Neutral Citation Number: [2012] EWHC 1539 (Admin)

Case No: CO/4942/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN LEEDS

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 01/06/2012

Before :

MR JUSTICE FOSKETT

- -

Between:

THE CROWN
(on the application of IAN GORDON SHANKS, PAUL THOMAS SHANKS and JANE BELL trading as BLUE LINE TAXIS) **Claimant**

- and -

THE COUNCIL OF THE COUNTY OF NORTHUMBERLAND **Defendant**

- -
- -

Jonathan Rodger (instructed by **Nicholson & Morgan Solicitors**) for the **Claimant**
John McGuinness QC (instructed by **Elizabeth Sinnamon, Principal Solicitor, Legal Services, Northumberland County Council**) for the **Defendant**

Hearing dates: 22 and 23 May 2012

- -

Judgment

MR JUSTICE FOSKETT:

Introduction

1. This case raises an interesting point concerning the powers of a local authority to impose conditions on the grant of a hackney carriage licence under section 37 of the Town Police Clauses Act 1847 ('the 1847 Act'). It raises the question of the relationship between that statutory provision and section 47 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act').

2. The Council of the County of Northumberland ('Northumberland') says that the conditions it wishes to impose may be imposed pursuant to section 47. The Claimant submits that such conditions may not be imposed or, alternatively, if they are permissible the proposed conditions are irrational and/or unworkable.

3. I am told that the issue raised in this case is one that has arisen elsewhere in the country, but is as yet unresolved. Given that it is over 35 years since section 47

was enacted, that seems a little surprising. Nonetheless, that appears to be the position and it is fair to say that the general issue thrown up by this case will generally arise only where the hackney carriage licensing authority is responsible for a predominantly rural area.

4. Permission to bring this claim was given on the papers by Mr Timothy Dutton QC in his capacity as a deputy High Court judge. The challenged policy has not been implemented pending the outcome of this case.

The background

5. The three individual claimants trade in partnership as Blue Line Taxis ('the Claimant'). The firm carries on business from premises in Wallsend, Tyne & Wear, situated within the Borough of North Tyneside. The business has been operated since 1958 and utilises both hackney carriages (see paragraphs 27-33 below) and private hire vehicles (see paragraphs 34-38 below) as part of its own fleet of vehicles. It also has individual contracts with owners and drivers of vehicles of both types under which those owners and drivers agree to do private hire work at the firm's direction and under its control. The firm has in total approximately 600 vehicles within its ownership and/or under its direction and control.

6. The area over which it conducts its business spans the entire north east conurbation and outlying areas at the centre of which is Newcastle upon Tyne. Its business is conducted principally in the local authority areas of North Tyneside, Northumberland, South Tyneside and Gateshead.

7. The private hire vehicles operate under a Private Hire Operator's licence (under the Blue Line Taxis trading name) granted by North Tyneside Council pursuant to section 55 of the 1976 Act.

8. Its hackney carriages are licensed (with an appropriately licensed driver) as such by North Tyneside, various other local authorities (including the Newcastle upon Tyne City Council) and by 'Northumberland' under section 37 of the 1847 Act.

9. Prior to 1 April 2009 Northumberland comprised the six District and Borough Councils of Alnwick, Berwick upon Tweed, Blyth, Castle Morpeth, Tynedale and Wansbeck and Northumberland County Council. Following local government re-organisation, from that date the unitary Northumberland County Council ('Northumberland') came into being.

10. Northumberland (as a geographical area) is between the Tyne & Wear conurbations in the South and the Scottish Border in the North. It covers an area including Berwick upon Tweed, Wooler, Alnwick, Amble, Rothbury, Morpeth, Ponteland, Ashington, Bedlington, Blyth, Cramlington, Corbridge and Hexham. The County Council area has one of the smallest populations in the country (310,000 according to the 2001 Census), but one of the largest geographical areas covering more than 5000 square kilometres. Unlike the Tyne and Wear conurbation to the south, the County does not have large concentrations of

leisure and entertainment activities. Large parts of Northumberland are rural in nature.

11. Following the re-organisation 'Northumberland' assumed responsibility for the licensing functions relating to hackney carriage and private hire under the two Acts referred to above. As a direct consequence of re-organisation, Northumberland has six hackney carriage licensing zones based upon the former District and Borough Council boundaries whereas private hire licensing is carried out across the whole administrative area of Northumberland.

12. In his witness statement prepared for these proceedings, Mr Philip Soderquest, the Public Safety Unit Manager within 'Northumberland's' Public Protection Service, sets out the following information about the overall licensing position within its area as at 1 April 2009. He said that on the basis of information compiled on 17 November 2008, Northumberland became responsible for approximately 1073 hackney carriage proprietor's licences, 1201 hackney carriage drivers licences, 439 private hire vehicle licences, 788 private hire driver's licences and 70 private hire operator's licences, which can be broken down as follows:

	Hackney Carriage Proprietor	Hackney Carriage Drivers	Private Hire Vehicles	Private Hire Drivers	Private Hire Operators
Alnwick	10	40	50	30	15
Berwick Upon Tweed	700	727	100	347	10
Blyth	42	53	112	53	9
Castle Morpeth	130	147	71	123	15
Tynedale	161	153	56	74	48
Wansbeck	30	101	50	161	15
TOTALS	1073	1201	439	788	112

13. This represented, he said, a ratio of one licensed hackney carriage vehicle per 289/head of population.

14. He gave some more up-to-date figures which showed that as at 21 December 2011, based upon the number of actual licences currently granted, the ratio was one licensed hackney carriage vehicle per 350/head of population based upon a population of 310,00. He contrasted this ratio with the ratio for Newcastle City Council of 1:359 (based upon a population of 280,000 and 780 hackney carriages) and for Gateshead of 1:748 (based upon a population of 193,000 and 258 hackney carriages).

15. The conclusion from these figures is that the ratio of licensed hackney carriage vehicle per head of population for the predominantly rural area of Northumberland is a little higher than the ratio for Newcastle City Council and

considerably higher than the ratio for Gateshead Council, both of which are self-evidently more urbanised local authority areas.

16. I will return to this, but it gives a clue as to what lies behind the policy that is sought to be challenged in these proceedings.

