



**Committee: LICENSING REGULATORY COMMITTEE**

**Date: THURSDAY, 16 OCTOBER 2014**

**Venue: LANCASTER TOWN HALL**

**Time: 1.00 P.M.**

## **A G E N D A**

**1. Apologies for Absence**

**2. Minutes**

Minutes of the meeting held on 4 September 2014 (previously circulated).

**3. Items of Urgent Business authorised by the Chairman**

**4. Declarations of Interest**

To receive declarations by Members of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests, which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting.)

Whilst not a legal requirement, in accordance with Council Procedure Rule 10 and in the interests of clarity and transparency, Members should declare any disclosable pecuniary interests, which they have already declared in the Register, at this point in the meeting.

In accordance with Part B, Section 2 of the Code of Conduct, Members are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

**5. Exempt Items**

The Committee is recommended to pass the following recommendations in relation to the following items:

"That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the grounds that they could involve the possible disclosure of exempt information, as defined in paragraph 1 of Schedule 12A of that Act."

Members are reminded that, whilst the following items have been marked as exempt, it is for Committee itself to decide whether or not to consider each of them in private or in public. In making the decision, Members should consider the relevant paragraph of

Schedule 12A of the Local Government Act 1972, and also whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In considering their discretion Members should also be mindful of the advice of Council Officers.

6. **Existing Hackney Carriage Driver's Licence - Syed Muhammad Mahmood** (Pages 1 - 8)

Report of Licensing Manager

7. **Existing Hackney Carriage Driver's Licence - Alan Brodie** (Pages 9 - 14)

Report of Licensing Manager

8. **Existing Hackney Carriage Driver's Licence - Keith Raby** (Pages 15 - 20)

Report of Licensing Manager

9. **Public Items**

The press and public will be readmitted to the meeting at this point.

10. **Implementation of New Licensing Controls being brought in under the Mobile Homes Act 2013** (Pages 21 - 34)

Report of Chief Officer (Health and Housing)

11. **Local Government (Miscellaneous Provisions) Act 1976 - Proposed Review of the Hackney Carriage Stand at the Arndale Centre, Market Street, Morecambe** (Pages 35 - 37)

Report of Licensing Manager

12. **Hackney Carriage and Private Hire Plates** (Pages 38 - 43)

Report of Licensing Manager

13. **Commencement of Prosecutions** (Pages 44 - 84)

Report of Chief Officer (Governance)

## **ADMINISTRATIVE ARRANGEMENTS**

(i) **Membership**

Councillors Margaret Pattison (Chairman), Mike Greenall (Vice-Chairman), Roger Dennison, Jonathan Dixon, Tim Hamilton-Cox, John Harrison, Tony Johnson, Roger Mace and Robert Redfern

(ii) **Substitute Membership**

Councillors Tony Anderson, June Ashworth, Chris Coates, Joan Jackson, Terrie Metcalfe and Susan Sykes

**(iii) Queries regarding this Agenda**

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068, or email [jglenton@lancaster.gov.uk](mailto:jglenton@lancaster.gov.uk).

**(iv) Changes to Membership, substitutions or apologies**

Please contact Members' Secretary, telephone (01524) 582170, or email [memberservices@lancaster.gov.uk](mailto:memberservices@lancaster.gov.uk).

MARK CULLINAN,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER, LA1 1PJ

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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**LICENSING REGULATORY COMMITTEE****Implementation of New Licensing Controls being  
brought in under the Mobile Homes Act 2013  
16 October 2014****Report of Chief Officer (Health and Housing)****PURPOSE OF REPORT**

To seek decisions about the implementation of new licensing powers under the Mobile Homes Act 2013 and in principle about whether to impose related licensing charges.

**This report is public**

**RECOMMENDATIONS**

- (1) That the committee notes the new powers conferred by the Mobile Homes Act 2013.**
- (2) That the Chief Officer (Health and Housing) and any officers authorised by her in writing be given authority to exercise the licensing, inspection and enforcement powers provided in the Act, including authority to determine whether to grant or vary a licence, and whether to serve a Compliance Notice, and that the Committee's scheme of delegation to officers be amended accordingly.**
- (3) That a decision in principle be taken to introduce charging of fees for licensing under the Mobile Homes Act 2013.**

**1.0 Introduction**

- 1.1 The licensing provisions of The Mobile Homes Act 2013 (MH Act 2013) came into force on 1 April 2014. This act amends previous legislation covering residential caravan sites and provides local authorities with new licensing powers in relation to 'Relevant Protected Sites'. The new legislation is intended to overcome previous difficulties in law governing standards relating to mobile homes. Throughout the country some sites are very well run and provide consistently high standards of accommodation for residents without the need for regulatory intervention. However there are sites where residents are less well cared for by site operators and there is a need for stronger powers to curb poor standards. Many sites across England are occupied by vulnerable groups and people on limited incomes who would benefit from well-managed sites.

- 1.2 Sections 1-7 of the MH Act13 relate to the licensing of sites and are particularly relevant to the local authority. These sections apply only to 'Relevant Protected Sites', which are residential caravan sites, not those licensed for holiday use only - which cannot be used all year round. Relevant Protected Sites are therefore commonly known as park home sites or residential caravan sites, including traveller sites.
- 1.3 There are 39 Relevant Protected Site' involving residential caravan dwelling in the Lancaster District (Appendix 1).

## **2.0 Proposal Details**

- 2.1 The MH Act 2013 gives local authorities discretion (subject to regulations made by the Secretary of State) as to whether to issue or transfer a licence for a Relevant Protected Site The regulations detail a number of 'prescribed matters' which the council must consider when deciding whether to issue or transfer a site licence. These include the financial means of the proposed licence holder, his competence and any history of previous related offences. Dissatisfied applicants have a right of appeal to the Residential Property Tribunal against licensing decisions. Local authorities are free to choose whether to implement the Relevant Protected Site Application scheme introduced by the MH Act 2013.
- 2.2 Significantly, section 4 of the MH Act 2013 introduces Compliance Notices. A local authority may serve a Compliance Notice where a licensee is failing to comply with a licence condition. A licensee served with such a notice must take appropriate steps to comply with the notice within a specified period and they have a right of appeal against service of the notice. It is an offence not to comply with a Compliance Notice and any licensee convicted of three such offences may have their licence revoked. Local Authorities can charge the licensee for expenses involved in serving the Compliance Notice. Local Authorities are also empowered to carry out in default the works required in a Compliance Notice and to recover related expenses from the licensee.
- 2.3 Local Authorities are entitled to charge annual licensing fees when implementing powers available under the MH Act 2013. The amount of this fee is at the discretion of the local authority. Where an annual fee has become overdue, a local authority may apply to the Residential Property Tribunal for an order requiring the licence holder to pay the fee, and where the licence holder fails to comply with this order a local authority may apply for an order revoking the site licence. Local Authorities may also require a fee where licence holders apply to alter their licence conditions or to transfer their licences. Before charging fees in relation to the Relevant Protected Sites Local Authorities must prepare and publish a fees policy. They may fix different fees for different cases, for example the fee for large commercial sites may be set differently from small family sites.
- 2.4 The remainder of the MH Act 2013 relates to matters other than licensing matters, such as site rules and pitch fees.

## **3. Implications**

- 3.1. In the Lancaster district there are currently 39 Relevant Protected Sites of various sizes, ranging in number from a single one to 174 mobile homes.

Fifteen sites have less than five mobile homes. Sites have been inspected on a two or three year cycle, although those sites having only a single mobile home (currently 6) are assessed by questionnaire only. The majority of these sites are well-run and cause very few problems to the council, however on one or two sites problems do arise and these create disproportionate demands for the council's involvement. The new licensing powers offer timely and effective regulatory solutions when unacceptable standards and problems are faced by site residents. However it is likely that any new licensing fees imposed will be passed on by site owners to their residents, especially during the first year.

- 3.2. If the Licensing Regulatory Committee decides in favour of implementing powers for issuing and varying licences and inspection and enforcement of Relevant Protected Sites under the new legislation, and to introduce charging of fees, then a further report will be prepared detailing the options available. This would include charging options ranging from introducing a single fee through to several tiered levels of fee. Administration and other costs would arise from introducing any fee-charging system, however this could be taken into consideration when setting the fees.

**4.0 Details of Consultation**

4.1 In June 2014 approximately 550 questionnaires were delivered to residents on the 24 sites having five or more residential caravans on the site licence, seeking their views to aid the council's consideration whether and how to implement the new legislation. 275 completed questionnaires were returned, which is a 50% return rate, and the results are summarised in Appendix 2. In brief:

- overall, 68% of respondents were satisfied with their mobile home site, the primary causes for dissatisfaction are listed at the end of the summary in Appendix 2
- 69% of respondents supported the council having better powers to regulate mobile home sites i.e. by implementing the new legislation
- when asked whether residents are willing to pay a small fee in the first year for the cost of the council inspecting the site , 24% were willing, 5% were not sure, 30% were not willing and 39% said it would depend on the amount (2% didn't answer the question).

