

TCT

Traditional Cambridge Tours Ltd

Executive Summary

For the City Council and police to suggest that all touts for unlicensed vessels are rude, aggressive, abusive and unconcerned with health and safety – even criminals -- based on 33 complaints (a third of which do not relate to touting, aggression or even to independent operators) is offensive and defamatory. In the context of 3 million visitors each year and thousands of punt trips each week, the City's case does not justify banning and criminalising otherwise-normal business activity.

The Home Office guidance¹ states that behaviour restricted "*has to: be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable.*" Should these criteria be met, the guidance also specifies that the council "*should ensure that the measures are necessary (our emphasis) to prevent the detrimental effect*".

It is our view, based on objective evidence and legal advice received, that touting does not constitute detrimental or unreasonable behaviour. An independent survey commissioned by the City Council in 2011² showed that the majority of visitors and residents do not object to being approached by touts. Nor is tout behaviour worsening: a police report to the council on punt touting in September 2015 stated that "*we have received fewer complaints about anti-social behaviour than in previous years.*"³ The real driver of this proposal appears to be the view that there are too many touts working in the City. However, tout numbers and behaviour can be addressed in other, more proportionate ways which do not criminalise people. A PSPO is neither necessary or reasonable.

Traditional Cambridge Tours has been trading since 2009. Until 2012, all our punts were licensed. The Conservators then changed their bye-laws to restrict commercial licences to those trading from six newly-designated stations, none of which we have been permitted access to. We have applied for commercial licences every year since then, to no avail. We represent the majority of independent operators working in Cambridge, who between them employ some 100 young local people. We consider it defamatory to be repeatedly described as 'illegal' when our only 'crime' is to have been excluded from the riverfront by a series of anti-competitive decisions. We remain fully insured and our chauffeurs are skilled and experienced.

Businesses need customers. Should the PSPO ban on punt touting be introduced, this would severely affect our ability to trade, and put many young people out of work. We believe the City Council should not be criminalising people and depriving them of their livelihood simply for attempting to compete in a market. A PSPO, if adopted, would further entrench an already skewed, near-monopoly position, contrary to EC competition law. We urge the City to instead work with independent companies to agree more proportionate approaches and also to address the root cause problem of a flawed, anticompetitive punt market. We attach separately two statements drafted on our behalf, from David Wolfe QC, Matrix Chambers (Attachment A) and Luke Gittos, Hughmans Solicitors (Attachment B), which are based on the information in the consultation and information provided by us. This document outlines our wider objections to the PSPO:

1. Seeking trade is not inherently 'unreasonable' behaviour
2. The City's evidence does not demonstrate widespread or persistent detrimental effect
3. Other more proportionate options are available to address the concerns that exist
4. The procedure is potentially unfair, biased and in breach of the Human Rights Act
5. This decision would be anticompetitive, contrary to EC and UK competition law

¹Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance

²Punt touting in the City Centre, report to West Central Area Committee, November 2011

³Police report to West Central Area Committee, September 2015 p.30

1. Seeking trade is not inherently ‘unreasonable’ or illegal behaviour

- 1.1 Touting by licensed operators will still be permitted.** The City Council has stated that the PSPO would not apply to licensed touts. This confirms that touting (i.e. *‘soliciting for custom’*) is not an inherently unreasonable or detrimental activity.
- 1.2 Other organisations approach and promote to passers-by.** The PSPO seeks to ban advertising for punt or walking tours. Yet many organisations distribute promotional flyers in the City centre, for example The Cambridge Shakespeare Festival, restaurants and nightclubs, students promoting events. Many organisations place flags and boards on the public highway around Kings Parade and the city centre without repercussions, e.g. restaurants and cafes, Ryder and Amies, Scudamores, and McDonalds, who recently placed free standing flags in Market Square, which were eventually removed.
- 1.3 Touting is not an illegal activity.** The City’s biased and aggressive references to independent touts as ‘illegal’ are unfounded and defamatory – for example, Cllr Owers’ has been quoted stating: *“We’ll stop treating them like criminals when they stop acting like criminals.”*⁴ Approaching customers is not illegal, and we do not abuse anyone. Cllr Owers’ further comments about showing no regard for health and safety are also unfounded and defamatory: we are fully insured and our punt operatives well-trained.

The City Council cannot argue that punt touts are having a detrimental effect simply by going about their business. Seeking trade is not inherently ‘unreasonable’ behaviour. Indeed it is our view that the City’s decision to limit touting to within 50 metres of the river (through its Code of Conduct) is also unreasonable and discriminates against one category of business. It also increases the density of touts and touting approaches in the specified areas, instead of allowing them to disperse at lower density over a wider area.

We believe the City should be working with all punt and walking tour companies to identify reasonable and proportionate ways to control numbers and behaviours. EC and UK competition law makes it clear that those with regulatory power should encourage local entrepreneurs and competition, not stifle it.

2. The City’s evidence does not demonstrate widespread or persistent detrimental effect

- 2.1 An independent survey reached the opposite conclusion.** An independent survey commissioned by the City in 2011⁵ found that *“on the whole, visitors did not feel that touting had an adverse effect.”* The report then states *“although a small but significant number felt that it did.”* We fail to understand why the smaller number is considered more ‘significant’ than the majority view. We are told that *‘a much larger proportion’* of residents surveyed felt that punt touting adversely affected their experience, but no figures are given – we assume from this that objectors were not a majority. The 2011 survey evidence has been omitted from the PSPO information provided to committee members and from the public consultation.
- 2.2 The City has not seen fit to conduct another survey,** perhaps for fear it will give the ‘wrong’ answer again. This would be the ONLY way to provide objective, statistically significant data on the real impact of touting on visitors and locals, and the extent that people feel it is ‘detrimental’ to daily life. This decision, and the withholding of the 2011 survey, raises concerns about the fairness of this process.
- 2.3 The City and police both acknowledge that ‘aggressive’ touting has diminished.** A police report to the City council in autumn 2015⁶ stated: *“We are drawing towards the end of the busiest part of the year*

⁴<http://www.cambridge-news.co.uk/Inside-Cambridge-8217-s-punt-wars-8211-talk-sides/story-28023381-detail/story.html>

⁵Op cit (footnote 2)

⁶Op cit (footnote 3)

for punt tout related activity, and we have received fewer complaints about anti-social behaviour than in previous years." This view was repeated by the city council's head of property services: "It used to be far more aggressive than it is – now it is very much the higher number of touts."⁷ The real issue, therefore, appears to be volume of approaches, not 'unreasonable' behaviour by touts.

