

Agenda

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General Purposes Licensing Committee

Date: **Tuesday 21 May 2013**

Time: **To follow the Licensing and Gambling Acts Committee**

Place: **Oxford Town Hall**

For any further information please contact:

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General Purposes Licensing Committee

Membership

Membership of this Committee will not be decided upon until the Annual Meeting of Council on 20th May 2013.

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AGENDA

Pages

1 ELECTION OF CHAIR FOR THE COUNCIL YEAR 2013/2014

2 ELECTION OF VICE CHAIR FOR THE COUNCIL YEAR 2013/2014

3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

The Quorum for this meeting is 4 Members. Substitutes are permitted.

4 DECLARATIONS OF INTEREST

Councillors serving on the Committee are asked to declare any disclosable pecuniary interests they may have in any of the following agenda items.

5 GENERAL PURPOSES LICENSING COMMITTEE - APPOINTMENT OF SUB-COMMITTEES

1 - 6

The Head of Law and Governance has submitted a report, the purpose of which is to establish Sub-Committees for the 2013-14 Council Year, to deal with the casework flowing from the Committee's own responsibilities.

The Committee is asked to:

- (1)(a) establish a Hackney Carriages and Private Hire Licensing Sub-Committee for the Council Year 2013 - 14, to agree its powers and duties and to appoint members to it on the basis of political balance;
- (b) note that the quorum for the Hackney Carriages and Private Hire Licensing Sub-Committee is two and to agree the proviso that the Sub-committee can only proceed on this basis if the person appearing before the Sub-Committee agrees;
- (2)(a) establish a Licensing and Registration Sub-Committee for the Council Year 2013 - 14, to agree its powers and duties and to appoint members to it on the basis of political balance;
- (b) note that the quorum for the Licensing and Registration Sub-Committee is two and to agree to the introduction of a proviso that the Sub-committee can only proceed at quorum or with three members if the person appearing before the Sub-Committee agrees;
- (3) agree that substitution is permitted on the two sub-committees but that substitutes must be from the Committee itself.

6 UPDATE ON TAXI LICENSING ACTIVITY - JANUARY 2013 - MARCH 2013

7 - 16

The Head of Environmental Development has submitted a report, the purpose of which is to inform Committee of the progress made by licensing authority on the Taxi Licensing Function between January 2013 and March 2013.

The Committee is asked to:

- (a) Note the contents of the report; and
- (b) Make any comments and recommendations regarding the future work of the taxi licensing function.

7 HACKNEY CARRIAGE UNMET DEMAND SURVEY

17 - 22

The Head of Environmental Development has submitted a report, the purpose of which is to consider the report of the "Unmet Demand" survey that was carried out between October 2012 and December 2012.

The Committee is asked to:

- (a) Agree to accept the conclusions of the Hackney Carriage "Unmet Demand" survey report prepared by Halcrow Group Limited, that there is currently no significant unmet demand for hackney carriage services in Oxford;
- (b) Recommend to the City Executive Board and Full Council that there is currently no significant unmet demand for hackney carriage services and to therefore resolve to maintain the Council's policy of quantity control on the number of hackney carriage vehicle licences; and
- (c) Agree that a further Unmet Demand survey be commissioned in 2015, subject to any future changes to relevant legislation.

8 AUDIO VISUAL RECORDING IN LICENSED VEHICLES - UPDATE

23 - 46

The Head of Law and Governance and the Head of Environmental Development have submitted a report, the purpose of which is to update Committee following its resolution of 28th May 2012 to suspend the requirement for audio visual recording.

The Committee is asked to:

- (a) Note the contents of the report;
- (b) Agree not to implement the audio visual recording scheme at this time;
- (c) Agree not to require any further consultation to be carried out.

9 MINUTES

47 - 50

Minutes of the meeting held on 19th February 2013.

10 DATES OF FUTURE MEETINGS

The Committee is asked to note the following dates on which it is scheduled to meet and to confirm the start time of its meetings for the remainder of the Council Year 2013/14.

Tuesday 24th September 2013

Tuesday 21st January 2014

DECLARING INTERESTS

General duty

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you.

What is a disclosable pecuniary interest?

Disclosable pecuniary interests relate to your employment; sponsorship (ie payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licences for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

Declaring an interest

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest.

If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

Members' Code of Conduct and public perception

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that "you must not place yourself in situations where your honesty and integrity may be questioned". What this means is that the matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

¹ Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those of the member's spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

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To: General Purposes Licensing Committee

Date: 21st May 2013

Report of: Head of Law and Governance

Title of Report: GENERAL PURPOSES LICENSING COMMITTEE – APPOINTMENT OF SUB-COMMITTEES

Summary and Recommendations

Purpose of report: To establish Sub-Committees for the 2013 - 14 Council Year to deal with the casework flowing from the Committee's own responsibilities.

Report approved by:

Legal: Daniel Smith

Policy Framework: Not applicable

Recommendation(s): The Committee is RECOMMENDED to:-

- (1)(a) establish a Hackney Carriages and Private Hire Licensing Sub-Committee for the Council Year 2013 - 14, to agree its powers and duties and to appoint members to it on the basis of political balance;
- (b) note that the quorum for the Hackney Carriages and Private Hire Licensing Sub-Committee is two and to agree the proviso that the Sub-committee can only proceed on this basis if the person appearing before the Sub-Committee agrees;
- (2)(a) establish a Licensing and Registration Sub-Committee for the Council Year 2013 - 14, to agree its powers and duties and to appoint members to it on the basis of political balance;
- (b) note that the quorum for the Licensing and Registration Sub-Committee is two and to agree to the introduction of a proviso that the Sub-committee can only proceed at quorum or with three members if the person appearing before the Sub-Committee agrees;
- (3) agree that substitution is permitted on the two sub-committees but that substitutes must be from the Committee itself.

1. For the 2012 – 13 Council Year the Committee established two sub-committees, a Hackney Carriages and Private Hire Licensing Sub-Committee and a Licensing and Registration Sub-Committee. This report is recommending the re-establishment of both sub-committees.

HACKNEY CARRIAGES AND PRIVATE HIRE LICENSING

2. The powers and duties of a Hackney Carriages and Private Hire Licensing Sub-Committee are set out in Annex 1 to this report. The Sub-Committee is essentially a body that deals with casework.
3. Last year three members were appointed to the Sub-Committee with two members appointed as standing substitutes for two of the appointed members. For this year I suggest that substitution is more widely drawn, namely that any member of the Committee may act as substitute. The Sub-Committee should be politically balanced. If three members are appointed to serve on it this year, the political balance will need to be 2 Labour and 1 Liberal Democrat members. If the Committee wishes to appoint a different number of members, I will report orally on the political balance requirement.
4. The Constitution provides for the Sub-Committee to be quorate if only two members are present. However the procedures that relate to the Sub-Committee say that in those circumstances the Sub-Committee can only go ahead if the person appearing before it agrees. The Committee is being recommended to agree to this proviso, and if it accepts the recommendation the Constitution will be amended accordingly.
5. Dates have been set for meetings of the Sub-Committee and they are set out in Appendix 1.

OTHER LICENSING MATTERS

6. The powers and duties of a Licensing and Registration Sub-Committee are set out in Annex 2 to this report. The Sub-Committee is essentially a body that deals with casework.
7. Last year, four members were appointed to the Sub-Committee. The Sub-Committee should, be politically balanced. If four members are appointed to serve on it this year, the political balance will need to be 2 Labour and 2 Liberal Democrat members. If the Committee wishes to appoint a different number of members, I will report orally on the political balance required. The substitution arrangements referred to above for the Hackney Carriages Sub-Committee should apply to this Sub-Committee with the addition that if the Sub-committee is at quorum or three members it can only proceed if the person appearing before it agrees.
8. No dates have been fixed for the Sub-Committee. Its business cannot be predicted. It will meet as and when required.

