Neutral Citation Number: [2012] EWHC 2599 (Admin)

Case No: CO/3872/2012

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

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

Date: 27/09/2012

Before:

MR JUSTICE HICKINBOTTOM

- -

Between:

BLUE LINE TAXIS (NEWCASTLE) LIMITED

Appellant

- and -

THE COUNCIL OF
THE CITY OF NEWCASTLE-UPON-TYNE

Respondent

- -
- -

Jonathan Rodger (instructed by **Nicholson & Morgan Solicitors**) for the **Appellant**
John McGuinness QC (instructed by **Melanie Bulman, Solicitor, Newcastle City Council**) for the **Respondent**

Hearing date: 30 July 2012

Judgment

MR JUSTICE HICKINBOTTOM:

Introduction

1. This is an appeal by way of case stated against the decision of 10 January 2012 of District Judge Earl, sitting in the Newcastle-upon-Tyne Magistrates Court, concerning the decision of the Regulatory Committee of the Council of the City of Newcastle-upon-Tyne ("the Council") to revoke the licence of the Appellant ("Blue Line Newcastle") to operate private hire vehicles. The District Judge overturned that decision on the basis that it was *ultra vires*, on grounds that are not relevant to this appeal. However, he found against the Appellant in respect of other grounds upon which it relied, which related to conditions the Council imposed on its private hire vehicle operator's licence in respect of the telephone number to be used for the operation. In this appeal, the Appellant challenges the District Judge's decision in relation to those grounds.

Legal Background

2. For the purposes of this appeal, there are two types of car available for hire to transport passengers: hackney carriages (or "taxis") and private hire vehicles (or "minicabs"). Whilst other differences were recently identified and considered by

Burton J in R (Eventech Ltd) v The Parking Adjudicator [2012] EWHC 1903 (Admin) (see, especially, at [12]), the differences between hackney carriages and other hire vehicles relevant to this appeal are that (i) a taxi may be hired by pre-booking or "plying for hire" (i.e. soliciting or waiting for passengers on the street without prior booking), whereas private hire vehicles can only be hired by a pre-booking; and (ii) private hire vehicles can only undertake work through a separately licensed operator, and a booking can only be made through that operator.

3. Hackney carriages in London were first regulated by Royal Proclamation in 1635, and then by the London Hackney Carriages Acts 1831-53 and the Metropolitan Public Carriage Act 1869. The 1869 Act and regulations made under that Act (notably the London Cab Order 1934) remain the principal taxi legislation in London. Under the Greater London Authority Act 1999, the functions of the Metropolitan Police and Secretary of State in relation to taxis were transferred to Transport for London where day-to-day licensing functions are now carried out by officers in the London Taxi and Private Hire Unit.

4. Outside London, taxis are regulated by the Town Police Clauses Act 1847 ("the 1847 Act") as supplemented by the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"). The 1847 Act provides for the licensing by local authorities of hackney carriages (section 37), and hackney carriage drivers (section 46). Only a licensed hackney carriage, driven by a licensed driver, is permitted to ply for hire. Sections 45 and 47 of the Act create a number of criminal offences to enforce that restriction.

5. Although they cannot ply for hire, other vehicles can be hired to transport passengers on a pre-booked basis. Private hire vehicles were not regulated until 1976, when, outside London, they became subject to the 1976 Act, albeit under a regime different from that applying to hackney carriages. Such vehicles remained unregulated in London until the Private Hire Vehicles (London) Act 1998, and were not fully regulated until 2004. The licensing authority in London is again Transport for London. This appeal concerns out-of-London private hire vehicle operations, and I need not consider London further, except to say that in a number of respects the London scheme is materially different from that out-of-London.

6. In respect of out-of-London, Part II of the 1976 Act provides for the licensing by local authorities of private hire vehicles (section 48), drivers of such vehicles (section 51) and the operation of such vehicles (section 55). 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 [1993] RTR 356 ("Dittah"), and Shanks v North Tyneside Borough Council [2001] EWHC 533 (Admin) ("Shanks")).

7. "Operate", for this purpose, means "in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle" (section 80(1)). Operators have been described as "the lynchpin of the current private hire vehicle licensing scheme" (Law Commission Consultation Paper No 203, "Reforming the Law of Taxi and Private Hire Services: A Consultation Paper" (May 2012) ("Law Commission Consultation Paper"), at paragraph 2.15).

