IN THE NEWCASTLE UPON TYNE MAGISTRATES' COURT

BLUELINE TAXIS (NEWCASTLE) LIMITED

APPELLANT

-v-

THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE

RESPONDENT

JUDGEMENT

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1. This case concerns an application to the Magistrates' Court by way of complaint following the revocation by the Respondent local authority, of the Appellant's private hire operator's licence. This took place at a regulatory committee meeting on 17 December 2010 and was placed in writing and served upon the Appellants on the 7th January 2011. The Appellants then appealed that decision to this court by complaint dated 19th January 2011.

2. The formal hearing of this matter took place on Monday 9th January 2012 and both parties were represented by Counsel, Mr Rodger for the Appellant and Mr McGuinness QC for the Respondent. Both had filed skeleton arguments to assist this Court and the oral evidence was dealt with shortly by witnesses confirming their previously served statements on oath and then limited but relevant cross examination. I am grateful to the succinct manner in which they both presented their cases enabling me to grasp the necessary complexities of taxi regulation.

3. In essence the issues in this case relate to conditions applied to the private hire operators licence granted to the Appellant on 22 April 2010. The Appellant states that the conditions are either being complied with, are ultra vires the Respondent's powers to impose or are a restraint of trade, going beyond that which could reasonably be considered as regulatory and straying into an area of function that should properly be left to the primary Legislative. The Respondents say that they are necessary to fulfil their public safety roles and to ensure passenger safety and responsible private hire business conduct.

4. A preliminary point of jurisdiction to hear this matter was raised by Mr Rodgers at the start of the hearing. I dealt with that by means of a preliminary ruling on an ex tempore basis. In short, the Appellants argued, that the notice of the decision to revoke the operators' licence of the Appellant, by the Respondent's regulatory committee on 17 December 2010, was not served in writing until 7 January 2011. There was agreement that the decision was communicated at the meeting orally both to the Appellant representative, Mr Shanks, and to his solicitor, Mr Nicholson. It was argued that this should have been in writing by virtue of the wording of sec 62 Local Government (Miscellaneous Provisions) Act 1976, section 77 of that Act and section 300 of the Public Health Act 1936. In the first it is conceded that it simply states that notice must be given of the decision and reasons within 14 days. In the second (sec 77) the Act incorporates the 1936 Public Health Act provisions as to appeals. In the third provision (sec 300 of the 1936 Act) it states that:

> "*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."

5 Therefore, the Appellants argued that the notice period for appealing the decision is triggered by "the document" referred to in sec 300(3). If the decision were intended to be given only orally within 14 days, there would be no document triggering the appeal. Whilst this seems attractive, I preferred the counter argument of the Respondents. That say, and I agree, that the committee often deal with matters on paper applications without formal hearing and in those cases the only means of communicating the decisions are in writing. Thus notice of decision is sent out. In cases where there are hearing, the decision is communicated there and then and confirmed in writing, so as to trigger the appeal process envisaged as above. Therefore, I am satisfied that the 14 day notice period was complied with and so was the 15 day period for the filing of the appeal by means of the complaint before me.

The Law

6. The law relating to taxis is essentially contained in two primary pieces of legislation. Section 37 Town Police Clauses Act 1847 (1847 Act) relating to the licensing of hackney carriages regulated by and plying for hire within their local authority area and sections 46 and 55 of the local Government (Miscellaneous Provisions) Act 1976 (1976 Act) relating to the requirement for and licensing of

private hire vehicles, drivers and (particularly for this case), operators thereof. Such private hire vehicles may not ply for hire nor work from a cab stand and must only respond to booked journeys. That is the reason why they work through licensed operators. All three licences for a private hire (vehicle, driver and operator must be issued by the same authority). An operator receiving a call for a booking must normally use a private hire car licensed by the authority where the booking is taken.

7. There is a third class of vehicle which exists and is much of the subject matter of the matters argued before me. That is a hackney carriage licensed and regulated as such by one authority but being used for pre – booked journeys in another authority area. These vehicles, whilst acting as private hire vehicles and carrying out pre-booked fares are not regulated under either the 1976 Act or the 1847 Act. They fall into a lacuna in the law as it stands. That much, the parties agree upon.

8. The provisions under the 1976 Act only apply, if the Acts provisions are adopted under section 45 of that Act. It is conceded and agreed that such adoption has taken place in the Respondent's area by resolution passed 24 March 1977 and into force on 1 May 1977.

9. Section 46 of the 1976 Act states at sec 46(d) that:

> *"no person shall in a controlled district operate any vehicle as a private hire vehicle without first having a current licence under section 55 of this Act"*

Thus, an operator needs an operator's licence (and must ensure that there are vehicle and driver licences in place as well (sec 46(e)).

Section 55 states:

> *"55 Licensing of operators of private hire vehicles.*
> *(1)Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:*

Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.

