
NOTICE OF MEETING

LICENSING COMMITTEE

FRIDAY, 21 NOVEMBER 2014 AT 9.30 AM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

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Licensing Committee Members:

Councillors Hannah Hockaday (Chair), Ken Ellcome (Vice-Chair), Margaret Adair, Ken Ferrett, Margaret Foster, David Fuller, Frank Jonas, Lee Mason, Stuart Potter, Eleanor Scott, Phil Smith, Les Stevens, Sandra Stockdale, Julie Swan and Gerald Vernon-Jackson

Standing Deputies

Councillors Stephen Hastings, Lee Hunt, Leo Madden, Hugh Mason, Robert New, Linda Symes, Neill Young and Colin Galloway

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: www.portsmouth.gov.uk

Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the relevant officer by 12 noon of the working day before the meeting, and must include the purpose of the deputation (eg. for or against the recommendations). Email requests are accepted. Contact: Lucy Wingham as listed above.

AGENDA

- 1 **Apologies for Absence**
- 2 **Declarations of Members' Interests**
- 3 **Minutes of the Licensing Policy Committee meeting held on 10 January 2014** (Pages 1 - 4)

The minutes of the meeting held on 10 January 2014 are attached.

RECOMMENDED that the minutes of the Licensing Policy Committee meeting held on 10 January 2014 be agreed and signed by the chair as a correct record.

- 4 **Hackney Carriage and Private Hire Policy Review - Consideration of options for review of current policy guidelines** (Pages 5 - 10)

Purpose

The purpose of this report is for the Licensing Committee to give approval, in principle, for the Head of Health, Safety and Licensing to undertake a thorough review of hackney carriage and private hire policy in respect of drivers, vehicles and private hire operators. Report attached.

- 5 **Annual Review of Licensing Fees** (Pages 11 - 30)

Purpose

The purpose of this report is for the committee to consider a review of the non-statutory fees charged for licences/registrations which are administered by the Licensing Committee. Report attached.

- 6 **Schedule 5, Local Government (Miscellaneous Provisions) Act 1982 and sections 115A - 115K Highways Act 1980 - Provision of Highway Amenities - Determination of Policy, Guidelines and other Associated Matters** (Pages 31 - 70)

A report by the Licensing Manager is attached.

- 7 **Exclusion of the Press and Public**

In view of the contents of the following item on the agenda the committee is **RECOMMENDED** to adopt the following motion:

"That, under the provisions of Section 100A of the Local Government Act, 1972 as amended by the Local Government (Access to Information) Act, 1985, the press and public be excluded for the consideration of the following items on the grounds that the report contains information defined as exempt in

Part 1 of Schedule 12A to the Local Government Act, 1972".

The public interest in maintaining the exemption must outweigh the public interest in disclosing the information.

Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2013, regulation 5, the reasons for exemption of the listed items is shown below.

Members of the public may make representation as to why the item should be held in open session.

(N.B. the exempt/confidential papers on the agenda will contain information which is commercially, legally or personally sensitive and should not be divulged to third parties and members can return their exempt documentation to the Local Democracy Officer at the conclusion of the meeting for shredding.)

<u>Item</u>	<u>Exemption Para No.*</u>
8 - Prosecutions Appeals & Enforcement Action (Appendix only)	1

*Paragraph Numbers:

1. Information relating to any individual

8 Prosecutions, Appeals and Enforcement Action - Licensing Matters
(Pages 71 - 84)

Purpose

To advise members of prosecutions, appeals and other targeted enforcement action taken in respect of licensing matters and on behalf of the Licensing Manager and Head of Health, Safety and Licensing. It is normal policy to provide details of any prosecutions to the committee for information purposes, some of which will be exempt information. Report attached.

RECOMMENDED that the report be noted.

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Agenda Item 3

LICENSING COMMITTEE

MINUTES OF A MEETING of the Licensing Committee held on Friday, 10 January 2014 at 9.30 am in the Council Chamber, floor 2 of the Guildhall, Portsmouth

Present

Councillors Les Stevens (Chair)
David Fuller (Vice-Chair)
Phil Smith (Deputy Chair)
Margaret Adair
Peter Eddis
Ken Ellcome
Jason Fazackarley
Ken Ferrett
Margaret Foster
Jacqui Hancock
Lee Mason
Sandra Stockdale

1. Apologies for Absence (AI 1)

Apologies for absence were received from Councillors Aiden Gray, Eleanor Scott, Frank Jonas and April Windebank. Councillor Eleanor Scott was represented by Councillor Peter Eddis.

2. Declarations of Members' Interests (AI 2)

There were no declarations.

3. Annual Review of Licensing Fees (AI 4)

(TAKE IN THE LICENSING MANAGERS REPORT)

The Licensing Manager introduced her report and explained to members of the committee that it has always been the aim of the committee to work towards total cost recovery where possible when undertaking all of the various licensing functions. She explained that the fee increases had been calculated by finance and that the increase in the Hackney Carriage vehicle renewal-extension would only result in a net increase of 76p per day.

A deputation was heard from Councillor Gerald Vernon-Jackson who explained that as part of the administration of the Council he was responsible for putting the budget together and that many difficult decisions had to be made. He explained that wherever possible full cost recovery was being met. The taxi trade cannot be seen to set aside from this. He accepted that Southampton City Council do charge less for a licence and that as they already licence Eastleigh discussions had taken place regarding them also taking on Portsmouth, if this was what the trade wanted. Councillor Vernon-Jackson also referred to spreading full cost recovery over a 5-year period as an option.

Councillor Vernon-Jackson left the meeting at this point as he had another meeting to attend.

Chris Dixon, Hackney Carriage trade representative asked if the trade could be given some time to discuss the 5-year proposal as although the suggestion had been muted at the consultative meeting the week before it had not been fully proposed. The chair, Councillor Stevens, proposed a 10minute recess to allow the trade to discuss the matter. All members and officers left the chamber.

When the committee reconvened, deputations were then heard from the following persons.

Chris Dixon, Hackney Carriage trade representative thanked the committee for the opportunity to discuss the 5-year option. He mentioned that the trade are having a hard time and that they realise the council needs to recover costs. The trade had reluctantly agreed to go along with the 5-year plan.

Carolyn Holmes, Hackney Carriage Proprietor, explained that she had been in the taxi trade for over 40years. This is such a quiet period for drivers and a massive hike in fees. Motoring and living costs have all gone up and this is yet another increase that the drivers have to absorb. She questioned the employment costs of the licensing department. She also reluctantly endorsed the 5-year option.

Viv Young, Hackney Carriage trade representative strongly objected to the massive hike in fees. He explained that drivers have ever increasing costs for maintaining the vehicles and insurance and yet have not had an increase in fares since 2010. There has been a noticeable decrease in fares since the closure of the Dockyard and yet in Southampton they have the cruise ships, premier football club and West Quay but their licence fees are less. Drivers work long shifts due to a lack of work and low wages. He felt that partial recovery was far more palatable and accepted that the trade need to do their bit. He mentioned that drivers have to put up with drunks and abuse, and 'no payers' and get nothing in return. Travel tokens have been stopped and replaced by bus passes which is good for the buses but not the taxi trade. He felt the increase in fees between the HC and PH driver was unfair.

Bruce Hall, General Manager of Aquacars explained that he supported the 5-year option but asked to see the figures broken down over the 5year period.

Written deputations were also received from Ian Hunter and Nizam Ahmed which were circulated to the members.

In response to some of the points raised by the deputations, the Licensing Manager explained that a review of the service was undertaken 18months-2years ago, and that there was a constant process of review to make efficiencies and savings. She continued to explain that the Private Hire and Hackney Carriage fees differ in costs because they cannot cross subsidise. There are less Hackney Carriage licences but with the same overheads. Following on from the consultative meeting the week before, a breakdown of fees over a 5-year period had been prepared by finance. As a point of clarity, the Licensing Manager explained that after the meeting in November had been adjourned, she had met with the trade representations shortly after to discuss the options and it was not until Wednesday of last week that the

trade had submitted their proposals. The proposed figures for a 5-year spread to meet full cost recovery were circulated to the committee.

Members' questions

Members sought clarification on which licences would need to go out to public consultation and which must be agreed today, when the fees were last increased, whether the fares could be increased to help with the increase in fees, how many Private Hire operators there currently are and how many cars they operate and questioned whether the deficit has been this big since 2010.

In response to members' questions, the Licensing Manager explained that the report also contained increases for street trading consent and amenity on the highway licences, neither of which are subject to public consultation. She also explained that if members were to choose either 3year or 5year full cost recovery, members could only agree the cost of fees for 2014/15. Members are not able to set the fee increase, for example, for year5 today and that this would be reviewed every financial year. She explained to the committee that they could review the licence fees at any time and the local authority does not set the fares for private hire.

Members' comments

Members were mixed in their views. Some felt that the recurring theme seemed to be too many drivers all seeking less work. Other members expressed their support to the trade in what must at some times be a difficult and unpleasant job. They appreciated that the trade provided an almost 24hour service and that they are an integral part of the transport system. Members also accepted that most of the drivers were also residents in the city and that rather than look at the trade as a whole, they should look at the impact the increase would have on the individual. Members also recognised the council commitment to meet full cost recovery.

RESOLVED that;

1. **The committee noted the contents of the report and agreed to meet full cost recovery over a period of 5years.**
2. **The following fees are to be implemented with immediate effect; Street Trading Consent, Amenities on the Highway Permits, Sex Establishments, Private Hire Driver Licence @£78 and Hackney Carriage Driver Licence @£88.**
3. **Delegated authority was granted to the Head of Health, Safety and Licensing to**
 - a) **advertise the following fees and charges which are subject to formal public statutory consultation: Private Hire Operators Licence @£418 and Hackney Carriage Vehicle Licence renewal @£196 & extension @£331 for Year 1 and**
 - b) **that subject to no representations being received, implement such fees and charges.**

The meeting concluded at 12.35 pm.

Signed by the chair, Councillor Les Stevens.

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Agenda Item 4

REPORT TO: LICENSING COMMITTEE - 21 NOVEMBER 2014

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

Hackney Carriage and Private Hire Policy Review Consideration of options for review of current policy guidelines

1. Purpose of report

The purpose of this report is for the Licensing Committee to give approval, in principle, for the Head of Health, Safety and Licensing to undertake a thorough review of hackney carriage and private hire policy in respect of drivers, vehicles and private hire operators.

2. Recommendations

- (1) That the Head of Health, Safety and Licensing be authorised to undertake a thorough review of hackney carriage and private hire policy in relation to vehicles, drivers and operators and report back to a future meeting of the Licensing Committee;
- (2) Officers shall meet with recognised hackney carriage and private hire trade representatives, private hire operators and other relevant forums/bodies to discuss any proposed policy initiatives.

3. Background

The proposal to review the current policy guidelines originates from a request by members of the Licensing Committee that the Licensing Manager prepare a report giving options for the review of policy with particular emphasis on the following matters:

Hackney Carriage and Private Hire Vehicles

- Review of hackney carriage vehicle quantity controls;
- Increase in availability and choice of wheelchair accessible vehicles for hackney carriages;
- Provision of CCTV in hackney carriage and private hire vehicles (subject to any appropriate exemptions);
- Review of age limits of licensed vehicles;
- Review of hackney carriage stands within the City.

Hackney Carriage and Private Hire Drivers

- Satisfactory standard of English comprehension via oral and written examination;
- Knowledge and understanding of currency, highway code etc.;
- Driver disability awareness training;
- Review of procedures and process for checking of applicants;
- Duration of licences for drivers and operators;
- Advanced driver training for new drivers or existing licence holders where valid complaints have been received.

Review of fees and charges

- Ongoing review of fees with a view to total cost recovery

Delegation to Head of Service

- to review and update where necessary licence conditions, forms, procedures, including the points system.

4. Comments from Transport and Environment - Road Safety

In response to a request by the Vice-Chair of the Committee, this report also includes information and comments from the PCC Road Safety Officer in respect of Police/Local Authority casualty records and its correlation to hackney carriage and private hire licensing. The main points are highlighted below:

Road Safety

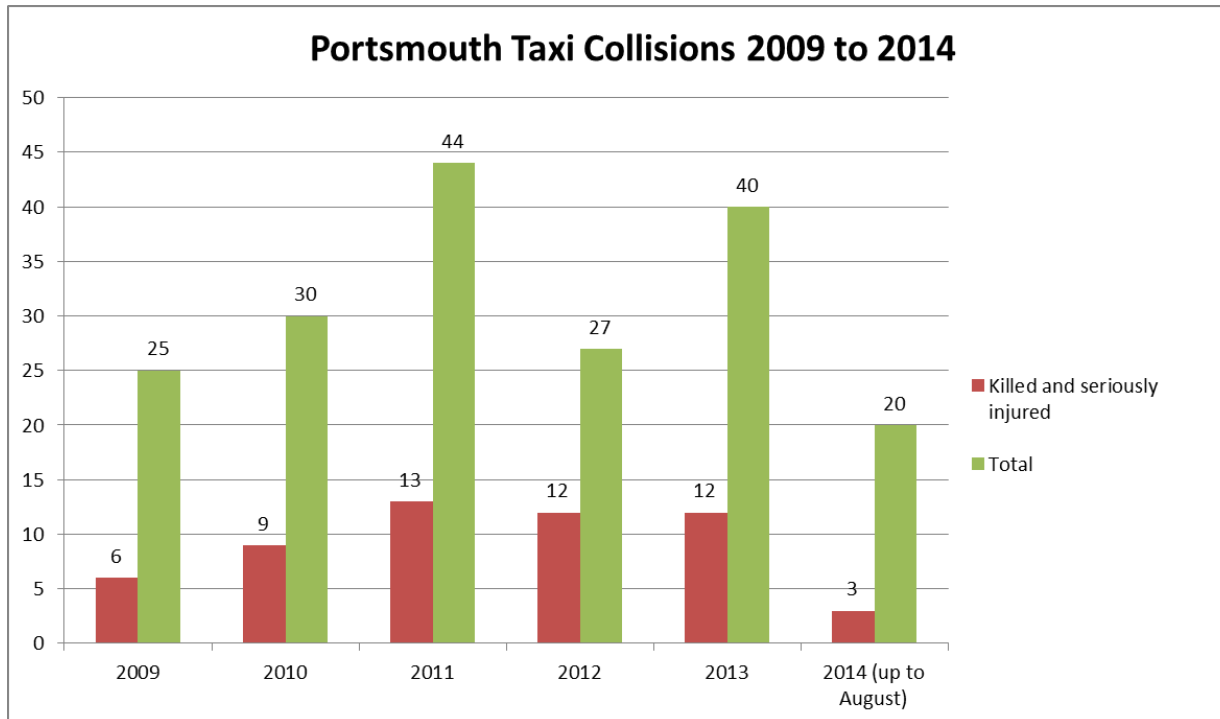
- The following data is all drawn from Stats19 Police/Local Authority casualty record analysis.
- Portsmouth has significantly higher taxi casualties than the rest of Hampshire and vulnerable road users feature heavily.

Overall picture

- Dividing the county into the Policing areas:
- During the four years January 2009 – December 2012 there were 407 personal injury collisions in the area involving taxis and private hire vehicles.
- **61.4% of the collisions occur in the Eastern RPU Area (this includes Portsmouth and Isle of Wight)**
- 24.1% of the collisions occur in the West RPU Area
- 14.5% of the collisions occur in the North RPU Area
- **215 collisions (72 serious, 143 slight) occurred in Portsmouth, this accounts for 41.8% of the 407 collisions Hampshire wide.**
- 76 collisions (15 serious, 61 slight) occurred in **Southampton**, this accounts for 18.7% of the 407 collisions.

- In 70.6% of the collisions in Portsmouth – the Taxi driver had blame for the collision

Portsmouth picture



- Analysis of the most recent stats19 data for Portsmouth 1st September 2011 and 31st August 2014 shows there were a total of 200 collisions (1 fatal, 45 serious and 154 slight).
- 57 (21%) of the collisions are with pedal cycles, 60 (22%) are with pedestrians and 15 (6%) are with motorcycles with the remaining being with other vehicles.

Cycle collisions

- It is clear that cyclists are over represented in this data.
- Cyclists make up only 4.7% of traffic but 21% of Taxi related casualties.
- Taxis/Private Hire represents 0.9% of registered vehicles in Portsmouth (1000 out of a total of 110,000) but represent 8% of total cycle collisions.
- Most common contributory factor is driver failing to look properly.
- Most common manoeuvre is pulling out on cyclists at junctions and roundabouts and opening of doors into their path.