The challenged policy

17. Every hackney carriage licence is granted annually on the basis of a declaration by the applicant. The challenged policy concerns conditions that Northumberland resolved to impose on certain of the hackney carriage licences granted.

18. On 2 March 2011 Northumberland's Licensing and Regulatory Committee decided to amend its Hackney Carriage and Private Hire Licensing Policy by adopting the following recommendation made by Northumberland's Corporate Director, Health and Public Protection:

> "... in circumstances where the applicant for a Hackney Carriage Proprietors licence is or is associated with a Private Hire Operator other than licensed by Northumberland County Council or declares as part of the intended use declaration, that the vehicle may or is to be used for the purposes of fulfilling pre-booked hiring's on behalf of a Private Hire Operator not licensed by Northumberland County Council that:
>
> 1) Subject to all other relevant application criteria being met that the licence is granted subject to the following condition:
>
> - The holder of the hackney carriage proprietor's licence shall ensure that an accurate and contemporaneous record is made and maintained either by himself or the driver of the vehicle, of all uses of the vehicle arising from plying for hire as a hackney carriage and when used to fulfil pre-booked hirings other than through a contract for hire with a Private Hire Operator licensed by Northumberland County Council.
>
> - Details of all journeys, so as to include the criteria set out below, shall be legibly and clearly recorded in a stitch or heat/glue bound book so as to provide a continuous record without breaks between rows, of all uses in horizontal rows by date and time:
>
> - Date
>
> - Time of first "pick up"
>
> - First "pick up" point by location/name/address including house number and post code as appropriate

- Final "drop off" point by location/name/address including house number and post code as appropriate

- Nature of hiring – whether (i) as a hackney carriage plying for hire within the County of Northumberland, or (ii) when used to fulfil pre-booked hirings other than through a contract for hire with a Private Hire Operator licensed by Northumberland County Council

- Where applicable, the name of the Private Hire Operator not licensed by Northumberland County Council through which the pre-booked hiring has been fulfilled

- Each book shall legibly and clearly display the details of the vehicle it relates to including the make, model, vehicle registration number and hackney carriage licence number.

- The record of journeys shall be available for inspection at any time by an authorised officer of Northumberland County Council when the vehicle is being used for the purposes of plying for hire or used to fulfil pre-booked hiring's.

- The record of journeys shall be available for inspection at any time by a Northumbria Police or Community Support Officer AND an officer of any local authority who through the course of their normal duties are authorised to inspect the licensed vehicle.

- Each book, when full, shall be forwarded to the Public Protection Service, Northumberland County Council, Morpeth, Northumberland NE61AP.

In circumstances where the holder of a hackney carriage proprietor's licence wishes to maintain a record of use in any other format than set out above, prior approval must be obtained from Northumberland County Council.

2) That the Hackney Carriage and Private Hire Licensing Policy be amended so as to require that the conditions stated above are to be attached to all hackney carriage proprietor's licences upon grant or renewal, where the applicant is or is associated with a Private Hire Operator other than licensed by Northumberland County Council or the applicant declares as part of the intended use declaration, that the vehicle is to be

> used for the purposes of fulfilling pre-booked hirings other than through a contract for hire with a Private Hire Operator licensed by Northumberland County Council
>
> 3) That the Request for Information – "Intended usage of a hackney carriage - Local Government (Miscellaneous Provisions) Act 1976, section 57" which is part of the standard application procedure be revised as follows:
>
> - A specific question/declaration that the vehicle is or is not, as part of the intended use, to be used for the purposes of fulfilling pre-booked hirings other than through a contract for hire with a Private Hire Operator licensed by Northumberland County Council.
>
> - To include an additional question requiring the applicant to provide details of where the vehicle is to be usually kept when not in use.
>
> 4) In circumstances where the application is made by a person who does not live, or intend to keep or maintain the vehicle for which a licence is sought, in a local authority which has a border with Northumberland County Council that the application be refused unless the applicant is able to demonstrate that there are exceptional circumstances which would make it appropriate to grant the licence."

19. The new application form for a licence consequent upon the adoption of this policy asked whether the applicant intended the vehicle to be used –

> (1) exclusively or predominantly to ply for hire within the relevant hackney carriage licensing zone, and/or
>
> (2) exclusively or predominantly for private hire remotely from that zone, and/or
>
> (3) in some other manner to carry fare paying passengers.

20. Each form contained a declaration of truth. If the applicant answered 'no' to the question 1 and/or 'yes' to questions 2 and/or 3, the form stated there was a presumption of refusal of the application unless the applicant satisfied the Council that "it may grant … a hackney carriage proprietor's licence without undermining the purpose of the legislation".

21. Where the applicant's declared intended use of the vehicle did not give rise to the presumption of refusal the next issue was whether the applicant fell into one of the following three categories:

> (i) a person who was a Private Hire Operator licensed by an authority other than the Council; or

(ii) a person who was associated with a Private Hire Operator licensed by an authority other than the Council; or

(iii) was someone who had declared as part of the intended use declaration on the form that the vehicle was to, or might, be used to fulfil pre-booked hirings on behalf of a Private Hire Operator not licensed by the Council

22. If the applicant came within any of those categories then, subject to all other relevant application criteria being met, such an applicant would be granted a section 37 licence subject to a condition on the licence in the terms set out in sub-paragraph (1) of the policy set out in paragraph 18 above.

23. It is this policy that affects the Claimant, as a Private Hire Operator not licensed by 'Northumberland', in relation to the use for private hire of its hackney carriage vehicles/drivers licensed by 'Northumberland'. It fell within category (i) above. It affects any other hackney carriage licensee licensed by 'Northumberland' who wishes to use a hackney carriage for private hire in the form of a pre-booked hiring on behalf of a Private Hire Operator not licensed by 'Northumberland'. In a nutshell it is submitted by the Claimant that this constitutes an interference with what is submitted to be the well-established principle that it is lawful for a hackney carriage to be used for private hire anywhere, which use is an unlicensed and unregulated activity.

24. Prior to 2 March 2011 the Claimant made applications to the 'Northumberland' for the grant of 95 hackney carriage licences pursuant to section 37 of the 1847 Act. It sought to attach the conditions that were set out in the foregoing policy. By that date it had received approximately 285 applications for such licences.