2.4 Low number of complaints. The City has presented a dossier of 33 complaints. While we view any complaint as regrettable, in the context of 3 million visitors to the City annually, and an estimated 3,000 punt trips per day, this number is extremely small. Of the many interactions touts have during the season, the overwhelming majority generate no complaint. Our own touts are invariably polite and friendly. In many cases, visitors thank us for our help taking photos, giving directions and providing local information, and also appreciate the quality of our punt trips. It is not reasonable to rely on unsubstantiated assertions that complaints are just the 'tip of the iceberg'.⁸

2.5 Over one-third of the complaints cited are not relevant to the PSPO. Some do not cover advertising or touting. Others do not describe unreasonable behaviour or relate to licensed touts, who are not the subject of the proposed PSPO. Others are misleading or unfounded. Only 20 complaints remain once inapplicable complaints are taken out, viz:

(i) Complaints that are NOT about unreasonable or antisocial behaviour.

ID 381087 - *Report of a large group of punt touts on King's Parade, around 9 of them.*

ID 390963 - *Report of three punt touts in Market Square. They had boards with the punting company's name on one side.*

ID 426613 - *proliferation of punt touts operating*

ID 443481 - *Large number of students, perhaps from language schools... being led towards Garret Hostel Lane...lined up to board punts*

None of these complaints demonstrate unreasonable or antisocial behaviour. They merely confirm that touts exist. However, in 2015, it was not illegal to tout or be a tout in any area of Cambridge. It is unclear what the final complaint actually is. Garrett Hostel Lane is a public access point to the river.

(ii) Complaints that are NOT about touting.

ID 403784 - *A punt chauffeur left punt to urinate on river bank*

ID 411796 - *Privately hired punt crashed into on the river by unlicensed operator*

ID 425313 - *Lady suffered quite a bad head injury (Garrett Hostel Lane slipway)*

These complaints all relate to incidents on the river or riverside, not to touting, so are irrelevant to the proposed PSPO ban. Whilst all were regrettable, there is no evidence that the first or last incidents involved independent operators – all punting companies, licensed or unlicensed, regularly use Garrett Hostel Lane for drop-offs. The collision also has nothing to do with touting. It is also the case that the majority of serious accidents and collisions involve self-hire punts, not independent punts. See Appendix, Serious Accident reports 2009-2015.

(iii) Complaints that are clearly about LICENSED touts

ID 390970 - *Touts obstructing the pavement on Bridge Street*

ID 394098 - *Report of aggressive and nuisance punt touting on Magdalene Bridge*

ID 421831 - *A lot of touts...continual nuisance for all users and visitors to Quayside*

ID 444370 - *Report of misinformation and littering at Quayside*

These four complaints all relate to an area where the only touting is carried out by licensed companies. These companies will not be affected by the PSPO. There appears to be no good reason why touting on Quayside is considered acceptable but touting elsewhere in the City is not.

(iv) Complaints that are unfounded and misleading.

ID 402794 - *Visitors being overcharged by punt touts*

ID 411312 - *Harming the business of legitimate tax-paying punting companies*

⁷<http://www.tcs.cam.ac.uk/news/0034597-city-cracks-down-on-punting-touts.html>

⁸<http://www.cambridge-news.co.uk/Cambridge-punt-wars-8211-touts-banned-city-centre/story-28009771-detail/story.html>

The first complaint is that companies with unlicensed boats are overcharging people, yet the tout in the complaint was offering to discount the price to below £20 per adult. We would point out that Scudamores charges £19 at their kiosk for the same trips (their own) which can be purchased from the Tourist Information Centre for £14. The second complaint implies that independent operators pay no tax. This is untrue and defamatory. TCT pays tax at the full corporate rate.

- 2.6 The case for a PSPO has not been made.** The 20 complaints which do relate to touting and may have involved unlicensed operators include some behaviours which, if true, are unpleasant and unacceptable. However, we do not believe this to be typical of all independent punt touts. It would be pointless and self-defeating to abuse potential customers. We abhor such behaviour and insist on the highest standards of politeness from our own touts.
- 2.7 The true issue appears to be the volume of touting approaches.** Given the low number of complaints and the fact that both police and the City Council agree that 'aggressive' touting has declined, the true issue appears to be the number of approaches made. A PSPO blanket ban on all unlicensed touting is not a reasonable or proportionate response.

3. Other more proportionate options are available to address the concerns that exist

We are concerned that the actions of a few rogue individuals are being used to smear the law-abiding majority of touts, who are not doing anything illegal by touting. We believe that the solution is to establish clear accountability for behaviour and agree acceptable numbers. At a recent meeting with Cllr Herbert, we made constructive suggestions which would allow the City to enforce rules on numbers and behaviour without resorting to costly legal action or criminalising local young people, namely:

- 3.1 Establish a Federation of Independent Punters.** We have formed a Federation with other independent operators which will enable us to self-police the conduct of our employees and be held accountable for any relevant complaints – see Attachment C. We are implementing the following measures:

(i) *Name badges and uniforms to allow monitoring.* Our staff already wear smart uniforms. We have now ordered new uniforms which display a telephone number on the back in case of complaint, and name badges for all our staff.

(ii) *A reduction in the number of touts.* We are willing to limit the number of touts across the board to a level consistent with permitted tout numbers for the licensed companies.

(iii) *Adherence to the voluntary Code of Conduct.* We are all aware of the voluntary Code of Conduct, and already tell our staff to adhere to all its terms relating to behaviour.

- 3.2 Help the Council enforce existing bye-laws.** There are bye-laws in place already to deal with aggressive touting (through the police) and obstructive advertising (through the highways authority⁹). Greater visibility and accountability will allow any touts who misbehave to be easily identified, though we are confident that they will not be our employees. We can also alert police and the council to any individual 'rogue' touts who behave badly.

