



LICENSING AND REGISTRATION COMMITTEE

DATE: Wednesday 12 April 2017
TIME: 7.30 pm
VENUE: Council Chamber, Council Offices,
Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Cossens (Chairman)
Councillor Callender (Vice-Chairman)
Councillor Amos
Councillor B Brown
Councillor M Brown
Councillor Bucke
Councillor V Guglielmi
Councillor J Henderson

Councillor Porter
Councillor Raby
Councillor Skeels Jnr
Councillor Watson
Councillor White
Councillor Whitmore
Councillor Winfield

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Katie Sullivan on 01255 686585.

DATE OF PUBLICATION: TUESDAY 4 APRIL 2017



AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 6)

To confirm and sign as a correct record, the minutes of the meeting of the Committee, held on 18 January 2017.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or other interest, and nature of it, in relation to any item on the agenda.

4 Minutes of the Licensing (General Purposes) Sub-Committee held on 20 March 2017 (Pages 7 - 8)

The Committee is to receive and note, for information only, the above minutes.

5 Report of the Management and Members' Support Manager - A.1 - Corporate Enforcement Strategy (Pages 9 - 44)

To consult with the Committee on the draft Corporate Enforcement Strategy.

6 Report of the Corporate Director (Operational Services) - A.2 - Commencement and Implementation Process for Sections 165 and 167 of the Equality Act 2010 (Pages 45 - 58)

The Committee is asked to note and agree to the commencement of Sections 165 and 167 of the Equality Act 2010 as from the 6 April 2017 and the process that the Council and the Tending Hackney Carriage and Private Hire licenced trades will have to follow in order to lawfully comply with Sections 165 and 167 of the Act.

7 Exclusion of Press and Public

The Committee is asked to consider the following resolution:

"That under Schedule 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during the consideration of Agenda item 8 on the grounds that it involves the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 12A, as amended, of the Act."

8 Exempt Minutes of the Licensing (General Purposes) Sub-Committee held on 20 March 2017 (Pages 59 - 62)

The Committee is to receive and note, for information only, the above exempt minutes.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Licensing and Registration Committee is to be held in the Council Chamber, at 7.30 p.m. on Wednesday 12 July 2017.

Information for Visitors

FIRE EVACUATION PROCEDURE

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**MINUTES OF THE MEETING OF THE LICENSING AND REGISTRATION COMMITTEE,
HELD ON WEDNESDAY 18 JANUARY 2017 AT 7.30 PM
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present:	Councillors Cossens (Chairman), Amos, B Brown, M Brown, Bucke, V E Guglielmi, J Henderson, Raby, Skeels Jnr, Watson, White, Whitmore and Winfield
Also Present:	Councillor Davis
In Attendance:	Mark Westall (Head of Customer and Commercial Services), Linda Trembath (Senior Solicitor) (Litigation and Governance), Simon Harvey (Licensing Manager) and Katie Sullivan (Committee Services Officer)

14. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor Callender (with no substitute).

15. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Committee held on Wednesday 5 October 2016 were approved as a correct record and signed by the Chairman, subject to the requested amendment by Councillor Winfield to include his apology for non-attendance in minute 10.

16. DECLARATIONS OF INTEREST

There were none.

17. MINUTES OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 19 DECEMBER 2016

The Committee received and noted, for information only, the minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 19 December 2016.

18. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.1 - REPORT RECOMMENDING AMENDMENT TO COUNCIL'S HACKNEY CARRIAGE (TAXI) & PRIVATE HIRE DRIVER KNOWLEDGE TEST

The Committee had before it a report (A.1) which sought its agreement for an amendment to the Council's Hackney Carriage and Private Hire Driver Knowledge Test procedures in order to delegate its authority to the Licensing Manager to allow applicants to re-sit a fourth knowledge test on appeal to the Licensing Manager, rather than having to lodge an appeal to the Licensing (General Purposes) Sub-Committee.

It was reported that:

- The former Licensing Committee had reviewed the procedures and process of the Council's Hackney Carriage and Private Hire driver knowledge test at its meeting on 16 December 2014.
- As part of that review, the Committee had decided to retain the appeal processes to the Licensing (General Purposes) Sub-Committee whereby new

applicants for Hackney Carriage and Private Hire Drivers Licences could appeal to be allowed to take a fourth knowledge test after having failed three tests.

- There had been 10 appeals to the Licensing (General Purposes) Sub-Committee in the last two calendar years 2015 to 2016 to allow new applicants for a Hackney Carriage and Private Hire Drivers Licences to re-sit a fourth driver knowledge test.
- The appeal process therefore had become quite onerous and expensive for the Licensing (General Purposes) Sub-Committee to undertake and it was suggested that it be delegated to the Licensing Manager as a result.

The Licensing Manager informed the Committee that in order to process the appeals for consideration by the Sub-Committee, covering reports had to be written, agendas had to be printed and published and the Council Chamber had to be booked. Officers including a Legal Officer and a Committee Services Officer had needed to be present to assist Members at the appeal and a Licensing Officer had to be in attendance to present the report.

The Licensing Manager informed the Committee that the appeal process was costly and time consuming for the Council to offer and may also be costly and time consuming for the applicants if, for example, they had needed to take time off work to attend the appeal hearing.

It was therefore recommended to the Committee that it agreed to delegate the appeal process and the appeal decision to the Council's Licensing Manager or in their absence, to an appropriate Licensing Officer.

The Committee were informed that such a change would reduce time and costs to the Licensing service all round and therefore provide a more efficient and cost effective service for Hackney Carriage and Private Hire Driver Licence holders as a result. It would also enable the Sub-Committee to focus their time on those appeal matters that were perhaps not so straight forward as considering or allowing a re-sit of a fourth driver knowledge test.

Following discussion, it was moved by Councillor White seconded by Councillor V E Guglielmi and unanimously **RESOLVED** that the Committee agrees to delegate the decision to allow applicants to appeal to re-sit a fourth Hackney Carriage and Private Hire driver knowledge test (subject to the applicant paying the necessary fee), to the Council's Licensing Manager, or their appropriate delegated substitute.

19. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.2 - REPORT RECOMMENDING CHANGE TO FORMAT OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER BADGES GRANTED BY TENDRING DISTRICT COUNCIL

The Committee had before it a report (A.2) which sought its agreement to an amendment of the format of the Council's Hackney Carriage and Private Hire driver badges so that the name of the driver was displayed prominently on the front of the badge to accompany the photo of the driver concerned.

It was reported that:

- Hackney Carriage and Private Hire driver's badges had shown the serial number of the licence, a photograph of the driver, the expiry date of the licence/badge and the Tendring District Council crest.
- It was proposed to amend the format of the driver's badge to include the driver's name prominently on the front of the badge to accompany the photograph in order to aid the Licensing Officers in communicating with drivers and also in identifying them when carrying out roadside or taxi rank compliance checks of drivers and vehicles.

The Licensing Manager informed the Committee that it was unknown as to why historically the Council's Hackney Carriage and Private Hire driver badges had not included the name of the driver on them, but this had been the case for a number of years.

The Licensing Manager informed the Committee that not having the name of the driver on the badge could, and did, make communication with the driver and recognition of the driver difficult for Licensing Officers carrying out roadside or taxi rank compliance checks of the driver and/or the vehicle they were driving.

It was therefore recommended to the Committee to agree to amend the format of the Council's Hackney Carriage and Private Hire driver badges to include the title, initial(s) and surname of the driver in question.

The Committee were informed that such a change would aid the Council's Licensing Officers to communicate more easily and readily with drivers when carrying out roadside and taxi rank compliance checks and also assist with identifying drivers for other agencies such as the Police or VOSA.

Following discussion, it was moved by Councillor Watson seconded by Councillor Raby and unanimously **RESOLVED** that the Committee agrees to include the title, initial(s) and surname of the licence holder prominently on the front of the Council's Hackney Carriage and Private Hire drivers badges with immediate effect.

20. **REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.3 - REPORT TO ADVISE THE LICENSING AND REGISTRATION COMMITTEE ON THE EFFECTS OF IMMIGRATION ACT 2016 ON TAXI AND PRIVATE HIRE LICENSING AND RECOMMENDING CHANGES TO THE COUNCIL'S HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER, VEHICLE AND OPERATOR APPLICATION FORMS AS A RESULT OF THE NEW IMMIGRATION ACT.**

The Committee had before it a report (A.3) which sought its agreement to an amendment to the format of the Council's Hackney Carriage and Private Hire driver, operator and vehicle application forms in order that the driver and operator application forms were compliant with the requirements of the Immigration Act 2016. Agreement was also sought from the Committee so that all of the Hackney Carriage and Private Hire application forms could be updated to include all necessary contact details to improve the effectiveness and efficiency of the customer service provided by the Licensing Team and also to be able to provide necessary and robust information as required by the National Fraud Initiative.

It was reported that:

- The Immigration Act 2016 which had come into effect on 1 December 2016 required Councils to make positive checks that all applicants for both new and renewed Hackney Carriage and Private Hire driver and operator licences had the right to work in the United Kingdom.
- As a result of the new requirements the Licensing team had reviewed its Hackney Carriage and Private Hire driver, vehicle and operator application forms and had amended the driver and operator forms specifically in line with the new Immigration Act 2016. The Licensing team had also taken the opportunity to improve all of the Council's Hackney Carriage and Private Hire forms both in terms of their customer service and customer contact profile and also in regards to the National Fraud Initiative.

