

REPORT TO CABINET

Title: **GOVERNMENT CONSULTATION ON THE LICENSING OF VEHICLE IMMOBILISATION BUSINESSES OPERATING IN PRIVATE CAR PARKS AND ON PRIVATE LAND**

Date: 23 July 2009

Member Reporting: Councillor Rayner, Lead Member for Highways and Streetcare

Contact Officer(s): Steve Johnson, Trading Standards & Licensing Manager

Wards Affected: This report will have direct or indirect impact on all Wards within the Royal Borough

1. SUMMARY

- 1.1 The Government has invited consultation before 23 July 2009 on the best way to regulate businesses in the vehicle immobilisation industry – commonly known as wheel clamping businesses – to ensure that abuses or intimidating behaviour and demands are stopped, whilst preserving the rights of land owners to take reasonable action to deter or prevent unwanted parking.
- 1.2 RBWM has a long history of complaints from members of the public about clamping and vehicle removal from private car parks and land within the borough. The complainants are often visitors to the borough and whilst **it should be noted that clamping/removal is not undertaken by RBWM itself in any of its own car parks**, there is a tangible negative effect on both RBWM as a council and on tourism within the borough due to clamping and vehicle removal on private land.
- 1.3 Consideration was given in recent months (by a working group consisting of RBWM officers working in relevant services) to what RBWM could do, legally, to alert motorists to the potential problems. However given that most of the complaints do not detail any criminal law breaches, RBWM's action has had to be limited to erecting warning signs close to private clamping areas.

2. RECOMMENDATION: That:

i) The consultation and publicity measures already undertaken by RBWM and outlined in Section 5 below be noted.

ii) The Home Office pro-forma consultation questionnaire be completed and returned but also attach to it details of RBWM's own preferred option based on prohibiting clamping (a draft response is attached as Appendix A).

iii) RBWM's response to include an alternative request (draft included in Appendix A) based on an amended version of the Home Office's Preferred Option should the Home Office not be minded to agree with RBWM's main proposal.

iv) Responsibility for responding to the consultation be delegated to the Strategic Director of Environment in consultation with the Lead Member for Highways & Streetcare.

What will be different for residents as a result of this decision?
Residents and visitors will be better protected against the possibility of abuses or intimidating behaviour, whilst the rights of land owners to take reasonable action to deter or prevent unwanted parking will be preserved. Residents will also be satisfied that RBWM has, as far as possible, attempted to convince the Home Office that a viable alternative to the currently permitted - and very unpopular - clamping regime exists.

3. SUPPORTING INFORMATION

- 3.1 The Private Security Industry Act 2001 requires any individual involved in immobilising vehicles on private land with a view to charging a release fee to be licensed by the Security Industry Authority (SIA). It also requires the licensing of anyone involved in blocking in or towing away vehicles for the same purpose, and of those who collect the fee.
- 3.2 The Act does not currently require wheel clamping businesses to be licensed – however, businesses working in this sector can only employ licensed individuals to carry out the designated activities.
- 3.3 The SIA doesn't regulate business practices such as size/visibility of signage or the maximum allowable penalty charges and the Act does not provide the power for it to do so. The SIA does run a voluntary Approved Contractor Scheme but again this scheme does not cover signage or fees.
- 3.4 The licences issued to individuals by the SIA have conditions that individuals must observe such as not clamping vehicles showing valid disabled badges and requirements for a receipt to be given when collecting a release fee, the receipt having to contain certain information including the licence holder's name and licence number.
- 3.5 Working without a licence and supplying unlicensed staff are criminal offences under the Act, as are breaches of licence conditions.
- 3.6 However, the SIA's preferred option is to encourage compliance with the law in the first instance, using verbal or written warnings to start with where this is appropriate. They can revoke an individual's licence (there is a right of appeal

during which the licence remains valid). They may also suspend a licence if they consider that permitting it to remain valid could pose a risk to the public.

