

Cabinet

20 January 2015

Report of the Director of City and Environmental Services and the Director of Customer Business and Support Services

Lendal Bridge Repayment Process

Executive Summary

1. On 11th December 2014 Full Council passed a Motion requesting that automatic repayments be made for Lendal Bridge Penalty Charge Notices (PCN). This report sets out the legal and financial implications of taking this action.
2. An Online Refund Process is currently available whereby members of the public can dispute their PCN in relation to Lendal Bridge. The refund request process opened on 8th September 2014 and was originally due to close on 31st December 2014. The deadline has been extended to 30th June 2015. This decision was taken by the Cabinet Member for Planning, Transport and Economic Development on 22nd December 2014 to enable Cabinet to consider this report setting out the implications of the Council Motion.
3. Cabinet is asked to determine whether the Council should move to automatically notifying the public of the established legally compliant process or move to a process of making automatic payments, having regard to the legal and financial implications of doing so.

Recommendations

4. It is recommended that Cabinet:
 - i) Instruct officers to instigate a process to automatically provide written notification to all persons issued with a PCN (who has not received a payment) in respect of Lendal Bridge advising them of the online refund request process to contest their PCN.

Reason: To ensure the means of contesting the PCN is widely communicated and all reasonable attempts have been made to inform persons issued with a PCN of the process.

- ii) Confirm that the deadline for submitting a claim under the scheme will be 31st December 2015.

Reason: To provide certainty for everyone involved and ensure financial accountability and good governance of the process.

- iii) Approve the use of £150,000 of New Homes Bonus (from 2014/15 allocation) to fund the administrative costs of making repayments.

Reason: To provide appropriate budgetary provision for the costs of administering the refund scheme.

Background

5. The former Leader made a decision in April 2014 to bring the Lendal Bridge trial to a conclusion, and the Lendal Bridge Experimental Traffic Order was, therefore, revoked. At the time he acknowledged the benefits of the Lendal Bridge trial included the significant increase in bus reliability and patronage, improved air quality and the increase in recorded footfall and hotel bookings. (The most detailed report on the trial outcomes is that made to Cabinet on 6th May 2014 to be found in the report pack at http://www.york.gov.uk/info/200621/transparency/827/council_webcasts/70.)
6. The charges imposed during the Lendal Bridge trial were a means of enforcing the restrictions at that time and were not an exercise in raising revenue for the Council.
7. During the Lendal Bridge trial a number of PCNs were appealed to the Traffic Penalty Tribunal (TPT). In April 2014 the TPT determined in a composite decision letter that both the Lendal Bridge Experimental Traffic Regulation Order and the Coppergate Traffic Regulation Order were not valid and were not capable of being enforced as bus lanes. The Council challenged these findings in respect of both Lendal Bridge and Coppergate Schemes, and requested a review of the TPT decision.
8. By August 2014 the TPT Adjudicator had still not determined the review application. No statutory deadlines exist that require the

review decision to be made within a specific time period. As the Lendal Bridge Experimental Traffic Regulation Order had now been revoked, Cabinet, having regard to the advice of Leading Counsel, resolved at the meeting in August 2014 that it was no longer in the public interest to pursue the review of the TPT decision in respect of Lendal Bridge. However, the review should continue in respect of the permanent Coppergate Traffic Regulation Order, as the Council continues to dispute the lawfulness of the TPT decision. The TPT has still not published its review of Coppergate and this report, therefore, does not consider that closure further.

9. Cabinet also resolved that officers make arrangements to set up a process to enable members of the public to contest their Lendal Bridge PCN and for the settlement payments to be equivalent to the value of the PCN paid, in full and final settlement of any claims.
10. Further legal advice was sought in relation to the process to be adopted, wording to be used on the form and length of time the process should remain open. The advice in relation to the period for which the process should remain open was that it should be reasonable and that three months was considered to be reasonable.
11. The online refund request process opened on 8th September 2014. The process was time limited and was due to close on 31st December 2014. The Council has now passed a Motion at Full Council on 11th December 2014 requesting instead that automatic payments be made for Lendal Bridge.
12. Consequently in December 2014 the Cabinet Member for Planning, Transport and Economic Development agreed to extend the Lendal Bridge refund request deadline to 30th June 2015. This was in order that Cabinet could consider this report setting out the implications of the Council Motion.
13. As at the 31st December 2014 applications have been made as follows:
 - September 2014: 5,584 in total
 - October 2014: 2,199 (7,783 in total)
 - November 2014: 2,810 (10,593 in total)
 - December 2014: 1,919 (12,512 in total)

14. There therefore remains the potential for approximately a further 35,000 requests to be made. This follows a significant period of publicity including two national television reports on the BBC.