The Licensing Manager informed the Committee that the proposed new Hackney Carriage and Private Hire driver, operator and vehicle application forms were attached to the report as APPENDIX 1, APPENDIX 2 and APPENDIX 3.

It was recommended to the Committee that it adopt the new forms for use with immediate effect in regards to new and renewal applications for Hackney Carriage and Private Hire driver and operator licences and also vehicle licence applications.

Following discussion, it was moved by Councillor Whitmore seconded by Councillor Winfield and unanimously **RESOLVED** that the Committee note the requirements that the Immigration Act 2016 placed on the Taxi and Private Hire trades and the Council and that they also approve the content and format of the proposed new Hackney Carriage and Private Hire driver, operator and vehicle application forms attached to the report as Appendices 1, 2 and 3, as amended.

21. EXCLUSION OF PRESS AND PUBLIC

It was **RESOLVED** that, under Schedule 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda item 9 on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act.

22. EXEMPT MINUTES OF THE LICENSING (GENERAL PURPOSES) SUB-COMMITTEE HELD ON 19 DECEMBER 2016

The Committee received and noted, for information only, the exempt minutes of the meeting of the Licensing (General Purposes) Sub-Committee held on 19 December 2016.

The Meeting was declared closed at 8.29 pm

Chairman

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**MINUTES OF THE MEETING OF THE GENERAL PURPOSES SUB-COMMITTEE,
HELD ON MONDAY 20 MARCH 2017 AT 10.00 AM
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present:	Councillors V Guglielmi (Chairman), Cossens (Vice-Chairman), J Henderson, Raby, Watson and White
In Attendance:	Linda Trembath (Senior Solicitor - Litigation and Governance), Simon Harvey (Licensing Manager), Emma King (Licensing Assistant), Katie Sullivan (Committee Services Officer) and Megan Blake (Legal Apprentice)

36. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor Winfield (with no substitute).

37. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Sub-Committee, held on 19 December 2016, were approved as a correct record and signed by the Chairman.

38. DECLARATIONS OF INTEREST

There were none.

39. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - A.1 - HACKNEY CARRIAGE/PRIVATE HIRE LICENCES

The Sub-Committee noted the contents of a report (A.1) on the number of Hackney Carriage and Private Hire drivers, vehicles and operators, licensed by the Council as at 9 March 2017, which was submitted for information only.

40. EXCLUSION OF PRESS AND PUBLIC

It was moved by Councillor Cossens, seconded by Councillor V E Guglielmi and:

RESOLVED that the public be excluded from the meeting for the items of business to be considered below on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A, as amended, of the Act:

(a) Exempt Minutes of the Last Meeting of the Sub-Committee held on 19 December 2016; and

(b) Report of the Corporate Director (Operational Services)

B.1 - Application for the Grant of a Hackney Carriage Driver's Licence

41. EXEMPT MINUTES OF THE LAST MEETING

The Exempt Minutes of the last meeting of the Sub-Committee, held on 19 December 2016, were approved as a correct record and signed by the Chairman.

**42. REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES) - B.1 -
APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE DRIVER'S LICENCE**

The Sub-Committee reviewed a named individual's application for the grant of a Hackney Carriage Driver's Licence. The Sub-Committee's resolutions are detailed in the exempt minutes of this meeting.

The Meeting was declared closed at 11.00 a.m.

Chairman

LICENSING AND REGISTRATION COMMITTEE

12 APRIL 2017

REPORT OF MANAGEMENT AND MEMBERS' SUPPORT MANAGER

A.1 CORPORATE ENFORCEMENT STRATEGY

(Report prepared by Karen Neath)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consult with the Committee on the draft Corporate Enforcement Strategy.

EXECUTIVE SUMMARY

- At Cabinet on 16 December 2016, the draft Corporate Enforcement Strategy was agreed for consultation. Within the Council, it was agreed that the Strategy be considered by the Planning, Licensing and Registration and Community Leadership and Partnerships Committees.
- The purpose of this Corporate Enforcement Strategy is to set out the overarching “umbrella” principles to apply to all service departments and its officers within the Council which undertake enforcement functions.
- The Council’s enforcement responsibilities and powers cover a wide range of legislation with a variety of formal and informal sanctions, which aim to protect the interests and rights of people in relation to the environment that they use. The enforcement of regulatory legislation enables the Council to achieve its’ priorities contained within the Corporate Plan and fits with national policy, codes and guidance.
- It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach we take. The purpose of this Corporate Enforcement Strategy is to explain clearly and publicly summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance.
- It is important to note that the Licensing and Registration and Planning Committees retain the legal responsibility and power with regards to enforcement decisions including the proposed adoption of a corporate Harm Risk Assessment Checklist and Template however, it is intended that some general principles can be agreed across the Council to form a corporate approach.
- The draft Strategy is attached at Appendix A and includes the following sections on how we will deal with enforcement:-
 - Openness & Transparency
 - Helpfulness
 - Consistency

<ul style="list-style-type: none"> ○ Proportionality ○ Targeting resources on higher risk; and ○ Accountability. <ul style="list-style-type: none"> • The outcome of the consultation will be reported back to Cabinet in early 2017 for consideration in the adoption of the final document.

RECOMMENDATION(S)
That Members of the Committee determine whether they have any comments on the draft Corporate Enforcement Strategy as attached at Appendix A.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES
<p>Council enforcement services across the Council have a key role to play in helping to deliver an ethos of open for business whilst addressing issues adversely affecting our residents. It underpins Tendring Council's ethos and objectives to deliver high quality affordable services, engaging with the community and effective partnership working to promote healthier lifestyles and well-being in the district. It is important to ensure that enforcement solutions are developed to meet local needs and through engagement with local stakeholders.</p> <p>Adopting a Corporate Enforcement Strategy will provide a means for engaging with the community to explain to how its enforcement services will be targeted and delivered following harm and risk assessments, encouraging compliance through communication and partnership working.</p> <p>Adopting Principles of Good Regulation demonstrates good governance through openness & transparency, helpfulness, consistency, proportionality, targeting resources on higher risk and accountability.</p>
FINANCE, OTHER RESOURCES AND RISK
<p>Finance and other resources</p> <p>The introduction of the draft Corporate Enforcement Strategy for further consultation does not in itself have any financial implications, however, there may be resource implications in delivering the principles of Good Regulation although, at this stage it is anticipated that these will be covered by existing budgets and resources.</p> <p>Risk</p> <p>The introduction of the draft Corporate Enforcement Strategy and associated Service Standards will summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance. It is intended that adherence to the Principles will increase public confidence, awareness and understanding of the factors taken into consideration and consequently, reduce adverse criticism of enforcement activity.</p>
LEGAL
<p>Local authority regulators whose functions are specified by order under section 24(2) of the Legislative and Regulatory Reform Act 2006 are bound to have regard to the Regulators' Code when developing policies and operational procedures that guide regulatory activities.</p> <p>The Government have stated that they will monitor published policies and standards of</p>

regulators subject to the Code, and challenge local authorities where there is evidence that policies and standards are not in line with the Code or are not followed.

The draft Strategy accords with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat, the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 ("the 2006 Act"), including the duty to have regard to economic growth ('the Growth Duty'). The provisions of Section 6 of the 2006 Act include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them.

"Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law.

Regulatory activities within Licensing, Registration and Planning are non-executive functions and therefore consultation is required with the relevant committees before approval by Cabinet, this is particularly relevant to the suggested use of a corporate Harm Risk Assessment Checklist/Template across all council services. It will still remain the responsibility of the relevant enforcement Committee to adopt a corporate checklist and template and they will have the power to suggest and make changes appropriate to their specialised area.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

The Regulators' Code and Draft Corporate Enforcement Strategy contributes to the Council's duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Equality and Diversity

An assessment of the impact of the recommendations in this report has been undertaken and no potential for discrimination or adverse impact has been identified and all opportunities to promote equality have been taken.

Consultation / Public Engagement

Internal consultation has been undertaken in formulating the draft Corporate Enforcement Strategy and further consultation will be carried out with external partnership bodies, key stakeholders and relevant committees and reported back to Cabinet for consideration in the adoption of the final document.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The [Regulators' Code](#), published by BRDO in July 2013, came into force on April 6th 2014. The Better Regulation Delivery Officer (BDRO) sits within the Department of Business,

Energy and Industrial Strategy (BEIS).

Nearly all non-economic regulators, including local authorities and fire and rescue authorities, must have regard to this code when developing standards, policies or procedures that either guide their regulatory activities with business or apply to other regulators.

Section 6 of the Regulators' Code sets out Government's expectation that local authorities will ensure that their approach to regulatory activities is transparent. The provisions of section 6 include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This includes their enforcement policy, explaining how they respond to non-compliance.

The Regulators' Code contains details of how enforcement activity should be approached and specifically requires that Regulators:

- Carry out activities in a way that supports those that are regulated to comply and grow;
- Provide simple and straightforward ways to engage with those that are regulated and hear their views
- Base their regulatory activities on risk
- Share information and compliance and risk
- Ensure clear information, guidance and advice is available to help those regulated to meet their responsibilities to comply
- Ensure that their approach to regulatory activities is transparent.

Published service standards serve to bring the provisions of the Regulators' Code to life for each regulator and are important for regulators in meeting their responsibility under the statutory principles of good regulation to be accountable and transparent about their activities.