- 3.7 The Government and the SIA are concerned at the level of complaints received about the activities of some wheel clamping businesses and their staff.
- 3.8 The main areas of complaint include:
- inadequate signage
 - the size of release fees
 - immediate clamping and/or towing away;
 - operatives refusing to identify themselves;
 - operatives luring people to park, or intimidating them;
 - SIA's lack of powers against these types of conduct;
 - operatives clamping blue-badged disabled users' vehicles.
- 3.9 The SIA's records indicate that while wheel clampers account for less than 1% of the licensable population, complaints about their activities account for at least 25% of the Parliamentary correspondence and over 10% of the public correspondence they receive.
- 3.10 The SIA report that in the period January 2006 to February 2007, 75 letters related to complaints about vehicle immobilisation, of which 28% of issues fall within their regulatory remit. However, 72% related to matters outside the SIA's remit:
- 28% VI businesses;
 - 15% Release fee;
 - 12% Signage;
 - 9% Behaviour of VIs;
 - 8% Speed of clamping/towing.
- 3.11 In the period from April 2008 to April 2009, the Home Office received at least 70 Parliamentary Questions and letters from MPs relating to vehicle immobilisation.
- 3.12 Outside of the SIA's limited remit, there is no accredited body which is responsible for regulating the practice of wheel clamping businesses. Complaints must normally be made direct to the business. The British Parking Association (BPA) does run an Approved Operator Scheme which requires its members to have an effective appeals system but the majority of wheel clamping businesses, including of course those most likely to operate 'unacceptable' business practices, are not members of that scheme.
- 3.13 On 30 April 2009, the Home Office issued a Consultation Paper entitled "Licensing Of Vehicle Immobilisation Businesses".
- 3.14 The Consultation Paper sets out 4 Options for the future regulation of wheel clamping businesses. However, respondents are also free to suggest their own options.
- 3.15 Option 1 - Status Quo - no change in the current position

- 3.16 Option 2 - A Voluntary Code of Practice.
- 3.16.1 This would be a government endorsed code similar to the BPA scheme discussed above.
 - 3.16.2 The Consultation Paper does not see that this will be any more successful than the existing code. It believes any code or scheme would need to be compulsory to achieve the desired objectives.
- 3.17 Option 3 (The Home Office's Preferred Option) - Compulsory Membership of a Business Licensing Scheme
- 3.17.1 This would require all businesses to be licensed by the SIA and to comply with a compulsory code of practice run by an accredited 3rd party.
 - 3.17.2 The scheme would prohibit businesses/employees from engaging in specified unacceptable practices and would require a transparent appeals system.
 - 3.17.3 Under the scheme, the SIA would remain as the regulator and the accrediting body would decide whether each business applying for a licence met its requirements. It would also be responsible for checking continued compliance with licence conditions which, in agreement with the SIA, it would set. It would also ensure that effective arrangements were in place for considering complaints and securing redress.
 - 3.17.4 The licence conditions would include general conditions like business name and contact details and also "sector specific" conditions relating to size and visibility of signage, maximum penalties charged, minimum times between immobilisation and removal, a complaints and appeals policy.
- 3.18 Option 4 - A Compulsory Approved Contractor Scheme
- 3.18.1 This would make the current SIA-run voluntary scheme compulsory. The Home Office considers that this would create too high a target for the industry (the current scheme is aimed at "high achieving" businesses).
 - 3.18.2 The current scheme also fails to cover the business malpractices that the consultation is seeking to redress.
- 3.19 The Consultation Paper provides a questionnaire to be used for responses. However, there is no requirement to respond in that format. Responses must be made by 23 July 2009.
- 3.20 Members of the working group who initially considered what RBWM's response to clamping complaints could be have been asked for their views on the

consultation documents, including the questionnaire, and these views have informed this Report.

3.21 The formal Consultation Questionnaire is very limited and only allows for a choice amongst the 4 options given in the Consultation Paper. RBWM needs to complete and return the questionnaire but Members may wish to consider attaching to the questionnaire a further option based on the prohibition of clamping.

