

For publication

**Hackney Carriage and Private Hire Licensing Policy -
Amendments (A410)**

Meeting: Appeals and Regulatory Committee

Date: 28 June 2017

Cabinet portfolio: Health and Wellbeing

Report by: Licensing Manager

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1 PURPOSE OF REPORT

- 1.1 To review proposed amendments to the Hackney Carriage and Private Hire Licensing Policy following a period of consultation on:
- 1.2 Disclosure and Barring Service (DBS) checks;
- 1.3 Access for wheelchair users; and
- 1.4 Security/CCTV cameras in licensed vehicles

2 RECOMMENDATIONS

- 2.1 Applicants for a new or renewed licence requiring a DBS check to use the DBS update service only.
- 2.2 The council maintains a list of designated wheelchair accessible vehicles, thereby requiring the drivers of such vehicles to provide assistance to those passengers and prohibit them from charging more for the journey.
- 2.3 If CCTV is fitted in a Chesterfield licensed hackney carriage or private hire vehicle then it must comply with the current version of the Home Office

‘Surveillance Camera Code of Practice’ or equivalent document. Any such system must not be on continuous audible recording.

3.0 REASON FOR RECOMMENDATIONS

3.1 The amendments will enhance public safety and ensure compliance with new legislation.

4.0 BACKGROUND

4.1 These proposals were brought before the committee on 15 March 2017 together with measures on the Immigration Act 2016 and driving assessments. The measures on the Immigration Act and driving assessments were implemented immediately but the remainder have been consulted on for three months.

4.2 The consultation involved a letter sent to all licensed drivers and operators, an in depth discussion at the meeting of the taxi consultative meeting on 19 April 2017, direct contact through the customer service centre and information placed on the council’s website.

4.3 The original proposal on DBS recommended annual, as opposed to three-yearly, checks, but this has been amended to the update service in light of feedback received during the consultation from safeguarding officers and advice from the DBS itself. Many other authorities are now adopting the update service.

4.4 Trade representatives at the consultative meeting were supportive of all the measures and one response was received in respect of CCTV recording.

4.5 The proposed amendment on CCTV recording was made by the council’s Information Assurance Manager, Mr Tony Smith, and made reference to the case of ‘Information Commissioner against Southampton City Council (EA/2012/0171)’. The representation seeks to show that the above ruling is not binding on Chesterfield licensed drivers as the council does not, unlike Southampton, mandate the fitting of CCTV. A copy of the letter is attached at appendix A.

4.6 Guidance has been sought from both Mr Smith and the council’s solicitor, Mr Oliver, who advise that the principles of the decision in the Southampton case apply regardless of who is the data controller and regardless of whether there is a requirement imposed by a council for

CCTV. In Chesterfield's case, the data controller will be either the driver, owner of the vehicle or operator and if they choose to have CCTV.

- 4.7 As such, the policy amendments recommended in this report are legally correct. If approved, officers will remind drivers and operators who are data controllers of their personal responsibility to register with the Information Commissioner's Office.

5.0 THE PROPOSALS

5.1 Disclosure and Barring Service (DBS)

- 5.2 The current policy requires a new DBS every three years from applicants who have been conviction free for a period of five years, and annually if the applicant has a conviction within the last five years that attracts five or more penalty points.

- 5.3 Concern has grown over the length of time between DBS checks and the danger this may place on the public. Safeguarding professionals and the DBS now recommend the update service, an online subscription that enables applicants to keep their DBS certificate up to date and allows employers to check a certificate online, with consent, at any time. The certificate can be used for other positions in the same workforce where the same type and level of check is required, provided the annual subscription of £13 is paid.

5.4 Access for wheelchair users

- 5.5 Parts of the Equality Act 2010 have recently been commenced by the government to require drivers of 'designated accessible vehicles' to provide assistance to wheelchair passengers and prohibits them from charging extra for the service. A 'designated accessible vehicle' is defined as being capable of carrying a passenger in a wheelchair.

- 5.6 For these provisions to take effect licensing authority must maintain a designated list of wheelchair accessible vehicles.

- 5.7 Exemptions are available to the requirement to carry wheelchair passengers, but only on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with the rules. Otherwise it is a criminal offence to not comply with these requirements.

- 5.8 The council currently requires all but 30 (120) of our hackney carriage vehicles to be wheelchair accessible to this level. There are also a number of private hire vehicles that are wheelchair accessible.

- 5.9 These provisions of the Equality Act 2010 are already enshrined in council policy but this amendment will allow a prosecution to be considered if appropriate.
- 5.10 **Security/CCTV cameras**
- 5.11 The council policy already makes provision for the use of CCTV in licensed vehicles but our Information Assurance Manager has advised it needs to be more robust.
- 5.12 CCTV systems must be targeted and not on continuous audible recording.
- 5.13 The use of surveillance cameras in licensed vehicles must comply with the current Home Office guidance and code of practice.

6.0 OPTIONS

6.1 DBS checks

6.2 A DBS check has no official expiry date. Any information included will be accurate at the time the check was carried out. It is for the council to decide if and when a new check is needed.

6.3 The DBS update service is the preferred process by safeguarding professionals, the school transport service and DBS itself for ensuring public safety.

6.4 Access for wheelchair users

6.5 The council has the discretion whether or not to comply with section 167 of the Equality Act, although government advice is that they should do.

6.6 Without the list as required by section 167, section 165 cannot be prosecuted through the courts if necessary.

6.7 Security / CCTV cameras

6.8 There have been a number of developments since the council's policy first included mention of security/CCTV cameras.

6.9 Our policy should reflect the judgement of the Information Commissioner against Southampton City Council (appeal no: EA/2012/0171) that CCTV fitted in licensed vehicles must not be on constant audio record.

7.0 EQUALITIES IMPACT ASSESSMENT

- 7.1 A full equalities impact assessment has not been completed but the impact of these changes on minority groups will be minimal.

8.0 RISK MANAGEMENT

- 8.1 A full risk management assessment has not been completed but these measures will all enhance public safety.

9.0 RECOMMENDATIONS

- 9.1 Applicants for a new or renewed licence requiring a DBS check to use the DBS update service only.
- 9.2 The council maintains a list of designated wheelchair accessible vehicles, thereby requiring the drivers of such vehicles to provide assistance to those passengers and prohibit them from charging more for the journey.
- 9.3 If CCTV is fitted in a Chesterfield licensed hackney carriage or private hire vehicle then it must comply with the current version of the Home Office 'Surveillance Camera Code of Practice' or equivalent document. Any such system must not be on continuous audible recording.

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