

**QUESTIONS TO THE
LEADER OF THE COUNCIL, CABINET MEMBERS
AND/OR
CHAIRMEN OF COMMITTEES**

Thursday 5 October 2017

**1. QUESTION FROM COUNCILLOR PROWSE
Re: Dispensation Permits**

The Council will recall my question in May regarding the lawfulness of one of the charges relating to the daily charge over and above the application fee. The reply was not available at the meeting. Pursuant to a request a reply was furnished on the 24th July. The letter was signed by Councillor Hughes, the reply is as follows:

“I refer to your question at full Council on 25 May relating to the Council’s parking dispensations scheme. The matters you raised have been considered by the County Solicitor and it is agreed that the two part pricing structure in respect of dispensation notice permits needs to be reviewed. I have asked officers to develop a revised pricing structure. These proposals will be reviewed by the County Solicitor and changes proposed as soon as possible. Users will be contacted directly regarding these changes.”

It is apparent that recent legal advice has confirmed my assertion that the second charge is not lawful. My questions are as follows:

- a) What date was the Traffic Order relating to the dispensation scheme sealed and effective from?
- b) Given the reply as above please confirm that this advice was from a barrister and at what cost to the authority?
- c) On what date was the reply received by this authority?
- d) Accepting that the daily charge is no longer chargeable, on what date did this authority instruct employees to cease charging? (please supply a copy of that notice)
- e) How many permits have been issued since the effective date? (annual permits that is)
- f) How many applications for the daily charge have been made since the effective date?
- g) How many daily charges have been made and issued between the date of receipt of the legal advice and the issues of the cessation notice?
- h) Does the Cabinet Member agree that an apology press release should now be made?
- i) What does the Cabinet Member propose to correct this negligent error?
- j) Does the Cabinet Member agree that all those who applied for the daily charge will now be offered a refund? (on account that most applied online and paid by card the refund is easily achieved)
- k) Does the Cabinet Member propose to introduce a new Traffic Order or amend the current one?

REPLY BY COUNCILLOR HUGHES

- a) The most recent Traffic Order relating to dispensations, and applying the current charging mechanism was effective from 21st September 2015
- b) Advice was sought from a barrister, the cost in respect of this was £2000 (plus VAT)
- c) The advice was received on 7th July 2017, further clarification was provided with discussion on appropriate remedial actions being finalised on 27th July 2017
- d) The instruction to cease charging was issued on 30th August 2017 to our contractor:

“Further to earlier conversation, please could you action the change to charging for our daily dispensations. This is following legal advice that a two part charge is problematic and that we should only charge for “consideration” of applications.

So we will retain the £5 application fee, but zero the additional costs per day. Therefore for the time being there will be a flat rate of £5 irrespective of whether an application is for 1 or 21 days.

(We will be arranging a new TRO to put a new more appropriate charging regime in place in due course)”.

- e) Since September 2015, 3,958 Annual Dispensation Permits have been issued.
- f) Since September 2015, 4381 Daily Dispensations of various durations between 1 and 21 days) have been issued
- g) Between 7th July 2017 and 30th August 2017, 310 Daily Dispensations of various durations between 1 and 21 days) have been issued.
- h) The situation will be made public on our web pages, along with the proposal to advertise a new Traffic Order, communications will be sent direct to all users on this matter. A press release will be made to launch the new service and reiterate offer of refund.
- i) A new Traffic Order will be advertised to apply an appropriate charging mechanism. As stated above the proposals will be direct marketed, with a press release at launch.
- j) It is agreed that an offer of refund should be made.
- k) A new traffic order will be advertised to ensure an appropriate charge is applied.

2. QUESTION FROM COUNCILLOR PROWSE

Re: County Hall Barriers

In May 2015, I objected to a formally advertised Traffic Order which amongst other things proposed to include the lawfulness of the double yellow lines between the two sets of barriers at the County Hall Site. In a written response at the time, it was asserted by this Authority that the road between the barriers was not a road, it being owned by the Authority.

The advert to seal the Traffic Order was made on 25 June 2015. No challenge was made within the six week period to the High Court. In view of a recent event I have conducted further research. The advert pertaining to the double yellow lines was clearly made subject to the provisions of sections 1, 2, 32, 25 & 39 of the Road Traffic Regulations Act 1984. Sections 1 & 2 of this Act concern the regulation of the work road and its definition. They do NOT relate to off street car park areas. By this definition the Authority (its legal department) has clearly advertised the road between the barriers to be a road. If the Authority did not wish to have this road cited as a road then it should not have advertised it as section 1 & 2.