(2)Every licence granted under this section shall remain in force for such period, not being longer than five years, as a district council may specify in the licence.

(3)A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.

(4)Any applicant aggrieved by the refusal of a district council to grant an operator's licence under this section, or by any conditions attached to the grant of such a licence, may appeal to a magistrates' court.

As can be seen, therefore, the authority must grant licences to fit and proper persons but may impose conditions subject to appeal thereof as are "deemed reasonably necessary".

10. Sections 60 and 61 deal with suspension and revocation of vehicle and drivers licences for private hire respectively and section 62 deals with the same relating to operators licences. It states:

"62 Suspension and revocation of operators' licences.

(1)Notwithstanding anything in this Part of this Act a district council may suspend or revoke, or (on application therefor under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:—

(a)any offence under, or non-compliance with, the provisions of this Part of this Act;

(b)any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;

(c)any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or

(d)any other reasonable cause.

(2)Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the operator notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal.

(3)Any operator aggrieved by a decision of a district council under this section may appeal to a magistrates' court.

This case relates to the revocation of the operators licence granted to the Appellants by decision made 17 December 2010. By virtue of this appeal, the licence remains in force pending the outcome of this appeal (sec 77 (2) 1976 Act).

11. There has been a good deal of litigation in this filed in recent years but none appear to have dealt with all of the areas which are contained in this case before me. In particular I have been referred to cases similar in nature such as R (on application of Newcastle City Council v Berwick–upon–Tweed borough Council [2008] EWHC 2369 (Admin) (the Berwick case); Stockton on Tees Borough Council v Latif [2009] EWHC 228 Admin (the Latif case) and Stockton on Tees Borough Council v Fidler [2010] EWHC 2430 (the Fidler case). I have also been referred to a number of authorities concerning licensing matters generally of a variety of natures dealing with the general point of how local authorities conduct the imposition of conditions upon the granting and renewal of licences of various types. Two cases were particularly relied upon in the hearing, namely; Rossi v Edinburgh Corporation 1904 HL (the Rossi case) and Stewart v Perth and Kinross Council [2004] UKHL 16 (the Stewart case).

The Facts

11. The majority for the facts in this case are agreed. Evidence thereof was formally called by Mr Ian Shanks, essentially the owner of Blueline Taxis (Newcastle) Ltd and its partner company operating out of Wallsend for North Tyneside. I also heard from Mr Mark Kelly and read the statement of Mr Michael Washington dated 30th September 2011 by agreement. Mr Jonathan Bryce gave formal evidence for the Respondents. In each case except Mr Worthington, the parties

agreed to call their witnesses and tender them having identified that their filed statements were true. I was happy so to do, under Magistrates Courts Rules and Criminal Procedural Rules 2011 which allow for such, by consent. Most of the hearing concerned submissions upon the law.

12. The Appellants applied for a private hire operators licence to the Respondents in February 2010 which application I have seen in the agreed bundle at page 237 et seq. It states the intent to set up as a new private hire operator from the Fisher street Garage, Fisher Street, Walker, Newcastle upon Tyne NE6 4LT utilising the telephone numbers 0191 2626666 and 0191 2150444.By letter dated 30th March (page 296) the Respondents raised concerns over aspects of the application relating to telephone numbers and use of Newcastle licensed vehicles and referred the application for hearing before the regulatory committee. That met to consider the application on 22nd April 2010. It was by then already policy in the Respondents area to impose conditions upon all private hire operators only to use hackney carriages for pre booked customers that were licensed by the Respondents and not "out of area" ones.

13. The Committee resolved to grant the operators licence having heard from Mr Shanks and his solicitor, subject to their standard conditions including:

1. The operator shall ensure that for each private hire vehicle operated by him within the area of the City of Newcastle upon Tyne, there is in force a private hire vehicle licence granted by the council and that every driver of such vehicle has a private hire driver's licence granted by the council

2. *Any hackney carriage used to undertake a private hire booking under this operator's licence must be one that is licensed by this authority pursuant to section 37 of the Town and Police Clauses Act 1847.*

3. *Any hackney carriage used to undertake a private hire booking under this operator's licence must be driven by a person holding a licence issued by this authority pursuant to section 46 of the Town and Police Clauses Act 1847.*

4. The operator shall return his licence to the council for endorsement when changing his home and /or operating premises within 7 days of such change.

Only conditions 2 and 3 above are the subject of this hearing.

14. In addition, the Respondents added two further conditions at Annex 1 to the licence:

1. The Operator shall maintain an independent operation in Newcastle by the installation of a dedicated telephone line to the Newcastle office with its own unique number.

2. The telephone number used must be exclusive to this Operator's Licence.

Both of these are the subject of this appeal.

