

Licensing Committee

Thursday, 19th September,
2013

at 9.30 am

PLEASE NOTE TIME OF MEETING

Conference Rooms 3 and 4 - Civic Centre

This meeting is open to the public

Members

Councillor Cunio (Chair)
Councillor Mrs Blatchford
Councillor Fitzhenry
Councillor B Harris
Councillor L Harris
Councillor Laming
Councillor Lewzey (Vice-Chair)
Councillor Lloyd
Councillor Parnell
Councillor Pope
Councillor Spicer
Councillor Thomas
Councillor Vassiliou

Contacts

Democratic Support Officer
Karen Wardle
Tel: 023 8083 2302
Email: karen.wardle@southampton.gov.uk

Head of Legal, HR and Democratic Services
Richard Ivory
Tel. 023 8083 2794
Email: richard.ivory@southampton.gov.uk

PUBLIC INFORMATION

Terms of Reference

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Southampton City Council's Priorities:

- **Economic:** Promoting Southampton and attracting investment; raising ambitions and improving outcomes for children and young people.
- **Social:** Improving health and keeping people safe; helping individuals and communities to work together and help themselves.
- **Environmental:** Encouraging new house building and improving existing homes; making the city more attractive and sustainable.
- **One Council:** Developing an engaged, skilled and motivated workforce; implementing better ways of working to manage reduced budgets and increased demand.

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – Please turn off your mobile telephone whilst in the meeting.

Fire Procedure – Should the fire alarm sound during the meeting leave the building by the nearest available exit and assemble in the Civic Centre forecourt car park.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2013/14:

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 5.

DISCLOSURE OF INTEREST

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
 - a) the total nominal value fo the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
 - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available via the Council's website

1 **APOLOGIES**

To receive any apologies.

2 **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 **STATEMENT FROM THE CHAIR**

4 **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

To approve and sign as a correct record the Minutes of the meeting held on 25 April 2013 and to deal with any matters arising, attached.

5 **HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS AND POLICY - CAB CAMS**

Report of the Head of Legal, HR and Democratic Services seeking to determine whether the policy and conditions for Hackney Carriage 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 the report, attached.

6 **TRADE REQUEST TO REMOVE THE CONDITIONS RELATING TO FIRE EXTINGUISHERS AND FIRST AID BOXES IN HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES**

Report of the Head of Legal, HR and Democratic Services seeking to determine whether the conditions relating to fire extinguishers and first aid boxes in Hackney Carriages and Private Hire Vehicles should remain or be amended or removed, attached.

7 TRADE REQUEST TO AMEND THE CONDITION TO LENGTHEN THE LIFE OF LICENSED PRIVATE HIRE VEHICLES AND HACKNEY CARRIAGES

Report of the Head of Legal, HR and Democratic Services seeking to determine whether the policy and conditions in relation to the operational life of hackney carriages and private hire vehicles should continue or be amended in line with one of the options set out within the report, attached.

8 TRADE REQUEST TO AMEND REQUIREMENTS OF WHEEL CHAIR ACCESSIBLE HACKNEY CARRIAGES FOR PLATES 264 TO 283

Report of the Head of Legal, HR and Democratic Services seeking to determine whether the requirement of wheel chair accessible hackney carriages imposed on the last 20 hackney carriages be relaxed to rear loading rather than side loading, attached.

Wednesday, 11 September 2013

HEAD OF LEGAL, HR AND DEMOCRATIC
SERVICES

SOUTHAMPTON CITY COUNCIL
LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 25 APRIL 2013

Present:

Members of the Council

Councillors Cunio (Chair), Thomas, Mrs Blatchford, Vassiliou, Laming, Lewzey (Vice-Chair), Lloyd, Spicer, and L Harris

11. **APOLOGIES**

The Committee noted that apologies had been received from Councillors B Harris, Tucker, Parnell and Fitzhenry.

12. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 28th February 2013 be approved and signed as a correct record.

13. **DRAFT POLICY, CONDITIONS AND APPLICATION FORM FOR SEX ESTABLISHMENTS**

The Committee considered the report of the Head of Legal, HR and Democratic Services requesting approval of the draft policy and application form for the grant, renewal or transfer of a Sex Establishment Licence and approval for the draft conditions for Sex Establishments to be released for consultation. (Copy of the report appended to the agenda and circulated with the signed minutes).

The following was noted:-

- that the new supplementary powers to licence sexual entertainment venues had been adopted by council on 11 July 2012;
- a licensing policy, application form and conditions relating to Sex Establishments generally was now required to be approved, with a pool of conditions to be imposed on individual licenses as necessary;
- that regulations for sexual entertainment venues were not as restrictive as premises licences;
- that Sexual Entertainment Venues would need to be double-licensed ie for alcohol and sexual entertainment, if appropriate;
- that members concerns relating to the welfare of performers at Sexual Entertainment Venues was covered under the policy and available licensing conditions, which could include a code of conduct for customers and/or performers;
- that a further standard condition be added to Sexual Entertainment Venue Licenses that a list of all personnel working at the premises should be held by the venue and made available to the licensing authority and police when required; and

- that minor amendments agreed at the meeting be added to the draft policy and conditions, prior to releasing the draft conditions for consultation.

RESOLVED

- i. that the draft policy and application form for the grant, renewal or transfer of a Sex Establishment License be approved, subject to the agreed amendments;
- ii. that the draft conditions for sex establishments for consultation be approved, subject to the agreed amendments; and
- iii. that authority be delegated to the Head of Legal, HR and Democratic Services to make the agreed amendments and to undertake consultation.

Agenda Item 5

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>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
	E-mail:	phil.bates@southampton.gov.uk	
Director	Name:	Mark Heath	Tel: 023 8083 2371
	E-mail:	mark.heath@southampton.gov.uk	

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:	
------------------------------------	--

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
----	---

Equality Impact Assessment

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

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.	

This page is intentionally left blank



Technical note

Project Southampton In Car Camera System
Subject Trade Surveys
Author Liz Richardson

Date 10th August 2012
Ref

1 Introduction

A trade survey was issued to all drivers in Southampton with the aim of obtaining views on the requirement for vehicles to be fitted with an in car camera system. Some 435 responses were received, giving a response rate of 31%. It should be noted that not all totals sum to the total number of respondents as some respondents failed to answer all of the questions.

2 General

Table 2.1 shows the breakdown of responses according to individuals' involvement with the trade.

Table 2.1 – Breakdown of Responses between Trades (multiple responses)

	Frequency	Percent
HC Driver	172	39.5
HC Plate Owner	146	33.6
HC Operator	25	5.75
PH Operator	72	16.6
PH Driver	169	38.9
PH Plate Owner	142	32.6

Table 2.2 indicates the proportion of the trade who were aware of the In Car Camera Policy. The majority of the trade (98.4%) were aware of the policy with only 1.6% unaware.

Table 2.2 – Are you aware of the policy

	Frequency	Percentage
	Yes	419
No	7	1.6
Total	426	100

Respondents were then asked whether they agreed with the policy. The results are shown in Table 2.3. Views were mixed with 61.2% against the policy.

Table 2.3 – Do you agree with the policy?

	Frequency	
	Frequency	Percentage
Yes	162	38.8
No	256	61.2
Total	418	100.0

Those who were in favour of the policy made the following comments:

- 'protects driver and passenger'
- 'safer for driver and passenger'
- 'helpful for Police investigations'
- 'feel safer as a HC driver as I don't know who im picking up'
- 'prevents crime'
- 'stops disputes'
- Acts as a deterrent

Those who were against the policy made the following comments:

- 'Should be drivers choice'
- 'Council shouldn't tell me what to do'
- 'Used as a family car and there should be privacy'
- 'invasion of privacy'
- 'freedom of choice'
- 'shouldn't be compulsory'
- 'against human rights'
- 'no other town has this policy'
- 'Camera too expensive'

- 'Should be able to turn camera off'
- 'My car has stop start technology and the camera flattens the battery'
- 'Cost of moving the camera to a new vehicle'
- 'its breaking the law'
- 'my clients are regular pre booked, they don't want cameras'
- 'should be optional'
- 'I have clients who wont use me if CCTV is put in'
- 'all hackneys should have a partition and don't need a camera'
- 'customers are still running away and not paying'
- 'not happy with sound'
- 'I lost three days work when camera was being fitted'

Respondents who didn't agree with the policy were asked if they would agree if only digital images were captured. As reported in Table 2.4 87.3% of those disagreeing with the policy still disagreed should only digital images be captured.

Table 2.4 – Do you agree with the policy?

	Frequency		Percentage	
	Frequency	Percentage	Frequency	Percentage
Yes	30	12.7		
No	206	87.3		
Total	236	100.0		

3 Drivers

Respondents were asked whether they have a camera installed in the vehicle that they drive. The results are shown in Table 3.1. Over three quarters (76.7% had a camera installed in the vehicle that they drove.

Table 3.1 – Do you have a camera installed in the vehicle that you drive?

	Frequency	Percentage
Yes	297	76.7
No	90	23.3
Total	387	100.0

Those with a camera were asked when this was installed. Table 3.2 reports that 85.2% of drivers had their camera installed between 2010 and 2012.

Table 3.2 – When was it installed?

	Frequency	Percentage
2002	1	0.48
2003	2	0.95
2004	0	0.00
2005	1	0.48
2006	4	1.9
2007	1	0.48
2008	11	5.2
2009	11	5.2
2010	66	31.4
2011	77	36.7
2012	36	17.1
Total	210	100.0

Drivers were subsequently asked what effect the camera had had. As detailed in Table 3.3 drivers had experienced a range of effects. Some 43.8% felt safer following the camera being fitted. However 45.5% felt that the camera was an invasion of their privacy.

Table 3.3 – What effect had the camera had (multiple responses)?

	Frequency	Percentage
I feel safer	130	43.8
I feel less vulnerable	94	31.6
I drive more at night	57	19.2
I drive in areas of Southampton that I wouldn't before	44	14.8
I feel that it is an invasion of my privacy	135	45.5
Passengers behaviour changes	115	38.7
No effect	87	29.3
Other	6	2.0

Those drivers with a camera were then asked if they had ever been attacked by a passenger within the last year. Only 9.1% admitted to having been physically attacked, with 27.9% stating that they had been verbally attacked. Nearly two thirds (65.3%) had not been attacked. However when asked whether this had been prior to or following the introduction of the camera over half (59.1%) stated that this was after the camera was introduced. Of those that had been attacked only 26% reported the incident to the Police and/or SCC.

Table 3.4 – Have you been attacked by a passenger within the last year (multiple responses)?

	Frequency	Percentage
Physically attacked	27	9.1
Verbally attacked	83	27.9
Not attacked	194	65.3

Table 3.5 – Was this before or after the camera was installed?

	Frequency	Percentage
Before	36	40.9
After	52	59.1
Total	88	100.0

Drivers were then asked whether they felt that the camera has had a positive impact on safety. Some 39.5% of people felt that the camera had had an impact on both driver and public safety, however 46% felt that there had been no positive impact.

Table 3.6 – Do you think the camera has had a positive impact on safety?

	Frequency	Percentage
Driver Safety only	20	7.6
Public Safety only	18	6.8
Both	104	39.5
None	121	46.0
Total	263	100.0

Drivers without a camera fitted to their vehicle were then asked what they would perceive the effect to be of having a camera fitted to the vehicle that they drove. As detailed in Table 3.7 a third felt that they would feel safer (33.7%), whereas 24.6% didn't feel that there would be any effect.

Table 3.7 – Perceived effect of having a camera fitted?

	Frequency	Percentage
I will feel safer	100	33.7
I will feel less vulnerable	68	22.9
I will drive more at night	44	14.8
I will drive in areas of Southampton that I wouldn't before	30	10.1
I will feel that it is an invasion of my privacy	93	31.3
I believe passengers will behave differently	76	25.6
No effect	73	24.6
Other	5	1.7

4 Vehicle Owners

Vehicle Owners were asked if they had a camera installed in the vehicle that they own. Some 84.6% of owners stated that they had a camera installed. Table 4.1 demonstrates when this was installed. Some 87.1% of owners installed their camera since 2010

Table 4.1 – When was your camera installed?

	Frequency	Percentage
	2004	1
2005	0	0
2006	0	0
2007	2	3.8
2008	1	1.9
2009	3	5.6
2010	15	27.8
2011	21	38.9
2012	11	20.4
Total	54	100.0

Owners were then asked whether they were aware that the cost of the camera is fully deductible in the first year. The majority of owners (84%) were aware of this.

Table 4.2 – Were you aware that the camera is tax deductible in Year 1?

	Frequency	Percentage
	Aware	184
Not Aware	35	16.0
Total	219	100.0

Owners were then asked whether they had claimed the cost of the camera back. As detailed in Table 4.3 two thirds of owners (66.7%) had claimed the cost back. A third however had not. Reasons given included:

- 'didn't know'
- 'most of us don't earn enough to pay tax'
- Waiting for refund
- It came with car
- Waste of tax payers money

Table 4.3 – Have you claimed the cost of your camera back?

	Frequency	Percentage
Claimed	126	66.7
Not Claimed	63	33.3
Total	189	100

DATA PROTECTION ACT 1998
SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE
DATED 23 July 2012

To: Southampton City Council

Of: Civic Centre
Southampton
SO14 7LT

1. Southampton City Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried on by the Council and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
3. The Commissioner has considered the data controller's policy (effective from 26 August 2009) that all licensed taxis and private hire vehicles have to be fitted with a CCTV system that features an audio recording facility that is in permanent operation (the "policy"). The policy results in the recording of all driver and passenger conversations (including mobile telephone calls) that take place in taxis and private hire vehicles licensed by Southampton City Council whenever they are in use and regardless of whether the use is personal or private.

4. The Commissioner has considered a report on the data protection and related issues arising out of this policy, in addition to correspondence entered into with the data controller concerning their policy. The Commissioner is mindful of the relevant advice he has provided in his Codes of Practice on CCTV, Employment Practices and Privacy Notices. In the light of these the Commissioner has considered the data controller's compliance with the provisions of the Act. The relevant provisions of the Act are the First Data Protection Principle.
5. The First Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:
 - a. *"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—*
 - b. *at least one of the conditions in Schedule 2 is met, and*
 - c. *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*
6. The Commissioner is of the view that the data controller has contravened the First Data Protection Principle in that they are processing personal data unfairly and unlawfully. The Commissioner considers that the data controller is also processing sensitive personal data as defined by section 2 of the Act. Further, he considers that none of the conditions for processing in Schedules 2 and 3 to the Act have been met contrary to the requirements of the First Data Protection Principle.
7. The data controller has given no satisfactory explanation to the Commissioner for its policy that all licensed taxis and private hire vehicles have to be fitted with a CCTV system that features an audio recording facility that is in permanent operation.
8. The Commissioner considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner has taken the view that, in the event of the data controller failing to address the Commissioner's concerns about the policy, damage or distress to licensed taxi and private hire vehicle drivers and passengers may result. Although the recorded information may only be accessed in limited circumstances, the Commissioner is concerned that it could be used for purposes (albeit legitimate) other than those originally

intended. The Commissioner is also of the view that where personal data is recorded and stored for any period of time there is always the risk that it could be subject to unauthorised or unlawful access, disclosure or other processing that results in distress or even damage to individuals, notwithstanding any security measures that may have been taken by the data controller. Finally, the simple knowledge that a conversation will be recorded including when the vehicle is being used privately might cause distress to an individual, whether they are a passenger or a driver, who feels obliged to alter their behaviour in circumstances when they would otherwise expect a degree of privacy. In particular, in the case of taxi and private hire vehicle drivers there will be extensive recording of their conversations. Given the nature of their working environment and the fact that recording is not limited to situations where the vehicle is in commercial use this may include numerous conversations of a private nature such as on a mobile telephone. The potential exists for information recorded to be used to affect licensing decisions about them.

9. The Commissioner has further taken account of the effect of the incorporation in English law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that drivers of taxi or private hire vehicles and their passengers have the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by the processing referred to in paragraph 3 above. A breach of Article 8 will also contravene the lawful processing requirement of the First Data Protection Principle.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that by 1 November 2012 the data controller shall:

- (1) Erase any personal data in the audio recordings referred to in paragraph 3 of this notice that has already been obtained as a result of the policy and which is still held by the data controller; and
- (2) Refrain from recording any such personal data in future.

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 23rd day of July 2012

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

THE DATA PROTECTION ACT 1998 (PART V, SECTION 40)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.
- b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
- c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery

service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:
 - a) your name and address;
 - b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;
 - c) the grounds of your appeal;
 - d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
 - e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
 - f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the notice contains a statement that the Commissioner considers that the notice should be complied with as a matter of urgency.

Section 48(3) provides that where an enforcement notice contains a statement that the notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the notice, you may appeal against –

- (a) the Commissioner's decision to include the statement in the notice, or
- (b) the effect of the inclusion of the statement as respects any part of the notice.

6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

7. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).

This page is intentionally left blank

**IN THE FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
(INFORMATION RIGHTS)
BETWEEN:**

SOUTHAMPTON CITY COUNCIL

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

GROUNDS OF APPEAL

1. The Respondent (“the Commissioner”) has served an enforcement notice (“the Notice”) on the Appellant (“the Council”), under section 40 of the Data Protection Act 1998 (“DPA). The Notice relates to the Council’s policy (effective from 26th August 2009) that all licensed taxis and private hire vehicles have to be fitted with a CCTV system that features an audio recording facility that is in permanent operation: “the Policy”.
2. The Notice requires the Council to do the following, by 1st November:
 - (i) Erase any personal data in the audio recordings that has already been obtained as a result of the Policy and which is still held by the Council; and
 - (ii) Refrain from recording any such personal data in future.

3. The Council appeals against the Notice, under DPA section 48(1).
4. Under DPA section 49(1) the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner if it considers:
 - (a) that the Notice is not in accordance with the law, or
 - (b) to the extent that the Notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently.

The Tribunal may review any determination of fact on which the Notice was based: DPA section 49(2).

First Ground of Appeal: the Commissioner erred in law in concluding the Council had contravened the first Data Protection Principle

5. At §6 of the Notice, the Commissioner concluded that the Council had contravened the First Data Protection Principle. The Commissioner thereby erred in law, as set out below.

Unfair processing

6. The Commissioner was wrong to conclude that the Council was processing personal data unfairly.
7. The Policy is not unfair either to drivers or to passengers, who are the two classes of data subjects affected by the Policy, having regard in particular to the following considerations.

- (i) The Policy serves an important objective, namely the prevention, deterrence and detection of crime, particularly in relation to criminal offences committed by drivers against passengers and *vice versa*.
- (ii) The data subjects affected by the Policy – that is, drivers and passengers – are the very groups that the Policy is intended to protect. The operation of the Policy confers a benefit on these groups.
- (iii) The sounds and images obtained as a result of the Policy can only be accessed in very limited circumstances. They are stored on an encrypted hard disk that is accessible only to specific Council officers. They are downloaded only when there is a specific complaint against a driver or when the Police request access in order to investigate an alleged offence.
- (iv) Alternative options not involving the use of audio recording at all, or not involving continuous audio recording, would be unsatisfactory and inadequate as a means of achieving the Policy's objective.
- (v) The use of an alternative system whereby audio recording would be triggered by use of a panic button activated by drivers and/or passengers in response to a specific threat would be inadequate and unsatisfactory as a means of combating crime. Since such a button would only be used once an incident, e.g. of verbal or physical assault, was already underway, only part of the relevant incident would be captured and so the evidential value of the recording would be greatly reduced. Moreover, a panic button system would fail to protect the most vulnerable passengers, who would be the very groups that would have most difficulty in locating and using a panic button: for instance, the elderly, the physically infirm, the visually impaired, and those under the influence of drink or drugs.

- (vi) Likewise, the use of an alternative system whereby the driver could disable the audio recording when the vehicle was not in commercial use would be inadequate and unsatisfactory, since it would put the operation of the audio recording system in the hands of the driver and would effectively give him the means of disabling it whenever he chose.
- (vii) Alternatively, if the system was disabled from time to time by a Council employee, so that the driver could use the vehicle for private purposes, there would be no effective way of preventing the driver from also using the vehicle for commercial purposes while the system was disabled.

Unlawful processing

- 8. The Commissioner was wrong to conclude that the Council was processing personal data unlawfully. The enforcement notice does not explain the respect in which the Commissioner considered that the processing was unlawful, or the reasons for that conclusion.
- 9. If the Commissioner considered that the Council was acting unlawfully because the relevant processing was *ultra vires* the Council, then that conclusion was wrong in law. The Council had adopted the Policy pursuant to:
 - (i) its duty to regulate licensed taxis and private hire vehicles under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976; and
 - (ii) its duties regarding crime and disorder under section 17 of the Crime and Disorder Act 1998.

10. If the Commissioner considered that the Council was acting unlawfully in that the Policy was in breach of Article 8 of the European Convention on Human Rights (“the Convention”) then that conclusion was also wrong in law. The Policy served a legitimate aim, namely the prevention, deterrence and detection of crime. Any interference with the right for respect for private life under Article 8(1) was very limited, having regard to the restricted circumstances in which any audio recordings would be accessed and heard. Any such interference was necessary and proportionate, having regard to the considerations set out at §6 of these Grounds, above.

Sensitive personal data

11. The Commissioner erred in concluding that the Council was processing sensitive personal data as defined by DPA section 2. The Notice does not identify the category of sensitive personal data that the Council is said to be processing. If the Commissioner relies on section 2(g), namely data consisting of information as to the commission or alleged commission by the data subject of a criminal offence, then this is unsustainable. The Council does not process data falling within section 2(g) until the point when the audio recordings are accessed. The Notice is directed at the making and holding of audio recordings, rather than the way in which the Council accesses them: in making and holding recordings the Council is not processing sensitive personal data, whether within section 2(g) or within any other category.