Pedestrian collisions

- Most common contributory factor is driver failing to look properly, although this is followed by pedestrian failed to look and impaired by alcohol.
- Most common manoeuvre is the taxi going straight ahead

Vehicle Collisions

- Most common contributory factors are: failed to look properly and failed to judge other persons path or speed.
- Most common collisions are pulling out at junctions and roundabouts and rear end shunts.

Locations of note

- 82% occur on main 30mph roads
- Taxi casualties are spread widely across the city but four locations are priorities.
- Cosham – Southampton Road to M27
- A2047 – entire length
- Fratton Station (radius of 100 metres from entrance)
- Albert Road entire length

Summary

- As professional drivers, taxi drivers are performing poorly in Portsmouth.
- There is a high percentage of vulnerable road users involved in collisions with Taxis.
- A lack of observation and care at junctions and when driving generally is the prevalent behaviour.

Potential solutions

- Driver testing through the Blue Lamp Trust or DSA for all new drivers– this is tax deductible.
- Review of private hire and hackney carriage licence penalty system including increased penalty points for infringements relating to safety.
- Increase the length of time penalties remain on the driver's record (one year is too short).
- Portsmouth specific licensed driver hazard awareness training for all drivers.
- Double penalty points for incidents involving vulnerable road users when at fault.
- Cap on number of driving licence points on entry.
- Messages inside taxis and private hire vehicles to warn passengers to check for cycles before opening doors.

5. Other Considerations

The last major review of hackney carriage and private hire policy was undertaken in 2001, and it is suggested that it would be appropriate for a further full review to be carried out.

In conjunction with the review, the Committee will also be informed of the current best practice guidance for taxi and private hire licensing issued by the Department for Transport and also the key proposals contained within the Law Commission's recommendations for legal reform of the hackney carriage and private hire licensing regimes.

6. Proposed timescales

It is suggested that any proposed changes to the policy guidelines to be put before the Licensing Committee for consideration by no later than 1 April 2015.

This timescale will be subject to consultation with the hackney carriage and private hire trade, public, other relevant bodies and partner agencies.

7. Legal implications

The legal implications are embodied within this report.

THE COMMITTEE IS REQUESTED TO DETERMINE THE MATTER

Licensing Manager
For Head of Health, Safety and Licensing

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Agenda Item 5

REPORT TO: LICENSING COMMITTEE 21 NOVEMBER 2014

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

ANNUAL REVIEW OF LICENSING FEES

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider a review of the non-statutory fees charged for licences/registrations which are administered by the Licensing Committee.

2. RECOMMENDATIONS

RECOMMENDED:-

- a) That the Licensing Committee note the contents of this report, consider the proposed options and determine the level of fee to be adopted;**
- b) That the approved fees be implemented with immediate effect; and**
- c) That the Head of Health, Safety and Licensing be given authority to advertise, (where appropriate) such fees and charges that are subject to any formal public statutory consultation.**

3. BACKGROUND INFORMATION

- 3.1 It has always been the aim of the Committee to work towards total cost recovery, where possible in undertaking the various licensing functions. For some licences/permits, no fee is payable or the licensing fees are controlled centrally by Government. In these cases, the Council cannot vary the fees to take into account local administrative on-costs.
- 3.2 However, members should be aware that the EU Services Directive 2009 and recent case law (Hemming v Westminster City Council) prohibits the Licensing Authority from recovering the cost of enforcement activity in respect of unlicensed traders.
- 3.3 On 5 November 2008, the Licensing Committee resolved that these fees are to be reviewed on an annual basis to take into account inflationary and other increased costs (Minute No. 15/08 refers).
- 3.4 Due to increasing budget pressures on the Council, the Committee should consider whether it wishes to work towards the licensing service achieving total cost recovery and no longer carries a deficit which has to be met by the Council tax payer.

3.5 To achieve this position, in 2013 a thorough analysis was undertaken of the costs associated with each of the various licensing functions and what increases are necessary to the existing licence fees to meet total cost recovery. This analysis took into account the on-costs for employees, supplies and services, agency and other contracted services so that the licensing budget meets the cash limit requirement as set down in the Council's budget and rectifies the current deficit.

3.6 At the formal meeting of the Licensing Committee on 10 January 2014, it was determined that a staged approach over 5 years to achieve cost recovery would be implemented in respect of hackney carriage and private hire subject to annual review.

The fees in respect of amenities on the highway were to be implemented with immediate effect to achieve cost recovery.

The fees in respect of street trading and sex establishments were implemented as per previous year's report.

3.7 The proposed fees as set out in Appendix A to this report will ensure that full cost recovery can be achieved, where possible, in relation to the cost of administration and compliance checks for the various licensing functions.

Members should note that the figures have altered from the previous year's projection. This is because updated analysis has been undertaken with regard to the examination of time spent by officers on those individual licensing functions.

Attached as Appendix B is a summary of the analysis of the Licensing Budget which identifies both revenue and expenditure under each licensing function.

3.8 The Committee have again been provided with three options for consideration when determining the appropriate level of fees to be charged. These options are based upon the following precepts:

Option 1

This option is to introduce an immediate increase in fees to achieve full cost recovery. This option means that increases are "front loaded" with the charge to the licence holders being immediate and significant in order to fully recover costs and eliminate service deficit/Council subsidy.

This does not provide any retrospective cost recovery as previous years deficits have been absorbed by PCC budgets. The immediate rise to full cost recovery is based on current budgeted expenditure as per 2014/15 cash limits. The revised fee will recover these costs in year and will be subject to continuing annual review in order to balance further budgets as time progresses.

Options 2 and 3

These options are based on a phased increase of fees in line with cost recovery in order to reduce the deficit and meet the expectations of the Licensing Committee that the cost of administering the various licensing functions is met fully from the fees charged.

This option does not meet full cost recovery immediately but instead staggers the increase to this level over the course of a period of years until such time that the fee covers costs of the cash limit dependent upon which phased period the Committee would wish to implement.

The phased approach takes into account rises in operating costs into the required fee.

The time period options are full recovery:

- over 3 years (2015/16, 2016/17 & 2017/18); or
- over the current 5 year model where 2015/16 is year 2 of the 5 year period of achieving cost recovery (i.e. recovery over 4 the remaining 4 years, 2015/16, 2016/17, 2017/18, 2018/19).

4. CURRENT FEES AND CHARGES

Set out below are the existing fees charged for those licensing functions where the authority has discretion to set the fees.

4.1

Licence Type:	Existing Fee: £
Private Hire and Hackney Carriage Licences	
Private Hire Operators:	
Grant or renewal	418.00
Private Hire Vehicles:	
Grant or renewal	150.00
Renewal – Extension	246.00
Grant – January only	75.00
Car-to-car transfer fee	126.00
Car-to-car transfer – Admin fee	26.00
Temporary car-to-car transfer fee	64.00
Vehicle re-test fee	49.00
Certificate of Compliance - Duplicate Copy	10.00

Private Hire Drivers:	
Grant or renewal	78.00
Replacement badge	13.00
DBS Administration Fee	11.00
Drugs Test	44.00
Geography Test – Each Separate Attempt	12.00
Hackney Carriage Vehicles:	
Grant or renewal	196.00
Renewal – Extension	331.00
Car-to-car transfer fee	132.00
Car-to-car transfer – Admin fee	27.00
Temporary car-to-car transfer fee	66.00
Vehicle re-test fee	52.00
Certificate of Compliance - Duplicate Copy	10.00
Hackney Carriage Drivers:	
Grant or renewal	88.00
Replacement badge	13.00
DBS Administration Fee	11.00
Drugs Test	44.00
Geography Test – Each Separate Attempt	12.00
Street Trading Consents:	
Grant or renewal	1736.00
Amenities on the Highway Permits:	
Goods on the Highway:	
Grant	279.00
Renewal	159.00
Variation	73.00
Tables and chairs on the Highway:	
Initial application fee	120.00
Additional fee and subsequent renewal fee:	
Highway area up to 5 m2	230.00
Highway area between 5 m2 and 10 m2	456.00
Highway area between 10 m2 and 15 m2	687.00
Highway area between 15 m2 and 20 m2	911.00
Highway area greater than 20 m2	1139.00

Sex Establishments	
Grant	12000.00
Renewal	4000.00
Transfer	1000.00
Variation	1000.00
Scrap Metal Dealers	
Site Licence - Grant and Renewal	1000.00
Site Licence - Variation	100.00
Collector's Licence - Grant and Renewal	300.00
Collector's Licence - Variation	100.00
Replacement Licence	25.00

5. CONCLUSION

5.1 The fees as outlined in the attached appendix provide members with 3 options as to how it may achieve cost recovery;

Option 1 - Front load fees with a view to full recovery of operating costs and remove the current deficit immediately.

Option 2 - Implement a staged approach over a 3 year period allowing for expected rises in expenditure.

Option 3 - Continue with the current staged approach, where 2015/16 is year 2 of a 5 year period model (pursuing the previously agreed phased approach), allowing for expected rises in expenditure.

5.2 We recommend that we continue with the current staged approach of recovery of the fees for private hire and hackney carriage over the remaining 5 year period, where 2015/16 will be year 2 of the 5 year period.

We recommend fees for amenities on the highway and street trading continue to be on an immediate recovery basis.

We recommend fees for sex establishments decreases by 5% in 2015/16 and remains constant over the remaining 5 year period.

5.3 The Committee should be aware that the proposed fees have been calculated using the latest data and analysis to justify the proposals put forward for consideration, having regard to statutory limitations and case law. Any arbitrary deviation from the fees prepared that cannot be shown to be justified or reasonable may result in legal challenge by licence holders. Any proposed amendments by the Committee to either option should be accompanied by full and comprehensive reasons for those changes.

5.4 Representatives from the hackney carriage and private hire trade have been informed on the proposals contained within this report and have been invited to make representations to the Committee in relation to the proposals put forward for consideration.

In discussions with Officers, the trade representatives have given a clear indication that they would wish the Committee to implement Option 3 which continues the staged approach towards cost recovery over 5 years which was agreed in January this year.

6.0 LEGAL IMPLICATIONS

The legal implications are embodied within this report and are endorsed by Legal Services.

THE COMMITTEE ARE REQUESTED TO DETERMINE THIS MATTER

7.0 APPENDICES

Appendix A - Proposed Options for increases to existing licence fees.
Appendix B - Summary of Analysis of Licensing Budget

Licensing Manager

PROPOSED FEES - OPTIONS FOR CONSIDERATION

OPTION 1

This option is an immediate increase in line with full cost recovery where appropriate.

All fee increases are 'front loaded' with the charge to the trade being immediate and sharp in order to fully recover costs and eliminate service deficit / Council subsidy

<u>Licence Type</u>	<u>Proposed Fee £</u>	<u>Officer Comments</u>
Private Hire and Hackney Carriage Licences		
Private Hire Operators:		
Grant or Renewal	700.00*	This is a 67.5% increase in fees from 2014/15.
Private Hire Vehicles:		
Grant or renewal	164.00*	This is a 9.4% increase in fees from 2014/15.
Renewal – Extension	269.00*	This is a 9.4% increase in fees from 2014/15.
Grant – January only	75.00*	No change in fee from 2014/15.
Car-to-car transfer fee	126.00	No change in fee from 2014/15.
Car-to-car transfer – Admin fee	26.00	No change in fee from 2014/15.
Temporary car-to-car transfer fee	64.00	No change in fee from 2014/15.
Vehicle re-test fee	49.00	No change in fee from 2014/15.
Certificate of Compliance - Duplicate Copy	10.00	No change in fee from 2014/15.

<u>Licence Type</u>	Proposed Fee £	Officer Comments
Private Hire Drivers:		
Grant or renewal	95.00	This is a 21.3% increase in fees from 2014/15.
Replacement badge	13.00	No change in fee from 2014/15.
DBS Administration Fee	11.00	No change in fee from 2014/15.
Drugs Test	44.00	No change in fee from 2014/15.
Geography Test – Each Separate Attempt	12.00	No change in fee from 2014/15.
Hackney Carriage Vehicles:		
Grant or renewal	303.00*	This is a 54.5% increase in fees from 2014/15.
Renewal – Extension	520.00*	This is a 57% increase in fees from 2014/15.
Car-to-car transfer fee	132.00	No change in fee from 2014/15.
Car-to-car transfer – Admin fee	27.00	No change in fee from 2014/15.
Temporary car-to-car transfer fee	66.00	No change in fee from 2014/15.
Vehicle re-test fee	52.00	No change in fee from 2014/15.
Certificate of Compliance - Duplicate Copy	10.00	No change in fee from 2014/15.
Hackney Carriage Drivers:		
Grant or renewal	176.00	This is a 100% increase in fees from 2014/15.
Replacement badge	13.00	No change in fee from 2014/15.
CRB Administration Fee	11.00	No change in fee from 2014/15.
Drugs Test	44.00	No change in fee from 2014/15.
Geography Test – Each Separate Attempt	12.00	No change in fee from 2014/15.
Street Trading Consents:		
Grant or renewal	1736.00	No change in fee from 2014/15.

<u>Licence Type</u>	Proposed Fee £	Officer Comments
Amenities on the Highway Permits:		
Goods on the Highway:		
Grant	296.00	This is a 6% increase in fees from 2014/15.
Renewal	169.00	This is a 6% increase in fees from 2014/15.
Variation	73.00	No change in fee from 2014/15.
Tables and chairs on the Highway:		
Initial application fee	127.00	This is a 6% increase in fees from 2014/15.
<i>Additional fee and subsequent renewal fee:</i>		
Highway area up to 5 m2	244.00	This is a 6% increase in fees from 2014/15.
Highway area between 5 m2 and 10 m2	483.00	This is a 6% increase in fees from 2014/15.
Highway area between 10 m2 and 15 m2	728.00	This is a 6% increase in fees from 2014/15.
Highway area between 15 m2 and 20 m2	966.00	This is a 6% increase in fees from 2014/15.
Highway area greater than 20 m2	1207.00	This is a 6% increase in fees from 2014/15.
Sex Establishments		
Grant	11,400.00	This is a 5% decrease in fees from 2014/15.
Renewal	3800.00	This is a 5% decrease in fees from 2014/15.
Transfer	1000.00	No change in fee from 2014/15.
Variation	1000.00	No change in fee from 2014/15.
Scrap Metal Dealers		
Site Licence - Grant and Renewal	1000.00	No change in fee from 2014/15.
Site Licence - Variation	100.00	No change in fee from 2014/15.
Collector's Licence - Grant and Renewal	300.00	No change in fee from 2014/15.
Collector's Licence - Variation	100.00	No change in fee from 2014/15.
Replacement Licence	25.00	No change in fee from 2014/15.
*Denotes fees that are subject to statutory public consultation		

Option 2

This option is based on a phased increase of fees over three years in line with cost recovery in order to reduce deficit and meet the expectations of the Licensing Committee.

This means that the cost of administering the licensing function is met fully from the fees charged. This takes into account rises in operating costs and offsets these costs using the phased increase over 3 years.

THREE YEARS				
Licence Type	Fee Year 1	Fee Year 2	Fee Year 3	Officer Comments
Private Hire and Hackney Carriage Licences				
Private Hire Operators:				
Grant or Renewal	497.00*	590.00*	700.00*	This is an 18.7% increase in fees each year from 2014/15.
Private Hire Vehicles:				
Grant or renewal	155.00*	159.00*	164.00*	This is a 3.05% increase in fees each year from 2014/15.
Renewal – Extension	254.00*	261.00*	269.00*	This is a 3.05% increase in fees each year from 2014/15.
Grant – January only	75.00*	75.00*	75.00*	No change in fee from 2014/15.
Car-to-car transfer fee	126.00	126.00	126.00	No change in fee from 2014/15.
Car-to-car transfer – Admin fee	26.00	26.00	26.00	No change in fee from 2014/15.
Temporary car-to-car transfer fee	64.00	64.00	64.00	No change in fee from 2014/15.
Vehicle re-test fee	49.00	49.00	49.00	No change in fee from 2014/15.
Certificate of Compliance - Duplicate Copy	10.00	10.00	10.00	No change in fee from 2014/15.

