Neutral Citation Number: [2011] EWCA Civ 160

Case No: C1/2010/1568

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM QBD ADMINISTRATIVE COURT IN BIRMINGHAM
THE RECORDER OF BIRMINGHAM
CO/6524/2009

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/02/2011

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
LADY JUSTICE SMITH
and
LORD JUSTICE AIKENS

- -

Between :

THE QUEEN ON THE APPLICATION OF 007 STRATFORD TAXIS LIMITED	**Appellants**
- and -	
STRATFORD ON AVON DISTRICT COUNCIL	**Respondents**

- -
- -

James Findlay QC and Ben Blakemore (instructed by **Allansons LLP**) for the **Appellants**
David Lock and Philip Williams (instructed by **Legal Services, Stratford-on-Avon District Council**) for the **Respondents**

Hearing dates : 25th and 26th January 2011

- -

Judgment

President of the Queen's Bench Division

This is the judgment of the court

Introduction

1. What most people call taxis are still sometimes referred to as hackney carriages. This is mainly because that is the name of the horse-drawn vehicles which used to ply for hire in the 19th century, when sections 36 and 47 of the Town Police Clauses Act 1847, which are still in force, provided for the carriages and their drivers to obtain licences. Taxi licences are now issued by district councils, and section 47 of the Local Government (Miscellaneous Provisions) Act 1976 provides that a district council may attach such conditions to the grant of a taxi licence as the district council may consider reasonable. A person who objects to any condition so attached to a licence may appeal to a Magistrates' Court.

2. District councils comprise elected members, and a council may exercise its powers in a number of ways. These may include decisions taken by the full council. Decisions of the council may be devolved to committees, whose membership is required to represent the political composition of the full council. Since the Local Government Act 2000, decisions may also be taken by an executive, which, in the case of Stratford-on-Avon District Council, comprises a cabinet drawn from the majority party of the council. Intrinsically, questions of policy, being political in nature, are suitable for decision by such a cabinet.

3. Section 13(2) of the 2000 Act provides that any function of a local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements. Section 48(4) of the 2000 Act provides that any reference to the discharge of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions. Regulation 2(1) of the Local Authorities (Functions and Responsibilities (England)) Regulations 2000 provides by reference to schedule 1 that the power to license hackney carriages and private hire vehicles is not to be the responsibility of an authority's executive. On the other hand, regulation 5 of the regulations provides, with reference to schedule 4, that the adoption or approval of a plan or strategy, which might be the responsibility of an executive, shall not be the responsibility of the executive where the authority determines that the decision whether the plan or strategy should be adopted or approved should be taken by them, that is by the authority. One issue in the present appeal is whether adopting a policy that all taxis should have wheelchair access constitutes adopting a plan or strategy within regulation 5 and schedule 4, or whether it is doing something which is calculated to facilitate, or is conducive or incidental to, the discharge of the council's power to license taxis within regulation 2 and schedule 1. If it is the first, Stratford's cabinet had power to decide to adopt the wheelchair policy. If it is the second, they did not. With such nice points is 21st century appellate judicial life made interesting.

Wheelchair access policy

4. Stratford's policy decision that all new taxis should from 1st January 2010 have wheelchair access was made by the authority's cabinet on 15th December 2008, following a recommendation to that effect from the General Purposes Licensing

Committee taken on 10th November 2008. The Committee had considered the matter from at least April 2003 when they were examining ways of increasing the number of taxis with wheelchair access. In June 2003, the local taxi trade reported that this would happen, but it did not. No progress had been made by April 2004 following a consultation exercise in January and February 2004. The committee's preliminary view in 2004 was that all taxis should have wheelchair access, but they were persuaded to accept a compromise, whereby a restriction on the number of new drivers' licences was removed, but new drivers' licences would only be issued in conjunction with vehicles with wheelchair access. An existing licence holder could replace his vehicle with one which did not have wheelchair access. On 18th May 2007, the council published a draft document entitled *Hackney Carriage and Private Car Driver, Vehicle and Operator Handbook* which was distributed in June 2007 to various public bodies, the local Chamber of Commerce and authorised garages. This handbook proposed a change whose effect was to remove the earlier protection from existing licence holders. There was a period of consultation to 31st August 2007.

5. The committee meeting of 10th November 2008 was provided with a summary of the comments and objections which had been made. The first part of this committee meeting was in public and those present were able to express views. The claimants, who operate taxis in Stratford, were not present at the meeting nor had they provided comments. They relied on a detailed written response from their Trade Association, whose representative also did not attend the meeting. On 15th December 2008, the cabinet approved and adopted the policy recommended by the committee.