Consultation

15. No specific consultation with the public has been undertaken on this report which explores the approach to implementing a Council Motion.

Options

16. The deadline for submitting an application through the current process has been extended to 30th June 2015. The options for Members to consider are:
17. Option 1: Make arrangements for the automatic notification of everyone who was issued with a PCN (who has not yet received a payment) at their last known address to advise them of the extended process, whilst maintaining the current Lendal Bridge refund request process and promote an extended deadline date through the appropriate media channels.
18. Option 2: Automatic payments – seek out and pay back individuals without requiring any validation of their details.
19. Option 3: Maintain the current Lendal Bridge refund request process and promote the extended deadline date through the appropriate media channels.

Analysis

Option 1: Make arrangements for the automatic notification of the Lendal Bridge Refund Request Process by writing directly to individuals yet to claim

20. This option would maintain the refund request process that has been approved by Leading Counsel and hence avoid the significant legal and financial risks of Option 2. Optimum publicity of the process would be achieved by:
 - 1) Automatically writing directly to all the estimated 35,000 outstanding people who have received a PCN but not to date made a refund request. This would be to inform them directly of the refund request process.

- 2) As the issuing of the PCN was undertaken by ICES (a specialist private sector company) all addresses are currently held on their secure databases. Therefore, the quickest and most cost effective for issuing the letters would be to engage ICES to undertake a single mail distribution. We are advised by ICES that it would take up to 2 weeks to extract the data and mailing would begin shortly thereafter.
- 3) Extending the date of receipt of the refund request to 31st December 2015 to allow for the above administration of the scheme above and a minimum of 6 months to respond.
- 4) Publicising the online refund process and extended deadline through media channels (in addition to the publicity already undertaken).

Legal Implications of Option 1

21. Presently, the online refund process requires a claim to be made by the individual, and the Council then settles that claim in full and final settlement only to the amount of the PCN. The settlement is on the terms set out in the 'Lendal Bridge Online Refund' form attached at **Annex A**.
22. This process effectively prevents any other claims from the individual once the settlement has been reached through this process. It closes down the matter. Leading Counsel's advice is that this process, in paying back penalties to those who did not appeal is appropriate as a pragmatic response to a situation created by the legislative regime and the TPT.
23. Leading Counsel advises that this process is lawful and significantly better than simply paying cheques to every individual. It is the best means of achieving reimbursement to those who received a PCN having regard to the ongoing legal proceedings concerning the related Coppergate Traffic Regulation Order. In order to achieve closure the online refund process is time limited and payment made on the basis that it is in full and final settlement of a claim. This enables the Council to continue to pursue the claim that the TPT decision in respect of Coppergate is legally flawed.
24. In light of the clear wish of Members to draw a line under the Lendal Bridge trial and ensure that individuals are given an opportunity to be reimbursed, but without impeding the Council's ability to challenge the TPT decision in respect of Coppergate, officers

sought Leading Counsel's advice on the possibility of writing to individuals to inform them of the existence of the online refund process. Leading Counsel advised that:

- The present public invitation that has been made for claims for repayment is reasonable, and there is no compulsion for further letters to be sent.
 - If letters are sent to individuals and are formulated in terms of paying people back this could undermine the Coppergate Order.
 - Any letters sent to individuals should be framed in terms of drawing attention to the extant scheme on the basis of an extension to the present arrangement in order to avoid undermining the Council's position in relation to Coppergate.
25. In essence, it must be clear that payment will only be made under the extant scheme, i.e. that there is a requirement to validate the details in order to achieve settlement. To do otherwise would undermine the Council's position in relation to the validity of the Coppergate Order and the ability of the Council to undertake civil enforcement of any such schemes by camera in the future
26. The advice of Leading Counsel is that whilst the Council could send out letters drawing attention to the extant scheme, the current level of publicity meets the legal test of reasonableness in relation to the pragmatic approach taken by the Council in all the circumstances.

Financial and Administrative Implications

27. A definite end date to the process would need to be stated to provide certainty to all applicants, financial accountability and ensure good governance of the process.
28. Writing to everyone would incur additional costs and this could be up to £150k of administration costs in sending the letters and dealing with the additional claims. There is also a time cost associated with acquiring the full set of data from ICES, needed to identify the name and address of everyone issued with a PCN. ICES have indicated that it would take them 2 weeks to provide the data meaning that the process of writing to everyone would start late February/early March 2015.
29. On balance this is the recommended option.

