



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

21 September 2023

Report of the Executive Director - Place

Changes to Trading Standards Compliance Policy in relation to Weight Restriction Enforcement

(Cabinet Member for Health and Communities)

1. Divisions Affected

1.1 County-wide.

2. Key Decision

2.1 This is a key decision because it is a decision made in the exercise of a Cabinet function which is likely to: be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the county area.

3. Purpose

3.1 To seek Cabinet's approval to change the Council's current Trading Standards Compliance Policy by removing specific references to the prosecution of weight restriction cases, including Appendix 1 which outlines the general approach to decision making in respect of these cases and contains additional criteria to be considered when determining how such cases should be progressed.

3.2 The amendments sought are necessary following a decision by the police to no longer provide driver details to the Council and the introduction of new inter-agency collaborative processes which accord with this decision.

4. Information and Analysis

- 4.1 This report sets out the proposals to alter the current arrangements with the Police to pursue breaches of weight and environmental restriction enforcement. Over the last 18 months, Derbyshire Police and Trading Standards Services (TSS) have been in extended dialogue to consider alternative processes that would acknowledge the ongoing issues of weight restrictions in certain parts of the County. A resulting proposal has been agreed by both partners to continue an achievable level of monitoring in the affected areas. The proposed working arrangement with the Police would require, as set out in the recommendation, changes to the Council's current Trading Standards Policy (including Appendix 1).
- 4.2 The proposed new arrangements have been driven by Derbyshire Police confirming that they are now no longer able to process the vehicle owner checks that have previously supported the weight restrictions investigative process undertaken by TSS.
- 4.3 This change would have significant implications for TSS enforcement activity, since it effectively prevents the Service from undertaking further retrospective investigation in cases where vehicle owners choose not to co-operate.
- 4.4 There are a significant number of structural and environmental Heavy Goods Vehicle (HGV) weight restrictions on Derbyshire's road network. These restrictions were introduced by Derbyshire County Council (DCC), as the local highway authority, to help protect bridges and environmentally sensitive areas from the passage of large HGVs.
- 4.5 Structural weight restrictions are intended to help protect bridges or other highway features that could be damaged by the weight or size of continuous HGV traffic. The restriction usually applies over a short length (such as a bridge), and there are generally no exemptions for access because of the safety related requirement for the restriction.
- 4.6 HGV weight restrictions are imposed by the Highway Authority by means of a Traffic Regulation Order (TRO) under the RTRA. This process must also consider the alternative routes for vehicles that will be affected. Exemptions can be made in the TRO to allow loading and deliveries within the restricted area as local circumstances require. HGV traffic above the weight limit prescribed by the Order must use alternative (and more appropriate) routes to their destination.

- 4.7 Environmental restrictions are introduced to help protect rural or urban areas that are unsuitable for HGVs because their layout or the surrounding environment cannot safely accommodate or is unsuitable for HGV traffic. An example might be an historic town centre with narrow streets and pavements or a country lane that could be used as a short cut between two main roads/towns. Environmental HGV restrictions can also be applied over large areas, forming a zone. Generally, these environmental restrictions are targeted at heavy goods vehicles over 7.5 tonnes, which would typically include vehicles with three or more axles (and some with two axles). Road Traffic legislation, specifically the Road Traffic Regulation Act 1984 (RTRA), makes it an offence to breach an HGV weight restriction.
- 4.8 Across most authorities in the UK, the enforcement of these restrictions is routinely a Police responsibility because they have powers under the RTRA that allow them to stop and inspect vehicles and enforce regulations as appropriate. In such circumstances, a Fixed Penalty Notice (FPN) can be issued by the Police to the driver of a vehicle for contravening a TRO, such as an HGV weight restriction.
- 4.9 Given the potential impact on communities, the Council has historically undertaken enforcement of the restrictions, including prosecutions. Within the Council, the task of enforcement and investigation was given to TSS. Unlike almost all other legislation enforced by TSS, there is no statutory duty placed on the Council to enforce this legislation. Most of the matters investigated arise because of sightings reported by concerned residents.
- 4.10 TSS received 575 complaints about breaches of weight restrictions during 2021 – 22, mainly submitted via an online form. Investigations were pursued where complainants agreed to submit witness statement were agreed with a view to potential formal action.
- 4.11 A total of 210 breaches in relation to TROs were subject to further enquiries/investigations during the year 2021-22, resulting in warnings, caution, or prosecutions. Twenty-eight prosecutions concluded in 2021-22.
- 4.12 Investigations by TSS present more procedural obstacles than investigations undertaken by Police counterparts. Critically, Council officers do not have the same legal powers to stop vehicles at the roadside, or require the provision of information as to the identity of the driver so enforcement relies on other evidence gathering. A summons to court may take many months to materialise due to the process involved. The issuing of a summons has often been reliant on Police support to

