IN THE BLACKBURN MAGISTRATES' COURT
CASE NUMBER:

CHARLES OAKES

-v-

BLACKBURN WITH DARWEN BOROUGH COUNCIL

APPELLANT'S SKELETON ARGUMENT AND DRAFT SUBMISSIONS

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1. This skeleton argument and the draft submissions contained herein have been prepared to assist the Court determine an appeal against the refusal to grant a hackney carriage vehicle licence in respect of a white Peugeot E7 vehicle which is a vehicle designed and constructed for use as a taxi.

Factual Background

2. The number of hackney carriage vehicle licences within Blackburn and Darwen is regulated so that 70 vehicle licences are available. Of that available pool only 66 are currently issued, the lowest figure since 2005 – **"Hackney Carriage Unmet Demand Survey – Final Report", Blackburn with Darwen Council, July 2013** at page 7.

3. There are 659 licenced private hire vehicles within the borough, the highest number since records began, serviced by 740 licenced private hire drivers - **"Hackney Carriage Unmet Demand Survey – Final Report", Blackburn with Darwen Council, July 2013** at page 7.

4. It is a matter of agreement that Blackburn with Darwen Borough Council, as with all other District Councils are prohibited from regulating the number of

private hire vehicles by **section 51(1) Local Government (Miscellaneous Provisions) Act 1976**

5. The key differences between a private hire vehicle and a hackney carriage are that:

    i. Private hire vehicles need not be purposefully designed as a taxi and are frequently ordinary cars licenced for use as a private hire vehicle;

    ii. Private hire vehicles are usually unsuitable to provide wheelchair access – all Hackney Carriages within Blackburn with Darwen are wheel chair accessible **"Hackney Carriage Unmet Demand Survey – Final Report", Blackburn with Darwen Council, July 2013** at page 9;

    iii. Private hire vehicles cannot ply for hire, which is to say that unlike hackney carriages they cannot be flagged down by members of the public or stand at ranks to wait for customers. Customers seeking to use a private hire vehicle must make a booking with the vehicle's operator prior to the journey commencing.

    iv. Private hire vehicles cannot display roof signs or other signage containing the words "taxi", "cab" or "hire" – **section 64 of the Transport Act 1980.**

6. Charles Oakes and Ulmar Talaty seek to licence a white Peugeot E7 as a hackney carriage for the purposes of plying for hire within the borough of Blackburn with Darwen.

7. They will produce evidence that white Peugeot E7 vehicles are considerably cheaper than an identical black Peugeot E7 vehicle the premium being between £1,500 and £2,000.

8. Blackburn with Darwen Borough Council have adopted a policy only to licence black vehicles of a variety of types, including Peugeot E7 vehicles, as hackney carriages.

9. As the application submitted by Mr Oakes and Mr Talaty did not fall within the guidance available to the designated licensing officer the application was referred to the Council's Licensing Committee for a decision as to whether or not a hackney carriage vehicle licence should be granted.

10. In a report to the Licensing Committee for the purposes of assisting the Licensing Sub-Committee determined that application dated 23rd July 2013 (sic) at paragraph 3.3 Donna Riding, the Principal Licensing Officer states that:

> "the decision on colour was made so that members of the public could recognise the differing vehicles as hackney carriages"

11. Ms Riding makes mention of a survey conducted in 2012 within that report which questioned no more than 100 people about hackney carriages.

12. One of the questions was:

> "Should the Council introduce a single colour for all hackney carriage vehicles, for example black or yellow?"

To which 62 respondents (69%) responded "yes" and 28 respondents (31%) responded "no". The total number of respondents was 90.

13. The population of Blackburn with Darwen in mid 2012 was said to be 147,657 - **"Population Estimates for England and Wales, Mid-2012" Office of National Statistics.**

14. There are 139 hackney carriage drivers licenced by Blackburn with Darwen Borough Council- **"Hackney Carriage Unmet Demand Survey – Final**

Report" (ibid) which suggests that there are currently 106 licenced hackney carriage drivers within the borough, all of whom are currently required to drive black vehicles.

15. There is no evidence that hackney carriage drivers, who would have a vested interest in excluding new vehicles from the fleet, were prevented from taking part in that survey which was conducted at taxi ranks.

16. No reason, other than the colour of the vehicle in question was raised by the Principal Licensing Officer in her report to Committee dated 23rd July 2013.

17. The application was considered by a Licensing Sub-Committee on the 17th July 2013 and the application was refused.

18. On the 17th July 2013 the Council's Principal Licensing Officer wrote a decision letter to Mr Oakes and Mr Talaty informing them of the Sub-Committee's decision and providing the following reasons:

> "In reaching he decision Members considered all the issues raised as to why an exception should be made to the Council's current policy only to permit black alternative purpose built hackney carriages to be licensed.
>
> This policy was re-affirmed by the Council in December 2012 following a number of consultations.
>
> Members considered the issues of costs and the alternative signage but also the reasons why the policy was adopted and reaffirmed recently including the results of the consultation with the residents of Blackburn with Darwen, public safety and the importance of the public being able to distinguish between hackney carriage and private hire vehicles.
>
> It was decided not to grant your request in this particular case and therefore your application is refused".

19. Mr Oakes exercised his statutory right of appeal on the 25th July 2013.

20. It is understood that the Respondent Council has previously departed from its policy and has licenced one white TX2 (London Black Cab type) hackney carriage and one blue TX2 hackney carriage.

The Licensing Regime and Right of Appeal

21. **Article 1, Protocol 1 of the European Convention on Human Rights** states:

> (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

22. The role and objectives of the taxi licensing regime is set out within paragraphs 8 to 10 of the **"Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" – Department of Transport, March 2010.**

> **THE ROLE OF LICENSING: POLICY JUSTIFICATION**
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> 8. The aim of local authority licensing of the taxi and PHV trades is to protect the public. Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services, because of the part they play in local transport provision. Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications.
>
> 9. For example, it is clearly important that somebody using a taxi or PHV to go home alone late at night should be confident that the driver does not have a criminal record for assault and that the vehicle is safe. But on the other hand, if the supply of taxis or PHVs has been unduly constrained by onerous licensing conditions, then that person's safety might be put at risk by having to wait on late-night streets for a taxi or PHV to arrive; he or she might even be tempted to enter an unlicensed vehicle with an unlicensed driver illegally plying for hire.
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> 10. Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address; or, to put it another way, whether the cost of a requirement in terms of its effect on the availability of transport to the

public is at least matched by the benefit to the public, for example through increased safety. This is not to propose that a detailed, quantitative, cost-benefit assessment should be made in each case; but it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve."