8. The operation is geographically fixed in the operator's licensing area: that area must be where the operator's premises are located, bookings made and from which vehicles

are dispatched (Windsor and Maidenhead Royal Borough Council v Khan [1994] RTR 87, and Shanks). It is an offence for operators to operate outside that licensing area; nor can they subcontract work to operators outside that area (Dittah). It is therefore clear that Parliament has determined that the licensing regime for private hire vehicles is inherently local in nature – presumably on the basis that "devolved decision making in relation to the application of the legislation is beneficial in that local authorities are in the best position to determine what is needed most in their area and what the main problems and issues are" (Law Commission Consultation Paper, paragraph 2.8) – and it is a "central principle of this legislation" that "the authorities responsible for granting licences should have the ability to exercise full control over the operation of private hire vehicles within their area" (Shanks at [12], per Latham LJ).

9. However, although the operator must be based and "operate" exclusively in the relevant licensing authority's area, that does not prevent a pre-booked journey, in whole or part, being made outside that authority's area. So long as the relevant operator's licence, vehicle licence and driver's licence are all issued by the same local authority, then it is irrelevant that any particular journey undertaken by a private hire vehicle neither begins, nor ends, nor passes through the area for which that authority is responsible (Dittah, at page 363D-F); although it may be that, if an operation engages in journeys none or few of which pass through the geographical area of the licensing authority, then a licence may not be forthcoming from that authority (see the comments of Foskett J in respect of the analogous hackney carriage regime in R (Blue Line Taxis) v The Council of the County of Northumberland [2012] EWHC 1539 (Admin) ("Northumberland County Council") at [61] and following).

10. In respect of licensing the operators of private hire vehicles, section 55(3) of the 1976 Act provides:

> "A District Council [i.e. the licensing authority] may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary".

Section 47 of the 1976 Act gives a power, in similar terms, to the licensing authority in respect of a licence of a hackney carriage.

11. It is apparent from the wording of section 55(3) that, "Licensing authorities have considerable scope for setting vehicle conditions" (Law Commission Consultation Paper, at paragraph 4.48); and, in the context of the analogous section 47, it has recently been said that those words "are wide and emphatically so" (Northumberland County Council at [64], per Foskett J).

12. However, wide as a licensing authority's discretion to impose conditions might be, the discretion must be exercised against the background of the conferring legislation and to further the objectives of the 1976 Act (Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997 at page 1030). The patent intention of the Act is to impose a regulatory scheme which (i) is focused on operators and (ii) is inherently local in character, including enforcement by the relevant local licensing authority. The scheme imposes obligations upon operators in part because, no doubt, enforcement against a relatively few operators is easier than enforcement against relatively more drivers (see Law Commission Consultation Paper, paragraph 4.69). As part of that

enforcement obligation, it is for that authority to ensure that those operating private hire vehicle services from their area do so from their area, using only vehicles and drivers licensed by them; and to enable dissatisfied or concerned customers to complain about an operator to that authority, as the first and primary port-of-call.

13. Where an applicant has been refused an operator's licence under the private hire regime, or is aggrieved by any conditions attached to such a licence, he may appeal to the Magistrates Court (section 55(4)).

14. Finally, although breach is not a criminal offence, where an operator fails to comply with the conditions of its licence, the Council may revoke the licence (section 62(1)). Where an operator is aggrieved by the decision to revoke, there is a right of appeal to the Magistrates' Court (section 62(3))

The Factual Background

15. In 1958, a private hire business was established in the North East of England, using the style "Blue Line" and a distinctive telephone number (0191 262 6666, "the 6666 number"). The business is now carried on by the children of the founder, Ian Shanks, Paul Shanks and Jane Bell.

16. As I have indicated, a private hire business can only operate through an operator's licence granted by a local authority. Historically, Blue Line has traded through a partnership trading under the name of "Blue Line Taxis" with a private hire operator's licence granted pursuant to section 55(1) by North Tyneside Metropolitan Borough Council and its statutory predecessors. I shall call that original business "Blue Line North Tyneside". Under the statutory scheme, having a North Tyneside operator's licence, it can only operate from North Tyneside, and only use cars and drivers licensed by that same authority.

17. However, the business has historically provided such cars and drivers to fulfil journeys the majority of which start or end in the City of Newcastle, but which frequently start, end or pass through a number of other local authority licensing districts: Durham, Gateshead, Northumberland, South Tyneside and Sunderland. Many journeys do not pass through North Tyneside itself at all. As I have explained, there is nothing contrary to the statutory scheme in that.

18. Blue Line North Tyneside's principal office was, and is, in Wallsend, which is in the area of North Tyneside Council but very close to its border with the respondent Council, the City of Newcastle. The principal telephone number of the Wallsend office is the 6666 number. Cars are generally pre-booked on the telephone: the District Judge found that there was not only no facility to book journeys on the internet, but Blue Line had no plans to introduce such a facility (Judgment, paragraph 17). At Wallsend, at any one time, there are between 8 and 19 telephone operators, who take tens of thousands of calls per week.

