



Neutral Citation Number: [2019] EWCA Civ 2166

Case No: C1/2019/0041

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEEDS DISTRICT REGISTRY
HHJ Saffman (sitting as a Judge of the High Court)
[2018] EWHC 3664 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2019

Before :

THE MASTER OF THE ROLLS
LADY JUSTICE KING DBE
and
MR JUSTICE LAVENDER

Between :

R (on the application of Abdul REHMAN, on behalf of the **Respondent**
Wakefield District Hackney Carriage and Private Hire
Association)

- and -

THE COUNCIL OF THE CITY OF WAKEFIELD **Appellant**

-and-

THE LOCAL GOVERNMENT ASSOCIATION **Intervener**

Sarah Clover and Ben Dylan Williams (instructed by Wakefield Council Legal Services) for
the Appellant

Gerald Gouriet QC and Charles Streeten (instructed directly) for the Respondent
Leo Charalambides (instructed by Shelagh O'Brien, LGA) made written submissions on
behalf of the Intervener

Hearing date : 26 November 2019

Approved Judgment

Sir Terence Etherton MR, Lady Justice King and Mr Justice Lavender :

1. The issue on this appeal is whether the appellant council (“the Council”) acted unlawfully when it resolved to fix the fees for vehicle licences for hackney carriages, which we will call taxis in this judgment, and private hire vehicles, often called minicabs, at an amount which included recovery of all or part of the cost of supervising the conduct of drivers licensed to drive such vehicles and, if not, whether such costs may be taken into account in setting the fee for drivers’ licences.
2. The appeal is from the order dated 5 December 2018 of His Honour Judge Saffman, sitting as a Judge of the Administrative Court of the Queen’s Bench Division of the High Court, which, among other things: (1) allowed the claim of the respondent, Abdul Rehman, acting on behalf of the Wakefield District Hackney Carriage and Private Hire Association (“the Association”), for judicial review of a resolution of the Council’s Licensing Committee on 24 January 2018 adopting proposed fees for licences for private hire vehicles and for hackney carriages, for licences for drivers of such vehicles and for licences for operators of private hire vehicles, and (2) declared that certain specified misconduct of drivers “cannot be lawfully charged” under section 70 of the Local Government (Miscellaneous Provision) Act 1976 (“the 1976 Act”), and (3) quashed the Council’s resolution.
3. Mr Rehman is the chairman of the Association. The Association represents the interests of proprietors and drivers of taxis and private hire vehicles and also operators of private hire vehicles. It has some 600 members, the majority of whom are local to Wakefield.

The licensing regime for taxis and private hire vehicles

4. The past and present licensing regime for taxis and private hire vehicles was helpfully summarised by Hickinbottom J (as he then was) in *Blue Line Taxis (Newcastle) Ltd v Newcastle Upon Tyne City Council* [2012] EWHC 2599 (Admin), [2013] RTR 8, and *R (Cummings) v Cardiff City Council* [2014] EWHC 2544 (Admin). We gratefully base the following description on his summary.
5. So far as relevant to this appeal, there are two types of car available for hire to transport passengers: taxis and private hire vehicles. Among the differences between them are that a taxi may be hired by pre-booking or “plying for hire” (that is, soliciting or waiting for passengers on the street without prior booking) whereas private hire vehicles can only be hired by pre-booking. Further, private hire vehicles can only undertake work through a separately licensed operator, and a booking can only be made through that operator.
6. There are separate legislative and regulatory regimes for taxis and private hire vehicles in London, on the one hand, and outside London, on the other hand. This appeal is only concerned with the position outside London and so it is not necessary to describe the regime applicable in London.
7. Outside London taxis are regulated by the Town Police Clauses Act 1847 (“the 1847 Act”) as amended and supplemented by the Local Government (Miscellaneous Provisions) Act 1976. The 1847 Act provides for the licensing by local authorities of taxis (section 37) and taxi drivers (section 46). Only a licensed taxi, driven by a

licensed driver, is permitted to ply for hire. The original terms of section 46 provided for a fee of one shilling for such a taxi driver's licence. The Local Government, Planning and Land Act 1980 ("the 1980 Act") Schedule 6 paragraph 1 amended section 46 of the 1847 Act so as to provide for the charging of "such fees as the commissioners may determine shall be paid" for the driver's licence.