23. **Sections 37 to 44 of the Town and Police Clauses Act 1847** requires vehicles that are to used as hackney carriages are to be licenced.

24. It is an offence for any vehicle which is not licenced as a hackney carriage to be used for the purposes of plying for hire, that offence being punishable on summary conviction of a fine not exceed level 4 (£2,500) – **section 45 of the Town and Police Clauses Act 1847.**

25. **Section 47 of the Local Government (Miscellaneous Provisions) Act 1976** provides that:

    47 Licensing of hackney carriages.

    (1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.

    (2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.

26. Only vehicles designated and licensed as hackney carriages can display roof signs or other signage containing the words "taxi", "cab" or "hire" – **section 64 of the Transport Act 1980.**

27. It is a matter of agreement that Blackburn with Darwen Borough Council is a District Council and entitled to exercise the powers of a taxi licensing authority under the terms of the **Town and Police Clauses Act 1847** and the **Local Government (Miscellaneous Provisions) Act 1976** .

28. We have been unable to discover any High Court binding decision on the use of section 47 conditions to regulate the colour of hackney carriages, such decisions being confined to the construction of such vehicles such as:

    R((1) Lunt and (2) Allied Vehicles Ltd) v Liverpool City Council [2009] EWHC 2356 (Admin) – proper approach to the licensing of E7 vehicles as hackney carriages for the assistance of wheel chair users;

    R (007 Stratford Taxis Ltd) v Stratford on Avon District Council [2011] EWCA Civ 160 – a condition requiring taxis registered on or after January 1, 2010 to be wheelchair accessible.

29. Two published Crown Court decisions which deal with section 47 conditions in respect of colour are persuasive and my assist the Court:

    Stockport Metropolitan Borough Council –v- Kenneth John Eyles – Crown Court at Manchester Minshull Street, April 29, 2002 (A20020014);

    Durham City Council v Adrian Fets – Crown Court at Newcastle, September 30, 2005 (A20040066).

    Copies of those judgments are included within this bundle.

30. Where an applicant for a hackney carriage vehicle licence is dissatisfied with the conditions upon which a licence is granted or a refusal to grant such a licence a right of appeal lies to the magistrates' court pursuant to **section 47(3) of the Local Government (Miscellaneous Provisions) Act 1976** which states:

    (3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates' court.

31. **Section 77(1) of the Local Government (Miscellaneous Provisions) Act 1976** states:

77 Appeals.

(1) Sections 300 to 302 of the Act of 1936, which relate to appeals, shall have effect as if this Part of this Act were part of that Act.

32. **Section 300 of the Public Health Act 1936** states:

300 Appeals and applications to courts of summary jurisdiction.

(1) Where any enactment in this Act provides—

(a) for an appeal to a court of summary jurisdiction against a requirement, refusal or other decision of a council; or

(b) for any matter to be determined by, or an application in respect of any matter to be made to, a court of summary jurisdiction,

the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings.

(2) The time within which any such appeal may be brought shall be twenty-one days from the date on which notice of the council's requirement, refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the council in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought.

33. **Section 301 and 302 of the Public Health Act 1936** deal with a further right of appeal to the Crown Court and consequential matters and need not be considered further for the purposes of this appeal.

The Approach to be Adopted by the Appellate Court

34. In **Stepney Borough Council v Joffe [1949] 1 All ER 256** Lord Goddard CJ

said:

> "It is argued that on an appeal against a refusal on the ground of misconduct or for any other sufficient reason rendering the applicant unsuitable to hold such a licence, the magistrate is not entitled to substitute his opinion for that of the borough council, but all he can decide is whether there was evidence on which the council could come to that conclusion. I find myself unable to accept that argument. If it be right, the right of appeal which is given, at any rate against a refusal on any ground mentioned in s 21(3)*(a)*, would be purely illusory. It would, I suppose, as Humphreys J pointed out during the argument, really be an appeal on the question of law whether there was any evidence on which the borough council could form an opinion. If their decision is to be a mere matter of opinion and their opinion is to be conclusive, I do not know what evidence the council would be obliged to have. They could simply say: "In our opinion, this man or this woman is unsuitable for holding a licence," and give any reason they liked. I do not know how a court could say on appeal whether that was a sufficient reason. If the reason is to be one which is sufficient in their opinion, it is difficult to see how any court of appeal could set aside their decision"

35. Lord Goddard went on to say:

> "That does not mean to say that the court of appeal ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter and ought not lightly to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers where it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right."

36. In **Sagnata Investments Ltd v Norwich Corporation [1971] 2 QB 614 CA** Edmund Davies LJ cited with approval the test in **Joffe (ibid)** and held that the appeal proceedings are a complete re-hearing.

37. The appellate process was most recently reviewed in the case of **R(Hope and Glory Public House Ltd) v Westminster Magistrates' Court and the Lord Mayor and Citizens of the City of Westminster [2011] EWCA Civ 31** in which the court was required to consider three questions of which the first two are relevant to this appeal, namely:

    1. How much weight was the district judge entitled to give to the decision of the licensing authority?

2. More particularly, was he right to hold that he should only allow the appeal if satisfied that the decision of the licensing authority was wrong?

38. In answer to the first question Toulson LJ said at paragraph 43:

> "The statutory duty of the licensing authority to give reasons for its decision serves a number of purposes. It informs the public, who can make their views known to their elected representatives if they do not like the licensing sub-committee's approach. It enables a party aggrieved by the decision to know why it has lost and to consider the prospects of a successful appeal. If an appeal is brought, it enables the magistrates' court to know the reasons which led to the decision. The fuller and clearer the reasons, the more force they are likely to carry."

39. At paragraph 45 he went on to say:

> "...It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal."

40. In answer to the second question the Court of Appeal approved the approach adopted by Burton J in the High Court, namely:

> "43. I conclude that the words of Lord Goddard approved by Edmund Davies LJ are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below "is wrong", that is to reach its conclusion on the basis of the evidence put before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time. That is what this district judge was prepared to do by allowing fresh evidence in, on both sides.
>
> 44. The onus still remains on the claimant, hence the correct decision that the claimant should start, one that cannot be challenged as I have indicated.
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> 45. At the end of the day, the decision before the district judge is whether the decision of the licensing committee is wrong. Mr Glen has submitted that the word "wrong" is difficult to understand, or, at any rate, insufficiently clarified. What does it mean? It is plainly not "Wednesbury unreasonable" because this is not a question of judicial

review. It means that the task of the district judge – having heard the evidence which is now before him, and specifically addressing the decision of the court below – is to give a decision whether, because he disagrees with the decision below in the light of the evidence before him, it is therefore wrong."

