

Committee: Licensing Committee
Date: Wednesday 3 April 2013
Time: 5.00 pm
Venue: Bodicote House, Bodicote, Banbury, Oxfordshire
OX15 4AA

Membership

| | |
|---|---|
| Councillor Fred Blackwell (Chairman) | Councillor Mrs Diana Edwards (Vice-Chairman) |
| Councillor Michael Gibbard | Councillor Timothy Hallchurch MBE |
| Councillor Tony Ilott | Councillor Kieron Mallon |
| Councillor P A O'Sullivan | Councillor G A Reynolds |
| Councillor Alaric Rose | Councillor Gordon Ross |
| Councillor Rose Stratford | Councillor Douglas Webb |

AGENDA

1. Apologies for Absence and Notification of Substitute Members

2. Declarations of Interest

Members are asked to declare any interests and the nature of that interest which they may have in any of the items under consideration at this meeting.

3. Petitions and Requests to Address the Meeting

The Chairman to report on any requests to submit petitions or to address the meeting.

4. Urgent Business

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. **Minutes** (Pages 1 - 4)

To confirm as a correct record the Minutes of the meeting of the Committee held on 17 December 2012.

6. **Head of Service Delegations: Taxi Licensing** (Pages 5 - 48)

Report of Head of Public Protection & Development Management.

Summary

To advise the Licensing Committee of the consideration given by the Head of Public Protection and Development Management when exercising his delegated powers in determining applications for exceptions to Hackney Carriage and/Private Hire Driver Licences.

Recommendations

The meeting is recommended:

- (1) To note and endorse the consideration given by the Head of Public Protection and Development Management when determining applications for exception to Policy as detailed in the contents of this report.

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to democracy@cherwellandsouthnorthants.gov.uk or 01295 221601 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by

Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Louise Aston, Democratic and Elections
louise.aston@cherwellandsouthnorthants.gov.uk, 01295 221601

Sue Smith
Chief Executive

Published on Friday 23 March 2013

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Agenda Item 5

Cherwell District Council

Licensing Committee

Minutes of a meeting of the Licensing Committee held at Bodicote House, Bodicote, Banbury, Oxfordshire OX15 4AA, on 17 December 2012 at 4.00 pm

Present: Councillor Fred Blackwell (Chairman)
Councillor Mrs Diana Edwards (Vice-Chairman)

Councillor Timothy Hallchurch MBE
Councillor Kieron Mallon
Councillor P A O'Sullivan
Councillor Rose Stratford

Substitute Members: Councillor Margaret Cullip (In place of Councillor Douglas Webb)

Apologies for absence: Councillor Michael Gibbard
Councillor Alaric Rose
Councillor Douglas Webb

Officers: Natasha Barnes, Licensing & Vehicle Parks Manager
Claire Bold, Licensing Team Leader
Dave Parry, Interim Democratic and Elections Officer

13 **Declarations of Interest**

There were no declarations of interest.

14 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

15 **Urgent Business**

There was no urgent business.

16 **Minutes**

The Minutes of the meeting of the Committee held on 8 November 2012 were agreed as a correct record and signed by the Chairman.

17 **Minutes of meeting Tuesday 24 July 2012 of Licensing Sub Committee**

Resolved

That the Minutes of the meeting of the Licensing Sub-Committee held on 24 July 2012 be noted.

18 **Minutes of meeting Tuesday 21 August 2012 of Licensing Sub Committee**

Resolved

That the Minutes of the meeting of the Licensing Sub-Committee held on 21 August 2012 be noted.

19 **Minutes of meeting Monday 10 September 2012 of Licensing Sub Committee**

Resolved

That the Minutes of the meeting of the Licensing Sub-Committee held on 10 September 2012 be noted.

20 **Minutes of meeting Monday 19 November 2012 of Licensing Sub Committee**

Resolved

That the Minutes of the meeting of the Licensing Sub-Committee held on 19 November 2012 be noted.

21 **Hackney Carriage Licensing**

The Committee considered a report of the Head of Public Protection and Development Management which sought the Committee's approval to vary the Hackney Carriage fare tariff following notice of variation in accordance with Section 65 of the Local Government (Miscellaneous Provisions) Act 1976.

The Committee noted the proposed fare tariff as detailed in the report, together with the responses received during the notice period.

An alternative fare tariff schedule was subsequently circulated by the Chairman for consideration. Councillor Blackwell then proposed that the revised fare tariff schedule be approved. Councillor Mallon seconded the proposal.

Resolved

- (1) That the revised Hackney Carriage fare tariff be approved (annex to the minutes as set out in the minute book).
- (2) That the Licensing Officer be requested to implement the variation within two months of the original implementation date.

22

Gambling Act 2005 - Revised Statement of Licensing Principles

The Committee considered a report of the Head of Public Protection and Development Management which detailed proposed amendments to the Statement of Licensing Principles and sought the Committee's agreement that these be adopted for publication.

Resolved

- (1) That the amendments to the Statement of Licensing Principles as presented be accepted, and the revised Statement of Licensing Principles be adopted for publication.

23

Licensing Act 2003

The Committee considered a report of the Head of Public Protection and Development Management detailing changes made to the Licensing Act 2003 with regard to Early Morning Restriction Orders and Late Night Levies.

Although it was noted that a Licensee affected by a decision of the Council would still be able to appeal, the Committee nevertheless welcomed the new powers, and hoped they would support a more proactive approach.

Resolved

- (1) That the report be noted.

The meeting ended at 4.20 pm

Chairman:

Date:

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Licensing Committee

Exception to Hackney Carriage and/Private Hire Driver Policy – Head of Service Guidelines

3 April 2013

Report of Head of Public Protection and Development Management

PURPOSE OF REPORT

To advise the Licensing Committee of the consideration given by the Head of Public Protection and Development Management when exercising his delegated powers in determining applications for exceptions to Hackney Carriage and/Private Hire Driver Licences.

This report is public

Recommendations

The Licensing Committee is recommended:

- (1) Note and endorse the consideration given by the Head of Public Protection and Development Management when determining applications for exception to Policy as detailed in the contents of this report.