The Regulators' Code requires that published service standards should be accessible, clearly signposted, and kept up-to-date, but does not set out a single required approach to service standards. It is for each authority to determine an approach which works best for those it regulates and itself. The Code expects that local authorities will engage with those they regulate in relation to the development of their service standards. To date each service undertaking enforcement activity has focused on their individual enforcement policies and standards and to ensure consistency it is recommended that the BRDO's toolkit mentioned below is considered.

The BRDO has worked with a number of groups, including the Local Authority Reference Panel, Pathfinder LEPs and others, to explore the content of service standards and how the local authority can ensure that businesses find them. From this work, a toolkit was produced by the BRDO presenting examples of how a local authority might choose to approach:

- Developing or reviewing its service standards; and
- Developing or reviewing its enforcement policy.

The Council's services have been informally working together on corporate operational enforcement matters for some time however, it has been identified that a more consistent joined up approach would be beneficial and review of its working practices and procedures has commenced. Adopting a Corporate Enforcement Strategy would assist and provide a directional steer in this process.

The Community Safety Hub in Tendring already engenders the ethos of partnership working and holds regular hub tasking meetings to consider multi- agency enforcement issues. The principles set out in the Corporate Enforcement Strategy can also be applied to the hub to strengthen the good practice already in place.

DRAFT CORPORATE ENFORCEMENT STRATEGY

The Council's enforcement services seek to ensure that advice and information is available to individuals and local businesses about their responsibilities and duties and, when appropriate, uses its powers to make sure that those who disregard the law are held to account for their behaviour. The Council will approach enforcement decisions by ensuring that they will comply with this Strategy and information on individual services Enforcement Policies may be obtained from the relevant department and the Council's website.

Initial proactive engagement is encouraged to discuss issues, in a positive manner. If initial approaches are unsuccessful then a firm but fair stance will be adopted which will address issues quickly and transparently, whilst protecting members of the community and the environment.

We want to engage with residents who are often unaware that they require certain permissions to help them through processes; however if they are unwilling to engage then we take appropriate action. With new businesses, we want to encourage them to open and expand in Tendring and identify what are the blockages for them, rather than our first contact being one of enforcement; but we are prepared to take a proactive approach to enforcement if required.

The Council shares the Government's view that effective and well-targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches

Where possible, the Council will reward good compliant businesses by lighter touch, fewer or no visits, alternative interventions, and/or other incentives. However, adopting a risk based approach, we will not hesitate to take all necessary enforcement action against those who, e.g. commit serious breaches, flout the law, and refuse to work with us to seek compliance or commit offences which are prevalent in the district. It is intended that a corporate Harm Risk Assessment Checklist/Template is adopted for use across council services.

Whilst it is acknowledged that the Regulators' Code relates principally to the Council's activities for Environmental Health and Licensing, the principles outlined are considered to be equally relevant to other council services undertaking enforcement functions. It was felt appropriate to have a single Strategy to cover all of these areas therefore, the scope of the Strategy is intended to include:

- Building Control and Dangerous Structures
- Community Safety and Anti-Social Behaviour
- Environmental Health (including food hygiene, health & safety, housing,

- pollution control and smoking)
- Housing
- Licensing (including alcohol, animal establishments, gambling, public entertainment and taxis) (some of these activities are also subject to specific policies on the application of legislation adopted by Full Council)
- Parks, Open Spaces and the Seafront (including Bylaws, Trespass and unauthorised encampments)
- Planning; and
- Street Care (including dog fouling, fly tipping, fly posting, littering, trade & domestic waste);

In achieving compliance, the Council will exercise our regulatory activities in a way which delivers the following Principles of Good Regulation:

- The Council is committed to following good enforcement practice in accordance with current legislation, guidance, codes of practice that influence policy listed within the draft Corporate Enforcement Strategy as set out in Appendix A.
- We aim to carry out our activities in a robust but fair way that supports those we regulate to comply without creating unnecessary business burdens.
- We will exercise our regulatory activities in a way which delivers:
 - (i) Openness & Transparency
 - (ii) Helpfulness
 - (iii) Consistency
 - (iv) Proportionality
 - (v) Targeting resources on higher risk; and
 - (vi) Accountability
- We will assess whether similar social, environmental and economic outcomes to achieved by less burdensome means.

The Draft Strategy also includes a section on a ward councillor's role in relation to enforcement matters and a Data Sharing Statement. The statement aims to provide a common understanding of the data that can be shared between public bodies undertaking enforcement activities and includes Councils (all tiers), Police and Fire Authorities, Central Government agencies and Statutory Undertakers.

The sharing of personal data between delivery bodies involved in the enforcement of legislation is subject to the requirements of the Data Protection Act 1998 (DPA). This statement aims to clarify how such data should be handled to ensure openness, transparency and consistency in compliance with the DPA and any other applicable legislation. It also promotes best practice to encourage effective working relations.

BACKGROUND PAPERS FOR THE DECISION
<ul style="list-style-type: none">• Department for Business Innovation and Skills – Better Regulation Delivery Officer Regulators’ Code April 2014• Department for Business Innovation and Skills – Better Regulation Delivery Officer Regulators’ Code Section 6: Local Authority Toolkit March 2014

APPENDICES
Appendix A: Draft Corporate Enforcement Strategy for consultation

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Corporate Enforcement Strategy

Draft for consultation

December 2016

Foreword

Tendring District Council's Enforcement Ethos

Encouraging businesses to come to Tendring and keeping a clean and safe district is critical for our residents, visitors and businesses. Our Council recognises the strong link between quality of the environment and people's health, safety and quality of life.

Council enforcement services across the Council have a key role to play in helping to deliver an ethos of open for business whilst addressing issues adversely affecting our residents. It underpins Tendring Council's ethos and objectives to deliver high quality affordable services, engaging with the community and effective partnership working to promote healthier lifestyles and well-being in the district. It is important to ensure that enforcement solutions are developed to meet local needs and to engage with local stakeholders in the development of local action planning.

Our enforcement services seek to ensure that advice and information is available to individuals and local businesses about their responsibilities and duties and, when appropriate, uses its powers to make sure that those who disregard the law are held to account for their behaviour. Our approach to enforcement and the decisions that we make will be set out within our enforcement policies. Information on services individual Enforcement Policies may be obtained from the relevant department and the Council's website at *[address and link to be inserted]*.

Our approach to enforcement will be one of an initial proactive engagement, to discuss issues, in a positive manner. If initial approaches are unsuccessful then a firm but fair stance will be adopted which will address issues quickly and transparently, whilst protecting members of the community and the environment.

We want to engage with residents who are often unaware that they require certain permissions to help them through processes; however if they are unwilling to engage then we take appropriate action. With new businesses, we want to encourage them to open and expand in Tendring and identify what are the blockages for them, rather than our first contact being one of enforcement; but we are prepared to take a proactive approach to enforcement if required.

The Council shares the Government's view that effective and well-targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches

Where possible, the Council will reward good compliant businesses by lighter touch, fewer or no visits, alternative interventions, and/or other incentives. However, adopting a risk based approach, we will not hesitate to take all necessary enforcement action against those who, e.g. commit serious breaches, flout the law, and refuse to work with us to seek compliance or commit offences which are prevalent in the district.

The Council will work with local ward members on the approach to enforcement where appropriate. The Council approach will be proportionate to the outcome achievable and will seek to not undertake effort disproportionate to the outcome achievable.



Cabinet Member for Enforcement and Community Safety

Councillor Giancarlo Guglielmi

Details will be included of where copies of the strategy can be obtained, accessibility statement, how the Policy has been approved and issue date.

1. Introduction

- 1.1 The purpose of this Corporate Enforcement Strategy is to set out the overarching “umbrella” principles to apply to all service departments and its officers within the Council which undertake enforcement functions. The Council’s enforcement responsibilities and powers cover a wide range of legislation with a variety of formal and informal sanctions, which aim to protect the interests and rights of people in relation to the environment that they use. The enforcement of regulatory legislation enables the Council to achieve its’ priorities contained within the Corporate Plan and fits with national policy, codes and guidance.
- 1.2 It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach we take. The purpose of this Corporate Enforcement Strategy is to explain clearly and publicly summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance.
- 1.3 All authorised officers when making enforcement decisions shall abide by this Strategy, and the supporting documented procedures, both within the appendices and departmental processes.
- 1.4 This Strategy will be/has been developed through external consultation with our partners in the Community Safety Hub and internally with elected members across political parties sitting on the following Committees:
 - Licensing and Registration
 - Planning
 - Community, Leadership and Partnership

2. Principles of Good Regulation:

- The Council is committed to following good enforcement practice in accordance with current legislation, guidance, codes of practice that influence policy listed at Appendix A.
- We aim to carry out our activities in a robust but fair way that supports those we regulate to comply without creating unnecessary business burdens.
- We will exercise our regulatory activities in a way which delivers:
 - (i) openness & transparency
 - (ii) helpfulness

- (iii) consistency
 - (iv) proportionality
 - (v) targeting resources on higher risk; and
 - (vi) accountability
- We will assess whether similar social, environmental and economic outcomes to achieved by less burdensome means.
- The Strategy accords with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat, the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 ("the 2006 Act"), including the duty to have regard to economic growth ('the Growth Duty'). The provisions of Section 6 of the 2006 Act include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. These Service Standards we be included within Annex A to this document and available on the Council's website through [\(insert link\)](#).

