

PUBLIC PROTECTION COMMITTEE: 6 November 2018

Report of the Head of Shared Regulatory Services

**CONSIDERATION OF THE USE OF DARKENED GLASS IN RESPECT OF
LICENSED VEHICLES**

1. Background

- 1.1 At its meeting of 3 July 2018 the Committee considered a report in relation to whether the vehicle licence condition restricting the use of darkened glass should be removed. Cardiff Council is one of only a few local Authorities in Wales that has such a requirement. The condition states:

Windscreen & Windows

To be in a good clean condition and free from damage. The windscreen must allow at least 75% of light to pass through with all other windows allowing 70% of light to pass through.'

- 1.2 The Committee resolved to allow the use of darkened glass (glass that lets less than 70% of light to pass through) that is manufacturer fitted in licensed vehicles, provided that a Council approved interior CCTV system was in place.
- 1.3 A subsequent report was considered by Committee at its meeting of 7 August 2018. The report explained the need to ensure that any approved CCTV system complies with all legal requirements, and as a result the Committee resolved to delay implementation of the change of vehicle licence condition until approval of a CCTV specification criteria.
- 1.4 Having reviewed Information Commissioners Office (ICO) and Home Office guidelines on the use of CCTV, Officers feel that further consideration of the condition outlined in paragraph 1.2 is required to ensure it is lawful.

2. ICO Guidelines.

- 2.1 The ICO's 'Data Protection Code of Practice for Surveillance Cameras and Personal Information' was developed to explain the legal requirements affecting the use of CCTV systems and to promote good practice.
- 2.2 The Code states that a privacy impact assessment should be undertaken and that the assessment should be based on reliable evidence and show whether the proposed CCTV can be justified as proportionate to the needs identified.

2.3 At its July meeting the Committee considered that the potential increased risk to the safety of the public/driver by removing the darkened glass restriction warranted the use of mandatory CCTV.

2.4 It was stated in the July Committee report that there was no evidence available to indicate that removing the darkened glass condition would increase safety concerns. An Inspector from South Wales Police was quoted saying:

'I don't believe that we have any evidence based/analytical work done on offences or safety concerns around darkened glass. I think because of this and that it will be fitted during the manufacturing stage it would be difficult to raise any valid objections.'

The July report is detailed in Appendix A for further information.

2.5 The ICO has recently reviewed the policy of a number of Councils where CCTV systems have been mandated as part of the conditions of a licence. It has been made clear that there needs to be a strong evidential base to justify the Policy and that the Policy must be reviewed regularly, especially where audio recording is being used in addition to cameras.

2.6 The law is also clear that the use of CCTV and audio in taxis must be proportionate to the risk presented, and councils will need to set out a clear justification of why they believe there is a need for visual and audio recording if applicable.

2.7 Detailed work looking at the use of CCTV across all licensed vehicles is yet to be undertaken. Any such work would require an evidential basis as part of the privacy impact assessment. However, there is no evidence at present to support the mandatory requirement of CCTV in vehicles with darkened glass. This requirement could result in the use of CCTV in these circumstances as being viewed by the ICO as disproportionate and open to legal challenge.

3. Consultation

3.1 The trade consultation procedure was undertaken in accordance with the consultation procedure on any policy matters. The draft reports intended for consideration were made available at the licensing offices for any interested party to provide written submissions. Details of consultation responses are found in Appendix B.

4. Achievability

4.1 This report contains no equality personnel or property implications.

5. Legal Implications

- 5.1 Sections 48 (1) (a) (i) (iv) and (v) of the Local Government (Miscellaneous Provisions) Act 1976 stipulate that the Council shall not grant a private hire vehicle licence unless it is satisfied that the vehicle is suitable in type size and design for use as a private hire vehicle, safe and comfortable. Further, if a licence is granted the Council may attach such conditions to it as it considers to be reasonably necessary.
- 5.2 Under section 47 of the Act the Council may attach to the grant of a Hackney Carriage licence such conditions as it may consider reasonably necessary. The range of conditions is wide and can therefore encompass safety, comfort and design.
- 5.3 Applicants have the right of appeal to the Courts against the refusal of a licence or conditions attached to a licence. Council policies may be challenged by way of judicial review.
- 5.4 Legal implications in relation to data protection issues are found throughout the body of this Report. In particular the Code of Practice issued by the Information Commissioner's Office must be given considerable weight. Any condition relating to CCTV which cannot be justified as proportionate to identified needs is vulnerable to legal challenge. Assessments must be based on reliable evidence. As there is no such evidence available it is not possible to impose a condition requiring CCTV at the present time.

6. Financial Implications.

- 6.1 There are no financial implications arising directly from this report.

7. Recommendation

- 7.1 It is recommended that the Committee resolve to either:

a) Remove the hackney carriage & private hire vehicle licence condition stated in paragraph 1.1 (relating to darkened glass) and replace with:

'Windscreen & Windows

'To be in a good clean condition and free from damage. All windows must comply with relevant legislation in respect of light transmission. Only original vehicle manufactured tints are permitted on the rear windows. '

Or;

b) Retain the hackney carriage & private hire vehicle licence condition stated in paragraph 1.1 (relating to darkened glass)

8. Reasons for Recommendation

8.1 To ensure that any conditions made in respect of vehicle licence conditions remain lawful.

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HEAD OF SHARED REGULATORY SERVICES

1 October 2018

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: Report of the Head of Shared Regulatory Services: ' *Consideration of the Use of Darkened Glass in Respect of Licensed Vehicles* '. 3 July 2018

Report of the Head of Shared Regulatory Services: ' *CCTV Systems in Licensed Vehicles* ' 7 August 2018

APPENDIX A