25. Mr Soderquest explains the background to the policy in some detail in his witness statement (see paragraphs 56-57 below), but in essence the concern of Northumberland is that it has a good number of hackney carriages which it has licensed that rarely, if ever, ply for hire within its area and spend most, if not all, of their time engaged in private hire work outside its area acting for private hire operators that it ('Northumberland') does not license and over which it has no control. It means also that the testing and inspection of the hackney carriages it has licensed is rendered more difficult. This local control is intended for the protection and the safety of the travelling public.

26. Before returning to deal with these arguments in more detail, it is helpful to record the essential difference between a hackney carriage and a private hire vehicle. It is a distinction that has been highlighted in recent authorities and I propose essentially to summarise. The two most pertinent authorities are *Fidler v Stockton-on-Tees Borough Council* [2010] EWCA 2430 (Admin) and *Newcastle City Council v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369 (Admin), each of which emerged from issues that have arisen in this geographical area.

The 'hackney carriage' and the licensing regime

27. Whilst the characteristics of a 'hackney carriage' have been reflected upon judicially on a number of occasions and it would be easy simply to draw attention to what has been said previously, I should be disappointed not to be able to record in one judgment during my judicial career the terms of an Act passed 165 years before the judgment is formulated that still has a relevance to contemporary everyday life.

28. Section 38 of the 1847 Act is as follows:

> "Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the pre-scribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage:
>
> Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act."

29. Mr Jonathan Rodger, who appears for the Claimants, says that the "defining characteristic of a hackney carriage is that it may be used to stand or ply for immediate hire: it may wait on a rank for a walk up customer or it may be hailed in the street, in each case to take the customer on a journey starting there and then." That appears to be an entirely accurate description.

30. In the *Fidler* case, in which he also appeared, he accepted (see paragraph 50) that upon a true construction of section 45 of the 1847 Act, a hackney carriage is not permitted to stand or ply for hire outside the area of the local authority. A hackney carriage may, of course, complete a journey outside that area which commenced within it, but may not commence a journey in such an area having stood there or plied for hire within it.

31. Pursuant to section 37 a local authority may (in other words, has a discretion to) grant to the proprietor of a hackney carriage a licence to use the vehicle to ply for hire within its local area and in doing so it may, pursuant to section 47 of the 1976 Act, attach to the grant of a hackney carriage proprietor's licence such conditions as it considers "reasonably necessary". Section 46 of the Act permits a local authority to grant to a person a licence to drive a hackney carriage, but it appears that there is no power to attach conditions to the grant of a hackney carriage driver's licence: see *Wathan v Neath Port Talbot County Borough Council* [2002] EWHC 1634 (Admin).

32. Mr John McGuinness QC, who appears for 'Northumberland', is also justified in saying that an application for the grant of a licence under section 37 of the 1847 Act is an application for a hackney carriage "to ply for hire within" the area of the licensing authority and that it is self-evidently not (and cannot be) an application for the hackney carriage to undertake private hire work through a private hire operator, whether licensed by the same authority or by another one. I will return to the relevance of this submission later.

33. I will turn briefly to the licensing provisions relating to 'private hire' vehicles – in other words, vehicles that are not licensed as hackney carriages.

The licensing of 'private hire vehicles'

34. As Munby LJ, in the *Fidler* case (see paragraph 26 above), observed:

> "Private hire vehicles were first regulated, outside London, by the Local Government (Miscellaneous Provisions) Act 1976 and, within London, by the Private Hire Vehicles (London) Act 1998."

35. He dealt with the relevant provisions of the 1976 Act as follows:

> "16. Section 48 of the 1976 Act provides for the licensing by local authorities of "private hire vehicles", section 51 for the licensing of drivers of private hire vehicles and section 55 for the licensing of persons to operate private hire vehicles ("operate", for this purpose, being defined in section 80(1) as meaning "in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle"). It is well-established that all three licences must be issued by the same local authority: section 80(2) as explained in *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 and *Shanks v North Tyneside Borough Council* [2001] EWHC 533 (Admin), [2001] All ER (D) 344 (June).
>
> 17. A "private hire vehicle" is defined for the purposes of the 1976 Act as follows (section 80(1)):
>
> > "private hire vehicle" means a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for hire with the services of a driver for the purpose of carrying passengers".
>
> The words "or a London Cab" were inserted by section 139(2) and Schedule 7, paragraph 17, of the Transport Act 1985. Section 80(1) provides that "hackney carriage" has the same meaning as in the 1847 Act and, by words also inserted by the 1985 Act, that "London cab" means a vehicle which is a hackney carriage within the meaning of the 1869 Act."

36. Section 48 enables a local authority to grant to the proprietor of a vehicle a licence to use the vehicle as a private hire vehicle, section 51 enables the grant to a person a licence to drive a private hire vehicle and section 55 enables the grant to a person a licence to operate private hire vehicles and in each case may attach such conditions to the relevant licence "as it considers reasonably necessary".

37. As Munby LJ noted, "all three licences must be issued by the same local authority".

38. The important statutory provision for the purposes of the present case is section 47 of the 1976 Act.

Section 47 of the 1976 Act

39. Section 47 reads as follows:

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

40. This provision contains the well-used formula in the Act that any conditions imposed should be such as the licensing authority considers "reasonably necessary". Any proprietor or driver of a hackney carriage who is aggrieved "by any conditions" can appeal to the Magistrates' Court. There is a further right of appeal to the Crown Court. (The statutory route for any such further appeal varies according to the nature of the initial appeal to the Magistrates' Court. Mr Rodger kindly produced a Note for me to indicate these various routes. Mr McGuinness agrees that this note is accurate. Whilst it is not of direct concern to the case before me, it may be helpful for the fruits of Mr Rodger's industry to be made more widely available. I have, accordingly, recorded the contents of his Note in an Annex to this judgment and express my gratitude to him for its production).