3. Scope and interpretation

- 3.1 "Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law.
- 3.2 Whilst it is acknowledged that the Regulators Code relates principally to the Council activities for Environmental Health and Licensing, the principles outlined are considered to be equally relevant to other Council services undertaking enforcement functions. The scope of the Strategy is therefore intended to include:
- Building Control and Dangerous structures
 - Community Safety and Anti-Social Behaviour
 - Environmental Health (including food hygiene, health & safety, housing, pollution control and smoking)
 - Housing
 - Licensing (including alcohol, animal establishments, gambling, public entertainment and taxis) (some of these activities are also subject to specific policies on the application of legislation adopted by Full Council)
 - Parks, Open Spaces and the Seafront (including Bylaws, Trespass and unauthorised encampments)
 - Planning; and
 - Street Care (including dog fouling, fly tipping, fly posting, littering, trade & domestic waste);

- 3.3 In many instances, enforcement activity relates to businesses, and accordingly this Strategy generally makes reference to 'business' and 'business premises' throughout. But sometimes - for example within planning enforcement work, issues of public nuisance, or public carriage driver licensing - the enforcement activity relates not to a business but to a private individual.
- 3.4 Clearly not all aspects of this Strategy are appropriate to circumstances involving private individuals, but wherever they are appropriate - for example in the approaches used to determine whether serious enforcement action should be taken - this Strategy should be read as applying to such private individuals in the same way as it applies to businesses.

4. Our approach to dealing with non-compliance

- 4.1 A range of activities will be undertaken to ensure compliance with legislation. Advice and guidance will be provided; proportionate, targeted, programmed and intelligence-led inspections will be undertaken and, where necessary, inspections will be undertaken in response to complaints from third parties. Some enforcement services will also have officers patrolling the streets.
- 4.2 In achieving compliance, we will work within the principles of good enforcement and exercise our regulatory activities in a way which delivers:

(i) Openness & Transparency:

- We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- Provide information and advice in a timely manner and in plain language on the rules that we apply and any action to be taken. This may be provided either verbally, by telephone, by personal visit where appropriate, or in writing.
- Be open about our work, including any charges that are set.
- Discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.
- Make it clear what should be expected from the Council as an Enforcement Authority.
- Respond to requests for information under the Freedom of Information Act 2000 or Environmental Information Regulations, within 20 working days.
- Our document retention policy will detail our commitment to records management.

- Make a record of decisions accessible, in full or partially, to the public to ensure openness and transparency of the criteria by which we will judge whether to take action or not. Information will only be withheld from the public, if there is a statutory reason to do so (for example personal information to third parties or exemptions under Freedom of Information or Environmental Information Regulations).

(ii) Helpfulness:

Formal enforcement action should be taken as a last resort and the Council believes that communication and conciliatory involvement are key to successful positive compliance outcomes. We will actively work with individuals and businesses to ensure that advice and information about their responsibilities and duties is available.

- We encourage compliance by providing guidance and liaising with stakeholders on how this can best be presented and disseminated – a request for advice will not directly trigger enforcement action where there is a willingness to resolve any non-compliance which may be identified.
- Our staff will identify themselves and provide a courteous and efficient service.
- We will provide a contact point and telephone number to encourage individuals and businesses to seek advice/information from us.
- Applications for approval of applications, licensing, registration, or authorisation will be dealt with efficiently and promptly.

(iii) Consistent:

We will carry out our duties in a fair, equitable and consistent manner, and

- Our officers are expected to exercise judgement in individual cases but we will endeavour to ensure that a similar approach is taken in similar circumstances.
- Our officers will use corporate systems consistently to maximise efficient use of resources and data management in accordance with the Fair Processing Data Statement. Where possible standardised templates and proformas will be developed and used across service areas. Decisions taken will be recorded with reasons.
- The Council will adopt a cross service enforcement operational team approach seeking joint problem solving of complaints across the District. Communication and efficiency will be strengthened as well as effective use of powers available. A lead officer will be allocated an overarching role to coordinate the team approach.

- Will take account of advice offered to us through bodies such as the Local Government Association (LGA), Food Standards Agency (FSA), Health and Safety Executive (HSE), Government Departments such as the Departments for Communities and Local Government (DCLG) and for Business, Energy and Industrial Strategy (BEIS) and Local Government Ombudsman (LGO).
- Where a Primary Authority Partnership (*) exists, officers will engage with and consider advice previously issued by the Primary Authority when considering the most appropriate course of action. Where, after further liaison with the Primary Authority, officers consider that formal action is still appropriate; the statutory notification process will be followed. This Scheme does not preclude officers from taking immediate action in the event of serious or imminent risks to health or safety.

(*) Primary Authority allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority or fire and rescue authority, which then provides robust and reliable advice for other local regulators to take into account when carrying out inspections or addressing non-compliance.

- Where there is a wider regulatory interest, we will liaise and co-operate with or pass information to the appropriate enforcement agency. This may include the sharing of intelligence with other Government Agencies, Police Forces, Fire Authorities, Statutory Undertakers or other Local Authorities.
- We will liaise with our colleagues in other Essex Authorities and Regulatory Services, to share information and develop a consistent approach to enforcement, e.g. through the use of common protocols. Reference to the Data Sharing Statement is included within Paragraph 5.2.
- We will consult in developing clear standards, setting out the level of service and performance the public and businesses can expect to receive.
- We will publish our standards.
- Advice from officers will be put clearly and an explanation given as to why remedial works are necessary.
- The timescales for compliance with notices will be reasonable.
- We will raise safeguarding alerts with the appropriate authorities.

(iv) Proportionate:

We will ensure our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence; and

- Aim to minimise the cost of compliance by ensuring that any action required is proportionate to the risk and that we take proper account of the economic consequences of our actions.
- Take into account, as far as the law allows, the circumstances of the case and the attitude of the offender when considering action.
- Help to promote a thriving local economy by maintaining a fair and safe trading and working environment.
- Are committed to choosing proportionate approaches based on relevant factors such as business size and capacity.
- Committed to dealing firmly with those who deliberately or persistently fail to comply.
- Will only take action that is necessary to achieve the aims of the statutory regime being enforced, with reasons for the action being recorded using the Harm & Risk Assessment.
- When we believe there is reasonable cause that a child, young person or vulnerable adult, may be suffering or may be at risk of suffering significant harm, consideration will always be given to referring these concerns to Children's or Adults Social Care (as appropriate) and/or the Police.

(v) Targeted

We will focus our resources on significant harm and higher risk enterprises and activities, reflecting local need and national priorities, and:

- Ensure resources and regulatory activities are targeted primarily on those which give rise to the most serious risks and harm.
- Take an evidence based approach to determining the priority risks and allocate resources where they would be most effective in addressing those priority risks.
- Consider risk and harm at every stage of the decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action. Decisions with reasons will be recorded.

- Ensure that Harm and Risk Assessment Framework principles currently in use by some services are adopted across all the Council's enforcement services. The assessment framework will be reviewed regularly.
- In undertaking the assessment of risk and determining the harm, the compliance record of the business or individual will be considered together with all available and relevant data on compliance, including evidence of any relevant external or other statutory verification.
- Ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it through the use of a graduated enforcement approach.
- Seek to ensure our resources are used with maximum effectiveness to avoid burdening businesses with the costs of unnecessary interventions.
- Where more serious non-compliances are identified, we will advise duty holders of the circumstances under which a revisit will be undertaken and the timescale for that revisit.

(vi) Accountable

Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures, and:

- We will ensure that we have policies and procedures against which our work can be judged.
- We will ensure there is an effective and accessible mechanism for dealing with comments and complaints and information is provided within the Council's Service Standards and available on the website.
- Officers are responsible to elected members(*), the public and government bodies for their actions.
- Officers will provide general updates to the relevant ward councillor when requested to do so (this will not be automatic and only where the ward councillor has been involved in raising awareness of a potential non-compliance). Detailed information will not be provided if to do so would prejudice further action or involve disclosure of personal or sensitive information.
- In exceptional circumstances and only upon the agreement of the Chairman of the Licensing & Registration or Planning Committees together with the Portfolio Holder for Enforcement and Community Safety, a Case Review of a particular matter will be held with the enforcement officer and their Head of Service. The purpose of the review would be to discuss and understand the reasons for the action and decisions taken on an alleged non-compliance, taking into

consideration the principles of Good Regulation as set out in this Strategy and the harm risk assessment.

- In order to maintain the integrity and impartiality of the Council's enforcement service it is vital that the system has the trust and confidence of all concerned.

5. A ward councillor's role in relation to enforcement matters is to:

- a. Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances. This may involve working directly with the community to seek positive outcomes.
- b. Effectively represent the interests of their ward and of individual residents, whereby acting fairly to understand the differences of opinions, personal circumstances and situations.
- c. Represent their communities and bring their views into the Council's decision-making process by becoming an advocate for their communities, whilst understanding and articulating the principles of good regulation and the Council's approach to non-compliance.
- d. Raise alleged non-compliance with the relevant service responsible for the enforcement activity and carefully consider the advice of the enforcement officer as to future involvement.
- e. Ensure their involvement does not compromise their position or put at risk failure to comply with their own Members' Code of Conduct and Member/Officer Relations Protocol.
- f. Understand the provisions of the Data Protection Act 1998 and to ensure confidential or personal information is not disclosed to third parties.

6. Working in Partnership with others:

- 6.1 On occasions (currently decided upon on a case by case basis) this will involve working in partnership with other enforcement agencies (includes Essex County Council, RSPCA, Natural England, Police, CPS, Health and Safety Executive, Food Safety Agency and Housing associations.