Schedule 2 and Schedule 3 conditions

12. The Commissioner erred in holding that no Schedule 2 or Schedule 3 conditions were satisfied. The Council relies on the following conditions:

- (i) Schedule 2 paragraph 3;
- (ii) Schedule 2 paragraph 5(b) and (d);
- (iii) Schedule 2 paragraph 6; and
- (iv) if and to the extent necessary, Schedule 3 paragraph 7(1)(b).

Second Ground of Appeal: the Commissioner erred in law and/or ought to have exercised his discretion differently in relation to damage and distress

13. The Commissioner purported to consider the matters specified in section 40(2) of the DPA, at §8 of the Notice. The Commissioner found that in the event of the Council failing to address the Commissioner’s concerns about the Policy: “damage or distress to licensed taxi and private hire vehicle drivers and passengers *may result* [emphasis supplied]”.
14. The Commissioner thereby misdirected himself as to the meaning and application of DPA section 40(2). The question that he ought to have considered under that provision was whether any contravention of the DPA *had caused or was likely to cause* damage or distress. The test of likelihood in this context would be whether there was a very significant and weighty chance of damage or distress: compare *R (Lord) v Secretary of State* [2003] EWHC 2073, at §100. The test posed by the Commissioner, namely whether damage or distress “may result”, sets a lower standard as to the chance of damage or distress and is wrong in law. The matters relied on at §8 of the Notice demonstrate that the Commissioner took into account remote and speculative possibilities as to damage or distress, rather than asking whether there was a very significant and weighty chance of damage or distress.

15. Further, the matters relied upon by the Commissioner were incapable, whether considered individually or cumulatively, of leading to a conclusion that the Policy had caused or was likely to cause damage or distress.

- (i) The Notice states that the Commissioner is concerned that the recorded information could be used for purposes (albeit legitimate) other than those originally intended. The Commissioner does not identify the “other purposes” referred to; nor was there any material before the Commission entitling him to conclude that the recorded information could be used in that way.
- (ii) The Notice also states that the Commissioner was concerned that the data could be subject to unauthorised or unlawful access, disclosure or other processing. There was no material before the Commissioner entitling him to reach this conclusion. The Commissioner does not identify any basis for considering that the Council’s information security policies were inadequate; and nor was there in fact any basis for such a conclusion.
- (iii) The Notice states that the simple knowledge that a conversation was being recorded “might cause distress”. The point made above is repeated: the test under DPA section 40(2) is whether distress is likely, not whether it might be caused.
- (iv) Further, given the very limited circumstances in which anyone would actually access and listen to the recording, the distress referred to by the Commissioner was not likely: it was a remote and speculative possibility.
- (v) Finally the Commissioner suggested that the potential existed for information recorded to be used to affect licensing decisions. There was no material whatsoever before the Commissioner that entitling him to reach that conclusion. Nor does the Commissioner explain how

that “potential” existed, or in what way the information might be so used.

16. In these circumstances the Commissioner erred in law and/or exercised his discretion wrongly, in having regard to the matters set out at §8 of the Notice.

Third Ground of Appeal: the Commissioner erred in law in relation to Article 8 of the European Convention on Human Rights

17. At §9 of the enforcement notice the Commissioner concluded that the Council had acted in breach of Article 8 of the Convention. This conclusion was wrong in law, for the reasons stated at §9 of these Grounds, above.

Order sought

18. The Council asks the Tribunal to allow the appeal and set aside the Notice.

11KBW

Temple

2nd August 2012

TIMOTHY PITT-PAYNE QC

**IN THE FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
(INFORMATION RIGHTS)
BETWEEN:**

SOUTHAMPTON CITY COUNCIL

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

GROUNDS OF APPEAL

**Richard Ivory
Head of Legal, HR and Democratic Services
Southampton City Council
Civic Centre
Southampton SO14 7LT**

Ref: Ben Attrill

This page is intentionally left blank



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2012/0171

ON APPEAL FROM:

The Information Commissioner's Enforcement Notice dated 23 July 2012

Appellant: Southampton City Council

Respondent: The Information Commissioner

Heard at: Field House, 15 Bream's Buildings, London EC4A 1DZ

Date of Hearing: 30 & 31 January 2013

Before

HH Judge Shanks

Judge

and

Andrew Whetnall and John Randall

Tribunal Members

Date of Decision: 19 February 2013

Attendances:

For the Appellant: Timothy Pitt-Payne QC

For the Respondent: Anya Proops

Subject matter:

Data Protection Act 1998

s.2	Sensitive personal data
s.40	Enforcement notices
s.48	Rights of appeal
s.49	Tribunal's powers
Sched.1	Data Protection Principles: Principles
Sched.2	Data Protection Principles: Processing of Personal data
Sched.3	Data Protection Principles: Processing of sensitive data

Human Rights Act 1998

Article 8	Right to a private and family life
-----------	------------------------------------

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

REASONS FOR DECISION

Introduction

1. This is an appeal by Southampton City Council under section 48 of the Data Protection Act 1998 against an enforcement notice issued by the Information Commissioner on 23 July 2012. The enforcement notice in effect required the Council to drop a policy adopted on 26 August 2009 of requiring all licensed taxis in Southampton to be fitted with a CCTV system which includes an audio-recording facility which is in continuous operation. The Commissioner has no objection to a requirement that there should be continuous video-recording; it is only the continuous *audio*-recording that we are concerned with. We are told that this is the first appeal of its type and it is clear that the issues raised are of national significance.
2. We received very helpful written evidence from John Burke (the Council's licensing manager), Chief Superintendent David Thomas of the Hampshire Constabulary, Deputy Assistant Commissioner Martin Hewitt (who gave evidence in his capacity as an ACPO representative with responsibility for adult sexual offences) and Jonathan Bamford, a senior official in the Commissioner's office. Mr Burke and the police witnesses also attended to give oral evidence. We also received written and oral submissions of characteristically high quality from Mr Pitt-Payne QC for the Council and Ms Proops for the Commissioner.

Factual background

3. The Council is the licensing authority in the Southampton area for taxis (both "hackney carriages" and "private hire vehicles", of which there are about 700 or 800 in all) and taxi drivers (of whom there are about 1,300). As such, it has power to attach reasonable conditions to licences granted in respect of taxis.¹ It is not disputed that in exercising that power the Council must, under section 17 of the Crime and Disorder Act 1998, have due regard to the need to do all it can to prevent crime and disorder in its area but it is also not disputed that the purpose of the power to impose

¹ See sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976.

licence conditions is to promote public safety specifically in connection with the use of taxis.

4. In 2004 the Council received funding to help taxi owners install CCTV in their taxis on a voluntary basis but the take up was limited even though the cost to the owners was minimal. In the light of serious violent and sexual offences taking place in or around taxis and the need to protect vulnerable users of taxis, consideration was given by the Council to the compulsory installation of CCTV as an essential tool to deter and help with the investigation of such incidents.

5. On 6 May 2009 the Council's Licensing Committee was invited to consider the adoption of a number of new standard conditions for taxi licences, including the following:

Digital cameras. As crime and safety are both Government and Council priorities it is proposed that all vehicles are fitted with digital cameras as soon as possible ...

The paper put before the committee also stated:

The Council has for some time been fitting digital cameras to licensed vehicles as part of its strategic approach to reducing crime and disorder and improving driver safety...

The camera currently available has not only digital image technology but also a voice recording facility...

Some proprietors have suggested this is another case of 'Big Brother'. This is simply untrue. What the trade and members can be assured of is that the images will only be downloaded where a crime report has been made to the police involving the relevant vehicle or that a member of the public has a specific and recorded complaint against the driver of a specific vehicle.

Mr Burke told us that the "camera currently available" referred to in the paper was a camera called a VerifEye Mark 4 which had become available in early 2008. Earlier versions of the VerifEye camera (which had been installed up until then) had not included any audio facility. There was considerable confusion in Mr Burke's evidence as to the exact capabilities of the VerifEye Mark 4 but the Tribunal was later provided with some material from the manufacturer which indicated that the system is

triggered by certain events (door opening, meter being turned on or “panic button” being pressed), that the video then works for various periods but with only so many frames per second (one every 15 seconds for most of the time) and that the audio facility works continuously but only for a period of 15 minutes after a triggering event.

6. No conclusion was reached at the meeting on 6 May 2009 and there was further consultation with the trade on the issue. The paper prepared by officers for the next meeting on 26 August 2009 stated:

Digital cameras

Digital cameras are currently fitted to about [110 taxis] and are clearly the cause of some concern ... voiced at a recent consultation meeting:

Data protection issues with cameras. **Cameras are compliant and [the] Council is the data controller ...**

Who will pay for the downloading of photographs? **The licensing team have all the secure equipment and authority to download the encrypted data ...**

Concerns from customers being filmed, both adult and children. **The system is completely secure with the data being held in encrypted format. Data will only be downloaded in the event of a substantive complaint either from a driver or passenger or where a crime is alleged.**

...

Cameras are fitted to fulfil two roles; firstly, to ensure the safety of the public and secondly the safety and integrity of the driver.

There was no mention in the paper of audio-recording as such. The licensing committee resolved at the meeting that (among others) the following condition be added to taxi licences:

In line with Government and Council priorities on crime and disorder, public and driver safety all licensed vehicles to be fitted with Council approved digital cameras as soon as possible and in any case at the time a current licensed vehicle is replaced

...

7. At para 28 of his statement Mr Burke gives more detail about the policy as follows:
- 1 All passengers are made aware of the fact that they are being recorded, by notices strategically placed on the vehicles ... These labels clearly warn that both audio and visual recordings take place in the vehicle ... ²**
 - 2 Data will only ever be downloaded on two occasions:**
 - (1) where a crime report has been made involving a specific vehicle and the Police have formally requested that data or,**
 - (2) when a substantive complaint has been made to the [Council] regarding a specific vehicle/driver and that complaint is evidenced in writing (and cannot be resolved in any other way)**
 - 3 The request form for download must state the approximate time of the event/occurrence and only the timescale relevant to the specific incident will be downloaded, de-crypted and thereafter stored.**
 - 4 After a period of time, typically 14-30 days any data is automatically overwritten dependant upon the specification of the system installed.**
 - 5 Only systems approved by the Licensing Team may be installed by an independent installer – thereby ensuring that any equipment may not be tampered with, encryption is of a sufficient standard and data may not be interfered with or released to a third party/published.**

None of this detail is set out in any official document produced by the Council. Mr Burke amplified certain aspects of the policy in his oral evidence as follows. The only people authorised to de-encrypt and download data are Mr Burke and the three enforcement officers in his team; when they decide they need to take this step, the proprietor or driver of the taxi is obliged to present it to them so that the download can take place. The normal “destruction period” of 14 to 30 days is not a function of any thought-out policy decision but is simply dependent on the fact that the systems used only have so much storage space and the amount of time the data is in fact kept is therefore dependent on the useage of the taxi in question, which obviously varies. As to the “systems approved,” the VerifEye Mark 4 to which we have referred remains approved, but in 2011 two new systems, made by firms called Pageantry and Brigade respectively, were also approved; these two systems are superior to the

² A colour copy of the label is at p210 of bundle.

VerifEye Mark 4 system in that they provide continuous and full video and audio recording of everything that goes on in a taxi. Mr Burke was keen to stress and we fully accept that the Council's primary concern in selecting any system for approval was the security of the system in relation to access so as ensure that no-one was able to get hold of the data improperly. It is not disputed that the desired effect of the policy (notwithstanding the special situation with the still approved VerifEye Mark 4 system) is that every word spoken in a licensed taxi is recorded, whether it is part of a conversation between passengers, between passenger(s) and driver, or between the driver or a passenger and someone on the other end of a phone call; and it covers not only periods when the taxi is being used as a taxi but also periods when it is being used privately by a driver or proprietor, for example to take his family on holiday.

8. We were told that since the licensing condition was introduced the police have asked the Council for access to audio-visual recordings made in taxis on 193 occasions, of which Chief Superintendent Thomas was able to review 164 where it had been possible to get access to a relevant recording. Of these, the majority arose out of incidents taking place in or near taxis and involved criminal allegations against taxi drivers or passengers which included racially aggravated and sexual assaults, though by far the largest group (34 in all) involved allegations of making off without payment. However, there was also a substantial number of requests which involved serious criminal offences (including murder, other serious violence and drug dealing), but which did not directly involve taxis, where the police were simply seeking evidence which may assist their enquiries, for example where suspects had left the scene of a crime by taxi. Mr Burke accepted that in these cases the police were in effect making use of a form of surveillance for which they required no warrant (though it is right to note of course that the surveillance is not covert).
9. There was also a smaller group of downloads made by his team, estimated as 10% of the total by Mr Burke, which did not arise from a police request at all and did not necessarily involve any criminal allegation but which generally arose out of complaints by the public. Mr Burke's evidence was that such downloads would only take place if the allegation in question gave rise to some likelihood of a driver's

licence being withdrawn but he accepted that this may include occasions, for example, where a young female passenger had alleged that a taxi driver had inappropriately invited her out on a date.

10. On 23 July 2012 the Commissioner issued his enforcement notice under section 40 of the Data Protection Act. In the notice he referred to the Council's policy adopted on 26 August 2009, to a report on that policy and correspondence he had had about it with the Council, to his own Code of Practice on CCTV revised in 2008 and to relevant provisions of the Act, in particular the first data protection principle, and Art 8 of the European Convention on Human Rights (ECHR). He stated his view that the Council's policy involved a breach of the first data protection principle in so far as it required an audio-recording facility in permanent operation and that it may result in damage or distress. He therefore required the Council to refrain from recording "any such personal data in future."
11. The Council launched their appeal to the Tribunal on 2 August 2012. By virtue of section 40(7) of the Act, the Council did not have to comply with the enforcement notice pending determination of the appeal, a provision we understand the Council has taken advantage of.

The legal framework and the issues on the appeal

12. There is no issue that words recorded by the equipment installed in taxis under the Council's policy comprise "personal data" for the purposes of the Act; the relevant "data subject" would no doubt include the speaker but may very well also include other parties to any conversation or those being talked about. There is also no dispute that the Council is the "data controller" of that data for the purposes of the Act and that the very act of recording is a form of "processing."
13. It is therefore clear that the Commissioner had power under section 40(1) to issue an enforcement notice against the Council if he was satisfied that the audio-recording involved the contravention of a data protection principle; the primary issue in the case

is whether he was right in his conclusion that this was so. In deciding whether to exercise his power to issue an enforcement notice the Commissioner was also obliged to consider under section 40(2) whether “the contravention has caused or is likely to cause any person damage or distress.” Although it is accepted that a finding to this effect is not a pre-condition to the issue of an enforcement notice, the Council say that in this case the Commissioner approached section 40(2) in a fundamentally flawed way and that, even if he was right to conclude that the Council was contravening the first data protection principle, he ought not, as a matter of discretion, to have issued an enforcement notice. We return to this issue below.

14. The data protection principle relied on by the Commissioner, namely the first, provides as follows:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

The only potentially relevant conditions in Schedule 2 are these:

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

...

5. The processing is necessary-

(b) for the exercise of any functions conferred on any person by or under any enactment,

...

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

...

6.-(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed,

except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

And the only potentially relevant condition in Schedule 3 is:

7.-(1) The processing is necessary-

...

(b) for the exercise of any functions conferred on any person by or under an enactment.

15. There is a side issue (to which we return below) as to whether the Council's policy involves the processing of *sensitive* personal data (and therefore whether the Schedule 3 condition needs to be met), but in any event the parties are agreed that the essential question on contravention is whether Art 8 of the ECHR (which guarantees the right of privacy and which we set out below) is infringed by the Council's policy, and in particular whether the policy is justified under Art 8(2) as a proportionate means of achieving a legitimate aim. This is because it is common ground that if Art 8 is infringed by the policy, the audio-recording of conversations will not be "lawful" for the purposes of the first data protection principle by virtue of the Human Rights Act 1998 and, furthermore, that none of the conditions we have identified as potentially relevant will be satisfied, in that the processing will not be "necessary" for any of purposes set out therein any more than it will be "necessary" for the analogous purposes set out in Art 8(2).

16. The Tribunal's powers in relation to an appeal are set out in section 49 of the Act:

(1) If on an appeal under section 48(1) the Tribunal considers-

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice or decision as could have been served or made by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

- (2) On such an appeal, the Tribunal may review any determination of fact on which the notice in question was based.**

It is common ground based on the wording of section 49 that on an appeal the Tribunal has full power to re-consider the whole matter in the light of all the evidence put before it, including the question whether the discretion ought to have been exercised differently, although due respect must of course be afforded to the views of the Commissioner, who is the person entrusted by statute with the job of enforcing the Data Protection Act.

17. The issues on the appeal can therefore be summarised as follows:

- (1) whether the words recorded under the Council's policy include "sensitive personal data";
- (2) whether the Council's policy infringed Art 8 of ECHR;
- (3) whether the Commissioner was right to exercise his discretion to issue an enforcement notice.

We will deal with them in that order.

Sensitive personal data

18. "Sensitive personal data" is defined by section 2 of the Data Protection Act as personal data consisting of information as to:

- (a) the racial or ethnic origins of the data subject,**
- (b) his political opinions,**
- (c) his religious beliefs or other beliefs of a similar nature,**
- (d) whether he is a member of a trade union,**
- (e) his physical or mental health or condition,**
- (f) his sexual life,**
- (g) the commission or alleged commission by him of any offence ...**

19. Mr Pitt-Payne maintained that in the absence of specific evidence the Tribunal could not find that the Council's policy involved the processing of *sensitive* personal data. We consider that an unrealistic approach. Based on our collective knowledge of the world we are quite satisfied that the inhabitants of (and visitors to) Southampton will from time to time discuss their own and others' sex lives, health, politics, religious beliefs and so on in taxis (notwithstanding the presence of the taxi driver) and, if necessary, we take judicial notice of that fact. It is also worth noting in this context that there must be numerous conversations in taxis of a sensitive nature which do not necessarily come within the strict definition of "sensitive personal data", for example commercial negotiations carried on by a businessman with a client by telephone in the back of a taxi.

20. Mr Pitt-Payne also made the point that it would be open to taxi users, having been informed by the label in the taxi that their conversations were being recorded, not to discuss sensitive matters which they did not want to have recorded. Again, we consider that an unrealistic approach. We do not see why anyone should be forced to modify their normal behaviour in such a way, by being forced to treat what is now (at least) a semi-private space as a public one, not least the taxi driver driving his taxi to a holiday destination with his family. We also note Ms Proops' point that, if the Council's policy resulted in people "self-censoring" their conversations, that would *prima facie* involve a contravention of Art 10 of the ECHR which guarantees freedom of speech.

Art 8 ECHR

21. We set out the familiar terms of Art 8 of the ECHR:

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.**
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others.**

22. The Council is prepared to accept that the recording and retention of data under its policy constitutes an interference by a public authority with the right of privacy conferred by Art 8(1). However, it says that such interference is justified (or "... necessary in a democratic society ...") in the interests of public safety, the prevention of crime and the protection of others. It is well established that in order for such an interference to be justified it must serve a "legitimate aim", meet a "pressing social need" and be "proportionate." The Commissioner accepts that the policy serves a "legitimate aim" (which he describes rather narrowly as "assisting in the detection of crime" but which we have no doubt includes all three of the aims relied on in Art 8(2) so far as they relate to the use of taxis) and that there is a "pressing social need" for some surveillance in taxis (though he says there is no "pressing social need" in so far as such surveillance relates only to misconduct by drivers rather than crime). The real issue therefore comes down to the question whether the Council's policy of continuous audio-recording is "proportionate".

23. The question whether the policy is "proportionate" is ultimately one of judgment for us as a Tribunal, balancing the benefits to the legitimate social aims it is likely to achieve against the extent of the interference with the right of privacy likely to be caused. In striking this balance it is important to note two things: (a) the "legitimate aim" of the policy is that of deterring and detecting *taxi-related* crime and other misconduct; the fact, as we mention in para 8 above, that the police have been able to obtain useful evidence about crimes not directly related to taxis cannot therefore come into the balance as a benefit; (b) the relevant benefits and disbenefits are only those marginal ones that come from *audio-recording*; no-one is complaining about the existence of CCTV in taxis as such or about video-recording.

Benefits of the policy

24. As the Council point out forcefully, there are special features of taxis which make those who use them particularly vulnerable to crime. In general, neither drivers nor their passengers have any real choice about making a journey in a taxi, the driver because it represents his living and the passenger because he often has no other

practical means of getting from A to B. Passengers are sometimes vulnerable in themselves, either by nature because they are children or suffer mental or physical disabilities (and the Council itself often contracts with taxi drivers to carry such people) or because they are intoxicated one way or another after a night out.

Passengers and drivers are generally strangers to one another, forced to share a confined space in a moving object over which the driver has control. Physical, sexual and verbal assaults (either way) are therefore particularly dangerous when they occur in the context of taxis. Drivers are also particularly vulnerable to the risk of passengers making off without payment. Nevertheless the vast majority of drivers and passengers are of course honest and law abiding and the vast majority of journeys pass off with no incident at all.

25. It must be the case, and we accept, that the existence of CCTV in taxis tends to deter crime and assists in its investigation when it does occur and similarly that it assists the Council in relation to its function of licensing only suitable taxi drivers. The extent of any deterrence, and in particular the extent of any additional deterrence arising from audio-recording, is, we think, unlikely to be susceptible to hard proof and the unsuccessful attempt in Mr Burke's written statement to enlist statistical evidence to demonstrate the success of the policy in deterring crime confirmed our view about this. However, we do accept that there must be some additional deterrent effect from having continuous audio-recording in taxis. For example, it was suggested that a drunken group intent on trouble may get into a taxi and one of their number may persuade the others not to start being abusive by pointing out the audio-recording label, thereby preventing trouble that would otherwise ensue from "kicking off" in the first place. A driver who may be thinking of propositioning a lone female passenger may be deterred from doing so with the consequence that a subsequent sexual assault that might have followed just never happens. A passenger who gets into a dispute with a driver may be constrained in the language he uses and, in particular, not resort to racial abuse.

