Calderdale MBC

Wards Affected **ALL**

Cabinet **Feb**

A Boards - Policy Development

Joint Report of the Directors of Public Services and Regeneration and Strategy.

1. Purpose of Report

1.1 To inform Cabinet Members of the outcome of a "call in" by the Adults, Health and Social Care Scrutiny Board relating to Cabinet's earlier approval of a Borough wide A Boards policy.

1.2 The report focuses on A Boards because they are not "fixed" in the same way that other types of street furniture may be which may present a greater danger / obstacle to people of all abilities

2. Need for a decision

2.1 In October 2021, Cabinet approved a trial A Board policy which provided for a minimum 1.8m free passage adjacent to all A Boards. In the event, that decision was "called in" by the Adults, Health and Social Care Scrutiny Board who subsequently agreed the following:

(a) members of the public and Officers be thanked for attending and contributing to the discussion;

(b) the willingness of Cabinet Members to review the policy on 'A' Boards is welcomed; and

(c) in accordance with the provisions of paragraph 21(f) of the Overview and Scrutiny Procedure Rules the decision taken at Cabinet on 4th October 2021 in relation to Minute Number 41 be referred back to Cabinet to review the draft 'A' Board Policy, and that consideration be given to the views expressed by members of the public and the Adults, Health and Social Care Scrutiny Board within the meeting. (The minutes of that meeting are attached at Appendix A.)

3. Recommendation

3.1 That, following the call in by the Adults, Health and Social Care Scrutiny Board and in light of elements "b" and "c" above, Officers be requested to consult more widely with all interested parties and reformulate proposals for an A Board policy which was, in the original paper due to be, in the first instance, piloted in Hebden Bridge.

3.2 That, the approval of the reformulated proposals after consultation with the groups described be delegated to the Directors of Public Services

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and Regeneration and Strategy (in conjunction with the relevant portfolio holders) in order to reduce further delay for the initial pilot testing of this policy.

3.3 That, Officers be requested to report back to Cabinet on the measures adopted within the next six months and to indicate how these have been received.

4. Background and/or details

4.1 As the Highway Authority, the Council has a statutory duty to protect the rights of all road users to enjoy the safe use of the highway. Obstructions to the highway can interfere with this enjoyment and the Council has the power to remove obstructions and prosecute offenders.

4.2 The duty to assert and protect the rights of users of the highway arises under Section 130 of the 1980 Highways Act and the offence of 'obstruction of the public highway' arises under Section 137. The presence of 'A board's' or other types of advertising which causes an obstruction may, subject to sufficient evidence give rise to this. The Council also has the power to order by notice the removal of obstructions under Sections 143 and 149 of the 1980 Act.

4.3 In addition to the above, Section 149 of the Equalities Act 2010 requires the Council to exercise its functions, with due regard to the need to:

- Eliminate discrimination, harassment, victimisation and other conduct prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between such persons.

4.4 In respect of the 2010 Act, a relevant protected characteristic is defined as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In the case of A Boards and highway obstructions the most relevant characteristic would be visually impaired or blind persons, those with mobility issues, the elderly and parents with young children in prams or push chairs.

4.5 As reported to the Scrutiny Board, and indeed Cabinet before that, there is no standard national policy and local policies also appear to vary widely, although they may be described as falling into five main categories:

a) No specific policy guidelines. This allows local authorities a great deal of flexibility but also affords pedestrians little protection. Tradespeople who may utilise A Boards have no guidelines by which to gauge their size and siting.

b) Minimum passing width adjacent to the A Board (which appears to vary between 1.3m and 2.0m). As the name suggests, the A Boards can only be sited where a minimum passing distance can be achieved. The

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previous Cabinet approval related to this and provided a minimum passing width of 1.8m, however, as described above Scrutiny Board have asked Cabinet to reconsider this.

c) Licensing arrangement whereby the individual A Board is approved. Affords flexibility, gives size and siting guidelines and allows ease of enforcement by virtue of the fact that the individual A Board is licensed for use at particular location only.

d) Partial ban in certain designated areas (eg town centres). Can protect the busiest thoroughfares by removing A Boards in their entirety in certain areas. Outlying districts can be the subject to any of the other mechanisms listed above.

e) Total ban. Perhaps creates the highest level of protection by removing A Boards completely thereby allowing ease of enforcement although takes no account of business needs (either perceived or otherwise).

4.6 Clearly for any policy to be effective it must be easily understood, with no ambiguity, and we must also have the capacity and capability to enforce it. That being the case, Members should note that the enforcement of this policy will introduce a new work stream and will thus either require additional resources or for existing resources to be re-prioritised from other aspects of current enforcement activity.

5. Options Considered

5.1 As noted above, the Scrutiny Board have requested that in creating a suitable policy, "*consideration be given to the views expressed by members of the public and the Adults, Health and Social Care Scrutiny Board within the meeting".*

5.2 Using this request as a baseline, the consultation exercise would be used to develop the most appropriate policy which may reflect elements "c", "d" and "e" above ("a" and "b" have been discounted as by accepting the Scrutiny Board position Calderdale is therefore effectively moving on from those positions).

