

# Legal Guidance on Blue Badge Fraud Disposal Options and Alternative Sanctions

## Executive Summary

This white paper provides important analysis of the current legal landscape for local authorities on disposal options in blue badge fraud cases, particularly addressing suggested alternative sanctions such as **awareness courses** and **voluntary payments/fines**.

It is prepared by BBFI, a not-for-profit organisation regulated by the CIC commission, with 18 years of experience working with 25 local authorities across the UK, handling approximately 2,000 blue badge fraud cases annually. We are multiple parking award winners and work closely with DfT and other policy-makers to advocate for the integrity of the blue badge scheme.

### Key Issues Covered:

- Why local authorities may not be able to lawfully charge fees for blue badge awareness courses as an alternative to prosecution
- Potential legal risks of sending letters demanding payment
- Local authorities' roles in issuing simple cautions and not conditional cautions
- Why it appears fees cannot be attached to simple cautions, nor conditions requiring course attendance be imposed
- What the relevance of the Localism Act 2011 is, and why it does not appear to provide authority to circumvent existing statutory restrictions on charging
- Overview of disposal options under the current legislative framework

This paper emphasises established case law requiring both parking and legal departments to act as "Ministers of Justice" when exercising prosecutorial discretion and discusses the potential consequences for non-compliance including judicial review, abuse of process claims, Local Government Ombudsman complaints, and possible officer misconduct charges.

**Please note: this paper is not legal advice.** It has been drafted following advice being sought from leading barristers around current legislation and guidance and may be subject to further caveats or analysis. Local authorities should always seek legal advice on which disposal options are appropriate for their specific circumstances.

## **Introduction and context**

BBFI is a not-for-profit organisation set up 18 years ago to increase compliance with the blue badge scheme and assist disabled motorists; we are regulated by the CIC commission. We have worked for 25 local authorities in England and Wales and handle in the region of 2,000 blue badge fraud cases a year.

The first thing to say is if one holds oneself out as a legal adviser you are liable for the advice you give. BBFI are investigators and litigators not legal advisers, we do not give legal advice.

Last year (2025) we investigated 1944 blue badge fraud cases and prepared over 1,400 cases for court, 576 of those cases involved a stolen or fake badge. Over 450 Vehicles with cancelled badges were removed and impounded. We work on a not-for-profit basis and the end-to-end cost to a Local Authority of a blue badge fraud investigation case is £255.

The Councils review the cases and decide the disposal option (“diversions from prosecution”) often this is done by a senior manager or a sanctions panel. The importance of that role cannot be underestimated, these are serious cases and can result in criminal records, curfew orders and even time in custody.

About two thirds of the cases go to Court (the more serious ones). These often involve fake or stolen badges or repeat offenders.

The simple cases (which often involve a parent of a disabled child or an elderly wife/ husband using her/ his chronically disabled partners badge) get a letter in the post with words of advice.

Part of the reason the price is so low is because an evidence pack is not prepared in the cases in which words of advice are given (about 30% of the cases). The more serious cases can generate an additional removal fee of £380 (over £170,000 last year) which goes to the Council.

Court costs are awarded to the council if the motorist is convicted. In one council the average costs over 1,490 successful convictions were £370 (all are backed by a Court warrant). In another Council the average costs were £711 but in others its significantly lower. With barrister's fees (so no additional legal fees) the total cost to the council is on average £365 per case.

### **Scope and Purpose of This Paper**

This article is not legal advice, but it is drafted following advice from the leading barristers in the field. You should seek your own advice however, this is a complex area, and it might be that your local authority need external specialist advice.

The impact of getting it wrong could be very serious as I will discuss. Our interpretation of the law has been reviewed by 3 central London local authorities and a team of top public sector law barristers.

We are writing this because we have been approached by two County Councils and one London Local Authority seeking our advice on the disposal options in Blue Badge fraud cases. They have asked if we can provide a Blue Badge awareness training course for offenders. The answer to this is yes but not in the format the local authorities have proposed which is unlawful.

We have also been asked if we can send a letter asking for a fee to be paid to avoid litigation, this is it is strictly unlawful and possibly even criminal.

I have tried to explore how we can provide the course, in what format and for what fee.

### **The English Legal Framework**

English law (that is English and Welsh law) is made up of a mixture of statute and case law, which is law coming from Parliament and law coming from the judgements of the judiciary in the courts. Those judgements also guide us as to the interpretation of statute.

Guidance notes are also part of the "rules of the road." That said the law changes, and this is the law as it stands now.