26. As for assisting the investigation of crime (and lesser matters of complaint) in taxis, which is obviously of great use to the police and the justice system and to the Council

in its licensing function, it was clear that in *some* of the cases we refer to at paras 8 and 9 the existence of audio-recording in addition to video-recording had made a real difference. The clearest were a few cases where drivers had alleged that passengers were guilty of racially aggravated assaults or racial abuse where, obviously, the existence of audio-recording was crucial. There was also reference to one or two allegations of sexual assault where the video-recording did not show exactly what was going on out of view of the camera but an audio-recording would help, and one can imagine that the recording of the conversation before an alleged sexual assault might assist in establishing whether sex had been consensual. There may also be cases where the existence of an audio-recording would assist in establishing an offence of making off without payment or whether a driver had behaved inappropriately (but not criminally) in a way that would affect his entitlement to a licence. It is right to note also that benefit comes from the ability not only to prove true allegations but also to disprove false allegations. And it is right to recognise that while few of the examples raised involved really serious crime, it *may* be that one day there is a rape or a murder associated with a taxi which would have been successfully prosecuted if there was audio-recording but not if there was only video-recording.

27. The Commissioner raised the possibility of a more targeted and less intrusive alternative to continuous audio-recording, and in particular a “panic button” system whereby the driver or passenger could activate audio-recording if a need arose at the press of a button. As we understand it, there is no technical bar to such a device and the Commissioner would regard it as an acceptable alternative. We agree with the Council that the Commissioner did not fully meet its criticisms of a panic button system. We accept that such a system would clearly not be as effective as continuous audio-recording, since it would obviously not be as full a deterrent, it would require often vulnerable or incapacitated passengers to make use of it and it would by definition miss the initial and perhaps most important part of an incident. However, a panic button system would have some (albeit limited) additional benefits in relation to the legitimate aims being pursued over a pure video-recording system. For what it is worth, therefore, the relevant benefits of the Council’s policy for us to consider are only the additional marginal benefits associated with a *continuous* audio-recording system over those that could be achieved with a panic button system.

Extent of interference

28. We have already alluded to the extent of the interference with privacy rights involved in the Council's policy in paras 7, 19 and 20 above. In short, every single conversation, however private and however sensitive the subject matter, taking place during every single taxi ride in Southampton (of which there may well be a million a year) will be recorded and accessible to a public authority.
29. Mr Pitt-Payne emphasises aspects of the policy which he says mean that it involves only a slight interference with privacy rights: first, the data is only retained for a short time (14 to 30 days) unless it is accessed for good reason; second, access to the data is confined to a few individuals (Mr Burke and his team); and, third, their access is strictly controlled: there must be a request relating to a specific incident or allegation from the police or which Mr Burke and his team judge worthy of further investigation. The evidence is that the data has been accessed on only about 200 occasions in three years. It is not in any sense continuously monitored. We accept that these are highly relevant considerations but there are a number of points which go to weaken them in our view.
30. First, as we have mentioned, the policy has never been written down as such and we are concerned that, at least in so far as it relates to audio-recording, it was not very fully consulted on or well thought through. Rather it appears to have been driven by technological developments. The 14 to 30 day retention period in particular is simply a function of the capability of the systems and, if a new approved system came along which could retain data for much longer, there is nothing in the policy to stop data being so retained. Second, there is already evidence of what was called at the hearing "function creep": for example, the use of the system by the police to gather evidence about crimes not directly related to taxis, however beneficial in itself, was not (or should not have been) part of any policy devised by the Council arising from its taxi licensing function. Third, it has to be accepted that however robust the systems in place and however well-intentioned and conscientious Mr Burke is (and he made a generally good impression on us) there must always be a danger that a taxi driver or a

Council official or someone else will access and make improper use of this data. As it is, we were told that there were possibly four to five “data access requests” per year (generally made by taxi drivers) which had been acceded to: we do not have details of these but we wonder whether full consideration was given to the interests of data subjects other than the requester and we note that, once in the hands of the requester, notwithstanding the Council’s standard letter warning him that to publish will involve a breach of the Council’s copyright, there is little that anyone can do in practice to control the use of such data (and these days they can be instantly broadcast to the whole world through sites like *YouTube*).

31. Both sides sought to demonstrate in different ways that there was public support for their respective positions. The Council relied on the outcome of their consultation and certain opinion polls in Southampton. Although we were open to the possibility that firm evidence of local support or opposition could be relevant on the proportionality issue, we did not consider that the exercises relied on were sufficiently focussed on audio-recording to have any influence on our decision. The Commissioner relied on various complaints about the policy, in particular by taxi owners and drivers; without knowing more about motivation we do not think that any weight can be attached to these either.

32. We do, however, give some weight to the views expressed by the Commissioner in his 2008 Code of Practice on CCTV where he states:

CCTV must not be used to record conversations between members of the public as this is highly intrusive and unlikely to be justified. You should choose a system without this facility if possible. If your system come equipped with a sound recording facility then you should turn this off or disable it in some other way.

There are limited circumstances in which audio recording may be justified, subject to sufficient safeguards. These could include:

...

- where recording is triggered due to a specific threat, e.g. a panic button in a taxi cab.

We also formed the view that (notwithstanding the possible benefits to them of the Council's policy) the police witnesses took a somewhat neutral stance on the question of the proportionality of continuous audio-recording.

Conclusion on proportionality

33. Having regard to the considerations set out at paras 24 to 32 above, and paying due respect to the Commissioner's views, in our judgment the Council's policy, in so far as it requires continuous blanket audio-recording of everything said in taxis, is disproportionate when the extent of the interference with the right of privacy is weighed against the marginal benefits to the legitimate social aims of increasing public safety and reducing crime in relation to taxis which are likely to result from it. It follows from that conclusion that the policy is not justified under Art 8(2) and accordingly that it contravenes the first data protection principle.

34. Having reached that conclusion we wish to record that we were impressed by the police evidence in this case and that we appreciate the nature of the problem and the special vulnerability of some taxi passengers, in particular children, those with disabilities and those travelling at night, especially when they are "the worse for wear" as is so often the case. It may be that, bearing these points in mind, there is scope for a more targeted scheme involving audio-recording based on times of day, types of customer (for example, children or vulnerable adults carried under contract between a taxi firm and the Council), the use of panic buttons or a combination thereof, which strikes a better balance between the competing considerations and does not contravene the Data Protection and Human Rights Acts. Any such scheme would be a matter for the parties to work out and not for this Tribunal to put forward.

The exercise of the discretion by the Commissioner

35. Mr Pitt-Payne submitted that the Commissioner's approach to section 40(2) was flawed and that, in any event, he ought not to have exercised his discretion to serve an enforcement notice. Looking at para 8 of the enforcement notice we are inclined to agree with him that the Commissioner did not apply a sufficiently stringent test of

likelihood of damage or distress. However, we do not think that we need to consider that matter further for the simple reason that, having concluded that the Council were acting in breach of the Data Protection Act and having regard to the high level of public importance of the case, we think it must have been right in this case to decide to issue an enforcement notice, regardless of the likelihood of any actual damage or distress resulting from the policy.

Conclusion

36. We therefore dismiss the appeal. Our decision is unanimous.

Signed:

HH Judge Shanks

Date: 19 February 2013

This page is intentionally left blank

TRADE CONSULTATION MEETING ON TAXI CAMERAS

Thursday 2nd May 2013.
2pm – 3pm

Attendance:

Cllr Cunio
Cllr Rayment
Jim Martin
Kevin May

Cllr Parnell
Ben Atrill
Ian Hall
Clive Johnson

Cllr Thomas
Phil Bates
Perry McMillan
Amy Mullan

Perry McMillan read out a joint statement at the start of the meeting. A copy is attached to these minutes.

1. Mandatory condition to have visual only cameras?

- The Taxi trade want the camera system to be a voluntary decision of the driver.
- The camera system should be a benefit to the public as well as to the driver, for self protection to both parties. Although there is the impression throughout the taxi trade that the camera system is spying on the driver, when the council licence a driver, they should have 100% faith in them until they show otherwise.

2. If there is a condition to have cameras how important is it to the trade to have some element of audio recording?

- Some of the taxi trade liked the idea of having some form of panic button or triggered audio, especially at night with the fear of threats of racial remarks, harassment.
- The ICO 2009 published guidance was not closely followed, as it clearly stated that no audio recording was allowed. Therefore there was an inadequate consultation period as this policy was rushed through.
- A camera without audio is just not worth having, the only evidence without audio is that the individual was in the taxi, there is no evidence of what happened.

3. Are there any aspects of the old camera condition the trade would like altered, such as choice of camera.

- The taxi trade feel that the choice of the camera should be up to the individual. The camera the council found was £700 with expensive replacement parts, the taxi trade believe that a cheaper camera can be found.

- However, there is a certain threshold in price that will need to be paid in order to capture images at certain quality which will be integral to evidence.
 - The taxi trade need to propose and give examples of more appropriate cameras which could be used instead to Phil to help to find a system in which everyone agrees on. This can then be recommended to the licensing committee within the next 3 months.
- 4. The Council's ring fenced Licensing budget cannot subsidise the camera programme any longer. What impact will the removal of the subsidy have on the trade as the advice officers receive from HMRC is the full cost is recoverable in the first year as a legitimate expense?**
- Not discussed
- 5. How do the trade view the proposal to have a requirement for all of the fleet to have a camera fitted within a shorter set period, perhaps 6 months?**
- Not discussed
- 6. If there is a condition to have cameras then it will be intended that data will be only be disclosed on the report of a crime or a written (can be email) complaint or subject access request. What is the trades view on data only being accessed for complaints where the suspension of a driver is a possibility or are there any other conditions relevant?**
- Not discussed
- 7. What are the trades concerns with the Council being the data controller?**
- Anyone can be a data controller as long as they are registered with the ICO.
 - Any taxi driver can place the camera in their car and then become the data controller.

Chair.

Cllr Parnell, Cllr Thomas and Mr Phil Bates are aware – from the recent Consultation meeting – that the STA representative asked if questions could be put to Richard Ivory as he would not be in attendance today.

You are all aware that questions were submitted through Phil Bates, with a request for answers either prior to or at the commencement of this meeting. Though we thank Richard Ivory for his early response to those questions we are not impressed with the answers received.

They have only compounded the reasons that we sought advice after the Court process finished earlier this year.

There are a number of routes available to us two of which are:

1. With reference to the Data Protection Act: The decision regarding cameras in 2009 was flawed and as such was a breach of licensed drivers rights. As there is a 6 year window in which to file for compensation; claims are being prepared.
2. The Local Government Ombudsman.

Having said the above we are aware that the Council want this issue resolved at the earliest opportunity. The Trade also want a satisfactory and reasonable resolution.

If the camera system is for the protection of the public and that is why it is compulsory, then it is a false premise. It seems the SCC consider the driver to be a criminal? If so the Council licensing drivers is a waste of public money. It is also a total admission of the failure of the licensing department. Is the Council so incompetent in its checks on drivers that it needs a camera system to control them. It also shows a complete lack of faith in the trade and the licensing system.

On the other hand if the camera system is for the protection of the driver from unruly/violent passengers, then we should applaud the Council. And clearly the camera system should be voluntary, i.e. the driver's choice whether to have a camera or not.

Therefore in answer to your first question: Cameras should be a voluntary condition with compliant audio recording if required by the licensee.
Making it a voluntary condition would alleviate all of the Council and Trade's concerns regarding the rest of the Council's agenda.

If they go with voluntary we should then be prepared to move on and discuss how this would work etc. However, if they insist on compulsory then we analyse the past, go over Ivory's and the echo's responses etc as we discussed at our meeting.

This page is intentionally left blank

Agenda Item 5

Appendix 6

The policy is as follows:

1. All passengers are made aware of the fact that they are being recorded by notices strategically placed on the vehicles. These notices are placed on the rear windows adjacent to the B pillar on both sides and in purpose built vehicles also on the security screen that separates the driver and passenger. These labels clearly warn that both audio and visual recordings take place in the vehicle using wording and images of a camera and a microphone.
2. Data will only ever be downloaded on four occasions
 - 1) where a crime report has been made involving the specific vehicle and the Police have formally requested that data or,
 - 2) when a substantive complaint has been made to the licensing authority regarding a specific vehicle / driver and that complaint is evidenced in writing (and cannot be resolved in any other way),
 - 3) where a Data request is received from an applicant e.g. police or social services, that has a legitimate requirement to have access to the data requested to assist them in an investigation that involves a licensed vehicle or driver.
 - 4) Subject Access Request compliant with the Data Protection Act.
3. To safeguard the data all downloads will be conducted in the presence of at least two relevant people. Relevant people are: a member of the Southampton City Council licensing team or a serving police employee. This will generally be at the police station with 2 police employees or at the Council offices with two Licensing staff where possible.
4. All requests must be in an appropriate format detailing the powers that allow the release of the data and providing all the information required. The request form for download must state the approximate time of the event/occurrence and only the timescale relevant to the specific incident will be downloaded, de-crypted and thereafter stored.

5. On receipt of a download request to be conducted by SCC staff a member of the Licensing Team will confirm it is a legitimate request. If practical, arrangements will be made with the owner of the licensed vehicle for the vehicle to attend the Licensing Office. If it is not practical then a member of the Licensing Team will attend the location of the vehicle or data box to facilitate the download. Any download will be carried out in the presence of at least one other person if at the licensing office. If the download is taking place away from the licensing office then either an additional member of Council staff or a member of the requesting organisation i.e. police officer will be present in addition to the member of staff conducting the download.
6. A dedicated computer will be used to facilitate the download from the data box. This computer will copy the downloaded footage onto its files. A master copy will be created from this computer and placed on the external hard drive dedicated for such use and retained by SCC Licensing Team. This hard drive will be kept secure to prevent loss of data. A working copy will be produced and either given to the requesting authority or subject or retained by the investigating officer. Data retained by SCC Licensing Team will only be retained for the following periods:
 - a. Cases leading to prosecution 10 years from date of trial
 - b. Formal caution 3 years from date of caution
 - c. Written warning or no formal action 3 years from date of decision
 - d. Subject Access request 6 years from date of request.

The file on the dedicated computer will be deleted once the master and working copies are produced.

Staff in the Licensing Team will conduct a review of material held on the hard drive each year in March and erase any such material outside of these time limits. Any working copies should be placed on the appropriate files and they

will be weeded and safely destroyed with the files whose time limits mirror those set out above.

7. Data will only be viewed by the person performing the download to the extent necessary to facilitate the download process. Data being used in any investigations will only be viewed by persons involved in that investigation but will be released to be used in court if necessary.
8. After a period of time any data held by the system installed in any vehicle is automatically overwritten dependant upon the specification of the system installed. Typically, this will be within a period of 14 – 30 days.
9. Only systems approved by the Licensing Team may be installed by an approved installer – thereby ensuring that any equipment may not be tampered with, encryption is of a sufficient standard and data may not be interfered with or released to any third party / published.

This page is intentionally left blank

[REDACTED]

[REDACTED]

[REDACTED]

Formal Complaint

Sir

04-10-2010

[REDACTED] is writing to inform you that if you proceed with plans to install audio and visual surveillance in your fleet of vehicles then we will immediately withdraw our contract from your company. Furthermore we will also advise all of our clients who use your company to do likewise.

As you are aware we are a Government supplier for Police and Military Equipment both in the UK and internationally. As such the telephone communications that are conducted in the back of your vehicle to clients are done via highly encrypted hand held devices. This is done for extremely good security issues not only surrounding equipment supply and delivery but also because of the transportation of VIP personal.

If this information was to fall into the wrong hands then the security implication do not bear thinking about.

I have discussed this issue with my client base and all are of the opinion that sometimes a simple blanket approach as is being adopted here does not work in all situations and a more intelligent and flexible approach needs to be adopted.

Our recorded communications can not under any circumstances be intercepted by the local council or any other person attempting to illegally access the recording via either data or vehicle theft for example.

We are advising that if we do not receive a written guarantee within 30 days of this letter then please consider our contracts with you to be terminated.

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This page is intentionally left blank

PRIVATE HIRE VEHICLE LICENCE POLICY AND CONDITIONS From 26th August 2009



APPLICATIONS

1. Before a licence is granted in respect of a private hire vehicle, the applicant being a proprietor of the vehicle must :-
 - 1.1 Complete and submit to the City Council an application in the form prescribed by the Council.
 - 1.2 Satisfy the Council that the vehicle complies with the conditions for private hire vehicles licences made by the Council.

2. GENERAL

- 2.1 The licence holder must observe and carry out the requirements of the Local Government (Miscellaneous Provisions) Act 1976, Part II, and any orders or regulations made thereunder and the requirements of any other Act of Parliament or order.

2.2 Interpretation

In this licence and in this document, unless the subject or context otherwise requires:-

- 2.2.1 "authorised officer" means any officer of the Council authorised in writing by the Solicitor to the Council for the purposes of Part II of the Local Government (Miscellaneous Provisions) Act 1976;
- 2.2.2 "the Council" means Southampton City Council;
- 2.2.3 "private hire" has the same meaning as in the Local Government (Miscellaneous Provisions) Act, 1976
- 2.2.4 "licence plate" means the plate issued by the Council for the purpose of identifying the vehicle as a private hire vehicle duly licensed by the Council;
- 2.2.5 "licence holder" includes a part-proprietor and, in relation to a vehicle which is the subject of a hire purchase agreement, means the person in possession of the vehicle.

3. TYPE OF VEHICLE

- 3.1 General conditions covering all types of vehicles that are licensable as private hire vehicles are set out in 3.2. and 3.3 below.
- 3.2 The vehicle to be licensed, of whatever type, shall, subject to what is to follow, and other conditions herein, be suitable in size, type and design for use as a private hire vehicle to the satisfaction of the Council.
- 3.3 Without prejudice to the generality of 3.2 above, the vehicle shall:-
 - 3.3.1 have an engine producing 68 b.h.p., or greater;
 - 3.3.2 not be a London type taxi or any other type of vehicle constructed solely or primarily for use as a hackney carriage or be of such design or appearance as to be able to lead any person to reasonably believe that the vehicle is a hackney carriage;

PRIVATE HIRE LICENCE POLICY AND CONDITIONS from 26th August 2009

- 3.3.3 have a rear seat with a width of no less than 1220 mm (measured at the leading edge) and be of a "bench seat" type, and in the case of a mini-bus, have a minimum seat width of 407 mm per person;
- 3.3.4 have rear headroom that is adequate for passengers to sit comfortably and in any event, the distance from the squab as measured at its central point (from side to side), at the point where it meets the backrest, and then measured vertically to a point on the headlining, shall be no less than 840 mm;
- 3.3.5 Except as provided in condition 23 below, be of right hand drive;
- 3.3.6 be fitted with sufficient and suitable seat belts for every person who may be carried in the licensed vehicle pursuant to conditions 14 and 15;
- 3.3.7 in the case of estate cars, the space between the top edge of the rear seat and the roof of the vehicle must be fitted with a grille to ensure the safety of passengers from displacement of luggage;
- 3.3.8 at all times maintained to standards that meet the then current requirements of the Council, and must be in a clean and comfortable condition for the carriage of passengers.
- 3.4 Without prejudice to 3.2 and 3.3 above, and any other general requirement or condition, herein, or from time to time made by this Council, any private hire vehicle to be licensed as such must also comply with the requirements within one or the other of the following Categories (according to vehicle type) in order to qualify for licensing. The Categories are as follows:
 - 3.4.1 Category A - This Category shall include any vehicle otherwise licensable as a private hire vehicle by this Council, other than Category B vehicles, subject to any other requirement or condition herein, or from time to time made by this Council and would satisfy the Council's reasonable requirement as to suitability, that is purpose adapted or converted by manufacturers, or those professionally engaged in adaptation or conversion, that are "M1" certified after adaptation or conversion and are wheelchair accessible to a person who wishes to remain in his or her wheelchair during the journey, including entry and exit from the vehicle.
 - 3.4.2 Category B - This Category shall include any vehicle otherwise licensable as a private hire vehicle (other than a Category A vehicle) under the various conditions imposed by this Council.

4. **AGE OF VEHICLE**

- 4.1 No Category A vehicle will be licensed (or re-licensed by way of renewal) as a private hire vehicle which was first registered under the Vehicles (Excise) Acts of 1949, 1971, or successor legislation, more than ten years before the date of the commencement of the licence.
- 4.2 Except as provided in condition 23 below, no Category B vehicle will be licensed (or re-licensed by way of renewal) as a private hire vehicle which was first registered under the Vehicles (Excise) Acts of 1949, 1971, or successor legislation, more than seven years before the date of the commencement of the licence.

5. **COLOUR OF VEHICLE**

- 5.1 Except as provided in condition 23 below, the bodywork of any private hire vehicle shall be any colour except for white.

6 **ADVERTISEMENTS AND SIGNS**

6.1 No advertisement, sign, notice, mark, illumination or other feature, other than as required by law or permitted by these conditions shall be placed on the exterior of or visible from outside of any licensed private hire vehicle including the windows, except as follows:-

6.1.1 An unilluminated sign in the upper or lower rear window, but not both, of the licensed vehicle bearing lettering not more than 51 mm in height stating only the name, style or title of the proprietor or operator and their telephone number.

6.1.2 Advertising, including third party products and services, etc. is permitted (subject to conditions and law) on any part of the body of the licensed vehicle. Windows are excluded from this permission, subject to 6.1.1 above.

6.2 All such advertising as mentioned below may only be displayed after consultation with the Solicitor to the Council, who may grant permission, if satisfied that, all the criteria are met, but otherwise, will refer the decision to the appropriate Sub-Committee.