Executive Summary

Introduction

- 1.1 When applying for Hackney Carriage (HC) and/or Private Hire (PH) driver's licence, applicants must ensure that they meet the requirements of Cherwell District Council 'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences'. A full copy of the guidance is attached at Appendix 1.
- 1.2 The Head of Public Protection and Development Management have delegated authority in the Council's Constitution to make decisions on any Hackney Carriage (HC) or Private Hire (PH) Vehicle and Driver Licence application.
- 1.3 The Council's specification normally covers the majority of applications received by the Council for HC and PH driver licences. However, recent case law has come to light which affects the way enforcement action is taken against licence holders and the future of their licences.

- 1.4 If a complaint is received against a licensed driver that results in that person not meeting the Council's requirements to be a 'fit and proper' person, legislation dictates that there are two routes available for action to be taken. This is to either suspend the licence or to revoke the licence.
- 1.5 In the majority of instances, a suspension is used. This can be imposed with immediate effect should the matter concerned require it. This would permit an investigation to be carried out into the matter or for the matter to be rectified if possible, for example, on medical grounds.
- 1.6 New case law, Singh Vs Cardiff City Council has ruled that licensed drivers should not be suspended as a form of punishment for an unlimited time period. In these instances, revocation should be used. The relevant paragraphs of the document are as follows:

1.7 Revocation and suspension in the case of Mr Morrissey

100. The claimant submitted that in any event, quite apart from his other arguments what happened in this case was that on 5th July 2011 the defendant decided to suspend his licence rather than to revoke it. It was submitted, as it were, that the defendant authority was therefore "functus officio". It was submitted there is no power of interim suspension in section 61 of the 1976 Act.

101. I would accept those argument on behalf of the claimant Mr Morrissey, in this case.

102. Returning to the language of section 61, I remind myself that this was not a case in which any attempt was made to activate the suspension of the licence to have immediate effect pursuant to the interest of public safety basis in subsection (2B). The notice sent to Mr Morrissey did not purport to invoke that provision or to make the suspension immediately effective.

103. In my judgment, the way in which the concept of suspension is used by Parliament is section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether a ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.

104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of 1 year, will constitute sufficient sanction in the interests of the public.

105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976 Act. It does not use, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation. For those reasons I accept that aspect of Mr Morrissey's claim for judicial review also.

- 1.8 The full judgement is attached to this document as Appendix 2.

- 1.9 The ruling has an impact on the operations of the Licensing Team and the manner in which they deal with drivers and pending investigations.
- 1.10 If a driver has his licence suspended, on grounds that are later diminished, for example on medical reasons that are rectified or criminal charges that they are exonerated from, the licence can easily be reinstated if it has not expired during the suspension period.
- 1.11 If a driver has his licence revoked and then the reason for the revocation is diminished as outlined above, the driver would have to reapply for their HC/PH Driver licence following the full application process including passing a knowledge test and undertaking medical, Criminal Records and DVLA checks accompanied by paying an application fee.
- 1.12 This process could take several months and such a process could be deemed as unreasonably preventing the driver from working.
- 1.13 Therefore, the Licensing Committee are asked to consider the guidance set out below at paragraphs 1.14 to assist the Head of Public Protection and Development Management when considering exceptions to policy of grant applications for Hackney Carriage and/Private Hire Drivers licences following revocation.
- 1.14 Whilst it is acknowledged that Policy can not cover every possible scenario and that each case should be considered upon its individual merits, the Head of Public Protection and Development Management will take into account the following guidance when determining if an applicant is suitable to be considered as an exception to policy:

- **Nature of the grounds for revocation**

There are numerous reasons that a licence may be revoked upon, but all of these would result in the driver not being deemed as a 'fit and proper person' at that the time of revocation in accordance with Section 61 of the LG (MP) Act 1976. Consideration of a new application following revocation would only be considered if the applicant fulfils the criteria as a 'fit and proper person' and the original reasons for revocation have been diminished. The full guidance upon the Council's interpretation of a 'fit and proper person' is detailed in the Council's 'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences'. The applicant must ensure they fulfil these criteria in addition to the reason for revocation being diminished prior to any consideration being given by the Head of Service. The responsibility to meet these criteria will be that of the applicant and may require in some circumstances the applicant to submit new checks to the Disclosure & Barring Service (previously Criminal Records Bureau) and the DVLA depending on the nature of the revocation. This will be at the discretion of the Head of Service.

- **Time period that has elapsed since the revocation was imposed**

Consideration will not be given to any applicants whose licence has been revoked for a period of six months or longer. In these circumstances, the applicant will be required to undertake the full application process.

- **Revocation on Medical Grounds**

If the revocation was instigated for medical reasons, the applicant must provide proof that the matter is no longer a concern to the satisfaction of the Council's Medical Advisor prior to any consideration by the Head of Service.

- **Revocation on criminal grounds**

The applicant must provide proof that they have been exonerated from all charges to a level that goes beyond reasonable doubt prior to any consideration by the Head of Service. The applicant may be requested to provide records to prove such exoneration and may be required to undertake further checks at the request of the Head of Service.

- **Right to discretion**

Any consideration for an exception to policy will be at the discretion of the Head of Service. It is considered that this discretion will only be applied in exceptional circumstances and that for the majority of cases, a revocation of a licence is a permanent status.

- 1.15 If the Head of Public Protection and Development Management are minded to grant an exception to the Policy he may apply specific conditions related to that particular applicant. It is also possible for the Head of Public Protection and Development Management to issue short term licences (any period less than the standard 3 year licence) if appropriate.

Conclusion

The contents of this report are to advise the Committee of the guidance considered by the Head of Public Protection and Development Management in conjunction with existing policy when considering whether or not to make an exception to policy.

Background Information

- 2.1 Cherwell District Council Licensing Team issues all licences in relation to Hackney Carriage and Private Hire Driver, Vehicle and Operator licences in accordance with the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976
- 2.2 Applicants have a right of appeal to the Magistrates Court when any decision to suspend or revoke a licence is made.
- 2.3 As a result, the Licensing Team undertake enforcement as well as administration of the different licence types.
- 2.4 The main focus of the Licensing Team is to ensure that all licence holders within the district operate within the legislation and in a manner that promotes public safety.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The Head of Public Protection and Development Management has a duty of care to the public and so any determination will always be made in the interest of public safety.
- 3.2 Each application must be considered on its own merits but by applying the factors above and by securing Licensing Committee endorsement, the Head of Public Protection and Development Management can ensure that a consistent approach is taken.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** To note the contents of this report and approve the guidance set out above for the Head of Public Protection and Development Management to take into consideration when determining an application for exception to be made to current policy.
- Option Two** To note the contents of the report and to suggest amendments to the guidance set out above.