We would advocate a change in the law allowing Local Authorities to issue a conditional caution, something that might already be in motion.

### **Blue Badge Legislation and Offences**

Local authorities are empowered to issue a disabled persons parking card (commonly known as a Blue Badge). The badges have legal authority under the Chronically Sick and Disabled Persons Act 1970, s.21. This section also provides for the commission of offences by misuse of badges. There have been amendments over time, but none expressly extend to diversions from prosecution.

The rules are very simply laid out on the rear of the Badge, which states: *“This Badge can only be used by the named Badge holder or by a person who has dropped off or is collecting the badge holder from the place where the vehicle is parked. It is a criminal offence for anyone else to use this badge in any other circumstances.”*

Misuse of a blue badge is a criminal offence that is enshrined in the legislation.

The investigation of the misuse of that badge on the public highway is the investigation of a criminal offence. A local authority cannot decide to investigate as a civil action or not to comply with the rules of a public body carrying out a criminal investigation.

The investigation does not have to lead to a criminal sanction. There are various options and, in this article, I intend to visit those options which I refer to as disposal options/ “diversions from prosecution”.

Some of the questions I will be asking are whether a Blue Badge fraud awareness course could be a disposal option. Could a voluntary payment be an alternative to prosecution. Can local authority issue a conditional/ simple caution.

### **Local Authority Powers: The Statutory Framework**

Local authorities are ‘creatures of statues. That means they only have the powers granted to them by parliament and those which are truly incidental to the exercise of those functions.

Local authority powers are strictly confined, even with the general power of competence. The principal source of power is the Local Government Act 1972. Section 222 Provides the power to “prosecute and defend legal proceedings where this is expedient for the promotion and protection of the interests of their inhabitants”.

And

Section 111 provides an incidental power which states.

*“Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”*

So, the first disposal option is that of prosecution under the specific offence, be it the Consumer Rights Act (2015), Fraud Act 2006 or the Road Traffic Regulation Act 1984 (as amended) etc. Parliament delegates that power to local authorities.

### **Limitations on Charging Under Section 111**

Section 111 does not extend to the charging for a Service.

So, under section 111 a local authority could **not** charge for a Blue Badge awareness course.

The case law to support this statement is McCarthy and Stone V. Richmond 1990 2 2A 48. Which is a House of Lords decision which stated: s.111 made clear that focus of s.111 must be on the functions of the council. Section 111 was revisited last year in *R.(on the application of Ball) v Hinckley and Bosworth Council [2024] EWCA Civ 433*. But a local government can charge for Services, but how?

### **Local Government and Housing Act 1989 Section 150**

This was addressed in the Local Government and Housing Act 1989 s.150 provides means for the Secretary of State to make regulations which authorise the charging of prescribed Services. Could a Blue Badge awareness course be charged for under s.150.

The regulations made under this provision are an exhaustive list and cover a variety of functions. None include the provision of education or an alternative to prosecution. So, NO.

### **The Localism Act 2011: Sections 1-3**

What about s.1 of the Localism Act 2011?

What the 2011 Act gives in s.1 it takes away in s.2 and s.3. In section 1 the guidance notes emphasise that the power may be used to allow a local authority to do "Things that are unlike anything that a local authority- or any other public body- has done before or may currently do." Which does sound positive in terms of alternative sanctions.

Quoted from the decision in R (Qualter) v. Crown Court at Preston [2020] 1 WLR 1073. Mr Justice William Davis goes on to state that s.2 states that the Act cannot be used to circumvent restrictions on a pre-existing power or to avoid an expressed statute restriction. Thus, it does not give rise to a right to prosecute because section 222(1) of the 1972 Act still applies: see AB [2017] 1 WLR 4071.

In addition, any exercise of the general power of competence will remain subject to judicial review on ordinary public law principles; where activity by a local authority properly can be said to be irrational or unreasonable (see Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223 ), it will be liable to be quashed..."

Thus, this general power does significantly widen what local authorities can do, but it does not override restrictions imposed by other statutory powers: it is not a "blank cheque." There is a further limitation in s.3 specifically in relation to charging:

Unfortunately, section 3 places limits on charging in exercise of general powers.

2(c)" ignoring this section and section 93 of the Local Government Act 2003, the authority does not have power to charge for providing the service."