41. Mr McGuinness contends that if the conditions sought to be imposed in the present situation are not *ultra vires*, then the appropriate appeal route is not an application for judicial review, but by way of an appeal to the Magistrates' Court pursuant to section 47(3). I agree. However, the challenge to the proposed conditions is a root and branch challenge to the *vires* (the power) to attach a condition (or conditions) that have the alleged effect of interfering with

an otherwise unlicensed and unregulated activity. I do not think in those circumstances that an application for judicial review is inappropriate

The essential arguments

42. Mr Rodger's essential submission is based upon the twin propositions that the licensing regimes for hackney carriages and private hire vehicles are separate and that the use of a hackney carriage for private hire is an unlicensed activity. Accordingly, he submits that the effect of the policy adopted by 'Northumberland' is unlawfully to confine the use for private hire of a hackney carriage for which it grants a licence to someone also licensed by Northumberland to operate private hire vehicles under section 55 of the 1976 Act. This is, he contends, an unlawful a restraint of trade and is contrary to a liberty expressly provided by statute and, accordingly, the policy is *ultra vires*: see *Rossi v Edinburgh Corporation* [1904] AC 21, 26-31, *Powell v May* [1946] KB 330, 335, and *Gentel v Rapps* [1902] 1 KB 160, 163-166.

43. For the proposition that the licensing regimes for hackney carriages and private hire vehicles are separate, he relies upon Munby LJ's analysis in *Fidler* at paragraphs 55 to 61 and 65:

> "55. Mr Rodger, for his part, submits that the Deputy District Judge was entirely correct in deciding the preliminary issue as she did. He relies in particular upon *Britain*, *Gladen* and *Berwick*, all of which, he submits, were correctly decided. He submits that unless what I can conveniently refer to as the 'hackney carriage exemption' – that is, the qualifying reference in the definition of a private hire vehicle in section 80(1) of the 1976 Act to "a … vehicle … other than a hackney carriage … or a London cab" – is read back into the references to "a private hire vehicle" in sections 46(1)(d) and 46(1)(e) of the 1976 Act, it will not be lawful to "operate … as a private hire vehicle" a vehicle which is licensed as a hackney carriage, even in the area in which it is so licensed, unless it is also licensed under the 1976 Act. And the latter, he says, is impossible, not least in the light of the definition of a private hire vehicle in section 80(1) of the 1976 Act and given the requirement in section 48(1)(a)(ii) of the 1976 Act that:
>
> "a district council shall not grant … a licence [under section 48] unless they are satisfied … that the vehicle is … not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage".
>
> On the contrary, he says, the lawfulness of the use of a hackney carriage for private hire (at least in the area in which it is licensed as a hackney carriage) is assumed in section 67(1) of the 1976 Act, which provides that:
>
> "No hackney carriage shall be used in the district under a contract or purported contract for private hire except at a rate of

fares or charges not greater than that fixed by the byelaws or tables mentioned in section 66 of this Act …"

Section 67(2) makes contravention of this provision a criminal offence.

56. Put more generally, Mr Rodger submits that a hackney carriage is always a hackney carriage, no matter what it is doing, or where, and that its use, for whatever purpose, can never make it a private hire vehicle in the statutory sense. There are, he says, entirely separate and distinct regimes for the licensing of vehicles as hackney carriages and as private hire vehicles and the regime which regulates private hire vehicles has no application to a vehicle registered as a hackney carriage. The purpose of the 1976 Act (as later, in relation to London, of the 1998 Act) was, he submits, to impose a scheme of licensing on otherwise unlicensed vehicles and their drivers; it was not to impose further regulation on already-regulated hackney carriages. To "operate" within the meaning of the 1976 Act, including for the purposes of sections 46(1)(d) and 46(1)(e), is, he says, as the definition of "operate" in section 80(1) makes clear, an activity that can be carried out only in relation to a private hire vehicle as defined by section 80(1) – and that definition explicitly excludes a hackney carriage; it is not an activity carried out, or capable of being carried out, in relation to a hackney carriage, however or wherever it is being used. The provision of a hackney carriage for hire together with the services of a driver pursuant to an advance booking is not, he submits, a licensable activity. It always has been, and continues to be, he asserts, an activity unregulated under any statute. In short, Mr Rodger prays in aid what in Button is described (page xvi) as "the inherent right of the hackney carriage proprietor to undertake pre-booked hirings anywhere in England or Wales."

57. I agree with Mr Rodger and essentially for all the reasons he has given.

58. Central to the dispute in this case, as it seems to me, are two questions of statutory construction. The first relates to the meaning of the words "hackney carriage" where they appear in the definition of "private hire vehicle" in section 80(1) of the 1976 Act. This is the issue determined by the Divisional Court in *Britain v ABC Cabs (Camberley) Ltd* [1981] RTR 395. In agreement with the decision in that case, I would hold that "hackney carriage" in section 80(1) means a hackney carriage wherever it may be licensed as such. So what I have referred to as the 'hackney carriage exemption' is not confined to hackney carriages licensed as such by the local authority which is seeking to enforce within its own area the provisions of the 1976 Act. I respectfully agree with the reasoning in *Britain* of both Webster J and, more particularly,

of Ormrod LJ. Their reasoning is compelling. The decision has stood for thirty years without challenge. In my judgment it is correct and we should follow it.

59. The second question relates to whether what I have called the 'hackney carriage exemption' is to be read back into the references to a "private hire vehicle" in sections 46(1)(d) and 46(1)(e) of the 1976 Act. This is the issue determined by the Divisional Court in *Brentwood Borough Council v Gladen* [2004] EWHC 2500 (Admin), [2005] RTR 152. I agree with Collins J's decision and with his reasoning. In my judgment the words "private hire vehicle" in sections 46(1)(d) and 46(1)(e) have to be read as governed by the definition of "private hire vehicle" in section 80(1) and they are, accordingly, subject to the 'hackney carriage exemption'. This is a conclusion, moreover, which receives powerful support from the arguments which Mr Rodger has put forward (summarised in paragraph [55] above), in particular, the arguments based upon sections 48(1)(a)(ii) and 67(1).

60. I accept that in *Gladen* the court was not concerned, as we are, with a vehicle which had been licensed as a hackney carriage by another local authority. But that, in my judgment, does not take Ms Smith where she would have us go, for the 'foreign hackney carriage' point is determined against her by *Britain.*

61. Put shortly, the correct analysis, in my judgment, is this: first, and for the reasons given in *Gladen*, one has to read into the references to "private hire vehicle" in sections 46(1)(d) and 46(1)(e) the definition of "private hire vehicle" in section 80(1), including what I have called the 'hackney carriage exemption'; second, and for the reasons given in *Britain*, the words "hackney carriage" where they appear in section 80(1) are not confined to a vehicle licensed as a hackney carriage by the local authority which is seeking to enforce within its own area the provisions of the 1976 Act; they extend to any vehicle registered as a hackney carriage anywhere. And the combination of these two matters leads inexorably, as a matter of both logic and law, to the conclusion for which Mr Rodger contends.

