

**Cabinet**

**5<sup>th</sup> August 2014**

Report of the Cabinet Member for Transport

## **Lendal Bridge and Coppergate Traffic Regulation Orders**

### **Summary**

1. The Cabinet is asked to determine whether the Council should continue to pursue its application for a review of the decision to the Traffic Penalty Tribunal Adjudicator (the Adjudicator) in respect of appeals against fines for breach of the Lendal Bridge Traffic Regulation Order.
2. Subject to the decision not to pursue the review of the Lendal Bridge application, to determine if the Council would contest any new applications made for a refund of Lendal Bridge Penalty Charges Notices (PCN's) already paid.

### **Background**

3. The Leader made a decision in April to bring the Lendal Bridge trial to a conclusion. At that 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.
4. However it is now over 3 months since this decision was made and the Adjudicator has not completed the review of the Lendal Bridge or Coppergate decisions and no statutory deadlines exist that require this decision to be made in a timely manner.
5. Considering this significant passage of time and the uncertainty that this imposes on individuals the Cabinet is asked to consider whether to continue to pursue the outcome of the Adjudicator's ongoing review of the Lendal Bridge Trial.
6. In considering this issue the Cabinet is reminded that:

- It is the case that the fines imposed during the Lendal Bridge trial were a means of enforcing the restrictions at that time and not an exercise in raising revenue for the Council
- Having ended the Lendal Bridge trial it is no longer necessary for the Council to enforce the Lendal bridge Traffic Regulation Order
- The Coppergate scheme is, however, a longstanding restriction and is planned to be maintained. The validity of that restriction, and in particular of the order which underpins it, is therefore important to establish for the Council
- The Council has established its intent to form an independently chaired Congestion Commission to explore how the city addresses its transport challenges and full Cabinet is due to consider a report as to scope and membership of the commission at its November meeting.
- While there is uncertainty as to the outcome of the reviews of the Adjudicator's decision the Council continues to divert resources from other important Transport schemes, the significant passage of time and uncertainty also has an ongoing impact on the reputation of the Council, and well being of individuals, and that the ongoing pursuit of individuals for fine income from a trial that has now ended may not be in the public interest.

## **Consultation**

7. The Council's solicitor has prepared legally privileged advice at Appendix 1.

## **Analysis**

### **Option 1**

8. Should Cabinet determine not to proceed with the Adjudicator's review of Lendal Bridge the Authority would need to refund as ordered by the Traffic Penalties Tribunal (TPT). This would only apply to those individuals who have successfully appealed their PCN but to date have not been refunded, as the Council was awaiting the appeals outcome this is expected to effect

approximately 20 motorists. It is proposed that these individuals would be contacted by the Council and a refund made.

9. Should Cabinet determine not to proceed with the review of the Lendal Bridge trial the question arises as to how the Council will deal with those motorists who have not contested their PCN and thereby may in light of a decision not to pursue the Adjudicator's review wish to appeal against their PCN on the grounds that the Council had unlawfully issued them with a PCN.
10. Whilst the Council disputes that it has acted unlawfully it faces an ongoing legal dispute with members of the public who believe rightly or wrongly that the PCN issued to them is unlawful. The Council, therefore, needs to consider the cost of complaints, appeals and potential litigation on an ongoing basis. The recommendations of this report therefore reflect an approach to mitigate this ongoing financial and reputational risk.
11. In order to manage the above risks it is proposed that where a motorist makes an application for refund on the basis that the PCN was issued unlawfully then the Council would make a settlement payment equivalent to a refund of the PCN paid without admitting liability.
12. Where a motorist does not make an application for refund and thereby is not disputing the Council's position the Council will not be proactively seeking them out as no dispute exists between the parties.
13. As the Coppergate Traffic Order is a longstanding traffic order and the Council has made no decision to change this position there is no proposal to withdraw the request for Adjudicator's review for Coppergate.

## **Option 2**

14. Cabinet may determine that the review by the Adjudicator should proceed. As noted in the background there are a number of matters that arise from this course of action:
  - i. Uncertainty for all motorist affected by the Lendal Bridge Trial.

- ii. Uncertainty for the Council although a positive outcome for the Council would mean full retention of the PCN revenues received to date.
  - iii. No further benefits are being accrued from the trial as it has finished.
  - iv. Council Resources are being consumed which could otherwise be directed to other traffic schemes.
15. The uncertainty that exists is driven by the inability for the Council to determine what the outcome of the Adjudicator's review will be or to the extent that this was not favourable to the Council the outcome of any subsequent Judicial Review. A number of such schemes have nationally been found against Local Authority's for a variety of reasons often to do with process and as the legal process can / would take many months to complete a forensic analysis of the process taken for Lendal Bridge does pose a risk to the Council and extends the uncertainty for all parties around a trial that is now complete.

