

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