Neutral Citation Number: [2019] EWHC 365 (Admin)

Case No: CO/4549/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2019

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

Thomas McNutt	**Appellant**
- and -	
Transport for London	**Respondent**

- -
- -

Andrew Taylor (instructed by **Michael Demidecki & Co**) for the **Appellant**
David Patience (instructed by **Transport for London**) for the **Respondent**

Hearing dates: **13 February 2019**

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Approved Judgment

The Honourable Mr Justice Julian Knowles:

Introduction

1. This is an appeal by way of case stated against the decision of Hendon Magistrates Court on 23 May 2018 to find the Appellant, Thomas McNutt, guilty of the offence contrary to s 165(7) of the Equality Act 2010 ('the EA 2010'). It raises an important point of statutory construction in relation to the duty pursuant to s 165(1)(a) and s 165(4)(b) of the EA 2010 on the driver of a taxi which has been hired by or for a disabled person in a wheelchair 'not to make any additional charge for doing so'. By s 165(7), it is a criminal offence to make such an additional charge.

2. It is convenient at this point to set out the relevant statutory provisions. Section 165 provides:

> "(1) This section imposes duties on the driver of a designated taxi which has been hired—
>
> (a) by or for a disabled person who is in a wheelchair, or
>
> (b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
>
> (2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.
>
> (3) For the purposes of this section—
>
> (a) a taxi or private hire vehicle is 'designated' if it appears on a list maintained under section 167;
>
> (b) 'the passenger' means the disabled person concerned.
>
> (4) The duties are -
>
> (a) to carry the passenger while in the wheelchair;
>
> (b) not to make any additional charge for doing so;
>
> (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
>
> (d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
>
> (e) to give the passenger such mobility assistance as is reasonably required.
>
> (5) Mobility assistance is assistance—

> (a) to enable the passenger to get into or out of the vehicle;
>
> (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
>
> (c) to load the passenger's luggage into or out of the vehicle;
>
> (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
>
> …
>
> (7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.
>
> (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale."

3. The list maintained under s 167 mentioned in s 165(3)(a) is the list of wheelchair accessible vehicles kept by the relevant taxi licensing authority.

4. A taxi is defined by s 173(1)(a) to be a vehicle which is licensed under s 37 of the Town Police Clauses Act 1847 or s 6 of the Metropolitan Public Carriage Act 1869 (the 1869 Act). In simple terms, it means a vehicle plying for hire.

The factual background

5. The facts as set out in the stated case can be summarised as follows.

6. On the morning of 4 October 2017, the complainant, Emma Vogelman, who is a wheelchair user, went to a taxi rank. She was with her assistant, Laura Creek. The Appellant was the first driver on the rank. They sought to board his taxi. Before he unlocked the wheelchair ramp, and before the two women had boarded, the Appellant activated the taximeter fitted to his taxi. Ms Vogelman and Ms Creek noticed that the taximeter had been activated and Ms Creek challenged the Appellant about it, the point being that Ms Vogelman would be charged for the time it took to get her and her wheelchair into the taxi. There was then an altercation between the Appellant and Ms Vogelman and Ms Creek. The upshot was that the two women boarded another taxi driven by Graham Anmer. Ms Vogelman confirmed in her evidence that no money changed hands between her and the Appellant and she never got into his taxi. When Mr Anmer attempted to leave the Appellant prevented him using his taxi as he wanted their details. The police were called. Mr Anmer eventually drove the two women to their destination.

7. In due course the Appellant was interviewed under caution by Transport for London (TfL) (which, by virtue of Chapter II of Part IV of the Greater London Authority Act 1999, is the statutory taxi regulator in London) and he was then summonsed for the offence contrary to s 165(7) read with s 165(4)(b).