Consultations

- Not Applicable** The contents of this report are to advise the Committee of the guidance to be considered by the Head of Public Protection and Development Management when making exceptions to policy in the circumstances outlined above.

Implications

- Financial:** There are no financial implications arising from this report.
Comments checked by Kate Drinkwater, Service Accountant, 01327 322188
- Legal:** Where an application for a Hackney Carriage and/Private hire Drivers Licence is refused, the applicant has a right of appeal to the Magistrates Court. The existing specification and use of the suggested guidance for exception to Policy requests will help to prevent such challenges. In addition all applications of this type are taken through Legal for opinion prior to the Head of Public Protection and Development Management making a determination
Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687

Risk Management: As detailed in the legal implications, applicants may challenge the decision of the Head of Public Protection and Development Management, the use of existing policy as well as guidance for exception to Policy requests and seeking legal input prior to determination mean the risk is low.

Comments checked by Nigel Bell, Team Leader – Planning & Litigation, 01295 221687

Wards Affected

All

Document Information

| Appendix No | Title |
|--|--|
| Appendix 1 | 'Guidance to applicants for Hackney Carriages and/or Private Hire Vehicle driver licences' |
| Appendix 2 | Singh Vs Cardiff City Council |
| Background Papers | |
| Copies of the relevant sections of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 are available for the Licensing Team upon request. | |
| Copies of the Council's current policy in relation to the licensing of Hackney Carriage and/Private Hire Drivers Licences have been issued to all members. Further copies can be obtained from the Licensing Team. | |
| Copies of the Councils Scheme of Delegation, as issued in October 2012, can be obtained from Legal & Democratic Services | |
| Report Author | Claire Bold, Licensing Team Leader |
| Contact Information | 01295 753741 claire.bold@cherwell-dc.gov.uk |

GUIDANCE TO APPLICANTS FOR HACKNEY CARRIAGE AND/OR PRIVATE HIRE VEHICLE DRIVER LICENCES

How to apply

This guide tells you everything you need to do before you submit your completed application.

Most of your questions should be answered here, but if you need help you can:

- Call the Licensing Team on **01295 753744**
- Email your query to licensing@cherwell-dc.gov.uk
- Send a fax to **01295 221878** marked for the attention of the Licensing Team
- Write to us at **Licensing Team, Bodicote House, White Post Road, Bodicote, Banbury, Oxfordshire, OX15 4AA**

What to do first:

Your application cannot be processed without all the relevant paperwork so please ensure you read this guide before you submit your application. We want to make sure your application is not delayed;

Before submitting your application, check you have the following documents:-

- Completed Application form
- Medical Report completed by your own GP
- Completed Criminal Records Bureau disclosure form
- Documents for confirming your identity (See applicants guide for completing Disclosure Application form)
- Completed DVLA form
- The appropriate fee
- A full UK driving licence held for at least one year.

Declaration to be made by the Employer

When completing your application form you will need to get the form endorsed by the Proprietor or Operator who will employ you. Applicants must ensure prospective employers are given the relevant information in order to complete the necessary declaration.

Fees and Charges

The current application fees are detailed on a separate sheet enclosed with this guidance.

Submission of application

Submit your application either in person at Bodicote House. An appointment **must be made** before attending Bodicote House to ensure a member of staff will be able to assist you. It is important that all the necessary paperwork and documents (as listed above) are presented at the time of submission.

Once the Licensing Team have received your application, the medical form, the CRB and DVLA disclosures are sent to the relevant authorities for approval/disclosure. The process normally takes 3 – 6 weeks.

The knowledge Test

When applying for the grant of licence you must pass a knowledge test before a licence will be issued. **You** need to call the licensing team on: 01295 753744 to book this once you have handed in your application. The knowledge test consists of 35 questions; you will need to achieve 80% to pass. The knowledge test will consist of:

- (a) 10 general road knowledge questions. These include basic law and practise in relation to the use of Private Hire and Hackney Carriage Vehicles and the Highway Code.
- (b) 15 Road/Street/Place questions
- (c) 10 map location questions. The questions relate to the whole of the Cherwell District and surrounding are (Banbury, Bicester and Kidlington)

If you feel you need to “brush up on your knowledge” the following booklets / information will help you:

- The Highway Code - available from all good bookshops
- There are also various leaflets and Policy Documents enclosed with the Guidance which will assist you.

Knowledge Tests are taken at **Bodicote House** on Monday mornings at 10 am. It is best to arrive at about 9:50 am any queries can be answered before the test is taken. The test is a written test and should take no more than 30 minutes to compete.

An oral test may be requested but this must be done in writing and supported with a certificate of educational need confirming the necessity for an oral test.

Appointments for knowledge tests will only be made once a complete application has been submitted.

The result of your knowledge test may be obtained after 12pm on the Wednesday following the test. This gives the Licensing Team time to mark and record the results. You can call the Licensing Team on **01295 753744**.

If you fail 2 knowledge tests, a charge is made for each subsequent test taken. Advice will be given regarding areas for improvement. No advice will be given regarding specific questions and correct/incorrect answered.

You can take a maximum of **FIVE KNOWLEDGE TESTS**, after which the application is void. The first two tests are free and the following 3 will be £25 each.

If you are unable to make your knowledge test due to an emergency you must call a member of the Licensing Team before 9am to cancel the test. If you fail to let us know you are unable to come you will either be charged £25 for the missed appointment or if it was one of your two free tests then you will lose one of these.

Criminal Records Disclosure (CRB)

The completion of this form gives your permission to the CRB to divulge details of any criminal record to the Licensing Authority. A Guidance notes booklet is enclosed to aid completion of the form. When the disclosure has been completed, CRB will send a copy to you and to the Licensing Team.

Drivers Licence Disclosure (DVLA)

The completion of this form gives your permission to the DVLA to divulge any details of any motoring offences. It also confirms relevant dates, such as the date of passing your driving test, renewal of licence etc.

Identity Badge

If a licence is granted you will be issued with a photographic ID badge. A passport type photograph will be taken of you when you attend to hand your paperwork in. This badge must be worn at all times when you are driving a licensed vehicle.