41. It follows that it is for the Appellant in this case to prove, on the balance of probabilities, that the decision of the Licensing Sub-Committee on the 16th July 2013 was wrong.

Submissions

42. It is submitted on behalf of the Appellant that the decision of the Licensing Sub-Committee was wrong for the following reasons:

    a. The decision did not further the objectives of the licensing regime as set out in paragraphs 8 to 10 of the **"Taxi and Private Hire Vehicle Licensing: Best Practice Guidance"** on the grounds that:

        i. The decision imposed an extra financial burden on the appellant without their being any evidence that the use of a white hackney carriage would create a risk to the general public which is incompatible with the Department of Transport's guidance **"Taxi and Private Hire Vehicle Licensing: Best Practice Guidance"** – see paragraph 22 above

        ii. There is evidence within the Council's survey **"Hackney Carriage Unmet Demand Survey – Final Report"** (ibid) that the number of licenced hackney carriages is at its lowest level since 2005 and that some of regulated licences have not been taken up;

        iii. The recommendation within that report was that the Council should re-affirm the limit on hackney carriages but also seek to take actions that would develop the licenced vehicle service further - **"Hackney Carriage Unmet Demand Survey – Final**

Report" (ibid) at page 55. It is submitted that the decision in this case fails to achieve that objective.

iv. There isno evidence that the introduction of a white hackney carriage would affect to any degree the public's ability to recognise a hackney carriage, in which regard the appellant prays in aid the judgement of HHJ Carr in **Durham City Council v Fets** (ibid) at paragraph 10.1, and;

v. There is no evidence of any enforcement problem concerning the use of un-licenced hackney carriages within the borough of Blackburn and Darwen in which regard the Appellant prays in aid the judgments of HHJ Geake in **Stockport Metropolitan Borough Council v Eyles** (ibid) and HHJ Carr in **Durham City Council v Fets** (ibid) at paragraph 10.1.

b. The Licensing Sub-Committee failed to have any regard to the Appellants rights under **Article 1, Protocol 1 of the European Convention on Human Rights** – The Appellant prays in aid the approach of HHJ Geake in **Stockport Metropolitan Borough Council v Eyles** (ibid);

c. The Licensing Sub-Committee placed undue weight on the conclusions of a survey in which the responses of 90 persons drawn from a population of 147,657 (0.0006% of the population) were considered and which 62 persons (0.0004% of the population) considered that all hackney carriages within Blackburn and Darwen should be of the same colour, on the grounds that:

i. The sample of the population surveyed was too small to provide a reliable representative sample;

ii. The methods in which that sample of the population was drawn is unclear and unlikely to be representative;

iii. The conclusions drawn from such a small sample are likely to be unreliable;

iv. No reasons can be discerned capable of explaining why those who support a single coloured hackney fleet hold that view and it cannot necessarily be assumed that those views were held in relation to public safety.

d. The Licensing Sub-Committee failed to take into account the distinctive appearance of the vehicle in question, which is purposefully built and designed as a hackney carriage and the ability of such a vehicle when properly licenced as a hackney carriage to exhibit an illuminated "taxi" rood sign pursuant to **section 64 of the Transport Act 1980.**

e. It is submitted that the Licensing Sub-Committee failed to take into account the benefits of enabling the Appellant to source and operate a purpose built vehicle at lesser cost, namely:

i. That the available budget would be used to secure a newer, more fuel efficient and environmentally friendly vehicle as compared to an older more worn example;

ii. The vehicle has the same features as other properly licenced hackney carriage vehicles in the borough and is wheelchair accessible;

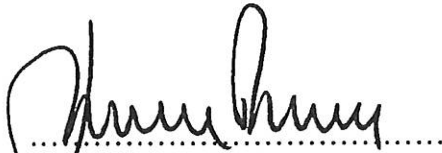
iii. The operation of the vehicle would necessarily expand the available service to residents of Blackburn with Darwen.

43. It is submitted that in finding that the Licensing Sub-Committee did not have due regard to those matters mentioned within paragraph 42 above the Court can have regard to the extent and content of the reasons given by the Principal

Licensing Officer in her letter to the Appellant of the 17th July 2013 – pursuant to the judgement of Toulson LJ in **R(Hope and Glory Public House Ltd) v Westminster Magistrates' Court and the Lord Mayor and Citizens of the City of Westminster** (ibid) – see paragraph 33 above.

44. For each and all of those reasons it is submitted by the Appellant that the Respondent Council was wrong not to depart from its policy, as it has done before and to refuse to grant a hackney carriage vehicle licence in accordance with its powers under **section 37 of the Town and Police Clauses Act 1847.**

2nd September 2013



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[1949] 1 All ER 256

Stepney Borough Council v Joffe and Others

KING'S BENCH DIVISION

LORD GODDARD CJ AND HUMPHREYS J

14 JANUARY 1949

Street Trading - Licence - Revocation - Appeal - Powers of magistrate - London County Council (General Powers) Act, 1947 (c xlvi), s 25(1).

By s 25(1) of the London County Council (General Powers) Act, 1947: "Any person aggrieved by the refusal of a borough council to ... grant or renew an annual [street trader's] licence ... or by the revocation or variation by a borough council of an annual licence ... may appeal to a petty sessional court and on any such appeal the court may confirm reverse or vary the decision of the borough council and may award costs."

The respondents were street traders who had been granted annual licences to engage in street trading in various foodstuffs in the metropolitan borough of S. All three respondents having been convicted of acquiring or selling food contrary to the Defence (General) Regulations, 1939, the borough council decided that they were unsuitable to hold licences and the licences were revoked. A metropolitan magistrate allowed appeals, by the respondents. The borough council now appealed against his decision contending that he was not empowered to substitute his opinion for that of the borough council in deciding whether or not the respondents were unsuitable to hold licences, but that his jurisdiction was limited to considering whether there was evidence on which the council could come to that conclusion.

Held - Appeals under s 25(1) were unrestricted and not confined to considerations of questions of law, and, therefore, the magistrate came to a right conclusion in holding that he had jurisdiction to entertain the appeal on any ground that seemed right to him.