…

65. The point arises in this way. It will be recalled that following the amendment of the 1976 Act by the 1985 Act, the 'hackney carriage exemption' in the definition of "private hire vehicle" in section 80(1) of the 1976 Act was extended to include a reference to "London cab". So a private hire vehicle is now defined as "a … vehicle … other than a hackney carriage … or a London cab", the latter, as we have seen, being

> defined as a vehicle which is a hackney carriage within the meaning of the 1869 Act. Mr Rodger's point is very simple. He submits that a "London cab" is necessarily a vehicle licensed before 2000 by the Commissioner of the Metropolitan Police or since then by Transport for London; in other words a vehicle which is not and cannot be licensed by a local authority licensing vehicles under the 1976 Act. So in relation to such an authority, whether it be Berwick-upon-Tweed Borough Council or Stockton-on-Tees Borough Council or, indeed, any other local authority outside Greater London, a "London cab" is necessarily a hackney carriage licensed by another authority, now Transport for London. It follows therefore, he says, that the 'hackney carriage exemption' in the definition of a private hire vehicle in section 80(1) is not confined to a vehicle licensed as a hackney carriage by the local authority seeking to enforce within its own area the provisions of the 1976 Act. For if a vehicle licensed by Transport for London as a hackney carriage within the meaning of the 1869 Act (in other words what is called a London cab for the purposes of the 1976 Act) can be used in Stockton-on-Tees for private hire purposes without being registered by Stockton-on-Tees Borough Council as a private hire vehicle – and that is the effect of the definition of private hire vehicle in section 80(1) – then by parity of reasoning the same must apply in relation to a vehicle registered, for example by Berwick-upon-Tweed Borough Council, as a hackney carriage within the meaning of the 1847 Act."

44. Mr McGuinness did not challenge the correctness of this analysis, but submitted that *Fidler* was concerned with whether it was a criminal offence under section 46(1)(e) of the 1976 Act for a person with a section 55 operator's licence issued by one area to operate a hackney carriage licensed in another area to undertake a pre-booked hiring." It did not deal with the question of the proper approach of a licensing authority to applications for hackney carriage licences under section 37 as previously determined in *R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council* (see paragraph 26 above).

45. The *Berwick* case was not doubted in *Fidler* and indeed Mr Rodger accepts that it was "not wrongly decided". However, he characterises the case as a "blunt and unsophisticated instrument" for the purposes of resolving the issues in the present case. He submits that the question not asked in *Berwick* was "what activity is the licensing authority entitled to regulate and control?" He submits that had it been asked the answer would (or should) have been "plying for hire under section 37 of the 1847 Act and not the use of a hackney carriage for pre-booked private hire work."

46. I should turn to the *Berwick* case, not merely for what it decides, but also for the role it has played in the background to the present case. Mr Rodger, instructed by his present solicitors, made written representations on behalf of Blue Line

Taxis as an interested party in those proceedings. Mr McGuinness represented Newcastle City Council.

47. The background to the case is set out in the following paragraphs towards the beginning of the judgment of Mr Christopher Symons QC, sitting as a Deputy High Court Judge:

> "3. Newcastle upon Tyne has a population within the city of some 276,000 people. The wider conurbation of Tyne and Wear has a total population of over 1 million people. Newcastle City Council (Newcastle) licences hackney carriage proprietors and drivers and private hire vehicles, private hire operators and private hire drivers. It has licensed some 780 hackney carriage proprietors and some 1196 drivers. Those numbers are separate from its licensing of private hire drivers. It also limits the number of hackney carriage licences it issues, as it is entitled to do under section 16 of the Transport Act 1985 because it is satisfied that there is no significant unmet demand for the services of hackney carriages within the city.
>
> 4. Berwick-upon-Tweed Borough Council (Berwick) also issues hackney carriage licences to proprietors and drivers. Although the population of Berwick-upon-Tweed is only some 26,000 people the number of hackney carriage proprietors licensed by Berwick, as at August 2008, was 672. This number is to be compared with only 46 licensed in April 2006 and 148 licensed as at April 2007. Of the 616 proprietors licensed as at July 2008 some 247 have their registered home address in Newcastle upon Tyne, 196 in North Tyneside, 24 in Darlington and 21 in Gateshead. Newcastle, North Tyneside and Gateshead are approximately 55 miles distant from Berwick upon Tweed and Darlington is approximately 90 miles distant. There is now about 1 hackney carriage licensed by Berwick for every 42 residents of Berwick. Mr. Wilson of Berwick informed the Court that 74 of the 672 licensed hackney carriages were likely to be primarily used within the Borough. This evidence was based either on the fact that the proprietors lived within the borough or because they were otherwise known to Mr. Wilson. Mr. Wilson accepted that the majority of vehicles never stand or ply for hire in Berwick despite being licensed to do so.
>
> 5. The reason for this substantial number of licensed proprietors in Berwick-upon-Tweed is because Berwick take the view that it is not open to them to refuse to issue licences to hackney carriage proprietors unless either the vehicle or the proprietor are unfit. Thus the fact that a proprietor may live remotely from Berwick and has no intention of plying for hire in Berwick is not considered to be a valid reason for rejecting the application.

