

Report to Regulatory Panel

Agenda
Item:

A.1

Meeting Date: 8th October 2014
Portfolio: Finance, Governance and Resources
Key Decision: Not Applicable:
Within Policy and Budget Framework
Public / Private Public

Title: JOHN MULHOLLAND - HACKNEY CARRIAGE DRIVER - COMPLAINT - DUTY OF CARE TO PASSENGER
Report of: Director of Governance
Report Number: GD45/14

Purpose / Summary:

John Mulholland is a licensed Hackney Driver with this council. A complaint has been received that on a journey from Warwick Road Rank to Brampton, he allowed a vulnerable passenger to leave the taxi at Warwick Bridge, resulting in the passenger being taken to hospital.

Recommendations:

To reach a decision from the options available, after hearing the evidence and any response from Mr Mulholland in accordance with Section 61 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1976.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

To the Chairman & Members of the Regulatory Panel on 8TH October 2014

NAME Mr John Mulholland

ADDRESS Leatham Street, Carlisle

AGE 55

1. HISTORY

- 1.1** Mr Mulholland was first granted a Private Hire Drivers licence in July 1992 and was granted a Hackney Carriage Drivers licence in 1998.
He has come to our notice on a number of occasions, the last one being for a vehicle defect in 2008. None of these issues were similar to the one for which he appears before the Panel today.

2. BACKGROUND TO COMPLAINT

- 2.1** On 26th August 2014, the licensing section received a complaint from a Mrs Carruthers. She reported that her daughter had taken a taxi from Warwick Road rank at 9.45pm on Saturday 16th August 2014, to travel home to Brampton. She had been attending a 21st birthday party at the Andalusian on Warwick Road, and had decided at 9.45pm that she had 'had enough' (meaning drink) and decided to go home. After being unable to contact her mother for a lift, she approached a taxi on the rank outside and requested to be taken to Brampton. An hour later she was found in Warwick Bridge, semi conscious and suffering from hypothermia. She was taken to hospital, where initially, medical staff were unable to find her blood pressure.
- 2.2** Paramedics who attended were concerned that she had been left there in a vulnerable condition by the taxi driver and contacted the Police. They visited the girl in hospital and a statement was taken. The Police were satisfied that no criminal offences were committed and advised the family to report the incident to Licensing. Unfortunately, as a side effect of hypothermia, the girl has no memory of what happened that evening.
- 2.3** Mrs Carruthers reported to us that she cannot understand how her daughter came to be left there as the family have no connections with Warwick Bridge at all. All they can think of was that she may have been sick, or wanted to be sick in the taxi and was abandoned by the taxi driver. However, her clothes contained no evidence of being sick. The weather that evening was heavy rain and cold.

- 2.4** The Licensing Officer who received the complaint eventually established from CCTV footage, that the taxi and driver who took the fare that evening was John Mulholland. He is a driver who owns his own vehicle and does not have a radio and therefore only takes fares from the ranks. The CCTV footage of Miss Carruthers getting into his taxi will be shown at the end of the report.
- 2.5** Mr Mulholland was interviewed on 4th September 2014 and recalled the fare. He said he was 3rd in the taxi rank queue that evening. However, as it happened, the two taxis in front of him both got fares about the same time the girl approached him and so he therefore agreed to take the girl to Brampton and she got into the front seat of his taxi.
- At first he said she 'seemed ok' but he soon realised she was 'very boozy'. He remembered her 'mumbling, possibly on the phone' and also remembered she was falling asleep. He had to pull in to a lay-by at the bottom of Warwick Rd outside Tesco to establish where in Brampton she wanted to go, as he said he was concerned she would fall asleep and he would not get the address out of her. On driving over Warwick Bridge he said she was 'gagging' and possibly going to be sick. He pulled quickly into a lay-by/exit of Holme Eden Abbey just over the bridge, leaned over and opened the door, and said he told her to 'get out and sort yourself out'. He then said the girl walked away from the taxi. He said he waited a few minutes, pipped the horn, then did a U turn back to town. He was asked what was on the meter and if he had asked for the fare. He replied that he 'didn't normally charge someone on their own if they walked off' and that 'it wasn't worth it'.
- 2.6** It was then explained to Mr Mulholland that the girl had been found an hour later and taken to hospital. He replied but what could I have done?' and said 'I couldn't man-handle a girl back into my taxi'. The Licensing Officer explained that he has a duty of care to his passengers. The options available to him could have been to inform the Police he had left a vulnerable girl in Warwick Bridge, or he could have gone after her and explained she wasn't in Brampton and/or offered to phone someone to collect her if she didn't want to continue the journey. A map of the drop off point is attached to the complaint **(Appendix A)**
- 2.7** On 5th September 2014 Miss & Mrs Carruthers were informed of Mr Mulholland's recollection of the fare and shown the CCTV footage of Miss Carruthers approaching the taxi, in the hope it would bring back any memory of the evening. Unfortunately it didn't.