- 3.3 Addressing anti-competitive barriers to licensing.** Licensing is a tool which the City council can use to control behaviour and numbers. At present it is a tool which the City is denying itself, however, along with the potential for increased rental income. Introducing a PSPO will criminalise local young people who wish only to make a living, and will require expensive enforcement and legal costs. We deal with the anti-competitive nature of the PSPO proposal and City income in Section 5 below. We wish simply to state here that releasing a small amount of publicly-owned frontage to independent punt operators would allow us to be licensed and subject to City Council enforcement, in the same way that legitimising moored boats on Riverside through registration has given the Council the power to enforce mooring licence conditions. If licensed we could participate in other measures to control touting, such as

⁹<https://www.cambridge.gov.uk/report-illegal-advertising-flyposting>

proposals to introduce kiosks.

4 The procedure is potentially unfair, biased and in breach of the Human Rights Act

We believe there are strong grounds for challenge to the PSPO procedure, including the following:

4.1 The Police community impact statement contains incorrect and misleading statements.

(i) It is incorrect to state that: "*Since 2012, it is a legal requirement for a punt tour company to be licensed by the CAM CONSERVATORS*". This is not true: vessels must be licensed, not the company. It is not illegal to set up a punt company. This makes the use of the terms such as 'illegal company' or 'unregistered company' defamatory.

(ii) It is misleading to state that: "*Because some of the punt tout companies are unlicensed, there is no ombudsman available to customers who have had a bad experience with punt touts..disputes..are often mistakenly referred to the council.*" There is no ombudsman for licensed punt touts.

(iii) It is misleading to state that: "*They must also adhere to a voluntary code of practice surrounding their tout activities*" If you MUST adhere to a voluntary code, then the code is not voluntary. The City report clearly states that not all licensed operators have signed up to the code. We have indicated our willingness to abide by the behavioural terms in the Code.

(iv) It is misleading to imply that independent operators are less safe than licensed operators. The vast majority of accidents involve self-hire punts steered by people with no experience or training (see Appendix 1). The ONLY companies which offer self hire boats are licensed operators (Trinity, Scudamores and Granta). Independent operators run only chauffeured tours, steered by trained, experienced punters. It is therefore misleading to state: "*I would question how well customers are triaged in respect in respect of their ability to swim or navigate a large cumbersome punt through unfamiliar and congested waterways.*" Swimming ability is not checked by licensed operators. The second half of this statement applies ONLY to the self-hire companies above.

(v) It is misleading to imply that all independent operators are uninsured: "*Despite some of the touts claiming they are adequately insured to carry passengers, this is unlikely due to the fact they are not appropriately licensed*". Traditional Cambridge Tours have full insurance with a third party insurer, based on our exemplary safety record. It is not subject to licensing by the Conservators.

4.2 The Police statement contains unjustified and biased assertions.

The statement is littered with unjustified and biased assertions. For example:

(i) The statement suggests that only unlicensed operators will behave badly in the pursuit of financial rewards. "*The Punting Trade is an extremely lucrative business*" "*The figures quoted were quite shocking*" Independent operators account for just 6% of total boat numbers on the Cam and an equally tiny proportion of total income. The dominant operator has 60% of punts on the river and reaps the lion's share of this multi-million pound industry.

(ii) The statement freely employs unsubstantiated emotional rhetoric without quantification or evidence, for example: "*an endemic anti-social behaviour issue*" "*frequent reports to the Police and Council suggest that some of these touts are extremely pushy...often becoming abusive and derogatory*" "*competition...has frequently devolved into allegations of assault and criminal damage*" "*cause misery to people in the city centre*" These comments are completely unjustified and biased given that the City Council's dossier contains only 20 complaints which could relate to unlicensed touts, and the September 2015 report by the police stating that aggressive behaviour has in fact declined (see para 2.3).

(iii) The most concerning statement is the one which states: "*our research has also discovered that the large majority (our emphasis) of the known punt touts have criminal convictions for a wide variety of*

offences - ranging from drug possession, theft, serious assaults and even sexual offences, which could be potentially detrimental to the image of the City – *given some of the Touts previous behaviour (our emphasis)*" It is hard to know where to start with this. The statement is not substantiated with any numbers of 'known' touts. We do not believe this statement to be true – the vast majority of touts do not have convictions. More importantly, Article 14 of the Human Rights Act prohibits discrimination against individuals or groups unless there is reasonable justification. Unless the City Council and police also propose to screen all shop workers, market stall traders and other employees interacting with the public in broad daylight in the City Centre, then this statement is unjustified and discriminatory.

4.3 The City Council has a declared financial interest in increasing tour sales through its DMO. The Council has transferred the running of Visit Cambridge to a private-public partnership known as a DMO (Destination Management Organisation).¹⁰ Reports state that: "*The new Cambridge model of a business-led public/private partnership is distinct from many other DMOs nationally because it will rely almost entirely on earned income.*" (our emphasis) The DMO has a target to become self funding within 3 years, putting it under extreme pressure to increase revenue. At present it receives a subsidy from the City Council, who thus stand to gain financially if the DMO becomes self-funding. The only punt tour tickets the DMO sells are for one licensed company (Scudamores) and the only walking tours are its own, so the City has a clear financial interest in removing or reducing the volume of tour sales to other companies. We consider this grounds for considering the PSPO proposal unfair or biased. In effect, Cambridge City Council are using legislation intended to preserve the peace to criminalise commercial activity and protect their own financial interests.

5 The decision would be anticompetitive, contrary to EC and UK competition law

Past decisions by the Cam Conservators and City Council have created a profoundly uncompetitive punt market which unfairly excludes new or 'non-privileged' businesses. Such businesses are criminalised if they attempt to participate in the market, under Cam Conservators bye-laws. A PSPO which bans touting by excluded businesses and introduces new criminal penalties for merely seeking to trade will entrench and exacerbate the current anti-competitive position. This is a potential breach of EC competition law.

It is our impression that the City Council does not fully understand the implications of its role in the market, or its responsibilities under EC and UK competition law. If it were to properly address this issue so as to give otherwise legitimate businesses fair access to the market, this would benefit consumers, allow the City to enforce licensing conditions with all market participants and make it possible for other companies to compete for business on a level playing field.

At no point have independent operators taken up more than 6% of boat numbers on the Cam (just over 20 punts between all independent operators). One dominant operator has a 60% share of commercial boats, estimated at over 200 punts. However an exact figure is hard to assess as this operator also keeps many unlicensed punts on the upper river. This dominant share has increased since the City last conducted research in 2009. According to the Competition and Markets Authority, more than a 40% market share is considered dominant. If there are structural barriers to entry, including "*refusing to grant access to facilities which may be essential for other competitors to operate in a market*", this may indicate abuse of a dominant position. The penalties for anti-competitive behaviour are severe¹¹.