Notes

As to licencing of street traders in the metropolis, see *Halsbury* Hailsham Edn, Vol 31, p 693, para 1019; and for cases, see *Digest* Supplement, Vol 26, pp 36, 37, Nos 1435a-1435k.

Cases referred to in judgment

Fulham Borough Council v Santilli [1933] 2 KB 357, 102 LJKB 728, 149 LT 452, 97 JP 174, *Digest* Supp.

Cases Stated

Cases Stated by a metropolitan magistrate.

At a court of summary jurisdiction sitting at the Thames Magistrate's Court, the three respondents, who were street traders, appealed under the London County Council (General Powers) Act, 1947, s 25(1), against decisions of the Stepney Borough Council who had revoked their licences to engage in street trading on the ground that, in the opinion of the council, they were unsuitable to hold such licences. The council now appealed, contending that the magistrate was not empowered to review the merits of the cases generally, but was limited to considering whether there was any material on which the council could reasonably have arrived at their decisions. The Divisional Court held that the magistrate had power to act as he did and dismissed the appeals.

Havers KC and Sebag Shaw for the borough council.

Ahern for the respondent Joffe.

Lester for the respondents, Diamond and White.

14 January 1949. The following judgments were delivered.

LORD GODDARD CJ.

These are three Cases stated by a metropolitan magistrate who reversed on appeal three decisions of the Stepney Borough Council revoking the licences of certain street traders, the respondents. The question is obviously one of importance.

Under the London County Council (General Powers) Act, 1947, s 21, it is provided:

> "(1) A person requiring an annual [street trader's] licence or the renewal of an annual licence shall make application in writing to the borough council and shall in such application state ... (2) As soon as reasonably practicable after the receipt of an application under this section the borough council shall ... grant or renew an annual licence to the applicant. (3) A borough council may refuse to grant or renew an annual licence or may at any time revoke or vary an annual licence granted by them if--*(a)* the applicant or the licensee is on account of misconduct or for any other sufficient reason in their opinion unsuitable to hold such licence; or *(b)* the space available in the street or streets to which the application relates or which is or are prescribed by the licence is at the date of such application or becomes at any time after the grant of such licence insufficient to permit of the applicant or licensee engaging therein in any street trading or in the particular street trading proposed to be or actually carried on by him without causing undue interference with or inconvenience to traffic in such street or streets; or *(c)* the street or streets to which the application relates is or are not a designated street or designated streets ... "

Paragraph *(d)* relates to:

> "... a designated street or designated streets in relation to which the borough council have by resolution specified a class or classes of articles or things which or other than which they will not prescribe in any street trading licences granted by them in respect of that street or those streets ... ."

In other words, the borough council can say to an applicant in respect of certain streets: "We can grant you a licence to carry on street trading in certain articles, but not in other articles." By para *(e)* the borough council may revoke a licence if

> "... the applicant or licensee has persistently refused or neglected to pay any charges due from him to the borough council under this Part of this Act or the byelaws made thereunder";

and para *(f)* supplies another ground--if

"... the licensee has for a period of not less than four weeks not exercised or not fully exercised his rights under the licence."

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By s 25(1):

"Any person aggrieved by the refusal of a borough council to register him as a registered street trader or to grant or renew an annual licence or by the cancellation by a borough council of his registration as a registered street trader or by the revocation or variation by a borough council of an annual licence or by any prescription made by a borough council under s. 21(5) (annual licences) of this Act may appeal to a petty sessional court and on any such appeal the court may confirm reverse or vary the decision of the borough council and may award costs."

A proviso regulates the time within which an appeal is to be brought, and another proviso prohibits an appeal if the licence has been refused or revoked under s 21(3)*(c)* and *(d)*. Parliament has recognised that in those matters the opinion of the borough council is to be final.

It is said that the reason why the borough council refused licences to these street traders was because they had been convicted under the regulations which deal with the sale of food at maximum prices of charging too much and the council took the view that persons who had been convicted of those offences were unsuitable to hold such licences. It is argued that on an appeal against a refusal on the ground of misconduct or for any other sufficient reason rendering the applicant unsuitable to hold such a licence, the magistrate is not entitled to substitute his opinion for that of the borough council, but all he can decide is whether there was evidence on which the council could come to that conclusion. I find myself unable to accept that argument. If it be right, the right of appeal which is given, at any rate against a refusal on any ground mentioned in s 21(3)*(a)*, would be purely illusory. It would, I suppose, as Humphreys J pointed out during the argument, really be an appeal on the question of law whether there was any evidence on which the borough council could form an opinion. If their decision is to be a mere matter of opinion and their opinion is to be conclusive, I do not know what evidence the council would be obliged to have. They could simply say: "In our opinion, this man or this woman is unsuitable for holding a licence," and give any reason they liked. I do not know how a court could say on appeal whether that was a sufficient reason. If the reason is to be one which is sufficient in their opinion, it is difficult to see how any court of appeal could set aside their decision.

On the other hand, there is given here an unrestricted right of appeal, and, if there is an unrestricted right of appeal, it is for the court of appeal, in this case the metropolitan magistrate, to substitute its opinion for the opinion of the borough council. That does not mean to say that the court of appeal ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter and ought not lightly to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers where it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right. In the present case the words are very wide. The magistrate is given power to "confirm reverse or vary the decision of the borough council," and it seems to me that once the applicant appeals to him, he is bound to form an opinion on the matter and "confirm reverse or vary the decision of the borough council" according to the judgment which he forms. There is no doubt that the magistrate had power to do what he did.

My opinion is fortified by the decision in *Fulham Borough Council v Santilli*. It is true that the provisions of the London County Council (General Powers) Act, 1927, which were under consideration there have been to some extent modified because the Act of 1947 has taken away the particular right of appeal which was then in question. That shows that this question of appeal was before

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Parliament when the Act of 1947 was passed. If Parliament had intended that the very wide appeal, which is *prima facie* given by s 25, should be limited in the way which it is now contended it ought to be limited, with-

out doubt they would have put in words so limiting it. It is, perhaps, not without importance to notice that by s 64 of the Act from the magistrate's decision a further appeal is given to quarter sessions, which would certainly enable the trader, though not, I think, the borough council, to appeal. Therefore it seems that Parliament attaches great importance to the right of a trader, whose livelihood may be taken away by the action of the borough council, to have not merely one appeal but two appeals. For the reasons I have endeavoured to express, I think the magistrate came to a right conclusion.

HUMPHREYS J.