8. The Appellant pleaded not guilty and stood trial at the magistrates' court on 23 May 2018. Ms Vogelman, Ms Creek and Mr Anmer all gave evidence for the prosecution. At the conclusion of the prosecution's case the Appellant submitted that there was no case for him to answer. It was contended that the offence contrary to s 165(7) of breaching the duty under s 165(4)(b) was not made out until the exact point in time when the charge was levied, in other words, when the driver demanded payment. This could only be at the end of the journey. Here, no journey had been taken and therefore there could be no offence.

9. Counsel for TFL argued that this was a contrived interpretation of the legislation. If followed it would have the impact of seriously undermining the effectiveness and integrity of important legislation designed to promote equality. Whatever charge would be levied would be determined by the meter and this had been switched on.

10. According to the case stated, the magistrates decided that that the process of making an additional charge started at the point in time when the Appellant started his taximeter and that clearly the final required payment would include that period during which Ms Vogelman was boarding the vehicle. This is the type of situation that s 165 was meant to prevent. Accordingly, they found that there was a case to answer.

11. The Appellant then gave evidence. He accepted that he had switched on the meter before he had unlocked the ramp and before Ms Vogelman had boarded. The stated case observes that because the burden of the prosecution case was that the charging process commenced at the point in time when the Appellant had switched on the taximeter, and there was no dispute that had occurred, the extent of the disagreement between the Appellant and the prosecution witnesses was relatively peripheral. He also accepted that an altercation had ensued, but alleged that the two women had been more aggressive and provocative than he had been.

12. At the end of their deliberations the magistrates were of the view that the point in time when the making of the charge commenced was the point when the Appellant turned on his taximeter. Accordingly, they found the Appellant guilty. The stated case records their decision as follows (*sic*):

> "Mr McNutt please stand. You are charged under the Equality Act 2010. s.165 of which states that a designated taxi driver should not make an additional charge for carrying a disabled person. By putting on your meter as you got out of your cab to unlock the ramp, it is apparent that it was your intention for the meter to keep running during the process of loading the wheelchair. This would lead to an additional charge to that which passenger without a disability would pay. It was your responsibility to keep up to date with changes in legislation and not being aware of changes to the law is not a defence. We therefore find you guilty beyond reasonable doubt."

13. The Appellant was conditionally discharged for twelve months, ordered to pay costs of £1000 and compensation of £75 each to Ms Vogelman and Ms Creek, and the victim surcharge of £20.

14. I was told at the hearing that this was the first prosecution by the Respondent for the offence under s 165(7) for breach of the duty in s 165(4)(b), although there have been prosecutions of taxi drivers for refusing to carry disabled passengers.

Questions posed

15. The questions posed in the stated case for the opinion of the High Court are as follows:

    (1) Did the Appellant make an additional charge for carrying a wheelchair user, Emma Vogelman, on 4 October 2017 ?

    (2) Did the magistrates err in law by convicting the Defendant of making an additional charge for carrying a wheelchair user, contrary to s 165(7) Equality Act 2010 ?

16. It is not in dispute that if the answer to the first question is 'yes' then the answer to the second question automatically follows and is 'no'.

The parties' submissions

17. It is not in dispute between the parties that demanding payment from a wheelchair user for the time it takes to board the taxi would amount to the making of an *additional* charge for the purposes of s 165(4)(b) and s 165(7) of the EA 2010. This is consistent with what is said in *Button on Taxis: Licensing Law and Practice* (4th Edn), [9.24]:

> "It is important to consider the position of disabled and wheelchair bound passengers. The 'journey' does not commence until the passenger is securely seated, or the wheelchair has been correctly loaded and secured, the ramps have been properly stowed and the journey commences. If the meter commenced before the loading commences, and continues until the loading has finished, there is direct discrimination because the disabled passenger is being treated less favourably than an able-bodied passenger, contrary to s 13 of the Equality Act 2010."

18. This is said in relation to hackney carriages outside London, but in my judgment the same is true within London.

19. The main issue on this appeal is whether a 'charge' was made by the Appellant by the act of him switching on his taximeter before Ms Vogelman and Ms Creek had boarded, even though Ms Vogelman never entered his taxi, no money was demanded (either expressly or by implication) and they ended up travelling in a different taxi.

