

# The Yardstick

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## The measure of Hackney Council

Hackney Council has released a *Weights and Measures Project Briefing*, reproduced on page two of this Yardstick, which gives the rationale for the forthcoming prosecution of Janet Devers for using pounds and ounces.

The briefing states the need to ensure accuracy of weighing scales, saying that it is "...not possible to test imperial scales for accuracy" because imperial measures have been removed from the Weights and Measures Act 1985 and do not exist legally. Indeed, Hackney Council says that it would be "... illegal for an Inspector of Weights and Measures to test an imperial scale". So, whereas Janet Devers is making a stand on choice of units, Hackney is trying to change the emphasis to one of ensuring accuracy.

Where Hackney's reasoning falls down is that its statement that imperial scales cannot be tested is contradicted by the *Metrication Concordat Advice & Enforcement Pack*, issued by the trading standards co-ordinating body LACORS in 2004, which addressed this very question; it stated: "There appears to be no bar to the testing of imperial indications by the application of the equivalent metric standards ... the equivalent metric standards should be applied, i.e. to test the machine at '1lb', metric standards of, e.g. 453.6g would be applied and errors stated in metric".

So, Hackney Council's claim that an imperial scale is seven times more likely to be in error than a metric scale is a problem that *they themselves are causing* by not checking imperial scales with metric equivalents. Is the right person being prosecuted, we wonder?

## Annual General Meeting & Conference

Please see back page: to be held on Saturday 17 May 2008 at the Victory Services Club, 63 Seymour Street, London. Guest speakers to include Dr John Bentham, Managing Director of Benoil Services, and Cllr Steve Radford, President of the Liberal Party.

John Gardner, Director

BWMA is a non-profit body that exists to promote parity in law between British and metric units. It enjoys support from across Britain's political spectrum, from all manner of businesses and the general public. BWMA is financed by member subscriptions and donations.

Membership is £12 per year. Cheques or postal orders payable to "BWMA", 11 Greensleeves Avenue, Broadstone, Dorset BH18 8BJ

## **Mayor of Hackney writes to BWMA Committee Member Derek Norman**

Dear Mr Norman

Thank you for your email regarding [enforcement of Weights and Measures regulations] which was forwarded to my office on 18 January 2008.

You will find details of the legal situation regarding the enforcing of weights and measures regulations in protecting residents and shoppers in the attached report [see below].

Enforcing weight and measures regulations is vital in ensuring businesses are trading fairly and in full compliance with the legal requirements, directly addressing residents' concerns that they get prices which are clear and allow for comparison, and that they can have continued confidence that the scales used by traders are accurate. It is vital that consumers can make direct comparisons between different stalls and shops. They can do this as a result of consumer confidence that scales are accurate and that all traders operate to the same standards.

Hackney Council has carried out a number of surveys of residents and visitors and the results showed that people are concerned about the pricing and accuracy of their scales. Indeed National surveys such as the Vanilla Report *Measuring up (Consumer perceptions of Weights & Measures Legislation)* have shown that people greatly appreciate the confidence provided by checks on weighing machines and want these checks to continue.

Yours sincerely  
Jules Pipe  
Mayor of Hackney

### **Attached document: Hackney Council "Weights and Measures Project Briefing", February 2008**

#### **Legal background**

In the year 2000 imperial measurements were removed from the schedule of the Weights and Measures Act 1985 by a UK regulation implementing the Units of Measurement Directive therefore making them illegal for use for trade in selling loose produce, thus from a legal point of view imperial does not exist.

It is a duty of a Weights and Measures Authority to inspect metrological equipment (including scales) in their area. Inspectors of Weights and Measures use Working Standard test weights to check for scales' accuracy. These weights are tested against more accurate Local Standards, which are in turn tested against National Standards, thus there is a full traceability of measurement from a scale to National Standards. This allows confidence in weighing transactions. This is what happens with metric scales. However, because imperial measures have been removed from the schedule to the Weights and Measures Act 1985, there are no Standards, which can be used to

test weights against, they do not legally exist. Therefore it is not possible to test imperial scales for accuracy, and indeed it would be illegal for an Inspector of Weights and Measures to test an imperial scale. Metric scales are tested on approximately a yearly basis, but any imperial scales will not have been checked for 7 years. Therefore imperial scales are at least 7 times more likely to be inaccurate and possibly counting against the consumer. Another part of our remit is to ensure a level playing field for other traders. Obviously it is hardly fair for one trader to be able to avoid any inspection on their machines whereas everyone else on the market has their machine regularly checked.

#### **The requirement to carry out regular tests on weighing equipment**

It is important to note that it is a duty of a Weights and Measures Authority to inspect metrological equipment in their area and this includes weighing scales used for the sale of fruit and vegetables. Authorities are required to use Working Standard test Weights to check the scales for their accuracy. In order to carry out these tests the weights have to be tested against more accurate Local Standards, which are in turn tested against National Standards. This is the approach adopted in relation to metric scales.

However, the problem the Authority faces with the sole use of imperial measures is that they have been removed from the UK legislation via the Weights and Measures Act 1985. Therefore imperial measures no longer legally exist and as such there are no Standards which can be used to test the imperial scales against. Therefore it is not possible to test imperial scales for accuracy and indeed it would be illegal for an Inspector of the Weights and Measures to test imperial scales.

Metric scales on the other hand are tested on approximately a yearly basis and the Authority is under an obligation to carry out these checks. But if a trader insists on using the imperial scales in contravention of the legislation there is no way of testing them because no tests have been carried out on imperial scales for at least seven years.

The Authority have to ensure a level playing field for all its traders and consequently it would be unfair for one trader to be able to avoid any inspection of their machines whilst everyone else who is adhering to the use of metric scales has their machines checked regularly.

#### **The EU's decision 2000**

The above Directive was amended in January 2000 and this allowed the UK to use imperial units as supplementary units; that is they could be used for comparisons with metric units (so long as they were not as prominent as the metric). This was to continue until 31<sup>st</sup> December 2009 when imperial units would be removed completely. Earlier this year the European Commission agreed to extend this derogation indefinitely, thus allowing imperial units to be used as comparison units only for an indefinite period of time.

Therefore in essence, the EU's announcement changed nothing, only extended what has been happening since the year 2000.

It has always been the policy of this Council, since 2000, that imperial units could be used as comparison units; this has not & will not change. This means that the Council allows traders to use a "Dual Scale" which measures metric units but can also provide a comparison for imperial units. But the metric units must be the predominant weighing scale. The word and spirit of the law asks that all produce is weighed in metric quantities. If people ask for 'a pound' then 454g is weighed out for them, they know the price because both price per kg and price per lb are listed.

### **Legal power to seize scales**

The legal power to seize scales comes from the Weights and Measures Act 1985. As previously stated, legally, for trade, imperial units cannot be used for trade transactions. Therefore scales that can only weigh in imperial units cannot be used for trade. Because of this the scales are 'rejected' by an Inspector of Weights and Measures, this means that the crown stamp is obliterated by a 6 pointed star. At this point the scales are illegal to use for trade transactions and if observed in use by an Inspector of Weights and Measures they can be seized.

Since May 2007 Trading Standards Officers have been advising all market traders regularly and leaving advice packs which explain fully and clearly the correct way to sell fruit and vegetables. Regular follow up advice has been given. Traders always have the chance to rectify any problems throughout the process, assisted by Officers if they do not understand.

Further action will be taken against any trader who deliberately ignored the advice and information. This may take the form of formal action allowed under the Weights and Measures Act, for example notices, equipment seizures.

As discussed above, the Council follows the Enforcement Concordat, whereby advice is given to help the trader comply. If the advice is ignored then a warning will be given, followed up in writing; if no improvement occurs formal action will be taken. This is what happened in this case. The Council would like to stress that prosecuting anyone is a last resort and is only taken in circumstances that warrant it.

As previously discussed it is hardly in the spirit of fair and free trade to be refusing to convert and correctly price when all the other traders now use Metric scales and dual mark their prices.

### **Costs**

In relation to costs it would be unfair and inappropriate to give an estimate of future costs in the case at this stage.

The Council trust that we have addressed all the points raised and would like to thank you for your comments and interest in this matter.

## ***Government reply to BWMA Freedom of Information request, 29 February 2008***

Dear Mr Gardner

Thank you for your letter of 28 December 2007 in which you requested an internal review of the way in which your request for information in relation to the Commission consultation on Directive 80/181/EC was handled. In accordance with the Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (FOI Act), I have conducted an internal review of the original decision on your request. In carrying out this review, I have considered whether the original decision to withhold the information, was correct. I have also considered whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Having considered the information being withheld in the light of the exemption relating to international relations I have concluded that, on balance, the public interest in withholding the information outweighs the public interest in disclosure. It is important that the public should feel confident that decisions made by Government are carefully considered and are the right ones in any given circumstances. Wherever possible any information which would be likely to achieve that aim should be disclosed. However, against this must be weighed the possible detriment of disclosure to the effective conduct of the United Kingdom's international relations. Release of the information in question could prove detrimental by inhibiting free and frank exchange between officials here with officials in the European Commission.

In the case in question, having considered the public interest arguments both for and against disclosure, I have concluded that the latter outweigh the former on the grounds that disclosure would be likely to prejudice relations between the UK and the European Commission by inhibiting the free and frank exchange of views to the detriment of the conduct of such international relations.

I have also considered the arguments put forward in your letter of 28 December in which you question the applicability of the section 27 exemption in this case on the grounds that the correspondence in question relates to a Directive that is applicable across EU borders and is therefore a matter in which the UK is part of the EU. You go on to state that this is therefore not a case of the UK as a separate nation dealing with the EU as another separate body, so exemptions designed to protect the sensitivity of international negotiations do not apply. However, section 27 (5) of the FOI Act defines an international organisation as "any international organisation whose members include any two or more states, *or any organ of such an organisation*". The European Commission is without doubt an 'organ' of the EU. My view therefore is that your interpretation of section 27 is legally incorrect.

Yours sincerely, Sir Keith O'Nions  
Director General, Science and Innovation,  
Department for Innovation, Universities and Skills, Kingsgate House, Victoria Street, London

*To be continued*

## **EC Commissioner Mr Verheugen writes**

Yardstick 33 commented on the apparent contradiction of EC Directive 80/181 requiring the use of metric units from 1 January 2000, yet including Article 4 which permits the continued use of non-metric scales in use on that date. EC Commissioner Mr Verheugen provided the following explanation to Ashley Mote MEP on 14 March 2008:

“Since 1 January 2000, the legal units of measurement are the metric ones (Article 1 of Directive 80/181/EEC). However, Directive 80/181/EEC allows imperial units (i.e. pound, ounce) as supplementary indications (Article 3.2). Therefore a dual indication on measuring instruments (in both metric and imperial units) is allowed.

“Article 4 of Directive 80/181/EEC intends to allow the continued use, maintenance, repair and replacement of old products and equipment that bear only an imperial indication and which were already on the market and/or in service on the date on which the Directive was adopted. However, Member States may require the use of legal units of measurement for the indicators of measuring instruments, according to the last sentence of Article 4. Therefore, there is no contradiction in that Article.

“As a conclusion, the Commission is not aware of any confusion, contradictions or difficulties in the implementation of Directive 80/181/EEC and this has been confirmed by Member State authorities. The Commission’s legislative proposal is to extend the current practice indefinitely”.

**BWMA comment:** no confusion at all, except that Mr Verheugen does not explain how a Member State must “require the use of legal units of measurement for the indicators of measuring instruments” when Article 4 states that pre-2000 scales without metric indications may be used indefinitely.

## **Annual General Meeting & Conference Saturday 17th May 2008**

**Victory Services Club, 63 Seymour Street, London  
W2 2HF**

**Tel: 020 7616 8305**

**(off Edgware Road, just north of Marble Arch)**

### **AGM 10.30 for 11.0am - free to members**

The following nominations have been proposed and seconded:

Chairman Michael Plumbe, Director John Gardner, Hon Treasurer & Membership Secretary Lee Consterdine.  
Committee Members: David Delaney, Professor Antony Flew, Pamela Shaw-Hesketh, Derek Norman, Fabian Olins, William Peters, Bruce Robertson, Peter Rogers, Robert Stevens, John Strange.

### **Conference 1.30 for 2.0pm - £5 admission on door**

Guest speakers **Dr John Bentham**, Managing Director of Benoil Services, the Newbury-based specialist supplier of industrial products, and **Cllr Steve Radford**, President of the Liberal Party. Further contributions by Neil Herron of the Metric Martyr Defence Fund, Vivian Linacre, BWMA’s Founder and President, and John Gardner, BWMA Director.

**Minutes of the 12th Annual General Meeting**, held on Saturday 19 May 2007 at Victory Services Club, 63 Seymour Street, London W2 6HF at 11.00am

**Present:** Vivian Linacre (President), Michael Plumbe (Chairman), John Gardner (Director), Lee Consterdine (Hon Treasurer), members of the Committee and 40 members.

**Apologies:** 20 apologies were recorded including Sir Patrick Moore, David Delaney and Pamela Shaw-Hesketh.

**Minutes of AGM held on 22nd May 2006:** These, having been circulated earlier, were taken as read and approved.

**Director's Report:** John Gardner gave a full and detailed report on recent developments. He had meeting with DTI and nine industry groups. UK government now supporting indefinite use of supplementary indications, the European Commission was expected to make a formal response in July. Honorary Members had sent a letter to government which was reported in *The Times*. MEPs had corresponded with the EU to whom BWMA had also sent submissions. Four editions of *The Yardstick* had been published, press releases had been issued world wide, a newswire agency had been appointed and a consumer opinion poll conducted. Approved nem con

**Hon. Treasurer's Report:** Lee Consterdine reported that audited accounts for 2006 had since been signed off. The accounts for 2007 had not been signed off. (Subsequent to the meeting these accounts were signed off and showed a total cash balance of £9,884.) Expenditure was not expected to be as high for the current year. BWMA had 550 members. Of 140 lost, 27 had rejoined. Renewals would be promoted in the next edition of *The Yardstick*. Approved nem con

**Election of Officers and Committee:** Chairman, Michael Plumbe, proposed by John Gardner and seconded by Mr M Davies. Election of Officers, John Gardner (Director), Lee Consterdine (Hon. Treasurer). Committee members, David Delaney, Professor Antony Flew, Pamela Shaw-Hesketh, Simon Hooton, Derek Norman, Fabian Olins, William Peters, Philip Pitt, Bruce Roberston, Peter Rogers, Robert Stevens and John Strange. All duly elected, proposer Vivian Linacre, seconder E. Worster.

**Appointment of Auditor:** proposed by Hon. Treasurer, seconded by Michael Plumbe, Bill Featherstone duly elected.

**Any Other Business:** Mr M Davies asked if BWMA was successful with supplementary indications would schools have to teach customary measures. Vivian Linacre’s book *The General Rule* was now published and available for purchase.

BWMA has set up a campaign fund for Janet Devers. Members who wish to donate should make cheques payable to “BWMA” and write “Janet Devers Appeal” on the reverse. Please send to 11 Greensleeves Avenue, Broadstone, Dorset BH18 8BJ.

Renewing members who wish to send a single cheque for both renewal and donation for Janet Devers must state on their renewal form how much they are donating to Janet Devers. If this is not done, additional sums will be regarded as a donation to BWMA itself.

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Broadstone, Dorset BH18 8BJ**

**☎ 020 8922 0089 (ansa machine)**

Website: [www.bwmaOnline.com](http://www.bwmaOnline.com)

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**Director:** John Gardner

**Chairman:** Michael Plumbe

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