6.3 Consultation will include:

6.3.1 Initial approach to the Solicitor to the Council by the proprietor or operator with proposals for the style, content and materials to be used. Sight of proposed artwork would be preferred. **UNDER NO CIRCUMSTANCES MUST A VEHICLE DISPLAY ANY ADVERTISEMENT OR MARK BEFORE FORMAL PROVISIONAL APPROVAL IS OBTAINED**

6.3.2 Provisional approval will be given when the Solicitor to the Council is satisfied that the criteria and requirements are met by the proposals.

6.3.3 Following completion of advertising, the vehicle will be inspected by the Solicitor to the Council and, if satisfied that all criteria and requirements are met, will give formal final written approval.

6.4 At all stages prior to final written approval the proprietor or operator will accept the risk involved in not meeting these criteria or requirements.

6.5 The power to give final approval will be delegated to the Solicitor to the Council but a refusal of approval can only be given by the appropriate Sub-Committee.

6.6 All advertising is to be completed to a professional standard and quality.

6.7 This advertising may promote the proprietor or operator of the licensed vehicle or a trade, business, goods or services of a third party.

6.8 The advertising shall not exceed 35% of the body area, always excluding the area taken up by the City Identity Sticker. The window area shall be excluded from the calculation.

6.8.1 A certificate produced by the Head of Neighbourhood Services to the Solicitor to the Council shall be conclusive as to compliance with the 35% requirement referred to above.

7. **ADVERTISEMENT CONTENT**

All advertisements must comply with the British Code of Advertising Practice and it is the responsibility of the agency or individual seeking the Licensing Authority's approval to ensure that they do so.

7.1 Each proposal is considered on its merits, but the following advertisements **WILL NOT BE APPROVED**, always subject to the provisions of the Human

PRIVATE HIRE LICENCE POLICY AND CONDITIONS from 26th August 2009

Rights Act 1998 and any other law.

- 7.1.1 those with political, ethnic, religious, sexual or controversial texts
- 7.1.2 those for escort agencies, gaming establishments or massage parlours
- 7.1.3 those displaying nude or semi-nude figures
- 7.1.4 those likely to offend public taste.
- 7.1.5 those which seek to advertise more than one company/service or product
- 7.1.6 those which promote the sale or consumption of tobacco products or cigarettes.
- 7.2 The Solicitor to the Council will be delegated to give approval of matters in 7.1 above, but a refusal of approval can only be given by the appropriate Sub-Committee.
- 7.3 It is the proprietor's responsibility, as part of the contract entered into when commissioning any exterior advertising of the foregoing nature, to ensure that, at the completion of the contract, or upon the vehicle ceasing to be a licensed private hire vehicle, a re-spray to the vehicles original manufacturer's colour is included.
- 7.4 Provided always that no advertisement permitted by these conditions shall consist of or include the words "taxi" or "cab" whether in the singular or plural or "hire" or any word of similar meaning or appearance of any other feature which may suggest that the vehicle is a hackney carriage, and no advertisement, sign, notice, mark, illumination or other feature shall be placed on the licensed private hire vehicle without the Solicitor to the Council's prior approval.
- 7.5 No combination of letters or numbers must be used in the registration number of the vehicle to indicate or imply the words "taxi" or "cab" or any related idea which could lead a member of the public to take the view that the vehicle is a hackney carriage.

8. IDENTIFICATION

- 8.1 Other than as permitted by these conditions, no other advertisement, sign, notice, mark, illumination or other feature will be permitted.
- 8.2 Except as provided in condition 23 below, all private hire vehicles shall display two "City Identity Stickers" of the prescribed type for private hire vehicles. One sticker shall be placed on each front door, in a central position and as high as practicable under the window. The positioning of the sign shall not obstruct the opening of the door.
- 8.3 The City Identity Sticker shall be to the satisfaction of the City Council and shall be 240 mm in height by 600 mm in width on a white background. The upper portion of the display will show the words "LICENSED BY" in white capital letters with a letter height of 10 mm, on a black background 110 mm wide and 21 mm high.
- 8.4 Immediately below will be the City "Bargate" logo in blue, 90 mm at its widest point and 83 mm in height. Immediately below as part of the logo, in black, shall be the word "Southampton", below which shall be the words "City Council" in letters 14 mm high and text width 90 mm. Immediately below, in blue, shall be the words "Licensed Private Hire Vehicle No" with words on each of two descending lines, lettering 10 mm in height, the text width on each line will be 144 mm. Below those words shall be shown in individual boxes, the licence number of the private hire vehicle in black. Each box shall measure 50 mm in

height and 30 mm in width.

8.5 To the right of the above mentioned panel there shall be a vertical black line 230 mm in length in 3 mm in width. To the right of this line, along the whole remaining width of the sticker shall appear the words "PRE-BOOKED ONLY" in black capital letters, 24 mm high with a total length of 400 mm. Immediately below this wording shall appear a black horizontal line 420 mm in length and 3 mm in width running from the vertical line mentioned above to the rightmost edge of the sticker.

8.6 The sticker may be screen printed on a white background and must be supplied with adhesive backing, or some other similar method meeting the requirements of the Council, to enable it to be fixed in the correct position. Magnetic signs will not be permitted. For the avoidance of doubt, no roof mounted box or other structure or sign will be permitted.

8.7 The name of the proprietor or operator and their telephone number shall appear in bold clearly legible lettering in the space 190 mm high by 420 mm in length on the sticker, immediately beneath the wording "Pre-Booked Only".

Provided always that this identification shall not consist of or include the words "taxi" or "cab" whether in the singular or plural or "hire" or any word of similar meaning or appearance of any other feature which may suggest that the vehicle is a hackney carriage and shall not be placed on the licensed private hire vehicle without the Solicitor to the Council's prior approval.

9. LICENCE PLATES

9.1 Except as provided in condition 23 below, one licence plate shall be securely fixed in a position at the rear of the private hire vehicle to the satisfaction of the Solicitor to the Council.

9.2 A second licence plate shall be securely fixed in a position on the front of the private hire vehicle to the satisfaction of the Solicitor to the Council.

10. RETURN OF LICENCE PLATES

10.1 The private hire vehicle licence plates shall remain the property of the Council and shall be returned within seven days after the service on the licence holder of an appropriate notice by the Council's Solicitor to the Council or when the licence expires and is not renewed. The deposit paid on the issue of the plates shall be refunded provided the plates are in good condition.

11. INSPECTION OF VEHICLE

11.1 The licence holder shall present the vehicle for inspection at the time and place notified by the Council, the private hire vehicle shall be submitted for inspection at least once, but not more than three times, in a year. In addition the Council may arrange for the vehicle to be tested at any reasonable time and require further inspection and testing if it proves unsatisfactory. Licence holders will be notified by letter of time and date that vehicle is to be presented for inspection.

11.2 Without prejudice to the foregoing, where more than two years has elapsed since the first registration of the private hire vehicle under the Vehicles (Excise) Acts of 1949, 1971, or successor legislation, the private hire vehicle shall undergo a VOSA "MOT" test in the period of one week either side of the date six months from the last grant of the vehicle licence (the "due date") and the vehicle test certificate shall be presented for inspection to the Solicitor to the Council

within 14 days of the due date.

12. **DAMAGE TO VEHICLE**

12.1 If a private hire vehicle is involved in a road traffic accident and either mechanical or bodily damage is sustained, a report must be made by the proprietor to the Solicitor to the Council within three days and, after repair, which must be completed within one month of the damage being sustained, may be required to pass a mechanical inspection at a place to be determined by the Council, subject to payment of an appropriate fee. The private hire licence plate is liable to be removed from any vehicle which, in the opinion of an appropriate Officer or agent of the Council in any way constitutes a danger to the public, is in breach of any road traffic enactment or the Construction and Use Regulations, or is unfit for use as a private hire vehicle. On completion of the repairs, to the satisfaction of the Solicitor to the Council, the licence plate may be restored.

12.2 The removal of the private hire licence plate will constitute suspension of the vehicle licence.

13. **INSURANCE**

13.1 At all times during the currency of the licence the licence holder shall keep in force in relation to the use of the vehicle as a private hire vehicle a policy of insurance complying with the requirements of Part VI of the Road Traffic Act 1972.

14. **PRODUCTION OF DOCUMENTS**

14.1 The proprietor shall on being so required by an authorised officer, produce for inspection the licence and/or the certificate of insurance in relation to the use of the vehicle as a private hire vehicle. Provided that, if the proprietor fails to produce such licence and/or certificate of insurance on request, he shall produce it within five days of such request to an authorised officer at the office of the Solicitor to the Council.

15. **SEATING CAPACITY**

15.1 Every private hire vehicle shall have sufficient seating capacity to carry not less than four nor more than eight passengers in comfort in addition to the driver. (The seating capacity shall be determined in accordance with Regulation 42 of the Road Vehicles (Registration and Licensing) Regulations 1971);

16. **NUMBER OF PASSENGERS**

16.1 The licensee shall not convey, or cause or permit to be conveyed in the vehicle a greater number of persons, exclusive of the driver, than specified in the licence. In addition, children under three years will not be conveyed in the front seat of a vehicle whether restrained or unrestrained.

17. **FIRE EXTINGUISHER AND FIRST AID KIT**

17.1 The licence holder shall cause to be carried in the private hire vehicle an efficient fire extinguisher of a type approved by the Council and suitable for use on motor vehicles and a first aid kit: Such extinguisher shall be fixed on the vehicle in such a position as to be readily available for use and maintained in good working condition at all times.

18. **TAXIMETER**

18.1 Should a taximeter be installed in a private hire vehicle, it must be electronically designed and of the type and model approved by the Council. It must be fitted in a position satisfactory to the Council.

18.2 No operator, proprietor or driver may tamper with the mechanism of the Taximeter or its seals provided that, should the meter become defective it may be replaced by a service meter.

19. **TRANSFER OF LICENCE**

19.1 If the proprietor of a private hire vehicle transfers his licence and vehicle, he shall within fourteen days give notice to the Solicitor to the Council details of the name and address of the person to whom he has transferred the licence.

20. **PARKING**

20.1 The licence holder shall not permit the vehicles to be stationed on the Highway unless they are at that moment actually in use for the purpose of carrying passengers for which a "hire" has been agreed.

21. **ADHERENCE TO BOOKINGS**

21.1 The holder of a licence who has agreed, or whose vehicle has been hired to be in attendance at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such vehicle at such appointed time and place.

22. **WEDDINGS AND FUNERALS**

22.1 Private hire vehicles being used to carry passengers to, from or in connection with any wedding ceremony or funeral will not be required to display a private hire vehicle plate during such journeys.

23. **SPECIALIST VEHICLES**

23.1 In exceptional circumstances, the Solicitor to the Council may determine that a vehicle is a specialist vehicle, such as, but not exclusively, stretched limousines, classic cars and other unusual vehicles to be used for private hire.

23.3 Where the Solicitor to the Council determines that a vehicle is a specialist vehicle, and that it is intended to be used in the circumstances described in section 75(3) of the Local Government (Miscellaneous Provisions) Act 1976, a notice may be issued of the suspending the requirement for the display of the rear licence plate in those circumstances, as required by condition 9.1 above.

23.4 Additionally, in the case of a specialist vehicle, the Solicitor to the Council may, at his absolute discretion, suspend or amend all or some of the provisions of the following conditions:

- 3.3.5 (right hand drive);
- 4.2 (age of vehicle);
- 5.1 (colour of vehicle);
- 8.2 (city identity stickers)

24. **ORIGINAL VEHICLE SPECIFICATION**

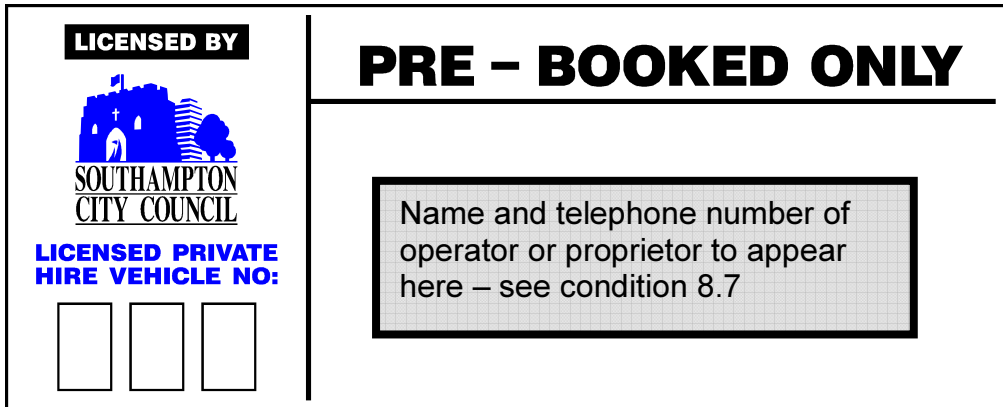
24.1 All licensed private hire vehicles shall be maintained to their original specification whilst the licence remains in force.

25. **DIGITAL TAXI CAMERAS**

25.1 A secure digital taxi camera system approved by the Council shall be fitted to the vehicle prior to the grant of the licence and maintained in the vehicle thereafter for the duration of the licence to the satisfaction of the Council.

25.2 The above requirement will be effective immediately on the grant of a new licence (other than by way of renewal) or on the replacement of a licensed vehicle.

Note: For the purposes of condition 8 (Identification) and in order to avoid doubt, an example of the identity sticker appears below:



Note: For the avoidance of doubt all of the above requirements shall be deemed to form both the Council's policy (i.e. pre requisite to the grant of the licence) as well as conditions subject to which the licence is granted (which will continue to apply throughout the duration of the licence, as appropriate. As a result, any requirement which requires action or implementation prior to the grant of the licence is to be considered the Council's policy and any requirement to be complied with after the grant of the licence is a condition and compliance is required for the duration of the licence.

ADDITIONAL INFORMATION

Please note that this information does not form part of Southampton City Council's licence policy or conditions

Drivers, proprietors and operators of licensed hackney carriages and private hire vehicles are reminded of the other statutory duties and restriction placed on them, amongst which are the following:

Smoking

The Health Act 2006 prohibits the smoking of tobacco or any other substance by anyone in a licensed hackney carriage or private hire vehicle. The legislation applies at all times whilst the vehicle remains licensed, thus smoking remains prohibited when the vehicle is not hired or not for hire.



Every licensed vehicle is required to carry appropriate signage under the Smokefree (Signs) Regulations 2007. Guidance and signs are available from:

<http://www.smokefreeengland.co.uk/resources/guidance-and-signage.html>

Assistance Dogs

The Disability Discrimination Act 1995 imposes a duty on licensed drivers and operators to convey any guide, hearing or other assistance dog in a licensed hackney carriage or private hire vehicle.

Drivers must:

- carry assistance dogs accompanying disabled people;
- do so without additional charge; and
- allow the dog to remain with the passenger

Operators must:

- accept bookings made by or on behalf of a disabled person who is accompanied by an assistance dog;
- accept bookings made by a person who will be accompanied in a PHV by such a disabled person; and
- not make an additional charge for carrying the assistance dog

If a driver has a medical condition, such as severe asthma, which is aggravated by contact with dogs, or is allergic or has an acute phobia to dogs, it may be possible for them to qualify for an exemption. Please discuss this with the licensing team in the first instance, to whom application for exemption must be made. The driver will be required to produce conclusive medical evidence in support of his application.



Please note that the law does not allow for an exemption to be granted on religious grounds.

Additional information is available from: <http://www.dft.gov.uk/transportforyou/access/taxis/>

This page is intentionally left blank



Direct dial: 023 8083 3002

Our ref:

Your ref:

E-mail: licensing@southampton.gov.uk

Please ask for: Mr. Bates

Big Brother Watch,
55 Tufton Street,
London,
SW1p 3QL

7th May 2013

Dear Sir or Madam,

Cameras fitted in licensed taxis and private hire vehicles

As a result of the decision by the Information Tribunal earlier this year Southampton City Council has suspended its condition to require licensed vehicles to have a camera fitted and acted immediately to ensure systems ceased recording audio. The Head of Legal, HR and Democratic Services wrote to you on 28th February 2013 to answer the queries raised by you in your letter of 25th February. However, the Council was in any event in the process of a wholesale review of the policy – a process which will now continue with the benefit of the Tribunal decision to inform any decision going forward. As a result of the delay pending the hearing outcome the Council is now undertaking further and additional consultation on the matter and would welcome your views on the subject.

Any system agreed by the authority is expected to have a high level of safeguards in place to prevent inappropriate access to or misuse of data. The Council was the Data Controller with the suspended system and it had a high level of encryption, was only accessed by a small number of staff when a set criterion was met and was intended to protect and reassure both driver and public, assist in the detection of crime and reduce incidents of serious crime. In addition the Council accept there are some individual circumstances that will exempt a licensed vehicle from having a camera fitted.

We invite you to comment on the following subjects, as well as any additional matter you may consider relevant, in relation to the fitting of cameras in licensed Hackney Carriage and Private Hire Vehicles.

1. Whether the condition to have cameras in vehicles licensed by the authority should be mandatory or not?
2. Should the recording of visual data be permanent or triggered? If triggered what controls the trigger and for how long should a recording be? What would be the benefits or disbenefits?
3. Should there be any audio recording and if so to what extent?
4. The choice of Data Controller between the Council and the vehicle owner. What would be the benefits and disbenefits?



INVESTOR IN PEOPLE

\$qoonhntn5

If you require this letter or future correspondence from us in a different format (e.g. tape, Braille or disc) please do not hesitate to let us know.

I would appreciate a speedy response to allow me to report to the Council your views in time for them to make an informed decision. With this in mind I ask you respond by 21st May 2013

Yours faithfully,

Phil Bates
Licensing Manager
for Head of Legal, HR and Democratic Services



INVESTOR IN PEOPLE

\$qoonhtn5

If you require this letter or future correspondence from us in a different format (e.g. tape, Braille or disc) please do not hesitate to let us know.



Big Brother Watch

Southampton Council, Cameras Fitted In Licensed Taxis and Private Hire Vehicles Consultation

21 May 2013

1. Whether the condition to have cameras in vehicles licensed by the authority should be mandatory or not?

Taxi drivers should not be forced to install surveillance equipment in their taxis. Voluntary schemes and panic button systems would offer a solution to those drivers who feel their safety is at risk without forcing every taxi to record their passengers.

We would not object to the council publishing non-binding guidance on best practice and standards of CCTV, but this should absolutely not in the manner of "all systems must adhere to the specifications contained in the Council's guidance" – it should only be advice and non-mandatory.

2. Should the recording of visual data be permanent or triggered? If triggered what controls the trigger and for how long should a recording be? What would be the benefits or disbenefits?

We believe if drivers choose to install CCTV, then a panic button system would work to protect them as well as an always-on system, without the associated risks to privacy of law-abiding passengers.

The case for always-on CCTV should be based on a legitimate problem and an impact assessment should require evidence to be provided of what that problem is, how it will be monitored to measure CCTV effectiveness and what the alternatives are, and why they are not suitable.

3. Should there be any audio recording and if so to what extent?

Audio surveillance in particular is a gross intrusion on privacy and an entirely disproportionate response to the risk posed. Furthermore, installing such



technology goes entirely against the Information Commissioner's code of practice on CCTV use, which states CCTV should not be used to record conversations except in situations where it is absolutely necessary.

The ICO's code of practice for the use of CCTV is very clear on the issue of audio recording;

"CCTV must not be used to record conversations between members of the public as this is highly intrusive and unlikely to be justified. You should choose a system without this facility if possible. If your system comes equipped with a sound recording facility then you should turn this off or disable it in some other way."¹

So even with a panic button, there is a question as to whether this is still too intrusive.

4. The choice of Data Controller between the Council and the vehicle owner. What would be the benefits and disbenefits?

This is a critical decision. If taxi drivers are the data controllers, then any breach of the Data Protection Act would result in action against the driver. Our concern is that if the Council is the controller, while this has a benefit of existing processes and expertise on DPA compliance being available, the reality of enforcement is that it does not result in individual-level action and any penalty is manifested at a corporate level.

As such, we believe taxi drivers should remain data controllers, particularly as this is far more appropriate to a system where drivers are individually responsible for the decision about installing CCTV in the first place. (We support such a model over any mandatory system)

However, if a mandatory system is introduced, an explicit recognition that through such a system, there is de facto vicarious liability on part of the council should be included. Given a mandatory system may mean drivers who do not wish to install any CCTV equipment would be required to do so, this would arguably be the legal position anyway.

¹ http://www.ico.org.uk/for_organisations/data_protection/topic_guides/cctv



The council's responsibilities to monitoring the policy should include proactive assessment of any DPA infringements, irrespective of who is the data controller.

Further point:

The issue of panic button systems is clearly central to this question. We believe they are a useful way forward to ensure surveillance is not directed at law-abiding people, however there would still be a question over use and

As such, we suggest that if any system is to be installed, the following minimum standards should be adhered to:

- The system must be secured from access by the driver
- Audit processes must be in place to allow an official to see how many times the panic button was pressed and for how long recording took place.
- If there is evidence the system is being over-used, steps taken to investigate why
- License conditions should include that any unauthorised publication or sharing of video or audio would result in immediate revocation of the individual's license

We would also reaffirm our belief that unless there is a criminal offence, punished with a custodial sentence, of abusing or disclosing data collected by CCTV systems, then the risks are still too great. The recent case in Ireland of a person being mis-identified from CCTV footage that ended up on the internet is a salient warning.

This page is intentionally left blank

Agenda Item 5

Appendix 11

From: Bates, Phil
To: ["casework@ico.org.uk"](mailto:casework@ico.org.uk)
Subject: Triggered Audio in taxis
Date: 07 May 2013 12:08:00

Dear Sir or Madam,

As you are aware the recent appeal hearing where we challenged the Enforcement notice issued to us by you raised some interesting points on the recording of audio data within taxis.