19. However, the partnership was unable to meet demand, due to a shortage of licensed cars and drivers in North Tyneside. The partners therefore created a new corporate entity (Blue Line Newcastle) with a view to obtaining an operators' licence from Newcastle, which would give them access to private hire vehicles and drivers licensed by Newcastle Council.

20. In doing so, it was regarded as an essential part of this scheme that the new company, as well as the old partnership, was able to use the "Blue Line" brand and distinctive 6666 telephone number which was considered a core part of that brand: the partners in Blue Line North Tyneside (who became directors of Blue Line Newcastle) regarded the ability to use the same 6666 telephone number in the Newcastle part of the operation as a prerequisite for its commercial viability.

21. Therefore, whilst it was proposed to use a separate legal entity to obtain the Newcastle licence, it was intended to run Blue Line Newcastle and Blue Line North Tyneside effectively as a single business entity, in the sense that calls to the 6666 number would be answered in the Newcastle office, as well as in Wallsend office, according to availability of telephonists; and that the two offices would use a single coordinated booking computer system. However, it was intended that bookings taken on that number in North Tyneside would be serviced by North Tyneside licensed vehicles and drivers only; whilst bookings taken on that number in the new Newcastle office would be serviced by Newcastle licensed vehicles and drivers only. Blue Line acknowledged that they were not legally able to service bookings taken in North Tyneside by Newcastle licensed vehicles and/or drivers, or vice versa.

22. In February 2010, Blue Line Newcastle applied to the Council for a private operator's licence under section 55(1). It stated that it intended that its office would be in Walker, an area within the boundaries of the Council; but very close to the boundary with North Tyneside, and to the Wallsend office of Blue Line North Tyneside. Although it is not necessary for an application to indicate which telephone number(s) are to be used, the application stated that the Newcastle operation would utilise two telephone numbers, one of which would be the 6666 number.

23. On 30 March 2010, the Council raised concerns over aspects of the application, including those relating to the use of the same telephone number as the principal Blue Line North Tyneside number. It said it would refer the application to its Regulatory Committee. As Mr Rodger said (in his skeleton argument, at paragraph 14), there is no doubt at all that the Council objected to the proposed arrangements. That was clear from the outset; and certainly clear from the meeting of the Council's Regulatory Committee on 22 April 2010, at a meeting attended by Ian Shanks and Blue Line Newcastle's solicitor. Given that it was an essential part of the business plan to use the same 6666 telephone number as the Blue Line North Tyneside office – and the Council was intent on any Newcastle operation being a discrete business, in the sense of a business that at least used a different telephone number from the North Tyneside business – those issues were at the heart of the discussions that day, when the respective positions of both the Council and the Appellant were made clear. It was also apparent that those positions were each firmly held. At the end of the meeting, the Council's representatives indicated that they would consider the application further, before making a decision.

24. On 30 April 2010, the Council granted Blue Line Newcastle an operator's licence with a number of conditions. Reflecting the scheme of the 1976 Act I have described, condition 1 required the Appellant as operator to ensure that all vehicles and driver used as part of the operation had licences from the Council. In annex 1 to the licence, there were two specific conditions, as follows:

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

I shall refer to those two conditions as "the telephone conditions".

25. Blue Line knew that the Council objected to the method of working it proposed, and they concede that, upon receipt of the licence, they considered that the telephone conditions were intended to impede their proposed arrangements (Mr Rodger's skeleton argument, paragraph 14). However, although under section 55(4) of the 1976 Act and section 77(1) of the Public Health Act 1936, the Appellant had a statutory right to appeal to the Magistrates Court against the conditions, exercisable within 21 days of the imposition of the conditions, no appeal was lodged.

26. Blue Line Newcastle commenced business in November 2010, and it notified the Council that the telephone number referred to in the telephone conditions was to be 0191 209 0820 ("the 0820 number").

27. The Newcastle office opened. As always intended by the Appellant, it shared with Wallsend the same computer system for accepting and recording bookings received by telephone; and it used the 6666 number for its business. Again, as always intended by the Appellant, whilst live and used by no one other than the Newcastle office, the 0820 number was not advertised or otherwise made known to the public (e.g. it did not feature at all on the website): Mr Shanks said that he deliberately did not advertise that number, in the hope that a court would strike down the telephone conditions. The public were positively encouraged to use the 6666 number.

28. If dialled, the 0820 number would only connect to the Newcastle office. However, the 6666 number if dialled would be answered either by an operator in the Wallsend office, or by an operator in the Newcastle office, as may be available. The Newcastle office had capacity for up to 4 operators, but in the event a maximum working at any one time of one or two; and, given that there were up to about ten times the number of operators in Wallsend than in Newcastle, most calls would in fact have been answered at the former. If the 0820 number was dialled it might not be answered at all, because the operators at the Newcastle office were busy taking calls on the 6666 number. In the event, the estimated number of calls received by the whole business (whether the Newcastle or North Tyneside operation) was between 70,000 and 80,000 per week; but there were probably fewer than 100 people who were even aware of the 0820 number. Given the efforts to which the Appellants went to keep that number from the public, even that number may be high.

