

REPORT TO	ON
GENERAL LICENSING COMMITTEE	20 FEBRUARY 2018

September 2017



TITLE	REPORT OF
MANDATORY IN-CAB CCTV FOR LICENSED VEHICLES – IMPLICATIONS FOR LICENSING AUTHORITY	PETER HAYWOOD

Is this report confidential?	No
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### 1. PURPOSE OF THE REPORT

This report will inform members of the Council’s current permissive stance towards the use of CCTV in licensed vehicles, as well as updating them on (i) the benefits and (ii) legal implications of adopting a mandatory approach to this issue.

### 2. RECOMMENDATIONS

Members are requested to:

- 2.1 note the Council’s current permissive approach to the use of CCTV in licensed vehicles (as set out in section 7 of the report);
- 2.2 in light of (i) the perceived advantages of mandatory CCTV (set out in section 8) and (ii) the legal implications of such an approach (section 9), consider whether to support further efforts to develop the mandatory use of CCTV in vehicles licensed by South Ribble Borough Council; and
- 2.3 should members wish to consider a move towards a mandatory CCTV, consider whether efforts to develop this on a pan-Lancashire basis (section 11.3) would be preferable.

### 3. EXECUTIVE SUMMARY

3.1 Mandatory in-cab CCTV is increasingly seen by licensing authorities as a valuable tool in the promotion of Safeguarding as well as wider public protection. In common with many other councils, this authority has traditionally adopted a permissive approach to CCTV. Whilst the benefits of a mandatory approach are identified in section 8 below, it is clear that such a stance could not be adopted without a range of other factors being considered. One of these is cost; another is the range of legislative requirements which have an impact in terms of data protection and information governance – these are spelled out in detail in section 10. Given the complexity of the legal background; the time-consuming nature of the work to be undertaken; and the specialist technical knowledge required, the report considers whether a pan-Lancashire approach is potentially a preferable way forward.

#### 4. CORPORATE PRIORITIES

The report relates to the following corporate priorities

Clean, green and safe	x	Strong and healthy communities	
Strong South Ribble in the heart of prosperous Lancashire		Efficient, effective and exceptional council	

#### 5. BACKGROUND

- 5.1 There has been a national focus on the licensed taxi trade for some years, following issues of Child Sexual Exploitation in Rochdale, Rotherham and elsewhere. The Rotherham situation was the subject of a length report by Professor Alexis Jay (entitled Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 – 2013) in 2014; paragraphs 8.16-8.27 outline the involvement of licensed taxi drivers in this abuse. This was followed by Dame Louise Casey's inspection report on Rotherham MBC in February 2015, which maintained the spotlight on taxi regulation.
- 5.2 Traditionally, many local authorities have adopted a permissive approach to the use of CCTV in licensed vehicles. However, in response to the Jay and Casey reports, some authorities are now seeking to adopt a more proactive approach which obliges - rather than permits - licensed vehicles to carry a CCTV system; the purpose of this is to enhance the evidence-gathering capability of the Licensing Section with regard to issues such as Child Sexual Exploitation.
- 5.3 Members will recall that – when she carried out a review of South Ribble's Licensing Section in March 2017 - Commissioner Mary Ney was a strong advocate of the use of mandatory in-cab CCTV, citing Rotherham MBC's previous adoption of such a system. A press release on Rotherham MBC's website dated 13 April 2016 attributes the following comments to Commissioner Ney:

"The camera system will provide protection for both passengers and the driver, and there needs to be the correct balance between protecting people and making sure that there is no breach of people's rights to privacy.

The driver is required to make sure that the system is operating correctly when the taxi is working. We will carry out random checks including downloading footage from the systems to verify that the systems are being used as required by the Council's policy. If they are not then drivers may have their licence suspended or revoked."

