



Licensing Committee

Item
7

14 November 2018

Report of	Assistant Director (Communities)	Author	Jon Ruder
Title	Hackney Carriage/Private Hire Licensing Policy // Consultation Responses		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 The Committee is asked to consider the consultation responses received following a further period of consultation on the Policy.

2. Recommended Decisions

- 2.1 That the Policy, excluding Appendix 1, be recommended to full Council for adoption and implementation with effect from 1 January 2019.
- 2.2 That full Council be recommended to delegate to the Licensing Committee authority to determine the provisions in relation to the installation of CCTV in hackney carriage and private hire vehicles.

3. Reason for Recommended Decision

- 3.1 To approve the necessary changes to the Licensing Policy, however further information is required from the Information Commissioners Office and other agencies to ensure a robust procedure is in place relating to CCTV, which means that the Council is not in a position to include at this stage provisions relating to CCTV in the policy.

4. Alternative Options

- 4.1 To leave the Policy unchanged but this would leave it unfit for purpose.

5. Representations

- 5.1 In August 2018, the Committee approved the Policy, including the provisions relating to CCTV, for the purposes of consultation with the trade.
- 5.2 A number of comments have been received, particularly in relation to CCTV, but also on other matters contained within the Policy and the responses are attached at Annex 1. There are representations in relation to cycling on which the Committee is invited to take a view. Mention is also made within the Annex of the representations submitted at the end of the last Committee meeting in August.
- 5.3 There are some broad themes which are common across the representations which relate to, amongst other matters, cost, installation, privacy, enforcement, exemptions, and data access. A meeting was held on 19 October 2018 with a number of trade representatives at which further matters were raised including ownership of data; recording if the car is being used as a private vehicle; camera viewpoints for larger vehicles; use of the panic button; access to the data by operators and whether CCTV will be required for temporary replacement vehicles.
- 5.4 The officers response to the themes raised are set out in Annex 2 to this report. It is however acknowledged that in some cases it has not been possible at this stage to give a full response and this is addressed in paragraphs 7.1 and 7.2 of the report.

6. GDPR and the control of data

- 6.1 A key consideration regarding the installation of CCTV, in licensed vehicles is the need to satisfy the requirements of the General Data Protection Regulations (GDPR) as enshrined in the Data Protection Act 2018.
- 6.2 The requirements include identifying an appropriate lawful basis for processing personal data as well as providing individuals with the information to which they are entitled under their right to be informed. The Council must assess whether the personal data collected is proportionate and necessary to the purpose for which it is collected. The Information Commissioner's Office (ICO) has produced a draft code in relation to CCTV recording and this code makes reference to a decision notice issued by the ICO in which additional audio recording in a licensed vehicle was deemed to be disproportionate. Audio recording by way of a panic button has however been permitted.
- 6.3 In relation to the installation of CCTV in licensed vehicles, the specific purpose for collecting and retaining CCTV data is to ensure public safety; it is considered that this is a specific and legitimate reason for collecting the data. The reason for CCTV must be clear to any individual entering a licensed vehicle and therefore signage is essential, this would involve providing access to key privacy information on appropriate signage placed within the vehicle. The signage in the taxi may also refer back to the Council's website where further more detailed information is held on the justification for the data collection.
- 6.4 The Council must consider whether the requirement to install CCTV is proportionate and whether it could be done a different way. The Council has examined its own recorded crime/incident records and anecdotal evidence including from its partners and is satisfied that there are sufficient concerns to warrant further detailed work on the introduction of CCTV.
- 6.5 In relation to the ownership of data, whilst the driver is collecting the footage and has the means of storing it, the Council has determined the purposes for which it is collected and the way it is processed and therefore the Council is the data controller. As such the

Council is also ultimately responsible for any breaches or non-compliance by data processors who process the data on their behalf. As data controller the Council will need to maintain records of its data processing activities, a complete record of what data is held, where it came from, and how it is processed and agree the necessary protocols for the handling of such data. It will need to exercise a significant degree of control to minimise the risk of any data being tampered with. The retention of any footage will necessitate a data retention policy. The responsibilities placed on the Council as data controller are considerable and require further detailed investigation to ensure that any system installed is fully compliant with the relevant codes.

7. Conclusions

- 7.1 Many of the concerns raised both in the representations and at the trade meeting cannot be properly addressed until the matters around data protection have been further investigated. This work is essential prior to the Committee being able to make an informed decision regarding CCTV in licensed vehicles. Further discussions are required to be undertaken and concluded with the ICO and other relevant parties. Following this a full report will be submitted to the Committee. In order to allow this important work to be undertaken whilst enabling the remainder of the Policy to be implemented, it is proposed that the Policy, with the exception of Appendix 1, be recommended to full Council for adoption and implementation.
- 7.2 The Council's commitment to the introduction of CCTV is mentioned in the Policy and it is proposed that, if the Committee wishes in principle to proceed with the introduction of CCTV into licensed vehicles, additional wording be included within the Policy to confirm that CCTV is also sought as a measure to protect the public.

8. Equality, Diversity and Human Rights implications

- 8.1 The draft Policy has been developed in accordance with, and taken account of, all relevant legislation and national and local strategies.

9. Strategic Plan References

- 9.1 The Policy aims to contribute to the Council's vision of the Borough by ensuring that the licensed trade plays a significant role not only in the Borough's transport strategy but also in helping to promote Colchester and thereby enhancing our reputation as a destination and encouraging further investment.

10. Publicity Considerations

- 10.1 The draft revised policy was the subject of an extensive consultation process.

11. Financial Implications

- 11.1 There may be costs incurred in defending any action brought against the Council which seeks to judicially review the policy. There will be a cost for the Council being the data controller and also the Council would be financially liable in the event of a breach of the data protection requirements.

12. Community Safety Implications

- 12.1 The policy deals with the protection of children and vulnerable adults.

13. Health and Safety Implications

13.1 There is no known direct public health and safety issues which might arise from the adoption of the revised Policy.

14. Risk Management Implications

14.1 A flexible yet robust revised Policy will continue to provide both the Council with a sound basis for decision making.