3.22 To that end, a draft response is attached as Appendix A. In summary the key points included in the proposed response are as follows:

- The background to RBWM's specific concerns
- General agreement with the Home Office's Preferred Option as regards licensing and licence conditions
- Most importantly, a proposal that clamping no longer be permitted and that vehicle immobilisation be replaced by a parking ticket based scheme
- The scheme would allow 28 days for payment of fines
- It would also allow vehicles to be towed if not removed within a reasonable time (2 hours) after a ticket is issued
- The existing British Parking Association Code of Practice on the issuing of parking tickets to be made compulsory
- Acknowledgement that RBWM's proposals should not apply to vehicles illegitimately parked on military land or other similar sensitive areas
- Details of the absolute requirements of, and amendments to, the Preferred Option, should RBWM's ticketing-based scheme not be acceptable to the Home Office
- These to include a minimum time of 30 minutes between immobilisation and removal, strict signage requirements, a cap of £50-£100 on clamping, towing and impounding fees, a ban on unjustified "full day" charges and "double charging" (ie charges for clamping and removal), a strict re-licensing requirement on "phoenixing" companies, a requirement for all licensed businesses to assume responsibility for equipment such as pay-and-display machines, irrespective of actual ownership, the need for car pounds to be local and accessible, and the continuation of an annual licensing period rather than a move to a 3-year period.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	RBWM could choose not to respond to the Home Office consultation.	This option is not recommended. Vehicle immobilisation has ramifications throughout the Borough and RBWM would be criticised both by residents and visitors for	Cost of dealing with communications from residents and visitors who have been clamped in RBWM.

	Option	Comments	Financial Implications
		not engaging in the consultation process.	
2.	RBWM may choose to simply return the completed Home Office pro-forma consultation questionnaire	This option is also not recommended. The pro-forma is limited in scope and does not allow for RBWM to express its full view.	Cost of dealing with communications from residents and visitors who have been clamped in RBWM.
3.	RBWM could choose to return the completed pro-forma and attach to it its own further recommendations, as set out in this report and publicise the issue via a press release and its own website.	It is recommended that this option be progressed in order that RBWM's comprehensive views are taken into consideration by the Home Office and that residents and visitors are alerted to RBWM's action.	Cost of responding to consultation.

4.2 Risk assessment

It may be that the proposed recommendation is actually out of step with the views of residents and visitors. Given the large number of complaints received, however, this is highly unlikely.

5. CONSULTATIONS CARRIED OUT

- A synopsis of the Home Office Consultation Paper has been placed on RBWM's website stating that RBWM is totally opposed to clamping, that it does not clamp cars in its own car parks and that it is compiling its own response and asking local residents and businesses to forward their own responses to the Home Office.
- RBWM has written to both local MPs, to the town partnerships and Parish Councils and to borough businesses affected by clamping stating that it is compiling its own response and asking them all also to reply to the consultation.

6. COMMENTS FROM OVERVIEW AND SCRUTINY PANEL

6.1 That the report be recommended to Cabinet subject to the inclusion of the following comments:

- 6.1.1 That should clamping be prohibited and replaced by a ticket-based scheme, the time between issue of a ticket and a vehicle being allowed to be towed away, should the owner fail to return, be 2 hours and not the 1 hour as originally quoted.

6.1.2 That the Borough recognises the recommendations should not be applicable to vehicles which were illegitimately parked on military land or in other similar sensitive areas.

6.1.3 The Panel also commented that the pounds where towed cars were kept should be local and accessible, that the signage should be of an adequate size and that fees should be charged on the basis of the number of full days a car has been impounded.

6.2 These comments have all been incorporated into the report where appropriate at Section 3.22 and in Appendix A.

7. IMPLICATIONS

The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	N/A	N/A	N/A

Background Papers:

- Home Office – Licensing of Vehicle Immobilisation Businesses: A Consultation Paper

APPENDIX A – DRAFT RBWM RESPONSE

It is proposed that the RBWM response would be sent by letter under the name of the Strategic Director of Environment with the heading:

Licensing of Vehicle Immobilisation Businesses - A Consultation Paper

It is proposed that the text of the response, which would be “topped and tailed” as appropriate, would state:

I am the Strategic Director of Environment for the Royal Borough of Windsor & Maidenhead (“RBWM”) and I am instructed by the RBWM’s Cabinet to write to you setting out this local authority’s formal response to the above Consultation Paper. For your information, this follows a Cabinet meeting held on 23rd July 2009.

