

Licensing Committee

Thursday, 22nd March, 2012
at 9.30 am

PLEASE NOTE TIME OF MEETING

Conference Room 3 - Civic
Centre

This meeting is open to the public

Members

Councillor Parnell (Chair)
Councillor Drake
Councillor McEwing
Councillor Osmond
Councillor Rayment
Councillor Thomas
Councillor Willacy
Councillor Mrs Blatchford
Councillor Cunio
Councillor Fuller
Councillor Holmes
Councillor B Harris
Councillor Vassiliou

Contacts

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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 Seven Priorities

- More jobs for local people
- More local people who are well educated and skilled
- A better and safer place in which to live and invest
- Better protection for children and young people
- Support for the most vulnerable people and families
- Reducing health inequalities
- Reshaping the Council for the future

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 2011/12

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 Interests

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

Personal Interests

A Member must regard himself or herself as having a personal interest in any matter:

- (i) if the matter relates to an interest in the Member's register of interests; or
- (ii) if a decision upon a matter might reasonably be regarded as affecting to a greater extent than other Council Tax payers, ratepayers and inhabitants of the District, the wellbeing or financial position of himself or herself, a relative or a friend or:-
 - (a) any employment or business carried on by such person;
 - (b) any person who employs or has appointed such a person, any firm in which such a person is a partner, or any company of which such a person is a director;
 - (c) any corporate body in which such a person has a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in Article 14(a) to (e) in which such a person holds a position of general control or management.

A Member must disclose a personal interest.

Prejudicial Interests

Having identified a personal interest, a Member must consider whether a member of the public with knowledge of the relevant facts would reasonably think that the interest was so significant and particular that it could prejudice that Member's judgement of the public interest. If that is the case, the interest must be regarded as "prejudicial" and the Member must disclose the interest and withdraw from the meeting room during discussion on the item.

It should be noted that a prejudicial interest may apply to part or the whole of an item.

Where there are a series of inter-related financial or resource matters, with a limited resource available, under consideration a prejudicial interest in one matter relating to that resource may lead to a member being excluded from considering the other matters relating to that same limited resource.

There are some limited exceptions.

Note: Members are encouraged to seek advice from the Monitoring Officer or his staff in Democratic Services if they have any problems or concerns in relation to the above.

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 at
www.southampton.gov.uk/council/meeting-papers

1 APOLOGIES

To receive any apologies.

2 DISCLOSURE OF PERSONAL AND PREJUDICIAL INTERESTS

In accordance with the Local Government Act 2000, and the Council's Code of Conduct adopted on 16th May 2007, Members to disclose any personal or prejudicial 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 Committee Administrator prior to the commencement of this meeting.

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 14th July 2011 and to deal with any matters arising, attached.

5 TRADE REQUEST FOR VARIATION OF HACKNEY CARRIAGE FARES

Report of the Head of Legal, HR and Democratic Services for the Licensing Committee to consider a request for the variation of the table of fares for the hire of hackney carriages and to determine whether to proceed to public consultation, attached.

6 SEV'S CONSULTATION RESPONSE AND RECOMMENDATIONS TO COUNCIL

Report of the Head of Legal, HR and Democratic Services, seeking consideration for the adoption of the provisions for the licensing of sexual entertainment venues and the preliminary public consultation, attached.

7 HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS AND POLICY ON CAB CAMERAS

Report of the Head of Legal, HR and Democratic Services, requesting that the Committee authorises a consultation exercise on the review of the policy and condition with a report back to Committee in order to assess whether amendment of either is now necessary, attached.

Wednesday, 14 March 2012

HEAD OF LEGAL, HR AND DEMOCRATIC
SERVICES

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LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 14 July 2011

Present:

Members of the Council

Councillors Mrs Blatchford, Cunio, Drake, Fuller, B Harris, Holmes, Osmond, Parnell (Chair), Vassiliou and Willacy

Apologies

Councillors McEwing, Rayment and Thomas

1. ELECTION OF VICE CHAIR

RESOLVED that Councillor Willacy be elected as Vice-Chair for the 2011/12 municipal year.

2. MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)

RESOLVED that the minutes of the meeting held on 15th December 2010 be approved and signed as a correct record. . (Copy of minutes appended to the agenda and circulated with signed minutes).

3. LICENSING OF SEXUAL ENTERTAINMENT VENUES

The Committee considered the report of the Head of Legal and Democratic Services detailing amendments to the Local Government (Miscellaneous Provisions) Act 1982, introducing a new category of sex establishment – “sexual entertainment venues” and requesting authorisation to consult on whether to formally adopt the new statutory provisions. (Copy of report appended to the agenda and circulated with the signed minutes).

The following was noted:-

- (i) that representations on moral grounds to the nature and type of premises were not legitimate grounds for objection; and
- (ii) that although the Council had discretion to adopt the new provisions relating to sexual entertainment venues, if it determined that the SEV provisions would not be adopted, the legislation required that the Council carry out an extensive public consultation annually which would require considerable financial and staff resources.

RESOLVED that the Head of Legal and Democratic Services be authorised to consult with interested parties on the adoption of the provisions and bring a further report prior to submission to full Council in September 2011.

4. **LICENSING ENFORCEMENT POLICY**

The Committee considered the report of the Head of Legal and Democratic Services requesting that the proposed licensing enforcement policy be adopted. (Copy of report appended to the agenda and circulated with the signed minutes).

RESOLVED that the Committee adopt the proposed licensing enforcement policy, attached as appendix 1, with amendments, clarifying the content of the policy, with immediate effect.

5. **DELEGATION OF UNOPPOSED SEX ESTABLISHMENT LICENCE RENEWAL APPLICATIONS**

The Committee considered the report of the Head of Legal and Democratic Services requesting that the Committee delegate the renewal of unopposed sex establishment licence applications to the Head of Legal and Democratic Services. (Copy of report appended to the agenda and circulated with the signed minutes).

The following was noted:-

- (i) that the recommendation was made in the interests of efficiency and cost effectiveness; and
- (ii) any objection to the renewal of a sex establishment licence would result in the matter being reported to the Sub-Committee as at present.

Upon being put to the vote the following recommendation was carried:-

For - Councillors Parnell, Drake, Osmond, Willacy, Mrs Blatchford, Fuller, Holmes, Vassiliou

Against - Councillors Cunio and Harris

RESOLVED that the committee delegate the power to grant by way of renewal, **(but not to refuse, vary or transfer) unopposed** applications for sex establishment licences to the Head of Legal and Democratic Services with immediate effect.

Agenda Item 5

DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	TRADE REQUEST FOR VARIATION OF HACKNEY CARRIAGE FARES
DATE OF DECISION:	22 nd March 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Licensing Committee is asked to consider a request for the variation of the table of fares for the hire of hackney carriages and to determine whether to proceed to public consultation

RECOMMENDATIONS:

- (i) To consider and determine a request for the variation of the table of fares for the hire of hackney carriages in Southampton
- (ii) If the committee is minded to vary the table of fares to authorise the Head of Legal, HR and Democratic Services, to advertise any proposed variation in the table of fares.
- (iii) If the committee is minded to vary the table of fares, that, subject to consideration of any objections to the advertisement, the variation shall come into effect on 27th April 2012.

REASONS FOR REPORT RECOMMENDATIONS

1. The table of fares for the hire of hackney carriages in Southampton was last revised with effect from 29th December 2010.
2. Three bodies representing parts of the Southampton taxi trade, Southampton UNITE Cab Branch, Southampton Taxi Association and Southampton Hackney Association, have jointly submitted the request for variation of the table of fares as "Combined Taxi Trade".
3. The ability to submit a request for the variation of hackney carriage fares is not reserved to any particular element of the city's hackney carriage trade and proposals can be submitted at any time. It is for the committee to determine whether or not to proceed to consult on any such proposal.

DETAIL (Including consultation carried out)

4. The table of fares for hackney carriages, last varied by the city council with effect from 29th December 2010, is set out in appendix 1.
5. The Combined Taxi Trade's proposals and justification for the proposed variation of the table of fares is set out in appendix 2
6. A draft table of fares showing the effect of the proposals is set out in appendix 3.
7. It is important to note that the table of fares only relates to the hire of

hackney carriages licensed by the city council for the part of any journey within the city, and charges may only be made in accordance with the table of fares. The basis for the charge for any part of a journey outside the city boundaries must be agreed with the passenger before the commencement of the journey.

8. As a matter of law, the level of fares for the hire of private hire vehicles cannot be controlled by the city council; the basis for the fare for the hire of such vehicles must be agreed with passengers before the commencement of each journey. Many proprietors and drivers of private hire vehicles choose to follow the hackney carriage table of fares in charging their customers, but a significant proportion do not.
9. The existing and proposed tariffs represent the maximum fares that may be lawfully charged for the hire of hackney carriage within the Southampton.
10. If the committee is minded to vary the tariffs as shown in appendix 3, it should be noted that any proprietor or driver of a licensed hackney carriage might lawfully charge lower fares if they so wish, but may not exceed the tariffs set by the council or charge for items not appearing on the table of fares. A copy of the table of fares must be exhibited in every licensed hackney carriage, and drivers and proprietors are provided with a copy of table of fares for that purpose by the Licensing Team.
11. In summary, the effect of the Combined Taxi Trade's proposals is to vary the initial fares as follows:
 - for a day-time hiring from £2.40 to £2.50
 - for a night-time hiring from £3.20 to £3.40
 - for a day-time hiring on Sundays, Bank Holidays and 1st January from £3.40 to £3.50
 - for a hiring at Christmas from £3.60 to £5.00
 - for an evening/early morning hiring at New Year from £4.80 to £5.00
 - to impose an additional charge for the carriage of more than four passengers of £2.00 per hiring
 - to decrease the unit of charge for hiring by time ("waiting time") from 45 seconds to 36 seconds
 - to impose a charge equivalent to 10% of the metered fare for payment by debit or credit cards
12. It is proposed for all hirings that the basis of calculation for distance travelled will remain at 110 metres (120 yards) for the first 440 metres (481 yards) but that thereafter, the distance increment shall reduce from 212 metres (232 yards) to 205 metres (224.2 yards).
13. There are no proposals to change the £0.20 increment in the existing fare structure, which adds £0.20 to the initial fare of £2.50 for every 110 metres (120 yards) travelled, up to 440 metres (481 yards) (a total fare of £3.10); thereafter £0.20 is added to the fare for every 205 metres (224 yards) (currently 212 metres (232 yards)) travelled.
14. The Combined Taxi Trade proposes that the unit of "waiting time" (the basis of calculation of fares by time) should be reduced from 45 seconds to 36

seconds, and effective rate of increase of 25 %

15. The Combined Taxi Trade also proposes that an additional charge of £2.00 per hiring should be made where more than four passengers are carried.

16. These proposals would result in the following variations in fares for example distances travelled:

Miles	1	3	5	10	Time
<i>(Kilometres)</i>	<i>(1.61)</i>	<i>(4.83)</i>	<i>(8.05)</i>	<i>(16.09)</i>	<i>(per hour)</i>
Current daytime rate	£4.30	£7.20	£10.20	£17.80	£16.00
Proposed day (1-4 passengers)	£2.50	£7.50	£10.70	£18.50	£20.00
<i>Percentage increase</i>	<i>2.33%</i>	<i>4.00%</i>	<i>4.67%</i>	<i>3.78%</i>	<i>25.00%</i>
Proposed day (5-8 passengers)	£6.30	£9.50	£12.70	£20.50	£20.00
<i>Percentage increase</i>	<i>33.33%</i>	<i>24.21%</i>	<i>19.69%</i>	<i>13.17%</i>	<i>25.00%</i>
Current night-time rate	£5.45	£9.20	£12.95	£22.45	£20.00
Proposed night (1-4 passengers)	£5.55	£9.55	£13.55	£23.30	£25.00
<i>Percentage increase</i>	<i>1.80%</i>	<i>3.66%</i>	<i>4.43%</i>	<i>3.65%</i>	<i>25.00%</i>
Proposed night (5-8 passengers)	£7.55	£11.55	£15.55	£25.30	£25.00
<i>Percentage increase</i>	<i>27.81%</i>	<i>20.35%</i>	<i>16.72%</i>	<i>11.26%</i>	<i>25.00%</i>

17. There is no proposal to alter the basis of the fares charged for Sunday, Bank and Public Holiday journeys (commencing between 06:00 am and 11:00 pm), save that the underlying daytime rate (Tariff 1) is proposed to increase.

18. The Combined Taxi Trade proposes that the basis for the calculation Christmas tariff should be increased from the current 1 ½ times the daytime rate to twice the daytime rate. It is proposed that the basis for the calculation of the New year tariff should remain at twice the daytime rate.

19. It has come to the attention of the Licensing Team that facilities are being offered by some hackney carriage drivers and proprietors for payment of fares by debit and credit cards. It is understood that a charge is made by the providers of those facilities to the vehicle owner/driver for each transaction made.

20. Such a charge cannot lawfully be demanded of the hirer of the hackney carriage without there being provision for the charge in the table of fares. The Combined Taxi Trade proposes that an additional charge amounting to 10% or the metered fare should be made for all debit or credit card payments.

21. No proposals have been submitted to amend the soiling charge, currently £70.00.

22. Members will be aware that many taxi drivers and proprietors make a boundary charge for vehicles making journeys outside the city boundaries. Such charges cannot be controlled by the table of fares, as they relate to the

portion of the journey outside the city boundaries but must be the subject of a contract between the vehicle proprietor or their agent and the hirer, agreed before the commencement of the journey.

23. This report represents the first step in a process of determining the proposals. Members have discretion in varying the table of fares, and need not be bound by the request submitted on behalf of the trade. In addition, Members cannot fetter their discretion by agreeing future fare structures or formulae for them now.
24. The legislation prescribes a procedure which consists of a determination by the committee of the variation of the table of fares and the advertisement of the proposal in a newspaper circulating in the area.
25. A minimum period of 14 days must be allowed from the date of the advertisement for the receipt of written representations and objections. It is recommended that a period of 14 days be given for objections
26. The committee must then consider any objections made and determine whether to confirm the varied table of fares, with or without modifications.
27. If the committee is minded to vary the table of fares, any objections will be brought to a meeting of the committee on 31st May 2012, but, if no objections are received, the Head of Legal, HR and Democratic Services recommends any variation should come into force on the 27th April 2012.
28. Members will be aware that, following their decision, arrangements will need to be made by the Licensing Team and the suppliers of taximeters and their agents for the variation to be effected, fare charts printed and arrangements also need to be confirmed for checks on meters installed in licensed vehicles.
29. Representatives of the recognised trade representative organisations have been invited to attend the committee's meeting but whilst it considered appropriate for the proposer to address the committee at this stage it is recommended that all representations from the trade and public be considered after advertisement, should the committee be minded to proceed to that stage.
30. The committee has discretion in law to determine the fares for the hire of hackney carriages in Southampton, subject to a duty to act reasonably.
31. Subject to the committee's views today, the timetable for the implementation of the proposals could be as follows: -

22 nd March 2012	committee's consideration and decision
30 th March 2012	newspaper advertisement
13 th April 2012	close of objection period (14 days)
27 th April 2012	new table of fares in force if no objections made
31 st May 2012	committee – consideration of any objections
14 th June 2012	if agreed, new table of fares in force

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

32. None are appropriate

RESOURCE IMPLICATIONS

Capital/Revenue

33. Not applicable

Property/Other

34. The work involved for the Licensing Team in bringing a variation of the table of fares into effect and in arranging for the testing of taxi meters must be contained within existing resources and budgets. There is no power to make and separate charge for this process.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

35. Section 65 Local Government (Miscellaneous Provisions) Act 1976 gives the Licensing Committee power to determine hackney carriage fares. The power is not delegated to officers.
36. Section 17 Crime and Disorder Act 1998 places the council under a duty 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.
37. The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the council that could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the council which affect another's' rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations

Other Legal Implications:

38. The Council would be acting beyond its powers if it were to seek to fetter its discretion by fixing the period of review for fares or by fixing a particular formula for any future variations of fares
39. However, this does not preclude individuals or a trade association from making requests for variation, or from producing whatever evidence they think fit in support of any proposal.
40. If no objections are made to the proposals following the advertisement, the varied table of fares could come into force at the end of the period specified in the Notice mentioned above, or if objections were made, on such other date fixed by the committee. This must be no later than two months after the last date for making objections.

POLICY FRAMEWORK IMPLICATIONS

41. The decision to determine the application in the manner set out in this report is not contrary to the council's policy framework

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Current table of fares	
2.	Combined Taxi Trade's proposals and justification	
	Draft table of fares showing the effect of the proposals	

Documents In Members' Rooms

1.	None.
2.	

Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	Combined Taxi Trade's proposals and justification (published as appendix 2).	
2.		