**5.0 Options and Options Analysis (including risk assessment)**

	<b>Option 1:</b> Continue with pre-existing licensing only (i.e. do not implement the new powers).	<b>Option 2:</b> Implement the new powers but make no licensing charges for doing so	<b>Option 3:</b> Implement the new powers and introduce new charges
Advantages	No increased workload implications to city council or charges to site owners	Site residents benefit from the council implementing the new powers available to protect them from unacceptable standards or practices. No additional charges to site operators.	New powers available to protect residents from unacceptable standards or practices. Recovery of some or all of the administration, inspection and

			enforcement costs to the council.
Disadvantages	New powers to control sites would <u>not</u> be available to protect site residents. (going against the majority 69% of questionnaire respondents who supported the council implementing the new legislation).	Additional workload implications of licensing administration, inspection and enforcement action but no income to contribute towards or fully recover associated costs. This would be inconsistent with the spirit of the council's fees & charges policy	Increased licensing charges to site owners, who are likely to pass this on to site residents in the first year.
Risks	The council could face criticism for a decision contrary to the majority views of residents, in failing to use new powers to control problem sites and protect their residents from unacceptable standards or practices	Implementing new powers without introducing licensing fees would be inconsistent with the MH regulations and spirit of the council's fees & charges policy	Whilst this option balances implementation costs against some cost recovery, some 30% of responding site residents were against the corresponding increase they may experience in site charges in the first year if passed on by site operators

## 6.0 Conclusion

- 6.1 Officers anticipate that there will be individual cases where implementing the new licensing powers serve an important beneficial purpose to protect site residents from poor standards, and the adoption of recommendations (1) and (2) will provide for this. Implementation would, however, create additional associated workload implications for the council, which will need to be absorbed within existing resources. It would be consistent with the spirit of the existing charging policy for some or all of those costs to be recovered through the setting of charges at appropriate levels. Costs could be recovered if recommendation (3) is adopted, although it is likely that costs will be passed on by site owners to residents (only allowed in the first year). Subject to decisions taken on the recommendations in this report, a further report containing detailed proposals would be submitted for consideration.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None identified.



## **LEGAL IMPLICATIONS**

The Mobile Homes Act 2013 amends the Caravan Sites and Control of Development Act 1960 (“the CSCDA 1960”), the Caravan Sites Act 1968 (“the CSA 1968”) and the Mobile Homes Act 1983 (“the MHA 1983”). It brings the licensing regime that applies to mobile home sites in England under the CSCDA 1960 more closely in line with other local authority licensing regimes and also includes a power to enable the Secretary of State to introduce by way of secondary legislation a “fit and proper” person requirement for managers of sites. The Act amends section 3 of the CSA 1968 by extending the scope of the offences under that section.

Section 2 amends sections 3 (issue of site licences by local authorities) and 10 (transfer of site licences, and transmission on death, etc) of the CSCDA 1960. The effect of the amendments to subsections (4) and (5) of section 3 made by subsection (1) of section 2 is to confer discretion on a local authority when deciding whether to issue a site licence to the occupier of land who has made an application for a site licence authorising the use of that land as a relevant protected site under section 3(1). Currently, as long as the applicant can show that the necessary planning permission for use of the land as a caravan site has been granted and has provided the required information, the local authority has no option but to issue the licence.

The Secretary of State has made The Mobile Homes (Site Licensing) (England) Regulations 2014 that:

- require a local authority, where they have the new discretion not to issue a licence, to have regard to the matters prescribed in the regulations when deciding whether to issue one;
- require a local authority, where it decides not to issue a licence, to notify the applicant of the reasons for that decision;
- confer on an applicant a right of appeal to a residential property tribunal against a decision of a local authority not to issue a site licence;
- provide that no compensation may be claimed by the applicant for loss suffered in consequence of the decision pending the outcome of an appeal.

## **FINANCIAL IMPLICATIONS**

If the Licensing Regulatory Committee approves the recommendations within this report, it is likely that there will be additional workload implications for officers, particularly during the first year of implementation. It is expected that any associated costs including officer time during consultation and implementation will be met from within existing budgets, however.

If Members agree in principle to introduce a licence fee, then following consultation with site operators and appropriate council officers (such as Accountancy and Legal) and in line with information within the Mobile Homes Act 2013 / Council’s Fees and Charges policy, a further report will be brought to the Licensing Regulatory Committee with detailed options for approval prior to introducing any licence fees.

Members are reminded that the Fees and Charges Policy in relation to license fees offers a standard of good practice, although it is not binding on Licensing Regulatory Committee.

**OTHER RESOURCE IMPLICATIONS**

**Human Resources:**

None identified.

**Information Services:**

None identified.

**Property:**

None identified.

**Open Spaces:**

None identified.

**SECTION 151 OFFICER'S COMMENTS**

The Deputy Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Deputy Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

The Mobile Homes (Site Licensing (England)) Regulations 2014  
Mobile Homes Act 2013  
Caravan Sites and Control of Development Act 1960  
Caravan Sites Act 1968  
Health and Safety Act 1974  
Model Standard Conditions Residential Parks 2008  
Mobile Homes Act 1983

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**Ref:** LRC7

**Appendix 1.****List of Mobile Home Sites in the Lancaster City Council Area**

Name & Address of Site	Res	Static hol	Tourer
Barton Mobile Home Park The Bungalow Westgate Morecambe LA3 3BA	30R		4T
Broadfields Caravan Park 276 Oxcliffe Road Heaton With Oxcliffe Morecambe LA3 3EH	29R		
Oxcliffe New Farm Oxcliffe Road Heysham, LA3 3EF	23R	6SH (12 month)	
Stud Farm Caravan Site Oxcliffe Stud Farm Oxcliffe Road Morecambe LA3 3EQ	42R	53SH	
Venture Caravan Park Site Office Westgate Morecambe LA4 4TQ	44R	260SH	56T
Westcliffe Drive Caravan Site Westcliffe Drive Morecambe LA3 3NP	58R		
Westcliffe Park Westcliffe Drive Westgate LA3	10R		
Bell-Aire Park Homes Middleton Road Morecambe LA3 2SF	75R		

Lune View Caravan Park (Greyhound) Station Road Halton LA2 6LH	21R		
Broadgate Foot Caravan Park Middleton Road Middleton LA3 3JJ	42R		
Hale Carr Park Hale Carr Lane Heysham LA3 2AE	40R		
Bowling Green Mobile Home Park Lancaster Road Carnforth LA5 9DN	12R		
Craigholme Caravan Park Crag Bank Road Carnforth LA5 9JH	15R		
Hunting Hill Caravan Park Crag Bank Carnforth LA5 9JP	22R		
Old Trafford Caravan Park Middleton Road Middleton LA3 3JJ	30R		
Westgate Caravan Park (bit complicated as licence either or, but actually has a mix of each type)	Either 174 res or 307 holiday		
Greenacre Farm Green Ln Morecambe	12R gypsy only		
20 Hale Carr Ln Heysham LA3 2AE	8R gypsy only app family only		
Folly Bank Folly Lane Slyne LA2 6AB	12 gypsy only		
282 Oxcliffe Rd Morecambe	18R gypsy only		

338 Oxcliffe Rd Morecambe	5R gypsy only		
304 Oxcliffe Rd	5R	2SH	
Wayside 298 Oxcliffe Road Heaton With Oxcliffe Morecambe LA3 3EJ	5R		
Borrans Bungalow Borrans Lane Middleton LA3 3JJ	5R		4T

**Sites with Less than 5 Caravans**

Tanner Bank Farleton Old Rd Farleton LA2 9LF	1R		
Callender Caravans Scotland Rd Carnforth LA5 9RF	1R		
292 Oxcliffe Rd Morecambe LA3 3EH	1R		
179 Main Street Lancaster	3R		
Thwaite End Farm Bolton-le-Sands	1R		
Stockabank Plantation Littledale Rd Quernmore	1R		
Greenacre Green Lane Oxcliffe Rd	2R		
278 Oxcliffe Rd Morecambe	4R gypsy only		
258/260 Oxcliffe Rd Morecambe	2R family only		
244 Oxcliffe Rd Morecambe	3R gypsy only		

292 Oxcliffe Rd Morecambe	1R family only		
294 Oxcliffe Rd Morecambe	4R family only		
296 Oxcliffe Rd Morecambe	3R family only		
Castle O Trim Proctor Moss Road Over Wyresdale	3R		
Red Court (Upper) Carnforth WMC	3R	3SH	

Appendix 2

Mobile Home Act 2013 – Questionnaire consultation

Approximately 550 questionnaires posted to residents on caravan sites which have 5 or more residential caravans on the site licence.

275 returned: 50% return rate

**Q1) Overall, how satisfied are you with your mobile home site?**

**Out of the 275 replies:**

31% are Very Satisfied

37% are Quite Satisfied

5% are Not Sure

13% are Dissatisfied

14% are Very Dissatisfied

1% did not answer the question

**Q2) How satisfied are you with the layout of your mobile home site?**

**Out of the 275 replies:**

39% are Very Satisfied

36 % are Quite Satisfied

8% are Not Sure

8% are Quite Dissatisfied

7% are Very Dissatisfied

2% did not answer the question

**Q3) How satisfied are you with the general conditions on your mobile home site? (e.g. cleanliness, tidiness, upkeep of grounds and common areas)**

**Out of the 275 replies:**

27% are Very Satisfied

30% are Quite Satisfied

6% are Not Sure

15% are Quite Dissatisfied

20% are Very Dissatisfied

2% did not answer the question

**Q4) If you have been dissatisfied with general conditions, what have been the causes of this?**

Respondents could tick multiple answers for this question !