2.8 Mrs Carruthers has been extremely concerned that her daughter was let out/thrown out of the taxi by the side of a busy road, knowing that she was vulnerable and could have stumbled into the road, as well as other consequences had she not been found by a passer-by and taken to hospital. She feels the driver has been negligent in his duty to transport her daughter home safely and fears other people in the same position may be treated in the same way in the future. She gave Licensing details of the lady who cared for her daughter until the ambulance arrived and this lady said she was happy to give details as to the incident that night.

2.9 A witness statement was taken by telephone on Friday 19th September 2014. The witness confirmed the evening was very wet and cold. The girl had been found in the private entrance of Holme Eden Gardens, which meant she had walked the length of the A69 footpath opposite Downagate. She was found drifting in and out of consciousness and the lady and her husband tried to keep her warm and prevent her from choking until the ambulance arrived. **(Appendix B)**

3 LICENSING COMMENTS

3.1 As part of the Disability Awareness program that has been delivered to all drivers over the past year, other aspects of taxi driving have been covered, one being the duty of care placed upon drivers. Mr Mulholland attended this course on 1st May 2013, where it would have been discussed briefly about the importance of transporting all types of customers home safely. A power point presentation was given. **(Appendix C)**

3.2 Duty of Care is described as ‘a moral or legal obligation to ensure the safety or well being of others ; Oxford dictionary.

‘the legal obligation to safeguard others from harm while they are in your care, using services, or exposed to your activities’ Collins dictionary

‘a requirement that a person act towards others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would’ ; Farlex legal dictionary **(Appendix D)**

4 LEGISLATION

4.1 Section 61(1) of the Local Government Miscellaneous Provisions Act 1976 states that a District Council may suspend or revoke a Hackney Carriage Driver Licence on a number of grounds.

Section 61(1)(b) gives the grounds of “any other reasonable cause” **(Appendix E)**

5 OPTIONS

It is recommended that after hearing the evidence and any representations today, that members reach a decision in line with the options available:

- Take no further action
- Issue a warning letter
- Suspend Mr Mulholland’s Hackney Carriage Drivers Licence for a period of time.
- Revoke his Hackney Carriage Drivers Licence.

Contact Officer: Fred Watson Ext: 7028

**Appendices
attached to report:**

- A – Complaint**
- B - Witness statement**
- C – Extract from Disability Awareness Session**
- D – Duty of Care extract**
- E – Legislation**

CARLISLE CITY COUNCIL

22 /14

COMPLAINT FORM
Licensing Section

Full Name of Complainant Mrs Jane Carruthers

Date of Incident 16.8.14

Date Complaint reported 26.8.14

Nature of Complaint:- 20yr old daughter took taxi home from Warwick Rd Rank, asking to be taken to Brampton. She was found unconscious in Warwick Bridge and had to be taken to hospital.

Mrs Carruthers came in to report that her daughter had taken a taxi from Warwick Rd Rank at 9.45 on Saturday 16th August 2014 after attending a private 21st party at the Andelusian, Warwick Rd. Normally Mrs Carruthers would pick up her daughter, but on this occasion was driving down from Scotland and did not answer her phone, due to it being on silent in her bag, when her daughter rang for a lift.

Due to this, her daughter walked out of the Andelsuian and requested to be taken to Brampton getting into a white saloon hackney carriage.

Her daughter had been drinking at the party & knew she had 'had enough' which was why she had left to go home. She had not long returned from University for the summer.

She was later found at Warwick Bridge, by the side of the road, semi-conscious.

An ambulance was called and she was taken to hospital where A&E were initially unable to find her blood pressure. Once she had been warmed up, they were able to take bloods & establish there were no major side effects from the hypothermia she had suffered. Paramedics were concerned that she had been left by the taxi and contacted the Police, who visited her in hospital and took a statement from her .