TSS, whereby the Police have utilised their statutory powers to require a vehicle owner to provide details of the driver. Failure to provide driver details following receipt of a notice from the police to supply driver details is in itself a separate offence.

- 4.13 Enquires are complicated by the exceptions often in place to allow limited access to HGVs within restricted areas. Although HGVs can be a problem, they are often essential in supporting local businesses and communities. TROs cannot prevent all HGV use in a given area. In some cases, HGVs must use unsuitable roads as access is required for local deliveries to certain businesses. HGVs can legally enter a weight restricted area to access premises or to load/unload and, once they have entered a zone, they can legally exit that zone by any route.

The Proposal

- 4.14 The new proposal would involve TSS continuing to collate information on reports from the public, through the existing webpage. This would explain the process and ensure anyone reporting is aware of the change to enforcement.
- 4.15 The information would be shared with Derbyshire Police Roads Policing Unit (RPU). Analysis would be undertaken to identify particular areas generating the most reports, from a range of affected residents.
- 4.16 The proposed approach would also involve organised joint enforcement operations at key locations – using local intelligence and evidence and where logistics and resources allow. Given that the Police retain full powers for moving traffic work, these joint operations would be led by the RPU but may include other agencies such as Vehicles and Operator Services Agency (VOSA) as well as TSS. The operations would focus on the Police priorities of “Engagement, Partnership, Awareness, Prevention and Enforcement”.
- 4.17 Information, regarding the joint operations would be fed back to the local communities’ post operation via a joint communication and engagement approach between the Council and the Police. Where appropriate, specific investigations and formal action may follow from enforcement activity. This action could be taken either by RPU or TSS.
- 4.18 This proposed approach would enable TSS to continue to work with and assist Derbyshire Police in undertaking planned exercises in-situ, where HGV’s will be subject to roadside stops, where practical, and resources allow.

- 4.19 TSS follows a Compliance Policy, the cornerstone of which is that the actions of Trading Standards in enforcing the law are undertaken in a fair and consistent manner, using guidelines which are unambiguous and transparent. Appendix 1 of the Compliance Policy sets out additional criteria when determining whether to prosecute following an allegation that a heavy goods vehicle has breached a weight restriction under the Road Traffic Regulation Act 1984. It refers to all reports regarding alleged breaches being considered for potential prosecution following a warning in the first instance unless there are aggravating circumstances.
- 4.20 Through a proposed amendment to the TSS Compliance Policy, the Council would be considering potential weight restriction enquiries in the same context as all other investigative work, rather than having specific content for this area of legislation.

5. Consultation

- 5.1 Not specifically required in relation to the content/proposals set out in this report.

6. Alternative Options Considered

- 6.1 Option 1: To retain the current Compliance Policy together with Appendix 1 (unamended). Retaining the Compliance policy including Appendix 1 would be implying a continuing level of TSS intervention which is no longer viable in the absence of support from the police to assist in driver identification.
- 6.2 Option 2: Amendment of the current Compliance Policy in a manner which requires TSS to continue with the initial investigatory work but only processing this to the point of an advice or warning letter. This approach would be inconsistent with the proposed new working arrangements. This would also not in itself act as a deterrent to those breaching orders and could be considered an inefficient use of resources.
- 6.3 Option 3: Amend the current Compliance Policy to refer to TSS withdrawing from all weight restriction activity. This would risk the Council taking an isolated approach, failing to work in partnership with Derbyshire Police at a point where they have taken a lead on weight restriction issues.