108 respondents (39%) did not answer this question

Of the 167 respondents who did answer:

21% were dissatisfied with drainage

28% were dissatisfied with roads

15% were dissatisfied with boundaries

46% were dissatisfied with maintenance

**Q5) How would you rate your relationship with the owner of your Mobile Home Site?**

**Out of the 275 replies:**

25% said Very Good

20% said Good

22% said Satisfactory

13% Poor

15% Very Poor

5% did not answer the question

**Q6) What are your views on whether the council should have better powers to regulate mobile home sites in the area?**

**Out of the 275 replies:**

69% said they would support this

20% said they were not sure

10% said they were against this

1% did not answer the question

**Q7) The new legislation allows the council to charge site owners a fee for inspection of sites. Site owners are able to pass this fee on to residents during the first year. Would you be willing to pay a small fee if the cost of inspection was passed on to residents? Out of the 275 replies:**

24% said Yes

5% said Not Sure

30% said No



39% said it would depend on the amount

2% did not answer the question

**Q8) How long have you lived on your current mobile home site?**

**Out of the 275 replies:**

**26% Less than 5 years**

**62% 5-20 years**

**12% over 20 years**

**Where people were dissatisfied with general conditions on their site common comments / concerns that respondents had were:**

**Poor maintenance of roads**

**Poor maintenance of grass / weeds/ overgrown shrubs / trees on sites**

**Poor drainage / site roads flooding / not enough land drains**

**Insufficient or poorly maintain lighting on site**

**Not having a site warden / manager**

**Electricity supply issues**

**Site owner not being easily accessible / infrequently visits site**

**LICENSING REGULATORY COMMITTEE**

**Local Government (Miscellaneous Provisions) Act 1976 –  
Proposed Review of the Hackney Carriage Stand at the  
Arndale Centre, Market Street, Morecambe  
16<sup>th</sup> October 2014**

**Report of Licensing Manager**

**PURPOSE OF REPORT**

The report is to seek Members' approval of the commencement of a consultation on the review of the hackney carriage stand at the Arndale Centre in Morecambe which has been proposed as part of the Morecambe Area Action Plan.

**This report is public**

**RECOMMENDATIONS**

- (1) To indicate that, subject to consultation, the Committee would be minded to approve the proposed changes to the hackney carriage stand at the Arndale Centre, Market Street, Morecambe.
  - Remove the 8 taxi bays and 4 feeder bays from the east side of Market Street (as existing) and instead provide a 35 metre bay for 6 taxis along the west side of Market Street
- (2) To authorise the Chief Officer (Governance), in accordance with Section 63 (2) of the Local Government (Miscellaneous Provisions) Act 1976, to advertise the proposed new hackney carriage stand.

**1.0 Introduction**

- 1.1 Members will be aware that there is currently a Morecambe Area Action Plan (MAAP), and these changes are part of that overall plan.
- 1.2 The MAAP is much about restructuring the heart of the town so it draws people in and makes it function better for pedestrians – and in turn so people stay longer and spend more to the benefit of trading. The MAAP identifies a lack of quality places landward of the seafront and it contains many actions to remedy this and strengthen the town centre including (as per Action Set 8) to transform the street space between Barclays and the Post office as a public place with real quality.

- 1.3 Cabinet approved proposals for this in April 2014 and regeneration and planning officers have been working on these since and detailing a range of interrelated traffic changes to make the transformation possible. This work has included informal consultations with businesses and stakeholders including the Lancaster City Hackney Proprietors' Association.
- 1.4 The proposal is to put the taxi rank in what is understood to be the preferred location of drivers alongside the Post Office and switch disabled parking spaces to the side by the Arndale Centre (where the existing rank is). This will enable taxi passengers to alight direct onto the pavement, drivers to readily turn round a new turning facility on Market Street and pick up close by the Arndale Centre entrance and will benefit disabled drivers who will be able to alight straight onto the pavement. In turn these measures help make it possible to free up traffic space just to the north, narrow the carriageway and make a much better and safer pedestrian environment.
- 1.5 Under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976, a district council may from time to time appoint stands for hackney carriages for the whole or any part of a day in any highway in the district which is maintainable at the public expense and, with the consent of the owner, on any land in the district which does not form part of a highway so maintainable and may from time to time vary the number of hackney carriages permitted to be at each stand.
- 1.6 Before appointing any stand for hackney carriages or varying the number of hackney carriages to be at each stand in exercise of the powers of this section, a district council shall give notice to the chief officer of police for the police area in which the stand is situated and shall also give public notice of the proposal by advertisement in at least one local newspaper circulating in the district and shall take into consideration any objections or representations in respect of such proposal which may be made to them in writing within twenty-eight days of the first publication of such notice.
- 1.7 Nothing in Section 63 shall empower a district council to appoint any such stand:
  - (a) so as unreasonably to prevent access to any premises;
  - (b) so as to impede the use of any points authorised to be used in connection with a local 'bus service within the meaning of the Transport Act 1985 or PSV operator's licence granted under the Public Passenger Vehicles Act 1981, as points for the taking up or setting down of passengers, or in such a position as to interfere unreasonably with access to any station or depot of any passenger road transport operators, except with the consent of those operators;
  - (c) on any highway except with the consent of the highway authority;and in deciding the position of stands a district council shall have regard to the position of any bus stops for the time being in use.
- 1.8 Subject to the Committee's decision to proceed with the review of the hackney carriage stand as set out in the report and following the outcome of the required consultation process above, it would then be necessary to request the County Highways Authority to implement procedures to create appropriate Traffic Regulation Orders since the proposed changes at the specified sites would affect existing parking restrictions. Such process would also involve a further formal consultation process.

**2.0 Conclusion**

Members are requested to approve the amendment to the hackney carriage stand, as set out in the report, and to authorise the Chief Officer (Governance) to publish the notice in the newspaper as required by the legislation.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None applicable to this report

**FINANCIAL IMPLICATIONS**

If the proposals are approved the funding of the Stands and associated works in Morecambe will be funded through the Morecambe Area Action Plan.

The costs of advertising for the purpose of the requirements of the Local Government (Miscellaneous Provisions) Act 1976 will be met from the 2014/115 advertising budget.

**LEGAL IMPLICATIONS**

These are contained within the report.

**BACKGROUND PAPERS**

None.

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**Ref:**

**LICENSING REGULATORY COMMITTEE****Hackney Carriage and Private Hire Plates  
16th October 2014****Report of Licensing Manager****PURPOSE OF REPORT**

To inform members of the outcomes of the recent enquiries made by the Licensing Manager in relation to putting date stickers on hackney carriage and private hire plates

**The report is public.**

**RECOMMENDATIONS**

**The Committee is requested to note the report.**

**1.0 Introduction**

- 1.1 Members may recall that at the recent Forum meeting, a hackney carriage proprietor asked whether date stickers could be applied to hackney carriage and private hire vehicle plates upon renewal instead of new plates having to be issued each time.
- 1.2 The reasons stated by those proprietors present was that the current plates are too expensive and removing the plates from the vehicles to replace with new plates causes the existing drilled holes to get bigger. Proprietors also raised concerns as they stated that the current plates are made from some sort of plastic and are not recycled.
- 1.3 One member of the trade stated that he had informed the licensing manager that Salford Council use a sticker system and the trade asked that the Licensing Lanager look into this. The Licensing Manager has previously looked into this system and reported back to the trade in a Hackney Carriage and Private Hire Newsletter issued in January 2013. A copy of the Newsletter is attached at Appendix 1 to this report. However, she agreed to revisit this and to report back to this Committee in October.
- 1.4 The current plates are recycled although we do rely on proprietors returning the old plates to us. They are collected periodically from us by the suppliers and they are taken to a company where they are stripped back and cleaned off. They are then re-used again as vehicle plates.
- 1.5 Licensing officers discussed the sticker system with officers from Salford. Salford currently have problems with this system as they claim that stickers are prone to come off in car washes etc.
- 1.6 Further, as one of the issues raised by the proprietors was that removing the plates to replace them causes damage to the vehicles, members should be aware that

using the same methods as Salford, this problem would not be resolved. The plates have to be removed from the vehicles so that officers can clean off the old sticker and residue before applying the new sticker. This would mean that proprietors could spend some time off of the road whilst the plates are being prepared.

- 1.7 In officers' opinion the current system of removing the plates and replacing them with new ones is not an issue as the same holes are used each time to re fix the plates. In any case, plastic brackets can be supplied which the plates then clip on to. Currently the new plates are available instantly so that the vehicle does not have to spend time off of the road.
- 1.8 A further concern of the trade was the cost of replacing the plates. Currently the cost of a new plate is £6.20. Most proprietors need two plates a year which equates to a cost of £12.40. This is the direct cost of the plate from the supplier and no extra cost is added by the Council. The actual weekly cost to the proprietor is less than 24p. Members at this time should be reminded that public safety is the main concern in relation to the regulation of hackney carriage and private hire vehicles and drivers.
- 1.9 If officers had to spend time making date stickers, cleaning old stickers and residue off plates and adding the new stickers, the cost would have to be passed on to the trade. There would also be the cost of the actual stickers and new printing equipment would have to be purchased to facilitate the printing of the stickers. The approximate cost of the printer would be £300 - £500 and there would then be the additional cost of the actual stickers, cleaning fluids and specialised ribbons for the printer. Officers are also concerned that stickers can be tampered with and/or replicated.
- 1.10 There is a very good system in place at the moment in relation to the administration of vehicle licences and the issuing of plates and licensing officers cannot find any evidence which would indicate that changing the system would be of any great benefit to anyone.
- 1.11 All other Lancashire Licensing Authorities currently use the same or very similar systems to ours.

