

Briefing note to West/Central Area Committee on Pedlar activity in city centre

1. Background

1.1 On the 1st June, 2019, we were informed that an individual was selling Henna Tattoo's on the corner on of Market Hill/ Petty Cury. The individual was asked to provide a copy of his Pedlars certificate and was unable to do so. He was told that he was in breach of Street Trading legislation as well as failing to produce a valid Pedlars certificate and was asked to cease trading, which the individual did.

1.2 The Individual later wrote to the Markets and Street Trading team claiming he was in fact providing a 'service', which is exempt from the adopted Street Trading Legislation, under Schedule 4 of the Miscellaneous Provisions Act 1982. This is factually correct. He also pointed out that he was a legitimate Pedlar.

1.3 Since this point, the Markets and Street Trading team has observed the individual on numerous occasions trading from a fixed and static location on Kings Parade, however no sales have been observed during this time. The individual has provided a valid pedlars certificate on request which was issued by Devon and Cornwall Police and is valid until June 2020.

1.4 The individual has been written to on a number of occasions reminding him of the rules of being a Pedlar, in terms of being on the move at all times and not operating from a fixed and static position and reminding him that he is breach of obstructing a Highway (see 2.2 below).

1.5 The individual has also been advised to apply for a market stall to ensure he can continue to trade lawfully. Case law has stated the following regarding Henna Tattoos in terms of street trading:

"Under "Exemptions" from Street trading – Local Government (Miscellaneous Provisions) Act 1982: "Hair braiding, face painting, henna tattoos etc. - The Act which governs street trading relates to the selling of articles and as such people who provide a service e.g. hair braiders, are not considered by the council to be trading for the purposes of the legislation."

1.6 There is an argument that the individual is using a stencil to trace the tattoos which could be considered a 'physical article', however, when challenged on this the individual has stated the customer does not receive a physical article and the stencil is destroyed. Similar cases in other areas of the country appear to be in keeping with this defence and if the City Council were to attempt to prosecute on these grounds it might not succeed.

2. Context

2.1 Pedlars operate under the Pedlars Act 1871 – archaic legislation which contributes no end to the confusion - and must obtain a pedlar's certificate from the Police. Pedlars are people who sell from place to place and cannot sell from a fixed pitch; they must move around and not wait for customers to come to them, they cannot stand in any one place for a considerable time nor can they exhort those passing, to buy their goods. Pedlars must carry their goods but can use a small wheeled trolley to transport them.

2.2 The courts have explained what the Pedlar's Act means:

1. A pedlar must go from "town to town on foot", so must not return to Cambridge every day.
2. A pedlar must trade as they travel, as distinct from someone who merely travels to a particular location to trade.
3. A pedlar should only stop when someone wants to buy something from them or when they are resting. At the times a pedlar is resting their goods should not be offered or exposed for sale.
4. A pedlar must carry their goods, continually moving from area to area and not just moving around a town centre area such as the High Street.
5. A pedlar may use a small-wheeled trolley such as a suitcase carrier to assist them in carrying their goods but not as a device to carry and expose for sale all, or the vast majority, of their goods. One common misconception is that traders on push bikes (those that pedal) are covered by pedlar's legislation. They are not.

2.3 Control of Street Trading is a regulatory function. The Council has adopted the provisions of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 and regulates street trading under these provisions;

- A Consent Street is a street in which street trading can only take place if the consent of the local authority has first been obtained. Prohibited Streets are streets where no street trading may take place at all.
- It is a criminal offence to engage in street trading in (a Prohibited Street or) a Consent Street without authorisation.
- 'Street Trading' is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street – this does not include services and is subject to a number of exceptions such as:
 - a) Trading as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
 - b) Any trade in a market or fair, the right to hold which having been obtained by a Grant, enactment or order.

- c) Trading as a news vendor.
- d) Trading at or adjoining a shop premises as part of the business of the shop.
- e) Offering or selling things as a roundsman.

3. Next Steps

3.1 The Markets and Street Trading Team has met with the Police, the statutory authority for 'licensing' and enforcing against Pedlars, regarding this matter and are due to meet again on Thursday, 29th August, at the time of writing this briefing note.

3.2 To investigate obtaining delegated statutory powers from the Police/ County Council to include the ability to issue fixed penalty notices or community protection warnings/ notices for anti-social behaviour/ highway legislation breaches.

Tim Jones
Markets & Street Trading Manager
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