They were satisfied there were no offences committed.

The weather that evening was cold with heavy rain.

Mrs Carruthers cannot understand how she came to be left there, as they have no connections with Warwick Bridge at all.

Her daughter has no recollection of the event, as a side effect of hyperthermia is a loss of memory.

All they could think of was that she had maybe been sick in the taxi and had been thrown out, but her clothes had contained no evidence of this.

Signed

.....Date 24/9/14.....

FOR OFFICE USE ONLY

Officer Receiving Complaint: S J STASHKIW

Action taken: I explained it would be hard to establish who the driver was without any registration or plate.

After accessing several CCTV systems in the area, The Halston had clear footage of the girl leaving Andelusian at 9.45 and getting into a white saloon at 9.53.

The rank had a MPV black Taxi first in the queue, then two white saloons. She did not approach the black MPV, but the first white saloon. She spoke to the driver . (I identified that vehicle from the advertising & spoke to the driver who said he remembered the girl and the conversation he had with her was that he told her she must get the vehicle in front as he was 2nd in the queue) She then approached the 2nd white saloon. This turned out to be John Mulholland, who was an owner driver working from the ranks.

I interviewed John on 4.9.14 who remembered the fare. He said it was a young girl who asked him to go to Brampton. He had at first told her to go to the taxi at the front of the rank, but he said she said she didn't like the black taxis. (At this point it appears from the CCTV footage that both front vehicles get a fare and move off) so he then agreed to take her.

He said she 'seemed ok at first' and wanted to go to Brampton. He then realised she was 'very boozy' as she was falling asleep. He vaguely remembered her 'mumbling, possibly on her phone'

As he was driving down Warwick Road he decided to pull into the lay-by outside Tesco and ask her the exact address as he was frightened he would

not be able to get the address from of her. He asked her where in Brampton and she replied 'Longtown'. After confusion she then said 'by the school' He then realised it was Longtown Road past William Howard School.

As he drove over Warwick Bridge, he said she was 'gagging'. Not wanting her to be sick, he quickly pulled the taxi into the Holme Eden Abbey entrance, leaned over her and opened the door, saying 'get out and sort yourself out'. He said she got out and walked away.

He said he had £11.50 on the meter. He waited a few minutes, pipped the horn, then did a U turn back to Carlisle.

I then explained to him what had happened after that.

He asked me 'what could I have done?' 'I can't man-handle a girl back into my taxi'

I replied that he could have :

- phoned the Police to tell them he had left a vulnerable girl in Warwick Bridge
- Could have gone after her and offered to phone someone for her from her phone.

I explained it was possible that she thought she was in Brampton, which was why she walked off.

I asked why he didn't charge for the fare and he replied he generally doesn't if it's a lone person that walks off.

He then asked 'does this mean I will lose my badge'

I explained I would have to speak further with my manager and confirm to him what further action would be taken.

