

## **Appendix 1 – Legal implications: Advice from the Comptroller and City Solicitor**

### **Statutory duties**

The City Corporation has a duty under s.130 of the HA 1980 to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority.

It also has a network management duty under s.16 of the Traffic Management Act 2004. This requires it to manage its road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives:

- a. securing the expeditious movement of traffic on the authority's road network;  
and
- b. facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

Under section 122 of the Road Traffic Regulation Act 1984 local authorities are under a duty to exercise functions conferred on them under that Act so far as practicable, having regard to matters specified in subsection (2), to secure the expeditious, safe and convenient movement of traffic (including pedestrians).

The City Corporation is also subject to the public sector equality duty under section 149 of the Equalities Act 2010. This means that in the exercise of its functions it must have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This includes removing or minimising disadvantages suffered by people due to their protected characteristics (such as visual or mobility disabilities).

An unmanaged proliferation of bikes on the highway arising from dockless bike hire schemes may compromise compliance with the above statutory duties.

### **Statutory powers to deal with bikes on highway**

Dockless cycle hire schemes which do not necessitate any infrastructure being placed on the highway fall outside the existing legislative framework and do not need the City Corporation's consent to operate in the City. However, there are some existing statutory powers available where bikes are left so as to cause an obstruction, nuisance or danger.

1. Section 137 HA 1980 – 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 to a fine not exceeding Level 3 on the standard scale (currently up to £1000.00.)
2. Section 148(c) HA 1980– if, without lawful authority or excuse a person deposits anything whatsoever on a highway to the interruption of any user of

the highway he is guilty of an offence and liable to a fine not exceeding Level 3 on the standard scale.

3. Section 149 HA 1980 – if anything is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited there to remove it forthwith. In the event of non-compliance, a court order may be obtained authorising the removal and disposal of the offending item. If the highway authority has reasonable grounds for considering the item constitutes a danger (including a danger caused by obstructing the view) to users of the highway and ought to be removed without the delay of seeking a court order it can remove the item forthwith and, ultimately, seek a court order for its disposal.

A highway nuisance can be defined as ‘any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along the highway’. So it is something that causes an interference with the public right of way along a highway.

Obstructions are defined in TfL’s ‘Dockless Bike Share Code Of Practice For Operators In London 2018’ as *a situation arising from the deposit of a bike or bikes (whether by reason of its or their position, their number, or otherwise) so as to adversely affect the free use of a highway (including a footway or a carriageway), or adversely affect the free use of any other public or private land (including river, canal and park environments which is not specifically assigned for the purposes of dockless bikes, without lawful authority or excuse*. (This is not a legal definition but it provides a useful guide).

What constitutes a danger will need to be considered on the facts of each situation but a number of dockless vehicles left fallen across a footway so as to cause a trip hazard may be considered to be a danger. Where a substantial part of the footway is blocked that may also constitute a danger if pedestrians could be forced into the street. Location specific reasons may also be a factor as to whether left vehicles are a danger such as the width of the footpath and the level of footfall.

### **Street trading and ‘waste’**

Consideration has been given to whether the provision of dockless cycles for hire is caught by local legislation which makes it unlawful for any person to engage in unauthorised street trading in the City. “Street trading” is defined in the City of London (Various Powers) Act 1987 to mean the selling or exposing or offering for sale of any article or thing in a street. However, dockless cycle hire schemes involve bikes being available on the highway (or on private land with the consent of the owner) for temporary hire by members of the public, with payment being made via an App, and no person in the street engaged in the hiring out of the bikes. As the 1987 Act prohibits a person from selling etc. items in the street, not the temporary hiring of bikes in the way proposed which is more in the nature of a service (and not dissimilar to the existing Santander cycle hire scheme except that there are no docking

stations), the activity would not amount to unauthorised street trading.

Consideration has been given to whether definitions of “waste” or “litter” in legislation apply. It is considered that these terms are not intended to cover bicycles left temporarily on the highway and which are in use for the benefit of the operators and their customers and officers are not aware of any decisions on this point. It is not considered that this adds significantly to the City’s statutory powers to deal with bikes on the highway.

### **Regulation by making byelaws**

Government guidance states that byelaws are considered measures of last resort after a local council has tried to address the local issue the byelaw applies to through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable.

It follows that there is a risk that the case for making a byelaw to regulate dockless bike hire could be undermined if all bikes on City streets were to be classed as obstructions and removed under existing powers.

It is understood that action proposed to establish a regulatory framework for dockless vehicle schemes by way of a London-wide byelaw has been deferred as the Government has indicated that it intends to introduce controls to regulate the market. These regulations have been pushed back to at the earliest the next parliamentary session in 2023.

### **Liabilities**

In the event of loss, injury or damage being caused by the cycles, the person responsible would depend on the circumstances of each case. For example, if a cycle had remained in a dangerous position for days without the highway authority taking steps despite complaints, some liability would be likely to rest with the highway authority. If an accident occurred a few moments after the cycle was left in a dangerous position and the highway authority had no reasonable opportunity to identify and remedy the danger, it is unlikely any liability would rest with the highway authority, and therefore would be more likely to rest with the user and/or operator. In addition, the steps proposed to secure the co-operation of operators in ensuring safe practises would help demonstrate that the City is taking reasonable measures consistent with its responsibilities.