Types of licence available

Full Licence –

When granted, a driver's licence is valid 3 years from the date of issue. In some certain circumstances licences will be granted for a shorter period. The licence allows you to drive a Hackney Carriage and Private Hire Vehicle licensed by Cherwell District Council.

Temporary Licence –

You may apply for a 3 month licence. This will enable you to undertake driving on a trial basis. However, although the fee is less, you should note that the application process remains the same. If you decided to extend a 3 month licence you may do so by paying the balance of the fee required for a full 3 year licence. A small charge is made for this (See separate sheet for fees and charges)

How long before my licence is issued?

The whole process usually takes 3 – 6 weeks. However, licences are issued within 3 working days of receipt of replies to all the disclosures i.e. CRB, Medical Approval & DVLA as long as the applicant has successfully completed the knowledge test. It is advisable to take the knowledge test during the consultation period so that the licence can be issued at the earliest opportunity.

YOU CANNOT DRIVE UNTIL A LICENCE HAS BEEN ISSUED TO YOU

Who can apply for a licence?

The Council can only grant a licence if they are satisfied that you are a fit and proper person. You must also have held a full driving licence for at least 12 months.

What are the guidelines used in deciding applications?

Each case will be decided in its own merits.

When completing your application you are required to declare any convictions or cautions you may have. The information you give will be treated in confidence and will only be taken into account in relation to your application. A separate criminal records check form must also be completed as detailed earlier.

If you would like to discuss what effect a conviction may have on your application, you may telephone a member of the Licensing Team on **01295 753744** in confidence for advice.

Convictions and driving licence endorsements

A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for at least 3 years, according to the circumstances, before an application is entertained. Some discretion will be applied if the offence is isolated and there are mitigating circumstances. However, the overriding consideration will be the protection of the public.

In all cases, if a number of offences have been committed a longer 'trouble free' period will be expected.

The following examples afford a general guide on the action likely to be taken where convictions are admitted.

Minor traffic offences

Convictions for minor traffic offences e.g. waiting in a restricted street, speeding, etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage and Private Hire licence may be granted after its restoration but a warning would be issued as to future conduct.

Generally, a further trouble free period will be expected after any disqualification.

Major Traffic Offences

An isolated conviction for reckless driving or driving without due care and attention, etc, will normally merit a warning as to future driving and advice on the standard expected of Hackney Carriage and Private Hire drivers. More than one conviction for this type of offence within the last 2 years could lead to refusal and no further application would be appropriate until a period of 1 to 3 years free from convictions has elapsed.

Drunkenness

With motor vehicle – a serious view is taken of convictions for driving or being in charge of a vehicle while under the influence of drink. An isolated incident would not necessarily debar an applicant but strict warning would be given as for future behaviour. More than one conviction for these offences would raise grave doubts as to the applicant's fitness to hold a licence. **At least** 3 years should elapse (after the restoration of the driving licence) before an applicant will be considered for a licence.

Not in motor vehicle – an isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases a warning may be deemed sufficient.

Drugs

An applicant with a conviction for a drug related offence would be required to show a period of **at least** 3 years free of convictions before an application is considered or 5 years after detoxification treatment if he/she was an addict.

Indecency Offences

As Hackney Carriage and Private Hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assaults, importuning, or any of the more serious sexual offences, will be refused until they can show a substantial period (**at least** 3 to 5 years) free of such offences. More than one conviction of this kind would preclude favourable consideration. In either case if a licence were granted a strict warning as to future conduct would be issued.

Violence

As Hackney Carriage and Private Hire drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions involving violence. **At least** 3 years free of such convictions would need to be shown before an application is considered.

Dishonesty

Hackney Carriage and Private Hire drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Customers are not in a strong position when hiring a vehicle and can become 'fair game' for an unscrupulous driver. For these reasons a serious view is taken of any conviction involving dishonesty. In general, a period of **at least** 3 years free of conviction is required before considering an application.

Medical Considerations - What you have to do

A medical certificate **completed by your own GP**, or a partner in that practice who has access to your medical records, will be required on initial application then when a driver attains the age of 45, then every 5 years thereafter, then annually after the age of 65 years old. This is subject to the satisfactory completion of the report by your doctor. In the event of the medical report being valid for a lesser period or if a particular re-examination is required you will be expected to obtain a further report at the time stated.

Before consulting your doctor please read the Group 2 Medical Standards detailed below. If you have any of these conditions you may not be granted this licence. If, after reading the notes, you have any doubts about your ability to meet the standards, consult your doctor, optician or the Licensing Team for advice **before** you arrange for the medical form to be completed. The doctor will normally charge you for completing it.

In the event of your application being refused, the fee you pay the doctor is **not** refundable. Cherwell District Council has **no** responsibility for the fee payable to the doctor. The examination has to be carried out by a doctor who has access to your medical notes.

This report together with your application form, must be submitted to the Licensing Team within 4 months of the doctor signing the report.

It is most important that if, once a licence is granted, you develop symptoms of a condition which could affect safe driving (see Group 2 medical standards below) and you hold a licence, you must inform the Licensing Team at Cherwell District Council immediately.

Group 2 Medical Standards

The Council has adopted these medical standards for drivers of taxis, which are higher than those required for car drivers. The standard is used as a guideline in deciding whether an applicant is medically fit to hold a licence.

The following conditions may be a bar to holding a licence:

Epilepsy or liability to epileptic attacks – Group 2 standards state that a diagnosis of epilepsy or spontaneous epileptic attack(s) requires 10 years free of further epileptic attacks without taking anti-epilepsy medication during that 10 year period.

For conditions that cause an increased liability to epileptic attacks, the risk of attacks must fall to that of the general population.

Diabetes – Drivers with insulin treated diabetes applying for a licence will generally need specialist assessment and must meet strict criteria for diabetic control and meet the other higher medical standards (Group 2). If you have any condition other than insulin treated diabetes the doctor should be able to advise you if you meet the relevant higher medical standards. Please refer to the section 'other medical conditions' on this form.

Eyesight – All applicants must be able to read in good light with glasses or corrective lenses if necessary, a number plate at 20.5 metres (67 feet) or 20 metres (65 feet), where narrower characters are displayed (50mm) wide. The characters displayed on all new and replacement number plates manufactured from September 2001 are 50mm in width instead of 57mm. In addition applicants should have:

- a visual acuity of at least 6/9 in the better eye and
- a visual acuity of at least 6/12 in the worse eye and
- If these are achieved by correction, the uncorrected visual acuity in each eye should be no less than 3/60.

