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 judger 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 Counsel. 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 "indispensible" 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