THREE YEARS				
Licence Type	Fee Year 1	Fee Year 2	Fee Year 3	Officer Comments
Private Hire Drivers:				
Grant or renewal	83.00	89.00	95.00	This is a 6.8% increase in fees each year from 2014/15.
Replacement badge	13.00	13.00	13.00	No change in fee from 2014/15.
DBS Administration Fee	11.00	11.00	11.00	No change in fee from 2014/15.
Drugs Test	44.00	44.00	44.00	No change in fee from 2014/15.
Geography Test – Each Separate Attempt	12.00	12.00	12.00	No change in fee from 2014/15.
Hackney Carriage Vehicles:				
Grant or renewal	227.00*	262.00*	303.00*	This is a 15.55% increase in fees each year from 2014/15.
Renewal – Extension	385.00*	447.00*	520.00*	This is a 16.2% increase in fees each year from 2014/15.
Car-to-car transfer fee	132.00	132.00	132.00	No change in fee from 2014/15.
Car-to-car transfer – Admin fee	27.00	27.00	27.00	No change in fee from 2014/15.
Temporary car-to-car transfer fee	66.00	66.00	66.00	No change in fee from 2014/15.
Vehicle re-test fee	52.00	52.00	52.00	No change in fee from 2014/15.
Certificate of Compliance - Duplicate Copy	10.00	10.00	10.00	No change in fee from 2014/15.
Hackney Carriage Drivers:				
Grant or renewal	110.00	139.00	176.00	This is a 26.2% increase in fees each year from 2014/15.
Replacement badge	13.00	13.00	13.00	No change in fee from 2014/15.
CRB Administration Fee	11.00	11.00	11.00	No change in fee from 2014/15.
Drugs Test	44.00	44.00	44.00	No change in fee from 2014/15.
Geography Test – Each Separate Attempt	12.00	12.00	12.00	No change in fee from 2014/15.

THREE YEARS				
Licence Type	Fee Year 1	Fee Year 2	Fee Year 3	Officer Comments
Street Trading Consents:				
Grant or renewal	1736.00	1736.00	1736.00	No change in fee from 2014/15.
Amenities on the Highway Permits:				
Goods on the Highway:				
Grant	296.00	296.00	296.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Renewal	169.00	169.00	169.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Variation	73.00	73.00	73.00	No change in fee from 2014/15.
Tables and chairs on the Highway:				
Initial application fee	127.00	127.00	127.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Additional fee and subsequent renewal fee:				
Highway area up to 5 m2	244.00	244.00	244.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Highway area between 5 m2 and 10 m2	483.00	483.00	483.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Highway area between 10 m2 and 15 m2	728.00	728.00	728.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Highway area between 15 m2 and 20 m2	966.00	966.00	966.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.
Highway area greater than 20 m2	1207.00	1207.00	1207.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1.

THREE YEARS				
Licence Type	Fee Year 1	Fee Year 2	Fee Year 3	Officer Comments
Sex Establishments				
Grant	11,400.00	11,400.00	11,400.00	This is a 5% decrease in fees from 2014/15 and then remains static for 2 years.
Renewal	3800.00	3800.00	3800.00	This is a 5% decrease in fees from 2014/15 and then remains static for 2 years.
Transfer	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Variation	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Scrap Metal Dealers				
Site Licence - Grant and Renewal	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Site Licence - Variation	100.00	100.00	100.00	No change in fee from 2014/15.
Collector's Licence - Grant and Renewal	300.00	300.00	300.00	No change in fee from 2014/15.
Collector's Licence - Variation	100.00	100.00	100.00	No change in fee from 2014/15.
Replacement Licence	25.00	25.00	25.00	No change in fee from 2014/15.
<p>*Denotes fees that are subject to statutory public consultation. For this option, any public consultation will only be in respect of year 1 and years 2 and 3 will be subject to review by the Committee on an annual basis prior to any public consultation.</p> <p>Members should note that increases in fees for years 2 and 3 would be subject to review and amendment depending on any further budget pressures, increase in revenue, rate of inflation etc.</p>				

Option 3

This option is based on a phased increase of fees over the existing five year model (updated to show the remaining 4 years from 2015/16) in line with cost recovery in order to reduce deficit and meet the expectations of the Licensing Committee.

This means that the cost of administering the licensing function is met fully from the fees charged. This takes into account rises in operating costs and offsets these costs using the phased increase over 5 years.

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FIVE YEARS					
Licence Type	Fee Year 2	Fee Year 3	Fee Year 4	Fee Year 5	Officer Comments
Private Hire and Hackney Carriage Licences					
Private Hire Operators:					
Grant or Renewal	476.00*	541.00*	616.00*	700.00*	This is a 13.88% increase in fees each year from 2014/15.
Private Hire Vehicles:					
Grant or renewal	153.00*	157.00*	161.00*	164.00*	This is a 2.29% increase in fees each year from 2014/15.
Renewal – Extension	252.00*	257.00*	263.00*	269.00*	This is a 2.29% increase in fees each year from 2014/15.
Grant – January only	75.00*	75.00*	75.00*	75.00*	No change in fee from 2014/15
Car-to-car transfer fee	126.00	126.00	126.00	126.00	No change in fee from 2014/15
Car-to-car transfer – Admin fee	26.00	26.00	26.00	26.00	No change in fee from 2014/15
Temporary car-to-car transfer fee	64.00	64.00	64.00	64.00	No change in fee from 2014/15
Vehicle re-test fee	49.00	49.00	49.00	49.00	No change in fee from 2014/15
Certificate of Compliance - Duplicate Copy	10.00	10.00	10.00	10.00	No change in fee from 2014/15

FIVE YEARS					
Licence Type	Fee Year 2	Fee Year 3	Fee Year 4	Fee Year 5	Officer Comments
Private Hire Drivers:					
Grant or renewal	82.00	86.00	90.00	95.00	This is a 4.95% increase in fees each year from 2014/15.
Replacement badge	13.00	13.00	13.00	13.00	No change in fee from 2014/15
DBS Administration Fee	11.00	11.00	11.00	11.00	No change in fee from 2014/15
Drugs Test	44.00	44.00	44.00	44.00	No change in fee from 2014/15
Geography Test – Each Separate Attempt	12.00	12.00	12.00	12.00	No change in fee from 2014/15
Hackney Carriage Vehicles:					
Grant or renewal	219.00*	244.00*	272.00*	303.00*	This is an 11.5% increase in fees each year from 2014/15.
Renewal – Extension	371.00*	415.00*	464.00*	520.00*	This is an 11.95% increase in fees each year from 2014/15
Car-to-car transfer fee	132.00	132.00	132.00	132.00	No change in fee from 2014/15
Car-to-car transfer – Admin fee	27.00	27.00	27.00	27.00	No change in fee from 2014/15
Temporary car-to-car transfer fee	66.00	66.00	66.00	66.00	No change in fee from 2014/15
Vehicle re-test fee	52.00	52.00	52.00	52.00	No change in fee from 2014/15
Certificate of Compliance - Duplicate Copy	10.00	10.00	10.00	10.00	No change in fee from 2014/15
Hackney Carriage Drivers:					
Grant or renewal	105.00	124.00	148.00	176.00	This is an 18.9% increase in fees each year from 2014/15
Replacement badge	13.00	13.00	13.00	13.00	No change in fee from 2014/15
CRB Administration Fee	11.00	11.00	11.00	11.00	No change in fee from 2014/15
Drugs Test	44.00	44.00	44.00	44.00	No change in fee from 2014/15
Geography Test – Each Separate Attempt	12.00	12.00	12.00	12.00	No change in fee from 2014/15

FIVE YEARS					
Licence Type	Fee Year 2	Fee Year 3	Fee Year 4	Fee Year 5	Officer Comments
Street Trading Consents:					
Grant or renewal	1736.00	1736.00	1736.00	1736.00	No change in fee from 2014/15
Amenities on the Highway Permits:					
Goods on the Highway:					
Grant	296.00	296.00	296.00	296.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Renewal	169.00	169.00	169.00	169.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Variation	73.00	73.00	73.00	73.00	No change in fee from 2014/15
Tables and chairs on the Highway:					
Initial application fee	127.00	127.00	127.00	127.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Additional fee and subsequent renewal fee:					
Highway area up to 5 m2	244.00	244.00	244.00	244.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Highway area between 5 m2 and 10 m2	483.00	483.00	483.00	483.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1

FIVE YEARS					
Licence Type	Fee Year 2	Fee Year 3	Fee Year 4	Fee Year 5	Officer Comments
Highway area between 10 m2 and 15 m2	728.00	728.00	728.00	728.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Highway area between 15 m2 and 20 m2	966.00	966.00	966.00	966.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Highway area greater than 20 m2	1207.00	1207.00	1207.00	1207.00	This is a 6% increase in fees from 2014/15 and all the AOH fees are recovered in year 1
Sex Establishments					
Grant	11,400.00	11,400.00	11,400.00	11,400.00	This is a 5% decrease in fees from 2014/15 and then remains static for 2 years.
Renewal	3800.00	3800.00	3800.00	3800.00	This is a 5% decrease in fees from 2014/15 and then remains static for 2 years.
Transfer	1000.00	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Variation	1000.00	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Scrap Metal Dealers					
Site Licence - Grant and Renewal	1000.00	1000.00	1000.00	1000.00	No change in fee from 2014/15.
Site Licence - Variation	100.00	100.00	100.00	100.00	No change in fee from 2014/15.
Collector's Licence - Grant and Renewal	300.00	300.00	300.00	300.00	No change in fee from 2014/15.
Collector's Licence - Variation	100.00	100.00	100.00	100.00	No change in fee from 2014/15.
Replacement Licence	25.00	25.00	25.00	25.00	No change in fee from 2014/15.

FIVE YEARS					
Licence Type	Fee Year 2	Fee Year 3	Fee Year 4	Fee Year 5	Officer Comments
<p>*Denotes fees that are subject to statutory public consultation. For this option, any public consultation will only be in respect of year 2 and years 3, 4 and 5 will be subject to review by the Committee on an annual basis prior to any public consultation.</p> <p>Members should note that increases in fees for years 3, 4 and 5 would be subject to review and amendment depending on any further budget pressures, increase in revenue, rate of inflation etc.</p>					

SUMMARY OF ANALYSIS OF LICENSING BUDGET

		PRIVATE HIRE			HACKNEY CARRIAGE							
		<u>PHO</u>	<u>PHV</u>	<u>PHD</u>	<u>HCV</u>	<u>HCD</u>	<u>AOH</u>	<u>ST</u>	<u>SE</u>	<u>OTHER</u>		
			<u>Renewal</u>	<u>Extension</u>	<u>Renewal</u>	<u>Extension</u>						
TOTAL EXPENDITURE (2014/15)	£773,156	£16,804	£105,577	£69,319	£118,955	£45,385	£36,925	£61,394	£34,234	£33,529	£15,080	£235,955
1 YEAR RECOVERY												
TOTAL INCOME (RECOVERY ALL IN YEAR 1)		(16,800)	(134,992)	(39,867)	(118,908)	(61,807)	(20,557)	(61,285)	34,322	(36,456)	(15,200)	N/A
Deficit/(Surplus) (RECOVERY ALL IN YEAR 1)		4	(29,415)	29,453	46	(16,423)	16,368	109	0	(2,927)	(120)	N/A
3 YEAR RECOVERY												
TOTAL INCOME (YEAR 1 OF 3 YR MODEL)		(11,921)	(127,315)	(37,711)	(106,057)	(46,749)	(15,704)	(40,432)	0	(36,447)	(15,200)	N/A
TOTAL INCOME (YEAR 2 OF 3 YR MODEL)		(14,151)	(131,115)	(38,778)	(112,292)	(53,731)	(17,948)	(49,632)	0	(36,447)	(15,200)	N/A
TOTAL INCOME (YEAR 3 OF 3 YR MODEL)		(16,797)	(135,031)	(39,877)	(118,952)	(61,798)	(20,556)	(61,243)	0	(36,447)	(15,200)	N/A
Deficit/(Surplus) (RECOVERY OVER 3 YR MODEL)		7	(29,454)	29,442	3	(16,414)	16,369	151	0	(2,918)	(120)	N/A
5 YEAR RECOVERY (Yr 2 of 5)												
TOTAL INCOME (YEAR 2 OF 5 YR MODEL)		(11,416)	(126,396)	(37,453)	(104,816)	(45,120)	(15,189)	(38,590)	0	(36,456)	(15,200)	N/A
TOTAL INCOME (YEAR 3 OF 5 YR MODEL)		(12,992)	(129,228)	(38,248)	(109,294)	(50,096)	(16,783)	(44,879)	0	(36,456)	(15,200)	N/A
TOTAL INCOME (YEAR 4 OF 5 YR MODEL)		(14,785)	(132,125)	(39,062)	(113,993)	(55,644)	(18,568)	(52,356)	0	(36,456)	(15,200)	N/A
TOTAL INCOME (YEAR 5 OF 5 YR MODEL)		(16,825)	(135,088)	(39,894)	(118,925)	(61,831)	(20,566)	(61,246)	0	(36,456)	(15,200)	N/A
Deficit/(Surplus) (RECOVERY OVER 3 YR MODEL)		(21)	(29,511)	29,426	30	(16,446)	16,360	148	0	(2,927)	(120)	N/A

BUDGET CATEGORY	TOT BUDGET	PRIVATE HIRE											TOTAL
		PHO	PHV		PHD	HCV		HCD	AOH	ST	SE	OTHER	
			Renewal	Extension		Renewal	Extension						
Employment Costs	£408,111	7,730	27,856	39,092	83,989	16,088	22,853	38,023	20,947	19,586	7,453		
Transport Costs	£8,700	870	435	435	870	435	435	870	585	585	585		
Supplies & Services	£54,629	5,579	2,742	2,742	5,555	2,742	2,742	5,579	4,157	4,157	4,157		
Department Recharges	£77,700	1,000	500	500	6,140	500	500	6,140	1,000	1,000	1,000		
Agency	£105,000	0	67,200	16,800	0	16,800	4,200	0	0	0	0		
TOTAL CASH LIMITED EXPENDITURE	£654,140	15,179	98,733	59,569	96,553	36,565	30,730	50,611	26,689	25,328	13,196	200,986	654,140
Employees	£15,704	251	1,059	1,508	3,233	599	873	1,436	819	766	291		
Support Services	£85,812	1,374	5,785	8,242	17,668	3,271	4,772	7,847	4,476	4,185	1,593		
Other Costs	£17,500	£0	£0	£0	£1,500	£4,950	£550	£1,500	£2,250	£3,250	£0		
TOTAL NON CASH LIMITED EXPENDITURE	£119,016	£1,625	£6,844	£9,750	£22,401	£8,819	£6,195	£10,782	£7,545	£8,201	£1,884	£34,969	119,016
TOTAL EXPENDITURE	£773,156	16,804	105,577	69,319	118,955	45,385	36,925	61,394	34,234	33,529	15,080	235,955	773,156

Key:

- PHO - Private Hire Operators
- PHV - Private Hire Vehicles
- PHD - Private Hire Drivers
- HCV - Hackney Carriage Vehicles
- HCD - Hackney Carriage Drivers
- AOH - Amenities on the Highway
- ST - Street Traders
- SE - Sex Establishments

The fees for the 'Other' Column are statutory fees such as Licensing and Gambling Act.

Agenda Item 6



Portsmouth
CITY COUNCIL

Title of meeting: LICENSING COMMITTEE

Date of meeting: 21 NOVEMBER 2014

Subject: Schedule 5, Local Government (Miscellaneous Provisions) Act 1982 and sections 115A - 115K Highways Act 1980 - Provision of Highway Amenities - Determination of Policy, Guidelines and other Associated Matters

Report by: LICENSING MANAGER
(In consultation with the City Development Officer, Head of Transport and Street Management, City Centre Management Team, PFI co-ordinators, Access and Equality Advisor - Portsmouth Disability Forum)

Wards affected: ALL

Key decision: No

Full Council decision: Yes

1. Purpose of report

1.1 The purpose of this report is as follows:

- To recommend and formally adopt an all-embracing policy in respect of the licensing and administration of "highway amenities" and related matters within the City of Portsmouth
- To recommend and approve standard conditions and seek approval for the imposition of special conditions for highway amenity permissions
- To recommend and approve revisions and amendments to the scheme of delegation to the appropriate Head of Service
- To recommend and adopt a local appeal provision process for certain highway amenity applications direct to a panel of members drawn from the Licensing Committee

1.2 This report has also been prepared for consideration by Council with a recommendation to approve the policy and the delegation of the function to the Licensing Committee together with appropriate delegations (as set out in the recommendations below) to the appropriate Head of Service.