5.3 If "d" were to be adopted suitable areas to introduce the partial (limited town centre area) ban would need to be identified in each market town (the centres) It is important that if there were designated areas or exclusion zones in each of the area's six market towns that the businesses and the Council's enforcement staff were clear about the geographical delineation and therefore able to properly enforce any such zone. Were element "c" to be adopted the criteria needed to achieve a licence would also need to be clearly understood.

5.4 In the first instance, and in order to respond to the well documented concerns of Hebden Bridge Disability Access Forum, it would be further proposed in the next consultation phase that Hebden Bridge be adopted as a suitable initial pilot area.

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5.5 The organisations to be consulted will include:

- Halifax Blind Society.
- Hebden Bridge Disability Forum.
- Royal National Institute for The Blind.
- Accessible Calderdale Disability Access Forum.
- Hebden Bridge Disability Access Forum.
- Halifax BID.
- Brighouse BID.
- Business Associations in all six market towns.
- Other interested parties including those individuals present at Scrutiny Board who are not represented in the above.

6. Financial implications

6.1 There are no specific financial implications arising from this report. However, the introduction of a policy that establishes sensible parameters would protect the public's right to unrestricted use of any highway at all times.

7. Legal Implications

7.1 The Council has a statutory duty, not just a power, under Section 130 of the Highways Act 1980 to assert and protect the public's right to unrestricted use and enjoyment of any highway at all times. Several enforcement powers are available to the authority that give teeth to this duty, including those under Sections 137, 143 and 149 of the 1980 Act referred to in paragraph 4.2 above. They are probably the most common remedies for dealing with obstructions and encroachments on highways.

7.2 A long line of cases has established that almost anything may be held to be an obstruction of the highway if it is capable of impeding passage along part of it. Even quite small encroachments across a fraction of the width of a footway have been treated as obstructions. However, the offence under Section 137 requires that the obstruction be deliberate, more than de minimis, without lawful authority and an unreasonable use of the highway as a matter of fact. This means that obstruction without more is not necessarily an automatic ground for liability.

7.3 Displays of goods outside shop premises appear regularly to create particular problems in determining whether or not an obstruction is within the de minimis principle or not. A particular problem has arisen from time to time in respect of A Boards placed on the pavement, or even in the road, outside some shops. The current state of the authorities appears to be that these boards will not fall within the de minimis principle but that there may be circumstances where, nonetheless the placing of such boards on the highway may not be an unreasonable use of the highway.

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7.4 Other powers under the 1980 Act that may be employed to control A Boards on highways are:

7.4.1 Section 115E - enables the Council to grant permission to a person to locate an A-Board within the highway so long as they can be shown to enhance the amenity of the highway and its immediate surroundings, or to provide a service for the benefit of the public.

7.4.2 Section 115F - the highway authority may set any conditions of use that they consider necessary and to require payment of such reasonable charges as may be determined, to cover the costs that are incurred with administering any licensing scheme developed under Section115E.

7.4.3 Section 161 – it is an offence for a person to deposit, without lawful excuse anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered;

7.4.4 Section 333 – the Council may remove an obstruction from the highway or otherwise abate a nuisance (i.e. something that causes a danger) or other interference with the highway at its cost as self-help without recourse to the Courts.

7.5 There are other legislative requirements that may impact upon the ability of a business to legitimately locate A-Boards within the highway such as the Town and Country Planning Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. It will remain the responsibility of the individual/company to ensure that they meet the requirements of these and any other Acts and Regulations that are applicable and, where pertinent, obtain any additional licences, permissions etc. that may be needed.

8. Consultation

8.1 The development of the final A Board policy would be dependent upon a wide ranging consultation exercise.

9. Environment, Health and Economic Implications

9.1 Active travel is a precursor to overall health and well being. By protecting the ability of travellers to pass and repass along the footway the ability to travel in this manner will be enhanced.

10. Equality and Diversity

10.1 The requirements of Section 149 of the Equalities Act 2010 are described above at para 4.3 and 4.4.

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11. Summary and Recommendations

11.1 The report describes the need for a suitable A Board policy in order to ensure that we meet our statutory duties.

11.2 The report recommends:

11.2.1 That, following the call in by the Adults, Health and Social Care Scrutiny Board and in light of elements “b” and “c” above, Officers be requested to consult more widely with all interested parties and reformulate proposals for an A Board policy which was, in the original paper due to be, in the first instance, piloted in Hebden Bridge.

11.2.2 That, the approval of the reformulated proposals after consultation with the groups described be delegated to the Directors of Public Services and Regeneration and Strategy (in conjunction with the relevant portfolio holders) in order to reduce further delay for the initial pilot testing of this policy.

11.2.3 That, Officers be requested to report back to Cabinet on the measures adopted within the next six months and to indicate how these have been received.

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The documents used in the preparation of this report are:

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2.
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The documents are available for inspection at:

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