8. Part II of the 1976 Act regulates both taxis and private hire vehicles. Private hire vehicles were not regulated until Part II of the 1976 Act came into force. So far as concerns taxis governed by the 1847 Act, section 45 of the 1976 Act provides that the other provisions of Part II of the 1976 Act will come into force if the council for the relevant area pass a resolution to that effect. Such a resolution has been passed by the appellants Council. We were informed that all other councils outside London have also passed such a resolution. The 1847 Act, therefore, continues to apply in the Wakefield district subject to the provisions of Part II of the 1976 Act.
9. We discuss the structure and relevant provisions of Part II of the 1976 Act in the Discussion section below. For the present, it is sufficient simply to say that Part II contains, among other things, provisions prohibiting the use, driving or operating of a private hire vehicle without the requisite vehicle, driver's or operator's licence, provisions for the grant, suspension and revocation of such licences, and provisions relating to taxis, taxi proprietors, taxi licences under the 1847 Act and taxi drivers.
10. The critical provisions of Part II of the 1976 Act which lie at the heart of these proceedings and of this appeal are sections 53(2) and 70(1) and (2), which concern respectively the fees chargeable for the grant of drivers' licences for taxis and private hire vehicles and the fees chargeable for vehicle and operators' licences. Those provisions are as follows:

"53 Drivers' licences for hackney carriages and private hire vehicles.

(1) ...

(2) Notwithstanding the provisions of the Act of 1847, a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so."

(3) ...

(4) ..."

"70 Fees for vehicle and operators' licences.

(1) Subject to the provisions of subsection (2) of this section, a district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time

to time and as may be sufficient in the aggregate to cover in whole or in part—

(a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;

(b) the reasonable cost of providing hackney carriage stands; and

(c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.

(2) The fees chargeable under this section shall not exceed—

(a) for the grant of a vehicle licence in respect of a hackney carriage, twenty-five pounds

(b) for the grant of a vehicle licence in respect of a private hire vehicle, twenty-five pounds; and

(c) for the grant of an operator’s licence, twenty-five pounds per annum;

or, in any such case, such other sums as a district council may, subject to the following provisions of this section, from time to time determine.

(3) ...

(4) ...

(5) ...

(6) ...”

The background facts

11. On 24 January 2018 the Council resolved to approve the fee to be charged from 1 February 2018 for a vehicle licence and an operator’s licence in respect of taxis and private hire vehicles. In setting the fee for the vehicle licence the Council took into account, as “costs in connection with the control and supervision of hackney carriages and private hire vehicles” within section 70 of the 1976 Act, the costs incurred by the Council in monitoring and undertaking enforcement action against drivers for such things as speeding, smoking in the taxi, dressing inappropriately, parking badly, using a mobile phone, carrying excess passengers, not permitting the carrying of an assistance dog, and various other uncivil and illegal conduct (which were called by HHJ Saffman, and have been called by the parties, “the Activities”).

12. The Council quantified the fee in that way in the belief, having undertaken extensive consultation and sought the advice of lawyers, that such costs could not lawfully be recovered through the driver's licence fee under section 53(2) of the 1976 Act but that Parliament's policy was that the licensing regime should be self-financing; and so the Council could and should provide for the recovery of such costs through the scheme rather than leaving it to be borne by the general body of Wakefield council tax payers, and the only appropriate way to do so was by means of the vehicle licence fee.

The proceedings

13. The Association, acting by Mr Rehman, filed its judicial review claim form on 29 March 2018. It sought judicial review of two resolutions passed by the Council's Licensing Committee on 24 January 2018, namely the fees decision which is the subject of this appeal and a decision amending the Council's taxi and private hire vehicles standards. Mr Rehman's Statement of Facts and Grounds of Claim stated that there were two grounds for the claim. The first ground was that the fees decision was unlawful as, (1) in calculating the fees to be charged, the Council's Licensing Committee failed to calculate or to take into account previous relevant surpluses and deficits, and (2) the Licensing Committee wrongly attributed costs resulting from the licensing of drivers of taxis and private hire vehicles to the costs of taxis and private hire vehicles. The second ground was that the standards decision was disproportionate, as the Licensing Committee failed to have regard to lesser measures which could have achieved the objective pursued. On 26 March 2018 Males J gave permission limited to the first ground.