I am of the same opinion. Considerable weight must be given to the fact, if it be a fact, that the argument of counsel for the borough council, if accepted, would result in our deciding that the only appeal to the magistrate given by s 25 is an appeal on a question of law. Not only is there nothing in the section itself to indicate that such is the intention of Parliament, but it seems to me that that construction would be quite contrary to the language of the section. I see no reason to withdraw or to differ from what was said by the court, including myself, in *Fulham Borough Council v Santilli*, namely, that it is a matter of common knowledge that a right of appeal is a right to a re-hearing of the whole matter in dispute unless there are words to the contrary, and the appellate tribunal is not confined to the reasons which have been given by the court below as the ground of its decision. I think the fact that "on any such appeal the court may confirm reverse or vary the decision of the borough council" indicates, as strongly as possible, that the court has the fullest possible power to deal with the appeal from every point of view. Why should it be given a power to vary the language of the decision if the only matter before it is the question of law whether there was any evidence on which the council could come to the conclusion at which it arrived. I think the words "on account of misconduct or for any other sufficient reason in their opinion" are not nearly strong enough to take away the general right of appeal which is given to a person who has been refused what, in effect, under this section means a right to carry on his living in the way that he has been accustomed and to substitute merely a right to appeal to a magistrate on a question of law. Further, as my Lord has pointed out, there is a further right of appeal. Why should there be a right of appeal to quarter sessions on a pure question of law from the magistrate? If a right of appeal is given on a question of law, it is generally to the High Court by means of a Case Stated as in the present case. I feel no doubt that the decision of the magistrate was one to which he had power to come.

Appeal dismissed with costs.

Solicitors: J E Arnold James, town clerk, Stepney (for the borough council); Scott & Son (for the respondent Joffe); Harry Baker (for the respondent Diamond); Conway & Conway (for the respondent White).

F A Amies Esq Barrister.

at 260

THE CROWN COURT

A2002-0014

MANCHESTER CROWN COURT
MINSHULL STREET
MANCHESTER

Thursday, 29th April, 2002

Before:-

HIS HONOUR JUDGE GEAKE
(Sitting with Magistrates)

APPEAL OF

STOCKPORT METROPOLITAN BOROUGH COUNCIL

-V-

KENNETH JOHN EYLES

MR. WALSH appeared on behalf of the Respondent.
MR. GLEESON, on behalf of MISS KILPATRICK, appeared on behalf of the Appellant.

(Transcribed from the Official Notes by Cater Walsh & Co., Official Court Reporters, Suite 410 Crown Court Bullring Kidderminster DY10 2DH)
(Official Court Reporters and Tape Transcribers)

JUDGMENT

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Thursday, 29th April, 2004

JUDGE GEAKE: The appeal raises, if I may say so, quite interesting philosophical and legal issues in which the decision of an elected local authority council, in this case Stockport Metropolitan Borough Council, are challenged by the appellant and by statute are reviewable by an unelected Magistrates Court and, thereafter, here by an unelected Crown Court.

So, we have been referred, perfectly properly, by Mr. Walsh, and had due regard to the 1971 case of Sagnata Investments Limited-v-The Norwich Corporation and have paid proper regard to the opinion policy and decisions of the respondent local authority and, clearly, this case emphasises the tensions between individual rights and necessary local Government controls.

This Court believes that the proper starting point from which to approach this problem is the general Human Right as enshrined in Article 1 of the first protocol of the European Convention, which is referred to in the documents before us and which I quote from Miss Kilpatrick[1]s skeleton argument:

> ***"Every natural or legal person is entitled to the peaceful enjoyment of his possessions",***

and I summarise,

> ***"Except in the public interest as is deemed necessary to control the use of property in accordance with the general interest".***

That, plainly, is the starting point in our view from which to approach this appeal. The Court also accepts, and it is agreed by all the local Government Miscellaneous Provisions act 1976, Section 47, empowers a local authority to attach to the grant of Hackney carriage licences and I quote,

> ***"Such conditions as the council may consider reasonably necessary".***

Subject to sub-Section three,

> ***"Any person aggrieved having a right of appeal to a Magistrates' Court".***

We believe that, in accordance with general legal principles, the burden of proving the grievance, on a balance of probabilities, lies upon the appellant to show that the local authority's stated conditions are not reasonably necessary.

To that end the Court heard the evidence in the case:

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First of all from Mr. Norman Elthorp, who is and has been the manager of the licensing team for the council. He, no doubt, acted throughout, as he saw it, with the best of intentions and told the Court that he was concerned with Trading Standards and with concerns about safety and illegal plying for hire by taxis which undoubtedly does, from time to time, occur although there is no evidence that it has caused any particular problem, from the point of view of the public confidence or safety.

The more recent history of this matter is, perhaps, constructive, and I turn to page 27 of the respondent's bundle which is effectively Mr. Elthorp's statement - Mr. Walsh, I am going to read from this so that it is in the record - starting at paragraph seven of Mr. Elthorp's statement, we go back to the 20th August 2001:

> "Members of the sub-committee received a report relating to the introduction of a corporate image for taxis, this followed a best value review of the Trading Standard Service in which it was recommended that Stockport examine the possibility to improve its taxi fleet by requiring a uniform colour and control on advertising. The review included the observations of a critical friend from Nottingham, where they have a taxi fleet of a corporate colour which is regarded as assisting in recognition and, therefore, safety of the travelling public. The meeting resolved to amend the council's condition for taxis with effect from 1st January 2002 so that taxis could only be dark green, all advertising on the side panels would be prohibited and the council's crest, approximately 50cm by 50cm, would be displayed on the front door of each side of the vehicle; this related to new vehicles, new release vehicles and gave an 'end date' of 31st December 2008 for existing licensees".

The report was submitted to the August 2001 meeting and accepted by members, set out the criteria upon which the best value review recommendation was based and then the criteria followed. Subsequent

to this decision being made, it was noticed that it was a very unpopular with the taxi trade and, as such, a request was made by members of the committee to undertake a consultation process with various stakeholders. It is worth noting that there was also a change to the chair of the committee around this time who was eager to hear the views of the taxi trade, he was involved in the meeting with many taxi owners as part of consultation process which demonstrated the lack of popularity with trade but other stakeholders welcomed the apparent improvements.