The claimants' case

6. The claimant accepts in these proceedings that this is a policy which the council could rationally reach, but they have a number of procedural objections to the way in which the decision was reached. They say that:

    a) the cabinet was not competent to take the decision. It should have been taken by the council.

    b) if it was a decision for the cabinet, that body did not itself sufficiently consider and determine all the various matters that the decision-maker needed to decide and determine.

    c) the decision should not have been a policy decision. It should have been made as a condition to the grant of individual licences. If it had been, there would have been an appeal to the magistrate's court. Because of the way in which the decision was taken, applicants for licences have been wrongly deprived of this route of challenging the decision.

    d) the respondent did not conduct a sufficient consultation.

    e) the respondent did not sufficiently take account of the responses to the consultation.

    f) the decision contravened section 49A of the Disability Discrimination Act 1995 because it failed to have due regard to the fact that it

discriminated against those who are disabled but do not use a wheelchair, it being more difficult for the walking disabled to get into an expensive taxi with wheelchair access than into a less expensive taxi which is a saloon vehicle.

The litigation

7. The claim was heard and determined by HH Judge Davis QC, the Recorder of Birmingham, who gave judgment in favour of the respondents on 9th June 2010. His judgment may be found at [2010] EWHC 1344 (Admin) and may be referred to for greater detail than this judgment need contain. The grounds of appeal essentially restate the matters which the Recorder dismissed. There is a Respondents' Notice, which contends that the proceedings should have been dismissed because they were started well out of time. The Recorder did not determine this matter because he dismissed the claim for other reasons.

8. The decision under challenge was taken on 15th December 2008. The proceedings were not started until 24th June 2009, more than 6 months later. Rule 54.5 of the Civil Procedure Rules provides that a judicial review claim form must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose. The claimants contended that the claim was in time, but in the alternative they did seek an extension of time, contending that they were not aware of the decision of 15th December 2008 until they attended a meeting on 24th March 2009. Nicola Davies J in granting permission to bring the judicial review proceedings did not grant an extension of time, saying wrongly that an extension of time was not needed. The position therefore is that the needed extension of time was sought but not granted, and Mr Findlay QC for the appellants applied for an extension at the hearing before this court. Mr Lock for the respondents opposed this saying that an extension should not be granted when no proper explanation for the delay after March 2009 had been offered. He contended in the alternative that the court should refuse to grant relief under section 31(6) of the Senior Courts Act 1981 because to do so would be detrimental to good administration.

The appeal – Ground 1

9. The appellants wished to contend before the Recorder that the cabinet, in taking the decision, did not themselves properly consider the matters relevant to the decision because they had not been provided with the material which had been provided to the committee, nor with details of the committee's recommendation. The Recorder considered that this ground had been raised very late, being first raised in recognisable form in the week before the hearing in the appellants' skeleton argument. The Recorder decided that the appellants needed his permission to argue this ground. He refused permission, saying that the entire thrust of the appellants' case and the evidence had concentrated on the meeting of the Licensing Committee and that the cabinet issue was raised too late to allow the respondents properly to meet it. The appellants' first ground of appeal is that they should have been permitted to argue this point because, as may be seen from their claim form, their challenge was and always had been to the cabinet's decision of 15th December 2008. They had been given permission to make this challenge by Nicola Davies J and they should not have been prevented from advancing this part of their case. Mr Lock accepted before us that there would have been no real prejudice to the respondents if they had been required

to meet this point. He further accepted that the cabinet had not themselves given systematic and detailed consideration (as the committee had) to the various matters relevant to the decision. They could not be said to have done so in the short time which their consideration of this and other matters took, despite the fact that Councillor Brain, who had attended the committee meeting on 10th November 2008, was also a member of the cabinet which took the decision on 15th December 2008.

10. In our judgment, the judge was wrong not to permit the appellants to contend that the cabinet took the decision on 15th December 2008 without themselves adequately considering the matters which needed consideration. It was not contentious that the operative decision was that of the cabinet on 15th December 2008. The appellants' claim form had expressly asserted that it was this decision which was challenged. The main thrust of the evidence and written submissions may have related, until shortly before the hearing, to the proceedings before the committee. But we are satisfied that the respondents were aware that it was the cabinet's decision which was under challenge, and the judge's view that the issue was raised too late to allow the respondents to meet it properly does not stand up to scrutiny. The first ground of appeal therefore succeeds.