> 6. This case comes before this Court on the application of Newcastle which is troubled by the influx of hackney carriages licensed in Berwick which are being used by private hire operators in Newcastle upon Tyne to fulfil their pre-booked hire contracts. Newcastle, not being the licensing authority, has no enforcement powers over these vehicles and in addition these vehicles are not subject to the same conditions as those licensed by Newcastle. Whether the conditions imposed by Berwick are better or worse they are different.
>
> 7. One of the reasons why Berwick have received numerous applications for licences from outside their area is undoubtedly the fact that the cost of the licence in Berwick-upon-Tweed is less than in many other areas including Newcastle upon Tyne. There may be other reasons as well relating to the conditions and bye laws imposed relating to the vehicles themselves. There is a danger, as was mooted in front of me, of Berwick becoming a national issuer of hackney carriage licences. Newcastle, by their application to this Court, sought a declaration that it was unlawful for Berwick to grant a hackney carriage licence to a proprietor where it was not satisfied that the vehicle, if licensed, would ply for hire in the area of Berwick together with certain other relief. However it seems to me that the issue before the Court is whether or not Berwick are right in their submission that they have no discretion, save as to fitness, but instead are obliged to keep granting licences for hackney carriages regardless of the intentions of, and geographic location of, the proprietors of those vehicles. The answer to this issue depends on the proper interpretation of section 37 of the Town Police Clauses Act 1847."

48. The problem from the perspective of Newcastle, therefore, was as identified in paragraph 6 of the Deputy Judge's judgment. The Claimant in the present case supported the position taken by Berwick. At that stage the Claimant had about 70 hackney carriages licensed by Berwick and about half of their Berwick licensed drivers lived in Newcastle.

49. The Deputy Judge's interpretation of section 37 of the 1847 Act is relevant both to the issues before me and to the background to the case as a whole. He said this:

> "22. In my judgment the major purpose behind the 1847 Act, and indeed the 1976 Act, is the safety of the public by which I include both the travelling public as passengers and other road users. Thus the scheme of the legislation is directed towards having safe vehicles, fit and proper drivers and appropriate conditions of hire. To ensure this safety a form of enforcement is provided for with a system of penalties for non-compliance. Registers of proprietors and drivers are kept together with offences committed which are available for

> public inspection. Byelaws and conditions apply locally to the licensed hackney carriages and it was apparent from the evidence before me that different councils will impose different conditions and have different byelaws no doubt prompted by legitimate differences of opinion but also dependent on the area concerned. It may be, for example, that an authority covering a large conurbation will have different concerns, and require different conditions, to one covering a more rural area.
>
> 23. If hackney carriages are working remote from their licensing authority a number of, at the least potentially, undesirable consequences follow. The licensing authority will not easily keep their licensed fleet under observation. It will be carrying out its enforcement powers from a distance. The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in its area. Further, unlike its own licensed vehicles, the hackney carriage from remote areas will not be subject to the same conditions and byelaws as the local vehicles. It is no surprise that the legislation provides for testing and testing centres to be within the licensing authority's area.
>
> 24. The fact that Berwick now has a large, but remote, fleet of hackney carriages has had the effect of persuading Berwick that they need to have testing stations over a wide area well removed from Berwick-on-Tweed. Mr. Holland, who appeared before me for Berwick, told me that due to the large number of licences being issued Berwick has a financial surplus which they use in part to pay to have a vehicle on the road in the Tyneside area to keep an eye on their hackney carriages.
>
> 25. It seems to me that it must be desirable for an authority issuing licences to hackney carriage to be able to restrict the issuing of those licences to proprietors and drivers which are intending to ply for hire in that authority's area. Similarly it must be desirable to be able to refuse to issue licences to proprietors and drivers who do not intend to ply for hire, to a material extent, in the area of the licence grantor."

50. Notwithstanding the view expressed by the Deputy Judge in paragraph 25 of his judgment, the argument of Berwick was that it is not open to it as a licensing authority to refuse a hackney carriage licence to anyone who was a fit and proper person and assuming that the vehicle concerned was fit. On the basis that it was lawful for a hackney carriage to fulfil a pre-booked hire made and to be undertaken outside the area where it was licensed then it was not open to Berwick to refuse the licence and thereby stop that lawful activity. The argument advanced involved the contention the two licensing regimes (relating respectively to hackney carriages and to private hire vehicles) were separate and distinct, as Mr Rodger contends in this case. What Newcastle were expecting

Berwick to do when considering a grant of a hackney carriage licence was, it was contended, to have regard to "an extraneous and irrelevant matter namely a different licensing regime to further the aims of that regime".

51. Having referred to the discretion conferred by section 37 in much the same manner as I refer to it in paragraph 60 below and to the fact that the licensing authority can, if it wishes, restrict the number of licences it issues based on demand (section 16 of the Transport Act 1985), the Deputy Judge said this:

> "The local authority can issue it its own conditions and make its own byelaws. It can make provision for its own inspections of the hackney carriages. Thus the licensing regime is local in character. In addition it can be seen that most of the provisions have public safety much in mind. The local imposition of conditions and byelaws, local testing and enforcement, together with the other statutory provisions I have referred to all seem to me to point clearly to the conclusion that it was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used."

52. He concluded that "in exercising its discretion under section 37 … [Berwick] should take into account where the hackney carriage will be used." He observed that if "the hackney carriages are used in areas remote from Berwick-upon-Tweed enforcement will be very difficult and impracticable".

53. He concluded in this way:

> "It seems to me that the question to be asked is … whether in exercising their discretion a licensing authority can use its discretion to ensure that it maintains control over those vehicles it has licensed. In my judgment a local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of hackney carriages which operate remotely from the area where they are licensed.
>
> Approaching the matter in that way there is in fact no need to have regard to the private hire regime in the exercise of the discretion. But in my judgment the two regimes relating to hackney carriages and private hire vehicles are to be considered as closely related and complementary and it would not be unlawful to have regard to both regimes when issuing licences in either one. The fact that hackney carriages are expressly excluded from the private hire scheme does not seem to me to alter the position."

54. He said that he could see no reason why information about the intended use of a hackney carriage could not be sought in the future so that the licensing authority had relevant material upon which to base its decision.

55. The declarations the Deputy Judge made at the conclusion of the case were as follows:

> (1) In the proper exercise of its statutory discretion under section 37 of the Town Police Clauses Act 1847 a licensing authority is obliged to have regard (a) to whether the applicant intends that the hackney carriage if licensed will be used to ply for hire within the area of that authority, and (b) whether the applicant intends that the hackney carriage will be used (either entirely or predominantly) for private hire remotely from the area of that authority.
>
> (2) A licensing authority may in the proper exercise of its discretion under the said section 37 refuse to grant a licence in respect of a hackney carriage that is not intended to be used to ply for hire within its area and/or is intended to be used (either entirely or predominantly) for private hire remotely from the area of that authority.
>
> (3) In determining whether to grant a licence under the said section 37 a licensing authority may require an applicant to submit information pursuant to section 57 Local Government (Miscellaneous Provisions) Act 1976 in order to ascertain the intended usage of the vehicle.

