

Riding Donna

From: AOverton@lfi.co.uk
Sent: 03 December 2009 16:20
To: Riding Donna
Subject: RE: Liverpool Case

Donna,

I outline below the advice received from our lawyers, which may help in your deliberations regarding the article 28 point, and ties in with the Letter I sent. (Point iv (1))

(a) With regard to Article 28 -

(i) Blake J states (at paragraphs 77 and 78) -

'The fact that the Peugeot vehicle meets EU requirements for safety specification as a vehicle is thus not conclusive of the question of justification. It will be for the Council on reconsideration of the case to justify the maintenance of the turning circle, or indeed any other requirement that it considers relevant if it continues to believe that, for example, sliding doors do represent a safety issue in Liverpool in public hire taxis. However, justification must be for a legitimate end. Here, it would be the safety of the public.

Second, the Council must show that its restrictions are proportionate and no more intrusive than is needed to give effect to the legitimate end. ...' (emphasis added)

(ii) The underlined statement is a statement of fact, not an assertion of law. Blake J is indicating that safety is a live issue, not the only one which may be considered.

(iii) Further, Blake J does not state that maintenance of the turning circle is incapable of justification, simply that the reasons which have been given by the Committee to date are insufficient.

(iv) In any event, we consider that Article 28 is not in fact relevant in this context as the New E7 is not the subject of inter-state trade (i.e. it originates in the UK and has not been lawfully marketed in another EU Member State). Specifically -

(1) Article 24 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code provides -

'Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.'

(2) And Blake J states (at paragraphs 2 and 3) -

'The New E7 is manufactured by [Allied] in the United Kingdom using a chassis based imported from France that is used in the Peugeot Expert Teepae range of vehicle. [Allied] has imported some 800 vehicles from Peugeot in 2008 into the United Kingdom, of which 647 were for use as E7 taxis, and 153 for use as Eurobus private hire taxis.' (emphasis added)

Hope this helps

Andrew