Sjs 4.9.14

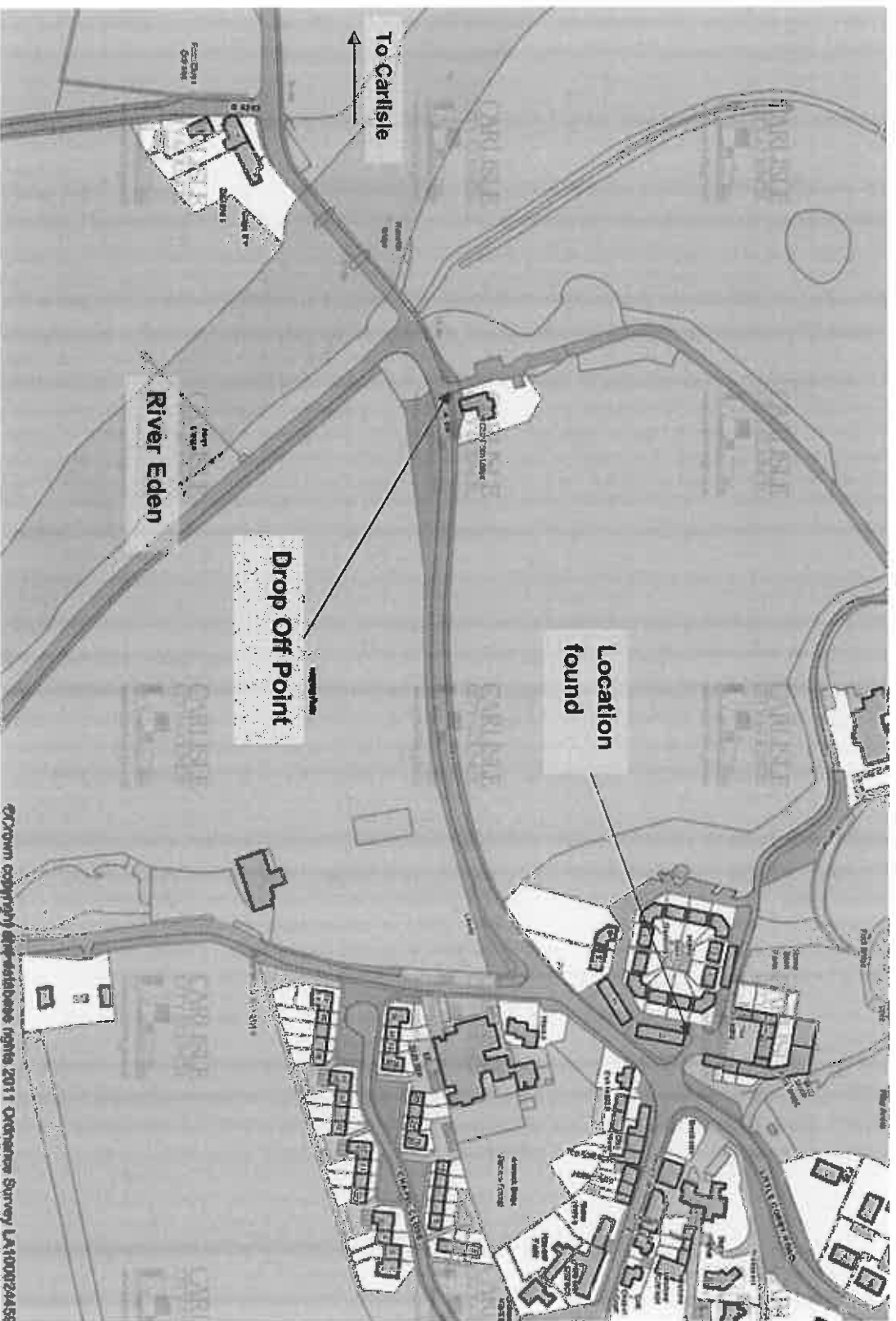
FURTHER ACTION

5.9.14 The above information was relayed to both Mrs Carruthers and her daughter. The CCTV was shown to them in the hope it would bring back any memory of the evening, but unfortunately it didn't. They said they were extremely concerned of the consequences had she not been found by a passerby and an ambulance called, and wanted to take the matter further to

committee. I asked for the details of the person who alerted the ambulance and they would find out and get back to me.

11.9.14 phone call from a Mrs Pound, who was returning that evening to her home at Holme Eden Gardens around 10.50pm, when she found Miss Carruthers. Arrangements were made for her to call in and make her statement.

Complaint to proceed to Regulatory Panel.



**Warwick
Bridge**

To Brampton

CARLISLE CITY COUNCIL

WITNESS STATEMENT

(CJ Act 1967, s.9 MC Act 1980, ss 5A (3a) and 5B, MC Rules 1981, r.70)

Statement of Wendy Round

Age Over 18.....✓..... (if over 18 insert 'over 18')

Page 1 of ...1.....

This statement consisting of 1... pages signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the

Signature 24 SEPTEMBER 2014.....

My partner & I were returning from Cumwhinton on Saturday 16th August 2014 around 10.50pm. We turned into the private driveway leading to Holme Eden Gardens, Warwick Bridge when we saw a young girl leaning against the back wall to No 2 Holme Eden Gardens.

She was semi-conscious, with her bag and money strewn all around her. Although she did have a jacket she was wearing very short shorts and was obviously very cold, being both dehydrated and having been out in the rain for some time. Another couple had been leaving Holme Eden Courtyard and had seen her at the entrance of Holme Eden Gardens. They had phoned for an ambulance, but as soon as we arrived they left immediately. They had said that they had seen her stumbling into the courtyard and then she had collapsed at the back of the walled garden area.

The weather that evening was very cold and wet.