Can the Cabinet Member confirm that the legal department made a glaring error in their advert? If he agrees then as he is the Highways Cabinet Member, what does he intend to do about the illegal barriers which do not have their own separate traffic order?

REPLY BY COUNCILLOR HUGHES

The provisions of the Road Traffic Regulation Act 1984 apply to all “lengths of highway or of any other road to which the public has access”. The road between the two sets of barriers at County Hall is a road to which the public has access and can therefore be the subject of the TRO. This road is not however a public highway. It is not shown on our official records of maintainable public highways and is privately owned by the Council. As the road is not a public highway there is no requirement for a separate TRO in respect of the barriers. If you wish to discuss the status of the County Hall road further then I am happy to arrange a meeting to discuss directly with the legal team.

3. QUESTION FROM COUNCILLOR SHAW

Re: Recruitment of EU Citizens to health, social care and education

National evidence shows both that recruitment to health, social care and education jobs from other European Union countries has fallen drastically and that the numbers of other EU citizens leaving employment in these sectors has risen, since the Brexit vote. Please provide the most recent figures, compared to those for preceding years, for the numbers of citizens of other EU states:

- (1) recruited into health, social care and education employment in Devon
- (2) leaving health, social care and education employment in Devon
- (3) currently in health, social care and education employment in Devon.

REPLY BY COUNCILLOR PARSONS

We do not have the fields populated within our HR system (Oracle) that would supply the data to allow us to report on this.

4. QUESTION FROM COUNCILLOR SHAW

Re: Social Workers Survey and Reduced Care Packages

A new national survey of social workers by Community Care Magazine, supported by the Care and Support Alliance, shows that most respondents feel expected to reduce care packages because of cost pressures in their local authority, while many feel they are unable to provide people with the care they needed, or are not confident that the reduced care they have to administer is "fair and safe". What opportunities do we provide for Devon social workers to express their opinions about the care packages they arrange, and do we have any data which shows to what extent they share concerns similar to those reported by this survey?

REPLY BY COUNCILLOR LEADBETTER

Social Workers are key to assessing the level of support that is required to keep people safe, meet eligible needs, and to promote independence. In doing so, Social Workers must adhere to both requirements of legislation and local and national policy. Furthermore, Social Workers must comply with the requirements of the regulatory body, the Health and Care Professions Council, and must adhere to professional standards.

Social Workers in Devon have the opportunity to speak to their Manager about any support arrangement that they are planning, and indeed are required to seek Manager approval where the cost of a package of support proposed is above a threshold amount. Both Manager and Social Worker will need to be confident that the support arrangements proposed and authorised are safe and offer support in line with Care Act requirements.

There are a number of other routes through which Social Workers can raise any issues or concerns. Social Workers are, for example, represented within the Senior Management Team by the Principal Social Worker. This gives an avenue through which concerns can be raised and considered alongside reporting through the line management structure.

By way of context, national evidence suggests that Devon has historically provided a higher level of support than other authorities nationally, and within "statistical neighbour" groups. The latest benchmarking information demonstrates that relative to our population, we still provide care to more people than comparators.

Community-Based Services
Rate per 100,000 population
As at 31 March 2017



Although the social care budget for Devon and other authorities has been increased in 2017/18 to meet inflationary and demand pressures, Social Workers and all employees must take care to ensure effective use of public funds. We have supported practitioners through guidance and training to ensure that they are properly focussed on balancing safety and risk on the one side with promoting independence and reducing reliance on funded support where appropriate. In line with Care Act guidance, and the Council's Promoting Independence policy, we seek to ensure that in all situations Social Workers will consider opportunities for people to develop skills and self-reliance; look to their family and community networks for support; and make use of assistive technology to ensure safety and wellbeing.

5. QUESTION FROM COUNCILLOR CONNETT
Re: Private Finance Initiative Contracts

What would be the cost to Devon County Council if it cancelled its Private Finance Initiative contracts, including those for the schools in Exeter?

REPLY BY COUNCILLOR CLATWORTHY

It is not possible to accurately estimate the costs of terminating the Council's PFI and similar contracts, without entering into negotiations with the contractors and also grant paying organisations.

The audited Statement of Accounts for 2016/17 discloses the payments that are to be made under PFIs and similar contracts from 1 April 2017 for the remainder of the contracts.