#### 6. INTRODUCTION

- 6.1 The term "CCTV system" used throughout this report will include any electronic recording device attached to the inside of a vehicle and which has the technical capability of capturing and retaining (i) visual images and (ii) audio recording from inside or outside the vehicle.

#### 7. CURRENT POSITION UNDER THE COUNCIL'S LICENSING POLICY

- 7.1 Under the current Licensing Policy, and in line with many other local authorities, South Ribble Borough Council permits (but does not require) the use of CCTV in licensed vehicles. This is confirmed by sections 6.13 (Hackney Carriage vehicles) and 7.12 (Private Hire vehicles) of the Licensing Policy, which state:

"The Council **recommends** [added emphasis] the use of CCTV systems in vehicles for the safety of both the driver and passenger.

CCTV or any other image recording device may be used within a Hackney Carriage subject to the Council being given prior notification of the installation.

CCTV systems must comply with the current data protection requirements as directed by the Information Commissioner.

Where CCTV is installed in a vehicle, there must be a minimum of 2 signs which are clearly visible to passengers, advising them of the presence of CCTV.

CCTV systems must be capable of storing image/audio files in a manner which prevents them being downloaded or viewed by the driver or any other person travelling in the vehicle.

The storage device must be encrypted and image/audio files may only be downloaded by an authorised officer of the Council or a Police Constable.

The CCTV system supplier shall furnish the Council with de-encryption software at no cost to the Council, along with a lifetime licence for the use of such software as may be required.”

7.2 This permissive rather than mandatory stance is considered to be typical of that currently adopted by most local authorities.

## **8. ADVANTAGES OF IN-CAB CCTV**

8.1 The implementation of mandatory CCTV within licensed vehicles would be intended to support the prevention and detection of crime (as well as promoting a safe experience for both drivers and the travelling public). The advantages of such an approach are considered in more detail below:

### The protection of licensed drivers

8.1.1 At the time of writing, members of the General Licensing Committee have received evidence against drivers / applicants at 8 hearings (either at full committee or sub-committee) during the current calendar year. In at least 1 of these, the availability of CCTV evidence would have been of assistance to members in making their decision. For instance, an applicant was accused of inappropriate behaviour, whilst driving a licensed vehicle. . Clearly, the availability of CCTV footage would have allowed the hearing to consider the CCTV evidence and make a more informed assessment before reaching their decision.

8.1.2 Drivers work alone, often at antisocial hours, visiting areas that may be poorly lit or away from safe routes, and could be carrying any amount of cash within the vehicle. These factors could increase the risk posed to drivers and drivers may feel more protected if there is the potential for assaults against them to be captured on film.

### The protection of the travelling public

8.2.1 Licensed vehicles are used extensively to service the late night economy, the period of which extends well beyond the availability of other forms of public transport. Patrons often have little choice but to use licensed vehicles. Some customers may be vulnerable if they have consumed excessive amounts of alcohol, and or, become separated from their friends. Licensed vehicles are often the only option for vulnerable people who have no direct transport links, or who have special transportation requirements.

## The protection of contracted support

8.3.1 Licensed vehicles are often used to transport particularly vulnerable children to and from school. The availability of CCTV footage could be of assistance, should it be required.

### To ensure that licensed drivers continue to be 'fit and proper' in line with wider Licensing requirements

8.4.1 A driver's behaviour even when not on duty, particularly when in charge of a vehicle, can be taken into account when applications and renewals for a license are considered. A taxi is a licensed vehicle at all times and is marked as such with identification plates even when being used for personal journeys. Where the Council receives a complaint it has to investigate whether the licensed driver remains compliant with the licensing conditions, including being a 'fit and proper person'.

8.4.2 It is established in case law that once a vehicle is licensed as a taxi or for private hire it remains a licensed vehicle 24 hours day and as such it is incapable of operating on a purely private basis outside the licence; Benson v Boyce (1997) and Yates v Gates (1970).