After consultation with external organisations - Include details of any requirements to consult with another organisation before taking action, including details of the statutory requirement under Primary Authority to notify proposed enforcement action.

6.2 Data Sharing Statement

A Data Sharing Statement was produced between the Community Safety Hub and Tendring District Council. This statement also applies across Tendring District Council's internal services.

The statement aims to provide a common understanding of the data that can be shared between public bodies undertaking enforcement activities and includes Councils (all tiers), Police and Fire Authorities, Central Government agencies and Statutory Undertakers.

The sharing of personal data between delivery bodies involved in the enforcement of legislation is subject to the requirements of the Data Protection Act 1998 (DPA).

This statement aims to clarify how such data should be handled to ensure openness, transparency and consistency in compliance with the DPA and any other applicable legislation. It also promotes best practice to encourage effective working relations.

The statement may be found *[insert link]*.

7. Publicity

We will consider, in all cases, drawing media attention to factual information about charges that have been laid before the courts, but will take care to avoid publicity that could prejudice a fair trial. We will also consider publicising any conviction that could serve to draw attention to the need to comply with the legal requirements or deter anyone tempted to disregard their duties.

8. Comments, compliments or complaints

Tendring District Council is committed to responsive, good quality customer services to the people of the district and would welcome comments and feedback about the Corporate Enforcement Strategy may have on local residents and/or business through our X service team.

9. How often is the Strategy Reviewed?

It is considered good practice to review Council policies and a 5 yearly review will provide a reasonable timetable for this Strategy however, a review may also be appropriate in the intervening period if there is a significant change in legislation, national codes, guidance or national or local policy.

10. ENFORCEMENT PROCEDURES AND OPTIONS

Procedures:

- 10.1 Our enforcement services will investigate alleged breaches and complaints that are reported in writing and we will only register and investigate anonymous complaints where the alleged breach is extremely serious and/or is readily apparent. In all cases we will proceed on the common law principle that the person or business under investigation is “presumed innocent until proved guilty”.
- 10.2 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient

training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their written authorisation on demand.

- 10.3 A record of Officers authorised within services to undertake enforcement activities is contained within the Council's Scheme of Delegation within the Council's Constitution and maintained by the Monitoring Officer.
- 10.4 In coming to a decision on how to deal with non-compliance, we will have regard to the following principles which are set out in the Macrory Review. In particular our actions should:
- a) aim to change the behaviour of the offender;
 - b) aim to eliminate any financial gain or benefit from non-compliance;
 - c) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - d) be proportionate to the nature of the offence and the harm caused;
 - e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
 - f) aim to deter future non-compliance.
- 10.5 All services undertaking enforcement activities undertake a Harm Risk Assessment scheme to produce indications of risks that may be broadly described as "High, Medium or Low", or similar.
- 10.6 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be applicable. Enforcement action will include reference to Harm Risk Assessments. The action taken, which may be immediate, will be proportionate to the gravity and nature of the non-compliance.
- 10.7 Factors that may be taken into consideration include, but are not limited to:
- the risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
 - the alleged offence involved a failure to comply in full or in part with the requirements of a statutory notice or order
 - there is a history of previous warnings or the commission of similar offences
 - aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
 - the offence, although not serious itself, is widespread in the area where it is committed
 - death was a result of a breach of legislation
 - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm
 - the general record and approach of the offender

- there has been reckless disregard of health and safety requirements
- there has been a repetition of a breach that was subject to a formal caution
- false information has been supplied wilfully, or there has been an intent to deceive

10.8 Tendring District Council will balance the relevant factors carefully and fairly, considering each case on its merits and recording the outcome of the decision. The enforcement options available to the Council are summarised below but set out in more detail in Appendix C.

Options:

10.9 Where non-compliance is found, options to promote/seek compliance will include:

- undertaking pro-active education programmes
- explaining legal requirements and, where appropriate, the means to achieve compliance
- providing an opportunity to explore alternative approaches and reasonable timescales to achieve compliance including voluntary undertakings
- service of advisory letters, warnings, statutory (legal) notices or prohibitions detailing non-compliance
- enforcement actions including, but not limited to:
 - formal caution
 - fixed penalty notices
 - seizure of documents or goods
 - review/refusal/suspension/revocation of Licenses
 - closure of premises
 - prosecution and/or injunction
- Immediate, without notice, enforcement action may be taken, but only where deemed necessary, reasonable and proportionate.

Appendix A

Legal and Policy context

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Tendring District Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate - our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable - our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent - our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent - we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted - we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators' Code

Tendring District Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

Tendring District Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Strategy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

Where there is a need for Tendring District Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute Tendring District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, Tendring District Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- b. Public Interest Test - is it in the public interest for the case to be brought to court?

Tendring District Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in Appendix B.

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

Appendix B

Conduct on Investigations:

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to Tendring District Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Appendix C

Enforcement Actions available to Tendring District Council in Respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

Tendring District Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Tendring District Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and Tendring District Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, Tendring District Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

Tendring District Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. Tendring District Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches Tendring District Council has powers to issue statutory notices. These include: 'Stop Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Financial penalties

Tendring District Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Tendring District Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Tendring District Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Tendring District Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Tendring District Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances Tendring District Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

Tendring District Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, Tendring District Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

Tendring District Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Tendring District Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how Tendring District Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

Tendring District Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute Tendring District Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Tendring District Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, Tendring District Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) the seriousness of the offence committed?
- b) the level of culpability of the suspect?
- c) the circumstances of and the harm caused to the victim?
- d) the age of the suspect or suspects?
- e) the impact on the community?
- f) whether prosecution is a proportionate response?

This list is not an exhaustive list of the elements that will, or may be considered when deciding whether a prosecution is appropriate but helps to identify and determine the relevant public interest factors tending for and against prosecution. Not all factors may be relevant in all cases, and in some cases, it is possible that one public interest factor alone may outweigh those factors which suggest the opposite direction. The weight to be given to each factor will vary according to the facts and merits of each case.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

H. Refusal/Suspension/Revocation of Licences

Tendring District Council issues a number of licences and permits. Tendring District Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, Tendring District Council may take previous breaches and enforcement action into account.

Annex A: Example of an approach to Service Standards

What you can expect from Regulatory Services in [Local Authority]

Contents:

[Areas we regulate](#)

[How we deliver our services](#)

[Working with you](#)

[Helping you to get it right](#)

[Inspections and other compliance visits](#)

[Responding to non-compliance](#)

[Requests for our service](#)

[How to contact us](#)

[Our Team](#)

[Working with others](#)

[Having your say](#)

This document explains what you can expect of Regulatory Services in [Local Authority]. Whether you are run a business, are an employee or a member of the public, we are committed to providing you with an efficient, courteous and helpful service and this document tells you how we aim to do that and what standards we will meet.

Areas we regulate

We deliver services in a number of areas:

Environmental Protection	Planning	Food Safety
Health and safety	Licensing	Private Sector Housing
Public Health	Housing	Street Care and Waste
Building Control and Dangerous Structures	Community Safety and Anti-Social Behaviour	Parks, Open spaces and Seafront

How we deliver our services

We make a fundamental contribution to the maintenance and improvement of public health, quality of life and wellbeing. Our aims are to:

- Protect the public, businesses and the environment from harm
- Support the local economy to grow and prosper

We determine our activities by assessing the needs of local people and our business community, and considering the risks that require addressing. We do this through [provide details of engagement with local citizens and businesses] and through using data and other information available to us and our partners. In this way we ensure our resources are targeted appropriately, in the light of these local needs and of national priorities.

Details of our current work programme are available at [add link]

We are committed to being transparent in our activities. We measure what is important and we publish a range of information about our performance data so that you can see how we are doing. This is available at [add link]

We carry out all our activities in a way that supports those we regulate to comply and grow:

- We ensure that information, guidance and advice is available to help you to meet legal requirements (see [Helping you to get it right](#)).
- We carry out inspections and other activities to check compliance with legal requirements, and we target these checks where we believe they are most needed (see [Inspections and other compliance visits](#)).
- We deal proportionately with breaches of the law as set out in our Enforcement Policy, including taking firm enforcement action when necessary (see [Responding to non-compliance](#)).
- We provide a range of services to businesses, including [add list eg. pest control, licences, registrations, issue of certificates] (see [Requests for our service](#)).

Our services will be delivered in accordance with the requirements of the [Regulators' Code](#).

Working with you

In all your dealings with us you can expect, and will receive, an efficient and professional service. Our officers will:

- Be courteous and polite
- Always identify themselves by name in dealings with you, and provide you with contact details
- Seek to gain an understanding of how your business operates
- Provide details of how to discuss any concerns you may have
- Agree timescales, expectations and preferred methods of communication with you
- Ensure that you are kept informed of progress on any outstanding issues.

We recognise that your business will receive advice and inspections from other organisations, and we will do our best to work with them to ensure that you receive the best service.

Helping you to get it right

We want to work with you to help your business to be compliant and successful and it is important to us that you feel able to come to us for advice when you need it. We won't take enforcement action just because you tell us that you have a problem.

We make information and guidance on meeting legal requirements available [add details of how information and guidance are made available, including links to relevant websites].

Where you need advice that is tailored to your particular needs and circumstances we will:

- Discuss with you what is required to achieve compliance
- Provide advice that supports compliance and that can be relied on
- Provide clear advice that can be easily understood and implemented
- Distinguish legal requirements from suggested good practice
- Ensure that any verbal advice you receive is confirmed in writing if requested

- Acknowledge good practice and compliance.