## 2.0 Conclusion

- 2.1 Members are asked to note the report.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

The contents of this report does not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), sexual orientation, or rural isolation.

### **FINANCIAL IMPLICATIONS**

None arising from this report.

### **LEGAL IMPLICATIONS**

None arising from this report.

**BACKGROUND PAPERS**

None

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# Hackney carriage and private hire newsletter

January 2013



[www.lancaster.gov.uk](http://www.lancaster.gov.uk)

## Have your say on hackney licence restrictions



LANCASTER City Council is asking the public, taxi trade and other interested parties if rules limiting the number of hackney carriages operating within the district should be lifted.

Currently the number of licences issued to hackney taxis - which can pick passengers up without being pre-booked - in the Lancaster district is limited to 109.

This is regularly reviewed to ensure there are sufficient hackney taxis to meet demand, but local authorities elsewhere in the country are currently increasingly removing similar restrictions.

Latest available figures show that 92 councils regulate the number of taxi licences, which constitutes around 26.7% of licensing authorities in England and Wales.

A new report from the Law Commission is also recommending that such restrictions should be abolished. Any relaxation in the rules would be particularly beneficial to wheelchair users.

Currently just 15 of the 109 Hackney Carriages in the district are wheelchair accessible and any new licences issued would make this a requirement.

To take part in the consultation:

Email: [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)

Visit: [www.lancaster.gov.uk/hackney-consultation](http://www.lancaster.gov.uk/hackney-consultation)

Write to: Hackney Carriage Consultation,  
Licensing, Town Hall, Lancaster, LA1 1PJ.

The deadline for making representations is March 31 2013.

### Taxi rank relocation

AS you will be aware the taxi rank at Lancaster Bus Station is due to be relocated to Dalton Square in March.

This is due to the essential work being undertaken by United Utilities in the city to improve the quality of their sewage discharges to comply with the European Bathing Water directive, which comes fully into effect in 2015.

The work at the bus station is to create a large new underground storm water tank as part of a major £17 million scheme to clean up the River Lune and coastal waters around Morecambe Bay, by preventing sewer spills into the river.

At this stage, United Utilities expect the work at the bus station to take 12-14 months.

The whole project, which also includes building another storage tank, beneath part of the car park at Bulk Road retail park, should be finished by spring 2015.

# Your questions answered



The following questions were asked at the recent proprietors' forum

*Q: 'Can the vehicle plate be issued at the VMU centre when the vehicle has passed its test?'*

A: This would not be viable or cost effective. A member of the licensing team would have to attend the VMU on the day of the test to issue the plate and new printers etc. would have to be purchased for use at VMU.

Not all tests take place on a Wednesday and licensing staff are already stretched to full capacity following a recent restructure and it would not always be possible to release a member of staff to attend VMU to produce and issue plates.

The licensing software is not available at the VMU centre and this would attract additional costs to install the software in that location, additionally the licensing system contains confidential information and there could be data protection issues if the information was available at other locations. Plates can not be produced prior to the vehicle passing its test as the licensing system will not allow the test result to be bypassed. Compliance certificate details have to be entered into the system before a plate can physically be issued.

*Q. 'Can plates be left on the vehicle to avoid damage by removal?'*

Brackets are available from the licensing department at a cost of £10.35.

Purchase of the brackets would remove this problem as the plates are attached to the brackets via plastic studs.

Plates have an expiry date on them and therefore would not be able to remain on the vehicle.

*Q. 'Would it be possible to issue holographic stickers as an alternative to issuing new plates every time a licence was renewed?'*

A. Licensing officers have discussed this issue with the licensing department in Salford as they currently use this method. However there have been problems with these stickers coming off of the cars in car washes etc.

The plates are still required to be removed from the car so that licensing officers can clean off the old sticker and the residue, and then apply the new sticker, this would mean there would be a period of time when the vehicle did not have a licence plate, and therefore could not be used.

There would be no guarantee that the plate would be available immediately as this would be dependant on staff levels and other commitments. The stickers themselves cost 16p each for the council to purchase, and the time allocated by the staff to carry out the function would mean that there would be no financial saving to the trade. The plates that we currently use are all recycled.

The initial enquiry was based on the fact that members of the trade didn't want to have to remove the plate from the vehicles, and when raised at the Forum by a proprietor it was claimed that the plates were not removed from the vehicles in Salford to have the new dates applied. Following discussions with licensing officers in Salford this apparently is not the case, and therefore a change to this method would not resolve that problem, however, brackets can be purchased which would resolve this issue.

# Peugeot E7 can be used as a private hire vehicle

At the proprietors' forum held in November, some members of the trade raised concerns about the fact that a Peugeot E7 had been licensed authority as a private hire vehicle.

The concern was based on the fact that the trade thought that the E7 was a purpose built hackney carriage and should therefore not be licensed as a private hire vehicle as this would confuse the public.

This principle was considered by a High Court Judge in the case of R v Bournemouth Borough Council, ex p Thompson.

This concerned a Judicial Review of a decision by Bournemouth Borough Council to grant a private hire licence to an applicant for an Austin FL2 vehicle, which was similar in appearance to an Austin FX4R which was being built as a purpose built hackney carriage, the classic London Type cab at the time.

In his judgement the Mann J said that having regard to the definition of a hackney carriage contained with the Town Police Clauses Act 1847;

'It seems to me that what the committee had to ask itself was this: is the FL2 of such design and appearance to lead any person to believe that the vehicle is a vehicle plying for hire?

It seems to me that the question has to be asked in relation to the local circumstances. That which may give rise to a belief in London is not necessarily the same as that which might give rise to a belief in Inverness.

The likelihood of the belief occurring must depend upon local conditions and upon factors such as – and I would have supposed importantly – the composition of the local hackney carriage fleet. There is in my judgement, no such thing as a vehicle, which, as a matter of law, is in all places to be regarded inexorably as a hackney carriage.'

This judgment means that it is a matter for local councils to determine which type of vehicle can be licensed as a private hire vehicle. Obviously if the hackney carriage fleet in Lancaster was predominately made up of purpose built cabs, then it would not be appropriate to grant a private hire licence to such a vehicle.

However as the local fleet is made up of saloon and people carrier type vehicles, then the distinguishing factor would be the roof signs on hackney carriage vehicles, the front plate on the private hire vehicles and the different door signs and plates.

## News in Brief

Just a reminder that the process for renewing vehicle licences has been changed in order to streamline the procedure.

Pre-populated application forms will be sent to you in the month prior to the renewal date.

You need to check the details, make any necessary amendments, sign the form and return it to the licensing department at the Town Hall, along with a copy of your insurance and your current compliance certificate.

You can either submit payment by cheque at that time, or you can contact the licensing office and make a card payment over the phone.

Once all the paperwork has been received and payment has been made, you can telephone the licensing office and book your vehicle into VMU for the compliance test.

You are not required to make an appointment to submit paper work. The new plate will be available within 3 days of your vehicle test.

You are reminded that it is your responsibility to make sure you book your vehicle test in plenty of time, failure to do so could result in the vehicle licence lapsing. Licensing officers can not guarantee last minute appointments.

.....

A Lancaster private hire operator pleaded guilty on Friday 25th January at Lancaster Magistrates to using an unlicensed vehicle to fulfil a booking.

He was given a 6 month conditional discharge. This is the second private hire operator to be prosecuted in the past 12 months for this type of activity, and this should give out a clear message to unscrupulous people who are prepared to use unlicensed vehicles that this authority will take legal action.

**LICENSING REGULATORY COMMITTEE****Commencement of Prosecutions  
16<sup>th</sup> October 2014****Report of Chief Officer (Governance)****PURPOSE OF REPORT**

To enable the Committee to reconsider, at the request of three members of the Committee, the report of the 5<sup>th</sup> June 2014 on the commencement of prosecutions.

**This report is public**

**RECOMMENDATIONS**

- (1) That the Committee consider whether the format of the quarterly reports on court proceedings should be amended to include information about formal cautions, and where a prosecution has been taken, information about why a formal caution was not considered appropriate.
- (2) That the Licensing Enforcement Policy be amended in accordance with the draft appended to this report.
- (3) That in view of the legal and practical risks set out in the report of the 5<sup>th</sup> June 2014 and reiterated in this report, the commencement of prosecution proceedings, (including consideration of the public interest stage) remain delegated to officers.