2. Recommendations

To the Licensing Committee:

- (1) That the report, highway amenity policy (shown at appendix A) and recommendations be noted and approved;
- (2) That the Licensing Committee recommends to Council the formal approval and adoption of this report and policy (together with all related matters) and further recommends the delegation of this function to the Licensing Committee together with:
 - Delegation to the Head of Health, Safety & Licensing to carry out the administration of all highway amenity matters pursuant to sections 115A - 115K of the Highways Act 1980. To include the power to grant, vary, transfer and renew (but not to refuse or revoke) any individual highway amenity permission for a period of not more than 12 months and subject to such standard and special conditions as considered appropriate
 - Delegation to the Head of Health, Safety & Licensing to recommend to the Licensing Committee, from time to time, such fees and/or other reasonable expenses/charges as may be appropriate to recover the costs of administration and compliance with highway amenity permissions¹
 - Delegation to the Head of Health, Safety & Licensing to refund such fee(s) for unsuccessful applications as considered appropriate on individual merit²
 - Delegation to the Head of Health, Safety & Licensing to give notice of intended refusal/revocation or non-renewal of any amenity permission on individual merit
 - Delegation to the Head of Health, Safety & Licensing to establish, amend, vary and/or substitute any hearing procedures, application forms, notes of guidance and other documentation commensurate with these proposals
- (3) That the Licensing Committee establishes a panel (drawn from not less than 3 members of the Licensing Committee) to determine and adjudicate on any contested highway amenity applications (where permission is likely to be refused, revoked or not renewed) and whose decision will be final;

¹ EU Services Directive 2006/123/EC

² Local Government Association - "Open For Business - Guidance on Fees"

(4) That the Licensing Committee reviews the adopted highway amenity policy every 3 years

To the Council:

That the Council notes and approves the recommendations of the Licensing Committee and resolves to delegate this function together with the scheme of delegations to the Licensing Committee and Head of Health, Safety & Licensing as appropriate.

3. Background

Statutory Considerations

3.1 The Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 act") came into force in July 1982 and contained mainly adoptive or discretionary local provisions for the licensing and control of public entertainment premises, sex shops/cinemas and street trading.

3.2 Section 20, schedule 5 of the 1982 act made provision for sections 115 A-K to be incorporated within the Highways Act 1980 ("the 1980 act") so far as this related to the provision of highway amenities.

Highway amenities were generically described in the then Home Office circular 62/1982 in the following terms....."*section 115E enables a council to permit private individuals to operate, for the purposes of income, advertising (or for advice or information).....such objects or structures..... but does not remove the need to obtain planning permission*".

3.3 The 1980 act also permits a council to carry out works on, in or over a highway and to also place objects or structures on a highway for the purposes of enhancing the amenity of a highway and to provide a service to the benefit of the public.

Equally, the council is empowered to provide, maintain and operate facilities for recreation and refreshment on a highway.

3.4 The council **MAY** grant to a person (to include those acting in partnership or as a company) permission to do on, in or over a highway (generally for the purposes of enhancing the amenity of the highway and providing a service for the public benefit) the following:

- To carry out works
- To place objects or structures
- Providing lawns, trees, shrubs or flowers
- To provide facilities for recreation or refreshment

3.5 OR, grant permission for the use of "objects or structures"* on, in or over a highway for the following purposes:

- Production of income
- Providing a centre for advice or information
- Purposes of advertising

***NOTE - there is no statutory definition of "objects or structures" which could therefore include a multitude of different uses.**

- 3.6 In considering any application the council should seek the consent of frontagers with an interest and must further give notice of the proposal in a conspicuous position near the place to which the proposal relates for a period of 28 days. Any representations received must be considered.
- 3.7 Any permission may be granted subject to conditions as the council "think fit".
- 3.8 Any permission granted may be subject to the payment of reasonable charges.³
- 3.9 The council may require a person to whom permission has been granted to provide an indemnity against any claim in respect of injury, damage or loss arising out of the grant of the permission.
- 3.10 Permission may not be granted without consultation with the highway and planning authority.
- 3.11 If a person fails to comply, or breaches the terms of any permission, the council may serve notice to require the remedy of the breach within such time period as may be specified.⁴
- If a person fails to comply with the terms of a notice, the council may take steps to remedy the breach and demand the recovery of any expenses so incurred.
- 3.12 Providing objects or structures for trading are not deemed to be "street trading" activities for the purposes of provisions contained under schedule 4 to the 1982 act.

Additional Statutory Considerations

- 3.13 The city council, as the local planning authority, has a duty to control advertising boards on the highway under the Town & Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

³ Officer advice is that charges should be set at a level to cover the cost of administration, the issue of any permission and subsequent enforcement/compliance visit purposes - EU Services Directive refers

⁴ Officer advice is that any initial amenity notices should be served by, or on behalf, of the Head of Health, Safety & Licensing but subsequent enforcement should be dealt with by other duly authorised officers under the existing PFI provisions

Advertisement consent (subject to payment of prescribed fees) may be required and, if the "proposed amenity" is deemed permanent in nature, planning permission for the structure(s) or the change of use to the land may be required.

- 3.14 The city council, as the local highway authority, has a duty to assert and protect the rights of the public to the use and enjoyment of any highway under section 130 of the Highways Act 1980. Equally, the council may prosecute where there is an evidenced unreasonable obstruction of the free passage along the highway pursuant to section 137 of the act.
- 3.15 The Equality Act 2010 provides that the council must have due regard to the need to eliminate discrimination, harassment and victimisation.
- 3.16 Section 28 of the Town Police Clauses Act 1847 is still in force and provides that every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits (prescribed offences), shall be liable to a penalty for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison for a period not exceeding fourteen days.

Policy Considerations

- 3.17 There is no requirement, at law, to adopt a policy for highway amenities but it is recommended, in this case, that it is **appropriate** to do so in order to promote consistent standards of administration, advice and decision making by both officers and members alike.

Likewise, local traders and those engaged in businesses will expect clear guidance and understanding on both the administration and subsequent enforcement of highway amenity matters across the city.

- 3.18 Evidence of mixed and confusing messages about amenity and associated policy matters has been apparent in the past. This has included, for example, whether or not the Council was supportive, as a matter of local policy, of the use of "A boards" or not.

This has resulted in officers' seeking clarification as to enforcement powers and complaints from the public leading to subsequent investigation by the Ombudsman. Some premises have, when visited, resisted removing A boards citing that other nearby premises have them with no apparent action being taken. This cannot be regarded as satisfactory.

- 3.19 No policy can ever be considered to be absolute and each case must be considered on merit.

It is permissible however, to adopt a presumption of NOT granting permissions (in certain circumstances) provided the council is prepared to hear reasons why the policy should not apply in individual cases before making a final decision.

3.20 It is important to recognise that the policy has been written to assist the council, as the local **licensing authority**, in determining matters relating only to highway amenities and should not be seen as an indication as to how the council will carry out its general statutory functions as both the local planning and highway authority.

3.21 The proposed amenity policy has been subject to wide internal and external consultation.

The use of "A Boards"

3.22 Currently, advertising boards are not permitted on the highway nor recognised under the terms of any current highway amenity permission. Standard condition 10 (applicable to all amenity permissions) is very clear that "advertising boards are not permitted on the highway".

That said, the amount of A boards (on the highway) and around the city is of concern and officers have previously sought advice on how to tackle this growing problem - (see 5.2 above). Some A boards have been "observed" as part of furniture associated with current amenity permissions at premises and some have been placed outside unlicensed premises but have not, upon inspection, been deemed to be an "unreasonable" obstruction.

However, poorly sited A boards can cause an immediate risk to public safety - particularly to those persons with mobility or sight problems.

3.23 The main concerns about A boards appear to be:

- Indiscriminate obstruction of the highway thus preventing right of way
- A health & safety issue to vulnerable persons
- Blocking of designated fire routes (particularly in the precinct environs)
- Sporadic enforcement
- Businesses unlikely to be challenged immediately
- Businesses putting A boards lawfully on private land and causing confusion when close to the highway
- The various designs, shape, size and style of A board paraphernalia causes "street clutter" and detracts from the "free space"
- A boards not deemed to be causing an unreasonable obstruction of the highway and left in situ

3.24 Conversely, attractive, well positioned and "licensed" A boards **may** help promote local businesses and traders and boost tourism within the local economy in any one area.

If A boards were sited and considered together with say the provision of other amenities such as tables/chairs - the resultant "café culture" ambience in any one area could be a positive step forward.

- 3.25 This stance has been now been adopted by Hampshire County Council. Until 2012 the county had a zero tolerance approach towards A boards. Where complaints were received (and there was an obvious obstruction) - enforcement action to remove A boards and/or to prosecute offenders was taken.

Following a report to the executive member for Environment and Transport in April 2012, the County Council have now adopted a policy of:

"enabling the regulation of A boards on the public highway controlled through the issuing of licences by District Councils under appropriate sections of the highways Act 1980".

The report is attached at **appendix B**.

- 3.26 There appear to be 3 options available to members in relation to the provision of A boards on the highway:

- 1) **To support a total ban on A boards on the public highway within the city (this is the current deemed policy although not rigorously enforced by the council as the licensing, planning or highway authority)**
- 2) **To consider granting amenity permissions on individual merit for the use of A Boards on the public highway ANYWHERE in the city**
- 3) **To consider granting amenity permissions on individual merit for the use of A boards on the public highway in respect of area(s) deemed to be both a low obstruction risk and located outside of the stress areas identified within the amenity policy document**

On balance, it is the view of your reporting staff that A boards should NOT be permitted on the public highway unless in specified areas and where a highway amenity permission has been granted or renewed by the council. Any permission should be subject to strict conditions of use. This would endorse option 3 above.

- 3.27 In area(s) deemed to be A board "stress area(s)" as identified in the attached policy document - there will be a presumption in favour of **NOT** granting permission for A board use whatsoever and an expectation of subsequent strict enforcement of the Highways Act 1980 by designated and authorised officers in order to prevent obstruction.

Scheme of delegation and historical application

3.28 The current scheme of delegation for the administration and enforcement of highway amenity permissions under the 1980 act is unclear.

3.29 Historically, full council approved a number of recommendations relating to the 1982 act and 1980 act (and highway amenities) from the then Policy & Resources Committee on 27 October 1982 (minute 644/82 refers).

The new powers relating to highway amenities were delegated in total to the Transportation Committee.

3.30 The Transportation Committee subsequently received a joint report and advice from the then City Secretary & Solicitor and Director of Engineering on 04 January 1983 (minute 12/1983 refers) to confirm:

- That whilst the function was delegated to the Transportation Committee - the council's Licensing Officer would be responsible for all administration, issuing of public notices and consultation with other officers and the Police
- The Transportation Committee would consider all applications and the imposition of appropriate conditions
- All approved applications would be granted for a period of one calendar year - to allow for impact assessments to be made having regard to changing circumstances in particular localities
- The fees be reviewed after 12 months

3.31 Responsibility for the administration of highway amenity permissions was subsequently passed from the Licensing Service to the then City Engineer.

3.32 The function reverted back to the Licensing Service with effect from 01 November 2008.

3.33 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000) have been amended in the following manner:

The "power to grant permission for provision, etc of services, amenities, recreation and refreshment facilities on the highway, and related powers".....together with a "duty to publish notice in respect of proposal to grant permission"..... is NOT to be a function of the executive.⁵

⁵ *The Local Authorities (Functions and Responsibilities) (Amendment No3) (England) Regulations 2004 - SI 2748 of 2004*

3.34 The constitution appears to be silent and contains no reference to the amended Functions and Responsibilities regulations so far as this relates to the administration of highway amenities. Consequently, there are no implied permissions to the appropriate Head of Service (or other officers) to refuse to grant or renew amenity permissions (without referral to an appropriate committee), to revoke permissions or indeed to grant "A board" permissions contrary to the existing conditions. There is also no delegation to amend or vary conditions associated with current amenity permissions.

3.35 The proposal to appoint a panel of 3 members drawn from the parent Licensing Committee will allow "contested" applications to be considered on merit with the applicant given an opportunity to present their case in person.

This accords with the well-established principles of natural justice and reflects the normal scheme of delegation to the Head of Service in respect of licensing matters to generally grant but not to refuse applications.

3.36 Accordingly, and for the above reasons, both the Licensing Committee and Council are asked to formally approve the policy, conditions and scheme of delegation as set out in recommendations above.

Enforcement

3.37 A recent complaint to the Ombudsman has highlighted that repeated and persistent breaches by local businesses to the "no A board" policy has not led to effective enforcement action and consequently "the evidence shows that the Council is not enforcing any policy effectively".

3.38 The PFI team are the first point of contact in relation to highway complaints.

Any complaint is logged on PEM and the site inspected normally within 10 working days.

Correspondence will be given either to say that there is no obvious obstruction apparent or requesting the removal of any obstruction and the consequences, at law, for failure to abide.

3.39 If the obstruction is not removed, the matter is passed back to the Council's appropriate environmental enforcement team to investigate, serve notice and to act under powers contained in the Highways Act 1980. This is because COLAS staff have no deemed enforcement powers.

3.40 The enabling powers for highway amenity permissions contained within sections 115A - 115K of the 1980 act does not include any "offence" provisions. The only recourse is to serve notice to prevent a breach to the terms of any permission.

Failure to comply with a notice could lead to the council taking steps to remedy the breach.

It is recommended that failure to comply with any notice should lead to committee consideration by way of suspension and/or revocation of any permission.

It is important to note that the power to deal with obstruction of the highway does not include private land or non-adopted highway (even if maintained by the council) such as the seafront promenades.

The proposed policy also considers the use of the following to aid enforcement:

- That any "licensed" amenity areas be properly and clearly "marked out" with brass or metal studs
- That a window "sticker style" notice of any amenity permission granted or renewed to any person (in respect of any premises) be clearly and prominently displayed from the frontage of the premises concerned

4. Reasons for recommendations

To ensure that the policy relating to the provision of highway amenities in accordance with the relevant legislation reflects the requirements of the Local Authorities (Functions and Responsibilities) (Amendment No3) (England) Regulations 2004 and to review the current arrangements in respect of delegation, administration and enforcement of the licensing regime.

5. Equality impact assessment (EIA)

A preliminary Equality Impact Assessment has been undertaken in respect of this proposal as changes to the existing policy are envisaged. A full Equality Impact Assessment will follow.

6. Legal Implications

The legal implications are embodied in this report.

7. Finance Comments

There are no financial implications arising from the recommendations contained within this report other than any fees charged must reflect any reasonable expenses/charges as may be appropriate to recover the costs and administration and compliance with highway amenity permissions.

.....
Signed by:

Appendices:

Appendix A - Amenities on the Highway Policy to include:

- General guidelines
- Application process
- Conditions
- A board stress area(s)

Appendix B - Hampshire County Council adopted A Board policy - 03 April 2012

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

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Amenities on the Highway

Policy Guidelines, Application Process and Conditions

www.portsmouth.gov.uk

Introduction & Overview

Portsmouth City Council (“the Council”) supports and encourages the use of amenities on the highway and recognises that their provision can make a positive contribution to the street scene by:

- providing facilities for people who visit, work or live in Portsmouth
- aiding the local economy and by maximising the use of public space

This policy is intended to help businesses understand where the placing of objects or structures on the highway might be permitted. However, the Council will require that any amenity permissions are maintained to a high standard and that robust enforcement action will be taken to ensure that obstruction to the highway is kept to a minimum.

The policy has been written after extensive internal consultation and with the views of individual councillors, the Police and Portsmouth Disability Forum. The policy will be reviewed every 3 years.

In order to ensure that any application to place objects or structures on the highway makes a **positive contribution and does not cause an unreasonable obstruction** to the area in question (and to protect rights and safety of those persons using the highway); the Council has adopted requirements that must be met by any applicant.

The Council is of the view that the provision of highway amenities must be carefully managed to ensure that the public are not put in danger of injury or worse. Especially at risk are people with impaired vision or other disabilities, children or people pushing prams and older people.

Additionally, amenities need to be sited where they do not impede rights of access, block vehicular sight lines or obstruct fire paths and emergency access routes and there should be adequate thoroughfare for pedestrians including wheelchair users and people with assistance dogs.

Amenities must not be permanent structures and must be removed during periods outside the scope of the permission.