15. The Appellant did not appeal the conditions under section 62 of the 1976 Act nor did they seek to judicially Review the same. Mr Shanks explained that they were awaiting the outcome of the Fidler case which was reported in about September 2010 and Mr Rodgers appeared in that case also, whereupon Mr Shanks decided upon advice to ignore the conditions as ultra vires the Respondent Council's powers or, I suspect to see what the Respondents would do. The Respondents decided to consider the matter at its regulatory committee meeting on 17 December 2010 and revoked the operator's licence. This was on the grounds of non compliance with the hackney carriage conditions, (set out in paragraph 13 above), and for any other reasonable cause, namely the failure to comply with the telephone number conditions, (set out in paragraph 14 hereof).

16. It is accepted that the Appellant has used out of area hackney carriages to fulfil private hire bookings and whilst they have taken out an exclusive telephone number for the office at Newcastle (Fisher Street) which is, it is not exclusive for the Newcastle operation as the main business 2626666 number is also answered there. Indeed it is conceded that the new number is rarely answered and that fewer than 100

would know of its existence since it is not advertised anywhere on website in literature. That is against about 70,000 - 80,000 calls per week to the operation.

The Telephone numbers issue:

17. Mr Shanks confirmed that is the new number (8020 ending) rings it will be answered at the Newcastle office assuming they are not already busy on the 2626666 calls. At Wallsend, there are 8 to 19 operators and at Fisher Street capacity for 4 but maximum only 1 to 2 thus far. He agreed that logic dictates that most calls would thus be answered at Wallsend and thus a North Tyneside car would be despatched. A private hire car will be despatched depending upon which office answers the call and logs it. Collection and destination locations matter not. Mr Shanks was very clear that the number 2626666 is a brand mark to go with Blueline's whole group operation. There are no separate web sites or plans for them. Indeed, he was candid that he would not advertise the 8020 number for Newcastle in the hope that he won't need to if the condition is struck down by the Courts.

18. Mr Bryce for the Respondents sets out in his statement the reasons for the numbers to ensure that the public know that it is a Newcastle licensed operation operating under their regulatory powers and that the public may have confidence in that. Mr Rodgers submits that this is restraint of trade as in the Rossi and Stewart cases.19. For my part, I believe that it is a proper exercise of the power to impose conditions to require a company applying for a new licence to establish a separate operation under the current legislative framework. The Appellant via Mr Rodgers states that they did comply in any event. They set up the number and there is no requirement to use it. He submits that the strict interpretation should be given to the words used and the Appellant has so complied, assuming I am not with him on the

ultra vires point. I am not with him on either point. It is clear to me that Mr Shanks was party to a discussion before committee on the 22nd April 2010 when this issue was dealt with. He was represented and can have been under no illusion as to what the purpose and meaning was concerning the conditions. Coupling the wording about an independent operation and exclusive numbers was clearly intended to import that this should be one number for the Newcastle operation, answered at Fisher Street for Newcastle licensed cars. Mr Shanks submits that the council's purposes of public protection and identity are irrelevant. He states the public only want taxis from Blueline Group. They don't care where they emanate from. I disagree. People place faith in the licensing system of the local council and I am satisfied that this is a proper set of conditions with a legitimate aim. I am also satisfied that the conditions are not a restraint of trade as seen in the Rossi and Stewart cases as they strike at the heart of the licensing matters, that of the nature of operating drivers and vehicles licensed by Newcastle City Council .

The Hackney Carriage conditions

20. I am satisfied after hearing argument and evidence and after considering the Berwick; Latif and Fidler cases that, notwithstanding the Council's similar reasoning for imposing these conditions into a private hire operator's licence, it is taking their powers of regulation too far. That Parliament did not see fit to impose such a regime and has left unfilled the lacuna referred to in paragraph 7 hereof is clear. I have considered the cases of Rossi and Stewart and am satisfied that the Respondents conditions restricting the use of out of area hackneys to fulfil private hire pre-bookings, whilst perhaps laudable in intent, is not a power that they have to use to regulate licensed Private Hire Operators. In that regard I strike down those two

conditions as outside the powers of the Respondent. Mr McGuiness submitted that the important fact is that the Appellants are not just a licensed Operator and they do not wish to say that the vast majority of their Newcastle operation is essentially locally unregulated (out of area hackneys as private hire use vehicles) and thus Rossi and Stewart are distinguished. I am not attracted to that argument. The exercise of the power to impose conditions in section 55 of the 1976 Act was not a reasonable exercise of discretion.

21. Therefore, I am of the opinion that the appeal succeeds on the grounds that at least one part of the application by way of complaint has been upheld. However, having considered the matter of costs and in consultation with both Mr Rodgers and Mr McGuiness on behalf of their respective parties, I make no order as to costs, notwithstanding my finding for the Appellant on this matter.

Stephen Earl
District Judge (Magistrates' Courts)
Newcastle

10 January 2011