The judgment of HHJ Saffman

14. The Judge, in a succinct and tightly reasoned oral judgment, rejected (at [15]) the submission on behalf of the Council that there is a general principle which entitles all local authority licensing schemes to be self-funding. He said that the cases to which he had been referred, namely *R v Westminster City Council ex p Hutton* [1985] 83 LGR 461, *Liverpool City Council v Kelly* [2003] EWCA Civ 197, [2003] LLR 258, and *R (Hemming (trading as Simply Pleasure Ltd)) v Westminster City Council* [2015] UKSC 25, [2015] AC 1600, and [2017] UKSC 50, [2018] AC676, did not support the Council's proposition.
15. Having refused (at [16]) to extend the hearing so as to determine definitively whether or not the costs of enforcement of the Activities could be taken into account in fixing the fee for the driver's licence, the Judge said (at [22]) that he could not accept that such costs could be brought within the scope of the phrase "the control and supervision of hackney carriages and private hire vehicles" in section 70(1)(c). He said that such costs inevitably relate to the activities of drivers rather than vehicles. He repeated that conclusion at paragraph [25].
16. The Judge said (at [27]) that he had had regard to the discussion in both *Button on Taxis: Licensing Law and Practice* and *Paterson's Licensing Acts* but they did not cause him to change his view; and so he held (at [29]) that it was appropriate to quash the decision fixing the vehicle licence fee because it incorporated expenses which it ought not to have incorporated.

17. The Judge went on to deal with the issue of cross-subsidy. He observed (at [30]) that the Council accepted that for a number of years they had been incorporating the expenses involved in enforcement action relating to the Activities in their assessment of the level of fees payable by owners and operators. He then referred to *R (Cummings) v Cardiff City Council* as authority that there can be no cross-subsidy between different work streams. He noted (at [33]) that the Council's counsel did not take issue with the proposition of Mr Rehman's counsel that, when determining taxi and private hire vehicle licence fees, the Council must keep separate accounts for the surpluses and deficits arising under each of the licensing regimes and there must be no cross-subsidy between regimes and between licence types within a regime.

The appeal

18. The written grounds of appeal are as follows:

Ground (1) – The Judge incorrectly restricted himself to determining the meaning of section 70 only of the 1976 Act, when the correct question to be determined was whether driver enforcement costs were recoverable at all, and if so, whether under section 53(2) or section 70. The Judge, therefore, erred in refusing to have regard to the following four matters together: (a) the correct construction of section 53(2) with regard to the recovery of driver enforcement costs; (b) the correct construction of section 70 with regard to the same; (c) whether driver enforcement is recoverable at all; (d) whether the taxi licensing scheme for licence fees should be subject to the general principle that it should be self-financing and not be subsidised by the local rate payer.

Ground (2) – The Judge incorrectly concluded that there was no general principle that the taxi licensing fee regime should be self-financing.

19. There is no appeal against the Judge's decision that there can be no cross-subsidy between the different licences.
20. Pursuant to an order of King LJ the Local Government Association ("the LGA") has intervened in the appeal and made submissions in writing broadly supportive of the Council's appeal.