8.4.3 Existing control measures include the requirement for Disclosure & Barring Service (DBS) checks for drivers upon application, and then every three years. The DBS check provides a snapshot at that time of matters such as unspent convictions. Under the Council's current Convictions Policy, it is the case that holders of existing driver's licences are obliged to inform Licensing staff within 5 working days if they are the subject of criminal proceedings. However, it is not unknown for such information to be withheld, and it would not necessarily be picked up unless the organisation requested another DBS check to be undertaken.

8.4.4 Where the Council receives a complaint or allegation, it currently has no option but to investigate the incident - the implementation of CCTV would again provide the council with a useful tool which could speed up any such investigation.

## **9. MANDATORY CCTV IN OTHER LOCAL AUTHORITIES**

9.1 The latest information available (April 2017) from the Local Government Association (LGA) confirms that local authorities seeking to mandate CCTV is not a new thing; currently 9 councils are known to be doing this, namely:

- Brighton and Hove
- Herefordshire
- Gravesham
- Northumberland
- Portsmouth
- Rossendale
- Rotherham
- Southampton
- Warrington

9.2 According to the LGA, data from the Department for Transport suggests that support for mandatory CCTV is strong; a 2012 survey indicated that 62% of responding councils were in support of mandatory CCTV and only 8% in opposition.

9.3 For the avoidance of doubt, authorities who require mandatory CCTV also tend to be supportive of the need for in-cab audio recording; the main rationale for using audio recording in

taxi / Private Hire vehicles is that this would pick up any inappropriate conversations between passengers and drivers.

## **10. MANDATORY IN-CAB CCTV – LEGAL IMPLICATIONS**

10.1 Should this authority resolve to oblige drivers to install in-cab CCTV, a wide range of significant legal issues would need to be taken into account. These particularly relate to the topics of Data Protection and Information Governance, as the ensuing potential for intrusion / infringement of civil liberties is considerable. The Local Government Association is currently in the process of producing draft guidelines for authorities in a similar position to South Ribble, and enquiries with the LGA have confirmed the complexity of the situation; an indication of the public authorities with an interest in this field and which would need to be satisfied with the robustness of the Council's approach is given below.

### 10.2 Information Commissioner's Office (ICO)

10.2.1 The ICO is the official regulatory body responsible for enforcing compliance with privacy and data protection legislation, including regulating the personal data derived from use of CCTV systems in taxis/PHVs. The ICO has taken an active role in advising, and in some cases challenging, councils which have introduced policies. It is therefore important that this authority is aware of the ICO's CCTV Code of Practice in order to ensure compliance with its requirements.

10.2.2 The ICO has previously stated that if CCTV systems are to be mandated through the use of licence conditions, this can only be done with strong justification. Any such policy will need to be subjected to regular review, particularly where audio recording is being used in addition to cameras.

10.2.3 The ICO has previously accepted mandatory usage of CCTV on the grounds that it provides a safer environment for the benefit of the Taxi/PHV driver and passengers by:

- deterring and preventing the occurrence of crime;
- reducing the fear of crime;
- assisting the Police in investigating incidents of crime; and
- assisting insurance companies in investigating motor vehicle accidents.

10.2.4 Continuous or blanket use of CCTV is considered more intrusive than where recording is restricted to certain times, and would require strong justification (especially in the case of audio recording). The hours of operation of audio recording in particular should therefore be considered carefully. The ICO's code includes a useful set of questions that must be thought through before the use of audio recording is agreed:

- is there pressing social need and do you have evidence that this need must be addressed?;
- have you considered other, less privacy-intrusive, methods of addressing the need?;
- have the alternative options been reviewed and is there evidence to show that the only way to address the issue is through the use of audio recording?;
- have you got a clear specification for the audio system to ensure appropriate privacy and the necessary quality of recording?; and
- is the public aware when audio recording is taking place, and how they can activate it?