Integrated Impact Assessment and Other Background documents available for inspection at: Licensing office, Southbrook Rise, Southampton

WARDS/COMMUNITIES AFFECTED:	Not applicable
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EXISTING MAXIMUM TABLE OF FARES

inclusive of VAT (where applicable)

Passengers are only obliged to pay the fare shown on the meter except where a surcharge for journeys ending outside the city has been agreed before the hiring commences

1. **TARIFF 1 – Daytime** – Except as in Tariffs 3, 4 and 5 below, for any hiring begun after 6.00 a.m. and before 11.00 p.m. on any day
Fare for Distance

(a) For the first 110 metres (120.3 yards) or part thereof	£2.40
(b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards)	£0.20
(c) For each subsequent 212 metres (231.85 yards) or part thereof thereafter	£0.20

Waiting Time – For each period of forty-five seconds or part thereof £0.20
2. **TARIFF 2 – Night-Time** – Except as in Tariffs 4 and 5 below, for any hiring begun after 11.00 p.m. and before 6.00 a.m. on any day
Fare for Distance

(a) For the first 110 metres (120.3 yards) or part thereof	£3.20
(b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards)	£0.25
(c) For each subsequent 212 metres (231.85 yards) or part thereof thereafter	£0.25

Waiting Time – For each period of forty-five seconds or part thereof £0.25
3. **TARIFF 3 – Sundays, Bank Holidays and New Year** – Except as in Tariff 4 below, for any hiring begun after 6.00 a.m. and before 11.00 p.m. on a Sunday, Good Friday, a Bank or Public Holiday, or 1st January, Tariff 1 above plus a surcharge, per hiring, of £1.00
4. **TARIFF 4 – Christmas** – For any hiring begun after 11.00 p.m. on the 24th December and before 6.00 a.m. on the 27th December 1.5 times the rate of Tariff 1
5. **TARIFF 5 – New Year** – For any hiring begun after 11.00 p.m. on the 31st December and before 6.00 a.m. on the 1st January Twice the rate of Tariff 1
6. **ITCHEN BRIDGE TOLLS**
 If any hiring involves crossing the Itchen Bridge, and a toll is payable, there shall be added to the fare a sum equivalent to the toll paid
7. **SOILING CHARGE**
 If the hackney carriage is soiled by a passenger or an animal £70.00

Licensing Team

PO Box 1344

Southampton SO15 1WQ

Email: licensing@southampton.gov.uk

Internet: www.southampton.gov.uk/licensing

MARK R. HEATH

Solicitor to the Council

29th December 2010

Any complaints about the hiring of this vehicle or the conduct of the driver should be sent in writing to the Licensing Team at the address above, where possible quoting the licence number of the vehicle and driver

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Southampton's Combined Taxi Trade's Proposed Variation of the Hackney Carriage Table of Fares

September 2011

Southampton's Combined Taxi Trade that represents the Southampton Trade Association (STA), Southampton Hackney Association (SHA) and the Unite Union Cab Section is requesting the following increase to the Southampton City Council Table of Fares.

The pressures on the Taxi Trade has been severely increased over the intervening months since the last fare increase from increasing fuel prices, repair costs, insurance premiums and licensing costs on top of the numerous increases in general services and expenses.

From the ONS www.statistics.gov.uk the Retail Price Index (RPI) was 5.0% in June and July but rose to 5.2% in August. The Consumer Price Index (CPI) was 4.2% in June, 4.4% in July and 4.5% in August. Fuel prices may have slightly reduced this last month but Insurance premiums have accelerated beyond belief.

These increases are having a massive effect on the Trades ability to operate and although the members of the Trade know that there are increases that we all have to bear in this present financial climate they feel it is necessary to have a small but relevant increase in the current tariff just to be able to continue in business.

The tariff variation the Combined Taxi Trade is proposing will increase the overall cost of a journey by approximately 3.3% no matter how far the journey travels. Also because the fare variation has been constructed to make only a small change to the current tariff structure very little has to be done to verify compliance of the taximeters. The trade was, and will, work towards simplifying the structure even further in the future but to do that at the moment would mean a fare structure that would not be easily understood and would have a negative impact on the travelling public.

The proposed fare structure for 2011 is that the initial displayed fare during the Day Time Tariff (Tariff 1) should be increased by 0.10p to £2.50 followed by the current four 110 metre drops of £0.20 and then every subsequent £0.20p drop would be reduced by 7 metres to 205 metres. The Night Time Tariff (Tariff 2) would follow the same drop sequence and the initial displayed fare would also be increased by £0.10p to £3.30 and each following drop will remain at £0.25.

The current waiting time has not changed since May 2004, some 7 years, and it is therefore proposed to increase the charge from £16.00 to £20.00 an hour. The Sunday and Bank Holiday Tariffs would remain at Tariff 1 plus £1.00. The Trade also propose that the previous Tariff for Christmas be restored with the double rate of Tariff 1 to apply from 20.00 on Christmas Eve to 06.00 on the 27th December and from 20.00 on New Year's Eve to 06.00 on New Year's Day. The New Year's Day Tariff would remain at Tariff 1 plus £1.00 and the soiling charge would also stay the same.

Members of the Trade with the larger multi seat vehicles are always faced with larger repair, maintenance and tyre bills as well as higher fuel costs which reduce the vehicles economy when they are transporting more than 4 passengers. Therefore the Trade propose that an additional charge be included on the Tariff Chart of £2.00 for vehicles that are carrying more than 4 passengers. Only vehicles with the capacity to carry more than 4 passengers will have their taximeters set to allow this charge to reduce to possibility of abuse.

Because of the extra pressures on the members of the Trade many are looking toward other facilities and services they can offer their passengers. They want to

APPENDIX 2

expand the City's profile for business travellers as well as the ordinary members of public. One facility that is constantly asked for is the ability of a driver to accept credit or debit card payments. There are Companies willing to hire or sell terminals to the drivers but to cover those Companies operational costs and fraud risks they insist they have to add a Service charge to the transaction of 10%. On a small fare this does not amount to much and customers do not mind paying the charge but because it is an increase to the displayed fare on the taximeter the Trade propose this be added as an additional charge to the Tariff Chart.

Yours sincerely

Mr C Johnson

Chairman

On behalf of the Southampton's Combined Taxi Trade

APPENDIX 2

Southampton Combined Taxi Trade 2011 Fare Increase Proposal

PROPOSED MAXIMUM TABLE OF FARES inclusive of VAT where applicable

TARIFF 1 – Daytime – for any hiring begun after 6.00 a.m. and before 11.00 p.m.
except as in Tariffs 3 and 4 below

- | | |
|---|-------|
| (a) For the first 110 metres (120.3 yards) or part thereof: | £2.50 |
| (b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards): | £0.20 |
| (c) For each subsequent 205 metres (224.2 yards) or part thereof thereafter: | £0.20 |
| (d) Waiting Time – For each period of thirty-six seconds or part thereof: | £0.20 |

TARIFF 2 – Night-Time – for any hiring begun after 11.00 p.m. and before 6.00 a.m.
except as in Tariffs 4 and 5 below

- | | |
|---|-------|
| (a) For the first 110 metres (120.3 yards) or part thereof: | £3.30 |
| (b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards): | £0.25 |
| (c) For each subsequent 205 metres (224.2 yards) or part thereof thereafter: | £0.25 |
| (d) Waiting Time – For each period of thirty-six seconds or part thereof: | £0.25 |

TARIFF 3 – Sundays, Bank and Public Holidays

Except as in Tariff 4 below, for any hiring begun after 6.00 a.m. and before 11.00 p.m. on a Sunday, Good Friday, a Bank or Public Holiday, or 1st January, Tariff 1 above plus a surcharge, per hiring, of: £1.00

TARIFF 4 – Christmas and New Year's Eve

For any hiring begun after 8.00 p.m. on the 24th December and before 6.00 a.m. on the 27th December or begun after 8.00 p.m. on the 31st December and before 6.00 a.m. on the 1st January: Twice the rate of Tariff 1

Additional Charges

MORE THAN 4 PASSENGERS – If more than four passengers are carried, £2.00 per hiring

CARD PAYMENT – If payment is made by credit or debit card, a sum equivalent to 10% of the metered fare shall be added to the fare

ITCHEN BRIDGE TOLLS – If a toll is payable for crossing the Itchen Bridge, a sum equivalent to the toll paid.

SOILING CHARGE – If the hackney carriage is soiled by a passenger or an animal: £70.00

JUNE INFLATION FIGURES

RETAIL PRICE INDEX (RPI) - 5.0% (down from 5.2% in May) CONSUMER PRICE INDEX (CPI)- 4.2% (down from 4.5% in May) BREAKDOWN OF KEY RPI STATISTICS ANNUAL RATE

Housing 1.5% Petrol & Oil 15.4%
Vehicle tax & Insurance 20.2% Rail Fares 7.4%
Food 7.3%

Oil & other foods 30.2% Clothing & footwear 10.9% Motoring costs 8.7%
Household consumable 6.1%

Source: ONS www.statistics.gov.uk

INFLATION FORECASTS (RPI) ANNUAL RATE

Quarter 2 2011 5.0% Quarter 3 2011 5.0% Quarter 4 2011 5.1% Quarter 1 2012 3.7% Quarter 2 2012 3.5% Quarter 3 2012 3.5% Quarter 4 2012 3.4%

Source: IDS Pay Report June 2011

JULY INFLATION FIGURES

RETAIL PRICE INDEX (RPI)- 5.0% (no change from June) CONSUMER PRICE INDEX (CPI)- 4.4% (up from 4.2% in June) BREAKDOWN OF KEY RPI STATISTICS ANNUAL RATE

Housing 1.5% Petrol & Oil 14.5%
Vehicle tax & Insurance 21.4% Rail Fares 9.7%
Food 6.4%

Oil & other fuels 28.5% Clothing & footwear 12.2% Motoring costs 8.2%
Household consumable 6.3%

Source: ONS www.statistics.gov.uk

INFLATION FORECASTS (RPI) ANNUAL RATE Quarter 3 2011 5.4%

Quarter 4 2011 5.4%

Quarter 1 2012 4.2% Quarter 2 2012 3.8% Quarter 3 2012 4.1% Quarter 4 2012 3.9%

Source: IDS Pay Report June 2011



PROPOSED **MAXIMUM TABLE OF FARES** inclusive of VAT where applicable

Passengers are only obliged to pay the fare shown on the meter except where a surcharge for journeys ending outside the city has been agreed before the hiring commences

The driver must carry an assistance dog at no extra charge – Equality Act 2010, section 168

Any complaints about the hiring of this vehicle or the conduct of the driver should be sent in writing to the Licensing Team at the address below, if possible quoting the vehicle and driver licence numbers

TARIFF 1 – Daytime – for any hiring begun after 6.00 a.m. and before 11.00 p.m. except as in Tariffs 3 and 4 below

- | | |
|---|--------------|
| (a) For the first 110 metres (120.3 yards) or part thereof: | £2.50 |
| (b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards): | £0.20 |
| (c) For each subsequent 205 metres (224.2 yards) or part thereof thereafter: | £0.20 |
| (d) Waiting Time – For each period of thirty-six seconds or part thereof: | £0.20 |

TARIFF 2 – Night-Time – for any hiring begun after 11.00 p.m. and before 6.00 a.m. except as in Tariffs 4 and 5 below

- | | |
|---|--------------|
| (a) For the first 110 metres (120.3 yards) or part thereof: | £3.20 |
| (b) For the each subsequent 110 metres (120.3 yards) or part thereof to a maximum total distance travelled of 440 metres (481.2 yards): | £0.25 |
| (c) For each subsequent 205 metres (224.2 yards) or part thereof thereafter: | £0.25 |
| (d) Waiting Time – For each period of thirty-six seconds or part thereof: | £0.25 |

TARIFF 3 – Sundays, Bank and Public Holidays

Except as in Tariff 4 below, for any hiring begun after 6.00 a.m. and before 11.00 p.m. on a Sunday, Good Friday, a Bank or Public Holiday, or 1 st January, Tariff 1 above plus a surcharge, per hiring, of:	£1.00
--	--------------

TARIFF 4 – Christmas and New Year's Eve

For any hiring begun after 8.00 p.m. on the 24th December and before 6.00 a.m. on the 27th December or begun after 11.00 p.m. on the 31st December and before 6.00 a.m. on the 1st January:

Twice the rate of Tariff 1

Additional Charges

MORE THAN 4 PASSENGERS – If more than four passengers are carried, **£2.00** per hiring

CARD PAYMENT – If payment is made by credit or debit card, a sum equivalent to **10%** of the metered fare shall be added to the fare

ITCHEN BRIDGE TOLLS – If a toll is payable for crossing the Itchen Bridge, a sum equivalent to the toll paid.

SOILING CHARGE – If the hackney carriage is soiled by a passenger or an animal: **£70.00**

Licensing Team, PO Box 1344, Southampton SO15 1WQ
licensing@southampton.gov.uk – www.southampton.gov.uk/licensing

RICHARD IVORY
Head of Legal, HR & Democratic Services

Day Month 2012

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Agenda Item 6

DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	LICENSING OF SEXUAL ENTERTAINMENT VENUES
DATE OF DECISION:	22 MARCH 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

This report seeks consideration of the adoption of the provisions for the licensing of sexual entertainment venues and the preliminary public consultation.

RECOMMENDATIONS:

- (i) The Licensing Committee is requested to note the contents of this report, and
- (ii) Recommend to Council that consideration is given to the formal adoption of the legislation requiring sexual entertainment venues to be licensed, and
- (iii) If Council resolves to adopt the legislation, to set the date on which the licensing provisions will come into effect and to delegate:
 - the statutory function (to include the making of policy, standard conditions and the setting of fees) to the Licensing Committee, and
 - the power to determine applications made for sexual entertainment venue licences to the Licensing (General) Sub-Committee, and
 - the arrangements for publication of statutory notices and powers to approve applications for renewal where no valid objections have been received to the Head of Legal, HR and Democratic Services.

REASONS FOR REPORT RECOMMENDATIONS

1. The parts of the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") relating to sex establishments are adoptive, and the Council is required by the Policing and Crime Act 2009 (the "2009 Act") to consider whether or not to adopt the provisions relating to sexual entertainment venues ("SEVs").

DETAIL (Including consultation carried out)

2. The Licensing Committee considered a report from the Head of Legal and Democratic Services on 14th July 2011 regarding the adoption of the power to license sexual entertainment venues contained in the amended Local Government (Miscellaneous Provisions) Act 1982 and resolved that consultation be carried out regarding the adoption of those provisions. Notice of that consultation appeared in the Southern Daily Echo on 22nd November

2011 and on the City Council's web site. Operators of those premises identified as being potentially affected by the adoption of the provisions were notified individually. A copy of the consultation notice is attached at Appendix 1. At the close of the consultation period, five responses had been received, which are reproduced at Appendix 1.

3. Although the Licensing Act 2003 regulates the sale or supply of alcohol, regulated entertainment and/or late night refreshment, an effect of the adoption the SEV provisions would be to remove the requirement for regulated entertainment at SEV licensed premises to be authorised under the Licensing Act 2003.
4. The SEV provisions permit licensing authorities a wider discretion in regulating such premises than the 2003 Act allows, where determinations and conditions imposed are constrained by the statutory licensing objectives. However, it should be made clear that representations on moral grounds to the nature and type of premises are not legitimate grounds for objection.
5. The determination as to whether or not to adopt the SEV provisions is required to be made by Council. The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3rd July 1995.
6. Under the existing adopted provisions four licensed sex shops and no licensed sex cinemas currently have licences in Southampton.
7. If Council were to resolve to adopt the provisions, a further report would be brought to Licensing Committee detailing proposed conditions for any licences granted and setting out the steps which although the Council has discretion to adopt (or not) the new provisions relating the sexual entertainment venues, the legislation requires the Council to carry out an extensive public consultation annually and, if it determines that the new SEV provisions will *not* be adopted, publish detailed reasons why it does not intend to adopt those provisions on each occasion.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

8. None, since consideration of adopting the powers to license SEVs is a legal duty.

RESOURCE IMPLICATIONS

Capital/Revenue

9. If adopted, the additional officer workload and associated costs should be offset by additional fee income from applications. This will be kept under review.
10. If the new provisions were not adopted, there would be an ongoing unfunded resource implication for the annual consultation procedures above.

Property/Other

11. None.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

12. The 2009 Act amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6th April 2010, by introducing a new category of sex establishment called “SEVs” enabling local licensing authorities to adopt provisions for the regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas.
13. If Council decides not to adopt the provisions the legislation requires that the Council must consult local people, annually, in order to consider their views about whether it should make such a resolution.

Adoption Procedure

14. The adoption procedure is by a Council resolution. In considering such a resolution, Council may have regard to any recommendation made by the Licensing Committee. If Council decides to adopt the new provision it must state the date upon which the new regime is to come into effect which must be at least one month after the resolution is made. Council would be recommended to delegate to the Licensing Committee responsibility for establishing the detail of any policies and standard conditions, and thus sufficient time should be allowed for the Licensing Committee to determine these issues.
15. The licensing of SEVs is not a matter which can be determined by the Executive.
16. The notice must also state the general effect of the provisions adopted which will include:
- That sexual entertainment venues will be required to apply for a licence;
 - That there will be an opportunity for objections to be made to the grant, renewal, variation and transfer of licences; and
 - That licences may be granted; granted with conditions or refused.

Sexual Entertainment venues:

17. Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.

A sexual entertainment venue is defined as:

“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”

Relevant entertainment is defined as:

“Any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an

audience (whether by verbal or other means).”

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

18. In terms of considering what constitutes “relevant entertainment” each case must be judged on its merits, but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
19. However, the list above cannot be exhaustive and, as the understanding of the exact nature of these descriptions may vary, it should therefore merely be used as an indicator for certain types of entertainment. Ultimately, decisions on the licensing of individual premises as sexual entertainment venues will depend on the content of the entertainment provided and not on how it is described.
20. The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”. “Organiser” means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
21. The 1982 Act also sets out those premises that are not sexual entertainment venues. These are:
- Sex shops and sex cinemas
 - Premises which provide entertainment on an infrequent basis. These are defined as premises where –
 - a. No relevant entertainment has been provided on more than 11 occasions within a 12 month period
 - b. No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c. No such occasion has lasted longer than 24 hours.
 - Other premises or types of performances or displays exempted by an order of the Secretary of State.
 - Private dwellings with no public admittance

Transitional Provisions:

22. Transitional period

Should a local authority resolve that the new provisions will have effect in its area, the new legislation sets out a “transitional period” which will last for 12 months beginning with the date that the local authority resolves that the provisions will come into force in its area – this date would be known as “the

first appointed day”. Six months following the first appointed day will be known as the “second appointed day” and the day on which the transitional period ends will be known as the “third appointed day”.

These dates will vary across individual authority areas as it will be dependent upon when local authorities resolve to adopt the new provisions.

23. Existing operators

In order to allow sufficient time for existing operators to comply with the new regime (i.e. those operators who, immediately before the first appointed day, have a licence under the 2003 Act and lawfully use premises as a SEV) they will be allowed to continue to provide relevant entertainment until the third appointed day or until the determination of any application submitted before that time (including any appeal against the refusal to grant a licence), whichever is the later.