**On public law principles, an act by a local authority which does not fall within the scope of the statutory authorisations will be ultra vires and may be liable to be quashed.**

## **Disposal Options: Prosecutions**

Prosecutions may be brought for offences within the area of the local authority under s.222 power. Investigation is a function which is ancillary to the enforcement and prosecution functions. In determining whether a prosecution should be brought the authority should consider:

- (a) Whether there is a realistic prospect of conviction.
- (b) Whether it is in the public interest for a prosecution to be brought; and
- (c) In this particular context, whether for the purposes of s.222 Local Government Act, it is expedient for the promotion or protection of the interests of the inhabitants of their area for a prosecution to be brought.

If prosecution is not in the public interest a local authority may consider other options:

- Issuing a warning letter
- In certain circumstances issuing a simple caution

## **Duties as a 'Minister of Justice'**

In exercising these functions, the local authority must act in accordance with the principles of public law. It must act reasonably, without bias or fettering its discretion, having regard to all relevant factors and no irrelevant matters, and it must use its powers for their proper purpose. A failure to do so may render a decision liable to challenge. When exercising a prosecutorial function, the local authority must act fairly, as a **“minister of justice”** as set out in *R (Kay) v. Leeds Magistrates' Court* [2018] 4 WLR 91 at paragraph 23:

“(1) Whilst the Code for Crown Prosecutors does not apply to private prosecutions, a private prosecutor is subject to the same obligations as a Minister for Justice as are the public prosecuting authorities – including the duty to ensure that all relevant material is made available both for the court and the defence.

(2) Advocates and solicitors who have the conduct of private prosecutions must observe the highest standards of integrity, of regard for the public interest and duty to

act as a Minister for Justice in preference to the interests of the client who has instructed them to bring the prosecution – owing a duty to the court to ensure that the proceeding is fair.”

In the case of local authority prosecutions, the “private prosecutor” is the client, the authority, not the lawyer. Both the prosecutor and their lawyers are required to act in accordance with these principles. The principles apply equally to the parking department as the legal department.

### **Disposal Options: Cautions**

The police can compel an offender to attend such an awareness course as part of a conditional caution. Local authorities can only issue a simple caution not a conditional caution. A Local Authority cannot compel the driver to attend such a course as part of a simple caution.

As part of a conditional caution the police could compel a driver to attend a Blue Badge awareness course at the police station or a local authority. A caution is a recorded admission of guilt of an offence and goes on an offender’s criminal record.

### **The Legal Framework for Cautions**

The law and guidance relating to cautions is something of a patchwork:

- (i) Simple cautions are a non-statutory out of court disposal, governed by the public law.
- (ii) Guidance issued to the CPS and the Police by the Ministry of Justice sets out the criteria for the issue of a caution:
  - (a) There must be an unequivocal admission to the offence.
  - (b) A caution must not be offered in order to secure such an admission and must not be offered before such an admission has been made.
  - (c) An admission need not be in a formal interview but must be PACE-compliant.
  - (d) The Full Code Test must be applied, such that there must be sufficient evidence to provide a realistic prospect of conviction of the offence. A caution must not be offered in order to secure such evidence by way of an admission.

- (e) A caution must not be prohibited by any other provision; and
- (f) A prosecution must not be required in the public interest.
- (g) Additional provisions in the guidance govern the information to be provided to the recipient of the caution, and how it is to be recorded.

### **Statutory Provisions on Cautions**

(iii) Statutory provisions have added to the caution regime:

(a) The Criminal Justice Act 2003 introduced Conditional Cautions. These may be issued under s.22(1) only by those on a limited list of authorised persons, being constables, and/or relevant prosecutors and investigating officers as defined by s.27. Local authority lawyers and officials are not included in this list.

(b) Originally, the 2003 Act permitted the imposition of financial penalties under conditional cautions. This provision has since been narrowed. A new s.23A was added by the Police and Justice Act 2006 and has since been extensively amended. **Its effect is ultimately to limit the amount of financial penalty for a summary offence to £50.** Payment is not a condition precedent to the giving of a caution. The caution must be given, and then payment is part of the obligation subsequent to the caution. It should be noted that the financial penalty provisions are punitive in nature, rather than a fee for either the caution or any other part of the conditions.

(c) The Criminal Justice and Courts Act 2015 s.17 prevents the issue of a caution in certain circumstances (indictable only offences, repeat offending). This is primarily a provision which prevents the issue of a caution in certain circumstances.

**A new scheme of cautioning was set out in law in the Police, Crime, Sentencing and Courts Act 2022, Part 6. It is not clear if once enacted these provisions will extend to local authorities however I would urge organisations such as the ALG, IPC & BPA to lobby central government to extend these provisions to local authorities.**

In conclusion the law on cautions does not permit the imposition of a fee for the provision of a caution, nor a condition of any kind to be attached to a simple caution.