Discussion

The issue for determination

21. At the outset of her oral submissions for the Council, Ms Sarah Clover agreed that the Council's appeal can be compendiously described as being that the Judge ought to have decided that the costs of enforcing appropriate behaviour on the part of drivers of taxis and private hire vehicles are recoverable either by way of the fee for drivers' licences under section 53 or by way of the fee for vehicle licences under section 70, interpreting those statutory provisions purposively. She confirmed that Appeal Ground 1(d) and Appeal Ground (2) are more appropriately approached as aspects of a purposive interpretation of the two statutory provisions.
22. The Council's reliance, in the alternative, on section 53 of the 1976 Act is a departure from the way Ms Clover, who also represented the Council before HHJ Saffman, put

the Council's case in the court below. The Council's primary argument before HHJ Saffman was that the cost of enforcing driver behaviour is recoverable by way of the vehicle licence fee under section 70. The Council supported that argument by emphasising the difference between the wording of section 70(1), on the one hand, and the wording of section 53(2), on the other hand. It was Mr Gerald Gouriet QC, who represented Mr Rehman in the court below, as he did before us, who contended before HHJ Saffman that an indication that section 70 has no application in the recovery of the cost of enforcing driver behaviour is that (in Mr Gouriet's language) "it may be" that the cost of enforcement action in respect of drivers can be taken into account in setting the fee for a drivers' licence under section 53. Mr Gouriet explained to us that he was not willing then, and is not willing now, to express the scope of section 53 with any greater conviction because, even though we understand that the Association includes drivers, he was not and is not instructed on behalf of drivers.

23. As indicated in HHJ Saffman's judgment, it appears that, during the hearing before the Judge, Ms Clover did invite him to extend the hearing to encompass the interpretation of section 53 with a view to establishing whether or not the costs of enforcement of drivers' conduct can be taken into account in fixing the fee for the driver's licence in the event that the Judge decided that it was not lawful for the Council to take those costs into account in fixing the vehicle licence fee under section 70. HHJ Saffman made it clear in his judgment (at [16]) that he was not willing to express a conclusion as to whether the costs of enforcing appropriate driver behaviour fall within section 53 as drivers were not represented before him.
24. We agree with HHJ Saffman that the cost of monitoring and enforcing driver conduct cannot be taken into account in fixing the vehicle licence fee under section 70. We consider that the wording of section 70 in the context of the structure of the 1976 Act leads clearly to that conclusion, irrespective of the proper interpretation of section 53. We also consider, however, that such cost can be included in the driver's licence fee under section 53. It is regrettable that no one representing drivers appeared before HHJ Saffman or before us to argue that point, which is plainly relevant to the scope of section 70.

The structure of the 1976 Act

25. Part II of the 1976 Act concerns taxis and private hire vehicles. What is immediately apparent is that there are distinct and detailed regimes for (1) vehicle licences for taxis and private hire vehicles (2) drivers' licences, and (3) operators' licences.
26. Section 46 provides that a proprietor of a private hire vehicle may not use the same without having a vehicle licence under section 48.
27. Section 47 provides that a district council may attach to the grant of a taxi licence under the 1847 Act such conditions as the district council may consider reasonably necessary, including as to design, appearance and distinguishing marks identifying it as a taxi.
28. Section 48(1) contains provisions as to the requisite suitability of a private hire vehicle in terms of design, appearance, mechanical condition, safety, comfort and the existence of a valid policy of insurance in order to qualify for a licence for use of the vehicle as a private hire vehicle. Section 48(2) provides that a district council may

also attach to the grant of a licence such conditions as they may consider reasonably necessary including conditions requiring or prohibiting the display of signs on or from the vehicle.