29. Whichever number a call came in on, and wherever answered, the operator would enter details of the booking on the shared computer system. As I have indicated, it was intended that a North Tyneside booking would be serviced by North Tyneside licensed vehicles and drivers – and vice versa in respect of Newcastle bookings – but, in the event, the Appellant concedes that there were instances, both before and after the Council revoked the operator's licence, where a booking came into one office but was serviced by a vehicle and driver licensed in the area of the other office. Mr

Rodger described these as "teething troubles", and said that changes to the computer system were such that it was impossible for that to happen now. The system was now such that a call which came into Newcastle on the 6666 number can only be serviced by a North Tyneside licensed vehicle and driver.

30. However, leaving aside those particular difficulties of which the Council were unaware, the Council considered that, by operating in the manner it was, the Appellant was not observing the telephone conditions. On 17 December 2010, the Regulatory Committee of the Council met to consider whether Blue Line Newcastle's licence should be revoked on that basis. Mr Shanks and Blue Line's solicitor again attended. Having heard them, pursuant to section 62(1) of the 1976 Act, the Committee revoked Blue Line Newcastle's operator's licence on the grounds, amongst others, that it had not complied with the telephone conditions attached to its operators' licence. That was confirmed in writing on 7 January 2011.

31. The Appellant appealed that revocation to the Magistrates' Court under section 62(3). On 10 January 2012, District Judge Earl refused the appeal on the grounds relating to the telephone conditions; and it is against that refusal that the Appellant now appeals, by way of case stated.

32. The three questions referred to this court by the Magistrates' Court identify the three findings of the District Judge now challenged. They are as follows:

> "(a) Whether the District Judge was right to hold that the grant of the licence pursuant to section 55 of the Local Government (Miscellaneous Provisions) Act 1976 subject to the Telephone Conditions… was within the [Council's] powers (i.e. was not *ultra vires*)? ('the vires question').
>
> (b) Whether the District Judge was right to hold that on a proper construction of the Telephone Conditions… the meaning of those conditions was that there should be one number for the Appellant's Newcastle operation under the style Blue Line Taxis (Newcastle) Limited? ('the construction question').
>
> (c) Whether the District Judge was right to hold that the Appellant was in breach of the telephone Conditions so imposed? ('the breach question')".

33. I shall deal with these questions in turn. Logically, the first is the construction question.

The Construction Question

34. Mr Rodger for the Claimant submitted that, in construing the telephone conditions, one can only have regard to the words the Council has used in the conditions themselves to express its intention. In support of that proposition, he relied upon the following extract from Alice in Wonderland:

> "March Hare: … Then you should say what you mean.

> Alice: I do; at least – at least I mean what I say – that's the same thing you know."

35. Much as Lewis Carroll is to be admired in other respects, a better authority for the proposition that intention can only be taken from words used, at least in the field of statutory interpretation and Parliamentary intention, is perhaps Lord Reid in Inland Revenue Commissioners v Hinchy [1969] AC 748 at page 767, and Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591 at page 613G.

36. Mr Rodger also relied upon the comments of Scott Baker LJ in Crawley Borough Council v Attenborough [2006] EWHC 1278 (Admin) where, in relation to a liquor on-licence, he said (at [6]-[7]):

> "7. … It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialised knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.
>
> 8. The terms of a licence and its conditions may of course be the subject of enforcement. Breach carries criminal sanctions. Everyone must know where they stand from the terms of the document. It must be apparent from reading the document what the licence and its conditions mean…".

37. On the words used by the Council in the telephone conditions, Mr Rodger submitted that the burden imposed upon the Appellant was restricted to an obligation;

    (i) to install a dedicated telephone line to its Newcastle office, with a unique number; and

    (ii) not to use that line for the purpose of making provision in the course of business for the invitation and acceptance of bookings for a private hire vehicle and driver by anyone other than Blue Line Newcastle.

    He submitted that the words used could not bear the interpretation that the Appellant was prohibited from using the 6666 number to invite or accept bookings for a private hire vehicle, or from using any telephone line or telephone number other than the line referred to in the telephone conditions whether or not that other number was also used by an operator licensed by another local authority.