[Include an explanation of advice services, including Primary Authority]

[Include an explanation of the basis on which any charges are made for advice, with a link to Fees and Charges Schedule]

Inspections and other compliance visits

We monitor and support compliance in a number of different ways including through inspections, sampling visits, test purchases, advisory visits and complaint investigations. These visits will always be based on an assessment of risk – we won't visit without a reason.

We will give you notice that we intend to visit unless we have specific reason to believe that an unannounced visit is more appropriate.

When we visit you our officers will:

- Explain the reason and purpose of the visit
- Carry their identification card at all times, and present it on request when visiting your premises
- Exercise discretion in front of your customers and staff
- Have regard to your approach to compliance, and use this information to inform future interactions with you
- Provide information, guidance and advice to support you in meeting your statutory obligations, if required
- Provide a written record of the visit.

[Include an explanation of the risk framework(s) used to target visits, with links to these frameworks]

[Include an explanation of the basis on which any charges are made in relation to visits, with a link to Fees and Charges Schedule]

Responding to non-compliance

Where we identify any failure to meet legal obligations, we will respond proportionately, taking account of the circumstances, in line with our Enforcement Policy [\[add link\]](#).

We deal proportionately with breaches of the law as set out in our Enforcement Policy, available at [\[add link\]](#), including taking firm enforcement action when necessary

Where we require you to take action to remedy any failings we will:

- Explain the nature of the non-compliance
- Discuss what is required to achieve compliance, taking into account your circumstances
- Clearly explain any advice, actions required or decisions that we have taken
- Agree timescales that are acceptable to both you and us, in relation to any actions required
- Provide in writing details of how to appeal against any advice provided, actions required or decisions taken, including any statutory rights to appeal
- Explain what will happen next
- Keep in touch with you, where required, until the matter is resolved

Requests for our services

We clearly explain the services that we offer, including details of any fees and charges that apply: *[add links to further information]*

In responding to requests for our services, including requests for advice and complaints about breaches of the law, we will:

- Acknowledge your request within *[add timescale]*
- Tell you when you can expect a substantive response
- Seek to fully understand the nature of your request
- Explain what we may or may not be able to do, so that you know what to expect
- Keep you informed of progress throughout our involvement
- Inform you of the outcome as appropriate

A detailed breakdown of our response times and expected resolution times is available at *[add link]*, however, please be aware that our officers will exercise their judgment to determine whether a more prompt response is required.

How to contact us

You can contact us by:

Telephone: *[insert number]*

Email: *[insert email address]*

Web: *[insert website address]*

By post: *[insert address]*

Or in person: *[insert address and opening hours]*

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats, and have access to translation and interpretation services.

If you contact us we will ask you for your name and contact details to enable us to keep in touch with you as the matter progresses. We treat all contact with the service in confidence unless you have given us permission to share your details with others as part of the matter we are dealing with on your behalf or there is an operational reason why we need to do so. We will respond to anonymous complaints and enquiries where we judge it appropriate to do so.

Personal data will be managed in accordance with *[Local Authority]*'s Data Protection Policy. *[add link]*.

Our Team

We have a dedicated team of officers who have the appropriate qualifications, skills and experience to deliver the services provided. We have arrangements in place to ensure the ongoing professional competency of all officers.

Where specialist knowledge is required in an area outside of our expertise we have arrangements in place, with both neighbouring authorities and other regulatory organisations, to call on additional resources as necessary.

Working with others

We work closely with other council services such as Planning and Economic Development and our aim is to provide a streamlined service to you.

We are part of a much wider regulatory system in [*the Local Authority area*]. We have good working relationships with other regulators such as [*insert details*], and this enables us to deliver a more joined up and consistent service. This includes sharing information and data on compliance and risk, where the law allows, to help target regulatory resources.

Our officers are familiar with the work of our partners and can signpost you to the advice and guidance you need. We are members of the [*add details of local Regulatory Services Partnership/ Local Enterprise Partnership*] and if you have any comments or concerns regarding the way in which the local regulatory system is operating you can contact the partnership at [*insert contact details*].

Having your say

Complaints and appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. You can contact [*insert named officer, other than the officer who dealt with the matter*].

We manage complaints about our service, or about the conduct of our officers, through [*Local Authority*]'s Corporate Complaints Policy. Details can be found at [*add link*] or by telephone [*insert number*]

Feedback

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We use customer satisfaction surveys from time to time but we would welcome your feedback at any time. You can provide feedback in the following ways:

Telephone: [*insert number*]

Email: [*insert email address*]

Web: [*insert website address*]

By post: [*insert address*]

Or in person: [*insert address and opening hours*]

Any feedback that we receive will be acknowledged, considered and responded to.

Developing our services with you

We have a number of groups that we consult with to ensure that we are delivering our services to meet your needs. We are always happy to welcome new members to these groups. We currently work with the following:

[Include details eg. Business Panel, Residents Panel, Residential Landlords Panel, with links to further information]

If you are interested in finding out more about the work of these groups, or participating in one, please visit *[add link]* or contact us using the contact details above.

Dated: *[insert date]*

Name:

Job title:

Review Due: *[insert date]*

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LICENSING AND REGISTRATION COMMITTEE

12 APRIL 2017

REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES)

A.2 REPORT TO ADVISE THE LICENSING AND REGISTRATION COMMITTEE OF THE COMMENCEMENT AND IMPLEMENTATION PROCESS FOR SECTIONS 165 AND 167 OF THE EQUALITY ACT 2010 (EA 2010) AS IT RELATES TO WHEELCHAIR ACCESSIBLE HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE VEHICLES AND DRIVERS AND OPERATORS OF THESE VEHICLES.

(Report prepared by Simon Harvey)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to note and agree to the commencement of Sections 165 and 167 of the Equality Act 2010 (EA 2010) as from the 6 April 2017 and the process that the Council and the Tendring Hackney Carriage and Private Hire licenced trades will have to follow in order to lawfully comply with Sections 165 and 167 of the Act.

EXECUTIVE SUMMARY

- The Government has enacted Sections 165 and 167 of the Equality Act 2010 with effect from the 6 April 2017 in respect to Hackney Carriage (Taxi) and Private Hire Drivers, Vehicles and Operators.
- This will require the Council as the Licensing Authority to make a list of taxi and private hire vehicles licensed by Tendring District Council that it considers to be wheelchair accessible; e.g. as a minimum, the vehicle is designed for and is able to carry, a passenger seated in a standard “reference wheelchair “and also publish a list of those vehicles (known as designated vehicles under Section 167 of the EA 2010).
- It will also require the Council to set a date from when it will be unlawful in our area for drivers of licensed Tendring District Council designated wheelchair accessible taxi and private hire vehicles to refuse to carry passengers in wheelchairs; provide assistance to those passengers and prohibit wheelchair passengers from being charged extra for their journey.
- This date is likely to be six months from the date that the Licensing and Registration Committee commences the implementation of this policy in our area. E.g. if it is adopted by Committee at the 12 April meeting then it is likely to come into force in mid-October 2017.
- It will be a criminal offence if a driver of a designated wheelchair accessible vehicle fails to comply with the duties specified and any driver convicted would be liable to receive a level 3 fine which is currently £1,000.
- Drivers can however apply for a medical exemption to undertake the carriage of a wheelchair accessible passenger and the duties associated with that carriage under

Section 165 of the EA 2010. It will be at the discretion of the Council as to who it will accept that medical exemption from, i.e. the drivers own General Practitioner, or one that the Local Authority designates such as an occupational health Doctor. Any such medical requests or examinations will be undertaken at the drivers own expense.

- There is no national or central government set standard for design of wheelchair accessible vehicles in terms of their size and dimensions.
- There is no requirement for Council's to specify that a certain percentage of the taxi and private hire vehicles that they licence must be wheelchair accessible although as at March 2015, 61% of Local Authorities do. In London (since January 2000) and other Metropolitan areas, taxis must be wheelchair accessible in order to be granted a licence.
- Outside London and other Metropolitan areas the average percentage of wheelchair accessible vehicles are 36% in urban areas and 13% in rural areas (as at March 2015).
- In Tendring, it is estimated that we currently have approximately 14 wheelchair accessible taxi and private hire vehicles that are likely to be designated out of around 285 licensed vehicles.
- The number of wheelchair accessible vehicles in Tendring will only be confirmed however once the process of vehicle designation commences in our district.
- The cost of a wheelchair accessible vehicle is considerably higher than that of an ordinary saloon or MPV type vehicle.