24. New applicants

New applicants are considered to be those persons who wish to use premises as a SEV after the first appointed day but do not already have a premises licence or club premises certificate under the 2003 Act or do have such a licence but have not taken any steps towards operating as such.

After the first appointed day, new applicants will not be able to operate as a SEV until they have been granted a sexual entertainment venue licence.

25. Determining applications received on or before the second appointed day

Applicants will be able to submit their application for a SEV from the first appointed day onwards. However, as the local authority is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the first appointed day and on or before the second appointed day shall be considered together. This is to ensure that applicants are given sufficient time to submit their application and that all applications received on or before the second appointed day are considered on their individual merit and not on a first come, first served basis.

26. No applications will be determined before the second appointed day. After this date the local authority must decide what, if any, licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the third appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

27. Determining applications received after the second appointed day

Applications made after the second appointed day shall be considered when they are made but only after all applications made before or on the second appointed date have been determined.

As in paragraph 27 above, licences granted to new applicants shall take effect immediately and licences granted to existing operators will take effect from the third appointed day or, if later, the date the application is determined.

Licensing Policies:

28. Local licensing authorities are not required to publish a licensing policy relating to sex establishments but can do if it wishes so long as it does not prevent any individual application from being considered on its merits at the time the application is made. A policy may include statements about where the local licensing authority considers a location for such venues to be appropriate or inappropriate. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality. Equally, the policy could give an indication of how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality. Different policies or separate sets of criteria may be applied in respect of different types of sex establishments. This may relate to distinctions between the operating requirements of different establishments for the fact that the location that the local authority considers appropriate for a sex shop may be different to that for a SEV.
29. At present, the policy of the Council relating to the licensing of sex establishments (shops and cinemas) is to consider each case on its individual merits.

Licensing Conditions:

30. If a local licensing authority has decided to grant a licence it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.
31. Examples of the matters that standard conditions may address can include, but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.
32. If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

Consideration of Adoption of New Powers by Council

33. It is intended that Council will consider whether or not to adopt the new licensing provisions at a future meeting. Should Council resolve to adopt the provisions then further recommendations will be made in respect of the following matters:
- 34.
- The date that the new regime will come into effect;
 - Delegation of the statutory function (to include the making of policy, standard conditions and the setting of fees) to the Licensing Committee;
 - Delegation of powers to officers to approve applications for renewal of

licences where no valid objections have been received;

- Arrangements for publication of statutory notices
- Preparation of proposed policy and standard conditions for consideration and approval by the Licensing Committee.

Other Legal Implications:

35. Section 17 of the Crime and Disorder Act 1998 places the Council under a duty 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
36. The Human Rights Act 1998 Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matters set out in this report must be considered in light of the above obligations

POLICY FRAMEWORK IMPLICATIONS

37. None.

AUTHOR:	Name:	John Burke, Licensing Manager	Tel:	023 8083 2306
	E-mail:	licensing.policy@southampton.gov.uk		

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Consultation of adoption and responses.
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Documents In Members' Rooms

1.	None.
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

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. Home Office Guidance relating to Sexual	

	Entertainment Venues	
2.		

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	Not applicable
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Southampton City Council

Local Government (Miscellaneous Provisions) Act 1982, section 2 and schedule 3

Consultation regarding the adoption of provisions controlling sexual entertainment venues

Southampton City Council intends to consider whether or not it should adopt the amended provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 insofar as they relate to the licensing of sexual entertainment venues.

The legislation defines a sexual entertainment venue as being:

“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”.

“Relevant entertainment” is any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

The following are *not* sexual entertainment venues for the purposes of the legislation:

- (a) sex cinemas and sex shops;
- (b) premises at which the provision of relevant entertainment has not taken place:
 - on more than eleven occasions in the past 12 months; and
 - on such occasions has not lasted for more than 24 hours; and
 - on such occasions has not begun within the period of one month beginning with the end of any previous occasion

Anyone who wishes to comment on whether the Council should adopt the provisions should put their comments in writing, before 20th December 2011, giving their name and address, to:

licensing.policy@southampton.gov.uk

or by post to:

The Licensing Team
Southampton City Council
PO Box 1344
Southampton
SO15 1WQ

Please note that all comments will be treated as being in the public domain and may be published as part of the decision making process.

For further information please see www.southampton.gov.uk/consultations

Dated 22nd November 2011

Richard Ivory
Acting Head of Legal, HR and Democratic Services

Responses to Consultation:

From Mr. Glenn Nicie, For Your Eyes Only Ltd.

Southampton City Council

Consultation Response

Adoption of the Provisions controlling Sexual Entertainment Venues (SEVs)

For Your Eyes Only Limited t/a

For Your Eyes Only
135-136 High Street
Southampton
SO14 2BR (FYEO)

Consultees are asked to comment on whether the Council should adopt the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982 so that it can control the licensing of SEVs.

As original founders and prominent members of the Lap Dancing Association, FYEO continue to maintain that such licensing is not necessary. It has demonstrated over the many years that it has held a Licence in Southampton (firstly under the Licensing Act 1964 and the Local Government (Miscellaneous Provisions) Act 1982 and now under the Licensing Act 2003) that properly controlled entertainment of this nature does not cause anti-social issues to those living or working in the area. This is confirmed in its other long standing operations in major towns and cities across Great Britain. If issues of crime and disorder, public nuisance, public safety or harm to children were caused by any such establishment, the Licensing Act 2003 provides adequate sanctions and controls. FYEO is proud to say that it has never been the subject of a refusal to renew under the former legislation, or review under the Licensing Act 2003, in respect of any of its sites.

FYEO is sensitive, however, to the views of some residents, especially in areas of high residential development, that an SEV may be inappropriate in such an area, and accepts that the Council is likely to be similarly sensitive if genuine views of this nature are aired by its residents.

As a responsible operator, it has no fear of the controls that can be exercised on SEV licensing (eg, the conditions that can be imposed) and indeed has worked with many of its Council partners in both formulation of policy and standard conditions.

It wishes to stress at this juncture, however, that its existing business at 135-136 High Street is wholly dependent on being able to continue the entertainment offered currently, which is, under the proposed adoptive legislation, now described as relevant entertainment. It will not be a viable business without that entertainment, although it is licensed to operate as a late night venue and an alternative operator may care to trade in this manner. FYEO believe that this would not be beneficial to the city.

FYEO urges the Council, in the event that it adopts the provisions, not to pre-determine any policy which may prevent an existing properly run SEV operation, such as that of For Your Eyes Only, from continuing to offer SEV entertainment. The Company; those who work for it and the performers whose livelihood may depend on it, would, amongst other things, find its/their human rights violated in such circumstances.

In the event that the Council adopts this legislation, and then considers also adopting a policy in that respect, FYEO ask for the opportunity to respond to consultation in that respect.

30.11.11

From Dr. Paul Buxton:

From: Paul Buxton [REDACTED]@[REDACTED].org.uk]
Sent: 05 December 2011 11:01
To: Licensing Policy
Subject: Schedule 3 Licencing provisions

I support Southampton City Council adopting these provisions - that would enable residents to raise problems relating to licencing of sexual enyertainment venues.

PK Buxton

Dr P K Buxton

[REDACTED]
Southampton
SO32 [REDACTED]

From Clem and Elaine Mason

From: Clem & Elaine Mason [REDACTED]@[REDACTED].net]
Sent: 08 December 2011 12:23
To: Licensing Policy
Subject: Sexual Entertainment Venues

I consider that the Council SHOULD have the power to dedal with such liceneces in this locality.

C M Mason
[REDACTED]
Southampton
SO15 [REDACTED]

From Councillor Carol Cunio

From: Cunio, Carol (Cllr)
Sent: 19 December 2011 17:21
To: Burke, John
Subject: Sexual entertainment

Hi - cannot find the email you sent with links for the consultation re above. My main concern is that the venues are not in places where family entertainment is being held and I consider men leaving such places to be a danger to younger people in the area. C

From Mr. Chris Knight, Nightlife Clubs Ltd.

Southampton City Council

Consultation Response

Adoption of the Provisions controlling Sexual Entertainment Venues (SEVs)

Chris Knight
Nightlife Clubs Limited
Unit 25
Mitchells Point
Ensign Way
Southampton
SO31 4RF

Consultees are asked to comment on whether the Council should adopt the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982 so that it can control the licensing of SEVs. I have entered into a contract to purchase Original Sin which is one of the 3 Lap Dancing clubs operating in Southampton. This purchase should conclude by the middle of January 2012. As such I thought it prudent to offer my response to this consultation.

As Vice Chairman of the Lap Dancing Association and being heavily involved with the Home Office during the formulation of this legislation, I would maintain that such licensing is not necessary. It has demonstrated that under the Licensing Act 2003 properly controlled entertainment of this nature does not cause anti-social issues to those living or working in the area. If issues of crime and disorder, public nuisance, public safety or harm to children were caused by any such establishment, the Licensing Act 2003 provides adequate sanctions and controls. As you are aware for the last 13 years I have worked for the largest Table Dancing chain in the UK, FYEO. I am happy to state that during my time with FYEO none of its venues were ever the subject of a refusal to renew under the former legislation, or review under the Licensing Act 2003, in respect of any of its sites.

Of course I am sensitive to the views of some residents, especially in areas of high residential development, that an SEV may be inappropriate in such an area, and accepts that the Council is likely to be similarly sensitive if genuine views of this nature are aired by its residents.

As a responsible operator, I have no fear of the controls that can be exercised on SEV licensing (eg, the conditions that can be imposed) and while with FYEO I worked with many of its Council partners in both the formulation of policy and standard conditions.

I would like to stress at this juncture that the existing business (currently trading as Original Sin) at Unit 2, Leisure World, is to offer Table Dancing and my sole purpose for purchasing it is to continue to run this sort of establishment. It will not be a viable business without that entertainment, although it is licensed to operate as a late night venue and an alternative operator may care to trade in this manner. I believe that this would not be beneficial to the city.

I would urge the Council, in the event that it adopts the provisions, not to pre-determine any policy which may prevent an existing SEV operation from continuing to offer SEV entertainment. The Company; those who work for it and the performers whose livelihood may depend on it, would, amongst other things, find its/their human rights violated in such circumstances.

In the event that the Council adopts this legislation, and then considers also adopting a policy in that respect, I would ask for the opportunity to respond to consultation in that respect.

20.12.11

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Agenda Item 7

DECISION-MAKER:	LICENSING COMMITTEE
SUBJECT:	HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS AND POLICY ON CAB CAMERAS
DATE OF DECISION:	22 MARCH 2012
REPORT OF:	HEAD OF HR, LEGAL & DEMOCRATIC SERVICES
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 ongoing challenges to that policy and the condition and the cost implications of the subsidised scheme the matter requires review.

RECOMMENDATIONS:

- (i) That the committee consider the issues and;
- (ii) authorises a consultation exercise on the review of the policy and condition with a report back to Committee in order to assess whether amendment of either is now necessary and;
- (iii) considers and determines whether, in the interim, the policy and conditions should continue to be applied and remain in force

REASONS FOR REPORT RECOMMENDATIONS

1. Following the implementation of the policy and condition an appeal of the condition has resulted in adverse comment from the Crown Court, despite finding for the Council.
2. Further, a complaint to the Information Commissioner's Office has raised Data Protection issues.

DETAIL (Including consultation carried out)

3. As Members are aware Home Office Guidance places taxi driving in a group of occupations bearing special trust and responsibility where substantial public interest considerations arise especially in relation to protection of children and the vulnerable.
4. On 26th August 2009 after consultation the Licensing Committee resolved to adopt a policy and attach conditions to Hackney Carriage and Private Hire vehicles requiring cameras to be fitted to all new vehicles or on replacement vehicles.
5. As well as the trade associations, every driver of a licensed vehicle was written to by way of consultation (in the region of 1200 drivers) regarding the decision and 41 replied. Of which only 18 were negative (17 were positive and 6 were of no opinion).

6. Previously, cameras were merely encouraged but take up was slow despite significant Home Office funding (over two years 57 out of 700 vehicles).
7. Following the decision to adopt the policy and condition requiring cameras an appeal was made to the Magistrates' Court by Mr Kevin May and Mr Clive Johnson. The appeal was struck out on the 9th February 2010 on a preliminary point raised by the Council insofar as the condition had not actually at that time been attached to a licence held by the appellants (so could not be appealed) and the only means of challenging policy is by way of Judicial Review.
8. On the 24th November 2010, by which time the condition had attached to his licence, Mr Kevin May lodged a further appeal at the Magistrates' Court stating the condition imposed on his Hackney Carriage vehicle licence was unreasonable. Primarily the argument of Mr May was that the requirement of the system to be permanently recording both video and audio was a breach of his rights under Article 8 of the European Convention of Human Rights. The matter was heard before a District Judge at the Magistrates' Court who found in Mr May's favour. The Judgment is attached at Appendix 1.
9. The Council, in turn, appealed that decision to the Crown Court after having sought advice from Counsel.
10. This latest Appeal was heard at Salisbury Crown Court before a Crown Court Judge sitting with two Magistrates on 20th and 21st October 2011.
11. The Council's case was that this amounted to an attack upon the Council's policy rather than the condition per se and as a result was beyond the remit of the Court (such challenges only able to be made by way of Judicial Review at the High Court) and in any event that the recording was justified as a necessary and proportionate means of addressing a pressing social need. This was due to the fact that sexual and violent offences were occurring in Southampton taxis (nine sexual offences over a two year period). Four of which related to the driver and were not prosecuted due to a lack of evidence.
12. The continuous recording is counterbalanced by the fact that recordings are strongly encrypted and securely stored - only ever accessed and viewed where there is 1) a formal complaint to the Council against a driver or 2) where the police are investigating a criminal offence and make a formal request. The recordings cannot be accessed, viewed or published in any other way. Only authorised Council officers may carry out a download from a vehicle and the recordings are stored on specific computers only used for that purpose with access restricted. The data stored in the taxi is automatically over-written after a relatively short period of time (currently between 11 and 30 days, dependant on the system). The vehicle once licensed, in law, is thereafter always a licensed vehicle and can only ever be driven by a licensed driver for whatever purpose.
13. The police supported the Council and provided evidence of incidents where cameras had assisted the investigation of crimes. In particular they highlighted the fact that certain types of crime (including race hate crime) can only be detected by audio recording. The police evidence was considered in

both appeal hearings and is dealt with in the judgments given in those hearings.

14. The National Private Hire Association also supported the Council's case and provided substantial evidence to show that taxi drivers are the subject of robbery, assault and murder and that drivers themselves have called for cameras in cabs across the country.
15. The Council commissioned an independent survey of the public in Southampton which showed clear support for cameras (89.6% indicate satisfaction with SCC's camera policy). The results of that survey are attached at Appendix 2.
16. An argument was raised by Mr May that:
 - 1) the system should be capable of being switched off by the driver
 - 2) recording, in particular audio, ought to be triggered, where necessary, by way of panic button.
17. The Council's case was that:
 - 1) a system controlled by the driver would entirely undermine any system imposed to prevent drivers misusing their position or abusing passengers - meaning that evidence would never be gathered if drivers could decide to switch off the system and removing the deterrent effect of such a system.
 - 2) a panic button has serious practical implications – those most at risk, the particularly vulnerable due to disability, age or intoxication are placed in a position where they have to consciously decide to activate a system (if they are physically able to) and potentially aggravate an already hostile situation. Further, the differing types of vehicle means that positioning the button would always be complex – in such a way that a single passenger would always be able to reach it or identify it and understand its purpose. Also by its very nature by the time someone must decide to activate the system any comment or action must already have occurred (at least in part) meaning that relevant evidence is lost.
18. Audio recording is of fundamental importance given that most allegations made against drivers relate to situations where the driver and passenger are alone in the vehicle. As a result, evidentially, investigating and proving or disproving allegations is a considerable issue.
19. Studies elsewhere (Doncaster in particular) have shown that there are fewer incidents and reported crime following the installation of cameras. Proving a negative in this way, however, is always fraught with difficulty given that the number of incidents that are prevented by way of deterrent effect can never be proven. What is clear is that the installation of cameras and their clear advertisement / signage does offer considerable reassurance and tackles the fear of crime. This can only encourage the use of taxis, particularly by those most at risk.
20. In considering all of the above the Court ruled in favour of the Council insofar

as it accepted the Court had no jurisdiction to challenge or consider the Council's policy. Despite accepting that position and stating that the District Judge in the Magistrates' Court had been wrong to do so the Court nonetheless went on to make comment on the Council's policy. That comment included statements that the condition was not necessary and proportionate and further, in Human Rights Act terms, did not correspond to a pressing social need. The full text of the judgment is attached at Appendix 3.

21. In addition to the above the Council has received correspondence from the Information Commissioner's Office (ICO) following a complaint made relating to the installation of cameras and the recording of audio.

The first letter, notifying the Council of the complaint, was dated 2nd September 2011 and is attached as Appendix 4. In response the Council wrote to the Information Commissioner on 28th September 2011 setting out its position. That reply is attached at Appendix 5. The Information Commissioner's Office then issued an Information Notice that the processing of the data was unlikely to comply with the requirements of the Data Protection Act 1998 (although it was clearly stressed that it held no concerns with the processes put in place regarding storage and security of the systems). The letter dated 4th October 2011 confirming this is attached as Appendix 6. This was produced and relied upon at the Crown Court by Mr May and the Court indicates in its judgment that it was taken into account when reaching its decision.

22. The opinion of leading Counsel in the particular field was sought by Legal Services prior to the commencement of the appeal hearing at the Crown Court; in light of the terms of the ICO's Notice.
23. On 22nd December 2011 the ICO wrote again to the Council making a general enquiry about its policy and asking for its views, particularly in regard to the use of audio recording. That letter is attached as Appendix 7.
24. The Council replied by letter dated 20th January 2012 setting out its case and providing justification of its position. The same letter confirmed that as a result of the issues raised (and others) the Authority intended to conduct a wholesale review of its policy and condition. That letter is attached as Appendix 8.
25. Subsequent to the outcome of the appeal at the Crown Court the Council has received correspondence from Lamport Bassitt Solicitors acting on behalf of Mr May asking that the Council amend its condition and policy in light of the comment in the judgment in the case, threatening Judicial Review. The letter dated 5th January 2012 is attached as Appendix 9. In response the Head of HR, Legal and Democratic Services confirmed, as in the response to the ICO, that a report would be presented to the Licensing Committee proposing a review of the policy and condition following the usual consultation. A copy of the letter sent in response and dated 20th January 2012 is attached as Appendix 10.
26. It is the view of officers that it is reasonable for both the policy and condition to remain in place until such time as the consultation has been undertaken

and the matter brought back to committee for reconsideration.