7. Implications

7.1 Appendix 1 to this report sets out the relevant implications considered in the preparation of the report.

8. Background Papers

8.1 Derbyshire County Council Trading Standards Service Compliance Policy.

9. Appendices

9.1 Appendix 1 – Implications.

10. Recommendations

That Cabinet resolves to authorise the Trading Standards Service Compliance Policy to be amended by the deletion of:

- a) the paragraph entitled “Weight restriction Cases”.
- b) Appendix 1.

11. Reasons for Recommendations

11.1 The Council does not have a statutory duty to enforce weight restrictions and unlike the police has no legal power to compel the registered keeper of a vehicle to provide details of a driver. In view of the changes to police practices as outlined above it is therefore no longer appropriate to have within the TSS compliance policy a separate paragraph and appendix specifically tailored to weight restriction cases.

11.2 The Compliance Policy should therefore be simplified as recommended to reflect that future reports of offences of this nature would be referred to Derbyshire Police as the primary agency responsible for enforcement under the new inter-agency arrangements.

12 Is it necessary to waive the call-in period?

12.2 No.

Report Steve Allen
Author:

Contact steve.allen@derbyshire.gov.uk
details:

Implications

Financial

- 1.1 There are no financial implications. No savings will accrue as the resources undertaking this work will be diverted to support compliance with other statutory functions.
- 1.2 Implementing any of the dismissed options outlined in paragraphs 6.1 to 6.3 would incur additional financial costs due to the impact on staff resources and level of activity.

Legal

- 2.1 Historically, the Council has used its general powers set out in Section 222 of the Local Government Act 1972 to prosecute breaches of weight restriction regulations. Section 222 gives Councils a wide power to prosecute where it is considered “expedient for the promotion of protection of the interests of the inhabitants of their area”. Unlike other consumer protection legislation, such as the General Product Safety Regulations 2005, there is no legal duty upon the Council to enforce weight restriction Regulations within its area.
- 2.2 Section 172 of the Road Traffic Act 1988 places a specific legal duty to give information as to the identity of a driver in certain circumstances. However, this duty only arises when a request is made by or on behalf of a chief officer of police or the Chief Constable of the British Transport Police Force. If an individual refuses to provide information following a request from the Police, they commit a separate offence for which they may be prosecuted. However, the Council has no equivalent legal power to obtain the provision of driver information. Considering the Police position that they will no longer carry out checks on behalf of the Council, the Council is unable to effectively carry out enforcement activity in this area following its previous processes.
- 2.3 The TSS attempting this enforcement work following the withdrawal of Police support in their investigations would be likely to present evidential difficulties in the event suspected offenders chose not to co-operate with trading standards officers investigating these matters. In such cases a driver’s refusal to co-operate would be likely to result in there being insufficient evidence to enable a successful prosecution. Pursuing only those cases where drivers had made admissions would be contrary to the principles of the Legislative and Regulatory Reform Act 2006 which requires decisions to be made in a transparent,

accountable, proportionate and consistent manner, targeted only at cases in which action is needed. This would also be contrary to the spirit of the Regulators' Code laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 which the Compliance policy has been designed to demonstrate a commitment to as only those accepting that they had driven the vehicle would face prosecution whereas those who were evasive or refused to co-operate with TSS would face no further action.

Human Resources

3.1 None directly as a result of this report.

Information Technology

4.1 None directly as a result of this report.

Equalities Impact

5.1 The author of this report has been mindful of the Council's equality duty, set out in Section 149 Equality Act 2010 which requires public authorities to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.2 In order to mitigate any possible impact of the decision on any particular group with protected characteristics and the wider public, from the recommended change to the Policy, it is proposed to provide information to the public on the Council website explaining the change in approach. The opportunity would also be taken to review how the data received by the Council will be handled to ensure continued compliance with data protection legislation.

Corporate objectives and priorities for change

6.1 None of specific relevance.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 **Environmental** – The restrictions in place on the County’s roads protect local communities from the disruption and damage caused by large goods vehicles travelling unnecessarily along unsuitable routes.
- 7.2 **Risk Management** – Those reporting alleged breaches and residents in affected areas, now have a significant expectation of a level of enforcement activity by the Council. Changes to the work will require an appropriate explanation to detail the change in use of data provided by the public, the nature of any surveillance/enforcement in future and also that the work will be effectively led by Derbyshire Police.