I am now trying to move forward in light of the decision. A number of drivers, who having experienced the benefits of both visual and audio recording, are expressing a desire to have triggered audio recording in their vehicles but do not wish to be in breach of any regulations or face a legal challenge on their use. These drivers have already gone for a period of time with out the protection of this system and they would appreciate a speedy response to this mail. As a result I have a number of questions. Firstly I will briefly describe the system we use.

The system Southampton City Council has records data onto a hard drive kept within the vehicle. This data is heavily encrypted and can only be accessed by approved persons who need to access the hard drive within the vehicle. The Council is the data controller.

At the hearing there were some concerns expressed about the policy and procedure for the downloads. I have nearly completed this policy to address those concerns.

Arrangements have been made for the audio recording to be turned off and I am making the final checks to ensure 100% compliance with this. However the systems are capable of recording audio and this can be triggered by the use of a panic button or some other electronic trigger such as a door opening.

The questions:

1. Can Hackney Carriages and Private Hire Vehicles record audio data from within their cab if it is triggered by a panic button?
2. If activated how long will the capture of audio data be allowed before it is questioned by the ICO?

I appreciate these questions may not have simple answers so I am more than happy for someone to call to discuss this with me before any written response is given.

Phil Bates

Licensing Manager

Legal, HR and Democratic Services

Southampton and Eastleigh Licensing Partnership

Southampton City Council

'phone: 023 8083 3523

fax: 023 8083 4061

e-mail: phil.bates@southampton.gov.uk

web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk

post: Licensing - Southampton City Council

PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

This page is intentionally left blank

From: casework@ico.org.uk
To: [Bates, Phil](#)
Subject: CCTV in taxis[Ref. ENQ0496479]
Date: 16 May 2013 15:42:31

Dear Mr Bates

Thank you for your e-mail asking for the Commissioner's views on the activation of audio recordings by panic buttons and the duration of any such recordings. The answers to your questions are as follows:

Q1. Any processing of sound and image data relating to individuals needs to be in accordance with the first data protection principle's fair and lawful processing requirements. In order for it to be lawful the Council must, amongst other things, comply with its Human Rights Act 1998 obligations including ensuring there is respect for private and family life. We would anticipate that in order to meet these obligations an assessment of the pressing social need that audio recording is aimed to address would first be necessary and if there is one identified, then whether the use of a panic button activated device would be a proportionate response to this. Chapter Four of the ICO's CCTV code of practice makes clear the need for such an initial assessment before deployment. If these tests are met and other data protection obligations, such as providing clear notices, are complied with then it is possible for panic button triggered systems to be operated in accordance with the DPA but this will depend upon the particular circumstances in your licensing area.

Q2. The Commissioner would expect any period for continued processing of a panic button activated audio recording to be informed by previous experience of incidents that would have benefitted from the availability of such a facility. If there is evidence of the duration of previous incidents then the Commissioner would take this into account if any queries are raised. It may well be that undertaking the impact assessment suggested above will also help inform the judgement over appropriate recording period.

We have also considered the questions posed in your accompanying letter dated the 7 May 2013 concerning cameras fitted in licensed taxis. This clearly covers similar ground to that in our previous correspondence on the use of continuous audio recording in licensed taxis and the resultant enforcement action and appeal proceedings. I will answer your queries in the same order they are set out in your letter:

Q1 The question of whether cameras should be in licensed vehicles and be mandatory will be informed by an assessment of the pressing social need that they would be aimed at addressing and whether including them in licensed vehicles and making them mandatory is a necessary and proportionate response to addressing this need. No doubt the Council's existing experience of the value of images under a mandatory scheme will help inform this judgment. The Information Commissioner does not have the details of the particular problems facing licensed taxi passengers and drivers in your licensing area or information as to the value of existing image capture, recording and disclosure. It is a judgment for the Council to make in the first instance based upon a careful evidence-based analysis of the situation.

Q2 As mentioned previously, judgements as to the triggering of image recording and the events used to do this will be informed by the particular pressing social need the cameras are meant to address and what are necessary and proportionate responses to these needs. Similarly the length of the recording will be informed by practical experience of past events and what is a proportionate response to these.

Q3. As made clear previously and reaffirmed in the recent Tribunal judgment in the appeal by the Council against enforcement action by the Commissioner, there needs to be a proper impact assessment identifying the pressing need and what is a necessary and proportionate response to this. It is clear from the Tribunal judgment that they share the Commissioner's view that on the evidence present to them the use of continuous audio recording is not proportionate.

Q4. The Commissioner believes the Council's existing approach of assuming the role of data controller for the information recorded by the camera/microphone is the correct one in law. This is because of the degree of control that the Council must necessarily exercise over the recording, quality and use of the data if it is to meet the Council's stated purposes. The level of control exercised in practice is consistent with the definition of a 'data controller' in the DPA. It is a criminal offence to process personal data whilst not being notified to the ICO as a data controller for that information so any departure from this policy would require very careful consideration. It is clear that besides being a legal requirement under the existing arrangements, it does have benefits in helping ensure consistent standards and appropriate data protection safeguards are adopted and adhered to in practice.

Yours sincerely

David Evans
Senior Policy Officer.

The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

If you are not the intended recipient of this email (and any attachment), please inform the sender by return email and destroy all copies. Unauthorised access, use, disclosure, storage or copying is not permitted.

Communication by internet email is not secure as messages can be intercepted and read by someone else. Therefore we strongly advise you not to email any information, which if disclosed to unrelated third parties would be likely to cause you distress. If you have an enquiry of this nature please provide a postal address to allow us to communicate with you in a more secure way. If you want us to respond by email you must realise that there can be no guarantee of privacy. Any email including its content may be monitored and used by the Information Commissioner's Office for reasons of security and for monitoring internal compliance with the office policy on staff use. Email monitoring or blocking software may also be used. Please be aware that you have a responsibility to ensure that any email you write or forward is within the bounds of the law. The Information Commissioner's Office cannot guarantee that this message or any attachment is virus free or has not been intercepted and amended. You should perform your own virus checks.

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire, SK9 5AF
Tel: 0303 123 1113 Fax: 01625 524 510 Web: www.ico.org.uk

Agenda Item 5

Appendix 13

From: Bates, Phil
To: ["A 2 B Travel & Parcel Services"](#); ["Aero Taxis"](#); ["Airports And Allsorts"](#); ["Anchor Airport Cars"](#); ["ATS"](#); ["Bitterne Cars Ltd."](#); ["Carisma Cars"](#); ["Central Shirley Cabs Ltd."](#); ["D H Billinghamurst"](#); ["Dean's Airport Travel"](#); ["Goldstream VIP Chauffeur Services"](#); ["Hampshire Executive Travel Ltd."](#); ["Hampshire Travel"](#); ["Hi-Profile Limousines"](#); ["Imperial Cars"](#); ["JMW Travel"](#); ["Jordy Cars"](#); ["K + K Hire"](#); ["L.S.B.Taxis"](#); ["Lionheart Travel"](#); ["M + J Taxis"](#); ["PJ Services"](#); ["R R Elite Ltd."](#); ["Radio Taxis Ltd."](#); ["RFC Luxury Limousines"](#); ["SCA Support Services Ltd."](#); ["Simon A Johnson"](#); ["South Coast Limousine Services"](#); ["Southampton Chauffeur Hire"](#); ["Southern Airport Cars"](#); ["Southern Chauffeur Services"](#); ["Steve Markham"](#); ["Streamline Taxis \(Southampton\) Ltd."](#); ["There + Back Travel"](#); ["Town and Country Cars"](#); ["Transmobility Ltd."](#); ["UK Your Way Ltd."](#); ["West Quay Cars \(Southampton\) Ltd."](#)
Subject: Taxi Camera Consultation
Date: 30 May 2013 15:22:00

Dear all,

In March 2012 it was agreed there would be further consultation on the condition requiring vehicles licensed by Southampton City Council to have a taxi camera fitted. The conclusion of this consultation has been delayed pending the outcome of legal proceedings. As I am sure you are aware as a result of these proceedings the condition requiring the cameras has been temporarily suspended. The Council will be considering reinstating the condition in an amended form.

I am writing to you for two reasons:

1. To offer you a chance to provide comment on the below subject areas
2. To pass this message onto your drivers for them to provide comments on the below subject areas,

To allow time to prepare a report to the Council please submit any comments ***no later than 4pm on Friday 14th June 2013***

You are invited to comment on the following or any other aspect of the Taxi cameras. When responding please state in what capacity i.e. Driver, operator, owner:

1. Views on a mandatory condition to have visual only cameras?
2. If there is a condition to have cameras how important is it to have some element of audio recording?
3. Are there any aspects of the old camera condition you think should be altered? Such as choice of camera.
4. The Council's ring fenced Licensing budget cannot subsidise the camera programme any longer. What impact will the removal of the subsidy have on you as the advice officers receive from HMRC is the full cost is recoverable in the first year as a legitimate expense?
5. How do you view the proposal to have a requirement for all of the fleet to have a camera fitted within a shorter set period, perhaps 6 months?
6. If there is a condition to have cameras then it will be intended that data will only be disclosed on the report of a crime or a written (can be email) complaint or subject access request. What is your view on data only being accessed for complaints where the suspension of a driver is a possibility or are there any other conditions relevant?

7. Do you have concerns with the Council being the data controller?

The report will contain an option for an amendment to conditions to allow exemptions to the requirement for a camera for a very small number of specialist vehicles employed in a particular manner, effectively Executive Chauffeur Services and some novelty vehicles.

Please reply to licensing@southampton.gov.uk

Thank you for your co-operation.

Phil Bates

Licensing Manager

Legal, HR and Democratic Services

Southampton and Eastleigh Licensing Partnership

Southampton City Council

'phone: 023 8083 3523

fax: 023 8083 4061

e-mail: licensing@southampton.gov.uk

web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk

post: Licensing - Southampton City Council

PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

From: [Southampton City Council](#)
To: [Bates, Phil](#)
Subject: Consultation - Taxi Cameras
Date: 05 June 2013 16:53:28

TAXI HEADER



Consultation on taxi cameras

Members of the taxi and private hire trade (drivers, proprietors and operators) are invited to feed back on the current consultation on taxi cameras fitted in Southampton's licensed vehicles.

Following legal proceedings by the Information Commissioner, the condition requiring cameras to be installed in licensed vehicles has been temporarily suspended and facilities for audio recording have been removed. The council will be considering the reinstatement of this condition in an amended form following feedback from the trade.

If you would like to have your say, please submit your responses to licensing@southampton.gov.uk by 4pm on Friday 14 June 2013.

Click here to find out more about the consultation.

[Discover Southampton online](#)



[Edit your preferences](#) / [Unsubscribe](#) / [Get help](#) / [Contact the council](#)



Follow us



Email us



This page is intentionally left blank

Agenda Item 5

Appendix 15

From: [McGuiness, Jan](#) on behalf of [Licensing](#)
To: [Bates, Phil](#)
Subject: FW: Cameras in Taxis!
Date: 10 June 2013 08:18:22

From: [REDACTED]
Sent: 07 June 2013 22:17
To: Licensing
Subject: RE: Cameras in Taxis!

Dear Mr Bates –

Thank you for this info which puts the situation in a different light, and one which I agree will benefit the trade and public alike.

Your time is appreciated....

[REDACTED]

From: Bates, Phil [REDACTED]
Sent: Friday, June 7, 2013 2:59 PM
To: [REDACTED]
Subject: RE: Cameras in Taxis!

Dear [REDACTED]

To confirm the systems we have allowed do not have a monitor for the driver to view so there is no distraction. The only time anything is viewed is when the criteria is met for a download, even then the driver does not get to see it.

Thank you for your responses but I must get on with some other work now. I will add your views to the consultation.

Phil Bates

Licensing Manager
Legal, HR and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council
'phone: 023 8083 [REDACTED]
fax: 023 8083 4061
e-mail: [REDACTED][southampton.gov.uk](mailto:[REDACTED]@southampton.gov.uk)
web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk
post: Licensing - Southampton City Council
PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

From: [REDACTED]
Sent: 07 June 2013 12:48
To: Licensing
Subject: RE: Cameras in Taxis!

Dear Mr Bates –

I thank you again for your time to explain the reasons behind this suggestion –

By extra responsibility I mean that to which driver concentration being compromised?
I have assumed that whatever is being recorded by the camera is seen by the driver on a monitor sited somewhere within his field of vision?
If so, then that picture could be distracting!!!

It is unfortunate that we seem to live in an age of ever increasing public disorders, but then history tells us that this is nothing new except perhaps there is more IT at the villain's disposal!!!

It is good to know that some drivers see this as a positive move, and one which I trust will be able to be implemented safely.

Regards and again my thanks

From: Bates, Phil [REDACTED]
Sent: Friday, June 7, 2013 11:06 AM
To: [REDACTED]
Subject: RE: Cameras in Taxis!

Dear [REDACTED]

Apologies for mistaking your understanding of the system. As you say there is no such thing as 100% security but the measures in place I consider to be reasonable and stringent enough to prevent such abuse.

Sadly over the years there have been a number of assaults on drivers. In addition a number of drivers have been accused of serious offences including sexual offences that have allegedly occurred in the cab. The presence of the camera and audio recordings were seen as protection against assaults and would determine the guilt or innocence of allegations against the drivers. In fact since the cameras have been in a number of drivers have reported better behaviour from their fares.

I am not sure of the extra responsibility you mention unless you refer to the pressing of a panic button. I do not see this as being detrimental to the drivers ability. There is no other action the driver needs to take with regards the camera.

Phil Bates

Licensing Manager
Legal, HR and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council
'phone: 023 8083 [REDACTED]
fax: 023 8083 4061
e-mail: [REDACTED][southampton.gov.uk](mailto:[REDACTED]@southampton.gov.uk)
web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk
post: Licensing - Southampton City Council
PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

From: [REDACTED]

Sent: 07 June 2013 09:54
To: Licensing
Subject: RE: Cameras in Taxis!

Dear Mr Bates,

I am grateful for your response, but I do understand the technology!!

As you are aware, there are ways and means available to those who would wish to access secure data, although I agree that the possibility of doing so in these events is quite low - there is nothing in this world that prevents the 100% misuse of data to those intent on doing so.

What I do not understand is the thought behind this suggestion?
What events have led to the proposal?

Is it considered that drivers are capable of having this extra responsibility, and still be able to be safe driving?

I would forecast that a camera would be liken to holding up a red flag to a bull!

Regards and my thanks...

From: Bates, Phil [REDACTED]
Sent: Friday, June 7, 2013 9:28 AM
To: [REDACTED]
Subject: RE: Cameras in Taxis!

Dear [REDACTED]

Thank you for your response. I wish to explain briefly how the system works as your response suggests you misunderstand the security of the system.

A camera head is fitted to the car to record images from within the cab of the vehicle. There may be an option to have a panic button for the driver to press to allow audio recording to start for a short period of time. All of this data is recorded onto a secure data box within the car. The only people with access to this are the Council and possibly in the future the police. All the data is protected with a high level of security. Set criteria needs to be met before anyone can access the data. This prevents misuse of the data.

Phil Bates

Licensing Manager
Legal, HR and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council
'phone: 023 8083 [REDACTED]
fax: 023 8083 4061
e-mail: [REDACTED]@southampton.gov.uk
web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk
post: Licensing - Southampton City Council
PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

From: [REDACTED]
Sent: 06 June 2013 19:22
To: Licensing
Subject: Cameras in Taxis!

Whilst there is some merit in this event, it is intrusive to one's private life.
One uses a taxi or private hire to be transported from one place to another for a fee.

By placing CCTV in any licenced public vehicle, which would also probably have a recording device, a driver with ulterior motives could use it for his own illegal gain.

Other public vehicles I know, do have CCTV, but this is for a greater number of travellers than that which a taxi or private hire vehicle caters for, and does not present an opportunity for an ulterior motive as such.

It is also quite costly, and would present another event to drivers that they would have to be aware of, on top of their already driving awareness, and could lead to a situation leading to a form of carelessness!

Professional drivers learn to drive safely, this sort of diversion would interfere with that safety margin.

Regards
[REDACTED]

From: [Arm, Chris](#) on behalf of [Licensing](#)
To: [Bates, Phil](#)
Subject: FW: camera
Date: 03 June 2013 09:09:36

From: [REDACTED]
Sent: 02 June 2013 18:31
To: Licensing
Subject: camera

Hi Phil

I don't see the point of visual only cameras I never had a problem with audio on .
There are more cameras on the market now I have been told any expense of the camera
come off accounts.

Time for fitting should depend on how long taxi/ph has left if less than 12 months wait till
change 2-3 yrs
maybe within 6 months.

On some occasions you will not get the full story without any sound as I had myself on 1
occasion picked

up a customer asked to go to St Marys St when we got there he said I took him to the
wrong place he
wanted St Marys Rd.

No problem with data control
[REDACTED]

From: [REDACTED]
To: [Licensing](#)
Subject: taxi camera fitting
Date: 06 June 2013 16:29:54

I have been invited to give my views. If cameras will curtail the prevalent habit of speeding and poor driving standards among Soton taxi drivers, then it will be a very good idea of self monitoring.

--
[REDACTED]

[REDACTED]

From: [REDACTED]
To: [Licensing](#)
Subject: taxi cameras
Date: 09 June 2013 12:04:26

There's a compromise here, Private Hire cars are pre booked, the operator will have passenger name, pick up address, drop off address and the passengers phone number, with this amount of information it is very unlikely passengers will misbehave, also the passenger has the telephone number of the PH company should they wish to complain or if they are unhappy with the service provided they can simply change to another PH company, so considering the above cameras need not be fitted in PH vehicles.

The hackney however has none of the above safeguards so should be fitted with a camera.

Friday, 31 May 2013

Phil Bates
Licensing Manager
Legal, HR and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council

Dear Phil,

Re: In-Car CCTV Camera Systems in Southampton Licensed Vehicles.

My comments for consideration for the consultation are as an Owner of licensed vehicles and as Operator [REDACTED]

- 1) The use of CCTV in licensed vehicles is an extremely good aid to preventing and the detection of crimes that involve abuse of the driver and of any customer inside the vehicle. The decision to stop audio recording is, in my and many of my colleagues' opinion, a very backward step and makes the use of any camera system inside the vehicle next to useless. Any recording viewed without audio will not give any evidence as to why any incident occurred or any evidence as to what abuse was being carried out. Trying to lip read what was said will be impossible because the mouth of any persons in the vehicle will not be visible all the time. Trying to guess what went on would be grossly unfair on any person involved. I feel the decision was wrong on so many levels but mainly because unless an incident occurred none of the images recorded would ever have been looked at and therefore nobody's privacy was being invaded.
- 2) If there is to be a condition to have cameras then it is very important to have the facility to record the audio of any incident. However a panic button to start the recording is not likely to be always to right answer because nobody knows when the abuse or attack is likely to happen and it is too late after the event. Also although it seems some people think it is to protect the passengers the facts are most attacks are on drivers who are actually driving and have enough to worry about without try to activate a panic switch. To protect the passengers they would need a panic button at every seat location and as every driver knows any button or switch or lever available to some passengers will be abused and damaged so frequently they would never be able to keep up or even know they were not working. As drivers are not allowed to see the images they will never know if their systems are working or not.

It may be a case of investigation with suppliers to see if faster over writing of recordings is the answer but then there is still the question of who activates the saving of the incident.

- 3) The matter of the choice of camera is a major one and one that was never considered properly in the first place which has caused the original controversy and so should be thought carefully through this time. There are many different camera systems available and every one of them should have been considered to make the whole idea more acceptable to all concerned. The systems we have been enforced to use are very expensive to purchase and repair and are difficult to house in most modern vehicles. The fact that the owner of the vehicle is responsible for the upkeep of the system makes them the owner of the system and

therefore should have the right to choose which system they want in their vehicle albeit that it comes up to a required standard but if audio is not to be used then there are hundreds of camera systems available. Camera systems that also have external facing cameras could be useful not only to reduce insurance claims and stop insurance scams that cost us all a lot of money for the owners, but could also determine if a driver has caused a complaint about their driving or route they took and it could possibly be a witness to any attack outside the vehicle.

- 4) Again because of the poor selection of camera systems the money would have gone further and would have been better spent and the whole fleet would have been covered easily long before now. The removal of any subsidy now will have a devastating effect on the owners of vehicles in today's financial climate if the present systems are the only ones allowed. The red herring about the cost being fully recoverable from the HMRC does nothing for those who have to pay for a system and wait a year or so to find they have not got to pay as much Tax for last year.
- 5) The system of fitting cameras when the vehicle is replaced is a fair system and should be retained. If an incident was to occur then those without cameras would have a harder time proving something did not occur. But if we only have vision and not audio it will be very difficult to prove anything other than physical action took place within the vehicle anyway but still doesn't answer why it took place.
- 6) If the camera is the property of the vehicle owner then those recordings are the owners and available to that owner to support any accusation against them. Of course it would also be to their advantage to make a recording available to the Licensing Dept. or the Police to prove their innocence as well. An owner should not be discriminated against when compared to any other licensed premises that have their own CCTV systems. Also if an owner possesses an ICO license that owner will be allowed to view those images for the detection of crime. As all owners and drivers are assessed to be a "Fit and Proper Persons" to hold Licenses then there should not be any concerns about their integrity but as with the rest of the country if any person is found to be using images improperly then they can be dealt with by the Courts in the normal way.
- 7) As above I believe for the Council to be the data controller they would need to be the owners of the equipment. To reduce their costs they should not be involved with the purchase of any equipment in the same way as taximeters, hire signs etc. the only involvement is in negotiating with the owners and appropriate suppliers for the correct standard of the equipment fitted to form the basis of any licensing condition. Therefore the Council should not be the data controller but should have a written agreement from every owner that they will be supplied with any evidence required to support any complaint or claim of a passenger or driver.

