

<b>DECISION-MAKER:</b>	<b>LICENSING COMMITTEE</b>
<b>SUBJECT:</b>	HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS AND POLICY ON CAB CAMERAS
<b>DATE OF DECISION:</b>	22 MARCH 2012
<b>REPORT OF:</b>	HEAD OF HR, LEGAL & DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
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 ongoing challenges to that policy and the condition and the cost implications of the subsidised scheme the matter requires review.

### **RECOMMENDATIONS:**

- (i) That the committee consider the issues and;
- (ii) authorises a consultation exercise on the review of the policy and condition with a report back to Committee in order to assess whether amendment of either is now necessary and;
- (iii) considers and determines whether, in the interim, the policy and conditions should continue to be applied and remain in force

### **REASONS FOR REPORT RECOMMENDATIONS**

1. Following the implementation of the policy and condition an appeal of the condition has resulted in adverse comment from the Crown Court, despite finding for the Council.
2. Further, a complaint to the Information Commissioner's Office has raised Data Protection issues.

### **DETAIL (Including consultation carried out)**

3. As Members are aware Home Office Guidance places taxi driving in a group of occupations bearing special trust and responsibility where substantial public interest considerations arise especially in relation to protection of children and the vulnerable.
4. On 26<sup>th</sup> August 2009 after consultation the Licensing Committee resolved to adopt a policy and attach conditions to Hackney Carriage and Private Hire vehicles requiring cameras to be fitted to all new vehicles or on replacement vehicles.
5. As well as the trade associations, every driver of a licensed vehicle was written to by way of consultation (in the region of 1200 drivers) regarding the decision and 41 replied. Of which only 18 were negative (17 were positive and 6 were of no opinion).

6. Previously, cameras were merely encouraged but take up was slow despite significant Home Office funding (over two years 57 out of 700 vehicles).
7. Following the decision to adopt the policy and condition requiring cameras an appeal was made to the Magistrates' Court by Mr Kevin May and Mr Clive Johnson. The appeal was struck out on the 9<sup>th</sup> February 2010 on a preliminary point raised by the Council insofar as the condition had not actually at that time been attached to a licence held by the appellants (so could not be appealed) and the only means of challenging policy is by way of Judicial Review.
8. On the 24<sup>th</sup> November 2010, by which time the condition had attached to his licence, Mr Kevin May lodged a further appeal at the Magistrates' Court stating the condition imposed on his Hackney Carriage vehicle licence was unreasonable. Primarily the argument of Mr May was that the requirement of the system to be permanently recording both video and audio was a breach of his rights under Article 8 of the European Convention of Human Rights. The matter was heard before a District Judge at the Magistrates' Court who found in Mr May's favour. The Judgment is attached at Appendix 1.
9. The Council, in turn, appealed that decision to the Crown Court after having sought advice from Counsel.
10. This latest Appeal was heard at Salisbury Crown Court before a Crown Court Judge sitting with two Magistrates on 20<sup>th</sup> and 21<sup>st</sup> October 2011.
11. The Council's case was that this amounted to an attack upon the Council's policy rather than the condition per se and as a result was beyond the remit of the Court (such challenges only able to be made by way of Judicial Review at the High Court) and in any event that the recording was justified as a necessary and proportionate means of addressing a pressing social need. This was due to the fact that sexual and violent offences were occurring in Southampton taxis (nine sexual offences over a two year period). Four of which related to the driver and were not prosecuted due to a lack of evidence.
12. The continuous recording is counterbalanced by the fact that recordings are strongly encrypted and securely stored - only ever accessed and viewed where there is 1) a formal complaint to the Council against a driver or 2) where the police are investigating a criminal offence and make a formal request. The recordings cannot be accessed, viewed or published in any other way. Only authorised Council officers may carry out a download from a vehicle and the recordings are stored on specific computers only used for that purpose with access restricted. The data stored in the taxi is automatically over-written after a relatively short period of time (currently between 11 and 30 days, dependant on the system). The vehicle once licensed, in law, is thereafter always a licensed vehicle and can only ever be driven by a licensed driver for whatever purpose.
13. The police supported the Council and provided evidence of incidents where cameras had assisted the investigation of crimes. In particular they highlighted the fact that certain types of crime (including race hate crime) can only be detected by audio recording. The police evidence was considered in

both appeal hearings and is dealt with in the judgments given in those hearings.

14. The National Private Hire Association also supported the Council's case and provided substantial evidence to show that taxi drivers are the subject of robbery, assault and murder and that drivers themselves have called for cameras in cabs across the country.
15. The Council commissioned an independent survey of the public in Southampton which showed clear support for cameras (89.6% indicate satisfaction with SCC's camera policy). The results of that survey are attached at Appendix 2.
16. An argument was raised by Mr May that:
  - 1) the system should be capable of being switched off by the driver
  - 2) recording, in particular audio, ought to be triggered, where necessary, by way of panic button.
17. The Council's case was that:
  - 1) a system controlled by the driver would entirely undermine any system imposed to prevent drivers misusing their position or abusing passengers - meaning that evidence would never be gathered if drivers could decide to switch off the system and removing the deterrent effect of such a system.
  - 2) a panic button has serious practical implications – those most at risk, the particularly vulnerable due to disability, age or intoxication are placed in a position where they have to consciously decide to activate a system (if they are physically able to) and potentially aggravate an already hostile situation. Further, the differing types of vehicle means that positioning the button would always be complex – in such a way that a single passenger would always be able to reach it or identify it and understand its purpose. Also by its very nature by the time someone must decide to activate the system any comment or action must already have occurred (at least in part) meaning that relevant evidence is lost.
18. Audio recording is of fundamental importance given that most allegations made against drivers relate to situations where the driver and passenger are alone in the vehicle. As a result, evidentially, investigating and proving or disproving allegations is a considerable issue.
19. Studies elsewhere (Doncaster in particular) have shown that there are fewer incidents and reported crime following the installation of cameras. Proving a negative in this way, however, is always fraught with difficulty given that the number of incidents that are prevented by way of deterrent effect can never be proven. What is clear is that the installation of cameras and their clear advertisement / signage does offer considerable reassurance and tackles the fear of crime. This can only encourage the use of taxis, particularly by those most at risk.
20. In considering all of the above the Court ruled in favour of the Council insofar