**1.0 Introduction**

- 1.1 At its meeting on the 27<sup>th</sup> March 2014, the Committee considered a report setting out the Taxi Task Group's view that there was no need to amend the Licensing Enforcement Policy or the scheme of delegation to officers. The Committee requested a report detailing the practical, legal and financial implications of the Committee, rather than officers, determining whether a prosecution should take place.
- 1.2 The further report was presented to the Committee on the 5<sup>th</sup> June 2014, and a copy of the report is appended for ease of reference, together with the minute. **(Appendix 1)**. The Committee resolved that the commencement of prosecution proceedings remain delegated to officers.
- 1.3 The Council's constitution provides that a Council decision made within the previous six months may not be amended or rescinded without a motion from a quorum of the Council. A similar rule applies to Committees of Council. A

request has been received from three members of this Committee, Councillors Mace, Hamilton-Cox and Johnson (constituting a quorum of the Committee) for the decision of the 5<sup>th</sup> June 2014 to be reconsidered by the Committee.

- 1.4 It has been requested that, in reconsidering the June report, consideration be given in particular to:
- (a) the Committee monitoring in some way the opportunity given to a suspect to admit to guilt and accept a formal caution
  - (b) amending paragraph 9.3 of the Licensing Enforcement Policy so as to better reflect the wording of the 2013 Code for Crown Prosecutors (**Appendix 2**)
  - (c) in circumstances where officers recommend prosecution, having member input in respect of the matters of the “public interest stage” set out in paragraphs 4.7 to 4.12 of the 2013 Code for Crown Prosecutors (**Appendix 2**) before prosecution proceeds

## **2.0 Proposal Details**

### (a) Cautions

- 2.1 In accordance with the current Enforcement Policy, consideration is given by officers as to whether a formal caution should be issued as an alternative to prosecution. A caution will only be appropriate where the evidence is such that there would be a realistic prospect of a conviction, and where the offender admits the offence, understands the significance of a formal caution and gives informed consent to being cautioned.
- 2.2 Appendix 2 of the Enforcement Policy sets out criteria that are relevant in considering whether a caution or a prosecution is appropriate, and these are considered by officers in each case.
- 2.3 The Committee currently receives quarterly reports on court proceedings, and there is no reason why these reports could not, in cases of prosecution, set out why prosecution, rather than formal caution, was considered appropriate.
- 2.4 There is no reason why Committee should not be advised of any formal cautions that have been issued. However, unlike court proceedings, cautions are not a matter of public record, and it would be necessary for any details of cautions to be provided to the Committee in an exempt appendix.

### (b) Amendment of the Licensing Enforcement Policy

- 2.5 Paragraph 9.3 of the current Enforcement Policy states that consideration must be given as to whether it is in the public interest to undertake a prosecution, following the guidance in the Code for Crown Prosecutors, and sets out a number of criteria to be considered. Because the current Enforcement Policy predates the current (2013) Code for Crown Prosecutors, the criteria listed in the Policy do not follow word for word those in the Code, although the spirit is the same. There is no reason why the Policy should not be amended to reflect the current Code.

- 2.6 An amended version of the Enforcement Policy is appended to this report (**Appendix 3**), with the amendments tracked, for the Committee's approval. The opportunity has been taken to make other minor amendments to take account of changes to legislation, organisational structures and guidance documents since the policy was drafted.

(c) Member input in the decision to prosecute

- 2.7 A request has been made for the Committee to reconsider the report of the 5th June 2014, and in particular to consider whether, in any case, where officers recommend prosecution, there could be member input at the "public interest stage", as set out in paragraphs 4.7 to 4.12 of the 2013 Code for Crown Prosecutors.
- 2.8 Currently, in making the decision to prosecute, officers consider in every case whether a prosecution is required in the public interest, and apply the criteria set out in the Code for Crown Prosecutors.
- 2.9 The June report, in section 2, set out in detail the implications of members of the Committee being involved in the decision to prosecute and the reasons why it was the clear recommendation of officers that the decision to prosecute should remain delegated to officers.
- 2.10 If members were to consider only the "public interest stage" and not the "evidential stage" of the decision to prosecute, the implications set out in paragraph 2.3 of the June report would not apply. However, the issues referred to in paragraphs 2.1, 2.2 and 2.4 to 2.6 of that report would still be relevant. Officers have particular concerns about the potential for lobbying members and the confidentiality issues; these are set out in paragraph 2.5 of the June report.
- 2.11 It is also of particular concern to officers that a decision for members to be involved in the decision to prosecute, even at the public interest stage only, would make the decision making process for prosecutions within the remit of this Committee different from the decision making process for all other prosecutions across the whole range of the Council's enforcement functions, for example planning, food safety, health and safety, benefit fraud, where there is no member involvement. It is particularly for this reason that the Chief Executive has indicated that he will refer the matter to full Council if the Committee is minded to amend its scheme of delegation.

**3.0 Options and Options Analysis (including risk assessment)**

(a) Cautions

- 3.1 The options open to the Committee are to request officers to amend the format of the quarterly reports on court proceedings include information about formal cautions, and where a prosecution has been taken, information about why a formal cautions was not considered appropriate; or, not to request any change to the current arrangements. There is no officer preferred option, but it should be noted that information about cautions would be exempt information.

(b) Licensing Enforcement Policy

3.2 The options open to the Committee are to approve the amended document as set out at Appendix 3; to approve other amendments to the document; or, to make no amendments. The officer preferred option is for the document at Appendix 3 to be adopted.

(c) Member input in the decision to prosecute

3.3 It would be open to the Committee to take on the role of determining whether a prosecution should be commenced, either considering both the evidential and public interest stage, or just the public interest stage. However, officers have identified a number of risks arising from this approach. These are set out in paragraphs 2.1, 2.2 and 2.4 - 2.6 of the June report. Of particular concern is the likelihood of lobbying, and also the potential damage to the Council's case should an individual become aware that a Committee decision to prosecute has not been unanimous. Taking account of all the implications and risks, the clear officer recommendation is that the decision to prosecute should remain delegated to officers. This is, and has for many years been, the position for all prosecutions across the range of the Council's enforcement functions, and there is no legal reason why taxi prosecutions should be treated any differently.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None directly arising from this report

**LEGAL IMPLICATIONS**

The legal implications are set out in this report, and in more detail in the appended report of the 5<sup>th</sup> June 2014.

**FINANCIAL IMPLICATIONS**

As indicated in the report of the 5<sup>th</sup> June 2014, referring prosecutions to Committee for consideration would place an additional burden on officer and member time. There would be no direct financial cost, but rather there would be less time for other officer duties or for the consideration of other committee items. However, there is a risk that there could be additional costs both in terms of officer time and possible legal costs as and when decisions are tested in the courts.

**OTHER RESOURCE IMPLICATIONS**

**Human Resources:**

None

**Information Services:**

None

**Property:**

None

**Open Spaces:**

None

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has prepared this report in her capacity as Chief Officer (Governance). The Monitoring Officer would reiterate that the Council's role as licensing authority is a regulatory one, and that the principles of licensing enforcement are not, and should not be, any different from those which apply to the other regulatory and enforcement functions of the Council. All decisions to prosecute have been delegated to officers for at least 25 years, and, in the Monitoring Officer's experience, this has not caused any problems. Officers have sufficient experience to assess prosecution files objectively both on the basis of evidence and on the basis of public interest.

**BACKGROUND PAPERS**

None

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**LICENSING REGULATORY COMMITTEE****Commencement of Prosecutions  
5th June 2014****Report of the Chief Officer (Governance)****PURPOSE OF REPORT**

As requested at the last meeting, to enable the Committee to consider the practical, legal and financial implications of the Committee determining whether a prosecution should take place when recommended by officers.

**This report is public**

**RECOMMENDATIONS**

- (1) **That in view of the legal and practical risks identified in the report, the commencement of prosecution proceedings remain delegated to officers.**

**1.0 Introduction**

- 1.1 At its meeting on the 9th January 2014, the Committee referred the Licensing Enforcement Policy and Scheme of Delegation to the Taxi Task Group. The Taxi Task Group at its meeting on the 11th February 2014 concluded that there was no need to amend the Enforcement Policy or Scheme of Delegation. This was reported back to the Committee on the 27th March 2014, when it resolved that the Committee receive a report detailing the practical, legal and financial implications of Committee determining whether a prosecution should take place when recommended by officers. Minute 105 refers.
- 1.2 Matters that may lead to prosecution arise in different ways; they may be observed by officers, reported by the police or another authority, or be the subject of a complaint from a passenger, other member of the public or from within the trade. Investigations will generally require the taking of statements by Licensing officers. If there is reasonable cause to suspect that a criminal offence has been committed, any interview of the individual responsible will need to be a recorded, PACE (Police and Criminal Evidence Act) interview. This stage is required whoever is to take the decision on the appropriate action.
- 1.3 Once all the evidence has been obtained, if prosecution is being considered, advice is obtained from Legal Services, and if appropriate, legal proceedings

are currently issued by Legal Services in accordance with the Scheme of Delegation to officers. Legal Services will consider the relevant offence that may have been committed, the elements of that offence which would need to be proved in court in order to secure a conviction, the evidence available, and any possible defence. A qualified solicitor will consider, in accordance with the Code for Crown Prosecutors, whether there is sufficient evidence to provide a realistic prospect of conviction, and will consider whether the evidence is admissible, reliable and credible. Where there is sufficient evidence to justify a prosecution, Legal Services will consider whether a prosecution is required in the public interest. In this respect, the principles set out in the Code for Crown Prosecutors are applied. The Licensing Enforcement Policy, approved by this Committee, also sets out the factors that will be relevant in considering whether to deal with a matter by way of prosecution or formal caution.