This authority has a long history of complaints from members of the public about clamping and vehicle removal from private car parks and land within the borough. The Borough hosts some 7.5 million tourists per year and many of the complainants are often visitors to the borough and whilst neither vehicle clamping nor removal is undertaken by RBWM itself in any of its own car parks, there is a tangible negative effect on both RBWM as a local authority and on tourism within the borough due to clamping and vehicle removal on private land.

For this reason, whilst I have attached a completed questionnaire as requested by the Consultation Paper, I also request that you give full consideration to the following additional points and proposals.

RBWM agrees with the general points of the Consultation Paper’s Preferred Option (Option 3) as regards the new licensing system and conditions to be attached to licences.

*However, it proposes that licensed businesses be permitted, in the first instance, only to issue parking tickets to offending vehicles - and **not** be permitted to clamp or otherwise immobilise vehicles.*

Ticketing fines would be payable within a set time period (for example, 28 days) and if a ticketed vehicle was not removed by the owner/driver within a reasonable time (for example, 2 hours) then the licensed business would be able to tow the vehicle and charge for recovery in the same way as envisaged by the Consultation Paper’s Preferred Option.

Nationally, many private car parks use a ticketing-based approach and unpaid ticketing fines are recovered through the civil courts. As you will be aware, this is particularly so in Scotland (outside the jurisdiction of the Act and the SIA) where court decisions have ruled that clamping is akin to extortion and have effectively banned it altogether.

There also currently exists a comprehensive Code of Practice issued by the British Parking Association (“BPA”), which has to be complied with by those members that choose to use a parking ticket approach. This BPA Code could easily be made

compulsory, in an appropriately amended form, to cover a national “ticketing-based” regime.

The Home Office should not underestimate the anger and concern caused within RBWM (and indeed other local authorities across the country) not just by abusive and/or intimidating vehicle immobilisation businesses and/or employees - but by clamping per se. It causes huge distress and inconvenience, both of which could be alleviated by simply replacing it with a “ticketing-based” regime.

Should the Home Office not be minded to accept this “ticketing-based” proposal then I would ask that the Preferred Option, Option 3, be adopted.

However this authority wishes to emphasise the absolute necessity of the following matters being included in the sector specific conditions:

- A minimum time between immobilisation and removal, with a minimum of 30 minutes being this authority’s wish*
- Strict requirements governing the size, visibility, clarity and legibility of signage, and*
- The capping of the rates to be charged by licensed businesses, with no more than £50-£100 being permitted for clamping, towing and/or impounding charges.*

Moreover, this authority also requests that the following additions and amendments are made to the Preferred Option:

- Many complaints about vehicle immobilising businesses relate to the fact that when a vehicle has been immobilised, both a clamping fee and a removal fee are often levied, even when a vehicle has not actually been removed (the justification being that signage often states that once clamped a vehicle “becomes liable for immediate removal” and the removal fee is payable because a removal vehicle has been called to attend). The sector specific conditions must ensure that this “double-charging” is prohibited.*
- Concern has also been raised regarding the unjustified use of “daily rate” storage charges for impounded vehicles. For example, owners of cars impounded late on Day 1 and released early on Day 2 are often charged 2 full days worth of release charges. The sector specific conditions must ensure that storage charges are based fairly on the actual elapsed time between impounding and release.*
- Vehicle immobilisation companies have been known to “phoenix” and re-emerge under a new name using the same staff, contracts, signage and equipment as the liquidated company. The new licensing regime must ensure that any company going into liquidation loses its licence and any new company emerging to take its place has to go through the entire licensing process afresh.*
- In respect of car parks, vehicle immobilising companies are normally separate legal entities from owners/operators of the land on which the car park is situated. The latter are often responsible for the equipment used – eg pay-and-display ticket*

machines. If equipment falls into disrepair and, for example, fails to issue tickets correctly or at all, vehicle immobilising businesses have been known to simply clamp all cars. The sector specific conditions must ensure that all licensed businesses are deemed to have responsibility for all equipment and signage used, irrespective of actual ownership and that if equipment is faulty then vehicle immobilisation cannot take place.