29. Section 50 provides that the proprietor of any licensed taxi or private hire vehicle must present it for inspection and testing by or on behalf of the council within such period and at such place within the area of the council as they may by notice reasonably require.
30. Section 51 imposes minimum requirements for the driver of a private hire vehicle, including that the applicant is a fit and proper person to hold a driver's licence and is not disqualified by reason of their immigration status from driving a private hire vehicle. Section 51(2) provides that a district council may attach to the grant of a driver's licence such conditions as they consider reasonably necessary.
31. Section 53(1) provides that the duration of a driver's licence for a private hire vehicle and for a taxi shall be three years or such lesser period as the district council think appropriate in the circumstances of the case. Section 53(2), which is set out above, specifies the fee that may be charged by a district council for the grant of a driver's licence for a taxi and a private hire vehicle, namely "such fee as they consider reasonable with a view to recovering the cost of issue and administration".
32. Sections 55 is concerned with the licensing of operators of private hire vehicles. Section 55(1) imposes minimum requirements for an operator, including that the applicant is a fit and proper person to hold an operator's licence and that, if an individual, they are not disqualified by reason of their immigration status from operating a private hire vehicle. Section 55(3) provides that a district council may attach to the grant of an operator's licence such conditions as they consider reasonably necessary.
33. Section 59(1) imposes minimum requirements for the grant of a driver's licence for a taxi, including that the applicant is a fit and proper person to hold a driver's licence and that the applicant is not disqualified by reason of the applicant's immigration status from driving a taxi.
34. Section 60 contains provisions for the suspension or revocation by the district council of a vehicle licence if the vehicle is unfit for use as a taxi or private hire vehicle or there has been an offence under, or non-compliance with, the 1847 Act or Part II of the 1976 Act or for any other reasonable cause.
35. Section 61 provides for the suspension or revocation of a driver's licence if, among other things, the driver has been convicted of an offence of dishonesty, indecency or violence or of an immigration offence or of an offence under, or there has been non-compliance with, the 1847 Act or Part II of the 1976 Act or for any other reasonable cause.
36. Section 62 provides for the suspension and revocation of an operator's licence if, among other things, the operator has committed an offence under, or has not complied with, the provisions of Part II, or any conduct on the part of the operator appears to the district council to render them unfit to hold an operator's licence or there has been

any material change since the licence was granted or the operator has been convicted of an immigration offence or for any other reasonable cause.

37. Section 68 provides that an authorised officer of the council or any constable shall have power at all reasonable times to inspect and test for the purposes of ascertaining its fitness, any taxi or private hire vehicle licensed by the district council.
38. Section 70(1) and (2) are set out above. Section 70(1) specifies the fee that may be charged by the district council for the grant of vehicle and operator's licences, including the such fees as may be sufficient to cover in whole or in part "any reasonable administrative or other costs in connection with ... the control and supervision of [taxis] and private hire vehicles".
39. What is apparent from those provisions of Part II, read where appropriate with the 1847 Act, is that each of the three types of licence – vehicle, operator and driver - has a comprehensive and self-contained statutory regime, which addresses grant, terms, suspension, revocation and fee. There is no cross-referencing in relation to any of those matters. The notion that the fee for one type of licence can reflect the costs involved in another, far from being implicit in Part II of the 1976 Act, is entirely contrary to its structure.
40. What is also apparent, on the other hand, is the similarity in the statutory treatment of some aspects of the three different types of licence. In particular the qualifying requirements for the grant of each licence involve matters which will be relevant throughout the duration of the licence, whether they be as to design, appearance, mechanical condition, safety, comfort and the existence of a valid policy of insurance in the case of a vehicle licence, or as to the person being a fit and proper person and not disqualified by reason of immigration status in the case of a driver's licence and an operator's licence. The continuing relevance of at least some of those matters throughout the duration of each type of licence is also reflected in the provisions for suspension and revocation. The fact that, in the case of each type of licence, the district council can attach such conditions as they consider reasonably necessary indicates that Parliament envisaged that there would be additional requirements to be observed as conditions of the licence after its grant. Plainly, in all those cases the district council would need to monitor compliance with the various requirements and conditions on the basis of which the licence was granted and was to be permitted to subsist until it came to an end or was suspended or revoked. That would inevitably involve, in the case of each category of licence, expense on the part of the district council beyond the cost of the original grant of the licence.

Section 70(1)

41. The Council contend that the costs of enforcing the conduct of drivers fall within the words "control and supervision of hackney carriages and private hire vehicles" in section 70(1)(c) because, after the grant of a vehicle licence, the driver controls the vehicle. It is clear, however, that the "control and supervision" mentioned in section 70(1)(c) are control and supervision by the district council, not by the driver. If the argument is that, by controlling the driver, in terms of monitoring and enforcing the behaviour of the driver, the district council control the vehicle, then that is a very strained and artificial interpretation of the relevant words.

