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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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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

LAMPOR T BASSITT