Normal binocular field – The second EC Directive requires a normal binocular field of vision for Group 2 drivers.

Monocular Vision – Drivers who have monocular vision would not generally be granted a taxi licence.

Uncontrolled symptoms of double vision – Uncontrolled symptoms of double vision will usually preclude licensing.

An applicant who is in doubt about the required eyesight standard should check with the Licensing Team. An applicant failing to meet epilepsy, diabetes or eyesight regulations may be refused a licence.

Other Medical Conditions – In addition applicants may be refused or suspended if they are unable to meet the recommended medical guidelines in the following situations:

- Within 6 weeks of – myocardial infarction, an episode of unstable angina, CABG or coronary angioplasty
- Angina, heart failure or cardiac arrhythmia which remain uncontrolled
- Implanted cardiac defibrillator
- Hypertension where the blood pressure is persistently 180 systolic or more and/or 100 diastolic or more
- A stroke or transient ischemic attack (TIA) within the last 12 months
- Unexplained loss of consciousness with liability to recurrence
- Meniere's or any sudden and disabling vertigo within the past one year with a liability to recurrence
- Insuperable difficulty in communicating by telephone in an emergency
- Major brain surgery and / or recent severe head injury with serious continuing after effects
- Parkinson's disease, multiple sclerosis or other chronic neurological disorders with symptoms likely to affect safe driving
- Psychotic illness within the past 3 years
- Serious psychiatric illness
- If major psychotropic or neuroleptic medication is being taken
- Alcohol and / or drug misuse within the past one year or alcohol and/or drug dependency in the past 3 years
- Dementia
- Any malignant condition within the last 2 years with a significant liability to metastasise to the brain
- Any other serious medical condition likely to affect the safe driving

The Council will expect each applicant for a licence to reach the standard required for drivers of Group 2 vehicles i.e. large goods vehicles, buses etc. The Council's Medical Adviser will vet all medical reports.

The Procedure After a Licence is Issued - Within 9 months of the issue of your licence you must attend a Disability Awareness Training Course. As attendance on this course is a condition of your licence, if you fail to attend, your badge will lapse after 9 months. If you have been granted a 3-month

'trial licence' and you then extend it to a 3-year licence, you must attend the Disability Awareness Training Course within 6 months from the original issue date of your licence.

When you get your licence you will be given details of the next available course date. If this date is not convenient you should contact the Licensing Team to book another date.

Refusal of an Application

In some cases applicants are refused a licence. This usually occurs as a result of convictions or on medical grounds. Refusals are effected under the Local Government (Miscellaneous Provisions) Act 1976. Applicants have a right of appeal to the Magistrates Court against any decision to refuse an application. Any appeal against the decision must be made to a Magistrates Court within 21 days of the date of receipt of the letter which would be sent. The letter will detail the reasons for refusal.

Renewal of the Licence

The Council will also take a view about the general conduct of the applicants who hold licences when they come up for renewal. Licences need to be renewed **before they expire**. A reminder will be sent before the expiry date. However, it is the responsibility of the driver to apply to the Council before the date of expiry of the licence for its renewal. Failure to comply with by-law requirements, persistent customer complaints or general behaviour recorded by the Council, which is unacceptable, can be expected to have a bearing on the continuation of a licence.

Data Protection

The Council collects information from Hackney Carriage / Private Hire Vehicle Drivers licensing purposes. The information we collect about you may be used for any of the Council's purposes. We may check information provided by you, or information about you provided by a third party, with other information held by us. We may also get information about you from certain third parties, or give information to them, to check the accuracy of information or to prevent or detect crime or to protect public funds in other ways, as permitted by law.

We will not disclose information about you to anyone outside the Council unless the law permits us to.

CO/10807/2011
Neutral Citation Number: [2012] EWHC 1852 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
Cardiff Civil Justices Centre
2 Park Street
Cardiff CF10 1ET

Wednesday, 23rd May 2012

B e f o r e:

MR JUSTICE SINGH

Between:
THE QUEEN ON THE APPLICATION OF SINGH
Claimant

v

CARDIFF CITY COUNCIL
Defendant

Mr G Walters (instructed by Crowley Solicitors) appeared on behalf of the
Claimant
Mr P Morris (instructed by Cardiff City Council) appeared on behalf of the
Defendant

MR JUSTICE SINGH:

Introduction

1. The principal claimants in this claim for judicial review are two holders of Hackney Carriage drivers' licences. The defendant is a County Council which is a unitary authority but which for present purposes exercises the functions of the District Council in relation to the licensing of Hackney Carriages and private hire vehicles.

2. The principal claimants challenge in particular decisions taken by the

defendant on 9th August 2011 to revoke their licences.

3. The defendant authority is the successor to the former Cardiff City Council. There are two other claimants in these proceedings which are companies referred to in the first witness statement of Mr Carl Cummings in support of the present claim for judicial review at paragraphs 2 and 3. The first of those is Prime Outlet Ltd which owns and is the proprietor of 133 Hackney Carriage vehicles in the Cardiff area. The company also provides private hire vehicles. Mr Cummings informs the court that he is the major shareholder in that company.

4. The other corporate claimant is SupaTax 2000 Ltd which owns a taxi booking business which Mr Cummings informs the court is used by over 20,000 passengers in Cardiff every week. He is also the major shareholder in that company and is its sole Director.

5. Permission to bring this claim for judicial review was granted after an oral hearing by Bean J on 13th February 2012. In the course of his judgment in granting permission Bean J extended time to bring the claim in the case of Mr Singh (see paragraph 14 of that judgment). Bean J did not expressly, it would seem, deal with the question of the standing to bring these proceedings of the two corporate claimants in this case. The defendant authority in its written submissions has objected to their standing. No vigorous opposition was pursued at the oral hearing before me on that basis. Nevertheless, standing is not something which can be conferred by consent and it is appropriate that I should say something about it albeit briefly.

6. Suffice it to say that having considered the material and submissions in this case, I am satisfied that both of the corporate claimants do have sufficient interest in the matters to which this claim for judicial review relates. They are not individual holders of licences, so in that sense they cannot be said to be directly the subject of the revocations by the defendant of which complaint is made. Nevertheless, I am satisfied on the evidence and submissions which have been placed before the court that they are not, for example, mere busy bodies. They have a legitimate interest in the matters to which these proceedings relate and accordingly I conclude that they do have standing to bring these proceedings along with the individual claimants.