20. On behalf of the Appellant, Mr Taylor submits that the temporary activation of a taximeter without more does not result in the making of a 'charge' within the meaning of s 165(4)(b). He says that action alone is not sufficient to amount to a charge in circumstances where Ms Vogelman did not enter his cab, no monies changed hands, no price was quoted and no services rendered. He says there has to be a demand for

the fare (either expressly or by implication) before the taxi driver 'makes a … charge' within s 165(4)(b).

21. Mr Taylor says that it was Mr Anmer and not his client who made the charge, because he quoted the final fare and received payment. Mr Taylor also says that a charge is not made until the end of the journey because then and only then can the payable amount be determined with certainty.

22. On behalf of the Respondent Mr Patience submits that the phrase 'make any additional charge' in s 165(4)(b) is not restricted to merely occurring at the point at which the metered fare (including an impermissible extra amount) is actually demanded at the end of the journey, but should be construed as covering both of the following situations:

    a. when an indication is given by the driver at the point of hiring to a disabled person that they will be made liable to an additional charge;

    b. where the taximeter is switched on before the disabled person and their wheelchair have been loaded, thereby creating a pecuniary obligation on the disabled passenger to pay the metered fare, the boarding process taking more time than it would for a non-disabled person, thereby resulting in an additional charge.

23. Mr Patience points to the Oxford English Dictionary definition of the word 'charge' as including 'to subject or make liable (a person, estate, etc) to a pecuniary obligation or liability' and says that this means that the word as used in s 165(4) covers the two posed scenarios. He said that to accept the Appellant's argument would mean that, for example, taxi drivers would be able to avoid carrying disabled passengers by giving an indication at the point of hiring that there would be a significant surcharge. That would discourage most disabled passengers from travelling with that driver. The driver would not, however, be liable for a breach of the duty in s 165(4)(b) because he would never reach the stage of demanding payment. The driver would then never have to carry a passenger in a wheelchair but would not be liable for the offence in s 165(7).

24. Mr Patience therefore says the two questions posed for this Court's opinion should be answered 'yes' and 'no' respectively.

Discussion

25. The researches of counsel have not uncovered any prior authority on the proper construction of s 165(4)(b). There is some brief statutory guidance which I will return to later. The issue before me is therefore a novel one. It is, as I have observed, a question of statutory construction.

26. The object of statutory interpretation is to discover the intention of the legislature as expressed in the instrument considering it as a whole and in its context, and acting on behalf of the people. As Viscount Simonds said in *Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436, 461:

> "… words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context.

> So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

27. The search for legislative intention is not a search for the actual subjective intention of a particular group of politicians, but an objective search for the intention that must be imputed to the legislature by reference to the meaning of the words used and the context in which they are used. In *R v Secretary of State for the Environment, Transport and the Regions, ex pate Spath Holme Ltd* [2001] 2 AC 349 at 396-397 Lord Nicholls of Birkenhead said:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

28. Also, as Lord Reid said in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613:

> "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used."

29. The starting point is to note the precise language used in s 165(4)(b). The driver's duty is not 'to make any additional charge' as a result of being hired by or on behalf of a disabled person. In this phrase the word 'charge' is being used as a noun and not a verb. The online Oxford English Dictionary definition of 'charge' when used as a noun include 'a price asked for goods or services' and also 'a financial liability or commitment' (see https://en.oxforddictionaries.com/definition/charge).

30. The first of these meanings supports, to an extent, Mr Taylor' submission that the point in time when a driver makes an additional charge can only be at the end of the

journey because it is then and only then that the precise fare can be ascertained, in other words, only is the price asked. On the other hand, the second definition supports Mr Patience's submission that in a taxi fitted with a taximeter the passenger's obligation is to pay whatever the meter shows at the end of journey, and so the moment the meter is switched on the passenger becomes financially liable for the fare, and it is thus at that point that the driver makes the charge.