On 12th February 2002, the new licensing, environment and safety committee - hereinafter, L.E.A.S. - received a report again relating to the image of taxis. The report gave details of trade consultations requested by members of the committee, it revealed that the taxi trade were particularly concerned about a single colour of green for taxis and the financial implications considering that the majority of cabs were a single colour; namely, black. Trade also expressed reservations about the size of the proposed crest on the doors. As a result, it was resolved by the committee that from 1st April 2002, the council's requirement for taxis be amended to state that taxis could only be in the approved colour, black, that each vehicle be required to display council coat of arms, the words 'Stockport Licensed Taxi' and the licence plate number on the rear door and an additional plate would be fixed to the front of the taxi, which, together with the rear licence plate, being the material and colour approved by the council.

The committee further decided that, with effect from 1st April 2003, the council's conditions for taxis would be amended to prohibit all advertising on taxis and that only vehicles in the approved colour would be granted a licence capable of extending beyond 31st December 2008.

On 13th August 2002 a report was submitted to L.E.A.S. looking to vary taxi fares for 2002/2003, in that the report was an additional(sic) addition to the formula used to calculate the fares,

allowing an amount of 500 pounds to compensate owners of taxis for the loss of income due to restriction of advertising on vehicles. In passing we noted that that particular proposal was not implemented according to Mr. Elthorp. However, even despite this change of view by the committee, many in the taxi trade were still unhappy and I, therefore, arranged a further meeting with them and, again, the Chair of the committee to discuss the issues. At this meeting it was noted that to have all taxis black would not make them as distinctive as Stockport taxis as the green taxis would have done, the Chair stated that his preference for distinctive colour, if retained, remains green; this then resulted in further consideration of the issue of colour and also a recognition that signs on the side, incorporating the licence plate number and additional plate on the front, would make them distinct.

Subsequent to this meeting, and having considered the views of the taxi trade, I then submitted a further report to L.E.A.S. on 14th January 2003:

> "Pursuant to my report members accepted that the colour restriction be lifted, having taken into consideration the fact that if the requirement for all cabs to be black were retained, there would be no particular distinction for Stockport taxis and as against those from other areas. However, the requirement to display a notice, incorporating the licence plate number, be kept and the committee decided that advertising be restricted to the rear doors only, each vehicle will display a notice on the front door panel consistent of the council crest and the words Stockport Licensed Taxi and the licence plate number, and any additional licence plate will be fitted to the front of the taxi of a material approved by the council".

I have read that section in full because that is, effectively, the history of the matter up to 14th January 2003. The minutes for that meeting do refer to passenger confidence and safety and a reduction in unlawful plying for hire.

It is clear to us, and from the evidence in the case, in any event, that as far as the public is concerned unlawful plying is not of serious significance when hailing a cab wherever that may be and that it would be at least as easy for a member of the public to identify a cab by its advertisement as by a sign or a crest on the side of the cab.

As for policing the proper use of taxis and policing unlawful plying for hire, any enforcement officer would know where to look for and be able to see the number of the cab wherever it was located, not necessarily in the places chosen by the respondent council in this case. Moreover it is recognised that taxi drivers themselves are the best placed and best motivated to notice and police any rogue Hackney cabs unlawfully plying for hire in their licensing area. In any event private hire cabs pose the main problems in the terms of unlawful plying for hire rather than Hackney carriages.

The Court accepted, and it is plainly agreed by Mr. Walsh for the respondents, that the appellant himself and the witnesses called by him such as representatives of the Stockport Area Drivers' Association and Mr. Darlington, whose job it is to sell cab advertising space to customers, are all perfectly decent, respectable individuals who accept the need for licensing regulations but who do not recognise the need for such restrictions on advertising, as is required by Stockport in this particular instance. Obviously, matters of taste and decency will require scrutiny at all times.

The Court heard evidence, and accepted, that there are significant revenues to be had from such advertising but the restrictions thus far imposed significantly curtailed the demands by advertisers thereby naturally reducing the income of owners, such as the appellant in this case, and consequently limiting their ability to upgrade and improve their taxi fleets for the ultimate benefit of the

public.

It is, in our view, very significant in this case that virtually all other local licensing authorities sanction the use of full two-door advertising or, indeed, all-over advertising on cabs and there is no evidence of any adverse impact upon the safety or the confidence of the travelling public from that. It is, within our experience locally, that many such cabs do not even have a side notice of any sort on either side of their cabs, only a front and back plate and a taxi sign, of course, on the top but if a side notice is required by Stockport, we believe it could just as effectively be placed on a window, such as is shown in some of the photographs that have been put before us.

So, in our appellate capacity in this case, we have come to the conclusion that the restrictive conditions imposed by the respondents in this case are not reasonably necessary for public confidence, for public safety; they do not, in our view, serve to assist in the curtailment of any illegal plying for hire which might occur and we believe that they are not, and have not, been logically thought through and that further thought and consultation could have been given by the parties to these issues and should therefore be given in the future.

To that end we allow this appeal by Mr. Eyles and will say no more about it.

Those are our views, Mr. Walsh.

I certify that this is a true
and accurate verbatim transcript
of my Palantype notes in the
case of the appeal of STOCKPORT METROPOLITAN
BOROUGH COUNCIL-v-KENNETH JOHN EYLES
from pages 1 to 8 to the best
of my skill and ability.

Signed
(Official Court Reporter)

THE CROWN COURT

A2002-0014

MANCHESTER CROWN COURT
MINSHULL STREET
MANCHESTER

Thursday, 29th April, 2002

Before:-

HIS HONOUR JUDGE GEAKE
(Sitting with Magistrates)

APPEAL OF

STOCKPORT METROPOLITAN BOROUGH COUNCIL

-V-

KENNETH JOHN EYLES

MR. WALSH appeared on behalf of the Respondent.
MR. GLEESON, on behalf of MISS KILPATRICK, appeared on behalf of the Appellant.

(Transcribed from the Official Notes by Cater Walsh & Co., Official Court Reporters, Suite 410 Crown Court Bullring Kidderminster DY10 2DH) (Official Court Reporters and Tape Transcribers)--

R U L I N G F O R C O S T S

Thursday, 29th April, 2004

JUDGE GEAKE: We are grateful to, Mr. Walsh, for his expose, exposition, of the up-to-date law on the costs in this sort of case and we have had regard to the case of The City of Bradford-v-Booth and the principle to be derived from that decision and we have come to this conclusion: that Mr. Walsh is, obviously, right to point out that the question of whether costs are awarded in a case of this sort depends upon whether the Court believes it is just and reasonable to do so, and that is a very basic concept; in general terms, costs will follow the event but we have had to consider whether or not, in the special circumstances of this case where a complainant has successfully challenged before justices an administrative decision by a regulatory authority, whether the authority were acting honestly, reasonably and properly and on the grounds that reasonably appear to be sound in the exercise of its public duty and the Court has to consider that in the special circumstances of a case of this sort. We have done and we have given it some considerable thought this morning but it seems to us, I have to say, that as a result of our findings in this case, by which we set out, in detail, the history of the matter as it was explored by the parties and as it developed through to 2003 and the ultimate restrictions that were placed on advertising, and our finding that there was no logic or rational to that particular set of conditions, we believe that, in this particular case, it has to be said that those conditions were not reasonable, whatever the local authority's position was, and we have come to the conclusion that costs, as in the normal way, ought to follow the event; they will, therefore, have to be taxed or agreed by the parties.