Amenities (particularly tables, chairs and parasols) **MUST** be of good quality and design and positively enhance the street scene and public space.

The Licensing Service of the Council will administer the amenity scheme in consultation with the highway authority (and after taking advice from other specialist council staff) and will arrange for any contested applications to be referred to a panel of the Licensing Committee for final adjudication.

Any proposals that might require planning permission will ordinarily need to be approved by the Planning Authority prior to the submission of an amenity application.

Any unauthorised highway use constituting an unreasonable obstruction will be investigated

And finally, each application will be considered on its merits.

Legal Considerations

The area for any amenity permission must be a highway as defined by Section 115A of the Highways Act 1980 (“the Act), namely:-

- A highway in relation to which a pedestrian planning order is in force;
- A bridleway;
- A footpath (including a walkway as defined in Section 35(2) of the Act);
- A footway;
- A subway constructed under Section 69 of the Act;
- A footbridge constructed under Section 70 of the Act;
- A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- To a local Act walkway.

The Council **may** grant permission to place objects or structures on the highway in accordance with Section 115E of the Act.

These objects or structures are termed “amenities” and although no strict statutory definition is given, could include such things as, but not limited to:

- Tables, chairs and parasols;
- Goods, for example fruit and vegetables or flowers outside a shop premises;
- Planters;
- Barriers, screens or enclosures to contain tables, chairs and/or outside designated smoking areas etc;
- “A” Boards or other advertising boards.

It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits offence(s) contrary to section 137 of the Act.

This policy is NOT concerned with objects, furniture or goods etc placed on a private forecourt which forms part of a building curtilage; or if the land is considered private where the public have access only with the implied or express permission of the land owner.

In cases where there is any doubt about the ownership or responsibility in relation to a “highway” please contact the Licensing Service/City Helpdesk or seek your own legal advice prior to making any amenity application.

Design considerations:

Requirements, Standards and Layout

Before any amenity use on the highway is proposed or granted, the following issues will need to be considered:

- **Space** – is there enough room for the proposed use?
- **Environment** – is the immediate environment suitable? Is it a conservation area? Will air quality affect people using the amenity? Are the amenities suitable for the area and fit for purpose?
- **Other Needs** – how will other highway users and usage be affected? Will neighbours be affected? Is the proposal in an area deemed a "special policy area" due to say the cumulative night time economy?
- **Is planning consent required** for any advertisements on parasols or barriers and screens? Applicants would need to make separate application or consult with the City Development Officer

Space

The size of the amenity area will depend on the type of usage and the actual space available. Each case will be determined on its own merits with the overriding principle being that public safety is paramount. There must always be sufficient room for pedestrians and others to safely use the footpath, taking into account fixed items like street light columns, waste bins, post boxes, parking meters and other street furniture. Access to fire hydrants must also be maintained.

A minimum clearance width of between 1.8 and 2 metres must be maintained between the outer edge of any amenity and the edge of any vehicular trafficked edged or other defined carriageway. This is to allow safe movement for pedestrians, wheelchairs, mobility scooters, prams and visually or physically impaired people. For pedestrian and/or shared service areas, any amenity must be sited so as to provide sufficient width (using the above clearance guidelines if applicable) for all users to pass freely.

Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are a number of permanent obstructions such as trees or other street furniture.

The extent of the amenity area **must be clearly defined**. The Council will require the use of metal studs or similar set into the ground to delineate the area, where appropriate - particularly for tables, chairs and barriers.

Means of Enclosure

In relation to the placing of tables and chairs on the highway, the Council will expect (in most cases) that the amenity area will be enclosed to demarcate the recognised area in order to:

- contain the tables and chairs so that the area is distinguishable to other pavement users;
- prevent “drifting” of the furniture or barriers outside of the authorised area; and
- to assist blind and visually impaired pedestrians.

Other uses for such enclosures may also include delineating areas for patrons who wish to smoke or to control queues of customers waiting to gain access to the premises.

Barriers or similar structures must have solid horizontal bar/elements at about 100mm in height from ground level and also at about 800 mm above ground level so as to be detectable by a stick (“tapping rail”).

Barriers must be a contrasting colour to any furniture and/or pavement to aid visual identification.

The height of any barrier must not exceed 1.5 metres unless otherwise authorised by the Council.

The means of enclosure must be removed from the highway when outside of the times authorised by the permission. The enclosure will therefore need to be lightweight in construction and portable but sufficiently robust so as to prevent them blowing over in high winds or from being pushed over by people.

The design of any barrier(s) should complement the character of the surrounding area and the Council may require the enclosure to be of a specific design in order to maintain continuity along the street frontage.

Where any permission is granted so as to allow patrons from pubs and clubs etc to smoke outside, that amenity area will need to be closely managed by the licence holder to ensure that patrons using the area do not overspill or exceed the recognised area. Receptacles for smoking litter will need to be provided.

Furniture Design

Tables and chairs should be of a high quality and robust. They should be separate and of a design to allow use by disabled or wheelchair users and their design, materials and colour should complement the area they are used in. Care must be taken in ensuring that the feet or resting points of tables and chairs do not create pressure points which could damage the road or footpath surface. (Repairs to such surfaces will be at the permit holder’s expense) White plastic or garden furniture/wooden benches would not normally be considered appropriate.

Different criteria may apply to conservation areas where furniture should preserve or enhance the character and appearance of the area.

Planters must be light enough to be removed on a daily basis but stable enough to resist movement due to extreme weather conditions and must not be allowed to become litter receptacles. They should not extend beyond the amenity area or stain the paving or road surface. They should be well maintained with a vibrant array of bedding plants or flowers. They should be of a contrasting colour to the surrounding area so they do not become a tripping hazard to people with a visual impairment.

Parasols must not extend beyond the amenity area and their lowest point should be 2 metres from the ground. They must be secured at the base so as not to blow over or away in winds and, as with tables and chairs, must be robust and high quality. Advertisements will only be permitted on them at the discretion of the Council and planning consent may be required.

Within reason, all furniture and parasols should be neutral or light in colour.

Planning consent may also be required for canopies, awnings or blinds, which are attached to buildings.

If patio heaters of any sort are proposed, the application must be accompanied by a full description of the type of heater together with a detailed risk assessment to include energy efficiency and an environmental impact statement. It is the responsibility of the applicant to notify his/her insurers of the use of such equipment and approved in accordance with the terms of the policy of public liability insurance.

Environmental Implications and Other Considerations

The amenity area must be kept clean and litter free at all times. Evidence of a scheduled cleaning record shall be provided upon request. Persons must also ensure that litter straying into neighbouring areas is removed. Ashtrays or similar receptacles must be provided in amenity areas where smoking takes place.

Serious consideration should be given to the division of amenity areas, where space permits, into smoking and non-smoking sections, with each section clearly marked.

External public address systems will not be permitted. The playing of live or recorded music may also be subject to statutory control and you should make your own enquiries accordingly.

Applicants will need to address and control any potential nuisance(s) caused by their patrons. Inappropriate behaviour may lead to a formal notice being given to require an improvement.

It is vitally important that the needs of other persons are fully considered. This includes neighbours, nearby residents, passers-by, emergency services, deliveries, utility companies requiring access to manholes, gas and water mains, access to hydrants by the fire service together with refuse collections. Market and event vehicles must be also be considered.

The council, as the local licensing authority, encourages applicants to consider their operating schedules when providing outside eating/drinking and/or designated smoking areas.

The Licensing Act 2003 provides a regime for the control of the sale or supply of alcohol, regulated entertainment and late night refreshment. Whilst the consumption of alcohol is not a licensable activity, licensees should be alive to the need to seek advice and apply for variations to incorporate "additional" areas where a licensable activity is likely to take place.

Although licensing law is not the primary mechanism for dealing with the general control of persons away from licensed premises; licensees do have a duty of care for the behaviour of persons immediately outside or adjacent to their premises. Licensees should be alert to the prevention of public nuisance(s) which, unless satisfactorily controlled, could lead to a review of an existing authorisation by responsible authorities or other persons.

No "goods" such as foodstuffs, clothing, shoes or any products associated with a retail premises shall be permitted on the highway within the designated precinct areas.

Safety

It is the responsibility of the applicant/amenity holder to ensure that any equipment complies with all relevant legislation and statutory requirements whether this be food hygiene, health & safety, food safety and alcohol sales requirements where applicable.

Holders will be responsible for securing insurance cover and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway.

Any damage to Council property caused as a result of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.

“A” Boards or Advertising Boards

The previous policy of the Council was to refuse outright the recognised use of “A Boards” and other advertising structures as amenities on the highway. This was because of historical evidence of wilful obstruction to the highway together with a "creeping culture" of A boards appearing on the highway without lawful permission. Organisations such as the The RNIB favour a complete ban on the use and proliferation of A boards.

However, attractive and well positioned A boards may help to promote local businesses and traders. The Council has now decided to permit and recognise the lawful use of A boards in low risk areas and away from any identified "stress" areas. This reflects also on the decision made by the County Council in 2012 to permit individual consideration of A board licensing.

This relaxation is subject to clear guidelines to ensure compliance with the law and to ensure the safety and convenience of the public, particularly the visually impaired and wheelchair users.

Stress Areas

A boards can cause significant obstruction if positioned poorly - particularly to those persons with mobility and visual impairment problems. They can also be used as weapons for crime and vandalism purposes.

Accordingly, the council has identified certain "stress areas" where the presumption will be to not grant amenity permissions for A Boards whatsoever. In all other cases, each application will be considered on merit.

The stress areas are currently identified as:

- Any highway within the prescribed cumulative impact special policy area relating to the night time economy for the city centre and Guildhall Walk to include.¹ :

¹ *Adopted statement of licensing policy for period January 2011 until January 2016*

- Alec Rose Lane
 - Cambridge Road
 - Commercial Road
 - Guildhall Square
 - Guildhall Walk
 - Hampshire Terrace
 - King Henry 1st Street
 - Stanhope Road
 - St Michaels Road
 - White Swan Road
 - Willis Road
 - Wiltshire Street
- Albert Road
 - Commercial Road, Crasswell Street (from Commercial Road to Paradise Street) Arundel Street, Palmerston Road and Cosham High Street Precinct environs²
 - Cosham High Street from Wayte Street south to the Train Station
 - Edinburgh Road
 - London Road, Kingston Road and Fratton Road
 - Marmion Road
 - Osborne Road
 - Palmerston Road south to the junction with Clarence Parade
 - Station Road
 - Within 5 metres of any significant road junction on recognised arterial routes (in order to prevent blocked vision for motorists, cyclists, pedestrians and visually impaired persons) and to include:
 - Albert Road
 - Copnor Road
 - Eastney Road
 - Highland Road
 - Milton Road
 - Northern Parade
 - Victoria Road North
 - Victoria Road South

Compliance and Enforcement

Any advertising structure that creates a nuisance, breach of advertising legislation or presents a danger are likely to be removed immediately by the Council. This may involve the serving of a formal notice requesting removal before seeking a court order for removal and disposal where necessary. However, “A Boards” or other advertising structures that constitute an “immediate danger” will be removed from the highway and either returned to the owner, if possible, or kept and later destroyed.

² Commercial Road means from the ABC roundabout south to the Train Station. **NOTE**, the City Centre or Town Management team MAY consider an application for A board permission in the middle of a designated precinct area provided a minimum of 2 metres clearance each side is maintained.

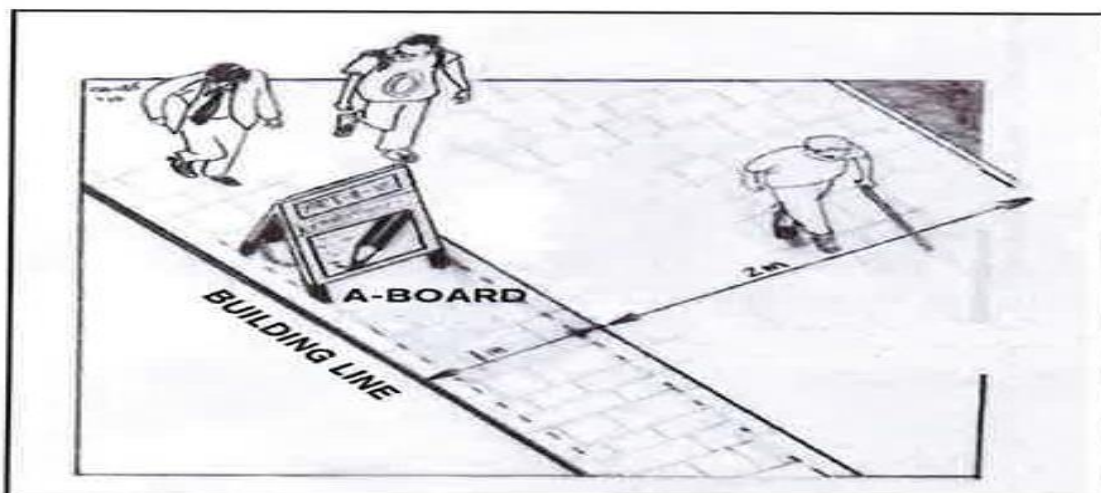
Any “A Boards” or other advertising structures removed and stored by the Council will be kept for 28 days before being disposed of. The Council may seek to recharge any expenses incurred in removing and storing “A Boards” or other advertising structures to the owner.

A Board Design/Size/Style Requirements

- ✓ Must be of a standard size normally (600x1100 mm) and a maximum of 1.1 metres high
- ✓ Must be of a quality construction – wood preferred for most locations but not to exclude other good quality materials such as stainless steel.
- ✓ **Flag, rotating, swinging or storm board signs will NOT be permitted**
- ✓ **A boards made of glass or mainly of glass construction will NOT be permitted**
- ✓ Should be professionally designed and well maintained with sign writing/printed or painted material (not hand written)
- ✓ Should be temporary in nature
- ✓ A maximum of one “A Board” per business
- ✓ Should be colour contrasting to differentiate between the business frontage and the pavement

Location of “A” Boards or other advertising structures

- ✓ Must be placed against the building line while maintaining a minimum of 2 metres “unobstructed zone”. Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are a number of permanent obstructions such as trees or street furniture (such as bus stops, benches, cycle stands, litter bins etc.)



- ✓ Must be placed outside own business
- ✓ Must not cause a visual obstruction to pedestrians or drivers

- ✓ Must be removed when the premises are closed or when weather conditions such as high winds could make the boards unstable
- ✓ Must not be fixed to street furniture to include lighting columns, traffic lights, bollards, safety barriers, seats or any other fixed items

Other considerations

All businesses are legally liable for any claims from damage or injury, caused by displaying “A Boards” or other advertising structures on the highway. Compliance with these guidelines will not negate the need to obtain Public Liability insurance cover of £5 million for any such claims.

In the event of an emergency, or to allow access to pipes and cables, “A Boards” may need to be removed to get access to the highway.

General Information

- Any permission will normally be issued for a period of 12 months from the date of first grant or for such shorter trial period as may be prescribed.
- Any permission for placing amenities on the highway may be subject to general or specific conditions.
- Hours of use will vary according to location and type of amenity permission. Generally speaking goods, produce etc outside shops must be removed from the highway at the premises closing times and tables, chairs, A boards etc. will not be permitted on the highway after 2100 hours daily.
- Permissions may be transferred and or varied after consideration and subject to payment of any prescribed fees.

Fees and Charges

Fees are determined having regard to the proposed type of amenity (whether goods on the highway or tables and chairs etc) and the proposed size of the amenity area.

The fees for amenity permissions are reviewed by the council on a regular basis. The fee **MUST** accompany any application. The link to the current fees is shown below:

<https://www.portsmouth.gov.uk/ext/documents-external/lic-general-fees.pdf>

NOTE: If your application is subsequently refused, you will be refunded the additional area fee but the initial application fee will be retained.

Application Process - Guidance

Procedure for applying for a highway amenity permission under section 115 (E-K) of the Highways Act 1980

The application process involves both statutory and non-statutory procedures and requirements. Applicants must have regard to the guidance contained in this policy document as failure to supply the relevant information may mean that your application will be rejected.

- An amenity on the highway permission can be applied for at any time.
- You are advised to read this policy carefully and ensure you fully understand the requirements before you proceed with an application.
- Complete in full the application form enclosed with this guidance. Tell us if you are applying as a person, in partnership or on behalf of a company.
- Attach a plan* and representative colour photographic images of any objects or structures to be utilised showing the dimensions and extent of the amenities/structures to be placed on the highway and:-
 - i) Indicate the position in relation to your own premises;
 - ii) The position in relation to any other premises; and
 - iii) The position of nearby street furniture etc, such as lamp columns, trees, fire hydrants, post boxes, litter bins and dropped kerbs.