31. In my judgment it is the second meaning which is to be ascribed to the word 'charge' as used in s 165(4)(b), and a taxi diver makes a charge when he switches his taximeter on, and if he does this for a disabled passenger before the passenger and her wheelchair have been loaded into the taxi, there will be an additional charge and thus an offence under s 165(7) even if, for whatever reason, the driver never actually demands the fare.

32. Section 165 has its basis in s 36 of the Disability Discrimination Act 1995 (as amended by the Local Transport Act 2008), which was in materially identical terms. Section 36 was introduced into the Disability Discrimination Bill at the Committee Stage in the House of Lords (see HL Deb 15 June 1995 vol 564 col 2037). Lord Mackay of Ardbrecknish, the Parliamentary Under-Secretary of State for Transport, introduced a number of amendments to the Bill concerning taxis and the requirement for them to be wheelchair accessible. In relation to what became s 36 he said:

> "In Amendment No. 96, it is one thing to provide for taxis to be designed or adapted to be able to carry a passenger in a wheelchair but we need also to ensure that the drivers of those vehicles are then required to convey those passengers. The new clause, Amendment No. 96, sets out the duties which will apply to drivers of regulated taxis when they are hired by a disabled person. These duties not only extend to the carriage of disabled persons, but also to the manner in which those persons should be carried. Any driver who fails to comply with these duties will be guilty of an offence."

33. Given my view that the word 'charge' as used in s 165(4)(b) is capable of more than one meaning, ie, it is ambiguous, I consider this statement by the Minister to be admissible under *Pepper v Hart* [1993] AC 593 because it is clear and discloses the mischief which s 36 (and now s 165) was and is aimed at. That is the need to ensure that taxi drivers carry disabled passengers and to provide criminal penalties if they fail to do so or fail to comply with the other duties which the section imposes upon them in order that disabled people have access to taxi services on terms which are not disadvantageous by reason of their disabilities.

34. Against that background, it cannot have been Parliament's intention that the word 'charge' should be construed so that a taxi driver only becomes criminally liable for charging a disabled passenger more when he actually demands the additional fare at the conclusion of the journey. The example given by Mr Patience demonstrates why this is so. It would mean that an unscrupulous taxi driver would be able to avoid his duty to carry disabled passengers, and his duty to assist them if necessary, by quoting an inflated fare upon being flagged down, knowing that it will not be accepted and he will then be free to drive off in search of a non-disabled fare. Another example might be the dishonest driver who puts an additional charge on the meter hoping that the

disabled customer does not spot it, but who does not demand the additional amount if the passenger does notice. If Mr Taylor's construction of s 165(4)(b) were correct, in neither scenario would the driver commit the offence under a 165(7) because he would not have actually demanded the additional amount, and (in the first scenario) he would be able to avoid his statutory duty without consequence. The second scenario would deprive disabled people of significant protection. These would be absurd results and wholly inconsistent with the stated purpose of the section. In my judgment they are not something which Parliament could have intended.

35. In my judgment there can be no doubt that no later than the time a taximeter is switched on at the point of hire, an actual financial liability or commitment is imposed on the passenger to pay the amount shown on the meter when the hiring is terminated, and it is therefore at that point that the charge is made for the purposes of s 165(4)(b). That is for the following reasons.

36. There are a number of pieces of legislation governing taxis. There are different statutory regimes for London and the rest of the country. The following paragraphs deal with the provisions relating to London; I will consider the position outside London at the end of this judgment.

37. The principal legal provisions relating to taximeters and fares in respect of hackney carriages within London (as taxis which ply for hire are often called in the legislation: see s 6 of the 1869 Act) are contained in Part VI of the London Cab Order 1934 (SI 1934/ 1346) (the LCO), made under s 9 of the 1869 Act. The LCO has been amended many times over the years and the power to make amendments now rests with TfL pursuant to s 253 and Sch 20, para 5(6)(a), of the Greater London Authority Act 1999.