I certify that this is a true and accurate verbatim transcript of my Palantype notes in the case of STOCKPORT METROPOLITAN BOROUGH COUNCIL-v-KENNETH JOHN EYLES from pages 1 to 2 to the best of my skill and ability.

Signed.
(Official Court Reporter).

Case No: A20040066

THE CROWN COURT SITTING AT DURHAM

The Law Courts
Quayside
Newcastle Upon Tyne
NE1 3LA

30th September 2005

BEFORE:

HIS HONOUR JUDGE CARR

BETWEEN:

Applicant

DURHAM CITY COUNCIL
- and -
ADRIAN FETS

Respondent

- - - - - - - - - - - - - - - - - - - -

Mr A. Walker Counsel appeared for the Claimant
Mr Singh Counsel appeared for the Defendant.

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Approved Judgment

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HIS HONOUR JUDGE CARR:

1. We dismiss the Appeal by Durham City and we order that they pay the costs of Mr Fets. These are the reasons for our decision:

2. This is an appeal by Durham City Council against the decision of Durham Magistrates on 18th November 2004 when they allowed an Appeal by Adrian Fets and reversed the decision of Durham City Council whereby the Council sought to impose a condition that Hackney Carriages in Durham be white in colour. The Magistrates concluded that Mr Fets had satisfied them that the condition that Hackney Carriages in Durham be white in colour was not reasonably necessary.

3. In this Appeal we heard evidence over several days and on 31st August 2005 we dismissed the Appeal because we also, just as the Magistrates, conclude that Mr Fets has satisfied us that the condition that Hackney Carriages in Durham be white in colour is not reasonably necessary.

4. The origins of the policy are not that clear. In 2003 the City Council commissioned a survey upon the demand for hackney carriage services, which was carried out by Transportation Planning International Ltd, known as the TPI Survey. That survey made no mention of colour policy. Mr David Stewart told us that a colour policy would have been raised by him in a meeting of the Economic Scrutiny Panel on 1st March 2004. In the TPI Survey there had been a Public Attitude Survey in which only 12.7% of those members of the public questioned could demonstrate a satisfactory level of understanding of the difference between Hackney Carriages and Private Hire vehicles. Mr Stewart felt that the difference in colour between the two would lessen the confusion. He also told us that Durham County Council were seeking to align the colour in taxis within the county, namely colour white, but this was secondary. Further, there was a public safety issue which was linked to enforcement and that a one colour policy would assist in this.

5. Following the Economic Scrutiny Panel meeting on 1st March 2004 Mr Stewart told us there were a number of meetings with the two Trade Associations to discuss, inter alia, the colour policy. It has been said that one or both of these associations agreed with the colour policy and that the disagreement related only to whether silver or white should be the colour. We conclude on the totality of the evidence in relation to this that in reality neither Trade Association agreed to a one colour policy. What is clear is that the Trade Associations felt they had no option but to agree the policy. Certainly, we have seen no evidence that the City informed the Trade Association that they had a right of challenge in the Courts in relation to the colour policy.

6. On 2nd August 2004 Durham City Council's Cabinet approved a colour policy, that as of 1st September 2004 newly licensed Hackney Carriages in Durham City must be white and that newly licensed Private Hire vehicles may be any colour other than white. On 18th August 2004 Mr Fets lodged his complaint to Durham City Magistrates Court against the imposition of such a condition upon his licence. They upheld his complaint on 18th November 2004.

7. The relevant legislation is Section 47 of the Local Government (Miscellaneous Provisions) Act 1976. Section 47(1) states a District Council may attach to the grant

of a licence for a Hackney Carriage, under the Act of 1847, such conditions as the District Council may consider reasonably necessary. Subsection 3 of Section 47 states that any person aggrieved by any conditions attached to such a licence may appeal to a Magistrates Court.

8. We have been referred to a number of authorities such as **Westminster City Council** (2002 EWHC1104 Admin.), **Reading Borough Council** (2004 EWHN765 Admin.), **Wirral NBC case** (of 1983 3CMLR150), **Luton Borough Council case** (1995, COD231) and **Blackpool Borough Council ex-parte Redcabs** (1994 QVD).

9. Of these authorities we find the decision of Mr Justice Judge (as he then was) in the Redcab case, of assistance more so than those authorities which are primarily focussed on Judicial Review. Clearly, Section 47(3) of the relevant Act gives Mr Fets a right to appeal to the Magistrates Court. What does he have to show in order to be successful in that appeal? We conclude that the law is that the burden is on Mr Fets to show that it was not reasonably necessary to attach the condition, of which he complains, to his licence. On Appeal to the Crown Court the same rule applies.

10. We now turn to an examination of the reasons for which the City Council says it relied upon in reaching its decision to have a colour policy of white for Hackney Carriages. We deal with them as they are listed in paragraph 23 of the appellant's submissions.

1. Ease of identification for members of the public.

It is said that 12.7% of those questioned in the survey could demonstrate a satisfactory level of understanding of the difference between Hackney Carriage vehicles and a Private Hire vehicle. We do not believe that a colour policy will have any or any significant effect on the public's body of knowledge as to the legal differences between a Hackney Carriage and a Private Hire vehicle. It was this reason Mr Stewart put forward as the origins of this policy. It is said that a uniform colour is the most potent way of ensuring clear identification. Since a private individual can drive a white car which is not a Hackney Carriage we do not see any force in this argument. What does make easy identification is the taxi signage, which is already present on a city taxi. The City Council has not produced any evidence at all to show that the public have any difficulty in recognising a Hackney Carriage.

2. Ease of identification for enforcement.

There is no enforcement problem in Durham City. If there is the City would have produced evidence before us, this the City did not do.