Factual Background: the development of policy

7. The background to these individual cases can be traced back, so far as the

efforts of the parties have been able to ascertain, to a report dated 14th September 1988 to the then City Council. The report was by the City Environmental Health Officer to its Licensing Committee and was entitled "Conduct of Hackney Carriage. Private Hire drivers".

8. Paragraph 1 explains that the purpose of the report was to consider the introduction of a penalty points scheme for implementation in the event of misconduct by licensed Hackney Carriage/Private Hire drivers. By paragraph 2, by way of background it was observed that the misconduct of licensed drivers can be actioned in one of two ways: (a) for a specific offence under bylaws or the Local Government (Miscellaneous) Provisions Act; (b) for other matters action can be taken under section 61 of the same Act.

9. As was observed at 2(1B) that section allows a relevant Council to suspend or revoke a driver's licence on the following grounds:

1. that since the grant of the licence he has been convicted of an offence involving dishonesty, indecency, violence or an offence under this or the Town Police Clauses Act 1847;

2. For any other reasonable cause. Paragraph 3 of the report was headed "present difficulty" and stated:

"3.1 The actions available to the Licensing Committee under paragraph 2(b) above appear wide ranging, but in practice are limited in that the decision to be made is in effect whether or not the driver in question is a 'fit and proper' person.

3.2 If it is decided that the driver is not, then the only real avenue available is to revoke the licence.

3.3 This results in no action being taken against licensed drivers who are guilty of misconduct, the magnitude of which does not warrant revocation."

Paragraph 4 of the report headed "proposals" stated;

"4.1 In order to bridge the gap that exists for action against licensed drivers involved in this misconduct, a penalty points system could be adopted for use by this Committee.

4.2 Instead of considering alleged offenders for suspension or revocation. The

Committee consider action by way of revocation or disciplinary action.

4.3. In the event of disciplinary action being deemed appropriate the offender be given penalty points, the number depending upon the severity of the offence.

4.4. The accumulation of more than 10 penalty points within a period of 3 years results in the automatic revocation of the driver's licence involved.

4.5 In cases of automatic suspension the driver involved will still have a right of appeal to the Magistrates' Court."

10. The recommendations at the end of the report were (i) the Committee adopt a penalty point scheme based on the proposals contained in that report; (ii) that the system be implemented from 1st October 1988; and (iii) that the trade be informed of the adoption of the scheme.

11. On that date, 14th September 1988, the relevant Committee of the City Council resolved to adopt the penalty point scheme based on the proposals contained in the report from 1st October 1988 for a 12 month trial period and to inform the trade of that scheme.

12. There is before the court next in time a report of the Director of Environmental Services to the City Council's Licensing Committee dated 7th December 1988, entitled "Penalty point system". In paragraph 4, which was headed "Discussion", the period adopted for the accumulation of penalty points was noted to be fixed as 3 years, as a reasonable period.

At paragraph 4.4 it was noted:

"The Committee has the right to revoke drivers' licences if offences are severe and to have penalty point range up to 10 is not necessary."

At paragraph 4.6 it was stated:

"The implementation of a penalty points system involves the consideration of offences by the Licensing Committee and if necessary the awarding of penalty points, the number of which will depend on extent and degree of the offence."

At 4.7 it was stated:

"The adoption of the penalty point system does not remove the authority of the Licencing Committee to revoke licences instantly outside of the points system for major offences."

13. On that date, 7th December 1988, the relevant Committee passed a resolution to introduce a penalty point system from 1st October 1988 for a 12 month period and for this to be reviewed after 12 months in October 1989. There is then before the court a resolution of the Licensing Committee of the City Council on 11th October 1989, which refers to the penalty point system review and resolved to amend the penalty point system guidelines relating to the persistent receipt of stop notices in the manner set out in more detail in that resolution.

14. At some point, although the date is not entirely clear, for reasons which are not material, a crystallised form of the relevant policy was arrived at. As it happens the document which is before the court bears the date in a footer of 16th April 1993 but it is not clear that it was in fact adopted on that date, it may well be that that was simply a date when a particular person printed the document out. It is to be noted, as I will mention later, that there has been an amendment to the policy in December 2011. The document produced on that occasion still has in its footer the date of 16th April 1993.

15. Be that as it may, it is common ground before me that the document which is before the court does set out the policy as it was in force at the time of the two individual decisions which are in issue in the present case. The document is headed "Penalty point system" and states:

"The Licensing Committee agreed to introduce a Penalty Point system to be utilised in the event of misconduct by licensed Hackney Carriage/Private Hire Drivers. As a consequence the Licensing Committee defined guidelines for the administration of the system and resolved that.

(i) the categories of offences, together with the range of penalty points listed below be adopted as guidelines, and each matter be considered on its merits and depend on the circumstances surrounding each case."

There then followed headed (a) to (g) a number of types of incident, for example assault, harassment, deception etc with a points range set out for each type of incident. The policy continued at paragraph 2:

"the accumulation of 10 or more points in any period of 3 years will normally result in the automatic revocation of the licence."

16. As I have said, the policy was amended after the particular decisions under challenge in this case in December 2011, paragraph 2 of the policy now states:

"The accumulation of 10 or more points in any period of 3 years will normally result in the revocation of the licence."

17. Some other documents were drawn to the court's attention as to the general background in this case. First, there are the minutes of a meeting of the Licensing and Public Protection Committee dated 2nd May 2001, on the subject of Hackney Carriage/Private Hire matters and in particular the conduct of their drivers and the penalty points system.

18. In the relevant minute it was recorded that:

"This Committee at its meeting on 6th March 2001... requested clarification of the guidelines for imposition of penalty points on new licences. The chief legal services officer advised that the penalty points scheme was introduced by the former Cardiff City Council in 1988 to cover a deficiency in the legislation relating to the discipline of drivers. Under the legislation the only sanction available against a driver who has committed misconduct was to suspend or revoke his licence.... proved to be too harsh a penalty for particular respondent in question. The penalty points scheme therefore provided for an accumulation of points for misconduct as a driver or other matters which related to a person's fitness to be a driver. If 10 points were reached within a period of 3 years, the Committee would deem a driver not a fit and proper person to hold a licence and revoke his licence on the grounds of reasonable cause, namely an accumulation of incidents."