***NB. The Council will supply applicants with an A3 template to enable the production of a scale drawing showing the position of the proposed amenities in relation to those matters indicated in i - iii above.**

- Provide evidence of Public Liability Insurance Cover to the sum of £5 million should a permission be granted or renewed.
- On receipt of your application the proposals will be checked against the policy guidelines. Further details may be needed and obtained from you at this stage.
- You will be required to display a notice for 28 consecutive days which must be clearly visible on the outside of your premises outlining your proposals and inviting representations from any interested parties. This notice will be supplied to you by the council. We will visit your premises to ensure the notice is displayed satisfactorily. It is your responsibility to ensure that the notice is continuously displayed for 28 days. Failure to do so may lead to the consultation process starting afresh.
- The Council may consult with other bodies which may include, but is not limited to:-
 - ✓ Ward Councillors
 - ✓ The Highway Authority
 - ✓ Police
 - ✓ Fire and Rescue Service
 - ✓ Development Service

- ✓ PFI Contract Manager
- ✓ Traffic and Road Safety Service
- ✓ City Centre Manager
- ✓ Visitor and Tourism Manager
- ✓ Local residents and/or businesses where appropriate
- ✓ Access & Equality advisor
- ✓ Disability Groups

A period of 28 days will be allowed for consultation with the above bodies.

- You will be advised if there are any objections to your application or it fails to meet the requirements of the policy. It may be possible to revise your application to negate any objections and to enable your application to be approved by licensing staff.
- If objections are not withdrawn in respect of the application and/or amendments are not appropriate then the application will be referred to a panel of councillors convened from the Council's Licensing Committee for final determination.
- You will have a right of attendance at the committee hearing and may be represented. The committee will normally make their decision at the end of the hearing and this will be communicated in writing to you. In some cases they may adjourn making a final decision for a day or two in order to consider further technical advice.

Right of Appeal

There is no right of appeal against a decision of the Council to refuse to grant or to suspend, refuse to renew or to revoke an existing permission. Likewise, there is no appeal against any conditions imposed.

Planning Consent

It will not normally be necessary to obtain planning permission for amenities on the highway provided that the main existing premises have appropriate planning consent for the use of the premises.

However, planning permission, listed building consent or conservation area consent may be required if there is any change to the building frontage or signage. Permanent structures on the highway will not be permitted.

A fee will be payable should planning permission be required, the level of which will be dependent upon the nature of the application. Further advice can be obtained on the Council's planning web pages at <https://www.portsmouth.gov.uk/ext/development-and-planning/planning/planning.aspx>

If your proposal requires planning permission you will normally be expected to have planning permission in place prior to making an application for an amenity licence. Advertising on the highway will generally require advertisement consent.

Contact Details

Licensing Service
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Telephone: 023 9283 4572
Fax: 023 9283 4811
Email: Licensing@portsmouthcc.gov.uk
Website: www.portsmouth.gov.uk

References

- Local Government (Miscellaneous Provisions) Act 1982
- Highways Act 1980
- Equality Act 2010
- Local Authorities (Functions and Responsibilities) (Amendment No 3) (England) Regulations 2004
- RNIB - A boards - "quick wins for local authorities"
- RNIB - Street Space
- RNIB - Street Furniture
- Guide Dogs - The Streets Ahead Survey
- NFBUK - Access for blind people in towns
- Hampshire County Council - A Board policy

Standard Conditions

1. The holder shall provide Third Party Liability Insurance to the amount of £5,000,000 to indemnify the Council against all claims for damage or injury arising out of the use of the highway and shall provide the City Council with a copy of the certificate of insurance on request.
2. Adequate provisions shall be provided for the disposal of litter.
3. Any damage sustained to the highway resulting from the amenities being placed on the highway in accordance with this permission shall be repaired at the expense of the holder to the requirements and satisfaction of the Council.
4. The amenities must be kept strictly within the designated area marked out by the Council and must not encroach on the adjoining or adjacent businesses or properties, or restrict the public thoroughfare to any extent where it would become a nuisance.
5. No additions or alterations to the highway amenities shall be made without the prior written consent of the Council by way of a variation application.
6. The maximum height of any barrier shall not exceed 1.5 metres.
7. In areas where street illumination is sparse, the amenities shall be adequately illuminated.

8. When the establishment for which the permission was granted is closed for business, the amenities shall be removed from the highway, unless previously agreed by the council.
9. Any authorised officer of the Council may require the holder to comply with any order or directive to prevent a breach of these conditions and/or the special conditions shown below.
10. The Council reserves the right to require the removal of amenities to allow for:
 - maintenance
 - emergencies
 - public events; exhibitions and markets
 - access
 - any other reasonable cause

As much notice as possible will be given but there will be occasions when this will be unavoidably minimal.

11. Items displayed or used in the designated area should be of sufficient solidity or properly secured to prevent them falling or being blown onto the highway.
12. The holder of the amenity permission shall prominently display the prescribed amenity approval notice from the frontage of the premises in order to be plainly visible to the public. This notice MUST be returned to the council in the event of a permission being suspended, revoked or not renewed.

Special Conditions (These conditions may be attached as and when considered necessary).

- a. The sale of alcohol from the premises shall be in compliance with an authorisation granted by Portsmouth City Council, as the Licensing Authority, in accordance with the Licensing Act 2003.
- b. All amenities (tables and chairs etc) shall be removed from the highway as indicated on the licence, unless previously agreed by Portsmouth City Council.
- c. Signs shall be displayed advising that drinks are not permitted to be taken outside the amenity area.
- d. The furniture design shall be approved by the Council.
- e. The amenity area shall be maintained in a clean and litter free condition at all times.
- f. The amenity floor area shall be cleaned twice weekly using a detergent to the satisfaction of the Council.
- g. No recorded or live music shall be played into the designated amenity area.
- h. The holder is required to keep tables, chairs, benches etc in good decorative order.

Licensing Service
Civic Offices
Guildhall Square
Portsmouth PO1 2AL

Telephone: 023 9283 4572
Email: licensing@portsmouthcc.gov.uk

September 2014

www.portsmouth.gov.uk

You can get this
Portsmouth City
Council information
in large print, Braille,
audio or in another
language by calling
023 9283 4572.



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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member – Environment and Transport
Date:	3 April 2012
Title:	'A Boards' Policy
Reference:	3731
Report From:	Director of Economy, Transport and Environment

Contact name: Steve Spender

Tel: 01962 845978

Email: steve.spender@hants.gov.uk

1. Executive Summary

1.1. The purpose of this paper is to seek the formal adoption of a policy that will enable the regulation of 'A' Boards on the Public Highway controlled through the issuing of licences by the District Councils under the appropriate section of the Highways Act 1980.

1.2. This paper seeks to set out the reasons for the proposed policy, explain the details of the proposed policy and identify the mechanism by which District Councils can authorise and licence the placing of 'A' Boards on the public highway.

2. Contextual information

2.1. Traditionally it has been the County Council's policy, under the terms of the Highways Act 1980, not to permit the use of 'A' Boards on the highway because they constitute an obstruction of the highway which could prevent its legitimate use. This policy can be difficult to enforce due to a perception by some businesses of unfair treatment.

2.2. A revised and specific policy on 'A' Boards has been drafted following consultation with numerous other Highway Authorities throughout the UK to establish current good practice that is in place. The policy has been formulated having considered the experience of some of the other Authorities from which guidance was received, in particular from Authorities where a similar scheme to that being proposed has been implemented. The proposed Policy is attached to this report as Appendix 1.

2.3. The draft policy is aimed at reducing the conflict between the desires of traders to promote their businesses and the rules for unobstructed movement

set down in the Highways Act by regulating the use of 'A' Boards rather than a blanket ban. Whilst it is acknowledged that 'A' Boards can be an obstruction and an unsightly nuisance it is also accepted that controlled use can reduce the negative influence of such items on the street scene, promote safer access for highway users and disabled groups, assist in promoting tourism, aid in maintaining the vitality of town centres and provide a service for the benefit of the public. A combination of all of these factors enhances the economic sustainability of town and rural businesses, and communities.

- 2.4. Under the policy 'A' Boards could be placed legitimately on the public highway outside shops on the basis of a licensing scheme controlled by District Councils. The District Council would be the licensing authority, rather than the County Council. The County Council would continue to treat unlicensed 'A' Boards as unauthorised signs on the highway and seek their removal. The County Council would adopt a policy of not permitting 'A' Boards in areas other than those where the District Councils agreed to undertake such a licensing scheme.
- 2.5. Consent to place objects on the highway can be exercised by both the County Council as Highway Authority and by District Councils through the Highways Act 1980. The appropriate Section covering this function is Section 115 A-K (this is currently used for licensing tables & chairs etc). Where District Councils are not also the highway authority (which is the case in Hampshire) the consent of the Highway Authority is required. Consent can be subject to conditions.

3. Finance

- 3.1. The proposal is expected to be cost-neutral to the County Council, although an approach of only permitting licensed 'A' Boards might be resource-intensive for the County Council in policing the arrangements for removal of such boards.
- 3.2. Costs incurred by the District Councils for administering the scheme would likely be recovered from the licensees by means of a licence fee. The fee would be expected to vary from district-to-district dependant upon the costs incurred.

4. Performance

- 4.1. Work is underway on developing a robust procedure that can be employed to deal with operating such a scheme, and which will aid the implementation by District Councils that wish to undertake such a scheme.
- 4.2. Issues needing further detailed attention include:
 - (i) The public liability requirements for permitting the placing of 'A' Boards on the public highway.

- (ii) Any possible legal challenges the Authority may face when such a scheme is implemented.

5. Future direction

- 5.1. It is proposed to advise the District Councils in Hampshire of the development of this policy and seek their cooperation in adopting the conditions contained within it.

6. Recommendation

- 6.1. That the policy related to the regulation of 'A' Boards on the public highway (Appendix 1) be formally adopted and added to the Department's Highway Maintenance Management Plan suite of policies.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	Yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	
Highways Act 1980		
Equalities Act 2010		

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Executive Member briefing, 06/09/2011	
Executive Member briefing, 10/10/2011	
EMET/DMT Informal Briefing, 16/01/2012	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1. The use of 'A' Boards on the public highway potentially affects the unobstructed use of the public highway by mobility- and visually- impaired people. While the number of 'A' Boards present on the highway might increase under the proposed policy, the proposed policy should provide for those 'A' Boards that are present to be better regulated, and might make those that are not licensed easier to remove, in contrast to the difficulty in enforcing the removal of the 'A' Boards placed on the highway under current arrangements.

2. Impact on Crime and Disorder:

- 2.1. 'A' Boards potentially could be instruments of vandalism and misuse. While the number of 'A' Boards present on the highway might increase under the proposed policy, the proposed policy should provide for those 'A' Boards that are present to be better regulated and might make those 'A' Boards that are not licensed easier to remove, in contrast to the difficulty in enforcing the removal of the 'A' Boards that are placed on the highway under current arrangements.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

The impact on the County Council's carbon footprint/ energy consumption is considered negligible

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

It is thought that the proposed policy does not have much opportunity to consider the need to adapt to climate change and be resilient to its longer term impacts

Policy for the Placing of A Boards on the Public Highway

1. INTRODUCTION

- 1.1 The widespread encroachment of portable advertising boards ('A' boards) onto public highways may be considered by some to be an unsightly nuisance, by the disabled to be a potential danger and by other traders as unfair, non-rated enlargements of a competitor's business. They also constitute an obstruction of the highway which prevent its legitimate use, and are therefore unauthorised within the terms of the Highways Act 1980.
- 1.2 Whilst all of these factors are acknowledged by Hampshire County Council (HCC), it is also accepted that controlled use can reduce the negative influence of such items on the street scene, promote safer access for all highway users and disabled groups, assist in promoting tourism, assist in maintaining the vitality of town centres and provide a service for the benefit of the public. A combination of all of these factors, enhance the economic sustainability of both town and rural businesses, and communities.
- 1.3 HCC has, in its role as the Highway Authority (HA), considered the placement of such items and created this Policy which is designed to operate as a high level framework document, setting out the conditions under which the Authority will give consent to applications by District Councils in respect of the placement of 'A' boards, within the boundaries of its highway network. The policy also identifies which Authorities will be responsible for the varying elements of granting licences or consent, carry out conformance inspections and deal with enforcement of any infringements.
- 1.4 A copy of the Policy, for use by Hampshire Highways personnel, will be added to the current policies held in Hampshire's Highway Maintenance Management Plan (HMMP).

2. LEGISLATION

- 2.1 The following sections summarise the legislation relevant to the control of highway obstructions, and provide general guidance to its application.

The Highways Act 1980

- 2.2 **Section 41** provides that Hampshire County Council, as the Highway Authority responsible for highways maintainable at the public expense within Hampshire has a statutory duty to reasonably maintain the highway so that it is free of dangers to all users who use the highway in the way normally to be expected of them - taking account the traffic reasonably to be expected on the particular highway.
- 2.3 **Section 58** provides HCC with a defence to successfully counter a legal action for negligence if one arose. HCC must be able to prove, in a court of law, that it has

taken "such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic".

- 2.4 As a responsible Highway Authority, Hampshire has developed a Policy that outlines what it considers to be acceptable criteria governing the usage and operation of 'A' boards across the highway network for which it is responsible. This has been produced to ensure that the Highway Authority is able to show that it has met the requirements of Section 58 of the Highways Act 1980, in as much as it has instituted suitable highways management procedures, with regard to these aspects of retail and business trading which can cause a nuisance and/or obstruct the highway, which balance the duty to maintain safe levels of access/passage for highway users, with the amenity value that they bestow on the general population and the benefits they deliver to the urban and rural economies. This will allow the Authority to produce a robust defence if an accident occurs where it is alleged that an obstruction or nuisance on the highway that has been permitted by District Councils and the County Council as Highway Authority may have been contributory to the cause of the accident.
- 2.5 **Section 130** makes it the duty of the Highway Authority to assert and protect the rights of the public to use and enjoy the highways for which it is responsible and, in certain cases, highways for which they are not the Highway Authority, and prevent, as far as possible, its obstruction or any unlawful encroachment.
- 2.6 **Section 132** makes it an offence to paint, inscribe or affix any picture, letter, sign or other mark on the surface of a highway or on any tree, structure or works on or in the highway. This Section also permits the Highway Authority to remove any picture, letter, sign or other mark which has been painted, inscribed or affixed upon the surface of a highway or on any tree, structure or works on or in the highway.
- 2.7 **Section 137** makes it an offence to obstruct the free passage along a highway. In certain circumstances the courts can order a person convicted under Section 137, to remove the obstruction within a specified period. Failure to do so is a further offence.
- 2.8 **Section 143** makes it an offence to erect a structure on a highway, a structure including, an 'object of such a nature as to be capable of causing obstruction'. A Highways Authority may serve notice on the person having control or possession of the structure, to remove it within a specified time period, and may, after one month, remove the structure and recover the expenses reasonably incurred by them in so doing.
- 2.9 **Section 148** makes it an offence, for a person, without lawful authority, to deposit 'any thing whatsoever on a highway to the interruption of any user of the highway'.
- 2.10 **Section 149** allows the Highway Authority to serve notice requiring a person who, deposits an item on the highway so as to be a nuisance to remove it forthwith. A magistrates order for its removal, disposal and recovery of expenses can be applied for if it is not removed, alternatively if the Highway Authority consider it constitutes a danger to users of the highway and ought to be removed without delay, they may remove it forthwith, without a magistrates order, and recover their expenses reasonably incurred.

- 2.11 **Section 152** empowers both the Highways Authority and the Local Authority to serve notice on either the owner or occupier of a building, or both, requiring the removal of projections (including signs) from buildings, which have been placed against or in front of the building and obstruct safe and convenient passage along a street, and if the person fails to do so, they are guilty of an offence.
- 2.12 **Section 161** makes it an offence for a person to deposit, without lawful excuse anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered.