## Case study – Southampton City Council

It is understood that Southampton Council's use of audio recording was challenged by the ICO for breaches of the Data Protection Act. The challenge was around the proportionality of Southampton's policy for blanket camera and audio recording. The tribunal's view was that the requirement for continual audio recording in licensed vehicles was disproportionate, with the impact on the right of privacy outweighing any positive impact it may have on public safety or reducing crime.

As a result, Southampton Council amended their requirements around audio recording and adopted a more targeted scheme in line with the requirements set out in the ICO's enforcement notice. Southampton Council's policy now sets out circumstances when audio recording should be activated based on times of day; types of customer (for example, children or vulnerable adults); and the use of panic buttons.

10.2.5 Similarly, policies adopted in Rotherham and by Transport for London (TFL) have been developed to reflect the ICO's code of practice and as such illustrate how Licensing Authorities can balance privacy and Safeguarding in a way that is judged by the ICO to be justifiable and proportionate. Rotherham Council's current policy is understood to state:

- CCTV must be in operation whenever the vehicle used in the capacity of a Hackney Carriage or Private Hire vehicle; and
- Audio can be used in prescribed circumstances, namely:
  - audio recording must be activated by the driver whenever an unaccompanied child or vulnerable adult is being carried in the vehicle;
  - the driver and the passenger can also activate the audio recording at any time. Both the driver and the passenger have access to buttons to switch on audio recording; and
  - a small indicator light will show when audio is being recorded, and stickers and notices will give people information about the systems and how they are used.

Examination of Rossendale Borough Council's CCTV policy (set out in Appendix R to its Taxi Policy) also confirms that both passengers and drivers must be able to activate audio recording in what is described as a "two trigger approach".

10.2.6 In addition, the ICO requires Licensing Authorities to pay attention to Information Governance (namely how images / audio from CCTV are stored and accessed). A clear policy covering the processing of any information collected from CCTV systems in Hackney Carriage or Private Hire vehicles relating to individuals will need to be established and should include:

- who has responsibility for the control of this information;
- how the information should be used and providing fair processing to passengers (ie when it will be downloaded); and
- to whom it may be disclosed.

10.2.7 The Data Protection Act (DPA) defines a "data controller" as the individual who or organisation which has ultimate responsibility for how personal data is collected and processed. The ICO has the view that in mandating the use of CCTV in Hackney Carriage or Private Hire vehicles, a council acts as a data controller and as such:

- is ultimately responsible for how the images are stored and used;
- determines in what circumstances the images should be disclosed; and
- is responsible for complying with all relevant data protection legislation.

- 10.2.8 Licensing Authorities will need to provide evidence which sets out detailed requirements and what action has been taken to ensure compliance with legislation. For instance, CCTV systems should be installed in a way that allows data to be secured in a locked “data box” inside a vehicle as well as being encrypted. No one but the relevant council officer or authorised staff from the data processor should be able to access this data. Councils may want to consider compiling a list of “approved installers” in the area so they can be confident that installation requirements have been met and data is secure.
- 10.2.9 Data controllers are required to register with the ICO, in most cases councils will already be registered with the ICO as data controllers, but registration will need to be updated to reflect new use of personal data.
- 10.3 Surveillance Camera Commissioner (SCC)
- 10.3.1 As well as complying with the ICO’s requirements, councils must also ensure that they meet the separate demands of the SCC.
- 10.3.2 The SCC’s role is to implement the Surveillance Camera Code of Practice (2013) and ensure compliance with it. The code covers all forms of surveillance camera systems including CCTV.
- 10.3.3 The SCC recommends following and completing a “Passport to Compliance”, which will ensure that a Licensing Authority complies with the Surveillance Camera Code of Practice. The SCC can also provide Self-Assessment Tools to assist local authorities in demonstrating publicly their compliance with the Surveillance Camera Code once CCTV is installed and operating.

