Appendix 5

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Date: 28 November 2013
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Dear Sir

Uma Talaty and Charles Oaks
Licensing Panel- 26 November 2013

Thank you for your letter of 27 November 2013.

I understand your client's frustration at the Sub-Committees inability to reach a decision yesterday evening. The sub- committee were reluctant to depart from the council's policy without further consultation. The matter is complex and carries serious legal and other connotations.

Your skeleton argument helpfully refers to section 47(1) and 2) of the Local Government (Miscellaneous Provisions) Act 1976:

"(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.

Section 47 therefore gives a clear statutory authority for Councils to implement measures that it considers reasonably necessary so that hackney carriages are clearly identifiable by the public. There is a like provision in section 48 for private hire vehicles. It is common knowledge that some Councils have decided to give effect to section 47 by requiring taxis to be the

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traditional FX4, London style cab. This authority and others have chosen to make the distinction, inter alia by requiring one colour scheme for hackney carriages, namely black. The only exception for this rule is that the traditional London Style cab may be any colour in this authority. By adopting this method of distinction there is a lesser financial burden on the trade. It is also the colour that many would identify as being associated with hackney carriages. This assessment is made on the basis that the London style hackney carriage was coloured black for a number of years and many such vehicles in London remain that colour. The Council has consulted the trade on this issue and found no significant objection to its colour scheme. The colour scheme has been in place within this borough for a number of years. The Council takes the view that hackney carriages should all be coloured black in this borough so as to enable the public to identify it as a hackney carriage as distinct from private hire vehicles.

It is understood that one of the applicant is a key figure within the hackney carriage association and has been a taxi driver for a number of years. The other applicant occupies a similar position in connection with the private hire association. Both will therefore have known of the council's policy with regard to the colour of hackney carriages when he purchased his white Peugeot E7. This is a second hand car and there will be many other vehicles on the market that meet the Councils condition at a similar price. The Council notes that the new price for the E7 in white is £2,000 more than the black equivalent. There is not necessarily the same price differential for second hand cars. The Council is therefore entitled to take the view that any financial prejudice to the applicant can be ameliorated at his choosing. By purchasing a car which does not meet the Councils colour specification the applicant has brought himself into conflict with the policy.

The skeleton argument refers to two decisions at paragraph 29 which mention the question of colour.

Whilst the Stockport case discussed the issue of colour the decision was confined to the question of advertising. I am unable to find any passage in this judgement that would assist on the point in question.

The Durham case is clearly on point and appears to be contrary to the Councils colour policy. It is noted that the crown court made reference to section 47 of the act. This is the private hire equivalent of section 48. The key words are the same. Those being that 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." These words appear at paragraph 7 of the judgement. It is apparent from paragraphs 18 and 23 that the court took its own view of the words "reasonably necessary" and found against the Council on that basis.

It is respectfully submitted that the court erred in this view by failing to recognise that the Council was entitled to take its own view on the meaning of the words "reasonably necessary" and the court should only take a contrary view if no reasonable Council could have arrived at that decision. The Court also made no mention of the court in Sagnata Investments v Norwich

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Corporation 1971 2 All ER 1441 which suggests that decisions of the committee should not be lightly reversed. This is particularly important in connection with taxis which are a local issue and vary from one Council to another.

The main difficulty with the case is that it makes no reference to the Chorion decision which you have cited in your skeleton. I find the paragraph requiring the court to accept the policy and applying it as if it were standing in the shoes of the council to be particularly supportive of our policy. Had the court followed this case it might have either applied the policy and upheld the condition or alternatively considered whether it should depart from the policy? In deciding whether it should depart from the policy one might expect some reference to the decision in Sagnata case. That case is authority for the proposition that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong. P1457E. In the event, the court made no reference to either of these authorities. It is therefore difficult to predict how the court would have decided the case had these authorities been brought into the equation.

At this juncture I raise the question as to whether the crown court would be entitled to review the policy. Had it done so it may well have adopted the reasoning in the Wirral case below.

It is apparent from the decision in n R v Metropolitan Borough of Wirral 1983, that the function of the high court is different in that in its reasoning is confined to the test based on the Wednesbury principles. A hearing de novo does not take place. The questions for consideration in that context includes asking whether the Council has taken into account an irrelevant consideration or came to a conclusion that no reasonable authority could ever have reached. (Page 9 para 1).

Before leaving the Wirral case it is worth mentioning that the court had no hesitation in supporting a condition requiring all taxis to be of the London style cab or similar specification. It is therefore submitted that the court would be far less likely to interfere with a less onerous condition, namely that all such vehicles should be black at a review level and perhaps also at first instance.

Turning more particularly to your submissions in paragraph 42. The extra financial burden is the lesser option and one which is proportionate in the circumstances. The Council is entitled to the view that the condition is necessary so that the public can readily distinguish hackney carriages from private hire vehicles. This logic is approved as being a legitimate objective in the Wirral case (page 8 paragraph 5). The case also appears to lend endorsement to the use of a uniform colour on page 3:

"I stop to comment that the reference to a uniform colour is clearly a reference to some distinguishing feature which would distinguish hackney carriages from private hire vehicles...."

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For the above reasons it is submitted that the policy supports best practice and it does so without imposing the additional financial burdens of requiring all hackney carriages to be of the London cab style.

The policy has also been challenged on the basis that it is not supported by an adequate survey. Whilst the public's views are one factor to consider on the question of reasonableness and necessity, it is one of many considerations and the results cannot be said to be unsupportive of the council's position in any event.

In addition to the committee being asked to consider whether to review its own policy it will be advised to look specifically at the white E7 and ask whether there is any reason to depart from its policy. For reasons mentioned above I take the view that they are entitled to re-affirm the current policy in these circumstances. Furthermore, I understand that there are a number of E7's which are licensed as both hackney carriage and private hire vehicles. This is an additional source of confusion which is likely to blur the distinction between the two types of vehicle.

In an attempt to accommodate your client's position, the licensing section would be able to licence your client's vehicle as a private hire vehicle with minimal delay. In order to be licensed the vehicle would need to pass the MOT and supplementary testing manual checks. It would also require minor modifications to its livery to remove the reference to "Taxi". I understand that the applicants have a private hire operator's licence together with a large fleet of vehicles. 16 of these vehicles are recorded as being private hire vehicles. Looking at the circumstances as a whole it may be that a high court would take the view that the limited time gained by taking that form of litigation is insufficient to justify high court action on an emergency basis. I would therefore ask you to place a copy of this letter before the court in connection with any application for leave to apply for judicial review.

Whilst I would be reluctant to predict the committee's decision, given that my advice is that they would be entitled to reaffirm their policy is your client still asking us to call an emergency meeting of the committee?

Yours faithfully

Jack Henriques

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