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Background papers: None

Version number: 3

HACKNEY CARRIAGES AND PRIVATE HIRE LICENSING SUB-COMMITTEE

Powers and Duties

1. To deal with cases concerning applicants for or holders of taxi, private hire or other driver or vehicle licences brought to the sub-committee by officers
2. To decide taxi and private hire and other vehicle, driver and operator licence applications when the applicant has a conviction and the relevant service head has concerns about the nature of the offence or the applicant or the vehicle may not be suitable for some other reason
3. To withdraw and suspend licences for taxis and private hire and other vehicles and their drivers and operators.

Dates of Meetings (all at 5.00 pm)

18th June 2013
30th July
17th September
29th October
17th December
28th January 2014
18th March
29th April

LICENSING AND REGISTRATION SUB-COMMITTEE

1. To decide sex establishment licence applications when there are objections
2. To decide street trading applications that are for longer than three months.
3. To decide applications to renew street trading permissions when there has been a complaint about the trader, or the trader has broken the conditions of their street trading permission in the past year or where there is competition for a vacant approved site.

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To: General Purposes Licensing Committee

Date: 21 May 2013 **Item No:**

Report of: Head of Environmental Development

**Title of Report: Update on Taxi Licensing Activity
January 2013 – March 2013**

Summary and Recommendations

Purpose of report: To inform Committee of the progress made by the Taxi Licensing Function between January 2013 and March 2013.

Report Approved by:

Finance: Paul Swaffield

Legal: Daniel Smith

Policy Framework: Vibrant Sustainable Economy

Recommendation(s):

The Committee is recommended to:

(i) note the contents of the report; and

(ii) make any comments and recommendations regarding the future work of the Taxi Licensing Function.

Introduction

1. This report informs Committee of progress made by the Taxi Licensing Function under the duties of the Town & Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 between January 2013 and March 2013.
2. The report covers data on service volumes; details of Taxi Licensing hearing decisions; decisions made under delegated powers; information on volumes of drivers and vehicles and enforcement activity.
3. The tables below provide data on licence applications received and processed during the period for January 2013 and March 2013.

Licences Issued	Total Jan 2013 – March 2013	Total for 2012/13 Year
Hackney Carriage Driver	69	324
Private Hire Driver	129	613
Hackney Carriage Vehicle	33	143
Private Hire Vehicle	165	684
Private Hire Operator	7	24

Actions Undertaken	Total Jan 2013 – March 2013	Total for 2012/13 Year
Licensing Hearings	6	34
Enforcement Actions Commenced	148	398
Number of Prosecution Cases Started	2	17
Complaints about Drivers / Vehicles	45	223

Applications Granted by the Licensing Authority

4. A hearing is not required where an application has been lawfully made and no adverse information pertaining to the “fitness” of a person or vehicle to be licensed by this Authority has been found. There have been 198 driver, 198 vehicle, and 7 Operator licenses issued by the Head of Environmental Development under delegated authority during the period January 2013 – March 2013.

Hackney Carriage & Private Hire Licensing Sub-Committee Hearings

5. When adverse information pertaining to the “fitness” of a person or vehicle to be licensed or to continue to be licensed by this Authority has been found then the matter is determined at a Sub-Committee Hearing.
6. Such adverse information may be derived from information relating to an application such as health concerns, relevant cautions or convictions, or from the enforcement records held by the Licensing Authority in relation to serious incidents, or repetitive failures to adhere to standard driver and vehicle conditions will call in to question a licence holders suitability to meet with this Authority’s description of a Fit and Proper person.
7. Whilst there is no legal definition the criteria the Authority consider relevant are set out in the Policy on the Relevance of Warnings, Offences, Cautions and Convictions states:

Fit and Proper Person: *A person who poses no threat to the general public, has a good knowledge of the City, is healthy, and is of a good character (including driving record) will be deemed fit and able to hold a licence.*

8. During January 2013 and March 2013, 6 Hearings were held to determine the fitness of new applicants and existing licence holders. The results of the Hearings are shown in the table below:

	Granted	Councillor Warning	Refused	Suspended	Revoked
New Driver	1	0	0		
Existing Driver	0	2	0	0	3

Appeals

9. The Licensing Authority received 2 applications for appeal during the period covered in this report. One of the appeals related to the revocation of a licence following a successful plying for hire prosecution. The other related to the revocation of a licence following a history of Warnings and Suspensions being issued to the licence holder.
10. On both occasions the Magistrate's Court whilst acknowledging that the Sub-Committee had adhered to the Council's Policy on the Relevance of Warnings, Offences, Cautions and Convictions, upheld the appeals, apparently finding that the drivers livelihoods would be severely undermined if the revocations were upheld, despite our contention that such a consideration was not a relevant factor.

Enforcement Activity

11. Between January 2013 and March 2013, the Licensing Team has carried out 149 enforcement interventions, issuing the following sanctions (in accordance with the Policy on the Relevance of Warnings, Offences, Cautions and Convictions):
- 1 Case still pending (awaiting outcome of Police investigation)
 - 23 Verbal Advice given at scene of an incident
 - 61 Advisory Warnings
 - 27 First Level Warnings
 - 6 Second Level Warnings
 - 15 Final Warnings
 - 5 Requests to vehicles to undergo an additional COC (MOT) Test
 - 3 Notifications of referral to Sub-Committee
 - 0 Suspension Notices (driver)
 - 0 Suspension Notice (vehicle)
 - 4 Notifications of non-payment letters
 - 3 PACE interviews (2 conducted, 1 to be conducted)

12. The purpose of the “Warning” system is to educate licence holders as to their responsibilities and the need to uphold the Taxi Licensing objectives. Verbal advice and the four levels of “Warnings” may be issued by the Licensing Officers, and the level of “Warning” issued is dependent upon the nature of the incident, the severity of the matter, whether there have been any previous incidents of non-compliance, and how the matter sits in relation to the Taxi Licensing objectives.
13. Verbal advice was given at the scene of a number of incidents relating to drivers committing basic Road Traffic Act offences whilst the Licensing Officers were carrying out their night time enforcement duties.
14. The majority of Advisory Warnings were issued due to minor breaches of driver / vehicle licence conditions i.e. failure to display Operator stickers, failure to have badge on display, minor cosmetic defects to vehicles, illegal parking, failing to inform the Authority of vehicle damage, etc.
15. Other issues found that resulted in higher levels of warnings were non-declaration of convictions on applications, excessive penalty points on DVLA driving licences, aggressive behaviour, poor driving standards, failures to comply with reasonable requests from the Licensing Officers, failures to adequately maintain a licensed vehicle (despite having been issued with a previous Warning).
16. As well as the disciplinary measures taken during the enforcement operations, 45 complaints were received from members of the public during this reporting period relating to poor customer service, rudeness, road traffic offences and plying for hire, and a breakdown of the actions taken by the Licensing Officers is detailed below:
 - 11 cases are still active (at the time of writing this report)
 - 20 No further action taken*
 - 6 Advisory Warnings
 - 4 First Level Warnings
 - 4 Second Level Warnings

** due to the version of events stated by the complainant and the driver being too dissimilar and no independent witness to verify either account, a record is kept on the driver file should similar issues be reported. It should also be noted that some complaints have been maliciously made about drivers and when the complaint has been challenged by the Licensing Officers, the complainant has not responded.*

Test Purchase Operations

17. Between January 2013 and March 2013, 3 Test Purchase Operations were carried out resulting in 2 drivers failing the Test Purchase. Resulting from the Operations 1 interview (under the Police & Criminal Evidence Act) was carried out by the Licensing Officers when investigating suspected offences of plying for hire and driving without the correct insurance (a Private Hire Vehicle is not insured for public hire,

whereas a Hackney Carriage Vehicle is). The other driver was invited to a PACE interview but refused to attend each invitation.

18. Resulting from the above PACE interview and the failure of the other driver to attend a PACE interview both cases were forwarded to Law & Governance for consideration to prosecute drivers for the offence of plying for hire and driving without the correct insurance, and in the case of the driver who failed to attend the Licensing Officer has also sought to prosecute the driver for the offences of Obstructing an Authorised Officer and Attempting to Pervert the Course of Justice .