Part VIIA of the Highways Act 1980

- 2.13 **Part VIIA** of Highways Act 1980 contains Sections 115A – 115K, which sections deal with the provision of, and the mechanisms governing the permissions required for, the placement of objects or facilities, which may be considered to provide an amenity upon certain highways. These are highways where the use of motor vehicles is prohibited by law, either because the highway is a non-vehicular highway, or because a Traffic Regulation Order is in force prohibiting or restricting vehicular use.
- 2.14 **Section 115E** enables a “Council”, within Hampshire (this includes District Councils), to grant permission to a person which allows them to locate an ‘A’ Board within the highway, so long as they can be shown to enhance the amenity of the highway and its immediate surroundings, or to provide a service for the benefit of the public.
- 2.15 **Section 115F** enables both District Councils and the Highway Authority to set any conditions of use that they consider necessary are complied with and to require payment of such reasonable charges as may be determined, to cover the costs that are incurred with administering any licensing scheme developed under S115E.
- 2.16 **Section 115H** requires that where consent is given by a Council which is not also the Highway Authority, the consent of the Highway Authority is needed, unless a pedestrian planning order is in force. District Councils seeking to grant permissions under S115E therefore need to seek the consent of the Highway Authority before permission is granted. Section 115 J provides that this consent should not be unreasonably withheld consent of the Highway Authority. (S115J).
- 2.17 Consent by the Highway Authority may be accepted as having been granted for a premise, if compliance with the contents of this policy by the owner/manager of the premises seeking a licence has been confirmed by a District Council, and all other necessary consents or permissions have been obtained.

The Equalities Act 2010

- 2.18 The Equalities Act 2010 provides that the County Council must in the exercise of its functions have due regard to the need to:
- eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it;
- for the purposes of this report the relevant protected characteristics are:
Age, Disability and Pregnancy and Maternity.

- 2.19 In the context of this Policy, the Act imposes a duty on local authorities to consider the requirements of the disabled community when establishing procedures for the management of items positioned on the highway that may cause an obstruction to highway users, but can also be identified as providing an amenity to the general public.
- 2.20 By taking account of the requirements of the disabled community Local Authorities will be able to ensure that, as far as is reasonably practical, continuity of use of these highway obstructions will be established throughout the County, providing a safer and more equal environment for the disabled community in terms of access to, and use of, the public highway.

Other Relevant Legislation

- 2.21 There are other legislative requirements that may impact upon the ability of a business to legitimately locate 'A' boards within the highway such as the Town and Country Planning Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 2.22 It is the responsibility of the individual/company seeking a licence or consent under the terms of this Policy, to ensure that they meet the requirements of these and any other Acts and Regulations that are applicable and, where pertinent, obtain any additional licences, permissions etc. that may be required.
- 2.23 The Local Government Act 2000 (Wellbeing Powers) enable a Local Authority to do anything to promote or improve economic, social or environmental wellbeing providing it is not expressly prohibited by other powers.

3. POLICY ON THE PLACING 'A' BOARDS ON THE HIGHWAY

- 3.1 Hampshire County Council will **not** permit the placement of 'A' boards on the Public Highway unless a licence has been issued, or consent been given, by the District Council or other licensing Authority.
- 3.2 A licence for the location of an 'A' board issued under S115E of the Highways Act 1980, is valid for a maximum of 12 months.
- 3.3 District Councils may levy reasonable initial licensing charges and annual renewal administration charges with these charges being reviewed annually.
- 3.4 A business that has a licence for the location of an 'A' board outside of its premises, may allow a part of that 'A' board to be used to promote, or direct customers to a separately owned business premises remote from the location of the board. This provision may be useful where the 'remote' business is located on a side street and the licensed premises is located at the junction of that side street and a street carrying higher pedestrian traffic.

Conditions of Use

- 4.1 Hampshire County Council will grant consent on applications by District Councils to place or give others permissions to place 'A' boards to be located on the public highway, subject to the following conditions:
- The applicant will be responsible for ensuring that all necessary planning requirements and any other requirements of the District Council are met before any licence is granted;
 - A minimum of 1.8 metres clearance, unobstructed by other street furniture or trees, must be maintained between the 'A' board and the edge of any vehicular trafficked carriageway. Where pedestrian flows are high, the District Council will make an assessment as to the width of clearance required, if it is considered that an unobstructed clearance greater than 2m is appropriate to ensure the safety of all highway users the increased clearance will form part of the licence conditions;
 - The location of the 'A' board must not hinder passage by the emergency services, or hinder access to, or egress from the premises, or to any adjacent premises, including fire evacuation routes, or cause a nuisance or hazard to persons using the highway or any adjacent land or premises;
 - A licence for only one 'A' board per premises will be issued by the District Council, (unless the premises has public access from more than one street, in which case one 'A' board per street is acceptable);
 - Where multi occupancy premises exist, e.g. shopping arcades/centres or alleyway locations, this Policy provides for the provision of one 'A' board to be located at each public street entrance, each of which may be a composite board used to advertise more than one business;
 - The location of the 'A' board must be within the limits of the frontage of the premises to which the licence is issued;
 - 'A' boards should be placed adjacent to the building line of the property and should not encroach into the highway by more than 0.7 metres unless an alternative location is agreed with the licensing authority.
 - 'A' boards must be constructed of suitable materials and kept in good repair, without protrusions that could cause trips, injury or damage to passing pedestrians and traffic.
 - The type, style and appropriateness of content of the board to be used is to be agreed between the owner/manager of the premises and the District Council,;
 - Boards will also be subject to the following conditions:
 - 'A' boards must not be more than 0.6 metres wide;
 - 'A' boards must not be more than 1.0 metres tall;
 - 'A' boards must be sufficiently stable so as not to blow over;
 - Rotating, swinging or flexing boards will **not** be permitted;
 - Suitable account must be taken of highway facilities in the immediate vicinity of the proposed 'A' board, e.g. bus stops, taxi ranks or pedestrian crossings, which will themselves give rise to intermittent footpath obstruction, and must therefore, be taken into account when considering unobstructed clearance;
 - A boards should not be placed out during periods of strong or gusty winds;
 - The 'A' board must not be fixed to any street furniture or other parts of the highway;
 - The location of the 'A' board must not obscure the visibility for road users of road signs, or obstruct the view of road users at pedestrian crossing facilities, junctions, accesses or bends;

- The location of the 'A' board must not obscure the visibility for pedestrians of vehicular road users;
 - Specific hours of operation will be indicated on the licence, however, generally the licence will only be permitted during the normal trading hours of the premises to which they are licenced.
 - The 'A' board must not be erected other than in accordance with the provisions of the licence or terms of consent;
 - The owner/manager of the premises is not to make, or cause to be made, any claim against the Highways Authority (Hampshire County Council) or District Council in the event of any property of the owner/manager becoming lost or damaged in any way from whatever cause;
 - Third Party Public Liability Insurance to the sum of **two** million pounds must be held by the owner / manager of the premises to indemnify both the Highway Authority and/or District Council against any and all claims that may arise from the use of the 'A' board;
 - The 'A' board must be removed at the instruction of the Highway Authority or the District Council for the purpose of works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by the Highway Authority, the District Council or any Statutory Undertaker, access required by emergency services or any other reasonable cause.
 - The licence holder must not display the 'A' board after the end of the licence period or sooner if the licence is revoked;
- 4.2 Any consent granted by the County Council under this policy can be revoked at any time should the County Council consider it necessary to do so, in the interests of its undertaking as highway authority.
- 4.3 HCC will reserve the right to remove or request the removal when considered necessary and in instances such as parades and other events which require improved/increased footway widths to be maintained.
- 4.4 Notwithstanding adherence to the Conditions of Use outlined above and any additional conditions required by the District Council, if an 'A' Board was considered to be causing an obstruction or nuisance to highway users Hampshire County Council reserve the right to utilise the provisions of the Highways Act 1980, to remove the items concerned.

Agenda Item 8

REPORT TO: LICENSING COMMITTEE - 21 NOVEMBER 2014

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR ROSS C LEE

Prosecutions, Appeals and Enforcement Action – Licensing Matters

1. PURPOSE OF REPORT

To advise members of prosecutions, appeals and other targeted enforcement action taken in respect of licensing matters and on behalf of the Licensing Manager and head of Health, Safety & Licensing. It is normal policy to provide details of any prosecutions to the committee for information purposes.

This report follows from a previous update report submitted to the committee on 21 September 2011 - (minute 12/2011 refers).

Prosecution files are considered on individual merit and in accordance with the council's adopted enforcement concordat. Offences that are both serious in nature and satisfy the public interest test are forwarded to Legal Services for consideration.

This report **does not** therefore include pending matters under investigation or the issue of suspensions for vehicle and/or driver licences together with the issue of individual penalty points, written and verbal warnings given to licence holders by your staff in the normal course of duties.

For matters relating to the Licensing Act 2003, the adopted Statement of Licensing Policy for 2011 – 2016 (at paragraph 9.7) states that members "will receive, from time to time, reports from officers on any formal enforcement proceedings".

2. RECOMMENDED that the report be noted.

3. BACKGROUND INFORMATION ON INDIVIDUAL CASES

3.1 Mr A - Former Hackney Carriage Driver - Driving whilst unlicensed and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988

On 07 May 2013 a complaint was submitted about the driver of licensed hackney carriage vehicle following a pick up from the Guildhall Walk area at about 0200 on the morning of 05 May 2013.

3 passengers had got into the vehicle and initially wanted to go to Portchester. The driver demanded £30 as an "upfront" fare. Comment was made about the driver's surly and miserable attitude and the journey therefore concluded prematurely in the area of New Road East.

At this point, a male passenger went to get out of the taxi which drove off, at speed, before he had properly alighted. He was dragged along clinging to the open door before being "flung" across the road. He received severe bruising and abrasions to his shoulder.

The passengers made a complaint to the council and were advised to report the matter to the Police and to also seek medical attention for the apparent injuries suffered by the male passenger. They nevertheless asked the council to formally investigate the conduct of the taxi driver.

Subsequent investigation revealed that the only insured driver for the licensed hackney carriage was Mr A. His hackney carriage driver licence had however expired on 30 April 2013 (the common renewal date). Licensing staff had previously advised him that his driver licence could not be immediately renewed as records showed he was overdue a prescribed medical examination with his GP to provide proof of fitness to drive to the vocational group II standard.

Further investigation with the insurance company revealed that A was not insured due to driving a licensed hackney carriage without a current hackney carriage driver licence.

Mr A failed to respond to any correspondence, visits to his home address or indeed attend any PACE Interviews.

The City Solicitor was requested to instigate proceedings against Mr A for multiple offences of driving whilst unlicensed contrary to section 46/47 of the Town Police Clauses Act 1847, permitting no insurance contrary to section 143 of the Road Traffic Act 1988 and driving without due care and attention contrary to section 3, Road Traffic Act 1988.

After an initial adjourned court hearing, Mr A appeared at Portsmouth Magistrates' on **06 January 2014** and pleaded guilty to two offences (driving without a licence and no insurance) but had entered a previous not guilty plea to the charge of driving without due care and attention.

He was sentenced as follows:

- For driving a licensed hackney carriage without a current hackney carriage driver licence - £100 fine
- For permitting no insurance - 6 points endorsed on driving licence and £100 fine
- Driving without due care and attention - after discussion with the City Solicitor (and to protect the witnesses who were reluctant to give evidence), the council offered no evidence in relation to the careless driving offence and the court dismissed this charge
- Council costs of £100 awarded
- Victim surcharge of £20

Mr A has not renewed his hackney carriage driver licence.

3.2 **Mr H - Private Hire Driver and Vehicle Proprietor - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr H is the current holder of private hire driver licence and the recorded proprietor of a black Vauxhall Vectra motor vehicle.

He was also the former holder of a hackney carriage driver licence.

At 23:20 on Saturday 30 June 2012 Mr H was observed driving his licensed vehicle by an off duty licensing officer in the vicinity of the Tesco Express premises situated in London Road, North End.

The vehicle was displaying a private hire plate and had both the private hire operator and the council's prescribed "advance booking only" livery displayed.

Two females were seen to engage the driver in conversation near Tesco's. The passengers got in and Mr H drove in a northerly direction towards cosham.

Subsequent investigation with the licensed private hire operator revealed no booking for Mr H or indeed any reason for his vehicle to be in the area when seen by the licensing officer.

Following further investigation and PACE interview, the City Solicitor was requested to instigate proceedings against Mr H for offences of plying for hire contrary to section 45, Town Police Clauses Act 1847 and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **05 February 2013** Mr H appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For permitting no insurance - 6 points endorsed on driving licence and £120 fine
- For plying for hire - no separate penalty
- Council costs of £555 awarded
- Victim surcharge of £15

3.3 **Mr T - Former Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr T is the former holder of private hire driver licence.

Mr T was the driver of a licensed private hire vehicle.

On 11 November 2012 at 0100 T was at the main Portsmouth & Southsea Train station and picked up 3 males going to Bordon. These males had been seen previously "bartering" with hackney carriage drivers about the cost of a fare and walking up and down the rank. One male was heard, after conversation with Mr T, to shout "this one's cheaper - he will take us".

Three hackney carriage drivers subsequently complained that he had taken a fare "from under the noses" of established taxi drivers waiting at the town station taxi stand.

Enquiries with the private hire operator revealed no booking for Mr T to take this lucrative fare to Bordon.

CCTV footage showed Mr T's vehicle to pick up the 3 males despite a hackney carriage driver walking over to his vehicle to remonstrate with him.

Following investigation and PACE interview the City Solicitor was requested to instigate proceedings against Mr T for offences of plying for hire contrary to section 45, Town Police Clauses Act 1847 and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **08 April 2013** Mr T appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For permitting no insurance - 6 points endorsed on driving licence and £100 fine*
- For plying for hire - no separate penalty imposed
- Council costs of £100 awarded
- Victim surcharge of £30
- *Mr T already had 6 points on his driving licence for previous matters and was therefore deemed a "totter". The court imposed a 6 month disqualification from driving

Mr T subsequently surrendered his private hire driver licence.

3.4 **Mr B - Convenience Store - Arundel Street - Breaches to the Licensing Act 2003**

Mr B runs a store in Arundel Street. The premises comprise a small ground floor convenience shop selling general produce. No alcohol sales are permitted as the previous premises licence authorisation was revoked by the committee on 27 July 2011. This decision followed a second review application submitted by Trading Standards as a result of previous evidence of alcohol sales to children and selling alcohol whilst the licence was previously deemed suspended (minute 49/2011 refers).

As a consequence to the evidence tendered before the committee at that time, Mr B was subject to investigation and PACE interview by licensing staff for apparent offences contrary to the Licensing Act 2003. This action was taken in partnership with colleagues from Trading Standards. After consideration of the evidence the City Solicitor was requested to instigate proceedings for multiple offences contrary to the Licensing Act 2003.

On **03 November 2011** Mr B appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For exposing alcohol for unauthorised sale on 09 May 2011 - £150 fine
- For exposing alcohol for unauthorised sale on 18 May 2011 - £150 fine
- For selling alcohol without a premises licence authorisation - no separate penalty
- For selling alcohol to a child - no separate penalty
- Personal licence forfeited by order of the court
- Council costs of £200 awarded
- Victim surcharge of £15

In May 2012 an application for the grant of a new premises licence was received in the name of Miss B. This application sought approval for alcohol sales with Miss B being nominated as the proposed Designated Premises Supervisor.

The premises were subject to pre-application inspections by licensing staff on 22 and 28 May 2012. On both occasions quantities of "priced" alcohol including high strength ciders, lagers, spirits, port and wine were observed in the premises store room. Some attempt to "hide" the alcohol had been made.

Licensing staff observed that there was unfettered access to this room which was directly adjacent to the main shop floor trading area. R B was identified as being on the premises and was cautioned for offences of having alcohol in his possession and under his control with intent to sell by retail.

Mr B was interviewed under caution and maintained that the alcohol was either "old stock" or for "personal and family consumption". Subsequent investigation with Booker Cash & Carry revealed evidence of alcohol purchases by Mr B (in a 6 month period) of £3338.67. He was re-interviewed and refused to answer questions although he did however submit a prepared statement.

The City Solicitor was requested to commence further proceedings against Mr B for offences of having in his possession and under his control alcohol that he intended to sell by retail contrary to section 138 of the Licensing Act 2003.