- 1.4 Consideration of the relevant offence, the evidence available and the prospects for success are a legal matter. Cases are referred to one of the Council's solicitors, who has the relevant knowledge and experience to form a view as to whether prosecution is appropriate. This is consistent with the approach taken by the Crown Prosecution Service, where the decision to prosecute is taken by legally qualified officers.
- 1.5 The Committee now wishes to consider the implications of a change to the current arrangements whereby the decision to prosecute would be made by the Committee, on the recommendation of officers. In preparing this report it has been assumed that the Committee would not wish to consider cases where the officer recommendation would be not to prosecute.

## **2.0 Detailed Implications**

- 2.1 A report would need to be prepared in each case, explaining the circumstances and presenting the available evidence and setting out the officer recommendation to prosecute. The draft report would need to be approved by the Chief Officer (Governance) and then be considered at a Committee meeting. Depending on the number of cases, this could considerably lengthen a scheduled Committee meeting, or might necessitate the calling of a special meeting, either because of the number of cases, or because there is no convenient scheduled meeting. Over the last two years, there have been 28 matters that would have had to be considered by Committee if this arrangement had been in place. Recently a Committee meeting overran because of two particularly complex individual matters that were on the agenda. This meant that other items had to be deferred. There is a risk that this situation could recur, which could delay the commencement of a prosecution. Detailed consideration of a prosecution at a meeting could equally result in the deferral of other items of business, causing delay to the consideration of those items or the need for additional meetings.
- 2.2 The financial implications of Committee considering prosecutions are difficult to quantify. It is impossible to quantify the cost of member time. The report writing, agenda preparation, servicing of the meeting and minute writing would all impose an added burden on officer time, (and the more so if additional meetings were required) which would mean that that time could not be spent on other work. The amount of that time would however depend on the number of cases referred, and the time taken to consider each. The

estimated cost of preparing a report for a Committee meeting and discussing an item such as this, with officer attendance to administer and advise is estimated in round terms at £800 per item. If bulky prosecution files had to be copied for each member of the Committee, there would be some additional paper and printing costs.

- 2.3 However, aside from the costs, the legal and practical implications of such a change are of more concern. Given that the decision whether or not to prosecute should be based on an assessment of the strength of the evidence, which is, as set out above, a matter for legal expertise, it is difficult to understand how the Committee would approach its consideration of an officer recommendation to prosecute. If this were to be simply a “rubber-stamping” exercise, there seems to be no point whatsoever in the referral to Committee. If the exercise is to be a genuine exercise to consider the evidence and decide whether to prosecute, it is difficult to understand in what circumstances the Committee would feel it appropriate to reject the recommendation of legally qualified officers. It would be necessary for the Committee to consider in detail all the evidence available, and take a view on the prospects of success at court. With all due respect, this is not something that lay members are qualified to do, and it is unfair to ask a Committee of Council to demonstrate the legal expertise required to undertake such a review of evidence.
- 2.4 In previous discussions on this subject, there has been some suggestion from some members that the potential “defendant” should be present when the decision whether to prosecute is made by the Committee. Officers are firmly of the view that this would be wholly inappropriate, as it would be improper for the evidence to be discussed with the defendant or in the defendant’s presence, or for the defendant to be asked to comment unless under caution. If Committee were to consider an officer recommendation to prosecute, such consideration should be based only on the papers. Even this approach would not be free from risk, as, if the Committee decided not to authorise prosecution, it would be open to claims of predetermination if, having already considered the evidence, it decided to ask to see the “defendant” at a future meeting for possible warning, or suspension or revocation of the licence. Further, it is not unusual following conviction for a driver to be referred to the Committee to enable members to consider whether, in the light of the conviction, the driver is a fit and proper person to hold a licence. If the Committee had made the initial decision to prosecute, there could be claims of predetermination if the same Committee considered the matter again following conviction. With these risks of legal challenge at all stages, and the possibility that such challenges might be pursued through the courts, there is an inherent risk of increasing legal costs to the Council quite substantially .
- 2.5 Another risk of the Committee approving prosecutions would be that some individuals would become aware of when their case was to be considered, and would contact some or all members by telephone, email or letter, seeking to influence the outcome. This would put undue pressure on members, might cause particular difficulties when an individual is known to some or all members, and might mean that all members might not be in possession of the same information and might take account of irrelevant or inaccurate information. The process might also prejudice those individuals who are less able to “lobby”. It is also likely that after taking any decision to prosecute, members would receive further contact and questions from the relevant individuals. This would be unfair to members, and there is a risk that any

responses given could prejudice any proceedings. Given that individual members of the Committee have in the past attended court to give evidence on behalf of licence holders who have appeared before the Committee, the possibility of this happening in the context of a prosecution would also be a concern if the Committee were to discuss the merits of a case in full and take a majority decision to prosecute.

2.6 These legal and practical risks and difficulties are such that, as previously reported to the Committee and to the Task Group, officers remain firmly of the view that the decision to commence prosecutions for matters within the remit of the Licensing Regulatory Committee should remain delegated to officers, as it has been for at least the last 25 years, and as it is across the whole range of the Council's other enforcement functions, including Planning. There are close analogies between Planning and Licensing, with the relevant Committee determining applications, and enforcement being an operational matter delegated to officers.

### **3.0 Options and Options Analysis (including risk assessment)**

3.1 The Committee requested a report detailing the practical, legal and financial implications of the Committee determining whether a prosecution should take place when recommended by officers. These are set out in the report above, and, whilst it would be open to Committee to take on the role of determining whether a prosecution should be commenced, the clear recommendation from officers, in the light of the implications and risks set out in the report, is that that decision should remain delegated to officers.

3.2 Should the Committee decide otherwise, the Chief Executive has indicated that he will refer the matter to full Council.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Health &amp; Safety, Equality &amp; Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>
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None directly arising from this report.
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<b>LEGAL IMPLICATIONS</b>
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The legal implications are set out in the report.
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<b>FINANCIAL IMPLICATIONS</b>
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Referring prosecutions to Committee for consideration would place an additional burden on officer time through report writing, agenda preparation, minute writing and the servicing of meetings, estimated at a notional figure of around £800 per item. As this would be met from existing staff resources there would be no direct financial cost as such, but, rather, less time for officers to undertake other duties. There would be additional costs both in terms of officer time and possible legal costs as and when any decisions are tested in the courts. There would be additional direct costs in printing bulky prosecution files as part of the agenda, but it is impossible to quantify this cost, as it would depend on the number of cases to be considered.
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**OTHER RESOURCE IMPLICATIONS**

**Human Resources:**

None

**Information Services:**

None

**Property:**

None

**Open Spaces:**

None

**SECTION 151 OFFICER'S COMMENTS**

The s151 Officer has been consulted; she is in support of the recommendation given the resource implications and risks associated with moving away from existing delegations to Officers.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has prepared this report in her capacity as Chief Officer (Governance). The Monitoring Officer would emphasise that the Council's role as licensing authority is a regulatory one, and that the principles of licensing enforcement are not, and should not be, any different from those which apply to all the other regulatory functions of the Council. The Monitoring Officer is firmly of the view that where there is evidence that a criminal offence has been committed, it is an operational matter for officers to determine how to proceed, and that it would be inappropriate for such cases to be referred to members for decision.

**BACKGROUND PAPERS**

None

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# The Code

for Crown Prosecutors

January 2013

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## Introduction

- 1.1 The Code for Crown Prosecutors (the Code) is issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985. This is the seventh edition of the Code and replaces all earlier versions.
- 1.2 The DPP is the head of the Crown Prosecution Service (CPS), which is the principal public prosecution service for England and Wales. The DPP operates independently, under the superintendence of the Attorney General who is accountable to Parliament for the work of the CPS.
- 1.3 The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The Code is issued primarily for prosecutors in the CPS, but other prosecutors follow the Code either through convention or because they are required to do so by law.
- 1.4 In this Code, the term “suspect” is used to describe a person who is not yet the subject of formal criminal proceedings; the term “defendant” is used to describe a person who has been charged or summonsed; and the term “offender” is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law.



## General Principles

- 2.1 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.
- 2.2 It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.
- 2.3 Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.
- 2.4 Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.5 The CPS is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.
- 2.6 Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General; with the Criminal Procedure Rules currently in force; and have regard to the obligations arising from international conventions. They must follow the policies and guidance of the CPS issued on behalf of the DPP and available for the public to view on the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk)

## The Decision Whether to Prosecute

- 3.1 In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence and, if so, what that offence should be. They make their decisions in accordance with this Code and the DPP's Guidance on Charging. The police apply the same principles in deciding whether to start criminal proceedings against a person in those cases for which they are responsible.
- 3.2 The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. This is to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators.
- 3.3 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see section 5), they should swiftly stop cases which do not meet the evidential stage of the Full Code Test (see section 4) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 4). Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.
- 3.4 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test (see section 4). The exception is when the Threshold Test (see section 5) may be applied where it is proposed to apply to the court to keep the suspect in custody after charge, and the evidence required to apply the Full Code Test is not yet available.
- 3.5 Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.
- 3.6 Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops, including what becomes known of the defence case. Wherever possible, they should talk to the investigator when thinking about changing the charges or

stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision whether or not a case should go ahead rests with the CPS.