### **Lawful Options Available to Local Authorities**

Let's get back to what can be done. A civil enforcement officer or an investigator in plain clothes either employed, temporary or contracted to a local authority has powers under the Disabled Persons Parking Badges Act 2013 to inspect and if need be, seize a Badge. In doing so they are bound by the rules of the Police and Criminal Evidence Act 1984.

Once seized the local authority has four options, none of which are services that can be charged for.

- A) The first is to prosecute under powers derived from s.222 of the Local Government Act in regard to the relevant legislation.
- B) The second is to issue a letter which has no judicial weight asking the driver to refrain from such activity in the future.
- C) The third option is to issue a simple caution (as previously discussed).
- D) The fourth option could be to offer a freestanding educational offer and charge at cost (because of s.3 localism act) for this. (It could theoretically offer this as a strictly optional add-on to the Blue Badge application process, but it could not make this compulsory for all applicants as:

(a) it would likely be discriminatory, and

(b) the fees for badges are prescribed in law.)

Any offer would have to charge no more than the cost of providing the course – not course plus administrative overheads, or course plus enforcement.

### **Can Educational Courses Be Offered as Alternatives to Prosecution?**

But could the fourth option be offered as an alternative to prosecution. Pre Localism Act the answer would be NO as a strict prohibition on charging for an educational course could be permitted under that power.

An individual cannot impose a fine, so the Localism Act does not authorise a local authority to do so. An individual can compromise legal actions and may in some

circumstances agree not to bring a prosecution on conditions, however it would be inconsistent with the public law duties of a local authority, acting as a 'Minister of Justice' in exercising its prosecutorial discretion, to cause a situation in which it might be perceived that individuals could pay to avoid a prosecution.

In certain circumstances, especially if a fee was demanded which was unlawful, this might appear to be blackmail.

In addition, prescribing an amount of money and pegging that to threat of prosecution may be regarded as fettering discretion in a very sensitive area, and may be discriminatory. Whilst a local official being prosecuted for misconduct in public office or blackmail seems unlikely (although cannot be ruled-out entirely), this could form the basis for a successful judicial review and/or abuse of process.

### **Departmental Responsibilities and Limits**

The discretion of the parking department is not wider than that of the legal department. A local authority parking department cannot make a decision prior to referral to legal services without consideration of the duties of a 'Minister of Justice'. "Client" departments are under the same obligation to act fairly as the legal department and in relation to the duties of the local authority considering the exercise of its powers under s.222.

### **Strict Limitations on Charging for Awareness Courses**

"Administration", "processing" and "investigation" costs cannot be rolled into the fee for such a course. Likewise, recovering for investigation and officer time, evidence collation and case administration, and processing of payment and record-keeping cannot be included in the fee.

The Localism Act is strict – what is permitted is a fee which covers the cost of the service, i.e. the course. Administration and investigation are functions which are ancillary or incidental, and either relate to the prosecutorial and enforcement function of the council or relate to the course but are ancillary to it rather than the cost of the service.

Any fee which is included these elements would be at risk of being declared unlawful.

The concept in the note of “reasonable administrative cost recovery” has no basis in law. The higher the level of the fee, the greater the perception that this is either an unlawful financial penalty for which there is no authority, or an extorted payment under threat of prosecution, in which case blackmail.

Section 3 of the Localism Act would require an annual exercise to ensure that the fees charged did not exceed the cost of provision. The inability to recoup investigative costs is crucial. There is no doubt that such costs cannot be included in any fees charged for the course – they are not on any reasonable basis costs of providing the course.

However, as set out below, the investigative work must be complete before a course can be offered or discussed. The cost of this cannot be recovered. This may disincentivise the provision of such a course. No course can be offered at a stage prior to a voluntary and PACE-compliant admission having been made, or prior to there being an assessment on full evidence that there is a realistic prospect of conviction.

#### **BBFI's Compliant Course Offering**

BBFI can provide such a course in a legal and compliant way adhering to the attached rules. The course would be given in person or on-line and we would suggest a fee of £50 per attendee to cover the provision of the course:

#### **Prerequisites for Offering the Course**

- (i) There has been proper consideration of the evidence, including evidence or material in favour of the potential defendant or against prosecution;  
(guidance documents from the MOJ and the CPS on cautions and out-of-court disposals)

There is a realistic prospect of conviction on that evidence, and the Council has considered that it would be expedient (etc) to prosecute for an offence within the authority's area (the various guidance documents from the MOJ and the CPS on cautions and out-of-court disposals are a good starting point).

