

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/11/2011

Before:

HIS HONOUR JUDGE BIDDER QC
Sitting as a Deputy High Court Judge

Between:

Cherwell District Council
- and -
NAVEED ANWAR

Appellant

Respondent

Tom Horder (instructed by **Cherwell District Council**) for the **Appellant**
Tim Boswell (instructed by **Johnson and Gaunt, Solicitors**) for the **Respondent**

Hearing date: 2 November 2011

Judgment

His Honour Judge Bidder QC:

1. This is an appeal by way of case stated against the decision of the North Oxfordshire Magistrate's Court sitting at Banbury on 22 January 2010, allowing an appeal by the respondent against the decision of Cherwell District Council's licensing subcommittee to refuse the Respondent's application to renew his hackney carriage and private hire vehicle drivers licenses.
2. The Respondent was licensed as a Hackney and private hire driver in 2003. On 7 October 2008 he assaulted his wife and on 18 March 2009, he pleaded guilty to an assault by beating contrary to section 39 of the Criminal Justice Act 1988. He was sentenced to a community order with a 15 month supervision requirement and ordered to pay £300 in costs.
3. In June 2009 applied to renew both his hackney and private hire driver licenses and on 14 September 2009 he met with the Appellant's licensing inspectors and informed them of the nature of his conviction.
4. On 29 September 2009 the Appellant wrote to the Respondent informing him of their decision to refuse his application. The ground for refusal was expressed to be that the

appellant was not satisfied that the Respondent was a fit and proper person to hold such a license at that time.

5. He requested a review and on 29 October 2009 the licensing subcommittee met to review the decision. They heard representations made by and on behalf of the respondent but upheld the decision. Their reasons were, again, that he was not, in their view, a fit and proper person to hold a licence. They stated that they had had regard to his criminal conviction for assault, the council's guidelines and the overriding need to ensure public safety and protection.
6. On 2 December 2009 the respondent, by way of complaint, appealed the decision to the North Oxfordshire Magistrates Court and on 22 January 2010 the respondent's appeal was allowed by the court. The Appellant now appeals by way of case stated against that decision of the court.
7. The guidance of the council at the material time, so far as was relevant, is as follows:

"Convictions and driving licence endorsements

A person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for at least three years, according to the circumstances, before an application is entertained. Some discretion will be applied if the offence is isolated and there are mitigating circumstances. However, the overriding consideration will be the protection of the public.

Violence

As hackney carriage and PHV drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions involving violence. At least three years free of such convictions would normally need to be shown before an application is entertained."

8. It should be noted that the guidelines themselves are not prescriptive and allowed for discretion and that they are specifically stated to be guidelines.
9. Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 makes provision for the licensing of private hire vehicles and section 59 of the Act makes very similar provisions in relation to hackney carriage licences. Both sections provide that the Council shall not grant a licence to a driver unless it is satisfied that he is "a fit and proper person to hold a driver's license"
10. Section 61 provides for the suspension, revocation and renewal of drivers' licences:

"61 Suspension and revocation of drivers' licenses

(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district Council may suspend or revoke or (one application therefore under section 46 of the act of 1847 or section 51 of this act, as the case may be) refused to renew

the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds-

(a) that he has since the grant of the licence --

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or

(b) any other reasonable cause."

11. An important issue for the magistrates was whether or not the respondent was a "fit and proper person". Indeed, it would be right to say that it was the central issue.
12. It should also be noted, as appears from the judgement of Wilkie J. in *Darlington Borough Council –v-Malcolm Kaye [2004] EWHC 2836 (Admin)* at page 12 in my bundle of authorities, on consideration by the judge of two earlier authorities, that although the magistrates hearing an appeal against a refusal to renew under section 61 (3) do so by way of rehearing, the magistrates must have regard to the policy of the local authority and should not likely reverse the local authority's decision, or, put it another way, the magistrates must accept the policy and apply it as if they were standing in the shoes of the council considering the application.
13. That is not inconsistent with the decision of the Court of Appeal in *Sagnata Investments –v- Norwich Corporation [1971] 2 All ER 1441* which held that an appeals court sessions from a decision of the local authority not to grant a permit under the Betting, Gaming and Lotteries Act 1963 was a complete re-hearing where the court had to consider all the evidence. *Darlington* simply makes it clear that "all the evidence" importantly includes the local authority's policies. Indeed, the Court of Appeal in *Sagnata* stressed that quarter Sessions must pay proper regard to the local authority's opinion and should not be uninfluenced by it.
14. At this stage of my judgement I should deal, briefly, with the issue of whether this licence constitutes a "possession" within the meaning of that term in Article 1 of the First Protocol of the European Convention of Human Rights. Counsel before me were agreed that it did not. I agree with their concession. While the contention that the licences in this case were "possessions" might appear to be supported by the Court of Appeal decision in *Crompton –v-Department of Transport North-Western Area [2003] EWCA Civ 64*, that the licence in that case was a "possession" was assumed by the court without argument.
15. Before Counsel's agreement I had concluded that the later decision of the Court of Appeal in *Waltham Forest NHS Primary Care Trust and Secretary of State for Health –v-Malik [2007] EWCA Civ 265* does appear to be indistinguishable from this case. Here, as in *Malik*, there is no evidence that the refusal to renew the licence would affect any "goodwill" of Mr Anwar's business, nor that it would diminish any of the other assets of the business. The licence itself is not marketable, nor does it bear any premium. It is not bought at a market value. *Crompton* is cited in *Malik* and the court

in *Malik* appears to have regarded it as a decision made *per incuriam*. That is, I consider I am bound by *Malik*, and indeed that decision appears to me to be completely consistent with a not always easily interpretable line of European authorities.