Prosecutions

19. During the period January 2013 and March 2013, 2 cases of plying for hire and driving without the correct insurance were heard in the Magistrates Court (relating to Test Purchase Operations and PACE interviews carried out prior to this reporting period).
20. In each case the licence holder was found guilty of both offences and issued with 6 penalty points to be endorsed on their DVLA Licence and a fine and ordered to pay costs.
21. All of these convictions will be referred to the Hackney Carriage and Private Hire Licensing Sub-Committee in due course in order to determine what action should be taken in accordance with our Policy on the Relevance of Warnings, Offences, Cautions and Convictions in relation to the licence issued by the Authority.

NightSafe Partnership

22. The NightSafe initiative contributes to the taxi licensing objectives. This includes intelligence sharing and has led to the Taxi Licensing Enforcement Officers being able to view late night taxi activity in a number of locations by arrangement with the CCTV Manager.
23. This benefits the regulation of licensed drivers and vehicles as it can reveal unprofessional conduct by the licensed trade in the City at night, and can act as a check or deterrent.

Future Work

24. Consultation commenced on 1st May 2013 (and ends on 12th June 2013) in relation to the decision of this Committee on 17th October 2012 regarding the proposals for vehicle age limits. The result of this consultation will be reported back to the Committee on 5th September 2013 for its recommendation to Council.
25. The Taxi Marshalling Scheme has commenced its second year of operation following a very successful debut during 2012/13. The Service Level Agreement (SLA) for this Scheme was forwarded to the Institute of Licensing who has published it as a model for all other Authorities to use should they implement similar Schemes. Our SLA has also been

recommended to the Law Commission for use as a National Standard for Taxi Marshalling.

26. The Law Commission has published an “interim response” following the consultation held in 2012 in relation to the proposals to reform Taxi and Private Hire Services. A copy of the “interim response” is attached as **Appendix One**. Members will note that the Law Commission appear to have abandoned plans to deregulate Hackney Carriage Vehicle Licence numbers, whilst all other proposals look to be moving forward as previously proposed. A full response is expected in due course.

Legal Implications

27. There are no legal implications contained within this report.

Financial Implications

28. Any financial implications contained within this report will be met within existing budgets.

Recommendations

29. The Committee is recommended to:
- (i) note the content of the report; and
 - (ii) make any comments and recommendations regarding the future work of the Taxi Licensing function.

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Background Papers

Appendix One: “Interim Response” from Law Commission

Version 1.0

TAXI AND PRIVATE HIRE LAW COMMISSION INTERIM STATEMENT

INTRODUCTION

1. In July 2011 the Law Commission started working on the project to review of the law relating to the regulation of taxis and private hire vehicles. We opened a four month consultation period in May 2012, outlining provisional proposals and questions, with a view to publishing a final report and draft Bill at the end of this year. Once we publish the draft Bill, it is up to government whether to accept our recommendations. We will publish our final report and a draft Bill at the end of 2013.
2. This is not a further consultation nor does this document include our analysis of the responses received. Our discussion of the responses and our reasoning will be published in the final report. This is an interim document outlining the key decisions we have reached. It is not normal practice for the Law Commission to publish any indication of its preferred policy at this point; however, we recognise that many stakeholders are concerned about possible changes to taxi and private hire licensing laws. We appreciate that waiting until the end of this year for our conclusions to be published is a long time. That is why we have decided to depart from our usual procedure and publish our thinking at this interim stage.
3. This deliberately short paper gives an indication of what will be contained in the proposed Law Commission draft Bill. We publish this alongside the responses we received during consultation. It should be stressed that this document is an interim statement and not our final report, and we will continue working on developing policy alongside Parliamentary counsel until the end of the year. It is important to be aware that our final recommendations might differ as a result of that process from those set out here. We continue to work to the government's deadline of December 2013 for our final report and draft Bill, but we would take this opportunity to stress that our recommendations cannot change the law, and the decision whether to accept the proposed policy rests with the government.

THE CONSULTATION

4. The consultation attracted over 3000 written responses from a wide range of stakeholders, including taxi drivers and private hire operators, licensing officers, disability groups, specialist consultants, trade unions and the police. We attended consultation meetings and events over a period of four months. We attended 84 meetings across England and Wales, many of which attracted large-scale attendance, including conferences and meetings organised by taxi associations and trades unions representing taxi drivers, the Institute of Licensing and the National Association of Licensing and Enforcement Officers, trade associations and councillors, as well as a two day road show at an exhibition event, organised by the National Private Hire Association. The Private Hire and Taxi Monthly magazine undertook a significant survey based on our provisional proposals, with over 800 responses. We were also assisted by some very helpful discussions with experts in the field, including an advisory group and an expert legal panel on plying for hire.

REFORM TO TAXI AND PRIVATE HIRE LAW

Retaining a two-tier system

5. The two-tier system, distinguishing between taxis on the one hand, and private hire vehicles on the other, should remain. Only taxis should be allowed to pick passengers up from hails or at ranks. Private hire vehicles should only be able to pick up passengers if pre-booked through a licensed operator. When requested, operators should be required to give passengers the price of the journey up-front, as is already the case in London. London should be covered by the reforms, which we think give enough flexibility to allow for the significant differences in its taxi and private hire markets. We suggest moving away from the out-dated concept of plying for hire and use instead a more modern definition of the limits to the way private hire services may be offered, using the concept of pre-booking (which would be statutorily defined) through a licensed operator.

Quantity controls

6. We no longer recommend abolishing quantity controls. We initially proposed that local authorities should lose the ability to limit the number of taxis licensed in their area on the basis of economic theory, whereby the market could be left to determine the appropriate number of vehicles. The weight of evidence received during consultation and further comparative research have led us to change this key recommendation in order to allow licensing authorities to limit taxi numbers should they wish to do so.
7. We propose that in any areas where the licensing authority chooses to implement new quantity restrictions, vehicle licences would not be transferrable, meaning that licences would not have a saleable value. In areas that already have quantity restrictions, transfers would continue (and therefore licences could still have a value), but we will recommend that the Secretary of State and Welsh Ministers should consider the future of licence transfers.

Who and what would be covered by licensing?

8. During consultation many stakeholders complained about vehicles operating at the fringes of licensing, or outside of licensing altogether. Pedicabs and stretch limousines are two examples that we recommend bringing clearly within the scope of taxi and private hire regulation, such that they may be controlled as necessary.
9. We recommend that wedding and funeral cars should continue to be exempted from licensing. Our provisional recommendation in respect of the wedding and funeral car exemption raised unparalleled concern among members of these trades, although licensing authorities and the police agreed that the current exemption could cause problems. On balance, we have concluded that there are valid arguments to keep the exclusion from licensing in primary legislation.

Standard-setting

10. Our provisional proposals for national safety standards for both taxi and private hire services proved popular and we maintain this recommendation. We think that the Secretary of State and Welsh Ministers should have the power to set standards in relation to safety, accessibility and enforcement.

Local standards for taxis

11. We also suggested that in respect of taxis, local authorities should retain their ability to impose additional conditions on top of national standards, and this too proved uncontroversial. Taxis would continue to only be able to be flagged down and use ranks in their licensing area, but would still be free to take pre-bookings elsewhere.

National standards for private hire services

12. We continue to recommend that only national standards should apply to private hire services. We appreciate the concerns of those who thought that local knowledge tests and signage should be retained, but think that appropriate national standards, including driver training, and vehicle signage, can address these concerns, alongside added customer protection through up-front pricing requirements for private hire journeys.

Cross-border

13. It would remain the case that taxis would only be allowed to pick up passengers in their own area (unless they had a pre-booking). However, we will recommend freeing up cross-border working for private hire services. Operators would no longer be limited to using drivers and vehicles from their own area; nor would they be restricted to only inviting or accepting bookings within that same licensing area. Under no circumstances would a private hire vehicle be allowed to pick up a passenger without a pre-booking with a valid operator.