RESOURCE IMPLICATIONS

Revenue

27. A review of the Licensing service budget has recently been undertaken and this demonstrates that the discrete taxi and private hire functions are currently in deficit. These are ring fenced budgets which should be self financing from fee income. This deficit will be addressed as part of a separate exercise.
28. Since the introduction of the camera policy in August 2009, spend on cameras to date totals £204,000; this has been funded from a combination of Home Office and SCC contributions.
29. 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 part subsidisation, of camera installation.
30. To continue with the current policy would generate an estimated cost of £63,000 pa based on a cost per camera of up to £375. As new / alternative funding has not been identified for these costs, this will need to be considered as part of the overall consultation process.

The consultation costs will be paid for from existing budgets.

Property/Other

31. No implications

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

32. Town Police Clauses Act 1847,
Sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976,
and; Section 1 Localism Act 2011

Other Legal Implications:

33. The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the council that could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the council which affect another's' rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
34. The Data Protection Act 1998 provides for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.
35. Section 17 Crime and Disorder Act 1998 places the council under a duty 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.

POLICY FRAMEWORK IMPLICATIONS

36. None

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1. Judgment of District Judge at the Magistrates' Court dated 10th April 2011
2. Survey Results dated 26th July 2011
3. Crown Court Judgment dated 17th November 2011
4. ICO letter dated 2nd September 2011
5. SCC letter dated 28th September 2011
6. ICO Information Notice letter dated 4th October 2011
7. ICO letter dated 22nd December 2011
8. Council letter to ICO dated 20th January 2012
9. Lamport Bassitt letter dated 5th January 2012
10. Council letter to Lamport Bassitt dated 20th January 2012

Documents In Members' Rooms

1. N/A

Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out. NO

Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1. N/A

Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:

NONE

IN THE SOUTHAMPTON MAGISTRATES' COURT

BETWEEN: -

KEVIN MAY

Complainant

and

SOUTHAMPTON CITY COUNCIL

Respondent

Coram: - Callaway DJ
Legal Advisor: - Mrs. Lucy Tew

JUDGMENT

Introduction

1. This is an appeal by way of complaint dated the 27th November 2010 by a Mr. Kevin May ('The Complainant') against a decision of the Southampton City Council ('The Respondent') who issued the Complainant with a Hackney Carriage Licence on the 27th October 2010 to which was appended the condition requiring the Complainant to install and maintain a digital camera within his vehicle ('the condition'). The decision to append such a condition, in turn followed a decision of the Licensing Committee of the Respondent Council which, on the 26th August 2009, resolved to approve with immediate effect a series of additional and revised conditions in order to improve the quality of both vehicles and the service provided by drivers. The relevant condition in so far as this appeal is concerned is as follows: -

'(g) in line with Government and Council priorities on crime and disorder, public and driver safety all licensed vehicles be fitted with Council approved digital cameras as soon as possible and in any case at the time a current

licensed vehicle is replaced with the cost to the proprietor/driver capped at £250 excluding VAT and fitting costs.'

2. By this appeal the Complainant asserts, inter alia, the following: -
 - (i). That the requirement is a breach of the Complainant's Article 8 rights which are engaged in the circumstances that pertain on the facts of this case, and for which there can be no justification and which necessarily represents an unnecessary interference with those rights by requiring the Complainant to be made the subject of continuous surveillance and of others who may happen to be in the vehicle.
 - (ii). That as part of the attack on the lack of justification for the measure, it is submitted that the Respondent Council have failed to demonstrate the necessity for the condition, the apogee of their own case amounting to no more than that the surveillance '...may be considered to be desirable or useful.'

3. The Respondent counters the averments of the Complainant as follows: -
 - (i). That Article 8 is not engaged in this case since it is contended that there is a clear distinction between an individual's home and a motor vehicle specifically licensed for the purpose of conveying members of the paying public. Accordingly no question of interference arises, necessary or unnecessary.
 - (ii). In the event that Article 8 is engaged it is submitted that such infringement is justified since:
 - a). s.47(1) Local Government (Miscellaneous Provisions) Act 1976 ('the Act') permits a District Council to attach to the grant of a licence of a Hackney Carriage under the Town Clauses Act 1847 such conditions as the District Council may consider reasonably necessary;
 - b). the aim of the local authority in licensing the taxi and PHV trades is to protect the public;
 - c). the evidence gained from the police (DC Joanne Green, statement dated the 18th January 2011, B: p. 98) and from the Licensing Manager (Richard Black, statement dated the 24th January 2011, B: p. 24) demonstrates both the investigatory and the deterrent effect that arises

as a consequence of such installations in Hackney Carriages and PHV's;

d). that the condition imposed was reasonably necessary.

Progress of the Appeal

4. I heard this appeal on the 23rd March 2011 over the course of ½ a day of court time at the conclusion of which I indicated that I would reserve judgment in the matter. At the commencement of the case both counsel indicated that the hearing could proceed upon the basis of submissions and upon the reading of the material within the bundle of evidence ('B') and the bundle of authorities ('BA').

5. This was a course that I considered both helpful and appropriate since the competing evidential nexus is contained on the part of the Complainant within the statement of himself (dated the 24th January 2011, B: p. 14), and on the part of the Respondent in the 2 statements to which I have already referred. The competing factual positions are set out within these 3 statements, and there was no specific need for the court to make findings of fact upon them.

6. The right of appeal is afforded to the Complainant by virtue of s.47(3) of the Act, and I determine the outcome according to the ordinary civil standard.

Article 8 Rights – Engagement

7. The Article reads as follows: -

'8 – (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.'

8. There is a superficial attraction to the submission made by the Respondent by which it is contended that a clear distinction exists between the home of an individual and a motor vehicle specifically licensed for the purposes of conveying members of the paying public (see R. skeleton para. 14). However, the term 'private life' is a concept that has been broadly defined to cover the moral, psychological and physical integrity of the person. In Botta v Italy 26 EHRR 241 the Court held that the guarantee afforded by Article 8 is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. Accordingly, the term may extend to those features which are integral to a person's identity or ability to function socially as a person (see R (Razgar) v Secretary of State for the Home Department [2004] 2 AC 368 HL, per Lord Bingham of Cornhill [9]).

9. I have been referred to the case of Niemitz v Germany, 16 EHRR 97 (BA: 1) and, in particular, the application of the Article to business premises and professional or business activities. It was held that the sphere of professional activities and premises does not fall outside the protection afforded by Article 8 (para. 56; BA: 9), whilst the Court did not consider it possible or necessary to attempt an exhaustive definition of the term 'private life' (Judgment para. 29; BA: 14). As regards the word 'home', the Court noted that it has been accepted in certain Contracting States that it extends to business premises, an interpretation which is fully consonant with the French text, since the word *domicile* has a far broader connotation than the word 'home' and may extend to a professional person's office (Judgment para. 30; BA: 15).

10. The Complainant strongly asserts that the term 'private life' should not be interpreted restrictively so as not to exclude the confines of a Hackney Carriage or PSV, and, by the same token, restrict the term to what may ordinarily be regarded as a person's 'home' in the strict and narrow sense of that term.

11. I have been additionally referred to the following: -

Amann v Switzerland, 30 EHRR 843 (BA: 19)

Rotaru v Romania, 8 BHRC 449 (BA: 54)

Von Hannover v Germany, 40 EHRR 1 (BA: 56)

Martin v United Kingdom, 37 EHRR CD (BA: 89)

Ernst v Belgium 39 EHRR 35 (BA: 107)

Steeg & Wenger v Germany 47 EHRR SE16 (BA: 199)

Weser & Bicos v Austria 46 EHRR 54 (BA: 167)

Buck v Germany 42 EHRR 21 (BA: 182)

12. From those authorities I distil the following (iv) propositions:

(i). Telephone calls received on business premises, as well as on private premises are capable of being covered by the notions of 'private life' and correspondence. The term 'private life' has a wide interpretation and embraces the right to develop relationships with other human beings.

(ii). The enjoyment of private and family life includes a person's physical and psychological integrity and extends beyond the private family circle and is inclusive of a social dimension (see Von Hannover v Germany (ante) para. 69.

(iii). Any interference with the right to privacy has to be necessary and proportionate (see Martin v United Kingdom (ante) CD 101.

(iv). A domicile and/or home may extend to business premises and vehicles (see Ernst v Belgium (ante) para. 110; and Wieser & Bicos v Austria (ante) para. 43.

13. I have been additionally referred to the provisions of the *Employment Practices Data Protection Code, Part 3* (BA: 357). The point that is to be derived therefrom is that the Code takes a restrictive view as to the extent to which monitoring should be conducted in the work place. In particular, the Code seeks to draw attention to the adverse impact which may result to individual workers and others likely to be affected as a consequence of monitoring (p.16; BA: 372). I am not entirely convinced that the analogy which is sought to be drawn from a Code of this kind and which has a particular application to the work place is necessarily apposite to the position that pertains in a taxi. I suppose it may be argued that if the Code seeks to restrict monitoring in the context of a workplace, then the greater must surely include the lesser, and should apply equally to a taxi where the requirement that is now the subject of this appeal is capable of involving the public at large. However, I do not feel safe in drawing a firm conclusion from a special provision that is designed to have application in the work place as opposed to conclusions which are capable of being drawn from specific legal provisions and which have more general application.

14. I am quite clear that the right to respect for private and family life, a home and correspondence extends beyond the physical confines of the home and is capable of covering and involving the privacy of the person when not at home and when he or she is going about their daily business. In my judgment this is particularly the case where a person may be engaged at work or travelling in a taxi or PSV. I bear in mind, in particular, that the cameras which the condition requires to be installed not only record images, but also audio recording (see, St. Richard Black, B: p. 27). In such a context the passenger and/or taxi driver is entitled to respect for his or her privacy, and which is moreover capable of being breached by the installation which this condition requires.

15. I have concluded that Article 8 is engaged in the circumstances of this case.

The Issue of Justification - Evidence

16. It is argued on behalf of the Respondent Council that the condition is lawfully imposed having regard to the essential aim of the local authority to protect the public, and which can only be considered to be a 'pressing social need'. There is no argument other than the local authority had the power to impose such a condition, and, in the event that it were to be contended otherwise, this court has no jurisdiction to review the implementation of such power in terms of its legality. The real question is was the imposition of the condition proportionate to the legitimate aim?

17. The evidence led by the Respondent in answer to the question is as follows: -

(i). Richard Black asserts that 'It became obvious that in some circumstances allegations of sexual assault were being reported by passengers in order to either avoid paying a fare or just to be vindictive towards the driver.' He suggests that this '...appeared to be a growing problem.' (St. R. Black, B: p. 28).

(ii). Sexual assaults were carried out by some drivers over the period from 2006 to 2009 one of which was subsequently charged and appeared in court. Some 7 cases were reported during the period 2008/2009. (St. R. Black, B: pp. 28-29).

(iii). Since the change in policy on 26th August 2009 the number of licensed vehicles with cameras fitted has reached 300. The Licensing Team has downloaded 32 incidents from cameras as a result of crime reports to the police. The downloads invariably but not exclusively, refer to assaults on and abuse of drivers and what are commonly referred to as runners. (St. R. Black, B: pp. 30-31).

(iv). The fitment of cameras has without doubt reduced the number of occurrences of alleged assault on passengers and there seems no reason to doubt that as more vehicles are fitted with cameras the incidence should drop further. (St. R. Black, B: p. 31).

(v). DC Green asserts that '... the fitting of CCTV cameras in taxis appears to becoming more frequent and therefore has assisted my investigations and the investigations of other detectives in the office.' (St. DC Green, B: p. 98).

(vi). It is also suggested by the same officer that '... having cameras fitted in all taxis would greatly benefit all police investigations. Cameras would protect taxi drivers from false and malicious allegations made against them. Cameras in all taxis would assist to corroborate allegations made by drivers as well as assisting to identify offenders. In the event of a taxi driver committing an offence or acting improperly this would also be caught on the footage, providing evidence to revoke the driver's licence, therefore protecting members of the public using taxis in the Southampton area.' (St. DC Green, B: p. 100).

Justification – Law

18. I have been referred, inter alia, to the following authorities: -

Sunday Times v United Kingdom (1979) 2 EHRR 345 (BA: 266)

Handyside v United Kingdom (1976) 1 EHRR 737 (BA: 198)

Silver v United Kingdom (1983) 5 EHRR 347 (BA: 228)

Klass v Germany (1978) 2 EHRR 214 (BA: 326)

19. From those authorities I distil the following propositions:

(i). Any interference with a right to privacy, which is a qualified right, must correspond to a pressing social need and must be proportionate to the legitimate aim pursued (Sunday Times (ante) para. 62).

(ii). The adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable', or 'desirable'. It is for the national authorities, and in this regard I import the Respondent, to make the initial assessment of the reality of the pressing social need implied by the notion of 'necessity' in this context (Handyside (ante) para. 48).

(iii). Article 8(2) is to be narrowly construed. Powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions (Klass (ante) para. 42).

Discussion

20. I am quite persuaded that the use of cameras in taxis are capable of assisting in the detection and prevention of criminal activity for all the reasons expressed by DC Green, and, moreover, have a double utility in so far as they are capable of protecting both the taxi driver and his or her passenger. Taken to an extreme, total surveillance, were such concepts to be technically possible, in all walks of life: at home, in the workplace, in schools, in hospitals, in transport systems and otherwise would have a utility in the detection of crime. Such measures would, however, be disproportionate to the aim they are designed to address.

21. DC Green was subjected to an attack during the submission of the Complainant and in relation to her rank. I do not think this was really justified since what she had to say was probably uncontroversial and merely expressed sentiments which, I suspect, are shared by most police officers of whatever rank. I have no doubt that most investigations, particularly of a character that are associated with taxis, would be 'assisted' by the use of cameras and audio recording. I also note the anecdotal evidence about which she has commented concerning her own experiences and those of her colleagues. However, the mere fact that they would 'assist' with police

enquiries does not mean that they are 'necessary' in terms of Article 8(2) and which requires a restrictive interpretation (see Klass (ante)).

22. I think it is fair to observe as the Appellant asserts within his skeleton argument (see para. 20) that the evidence led by Mr. Black in terms of statistical material to support the averment of the usefulness of cameras in crime detection is vague and, as it seems to me, to be no more than the statement of a general assertion. I do not regard this evidence as particularly compelling, and I do not see why the court should necessarily accept that the fitment of more cameras will reduce the amount of future occurrences without more particular statistical evidence in support of the proposition.

23. I am prepared to accept that the use of cameras in taxis is more likely than not to reduce the incidence of crime. However I am not convinced that this conclusion alone can justify a 'pressing social need'. The Respondent counters this point by asserting that even in the event that one crime, and in particular a serious crime is prevented, then this would of itself justify the implementation of the policy. Indeed it is powerfully argued that one serious crime is one too many. Of course there is no 'acceptable' level of crime and measures which may be of value in reducing crime are to be welcomed, yet I have a significant doubt as to whether the tests of necessity and proportionality are satisfied upon the evidence presently before me.

24. I have concluded, as submitted by the Complainant, that the Respondent has sought to introduce a wide ranging and 'blanket policy' in relation to this condition. It has given insufficient regard as to whether there is a pressing social need for such a condition, and insufficient regard to the respective rights of both passengers and drivers.

25. This appeal is allowed.

Appeal Allowed

ANTHONY CALLAWAY DJ
10TH APRIL 2011

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Technical Note and Method Statement

Project	Southampton Taxi and Private Hire Safety Consultation	Date	26 th July 2011
Note	Public Attitude Survey Results	Ref	GTXSOU000
Author	Nikki Callaghan/Liz Richardson		

1 *Introduction*

1.1 Halcrow were commissioned by Southampton City Council to undertake consultation with members of the public across Southampton to obtain their views as to a number of issues surrounding the use of taxis and private hire vehicles in Southampton.

2 *Methodology*

2.1 Halcrow developed a questionnaire in line with the requirements of the study. The survey was designed alongside a briefing guide to ensure the surveyors were fully aware of the requirements of the survey.

2.2 The surveyors were fully briefed and were set a socio – demographic quota in order to ensure that a representative sample of people undertook the consultation.

2.3 The surveyors stood in a range of locations across Southampton and undertook the survey between the hours of 9am and 10pm during June 2011.

2.4 People taking part in the survey were also asked for their contact details. A sample of these details was checked to ensure the validity of the data. A copy of the survey is appended to this statement.

3 *Survey Administration and Sample Selection*

3.1 Some 397 on-street public attitude surveys were carried out in June 2011. The surveys were conducted during the daytime and nighttime across a range of locations within Southampton. A quota was followed so that the survey reflected the age and gender characteristics of the local community. This in turn, ensured that broadly representative results were obtained. The age and gender samples are given in Table 1 below.

3.2 The age and gender samples are shown in Table 1 along with the actual turn-out figures.

Table 1 - Target and Actual Samples for Interview Surveys by Age and Gender

Category	Target Quota		Actual Quota	
	Frequency	Percent	Frequency	Percent
16-34	170	42.5	140	36.2
35-64	160	40.0	154	39.8
65+	70	17.5	93	24.0
Total	400	100.0	387	100.0
Male	199	49.75	183	47.3
Female	201	50.25	204	52.7
Total	400	100.0	387	100.0

3.3 As can be seen in Table 1, the survey provides a slight over representation of the over 65 age category and a slight under representation of the 16-34 age category who took part in the survey.