38. Section 9 of the 1869 Act provides:

> "9 Regulations as to hackney and stage carriages.
>
> Transport for London may from time to time by London cab order make regulations for all or any of the following purposes; that is to say,
>
> ...
>
> (3) For fixing the rates or fares, as well for time as distance, to be paid for hackney
>
> carriages, and for securing the due publication of such fares:
>
> (4) For forming, in the case of hackney carriages, a table of distances, as evidence for the purposes of any fare to be charged by distance, by the preparation of a book, map, or plan, or any combination of a book, map, or plan:
>
> Subject to the following restrictions:
>
> …

> (4) Any power of Transport for London to fix by regulations made by London Cab Order under this section any rates or fares to be paid for hackney carriages is exercisable subject to and in accordance with any directions given to Transport for London by the Mayor of London as to the basis on which those rates or fares are to be calculated."

39. In addition, s 1 of the London Cab and Stage Carriage Act 1907 (the 1907 Act) specifically provides for TfL to fix fares for cabs using taximeters in London. Section 1(1) provides as follows:

> "1 Fares for taximeter cabs
>
> (1) Transport for London shall have power by regulations made by London cab order under section nine of the Metropolitan Public Carriage Act, 1869, to fix the fares to be paid for the hire in London of cabs fitted with taximeters, either on the basis of time or distance or both, and so as to differ for different classes of cabs and under different circumstances."

40. Part VI of the LCO is entitled 'Regulations as to Taximeters and Fares for Motor Cabs'. The following provisions are relevant in this case:

a. All motor-cabs are required to be fitted with taximeters of a type approved by TfL ([35(1)] and set up in such a way that after the taximeter has been started the 'fare payable for the hiring, as prescribed by paragraph 40, is automatically recorded and displayed on the taximeter ([35(2)(a)]) and the total of 'any extra charges payable' is also displayed [35(2)(b)].

b. Such taximeters are required to sealed by persons authorised by TfL ([35(3)] and tampering with a seal is prohibited ([36]).

c. Plying for hire without a taximeter fitted or one which is unsealed or in respect of which the seal has been tampered with is prohibited ([37]).

d. The display on the taximeter must be illuminated so 'as to render the readings on the dial of the taximeter easily legible at all times of the day and night ([38]).

e. The taxi driver must 'start the taximeter no sooner than when the cab is hired or at such later time as the driver thinks fit' ([39(1)]) and must 'stop the taximeter no later than when the hiring is terminated or at such earlier time as the driver thinks fit' ([39(2)].

f. Paragraph 40 sets out rules relating to the maximum 'payable ' fares for the hiring for a journey of a motor cab. In particular, it provides that the maximum fare payable for a journey of a motor cab shall be the aggregate of:

   (i) a hiring charge ([40(1)(a)]) (ie, the amount shown on the meter at the start of the journey and before it has commenced);

(ii) a sum arrived at by reference to the length and duration of the journey in accordance with the rates set out in [40(2)].

Paragraph 40(2) contains the rates chargeable according to formulae whose principal variables are time, speed and distance. The rates are amended from time to time by TfL pursuant to its power under s 1 of the 1907 Act. Paragraph 40(3) provides for a minimum fare, and [40(4)] specifies what additional sums may be charged (eg, for soiling the cab).

g. Paragraph 40A allows a cab driver to opt to charge a passenger an agreed fixed fare instead of using the taximcter. In such circumstances, [39] and [40] do not apply but Schedule E has effect instead. Paragraph 6(1) of Schedule E provides that where a cab is hired under the fixed fare arrangements, the driver of the motor cub shall not start the taximeter during the course of the passenger's journey except where' the passenger makes a request to be taken to a different destination (para. 6 (2)).

