

East Herts Council Report

Executive

Date of meeting: 23 November 2021

Report by: Oliver Rawlings, Service Manager (Licensing and Enforcement)

Report title: Consideration of the revised draft Licensing Records Points Scheme following consultation

Ward(s) affected: All

Summary

- The Licensing Records Points Scheme (LRPS) has formed part of East Herts Council's taxi policies for many years. It has allowed officers to issue Licensing Record Points (LRP) to drivers who have fallen below expected standards and failed to comply with certain requirements.
- Over the years there have been a number of changes to the legislation and guidance that the Government has issued to local authorities so as part of this review those matters have been considered.

RECOMMENDATION FOR EXECUTIVE:

A. Endorse the final draft version of the Licensing Records Points Scheme, at **Appendix B**, and recommend it to Council for adoption.

1.0 Proposal(s)

1.1 That the revised wording of the proposed Licensing Records Points Scheme be considered in light of any consultation

responses and amendments proposed by the Licensing Committee.

2.0 Background

- 2.1 East Herts Council is responsible for the regulation of the Hackney Carriage and Private Hire trade within the boundaries of the district of East Herts.
- 2.2 The relevant legislation gives the council the power to implement its own policies, conditions and schemes to ensure that the public are kept safe.
- 2.3 The policies, conditions and schemes should be reviewed regularly and updated as and when necessary to ensure that they remain effective.
- 2.4 The introduction of the LRPS was to enable a wider range of enforcement options to be available to officers, providing a formalised stepped enforcement plan. The provisions of the scheme allow for further information to be added to the record of a licence holder's behaviour and conduct which can be drawn upon should the council need to reconsider whether they are a fit and proper person to continue to hold a licence with East Herts Council.
- 2.5 An eight week consultation was proposed to take place between 19th July 2021 and 10th September 2021. During the early part of the consultation one member of the licence trade identified that they had not received the initial email at the start of the consultation. So as to maximise the opportunities for consultees to raise issues, the consultation closing date was consequently extended to 22nd September 2021.
- 2.6 The Licensing Team contacted the trade to communicate this change and audited their systems to ensure that they were

able to evidence sufficient notification of the consultation and subsequent reminders.

3.0 Reason(s)

3.1 As the Licensing Authority, East Herts Council has operated a points based system to aid compliance within the Hackney Carriage and Private Hire Trade.

3.2 The revision of the current scheme aims to ensure that it remains up-to-date and fit for purpose.

3.3 Section 9.3 of the Department for Transport's Statutory Taxi & Private Hire Vehicle Standards (July 2020) relates to 'Setting expectations and monitoring' and states:

Licensing authorities should ensure that drivers are aware of the policies that they must adhere and are properly informed of what is expected of them and the repercussions for failing to do so. Some licensing authorities operate a points based system, which allows minor breaches to be recorded and considered in context while referring those with persistent or serious breaches to the licensing committee. This has the benefit of consistency in enforcement and makes better use of the licensing committee's time.

3.4 During the consultation two responses were received. Both were from longstanding Dual Drivers' Licence holders within East Herts.

3.5 Both responses, and the authority's replies, can be found at **Appendix A** of this report. Whilst a number of issues were raised neither response suggested any amendments to the draft scheme.

3.6 The points raised within the responses that were unrelated to the consultation were dealt with separately.

3.7 In addition, during the consultation period the Licensing Team were contacted by Julie Marson MP with an enquiry on behalf of a holder of an East Herts Dual Drivers' Licence whose response was received on 2nd September 2021. In the email to the MP, the driver raised the same issues that he raised directly with the Licensing Team and stated:

I am writing to you today to make you aware of a proposed change in the East Herts taxi private hire points scheme. The said scheme was put in place as a safeguard for the people of East Hertfordshire. As a licensed hackney carriage driver of thirty years experience I have no issues with the change .

3.8 The points raised within that email were responded to fully and the MP's support in seeking up-to-date primary legislation for this sector was requested.

3.9 On 13th October 2021 Licensing Committee considered the draft revision of the Licensing Record Points Scheme and the responses that had been received.

3.10 At this meeting the Licensing Committee proposed two amendments to the scheme which were:

- A. To reduce the points for the late renewal licence from six points to three points.
- B. To add wording around the use of racist, sexist, homophobic and other discriminatory language.