3.4 The respondents were asked to give their economic status. The results are displayed in Table 2 below.

Table 2 - Economic Status

	Frequency	Percent
Full-time Employed	95	26.2
Part-time Employed	70	19.3
Unemployed	29	8.0
Student/Pupil	56	15.4
Retired	98	27.0
Housewife/Husband	9	2.5
Other	6	1.7
Total	363	100.0

3.5 Respondents were asked to specify their residency. The results are shown in Table 3.

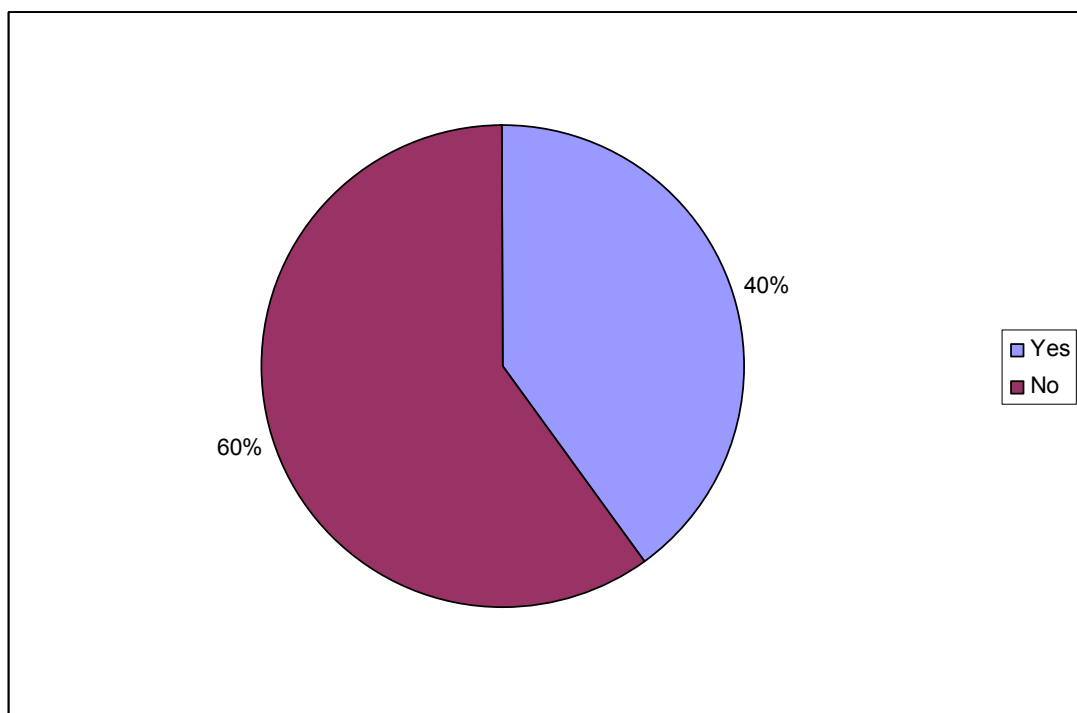
Table 3 - Residency

	Frequency	Percent
Permanent Resident	319	87.4
Visitor	23	6.3
Tourist	4	1.1
University Student	19	5.2
Total	365	100.0

4 Service Use

4.1 Respondents were asked whether or not they use taxi or private hire services in Southampton. The results are shown in Figure 1 below.

Figure 1 Do you use taxis or private hire vehicles in Southampton?



4.2 The results show that some 60% of respondents do not use taxi or private hire services in Southampton. Respondents were asked to provide subsequent reasons for their lack of use. The most common responses included;

- *I use the bus (20.6%);*
- *Taxis are too expensive (16.4%);*
- *I have access to a car and so don't need to use taxis (20.2%);*
- *I don't need to use taxis (17.6%);*
- *No need.*

4.3 Those respondents who do use taxis were subsequently asked when they typically use taxis the most. The results in table 5 identify that 43.6% of respondents generally use taxis during the night time period.

Table 5 - When do you use taxi and private hire vehicles?

Trip Type	Frequency	Percent
Daytime	38	24.4
Evening	50	32.1
Night time	68	43.6
Total	156	100.0

4.4 Respondents were then asked whether they feel safe when they use taxis and private hire vehicles in Southampton. . Table 6 below shows the results by time of hire. It can be seen that the majority of respondents felt safe using taxis regardless of what time they made their journey (80.5%). Safety was perceived highest for hiring's during the daytime with some 89.5% of respondents commenting that they feel safe. For hiring's during the night time periods, some 66.2% stated that they feel safe, whilst a further 20.6% of respondents commented that they feel safe some of the time. Some 7.4% of those hiring a taxi or private hire vehicle at night stated that they did not feel safe.

Table 6 – Do you feel safe when travelling in taxis and private hire vehicles in Southampton?

Time	Yes		No		Sometimes	
	Freq	%	Freq	%	Freq	%
Daytime	34	89.5	1	2.6	1	2.6
Evening	41	82.0	1	2.0	6	12.0
Night time	45	66.2	5	7.4	14	20.6
Total	120	80.5	7	4.7	21	14.1

4.5 Those who commented that they do not feel safe were subsequently asked why, the most common responses included;

- *Lack of trust for the driver;*
- *Fear of harassment;*
- *Nervous if drivers do not speak good English; and*
- *Do not feel safe unless it is a pre booked vehicle*

4.6 When asked what would make respondents feel safer using taxis the following comments were received;

- *Knowing that the taxi is licensed (10.9%);*
- *CCTV in the vehicles (10.9%);*
- *Travelling with friends or family (7.8%);*
- *More stringent checks on drivers (2.2%);*
- *Display of ID in vehicles (8.9%);*
- *More female drivers (5.6%);*
- *Drivers with good English (2.2%);*
- *Improved customer relations (7.8%);*
- *Proof that CCTV works (2.2%); and*
- *Nothing , I already feel safe (21.1%)*

4.7 Respondents were advised that Southampton Taxi Licensing Department requires all taxis and private hire vehicles to be fitted with fixed cameras that record digital images for public safety. The survey found that some 89.6% of respondents agreed with this policy. A breakdown of the results is provided in table 7.

Table 7 - Satisfaction with CCTV policy

CCTV Policy	Frequency	Percent
Yes	345	89.6
No	40	10.4
Total	385	100.0

4.8 Those respondents who did agree with the policy provided a number of reasons. The results in table 8 show that 21.2% of responses felt that CCTV in vehicles would improve general

safety and security whilst using taxis and private hire services whilst a further 13.5% felt that it would help to protect the driver and 12.1% thought that CCTV would protect the passenger.

Table 8 – Reasons why CCTV in taxis and private hire vehicles is beneficial

	Frequency	Percent
Protects the driver	50	13.5
Protects the passenger	45	12.1
Reduces / prevents crime	29	7.8
Tracks events (evidence)	35	9.4
Enhanced safety and security	79	21.2
Total	372	-

4.9

Those respondents who did not agree with the policy were asked what they would like to see introduced as a means of improving public safety when travelling in taxis or private hire vehicles. The most common responses included;

- *CCTV is an invasion of privacy;*
- *You feel safe if you use companies you trust;*
- *Drivers should report in whenever they pick up a passenger;*
- *Never felt unsafe in taxis;*
- *Too much surveillance these days;*
- *There is enough CCTV already; and*
- *The system should be left as it is.*

SOUTHAMPTON CITY COUNCIL

-V-

KEVIN MAY

JUDGMENT

1. This is an appeal by Southampton City Council from a decision of District Judge Calloway sitting in the Southampton Magistrates' Court on the 10th April 2011. By his decision he allowed an appeal by Kevin May against a decision of the Council who issued him with a Hackney Carriage Licence on the 27th October to which was appended the condition requiring him to install and maintain a digital camera within his vehicle.
2. The question appears at first sight to be a simple one, namely should the Council have made the licence subject to the condition. The case has, however, developed a life of its own, and acquired a complexity which has required us to decide a number of preliminary and inter-related issues.
3. The first point raised was whether the Court as at present constituted should hear the appeal at all. This point arose from the late transfer of the case from the Southampton Crown Court to this Court, the Salisbury Crown Court. This Court consisted of a Recorder and two lay justices. It was argued on behalf of the Appellant that it was inappropriate for the appeal to be heard by two justices from the Salisbury area rather

than from Southampton, since the case involved local affairs and would require local knowledge.

4. The Courts Act 1981 provided the power to create rules. The Crown Court Rules 1982 were made under this power.
5. Rule 2 (1) provides that “in these rules, unless the context otherwise requires, any reference to a judge is a reference to a judge of the High Court or a Circuit judge or a Recorder; “justice” means a justice of the peace.”
6. Rule 3 (1) provides that “subject to the provisions of Rule 4 and to any directions under section 74 (4) of the Senior Courts Act 1981, on any proceedings to which a subsequent paragraph of this Rule applies, the number of justices sitting to hear the proceedings and the qualification of those justices shall be as specified in that paragraph.
7. Rule 3(2) provides that “on the hearing of an appeal against a decision of licensing justices under the Licensing Act 1964, the Crown Court shall consist of a judge sitting with four justices, each of whom is a member of a licensing committee appointed under Schedule 1 to that Act and two (but not more than two) of whom are justices for the local justice area in which the premises to which the appeal relates are situated. A similar provision is made by Rule 3 (3) in respect of a decision under the Betting, Gaming and Lotteries Act 1963.
8. Rules 3 (1) and 3 (2) have no application to the licensing of taxis. Notwithstanding that, it was argued on behalf of the Appellant that there is a residual right to take objection to the constitution of the Court.

9. Counsel for the Respondent argued that if Parliament had considered that a similar provision should be made with regard to the licensing of taxis it would have made such a provision. The absence of such a provision shows that there was no such intention. There is no such discretion to adjourn the case in order to implement such an intention.
10. The Local Government (Miscellaneous Provisions) Act 1976 Part 2, section 45 deals with the Licensing of Hackney Carriages. Section 47 (3) gives the right of appeal to any person aggrieved by a condition imposed on the grant of a licence. No provision is made for the hearing of such an appeal by justices from a particular area. Parliament could have made such a provision if thought appropriate. Nor is there any such provision under the Licensing act 2003, which removes the requirement.
11. We ruled on this submission before hearing the remainder of the arguments. There is no specific statutory or regulatory provision for the constitution of the Court by particular magistrates. Such a provision could easily have been made if that was the intention of Parliament. The lack of such an intention can be inferred from the lack of such a provision.
12. There is no statutory or regulatory indication that Parliament intended to confer a discretionary power to adjourn cases so that magistrates from a particular area could sit. All indications are to the contrary. Any inherent power to adjourn proceedings is for case management purposes which do not apply in this case.
13. Even if there was a discretionary power to adjourn so that magistrates from a particular area could sit on the appeal, we would not have exercised the discretion to adjourn for that purpose. The question of whether the condition was necessary and

proportionate is evidenced based. The District Judge founded his decision on the evidence adduced before him, and there is no reason why this Court should not do likewise.

14. While the appeal could equally have been heard by justices from any area, if anything, it is arguable that the independence of justices from outside Southampton could be a positive advantage when dealing with a case which concerns the policy of the Southampton City Council, in that it could add to the perception of fairness.
15. It is worth noting that a considerable portion of the Appellant's evidence contained in the appeal bundle consists of newspaper reports of incidents all over the country. Furthermore there were arguments on both sides comparing the policy of the Southampton Council with that of other local authorities.
16. The Magistrates' Court is not the licensing authority for the purpose of licensing Hackney Carriages. That responsibility rests with Southampton City Council. This is not therefore an appeal from the licensing authority, as is the case with regard to an appeal against a decision of the magistrates under the Licensing Act 1964, or under the Betting, Gaming and Lotteries Act 1963.
17. It is to be noted that justices may now sit in any area.
18. There was in the circumstances no good reason for adjourning the case so that the Court can be differently constituted.
19. The second submission was also of a preliminary nature. It pre-empts the first of the Grounds of Appeal to this Court. The first ground of appeal was that the Magistrates'

Court was wrong to consider that it had jurisdiction to rule upon a policy of the Appellant rather than the effect of the operation of that policy upon the individual complainant.

20. It was argued on behalf of the Respondent as a preliminary point that this Court should not permit itself to consider the issue of whether or not it should rule upon a policy made by the Council, as it was said that this was not an issue raised in the Court below and it was not open to the Appellant to take the point here.
21. The learned District Judge in a careful reserved judgment did not deal with this issue, but appears to have taken it for granted that he could review the policy and decide whether it was lawful. He concluded that the Respondent “has sought to introduce a wide ranging and “blanket policy” in relation to this condition. It has given insufficient regard to whether there is a pressing social need for such a condition, and insufficient regard to the respective rights of both passengers and drivers.”
22. It is not clear whether or not the question of whether he was entitled to make such a ruling was fully argued before him. It was apparently argued orally, but not referred to in skeleton arguments placed before him. It is said that Counsel for the Respondent was taken by surprise, and was not able to deal fully with the point.
23. According to Counsel for the Respondent one could infer from the silence on this issue in the District Judge’s judgment, that he had declined to listen to argument upon it or rule, because it was introduced at a late stage.
24. Counsel for the Appellant on the other hand maintained that one could infer that as he had heard oral argument on the matter, he must have considered it and decided that he

did have jurisdiction to examine the policy of the Appellant, and that the Respondent had been entitled to appeal from the decision of the licensing authority to operate such a policy. It was argued on behalf of the Appellant that this was a re-hearing, a hearing *de novo*, and that fresh evidence could be adduced and fresh issues raised.

25. On behalf of the Respondent it was said that although this was a re-hearing so far as the evidence was concerned, it was otherwise not *de novo*, and substantial issues of law not canvassed in the Court below could not now be raised. It was said that the nature of the hearing was a review of the decision of the Learned District Judge, and that this Court's task was to review the judgment to decide whether the Learned District Judge was wrong, albeit having considered the evidence before this Court as well as the judgment.

26. Two cases were quoted in support of this contention. In *Sagnata Investments v Norwich Corporation* [1971] 1 QB 614, Lord Edmund Davies LJ quoted a number of authorities, and his conclusion can be summarised in this way; that although the appeal (to quarter sessions) was by way of a complete rehearing, this does not mean that the views of the local authority, duly constituted and elected should be disregarded. Further in *R (on the application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] 3 All ER 579, Toulson LJ at paragraph 48 said "it is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal and the 1981 Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities." We re-iterate that this is not an appeal from a licensing authority. It is arguable that the Learned District Judge should have had more regard to the views of the local authority which in the absence of an application for judicial review can be

taken to have considered all the relevant circumstances including local conditions. Furthermore if we come to consider the policy under review, we too should give consideration to the views of the local authority. However, this Court is dealing with an appeal from the Magistrates' Court and different considerations apply at this stage.

27. The question of whether we can consider the policy of the Council was raised in the skeleton arguments placed before us and it cannot be said that in this Court either party was hampered in its ability to deal with the issue.

28. This appeal is hybrid in nature. It is a civil matter in the sense that it does not involve an allegation of a criminal offence, and it deals with an issue between Southampton County Council and the holder of a Hackney Carriage licence. The procedure provided for the appeal is however quasi-criminal, or at least similar to that provided for a criminal case heard summarily. The original appeal was in the Magistrate's Court and this hearing is by way of appeal to the Crown Court, the Court consisting of a Judge (Recorder) and two lay justices. It is conceded that fresh evidence can be adduced (although it is said only on issues previously raised.) We find that we should treat this as a re-hearing *de novo*. It would be artificial to do otherwise. This Court cannot be sure of precisely what arguments were advanced in the Court below. There is evidence before us which was not before the Learned District Judge. It is inevitable that this would give rise to different arguments. The skeleton arguments are different and evidently raise different issues. If as asserted this important issue was not raised before the District Judge, that omission may have resulted in his misdirecting himself. That would not be a good reason for this Court to do likewise. The purpose of this appeal is to put right any erroneous decision of the Court below by hearing the matter afresh.

29. As a result neither the evidence nor the issues are restricted to the points raised in the Magistrates' Court. If we happen to reach a conclusion contrary to that of the Learned District Judge on the basis of the evidence and arguments before us that finding will inevitably mean that we find that his conclusion was wrong, although it may not have appeared wrong on the basis of the evidence and arguments presented to him. It is not helpful therefore to review his judgment in order to ascertain whether it can be said to be wrong. We are not bound to have regard to the decisions he reached. If we come to consider the policy however, we will for the reasons mentioned have due regard to the policy decision of the elected body entrusted by Parliament with the formulation of such policies.
30. It follows therefore that we were entitled to consider the question of whether it is within the jurisdiction of this Court (or for that matter the Court below) to review the policy of Southampton County Council and decide whether it was lawful or whether it violates Article 8 of the European Convention on Human Rights.
31. First we consider what is meant by policy, as this itself proved to be a controversial issue. It was suggested on behalf of the Respondent that the policy was the prevention and detection of crime and the protection of the public, and the licensing conditions imposed upon drivers as a whole were the means by which the policy was to be achieved. We rejected this interpretation. We distinguished between three elements, the aims and objectives, the policy adopted by the Council to achieve those aims and objectives, and means by which the policy was to be implemented.
32. The aim of local authority licensing of the tax and Private Hire Vehicle Licensing trades, according to *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance*,

is to protect the public. In order to do so it has to strike a balance between imposing licensing requirements to ensure that vehicles are safe and imposing conditions which are so onerous as to restrict the supply of properly licensed vehicles. Local licensing authorities are urged to look carefully at “the costs – financial or otherwise – imposed by each of their licensing policies.” They should ask themselves “whether those costs are really commensurate with the benefits a policy is meant to achieve.”

33. In order to achieve the objective of protection of the public, the Licensing Committee adopted a licensing policy, namely the policy set out in the minutes of its meeting held on the 26th August 2009. The policy was to impose six conditions “with a view to improving the quality of both vehicles and the service provided by drivers.” The 6th condition was that “in line with the Government and Council priorities on crime and disorder, public and driver safety, all licensed vehicles be fitted with Council approved digital cameras as soon as possible and in any case at the time a current licensed vehicle is replaced with the cost to the proprietor/driver capped at £250 excluding VAT and fitting costs.”