Yours sincerely



From: [REDACTED]
To: [Licensing](#)
Subject: taxi-camera consultation
Date: 13 June 2013 22:59:06

I think a visual only camera is not very useful as in many situations it is a verbal issue which causes the problem

I believe it would be better to have sound automatically activated at all times and a disable function/switch for Drivers when the car is used for personal use or at a customers request

There could be a larger choice of storage options and a more cost effective system as the subsidy is to be Removed

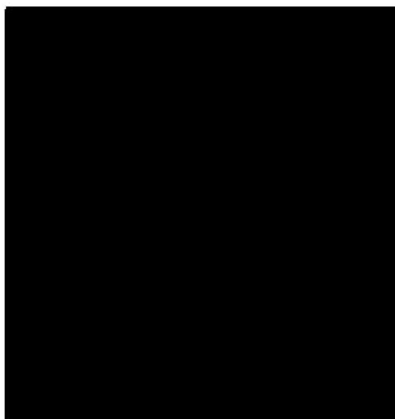
Information should be accessed for crime prevention complaints for and against drivers

I have no problem with the council as controller

I would like to say in the last few days I have spoken to a small no of hc drivers who were unaware of this consultation
Going on. and if they reply will be another issue as dealing with a computer is not always there way of communicating

Also when removing the sound from the verifeye cameras a lot of drivers thought that sound was needed
Only a small minority did not want sound or cameras in general mostly daytime people

I am responding on behalf of



From: [REDACTED]
To: [Bates, Phil](#)
Cc: [Licensing](#); [John Havill](#)
Subject: RE: Taxi Camera Consultation
Date: 05 June 2013 09:56:00

1. Views on a mandatory condition to have visual only cameras? **There is not a problem with either type of camera The key issue is the cost of the cameras at £600 - £700 (excluding subsidy) the market is very unfair in Southampton because Eastleigh registered private hire vehicles do not currently have to incur this cost nor are they restricted in the age of their vehicle which means they are able to put cheaper prices in for tenders which is what wins tenders in the current times. (Quality and age of vehicle does not win you points on e tendering sites for transport work it's all about price).**
2. If there is a condition to have cameras how important is it to have some element of audio recording?
3. Are there any aspects of the old camera condition you think should be altered? Such as choice of camera.
4. The Council's ring fenced Licensing budget cannot subsidise the camera programme any longer. What impact will the removal of the subsidy have on you as the advice officers receive from HMRC is the full cost is recoverable in the first year as a legitimate expense?

The removal of the subsidy is very unfair if anything the cameras should be fully funded by SCC as Eastleigh private hire vehicles do not have this requirement it makes tendering uncompetitive. Can SCC please get the local neighbouring boroughs to agree to SCCs standards? It is clear to me that SCCs standards for Private hire vehicles are very good but the market is not a level playing field when a private hire company registered in Eastleigh can ply their trade in Southampton.

5. How do you view the proposal to have a requirement for all of the fleet to have a camera fitted within a shorter set period, perhaps 6 months?

The cost of these items is the key issue here. If SCC fund them fully then fine if not SCC should allow them to be fitted within 2 years.

6. If there is a condition to have cameras then it will be intended that data will only be disclosed on the report of a crime or a written (can be email) complaint or subject access request. What is your view on data only being accessed for complaints where the suspension of a driver is a possibility or are there any other conditions relevant? **None**

7. Do you have concerns with the Council being the data controller? **None**

From: Bates, Phil [mailto:[REDACTED]]
Sent: 30 May 2013 15:23
To: [REDACTED]
Bitte
Gold

[REDACTED] + J
non
ck

Subject: Taxi Camera Consultation

Dear all,

In March 2012 it was agreed there would be further consultation on the condition requiring vehicles licensed by Southampton City Council to have a taxi camera fitted. The conclusion of this consultation has been delayed pending the outcome of legal proceedings. As I am sure you are aware as a result of these proceedings the condition requiring the cameras has been temporarily suspended. The Council will be considering reinstating the condition in an amended form.

I am writing to you for two reasons:

1. To offer you a chance to provide comment on the below subject areas
2. To pass this message onto your drivers for them to provide comments on the below subject areas,

To allow time to prepare a report to the Council please submit any comments ***no later than 4pm on Friday 14th June 2013***

You are invited to comment on the following or any other aspect of the Taxi cameras. When responding please state in what capacity i.e. Driver, operator, owner:

8. Views on a mandatory condition to have visual only cameras?
9. If there is a condition to have cameras how important is it to have some element of audio recording?
10. Are there any aspects of the old camera condition you think should be altered? Such as choice of camera.
11. The Council's ring fenced Licensing budget cannot subsidise the camera programme any longer. What impact will the removal of the subsidy have on you as the advice officers receive from HMRC is the full cost is recoverable in the first year as a legitimate expense?
12. How do you view the proposal to have a requirement for all of the fleet to have a camera fitted within a shorter set period, perhaps 6 months?
13. If there is a condition to have cameras then it will be intended that data will only be disclosed on the report of a crime or a written (can be email) complaint or subject access request. What is your view on data only being accessed for complaints where the suspension of a driver is a possibility or are there any other conditions relevant?
14. Do you have concerns with the Council being the data controller?

The report will contain an option for an amendment to conditions to allow exemptions to

the requirement for a camera for a very small number of specialist vehicles employed in a particular manner, effectively Executive Chauffeur Services and some novelty vehicles.

Please reply to licensing@southampton.gov.uk

Thank you for your co-operation.

Phil Bates

Licensing Manager

Legal, HR and Democratic Services

Southampton and Eastleigh Licensing Partnership

Southampton City Council

'phone: 023 8083 [REDACTED]

fax: 023 8083 4061

e-mail: licensing@southampton.gov.uk

web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk

post: Licensing - Southampton City Council

PO Box 1767, Southampton. SO18 9LA

Please note:- This email is confidential but may have to be disclosed under the Freedom of Information Act 2000, the Data Protection Act 1998 or the Environmental Information Regulations 2004. SCC does not make legally binding agreements or accept formal notices/proceedings by email. Emails may be monitored. This e-mail (and its attachments) is intended only for the use of the person(s) to whom it is addressed and may contain information which is privileged and/or confidential. If it has come to you in error you must take no action based on it, nor must you copy or show it to anyone.

From: [REDACTED]
To: [Licensing](#)
Subject: Taxi Camera Consultation - Feedback/Comment
Date: 07 June 2013 14:57:05

Good afternoon,

I am responding to Phil Bates email requesting comment re. taxi cameras. As a retired police officer I feel that I am able to supply an experienced and valuable opinion that offers a balanced reasonable solution catering for most of the variables that affect both taxis and private hire vehicles.

1. Views on a mandatory condition to have visual only cameras?
2. If there is a condition to have cameras how important is it to have some element of audio recording?

Audio and visual are equally important as one compliments and corroborates the other.

Any incident that involves verbal abuse, threats, or unacceptable verbal conduct by either passenger or driver will not be evidenced by visual only recordings. You will merely obtain an impression based on body language and physical behaviour.

Conversely, without visual recording an allegation that involves assault, including intimidating or bad physical behaviour will not be recorded. Identifying an offender would also be compromised.

The value of both visual and audio recording would be of high value in the recent police request for taxi drivers assistance in tracing a recent dangerous male who had attacked a female.

3. Are there any aspects of the old camera condition you think should be altered? Such as choice of camera.

I am unable to comment, as a restricted private hire licence holder, I have been exempt.

4. The Council's ring fenced Licensing budget cannot subsidise the camera programme any longer. What impact will the removal of the subsidy have on you as the advice officers receive from HMRC is the full cost is recoverable in the first year as a legitimate expense?

I would be against any change as this would be unfair and unreasonable to expect an individual driver to cover the whole cost. I would suggest that there are many other systems that offer an equal standard at a far lower cost. I fail to see the necessity of systems that need to be wired into the vehicle through roof linings and units secured into the boot. I appreciate systems have to meet legal requirements to standardize the quality of recordings but a choice of two systems is restrictive and offers little choice.

If mandatory I suggest there should be a cheaper option with more systems that include portable recording units. Camera/s should be mounted at positions to record both driver and passenger/s.

5. How do you view the proposal to have a requirement for all of the fleet to have a camera fitted within a shorter set period, perhaps 6 months?

As a sole trader this would not affect me. For a company with a large fleet I can see that this will have a substantial financial impact.

6. If there is a condition to have cameras then it will be intended that data will only be disclosed on the report of a crime or a written (can be email) complaint or subject access request. What is your view on data only being accessed for complaints where the suspension of a driver is a possibility or are there any other conditions relevant?

Data is valuable for both of the above.

As a driver and, if subject to a spurious allegation, I would welcome the examination of data to support my rebuttal. The data would give a clear and unambiguous account of my behaviour.

7. Do you have concerns with the Council being the data controller?
No concerns with controlling the data. However, I would query as to how it will be administered and financed. If administered by the Licensing Department would any addition cost be transferred to licence fees etc.?

Recommendations.

Hackney carriages are particularly vulnerable and would benefit from both visual and audio recording equipment. A mandatory requirement would give uniformity and give protection to drivers and passengers as it would become generally known among the public using Southampton City Council vehicles.

Private Hire vehicles should be voluntary and dependant upon the operator's business. However, companies who transport children, on behalf of the local authority, and other vulnerable persons, should have recording equipment fitted as compulsory.

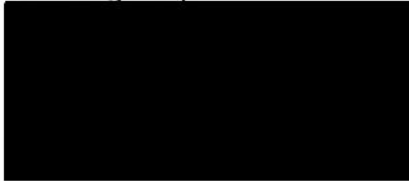
Chauffeur executive vehicles should be exempt or voluntary as it is highly unlikely that a driver or passenger will benefit from recording equipment. I suggest it would be detrimental to have camera and recording equipment fitted where a vehicle is used for wedding car hire. Certainly executives would be very wary and uncomfortable with recording equipment due to confidential conversations either by phone or with another passenger.

In my experience, as a restricted private hire license holder, I have never been in a situation that would have benefited from any recording equipment.

Recordings should be by audio and visual as both pay an important part and each would be compromised if one was removed.

I hope my opinion and comments have assisted.

Kind regards,



This page is intentionally left blank



Home Office

Surveillance Camera Code of Practice

June 2013

Surveillance Camera Code of Practice

Presented to Parliament Pursuant to Section 30 (1) (a) of the
Protection of Freedoms Act 2012

© Crown copyright 2013

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at:

Police Transparency Unit,
6th Floor FRY Building,
2 Marsham Street,
London, SW1P 4DF

ISBN: 9780108512421

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 562646 06/13

Printed on paper containing 75% recycled fibre content minimum.

1. Introduction	4
2. Overview and Guiding Principles.....	9
3. The development or use of surveillance camera systems	12
4. The use or processing of images or other information obtained by virtue of such systems	16
5. Surveillance Camera Commissioner.....	22

Chapter 1: Introduction

Definitions

1.1 In this code:

- “1998 Act” means the Data Protection Act 1998.
- “2000 Act” means the Regulation of Investigatory Powers Act 2000.
- “2012 Act” means the Protection of Freedoms Act 2012.
- “Overt surveillance” means any use of surveillance for which authority does not fall under the 2000 Act.
- “Public place” has the meaning given by Section 16(b) of the Public Order Act 1986 and is taken to include any highway and any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- “Relevant authority” has the meaning given by Section 33(5) of the 2012 Act.
- “Surveillance camera systems” has the meaning given by Section 29(6) of the 2012 Act and is taken to include: (a) closed circuit television (CCTV) or automatic number plate recognition (ANPR) systems; (b) any other systems for recording or viewing visual images for surveillance purposes; (c) any systems for storing, receiving, transmitting, processing or checking the images or information obtained by (a) or (b); (d) any other systems associated with, or otherwise connected with (a), (b) or (c)¹.
- “System Operator” - person or persons that take a decision to deploy a surveillance camera system, and/or are responsible for defining its purpose, and/or are responsible for the control of the use or processing of images or other information obtained by virtue of such system.
- “System User” – person or persons who may be employed or contracted by the system operator who have access to live or recorded images or other information obtained by virtue of such system.

Background

1.2 This code of practice is issued by the Secretary of State under Section 30 of the 2012 Act. It provides guidance on the appropriate and effective use of surveillance camera systems by relevant authorities (as defined by section 33 of the 2012 Act) in England and Wales who must have regard to the code when exercising any functions to which the code relates. Other operators and users of surveillance camera systems in England and Wales are encouraged to adopt the code voluntarily. It is a significant step in the ongoing process of delivering the government’s commitment to the ‘further regulation of CCTV’ which it believes is a task that is best managed in gradual and incremental stages. As understanding and application of the code increases the government may consider including other bodies as relevant authorities who will have to have regard to the code.

¹ Excludes any camera system with relevant type approval of a prescribed device under Section 20 of the Road Traffic Offenders Act 1988 used exclusively for enforcement purposes, which captures and retains an image only when the relevant offence is detected and with no capability to be used for any surveillance purpose. For example, for the enforcement of speeding offences.

Purpose of the code

- 1.3 Surveillance camera systems are deployed extensively within England and Wales, and these systems form part of a complex landscape of ownership and operation. Where used appropriately, these systems are valuable tools which contribute to public safety and security and in protecting both people and property.
- 1.4 The government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is: in pursuit of a legitimate aim; necessary to meet a pressing need²; proportionate; effective, and; compliant with any relevant legal obligations.
- 1.5 The purpose of the code will be to ensure that individuals and wider communities have confidence that surveillance cameras are deployed to protect and support them, rather than spy on them. The government considers that wherever overt surveillance in public places is in pursuit of a legitimate aim and meets a pressing need, any such surveillance should be characterised as surveillance by consent, and such consent on the part of the community must be informed consent and not assumed by a system operator. Surveillance by consent should be regarded as analogous to policing by consent. In the British model of policing, police officers are citizens in uniform. They exercise their powers to police their fellow citizens with the implicit consent of their fellow citizens. Policing by consent is the phrase used to describe this. It denotes that the legitimacy of policing in the eyes of the public is based upon a general consensus of support that follows from transparency about their powers, demonstrating integrity in exercising those powers and their accountability for doing so.
- 1.6 In order to achieve this, the code sets out guiding principles that should apply to all surveillance camera systems in public places. These guiding principles are designed to provide a framework for operators and users of surveillance camera systems so that there is proportionality and transparency in their use of surveillance, and systems are capable of providing good quality images and other information which are fit for purpose.
- 1.7 To support the practical application of these guiding principles by a system operator, the Surveillance Camera Commissioner will provide information and advice on appropriate and approved operational and technical standards for various aspects of surveillance camera systems and on appropriate and approved occupational and competency standards for persons using these systems or processing images and information obtained by these systems to supplement this code.
- 1.8 This code has been developed to address concerns over the potential for abuse or misuse of surveillance by the state in public places, with the activities of local authorities and the police the initial focus of regulation. However, the government fully recognises that many surveillance camera systems within public places are operated by the private sector, by the third sector or by other public authorities (for example, shops and shopping centres, sports grounds and other sports venues, schools, transport systems and hospitals). Informed by advice from the Surveillance Camera Commissioner, the government will keep the code under review and may in due course consider adding others to the list of relevant authorities pursuant to section 33(5)(k) of the 2012 Act.

² A public authority will be bound by the Human Rights Act 1998 and will therefore be required to demonstrate a pressing need when undertaking surveillance as this may interfere with the qualified right to respect for private and family life provided under Article 8 of the European Charter of Human Rights. This is the case whether or not that public authority is a relevant authority. A system operator who is not a public authority should nevertheless satisfy themselves that any surveillance is necessary and proportionate.

Scope of surveillance activity to which this code applies

- 1.9 The code applies to the use of surveillance camera systems as defined in paragraph 1.1 that operate in public places in England and Wales, regardless of whether or not there is any live viewing, or recording of images or information or associated data.
- 1.10 Covert surveillance by public authorities (as defined in Part II of the 2000 Act) is not covered by this code but is regulated by the 2000 Act. Covert surveillance in public places by those who do not fall within the 2000 Act (for example, the private operator of a surveillance camera system in a shopping centre) may be used as part of a specific investigation in exceptional and justifiable circumstances. Any such covert use of private systems by or on behalf of a public authority (with the authority's knowledge) immediately places such use within the bounds of the 2000 Act.

Effect of the Code

- 1.11 A relevant authority must follow a duty to have regard to the guidance in this code when, in exercising any of its functions, it considers that the future deployment or continued deployment of surveillance camera systems to observe public places may be appropriate. This can include the operation or use of any surveillance camera systems, or the use or processing of images or other information obtained by virtue of such systems. The duty to have regard to this code also applies when a relevant authority uses a third party to discharge relevant functions covered by this code and where it enters into partnership arrangements. Contractual provisions agreed after this code comes into effect with such third party service providers or partners must ensure that contractors are obliged by the terms of the contract to have regard to the code when exercising functions to which the code relates. The duty to have regard does not extend to such third party service providers or partners unless they themselves are a relevant authority.
- 1.12 When a relevant authority in England has civil parking enforcement functions under the Traffic Management Act 2004 or bus lane enforcement functions under the Transport Act 2000, and considers the use of surveillance camera systems in exercising those functions, it must have regard to the guidance in this code. The primary purpose of any surveillance camera system used as part of civil enforcement arrangements must be the safe and efficient operation of the road network by deterring motorists from contravening parking or road traffic restrictions. Motorists may regard enforcement by cameras as over-zealous and relevant authorities should use them sparingly. Such systems should, therefore, only be deployed where other means of enforcement are not practical and their effectiveness in achieving this purpose is subject to regular review. Where there is any conflict between this code and the secondary legislation made under the Traffic Management Act 2004 or the Transport Act 2000 relevant to those functions or the statutory guidance issued under section 87 of the Traffic Management Act 2004, the provisions made in or under the Traffic Management Act 2004 and the Transport Act 2000 shall apply.
- 1.13 When a relevant authority in England has civil enforcement functions for moving traffic contraventions under the London Local Authorities Act 1996 Part 2, the London Local Authorities Act 2000 Schedule 2 and the London Local Authorities and Transport for London Act 2003 Part 2, and considers the use of surveillance camera systems in exercising those functions, it must have regard to the guidance in this code. The primary purpose of any surveillance camera system used as part of civil enforcement arrangements must be the safe and efficient operation of the road network by deterring

motorists from contravening parking or road traffic restrictions. Motorists may regard enforcement by cameras as over-zealous and relevant authorities should use them sparingly. Such systems should , therefore, only be deployed where other means of enforcement are not practical and their effectiveness in achieving this purpose is subject to regular review. Where there is any conflict between this code and London Local Authorities Act 1996 Part 2, the London Local Authorities Act 2000 Schedule 2 and the London Local Authorities and Transport for London Act 2003 Part 2 relevant to those functions then that legislation shall apply.

- 1.14 When a relevant authority in Wales has civil parking, bus lane or moving traffic enforcement functions under the Traffic Management Act 2004 and considers the use of surveillance camera systems in exercising those functions, it must have regard to the guidance in this code. The primary purpose of any surveillance camera system used as part of civil enforcement arrangements must be the safe and efficient operation of the road network by deterring motorists from contravening parking or road traffic restrictions. Motorists may regard enforcement by cameras as over-zealous and relevant authorities should use them sparingly. Such systems should , therefore, only be deployed where other means of enforcement are not practical and their effectiveness in achieving this purpose is subject to regular review. Where there is any conflict between this code and the secondary legislation made under the Traffic Management Act 2004 relevant to those functions or the Statutory Guidance documents issued by the Welsh Government under section 87 of the Traffic Management Act 2004, then that legislation and guidance shall apply.
- 1.15 When a relevant authority has licensing functions and considers the use of surveillance camera systems as part of the conditions attached to a licence or certificate, it must in particular have regard to guiding principle one in this code. Any proposed imposition of a blanket requirement to attach surveillance camera conditions as part of the conditions attached to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review. Applications in relation to licensed premises must take into account the circumstances surrounding that application and whether a requirement to have a surveillance camera system is appropriate in that particular case. For example, it is unlikely that a trouble-free community pub would present a pressing need such that a surveillance camera condition would be justified. In such circumstances where a licence or certificate is granted subject to surveillance camera system conditions, the consideration of all other guiding principles in this code is a matter for the licensee as the system operator.
- 1.16 A failure on the part of any person to act in accordance with any provision of this code does not of itself make that person liable to criminal or civil proceedings. This code is, however, admissible in evidence in criminal or civil proceedings, and a court or tribunal may take into account a failure by a relevant authority to have regard to the code in determining a question in any such proceedings.
- 1.17 Other operators of surveillance camera systems who are not defined as relevant authorities are encouraged to adopt this code and its guiding principles voluntarily and make a public commitment to doing so. Such system operators are not, however, bound by any duty to have regard to this code.

Relevant documents

- 1.18 The Information Commissioner's CCTV Code of Practice provides good practice guidance for those involved in operating CCTV and other surveillance camera systems which view or record images of individuals including information derived from those images that may be related to them such as a vehicle registration mark. Its primary purpose is to help those involved in such activities to comply with their legal obligations under the 1998 Act.
- 1.19 The covert surveillance and property interference code of practice published by the Home Office provides statutory guidance on the use of covert surveillance by public authorities under the 2000 Act. Further guidance on the application of the 2000 Act is available from the Office of the Surveillance Commissioners.
- 1.20 This code provides guidance on the use of surveillance camera systems but does not replace or remove any statutory obligations on operators or users of such systems to comply with the provisions of both the 1998 Act and the 2000 Act.