5.1 Past regulatory decisions have created severe and unfair barriers to entry. These include:

(i) Use of 'congestion' to justify closure of previously-legal punt sites. The Conservators decided in

¹⁰<https://www.cambridge.gov.uk/news/news-model-for-tourism-services-set-to-get-go-ahead>

<http://scambs.moderngov.co.uk/documents/s80586/DMO%20Tourism%20Decision%20Eco%20Dev%20PFH%20June%202015.pdf>

www.cambridgenetwork.co.uk/news/visit-cambridge-and-beyond-launches-to-boost-cambridge-tourism/&num=1&client=firefox-a&hl=en&gl=uk&strip=1&vwsrc=0

¹¹Competition Law Risk, a short guide. Competition and Markets Authority 2014.

2012 to license only vessels trading from six designated stations, on grounds of congestion. The City Council banned independent punters from using Garrett Hostel Lane, also citing congestion. The small number of independent punts are NOT the reason that the river is crowded at this point. The congestion assessment was conducted by a competitor, Trinity Punts. We have commissioned an independent health and safety/congestion survey which we hope will inform a more balanced view.

(ii) Refusal to consider alternative solutions which would permit proper competition. Logic suggests that the solution to congestion problems is to introduce quotas. At present, operators working from authorised punt stations are currently free to register an unlimited number of punts (*"For as long as the Cam is a public navigation, there can be no limit to the vessels on the river,"* Cam Conservators Chair, Robin Walker)¹². The city has the power to limit the number of punts operating from its own punt stations should it wish.

(iii) Preferential allocation of publicly-owned frontage. As the landowner of Quayside, La Mimosa and Silver Street punt stations, the City Council controls a valuable business asset which – as of 2012 – has become a necessary precondition for commercial punt owners to participate in the market without breaching Conservators bye-laws, as only those operating from authorised stations are permitted to license commercial vessels. In 2009, the City Council entered into a 20 year lease agreement with Scudamores giving them exclusive rights to trade from Quayside¹³. This operator has also been granted exclusive trading rights to their Silver Street punt station. The city has preferentially allocated the bulk (these two stations represent approximately 60% of the City-owned punt station metrage) of the publicly-owned asset to one dominant operator. This operator also controls 60% of the total middle river boat station frontage, both publicly and privately owned, and 100% of the boat station frontage to access the upper river. Without opening the process to bids from other operators, the City has acted anti-competitively.

(iv) Discounted, below-market rent. It was reported in 2010 that Scudamores would pay less than market rent for the privilege of being the sole punt trader on Quayside. Cllr Neil McGovern was quoted saying: *"The conditions on the agreement state that within 10 years the lease will move up to market rates, so we hope that will be in excess of £30,00 to £40,00 per year on current rates"*¹⁴. By discounting the rent until 2020, the City has also deprived local ratepayers of fair value for the asset. Independent operators offered £30,000 to lease Garrett Hostel Lane but this offer was refused. Scudamores acquired their Silver Street river frontage through squatters rights. The below-market Quayside deal followed more than 80 years of Scudamores paying nothing to the City Council at all. During that period, Scudamores manager Rod Ingersent was quoted criticising independent companies for operating from Jesus Green without paying rent, and campaigning for their removal¹⁵.

5.2 The City does not appear to understand its role or responsibilities re: competition law. The punt market is an attractive and high value one (Scudamores is reported as having an annual turnover of 'over' £3 million¹⁶). It is unreasonable and misguided to seek to exclude new or 'non-privileged' punt companies from an attractive market, and even more unreasonable to strengthen and entrench the position of one dominant operator in so doing. Statements such as *"We are not a competition authority"*, *"The market is full"* or *"People can't just open up a coffee shop in the city centre"*¹⁷ show a fundamental

¹²<http://www.cambridge-news.co.uk/Inside-Cambridge-8217-s-punt-wars-8211-talk-sides/story-28023381-detail/story.html>

¹³September 2010 Cam Conservancy Board minutes

¹⁴http://news.bbc.co.uk/local/cambridgeshire/hi/people_and_places/newsid_8834000/8834741.stm

¹⁵<http://www.cambridge-news.co.uk/Making-waves-river/story-22471867-detail/story.html>

¹⁶<http://www.cambridge-news.co.uk/Inside-Cambridge-8217-s-punt-wars-8211-talk-sides/story-28023381-detail/story.html>

¹⁷www.cambridge-news.co.uk/Inside-Cambridge-8217-s-punt-wars-8211-talk-sides/story-28023381-detail/story.html

misunderstanding of market operation. As a regulator and asset-owner the City MUST demonstrate that it understands, complies with and implements competition law. A market may be saturated ('full'), but it must still be open and competitive, not frozen in perpetuity for the benefit of current members. People wishing to open up a coffee shop in the City centre are free to do so, with a wide choice of possible premises and options.

5.3 Privileged relationship raises questions. We are deeply uncomfortable about the fact that the dominant operator, Scudamores, has had a representative on the Board of the Cam Conservators since 2001. Their current Board member, a Scudamores director, is a City Council nominee. No other punt company enjoys this privilege. Their manager participates as an Observer.

Conclusion

A PSPO is neither necessary or reasonable, and we believe, on advice received, that the decision would be unlawful and open to challenge (see Attachment A). It would criminalise local young people for simply attempting to compete in a legitimate business market. There are other, more proportionate measures available to address concerns about numbers and behaviours, which we urge the City Council to collaborate with us to introduce. We also believe the anti-competitive barriers to licensing need to be addressed for the City to maintain a credible position and have the enforcement tools it needs.

