

Date: 11 February 2015

Item: Enhancing Advertising Board Enforcement

This paper will be considered in public.

1 Summary

- 1.1 This paper provides a summary of a trial to improve compliance with Advertising ('A') Board legislation on the Transport for London Road Network (TLRN) through on street enforcement, and sets out TfL's proposals for delivering improved compliance with 'A' Board restrictions across the agreed zero tolerance areas.

2 Recommendation

- 2.1 **That the Panel notes the paper.**

3 Background

- 3.1 Freestanding 'A' Board signs can constitute an unlawful obstruction, nuisance and a potential danger to the public. They interfere with the movement of pedestrians, particularly older people, or those with visual or mobility impairment issues.
- 3.2 TfL, as with other highway authorities, has a duty under the Highways Act 1980 (the 1980 Act) to 'assert and protect the rights of the public to the use and the enjoyment of the highway.' It is an offence under this Act, section 137 (1) to wilfully obstruct a highway. In some cases there could be difficulties in ascertaining the extent of the highway which often leads to land ownership disputes. However these issues are assessed on a case by case basis and enforcement action is only contemplated where TfL is satisfied that the footway forms part of the highway.
- 3.3 It is an offence under the 1980 Act, section 137 (1) to wilfully obstruct a highway - 'if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable on conviction to a fine not exceeding level 3 on the standard scale.' Section 149 of the 1980 Act includes provision for removing anything that is '*so deposited on a highway as to constitute a nuisance, the highway authority may serve a removal notice and failure to comply may make a complaint to a magistrates' court seeking a removal and disposal order.*' Although TfL recently successfully prosecuted a local business for highway obstruction for displaying an A Board on the footway, enforcement activity using the 1980 Act relies on intervention of the Magistrates Courts and can be slow, time consuming and expensive and as a result is infrequently used.

- 3.4 The London Local Authorities and TfL Act 2003 (the 2003 Act) provides alternative and potentially more effective powers to deal with 'A' Boards. Section 8 of the Act allows for the issuing of Fixed Penalty Notices (FPNs) and removal of 'A' Boards without the need to obtain a Court order. Payment of the FPN frees the offender from any subsequent prosecution, however, where an offender fails to pay the FPN TfL may follow up with a prosecution. The fine is currently set at £100 and discounted to £50 for prompt payment.
- 3.5 TfL has identified a number of priority locations on the TLRN, based on high levels of footfall, where it has adopted a zero tolerance approach to 'A' Boards. These locations are agreed by Surface Board and are kept under regular review.
- 3.6 London Travel Watch has long been campaigning for more action to tackle 'A' Boards across all of London's streets. TfL representatives and the Chair of Surface Transport Panel met with London Travel Watch in January 2015 to discuss TfL's approach to dealing with 'A' Boards. London Travel Watch were updated on the results from the recent trial of using on-street enforcement officers to engage with business owners, support removals and take enforcement action focussed within pilot locations in the zero tolerance zones. London Travel Watch was very supportive of TfL's plans for enforcement action going forward. Their position is that they want to see the elimination of A Boards across the whole of the TLRN and borough roads and we have taken this into consideration in arriving at the enforcement strategy.

4 Enhanced 'A' Board Enforcement Trial

- 4.1 In January 2014, TfL, working with the Metropolitan Police Service (MPS) began a six month trial of enhanced 'A' Board enforcement in three priority locations:
- a) Stoke Newington High Street (Hackney);
 - b) Kingsland High Road (Hackney); and
 - c) Tooley Street/Borough High Street (Southwark)
- 4.2 These areas were selected because of their high pedestrian flows, the significant number of 'A' Boards and because TfL's traditional approach of issuing removal notices to businesses and then removing the Boards, was not delivering sustained compliance in these areas.
- 4.3 The trial used Traffic Police Community Support Officers (TPCSOs) from the TfL-funded MPS Safer Transport Command,¹ working alongside TfL staff, to step up the level of enforcement against offenders using powers under Section 8 of the 2003 Act. TPCSOs regularly patrolled the route in uniform and gathered evidence of non-compliance and engaged with businesses to explain the rationale of TfL's actions and the risk of non-compliance. TfL continued to issue removal notices and then remove 'A' Boards where this was considered to be a more appropriate course of action, and issued Fixed Penalty Notices (FPNs) when removals notices did not achieve long term compliance.