Chapter 2: Overview and Guiding Principles

- 2.1 Modern and forever advancing surveillance camera technology provides increasing potential for the gathering and use of images and associated information. These advances vastly increase the ability and capacity to capture, store, share and analyse images and information. This technology can be a valuable tool in the management of public safety and security, in the protection of people and property, in the prevention and investigation of crime, and in bringing crimes to justice. Technological advances can also provide greater opportunity to safeguard privacy. Used appropriately, current and future technology can and will provide a proportionate and effective solution where surveillance is in pursuit of a legitimate aim and meets a pressing need.
- 2.2 In general, any increase in the capability of surveillance camera system technology also has the potential to increase the likelihood of intrusion into an individual's privacy. The Human Rights Act 1998 gives effect in UK law to the rights set out in the European Convention on Human Rights (ECHR). Some of these rights are absolute, whilst others are qualified, meaning that it is permissible for the state to interfere with the right provided that the interference is in pursuit of a legitimate aim and the interference is proportionate. Amongst the qualified rights is a person's right to respect for their private and family life, home and correspondence, as provided for by Article 8 of the ECHR³.
- 2.3 That is not to say that all surveillance camera systems use technology which has a high potential to intrude on the right to respect for private and family life. Yet this code must regulate that potential, now and in the future. In considering the potential to interfere with the right to privacy, it is important to take account of the fact that expectations of privacy are both varying and subjective. In general terms, one of the variables is situational, and in a public place there is a zone of interaction with others which may fall within the scope of private life. An individual can expect to be the subject of surveillance in a public place as CCTV, for example, is a familiar feature in places that the public frequent. An individual can, however, rightly expect surveillance in public places to be both necessary and proportionate, with appropriate safeguards in place.

3 Article 8 of the European Charter on Human Rights reads as follows:

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 2.4 The decision to use any surveillance camera technology must, therefore, be consistent with a legitimate aim and a pressing need. Such a legitimate aim and pressing need must be articulated clearly and documented as the stated purpose for any deployment. The technical design solution for such a deployment should be proportionate to the stated purpose rather than driven by the availability of funding or technological innovation. Decisions over the most appropriate technology should always take into account its potential to meet the stated purpose without unnecessary interference with the right to privacy and family life. Furthermore, any deployment should not continue for longer than necessary.
- 2.5 The starting point for a system operator in achieving the most appropriate balance between public protection and individual privacy and thereby achieving overt surveillance by consent is to adopt a single set of guiding principles that are applicable to all surveillance camera systems in public places. Following these guiding principles allows a system operator to establish a clear rationale for any overt surveillance camera deployment in public places, to run any such system effectively, helps ensure compliance with other legal duties and to maximise the likelihood of achieving surveillance by consent.

Guiding Principles

- 2.6 System operators should adopt the following 12 guiding principles:
1. Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.
 2. The use of a surveillance camera system must take into account its effect on individuals and their privacy, with regular reviews to ensure its use remains justified.
 3. There must be as much transparency in the use of a surveillance camera system as possible, including a published contact point for access to information and complaints.
 4. There must be clear responsibility and accountability for all surveillance camera system activities including images and information collected, held and used.
 5. Clear rules, policies and procedures must be in place before a surveillance camera system is used, and these must be communicated to all who need to comply with them.
 6. No more images and information should be stored than that which is strictly required for the stated purpose of a surveillance camera system, and such images and information should be deleted once their purposes have been discharged.
 7. Access to retained images and information should be restricted and there must be clearly defined rules on who can gain access and for what purpose such access is granted; the disclosure of images and information should only take place when it is necessary for such a purpose or for law enforcement purposes.
 8. Surveillance camera system operators should consider any approved operational, technical and competency standards relevant to a system and its purpose and work to meet and maintain those standards.
 9. Surveillance camera system images and information should be subject to appropriate security measures to safeguard against unauthorised access and use.

10. There should be effective review and audit mechanisms to ensure legal requirements, policies and standards are complied with in practice, and regular reports should be published.
11. When the use of a surveillance camera system is in pursuit of a legitimate aim, and there is a pressing need for its use, it should then be used in the most effective way to support public safety and law enforcement with the aim of processing images and information of evidential value.
12. Any information used to support a surveillance camera system which compares against a reference database for matching purposes should be accurate and kept up to date.

Chapter 3: The development or use of surveillance camera systems

This chapter expands on guiding principles 1-4 which address the development or use of surveillance camera systems

Principle 1 - Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.

- 3.1.1 Surveillance camera systems operating in public places must always have a clearly defined purpose or purposes in pursuit of a legitimate aim and necessary to address a pressing need (or needs). Such a legitimate aim and pressing need might include national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others. That purpose (or purposes) should be capable of translation into clearly articulated objectives against which the ongoing requirement for operation or use of the systems and any images or other information obtained can be assessed.
- 3.1.2 In assessing whether a system will meet its objectives, and in designing the appropriate technological solution to do so, a system operator should always consider the requirements of the end user of the images, particularly where the objective can be characterised as the prevention, detection and investigation of crime and the end user is likely to be the police and the criminal justice system.
- 3.1.3 A surveillance camera system should only be used in a public place for the specific purpose or purposes it was established to address. It should not be used for other purposes that would not have justified its establishment in the first place. Any proposed extension to the purposes for which a system was established and images and information are collected should be subject to consultation before any decision is taken.

Principle 2 - The use of a surveillance camera system must take into account its effect on individuals and their privacy, with regular reviews to ensure its use remains justified.

- 3.2.1 The right to respect for private and family life set out in Article 8 of the ECHR enshrines in law a long held freedom enjoyed in England and Wales. People do, however, have varying and subjective expectations of privacy with one of the variables being situational. Deploying surveillance camera systems in public places where there is a particularly high expectation of privacy, such as toilets or changing rooms, should only be done to address a particularly serious problem that cannot be addressed by less intrusive means. Such deployment should be subject to regular review, at least annually, to ensure it remains necessary.

- 3.2.2 Any proposed deployment that includes audio recording in a public place is likely to require a strong justification of necessity to establish its proportionality. There is a strong presumption that a surveillance camera system must not be used to record conversations as this is highly intrusive and unlikely to be justified.
- 3.2.3 Any use of facial recognition or other biometric characteristic recognition systems needs to be clearly justified and proportionate in meeting the stated purpose, and be suitably validated⁴. It should always involve human intervention before decisions are taken that affect an individual adversely.
- 3.2.4 This principle points to the need for a privacy impact assessment process to be undertaken whenever the development or review of a surveillance camera system is being considered to ensure that the purpose of the system is and remains justifiable, there is consultation with those most likely to be affected, and the impact on their privacy is assessed and any appropriate safeguards can be put in place. Where such an assessment follows a formal and documented process, such processes help to ensure that sound decisions are reached on implementation and on any necessary measures to safeguard against disproportionate interference with privacy. In the case of a public authority, this also demonstrates that both the necessity and extent of any interference with Article 8 rights has been considered.
- 3.2.5 A privacy impact assessment also helps assure compliance with obligations under the 1998 Act. Comprehensive guidance on undertaking a privacy impact assessment is available from the Information Commissioner's Office. This encourages organisations to devise and implement an assessment process that is appropriate and proportionate to their circumstances.

Principle 3 - There must be as much transparency in the use of a surveillance camera system as possible, including a published contact point for access to information and complaints.

- 3.3.1 People in public places should normally be made aware whenever they are being monitored by a surveillance camera system, who is undertaking the activity and the purpose for which that information is to be used. This is an integral part of overt surveillance and is already a legal obligation under the 1998 Act. Furthermore, such awareness on the part of the public supports and informs the concept of surveillance by consent.
- 3.3.2 Surveillance by consent is dependent upon transparency and accountability on the part of a system operator. The provision of information is the first step in transparency, and is also a key mechanism of accountability. In the development or review of any surveillance camera system, proportionate consultation and engagement with the public and partners (including the police) will be an important part of assessing whether there is a legitimate aim and a pressing need, and whether the system itself is a proportionate response. Such consultation and engagement also provides an opportunity to identify any concerns and modify the proposition to strike the most appropriate balance between public protection and individual privacy.

⁴ The Surveillance Camera Commissioner will be a source of advice on validation of such systems.

- 3.3.3. This means ensuring effective engagement with representatives of those affected and in particular where the measure may have a disproportionate impact on a particular community. It is important that consultation is meaningful and undertaken at a stage when there is a realistic prospect of influencing developments.
- 3.3.4 System operators should be proactive in the provision of regularly published information about the purpose, operation and effect of a system. This is consistent with the government's commitment to greater transparency on the part of public bodies.
- 3.3.5 In addition to the proactive publication of information about the stated purpose of a surveillance camera system, good practice includes considering the publication of information on the procedures and safeguards in place, impact assessments undertaken, performance statistics and other management information and any reviews or audits undertaken. Public authorities should consider including this information as part of their publication schemes under the Freedom of Information Act 2000.
- 3.3.6 This is not to imply that the exact location of surveillance cameras should always be disclosed if to do so would be contrary to the interests of law enforcement or national security.
- 3.3.7 A system operator should have an effective procedure for handling concerns and complaints from individuals and organisations about the use of surveillance camera systems. Information about complaints procedures should be made readily available to the public. Where a complaint is made and the complainant not satisfied with the response there should be an internal review mechanism in place using a person not involved in handling the initial complaint. Complaints must be handled in a timely fashion and complainants given an indication of how long a complaint may take to handle at the outset.
- 3.3.8 Once a complaint has been concluded information should be provided to the complainant about any regulatory bodies who may have jurisdiction in that case such as the Information Commissioner or the Investigatory Powers Tribunal.
- 3.3.9 Where a complaint or other information comes to the attention of a relevant authority or other system operator that indicates criminal offences may have been committed in relation to a surveillance camera system then these matters should be referred to the appropriate body, such as the police or the Information Commissioner for any offences under the 1998 Act.
- 3.3.10 In line with government commitment towards greater transparency on the part of public authorities a system operator should publish statistical information about the number and nature of complaints received and how these have been resolved on an annual basis at least.
- 3.3.11 The government's further commitment to 'open data' means that public authorities should consider making information available in reusable form so others can develop services based on this data. This would extend to information about surveillance camera systems.
- 3.3.12 The Surveillance Camera Commissioner has no statutory role in relation to the investigation and resolution of complaints. System operators should, however, be prepared to share information about the nature of complaints with the Surveillance Camera Commissioner on an ad hoc and where appropriate anonymised basis to assist in any review of the operation of this code of practice.

Principle 4 - There must be clear responsibility and accountability for all surveillance camera system activities including images and information collected, held and used.

- 3.4.1 Persons considering the need to develop a surveillance camera system should give due consideration to the establishment of proper governance arrangements. There must be clear responsibility and accountability for such a system. It is good practice to have a designated individual responsible for the development and operation of a surveillance camera system, for ensuring there is appropriate consultation and transparency over its purpose, deployment and for reviewing how effectively it meets its purpose.
- 3.4.2 Where a system is jointly owned or jointly operated, the governance and accountability arrangements should be agreed between the partners and documented so that each of the partner organisations has clear responsibilities, with clarity over obligations and expectations and procedures for the resolution of any differences between the parties or changes of circumstance.
- 3.4.3 A surveillance camera system may be used for more than one purpose. For example, one purpose might be crime prevention and detection, and another traffic management. Accountability for each purpose may rest within different elements of a system operator's management structure. Should that be the case, then it is good practice for the governance arrangements to include those accountable for each purpose and facilitate effective joint working, review and audit, decision making and public engagement.

Chapter 4: The use or processing of images or other information obtained by virtue of such systems

This chapter expands on guiding principles 5-12 which address the use or processing of images and information.

Principle 5 - Clear rules, policies and procedures must be in place before a surveillance camera system is used, and these must be communicated to all who need to comply with them.

- 4.5.1 There are significant benefits in having clear policies and procedures for the operation of any surveillance. This can not only aid the effective management and use of a surveillance camera system but also help ensure that any legal obligations affecting the use of such a system are addressed.
- 4.5.2 A surveillance camera system operator is encouraged to follow a quality management system as a major step forward in controlling and improving their key processes. Where this is done through certification against a quality management standard it can provide a robust operating environment with the additional benefit of reassurance for the public that the system is operated responsibly and effectively, and the likelihood of any breach of individual privacy is greatly reduced.
- 4.5.3 It is good practice that the communication of rules, policies and procedures should be done as part of the induction and ongoing professional training and development of all system users. This should maximise the likelihood of compliance by ensuring system users are competent, have relevant skills and training on the operational, technical and privacy considerations and fully understand the policies and procedures. It is requirement of the 1998 Act that organisations ensure the reliability of staff having access to personal data, including images and information obtained by surveillance camera systems.
- 4.5.4 Wherever there are occupational standards available which are relevant to the roles and responsibilities of their system users, a systems operator should consider the benefits and any statutory requirements associated with such occupational standards.
- 4.5.5 The Surveillance Camera Commissioner will provide advice and guidance on relevant quality management and occupational competency standards.
- 4.5.6 Wherever a surveillance camera system covers public space a system operator should be aware of the statutory licensing requirements of the Private Security Industry Act 2001. Under these requirements, the Security Industry Authority (SIA) is charged with licensing individuals working in specific sectors of the private security industry. A public space surveillance (CCTV) licence is required when operatives are supplied under a contract for services. It is a criminal offence for staff to carry out licensable activities without an SIA licence.

- 4.5.7 SIA licensing is dependent upon evidence that an individual is fit and proper to fulfil the role, and evidence of their ability to fulfil a role effectively and safely with the right skills and knowledge. There are various relevant qualifications available, and training to attain these is delivered by a range of different accredited providers.
- 4.5.8 Even where there is no statutory licensing requirement, it is good practice for a system operator to ensure that all staff who either manage or use a surveillance camera system, or use or process the images and information obtained by virtue of such systems have the necessary skills and knowledge.

Principle 6 - No more images and information should be stored than that which is strictly required for the stated purpose of a surveillance camera system, and such images and information should be deleted once their purposes have been discharged.

- 4.6.1 Images and information obtained from a surveillance camera system should not be kept for longer than necessary to fulfil the purpose for which they were obtained in the first place. This period should be decided in advance and be the minimum period necessary. This is also a requirement of the 1998 Act and further guidance on this is contained in the ICO CCTV code of practice.
- 4.6.2 The retention period for different surveillance camera systems will vary due to the purpose for the system and how long images and other information need to be retained so as to serve its intended purpose. It is not, therefore, possible to be prescriptive about maximum or minimum periods. Initial retention periods should be reviewed by a system operator and reset in the light of experience. A proportionate approach should always be used to inform retention periods and these should not be based upon infrequent exceptional cases.
- 4.6.3 Although images and other information should not be kept for longer than necessary to meet the purposes for recording them, on occasions, a system operator may need to retain images for a longer period, for example where a law enforcement body is investigating a crime to give them the opportunity to view the images as part of an active investigation.

Principle 7 - Access to retained images and information should be restricted and there must be clearly defined rules on who can gain access and for what purpose such access is granted; the disclosure of images and information should only take place when it is necessary for such a purpose or for law enforcement purposes.

- 4.7.1 The disclosure of images and other information obtained from a surveillance camera system must be controlled and consistent with the stated purpose for which the system was established. Disclosure of images or information may be appropriate where the 1998 Act makes exemptions which allow it provided that the applicable requirements of the 1998 Act are met, or where permitted by other legislation such as the Counter Terrorism Act 2008. These exemptions include where non-disclosure would be likely to prejudice the prevention and detection of crime, and for national security purposes. Where a system operator declines a request for disclosure from a law enforcement agency there is provision under Section 9 of and Schedule 1 to the Police and Criminal Evidence Act 1984 to seek a production order from a magistrate.

- 4.7.2 There may be other limited occasions when disclosure of images to another third party, such as a person whose property has been damaged, may be appropriate. Such requests for images or information should be approached with care and in accordance with the 1998 Act, as a wide disclosure may be an unfair intrusion into the privacy of the individuals concerned.
- 4.7.3 A system operator should have clear policies and guidelines in place to deal with any requests that are received. In particular:
- Arrangements should be in place to restrict disclosure of images in a way consistent with the purpose for establishing the system.
 - Where images are disclosed consideration should be given to whether images of individuals need to be obscured to prevent unwarranted identification.
 - Those that may handle requests for disclosure should have clear guidance on the circumstances in which disclosure is appropriate.
 - The method of disclosing images should be secure to ensure they are only seen by the intended recipient.
 - Appropriate records should be maintained.
- 4.7.4 Judgements about disclosure should be made by a system operator. They have discretion to refuse any request for information unless there is an overriding legal obligation such as a court order or information access rights. Once they have disclosed an image to another body, such as the police, then the recipient becomes responsible for their copy of that image. If the recipient is a relevant authority, it is then the recipient's responsibility to have regard to this code of practice and to comply with any other legal obligations such as the 1998 Act and the Human Rights Act 1998 in relation to any further disclosures.
- 4.7.5 Individuals can request images and information about themselves through a subject access request under the 1998 Act. Detailed guidance on this and matters such as when to withhold images of third parties caught in images is included in the ICO CCTV code of practice.
- 4.7.6 Requests for information from public bodies may be made under the Freedom of Information Act 2000. Detailed guidance on these obligations is included in the ICO CCTV code of practice.

Principle 8 - Surveillance camera system operators should consider any approved operational, technical and competency standards relevant to a system and its purpose and work to meet and maintain those standards.

- 4.8.1 Approved standards may apply to the system functionality, the installation and the operation and maintenance of a surveillance camera system. These are usually focused on typical CCTV installations, however there may be additional standards applicable where the system has specific advanced capability such as ANPR, video analytics or facial recognition systems, or where there is a specific deployment scenario, for example the use of body-worn video recorders.

- 4.8.2 Approved standards are available to inform good practice for the operation of surveillance camera systems, including those developed domestically by the British Standards Institute, at a European level by the Comité Européen de Normalisation Électrotechnique⁵, or at a global level by the International Electrotechnical Commission. A system operator should consider any approved standards which appear relevant to the effective application of technology to meet the purpose of their system, and taking steps to secure certification against those standards.
- 4.8.3 Such certification is likely to involve assessment by an independent certification body. This has benefits for a system operator in that the effectiveness of a system is likely to be assured and in demonstrating to the public that suitable standards are in place and being followed.
- 4.8.4 A current list of recommended standards for consideration by a system operator will be maintained and made available by the Surveillance Camera Commissioner. Such a list will provide detailed guidance on suitable standards and the bodies that are able to accredit performance against such standards.

Principle 9 Surveillance camera system images and information should be subject to appropriate security measures to safeguard against unauthorised access and use.

- 4.9.1 Putting effective security safeguards in place helps ensure the integrity of images and information should they be necessary for use as evidence in legal proceedings. This also helps to foster public confidence in system operators and how they approach the handling of images and information.
- 4.9.2 Under the 1998 Act, those operating surveillance camera systems or who use or process images and information obtained by such systems must have a clearly defined policy to control how images and information are stored and who has access to them. The use or processing of images and information should be consistent with the purpose for deployment, and images should only be used for the stated purpose for which collected.
- 4.9.3 Security extends to technical, organisational and physical security and there need to be measures in place to ensure that this is the case and guard against unauthorised use, access or disclosure. The ICO CCTV code of practice gives helpful guidance on achieving this in practice.

Principle 10 - There should be effective review and audit mechanisms to ensure legal requirements, policies and standards are complied with in practice, and regular reports should be published.

- 4.10.1 Good practice dictates that a system operator should review the continued use of a surveillance camera system on a regular basis, at least annually, to ensure it remains necessary, proportionate and effective in meeting its stated purpose for deployment.
- 4.10.2 As part of the regular review of the proportionality and effectiveness of a surveillance camera system a system operator should assess whether the location of cameras remains justified in meeting the stated purpose and whether there is a case for removal or relocation.

5 CENELEC is also known as the European Committee for Electrotechnical Standardization

- 4.10.3 In reviewing the continued use of a surveillance camera system a system operator should consider undertaking an evaluation to enable comparison with alternative interventions with less risk of invading individual privacy, and different models of operation (to establish for example any requirement for 24 hour monitoring). In doing so, there should be consideration of an assessment of the future resource requirements for meeting running costs, including staffing, maintenance and repair.
- 4.10.4 A system operator should make a summary of such a review available publicly as part of the transparency and accountability for the use and consequences of its operation.

Principle 11 - When the use of a surveillance camera system is in pursuit of a legitimate aim, and there is a pressing need for its use, it should then be used in the most effective way to support public safety and law enforcement with the aim of processing images and information of evidential value.

- 4.11.1 The effectiveness of a surveillance camera system will be dependent upon its capability to capture, process, analyse and store images and information at a quality which is suitable for its intended purpose. Wherever the purpose of a system includes crime prevention, detection and investigation, it should be capable through processes, procedures and training of system users, of delivering images and information that is of evidential value to the criminal justice system. Otherwise, the end user of the images, who are likely to be the police and the criminal justice system, will not be able to play their part effectively in meeting the intended purpose of the system.
- 4.11.2 It is important that there are effective safeguards in place to ensure the forensic integrity of recorded images and information and its usefulness for the purpose for which it is intended to be used. Recorded material should be stored in a way that maintains the integrity of the image and information, with particular importance attached to ensuring that meta data (e.g. time, date and location) is recorded reliably, and compression of data does not reduce its quality. This is to ensure that the rights of individuals recorded by a surveillance camera system are protected and that the material can be used as evidence in court. To do this the medium on which the images and information are stored will be important, and access must be restricted. A record should be kept as an audit trail of how images and information are handled if they are likely to be used as exhibits for the purpose of criminal proceedings in court. Once there is no longer a clearly justifiable reason to retain the recorded images and information, they should be deleted.
- 4.11.3 It is important that digital images and other related information can similarly be shared with ease with appropriate law enforcement agencies if this is envisaged when establishing a system. If this interoperability cannot be readily achieved it may undermine the purpose for deploying the system.
- 4.11.4 It is therefore essential that any digital images and information likely to be shared with law enforcement agencies and the criminal justice system are in a data format that is interoperable and can be readily exported, and then stored and analysed without any loss of forensic integrity. In particular:

- A system user should be able to export images and information from a surveillance camera system when requested by a law enforcement agency.
- The export of images and information should be possible without interrupting the operation of the system.
- The exported images and information should be in a format which is interoperable and can be readily accessed and replayed by a law enforcement agency.
- The exported images and information must preserve the quality of the original recording and any associated meta data (e.g. time, date and location).