11. Mr Lock was unable to contend that the cabinet took the decision after themselves giving sufficient material consideration to the main matters which required their consideration. Decision-making bodies in the position of the cabinet here are not required to give personal detailed attention to every strand of fact and argument capable of bearing on the decision they are making. But they are required to have drawn to their attention the main lines of relevant debate, or, as Sedley LJ put it in *R (National Association of Health Food Stores) v Secretary of State for Health* [2005] EWCA civ 154 at paragraph 61, adopting Brennan J in *Minister of Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24 at paragraph 65:

> "A minister may retain his power to make a decision while relying on the department to draw his attention to the salient facts."

Here, the cabinet adopted the committee's decision upon very short consideration and without either being provided with the material that was before the committee or a résumé of the committee's consideration and reasons. If, therefore, contrary to the appellants' contention in their third ground of appeal, the cabinet was competent to take this decision, there was a significant flaw in their process.

Ground 2

12. The second ground of appeal is insubstantial and the Recorder rightly so regarded it. It is contended that the respondents were not competent to take a policy decision that all taxis should have wheelchair access, because to do so deprived the appellants and others of the possibility of an appeal to the Magistrates' Court under section 47 of the 1976 Act which might otherwise challenge on its merits a decision to attach a condition to the grant of an individual licence. Such an appeal could not succeed (without special facts) if the condition was attached to the licence as a result of an antecedent policy decision. It is said that the policy is unenforceable unless conditions are attached to a licence. It is said that the policy, which magistrates would have to adhere to – see *R (Westminster City Council) v Middlesex Crown Court*

and Chorion [2002] EWHC 1104 (Admin) – is contrary to the statutory framework and unlawful.

13. In our judgment, this ground of appeal has no merit. It is open to an authority to decide to adopt a policy of this kind – see *R (A, D & G) v North West Lancashire Health Authority* [2001] WLR 977. Such a decision is open to challenge on orthodox judicial review grounds. There is no process of statutory construction or implication to the effect that, because there is a route of appeal (which may still be exercised in individual cases upon grounds particular to the individual case) against conditions attached to a licence, the adoption of a general policy relevant to the grant of licences which may affect such an appeal is unlawful.

Ground 3

14. The third ground of appeal (but logically the first) is that the judge was wrong to decide that the respondents' cabinet was competent to make the decision which they did by adopting a policy that all taxis must have wheelchair access. This matter turns on the construction and application of sections 13(2) and 48(4) of the 2000 Act and regulation 2(1) and schedule 1 of the 2000 regulations, to which we have already referred. In our judgment, this regulation and schedule are to be construed in the light of regulation 5(1) and schedule 4. The appellants' case is that a decision to adopt a policy that all taxis should have wheelchair access is the exercise of a function which is calculated to facilitate, or is conducive or incidental to, the discharge of the power to license hackney carriage and private hire vehicles.

15. The Recorder decided that the policy did not purport to apply a condition to every licence irrespective of the individual application. The policy provided that every application would be considered against the policy. Applicants were able to ask for an exception to the policy, but must be able to demonstrate sound and compelling reasons why the committee should depart from the policy. The Recorder considered that, when the cabinet made its decision on 15th December 2008, it was not exercising the function of licensing hackney carriages. The appellants contend that the regulations make it clear that all powers under the 1847 Act and the power to impose conditions under the 1976 Act are for the council. Any policy is ancillary to the statutory power to license hackney carriages and is in reality part of the exercise of that power, as attaching conditions to the grant of a licence is the only way in which the policy can be enforced. The respondents submit that adopting a policy (subject to exceptions in individual cases) is not exercising the power to license hackney carriages – which plainly it is not – nor is it doing something which is calculated to facilitate, or is conducive or incidental to, the exercise of the power to license hackney carriages. Mr Lock draws a distinction between taking broad decisions of policy, which is the province of a political majority and appropriately exercised by a cabinet, and individual decisions about the grant or refusal of licences, which may appropriately be taken by the politically diverse council or its delegate committee. He says that this is exemplified by regulation 5 and schedule 4, by which a decision to adopt or approve a plan or strategy may be taken by a cabinet unless the council determines otherwise.