as it accepted the Court had no jurisdiction to challenge or consider the Council's policy. Despite accepting that position and stating that the District Judge in the Magistrates' Court had been wrong to do so the Court nonetheless went on to make comment on the Council's policy. That comment included statements that the condition was not necessary and proportionate and further, in Human Rights Act terms, did not correspond to a pressing social need. The full text of the judgment is attached at Appendix 3.

21. In addition to the above the Council has received correspondence from the Information Commissioner's Office (ICO) following a complaint made relating to the installation of cameras and the recording of audio.

The first letter, notifying the Council of the complaint, was dated 2<sup>nd</sup> September 2011 and is attached as Appendix 4. In response the Council wrote to the Information Commissioner on 28<sup>th</sup> September 2011 setting out its position. That reply is attached at Appendix 5. The Information Commissioner's Office then issued an Information Notice that the processing of the data was unlikely to comply with the requirements of the Data Protection Act 1998 (although it was clearly stressed that it held no concerns with the processes put in place regarding storage and security of the systems). The letter dated 4<sup>th</sup> October 2011 confirming this is attached as Appendix 6. This was produced and relied upon at the Crown Court by Mr May and the Court indicates in its judgment that it was taken into account when reaching its decision.

22. The opinion of leading Counsel in the particular field was sought by Legal Services prior to the commencement of the appeal hearing at the Crown Court; in light of the terms of the ICO's Notice.
23. On 22<sup>nd</sup> December 2011 the ICO wrote again to the Council making a general enquiry about its policy and asking for its views, particularly in regard to the use of audio recording. That letter is attached as Appendix 7.
24. The Council replied by letter dated 20<sup>th</sup> January 2012 setting out its case and providing justification of its position. The same letter confirmed that as a result of the issues raised (and others) the Authority intended to conduct a wholesale review of its policy and condition. That letter is attached as Appendix 8.
25. Subsequent to the outcome of the appeal at the Crown Court the Council has received correspondence from Lamport Bassitt Solicitors acting on behalf of Mr May asking that the Council amend its condition and policy in light of the comment in the judgment in the case, threatening Judicial Review. The letter dated 5<sup>th</sup> January 2012 is attached as Appendix 9. In response the Head of HR, Legal and Democratic Services confirmed, as in the response to the ICO, that a report would be presented to the Licensing Committee proposing a review of the policy and condition following the usual consultation. A copy of the letter sent in response and dated 20<sup>th</sup> January 2012 is attached as Appendix 10.
26. It is the view of officers that it is reasonable for both the policy and condition to remain in place until such time as the consultation has been undertaken

and the matter brought back to committee for reconsideration.

## **RESOURCE IMPLICATIONS**

### **Revenue**

27. A review of the Licensing service budget has recently been undertaken and this demonstrates that the discrete taxi and private hire functions are currently in deficit. These are ring fenced budgets which should be self financing from fee income. This deficit will be addressed as part of a separate exercise.
28. Since the introduction of the camera policy in August 2009, spend on cameras to date totals £204,000; this has been funded from a combination of Home Office and SCC contributions.
29. 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 part subsidisation, of camera installation.
30. To continue with the current policy would generate an estimated cost of £63,000 pa based on a cost per camera of up to £375. As new / alternative funding has not been identified for these costs, this will need to be considered as part of the overall consultation process.

The consultation costs will be paid for from existing budgets.

### **Property/Other**

31. No implications

## **LEGAL IMPLICATIONS**

### **Statutory Power to undertake the proposals in the report:**

32. Town Police Clauses Act 1847,  
Sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976,  
and; Section 1 Localism Act 2011

### **Other Legal Implications:**

33. The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the council that could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the council which affect another's' rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
34. The Data Protection Act 1998 provides for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.
35. Section 17 Crime and Disorder Act 1998 places the council under a duty 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.

## **POLICY FRAMEWORK IMPLICATIONS**

36. None

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## **SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

### **Appendices**

1. Judgment of District Judge at the Magistrates' Court dated 10<sup>th</sup> April 2011
2. Survey Results dated 26<sup>th</sup> July 2011
3. Crown Court Judgment dated 17<sup>th</sup> November 2011
4. ICO letter dated 2<sup>nd</sup> September 2011
5. SCC letter dated 28<sup>th</sup> September 2011
6. ICO Information Notice letter dated 4<sup>th</sup> October 2011
7. ICO letter dated 22<sup>nd</sup> December 2011
8. Council letter to ICO dated 20<sup>th</sup> January 2012
9. Lamport Bassitt letter dated 5<sup>th</sup> January 2012
10. Council letter to Lamport Bassitt dated 20<sup>th</sup> January 2012

### **Documents In Members' Rooms**

1. N/A

### **Integrated Impact Assessment**

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out. NO

### **Other Background Documents**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1. N/A

**Integrated Impact Assessment and Other Background documents available for inspection at:**

**WARDS/COMMUNITIES AFFECTED:**

NONE