Principle 12 - Any information used to support a surveillance camera system which compares against a reference database for matching purposes should be accurate and kept up to date.

- 4.12.1 Any use of technologies such as ANPR or facial recognition systems which may rely on the accuracy of information generated elsewhere such as databases provided by others should not be introduced without regular assessment to ensure the underlying data is fit for purpose.
- 4.12.2 A system operator should have a clear policy to determine the inclusion of a vehicle registration number or a known individual's details on the reference database associated with such technology. A system operator should ensure that reference data is not retained for longer than necessary to fulfil the purpose for which it was originally added to a database.
- 4.12.3 There may be occasions when the inclusion of information about an individual in a reference database with the intention of undertaking surveillance can be considered as covert surveillance and thus fall with the bounds of the 2000 Act. Further guidance on the application of the 2000 Act is available in the Home Office statutory covert surveillance and property interference code of practice and from the Office of the Surveillance Commissioners.

Chapter 5: Surveillance Camera Commissioner

- 5.1 The Surveillance Camera Commissioner, (the commissioner), is a statutory appointment made by the Home Secretary under Section 34 of the 2012 Act. The commissioner's statutory functions are:
- a) encouraging compliance with this code;
 - b) reviewing the operation of this code; and
 - c) providing advice about this code (including changes to it or breaches of it).
- 5.2 In order to fulfil these functions effectively, the commissioner must work closely with other regulators including the Information Commissioner and the Chief Surveillance Commissioner. It is for the commissioner and other regulators to determine how best to maintain and formalise these relationships, to agree gateways through which issues flow between the public and the commissioners and how best to publicise and report on arrangements to support these relationships which will be critical in ensuring the success of the code in meeting its purpose.

Ways of working

- 5.3 The commissioner has no enforcement or inspection powers. In encouraging compliance with the code he should consider how best to ensure that relevant authorities are aware of their duty to have regard for the code and how best to encourage its voluntary adoption by other operators of surveillance camera systems.
- 5.4 The commissioner is expected to provide advice about the relevant operational, technical, quality management and occupational competency standards which are available for a system operator. A system operator can then consider these standards in determining how best to meet the purpose of their surveillance camera system whilst meeting legal obligations, making effective use of it, and safeguarding privacy considerations. Such advice can be updated to reflect developments in both the available technology and professional practice.
- 5.5 In reviewing the operation of the code, the commissioner should consider the impact of this system of regulation against published success criteria and the opportunities to improve compliance in line with better regulation principles.
- 5.6 The commissioner should provide advice and information to the public and system operators about the effective, appropriate, proportionate and transparent use of surveillance camera systems and should consider how best to make that information available. Such advice should complement the content of this code, and may for example provide additional detail on good practice, advice on the effectiveness of surveillance cameras and how this might be assessed, or on the proportionate application of any new technological developments in surveillance camera systems. Such advice could, for example, include the preparation of a manual of regulation that sets out how the commissioner will fulfil his functions.

- 5.7 The commissioner may establish a non statutory advisory council with specialist sub-groups to support him in fulfilling his functions. Any advisory council or specialist sub-group must have representation from such persons appearing to the commissioner to be representative of the views of relevant authorities and from the Home Office.
- 5.8 The commissioner must prepare a report about the exercise of his functions during the reporting period, and:
- a) give a copy of the report to the Secretary of State;
 - b) the Secretary of State must lay a copy of the report before Parliament; and
 - c) the commissioner must publish the report.
- 5.9 The reporting periods are set out in Section 35 of the 2012 Act.



Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, telephone, fax and email

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/general enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Houses of Parliament Shop

12 Bridge Street, Parliament Square,
London SW1A 2JX

Telephone orders/general enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other accredited agents



When you have finished with
this publication please recycle it

ISBN 978-0-10-851242-1



9 780108 512421

This page is intentionally left blank

Agenda Item 6

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	TRADE REQUEST TO REMOVE THE CONDITIONS RELATING TO FIRE EXTINGUISHERS AND FIRST AID BOXES IN HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES		
DATE OF DECISION:	19 SEPTEMBER 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
	E-mail:	phil.bates@southampton.gov.uk	
Director	Name:	Mark Heath	Tel: 023 8083 2371
	E-mail:	Mark.heath@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

NOT APPLICABLE

BRIEF SUMMARY

Section 22 of the Hackney Carriage Licence Policy and Conditions and Section 17 of the Private Hire Vehicle Licence Policy and Conditions require the licence holder to cause to be carried in the vehicle an efficient fire extinguisher of a type approved by the Council and suitable for use on motor vehicles and a first aid kit. Such extinguisher shall be fixed on the vehicle in such a position as to be readily available for use and maintained in good working condition at all times.

Concerns have been raised by the trade of the risk of litigation if the equipment is used.

RECOMMENDATIONS:

- (i) to determine whether the conditions relating to fire extinguishers and first aid boxes in Hackney Carriages and Private Hire Vehicles should remain or be amended or removed.

REASONS FOR REPORT RECOMMENDATIONS

1. At a Trade Representatives meeting this policy was questioned. Concern was expressed that insurances could be invalidated by drivers using fire extinguishers and that drivers were open to litigation if they administered first aid, especially if not trained..

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

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

DETAIL (Including consultation carried out)

3. It is a longstanding mandatory requirement that both hackney carriages and private hire vehicles carry fire extinguishers and first aid kits.

4. In April 2013 a Trade Representative consultation meeting was held and specific concerns were raised. It was stated that insurance companies have indicated they will invalidate claims where an extinguisher has been used and drivers are concerned they may face litigation if they administer first aid when not trained.
5. The condition specifies the type of fire extinguisher as approved by the Council and suitable for use on motor vehicles. Hampshire Fire and Rescue Service were consulted and it was explained that different extinguishers would be required for fires in the cab and the engine. It was also noted that drivers do not receive any training on the appropriate type of extinguisher or its use. The general advice of the Fire and Rescue Service if a vehicle catches fire is to get as far away as possible and call the fire service.
6. The conditions do not currently specify any requirements for the content of the first aid kit. South Coast Ambulance were consulted who confirm there is no legislation requiring the vehicles to have a first aid kit, however they support encouragement to carry a basic first aid kit to allow emergency common sense application of first aid or for self administration in minor cases.
7. There is little evidence to support the claim from drivers that they face litigation if they administer first aid without training.
8. Any first aid training always requires refreshing, usually after 3 years. Although training drivers is desirable, it is costly and has recurring costs that will inevitably be met by the drivers themselves.
9. There is no legal requirement to have these pieces of equipment; the benefit of having a first aid kit is marginal but desirable. It is therefore recommended that conditions requiring licensed Hackney Carriages and Private Hire Vehicles to have first aid kits and fire extinguishers be removed.

RESOURCE IMPLICATIONS

Capital/Revenue

10 Nil

Property/Other

11 None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

12 Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976.

Other Legal Implications:

13 None.

POLICY FRAMEWORK IMPLICATIONS

14 None.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	None
------------------------------------	------

SUPPORTING DOCUMENTATION

Appendices

1.	None
----	------

Documents In Members' Rooms

1.	None
----	------

Equality Impact Assessment

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

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	
----	------	--

This page is intentionally left blank

Agenda Item 7

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	TRADE REQUEST TO AMEND THE CONDITION TO LENGTHEN THE LIFE OF LICENSED PRIVATE HIRE VEHICLES AND HACKNEY CARRIAGES		
DATE OF DECISION:	19 SEPTEMBER 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3002
	E-mail:	phil.bates@southampton.gov.uk	
Director	Name:	Mark Heath	Tel: 023 8083 2371
	E-mail:	mark.heath@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

Not applicable.

BRIEF SUMMARY

Current conditions applied to hackney carriages and private hire vehicles restrict their operational life so no new or renewed licence will be issued for a vehicle more than 7 or 10 years since the date of first registration, dependant on the type of vehicle. Wheel chair accessible vehicles may be licensed for up to 10 years.

The trade consider the restrictions reduce their options on how to run their business and ask if this condition is appropriate at such times of austerity.

RECOMMENDATIONS:

- (i) to determine whether the policy and conditions in relation to the operational life of hackney carriages and private hire vehicles should continue or be amended in line with one of the options set out within the report.

REASONS FOR REPORT RECOMMENDATIONS

1. At the Trade Representatives Consultation meeting with Licensing Committee Members on 18th April 2013 the life of vehicles was raised by the trade with a request to extend the life by 1 or 2 years.
2. The Licensing Committee Members present at the meeting requested a report be submitted for consideration.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

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

DETAIL (Including consultation carried out)

4. Since 2000 the life of vehicles licensed by Southampton City Council has been restricted to 7 years. Since that date wheel chair accessible (WCA) vehicles have been introduced to the fleet and as they were considered to be

purpose built and a more expensive vehicle than a standard saloon car and therefore better equipped to withstand the rigours of licensed vehicle work. Their age was accordingly restricted to 10 years.

5. Licensed vehicles are either a Category A or B. Category A include vehicles made or adapted to 'M1' standards to allow wheel chair access for a person to remain seated in their wheelchair. Category B are all other types of vehicles. Category A will not be granted a new or renewed licence if it is more than 10 years since first registration and Category B is 7 years.
6. All Southampton City Council licensed vehicles are required to pass a vehicle inspection every 6 months.
7. At the consultation meeting the trade raised the following points:
 - the fact vehicles are tested twice in the year and that unacceptable vehicles should be suspended
 - at a time of recession a one year extension makes a difference and such a compromise will show the Council is listening.
 - owners will always have the choice to keep the car or not and may voluntarily change the vehicle before the age limit is reached.
8. Evidence from Council records show the vast majority of vehicles at the end of their life as a licensed vehicle have recorded mileage in excess of 150,000 miles and often much more. There are a few examples of such vehicles that still look pristine; however the majority do, naturally, show signs of their age and look tatty in appearance. The standard of appearance is an important factor and reflects on the City.
9. The vehicles are tested twice a year, a standard VOSA test (MOT) and 6 months later a more thorough compliance check that includes the body work. Vehicles deteriorate with time, the shine of the paint work dims and inevitably scratches and marks appear which reflects on the image of the city and, often, the maintenance regime of the owner.
10. High mileage vehicles are more prone to serious mechanical failures and not all owners are diligent in the maintenance of their vehicle. One recent vehicle was submitted for examination approaching the 7 year limit, the recorded mileage was 200584. It contained 10 failures and 15 advisory notes on a VOSA test. A redacted copy of the report is attached as Appendix 1.
11. Lengthening the life of the fleet reduces the safety benefits of new technologies and higher standards required of newer vehicles. Newer vehicles also benefit from matters such as better CO2 emissions and improved fuel efficiency.
12. **Options**
 - 1** To retain the condition as it is, restricting the life of the vehicles to 7 and 10 years.
Pros: This policy has a proven track record and provides a balance between maintaining a high quality fleet and affordability for proprietors. It provides a clear message to the trade of expectations to allow them to effectively plan their finances for replacement vehicles.
Cons: None

2 Increase the life of either all vehicles or Category B vehicles only by either one or 2 years.

Pros: None for the council or customers, the trade will benefit from a little more flexibility in the purchase and investment returns from vehicles.

Cons: This will be a lowering of previously adopted standards. Reduced quality of fleet as older vehicles are predominantly less safe, less energy efficient, more prone to breakdown and have suffered increase use affecting passenger comfort.

3 Retain the condition as it is at present but include an exemption for vehicles whose owners can demonstrate the vehicle has always been kept in excellent mechanical condition, i.e. no failures on the vehicle check list in the last 3 years and the vehicle is presented in excellent condition with no marks, dents or scratches and the seating providing sufficient support.

Pros: This represents a balance between the other 2 options.

Cons: This option is more difficult to enforce consistently and fairly. The test to keep a vehicle becomes subjective and open to challenge. The examination will take officer time and if challenged is likely to take up considerable officer time and therefore has a resource implication. Any level of subjective test will be open to allegations of officers acting unfairly.

13. In light of all the circumstances, on balance, the officers recommendation is option 1 as this will retain standards as they are. Thereby ensuring vehicles are kept up to date with modern safety measures / standards, are presentable and comfortable for passengers, are reasonably energy efficient and environmentally friendly.

RESOURCE IMPLICATIONS

Capital/Revenue

14. There are no direct cost implications for the Authority except staff time if option 3 is considered to allow staff to inspect vehicles and associated documentation to determine if the vehicle can be licensed. This in turn will need to be reflected in the fees.

Property/Other

15. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

16. Section 37 Town Police Clauses Act 1847
17. Section 47 Local Government (Miscellaneous provisions) Act 1976

Other Legal Implications:

18. None.

POLICY FRAMEWORK IMPLICATIONS

19. None.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	None
-----------------------------	------

SUPPORTING DOCUMENTATION

Appendices

1.	Redacted copy of a vehicle inspection sheet with numerous failures/advisories
----	---

Documents In Members' Rooms

1.	None.
----	-------

Equality Impact Assessment

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

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	
----	------	--



Hackney Carriage / Private Hire Vehicle no. [REDACTED] Mechanical Inspection

Appendix Item 7
No. [REDACTED]

Reg. no.: [REDACTED]
Make/model/color: [REDACTED]
Chassis no.: [REDACTED]

Year: 2006
Mileage: 200584
Fuel: D/LPG/LP

Items tested	Pass	Fail	Defects / Advisory items
Lighting Equipment			
Number plate lamps	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/S + O/S NO PLATE LIGHTS NOT WORKING ✓
Rear fog lamps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Front lamps	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	O/S IF SIDE LIGHT NOT WORKING ✓
Rear lamps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Headlamps	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/S HEADLAMP HAS NO CLEAR PATTERN ✓
Headlamp aim	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/S AIM NOT TESTED ✓
Stop lamps	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Rear reflectors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE N/S IN INDICATOR DISCOLOURED
Direction indicators / hazard lights	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steering & Suspension			
Steering controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	HIGH LEVEL STOP LIGHT N/S (ONLY ONE BULB WORKING OVER 50% N/S) ✓
Steering mechanism	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISOR KNOCK FROM NSP AREA ✓
Power steering	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Transmission shafts	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Stub axle assemblies	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Wheel bearings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Front suspension	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	O/S IF RIM - REAR DUSH WORN ✓
Rear suspension	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/S IF DRIVE SHAFT SECURITY BOLT MISSING - DIFFERENT BOLT ✓
Shock absorbers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brakes			
ABS warning system / controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE N/S + O/S IF DRIVES JUDGMENT SLIGHTLY
Service brake condition	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	ADVISE O/S IF DRIVE JUDGMENT SLIGHTLY
Parking brake condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE FRONT DISCS WORN - NOT WEARERED
Brake performance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REAR PADS WORN ✓
Tyres & Wheels			
Tyre type / size	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ADVISE N/S IF WHEEL RIM SLIGHTLY DISTORTED
Tyre condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE N/S IF TYRE CLOSE TO LIMIT + NAIL IN TREAD
Road wheels	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DIFFERENT SIZE TYRES FITTED TO REAR AXLE
Seat Belts			
Mounting condition / operation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
General Items			
Fuel systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE WINDSCREEN DAMAGED
Windscreen / washers / wipers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE EXHAUST SILENCER DETERIORATED
Registration plate / chassis plate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE FRONT NO PLATE DETERIORATED
Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Exhaust system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE ENGINE MANAGEMENT LIGHT STAYS ON
Engine noise / smoke / emissions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clearbox oil leak - FAIL
Vehicle structure	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE N/S OUTER SILL SEVERELY DAMAGED
HC and PHV Items			
Accident damage / body condition	<input type="checkbox"/>	<input type="checkbox"/>	ADVISE NO CAMERA
Seats / upholstery condition	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE O/S IF WIPER DAMAGED
HC roof light / PHV door signs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE ENGINE / GEAR OIL LEAKS
Fire extinguisher / first aid kit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NO FIRE EXTINGUISHER
Fare chart (HC) / camera stickers	<input type="checkbox"/>	<input type="checkbox"/>	NO FIRST AID KIT
Ancillary equipment (ramps etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Meter test (when required)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADVISE METER TIME SLIGHTLY FAST
Meter sealed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

FLAUGHT
O/S JUST
ADVISE
O.S. WESTBANK
25-4-13

Brake Test

Service brake	Locks	Parking Brake	Locks	Balance (Wheels not locked)
Axle 1 N/S	✓	N/S	✓	
Axle 1 O/S	✓	O/S	✓	
Axle 2 N/S	✓	Total		
Axle 2 O/S	✓			
Total		Service brakes	79 %	Front imbalance 4 % Park brake 23 %

Test Results: **Pass / Fail** (Pass circled)
Date: 17-4-13
Signed: [REDACTED]
Date: 25-4-13 (Tester)
Date: 17-4-13

This page is intentionally left blank

Agenda Item 8

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	TRADE REQUEST TO AMEND REQUIREMENTS OF WHEEL CHAIR ACCESSIBLE HACKNEY CARRIAGES FOR PLATES 264 TO 283		
DATE OF DECISION:	19 SEPTEMBER 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
	E-mail:	phil.bates@southampton.gov.uk	
Director	Name:	Mark Heath	Tel: 023 8083 2371
	E-mail:	Mark.heath@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

Not applicable

BRIEF SUMMARY

The last 70 hackney carriage plates to be issued by the authority are required to be wheel chair accessible vehicles. The last 20 of these require the access for the wheel chair to be from the nearside.

A request from the trade is to allow the last 20 vehicles to be rear loading and bring them into line with the other 50 wheel chair accessible vehicles.

RECOMMENDATIONS:

- (i) to determine whether the requirement of wheel chair accessible hackney carriages imposed on the last 20 hackney carriages be relaxed to rear loading rather than side loading.

REASONS FOR REPORT RECOMMENDATIONS

1. At the Trade Representatives Consultation meeting with Licensing Committee Members on 18th April 2013 it was asked if consideration could be given to allowing the last 20 Hackney Carriage Licences, plates 264 to 283, to have the requirement to be side loading wheel chair accessible removed.
2. The Licensing Committee Members present at the meeting requested a report be submitted for consideration.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. All options are contained within this report.

DETAIL (Including consultation carried out)

4. In 1986 there were 214 hackney carriage licences issued by the authority. There was no requirement for these to be wheel chair accessible.

5. Between 1987 and 2009 a further 49 hackney carriage licences were issued. These 49 vehicles and one existing vehicle were required to be wheel chair accessible – allowing a wheelchair passenger to remain seated in their wheelchair in the vehicle. These vehicles were not required to be nearside loading.
6. On the 11th March 2009 the Licensing Committee resolved the authority would issue a further 20 hackney carriage licences, plate numbers 264 to 283.
7. It was agreed these licences would have conditions attached to them requiring the vehicles to be fully wheel chair accessible, have a minimum standard of nearside loading capability for any wheelchair and conform to European Whole Vehicle Type Approval as a Hackney Carriage or VCA (Vehicle Certification Agency) qualification.
8. At the consultation meeting the trade asked if the nearside loading requirement could be removed to allow rear loading vehicles.
9. The trade explained there are a large number of different makes and models of wheel chairs and some are quite large. Manoeuvring them within the confines of a vehicle is difficult. Often a fare is left facing in a direction other than forwards. In addition there are some locations where loading a wheel chair to the side of the vehicle is difficult or impossible. Whereas rear loading vehicles allow for the fare to be loaded facing the front each time.
10. The nature of the work of a hackney carriage determines the majority of fares are picked up in the street either at a rank or hailed at the road side and these are usually in busy City centre locations. To facilitate loading a wheel chair to the rear of the vehicle will require the fare to be placed in the road behind the vehicle. This can present difficulties if the vehicles behind have not allowed enough room for the ramps and wheel chair to be properly positioned. Alternatively, if there is no vehicle behind that loading the wheel chair it leaves the fare unprotected behind the vehicle and in the road.
11. The Department for Transport state they have not issued any guidance but they do acknowledge that different solutions may suit different operational environments, e.g. a side loading solution may be better suited to an inner City environment whereas a rear loading solution may be best suited to a rural environment.

12. **Options**

1) Retain the condition as it is requiring hackney licences 264 to 283 to be nearside loading for wheel chairs.

Pros: Provides a safer environment for a wheel chair user, allowing them to access the hackney carriage from the safety of a pavement.

Con: Denies the owner the choice of having a side or rear loading vehicle. Some larger wheel chairs will be difficult to manoeuvre within the hackney carriage requiring considerable patience from both the user and the driver to ensure the fare is facing forwards when loaded from the side.

2) Allow the removal of the condition requiring nearside loading.

Pros: Allows a fare sat in a wheel chair to be loaded directly into a hackney carriage facing forwards with no requirement to manoeuvre within the cab of the vehicle.

Cons: For hails at the road side by a wheel chair user it will necessitate the wheelchair going onto the road at the rear of the hackney carriage to board it. This increases the risk to the fare of being struck by passing traffic.

For hails at a rank the hackney carriages behind will have to leave a large enough gap between vehicles to facilitate the loading of a wheel chair from the rear. This is likely to reduce the number of hackney carriages able to fit onto a rank adding to the problem of over subscribed ranks.

13. After consideration of all of these factors the officer's recommendation is to retain the condition as this provides the safest option and ensures a mix of available vehicles.

RESOURCE IMPLICATIONS

Capital/Revenue

14. Nil.

Property/Other

15. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

16. S. 47 Local Government (Miscellaneous Provisions) Act 1976

Other Legal Implications:

17. None.

POLICY FRAMEWORK IMPLICATIONS

18. None.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	None.
-----------------------------	-------

SUPPORTING DOCUMENTATION

Appendices

1.	None.
----	-------

Documents In Members' Rooms

1.	None.
----	-------

Equality Impact Assessment

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

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.	
----	-------	--