My partner immediately put her on her side as she seemed to be choking. We got the rug out of the car and rolled her onto it and covered her up. She was sick 3 times and lost consciousness twice. I tried to take her pulse in her leg and it was very weak.

I gathered her handbag and belongings to find her name.

I found a bank card & student card. I tried to keep her talking to keep her conscious. When I asked her where she thought she was, she said she was in Carlisle and when we asked where in Carlisle she said 'The Andalusian'.

My partner also asked whether she had taken anything and she said she had only been drinking. She was very apologetic about her condition all the time. Shortly after, the 1st responder arrived; I think from Corby Hill and completed some basic checks whilst my partner continued to try and keep her conscious and talking. He remained with us until the ambulance arrived and we provided all the information we had to the paramedics.

The girl's phone rang & I recognised the person who was ringing, as he was the son of a work colleague. He was ringing as he and his friends were concerned as to where the girl was. I explained what had happened and he said that he would try and phone the girl's mother.

I did check her phone to see whether she had tried to call a taxi as it was unclear at that point how she had managed to get to Warwick Bridge.

The ambulance arrived; after getting her into the ambulance they contacted her mother who arrived shortly afterwards. They all remained in the ambulance at which point we went home and we believed they proceeded to hospital shortly afterwards.

Signature

..... Signature witnessed by

Home Address

C/o Civic Centre, Rickergate, Carlisle
Licensing Section

Home telephone no Business telephone no ...01228 487029.....

Date and place of birth ... Over 21...CARLISLE.....

Contact point if different from above

Address

Telephone no

STATEMENT TAKEN BY (print name)

SUE STASHKIW.....

Finally...



Be available!

Want to be proud of our City, Taxi fleet & the service that we give

Appreciate you do a very difficult and demanding job.

Variety of people, sober, drunk, carrying food Duty of care

Please help cut down the number of complaints we receive

Handy booklet – please keep & read in your cab





Pioneers in dictionary publishing since 1819

British English American English

Search Terms

Search

duty of care ('dju:tɪ əv keə)

Definitions

noun

1. the legal obligation to safeguard others from harm while they are in your care, using your services, or exposed to your activities ⇒ Your hospital has a duty of care to you and your baby.

Definition of *duty of care* in English:

duty of care

Line breaks: duty of care

noun

chiefly *British*

A moral or legal obligation to ensure the safety or well-being of others: *employers have a duty of care to their employees road authorities owe a duty of care to keep roads as safe as possible*

<http://www.oxforddictionaries.com/>

duty of care *n.* a requirement that a person act toward others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence. (See: negligence, standard of care)

TheFreeDictionary by Farlex

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Local Government (Miscellaneous Provisions) Act 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Local Government (Miscellaneous Provisions) Act 1976

1976 CHAPTER 57

PART II

HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

61 Suspension and revocation of drivers' licences.

- (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—
 - (a) that he has since the grant of the licence—
 - (i) been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
 - (b) any other reasonable cause.
- (2) (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him in accordance with section 54 of this Act.
- (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F1}level 1 on the standard scale].

[^{F2}(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Local Government (Miscellaneous Provisions) Act 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.]
- (3) Any driver aggrieved by a decision of a district council under [^{F3}subsection (1) of] this section may appeal to a magistrates' court.

Annotations:

Amendments (Textual)

- F1** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46
- F2** S. 61(2A)(2B) inserted (16.3.2007) by Road Safety Act 2006 (c. 49), ss. 52(2), 61; S.I. 2007/466, art. 2
- F3** Words in s. 61(3) inserted (16.3.2007) by Road Safety Act 2006 (c. 49), ss. 52(3), 61; S.I. 2007/466, art. 2

Modifications etc. (not altering text)

- C1** S. 61: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1 Table B4

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Local Government (Miscellaneous Provisions) Act 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- s. 61 modified by S.I. 2009/2863 reg. 4 Table

Commencement Orders yet to be applied to the Local Government (Miscellaneous Provisions) Act 1976:

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2007/466 art. 2(b) commences (2006 c. 49)
- S.I. 2007/1897 art. 2 commences (2005 c. 9)
- S.I. 2009/3318 art. 2-4 commences (2009 c. 20)
- S.I. 2011/2329 art. 3 commences (2011 c. 5)
- S.I. 2011/3019 art. 3 Sch. 1 commences (2011 c. 13)