unreasonable.

Point 57. Waiting or stopping on double yellow lines - Although law, the majority of the city has double yellow lines or loading bays... this rule has concerned a lot of drivers, especially with the lack of access to Queen Street ext. It seems the wardens are targeting Private Hire vehicles in particular recently. We've had a driver ticketed at the back of Boots for setting down a blind passenger as the driver left the vehicle to open the door. (Concerns of disability cases or discrimination.)

A second response to the consultation was in the form of a petition received on behalf of the Exeter St David's and the Exeter Taxi Association and signed by 64 drivers, between the 31 March and the 11 April 2023. The petition sets out their concern that the proposed point system could not be enforced until such time as there was the opportunity to meet and discuss with the Chair of the Licensing Committee. The petition made reference to *what can action could be taken for out of town taxis working in Exeter; in Point 59, that there should be access to a meeting of Licensing Sub-Committee, and the right of appeal above the Environmental Manager; and that a driver should be able to eat or drink inside the cab when the taxi is stationary on the rank.*

8.6 Both responses raise issues that were not the subject of this consultation. For the purposes of this report the matters raised that were the subject of this particular consultation relate to points 31, 57 and 59 of the proposed penalty points policy.

8.7 Point 31 relates to evidence of food or drink in the vehicle. It has rightly been raised that drivers need to eat or drink whilst working. This is accepted and litter from food and drink in the vehicle would be covered by Point 11 which relates to unsatisfactory condition of a vehicle both inside and out. It is therefore proposed that point 31 be amended to eating whilst passengers are present in the vehicle.

8.8 Point 57 relates to waiting or stopping on a double yellow area, bus stop or private land (without the owner's permission) unless requested by a paying customer present in the vehicle. This is a road traffic regulation with an exemption to allow passengers to board or alight from a vehicle. We would not be seeking to penalise drivers who are legitimately dropping off or picking up passengers under the exemption. The points system would penalise those drivers who repeatedly ignore road traffic restrictions and park where they are not permitted to. It is proposed that Point 57 remains as written.

8.9 Point 59 relates to the appeal of points issued by way of a sub-committee. Members have been clear throughout this process that appeals against points issued by officers should be to the Environmental Health and Community Safety Manager or in his/her absence the Service Lead – Environmental Health and Community Safety, who, will have the discretion to:

- i. uphold the Council Officer's decision – retain the number points on the 'penalty points notice'; or
- ii. cancel the issue of the "penalty points notice" to the licensee.

Members will only hear cases where 12 or more points have been accrued or where it is proposed that 7 or more points are likely to be issued. It is therefore proposed that Point 59 can be removed.

8.10 The above points at 8.7, 8.8 and 8.9 were discussed and explained at the recent Taxi and Private Hire Forums, extracts from from the Minutes of both meetings on the 19 April 2023, which included the Chair and Deputy Chair of Licensing Committee, representatives of the respective taxi trades and Licensing Officers are set out below:-

Minute Extract Taxi Forum (Hackney Carriage)

The Principal Licensing Officer provided an update on the proposed Taxi Penalty Points Policy. The Licensing Committee at its meeting held on 31 January 2023, had agreed to undertake a 12 week consultation between 20 February and 30 April 2023. As part of the consultation process, the draft policy had been sent to the Hackney Carriage and Private Hire Trades for discussion at the Taxi Forum before a final policy is presented to the Licensing Committee.

Whilst the consultation process was still underway, the Licensing Authority had received a written submission from the Chair of the Exeter St David's Taxi Association, supported by Hackney Drivers, with the following concerns:-

How could Taxis licenced by authorities outside of the city, continue to work in Exeter using a Private Hire App, which was considered to be illegal. The proposed Taxi Penalty Points Policy, needed to ensure that there was quicker access to holding a Licensing Sub Committee hearing, for any right of appeal to the Service Lead - Environmental Health & Community Safety. The point relating to preventing drivers from eating or drinking inside a taxi whilst stationary needed to be addressed.