38. On the other hand, Mr McGuinness QC for the Council submitted that, in so far as the words used were ambiguous, they had to be construed in full context and purposively. The intention of the Council was well-known to the Appellant, particularly from the discussions held at the 22 April 2010 meeting: as the Appellant well-knew, the Council objected to the proposed method of working, and in particular the proposal to use the same 6666 number for the businesses of Blue Line Newcastle and Blue Line North Tyneside. The purpose of the telephone conditions was to ensure that the operation of Blue Line Newcastle – for which the Council was responsible – was

maintained independently from the associated business of Blue Line North Tyneside (for which it was not responsible). That was to be ensured, so far as the Council as licensing authority was concerned, by requiring Blue Line Newcastle to use a separate telephone line, with a distinct telephone number, to the exclusion of other numbers including any number used by Blue Line North Tyneside. That purpose was made clear to the Appellant through Mr Shanks and the Appellant's solicitor at the 22 April 2010 meeting; and is reflected in the wording of the telephone conditions, which use the terms "*independent* operation", "*dedicated* telephone line", "*unique* telephone number" and "the telephone number used must be *exclusive* to this Operator's Licence" (emphasis added in each case).

39. In construing the telephone conditions, I have particularly taken into account the following.

40. First, the telephone conditions are included in a private hire operator's licence, not a statute. They should not be construed with the same exegesis that might be appropriate for wording that has been the subject of Parliamentary scrutiny and thereafter included in an Act of Parliament.

41. Second, the relevant statutory provisions are not penal – it is not a criminal offence to breach any conditions imposed upon a licensee. The sanctions are restricted to sanctions against the licence, including, most seriously, revocation. I, of course, accept that that is a very serious sanction for a licence holder.

42. Third, at least for the purposes of this appeal, I accept that, insofar as the wording of such conditions is unambiguous, then the unambiguous meaning of the conditions must be applied. If the wording is ambiguous, then, in construing the conditions, their full context must be considered.

43. Fourth, however construed, conditions that are so vague or unclear as to be effectively unenforceable, they are bad in law; and a licensing authority acts unlawfully if it purports to impose or enforce such conditions: that is the focus of Scott Baker LJ's comments in Attenborough (see, especially, [7]). Any conditions must be sufficiently clear to all those who are or might be involved with enforcement, primarily (of course) the licensee but, depending on the context, possibly also others such as competitors.

44. Fifth, in my view, it cannot be said that the wording of the conditions is unambiguous. Indeed, Mr Rodger in his skeleton argument (paragraph 21) refers to the "obvious" ambiguity in the first telephone condition, which identifies the purpose or intention of the conditions (to "maintain an independent operation in Newcastle"), which is met by a specified requirement ("install a dedicated telephone line to the Newcastle office with its own unique telephone number"). He submitted that that requirement, looked at in isolation, could be construed as requiring only the installation of a line with a new and unique number, even if that number were never used and even if it were supplemented by another number which might be the same as the number used by the Blue Line North Tyneside operation. Such a requirement would do nothing to effect the intention of requiring an "independent operation in Newcastle". However, he submitted that the requirement was clear and unambiguous: it was simply the express intention or purpose that was either ambiguous or incongruous.

45. Similarly, he construed the second telephone condition by looking at it discretely. He submitted that an operator's licence did not have a telephone number – indeed, a public vehicle hire operation could be conducted with the use of a telephone at all – but, in any event, condition 2 only required the dedicated telephone line referred to in condition 1 to be used exclusively for making provision for the invitation and acceptance of bookings for a private hire vehicle and driver licensed by Newcastle. It did not prohibit the use of a second number, which might be the same as that used by the Blue Line North Tyneside operation.

46. Hence, he submitted, the requirements of neither telephone condition prohibited the use of the same 6666 number as used by Blue Line North Tyneside.

47. That was certainly a closely argued submission; but I am unable to accept it.

48. The true construction of the two telephone conditions requires consideration of both of those conditions, looked at together and as a whole. The incongruity that Mr Rodger recognises between the intention and the requirement in the first condition only arises because he seeks to construe the requirement in a vacuum, ignoring the express intention which is contextually an integral part of that requirement. The result of his approach is to construe the requirement in a way that does not promote the express, or indeed any sensible, purpose. The construction urged by Mr Rodger renders both telephone conditions purposively empty and otiose. Indeed, he accepted that, if his construction were correct, then the telephone conditions would be *ultra vires* because, far from pursuing a legitimate aim of the statutory scheme, they would have no purpose and would consequently be legally perverse.

49. However, the conditions cannot be construed in that way, i.e. by taking a part and construing it as though it were standing alone. The conditions have to be construed as a whole; and that whole includes the express intention and, so far as each condition is concerned, the other condition. In my judgment, Mr Rodger's approach to the construction of the conditions is therefore flawed.

50. When the conditions are looked at as a whole, it is clear that the construction Mr Rodger advocates is not the only proper construction. Given that there is ambiguity, in the sense of more than one possible construction, in arriving at the true meaning, one can have regard to the context, including the meeting of 22 April 2010.