Traditional Cambridge Tours Ltd

APPENDIX 1: Serious Accident reports self hire vs chauffeured punts 2009-2015
(source: Cam Conservancy data)

2011

1. 18 month old child finger crushed by Scudamores self hire
2. Scudamores chaining self hire together 4 abreast with chauffeurs on back
3. La Mimosa 2 elderly persons fall in whilst disembarking

2012

1. Scudamores punt stuck in flood gate (happened due to Scudamores breaching bye laws and mooring within 36 metres of flood/ sluice)

2013

1. Elderly gentleman breaks leg on a self hire from Scudamores
2. Lady traps hand at Garrett Hostel Lane and fractures her hand (company unknown, not TCT)
3. Collision between Scudamores self hire and chauffeured punt, child breaks thumb

2014

1. Two Scudamores chauffeured punts coming downstream rammed a TCT chauffeur boat into a tree, resulting in a man in the TCT punt receiving a gash to his head. Statements given by witnesses vouched that the collision was deliberate.
2. Scudamores self hire get sucked into weir on upper river with passengers aboard after being let out in treacherous conditions.
3. Scudamores self hire sinks on Jesus green full of young students drinking

2015

1. Scudamores self hire caught up down at Jesus green weir after been let out in strong current and high winds
2. Collision between privately hired punt and independent punt. A passenger's hand was injured.
(note: this is the sole accident example included in the City Council's list of complaints)

Text For Consultation drafted for Traditional Cambridge Tours Ltd by David Wolfe QC, Matrix Chambers.

Introduction

We are responding to the consultation on the Council's proposal to introduce a PSPO, the draft for which says it is in relation to "Touting for punt tours and punt hire".

We are three separate companies employing roughly 100 people. We are at risk of being put out of business by the PSPO because much of our business is secured through touting activities (which are perfectly lawful) in locations where that would be prohibited by the PSPO if it is put into place. That would lead to the loss of those jobs, the relevance of which is made clear below.

The background to the proposals

The text on the Council's website says that:

"Punt and tour touting in the city has been the focus of complaints for many years. The complaints relate to the number of touts gathering in certain areas of the city and the behaviour of the touts."

It then refers to the "summary of evidence" and the "community impact statement" – we will come back to those below.

It then says that:

"Over recent years the Council and the Cam Conservators have taken a number of steps to deal with the problems caused by touts. Despite these measures, public concern about the activities and prevalence of touts in the city continues."

We will comment on the "measures" below.

The form for people to fill in then explains that:

"Cambridge City Council is consulting on introducing a Public Spaces Protection Order (PSPO) to tackle touting and to prohibit advertising or soliciting for custom for a punt, walking tour, hire or use of punts, boats or similar craft, in the red shaded areas shown on the map."

And also that:

"Punt and tour touting have been the focus of complaints for many years. The complaints relate to the number of touts gathering in certain areas of the city and the behaviour of the touts. A summary of the evidence and a community impact statement from the Police Sergeant for the area is available below."

The Appendix to this document includes a more detailed analysis of the "complaints".

Complaints and the community impact statement

As an overall point, what is notable, as the consultation materials (as noted above) correctly explain, is that the complaints and the community impact statement relate to (and pass generalised negative comment on) a whole range of things including punting itself, the punts, whether customers are asked if they can swim, the licensing of punts,

insurance (including a specific allegation from the police that we are uninsured which is simply nonsense), the profitability of punting businesses, the payment of tax, the location and nature of punt stations the behaviour of people while punting, touting/advertising as a phenomenon, the price of punt hire, the unsubstantiated and irrelevant allegation that people touting have criminal convictions, the numbers of people touting/advertising (simply in terms of how many there are) and on the poor behaviour of a very small number of people which is said to be associated with touting/advertising.

All of that matters because consultees are being asked to comment on (and potentially express their support for) the PSPO on the basis of that material, most of which (even if well founded, which it is not) has absolutely nothing to do with what is covered by the order (such as punting/licensing/etc. issues) or which could not properly be the subject of objection (such as the fact of touting/advertising and or the number of people involved).

In that light we consider the consultation to be misleading and entirely flawed.

The council is taking into account (and will in taking into account responses to the consultation as framed) conduct/complaints which are entirely irrelevant here.

Legal preconditions

That point also goes to the legal preconditions to the making of a PSPO, namely that a PSPO can only be made (s59 of the 2014 Act) in relation to activities which have “a detrimental effect on the quality of life”, the effect of which is likely to be persistent and or continuing and which makes the activities “unreasonable”.

So a PSPO could not be made in relation to (say) the mere act of touting (or on the basis of people who simply don't like touting), or arising from people complaining about the number of touts or the price they are offering, let alone (as the evidence relied on here described) issues entirely unconnected with the PSPO (such as the punt stations, tax, insurance, profits or other matters).

The behaviour of a tiny minority

It would also only be lawful to make a PSPO which bans touting if the occasional poor behaviour of a very small number of touts made that touting overall “unreasonable” (as the 2014 Act makes clear). That is plainly not the case here.

In particular, even if the focus is indeed (and contrary to the council's documentation) only on the allegations of poor behaviour by some touts (as opposed to all the wider, irrelevant, issues raised in the materials), then what is notable is that the number of complaints is small particularly given the period and area of the city involved.

In discussion with us, Council officials have accepted that the allegations of poor behaviour arise from fewer than 1% of the people involved in touting.

Disproportionate impact

Again, looking at the legal preconditions, the PSPO can only be made if the effect of the activities (i.e. the poor behaviour of a tiny minority) justifies the restrictions (i.e. the banning of a perfectly acceptable activity of the overwhelming majority).

Again that is plainly not the case here, not least because, as above, the ban on that perfectly acceptable activity by the overwhelming majority will cause our companies considerable commercial difficulties and is likely to lead to the loss of 100 jobs (something which the council is not in a position to dispute, certainly not without proper evidence on the point).

That impact is plainly not justified by the poor behaviour of a few unidentified and unattributed individuals as complained of here (ignoring, as one must, all those other things which are complained of by some people but which have nothing to do with the PSPO). The proposed measure here is clearly disproportionate – it is far more than is necessary.

The Council's claim to have tried other things

Also plainly relevant to that question of justification (and proportionality) is whether the conduct complained of could be dealt with in other ways. In that regard we note that the consultation document on the web site says that:

“Over recent years the Council and Cam Conservators have taken a number of steps to deal with the problems caused by touts. Despite these measures, public concern about the activities and prevalence of touts in the city continues. A detailed background paper of the measures taken to address the issues are available in the Strategy and Resource Committee report below.”

The relevant section of the report is its 3.9.

It has no detail.

It also does not mention anything done by the Cam Conservators despite that claim being made in the consultation document. The claim of action by them is very misleading.