16. I therefore conclude that the licences in this case do not comprise "possessions" within the meaning of article 1.
17. I turn to the case stated and the facts found by the justices additional to those I have already set out.
18. It is the case that the respondent did not disclose his conviction to the local authority immediately, although it was a condition he should do so, but rather he disclosed that at the time of his renewal application.
19. The court noted that this was a case of domestic violence. The assault had followed an argument with his wife about their children and there was evidence that the couple had reconciled with no further difficulties. The magistrates did not consider that the respondent posed any risk to the public in the light of the conviction and they also took into account the council's policy, the respondent's previous good character, the fact that there had been no complaint in relation to his standard of driving, the fact that there was no evidence he posed a risk to the public and the needs of his wife and children.
20. They correctly directed themselves at the council's policy gave some discretion, even where a driver was convicted of an offence of violence. However, looking at the policy and page 20 of the appellant's bundle it does appear that that discretion is specifically related to mitigating circumstances in relation to the offence.
21. Paragraph (h) of the case stated reads as follows:

"We accept that the council acted in good faith at all times and were entitled to reach the decision that they did. However, we are of the opinion that they exercised their discretion incorrectly and that we are entitled to take into account the needs of his family"
22. It seems to me, looking at the judgement overall, that it is obvious that the magistrates considered that the needs of the respondent's family were an important factor in persuading them to overturn the council's decision. I find myself unable to accede to the argument of the respondent's counsel that the word "and" should not be read as "because" in paragraph (h).
23. In the case stated, the questions for the opinion of the Court are:
 - (a) Whether in determining this appeal and in the light of the decision in Leeds City Council –v- Hussain, we were right to consider and take account of the need for Mr Anwar to provide for his family and the personal circumstances of his wife and children.

(b) Having found that the council were entitled to come to the decision that they did, had acted in good faith and had taken into account all relevant matters, was our decision one which no reasonable court could have reached.

24. In Leeds City Council-v-Hussain [2002] EWHC 1145 Admin, Silber J, considering a suspension of a private hire driver's licence under section 61, had to determine, as I have in this case, whether the personal circumstances of the driver which did not feed in to his fitness or propriety could properly be taken into account and said this:

"There is indeed no authority on this point, but as Lord Bingham explained in the passage in McCool that I have already quoted, the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose, therefore, is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers. In other words, the Council, when considering whether to suspend the licence or revoke it, is focusing on the impact of the drug licence holders vehicle and character on members of the public and in particular, but not exclusively, on the potential users of those vehicles.

This does not require any consideration of the personal circumstances, which are irrelevant, except perhaps in very rare cases to explain or excuse some conduct of the driver."

25. Silber J. in consequence, answered the 4th question posed in that case in the negative. It has been ingeniously argued by counsel for the Respondent, that it is possible that the future impact of the removal of a licence on a licence holder's family would serve as a deterrent to him and thus might be relevant to the primary issue of the safety of the public. If, however, the magistrates had followed that subtle line of argument, one would have expected them to have included that in their reasons and to link it with their conclusion that the applicant was not a danger to the public. They did not and I therefore conclude that they regarded the hardship to his wife and children as a completely separate factor to the issue of the safety of the public and, from their reference to it in (h) clearly regarded it as an important reason for differing from the council's decision. That is simply not in line with the Hussain case.
26. Thus I answer the first question posed for my decision in the negative.
27. Although it has been argued that that does not necessarily mean that I must answer the second question in the affirmative, it is really quite impossible for me to conclude that the magistrates did not place any significant weight on the hardship point. Indeed, looking at the decision fairly and as a whole, they plainly regarded the hardship to the wife and children as important enough to differ from the council. They took into account an irrelevant reason, which no reasonable court would have done. I cannot speculate on what their decision would have been absent the taking into account of the hardship issue – had they not taken that into account it is difficult to see that they

could, while having proper regard to the council's decision, have made the generous decision they did. In any event, I should not speculate and I am driven to the conclusion that I should answer the second question in the affirmative.

28. I have been asked to consider whether, even given those findings, I should remit, given the relatively short period of time before the elapsing of 3 years from the conviction, after which time there is a good prospect that Mr Anwar would be able successfully to apply for a new licence. It is said that there are likely to be delays in this remitted matter being heard, but, apart from making a plea for early hearing of this matter, I do not consider it is right for me to take into account unparticularised listing delays. Therefore I order that the decision of the magistrates is quashed and that the appeal is remitted to the magistrates to be reconsidered by a fresh bench.