16. We have not found this ground of appeal easy to decide, since, at first blush, adopting a policy that generally all taxis should have wheelchair access may be said to be calculated to facilitate, or to be conducive or incidental to, the power to license

hackney carriages. On the other hand, we accept that a policy falls within the wording "plan or strategy" used in the regulations. In our view on consideration, there is a distinction between the political decision to adopt a policy of this kind and the particular power to license hackney carriages. On this view, adopting the policy is not conducive or incidental to the power to license hackney carriages, nor is it calculated to facilitate the exercise of that power, because it does not make the exercise of the licensing power easier in individual case precisely because it is not directed to the individual exercise of the power. Logically, a plan or strategy or a policy on whether hackney carriages should have wheelchair access comes first; and that function is one that a cabinet may undertake. The function of licensing individual hackney carriages and anything that is calculated to facilitate or is conducive or incidental to the exercise of that particular function (by the council) comes second and it is a function to be performed in the light of the plan or strategy or policy that the cabinet has determined.

17. For these reasons, in our judgment, the third ground of appeal fails. This, taken with our decision on the first ground of appeal, means that the cabinet was competent to take the policy decision that all taxis should have wheelchair access; but that their decision of 15th December 2008 was taken on consideration of significantly inadequate information.

Grounds 4 and 5

18. The fourth and fifth grounds of appeal are that the Recorder was wrong to find that there was adequate consultation and wrong to find that proper consideration was given to the product of consultation. The Recorder reproduced in his judgement (paragraph 34) the very well known test to be applied to a consultation process by a public body in paragraphs 108 and 112 of *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213. It is not necessary to reproduce these paragraphs again in this judgment. He also referred to the judgment of Sullivan J in *R (Greenpeace Limited) v Secretary of State for Trade and Industry* [2007] EWHC 311 (Admin), who referred to *Coughlan* at paragraphs 55 to 57 of his judgment. At paragraphs 62 and 63, he said that a consultation process which is flawed in one, or even a number of respects is not necessarily so procedurally unfair as to be unlawful. In hindsight, it is almost invariably possible to suggest ways in which a consultation exercise might have been improved upon. A decision-maker has a broad discretion as to how a consultation exercise should be carried out. A conclusion that a consultation exercise was unlawful on the grounds of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went clearly and radically wrong.

19. The Recorder tabulated in paragraph 36 of his judgment a number of alleged failures by the respondents, which he dealt with one by one in paragraph 37. He decided that, in so far as the failures could be made out, they did not individually or cumulatively demonstrate that something went clearly and radically wrong with the consultation process.

20. The appellants made two main criticisms of the respondents' consultation process. First, it is said that there was a failure to consult the general public; second, a failure to consult those concerned with the walking disabled. It is perhaps noteworthy that it was not contended that there was a failure to consult taxi drivers or owners nor the appellants themselves, and that the claimants were raising complaints on behalf of

people who had not themselves complained. The judge decided that there was a wide consultation in 2004 and that the way in which the respondents proceeded in 2007 was within the proper range of their discretion. As to the walking disabled, the judge found that the respondents sent the consultation letter to a number of organisations and people concerned with the disabled, and that no group of the kind suggested by the appellants was obviously identifiable. The appellants restate the case which failed to persuade the Recorder. There should have been consultation with the trade's customers, that is the general public. The consultation was limited and the 2007 letter did not highlight the proposed change for wheelchair access. The 2003/4 consultation had been much wider. Written responses only came from taxi drivers or proprietors or wheelchair users – which, we note, is scarcely surprising. The judge was wrong that no organisation concerned with walking disabled people was identified.

21. Mr Lock points out that the appellants themselves were consulted, and he suggests that the court should treat with caution contentions made on behalf of others who do not make them on their own account. The original contention alleged that there was no proper consultation at all and that the appellants themselves and the trade had not been consulted, which was wrong. The complaint about walking disabled had not been mentioned in the written response from the Trade Association on the appellants' behalf. The respondents had sent out 650 letters to drivers, vehicle owners and operators and others and the documents were publicised on the respondents' website and in libraries. The Recorder was entitled to come to the conclusion he did on the evidence set out in the respondents' Grounds of Defence and the witness statement of Ms Baird. Mr Lock says that this was a non-statutory consultation process by a district council that was not obliged to consult at all.

22. In our judgment, there is no proper basis for disturbing the Recorder's finding on this part of the case. It was a finding of fact derived from a judgment about the evidence tendered on behalf of the parties which was reached upon a proper basis in law. There could have been a more extensive consultation, but there is no proper basis for concluding that this consultation was obviously inadequate nor that something went clearly and radically wrong.