- 3.7 Parliament has decided that a limited number of offences should only be taken to court with the agreement of the DPP. These are called consent cases. In such cases the DPP, or prosecutors acting on his or her behalf, apply the Code in deciding whether to give consent to a prosecution. There are also certain offences that should only be taken to court with the consent of the Attorney General. Prosecutors must follow current guidance when referring any such cases to the Attorney General. Additionally, the Attorney General will be kept informed of certain cases as part of his or her superintendence of the CPS and accountability to Parliament for its actions.

## The Full Code Test

- 4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

## The Evidential Stage

- 4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.
- 4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

### Can the evidence

#### be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court;  
and
- b) the importance of that evidence in relation to the evidence as a whole.

**Is the evidence reliable?**

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

**Is the evidence credible?**

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

## The Public Interest Stage

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- 4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
- 4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

4.12 Prosecutors should consider each of the following questions:

**a) How serious is the offence committed?**

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

**b) What is the level of culpability of the suspect?**

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

**c) What are the circumstances of and the harm caused to the victim?**

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

**d) Was the suspect under the age of 18 at the time of the offence?**

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

**e) What is the impact on the community?**

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

**f) Is prosecution a proportionate response?**

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)

- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.



## The Threshold Test

- 5.1 The Threshold Test may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.

### When the Threshold Test may be applied

- 5.2 Prosecutors must determine whether the following conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
  - c) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
  - d) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
  - e) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.
- 5.3 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. The custody officer must determine whether the person may continue to be detained or be released on bail, with or without conditions.
- 5.4 There are two parts to the evidential consideration of the Threshold Test.

### The first part of the Threshold Test – is there reasonable suspicion?

- 5.5 Prosecutors must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
- 5.6 In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:
- a) it is relevant; and
  - b) it is capable of being put into an admissible format for presentation in court; and
  - c) it would be used in the case.
- 5.7 If satisfied on this the prosecutor should then consider the second part of the Threshold Test.

## The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?

- 5.8 Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
- 5.9 The further evidence must be identifiable and not merely speculative.
- 5.10 In reaching this decision prosecutors must consider:
- a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
  - b) the charges that all the evidence will support;
  - c) the reasons why the evidence is not already available;
  - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.
- 5.11 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

## Reviewing the Threshold Test

- 5.12 A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practicable and in any event before the expiry of any applicable custody time limit.

## Selection of Charges

- 6.1 Prosecutors should select charges which:
  - a) reflect the seriousness and extent of the offending supported by the evidence;
  - b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
  - c) enable the case to be presented in a clear and simple way.
- 6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
- 6.3 Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 6.4 Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
- 6.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

## Out-of-Court Disposals

- 7.1 An out-of-court disposal may take the place of a prosecution in court if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.
- 7.2 Prosecutors must follow any relevant guidance when asked to advise on or authorise a simple caution, a conditional caution, any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal.

## Mode of Trial

- 8.1 Prosecutors must have regard to the current guidelines on sentencing and allocation when making submissions to the magistrates' court about where the defendant should be tried.
- 8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. But prosecutors should consider the effect of any likely delay if a case is sent to the Crown Court, and the possible effect on any victim or witness if the case is delayed.

## Venue for trial in cases involving youths

- 8.3 Prosecutors must bear in mind that youths should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a youth in the Crown Court should be reserved for the most serious cases or where the interests of justice require a youth to be jointly tried with an adult.

## Accepting Guilty Pleas

- 9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.
- 9.2 Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient.
- 9.3 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
- 9.4 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
- 9.5 Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.
- 9.6 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, prosecutors must also bear in mind the fact that ancillary orders can be made with some offences but not with others.

## Reconsidering a Prosecution Decision

10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are reasons why the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

10.2 These reasons include:

- a) cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
- c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later; and
- d) cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

This document is available electronically from the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk)

Further copies of The Code for Crown Prosecutors and information about alternative languages and formats are available from the CPS.

Please send an email to [publicity.branch@cps.gsi.gov.uk](mailto:publicity.branch@cps.gsi.gov.uk) or by writing to:

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## LANCASTER CITY COUNCIL

### ~~LEGAL AND LICENSING~~ SERVICES GOVERNANCE - LICENSING

## LICENSING ENFORCEMENT POLICY

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## LANCASTER CITY COUNCIL

### LICENSING ENFORCEMENT POLICY

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#### 1 BACKGROUND

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- 1.1 The purpose of this document is to set out the general principles that the Council's Licensing Service will apply when undertaking licensing enforcement work. Enforcement does not only mean deciding whether to prosecute an alleged offender. Rather, it includes a wide range of issues including communicating effectively, acting fairly and acting consistently when using statutory enforcement powers. It includes undertaking inspections of licensed premises, vehicles and activities and giving advice to enable licensees to meet minimum legal standards as well as higher standards and good practice.

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#### 2 POLICY STATEMENT

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- 2.1 This Policy ~~was has-been~~ written having regard to the Government's "concordat on Good Enforcement" which Lancaster City Council ~~has~~ formally adopted. Officers will therefore have regard to and implement the 4 principles of enforcement set out in the Policy.
- 2.2 Where there is specific guidance on enforcement action, for example, statutory guidance, or Codes of Practice and guidance issued for example by the Better Regulation Delivery Office or the Local Government Association (formerly Local Authorities Co-ordinators of Regulatory Services (LACORS)), these will be followed.
- 2.3 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action is taken in strict accordance with the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.
- 2.4 The Council recognises that the particular interests of different consumers within the District will need to be taken account of to ensure that legislation is enforced fairly. Interpreters will be used where there is difficulty in understanding the English language. Where possible, translated advisory leaflets will be made available. Any visits that are required out of hours will be undertaken as necessary.
- 2.5 All enforcement action will be based on risk to health and safety and in accordance with this policy. Any departure from this policy will be justified to the Legal Services Manager or the Licensing Manager. The reasons for any departure will be fully documented and retained on the relevant file.

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#### 3 PRINCIPLES OF ENFORCEMENT

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- 3.1 The Council believes in firm but fair enforcement of licensing law and the relevant byelaws or licence conditions. Underlying this belief are the principles of **proportionality** in applying the law and securing compliance, **consistency** of approach, **transparency** about how the Licensing Service operates and what those regulated may expect from the Service and **targeting** of enforcement action.

#### 3.2 PROPORTIONALITY

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcement authorities to achieve compliance should be proportionate to any risks to public health and safety and the seriousness of any breach.

### 3.3 CONSISTENCY

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. There is a right to expect consistency from an enforcing authority whether they are: responding to requests for service, issuing advice, using statutory notices, or deciding to prosecute.

### 3.4 TRANSPARENCY

Transparency means helping duty holders and individuals to understand what is expected of them and what they should expect from the enforcing authorities. It also means making it clear to duty holders and individuals, not only what they have to do, but also, where relevant, what they do not. This means distinguishing between statutory requirements and recommendations or advice that is desirable, but not compulsory.

### 3.5 TARGETING

Targeting means making sure that enforcement is targeted primarily on those situations where activities give rise to the most serious risks, or where the hazards are least well controlled. The Licensing Service will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

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## 4 STATUTORY OBLIGATIONS

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- 4.1 The Licensing service administers a wide range of licences and permits which may be mandatory, where the local authority must license particular activities, or adoptive where the Council has elected to control certain businesses, activities or individuals through the issue of licences and the imposition of licence conditions.
- 4.2 The main purpose of licensing enforcement is to:
- a) Secure the health, safety and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way.
  - b) Deal immediately with serious risks.
  - c) Promote and achieve sustained compliance with the law.

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## 5 ENFORCEMENT OPTIONS

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- 5.1 External agencies including Lancashire Police, Lancashire Fire and Rescue Service, Lancashire County Council also have an interest in the enforcement of licensing legislation. Where there is a shared enforcement role, the Council's Licensing service will liaise with the appropriate body to ensure effective co-ordination. Protocols will be established between the enforcement agencies to ensure clarity in their respective roles.
- 5.2 Enforcement officers must seek to secure compliance with the law. Most of the time this will be conducted informally, by offering information, advice and support, both verbally and in writing. They may also use formal mechanisms, as set out in law,

including the service of notices, suspension of vehicle licences, or ultimately prosecution.

5.3 In arriving at a decision, the Licensing Service will consider:

- a) The seriousness of the offence;
- b) The individual or duty holder's past history;
- c) Confidence in management;
- d) The requirements of the legislation;
- e) The consequences of non-compliance; and
- f) The likely effectiveness of the various enforcement options.

5.4 Where enforcement is being considered, the Licensing service can choose one or more of the following options:

- a) Take no action;
- b) Take informal action;
- c) Take statutory action;
- d) Use formal cautions;
- e) Prosecution.

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**6 INFORMAL ACTION**

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6.1 Informal action will include the following:-

- a) offering advice
- b) verbal warnings and requests for action
- c) the use of warning letters setting out the potential consequences of any future non-compliance.

6.2 The circumstances in which informal action may be appropriate include:-

- a) Where it is considered that informal action will achieve compliance based on the offender's past history.
- b) Where confidence in the management of the licensed activity or the licensee is high.
- c) Where the consequences of non-compliance will not pose a significant risk to the physical, financial or emotional well-being of the public, or is of a minor technical nature.
- d) Where it is considered that informal action will be more effective than formal action.