Option 2: Automatic Payments – seek out and repay

30. There are a number of significant legal and financial implications members should be aware of which mean officers strongly advise against this option.
31. Leading Counsel's advice is that seeking out and paying back individuals is unsatisfactory and, at its lowest, legally questionable. In particular, he raises the following points:
 - There is no legislative requirement upon the Council requiring it to seek out every affected individual in order to pay back any penalty that has paid under the Order.
 - The Order is on its face perfectly legal and is subject to a protective legal provision preventing the questioning of the Order. A search for every individual to pay back penalties would run counter to that provision and it is likely that such a course of action would have to be on the basis that the order and enforcement of it were invalid, which would inevitably undermine the Coppergate Order.
 - A policy on search and pay will inevitably lead to greater cost and may lead to some payees being persons who had not in fact paid the penalty in question [i.e. a parent may have paid on behalf of their offspring who is the registered keeper of the vehicle]. This could lead to further claims and the possibility of the Council paying out twice in respect of the same penalty.
 - From a practical perspective, it has come to light from the operation of the current scheme the DVLA do not check registered keepers details and, therefore, misspelling of/or incorrect registered keepers details are not uncommon and, therefore, payees under an automatic refund process may not actually exist.
32. If Members choose this option, Leading Counsel advises that it will likely undermine the Council's position in relation to the validity of the Coppergate Order and the ability to enforce any such schemes in the future. The civil enforcement of bus lanes would no longer be an option for the Council if the Coppergate TPT decision remains unchallenged. Enforcement would revert to the criminal traffic offence and become reliant on police enforcement.

33. There are also important financial implications to this course of action, including:
- The risk of further challenge to the accounts from residents who do not believe this course of action is appropriate. The Council's auditors are already considering the challenge brought by a local resident who is represented by the National Motorists Action Group and Members are reminded that the Council pays additional costs incurred by the auditors in examining objections.
 - The clear and ongoing concerns about misuse of public funds. Members are reminded that the Council does not accept that the closure of Lendal Bridge was unlawful (or that the closure of Coppergate is unlawful) and so simple dispatch of funds to people represents an obvious risk of alleged misuse.
34. This option is therefore not recommended by officers, having regard to the financial and legal implications.

Option 3: Maintaining the existing Lendal Bridge online refund process with the end date of 30th June 2015 and publicising this revised date through the same media channels used for the original scheme

35. The existing process has been widely communicated through the usual and appropriate media channels as well as on national television. The extension to the deadline that has already been made would also need to be widely communicated using the same channels to ensure consistency of available information and efficient use of resources. This option carries least risk to ongoing proceedings.
36. As noted at 26 above, the advice of Leading Counsel is that whilst the Council could send out letters as proposed under option 1 drawing attention to the extant scheme, the current level of publicity meets the legal test of reasonableness in relation to the pragmatic approach taken by the Council in all the circumstances.
37. No decision would be required by Cabinet for this option as this option reflects the current decision of the Council.

Council Plan

38. The recommendation supports the Council's core capabilities in relation to delivering against our customer needs.

Implications

39. **Financial:** The extension of the deadline will increase the opportunity for refund requests and thereby is likely to increase the administrative cost to the Authority. The cost of extending and further promoting the current refund process is estimated at between £100-150k for administration of an automatic mailing approach. There remains £558,700 of New Homes Bonus that was awarded for the 2014/15 financial year (and the five following years). It is recommended that £150,000 of this funding is allocated towards covering the costs of administration of the recommended scheme.
40. The full value of fines relating to Lendal Bridge and Coppergate (£1,802k) were included in provisions / earmarked reserves in the Council's accounts in 2013/14. To the end of December 2014 payments in respect of appeals totalling £295k have been made.
41. **Human Resources (HR):** Existing staff resource will continue to support the scheme.
42. **Equalities:** No implications.
43. **Legal:** The current scheme has been confirmed as compliant with the Council's statutory obligations. The Automatic provision of a letter to persons issued with a PCN would more widely communicate the availability of the online refund process without negating the ability to continue to pursue the legal challenge in respect of the Coppergate TPT decision, provided that the letter clearly requires any claim to be made through the online refund process.
44. **Crime and Disorder:** No implications.
45. **Information Technology (IT):** No implications.
46. **Property:** No implications.

Risk Management

47. Risks associated with automatic refunds, (i.e. simply sending cheques to the registered keepers of all vehicles in respect of which PCNs were issued) is high. Risks associated with maintaining the online refund process and increasing publicity and / or automatically writing to the registered owner of the vehicle in respect of PCNs issued as part of the Lendal Bridge trial are comparatively low.

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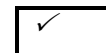
Report
Approved



Date 09/01/2015

Wards Affected: *List wards or tick box to indicate all*

All



For further information please contact the author of the report

Background papers

Cabinet report, 5th August 2014 – Lendal Bridge and Coppergate Traffic Regulation Orders

Cabinet Member for Planning, Transport & Economic Development, 18th December 2014 – Lendal Bridge Repayment Process Deadline Extension

Annexes

Annex A Claim Form