Operators, taxi radio circuits and intermediaries

14. We support the retention of private hire operator licensing, but recommend a tighter definition that would only cover dispatch functions. We suggest that requiring a licence for the mere acceptance or invitation of bookings (as under current law) is unnecessary and creates grey areas around smartphone applications, aggregator websites and other intermediaries. We recommend that intermediaries should only be liable if acting in the course of business, and if they assist in the provision of an unlicensed journey. We do not propose to extend licensing to taxi radio circuits.

Equality and accessibility

15. We regard the Secretary of State and Welsh Ministers' powers to set standards to promote accessibility as striking the right balance between local and national control.
16. Stakeholders highlighted the problem of drivers avoiding disabled passengers through ignoring their hails. In order to help address this problem, we recommend clarifying compellability, combining it with a new duty to stop in certain circumstances. In addition, taxi legislation should make it clear that drivers are not allowed to charge passengers more for the time it takes them to board the vehicle, reflecting the Department for Transport best practice guidance. Provisions to make complaints procedures more accessible can also be particularly valuable to empower disabled users. We will continue to recommend that all drivers should undergo disability awareness training.

Enforcement

17. Consultees were very concerned about enforcement – both that the current system was being insufficiently enforced, and that our proposals for opening up cross-border activities of private hire vehicles would increase the practical difficulties in information sharing and licence fee allocation. We recommend introducing a range of tougher powers for licensing officers, including the ability to stop licensed vehicles, impounding and fixed penalty schemes. We also recommend that such powers should apply in respect of out-of-area vehicles. We also recommend clarifying the scope of the touting offence and reinforcing licensing officers' powers in dealing with it.

Hearings and appeals

18. Magistrates' courts would continue to hear appeals in respect of licensing decisions. We think it should be easier to challenge local taxi conditions. We therefore recommend a simplified judicial review procedure in the County Court, akin to procedures that exist in relation to some housing challenges.

To: General Purposes Licensing Committee

Date: 21 May 2013 **Item No:**

Report of: Head of Environmental Development

Title of Report: Hackney Carriage Unmet Demand Survey

Summary and Recommendations

Purpose of report: To consider the report of the “Unmet Demand” survey that was carried out between October 2012 and December 2012

Report Approved by:

Finance: Paul Swaffield
Legal: Daniel Smith

Policy Framework: Policy on Hackney Carriage Quantity Control
Vibrant Sustainable Economy.

Recommendation(s):

Committee is requested to:

- (i) agree to accept the conclusions of the Hackney Carriage “Unmet Demand” survey report prepared by Halcrow Group Limited, that there is currently no significant unmet demand for Hackney Carriage vehicles;**
- (ii) recommend to City Executive Board and Council that there is currently no unmet demand for the services of Hackney Carriage vehicles and to therefore resolve to maintain the Council’s policy of quantity control on the number of Hackney Carriage vehicle licences; and**
- (iii) agree that a further Unmet Demand survey be commissioned in 2015, subject to any future changes to relevant legislation.**

Background

1. The Town Police Clauses Act 1847, section 37 and the Transport Act 1985, section 16 allow a licensing authority to limit the number of hackney carriages as long as they are ‘satisfied that there is no significant demand for the services of Hackney Carriages which is unmet’.

2. Oxford City Council has a policy to limit the number of Hackney Carriage vehicle licences granted to a level that meets but does not exceed demand for the services of Hackney Carriage vehicles. It checks this limit by carrying out periodic surveys. The policy forms part of the Council's Policy Framework. It can only be changed with Council's agreement. The only change that can be made is to abandon the policy
3. A full review of Hackney Carriage vehicle licensing was carried out by the Environmental Scrutiny Committee on 12th November 2007. The recommendations from the review went before this committee on the 16th January 2008 and were agreed by Council on the 30th June 2008, including having a regulated number of Hackney Carriage vehicle licenses.
4. At the General Purposes Licensing Committee on the 19th October 2011 it was agreed to note the Council resolution of the 30th June 2008 to continue with the regulated number of Hackney Carriage vehicle licenses and request officers to commission a new "Unmet Demand" survey to determine if there is a significant unmet demand for Hackney Carriage vehicles.

Hackney Carriage "Unmet Demand" Survey 2012

5. The Head of Environmental Development invited tenders for a survey to be carried out and the Halcrow Group limited was appointed. The survey was carried out between October 2012 and December 2012.
6. Halcrow Group Limited has produced a report with their conclusions regarding the survey. The full "Unmet Demand" survey report is 44 pages long and therefore only the Summary of the "Unmet Demand" Survey is attached to this report at **Appendix One**. Ahead of this Committee meeting the full "Unmet Demand" survey report has been emailed to Members and two hard copies have been made available in the Members Lounge.
7. The survey concluded:
 - **That there is no evidence of significant unmet demand for Hackney Carriages in Oxford. This conclusion covers both patent and latent/suppressed demand and is based on an assessment of the implications of case law that has emerged since 2000, and the results of Halcrow's analysis.**
8. A consultant from Halcrow Group Limited will be at the meeting to present the report to the Committee and answer any questions Members may have.

Legal Implications

9. Legal implications are contained within this report at paragraphs 1 and 2.

Financial Implications

10. Any financial implications contained within this report will be met within existing budgets.

Recommendations

11. The Committee is recommended to:
 - (i) agree to accept the conclusions of the Hackney Carriage “Unmet Demand” survey report prepared by Halcrow Group Limited, that there is currently no significant unmet demand for Hackney Carriage vehicles;
 - (ii) recommend to City Executive Board and Council that there is currently no unmet demand for the services of Hackney Carriage vehicles and to therefore resolve to maintain the Council’s policy of quantity control on the number of Hackney Carriage vehicle licences; and
 - (iii) agree that a further “Unmet Demand” survey be commissioned in 2015, subject to any future changes to relevant legislation.

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Background papers:

Appendix One : Summary of “Unmet Demand” Survey

Version number: 1

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8 Summary and Conclusions

8.1 Introduction

Halcrow has conducted a study of the hackney carriage and private hire market on behalf of Oxford Council. The present study has been conducted in pursuit of the following objectives. To determine;

- whether or not there is a significant unmet demand for Hackney Carriage services within Oxford as defined in Section 16 of the Transport Act 1985; and
- how many additional hackney carriages are required to eliminate any significant unmet demand.

This section provides a brief description of the work undertaken and summarises the conclusions.

8.2 Significant Unmet Demand

The 2012 study has identified that there is **NO** evidence of significant unmet demand for hackney carriages in Oxford. This conclusion is based on an assessment of the implications of case law that has emerged since 2000, and the results of Halcrow's analysis.

Since the 2009 study demand for hackney carriages has increased by 13%.

8.3 Public Perception

Public perception of the service was obtained through the undertaking of public attitude surveys. Overall the public were generally satisfied with the service – key points included;

- Some 62.0% of hiring's are by telephone;
- High levels of satisfaction with delay on last trip –hiring's at ranks providing the highest levels;
- Some 30.8% of people had given up trying to obtain a taxi at a rank or by flag down in the three months prior to being surveyed;
- Some 56.3% of people felt that CCTV should be introduced in taxis;
- Some 27.7% of people felt that new ranks were not needed.

8.4 Conclusions

The 2012 study has identified that there is **NO evidence of significant unmet demand** for hackney carriages in Oxford. This conclusion covers both patent and latent/suppressed demand and is based on an assessment of the implications of case law that has emerged since 2000, and the results of Halcrow's analysis.

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To: General Purposes Licensing Committee

Date: 21 May 2013 **Item No:**

Report of: Head of Law and Governance & Head of Environmental Development

Title of Report: Audio visual recording in licensed vehicles - Update

Summary and Recommendations

Purpose of report: To update Committee following its resolution of 28th May 2012 to suspend the requirement for audio visual recording.

Report Approved by:

Finance: Paul Swaffield

Legal: Jeremy Thomas

Policy Framework: Vibrant Sustainable Economy

Recommendation(s):

The Committee is recommended to:

- (i) note the contents of the report; and**
- (ii) agree not to implement the audio visual recording scheme at this time.**
- (iii) agree not to require any further consultation be carried out.**

Introduction

1. During 2011/12, in response to driver and passenger safety concerns expressed by the licensed taxi trade, the Licensing Authority formulated and consulted on a Scheme for the introduction of compulsory audio visual recording in licensed vehicles.
2. In May 2012 Committee reconsidered the Scheme following a petition in opposition submitted by a number of self employed drivers and data protection concerns raised by the Information Commissioners Office (ICO) in a preliminary enforcement notice.
3. On 28th May 2012 Committee resolved to suspend the Scheme pending further consultation and the outcome of the Law Commission review on reform of taxi and private hire licensing.