41. In light of these very detailed provisions specifying what fares may be charged by a driver of a London taxi fitted with a taximeter, in my judgment it is clear that a passenger is legally obliged to pay the metered fare, whatever that fare might be. That legal obligation has at least two strands to it. Firstly, it is an implied term of the contract struck between the taxidriver and the passenger at the point of hire. The taxi driver agrees to the take the passenger to their destination and the passenger agrees impliedly to pay the fare on the meter. It is always open to the taxidriver to vary the contract by accepting a lesser fare, ([40(1)] of the LCO making clear that the metered fare is the *maximum* fare, and see also *R v Liverpool City Council ex parte Curzon Ltd* [1993] Lexis Citation 2846), but absent such a variation the passenger is contractually bound to pay the metered fare. Second, a passenger who fails to pay the fare due according to the meter would likely commit one or more criminal offences. It is an offence contrary to s 41 of the London Hackney Carriage Act 1831 to 'refuse or omit to pay the driver of any hackney carriage the sum justly due to him for the hire of such hackney carriage'. The term 'justly due' is not further defined but must be the fare shown on the meter because that is what the LCO specifies the fare shall be (or a lesser sum if the driver agrees to that). There are further offences in s 1 of the London Cab Act 1896. It is an offence for a person to hire a cab when he knows or has reason to believe that he cannot pay the 'the lawful fare'. It is also an offence to fraudulently endeavour to avoid payment 'of a fare lawfully due'. For the same reasons, these expressions must refer to the fare shown on the meter, or a lesser fare if the driver agrees to that.

42. For these reasons, in my judgment the words 'make an additional charge' in s 165(4)(b) mean to impose an additional financial liability or commitment on a disabled wheelchair user as compared with an able bodied passenger, and such a liability or commitment is imposed no later than the point when a London taxi driver switches on his meter before such a person and their wheelchair have boarded the taxi.

43. Mr Taylor for the Appellant was able to point to s 11 of the Private Hire Vehicles (London) Act 1988, which defines a taximeter to be 'a device for calculating the fare to be charged', and he sought to draw support from it for his construction of 'charge' in s 165(4)(b). The short answer is that, as I have explained, the process of statutory

construction involves examining the language in question in its proper context. The context in which charge is being used in s 165 is in the context of protecting disabled people from discrimination and enabling them to use taxis on no worse terms than able bodied people. That context is different from s 11.

44. What about the first of Mr Patience's scenarios at [22(a)] above, where the driver gives a fare indication at or before the point of hiring (perhaps in course of negotiating a fixed fee fare under [40A] of the LCO) ? In my judgment such an indication also amounts to a financial liability or commitment, and thus a charge within s 165(4)(b), albeit of a contingent kind. The reason is the one I have already given: to construe 'charge' as excluding inflated fare indications would enable drivers deliberately to discourage disabled passengers from travelling with them, and thus to avoid their duty under s 165 to carry such passengers, and thus defeat the whole purpose of that section.

45. The conclusions that I have reached accord with such material as exists on the scope of the obligation imposed on drivers by s 165(4)(b). The Department for Transport has issued statutory guidance to taxi licensing authorities pursuant to s 167(6) of the EA 2010 on the application of ss 165 – 167 ('Access for wheelchair users to Taxis and Private Hire Vehicles – Statutory Guidance'). Paragraph 4.7 provides:

> "It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running."

46. TfL's own guidance for taxi drivers on 'Passengers and Accessibility' is in similar terms.

47. The conclusions I have reached are also consistent with the passage in *Button on Taxis: Licensing Law and Practice* (4th Edn), [9.24], that I quoted earlier in this judgment. Further, [18.10] of the same work states:

> "The London Cab Order 1934, art 39, makes it clear that the meter must be set in motion as soon as the cab is hired, and not before and then stopped as soon the hiring is terminated, but art 39 allows the driver to start the meter later, or stop it earlier. Section 29 of the Equality Act 2010 makes it clear that a service-provider cannot discriminate against a disabled person, so it is important that he meter is not started until a wheelchair bound passenger is properly loaded and secured and is also stopped at the end of the journey, not when the unloading has been completed."