The Principal Licensing Officer addressed the point raised on out of town drivers operating in the city. He clarified that despite the frustrations it caused, it was legal to do so. He also confirmed that there was nothing the Council's Licensing Authority could do to prevent it. He requested that the taxi representatives acknowledge that until the law was changed, the Licensing Authority was powerless on this matter.

Members advised that they were in support of the Licensing Authority on this matter and asked representatives to note that this matter was outside of the Council's control.

Representatives spoke on this matter, and the following points were made:-

Thanks were given to the Licensing Authority for their continuing support to the taxi trade. However, it was felt that Taxi Forum meetings needed to be held more frequently to address issues of drivers and operators.

The Licensing Authority needed to write to Apple Taxi's to request the number of operators from outside of Exeter who worked in the city and to enquire about the fares they set. Cross boundary cooperation was needed to address key issues by the various local authorities in Devon. East Devon District Council had made provisions for preventing the use of the term 'Taxi' on Private Hire Vehicles in their area to ensure that there was a clear distinction between the trades.

All drivers needed to undertake knowledge tests to ensure they know the local area whilst ensuring passenger safety.

Door signs and appropriate colour schemes needed to be introduced to support distinguishing between Hackney and Private Hire vehicles. Work had been previously been undertaken on signs and needed to be picked up.

Vehicle door signs needed to use stickers rather than magnetic signs. This would be advantageous for areas such as St David's Ward, where there were a number of vehicles requiring enforcement on this issue.

In response to questions and points raised during the discussion, the Principal Licensing Officer advised:-

Providing that Private Hire fares from other areas did not exceed meter fare rates on Hackney Carriages, they were operating legally. The onus was on the relevant authority who issued plates to determine the fares.

The proposed penalty point policy had been shared with other local authorities, but there was a discrepancy across the region, however, final approval of the policy would be made by the Council through its Members.

Although work on door signs for Private Hire vehicles had been undertaken previously, the DFT was currently undertaking a consultation on this matter. When the details of its findings were made available, work on this matter could be looked at again.

Any costs for any door signs would be included as part of the Taxi fees set by the Council; Any penalty points which exceeded 12 points would be determined by a Licensing Sub Committee, and was open to appeal.

The representatives were also advised by Councillors, that there was still a lot of work to be undertaken before Members considered the matter for approval. There were limited resources available for officers and work had to be prioritised. Work on door signs would be looked at its due course.

The Chair summarised the three points raised, and requested the Hackney Carriage representatives to:-

note and agree that it was legal for out of town taxis to work in Exeter. The Council would commit to working with other authorities in relation to issues raised on insurance and fares to find a unified way forward.

The Council would also look at progressing signs on vehicles to clearly identify them and work with other authorities accordingly.

note that a Licensing Sub Committee could only be convened, on the authority of the Service Lead - Environmental Health & Community Safety, Chair of Licensing Committee or by the Principal Licensing Officer.

note that drivers were allowed to eat and drink in their vehicles, however the vehicle must remain clean and presentable for passengers, and there must be no evidence of food in the vehicle, which included odour from cooked foods.

The Chair also advised that the Taxi Forum wasn't a decision making body and all issues raised would be picked up by the Licensing Authority.

The Principal Licensing Officer agreed to discuss the issue of insurance and fares of drivers plated at Teignbridge District Council with the legal team. He highlighted that Exeter didn't have the power to stop out of town drivers and could only request the relevant authority to pick up any enforcement matters.

The Chair in response to further questions raised by a representative, advised that:- signs on vehicles and would be implemented following any decision made by the Licensing Committee; and

issues relating to closed offices and advertising would be addressed following the publication of the DFT findings.

Members thanked the representatives for their contributions.