23. Ground 5 of the grounds of appeal also seeks to revive in this court submissions mainly of fact which failed before the Recorder. The matters relied on before the Recorder are listed in paragraph 38 of his judgment, as to which Mr Findlay accepted before us that there was some reference to most of them at the meeting of 10th November 2008. The Recorder dealt with these matters in paragraph 39 of his judgment, noting that the difficulties with the walking disabled were specifically considered, as demonstrated by a visit to the manufacturer of purpose built taxis in Coventry (see paragraph 20 of the judgment); that a paragraph in the report to the committee about the government's position was inaccurate (see paragraph 18 of the judgment), but that Mr Brain was aware in outline of the true position; that an EU report which was not drawn specifically to the decision-makers attention did no more than rehearse the issues considered by the Committee; and that cost implications were at the forefront of the Committee's discussions. The meeting had lasted from 10.00 a.m. to 3.35 p.m. and what occurred at the meeting was recorded in two contemporaneous notes – see paragraphs 21 and 22 of the judgment. The report to the committee did not suffer from substantial deficiencies when the overall circumstances were known to the committee. Looking at it in the round, and recognising that

improvements could have been made to the initial process, the evidence was that the issues raised in the consultation were sufficiently taken into account.

24. Mr Findlay points us to differences between the consultation responses of taxi operators and the Trade Association and the oral and written reports to the committee. Although Ms Baird prepared a summary of responses, which Mr Findlay characterises as wholly inadequate to convey the depth and weight of objections, he says that it is doubtful if this was before the committee. He says that the judge was wrong to give significance to consideration given prior to the meeting, because proper consideration must be given by the ultimate decision-marker. He says that the judge was wrong to consider that, if Councillor Brain knew something, that was to that extent sufficient. There was no proper basis for supposing that because the chairman of the meeting had the Trade Association's response, it was before the meeting. The same applied to the visit to the taxi manufacturers in Coventry and to the finding that Councillor Brain was aware that government policy had changed but that the officers did not report why that change had occurred. There was no reference to the published view that there was no vehicle which could be said to be accessible for all disabled people. The point emphasised by the proprietor of the appellants that implementation of the policy would put him out of business was not put before the committee. Mr Findlay also relies on what he says was a failure to deal with Best Practice Guidance, a failure to deal with health and safety concerns, and inadequacies in the officer's report to the committee with a regard to the consultation process and costs which adopting the policy would generate.

25. Mr Lock points out that the contention that the written summary of responses to the consultation may not have been before the committee is unsustainable. The evidence of both Ms Baird and Councillor Brain states that it was and this is confirmed by an independent solicitor, Mr Elliott, who attended the meeting and came away with a copy of the schedule attached to his file note and annotated by him. The judge noted this evidence. Further, Ms Baird gave an oral presentation to the committee about the responses to the consultation. There was further evidence, in addition to that from Councillor Brain, from Councillor the Rev. Neville Beamer. Ms Baird was also able to confirm that she had all the written responses, including that from the appellants' Trade Association, at the meeting, and referred to them at various points. As to the government's position, the consistent message was that it was up to local authorities to decide for themselves whether to adopt a policy that all taxis should have wheelchair access. Many local authorities had done so.

26. In our judgment, this is an insubstantial ground of appeal and, so far as the committee is concerned, we reject it. It was well open to the Recorder on the evidence to find, as he did, that the 5½ hour committee meeting gave sufficient consideration to the main points that had been raised in the consultation. As a matter of fact, the written summary of responses was used at the meeting and Ms Baird enlarged upon it orally.

Ground 6

27. The sixth ground of appeal concerns section 49A of the Disability Discrimination Act 1995, which relevantly provides that every public authority shall in carrying out its functions have due regard to the need to promote equality of opportunity between disabled persons and others, and to the need to take steps to take account of disabled persons' disabilities. It is said (and to an extent accepted) that taxis with wheelchair

access are not reasonably accessible by some walking disabled, and that there is no taxi design which can economically cater for all disabled. The case is that, if all taxis have to have wheelchair access, some other disabled people will be disadvantaged. The appellants say that this is a point which was not raised at the time of the decisions.

28. The Recorder referred at some length to *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) paragraphs 79 to 96 for the proposition that having "due regard" does not impose a duty to achieve results. The duty in one of its relevant forms is to have due regard to the need to take steps. There is no statutory duty to carry out a formal Disability Equality Impact Assessment. The Recorder also referred to *Domb v London Borough of Hammersmith and Fulham* [2009] EWCA civ 941 at paragraph 52. The Recorder said at paragraph 44 that the evidence of Ms Baird and Councillor Brain was that substantive regard was given to the needs of all sections of the disabled community. The notes of the meeting showed that the issue was raised by more than one contributor. There was no basis for a finding that it was ignored. Accordingly the committee did have regard to the relevant needs for the purpose of section 49A of the 1995 Act.