34. The sixth condition was that every taxi should have a secure digital taxi camera system approved by the Council 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. No specifications were attached to this condition, but we were informed, and it was agreed by both parties, that the only system which was approved by the Council was one which made audio recordings as well as visual, and which could not be de-activated by the owner or driver of the taxi, even when he was engaged in private activities, such as taking his family on holiday. We were invited by both parties to read this stipulation into the condition.

35. The stated reason for the adoption of the policy appears in the minutes of a meeting of the Licensing Committee of the Council on the 26th August 2009. The Committee resolved that all licensed vehicles be fitted with Council approved digital cameras “in line with Government and Council priorities on crime and disorder, public and driver safety.”
36. The power to attach conditions to a hackney carriage vehicle licence can be found in the Local Government (Miscellaneous Provisions) Act 1976, section 47 (1). This provides that “a district council may attach to the grant of a licence of a hackney carriage under the [Town Police Clauses] Act of 1847 such conditions as the district council may consider reasonably necessary.”
37. It was argued on behalf of the Respondent that it would be unlawful to take a policy decision to impose such a condition on all taxis without exception because to do so deprived the driver of the possibility of an appeal to the Magistrates’ Court under Section 47 (3) of The Local Government (Miscellaneous Provisions) Act 1976 Part 2, which as already explained, gives the right of appeal to any person aggrieved by a condition imposed on the grant of a licence. Such a person might otherwise challenge on its merits a decision to attach a condition to the grant of an individual licence.
38. This point was dealt with by the Court of Appeal in R (007 Stratford Taxis Limited) v Stratford on Avon District Council[2011] EWCA Civ 160 in paragraphs 12-13. In that case the Council took a policy decision that all taxis should have wheelchair access. The President said “it is open to an authority to decide to adopt a policy of this kind. Such a decision is open to challenge on orthodox judicial review grounds.”

39. It was pointed out that Civil Procedure Rule (CPR) 54.5(1), which governs judicial review claims, provides that a claim form must be filed promptly and in any event no later than three months after the grounds for making the claim first arise. This would mean that a driver whose taxi was to be licensed more than three months after the policy came into effect would be deprived of the opportunity to challenge it in the Court if it could not be challenged in the Magistrates' Court and, on appeal, in the Crown Court.

40. This may be unfortunate but in our view it does not endow the Magistrates' Court (or this Court) with the power to conduct a Judicial Review. A challenge to the policy as opposed to its implementation in particular circumstances is clearly the province of the Administrative Court. It is not for this Court to consider whether or not there is some means by which the Administrative Court could be persuaded to adjudicate upon the policy, as opposed to adjudicating upon its application resulting from a case stated, so as to enable an aggrieved person to establish his Article 8 rights.

41. As the Appellant points out, this Court is not permitted to attack a policy made in principle by the Council. This was made clear in *R (Westminster City Council) v Middlesex Crown Court [2002] EWHC 1104 (Admin)*. The case concerned the issue of a public entertainment licence. The Council adopted a policy with the presumption against the grant of a licence in areas already saturated with late night entertainment and refreshment uses. Scott-Baker J said "how should a Crown Court (or Magistrates' Court) approach an appeal where the council has a policy? In my judgment it must accept the policy and apply it as if it was standing in the shoes of the council considering the application. Neither the Magistrates' Court nor the Crown Court is the right place to challenge the policy. The remedy, if it is alleged that a policy has

been unlawfully established, is an application to the Administrative Court for judicial review. In formulating a policy the council will no doubt first consult the various interested parties and then take into account all the various relevant considerations.” It is to be noted that in formulating the policy in this case the Council did indeed engage in a consultative process, one in which Mr May played a prominent part.

42. We have therefore reached the conclusion that it is not open to us to review the policy of the Southampton City Council, and in that respect the decision of the Learned District Judge is wrong and the appeal will be allowed.

43. Counsel for the Respondent argued that we are entitled, indeed bound, to look at the Respondent’s individual case in order to see whether the condition should have been imposed in his case. Both Counsel agree, for different reasons, that the Council is entitled to consider an individual case to see whether exceptionally the policy should not apply. Counsel for the Appellant says it, lest failure to allow the possibility of an exception for individual circumstances might render the policy unlawful, because it would leave the Respondent without a remedy. (Article 13 of the European Convention on Human Rights provides that “everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Counsel for the Respondent says it in order to persuade us that this was a case where the Council should have considered the individual circumstances of the Respondent, but never enquired into them. He says we are therefore entitled to review their failure to do so. We are satisfied that neither the Council nor Mr May thought at the time that the policy allowed for exceptions. Nothing in any of the documents we have seen suggests this, and it is most unlikely

that any taxi owner would know, if it be the case, that there existed the possibility of exceptions to what was otherwise a blanket policy.

44. Although Mr May has made a fresh witness statement since the earlier hearing he does not bring to our attention any circumstances which would apply to him but not to every other taxi owner. Even if there is scope for exceptions to be made, there are no grounds on which the Council could have found that Mr May was an exceptional case. His Counsel goes on to argue that in the light of that, since it is open to us to consider his individual case, and that depends on the policy we are entitled to consider the policy. Further he says we should not, in the case of this individual, implement, or approve of the implementation of an unlawful policy. In order to avoid doing so we should look at the policy to see if it is unlawful for the reasons set out above.

45. Having already declined to rule on the lawfulness of the policy, we do not intend to permit it to creep in by the back door, and we do not consider that we are permitted to examine the policy on the pretext that it affects the individual taxi and individual condition.

46. In case our conclusion as to our jurisdiction to rule on the lawfulness of the policy is wrong, we were however invited to consider the issues which followed and which go to the question of whether the policy was lawful.

47. We have already referred to the Local Government (Miscellaneous Provisions) Act 1976, section 47 (1), which provides that “a district council may attach to the grant of a licence of a hackney carriage under the [Town Police Clauses] Act of 1847 such conditions as the district council may consider reasonably necessary.”

48. Counsel for the Appellant argues that “reasonably necessary” evokes the concept of Wednesbury unreasonableness. This derived from *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 1 KB 223. The Respondent would have to establish that the decision to impose the condition was so unreasonable that no reasonable authority would ever consider imposing it.
49. On behalf of the Respondent it was said that this argument was not to be found in the Appellant’s skeleton argument, and should not be permitted to be advanced now. Furthermore, the concept of reasonableness was a more general one and not as narrow as that prescribed in the Wednesbury case. In any event even if the concept of Wednesbury unreasonableness is adopted, the condition was so far from necessary on the evidence that no reasonable authority could impose it.
50. In order to judge whether the policy was reasonably necessary we had to examine the evidence adduced on behalf of the Appellant, although it is not certain how much of this was available to the Licensing Committee when deciding to adopt the policy, or the extent to which they considered it.
51. The report leading to the decision of the Council on the 26th August asserted that cameras were fitted to fulfil two roles; to ensure the safety of the public and secondly the safety and integrity of the driver.
52. In support of the argument that the condition was reasonably necessary for this purpose, the Appellant relied upon the evidence by way of statement of Mr Richard Scott Black, the Licensing Manager for Southampton City Council. He was responsible for the licensing of Hackney Carriages and Private Hire Vehicles. Although the power to attach conditions to the licence derives from different sections

of the Local Government (Miscellaneous Provisions) Act 1976, as the same condition applies to both we have not differentiated between them and have referred to both as taxis in this judgment. The condition applied to the grant of new licences from the 26th August 2009 onwards.

53. Mr Scott Black was concerned not only with the prevention and detection of criminal offences but with the interests and promotion of public safety generally, and the question of whether the driver is a fit and proper person to hold a licence. He said that since April 2008 the authority had dealt with numerous incidents where it had to suspend drivers due to the serious nature of alleged offences. However he set out the number and nature of offences where suspensions had been considered. In 2008 there were three allegations of sexual offences and three of assault, resulting in a total of 3 suspensions. In 2009 there were four of sexual offences and one of assault, resulting in five suspensions. In 2010 there were two of sexual offences and one of assault resulting in two suspensions. Mr Scott Black gave details of some of these occasions, and it was not clear in the case of all of them that cameras either assisted or would have assisted, though in one case at least evidently it protected the driver against false allegations. In one instance three elderly and partially sighted ladies were put out on the street without further assistance. The conversation recorded on the audio camera resulted in the suspension of the driver.

54. The 10 or 11 instances spread over three years have to be seen against the number of vehicles licensed by Southampton City Council. Those with cameras fitted had by the time of Mr Scott Black's undated statement reached 450 out of a total of about 1,000. Assuming each of the vehicles made several journeys a day, there must have been at least many thousands of journeys over that period.

55. The Appellant also relied on the anecdotal evidence from a relatively junior police officer, Detective Constable Timothy Mark Blanche. He spoke of three occasions over a three year period in which what he erroneously refers to as CCTVs in taxis were relevant. In one after a public order incident, a suspect made damning comments to the driver, was arrested and pleaded guilty. In another a driver was hit over the head with a hammer, and the suspect was identified by the camera in the taxi. In a third, the plea of guilty in a case involving domestic violence seems to have been the result of a statement from the driver, though it could have been affected by the presence of the camera. In a fourth incident, it was said that camera footage could have protected the driver from a false allegation.

56. A more senior officer, Chief Inspector Stuart Murray also provided a statement. It appears that the police do not keep records which would be of assistance. Nevertheless he was able to compile a table of offences undated. Of the 14 offences listed, 6 were making off without payment, and there was an assault, gravity unspecified, in respect of which a camera would have been “very useful” but not essential. There was a further assault occurring outside the taxi, so the fitting of a camera was not relevant. There was a case of criminal damage, though no details of the circumstances or value were given, a dwelling house burglary, and a further serious assault and serious public disorder. Three of these examples, including the last two, duplicated the evidence given by the Detective Constable.

57. There were numerous press cuttings describing various events in different parts of the country. It was impossible to evaluate the accuracy of these reports, and, as they occurred in many different areas, the extent to which the necessity for cameras

corresponded with the necessity if any in the Southampton area. Furthermore, the evidence was again anecdotal rather than statistical.

58. These examples were produced by Mr Bryan M Roland, who was the founder and General Secretary of the National Private Hire Association. His principal concern was the safety of taxi drivers, some 60 of whom had according to him been murdered over a number of years over the country as a whole. Most of the incidents were alcohol related and many were racially motivated. He referred to Sheffield where one of his members had reported that the incidents of violence and abuse against taxi drivers over the Christmas period had been reduced from 300 to 6 following the installation of CCTV cameras in the company vehicles. In fact the cameras to be installed in Southampton are not CCTV cameras, as they are not monitored. Once again the evidence from Southampton suggests a very different picture from that in some other parts of the country. Furthermore, all these are examples of attacks on or abuse to taxi drivers, rather than to other members of the public. While there is a public interest in preventing crime generally, including that against taxi drivers, it has to be remembered that the condition is imposed on licences granted to taxi drivers. Should they wish to protect themselves, there is no reason why they should not fit cameras on a voluntary basis, and we understand that many do.

59. Having considered all the evidence put before us we take the view that in order to further the aims and objectives adopted, it was not reasonably necessary to install audio cameras on a permanent basis in all taxis in Southampton.

60. We now come on to consider the application of Article 8 of the European Convention on Human Rights. The application of Article 8 was challenged in the Court below. It

was contended on behalf of the Appellant that there was a distinction between a private home and a taxi. The Learned District Judge devoted part of his judgment to this issue. He came to the conclusion, rightly in our view, that the condition engaged Article 8. Happily in this Court that was conceded and the appeal proceeded on the basis that the right under Article 8 was a right accorded to taxi drivers, family and friends, and also to customers hiring the taxi.

61. Article 8 provides that “(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.”

62. Counsel for the Respondent argues that the exception should be strictly construed. He cites a number of authorities. In *Silver v United Kingdom* 5 EHRR 347 at 377 it was said that “those paragraphs of Article of the Convention which provide for an exception to right guaranteed are to be narrowly construed.”

63. At 376 when examining the phrase “necessary in a democratic society” it was adjudged not synonymous with “indispensable” neither has it the flexibility of such expressions as “admissible”, “ordinary”, “useful”, “reasonable” or “desirable”. “The phrase “necessary in a democratic society” means that to be compatible with the Convention, the interference must, *inter alia*, “correspond to a pressing social need” and be proportionate to the legitimate aim pursued.”

64. The legitimate aim as stated in the minute is to act “in line with Government and Council priorities on crime and disorder, public and driver safety.” In order to ascertain whether it was “necessary” in the sense referred to in Article 8, and in particular whether it corresponded to a “pressing social need” it was necessary to look again at the evidence.

65. In addition to the evidence to which reference has already been made, we were referred to a survey carried out by a company called Halcrow Group Ltd, commissioned by Southampton City Council to undertake consultation with members of the public across Southampton to obtain their view as to a number of issues surrounding the use of taxis and private hire vehicles in Southampton. This was capable of addressing the question of a pressing social need.

66. 40% of the 397 respondents said that they used taxis or private hire vehicles in Southampton. 89.5% said they felt safe when travelling in such vehicles by day, 82% in the evening, and 66.2% by night. 10.9% of those who did not feel safe felt that CCTV (sic) in the vehicles would make them feel safer. However, when told that “Southampton Taxi Licensing Department requires all taxis and private hire vehicles to be fitted with fixed cameras that record digital images for public safety,” 89.6% of all respondents said they agreed with this policy. Notably they were not told that the cameras also made audio recordings at the same time, and were fixed permanently in the vehicle. Nevertheless a significant number apparently referred to CCTV as being an invasion of privacy. The results of this survey failed to convince us that there was a pressing social need for the condition as it stands.

67. We have been referred to a letter from Nicki Hargreaves, at the Information Commissioner's Office, in response to a complaint made by Mr A Giffard of Imperial Cars Southampton in respect of the application of the Council's policy with regard to the compulsory installation of cameras. It appears that the digital recordings are encrypted and cannot be accessed by members of the public or the taxi drivers themselves. Since the introduction of the requirement the recorded images have been accessed and used on a very limited number of occasions and only in the most exceptional circumstances. While this supports the claim that the use is not excessive in terms of the Data Protection Act 1998, it also impacts upon the question of whether the provision is necessary, and whether it satisfies a pressing social need.

68. The view of the Commissioner was that there is no reason to be concerned about the security of the systems in place, the storage of captured information and the access and use of the images and audio when it is considered necessary.

69. However the view taken by the Commissioner's Office is that given how rarely the images and audio are accessed, the level of intrusion into every single trip taken by every customer of a licensed vehicle operated by the Council cannot be considered proportionate to the aim of the system. For this reason the recording of audio itself is considered excessive for the purposes. Such excessive recording of personal data cannot be considered fair under the first principle, (namely Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met. The relevant conditions are "the processing is necessary ...for the exercise of any functions conferred on any person by or under any enactment or (d) for the exercise of any other functions of a public nature exercised in the public interest by any person or 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.)

70. This is of course only an opinion, and is in any event relevant strictly to the concerns of the Information Commissioner's Office, but the conclusion is not without interest and is based upon a factual matrix which also is of concern to us.

71. Having considered all the material before us we have reached a conclusion as to the condition as it stands, namely that every taxi should have a secure digital taxi camera system approved by the Council 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, read to refer to a camera making audio recordings as well as visual, and permanently fitted and operating whenever the vehicle is operating. The condition is in our view does not correspond to a pressing social need, is not proportionate to the legitimate aim pursued and is not 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.”

72. The most invasive aspect of the installation is the recording of each and every conversation both of conversations between the driver and passengers, and more importantly between passengers in the vehicle. Also invasive is the recording both visual and audio when the vehicle is in private use. We came to the conclusion that the condition as it stands is not necessary in pursuit of the stated aims. Furthermore,

balancing the duties of the Council to promote public safety and take steps for the prevention of disorder or crime against the Article 8 rights of the drivers and passengers, we consider the condition to be disproportionate and a violation of Article 8. Had the recording been restricted to visual, and had some means been made available to de-activate the camera while the vehicle was in private use, perhaps by a technician designated for the purpose, we would have taken a different view. Although Article 8 would still be engaged as the activities and whereabouts of fare paying passengers would be visually recorded, the degree of interference would in our view be justified in pursuance of the legitimate aims and objectives of the Appellant.

73. In conclusion therefore we accepted the argument of the Appellant that we are entitled to consider whether or not we have jurisdiction to consider the policy of the Council irrespective of whether consideration of it was given by the Court below.

74. We find for the Appellant in that we do not consider this Court has jurisdiction to overturn the policy of the Council. The Learned District Judge should not therefore have assumed that jurisdiction.

75. If we had such jurisdiction, we would have found in favour of the Respondent that the policy was not lawful, and was not justified in pursuance of the legitimate aims and objectives of the Appellant and the Learned District Judge was right in his conclusions in respect of this.

76. If the policy were to be amended and the condition limited to visual recordings while the vehicle was in operation as a taxi, the policy would in our view be justified in pursuance of those legitimate aims and objectives, and therefore lawful.

77. There is no reason to make an exception from the implementation of the policy by imposition of the particular condition in respect of the Respondent.

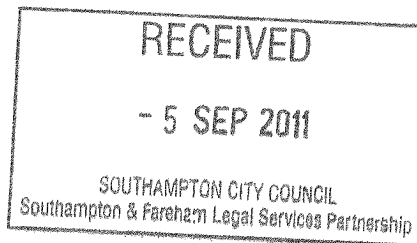
THIS APPEAL IS ALLOWED

STEWART PATTERSON

17th November 2011

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Ms J Austin
Information Compliance Officer
Southampton City Council
Corporate Legal Team
Civic Centre
Southampton
SO14 7LY



02 September 2011

Reference: RFA0392300

Dear Ms Austin

The Information Commissioner has received a complaint relating to the use of audio CCTV systems in private hire vehicles.

Complaints to the Information Commissioner's Office

Under the Data Protection Act 1998 (the DPA), those who collect and use personal information have to follow rules of good practice for handling information (called the data protection principles). The DPA also gives rights to individuals whose information is collected and used.