56. I will return to the implications of this judgment shortly, but I should simply record briefly what happened thereafter and why it has led to the present situation. The judgment was handed down in November 2008, only some 14 weeks before the local government re-organisation (see paragraph 9 above) was due to take place. In his witness statement Mr Soderquest described the steps taken to take forward the "steer" given in that case bearing in mind that 'Northumberland' was taking over responsibility for hackney carriage licensing. The outcome of the *Fidler* case was awaited and Mr Soderquest records the following:

> "In light of this decision, it was my opinion following discussions with Legal and Licensing Officers that the council, in exercising its discretion to grant licences, were obliged to take steps to ensure it did so in a manner which afforded local control and protected the safety of the travelling public. It was therefore both reasonable and necessary to try and establish the actual nature and use of hackney carriages once licensed by the council. In doing so, the council would be able to verify whether hackney carriages were being used predominantly or entirely within their zone, which would allow routine inspection by the council to take place. Where the use was not predominantly or entirely within the relevant hackney carriage

> licensing zone, the council would not be able to exercise routine control and enforcement and thereby put the safety of the travelling public at risk."

57. He then indicates the further internal steps taken, the investigations pursued (including the results of what he termed "joint cross border enforcement activity" with other licensing authorities) into the use of hackney carriages for private hire for out of town operators and the consultation engaged in as part of the process of taking this forward. Two particular paragraphs of his statement should be noted:

> "45. From the information that has been supplied to the council to date, it is evident that the safety of the public has been put at risk due to the presence of vehicle defects and the lack of appropriate insurance.
>
> 46. Furthermore, it is clear that without the ability to verify the actual nature and use of the vehicle following the grant of a hackney carriage proprietors licence, the local authority that granted the licence are unable to exercise effective local control if licensed hackney carriages are being operated predominantly or entirely in a different local authority area to that which granted the licence."

58. It was against this background that the challenged policy was adopted.

Discussion

Ultra vires

59. The circumstances in which the 1976 Act was passed some 36 years ago may well be different from the circumstances that exist now. The same, of course, must be said of the 1847 Act. Sometimes it may be necessary in seeking to give effect to the meaning of an Act to have recourse to the maxim that a statute "continues to speak" in order to put the words of a statute passed in a different generation a contemporary relevance and impact. On the other hand, a statute can be passed with the deliberate Parliamentary intention that it is to be applied in a range of circumstances not necessarily foreseen or contemplated at the time it is passed. The words "without prejudice to the generality" seem to me to convey that approach.

60. Taken at face value, provided that a condition sought to be imposed is "reasonably necessary" then it may be imposed subject to the additional proviso that it must be put in place to further the objectives of the Act or, more accurately, the 1847 Act combined with the 1976 Act.

61. What is arguably different about the overall conditions in which these two statutory provisions operate now compared with 36 years ago is that there is a greater focus on where responsibility lies if something goes wrong. Rightly or wrongly, but nonetheless almost inevitably, whenever an incident (particularly a tragic accident) occurs, some person or some institution has to be found

responsible. One only has to imagine an accident involving the death of a young child in a street in Newcastle caused by the proven unroadworthy condition of a hackney carriage licensed as such by 'Northumberland', but which (a) never (or hardly ever) operates as a hackney carriage in its area and (b) is working for a private hire operator licensed by some other authority, to see how easily the chain of responsibility for not ensuring its roadworthy condition could be taken back to the licensing authority of the hackney carriage, namely, Northumberland.

62. I choose that as a rather dramatic example simply to illustrate the seriousness with which any responsible licensing authority in present day conditions must address its role.

63. A licensing authority plainly cannot monitor every one of the hackney carriages it licences on a minute by minute basis every day of the week. It has to be reliant, to some extent, on the vigilance of other enforcement agencies, including the police. However, it does get one chance each year to decide whether or not to take upon itself the responsibility for licensing a particular hackney carriage and/or its operator or driver. As Mr Symons QC said in the *Berwick* case, it must be desirable for a hackney carriage licensing authority to be able to restrict the issue of licences to proprietors and drivers who are to ply for hire in its area and to refuse to licence those who do not intend materially to ply for hire in its area. If by means of simple observation of a vehicle (if sufficient resources and facilities existed to carry it out) over a year showed that it rarely, if ever, plied for hire in the licensing authority's area, there would be an ample basis for refusing to grant the licence the following year in accordance with the discretion conferred by section 37. It would be an evidence-based decision. What is being proposed here is a self-reporting arrangement imposed by virtue of the grant of a licence in year 1 the evidence from which can be used by the licensing authority to consider whether to grant a licence and, if so, upon what terms in year 2. Mr McGuinness posed the question "what's wrong with that?" I believe the answer of anyone who considers the potential safety issues that may be in play would be "nothing". As Mr McGuinness rightly says, there is nothing in the proposed arrangement that prevents a hackney carriage to which a licence is issued from engaging <u>now</u> (which, for this purpose, is year 1) in pre-booked private hire work for out of town private hire operators. To that extent, there is no infringement of the absolute right of a hackney carriage to engage in that kind of work and thus there is no "restraint of trade" as Mr Rodger has sought to contend. It is, of course, possible that the evidence generated by the proposed arrangement will lead to the refusal of a licence at some stage in the future. But that will be an individually based decision, given all the evidence available, taken the following year. For my part, I cannot see what principled objection there can be to any such arrangement.

64. In my judgment, therefore, to the extent that the very wide words of section 47 have to be construed to meet modern day conditions, then they should be so construed. However, I am not at all convinced that it involves that kind of approach: the words of the statute <u>are</u> wide and emphatically so. That being so, that is the end of the matter subject, of course, to any condition imposed being "reasonably necessary". At all events, I do not, for my part, see any basis upon

which it could properly be argued that the proposed arrangements for self monitoring are unlawful. In those circumstances, I do not consider that the proposed arrangement is *ultra vires* the statutory powers.