Minute Extract Taxi Forum (Private Hire)

The Principal Licensing Officer advised that Apple Taxi had submitted their apologies for the meeting, but had submitted some points in relation to the proposed Penalty Points system and other matters for consideration as follows:-

Apple Taxi's were supportive of the new points system, but felt that operator points should be withheld until the policy was fully in place.

A point of concern was on the issues of evidence of food or drink in vehicles and whether it was reasonable to prevent drivers having food in vehicles.

Another point of concern was on waiting or stopping on double yellow lines for disabled passenger collections. There were concerns about possible disability discrimination cases if passengers couldn't be picked up or dropped off.

Could the Council consider using holographic stickers for the front screen of all private hire cars?

There needed to be a push to ensure Operators had a manned commercial operating base, with fixed landlines.

Private Hire operators would like to undertake a joint operation managed by the Licensing Authority, to monitor drivers in the city.

There needed to be a bigger incentive to increase the number of wheelchair accessible vehicles in the city.

Private Hire vehicles needed access to the High Street in the evenings, using bus lane stickers, to support the safety of women walking alone at night, under the Safety of Women at Night Charter.

The new knowledge test for Private Hire drivers would be welcomed.

A representative from Devon County Council was needed to join the Taxi Forum to address a variety of importance matters.

The Principal Licensing Officer, advising on the submitted points, addressed each point as follows:-

Matters relating to stopping or waiting on double yellow lines had been discussed with Devon County Highways in relation to ensuring there was a level of reasonableness for disabled passenger work. Highways had confirmed that there was no issue with loading/unloading passengers, but drivers should not remain on double yellow lines for any longer period of time.

Apple Taxis would need to contact Devon County Highways to arrange access to Queen Street and other Hackney routes. A DCC contact number could be made available on request.

Private Hire Vehicles already had stickers and plates to identify them to the public.

There was no legislation or policy that would prevent an operator working from home, from a vehicle, or be required to have a fixed line.

Should Apple Taxi organise any operation to address drivers in the city, they would need to coordinate this event. The Licensing Authority would provide support as required.

Incentives to increase the number of wheelchair accessible vehicles in the city could be considered as part of the planned policy changes, going forward.

Although the membership to Safety of Women at Night Charter (SWAN) was important, passengers should continue to be directed to well-lit areas around the city, monitored by CCTV, such as by the library.

A Devon County Council representative would be invited to attend a future meeting, to address a number of matters.

In response to questions, the Principal Licensing Officer explained:-

Apple Taxis had recently started using new door signs using the term 'Taxi' which was their business name. They had been advised of the new DFT guidance in relation to Private Hire vehicles and it was likely they would have to remove the word from their signs and logo. It could take up to six months for a supplier to print new stickers and then issue the stickers to Private Hire drivers for use.

A Devon Licensing Officer meeting was held each month to enable officers from various authorities to meet and discuss cross boundary matters. Issues relating to fares from Teignbridge drivers and journey rates could be raised there;

He would contact Teignbridge District Council to find the number of licenced drivers who operated in Exeter; and

Drivers involved with the mystery shopper exercise would be written to, and be provided with the outcome of the recent exercise.

The Chair thanked the Principal Licensing Officer for the responses on the submitted points. He confirmed that the points raised by Apple had been noted and considered. It was important to highlight that some of the points raised were outside the control of the Licensing Authority.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 The appropriate and robust enforcement of Hackney Carriage and Private Hire licensing will contribute to a healthy and safe city, and lend support to a robust, business friendly economy.

10. What risks are there and how can they be reduced?

10.1 There are no risks identified with this proposal.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 The Licensing Committee could decide to just rely on the enforcement of the statutory legislation in relation to Hackney Carriages and Private Hire. However due to the age and prescriptive nature of this legislation this would be resource intensive and it is suggested should only be used in the most serious cases.

Report of: Simon Lane - Service Lead Environmental Health and Community Safety

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

The Town Police Clauses Act 1847

Local Government (Miscellaneous Provisions) Act 1976

Contact for enquires:

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