4. The Scheme remains suspended at this time.

Recent Events

5. In February 2013 The First Tier Tribunal (Information Rights) heard an appeal brought by Southampton City Council against an enforcement notice issued by the ICO. Southampton operate an audio visual recording scheme very similar to that proposed for Oxford and were subject of an enforcement notice brought by the ICO based on the same data protection and privacy reasons raised with Oxford.
6. The Tribunal found in favour of the ICO (decision attached at **Appendix A**). Despite safeguards similar to those in the Oxford Scheme the Tribunal found the audio recording element of Southampton's scheme to be an unjustified and disproportionate interference with the right to privacy of drivers and passengers. Until such time as the law in this area changes or public safety issues significantly worsen, it is likely Oxford's scheme would be found to be similarly unlawful if implemented.
7. On 9th April 2013 The Law Commission issued an interim statement on its review of taxi and private hire services. There is nothing in the statement, nor likely to be in the final review, that supports or relates to audio visual recording in licensed vehicles.

Further consultation

8. Pending the outcome of the situation in Southampton and the decision of the First Tier Tribunal no further consultation has yet been carried out.
9. Given the clear conclusions now reached by the Tribunal implementing the Scheme is not currently an option and pursuing further consultation on it at this time would therefore be redundant.

In light of the above Committee is invited to agree not to implement the Scheme nor require any further consultation be carried out. If the situation changes in the future the Scheme could be re-examined.

Financial implications

10. There are no financial implications associated with this report

Legal implications

11. Any legal implications are covered elsewhere in the report.

Recommendations

12. The Committee is recommended to:
- (i) note the content of the report; and
 - (ii) Agree not to implement the audio visual recording scheme at this time.
 - (iii) Agree not to require any further consultation be carried out.

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**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2012/0171

ON APPEAL FROM:

The Information Commissioner's Enforcement Notice dated 23 July 2012

Appellant: Southampton City Council

Respondent: The Information Commissioner

Heard at: Field House, 15 Bream's Buildings, London EC4A 1DZ

Date of Hearing: 30 & 31 January 2013

Before

HH Judge Shanks

Judge

and

Andrew Whetnall and John Randall

Tribunal Members

Date of Decision: 19 February 2013

Attendances:

For the Appellant: Timothy Pitt-Payne QC

For the Respondent: Anya Proops

Subject matter:

Data Protection Act 1998

s.2	Sensitive personal data
s.40	Enforcement notices
s.48	Rights of appeal
s.49	Tribunal's powers
Sched.1	Data Protection Principles: Principles
Sched.2	Data Protection Principles: Processing of Personal data
Sched.3	Data Protection Principles: Processing of sensitive data

Human Rights Act 1998

Article 8	Right to a private and family life
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DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

REASONS FOR DECISION

Introduction

1. This is an appeal by Southampton City Council under section 48 of the Data Protection Act 1998 against an enforcement notice issued by the Information Commissioner on 23 July 2012. The enforcement notice in effect required the Council to drop a policy adopted on 26 August 2009 of requiring all licensed taxis in Southampton to be fitted with a CCTV system which includes an audio-recording facility which is in continuous operation. The Commissioner has no objection to a requirement that there should be continuous video-recording; it is only the continuous *audio*-recording that we are concerned with. We are told that this is the first appeal of its type and it is clear that the issues raised are of national significance.
2. We received very helpful written evidence from John Burke (the Council's licensing manager), Chief Superintendent David Thomas of the Hampshire Constabulary, Deputy Assistant Commissioner Martin Hewitt (who gave evidence in his capacity as an ACPO representative with responsibility for adult sexual offences) and Jonathan Bamford, a senior official in the Commissioner's office. Mr Burke and the police witnesses also attended to give oral evidence. We also received written and oral submissions of characteristically high quality from Mr Pitt-Payne QC for the Council and Ms Proops for the Commissioner.

Factual background

3. The Council is the licensing authority in the Southampton area for taxis (both "hackney carriages" and "private hire vehicles", of which there are about 700 or 800 in all) and taxi drivers (of whom there are about 1,300). As such, it has power to attach reasonable conditions to licences granted in respect of taxis.¹ It is not disputed that in exercising that power the Council must, under section 17 of the Crime and Disorder Act 1998, have due regard to the need to do all it can to prevent crime and disorder in its area but it is also not disputed that the purpose of the power to impose

¹ See sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976.

licence conditions is to promote public safety specifically in connection with the use of taxis.

4. In 2004 the Council received funding to help taxi owners install CCTV in their taxis on a voluntary basis but the take up was limited even though the cost to the owners was minimal. In the light of serious violent and sexual offences taking place in or around taxis and the need to protect vulnerable users of taxis, consideration was given by the Council to the compulsory installation of CCTV as an essential tool to deter and help with the investigation of such incidents.

5. On 6 May 2009 the Council's Licensing Committee was invited to consider the adoption of a number of new standard conditions for taxi licences, including the following:

Digital cameras. As crime and safety are both Government and Council priorities it is proposed that all vehicles are fitted with digital cameras as soon as possible ...

The paper put before the committee also stated:

The Council has for some time been fitting digital cameras to licensed vehicles as part of its strategic approach to reducing crime and disorder and improving driver safety...

The camera currently available has not only digital image technology but also a voice recording facility...

Some proprietors have suggested this is another case of 'Big Brother'. This is simply untrue. What the trade and members can be assured of is that the images will only be downloaded where a crime report has been made to the police involving the relevant vehicle or that a member of the public has a specific and recorded complaint against the driver of a specific vehicle.

Mr Burke told us that the "camera currently available" referred to in the paper was a camera called a VerifEye Mark 4 which had become available in early 2008. Earlier versions of the VerifEye camera (which had been installed up until then) had not included any audio facility. There was considerable confusion in Mr Burke's evidence as to the exact capabilities of the VerifEye Mark 4 but the Tribunal was later provided with some material from the manufacturer which indicated that the system is

triggered by certain events (door opening, meter being turned on or “panic button” being pressed), that the video then works for various periods but with only so many frames per second (one every 15 seconds for most of the time) and that the audio facility works continuously but only for a period of 15 minutes after a triggering event.

6. No conclusion was reached at the meeting on 6 May 2009 and there was further consultation with the trade on the issue. The paper prepared by officers for the next meeting on 26 August 2009 stated:

Digital cameras

Digital cameras are currently fitted to about [110 taxis] and are clearly the cause of some concern ... voiced at a recent consultation meeting:

Data protection issues with cameras. **Cameras are compliant and [the] Council is the data controller ...**

Who will pay for the downloading of photographs? **The licensing team have all the secure equipment and authority to download the encrypted data ...**

Concerns from customers being filmed, both adult and children. **The system is completely secure with the data being held in encrypted format. Data will only be downloaded in the event of a substantive complaint either from a driver or passenger or where a crime is alleged.**

...

Cameras are fitted to fulfil two roles; firstly, to ensure the safety of the public and secondly the safety and integrity of the driver.

There was no mention in the paper of audio-recording as such. The licensing committee resolved at the meeting that (among others) the following condition be added to taxi licences:

In line with Government and Council priorities on crime and disorder, public and driver safety all licensed vehicles to be fitted with Council approved digital cameras as soon as possible and in any case at the time a current licensed vehicle is replaced

...