RECOMMENDATION(S)

It is Recommended to the Committee that it:

a) Agrees to implement Sections 165 and 167 of the Equality Act 2010 as laid out in the main body of the report and looks to implement within a period of six months from the date of the Committee meeting if it is possible to do so; and

b) Delegates the final setting of this future date to the Head of Commercial Services and/or the Licensing Manager; and

c) Adopts the suggestion made by the Department for Transport (DfT) and the Government that applications and decisions on medical or physical exemptions for drivers will be fairer and more objective if medical assessments are carried out by an appropriately qualified medical professional who is independent of the driver and this will be achieved by referring the driver/applicant to the Council's Occupational Health provider/assessor who is independent of the Council and such a request and referral for an exemption will be entirely at the applicants own expense.

d) Designates the criteria for listing and publishing the details of wheelchair accessible vehicles in the Tendring District as per the details outlined in Appendices 1 and 2 of this report and are those vehicles that are able to carry a passenger seated in a "reference wheelchair" or larger.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The implementation of the requirements of Sections 165 and 167 of the EA 2010 links into

and supports the Council's Corporate Plan for 2016 – 2020 under the following criteria:

Our Council Our Community

- Support the vulnerable
- Support rural communities

Community Leadership- Employment and Enjoyment

- Support business growth

Health and Housing

- Promote healthier lifestyles and wellbeing

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The implementation of Sections 165 and 167 of the EA 2010 will result in additional work and therefore cost for the Licensing team to communicate these requirements out to the hackney carriage and private hire trades in Tendring, identify the relevant vehicles that will need to be classified as 'designated vehicles' under Section 167 of the EA 2010 (i.e. vehicles which are as a minimum, capable of carrying a passenger safely, in reasonable comfort and securely seated in a standard wheelchair) and also process any requests received from licensed drivers for a medical exemption to carry wheelchair assisted passengers.

In addition, there may be added work for Licensing enforcement in dealing with any complaints that may be received in respect to any refusal to carry wheelchair assisted passengers in designated wheelchair accessible vehicles and which ultimately could lead to a prosecution in Court. The numbers of complaints received in respect to matters relating to wheelchair accessible vehicles are currently very low however and we received two in 2016, but these were not about a refusal to carry or pick up a wheelchair seated passenger.

Risk

Statutory Guidance from the Department for Transport issued in February 2017 to assist Local Authorities (LA's) in implementing Sections 165 and 167 of the EA 2010 and titled 'Access for wheelchair users to Taxis and Private Hire Vehicles' advises that Section 167 of the EA 2010 permits, but does not require, LA's to maintain a designated list of wheelchair accessible taxi and private hire vehicles but strongly recommends that they do so. Without the list being maintained by the Council, Section 165 of the EA 2010 which requires drivers to carry wheelchair passengers, provide assistance to them and prohibits charging any extra for doing so cannot be applied, or enforced.

Not maintaining such a list is therefore likely to be detrimental to wheelchair assisted passengers in the District and also potentially be harmful to the Council's reputation for promoting equality and diversity and also contrary to an aim of the Council's Corporate Plan 2016-2020 to support the vulnerable.

LEGAL

Any decision made by the Licensing and Registration Committee in regards to matters of grant, renewal, suspension or revocations of licences and attachment of policies or conditions to individual hackney carriage and private hire licences can be appealed to the Magistrates' Court and from there to the Crown Court.

In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

In terms of challenging policy decisions, appeals can also be made by way of a Judicial Review to the Administrative Court in the High Court and again in the event of an appeal being allowed by this Court, the costs associated with the hearing could be awarded against the Council.

There is no scope, caveat, restriction or guidance as to what may be considered as “reasonably necessary” within the Act in terms of adopting policy in regards to taxi or private hire licensing or attaching conditions to a licence but the standard of “reasonableness” imposed by the Courts is high and what is “unreasonable” has been said by the Courts to be “whether an authority had acted, or reached a decision, in a manner so unreasonable that no reasonable authority could ever have come to it” (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948) and in subsequent cases the Courts have considered whether a decision is “... so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.” (Council of Civil Service Unions v Minister for the Civil Service (1985))

The Courts have upheld a Council’s powers to set local conditions and policy on a number of occasions as stated cases.

The most recent stated cases of interest being R v Hyndburn Borough Council ex p Rauf and Kasim 12 February 1992 QBD and R v City & County of Swansea (Respondent) Ex Parte Julie Amanda Jones (Applicant) 1996 EWHC Admin 290

While these cases have involved the setting of maximum age policies in respect to hackney carriage and private hire vehicles, nonetheless the Courts of appeal have upheld the principle of a Council’s right to set reasonable policies that do not fetter the discretion of the Council in relation to the hackney carriage and private hire drivers, vehicles and operators that it licences.

The EA 2010 also allows for appeals to be made to the Magistrates Court against a Council’s refusal to exempt a driver on medical grounds from the requirements of Section 165 of the EA 2010 and also against a Council’s decision to include a wheelchair accessible vehicle on its ‘designated vehicles’ list in accordance with Section 167. Under the EA 2010 any such appeals must be made within 28 days of either the refusal to exempt a driver, or the date the decision was made to designate a vehicle.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

Not applicable to this matter

EQUALITY AND DIVERSITY

All Equality and Diversity issues and implications will be encompassed within, and will have been considered by, the EA 2010 as the primary legislation in regards to implementing Sections 165 and 167 of this Act in our District. The recommendation of this report is that this Council does implement Sections 165 and 167 of the EA 2010.

AREA/WARDS AFFECTED

All

CONSULTATION

All hackney carriage and private hire drivers licensed by Tendring District Council have been advised via a taxi newsletter sent out in April 2017 of the implementation of Sections 165 and 167 of the EA 2010 and what this will mean for them as drivers and for the taxi trade generally. There is no requirement or need to consult on this implementation either with the taxi trade or in any wider public capacity, as this is not an initiative that has been introduced locally by the Council, but comes about as a result of primary national legislation. It is a measure that the Council and the hackney carriage and private hire trades locally will be obliged to implement.

It is likely to be necessary however on a smaller scale to consult and liaise with a number of individual companies or proprietors over the requirements of Section 167 of the EA 2010 in order to be able to identify and confirm the use of a particular vehicle or vehicles that they operate to determine their use as wheelchair accessible vehicles.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Equality Act 2010 brought together in one Act a number of different pieces of legislation concerning discrimination and disability discrimination.

As it relates to taxi and private hire drivers, vehicles and operators, the Act came into effect in October 2010 and technically transferred and formalised the requirements previously made under the Disability Act 1995 (DDA 1995) in relation to the carriage of guide and assistance dogs. It also set into statute the mechanism for implementing the designation and listing of wheelchair accessible vehicles and the duties that taxi and private hire driver and operators would be placed under to carry wheelchair passengers, to reasonably assist them and not to charge extra for that carriage and assistance.

Under the DDA 1995 and then transferred within the remit of the EA 2010, it has been unlawful since March 2001 for hackney carriage (taxi) and March 2004 for private hire drivers and operators to refuse to carry passengers with assistance dogs, e.g. guide dogs, hearing dogs, support dogs and assistance dogs or to charge passengers extra for carrying them and their dog. If convicted of doing so, the driver or operator will have committed a criminal offence.

The only exception is if the driver had an agreed medical exemption for carrying an

assistance dog. There is no exemption on religious grounds or similar for example.

The implementation of Sections 165 and 167 will also now make it unlawful for taxi and private hire drivers and operators to refuse to carry wheelchair seated passengers in a designated wheelchair accessible vehicle or to charge the passenger extra for carrying them in a wheelchair or providing the passenger with reasonable mobility assistance.

Refusing to carry a wheelchair seated passenger in a designated wheelchair accessible vehicle will on conviction be classed as a criminal offence. The only exceptions will be for individual drivers on accepted/confirmed medical grounds.

Sections 165 and 167 of the EA 2010 along with accompanying Regulations will come into effect as from the 6 April 2017.

CURRENT POSITION

The Council does not hold a list of wheelchair accessible vehicles and has not formally been required to designate a list of wheelchair accessible vehicles in its District, or to hold and publish a list and the details of such vehicles licensed in its area up until now.

With the implementation of Section 167 of the Equality Act 2010 (EA 2010), the Government through the Department of Transport (DfT) have signalled that Local Authorities should now designate vehicles that it considers to be wheelchair accessible within a likely period of six months from the 6 April 2017. Council's should also agree the criteria for designating such vehicles and adopt a policy and a process for accepting applications from individual drivers to be exempted from the requirement to carry a wheelchair seated passenger and offering them reasonable mobility assistance on accepted and confirmed medical grounds only.

In addition, the Council will be required to publish on its web site for public access a list of those vehicles that have been designated as wheelchair accessible taxi and private hire vehicles in its area. I.e. those vehicles capable of carrying a passenger seated in a standard "reference wheelchair".

The details of this published list will include the make and model of the vehicle along with the name of the operator. It would also be helpful if known or where known, to include whether or not a vehicle is capable of carrying a passenger seated in a wheelchair larger than a standard reference wheelchair such as an electric wheelchair for example. While it is not a legal requirement to do so, the Licensing manager suggests as part of this report that including the operators business contact details such as e-mail if known and business telephone number contact will also be helpful to passengers wishing to book this type of transport.

The timescale for this implementation is however at the Council's own discretion although the DfT suggest a period of six months from 6 April 2017, but this will inevitably differ amongst authorities depending on local factors and circumstances.

There is an appeal mechanism within the EA 2010 for owners of vehicles that have been designated as wheelchair accessible by the Council to appeal this decision to Magistrates Court within 28 days of the vehicle in question being published on the public list.

It is notionally optional for a Local Authority not to designate any wheelchair accessible vehicles in its area, but the effect of doing so would mean that no driver or private hire operator could be prosecuted for refusing to carry a wheelchair seated passenger in an appropriate wheelchair accessible vehicle and it is likely that a decision not to designate wheelchair accessible vehicles in accordance with Sections 165 and 167 of the EA 2010 would be viewed with considerable disappointment and frustration by local and national mobility groups generally and others such as representatives of the wheelchair disabled.

It is hoped that the taxi and private hire trades locally will understand the reasons and need for the Council and their own industries to ensure fair access to local taxi and private hire services by wheelchair assisted passengers and work in partnership with the Council to promote and ensure that this reasonably happens.