51. One factor – of, perhaps, several – that undermines Mr Rodger's reliance on the extract from Alice in Wonderland to which I have referred, is that the exchange he relies upon occurred at the first meeting of Alice and the March Hare, and very shortly into that. The meeting was at a tea party. Neither was legally represented. As a result, they had difficulties communicating on the same wavelength, although by the end of the tea party they appear to have been making slightly better progress. On the other hand, in this case, by the time the telephone conditions were imposed, the Council and the Appellant with their solicitors had been in communication about the proposed business plans of Blue Line (and the Council's firm opposition to the thrust of those plans) for some time, and had attended the important 22 April 2010 meeting.

52. At that meeting, there was no doubt as to what Blue Line wished and intended to do, i.e. to run both North Tyneside and Newcastle businesses using the same 6666 number. Indeed, as I have already indicated, the use of that number by both

businesses was essential to the financial viability of the new Newcastle office. The Council apparently made their concerns about that use of telephone numbers clear in its letter in response to the application dated 30 March 2010 (not in the documents before me, but see the District Judge's Judgment, paragraph 12); and certainly did so at the 22 April meeting at which (the District Judge found) the issue was specifically dealt with (Judgment, paragraph 19). Whereas the Appellant's application for a licence envisaged the Newcastle office having two telephone numbers (one being the same as that of the North Tyneside office), the Council made it clear that that was not acceptable to it as the local licensing authority. As Mr Rodger frankly accepted, as soon as the licence with the telephone conditions was received by Blue Line Newcastle, it was understood by them that the imposition of the conditions was intended to impede the Appellant's proposed business model, by restricting the number of telephone numbers to be used in the Newcastle office to one, that number being different from any number used in the North Tyneside office and, indeed, unique.

53. On the evidence before him, in the light of his findings as to what occurred at the 22 April meeting and the wording of the telephone conditions (with their intention being expressly set out), the District Judge was fully entitled to find, as he did, that the Appellant and its solicitor "can have been under no illusion as to what the purpose and meaning was concerning the conditions" (Judgment, paragraph 19; substantively repeated in the case stated at paragraph 16). That is a clear finding that, upon receipt of the licence, the Appellant was well aware of the requirements the telephone conditions imposed upon it. The judge continued: "Coupling the wording about an independent operation and exclusive numbers was clearly intended to import that there should be one number for Newcastle operation, answered at [the Newcastle office] for Newcastle licensed cars." As Mr McGuinness pointed out, the wording of the conditions used the terms "*independent* operation", " a *dedicated* telephone line", "*unique* telephone number" and "the telephone number used must be *exclusive* to this Operator's Licence" (emphasis added). The use of the singular when describing the telephone line/number is also important.

54. In his judgment, the District Judge may have used some shorthand in the extract from his judgment I have quoted above; but the judgment must, of course, be seen in the context of the issues that were before him, and the parties understanding of those issues. Again with acknowledgment to Mr Rodger's ingenuity in attempting to persuade me otherwise, the judge clearly meant that Blue Line Newcastle were required to use a single unique telephone number, to the exclusion of other numbers including numbers used by Blue Line North Tyneside. That number could have been the 6666 number – but it could not have been that number if the North Tyneside operation continued to use it.

55. The Appellant does not suggest that it was under any illusion as to what the conditions required it to do: it immediately understood that the conditions were intended to prevent or impede the proposed arrangement using the 6666 number as one of two numbers for the Newcastle operation. The construction pressed by Mr Rodger now of course would do nothing to impede their arrangements or method of working.

56. The construction I favour, of course, takes into account and is consistent with the express purpose or intention set out in the conditions, of "maintaining an independent

operation in Newcastle". Mr Rodger submitted that the limited requirement did not ensure that the two operations were completely independent; but the conditions only required the independence to be marked in the form of discrete telephone numbers. That requirement was, in the Council's view, both necessary and sufficient to "maintain an independent operation in Newcastle".

57. The District Judge therefore found that the Appellant understood the requirements of the telephone conditions. Mr Rodger submitted that others were also required to understand them, e.g. competitors. However, (i) like the District Judge (who considered the words used clear: paragraph 19 of his judgment), I am satisfied that the conditions, even without the advantage of presence at the 22 April meeting, would be clear enough to a competitor or other interested member of the public, who read the conditions fairly and as a whole; and (ii) there is no evidence that any competitor or other member of the public has had any difficulty in construing these conditions. I also take comfort from the fact that, if anyone was in any possible doubt as to the meaning of the conditions, the Council as enforcing authority could, and no doubt would, clarify them on request.

58. In my judgment, the answer to question (b) in the case stated (the construction question) is "Yes": the District Judge was right to hold that, on the proper construction of the telephone conditions, the Blue Line Newcastle operation was required to have a single, unique telephone number.