7. At para 28 of his statement Mr Burke gives more detail about the policy as follows:
- 1 All passengers are made aware of the fact that they are being recorded, by notices strategically placed on the vehicles ... These labels clearly warn that both audio and visual recordings take place in the vehicle ... ²**
 - 2 Data will only ever be downloaded on two occasions:**
 - (1) where a crime report has been made involving a specific vehicle and the Police have formally requested that data or,**
 - (2) when a substantive complaint has been made to the [Council] regarding a specific vehicle/driver and that complaint is evidenced in writing (and cannot be resolved in any other way)**
 - 3 The request form for download must state the approximate time of the event/occurrence and only the timescale relevant to the specific incident will be downloaded, de-crypted and thereafter stored.**
 - 4 After a period of time, typically 14-30 days any data is automatically overwritten dependant upon the specification of the system installed.**
 - 5 Only systems approved by the Licensing Team may be installed by an independent installer – thereby ensuring that any equipment may not be tampered with, encryption is of a sufficient standard and data may not be interfered with or released to a third party/published.**

None of this detail is set out in any official document produced by the Council. Mr Burke amplified certain aspects of the policy in his oral evidence as follows. The only people authorised to de-encrypt and download data are Mr Burke and the three enforcement officers in his team; when they decide they need to take this step, the proprietor or driver of the taxi is obliged to present it to them so that the download can take place. The normal “destruction period” of 14 to 30 days is not a function of any thought-out policy decision but is simply dependent on the fact that the systems used only have so much storage space and the amount of time the data is in fact kept is therefore dependent on the useage of the taxi in question, which obviously varies. As to the “systems approved,” the VerifEye Mark 4 to which we have referred remains approved, but in 2011 two new systems, made by firms called Pageantry and Brigade respectively, were also approved; these two systems are superior to the

² A colour copy of the label is at p210 of bundle.

VerifEye Mark 4 system in that they provide continuous and full video and audio recording of everything that goes on in a taxi. Mr Burke was keen to stress and we fully accept that the Council's primary concern in selecting any system for approval was the security of the system in relation to access so as ensure that no-one was able to get hold of the data improperly. It is not disputed that the desired effect of the policy (notwithstanding the special situation with the still approved VerifEye Mark 4 system) is that every word spoken in a licensed taxi is recorded, whether it is part of a conversation between passengers, between passenger(s) and driver, or between the driver or a passenger and someone on the other end of a phone call; and it covers not only periods when the taxi is being used as a taxi but also periods when it is being used privately by a driver or proprietor, for example to take his family on holiday.

8. We were told that since the licensing condition was introduced the police have asked the Council for access to audio-visual recordings made in taxis on 193 occasions, of which Chief Superintendent Thomas was able to review 164 where it had been possible to get access to a relevant recording. Of these, the majority arose out of incidents taking place in or near taxis and involved criminal allegations against taxi drivers or passengers which included racially aggravated and sexual assaults, though by far the largest group (34 in all) involved allegations of making off without payment. However, there was also a substantial number of requests which involved serious criminal offences (including murder, other serious violence and drug dealing), but which did not directly involve taxis, where the police were simply seeking evidence which may assist their enquiries, for example where suspects had left the scene of a crime by taxi. Mr Burke accepted that in these cases the police were in effect making use of a form of surveillance for which they required no warrant (though it is right to note of course that the surveillance is not covert).
9. There was also a smaller group of downloads made by his team, estimated as 10% of the total by Mr Burke, which did not arise from a police request at all and did not necessarily involve any criminal allegation but which generally arose out of complaints by the public. Mr Burke's evidence was that such downloads would only take place if the allegation in question gave rise to some likelihood of a driver's

licence being withdrawn but he accepted that this may include occasions, for example, where a young female passenger had alleged that a taxi driver had inappropriately invited her out on a date.

10. On 23 July 2012 the Commissioner issued his enforcement notice under section 40 of the Data Protection Act. In the notice he referred to the Council's policy adopted on 26 August 2009, to a report on that policy and correspondence he had had about it with the Council, to his own Code of Practice on CCTV revised in 2008 and to relevant provisions of the Act, in particular the first data protection principle, and Art 8 of the European Convention on Human Rights (ECHR). He stated his view that the Council's policy involved a breach of the first data protection principle in so far as it required an audio-recording facility in permanent operation and that it may result in damage or distress. He therefore required the Council to refrain from recording "any such personal data in future."
11. The Council launched their appeal to the Tribunal on 2 August 2012. By virtue of section 40(7) of the Act, the Council did not have to comply with the enforcement notice pending determination of the appeal, a provision we understand the Council has taken advantage of.

The legal framework and the issues on the appeal

12. There is no issue that words recorded by the equipment installed in taxis under the Council's policy comprise "personal data" for the purposes of the Act; the relevant "data subject" would no doubt include the speaker but may very well also include other parties to any conversation or those being talked about. There is also no dispute that the Council is the "data controller" of that data for the purposes of the Act and that the very act of recording is a form of "processing."
13. It is therefore clear that the Commissioner had power under section 40(1) to issue an enforcement notice against the Council if he was satisfied that the audio-recording involved the contravention of a data protection principle; the primary issue in the case

is whether he was right in his conclusion that this was so. In deciding whether to exercise his power to issue an enforcement notice the Commissioner was also obliged to consider under section 40(2) whether “the contravention has caused or is likely to cause any person damage or distress.” Although it is accepted that a finding to this effect is not a pre-condition to the issue of an enforcement notice, the Council say that in this case the Commissioner approached section 40(2) in a fundamentally flawed way and that, even if he was right to conclude that the Council was contravening the first data protection principle, he ought not, as a matter of discretion, to have issued an enforcement notice. We return to this issue below.

14. The data protection principle relied on by the Commissioner, namely the first, provides as follows:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and**
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.**

The only potentially relevant conditions in Schedule 2 are these:

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

...

5. The processing is necessary-

(b) for the exercise of any functions conferred on any person by or under any enactment,

...

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

...

6.-(1) 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.

And the only potentially relevant condition in Schedule 3 is:

7.-(1) The processing is necessary-

...

(b) for the exercise of any functions conferred on any person by or under an enactment.

15. There is a side issue (to which we return below) as to whether the Council's policy involves the processing of *sensitive* personal data (and therefore whether the Schedule 3 condition needs to be met), but in any event the parties are agreed that the essential question on contravention is whether Art 8 of the ECHR (which guarantees the right of privacy and which we set out below) is infringed by the Council's policy, and in particular whether the policy is justified under Art 8(2) as a proportionate means of achieving a legitimate aim. This is because it is common ground that if Art 8 is infringed by the policy, the audio-recording of conversations will not be "lawful" for the purposes of the first data protection principle by virtue of the Human Rights Act 1998 and, furthermore, that none of the conditions we have identified as potentially relevant will be satisfied, in that the processing will not be "necessary" for any of purposes set out therein any more than it will be "necessary" for the analogous purposes set out in Art 8(2).

16. The Tribunal's powers in relation to an appeal are set out in section 49 of the Act:

(1) If on an appeal under section 48(1) the Tribunal considers-

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice or decision as could have been served or made by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

- (2) On such an appeal, the Tribunal may review any determination of fact on which the notice in question was based.**

It is common ground based on the wording of section 49 that on an appeal the Tribunal has full power to re-consider the whole matter in the light of all the evidence put before it, including the question whether the discretion ought to have been exercised differently, although due respect must of course be afforded to the views of the Commissioner, who is the person entrusted by statute with the job of enforcing the Data Protection Act.

17. The issues on the appeal can therefore be summarised as follows:

- (1) whether the words recorded under the Council's policy include "sensitive personal data";
- (2) whether the Council's policy infringed Art 8 of ECHR;
- (3) whether the Commissioner was right to exercise his discretion to issue an enforcement notice.

We will deal with them in that order.

