

LICENSING REGULATORY COMMITTEE

Commencement of Prosecutions 16th 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 5th 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 5th 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 27th 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 5th 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The Council's constitution provides that a Council decision made within the previous six months may not be amended or rescinded without a motion from a quorum of the Council.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 5th 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 5th June 2014.

FINANCIAL IMPLICATIONS

As indicated in the report of the 5th 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

Contact Officer: Mrs S Taylor

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

Ref: