

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS AND POLICY – CAB CAMS		
DATE OF DECISION:	19 SEPTEMBER 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
None

BRIEF SUMMARY

Since 26 August 2009 the Authority has required, by way of policy and conditions, that all new and replacement vehicles be fitted with Council approved cameras and that those cameras be subsidised to the effect that the cost to the driver be capped at £250 excluding VAT and fitting costs.

In light of factors including a Crown Court judgment in an appeal brought by the Council, the complaint to the Information Commissioner which resulted in a Tribunal decision of national importance and the ongoing subsidy implications of the scheme a review was required. The matter was originally referred to Committee in March 2012. The Licensing Committee agreed a review of the policy and conditions and authorised a consultation exercise. The review process was commenced with surveys conducted by an independent company, however, this was deferred pending the outcome of enforcement action and a Tribunal hearing considering the audio element of the policy. In light of the conclusion of those proceedings and further consultation the matter is now referred back to the Licensing Committee for determination.

RECOMMENDATIONS:

- (i) to
- (a) consider the results of the consultation exercise and recent judgment of the Information Rights Tribunal
 - (b) consider the financial and timescale impact on operators / proprietors from each of the options set out in the report
 - (c) determine whether the policy and conditions in relation to cameras for new and replacement hackney carriages and private hire vehicles should continue to be enforced and / or should be amended and consider adoption of one of the several options set out within this report.

- (ii) to delegate authority to the Head of Legal, HR and Democratic Services to implement any new or revised policy and conditions and keep under review.

REASONS FOR REPORT RECOMMENDATIONS

1. Following the implementation of the policy and condition an appeal of the condition resulted in observations (dicta) from the Crown Court, despite finding for the Council.
2. Subsequently a complaint was made to the Information Commissioner's Office who raised Data Protection issues leading to service of an Enforcement Notice by the Information Commissioner's Office ("ICO") and an appeal by SCC to the Information Rights Tribunal heard in January 2013.
3. Prior to that appeal on the 22nd March 2012 the Licensing Committee resolved to authorise the commencement of a consultation exercise to allow a full review of the policy and conditions in light of adverse judicial comment. This was suspended pending the tribunal case.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. None. All options are contained in this report.

DETAIL (Including consultation carried out)

5. The history of proceedings has been set out in full in the previous report dated 22nd March 2012 (and attachments) which is available for inspection in the Member's Room.
6. There has been some delay in the matter returning to Committee for consideration due to the enforcement action undertaken by the ICO and subsequent appeal brought by the Council against the service of that notice, to the Information Rights Tribunal. In light of these proceedings it was felt prudent to await the outcome and the clarification it would provide before referring the matter back to the Licensing Committee for full and proper consideration.
7. Following the resolution to authorise consultation, the Halcrow Group (an independent survey company) were instructed and undertook a consultation exercise by way of survey of the trade and members of the public and correspondence sent to stakeholders and trade representatives. Consultation responses are summarised and presented by the Halcrow Group Ltd. at Appendix 1.
8. During the consultation process the ICO served an Enforcement Notice requiring the cessation of continuous audio recording. The Notice is attached at Appendix 2. In response to the notice legal advice was sought from leading counsel and the decision was taken to appeal the terms of the notice. The grounds of appeal are set out in full at Appendix 3. The appeal led to a hearing before the Information Rights Tribunal where the Council was supported both by Hampshire Constabulary and the Association of Chief Police Officers (ACPO) giving evidence. The ICO itself acknowledged that the case was one of considerable national importance and was dealing with groundbreaking issues. The ICO also made clear that it had no concern with the continuous recording of video within taxis nor had any concern with audio

recording where it is triggered - for example by way of panic button. The only element of the Council's policy that caused concern was that part requiring continuous audio recording.

9. The judgment of the Tribunal is attached at Appendix 4. In essence the Tribunal noted the concerns of the Council and the clear purpose of the policy to protect the public (stating they were impressed by the evidence and the nature of the problem – including vulnerability of specific passengers), however were ultimately not satisfied on balance that the continuous recording of audio was proportionate. The tribunal decision is binding on the Council and has not been appealed.

10. **Trade Consultation**

In light of the delay in the review of the policy it was considered appropriate to allow the trade a further opportunity, in addition to the survey already undertaken and sent to each licence holder, to express views in light of the recent judgment and developments.

11. On 2nd May 2013 a Taxi Trade Representative Consultation meeting was held to discuss taxi cameras. In short the trade made the following points:

- If the proposal to have cameras was to protect the driver then why is it compulsory?
- If on the other hand it was for the protection of the public, the licensing of drivers is a waste of money and indicates a failure of the licensing department, if the council is so incompetent in its checks on drivers that it needs cameras to control them, adding it shows a lack of faith in the trade and the licensing system.
- The original cameras cost £700 with expensive replacement parts. The trade would like more choice of approved cameras.
- It was clear cameras and audio were supported but only voluntarily.

The notes of the meeting are attached as Appendix 5.

12. The purpose of the policy was to protect the public and drivers. In 2008 and 2009 there were a total of 8 allegations of sexual offences by licensed drivers against their passengers. Only 2 of these cases are understood to have resulted in convictions, the rest were either not proceeded with or found not guilty at court due to lack of evidence. Clearly taxi camera evidence would have assisted in determining if the allegations were true or not. The number of reported incidents has dropped since cameras have been made mandatory. In officers opinion this proves the cameras are a deterrent that works. Since 1st January 2011, nearly 30 months compared to the 24 months in 2008 and 2009, there has been a reduction to 5 allegations of sexual offences on passengers by drivers. Taxi camera evidence has been used in four of the investigations. Two licenses have been revoked and the remainder have had no further action taken.
13. Section 17 of the Crime and Disorder Act 1998 imposes a direction to local authorities to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. The purpose of the cameras is to protect both the public and the drivers and to further the council's

obligations under the above Act.

14. A driver is already subject to a high degree of checks to satisfy the “fit and proper” test to be a licence holder. Any vetting process alone cannot completely eliminate the risk of an individual acting inappropriately once licensed. It does, however, significantly reduce the risk.
15. Prior to making cameras compulsory there was a voluntary scheme open to the whole trade. 110 cameras were fitted under the voluntary scheme, a take up of less than 15%.
16. The camera specification required by the Council is under review, however to ensure data is captured, kept secure and able to be presented in a format meeting the requirements to be presented as evidence at a criminal trial the cost is likely to remain in the region of £700. If the committee decides to continue with a camera system, once the specification has been reviewed the trade will be notified to allow them to seek suitable systems to be considered for approval by the Licensing Manager. As each system will have its own procedure to secure downloads, the licensing manager will wish to restrict the number of approved systems to a maximum of 4. During the appeal hearing it became apparent the council needed to make public its policies in relation to when data will be downloaded, how it will be downloaded and who will conduct the download to safeguard against inappropriate or illegal downloads. The police have agreed to undertake the downloads (as mainly they are used as potential criminal evidence) but will only commit resources to do so if the camera systems are ones approved by the Council and equally the Council is the data controller. Attached at Appendix 6 is a proposed policy to cover downloads of data.
17. **Current Suspension of the policy**

In light of the judgment the Licensing Team has made arrangements for all licensed vehicles with cameras fitted to have the audio recording disabled pending the outcome of review of the policy by the Committee. A number of drivers have expressed concern to Licensing staff the loss of audio recording is putting them at greater risk of false allegations and racial abuse.
18. Whilst officers are sympathetic with their position as a matter of law the council is no longer able to require a system has continuous recording of audio. As a result it is suggested that the evidential benefits of audio recording alone are considerably undermined. However, it is accepted that a triggered system may well be of benefit to the driver in protecting their own position.
19. **Exemptions from the policy**

In addition to the impact of this judgment the experiences of the licensing team and trade in relation to the fitting of cameras have identified an area of the policy to be reconsidered. At present there is no express exemption for the fitting of cameras allowed within the policy. Yet there are examples of vehicles that have not had cameras fitted. These are generally specialist vehicles, such as chauffeur driven limousines and novelty vehicles; the Council has licensed a replica of Scooby Doo’s van amongst them.
20. One proprietor has a collection of distinctive vehicles and some of historical interest. Often the vehicle is valued in excess of £50,000. The vehicles are

used for 'novelty' private hire, are pre-booked days in advance to attend specific functions and therefore pose considerably less risk to both customer and driver compared to a normal private hire vehicle/hackney carriage picking up a fare from the street. The fitting of a camera is not practical in some of these vehicles because of the way they were built.

21. The main group affected are the Chauffeur businesses. Their vehicles are specialist vehicles as they are high quality, top end of the market vehicles. They do not openly advertise their business but target contracts with high profile business people to transport to either meeting locations or main transport hubs such as airports. A number of these businesses are likely to be involved in contracts with defence, military and high profile organisations from both home and abroad. These people understandably will not tolerate their conversations being recorded. Appendix 7 is a letter from a company explaining this. Such people are also less likely to pose a risk to the driver and they will have built up a trusting relationship with the driver so as not to feel at risk, reducing the need for a camera.
22. By amending condition 23.4 of the Private Hire Vehicle Licence Policy and Conditions to include exemption to condition 25 the Head of Legal, HR and Democratic Services will have discretion to exempt appropriate vehicles from the requirement to have a camera fitted. A copy of the present conditions is attached as appendix 8. It is noted the present policy and conditions refer to the Solicitor to the Council. This post no longer exists and the policy needs to be amended to reflect the change of title.
23. **Other Consultation**

In addition to the consultation with the Trade Representatives letters were sent to Big Brother Watch and the Information Commissioner's Office on 7th May 2013. The letters are identical except the address. A copy is attached at Appendix 9.
24. Big Brother responded and a copy of their letter is attached as Appendix 10. They believe the drivers/owners should have a choice and a panic button to activate the camera would offer them protection. They suggest justifying permanent recording of visual data needs to be considered with evidence of the requirement to have it and compared against the impact of such a system. They view audio recordings should only happen when it is absolutely necessary and even a panic button may not be justified. However they do suggest steps that should be taken should such a system be used. Big Brother Watch believe the drivers should be the data controllers so individuals are held to account for breaches rather than a corporate accountability.
25. In addition to the letter sent to the ICO an e-mail was sent asking their view on button activated recording of audio data. A copy of this mail is attached as appendix 11. The ICO responded with an e-mail and this is attached as appendix 12. The guidance they issue is that any recording of data needs to be justified and impact assessments need to be carried out to justify the steps taken.
26. The vast majority of the assessment has been carried out to justify the original policy. There is nothing to suggest that assessment was flawed. At the Consultation meeting there was an acceptance by the trade the audio data

was essential and necessary for the system to be meaningful. The only remaining question is how long the recording should be. Having reviewed the data downloads carried out and spoken to the staff involved with investigations a time of 5 minutes to record once the button is pushed appears to be proportionate. This time has also been suggested by one of the suppliers of the recording equipment who has experience in other areas.

27. On 30th May 2013 an e-mail was sent to all the Private Hire Operators, Appendix 13, and a notice placed on the Council licensing website, Appendix 14. This sought views from the trade on the Taxi Cameras. This consultation finished on Friday 14th June 2013 and 8 people responded. Their responses are attached as Appendix 15. There is general support for the camera system but concerns expressed over the cost of the approved systems and the removal of the subsidy.
28. In June 2013 the Surveillance Camera Commissioner issued a Code of Practice. This is attached as appendix 16. It outlines 12 guiding principles that should apply to all surveillance camera systems in a public place. This report has been compiled with these principles in mind.
29. **Exterior cameras**
As a separate matter, during the consultation process with both the trade and camera companies it is clear there is a demand for cameras to be fitted to view outside of the vehicle. The purpose of these cameras is to gather evidence for insurance claims after road traffic collisions. Insurance companies are offering substantial discounts for vehicles fitted with such a system.
30. There is no apparent reason why the City Council should object to these type of cameras and in fact support the fitting as it often improves driving standards. However it needs to be made clear any outward facing camera system is wholly separate from the Council approved system. The council will not be the data controller for such a system or be involved in the downloading of data. Each owner will need to register themselves as the data controller and take responsibility for the download of the data. Any person found abusing the data on such a system is likely to be committing a criminal offence, can be reported to the Information Commissioners Office and have the fit and proper person test applied to their licences.
31. **Options and financing the camera system**
At the meeting of the Licensing Committee on 26th August 2009 it was resolved the Council would subsidise the fitting of Taxi Cameras so each owner/driver paid no more than £250 +VAT. It was originally expected the licensing budget would cover the costs of providing the subsidy. It is now clear the Licensing budget is unable to continue this subsidy and at a time of cutbacks funding is not forthcoming from other avenues.

Licence Type	Number of Licences	Numbers with a camera	Numbers without a camera
Hackney Carriage	283 (fixed)	230	53
Private Hire Vehicle	570 (As of 17/4/13)	448	122
Totals	853	678	175

The above table provides details of the size of the fleet and how many vehicles have a camera and how many as of 17/4/13 still require a camera. The Private Hire fleet is not restricted and new licences can be added at any time.

33. In light of the financial position, consultation responses and clarification provided by the Information Rights Tribunal regarding the Data Protection Act 1998 and Human Rights Act 1998 the following options are tabled to regularise the position moving forward:

34. Option One

Abandon the policy and condition in its entirety.

Pros – there are no discernable benefits to a wholesale abandonment of the policy and condition other than SCC no longer incur the reimbursement cost of the cameras.

Cons – the considerable crime prevention and investigative benefits will be lost completely.

35. Option Two

Voluntary fitment of cameras with vehicle proprietors to be registered as data controller. Nil cost to SCC. Proprietors to determine the amount of audio data to be collected and ensure compliance with Data Protection Act.

Pros – the City Council no longer has the regulatory burden of ensuring data protection compliance. SCC no longer incur the reimbursement cost of the cameras.

Cons – there is no control over the specification of the systems installed meaning there is no guarantee that evidence, even if gathered, will be of a standard sufficient to ensure criminal conviction (where appropriate) due to the potential for interference / quality of recordings. There will be no protection for the public against inappropriate disclosure / publishing of data other than by way of complaint to the Information Commissioner after disclosure of the data.

36. Option Three

Mandatory fitment of cameras with permanent visual recording only. Nil cost to SCC. Adoption of a formal policy clarifying download procedure and minimum specification (to be amended from time to time by the Head of Legal, HR and Democratic Services).

Pros – the crime prevention and investigative benefits remain, albeit reduced by the loss of audio recording. Greater transparency through adoption of a

clear policy, offering reassurance to drivers, proprietors and the public. SCC no longer incur the reimbursement cost of the cameras.

Cons – No audio recording will still leave the visual data open to interpretation and provides a gap in the evidence that could prove vital in an investigation.

37. Option 4

Mandatory fitment of cameras with permanent visual recording and audio recording activated by the driver. Nil cost to SCC. Adoption of a formal policy clarifying download procedure and minimum specification (to be amended from time to time by the Head of Legal, HR and Democratic Services).

Pros – the crime prevention and investigative benefits remain, greater benefits than option 3 as drivers will activate audio recording at relevant times and in cases where they fail to activate it when circumstances dictate they should, will be evidence itself. Greater transparency through adoption of a clear policy, offering reassurance to drivers, proprietors and the public. SCC no longer incur the reimbursement costs of the cameras.

Cons – apart from an additional cost, about £100, to fit a panic button there are no apparent drawbacks to a continuation of the policy and condition requiring visual recording only.

38. Option 5

Mandatory fitment of cameras with permanent visual recording and an option to fit audio recording activated by the driver. Nil cost to SCC. Adoption of a formal policy clarifying download procedure and minimum specification (to be amended from time to time by the Head of Legal, HR and Democratic Services).

Pros – as option 4. The driver has the choice to pay to have a panic button fitted. SCC no longer incur the reimbursement costs of the cameras.

Cons – as option 4 plus the proprietors who opt not to have a panic button will be less protected as audio will not be able to be recorded, especially relevant for allegations of racially aggravated offences.

39. Options 2,3,4 or 5 can be approved either with or without a subsidy from the council but needs to be decided after careful consideration of the full financial impact.

40. If Options 3, 4 or 5 are chosen then consideration has to be given to determining a time limit for the fitting of the cameras or upgrading of audio recording. Under the original scheme it was decided to spread the roll out over the life of the vehicles. This allowed the Authority to spread the burden of the subsidy. It also gave the proprietors time to plan their finances.

41. There is no requirement to continue with this arrangement and a date can be set by the committee to ensure all vehicles required to be fitted with a camera are fitted by a date of their choice. The Committee will need to be mindful there is no longer any subsidy available and the cost of the camera and fitting needs to be factored in. Proprietors will require time to plan the finances and the fitters will need to have the time to fit the cameras. It is also appropriate to mention advice from the HMRC is the costs to purchase and fit these

cameras is one of those few expenses that can be recovered against tax returns in the first year of trading.

42. The purpose of these cameras is to protect both public and drivers and to achieve this it is necessary to record data of such quality and in such a manner it will meet the requirements to secure convictions at a criminal trial. A camera specification that meets these demands is required. To achieve this consideration is to be given to delegating the authority to adopt and amend the camera specification to the Licensing Manager to ensure the specification meets the evidential requirements and is of such quality to provide clear data to identify events and the individuals involved.
43. Finally, consideration needs to be given to a number of vehicles that under the original scheme should have a camera but do not. The condition requiring a camera to be fitted was suspended in February 2013 as a result of the Tribunal decision and ongoing review. Vehicles that have been renewed since then have not been required to fit a camera. The vast majority have opted not to fit a camera. In addition when the audio was being turned off a number of cameras were found to be faulty. A significant proportion of these cameras have not been fixed and are presently disconnected for the same reasons. Again consideration will need to be given to the fitters' available time to make the repairs.
44. Option 4 is recommended by the Licensing Manager as providing the best fit to fulfil the requirements of the Authority to satisfy its responsibilities, that the requirement to fit the cameras continues to be required as the vehicle is replaced. This will not place any undue demand on the fitters and allows proprietors to plan the financing of the camera. For those vehicles that will then require a camera immediately but need to arrange a fitting or repair to be given 3 months to make the necessary arrangements. In addition it is recommended that Committee agrees to
 - amend Hackney Carriage and Private Hire policies and conditions referring to Solicitor to the Council to refer to Head of Legal, HR and Democratic Services.
 - amend condition 23.4 of the Private Hire Vehicle Licence Policy and Conditions to include exemption to condition 25 the Head of Legal, HR and Democratic Services will have discretion to exempt appropriate vehicles from the requirement to have a camera fitted.
 - Delegate authority to adopt / amend, from time to time, the camera specification to the Licensing Manager

RESOURCE IMPLICATIONS

Capital/Revenue

45. Within the taxi and private hire function, revenue costs incurred to date on cameras following the introduction of the camera policy in August 2009 total £268k. These costs have been funded from a combination of Home Office and SCC contributions. If the existing policy continues to subsidise the cost of cameras, this would generate a further one-off pressure to the General Fund of £65k, before the additional costs of any new/replacement vehicles are also taken into account.

46. These sources of funding no longer exist and the current income and expenditure budgets for the taxi and private hire functions do not include any allowance for the total costs, or any part subsidisation, of camera installation.
47. Any option that generates a potential cost to the Council will therefore create an ongoing pressure to the General Fund if adopted and the ongoing financial implications will need to be considered in full as part of that option appraisal.

Property/Other

48. N/A

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

49. Town Police Clauses Act 1847
 Local Government (Miscellaneous provisions) Act 1976
 Localism Act 2011

Other Legal Implications:

50. European Convention on Human Rights
 Data Protection Act 1998
 Crime and Disorder Act 1998

POLICY FRAMEWORK IMPLICATIONS

51. None

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	
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SUPPORTING DOCUMENTATION

Appendices

1.	Trade Survey Results – Technical Note
2.	Enforcement Notice from the Information Commissioners Office
3.	The grounds for the appeal against the Enforcement Notice
4.	The judgement of the Information Tribunal
5.	Notes of the Taxi Trade Consultation meeting on 2 nd May 2013
6.	Proposed policy for Taxi Cameras downloads
7.	Letter expressing concern at recording conversations in Chauffeur vehicles
8.	Present Private Hire Vehicle Policy and Conditions.
9	Letter to Big Brother Watch dated 7 th May 2013
10	Response from Big Brother Watch

11	E-mail to the Information Commissioner Office dated 7 th May 2013
12	Response from the Information Commissioner Office.
13	E-mail to Private Hire operators on 30 th May 2013 seeking views on Taxi Cameras
14	Notice on Council Website seeking responses to the consultation
15	8 responses to the consultation
16	Surveillance Camera Commissioners Code of Practice (June 2013)

Documents In Members' Rooms

1.	Report of 22 nd March 2012 with appendices Report and Appendices
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. None.	