When we receive a data protection complaint, we will make an assessment. This is our view about whether an organisation has followed the rules of good practice properly. We do this by deciding whether it is likely or unlikely that an organisation has processed personal data in line with DPA.

Our aim is to ensure that personal information is dealt with properly in the future. Our assessment decisions can help us to decide whether we should take action against a particular organisation.

We know that most organisations work hard to ensure they process personal data in line with the DPA and want to put things right when they have gone wrong. However, if an organisation refuses to take its responsibilities under the DPA seriously, we may consider formal



action to ensure it complies with the law. Please see the enclosed guidance note for further information.

We are writing to you now because we have received a data protection complaint about Southampton City Council (the Council) and we need some information from you to help us make our assessment and decide whether further action is appropriate.

The complaint made to us

It has been brought to our attention that the Council has begun requiring private hire firms to install CCTV systems including audio recording in all vehicles before a licence can be granted.

Although the DPA does not prevent a company from requiring the installation of CCTV cameras, concerns have been raised as to the fairness of processing personal data in this way. This is due to the requirement that the CCTV cameras are equipped with audio recording capabilities.

As you should be aware, our CCTV Code of Practice makes clear that the recording of audio is unlikely to be acceptable except in very particular circumstances.

From the information provided, it is possible that the Council has failed to comply with the DPA in this case.

What you need to do now

We want you to revisit the way you have handled this matter. You should refer to our website for further information about fair processing and CCTV.

- If there is anything you can do to resolve the complaint at this point, please take the relevant action and let us know what you have done.

If you feel that you have complied with the DPA in this case, please provide detailed arguments to support your position.

In any event, to help us decide whether further regulatory action is appropriate, please also provide:



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- details of any safeguards you have in place to help ensure you handle personal data properly, particularly in relation to fair processing; and
- details of any steps you have taken (or intend to take) to add to or strengthen these safeguards.

You must provide this within **28 days**.

The Commissioner will base his assessment and decision as to whether further regulatory action is appropriate on the information provided to us already and your response to this letter. **You should therefore make sure you provide us with all the information you want us to take into account.**

If you do not provide the information we have requested

If you do not provide the information we have requested within 28 days, we will either base our decision on the information we already have or we will contact the head of your organisation. We can send an information notice compelling the Council to provide it.

Advice and assistance

Our website contains significant advice and guidance about the processing of personal data and an organisation's obligations under the DPA. I recommend that you review the information on our website before finalising your reply.

This case has not yet been allocated to an individual case officer. If there is anything you would like to discuss, please contact the office in writing initially, ensuring that you include the case reference number.

You may wish to send your response by email to casework@ico.gsi.gov.uk. In the subject field of your email please include the following text (including the square brackets) [Ref. RFAXXXXXXX], replacing the 'X' characters with the above case reference number. This will add your email directly to the case, ready for its allocation to an officer.



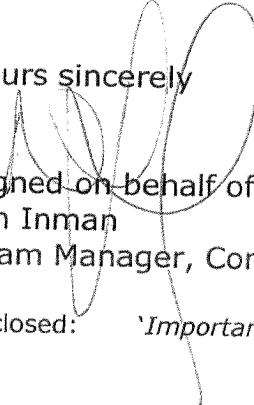
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ico.

Information Commissioner's Office

Yours sincerely


Signed on behalf of
Ian Inman
Team Manager, Complaints Resolution

Enclosed: *'Important information for data controllers'*



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ACTING HEAD OF LEGAL & DEMOCRATIC SERVICES
RICHARD IVORY, Solicitor
Southampton City Council
Civic Centre
Southampton SO14 7LT



FAREHAM BOROUGH
COUNCIL
www.fareham.gov.uk

Appendix 5

SOUTHAMPTON
CITY COUNCIL®

Southampton and Fareham Legal Services Partnership

Direct Dial: 023 8083 2027
Email: tracy.horspool@southampton.gov.uk
Please ask for: Miss T J Horspool

Fax: 023 8083 2308
Our ref: TJH/lcb/
Your ref: RFA0392300
Date: 28th September 2011

Mr Ian Inman
Team Manager
Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
WILMSLOW
Cheshire SK9 5AF

Dear Mr Inman

COMPLAINT BY MR GIFFARD

Thank you for your letter dated 2nd September 2011 relating to a complaint that the Information Commissioner has received concerning the use of audio digital camera systems in private hire vehicles. As a point of clarification, these systems are not CCTV in the true sense of the word, they are in fact, digital imaging systems. The Council is not taking particular issue with this as it appreciates that the same obligations in data protection law apply, whatever the system, but thought it would be useful at the outset to clarify this.

You have asked the Council to revisit its policies and the way it has handled this matter. The Council will respond in turn to each of the questions you have asked and points you raise. However, firstly we feel that it would be beneficial to explain the background to the complaint and explain the operation of the cameras in the city's taxis and private hire vehicles. The Council also makes submissions in respect of the CCTV Code of Practice and the Data Protection Act 1998 (the 'DPA') before turning to the specific questions you have raised.

1. Background

The City Council's role and legal obligation is to regulate the local taxi businesses in accordance with a body of law dating back to 1847. The main regulating acts are the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. There is a continuing requirement for the Council, as regulating body, to ensure that licences, vehicles and driver standards are kept at the highest level to ensure both the safety of passengers and drivers.

Cameras are now fitted to the city's licensed taxis and private hire vehicles in order to fulfil two roles: firstly to ensure the safety of the public and secondly, the safety and integrity of the driver. Recent years have seen an increase in both the number of incidents, locally and nationally, that have involved taxis. In 2009 the police investigated the murder of taxi driver Mohammed Arshad in north Worcestershire. He had been found fatally stabbed after working one evening as a self employed taxi driver.

Locally, in our adjacent borough, Eastleigh, a taxi driver was recently throttled and set on fire by one of his passengers. The benefit of digital imaging, both visual images and audio is clear. Not only is it used to identify offenders and be supporting evidence for any Police or Council licensing

enforcement actions, it has a vital use as a deterrent to would-be trouble makers and protects, and assists in protecting both drivers and passengers. In 2009 it was used to successfully identify in the region of a dozen offenders in the city alone. The picture and audio quality is exceptional and it is fully accepted as evidence in the courts as the system is fully auditable, containing details of the vehicle, camera serial number, licence number and time and date. The Council has been supporting the voluntary fitment of these systems since 2004. The early systems had no audio facility, however, all fitted since 2005 include the audio facility.

Mr Ian Inman, Information Commissioner's Office
20th September 2011

Many drivers are subjected to considerable verbal abuse and this is one of the main supporting reasons for including audio recording in the approved camera systems that are fitted. Visual CCTV alone is not capable of yielding evidence of any verbal abuse.

2. The Cameras

On 26th August 2009, the Licensing Committee of the Council resolved to make it a mandatory vehicle condition to have a digital camera fitted to licensed vehicles as part of its strategic approach and legal obligation to reduce crime and disorder and to improve driver safety. This was done after a lengthy period of consultation with both the trade and public. The cameras have been part funded by contribution from various agencies, including the Government Office South East and the Home Office, as part of the Safe City Partnership with the police. The Council currently licences in the region of 800 vehicles, of which 275 are hackney carriages, the remainder are private hire vehicles. The Council also licences about 1300 drivers who are from a multiplicity of ethnic origins and cultural backgrounds. To date, there are about 450 licensed vehicles with cameras fitted, where the proprietor has contributed in the region of £250 plus fitting charge, to obtain the device. The two types of camera approved for use by the Council have an audio recording facility. The first type runs audio and visual recordings when the taxi is in use and, when a 'trigger' is activated, such as by panic button or the use of the meter, the rate of still images increases to give the effect of video. The second type of camera records footage and audio in real time and has no such triggers.

The storage device for the footage is a secure hard disc, accessible only via approved secure software held by officers in the Council's dedicated Licensing team and by Hampshire Constabulary. Footage and audio are only ever accessed or downloaded in two specific instances: when a substantive complaint has been made to the Council against the driver of a specific vehicle and where a crime report has been made to the police involving the relevant vehicle and where the police have formally requested that data. No other occasions warrant access to this data and no-one else has access to the images. If either of these two limited scenarios arise, the request for access must be made in writing, state the approximate time of the event or occurrence and only the timescale relevant to the specific incident will be downloaded and decrypted.

After a maximum period of 30 days, any recorded data is automatically overwritten. The exact period of time for destruction will depend on the specification of the system installed. Only systems approved by the Licensing Manager may be installed by an independent installer, ensuring that any equipment may not be tampered with or footage be capable of release to a third party. When data has been extracted, either on behalf of the Police or the Council, it is secured in a locked evidence cabinet and strict rules of evidence are applied. Such data, together with any section 9 statements of evidence, are only ever signed over to the relevant case officer in the event of those two specific instances arising.

3. The CCTV Code of Practice (revised edition 2008)

The Council is aware and mindful of the Information Commissioner's CCTV Code of Practice. The Code clearly states that CCTV must not be used to record conversations between members of the public as this is considered to be highly intrusive and unlikely to be justified. The recommendation is that a system without this facility should be chosen if possible and that any system equipped with a sound recording facility should be turned off or disabled in some way.

The Code does, however, acknowledge that there are limited circumstances in which audio recordings may be justified, subject to sufficient safeguards being in place.

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Mr Ian Inman, Information Commissioner's Office
20th September 2011

Two relevant examples are cited: firstly where conversations between staff and particular individuals where a reliable record is needed of what was said, such as the charging area of a police custody suite or where a recording is triggered due to a specific threat. In the limited circumstances where audio recording is justified, signs must make it very clear that audio recording is being or may be carried out.

In Southampton and indeed presumably elsewhere in the country, most complaints about taxis involve only two parties, the driver and the single passenger making the complaint or reporting the crime. It is understandably difficult in such circumstances to establish the facts. The visual images only go part way to assisting in this. Audio recordings in the city have proved that they can provide independent evidence which is essential to both the Police when investigating crime and the Council when making its decisions in taking enforcement action.

To draw on a specific example, one of the most significant cases investigated to date by the Council is a case where a private hire driver was working for a major private hire operator to carry vulnerable individuals as part of a social care contract with the Council's Health and Adult Social Care Directorate. The driver was contracted to pick up three elderly, partially sighted females and transport them to a day centre. An incident prompted the driver to lose his temper. He was abusive and made serious threats to all three passengers. The incident culminated in the three elderly and vulnerable ladies being ejected from the vehicle, without any assistance, on the roadside of one of the main arterial routes into the city. They all had significant sight defects and were found scared and confused wandering the roadside sometime later by a member of the day centre staff who went to look for them after they failed to arrive at the centre at the expected time. In this case there was a camera fitted to the vehicle. The visual download only established the partial facts of the incident. The recording of the verbal exchange between the driver and his passengers was essential independent, factual evidence later presented to the Council's Licensing Committee, subsequently established to determine the resulting complaint and to determine whether the driver's licence should be revoked. It proved even more critical as the three witnesses proved too vulnerable and too scared to provide evidence to the Committee because the driver had made threats of violence towards them.

Since its introduction, a total of 39 complaints involving hackney carriages and 22 involving private hire vehicles have been made. Only in the most serious of complaints is the recorded information ever accessed. Recorded information has been downloaded and accessed on four occasions for private hire behavioural related complaints. On two occasions, the audio recordings in particular proved that the complaints were unfounded, on the other two occasions the audio recordings proved that the driver had acted inappropriately, on one occasion involving violence and further enforcement action was taken on the basis of this evidence.

The Council accepts that an automatic rolling audio recording in its licensed taxi cabs as opposed to an activated only in limited circumstances scenario may not be seen by the Information

Commissioner as a proportionate or justifiable use of audio recordings but it would submit that it may not always be practical or of benefit to the driver to self activate the audio recording, for instance, when the driver is the person delivering the abuse to the passenger. It is also not realistic to expect a passenger to have the knowledge or wherewithal to activate the recording if he or she felt under threat.

In light of the above, the Council therefore submits that the form and manner of audio recording as it currently exists is justifiable and compliant with the DPA.

The Council appreciates that the Code of Practice provides practical guidance on compliance and that such compliance demonstrates that the legal requirements of the DPA have been met. In the first instance the Council would submit that it is both acting in accordance with the Code and that audio recording is justified with sufficient safeguards are in place.

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Mr Ian Inman, Information Commissioner's Office
20th September 2011

Alternatively, if the Information Commissioner's Office takes the view that audio recordings in this case are in breach of the Code, the Council maintains that the Code itself is not strict law and the Council submits that it is nevertheless still complying with the provisions of the DPA.

4. Compliance with the DPA

Principle 1 – Fair & Lawful Processing

The Council submits that it is compliant with the fair processing requirements of the DPA. The Council is the data controller for the processing of the data. There is a clear notice in the rear window of each vehicle with the facility, and, in purpose built vehicles, also on the security screen that separates the driver and the passenger. Such notice comprises reverse digitally printed window stickers measuring 70mm x 100mm showing an image of both camera and microphone with the wording: '*Warning – Images and audio are recorded in this vehicle to prevent crime and ensure public safety. This Scheme is controlled by Southampton City Council. For more information call 023 8083 2792*'. The Council also has an up-to-date Notification lodged with the Information Commissioner's Office which describes the processing of this data under Purpose 11, Crime Prevention and the Detection and the Prosecution of Offenders.

The Council further submits that it satisfies a number of Schedule 2 DPA conditions, including, but not limited to condition 3, where the processing is necessary for the exercise of any legal obligation to which the data controller is subject, condition 5(b) where the processing is necessary for the exercise of any functions conferred on any person by or under any enactment and condition 5(d), where the processing is necessary for the exercise of any functions of a public nature exercised in the public interest by any person.

The Council submits that the legal obligations and public functions that it is both subject to and exercises relate in essence to the regulatory activity it performs under the taxi licensing acts, namely the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 as well as its general duty under section 17 of the Crime and Disorder Act 1998 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 it reasonably can, to prevent crime and disorder in its area. These are clearly obligations of a public nature exercised in the public interest.

Regarding the issue of the 'necessity' of the processing, the Council confirms that it has objectively considered this and asserts that the purposes of the processing are valid, that such purposes can be achieved to the highest required standards only by processing the personal data in the

circumstances described. Further, in light of the background to the scheme outlined at the outset and on the basis of the evidence presented – both by examples given and of the statistical information detailed – the Council considers that the digital images and audio footage is proportionate to the aim pursued.

Principle 2 – Processed for Limited Purposes

The visual and audio recording is for the prevention and detection of crime and disorder. No further use beyond that is permitted. This is evidenced by the access and retention safeguards outlined previously.

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Mr Ian Inman, Information Commissioner's Office
20th September 2011

Principle 3 – Adequate, Relevant and Not Excessive

As explained previously, although the camera and audio recordings are activated each time the taxi is in use, the recorded footage is only accessed in limited circumstances i.e. whenever either a complaint has been made or a crime is being investigated by a limited number of trained officers. Unaccessed information is deleted after a short period of time, and only retained up to a maximum of 30 days.

Principle 4 – Accurate and Up to Date

The Council submits that by the very nature of the footage, such data is accurate as it records real events.

Principle 5 – Not Kept for Longer than Necessary

The Council's retention and destruction arrangements are stringent and have been outlined previously. Accessed information in the two limited circumstances detailed previously is kept for the duration of the investigation or prosecution and then destroyed in line with the Council's retention schedule.

Principle 6 – Processed in line with the Rights of the Data Subject

The Council submits that it complies with all of its obligations under the DPA, but in particular the section 7 right of access of the data subject and section 10, the right to prevent processing. The Council has not received any section 10 notices and does of course comply with any subject access requests for such footage in accordance with its standard procedures.

Principle 7 – Security

As explained previously, there is a strict and limited access to the recorded footage by a limited number of persons on a restricted basis. Further, the recording devices in the car are mounted in deliberately inaccessible locations and either the memory card or hard drive is locked into the device. Only the Council has the access key and the encrypted software enabling the downloading of the footage.

Principle 8 – Transfer out of the Country

The data is not transferred out of the country.

5. The Council's Response to the Specific Questions of the Information Commissioner

- i. *If there is anything you can do to resolve the complaint at this point, please take the relevant action and let us know what you have done*

Currently the issue of the reasonableness of the Council's condition to have digital and audio recording in its licensed taxis is awaiting hearing in the Crown Court. The matter is due to be heard on 20th and 21st October 2011. Subject to the consideration of any appeal, the Council reserves its position until judgement has been given.

- ii. *If you feel that you have complied with the DPA in this case, please provide detailed arguments to support your position*

Please see the Council's case as submitted above.

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Mr Ian Inman, Information Commissioner's Office
20th September 2011

- iii. *Details of any safeguards you have in place to help ensure you handle personal data properly, particularly in relation to fair processing*

The Council has a range of measures in place to ensure compliance with the DPA. Measures relevant to this complaint include:

- The Council has a corporate Information Compliance Officer whose responsibility it is to ensure compliance with the Freedom of Information Act and Data Protection Act across the Council.
- The Council has a suite of policies to ensure safeguarding of personal information. These include the Data Protection policy, Information Security Policy, Data Loss Policy and so on.
- Management Academy – the Council arranges for intensive information law training for managers and dissemination to staff.
- The Council's Code of Conduct describes standards of service and conduct expected of its employees and refers to Confidentiality and Disclosure of Information. It states, '*All Council information should be treated as confidential unless the employee is sure that it is for public consumption. Even confirming that someone is a tenant or employed by the Council may be a breach of confidentiality... For guidance contact your line manager. An employee must not use any information obtained in the course of his/her employment for personal gain or benefit, nor pass it on to others who might use it in such a way.*
- Data Protection breaches are a disciplinary offence.
- We have extensive information on our intranet pages for employees to reference, including information on how to handle Subject Access requests.
- The Council trains its staff in a variety of ways at variety of levels. This includes:
 - Computer Based Training
 - Data Protection training face-to-face to key staff. The Children and Adults Services directorate deliver an Information Governance Training course to train and update staff on Data Protection issues that may be particularly relevant to their Directorate
 - Basic Level Data Protection training is offered to all staff;
 - The Information Compliance Officer sends a Newsletter to departmental information champions and other key officers within departments on information issues and reminding staff to adhere to the Council's Data Protection policies. It also contains updates as to any data protection breaches or complaints and the lessons to be learned from them.