### **Coppergate**

16. Should the Council not seek to review the Coppergate decision then we would be left with uncertainty as the approach of the Adjudicator to future appeals in respect of the continuing movement restrictions.

### **Council Plan**

17. The Council uses traffic regulation orders to assist meeting the Council's aims to get York moving and protect the environment. The proposal to establish a congestion commission in the Autumn to assist in determining how the Council will meet it's aims will be facilitated by the removal of the uncertainty around the Lendal Bridge Trial.

### **Implications**

18. **Financial:** Subject to the level of applications by the public, the implementation of the recommendation may require the repayment of all the PCN revenue received by the Council for the Lendal Bridge trial. As noted in the report, the trial was not intended to raise revenue for the authority and, therefore, all of the income received from fines has been set aside in a specific

reserve as part of the preparation of the Council's accounts for 13/14.

19. **Human Resources (HR):** Administration of the payment process will be met from existing resources.
20. **Equalities:** There are no equalities impacts associated with this report.
21. **Legal:** In light of the fact that there is an ongoing legal challenge and the Council is contemplating the possibility of future judicial review proceedings legal advice is contained in an exempt annex to this report
22. **Crime and Disorder:** Providing greater certainty to the public in respect of the Lendal Bridge PCN and continuing to pursue the Coppergate decision will provide greater clarity to the council's enforcement activity in the future.
23. **Information Technology (IT):** Officers in ICT will be engaged to automate the payment process as far as possible and provide easy access to motorists wishing to challenge their PCN.
24. **Property:** There are no property impacts associated with this report.

### **Risk Management**

25. There is a reputational risk to the Council associated with either continuing with or withdrawing the request for a review. There is also a risk associated with any subsequent legal challenge by Judicial Review of being unsuccessful. Should Cabinet accept the recommendations of the report, there is a risk of potential fraudulent claims for a compensation payment and it is proposed that should a decision be taken not to contest any new claims against the Lendal Bridge Trial then a simple but robust system subject to internal audit review would be put in place to facilitate payments.
26. It is also possible that even if Cabinet agrees the recommendations of this report individuals and organisation will continue to dispute the processes undertaken by the Council. Whilst this risk cannot be eliminated the proposals in this report reduce the risk of challenge as any aggrieved motorist will be able

to make an application for a payment equivalent to their PCN charge.

### **Recommendations**

27. Cabinet is asked to consider:

- 1) Instructing Officers to confirm the withdrawal of the Lendal Bridge review is made public through the Council's normal communication channels;
- 2) Asking Officers to make arrangements where members of the public contest their PCN for the settlement payments equivalent to PCN fines paid in respect of the Lendal Bridge trial to be made;
- 3) Ensuring that a robust mechanism is put in place to protect the public purse from fraud when applications are made. That this be done at the earliest opportunity to provide certainty to both the Council and individuals but is subject to internal audit review;
- 4) Asking Officers to confirm to the Traffic Penalty Tribunal that the Council will be taking these steps in relation to the Lendal Bridge trial only;
- 5) Confirming that the Council wishes the review into the Coppergate scheme decision to continue and will not be making any refunds in respect of Coppergate.

Reason: It is now the case that the Lendal Bridge trial finished over 3 months ago, will not require future enforcement and the fines income was not intended as a revenue income and remains in Council reserves. Notwithstanding these facts the Council and Motorists remain in a position of uncertainty due to the ongoing legal process associated with the enforcement of the PCN.

Therefore Cabinet can determine if it is in the Council's interest to sustain the uncertainty for the Council and individuals as to the validity of Penalty Charge Notices. That the ongoing diversion of Council resources from other transport congestion schemes is not value for money and that the Council needs to concentrate its limited resources and the results of the Lendal Bridge trial on working through the congestion commission to address the growing issue of congestion in the city.

## Contact Details

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	<b>Report Approved</b>	√	<b>Date</b> 28/07/2014
<b>Specialist Implications Officer(s)</b> None			
<b>Wards Affected:</b> Guildhall			√
<b>For further information please contact the authors of the report</b>			

## Background Papers:

None

## Annexes

Appendix 1 - Legally privileged advice