Sensitive personal data

18. "Sensitive personal data" is defined by section 2 of the Data Protection Act as personal data consisting of information as to:

- (a) the racial or ethnic origins of the data subject,**
- (b) his political opinions,**
- (c) his religious beliefs or other beliefs of a similar nature,**
- (d) whether he is a member of a trade union,**
- (e) his physical or mental health or condition,**
- (f) his sexual life,**
- (g) the commission or alleged commission by him of any offence ...**

19. Mr Pitt-Payne maintained that in the absence of specific evidence the Tribunal could not find that the Council's policy involved the processing of *sensitive* personal data. We consider that an unrealistic approach. Based on our collective knowledge of the world we are quite satisfied that the inhabitants of (and visitors to) Southampton will from time to time discuss their own and others' sex lives, health, politics, religious beliefs and so on in taxis (notwithstanding the presence of the taxi driver) and, if necessary, we take judicial notice of that fact. It is also worth noting in this context that there must be numerous conversations in taxis of a sensitive nature which do not necessarily come within the strict definition of "sensitive personal data", for example commercial negotiations carried on by a businessman with a client by telephone in the back of a taxi.

20. Mr Pitt-Payne also made the point that it would be open to taxi users, having been informed by the label in the taxi that their conversations were being recorded, not to discuss sensitive matters which they did not want to have recorded. Again, we consider that an unrealistic approach. We do not see why anyone should be forced to modify their normal behaviour in such a way, by being forced to treat what is now (at least) a semi-private space as a public one, not least the taxi driver driving his taxi to a holiday destination with his family. We also note Ms Proops' point that, if the Council's policy resulted in people "self-censoring" their conversations, that would *prima facie* involve a contravention of Art 10 of the ECHR which guarantees freedom of speech.

Art 8 ECHR

21. We set out the familiar terms of Art 8 of the ECHR:

- (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 ... public safety ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others.**

22. The Council is prepared to accept that the recording and retention of data under its policy constitutes an interference by a public authority with the right of privacy conferred by Art 8(1). However, it says that such interference is justified (or "... necessary in a democratic society ...") in the interests of public safety, the prevention of crime and the protection of others. It is well established that in order for such an interference to be justified it must serve a "legitimate aim", meet a "pressing social need" and be "proportionate." The Commissioner accepts that the policy serves a "legitimate aim" (which he describes rather narrowly as "assisting in the detection of crime" but which we have no doubt includes all three of the aims relied on in Art 8(2) so far as they relate to the use of taxis) and that there is a "pressing social need" for some surveillance in taxis (though he says there is no "pressing social need" in so far as such surveillance relates only to misconduct by drivers rather than crime). The real issue therefore comes down to the question whether the Council's policy of continuous audio-recording is "proportionate".

23. The question whether the policy is "proportionate" is ultimately one of judgment for us as a Tribunal, balancing the benefits to the legitimate social aims it is likely to achieve against the extent of the interference with the right of privacy likely to be caused. In striking this balance it is important to note two things: (a) the "legitimate aim" of the policy is that of deterring and detecting *taxi-related* crime and other misconduct; the fact, as we mention in para 8 above, that the police have been able to obtain useful evidence about crimes not directly related to taxis cannot therefore come into the balance as a benefit; (b) the relevant benefits and disbenefits are only those marginal ones that come from *audio-recording*; no-one is complaining about the existence of CCTV in taxis as such or about video-recording.

Benefits of the policy

24. As the Council point out forcefully, there are special features of taxis which make those who use them particularly vulnerable to crime. In general, neither drivers nor their passengers have any real choice about making a journey in a taxi, the driver because it represents his living and the passenger because he often has no other

practical means of getting from A to B. Passengers are sometimes vulnerable in themselves, either by nature because they are children or suffer mental or physical disabilities (and the Council itself often contracts with taxi drivers to carry such people) or because they are intoxicated one way or another after a night out. Passengers and drivers are generally strangers to one another, forced to share a confined space in a moving object over which the driver has control. Physical, sexual and verbal assaults (either way) are therefore particularly dangerous when they occur in the context of taxis. Drivers are also particularly vulnerable to the risk of passengers making off without payment. Nevertheless the vast majority of drivers and passengers are of course honest and law abiding and the vast majority of journeys pass off with no incident at all.

25. It must be the case, and we accept, that the existence of CCTV in taxis tends to deter crime and assists in its investigation when it does occur and similarly that it assists the Council in relation to its function of licensing only suitable taxi drivers. The extent of any deterrence, and in particular the extent of any additional deterrence arising from audio-recording, is, we think, unlikely to be susceptible to hard proof and the unsuccessful attempt in Mr Burke's written statement to enlist statistical evidence to demonstrate the success of the policy in deterring crime confirmed our view about this. However, we do accept that there must be some additional deterrent effect from having continuous audio-recording in taxis. For example, it was suggested that a drunken group intent on trouble may get into a taxi and one of their number may persuade the others not to start being abusive by pointing out the audio-recording label, thereby preventing trouble that would otherwise ensue from "kicking off" in the first place. A driver who may be thinking of propositioning a lone female passenger may be deterred from doing so with the consequence that a subsequent sexual assault that might have followed just never happens. A passenger who gets into a dispute with a driver may be constrained in the language he uses and, in particular, not resort to racial abuse.
26. As for assisting the investigation of crime (and lesser matters of complaint) in taxis, which is obviously of great use to the police and the justice system and to the Council

in its licensing function, it was clear that in *some* of the cases we refer to at paras 8 and 9 the existence of audio-recording in addition to video-recording had made a real difference. The clearest were a few cases where drivers had alleged that passengers were guilty of racially aggravated assaults or racial abuse where, obviously, the existence of audio-recording was crucial. There was also reference to one or two allegations of sexual assault where the video-recording did not show exactly what was going on out of view of the camera but an audio-recording would help, and one can imagine that the recording of the conversation before an alleged sexual assault might assist in establishing whether sex had been consensual. There may also be cases where the existence of an audio-recording would assist in establishing an offence of making off without payment or whether a driver had behaved inappropriately (but not criminally) in a way that would affect his entitlement to a licence. It is right to note also that benefit comes from the ability not only to prove true allegations but also to disprove false allegations. And it is right to recognise that while few of the examples raised involved really serious crime, it *may* be that one day there is a rape or a murder associated with a taxi which would have been successfully prosecuted if there was audio-recording but not if there was only video-recording.

27. The Commissioner raised the possibility of a more targeted and less intrusive alternative to continuous audio-recording, and in particular a “panic button” system whereby the driver or passenger could activate audio-recording if a need arose at the press of a button. As we understand it, there is no technical bar to such a device and the Commissioner would regard it as an acceptable alternative. We agree with the Council that the Commissioner did not fully meet its criticisms of a panic button system. We accept that such a system would clearly not be as effective as continuous audio-recording, since it would obviously not be as full a deterrent, it would require often vulnerable or incapacitated passengers to make use of it and it would by definition miss the initial and perhaps most important part of an incident. However, a panic button system would have some (albeit limited) additional benefits in relation to the legitimate aims being pursued over a pure video-recording system. For what it is worth, therefore, the relevant benefits of the Council’s policy for us to consider are only the additional marginal benefits associated with a *continuous* audio-recording system over those that could be achieved with a panic button system.

Extent of interference

28. We have already alluded to the extent of the interference with privacy rights involved in the Council's policy in paras 7, 19 and 20 above. In short, every single conversation, however private and however sensitive the subject matter, taking place during every single taxi ride in Southampton (of which there may well be a million a year) will be recorded and accessible to a public authority.
29. Mr Pitt-Payne emphasises aspects of the policy which he says mean that it involves only a slight interference with privacy rights: first, the data is only retained for a short time (14 to 30 days) unless it is accessed for good reason; second, access to the data is confined to a few individuals (Mr Burke and his team); and, third, their access is strictly controlled: there must be a request relating to a specific incident or allegation from the police or which Mr Burke and his team judge worthy of further investigation. The evidence is that the data has been accessed on only about 200 occasions in three years. It is not in any sense continuously monitored. We accept that these are highly relevant considerations but there are a number of points which go to weaken them in our view.
30. First, as we have mentioned, the policy has never been written down as such and we are concerned that, at least in so far as it relates to audio-recording, it was not very fully consulted on or well thought through. Rather it appears to have been driven by technological developments. The 14 to 30 day retention period in particular is simply a function of the capability of the systems and, if a new approved system came along which could retain data for much longer, there is nothing in the policy to stop data being so retained. Second, there is already evidence of what was called at the hearing "function creep": for example, the use of the system by the police to gather evidence about crimes not directly related to taxis, however beneficial in itself, was not (or should not have been) part of any policy devised by the Council arising from its taxi licensing function. Third, it has to be accepted that however robust the systems in place and however well-intentioned and conscientious Mr Burke is (and he made a generally good impression on us) there must always be a danger that a taxi driver or a

Council official or someone else will access and make improper use of this data. As it is, we were told that there were possibly four to five “data access requests” per year (generally made by taxi drivers) which had been acceded to: we do not have details of these but we wonder whether full consideration was given to the interests of data subjects other than the requester and we note that, once in the hands of the requester, notwithstanding the Council’s standard letter warning him that to publish will involve a breach of the Council’s copyright, there is little that anyone can do in practice to control the use of such data (and these days they can be instantly broadcast to the whole world through sites like *YouTube*).