But even in relation to the action by the Council we note the following:

- a) “we have made a byelaw”
- b) “we liaise with licences punt operators to make clear our expectation of the behaviour of touts”
- c) “we have put enforcement officers on the streets”
- d) “punt operators have signed up to a Code of Conduct”
- e) “we have used our ownership of punt stations to require operators to be signatories to and comply with the Code”

Taking those in turn:

The byelaw: The byelaw is (quite properly) focussed on poor behaviour by touts rather than touting itself. The report explains that it can be an effective tool. But it provides no evidence at all of any attempt by the Council to enforce the bylaw. It simply says that enforcement requires witnesses to attend court and that “usually witnesses are reluctant to come forward”. But (despite the claim of “detail”) there is no detail there, let alone detail of unsuccessful attempts by the council to use the bylaw.

Liaison: The council points to liaison with punt operators but that has only been with operators who fall within the exception to the order (as considered further below).

Prior to this consultation, no councillor even agreed to meet us to find a solution to the problem, despite our numerous attempts to arrange such a meeting over the past six years.

We have made clear our willingness to meet with the council to discuss and put in place improved arrangements including a Code of Conduct for people working for us, but the Council has simply refused to do so.

So the Council is relying on the irrelevant fact that it has undertaken such discussion with the exempt operators in order to justify curbing our activities having not undertaken equivalent liaison with us.

Enforcement officers: It is notable that the report says that “enforcement officers have a range of responsibilities not limited to punt touting”.

The obvious implication is that those officers have not in fact been deployed to any real extent to address the issue here.

Code of Conduct: The Council refers to the Code of Conduct in place with the exempt operators. Again that is not relevant here because the Council has made no attempt to do the same with us.

Ownership of punt stations: Again that is only relevant to the exempt operators.

So, overall, the “detailed” steps taken by the council are not in fact detailed, have not involved any attempted enforcement of the byelaw (or, at least, none is claimed), have relied on an under-resourced enforcement team (who will also, presumably, be expected to enforce the PSPO) and/or which (in the liaison/code/etc.) are relevant only to the exempt operators (without any equivalent for us).

Nor can that discrepant treatment be justified here on the basis of things completely unconnected with the issues involved in the PSPO (such as licensing arrangements or the location or punt stations).

Overall, we simply do not see how the council can claim it is justified to take this draconian step in the circumstances. It is plainly not.

Apart from anything else, as explained further below, we call on the council to treat us in the same way as the other operators when it comes to liaison, a Code, and so on.

The exempt operators and the Council’s own financial interests

As mentioned above, the framing of the order (in the sections marked “exception”) also means that it does not apply to touting associated with certain hire companies. That is highly problematic for a number of reasons (going beyond the points mentioned above).

First, it assumes that the people causing the concerns are not associated with those companies.

There is absolutely no basis for that assumption, not least because the complaints (and observations by the police) say nothing about the affiliation of the people causing concerns. There is no proper basis to exempt those companies.

Indeed, even the Committee report only claims that “touts operating from King’s Parade and the city centre are mainly touting on behalf of punt operators working from Garrett Hostel Lane slipway, Jesus Green and Laundress Green.”

Secondly, there is nothing to say that those individuals are associated with our companies. And yet the PSPO penalises the entirely proper and unobjectionable behaviour of people working for us (and, as above, our businesses).

Thirdly, the category of excepted companies are those licensed by the Conservators of the Cam, on the board of which is a director of Scudamores, the main company which will financially benefit from the effect of this PSPO.

Fourthly, those same companies include those for which the Council’s tourist office sells tickets (on which it makes a commission) such that this order directly benefits the Council’s own commercial purposes.

We understand that, from 1st February 2016, the Council transferred the running of Visit Cambridge (which includes the Tourist Information Centre and the Visit Cambridge website) to a not-for-profit private public partnership, known as a DMO (Destination Management Organisation).

All previous council employees were simply transferred over to the new company.

As stated by Cambridge City Council one of the key objectives for setting up this new structure is “*the aim of increasing revenues to the DMO*”.

They aim to increase revenue through a “*combination of commercial activity such as the Guided Walking tour service, ticket sales through the Visitor Information Centre, and a membership scheme for tourism partners.*”

So it is clear tickets for Ghost Tours, Walking Tours run by the DMO and tickets sales for Scudamore’s punts (which is the only company the DMO sell tickets for) will form the basis of funding.

However, over the next three years, the DMO will be under extreme pressure to increase revenue through these schemes as - “*The new Cambridge model of a business-led public/private partnership is distinct from many other DMOs nationally because it will rely almost entirely on earned income.*”

It is stated that the DMO will be self-funding within 3 years.

At the moment the DMO receives a public subsidy from Cambridge City Council – which means the Council stand to receive financial gain if the DMO hits its target of being self-funding. The City Council have stated one of the aims of the DMO is “*reducing the cost of tourism to the council*” it will remain a strategic partner in the DMO, even if it is able to be self-funding.

Overall

Overall, as explained above among other things:

1. The proposal relies on a range of allegations most of which are entirely irrelevant.
2. The consultation is entirely flawed.
3. The suggestion that the council has tried other things stands no scrutiny (it has not tried to enforce existing provisions and relies on liaison/Codes etc. in relation to exempt operators without any equivalent in relation to us).
4. The detrimental impact on us is entirely disproportionate and certainly cannot be justified by the allegations.
5. The PSPO will impact on us when there is nothing to link the allegations to us.
6. The council has an ulterior purpose here (and or will gain an improper benefit) through the promotion of its own financial interests.

We would ask the Council not to proceed with this PSPO and, instead, to undertake with us the liaison etc. which it has undertaken with other operators.

The Council should deal with us on the same basis as other operators, rather than on an entirely discrepant basis which will benefit their businesses and the council's own finances, while destroying our businesses.

Appendix – analysis of some of the complaints

1. Complaints that are NOT about the act of touting or advertising, which is the behaviour covered in the PSPO.

ID number 381087 - *Report of a large group of punt touts on King's Parade, around 9 of them.*

ID Number 390963 - Report of three punt touts in Market Square. They had boards with the punting company's name on one side.

ID Number 426613 - *proliferation of punt touts operating*

These complaints are not about the touts' behaviour. In 2015, it was not illegal to tout or be a tout in any area of Cambridge.