- Staff are also regularly reminded about their obligations via emails, e-bulletins, training sessions and face-to-face meetings.
- An information governance structure and regular meeting of governance groups addressing the issue of breaches and issuing remediation reports following such breaches
- A data breach reporting structure where all known breaches are assessed by a senior solicitor who will take the decision to self report to the Information Commissioner when appropriate

iv. *Details of any steps you have taken or intend to take to add to or strengthen these safeguards*

The Council considers that it does have sufficient safeguards in place and that compliance in this regard is a matter of interpretation of the DPA and the Code of Practice. We, of course, await both your decision and the court's decision in this regard and will reassess our safeguards for ensuring compliance with the DPA as soon as this has been determined.

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Mr Ian Inman, Information Commissioner's Office
20th September 2011

Please note that the Council's Information Compliance Officer is no longer Mrs Janice Austin, the addressee to whom your correspondence was sent. The Council's current Information Compliance Officer is a Mr Vikas Gupta. We would be grateful if any further complaints could be addressed to Mr Gupta personally.

We look forward to hearing from you further.

Yours sincerely



Tracy Horspool
Senior Solicitor (Corporate)
for Head of Legal & Democratic Services

If you would like this letter sent to you in another format or language, please contact the number at the top of this letter.

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Ms T Horspool
Senior Solicitor (Corporate)
Southampton City Council
Civic Centre
Southampton
SO14 7LT

04 October 2011

Our reference: RFA0392300
Your reference: TJH/lcb/

Dear Ms Horspool

Thank you for your letter of 28 September 2011.

I am sending this letter to you as you provided the response to our office; however it is noted that Mr Vikas Gupta is now the Information Compliance Officer for the Council. Please ensure that the contact details on the Council's notification (Z4809838) with the Information Commissioner are also updated. You can do this by emailing notification@ico.gsi.gov.uk or calling 0303 123 1113.

When we last wrote to you, we explained that when we receive complaints, our obligation is to make an assessment. The assessment is the Information Commissioner's view about whether an organisation has followed the rules of good practice for handling information in the Data Protection Act 1998 (the DPA).

We also explained that our aim is to ensure that organisations deal with personal information properly in the future. Our assessment decisions can help us to decide whether we should take action against a particular organisation.

Our decision

In this case we have decided that it is unlikely that Southampton City Council (the Council) has complied with the requirements of the DPA.



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You have explained in detail the Council's reasons for believing that the use of audio camera systems in private hire vehicles is compliant with the principles of the DPA.

Although we have no concerns regarding the security of the systems and the storage of the information, it is the capture of the information in the first instance that is considered excessive and disproportionate, and therefore unfair.

You have explained that it was on 26 August 2009 that the Licensing Committee resolved to make it a mandatory condition that digital cameras must be fitted to its 800 licensed vehicles. Since its introduction, a total of 61 complaints have been made involving private hire vehicles. Only on 4 occasions has the recorded information been accessed as part of the investigation. Therefore, in just over 2 years, only 4 occasions have warranted the access of this information from one of the 450 vehicles which currently have the system in place. It is difficult to see how such intrusion into every single trip taken by every customer of a licensed vehicle operated by the Council can be considered proportionate to the aim of the system.

As you are aware, our CCTV Code of Practice states that audio recordings should only be made in very limited, exceptional circumstances. The Council's use cannot be said to be compliant with the views expressed in this guidance. Although we acknowledge the guidance itself is not law, it is this guidance which expresses our view on how organisations can ensure that they are operating their CCTV systems in compliance with the principles of the DPA.

In your response you maintain that the Council is compliant with the third principle of the DPA because the recorded information is only accessed in limited circumstances; however it is the fact that the recording is activated on each and every occasion the taxi is in use that is considered excessive for the purposes. Such excessive recording of personal data cannot be considered fair under the first principle.

When deciding whether regulatory action is appropriate, we take into account the organisation's general record of compliance with the DPA (including any previous assessments we have made) and any other information that is in our possession (including information given during the course of those assessments).



Having carefully considered all the information that we hold about the Council, we have decided that formal regulatory action is not required at this point.

Next steps

Most organisations will want to put things right when they have gone wrong and learn from complaints that are raised with them. Although we are not considering further action at this time, you should consider the information we have provided during the course of this assessment and take steps to prevent the situation from happening again.

We keep a record of all assessment decisions and will take these into account if we receive further complaints about the Council. The information we gather from complaints may form the basis for regulatory action in the future.

Yours sincerely



Nicki Hargreaves
Case Officer, Complaints Resolution
Tel: 01625 545840



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BY EMAIL ONLY

Ms Tracy Horspool
Senior Solicitor (Corporate)
Legal & Democratic Services
Southampton City Council
Civic Centre
Southampton
SO14 7LT

Email: tracy.horspool@southampton.gov.uk

22 December 2011

Dear Ms Horspool

We have recently become aware that it is the policy of Southampton City Council (the Council) to require all taxis that it licenses to have a CCTV system installed. We understand that this is now a common approach from licensing authorities. However we are concerned by reports that taxi operators are required to install a system with an audio recording feature which is permanently on and thus recording all conversations that occur within the taxi.

Setting aside the need to satisfy one of the Data Protection Act's (the Act) conditions for processing (which means satisfying one of the conditions set out in Schedule 2 of the Act and in addition, where the information is defined as "sensitive personal data", a Schedule 3 condition) we still have serious concerns, if what we understand is correct, about what the Council imposes as a condition for licensing taxis in the city.

From our perspective it is not at all clear why the audio recording facility is required to be permanently running as part of the licensing conditions. Such an approach engages concerns about compliance with the requirements of the first and third data protection principles which are set out in the Act. This is because we consider that such processing could not be considered as "fair" because individuals in Southampton will have anything said in the vehicle recorded. It is not clear that there is a pressing need which justifies such an intrusive measure with no choice for individuals irrespective of the level of threat they may pose. We also consider that recording everything that is said within a taxi while it is

operating would be excessive and irrelevant. This is because there would be a massive amount of irrelevant material recorded using the proposed approach.

Another area of possible concern is the length of time that the images might be retained for. We would like to know how long this will be for.

We do consider that in certain circumstances the processing of audio recordings can be done in compliance with the Act's requirements. This is set out in the revised edition of the ICO's [CCTV code of practice](#) published in 2008. On page 10 we set out the limited circumstances where we think audio recording may be justified. One of these is where the recording is triggered in response to a specific threat such as by using a "panic button". This approach is one that is followed by Transport for London (TfL) in its guidance on taxi licensing.

What we would like to know is more about why the situation or the level of threat is so different in Southampton that it is felt that the audio recording needs to be permanently activated in the city's taxis?

We would be grateful if you could provide this information within 21 days. If you think that it will take longer than this to provide a response could you please let us know.

Yours sincerely

David Evans
Senior Policy Officer

HEAD OF LEGAL, HR & DEMOCRATIC SERVICES
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Date: 20th January 2012

Mr David Evans
Senior Policy Officer, Strategic Liaison
Information Commissioner's Office
Wycliffe House
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WILMSLOW
Cheshire. . SK9 5AF

Dear Mr Evans

AUDIO/VIDEO RECORDING IN TAXIS

Thank you for your letter dated 22 December 2011 in relation to Southampton City Council's policy requiring the installation of audio/video recording equipment in licensed taxis.

By way of background, the Council has a legal obligation under the Town and Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to regulate licensed taxis operating within its area, and to ensure that licensed vehicles and drivers adhere to strict standards for the protection and safety of passengers and of the drivers themselves. In addition, the Council is legally obliged under Section 17 Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder in its area.

Following a lengthy period of consultation with both the trade and the public, on 26th August 2009 the Council's Licensing Committee introduced the condition that all licensed vehicles have a digital camera fitted in furtherance of the abovementioned objectives. The digital cameras record audio and video onto an encrypted secure hard disc drive, which is only accessible with approved secure software held by officers in the Council's dedicated licensing team. Footage is only ever downloaded or accessed in two specific instances: when a substantive complaint has been made to the Council against the driver of a specific vehicle; and where a crime report has been made to the Police and they have formally requested that data. Requests for access must be in writing, state the approximate time of the event and only the footage relevant to the specific incident will be downloaded and decrypted. Recorded data is automatically overwritten after a maximum period of 30 days (although the majority of currently approved systems will overwrite within a much shorter period).

The decision to require constant audio recording rather than a panic button system was based on the premise that most complaints about taxis only involve two parties, the driver and the passenger making the complaint or reporting the crime. Visual images only go part way to establishing the facts and are of no use if the complaint or crime is verbal in nature. Audio recording has proven to be essential to the Police when investigating crime (including assault, serious sexual assault and race hate crime), and to the Council when making decisions in relation to enforcement action. The Council considers that it would rarely be practical or of benefit to the driver / passenger to activate audio recording manually, and not realistic to expect a passenger to have the knowledge or wherewithal to activate audio recording - particularly if they felt under threat (for fear that it may aggravate an already intimidating situation).

This is particularly the case for those passengers most at risk due to a specific vulnerability (heavy intoxication or mental capacity) also including children, the elderly or those with visual impairment who may be ill-equipped to make a decision to activate recording or physically unable for whatever reason. Further, it is important to stress that manual activation can only ever occur once something untoward has *already* occurred and thus will be inherently of less use evidentially.

With regards the particular circumstances in Southampton I would stress that as one of the major cities south of London it faces social / demographic / topographical factors. It has a significant late night economy with a considerable number of late night establishments attracting thousands of visitors late at night and in the early hours. This is accompanied by a large student population attending the City's two universities and City College. It has a large scale international port which not only functions as a traditional port (for the large scale importation / exportation of goods) but likewise is home to an ever growing cruise industry which attracts hundreds of thousands of short term visitors to the City and over 1.2 million passengers. It is important to stress foreign nationals are particularly vulnerable. As a large city it has the usual social and demographic issues and in particular the police have identified race and hate crime to be of particular concern for significant sections of the community.

The Council notes previous comment by the ICO with regard to the number of downloads over a given period being small and the conclusion drawn is that this renders its policy excessive. This assumption was based on an incorrect assessment of the statistics provided. First and foremost the camera should act as a deterrent and therefore if there are fewer incidents reported requiring downloading from the cameras, this should be an indication that the cameras are effective. Over the two year period previously detailed, the Council carried out nine downloads as a result of complaints (with there being four cases in which audio evidence was critical); in addition the Police requested 58 downloads which in fact gives a total number of 67 downloads over a two year period. Nonetheless it is accepted that the proportion of occasions on which the data is accessed is small in relation to the number of total journeys. One would expect it to be as the vast majority of people act within the law. The Council would disagree with the conclusion that due to the small proportion the recording is excessive. In fact it would assert the contrary: that the small number of downloads illustrates the effectiveness of the checks and balances purposefully put into place to ensure that recordings are secure, cannot be accessed by anyone other than those authorised and most importantly are only ever downloaded in specific and defined circumstances (and the data downloaded is relevant only to a specific complaint or crime). This all has the effect of reducing the adverse impact upon individual privacy.

The CCTV code is referenced and particularly the fact that recordings may be justified under the Code where a recording is triggered due a specific threat. Section 7 of the Code gives the specific example of use of a panic button in a taxi cab – which is treated by the Code as an exceptional circumstance where audio recording is acceptable. The Council's opinion, to date, however has been that there is no difference of substance between i) the system required by the Council, where audio recording is always turned on but where recording will only be listened to in case of specific need; and ii) the system that the CCTV Code regards as acceptable, involving the use of a panic button. It has always been assumed that the infringement to privacy comes at a point where conversations in a vehicle are heard by another person, rather than at the point where they are merely stored on an encrypted hard disk.

Whilst not complying with the letter of the CCTV Code in this respect, it has been the Council's view that it is consistent with the spirit of the Code given that it is intended as a source of guidance rather than strictly enforceable obligation.

In making its assessment the Council clearly considered the benefits of the system and whether those benefits could reasonably be secured in any other way. Those benefits, it is important to note, are conferred directly upon those whose privacy is affected – including also the wider deterrent effect which can never be meaningfully assessed or recorded.

While the Council considers that its policy is a necessary and proportionate response to concerns about public and driver safety, and that it has made a tangible difference in terms of the reduction of crime in taxis and the identification of offenders who are suspected of committing crime, we do of course take your comments very seriously.

The Council wishes to ensure that the policy remains relevant and fit for purpose and that it works to achieve the desired outcomes whilst balancing the rights and interests of individuals. As this particular policy has been in place since 2009, your correspondence serves as a timely reminder for the Council to review effectiveness of the policy having now had the benefit of two years of operation.

It is proposed that in light of the issues you raise the Council shall, in partnership with the Police and the Council's Licensing Department, formally collate evidence on the effectiveness of the policy and refer the matter to its Licensing Committee for a full consideration following consultation. The ICO's views will be included in the report.

This will form the basis of a wholesale review of the policy to consider not only the issues you raise and the arguments as set out (as well as others) but its effectiveness generally as well as financial implications of the scheme.

I will be sure to keep you apprised of the outcome of the above-mentioned review.

I hope that this assists, but please advise if you need anything further.

Yours sincerely

Richard Ivory
Head of Legal, HR & Democratic Services

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5 January 2012

By Post

Dear Sirs

Mr Kevin May v Southampton City Council

In the matter of an appeal against a condition attached to a Hackney Carriage Vehicle licence – Appeal, Salisbury Crown Court, 20 and 21 October 2011.

In light of the judgment of the Crown Court on 17 November 2011, we invite you to revise your condition which requires taxis to be fitted with an approved camera which takes constant audio and visual recordings. In its judgment, the Crown Court, presided over by Mr Recorder Patterson stated that “[h]aving considered all the evidence put before us we take the view that in order to further the aims and objectives adopted, it was not reasonably necessary to install audio cameras on a permanent basis in all taxis in Southampton” (para 59).

When considering the application of Article 8, the judgment stated that “[t]he condition, in our view, does not correspond to a pressing social need, [and] is not proportionate to the legitimate aim pursued” (para 71), namely to act “in line with Government and Council priorities on crime and disorder, public and driver safety” (para 64) and is not “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” (para 71). The judgment also considered the view taken by the Data Commissioner’s Office that “given how rarely the images and audio are accessed, the level of intrusion into every single trip taken by every customer of a licensed vehicle operated by the Council cannot be considered proportionate to the aim of the system” (para 69). Whilst the judgment acknowledged that this was with respect to the Data Protection Act 1998, they stated that it also “impacts upon the question of whether the provision is necessary, and whether it satisfies a pressing social need” (para 67).

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Date 5 January 2012



The judgment further stated that the "most invasive aspect of the installation is the recording of each and every conversation both of conversations between the driver and passengers, and more importantly between passengers in the vehicle. Also invasive is the recording both visual and audio when the vehicle is in private use. We came to the conclusion that the condition as it stands is not necessary in pursuit of the stated aims" (para 72). The judgment therefore concluded that when "balancing the duties of the Council to promote public safety and take steps for the prevention of disorder or crime against the Article 8 rights of the drivers and passengers, we consider the condition to be disproportionate and a *violation of Article 8*" (para 72, emphasis added). Further, in paragraph 72 of the judgment, it was stated that "[h]ad the recording been restricted to visual, and had some means been made available to de-activate the camera while the vehicle was in private use, perhaps by a technician designated for the purpose, we would have taken a different view [and]...the degree of interference would in our view [have been] justified in pursuance of the legitimate aims and objectives of the Appellant".

On the basis that the Crown Court found that the Council's condition is a violation of Article 8 and unlawful, we invite the Council to amend its condition in light of the judgment and the guidance therein within the next 28 days. If the Council fails to do this, our client will consider pursuing the matter by means of a judicial review.

Yours faithfully

A handwritten signature in black ink that reads 'Lampport Bassitt'.

LAMPOR T BASSITT

HEAD OF LEGAL, HR & DEMOCRATIC SERVICES
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DX 38529
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Dear Sirs

RE: KEVIN MAY V SOUTHAMPTON CITY COUNCIL

**IN THE MATTER OF AN APPEAL AGAINST A CONDITION ATTACHED TO A HACKNEY
CARRIAGE VEHICLE LICENCE –
APPEAL, SALISBURY CROWN COURT, 20 & 21 OCTOBER 2011**

Thank you for your letter dated 5th January 2012.

Clearly the Authority is very much aware of the comments of the Court in reaching its decision, which were made despite the Court's own acceptance that it was not in a position to review the Authority's policy (paras 40 – 42 inclusive). Accordingly those comments must be considered in context.

Nonetheless, it is important to stress that the Authority does take the issues you raise particularly seriously and always has done.

Even at the outset the principles of data protection and human rights were very carefully considered - which is precisely why checks and balances were imposed to ensure the safety of recordings and restriction on accessibility – with a very clear policy as to when downloads are permitted and how the data is stored thereafter. In this respect the Authority, in making its decision, has never closed its mind nor failed to pay due regard to those issues, but at that time it was clearly felt that the proposed condition, with the accompanying checks and balances, struck a fair balance between the aims and objectives of public safety, the prevention and detection of crime and the interests of passengers and drivers.

The Authority has never closed its ears to serious and meaningful debate and in the same vein takes the issues you now raise particularly seriously.

You will of course accept that what you propose is an impossible course of action for the Authority to undertake (ie amendment of its policy within 28 days). To do so without proper consultation and the usual formal decision making process would open the Authority to alternative threat of judicial review.

However, in light of your correspondence and the nature of the issues raised I can confirm that officers shall prepare a report to the Licensing Committee proposing a review of the policy and condition following the usual consultation exercise.

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Lamport Bassitt, Solicitors
20th January 2012

Accordingly, your request and any further representation you may wish to make on the matter shall be given full and proper consideration as a part of proper process.

Yours faithfully

Richard Ivory
Head of Legal, HR & Democratic Services

If you would like this letter sent to you in another format or language, please contact the number at the top of this letter.