19. On behalf of the claimants before me, particular reliance has been placed on the reference in that minute to the advice that there was "a deficiency in the legislation relating to discipline of drivers".

20. In similar vein another document has been drawn to my attention which consists of questions to the chairpersons of the Committees dated 10th May 2001, when in response to a question about taxi drivers in Cardiff, the relevant Chairperson of the Licensing and Public Protection Committee replied:

"The existing legislation covering the disciplining of licensed drivers is deficient in that the only sanction against a driver is to revoke a licence. For

many issues this sanction is often too harsh a penalty. The penalty points scheme was introduced to provide a penalty short of revocation that encourages drivers to improve the service they offer ..."

Finally, in respect of the general background my attention has been drawn to a report of the Chief Legal Services officer to the Licensing and Public Protection Committee dated 5th February 2002, on the subject of the determination of applications for Hackney Carriage/Private Hire drivers licences and disciplinary hearings.

21. At paragraph 2.3 of that report, extensive reference was made to the introduction of the Human Rights Act 1998 which had come into full force on 2nd October 2000. In the course of the discussion it was noted that:

"The decisions of the Council are subject to judicial review and where a licence is revoked or refused then there is a right of appeal."

Reference is made to case law on the question of compatibility of administrative decision making of this kind with Article 6 of the Convention rights which is set out in schedule 1 to the 1998 Act and confers the right to fair hearing in, for example, the determination of a person's civil rights and obligations.

22. Section 3 of the report dealt with existing procedure and set out at some length in detail, which it is not necessary to reproduce in the course of this judgment, the various steps which are available to a person affected by the relevant disciplinary hearings. In particular, it can be noted that at 3.2.2, the licence holder is invited to appear before the Committee and details of the possible decisions are also provided in advance of the meeting. At 3.2.7 it is noted that the licence holder is given an opportunity to address the Committee and to call such witnesses or present such evidence as they may wish.

3.3 stated:

"Under the legislation, the only sanctions available against a driver who has committed misconduct are to suspend or revoke his licence. These sanctions will frequently prove to be too harsh a penalty for the particular misconduct in question. However, an accumulation of incidents will usually mean that a driver is no longer to be regarded as a fit and proper person to hold a driver's licence. The Committee has therefore adopted a Penalty Points Scheme. Under this Scheme the Committee, instead of exercising its statutory powers

of refusal, suspension, or revocation, can impose penalty points in respect of a driver's misconduct, or other matters which relate to his fitness to be a driver. If 10 points are reached within a period of three years, the Committee will deem a driver to be not a fit and proper person to hold a licence, and revoke his licence on the ground of 'reasonable cause' namely, an accumulation of incidents. At that time there will be a right of appeal to the Magistrates' Court."

Appendix C to the report set out in further detail the various procedural steps which are available, in particular, the right of a person to make representations and to bring witnesses to speak on relevant matters.

23. It should be also be noted at paragraph 3A(iii) of the appendix, it is stated that one of the purposes of the hearing is for the Committee to consider whether disciplinary action should be taken. On behalf of the defendant before me, it was submitted that made it clear that the question of whether disciplinary action should be taken was not a foregone conclusion but was for determination at the relevant hearing.

24. On behalf of the defendant it was also drawn to my attention that appendix B to the report at paragraph (1A) states that each case will be decided on its own merits. However, I have not found that particular reference to be of assistance in this case. This is because that is not directly relevant to the issues which arise before me, appearing as it does in appendix headed "guidelines relating to the relevance of convictions".

The facts in the case of Mr Singh

25. On 14th August 2009 the senior licensing officer of the defendant Council sent a letter to Mr Singh enclosing a report which he proposed to put before the next Public Protection Committee meeting on 8th September 2009. This report noted that Mr Singh had been licensed on the last occasion on 4th June 2009 and his licence was to expire on 25th June 2010 and he had a Hackney Carriage/Private Hire driver's badge.

26. The report also noted on 4th June 2009, when reviewing his licence, Mr Singh had disclosed that he had three motoring convictions recorded on his DVLA licence between November 2008 and March 2009; the details need not be set out for present purposes. On 14th September 2009 the Council wrote to Mr Singh to inform him that the Public Protection Committee on 8th September 2009, after careful consideration had resolved to impose six

penalty points against him, that is under the relevant scheme which the Council had adopted. The letter continued that this had resulted from the three motoring convictions which he had disclosed.

The letter concluded:

"You should note that this will be kept on your file and the accumulation of 10 or more penalty points in any 3 year period will result in the automatic revocation of your licence."

27. Against that background there then took place an incident which is recorded in a road worthiness prohibition notice, dated 25th February 2011. The particular defect which had been discovered by the relevant agency was that Mr Singh's vehicle had a non steered axle tyre tread worn beyond its legal limit on the nearside. In consequence the relevant officer at the Council sent a letter to Mr Singh dated 16th May 2011, enclosing a report which he intended to make to the Public Protection Committee at its next meeting on 7th June 2011. That report observed the background facts including that Mr Singh had been first licensed in June 1998. It noted the events of the 25th February 2011 and in particular the defect which had been found in the nearside tyre.

28. At its meeting on 7th June 2011, the Public Protection Committee resolved to impose four penalty points on Mr Singh and therefore his licence was revoked.

29. Mr Singh was notified of that decision in a letter from the relevant officer dated 8th June 2011.

He stated:

"You already have six penalty points recorded from 8th September 2009 in respect of motoring convictions recorded against you between November 2008 and March 2009 and as a result you have 10 penalty points within a 3 year period and therefore your Hackney Carriage/Private Hire driver's licence has been revoked. Your licence was therefore revoked on the following grounds."

There was then set out the language of the relevant provision of section 61(1) of the Local Government (Miscellaneous) Provisions Act 1976 to which I will return. The letter concluded by informing Mr Singh that section 61(3) of the Act enabled him to appeal to a Magistrates' Court within 21 days of receipt of

the letter.

30. In a letter dated 21st June 2011 Mr Singh wrote to the Council to appeal against its decision to revoke his licence. In his grounds of appeal he submitted that the penalty of four points in respect of the tyre incident was excessive. He said that approximately 3 weeks prior to his penalty he had obtained information that another gentleman had received two points for the same offence. He asked the Council to consider his appeal favourably due to the fact that this is his only source of income and he has a mortgage and three children to support.