## **11. MANDATORY IN-CAB CCTV – COST IMPLICATIONS**

- 11.1 The introduction of CCTV would clearly have a cost implication (understood to be several hundred pounds per vehicle). In at least some (if not all) local authorities where mandatory CCTV has been adopted, this cost has been borne by the licensed trade rather than the council. However, to alleviate the impact of this cost, it may be possible for competitive rates to be negotiated with approved suppliers on the assurance that they will be entitled to compete in an appropriately-sized market which reflects the fleet size within the borough.

## **12. NEXT STEPS**

- 12.1 Should members wish to proceed with a policy of mandatory in-cab CCTV, and have clarified their thinking in terms of system requirements (eg constant recording or more a privacy-friendly approach) then the following policies / procedures will need to be produced as a minimum:
- an overall policy establishing the rationale and justification for the introduction of mandatory in-cab CCTV in the desired form;
  - a “download policy” prescribing who can access the CCTV / audio recordings and the security arrangements to prevent abuse;
  - documents to reassure the regulators that any processes meet their respective requirements, eg the SCC’s Passport to Compliance;
  - a detailed specification of equipment which is known to be of sufficient capability to meet the Council’s expectations as defined (eg privacy-friendly recording buttons to enable the activation of audio recording by the passenger, if required);
  - a list of approved retailers who will fit the equipment, and rules / criteria for establishing the inclusion of particular suppliers on the list;

- a certificate of installation to be displayed in the vehicle, along with other appropriate notices to provide adequate warning to members of the public travelling in the vehicles; and
- a Privacy Impact Assessment drawn up to ensure that all privacy issues have been considered and all statutory expectations met.

12.2 This will then need to be followed by a comprehensive and meaningful public consultation exercise to seek the views of all stakeholders, which will then be reported back to members for further deliberation.

12.3 Officers are aware that the formal introduction of mandatory in-cab CCTV is complex, time-consuming and requires a degree of specialist technical and legal knowledge. In view of this, and the potential impact upon scarce officer resource within the authority, a possible way forward would be to consider a wider pan-Lancashire approach. This could be pursued through a county-wide officer co-ordinating group, with tasks and costs conceivably shared out across a number of authorities. It may even be possible to use the Police and Crime Commissioner as a catalyst for such an approach. Members may therefore wish to consider this as a potential alternative to a more South Ribble-focused methodology.

### 13. WIDER IMPLICATIONS AND BACKGROUND DOCUMENTATION

#### 13.1 Comments of the Statutory Finance Officer

There are no financial implications arising from the recommendations in this report.

#### 13.2 Comments of the Monitoring Officer

The legal implications are set out within the body of the report.

Should any changes be introduced in respect of CCTV in licensed vehicles, the law relating to hackney carriage and private hire which is governed by the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, and the Transport Act 1985, should be adhered to. Furthermore, compliance with Data Protection and Information Governance laws together with adherence with Codes of Practice and Guidance would be appropriate in the circumstances.

<p><b>Other implications:</b></p> <ul style="list-style-type: none"> <li>▶ <b>Risk</b></li> <li>▶ <b>Equality &amp; Diversity</b></li> <li>▶ <b>HR &amp; Organisational Development</b></li> <li>▶ <b>Property &amp; Asset Management</b></li> <li>▶ <b>ICT / Technology</b></li> </ul>	<p>Mandatory in-cab CCTV is a potentially useful evidence-gathering tool to protect both licensed drivers and members of the public from risks they may otherwise face. However, this is a complex and technically-challenging area of the law which – if not thoroughly explored - could expose the Council to significant risk of intervention by regulatory bodies.</p> <p>None</p> <p>None</p> <p>None</p> <p>The mandatory use of in-cab CCTV represents an innovative use of technology to assist with public protection. However, as indicated in the text of the report, there are significant legal</p>
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	safeguards to be born in mind.
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#### 14. BACKGROUND DOCUMENTS

There are no background papers attached to this report.

SMT Member's Name – Peter Haywood

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