On **12 July 2013** Mr B appeared at Portsmouth Magistrates' and pleaded not guilty to the offences. After a full day's trial he was convicted and sentenced as follows:

- For keeping alcohol on the premises with intent to sell on 22 and 28 May 2012 - £600 fine
- Council costs of £945 awarded
- Victim surcharge of £15

The court concluded that alcohol was kept on the premises in large quantities. The invoices obtained from Bookers showed that large quantities of alcohol were purchased in quick succession over a short period of time. The court was satisfied that it was Mr B's intention to sell alcohol. The evidence of the council officers was credible, honest and detailed and the court had drawn an inference from Mr B's silence.

3.5 Mr H - Hackney Carriage Driver - Refusing To Drive - Town Police Clauses Act 1847 and corresponding Byelaws

Mr H is the holder of hackney carriage driver licence. He also holds a private hire driver licence.

At about 0100 on the morning of 29 March 2012 H was the driver of a licensed hackney carriage vehicle which was of a wheelchair accessible type. He was "first turn" at the popular and well frequented taxi stand situated at Gunwharf Quays.

Two young female students approached his vehicle. One of the females was in an electric wheelchair. After an initial discussion, it became clear that H was apparently refusing to take the passengers. They complained to the Licensing Service.

In her statement one of the students painted a gloomy picture of drivers previously refusing to take her. She went on to say....."I suffer with *Diastrophic Dysplasia a condition diagnosed at birth. The wheelchair that I*

use is a battery operated Spectra Plus. I am confident at controlling my chair but feel safer when someone is stood behind me when going up the ramps attached to a taxi".....

Investigations revealed that Mr H's vehicle was perfectly capable of transporting the students (and wheelchair) with no compromise to personal safety. Equally, H initially suggested that an "old shoulder injury" prevented him, on medical grounds, from offering assistance.

Mr H was challenged about his fitness during PACE interview and warned that medical enquiries had not substantiated his apparent long standing shoulder injury. He admitted, during interview, that he was capable of pushing and handling a wheelchair with no physical discomfort.

The City Solicitor was requested to commence proceedings against Mr H for offences of refusing to drive contrary to section 53 of the Town Police Clauses Act 1847 (corresponding offences under the various Disability Discrimination acts have never been enacted) and failure to behave in a civil and orderly manner (by swearing at the passengers) contrary to the adopted byelaws.

An initial not guilty plea was entered with the matter set for trial on **06 March 2013** at Portsmouth Magistrates'. On the day, H changed his plea to guilty and was sentenced as follows:

- For refusing to drive - £300 fine
- For failing to behave in a civil and orderly manner - no separate penalty
- Council costs of £85 awarded
- Victim surcharge of £15

After taking into consideration the views of the female witnesses, Mr H subsequently also received penalty points and a final written warning as to his future conduct.

3.6 **Mr M S H - Appeal against refusal to grant a Hackney Carriage Driver Licence - Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976**

Mr H was the former holder of both a private hire driver and vehicle licence.

His then driver licence was suspended (under delegated authority) in April 2009 as a result of allegations of a sexual assault and false imprisonment against a lone female passenger in his car late at night. He was charged with these offences but subsequently found not guilty of all criminal charges after trial at Portsmouth Crown Court.

He submitted an application for the grant of a hackney carriage driver's licence which was considered by the Licensing committee on 14 June 2013.

The officer recommendation was to refuse to grant the licence as Mr H had previously breached an absolute position of trust and thus could not be considered to be a "fit and proper" person as prescribed by law.

The committee resolved to refuse to grant a hackney carriage driver licence and concluded, on the balance of probabilities, that he was not a fit and proper person. (Minute 20/2013 refers).

Mr H gave notice of appeal against this decision which was heard at Portsmouth Magistrates' on **18 September 2013**.

After hearing the evidence the Magistrates concluded that Mr H was not a fit and proper person and concluded:

- The decision was made on the balance of probabilities
- They had regard to established case law submitted in the council's bundle
- They noted that they should not lightly overturn the decision of the Licensing Committee below them
- Mr H had admitted breaching a position of trust and became involved in sexual conduct
- The girl was vulnerable due to drink
- The decision of the Licensing Committee was not wrong then nor now and will stand
- Council costs of £247 awarded

3.7 **Mr H - Appeal against revocation of Hackney Carriage Driver Licence - Town Police Clauses Act 1847 & Local Government (Miscellaneous Provisions) Act 1976**

Mr H is the holder of a hackney carriage driver licence. He has been a full time taxi driver since 2010.

In 2013 licensing staff received a number of complaints about the conduct of Mr H. These were received from members of the public, other drivers and from one of your reporting staff. They related to his general conduct, attitude and evidence of poor driving standards.

The sub committee met on 11 December 2013 and resolved to revoke his hackney carriage driver licence 531. The committee were satisfied, on the balance of probabilities, that he was not a "fit and proper" person to drive a licensed vehicle. (Minute 62/2013 refers).

Mr H gave notice of appeal against this decision which was heard at Portsmouth Magistrates' on **16 April 2014** before the District Judge.

The council was represented at the appeal by your reporting legal advisor, Miss Putnam. Mr H's appeal was dismissed and he was ordered to pay a £250 contribution towards the council's costs.

He continued to drive (pending a further appeal to the Portsmouth Crown Court) under protective appeal provisions.

Your reporting staff noted that his behaviour had improved and no complaints had been received about his driving for a period of over 9 months. Equally, his DVLA driving licence and corresponding DBS enhanced disclosure checks revealed no matters of concern.

Following the receipt of further legal advice, the matter was referred back to committee on **02 July 2014** for consideration. Members concluded that his hackney carriage driver licence number 531 be re-instated subject to a final warning as to his future conduct. (Minute 55/2014 refers).

3.8 Mr H - Pedlar - Street Trading Without Consent - Commercial Road Precinct - Local Government (Miscellaneous Provisions) Act 1982

Mr H is the holder of a Pedlar's certificate issued by Hampshire Constabulary pursuant to the Pedlars Act 1871. By definition and subsequent case law, a pedlar is someone who "trades as they travel" as opposed to being permanent static traders.

Mr H uses a wooden stall and sells mobile phone covers. He normally trades in Commercial Road Precinct near the fountain and the "Phones 4 U" shop.

Commercial Road Precinct is a designated "consent" street for the purposes of street trading consents granted under the 1982 act. Street trading relates to the "selling, exposing or offering for sale of any article in a street". The consents in Commercial Road are limited to a number of identifiable pitches.

Exemptions from the street trading licensing code are available for both market traders and persons acting under the authority of a valid pedlar certificate.

During 2013 complaints were received that Mr H was selling his wares but was not "moving" - i.e. trading as he travelled, and that he was causing an obstruction and acting in direct competition to established business premises.

He received advice and verbal warnings from licensing staff culminating in a written warning being issued in July 2013.

Subsequent visits to the precinct environs in the run up to Christmas 2013 revealed that Mr H was not "moving" but rather trading from a predominantly static position adjacent to the fountain.

Following a PACE interview and investigation the City Solicitor was requested to instigate proceedings against Mr H for trading in Commercial Road precinct without a street trading consent contrary to schedule 4, section 10 of the Local Government (Miscellaneous Provisions) Act 1982.

On **22 July 2014** Mr H appeared at Portsmouth Magistrates' and pleaded guilty and was sentenced as follows:

- For trading without a street trading consent on 05 December 2013 - £100 fine
- Council costs of £200 awarded
- Victim surcharge of £20

4.0 "Operation Odin" - Town Police Clauses Act 1847 & Equality Act 2010 - Carriage of Assistance Dog in Licensed Vehicles

In the early part of 2013 anecdotal evidence of hackney carriage drivers either refusing to take and/or charging for the conveyance of assistance dogs was received.

Although a "test purchase" exercise had previously been carried out in 2009 (with good compliance results); arrangements were made to carry out another series of proactive test purchases using a local Portsmouth registered blind resident and his qualified/registered assistance dog.

The purpose of the exercise was to....."*actively approach the drivers of licensed taxis at various taxi ranks in Portsmouth and to also contact private hire companies licensed by the council to arrange for a booking to be made*"

The Equality Act 2010 compels licensed drivers to convey a disabled person with an assistance dog and to do so without further charge. Equally, licensed operators commit an offence for refusing to accept a booking.

There is an exemption for drivers to convey registered assistance dogs on medical grounds although the council has not issued any medical exemption certificates to date.

On **21 June 2013** the volunteer (accompanied by an able bodied council colleague) made various bookings around the city.

The results can be summarised as follows:

- Citywide Taxis accepting bookings promptly with no charge for conveyance of the assistance dog
- Aqua Cars Ltd accepted bookings promptly with no charge for conveyance of the assistance dog
- 9 individual hackney carriage drivers were approached at various taxi stands. ALL the drivers conveyed the test purchase volunteer and assistance dog to the required destination(s).
- 2 hackney carriage drivers were challenged, on the evidence, about apparent anomalies in the fares charged (receipts for each journey were obtained) and were both subject to subsequent PACE interview by licensing staff. Both drivers admitted charging an extra amount for the carriage of the assistance dog.

After consideration of the evidence, (and after consultation with both the test purchase volunteer and the council's Equalities and Diversity advisors), the two drivers concerned received penalty points and written warnings as to their future conduct.

The operators and other hackney carriage drivers were congratulated on their compliance with the law by the Licensing Manager.

The assistance dog was given a box of doggy treats.

5.0 "Operations Sparrow and Market Garden" - Plying For Hire and No insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988

On selected dates in November 2012 and June 2013 enforcement staff conducted operational orders in both the city centre and Albert Road to check for evidence of drivers and vehicles "plying for hire" contrary to section 45 of the Town Police Clauses Act 1847. Only Portsmouth taxis can pick up from the street in the city and/or be flagged down by the public.

The aim was to determine the level of compliance by both Portsmouth private hire drivers and "out of town" drivers to on-going allegations of "pirating". This causes friction and animosity between the respective taxi and private hire trades.

"Test purchase" exercises are the most accurate and reliable way of determining the scale of any concerns and to provide the most robust empirical evidence to be used to assess any future proceedings.

Staff from East Hampshire District Council were in attendance and invited to "shadow" more experienced Portsmouth staff during the operation in June 2013.

Over 40 vehicles were observed by staff and, as a result, 27 drivers were formally challenged by way of "on street test purchase" by other authorised council staff working in conjunction with licensing staff. As a result:

- 20 Portsmouth private hire or out of town drivers refused to take passengers
- 7 Portsmouth private hire drivers took the passengers to pre-arranged destinations

The 20 drivers who lawfully refused the street bookings were given positive feedback and congratulations by the Licensing Manager for their compliance with the law.

After individual investigation of the other cases (and taking into consideration some apparent medical matters) 5 drivers received penalty points and/or written warnings as to future conduct.

2 drivers were reported for prosecution as shown in 5.1 and 5.2 below:

5.1 Mr E - Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988

Mr E is the holder of a private hire driver licence. He was observed to be the driver of a licensed private hire vehicle. At 2309 on 30 November 2012 he accepted a fare from two council staff in White Swan Road to be taken to the Marriott hotel.

No booking had been made via his operator and E had no lawful reason to be in the vicinity of the established taxi stand in this very busy area serving the night time economy.

Following investigation and PACE interview, Mr E admitted the offences and the City Solicitor was requested to instigate proceedings against him for offences of plying for hire contrary to section 45 of the Town Police Clauses Act 1847 and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **04 June 2013** Mr E appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For plying for hire - £100 fine
- For permitting no insurance - 6 points endorsed on driving licence and £150 fine
- Council costs of £130 awarded
- Victim surcharge of £20

5.2 **Mr S - Private Hire Driver - Plying For Hire and Permitting No Insurance - Town Police Clauses Act 1847 and Road Traffic Act 1988**

Mr S was the holder of a private hire driver licence.

He was observed to be the driver of a licensed private hire vehicle. At 2350 on 07 June 2013 he accepted a fare from two council staff in Albert Road to be taken to the Marriott hotel.

No booking had been made via his operator and S had no lawful reason to be in the vicinity of Albert Road at the time.

Following investigation and PACE interview, he admitted plying for hire and the City Solicitor was requested to instigate proceedings against him for offences of plying for hire contrary to section 45 of the Town Police Clauses Act 1847 and permitting no insurance contrary to section 143 of the Road Traffic Act 1988.

On **18 November 2013** Mr S appeared at Portsmouth Magistrates' and pleaded guilty to the offences. He was sentenced as follows:

- For permitting no insurance - 3 month driving disqualification and £100 fine
- For plying for hire - no separate penalty
- Council costs of £150 awarded
- Victim surcharge of £20

Of concern was that Mr S had been cautioned for a similar offence in 2010. His private hire driver licence has not been renewed and, at the time of writing this report, Mr S has now left the UK.

6.0 **"Operations Overlord, New Year, Nemesis & Mustang" - Vehicle and Driver Fitness Checks - Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847**

The council has a statutory duty to ensure that hackney carriage and private hire vehicles are mechanically and cosmetically fit for public service.

All vehicles are tested at least once but sometimes twice a year (dependent upon the age of the vehicle) at the council's nominated garage - Adams Morey, Burrfields Road, Portsmouth.

Additionally, a number of pro-active night time operation orders were conducted in 2012/13 (in partnership with the garage) with mechanical inspectors on duty until the early morning hours.

The checks can be summarised as follows:

- Over 70 vehicles were inspected and checked by licensing staff at various locations around the city
- 51 vehicles were sent for full testing at Adams Morey
- 13 vehicles passed outright
- 11 vehicles were initially suspended but had repairs undertaken and were put back on the road the same night/early morning
- 27 vehicles failed - with 2 taken off the road permanently

- 1 vehicle was working unlicensed and the proprietor was subsequently cautioned for the offence.

Individual drivers were also subject to spot check drug screens as follows:

- 39 passes
- 2 failures - 1 for methamphetamines and 1 for cocaine use.

7.0 Big Slick (also known as Shuffles) - 240 Fratton Road - Club Premises Certificate - Breaches to the Licensing Act 2003 & Gambling Act 2005

The premises situated at 240 Fratton Road had been granted a club premises certificate following an application received in 2009. At that time, the club was described as *"a members only sports club located on one floor and comprising of a reception area, bar and kitchen, TV lounge, internet café, snooker and pool playing area together with darts, cards, chess and backgammon"...*

In the latter part of 2012 licensing staff had cause to visit the premises following apparent concerns that the club had changed its operating style to that of a commercial poker club with gaming being the primary or only activity available. These matters were brought to the council's attention by the Gambling Commission.

Following discussions with club staff, the Licensing Manager wrote to the club to warn of the consequences of illegal trading both in respect of the club premises certificate granted under the 2003 act and the apparent gaming activities contrary to the Gambling Act 2005.

The club was put on formal notice to provide valid and relevant documentary information to support both the retention of the club premises certificate and the club gaming permit. The club secretary/treasurer (and another person with an apparent freehold interest) were interviewed, at length, by the Licensing Manager on 15 July 2013.

The purpose of the interview was to invite the club (via the committee and designated secretary) to provide further empirical evidence to negate any concerns that "the club was operating as a commercial enterprise and not being conducted solely for the benefit of members".

Little information to support the retention of the club premises certificate was received and accordingly the Licensing Manager gave formal notice of an application to withdraw the club premises certificate pursuant to section 90 of the 2003 act.

On **23 October 2013** the committee resolved to withdraw the club premises certificate with immediate effect - minute 12/2013 refers. No appeal was submitted to the Magistrates' and the premises have now closed.

8.0 Service Requests For 2013

All complaints received by the Licensing Service are recorded generically as "Service Requests". These are allocated to individual officers on a case by case basis. Requests vary from those requiring a practical resolution between aggrieved parties or can be more complex leading to formal action by way of prosecution, suspension of licence and/or a committee appearance.

Staff are given an allocated "target resolution" time of 10 working days to deal with any complaint in line with corporate standards.

In 2013 there were **475** recorded complaints of which:

- 73% of complaints were dealt with within 10 working days with an average resolution time of 7 days
- 27% of complaints missed the 10 day target and took longer to resolve
- The "top 5" licensable activities complained about were:
 - Private hire drivers - 149
 - Hackney carriage drivers - 126
 - Licensing Act 2003 - 60
 - Hackney Carriage vehicles - 33
 - Private hire vehicles - 30

The vast majority of complaints were resolved by the issue of advice and/or warnings although penalty points, driver awareness courses, suspensions and revocation of licences by the committee were imposed in other cases and after consideration on merit.

For Licensing Manager and
on behalf of the Head of Service

THERE ARE NO PUBLIC BACKGROUND PAPERS TO THIS REPORT

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