29. The ground of appeal is that the judge reached the wrong conclusion. The respondents' own Equality Scheme declared that they would meet their legal responsibilities by carrying out an equality impact assessment. The officers' report had wrongly stated that there was no Disability Discrimination Act issue. There had to be an analysis with the specific statutory considerations in mind. There was no structured analysis of material before the committee in the context of the duty. Consideration by an officer is not sufficient. Councillor Brain was only one of the decision-makers.

30. Mr Lock points out that this was not a matter which featured in the Trade Associations' response to the consultation. The responses from disabled people were in favour of taxis with wheelchair access. The issue was considered on the visit to the manufacturer in Coventry when Councillor Brain and Ms Baird were assured that other disabled people could use taxis with wheelchair access. The vehicles are fitted with ramps which can be used by the walking disabled as well as those in wheelchairs. Equality impact issues were covered in Ms Baird's report. The facts that there was no vehicle which covered all needs and that not all disabled people are in wheelchairs were raised specifically by two people who attended the committee meeting. There is no proper basis for saying that the committee did not have due regard to these matters. Councillor Brain's evidence was that these various factors were taken into account. The Council's policy about Equality Impact Assessments related to services provided by the council, not to their acting as a regulator for taxi services provided by others.

31. In our judgment, the Recorder was fully entitled on the evidence before him to which we have referred to reach the conclusion he did on this issue for the reasons he gave. This ground of appeal is insubstantial and we reject it.

32. We therefore reject all grounds of appeal except ground one. The effect of this is that the respondents conducted proper consultation and their General Purposes Licensing Committee gave proper consideration to the responses to consultation and to the matter generally. The decision that all new taxis should from 1st January 2010 have

wheelchair access was taken by the cabinet, who were lawfully competent to do so. However there was a significant procedural flaw in the process in that the main matters relevant to the decision were not placed before the cabinet nor specifically considered by it. We accept that the main matters were properly considered by the committee. But given our conclusions on ground one, we must consider what, if any, relief should be granted to the claimants.

Relief – the effect of delay

33. Relevant to this is the fact that the judicial review proceedings were brought substantially out of time and no persuasive excuse is available for a significant part of the delay. We accept that the appellants did not know of the cabinet's decision of 15th December 2008 until late March 2009. Time for commencing proceedings had already expired and it was incumbent upon the appellants to act with expedition. Instead, they delayed for a further three months until late June 2009, ostensibly because they had to take advice and organise funding. Those excuses are not impressive. We conceive that the question for us is whether we should decline to grant the necessary extension of time in which to bring these judicial review proceedings. The alternative option is whether we should decline to grant relief because of the claimants' delay. Section 31(6) of the Senior Courts Act 1981 provides that, where there has been undue delay in making the application, the court may refuse to grant relief if it considers that to do so would be detrimental to good administration.

34. Mr Lock submits that we should decline to grant relief because the procedure adopted by the respondents was not so conspicuously unfair as to amount to an abuse of power requiring judicial intervention. Mr Lock refers here to *R v Secretary of State for Home Department ex parte Doody* [1994] 1 AC 531 at 560/1 and *R v Devon County Council ex parte Baker* [1985] 1 All ER 73 at 85. It is of some relevance that the decision of 15th December 2008 was not a wholly new decision, but a modification of the details of a policy which had been introduced in 2004. In our judgment, the cabinet's endorsement of the recommendation of the committee without proper consideration of the issues was a significant procedural flaw which, if the proceedings had been brought promptly, would have warranted the grant of relief. The proceedings were not brought promptly; there was undue delay. We do not consider that the council's actions amounted to an abuse of power; we do not think that there was any intentional or reckless flouting of the principles and procedures of proper decision-making. We think it more likely that the council did not think carefully about the procedures which should be followed in taking a decision of this kind. Nor do we think that the result of this procedural flaw has been conspicuously unfair. If we had thought that the council had abused its powers or that the result had been conspicuously unfair, we might have extended time, notwithstanding that we are unimpressed by the appellant's explanations for the delay. We do, however, think that it would be detrimental to good administration if the cabinet were now required to reconsider this matter given the time which has elapsed. Accordingly we decline to extend time and there will be no grant of relief. The appeal fails.