- (ii) Within the evidence, obtained properly in a PACE-compliant manner prior to any discussion of a course, there is an unequivocal admission to the offence.

- (iii) The authority has formed the view that prosecution is viable and would be justified in the public interest but for the possibility of rehabilitation via a course (anything less than this means the threat of prosecution is misleading, as if public interest is absent there would be no prosecution, course or not);
- (iv) A genuinely educational course is available.
- (v) The fee for the course does not exceed the cost of providing the course and does not include any added aspect for other expenses incurred by the authority.
- (vi) An equality assessment has been carried out such that there is no reasonable adjustment required either in relation to the provision of the course or its fee; and
- (vii) The course-participant has voluntarily agreed to take part in the course.

In which an evidence pack (to a criminal prosecution standard) must be prepared. It must be put to the suspect that they committed the offence and they must accept they committed the offence. They must then attend a meeting at which the simple caution is issued. They can be given an option to attend a Blue Badge awareness training session, but they cannot be compelled. It cannot be conditional. A fee can be charged but not exceeding £50 and realistically less.

### **Concerns About Current Local Authority Practices**

I understand some local authorities have already gone down that route; I further understand some have been referred to the local Government ombudsman.

### **The Role of Civil Enforcement Officers and Proper Case Handling**

The British Parking Association City and Guilds Blue Badge awareness course is an excellent way to make Civil enforcement officers (CEO) aware of how the Blue Badge

scheme works. They should be checking every Badge on the manage Blue Badge's application provided by the Department for Transport. Reports should be run from that system showing how many checks have been done per CEO and per local authority every day.

### **Procedures for Unattended Vehicles**

If a stationary unattended vehicle is parked with a lost, stolen, deceased persons or fake badge a penalty charge notice should be issued. Ideally, the vehicle should be removed and impounded and the badge seized by authorised officers (under the 2013 Act) at the vehicle pound. Investigators can then prepare the case for court. The cashier will still need to provide a witness statement as well the civil enforcement officer. A trained investigator will need to pull the case together, but the chance of success in court is very high. A CEO can be authorised to seize a badge. However, a CEO will not be trained to carry out an investigation to a criminal standard or collect evidence to a criminal standard this is a different skill set to that of being a CEO. Local authorities have an enormous resource in terms of their Regulatory Enforcement and corporate anti-fraud teams who could take over a case and prepare it for court or a simple caution.

### **Limitations of CEO-Initiated Cases**

Of course, cases generated by CEOs can result in Warning letters but if they are not prepared to a sufficient evidential standard not a Blue Badge awareness course or an option to pay a fee to avoid litigation. BBFI have previously been instructed to review CEO initiated cases and we've spent considerable amounts of time with them and prepared a small percentage for court. The reality is that our time would have been more effectively spent seizing the badge (all-be-it alongside a CEO) in the first place. If and authority can dedicate investigator time it should be spent initiating and preparing cases not trying to piece together cases from CEOs.

Making a false declaration in regard to a penalty charge notice issued to a vehicle parked in contravention using a cancelled Blue Badge could well be an offence under the Fraud Act 2006. Again, these Cases should be passed to either the regulatory enforcement team, Corporate anti-fraud team or a specialist Blue Badge fraud team.

## **Summary and Conclusion**

In summary any such course could only be offered after the evidence had been fully considered, a decision reached that there is a realistic prospect of conviction, and that it would be in the public interest to prosecute but for attendance at a course, and prior to that point there had been an unequivocal and voluntary PACE-compliant admission to the offence.

There would have to be residual discretion to offer the course in a different way or without payment of the fee. Any fee charged is very strictly limited only to the actual cost of providing the course. Associated or other expenses that are not the cost of provision cannot be charged to the course recipient. Charging a fee to reflect the investigative or prosecuting costs is unlawful. Sending a letter in the post giving the driver an option of paying a fee in order to avoid prosecution is also unlawful. Could a parking department “wing it.” The answer is “not for long” the ombudsman for local governments has wide reaching powers. Monies collected unlawfully would need to be returned possibly with damages; as for the officers making such a decision one corporate anti-fraud manager, we discussed this option with described this as gross misconduct.

**Paul Slowey LL.M. MBA**

**Founder and Director BBFI CIC | [bbfi.org.uk](http://bbfi.org.uk)**