The Vires Question

59. Given that that was the meaning of the telephone conditions, did the Council exceed its powers by imposing them?

60. In granting an operator's licence, section 55(3) of the 1976 Act gives a licensing authority power to impose "such conditions as they may reasonably consider necessary". As I have indicated, those are words importing a wide discretion, but the width of the discretion is not unlimited: the power can only be exercised for a legitimate aim, given the purpose of the legislation and the licensing regime it provides. Although section 55(3) of the 1976 Act prohibits the licensing authority from imposing a condition unless it considers such condition "reasonably necessary", Mr Rodger concentrated his submissions on the legitimate aim pursued by the conditions – no doubt because, if the conditions pursued such an aim, it would be a straightforward task for the Council to show that they considered the conditions reasonably necessary.

61. Mr Rodger submitted that the telephone conditions restricted the means of communication by which the Appellant might do business and the parts of its brand it might employ in doing so. That was an improper interference with the Appellant's commercial freedom and its ability to expand taking its brand with it; without any furtherance of the purposes of the statute or its regulatory regime. He submitted that the conditions do not relate to the subject matter of the licence, or to the activity which Part II of the 1976 Act is concerned.

62. However, again I do not agree. In coming to that conclusion, I have particularly taken into account the following.

63. The statutory power under which the conditions were imposed by the Council is in very wide terms (see paragraph 11 above).

64. The Act promotes various public objectives (including public safety and welfare, intelligence gathering and the combating of crime, and ensuring there is a regulatory scheme that is effective and effectively enforceable (see Law Commission Consultation Paper, paragraphs 4.68 and following), through a local authority licensing regulatory scheme. The hallmark of that scheme is localism: as well as the local licensing of every operation, vehicle and driver, the public vehicle hiring operation must be in fact be locally based, and the obligations imposed on operators must be capable of enforcement locally by the relevant local licensing authority.

65. The telephone conditions sought to maintain a distinction between the Blue Line Newcastle and the Blue Line North Tyneside operations, namely they required the former to have a different telephone number from the latter. The crucial question therefore arises: Did that promote any legitimate aim of the Act and the regulatory scheme under it?

66. The District Judge discounted the assertion of Mr Ian Shanks, a Director of the Appellant, that, when they rang the 6666 number and asked for a minicab, the public did not care from which Blue Line operator the vehicle they hired emanated, because, the judge said: "People place faith in the licensing system of the local council…" (Judgment, paragraph 19; reiterated in the case stated, paragraph 17). Mr Rodger criticised that finding. However, (i) the evidence adduced before the District Judge on behalf of the Appellant as to the lack of public concern about the identity of the licensing authority at the point of booking a minicab appears to me to be less than compelling, and (ii) although the statutory scheme sets minimum standards for any public hire vehicle operation, that does not mean that regulations are identical in each area: as I have indicated above, the rationale for a local licensing scheme is that local authorities are in the best position to determine what is required in their particular area (see paragraph 8 above). In my judgment, the District Judge was entitled to make the finding that he did.

67. In any event, leaving that aside, it seems to me that the telephone conditions pursued other legitimate aims. In particular, whether or not the public place faith in the local licensing system, more importantly *Parliament* does: Parliament has placed its faith in a system in which local licensing is at its core. It is a notable essential characteristic of the regulatory scheme imposed by statute that, in respect of any journey, a single authority must license the operator, vehicle and driver. In those circumstances, it must be a legitimate aim of a licensing authority to have better local vigilance, control and enforcement over an operator; and conditions that are imposed to obtain such control pursue that legitimate aim.

68. In my judgment, the telephone conditions pursue the aim of better control over Blue Line Newcastle's operation, as a local operation, in at least two ways.

69. First, the conditions reduce the risk of the regulatory scheme being breached by a telephone call answered in the Blue Line Newcastle office being responded to by a North Tyneside licensed vehicle and/or driver. There is a disagreement between the parties as to whether there was undisputed evidence before the District Judge that, after the "teething" period (when the Appellant accepted that North Tyneside

vehicle/drivers responded to a Newcastle call, and vice versa, both before and after the licence was revoked), Blue Line's computer system ensured that all calls received by one office were responded to by an appropriately licensed vehicle and driver; but, however great or small it might be, there must inevitably be a greater *risk* of an inappropriate response if the same telephone number is used. The actual inappropriate responses during the early period highlight that.

70. Second, in the event that a member of the public who hires a vehicle wishes to complain about a hiring, or make a claim against the operator, it is, at least, more difficult for him to identify the relevant operator if the telephone number used relates to two different operators in two different licensing areas. Mr Rodger submitted that the relevant operator's details can be found in the minicab itself; and, if that person or the Council as enforcing authority contacted the 6666 number, then the two Blue Line entities would cooperate and respond to an appropriate enquiry by identifying the correct operator of the two. However, even if it is possible to find out the correct operator in respect of any particular incident, by having distinct telephone numbers, enforcement is, as I say, at least easier. Ease of enforcement is clearly a legitimate purpose.