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**7 STATUTORY ACTION AND DECISION MAKING PROCESSES**

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7.1 Such action may involve the suspension, revocation or the refusal to grant or vary a licence.

7.2 In certain circumstances, authority to suspend the licence of hackney carriage/private hire vehicles, hackney carriage/private hire drivers and private hire operators may be delegated to authorised officers (See Appendix 1). The criteria for the suspension of such licences is as follows:-

- a) Hackney Carriage/Private Hire Vehicles

A licensed hackney carriage or private hire vehicle may be suspended if an authorised officer is not satisfied as to the vehicle's fitness (Sections 60 & 68 Local Government (Miscellaneous Provisions) Act 1976).

b) Hackney Carriage/Private Hire Drivers

A licence may be suspended by an authorised officer, if since the grant of a licence the driver has been convicted of an offence involving dishonesty, indecency or violence, or for any other reasonable cause (Section 61, Local Government (Miscellaneous Provisions) Act 1976). In these circumstances, consideration will also be given whether the interests of public safety require the suspension to take immediate effect.

c) Private Hire Operators

A licence may be suspended by an authorised officer, in the event of there being any offence under, or non-compliance with the private hire legislation, or for any other reasonable cause. (Section 62 Local Government (Miscellaneous Provisions) Act 1976)

7.3 However, in the majority of cases involving drivers' and operators' licences any consideration to suspend, revoke or refuse to grant/renew a licence will normally be dealt with by the Council's Licensing Regulatory Committee under established procedures. Similarly, the Licensing Act Sub-Committees and Gambling Act Sub-Committees will normally deal with contentious matters associated with premises licences issued under the Licensing Act 2003 and the Gambling Act 2005 respectively.

7.4 Any person aggrieved by a decision taken to suspend, revoke or refuse to grant/vary a licence has a right of appeal to the Magistrates' Court.

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**8 FORMAL CAUTIONS**

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8.1 Enforcement Officers will consider issuing a formal caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not require a prosecution, a formal caution may be an appropriate course of action. [The Ministry of Justice Guidance on Simple Cautions for Adult Offenders \(November 2013\)](#) ~~[Home Office Circular 18/1994 "The Cautioning of Offenders"](#)~~ states that the purpose of a formal caution is to:

- a) [Offer a proportionate response to low level offending where the offender has admitted the offence;](#) ~~[Deal quickly and simply with less serious offenders;](#)~~
- b) [Divert them from unnecessary appearances in the criminal courts;](#) ~~[and](#)~~ [Deliver swift, simple and effective justice that carries a deterrent effect;](#)
- c) ~~[Reduce the chances of them re-offending.](#)~~ [Record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;](#)
- d) [Reduce the likelihood of re-offending](#)
- e) [Increase the amount of time officers spend dealing with more serious crime and reduce the amount of time completing paperwork and attending court, whilst simultaneously reducing the burden on the courts](#)

8.2 The use of formal cautions will be in accordance with the ~~[Home Office Circular](#)~~ [and Ministry of Justice Guidance referred to above.](#) ~~[official guidance](#)~~. The following conditions must be fulfilled before a caution is administered:

- a) There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of a conviction;
- b) The suspected offender must admit the offence; and
- c) The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

8.3 Before proceeding with a formal caution, the enforcement officer must discuss the proposed action with their line manager. Where a formal caution is refused, the officer must re-consider all the evidence, which may result in a prosecution or other action being taken. Where formal cautions are accepted, they must be registered with Legal Services.

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**9 PROSECUTION**

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9.1 The following circumstances may warrant prosecution:

- a) The offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk; or
- b) The offence involves a failure by the offender to correct an identified serious potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer; or
- c) The offence involves a failure to comply in full or in part with the requirements of a statutory notice; or
- d) There is a history of similar offences on the part of the alleged offender; or
- e) The obstruction or assault of an authorised officer; or
- f) False or misleading information is provided to an authorised officer.

9.2 The officer must be satisfied, before a prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. If there is insufficient evidence, other formal action such as a formal caution will not be an alternative.

9.3 The officer and their manager must decide whether it is in the public's interest to undertake a prosecution, following the guidance in the current Code for Crown Prosecutors. The 2013 edition of the Code indicates that prosecutors should consider each of the following questions, including the following:

- a) How serious is the offence committed?~~The seriousness of the offence;~~
- b) What is the level of culpability of the suspect?~~The risk to public health, safety or welfare;~~
- c) Identifiable victims~~What are the circumstances of and harm caused to the victim?~~
- d) Was the suspect under the age of 18 at the time of the offence?~~Failure to comply with a statutory notice served for a significant breach of legislation;~~
- e) Disregard for public health for financial reward~~What is the impact on the community?~~
- f) Previous history of the defendant~~Is prosecution a proportionate response?~~
- g) Offences following a history of similar offences;~~Do sources of information need protecting?~~
- h) ~~Failure to respond positively to past warnings;~~
- i) ~~Whether a due diligence defence exists and the likelihood of the defendant being able to establish such a defence;~~

- ~~j) Ability of important witnesses and their willingness to co-operate;~~
- ~~k) The willingness of the defendant to prevent a recurrence;~~
- ~~l) The probable public benefit of a prosecution and the importance of the case e.g. whether it may create a legal precedent. Generally the graver the offence, the less likely that the public interest will allow anything other than a prosecution; however, the following two matters should form part of the consideration:
  - ~~i) whether other formal action would be more appropriate or effective; and~~
  - ~~ii) any explanations offered by the defendant. Officers should invite the defendant to offer an explanation before a decision to prosecute is made.~~~~

The Code provides that these questions are not exhaustive, and that not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

- 9.4 Once a decision to prosecute has been made, the procedure should be implemented without undue delay. The requirements of PACE and CPIA will be adhered to.
- 9.5 The criterion for deciding whether to prosecute or issue a formal caution is shown at Appendix 2.

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## 10 LEGISLATION

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- 10.1 The legislation under which authorised officers have the authority to act is shown at Appendix 3.



## APPENDIX 1

## AUTHORITY FOR OFFICERS TO ACT

DECISION MAKING AREA	OFFICERS AUTHORISED TO ACT	OFFICERS WHO MUST BE CONSULTED FOR AUTHORITY TO ACT
Informal action and formal letters	<del>Head of Legal and Human Resources</del> <del>Chief Officer (Governance)</del> Legal Services Manager Licensing Manager <del>Senior Licensing Officer</del> <del>Licensing Officer</del> Licensing Enforcement Officer	
Statutory Action		
a) Suspension of hackney carriage/private hire vehicle licence	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> Legal Services Manager Licensing Manager <del>Senior Licensing Officer</del> Licensing Enforcement Officer	Licensing Manager or <del>Senior Licensing Officer</del>
b) Suspension of hackney carriage/private hire drivers licence	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> Legal Services Manager Licensing Manager	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> or Legal Services Manager
c) Suspension of private hire operators licence	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> Legal Services Manager Licensing Manager	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> or Legal Services Manager
Formal Caution	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> Legal Services Manager Licensing Manager	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del> or Legal Services Manager
Prosecution	<del>Chief Officer (Governance)</del> <del>Head of Legal and Human Resources</del>	<del>Chief Officer (Governance)</del> <del>Head of Legal and</del>

	Legal Services Manager	<del>Human Resources</del> or Legal Services Manager
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APPENDIX 2

DECISION WHETHER TO PROSECUTE OR ISSUE A FORMAL CAUTION

CRITERION	PROSECUTE	OFFER CAUTION
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending?	Yes	No/Unknown
Is the offending willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Is the case likely to establish a legal precedent?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes
<b>TOTAL</b>		

**Note:**

Ring the appropriate response to each criterion and then total the number of rings in each column.

The decision will be based on the total number of rings.

Recommendation of Investigating Officer:    Formal Caution

Prosecution\*

Signed: .....

Date: .....

Decision of Licensing Manager :                    Agree

Disagree\*

Signed: .....

Date: .....

Decision of Legal Services Manager            Agree

Disagree\*

Signed: .....

Date: .....

**\*Delete as appropriate**

## APPENDIX 3

### RELEVANT LEGISLATION

Animal Boarding Establishments Act 1963  
Breeding of Dogs Acts 1973 and 1991  
Breeding and Sale of Dogs (Welfare) Act 1999  
Caravan Sites and Control of Development Act 1960  
Dangerous Wild Animals Act 1976  
Gambling Act 2005  
Game Act 1831  
~~Gaming Act 1968~~  
Game Licences Act 1860  
Health Act 2006  
House to House Collections Act 1939  
Hypnotism Act 1952  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
~~Lotteries and Amusement Act 1976~~  
Pet Animals Act 1951  
Pet Animals (Amendment) Act 1983  
Police, Factories etc (Miscellaneous Provisions) Act 1916  
Public Health Act 1936  
Riding Establishments Acts 1964 and 1970  
Scrap Metal Dealers Act 2013  
~~Scrap Metal Dealers Act 1964~~  
Town Police Clauses Act 1847  
Transport Act 1985  
Vehicles (Crime) Act 2001  
Zoo Licensing Act 1981

Please note that the above list is not exhaustive and may be amended from time to time.