48. It follows that I would answer the first question posed by the justices 'yes' and the second question 'no'.

49. I have focussed in this judgment on London taxis fitted with taximeters because this appeal concerns such a vehicle. However, I hope it will be of assistance if I say something about private hire vehicles (PHVs) in London, and taxis and PHVs outside London, all of which are also subject to s 165.

50. Inside London, licensed private hire vehicles (PHVs) are prohibited from being fitted with taximeters by s 11 of the Private Hire Vehicles (London) Act 1998; cf. *Transport for London v Uber* [2015] EWHC 2918 (Admin). PHVs therefore have to use a different method of fare calculation which, according to TfL, is usually distance based. TfL itself does not regulate PHV fares, although it does require through its licensing regulations that a fare estimate be given in advance of the journey if a fixed fee has not been agreed.

51. Providing an inflated fare estimate to a disabled passenger would in my view infringe s 165(4)(a) even though there may be no liability on the passenger (who may refuse to accept the estimate). To amplify what I have already said about taxi drivers providing inflated fare estimates if, for example, a licensed private hire company had a poster in the window of its office to the effect that there was a £50 surcharge for a wheelchair user, then that would amount be a contingent additional charge caught by s 165(4)(b). If this were not so then private hire companies could avoid taking disabled passengers without consequence which, for the reasons I have already given, would be inconsistent with the entire purpose of s 165.

52. I turn to the position outside London. There, as I have said, taxis and PHVs are subject to a different statutory regime. The principal legislation is the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). Neither of these requires hackney carriages to have taximeters, but most local authorities (who are the taxi licensing authorities for their area) do make it a requirement, either by means of byelaws made under s 68 of the 1847 Act, or as a condition attached to a hackney carriage proprietor's licence issued under s 47(1)(2) of the 1976 Act. In both cases the meter must be calibrated and sealed. *Button,* loc cit, summarises the general position as follows at [9.24]:

> "Therefore, the meter must be used for all journeys within the district unless a fixed fare has been agreed in advance of the hiring. In those cases, the driver must ensure that the fare will not exceed the maximum that could be charged for that hiring and it is therefore clearly good practice to activate the meter. This protects the driver from any allegation of overcharging, whilst allowing the passenger to see what a 'bargain' they have successfully negotiated."

53. I see no basis for reaching a different conclusion in relation to hackney carriages outside London as compared with those in London. In both places the taximeter calculates the fare and there is an implied term in the contract between the driver and the passenger (or an express term, should there be written conditions of carriage – there are no such conditions for London hackney carriages) that the passenger will pay the fare shown on the meter. A financial liability or commitment is therefore created when the driver switches on the meter, precisely as it is in relation to a London hackney carriage and it is no later than this point that a 'a charge is made' for

the purposes of s 165(4). This liability or commitment is reinforced by s 66 of the 1847 Act, which makes it an offence to refuse to pay the fare due. I reach the same conclusion as before where the driver gives an inflated fee estimate. That in my judgment is a contingent financial liability or commitment falling within s 165(4)(b).

54. In relation to PHVs outside London, unlike in London, these may lawfully be fitted with a taximeter. Section 71 of the 1976 Act provides that nothing in the Act shall require any PHV to be equipped with any form of taximeter but if it is then the taximeter must have been tested and approved. For the reasons already given, the use of a taximeter in a PHV creates a contractual obligation to pay the metered fare, and hence switching on the meter amounts to 'making a charge' because it creates a financial liability or commitment. This is reinforced by the criminal law: a failure to pay the fare would likely amount to the offence of making off without payment contrary to s 3 of the Theft Act 1978: see *R v Aziz* [1993] Crim LR 708. For PHVs outside London without a taximeter, the position is the same as for PHVs within London, and for the same reasons I conclude that providing a fare estimate or indication in advance of the journey is sufficient to amount to the making of a charge because it creates a contingent financial liability or commitment and that in my view is sufficient to engage s 165(4)(b).

Conclusion

55. For all of these reasons, I dismiss the appeal.