- RBWM is a significant tourist destination and many clamping complaints received are from visitors from overseas. The new regime must ensure that there is a requirement for signage and documentation to be multi-lingual and/or pictorial.*
- There has been concern both locally within RBWM and also nationally about the location of “pounds” to where immobilised vehicles are removed. The sector specific conditions must ensure that pounds are required to be local and easily accessible.*
- The recommendation to move to a 3-year licence period for individuals from the current annual period is a controversial one. This authority feels that 3 years is simply too long a period for changes to an individuals’ status to go unreported. The current period works well and does not need to be changed and, moreover, there would inevitably be public disquiet if the period were to be increased, particularly given the nature of the industry concerned.*

As a final point, RBWM does recognise that the above proposals should not be applicable to vehicles which are illegitimately parked on military land or in other similar sensitive areas and would ask that relevant exemptions are included in any new regime to reflect that fact.

RBWM hopes that its views will be taken into account in the consideration of this consultation. In the meantime, please do not hesitate to contact me if you have any queries or require further information.



Home Office

LICENSING OF VEHICLE IMMOBILISATION BUSINESSES

Consultation Questions

April 2009

Consultation Questions

All respondents are asked to reply to questions 1-7. Members of the vehicle immobilisation industry are also asked to respond to questions 8-17. The consultation ends on 23rd July 2009.

Replies should be e-mailed to clamping@homeoffice.gsi.gov.uk or posted to Home Office Wheel Clamping Business consultation, Security Industry Authority sponsor team, 4th Floor, Peel building, 2 Marsham Street, London, SW1P 4DF.

General (all respondents)

1) Which option do you prefer (click one)

- Option 1: No change
- Option 2: Voluntary scheme for industry sectors
- Option 3: Mandatory business licensing with sector specific requirements
- Option 4: Make Approved Contractor Scheme mandatory

2) Reasons for your choice of options?

Please see attached letter

3) Which of the following best describes your relationship with the VI Industry?

- Member of the VI Industry
- Landowner who employs VIs)
- Car owner who has been clamped
- Official/public enforcement role etc
- Trade organisation
- Motoring organisation
- Other (please specify)

4) Please rank the following proposed licensing conditions in order of importance to you (rank from 1 to 6 with 1 as the most important):

- 2 signage, including size and visibility;
- 1 maximum penalties charged and payment methods;
- 3 minimum time between immobilisation and removal;
- 5 providing evidence that a parking infringement has taken place;
- 6 security and location of pound where vehicles are impounded; and
- 4 complaints and appeals policy

5) What do you believe the maximum fee should be for clamping / towing /impounding (tick one)

- £0 – 50
- £50 – 100
- £100 – 150
- £151 – 200
- £201 – 300
- more than £300

6) Do you think the licence duration for individual vehicle immobilisers should be changed from one to three years?

- Yes
- No

Comments

Please see attached letter

Equality Impact Test

7) Do you believe this proposal could have a negative or positive impact on any individual or representative group for reasons such as nationality, ethnicity, disability or sexual orientation etc?

Comments: reasons for your view

Please see attached letter in respect of multi-lingual/pictorial signage and documentation requirements

Industry Specific (This section should only be completed by respondents who work in the VI sector)

8) In which other sectors does your business operate?
Please tick all relevant boxes.

- Security Guarding
- Door Supervisors
- CCTV
- Close Protection
- Key Holding

9) What is your role in the VI business?

- Director/Partner/Sole Trader
- Manager
- Clamper

10) How many operatives are there in your/the business?

11) Do you provide contract services or in-house?

- Contract
- In-house

12) Do you also provide a ticketing service?

- Yes
- No

13) What are your fee charges for :

- £ Clamping
- £ Towing
- £ Impounding

14)What impact do you believe a compulsory licensing scheme will have on your business

- Negative
- Neutral
- Positive

Comments/ reasons for your view:

15)If your business employs less than 20 people, do you think that the compulsory licensing of VI businesses will have a disproportionate effect on small businesses like yours?

- Yes
- No

Comments/ reasons for your view

16)What payment methods do you accept

- Cash
- Cheque
- Debit Card
- Credit Card

17)How many businesses do you believe currently operate in the VI sector