3. Public Safety.

It is said that by introducing the policy it makes it less likely that unlicensed vehicles can be passed off as Hackney Cabs, therefore not only protecting the public but in consequence encourage more of the general public to use taxis. We have heard no evidence to suggest that there is a passing off problem in the city. Since contiguous District Councils do have a white colour policy, for the city to have the same it is likely to encourage Hackney Carriages licensed by other authorities to ply for hire in

the city when they drop off a fare in the city. In other words, a white colour policy will do precisely what the city says it wants to prevent. We do not think that the colour of a taxi, as such, will encourage a person to use a taxi if they otherwise would not have done so.

4. Image.

It is said that white taxis would have a raised profile on the streets and encourage the public to use them as part of an overall Public Transport Provision. We believe that white is a colour that will deteriorate quickly, both of itself and in bad weather. We therefore, even if image was a relevant factor, disagree that the image of Durham City public transport will be enhanced in the way suggested. Durham City has its own colours, neither of which are white.

5. Having a standard fleet.

It is said that standardisation for Hackney Carriages county-wide is a legitimate consideration - this may or may not be right. The problem here is that the County Council has done no research whatsoever into the repercussions of a county-wide policy of this nature. Two areas spring immediately to mind: first the question of vehicles licensed in one district plying for hire in another and second the availability of white vehicles as taxis. To push a policy without having done any preparatory research gives us no confidence in that policy, particularly when it relates to the conditions upon which persons earns their livelihood. We accept that there are different shades of other colours and that black and white may well have less shades than these colours. White does, however, have different shades to it.

11. We accept that the timescale by which the policy is to come into force is a reasonable one. However, it is clear to us that the policy has not been worked though before its implementation. Initially, no thought had been given as to what happened when a licensed vehicle needed to be repaired and to say that we were surprised to find out that a vehicle which had been licensed then needing repair was substituted, had to come back white is understating our reaction.

12. We now turn to the Respondent's case. No reference is made to colour being used as a way of distinguishing between Hackney Carriage and Private Hire vehicle in the TPI report, The Office of Fair Trading report or The Best Practice Guidance issued by The Department of Transport. The suggestion that a person being carried in a Private Hire vehicle may not be insured fails to take into account that there is no problem of Private Hire vehicles unlawfully plying for trade and that, in any event, the Motors Insurers Bureau Agreement would give protection.

13. The city's Director of Legal Services in a letter dated 11th November 2004 specifically said:

> "Nor am I aware of any particular safety problems with taxis".

14. As recently as 14th June 2005 the Director wrote:

"I have liaised with the Licensing Manager and we have been unable to find any trace of a successful prosecution brought by the City Council for illegal plying for hire within the last 3 years".

15. There is no evidence, in our Judgement, that there is an issue of public safety in so far as the hire trade in the city of Durham is concerned. The Respondent submits, and with this we agree, that harmonisation across the county is more likely to lead to illegal plying for hire by other taxis.

16. The Council failed to do any research into the availability of white cars. In our view, the City Council did no preparatory work into the consequences of bringing into force the colour white policy. Had it done so, it would have been clear that the popularity of white as a colour for a car has significantly reduced over the last few years. Any observant motorist would have been able to see this. We are satisfied that the research efforts into the availability of suitable white cars carried out by the Respondent is extensive and reliable. The Appellant's evidence on this we find sketchy and carried out as an afterthought.

17. We conclude that in so far as second hand white cars are concerned there is only, at best, a very limited amount available and certainly not in sufficient quantities to allow a taxi driver to find a replacement within a reasonable length of time.

18. Insofar as the availability of new white cars is concerned Mr Fets, who is an honest witness, told us he had to wait 9 weeks for delivery. This is an unreasonable burden for any taxi driver to have to carry - for without his car he may not be able to earn his living.

19. The City's suggestion that a car could be obtained and re-sprayed, at a significant cost to the taxi owner, was yet another example of failing to do the necessary research. Had the City done so, they would have found out that a vehicle being purchased on Finance, as most taxis are, cannot be re-sprayed without the consent of the Finance Company. Our opinion is that such consent was not likely to be easily obtained.

20. The Respondent also states that white cars depreciate faster than any other colour of vehicle. We accept this as an acknowledged fact. Having said this, the use of any vehicle as a taxi is likely to have a significant effect upon its trade-in value in any event.

21. The Respondent has carried out research in relation to how many other Authorities have a white colour condition. Out of 396 Licensing Authorities 313 had no mandatory policy. White is the mandatory colour in just 7% of all Licensing Authorities. 80% of all Licensing Authorities have no colour policy. These figures lead us to conclude that there is no compelling reason why Local Authorities should have a colour policy but, as always, we have to look at the local reasons for and against such a policy.

22. We are satisfied, as the Magistrates were, that there has been no assessment made by Durham City Council as to why a colour policy is reasonably necessary for Durham. We have not heard one word from any member of the public expressing any concern

as to how the taxi business was operated in Durham pre the introduction of a colour policy. We are satisfied that 3 distinctive features, the sign on top, the logo on the doors and the plate itself, are sufficient for a member of the public to clearly identify a Durham Hackney Carriage and distinguish it from a Private Hire vehicle. We are satisfied that the present distinguishing features are adequate to deter passing off by unlicensed vehicles and thereby sufficient to secure passenger safety. We also accept that the City Council carried out adequate consultation with the trade. Lack of sufficient research into the needs for such a policy, however, as to what was to happen if a car needed to be repaired and the position that a car that had a licence could not be re-licensed if it was not white, clearly is unacceptable.

23. We differ from the Magistrates with regard to their findings on unavailability of white vehicles. We conclude that this is not just inconvenience but is a significant problem. It is not reasonable for a self-employed person to run the risk of no work for 9 weeks because of a waiting list for white cars. And it is not reasonable for a self-employed person to be required to have his vehicle re-sprayed at a significant cost or not to be able to have it re-sprayed at all because it has been purchased on finance.

24. We therefore conclude, as did the Magistrates, that Mr Fets has satisfied us that the condition that Hackney Carriages in Durham be white in colour is not reasonably necessary and accordingly we dismiss this Appeal by the Durham City Council.

25. Mr Singh, in his closing submissions in writing, referred to other grounds upon which we should dismiss the Appeal. We have not dealt with those but indicate that he did address us on these matters.

26. So there we have it Mr Fets. Those are our reasons, now you can spend your time earning your living again.

27. **Mr FETS:** That will be nice.

28. **CLERK TO THE COURT:** Court rise.

We hereby certify that this Judgement was approved by His Honour Judge Carr on the 10th October 2005.

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