¹ The MPS Safer Transport Command has been incorporated into the new MPS Roads and Transport Policing Command which has been operational since 1 December 2014.

- 4.4 This enhanced approach using on-street officers, though resource intensive delivered a significant reduction in the number of 'A' Boards in the three pilot locations. At the beginning of the trial there were a total of 70 'A' Boards across these three locations. 85 FPNs were issued during the trial to 30 different businesses. At the end of the trial, six months later, there were only 16 'A' Boards - a 77 per cent reduction. Recent compliance checks have shown sustained compliance at these locations.

5 Plans for 'A' Board Enforcement Going Forward

- 5.1 It was agreed at Surface Board in November 2014 that going forward, 'A' Board enforcement activity would be the responsibility of TfL's Directorate of Enforcement and On-Street Operations (EOS). This decision was made on the basis of the synergies between 'A' Board enforcement activity and existing EOS on-street and back office systems used for enforcement and prosecutions activity, and that these activities could be broadened to cover enhanced 'A' Board enforcement with minimal impact on resources.
- 5.2 FPN issuing would form part of a range of activity aimed at tackling 'A' Boards. Because of the need for a higher burden of proof for an FPN and the expectation that TfL would be proportionate and fair to businesses, prosecution will remain the last resort and TfL will continue with the current practice using the statutory process in the 2003 Act of issuing removal notices, after which the 'A' Boards are removed and kept until the business owners pay a fee and retrieve their 'A' Board.
- 5.3 Enforcement activities would be targeted at the zero tolerance areas. This list will be regularly reviewed and updated as the compliance picture improves and impact of enforcement develops. The current zero tolerance areas are listed in Appendix 1.
- 5.4 Work is underway to establish the necessary processes for EOS on-street operational staff, including the TfL funded TPCSOs in the MPS, to incorporate 'A' Board enforcement as part of their business as usual activity. The on-street officers will engage with the businesses, gather intelligence and collect the necessary evidence for the FPN, where this is needed. EOS enforcement and prosecutions team will manage the back office processes including the necessary checks at land registry to ascertain land ownership.
- 5.5 Changes are also being made to enhance TfL prosecution systems to include functionality for 'A' Board enforcement. The process for checking, penalising and prosecuting offenders will be largely automated as part of an existing IT enhancement project (Mercury Phase 3). This will be delivered later this year. The Asset Management Directorate will retain responsibility for 'A' Board removals.
- 5.1 Following Surface Board's review of the 'A' Board enforcement trial results at its meeting in November 2014, and agreement to EOS taking responsibility for this activity, an interim paper based system is currently being put in place for EOS to manage requests from Asset Management for enhanced enforcement of 'A' Boards. This interim process will be in place by March 2015. In the meantime, TPCSOs and EOS operational staff are continuing to engage with businesses providing advice. The Asset Management Directorate is also continuing with its removal activity.

6 Financial Implications

- 6.1 The cost of this additional function and system support will be covered by existing budgets for on-street and back office enforcement activity. There will of course be opportunity costs but these are expected to be minimal as this activity will be incorporated as BAU for EOS multifunctional operational staff.

List of appendices to this report:

Appendix 1 – List of zero tolerance areas

List of Background Papers: None.

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Appendix 1

Zero Tolerance Locations	Borough
Camden High Street	Camden
Finchley Road	Camden
Bishopsgate / Gracechurch Street	City of London
Kingsland High Street	Hackney
Stoke Newington High Street	Hackney
Holloway Road / Seven Sisters Road	Islington
Upper Street	Islington
Brompton Road	Kensington and Chelsea
Earls Court Road	Kensington and Chelsea
Clapham High Street	Lambeth
Peckham High Street	Southwark
Tooley Street / Borough High Street	Southwark
Whitechapel Road	Tower Hamlets
Balham High Road	Wandsworth
Tooting High Street	Wandsworth
Wandsworth High Street	Wandsworth
High Street Colliers Wood	Merton
London Road, Morden	Merton