Irrationality/unworkability

65. That being so, the next issue is whether the conditions sought to be imposed are, as is contended, irrational and/or unworkable. I can take this issue quite shortly.

66. The first point taken in the Detailed Grounds was as follows:

> "The policy which Northumberland has adopted will result in the insertion of conditions into certain hackney carriage proprietor's licences the observance of which most often will be outwith the direct control of the licensee. Thus the record-keeping condition imposes an absolute obligation upon a hackney carriage's proprietor which in practice can be fulfilled only by its driver. Breach of the condition may render the licensee liable to criminal prosecution without a defence of due diligence."

67. In the first instance it would be surprising if the alleged "absolute obligation" on the part of a proprietor could reasonably be treated as such. The obligation is to "ensure" that the driver keeps the specified record. A proprietor cannot watch over a driver every minute of the day. This obligation would probably have to be treated as a "use best endeavours" requirement. Obviously, if the driver fails to do so it may have consequences for the proprietor. But I do not see that there is anything irrational about the proposed obligation. However, as with all these matters, there is an avenue of appeal to the Magistrates Court which will be well-placed to assess the reasonableness of the requirement.

68. Mr McGuinness says that there is no criminal offence that a proprietor commits if there is non-compliance with a condition attached under section 47of the 1976 Act. That seems to be an end to the assertion in the final sentence of the first point referred to above.

69. The second point taken in the Detailed Grounds is as follows:

> "The record-keeping condition cannot reasonably be complied with by the licensee (or his driver agent) for the following reasons:
>
> (1) a hackney carriage driver, who on the one hand must be in control of his vehicle at all times and may and often does pick up and drop off his fare in moving and busy traffic, cannot on the other hand contemporaneously make the detailed and extensive manuscript record required in order to comply with the condition,
>
> (2) a hackney carriage driver on any given occasion may neither know nor have any reasonable means of ascertaining

> the location or name or address of his pick up and/or drop off points,
>
> (3) a hackney carriage driver on any given occasion may neither know nor have any reasonable means of knowing the house number and postcode of his pick up and/or drop off points, which information the record-keeping condition requires to be recorded on all occasions,
>
> (4) any given pick up or drop off point may not have a house number or postcode."

70. I do not doubt that the record-keeping obligation will be an unwelcome intrusion into a driver's daily work routine. However, there is an important overall public safety issue and a balance has to be struck. I cannot see why, in principle, it should be said that these requirements (or requirements like them) are irrational or unworkable. Again, the Magistrates' Court can adjudicate on these matters.

71. What is probably right to observe is that the proposed conditions should not be set in stone. Any policy, together with its refinements, has to be kept under review and if certain of the conditions prove to be unworkable, doubtless they will be changed.

72. I do not see to what extent the rationality challenge adds to the legal challenge arising from the interpretation of the two principal Acts. As I have said, there is recourse to the Magistrates' Court if it is felt that a condition is not reasonably necessary, which must embrace any suggestion of unworkability. At all events, I am not persuaded that the issues concerning rationality have been made out.

Conclusion

73. For the reasons I have given, the challenges to the policy adopted fail and the application must be dismissed.

74. I should like to express my appreciation to Mr Rodger and to Mr McGuinness for some extremely good written and oral arguments.

ANNEX

NOTE ON APPEALS

Appeal against refusal to grant a hackney carriage vehicle licence under section 37 of the 1847 Act

1. The appeal is to the Crown Court by way of complaint.

2. The power to grant or refuse a hackney carriage vehicle licence is contained in section 37 of the 1847 Act.

3. By section 171(4) of the Public Health Act 1875, the provisions of the 1847 Act with regard to hackney carriages are, for the purposes of regulating such matters in urban districts, incorporated into the 1875 Act.

4. By the Local Government Act 1972, Schedule 14, paragraph 25, a local authority may resolve that any of the enactments referred to in paragraph 24 of the Schedule apply throughout their area. Those enactments include section 171(4) of the 1875 Act.

5. By section 15 of the Transport Act 1985, the provisions of the Town Police Clauses Act 1847 with respect to hackney carriages (as incorporated in the Public Health Act 1875) were applied in all areas where they did not already apply, apart from such areas to which the Metropolitan Public Carriage Act 1869 applied (i.e. Greater London).

6. By section 2(1) of the Public Health Acts Amendment Act 1907, the 1907 Act must be construed as one with the Public Health Acts, which by section 2(3) of the 1907 Act are defined so as to include the 1875 Act.

7. By section 7(1) of the 1907 Act, any person aggrieved by any determination of a local authority under the 1907 Act (which necessarily includes the 1875 Act and those parts of the 1847 Act dealing with hackney carriages) may appeal to the Crown Court.

8. Thus, after 1985, everywhere outside Greater London came to be subject to those provisions of the 1847 Act as deal with hackney carriages, section 171(4) of the 1875 Act and section 7(1) of the 1907 Act.

9. I know of no authority in which this convoluted statutory basis of appeal has been comprehensively set out and I am indebted to Mr David Wilson (who is a consultant to the Claimant) for it.

Appeal against the attaching of conditions to a hackney carriage vehicle licence

10. The appeal is to the Magistrates' Court by way of complaint.

11. Section 47(1) of the 1976 Act confers a power to attach conditions to a hackney carriage vehicle licence granted under section 37 of the 1847 Act.

12. Section 47(3) of the 1976 Act provides that any person aggrieved by any conditions attached to such a licence may appeal to a Magistrates' Court.

13. Section 77(1) of the 1976 Act incorporates sections 300 to 302 of the Public Health Act 1936 into the 1976 Act. Those provisions prescribe a procedure for appeals. Section 301 of the 1936 Act provides for a further appeal to the Crown Court.

Appeal against suspension of or revocation of or refusal to renew a hackney carriage vehicle licence

14. The appeal is to the Magistrates' Court by way of complaint.

15. Section 60(1) of the 1976 Act confers a power to suspend or revoke or refuse to renew a hackney carriage vehicle licence.

16. Section 60(3) provides that any proprietor aggrieved by a decision of a district council under section 60 may appeal to a Magistrates' Court.

17. Again, by section 77(1) of the 1976 Act, the appeals procedure set out in section 300 to 302 of the 1936 Act applies, with a further appeal to the Crown Court under section 301.