71. Therefore, I consider that the telephone conditions did pursue a legitimate purpose.

72. Nor am I persuaded that such conditions are in unlawful restraint of the Appellant's trade. In support of the contention that they are, Mr Rodger relied upon Rossi v Edinburgh Corporation [1904] AC 21, which concerned the regulation of the sale of ice cream in Edinburgh, under the Edinburgh Corporation Act 1900. He submitted that the House of Lords were evidently surprised at being concerned with a licence regulating the sale of ice cream; but, with respect, they were substantially more surprised by the use of those statutory provisions for the sabbatarian purpose of preventing the pursuer's shop opening on a Sunday at all for the transaction for any business, by the attachment of a condition to that effect to a licence for the sale of ice cream, breach of which would be a criminal offence. Although the Court of Session had upheld such a condition, it was not surprising that the House of Lords held it to be *ultra vires* the corporation's powers under the 1900 Act

73. The facts here are very different. In the light of the local nature of the licensing system for private hire operations, the judge's finding that it was in line with the statutory purpose for an authority to require an applicant for a new licence to establish a separate operation from an operation licensed by another authority was, in my judgment, a perfectly proper one. The imposition of the telephone conditions was to that end. That was a legitimate purpose. The imposition of those conditions did not materially interfere with the Appellant's trade – they were still able to operate in both North Tyneside and Newcastle, where they could use their trade name and indeed the 6666 number in the Newcastle operation so long as they did not use that same number in North Tyneside (or vice versa) – and, in any event, any restriction on their trade was for a legitimate purpose and was justified as being proportionate to that aim.

74. In the course of debate, Mr Rodger conceded that, if the telephone conditions were in pursuit of a legitimate purpose, then the restraint of trade point must fail. For the reasons I have given, in my view, that concession was properly made.

75. Consequently, the answer to question (a) in the case stated (the vires question) is, in my judgment, "Yes": the District Judge was right to hold that the grant of the licence subject to the telephone conditions was within the Council's powers.

The Breach Question

76. On the true construction of the telephone conditions, did the Appellant breach them?

77. This can be dealt with shortly, the answer to question (c) of the case stated being, clearly, "Yes": the Appellant was in breach. Indeed, Mr Rodger conceded that, if the District Judge's construction of the telephone conditions was correct – as I have found it was – then the Appellant was in breach of them. That is clearly so.

Conclusion

78. For those reasons, I would answer each of the questions in the case stated affirmatively. In my judgment, the District Judge did not err in law, and on that basis, I dismiss this appeal.

Observations

79. Whilst the Appellant's grounds of appeal were narrow and discrete, underlying the Appellant's discontent with the telephone conditions imposed on its Newcastle licence is a belief that local control over public hire vehicles is now inappropriate, given the nature of current hiring, which is frequently across more than one local authority area. That is encapsulated in paragraphs 2 and 3 of the Addendum to Mr Rodger's Skeleton Argument:

> "2. … The problem for Newcastle is that it seeks to subject to very narrow geographical control an activity which is wholly unsuited to such regulation, namely transport by taxi [sic] into, across, through and beyond a geographical area.
>
> 3. The very activity which Newcastle seeks to regulate on a geographical basis takes place across a geographical area which is much bigger that Newcastle's administrative area."

80. It is clear from the evidence before me – and, as I understand it, uncontroversial – that private hire vehicles do very often make journeys partly, or even wholly, outside the area of their licensing authority, especially in conurbations such as the North East of England. The licensing system for taxis, upon which the system for minicabs is based, was formulated at a time when most journeys would have been wholly within an authority's area – and, therefore, it could perhaps be said that local licensing may be less appropriate now than it was historically.

81. However, as I have explained, localism is still a hallmark of the private hire vehicle regulatory scheme. The problem of localism – if problem it be – is not for Newcastle Council as licensing authority (which has a duty to perform the obligations the 1976 Act has placed upon it), but for Blue Line as operators. The scheme with that hallmark not only has the endorsement of Parliament, but, generally speaking, it appears that the Law Commission Consultation Paper proposes that the regulation of

minicabs should continue to be local. It is not for me to consider or comment upon the localism inherent in the regulatory scheme; except to say that it is a firm and clear characteristic of the scheme, which can only be changed by Parliament, if it considers such a change appropriate.

82. Finally, may I thank both Mr Rodger and Mr McGuinness for their contribution to this appeal. I found their submissions (including their further written submissions after the hearing), which reflected their particular experience in this field, more than usually helpful.