42. Moreover, in the context of the framework of Part II of the 1976 Act, we consider it is clear that the words in section 70(1)(c) cannot bear the meaning attributed to them by the Council. They cannot have been intended by Parliament to authorise something entirely alien to the structure of Part II, which, on the face of it, has a comprehensive, self-contained regime for each category of licence.
43. The Council and the LGA emphasise the importance of public safety and confidence, and the need to monitor and enforce the behaviour of drivers in that context. We do not in any way discount the significance of those matters. The issue, however, is not whether it is desirable in the public interest to monitor and enforce the behaviour of drivers of taxis and private hire vehicles but rather who should pay for that and how it should be paid for.
44. The Council and the LGA emphasise the limited resources available to local authorities and the potential adverse impact on compliance and enforcement activities if the taxi and private hire vehicle licensing scheme is not self-funding. A general resource consideration of that kind cannot, however, affect the proper interpretation of the legislation governing this or any other licensing scheme.
45. It is nevertheless in that context that the Council advance their allied points that – leaving aside the proper interpretation and scope of section 53(2) - the Council’s interpretation of section 70(1)(c) would enable the licensing scheme for taxis and private hire vehicles as a whole to be self-funding and that it is a principle of law that such licensing schemes ought to be self-funding rather than being reliant on a local authority’s general funds raised from its council tax payers. As we have said, reference was made in that regard before HHJ Saffman to *R v Westminster City Council (ex p Hutton)*, *Liverpool City Council v Kelly*, and *R (Hemming (trading as Simply Pleasure Ltd)) v Westminster City Council*. We agree with the Judge that none of those authorities justifies the interpretation of section 70(1)(c) for which the Council contend. Each case turned on the particular statutory scheme and provisions in issue. We can see nothing in *Hutton* which lends any support for any such general proposition of self-funding, and, in any event, that case, like *Hemming*, concerned the very different statutory provisions concerning the licensing of sex establishments. *Kelly* did concern the provisions of section 70 of the 1976 Act but the issue was about the ability to charge for vehicle inspections which failed and so did not result in the grant of a vehicle licence. We cannot see that such an issue, and the decision of the court in that case that the district council could charge for such inspections, throws any light on the very different issue in the present case about the ability to take into account in determining the fee for vehicle licences the costs related to the entirely different and distinct category of drivers’ licences.

Section 53(2)

46. In any event, we consider that the costs of enforcing the behaviour of licensed drivers can be recovered through the driver’s licence fee under section 53(2). The relevant words in that provision are “the costs of issue and administration”. The costs of “administration” must be something other than, and in addition to, the costs of “issue”. There is no difficulty in interpreting “administration” in its statutory context as extending to administration of the licence after it has been issued. It naturally includes the costs of suspension and revocation, which are events expressly mentioned in Part II of the 1976 Act. Suspension and revocation rest on non-

compliance with the requirements and conditions for continuing to hold the licence. As we have said, it would therefore have been obvious to Parliament, when enacting the 1976 Act, that costs would be incurred by the district council in monitoring compliance with such requirements and conditions.

47. Furthermore, there would appear to be no obvious reason why, as is plain, the costs of monitoring and enforcing the conditions and requirements for vehicle and operators' licences are recoverable under section 70, but those for monitoring and enforcing the conditions and requirements for drivers' licences are not recoverable under section 53. As we have said, in the case of all three categories of licence there are conditions of the grant which will have to be satisfied so long as the licence subsists; there will be reasonable additional conditions which the district council will wish to attach to the licence itself; and there are changed circumstances since the grant of the licence which Part II expressly states can result in suspension or revocation. In that connection, it is notable that, when section 46 of the 1847 Act was amended by the 1980 Act so as to permit the charging of "such fees as the commissioners may determine to be paid" for the grant of a hackney carriage driver's licence, Parliament did not consider it necessary to amend section 53(2) of the 1976 Act
48. For those reasons, both on the literal wording of section 53(2) and, if and so far as necessary, applying a purposive interpretation, we consider that the costs of monitoring and enforcing the behaviour of licensed drivers can be recovered through the fee under section 53(2).

Conclusion

49. For all those reasons, we dismiss this appeal.