- £210 millions for Exeter Schools PFI Scheme
- £322 millions for Exeter Energy from Waste (Public Private Partnership - although similar to a PFI this does not attract any support from Government and is therefore not technically a PFI)
- £139 millions for the Council's share of the Devonport Energy from Waste scheme. The lead authority in the South West Devon Waste Partnership is Plymouth City Council. Torbay Council is the third local authority partner.

These future payments include the costs of the construction of the buildings, plant and equipment and interest. Future payments also include the future costs of maintenance, facilities management and in the case of the energy from waste plants, the operating costs.

These future payments are gross - that is they do not take into account PFI credits and other income that offset the costs to the Council. Consequently, the contractor may be able to provide

a price to terminate the contract but the Council would need to secure the agreement from Government to avoid any financial loss from a termination.

For example, the Council's financial contribution to the Schools PFI is a relatively small amount compared with the financial contribution from Government and schools. When the Schools PFI commenced in 2005/06, the total payments under the contract were established at £348 millions. Set against this was a grant of £248 millions that would be received from central government. Of the balance, £75 millions would be met from delegated school budgets and the remainder (£25 millions) would be financed by the Council.

With energy from waste contracts there are agreements with other third parties about the supply of energy. The costs of terminating these contracts would have to be negotiated. In the case of Devonport Energy from Waste, the final costs to the Council would depend upon the negotiating positions of partner authorities and Government.

Future payments include contractor costs that have yet to be incurred. Consequently, the termination costs of these contracts would be lower than total future payments but how much lower would depend on negotiations with the contractors. The final cost to the Council would also depend on negotiations with partners (other councils, schools and Government) to determine the level of grants and contributions that they are prepared to pay to finance the termination of these contracts.

6. QUESTION FROM COUNCILLOR CONNETT

Re: Devolution

What was the outcome of the Leader's recent 'Devolution' meeting with the Government to press the case for another layer of bureaucracy and red tape to run Devon and Somerset?

REPLY BY COUNCILLOR HART

The purpose of the meeting with the Minister was to press the case for the Government to devolve new powers and funding to Devon. It certainly was not to create another 'layer of bureaucracy'. Indeed, one of the first topics on our agenda was to lobby Government to move away from its focus on governance and mayoral Combined Authorities and instead debate the real opportunities that I believe devolution can deliver. We called on the Minister to take us into formal negotiation and relinquish control of a range of centrally controlled powers to help non-metropolitan areas like Devon and Somerset to thrive. He was impressed with the level of unity and hard work undertaken with 22 other partners to develop plans to improve the prosperity of our area. We made the offer to the Minister to give us the powers so that we can make a difference that will benefit the whole economy. In particular, I focused on the importance of Government delegating powers to improve the delivery of training and skills in our region and in doing so boost productivity. The current skills system, with its fragmented budgets and perverse incentives, does not serve our people or our businesses well. We believe we can do a better job. The case for devolution for our region is real. We have some of the lowest waged areas in the country but we can only help to solve these local problems if we have the control over the tools that will make a difference. This is not about a layer of bureaucracy but an attempt to get control of our future. The alternative is that we sit back and are overlooked as those with a greater and united voice reap the rewards.

7. QUESTION FROM COUNCILLOR PROWSE

Re: Pay & Display Tickets

The recent purchase of an on street pay & display ticket from this authority revealed that it had the expression: "NOT TRANSFERABLE" on the front.

- a) What is the contravention code?
- b) When was a Traffic Order created to make such a statement valid and lawful?
- c) My understanding that having researched this it appears that such an expressions is unregulated

- d) Who authorised this to be included on our tickets?
- e) For what purpose was it included?

REPLY BY COUNCILLOR HUGHES

A pay & display ticket is valid for the parking place for which it was purchased, with appropriate tariffs and maximum stay periods applied. They are not transferrable around a community, or, between on and off street areas, or, between communities.

Paragraph 25 of our Traffic Regulation Order imposes the condition that the period of parking is purchased for use in that specific parking place "The initial charge is payable on the leaving of a vehicle in a parking place referred to in Schedule 5 and is the appropriate payment specified in corresponding tariff of Appendix C to purchase a ticket from a pay and display ticket machine or a payment made by means of a mobile phone or device to cover the anticipated length of stay subject to the maximum stay permitted at that parking place".

If it was identified that a ticket was being used in a parking place other than that in which it was purchased, then contravention code 06 would apply (Parked without clearly displaying a valid pay-and-display ticket or voucher).

If there remains concerns over the rules governing, or approach to, pay & display parking in Devon, the Traffic Management Team are happy to discuss the matter with the Councillor and if necessary I am happy to facilitate that discussion.