ID number - 443481 *Large number of students, perhaps from language schools... being led towards Garret Hostel Lane...lined up to board punts*

Another complaint not about touting or advertising - It is unclear what the complaint actually is. It is not illegal or anti-social behaviour for these students to board these punts. This again, is nothing to do with the terms of the PSPO. If the complaint is about boarding boats on Garrett Hostel Lane, as a public access point to the river, nothing illegal or anti-social is taking place here, and if no actual company is named one cannot even assume that they are boarding an unlicensed commercial vessel.

ID Number 411796

Privately hired punt was crashed into on the river by an illegal operator

ID Number 425313 'A lady suffered quite a bad head injury' - Garrett Hostel Lane

These are incidents on the river/ riverside and nothing to do with anti-social behaviour from touts or advertising. Why are other accident reports from all other punt companies not included – the River Manager from the Cam Conservators would be able to provide them.

Complaints that ARE about advertising or Touting, but are mis-leading in the presentation;

ID number - 386111

Complaint that Ticket Touts are displaying large advertising boards on the public highway.

This is the ONLY complaint/mention about advertising in all of the document and in fact, all the evidence submitted. In terms of an advertising board on the public highway, there is ALREADY a law in place to deal with this through the highways authority

<https://www.cambridge.gov.uk/report-illegal-advertising-flyposting>

Hence there is no need to include this in a PSPO. McDonalds, Ryder and Amies, The Cambridge Shakespeare Festival, Scudamores and various cafes are just some of the companies who have placed flags and boards on the public highway around Kings Parade and the market square in 2015 without repercussions. McDonalds have recently

placed free standing flags in the Market Square January of 2016 and independent companies were forced to complain to the council before they were removed.

ID Number - 402794

Complainant reported concern that visitors and newcomers to Cambridge are being overcharged by punt touts.

The assumption here is that companies with unlicensed boats are overcharging people. The complaint states that the tout mentions the TIC will charge £20 with no discount, whereas he will give a discount from a £20 ticket. This is based on the fact that the Tourist Information Centre sell only Scudamores tickets. Scudamores charge £19 at their kiosk, with no discount in person, only online. Evidence for this -

<http://www.scudamores.com/college-backs-punt-tour> The tout must have been using their knowledge of Scudamore's prices. What is interesting is that in fact the Tourist Information Centre charge less - £14 per adult for EXACTLY the same shared tour from Scudamores. So which company are clearly overcharging? Scudamores.

ID Number 411312

Complaint that touts are - Harming the business of legitimate, tax paying punting companies'

A suggestion that some punt companies do not pay tax. Of which there is no evidence whatsoever.

ID Number 421831

Complaint about touts being "a continual nuisance for all users and visitors to Quayside"

Quayside and the touts that operate there will not be affected by this PSPO. The head of the City Council has said he has no problem being hassled by touts on Quayside.

ID Number 444370 Local residents self-hire complaint & Littering

This complaint is about companies with licensed boats who operate at Quayside (evidence over self-hire can be provided from the Cam Conservators), whose touts on Quayside will not be affected by this PSPO. Littering on Quayside by punt workers is an issue not covered by the PSPO.

Response to Cambridge Council's Public Space Protection Order Consultation

On behalf of Traditional Cambridge Tours and
others

2/16/2016

The response of a group of commercial tour providers to the proposed Public Spaces Protection Order sought by Cambridge City Council.

Background

1. The Respondents operate a river tour company operating on the Cam River in Cambridge. They currently employ around 100 people. They traded commercially until 2012. They hope to submit applications for commercial licences at the close of this year.
2. The group have significant concerns about the imposition of the Public Spaces Protection Order. They have sought advice from interested parties, including a number of campaign groups including the charitable organisation Liberty and the Civil Liberties campaign group the Manifesto Club. The following submissions are made on the basis of that advice.
3. The basis of the respondent's objection is that the terms of the PSPO would significantly restrict their ability to engage in touting of any kind. Accordingly, it would significantly restrict their ability to trade. The consultation acknowledges that touting is a legitimate commercial activity undertaken by a number of providers in Cambridge City Centre. While the legislation allows for PSPOs to apply to wide range of activity, the council are under an obligation to ensure that any order does not restrict the terms of activity which does not meet the statutory criteria. The respondents submit that the terms of the PSPO as drafted fail to meet this obligation.
4. Further, the respondents are concerned that the impact of the order would be to unfairly restrict trade in boat tours to a small number of larger operators. The effect of this would be a decrease in competition which would have the potential to harm the consumer.
5. The respondents hope that following the consultation the remit of the order will be narrowed to regulate only aggressive touting rather than all touting. The respondents are open to continued dialogue with the council in this regard and would welcome further opportunity to discuss these concerns.

Communications

6. The group has engaged in a number of meetings with the council in respect of the anticipated PSPO. In the course of these meetings the following significant matters were raised:
 - (a) The failure to rely on existing legislation to enact the necessary controls over anti-social behaviour.
 - (b) The cost to the public of enforcing the restrictive terms of the PSPO.
 - (c) The potential economic impact that the PSPO may have on smaller providers of river boat tours.
 - (d) The difficulties with regard to signage drawing public attention to the fact of the ban.
7. This was followed on 8th February 2016 with Councillor Herbert during which further concerns were discussed. The respondents are grateful for the council's engagement to date and hope for engagement to continue throughout the consultation process.

The law

8. The power to impose PSPOs was created under Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the *Act*). Section 59 of the Act states that a local authority may make a PSPO if it is satisfied on reasonable grounds that “*activities carried on in a public place within the authority’s areas have had a detrimental effect on the quality of life of those in the locality*” and:
- “the effect... of those activities –*
- a) is... of a persistent or continuing nature,*
 - b) is... such as to make the activities unreasonable, and*
 - c) justifies the restrictions imposed by the notice.”*
9. It is clear that this test is designed to be broad and that many types of activity can be the subject of a PSPO. A PSPO may prohibit specific things being done in a restricted area but those prohibitions must be “*reasonable in order to prevent the detrimental effect... from continuing, occurring or recurring, or ... to reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.*”
10. The Council’s report into the consultation recognises this at paragraph 4.5 which states ‘the only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring’. It is clear on the basis of both the legislation and the council’s circular that the measures imposed under a PSPO must be proportionate in response to a specific problem. The prohibitions must be ‘reasonable’ and must ‘reduce the detrimental effect’ of those in the locality.