31. Both sides sought to demonstrate in different ways that there was public support for their respective positions. The Council relied on the outcome of their consultation and certain opinion polls in Southampton. Although we were open to the possibility that firm evidence of local support or opposition could be relevant on the proportionality issue, we did not consider that the exercises relied on were sufficiently focussed on audio-recording to have any influence on our decision. The Commissioner relied on various complaints about the policy, in particular by taxi owners and drivers; without knowing more about motivation we do not think that any weight can be attached to these either.

32. We do, however, give some weight to the views expressed by the Commissioner in his 2008 Code of Practice on CCTV where he states:

CCTV must not be used to record conversations between members of the public as this is highly intrusive and unlikely to be justified. You should choose a system without this facility if possible. If your system come equipped with a sound recording facility then you should turn this off or disable it in some other way.

There are limited circumstances in which audio recording may be justified, subject to sufficient safeguards. These could include:

...

- where recording is triggered due to a specific threat, e.g. a panic button in a taxi cab.

We also formed the view that (notwithstanding the possible benefits to them of the Council's policy) the police witnesses took a somewhat neutral stance on the question of the proportionality of continuous audio-recording.

Conclusion on proportionality

33. Having regard to the considerations set out at paras 24 to 32 above, and paying due respect to the Commissioner's views, in our judgment the Council's policy, in so far as it requires continuous blanket audio-recording of everything said in taxis, is disproportionate when the extent of the interference with the right of privacy is weighed against the marginal benefits to the legitimate social aims of increasing public safety and reducing crime in relation to taxis which are likely to result from it. It follows from that conclusion that the policy is not justified under Art 8(2) and accordingly that it contravenes the first data protection principle.
34. Having reached that conclusion we wish to record that we were impressed by the police evidence in this case and that we appreciate the nature of the problem and the special vulnerability of some taxi passengers, in particular children, those with disabilities and those travelling at night, especially when they are "the worse for wear" as is so often the case. It may be that, bearing these points in mind, there is scope for a more targeted scheme involving audio-recording based on times of day, types of customer (for example, children or vulnerable adults carried under contract between a taxi firm and the Council), the use of panic buttons or a combination thereof, which strikes a better balance between the competing considerations and does not contravene the Data Protection and Human Rights Acts. Any such scheme would be a matter for the parties to work out and not for this Tribunal to put forward.

The exercise of the discretion by the Commissioner

35. Mr Pitt-Payne submitted that the Commissioner's approach to section 40(2) was flawed and that, in any event, he ought not to have exercised his discretion to serve an enforcement notice. Looking at para 8 of the enforcement notice we are inclined to agree with him that the Commissioner did not apply a sufficiently stringent test of

likelihood of damage or distress. However, we do not think that we need to consider that matter further for the simple reason that, having concluded that the Council were acting in breach of the Data Protection Act and having regard to the high level of public importance of the case, we think it must have been right in this case to decide to issue an enforcement notice, regardless of the likelihood of any actual damage or distress resulting from the policy.

Conclusion

36. We therefore dismiss the appeal. Our decision is unanimous.

Signed:

HH Judge Shanks

Date: 19 February 2013

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GENERAL PURPOSES LICENSING COMMITTEE

Tuesday 19 February 2013

COUNCILLORS PRESENT: Councillors Canning, Clarkson, Cook (Chair), Coulter, Goddard, Gotch (Vice-Chair), Lygo, Royce and Williams.

OFFICERS PRESENT: Lois Stock (Democratic and Electoral Services Officer), Julian Alison (Licensing Team Leader), Dawn Cox (Team Leader - Environmental Development), Samantha Howell (Licensing Officer) and Jill Cramer (Environmental Development)

24. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

None

25. DECLARATIONS OF INTEREST

None

26. UPDATE ON TAXI LICENSING ACTIVITY SEPTEMBER 2012 - DECEMBER 2012

The Head of Environmental Development submitted a report (previously circulated, now appended). Julian Alison (Licensing Team Leader) presented the report to the Committee and explained the background.

He explained that there was a duty to work with licence holders of all sorts, and help them to make sure that they comply with the various rules and regulations. This included an educative role for licensing officers.

The Committee expressed appreciation for the Taxi Marshals, which were felt to be a good idea. The Committee also felt that enforcement in Oxford was working.

Resolved to note the contents of the report.

27. HACKNEY CARRIAGE - APPLICATION FOR VARIATION OF TARIFFS

The Head of Environmental Development submitted a report (previously circulated, now appended). Jill Cramer (Licensing Officer) presented the report to the Committee and explained the background.

Michael Tombs and Khalid Sharriff (COLTA – City of Oxford Licensed Taxi Association) attended the meeting and presented their case for a variation of tariffs.

The Chair, Councillor Colin Cook, observed that there was a need to strike a balance between the requirements of drivers and the needs of the travelling public. He thanked officers for all their hard work on this matter.

Having considered all submissions, both written and oral, the Committee resolved to:-

(1) Approve the variation of tariff requested by COLTA , as outlined in the report and in brief as follows:-

- **Tariff 1** the flag full will increase from £2.45 to £2.50;
- **Tariff 1 & 3** waiting time decreased from 20.3 seconds to 20 seconds;
- **Tariff 2** waiting time increased from 18.9 seconds to 19 seconds;
- **Tariff 1 & 3** distance of first flag fall to be reduced from 80 metres to 70 metres. Subsequent metres increased from 1600 to 1610 metres, then decreased from 125 metres to 110 metres;
- **Tariff 2** distance of first flag fall to be reduced from 53 metres to 47 metres. Subsequent metres decreased from 2120 to 2115 metres, then decreased from 130 metres to 110 metres.

(2) Request the Head of Environmental development produce a revised Hackney Carriage Tariffs Chart for the approval of the Chair and Vice Chair, and subject to this approval:

(3) Request that the Head of Environmental Development and the Head of Law and Governance carry out the statutory requirement of a public consultation, and delegate to the Chair and the Head of Environmental Development to consider any responses to the consultation.

(4) Ask Legal Officers to investigate a request from COLTA to display the City of Oxford Council logo on a notice to be placed in all licensed hackney carriages detailing that the fare for a journey that terminates outside the City boundary may be charged on the taximeter at Tariff 3 (the request not being agreed at this time)

28. LICENCE FEES 2013-14

The Head of Environmental Development submitted a report (previously circulated, now appended) Dawn Cox and Julian Alison (Licensing Team Leaders) presented the report to the Committee and explained the background to it.

The Committee noted that a report on review of the Street Trading Policy was expected in June 2013 and would address the matter of fees for street trading at charitable events.

Resolved to:-

(1) Note the license fees set by statute;

(2) Agree the other licence fees for 2013/14 as set out in the appendix to the report.

29. UPDATE ON MISCELLANEOUS LICENSING ACTIVITY MAY 2012 - DECEMBER 2012

The Head of Environmental Development submitted a report (previously circulated, now appended) providing an update on licensing activity between May and December 2012.

The Committee resolved to note the report.

30. MINUTES

Resolved to confirm as a correct record the minutes of the meeting held on 17th October 2012.

31. DATES OF FUTURE MEETINGS

Noted that the next meeting would be in the next Council year (date to be confirmed).

The meeting started at 5.58 pm and ended at 6.52 pm

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