8. QUESTION FROM COUNCILLOR PROWSE Re: On Street Pay & Display Machines - Car Registration Details

To what extent has this authority received negative feedback over the accuracy and complexity of number plate input and for those who choose to pay by phone via a third part?

REPLY BY COUNCILLOR HUGHES

Having reviewed customer contact records for the last 3 years it would appear very few complaints have been received relating to the need to provide vehicle registration data, and it is not considered to be a significant issue for drivers in Devon.

If the Councillor is aware of any specific concerns I would ask he raises them with the Traffic Management Team to respond directly or, if necessary, I would be happy to discuss his concerns with him directly.

9. QUESTION FROM COUNCILLOR BRENNAN Re: School Uniform – Compliance with Policy

"In light of the boys at Isca Academy who overcame their school uniform 'no shorts' policy during the summer heat by wearing skirts, which made headlines nationally and internationally, I would like to ask the Cabinet Member for Children's Services and Schools what guidelines DCC provides to our county schools, academies and free schools in terms of school uniform?"

In particular, what do we do to ensure that schools are adhering to equality policies by ensuring that there are no listed differences as to what boys and girls are expected to wear, but rather that there is a single uniform list of options that all pupils can choose from? Does the Cabinet Member agree that having separate uniform requirements for boys and girls is not only discrimination between the sexes, but it is also discriminatory against any pupils who may be transgender, or who may not identify as one or other sex? Does he also agree that schools should ensure that all pupils, both girls and boys, should feel comfortable in their classrooms in all weathers?

In addition, what does DCC do to ensure that schools are following school uniform guidance from the Department for Education in relation to the cost to parents? This states that:

'The school uniform should be easily available for parents to purchase and schools should seek to select items that can be purchased cheaply, for example in a supermarket or other good value shop. Schools should keep compulsory branded items to a minimum and avoid specifying expensive items of uniform e.g. expensive outdoor coats.

Governing bodies should be able to demonstrate that they have obtained the best value for money from suppliers. Any savings negotiated with suppliers should be passed on to parents wherever possible. Schools should not enter into cash back arrangements. Exclusive single supplier contracts should be avoided unless regular tendering competitions are run where more than one supplier can compete for the contract and where best value for parents is secured.'

A month or two after many Devon parents have spent, in some cases, hundreds of pounds on school uniforms, can the Cabinet Member confirm that DCC is proactive in ensuring that parents and carers are provided with the best value for money when it comes to purchasing these basics that children need to be able to even access their education?"

REPLY BY COUNCILLOR MCINNES

Governance regulations (Governance Handbook - January 2017), require that in all schools, Governing Boards decide whether there should be a school uniform and other rules relating to pupils' appearance, and if so, what they should be. Governing Boards also have a duty of course to ensure that they meet the duties of the Equality Act 2010 and the specific education sections of the Act, for school pupils.

The Department for Education last issued (non-statutory) general guidance on school uniform in September 2013, relating to best practice on developing school uniform policy for Governing Boards. The Department strongly encourages schools to have a uniform believing that it can play a valuable role in contributing to the ethos of a school and setting an appropriate tone.

The onus rests on the Governing Board to therefore decide: whether to have a uniform, what that uniform should be and where it can be obtained from - with a need to consider the cost of uniform and the availability of supply sources.

Governing Boards need to think very carefully about introducing any changes to uniform policy and would be advised to take into account the views of parents and pupils on any significant changes. Governing Boards also need to consider carefully any reasonable requests to vary their agreed policy, in particular to meet the needs of any individual pupil to accommodate their religion or belief, ethnicity, disability or potentially gender based issues.

In formulating its school uniform policy, a school will need to consider its obligations not to discriminate unlawfully. Governors should be willing to consider reasonable requests for flexibility in the uniform policy for an individual pupil to accommodate particular social and cultural circumstances.

There is no statutory duty for the LA to monitor schools adherence to the guidance and any disputes about school uniforms should be resolved locally and if necessary pursued in accordance with the school's complaints policy.

10. QUESTION FROM COUNCILLOR GREENSLADE Re: Traffic calming measures

Some months ago work was done with support from my community funds to provide traffic calming along St George's Rd, Barnstaple.

To date nothing has happened to install the calming when can I expect this to happen?

REPLY BY COUNCILLOR HUGHES

The Traffic Regulation Order and notices for the introduction of the 20mph speed limit and the road humps is currently being processed and should be advertised prior to Christmas. If there are objections to the Order these may need to go to the April meeting of the North Devon HATOC, and as such it is unlikely that the construction of the works will take place until June/July 2018.