The nature of complaints

11. The respondents submit that the complaints described in the Council’s consultation do not provide an evidential basis for the imposition of a PSPO. Further, the community impact statement of Ian Ward includes a number of factual inaccuracies and statements which are arguably misleading.
12. The following paragraphs detail the relevant complaints and the respondent’s comments.

ID number 381087 –

Report of a large group of punt touts on King's Parade, around 9 of them.

ID Number 390963 - Report of three punt touts in Market Square. They had boards with the punting company's name on one side.

ID Number 426613 proliferation of punt touts operating

The respondents submit that these complaints are not about the touts behaviour but rather relate to the number of touts in a particular area. These complaints do not evidence any aggressive or improper touting. There is no evidence that there has been a failure nor any difficulty in relying upon existing by laws in regulating the number of touts in a particular area at a particular time. There is no evidence that any detrimental effect caused by high

numbers of touts is 'persistent or ongoing'. There is no justification for claiming that high numbers of touts in a particular area amounts to 'unreasonable' behaviour given that there are a large number of operators competing for business.

ID number – 443481

Large number of students, perhaps from language schools... being led towards Garret Hostel Lane...lined up to board punts

This complaint does not relate to improper or aggressive touting. It is unclear how this complaint provides any evidence base for the imposition of the PSPO. It is not clear how the provision of tours to students meets any of the statutory criteria.

ID Number 411796

Privately hired punt was crashed into on the river by an illegal operator

ID Number 425313 'A lady suffered quite a bad head injury" - Garrett Hostel Lane

This complaint relates to the proper licensing of operators. It does not reflect the activity of touts. The conduct of operators in the course of punt tours should be considered by the relevant licensing body. The imposition of a PSPO should not be justified on the basis of complaints relating more properly to the grant or refusal of commercial licences. It does not provide any evidence base for the imposition of the PSPO.

ID number - 386111

Complaint that Ticket Touts are displaying large advertising boards on the public highway.

There is already legislation in place to address improper advertising boards on public highways. The respondents note that a number of large commercial traders, including McDonalds and the Cambridge Shakespeare Festival have been permitted to advertise around Kings Parade and the Market Square without repercussion. The respondents submit that effective enforcement of the current law relating to improper advertising would be more effective than the imposition of the PSPO.

ID Number - 402794

Complainant reported concern that visitors and newcomers to Cambridge are being overcharged by punt touts.

The respondents submit that this complaint provides no evidence for the imposition of a PSPO. The PSPO would not stop consumers being 'overcharged' for tours. There is no clear market standard price for these tours. There is no direct evidence of any overcharging nor is it clear how there could be any such evidence given the lack of any established market rate.

ID Number 411312

Complaint that touts are - Harming the business of legitimate, tax paying punting companies'

There is no evidence of any of the effected punt operators failing to pay tax. In any event, this is solely the remit of Her Majesty's Revenue and Customs and does not provide any relevant evidence for the imposition of the PSPO.

Comments on the community impact statement of PS Ian Wood

13. The following are the comments made by PS Ian Wood which are considered by the group to be false or misleading.

"Since 2012, it is a legal requirement for a punt tour company to be licensed by the Cam Conservators"

It is not the case that companies have to be licensed by Cam Conservators. Rather, the boats deployed by the companies must be licensed. Accordingly any reference made to 'illegal companies' in this statement is incorrect.

"There are currently six authorised punt stations in Cambridge - based at Jesus Green, Quayside, Trinity College, Mill Pond, Mill Lane and Granta Mill Pond, and tickets can also be purchased from the Tourist Information Centre"

Only one punting company can have their tickets bought from the Tourist Information Centre, which is a company called Scudamores. This statement makes it sound as if all punting companies can have their tickets purchased there.

"I would question how well customers are triaged in respect in respect of their ability to swim or navigate a large cumbersome punt through unfamiliar and congested waterways."

The same question applies to all punt companies, especially as it is only companies with registered boats who offer self hire.

"our research has also discovered that the large majority of the known punt touts have criminal convictions for a wide variety of offences - ranging from drug possession, theft, serious assaults and even sexual offences"

No evidence has been provided in this regard and its inclusion in the statement is gratuitous and arguably defamatory.

"Despite some of the touts claiming they are adequately insured to carry passengers, this is unlikely due to the fact they are not appropriately licensed"

The respondents are subject to full insurance with a third part insurer – which is not subject to the terms of licensing from the Cam Conservators. Further, this is a matter for the river authority and does not provide any basis for the imposition of the PSPO.

Conclusion

The respondents make the following submissions following the review of the Counsel's consultation materials:

- 1) The complaints provided do not provide a sufficient evidence base for the position of the PSPO. There is no evidence that the touting activity causes a detrimental effect on the lives of Cambridge residents.

- 2) Cambridge Council has not adequately explored options for regulating 'aggressive' touting through existing legislation. It is also not clear that the council has explored options for properly enforcing legislation related to improper advertising.
- 3) The PSPO will have a significantly detrimental impact on the ability of smaller operators to provide tours. The PSPO as currently drafted is so broad as to effect the legitimate trade of these operators and fails to sufficiently target the council's intervention at anti-social behaviour.
- 4) The evidence provided by DS Ian Wood is misleading and false in significant respects.

The respondents would be grateful for the council's immediate consideration of these concerns and a response in writing. We would then appreciate the opportunity to make further representations following the relevant clarification. If an indication is given that the PSPO will be passed it is anticipated that a High Court challenge will be initiated.

TCT

Traditional Cambridge Tours Ltd

In response to the councils proposed PSPO to ban touting we have formed *The Federation of Independent Punters*.

This Federation represents all of the punting companies who tout for punting tours on Kings Parade.

One of the main problems as far as we see is the lack of accountability for the behavior of touts.

We feel that this would best be remedied through the introduction of clear name tags so that any complaints can be fed back to the managers in charge, and if necessary to the council or police.

This act alone will improve customer relations as it does with many companies, as well as providing reassurance to the public. It will also help us to identify problems early by highlighting any patterns of poor behaviour by individuals.

We will also uniform all staff distinctively and clearly with one clearly visible manager on site at all times.

We will also agree to limit tout numbers and geography of touting and we would welcome the councils input on these points.

We are happy to consider any suggestions that the council may have to improve the situation and hope that we can start a clear channel of communication that we can use to improve the situation for all.

We ask that the council back this effort made in good faith on our part.