The first step in this process is for the Council as the Licensing Authority for taxi and private hire drivers, vehicles and operators, to identify the vehicles that are licensed by the Authority that are likely to be designated vehicles. I.e. vehicles that will be listed by the Authority as those that are capable of carrying passengers seated in a wheelchair.

These vehicles must be clearly identified and published as 'designated for the purposes of Section 165 of the EA 2010'. In other words, Section 165 of the EA 2010 places a legal duty on the driver of that vehicle to carry out the following:

- to carry the passenger while in the wheelchair;
- not to make any additional charge for doing so;
- if the passenger chooses to sit in a passenger seat to carry the wheelchair;
- to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
- to give the passenger such mobility assistance as is reasonably required.

In terms of defining what constitutes 'mobility assistance' for the wheelchair passenger, Section 165 of the EA 2010 describes it as assistance by the driver of a taxi or private hire vehicle (PHV) to do the following:

- To enable the passenger to get into or out of the vehicle;
- If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
- To load the passenger's luggage into or out of the vehicle;
- If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

Once the duties are commenced, it will be an offence for the driver (unless they are medically exempt from these requirements) of a taxi or PHV which is on the licensing authority's designated wheelchair accessible list to fail to comply with them.

Some drivers may however have a medical condition, disability or physical condition which either makes it impossible or unreasonable to offer and give physical mobility assistance as outlined above to a wheelchair seated passenger.

In which case, the driver concerned will be able to apply to the Council for an exemption from this requirement; although such an exemption will only be agreed on medical or physical grounds as substantiated or confirmed by a written report or letter from a General

Practitioner, or where a medical or physical assessment has been carried out by a medical professional who has been specifically trained to undertake such an assessment.

The DfT and Government suggest however decisions on exemptions will be fairer and more objective if medical assessments are carried out by appropriately qualified medical professionals who are also independent of the applicant, particularly where a long term or permanent exemption is being applied for. This could be achieved for example by referral of the applicant to the Council's Occupational Health provider/assessor who is independent of the Council. Such a request for an exemption referral should however be paid for entirely at the applicants own expense as the person applying for and asking for such an exemption.

Medical exemptions are entirely related to the individual in question and will not cover any other person. The exemption also covers the person and not the vehicle. While driving a licensed vehicle, the person subject to the exemption must display a prescribed 10cm x 10cm notice on the nearside of and immediately behind the windscreen so that it is clearly visible from the outside of the vehicle and its back is clearly visible from the driver's seat of the vehicle. If the licensed vehicle is driven by another non exempted licensed driver the notice must be removed.

The exemption notice and certificate issued by the Council is only applicable to the person exempted.

The requirements of Section 167 of the EA 2010 do not necessarily mean that the vehicles which are designated as wheelchair accessible by the Council are capable of carrying all types and sizes of wheelchair however. The DfT/Government's criteria for wheelchair carriage is that the user of what is termed as a "reference wheelchair", is able to enter, leave and travel in the passenger compartment of the vehicle in safety and reasonable comfort whilst seated in their wheelchair. An example of the type of wheelchair that is defined as a "reference wheelchair" is shown attached to this report as **APPENDIX 1**.

The dimensions of a "reference wheelchair" are as defined in Schedule 1 of the Public Service Vehicles Accessibility Regulations 2000 and are shown attached to this report as **APPENDIX 2**.

It also does not mean that wheelchairs passengers have to be transported while seated in their wheelchair. They may prefer for example to choose to transfer from their wheelchair into a passenger seat of the vehicle and stow their wheelchair in the boot. This could equally apply to designated wheelchair accessible vehicles or ordinary four door saloon, estate or Multi Purpose type vehicles. However only drivers of 'designated vehicles' would be subject to prosecution for failing to carry or provide assistance to a wheelchair assisted passenger for example.

To sum up for Members, a proposed stepped process to introduce the implementation of Sections 165 and 167 of the EA 2010 over the next six months depending on circumstances such as ease of identifying vehicles to be designated as wheelchair accessible, the availability of a medical exemption provider/assessor for drivers and the prevailing workload and availability of Licensing staff to carry out these functions is suggested in the flow chart shown below:

Licensing Authority (Council) L&R Committee agrees to implement Sections 165 and 167 of the EA 2010.



Licensing Authority sets out policy for exempting drivers on medical and physical condition grounds (i.e. own GP or independent Occupational Health at own cost)



Licensing Authority identifies and prepares draft lists of designated wheelchair accessible vehicles identified



Licensing Authority liaises with owners that their vehicles will be placed on the list and alert drivers to their new legal responsibilities



Drivers to apply for medical or physical exemptions where necessary



Licensing authority issues medical or physical exemptions



Licensing authority publishes list of designated wheelchair accessible vehicles and new legal responsibilities on drivers of wheelchair accessible vehicles under EA 2010 take effect

ADDITIONAL BACKGROUND INFORMATION

- There is no national or central government set standard for design of wheelchair accessible vehicles in terms of their size and dimensions. No vehicle manufacturer has yet been able to offer or provide a template for such a vehicle and this has been an ongoing aspiration and challenge for vehicle manufacturers, transport and mobility groups and Councils for a considerable number of years now.
- There is no requirement for Council's to specify that a certain percentage of the taxi and private hire vehicles that they licence must be wheelchair accessible although as at March 2015, 61% of Local Authorities do; including Councils which specify that all taxi's in their area must be wheelchair accessible in order to be granted a hackney carriage vehicle licence. An example of this would be London since January 2000.
- Outside London and other Metropolitan areas the average percentage of wheelchair accessible vehicles per taxi and private hire fleets are 36% in urban areas and 13% in rural areas (as at March 2015).
- In Tendring, it is estimated that we currently have approximately 14 wheelchair accessible taxi and private hire vehicles that are likely to be designated out of around 285 licensed vehicles. If accurate, this would make the percentage of wheelchair accessible vehicles at just over 5% of the total number of licensed vehicles in our District.
- The number of wheelchair accessible vehicles in Tendring will only be confirmed however once the process of vehicle designation commences in our district.
- The cost of a wheelchair accessible vehicle is considerably higher than that of an ordinary saloon or MPV type vehicle and is likely to be in the range of £20,000 to £30,000 for new purpose built or converted vehicles or more if electric tail lifts are integral or added. Costs of second hand vehicles are lower.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

APPENDIX 1 – Example of a “Reference Wheelchair”.

APPENDIX 2- Dimensions of a “Reference Wheelchair”.

APPENDIX 1

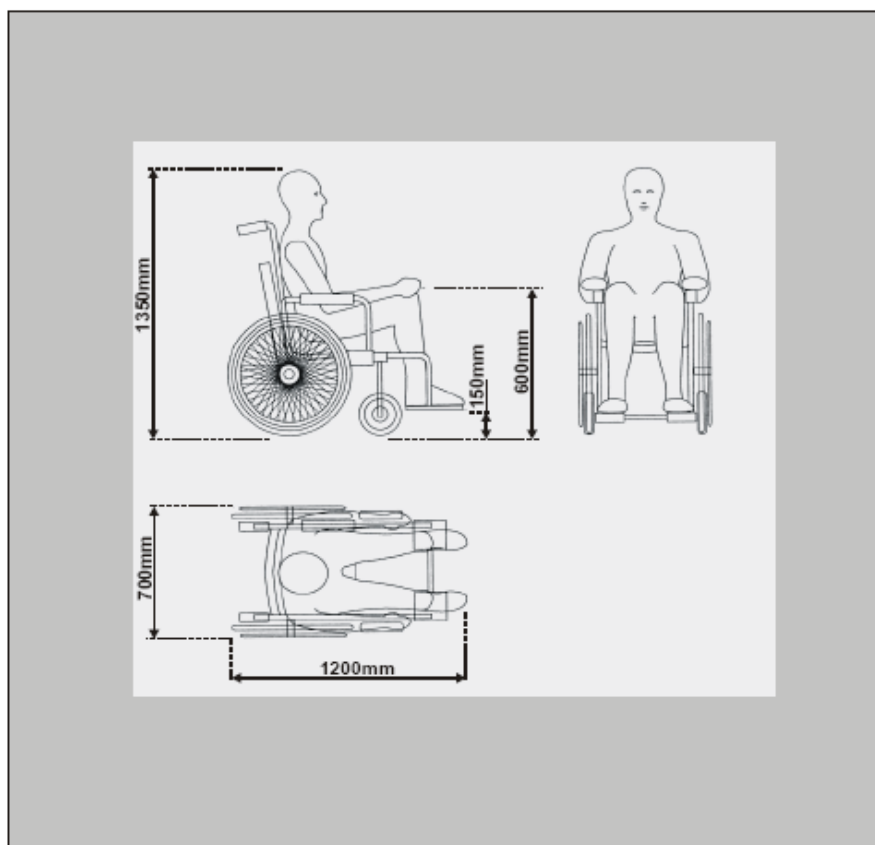
Example of type and style of a “reference wheelchair” as per the Public Service Vehicles Accessibility Regulations 2000 (SI 2000 No 1970)



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Wheelchair access

Where a “regulated public service vehicle” is wheelchair accessible it has been designed to accommodate a “**reference wheelchair**”. This is a wheelchair of a size large enough to represent the majority of wheelchairs currently in use. The reference wheelchair is illustrated below as per the **Public Service Vehicles Accessibility Regulations 2000 (SI 2000 No 1970)**



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