3.11 Following subsequent discussion with the Executive Member for Planning and Growth, it was determined that incorporating suggestion (A) would be acceptable as it would still act as a deterrent to late renewal.

3.12 With regard to suggestion (B), members of the Licensing Committee subsequently presented their suggested wording

which the Service Manager – Licensing and Enforcement and the Executive Member considered in detail. On reflection, it was concluded that providing a sanction for discriminatory behaviour in the Licensing Records Points Scheme could undermine the existing provisions in the Taxi Driver Suitability Policy. Put simply, it was felt it could undermine the council's ability to defend an appeal against suspension or revocation of a driver's licence for discrimination / hate crime as the driver could argue that points, an arguably lesser sanction, could have been applied instead.

- 3.13 To reassure all members, the issue of discrimination is covered in detail in the initial training prospective drivers must complete and as part of the update course which drivers must complete at each renewal.

4.0 Options

- 4.1 Endorse the draft Licensing Records Points Scheme wording attached at Appendix B without amendment – **RECOMMENDED.**
- 4.2 Endorse the draft Licensing Records Points Scheme wording attached at Appendix B with appropriate amendments.
- 4.3 Do not endorse the draft Licensing Records Points Scheme – **NOT RECOMMENDED** as the current scheme is in need of updating and no negative views on the draft were expressed during the consultation with the taxi trade.

5.0 Risks

- 5.1 Policies, conditions and schemes that are not reviewed regularly or updated as-and-when necessary so as to remain effective risk leaving the authority open to legal challenges should the council rely on an out-dated policy.

- 5.2 Failure to address gaps within the current scheme could be detrimental to the authority's defence of any legal challenge.
- 5.3 If the authority does not have robust policies and procedures in place then it is unable to limit, as far as is possible, risks to the public.

6.0 Implications/Consultations

Community Safety

The primary purpose of Hackney Carriage and Private Hire regulation is the protection of the public. The continued use of a points-based system will allow for minor breaches to be recorded and considered in context while referring those with persistent or serious breaches for more formal action.

Therefore Community Safety has been considered when drafting the Policy.

Data Protection

No changes are proposed to how data will be held or handled so no additional implications.

Equalities

Consideration has been given to the Equality Act 2010 and the Public Sector Equality Duty whilst drafting the Policy.

Negative Impacts

The council has not identified any negative effects from the analysis of consultation responses, the makeup of the District and information known about licence holders.

Positive Impacts

The council has not identified any positive effects from the analysis of consultation responses, the

makeup of the District and information known about licence holders.

By ensuring East Herts is a District where the hackney carriage and private hire trade is well regulated we help ensure that it is a place where communities can live safely and peacefully together, thus fostering the good relations that are also part of the council's equality duty.

Overall conclusion

From the information held we have not identified that there are people with protected characteristics particularly represented amongst applicants/licence holders. Decisions made under the existing scheme have been reviewed and no evidence of negative impacts on any person due to a protected characteristic have been identified. The revised scheme will be administered in the same way. Points awarded under the scheme are awarded on a case by case basis so if it was identified that a person with a protected characteristic would be disproportionately impacted then another decision could be reached. There is no evidence to demonstrate that our processes for applying the scheme could act differentially among those with a protected characteristic.

On consideration, there is no negative impact on any characteristic or group as a result of the revision of the Licensing Record Points Scheme.

Environmental Sustainability

None

Financial

None as implementing any changes will be possible within existing budgets or fees can be adjusted to balance any shortfall.

Health and Safety

None

Human Resources

As with all policies and council functions, the Human Rights Act 1998 has been considered when drafting this Policy.

Human Rights

As with all Policies and Council functions, the Human Rights Act 1998 has been considered when drafting the Policy.

Legal

All statutory requirements have been considered in preparing this report, including the requirement for public consultation.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 **Appendix A** – Consultation responses

7.2 **Appendix B** – Licensing Record Point Scheme

7.3 Department for Transport, Statutory Taxi and Private Hire Vehicle Standards -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928583/statutory-taxi-and-private-hire-vehicle-standards-english.pdf

7.13 East Herts Taxi and Private Hire Handbook (containing the suitability Policy and the current Licensing Record Points Scheme) – <https://www.eastherts.gov.uk/licences-registration/taxi-licensing/become-licensed-taxi-driver>

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