31. By a letter dated 12th July 2011 the relevant officer of the council wrote to Mr Singh enclosing a report which he intended to make to the next Public Protection Committee at its meeting on 9th August 2011. This report noted the background facts and noted that Mr Singh had appeared before the Committee on 7th June 2011, and that he had been penalised with 4 points on that occasion. It noted Mr Singh had already accumulated 6 penalty points on his licence due to three motoring convictions and therefore his licence was revoked. The report continued that Mr Singh felt that penalising him with 4 points was severe as drivers had appeared before the Committee on 10th May 2011 had only received 2 points per illegal tyre. It stated that Mr Singh felt that he should have been given the same punishment and if he had been he would now have 8 points but still have his licence. It concluded that Mr Singh wished the Committee to reconsider their decision to revoke his licence and award it 2 points instead of 4 and allow him to keep his licence.

32. At its meeting on 9th August 2011, the Committee resolved not to review the previous disciplinary action in respect of Mr Singh. By a letter dated 11th August 2011 the relevant officer at the Council wrote to inform Mr Singh of the outcome.

He said that the Committee on 9th August 2011:

"decided not to reconsider your revocation and said they had made their decision and any appeal against that decision would be a matter for the Magistrates' Court."

The court has been informed that subsequently Mr Singh has appealed against his revocation to the Magistrates' Court, but that that appeal has been adjourned pending his claim for judicial review.

The facts in the case of Mr Morrissey

33. The relevant facts can conveniently be taken by the way of background from a letter dated 3rd June 2011, from the licensing enforcement officer to the senior licensing officer with the Council. The letter states that on 25th May 2011 the officer on duty in Cardiff City Centre, together with another enforcement officer, at 21.20 hours saw a Hackney Carriage stationary and unattended in St Mary's Street opposite the designated rank. He noted the "For Hire" light was illuminated, he also noted that the vehicle was not displaying the driver's identity badge in the front windscreen.

34. Whilst examining the vehicle the officer was approached by a male person, now known to be Mr Morrissey, who is a licensed driver. The letter continued that it became apparent that he was the driver of the vehicle. He asked "what are you doing?" The officer pointed out the failure to display the badge and asked him where the badge was, he replied: "I changed cars, it's in the other one". The officer saw that his personal identification was not visible on his person and pointed this out to him. He replied: "How can I display it if it's in the other car?" The officer pointed out that he was referring now to his personal badge, which is required to be worn upon his person at which point Mr Morrissey produced it from under his clothing. At that point Mr Morrissey walked away and rejoined another male in a door of a store. The officer, overheard him to say to the other male "they [edited by admin] me off." In all, his general attitude, according to the officer, was contemptuous and dismissive. The letter continued to describe an incident on 27th May 2011 when again the officer was on duty in the city centre and engaged in a multi agency operation at a check station outside the Crown Court.

35. At 20.05 hours the officer examined a Hackney Carriage with a member of the Vehicle and Operators Standards Agency (VOSA). On examination it was found there was a cut to the side wall of the rear offside tyre. The spare tyre was also found to be unroadworthy in as much as the ply cord was visible. As a result both VOSA and the licensing officer issued prohibition notices for defects.

36. The relevant notice of unfitness issued by the County Council is before the court and bears in manuscript a heading above the printed heading which states "driver". The notice of unfitness purports to be made under section 68 of the Local Government (Miscellaneous) Provisions Act 1976, to which I will return. The form of the notice refers to Mr Morrissey as being the proprietor of the relevant Hackney Carriage vehicle although it has been pointed out on

behalf of Mr Morrissey that in fact that he was not the proprietor but the driver. It has been observed by counsel that section 68 of the 1976 Act does not relate to drivers but only to proprietors.

37. In a letter dated 16th June 2011 the relevant officer of the Council wrote to Mr Morrissey enclosing a report which he intended to make to the next Public Protection Committee Meeting on 5th July 2011. That report summarised the facts relating to the two incidents alleged to have taken place on 25th May and 27th May 2011. It noted that Mr Morrissey was first licensed in October 1994 and that his last licence had been issued on 20th October 2010 and was due to expire on 20th October 2011. He was licensed as a Hackney Carriage/Private Hire driver.

38. At its meeting on 5th July 2011 the Public Protection Committee noted that Mr Morrissey had not attended its meeting. Its resolution was therefore suspended until the next meeting. In a letter dated 6th July 2011 the relevant officer of the Council wrote to Mr Morrissey to inform him of that decision by the Committee.

He stated:

"The Committee had resolved as you failed to attend the meeting of 5th July 2011 to suspend your Hackney Carriage/Private Hire driver's licence until you attended a future meeting of the Committee to answer the report made against you."

He continued that the licence was therefore suspended on the grounds set out in section 61(1) of the 1976 Act, to which I will return. He also informed in the standard form that section 61(3) of the Act enabled Mr Morrissey to appeal to a Magistrates' Court within 21 days of receipt of the letter.

39. On 12th July 2011 the relevant officer wrote to Mr Morrissey, again enclosing the report that he intended to make to the next Public Protection Committee meeting on 9th August 2011.

40. There is before the court an email dated 28th July 2011 between Amanda Jones (Legal) and Sharyn on the subject of Mr Morrissey. In that email Miss Jones confirms that she was legal adviser present at the Public Protection Committee on 5th July 2011 and reports the sanctions which were imposed upon Mr Morrissey in his absence.

The email continues:

"If Mr Morrissey had been present before the Committee accumulating 10 points would resulted in the revocation of his licence. However as the driver was not present the Committee had resolved not to revoke his licence in his absence it is said to impose a suspension until its next meeting on 9th August 2011, to allow the driver an opportunity to attend and give his own account of the circumstances."

41. At its meeting on 9th August 2011 the Public Protection Committee resolved to impose more points than the meeting on 5th July. Sixteen penalty points were now imposed, two penalty points for not displaying the driver's identification badge, two penalty points were imposed for not displaying the windscreen badge, eight penalty points imposed for having two defective tyres and four penalty points were imposed for abuse of a member of the public.

42. In a letter dated 26th August 2011 Mr Morrissey was informed of the outcome of that Committee Meeting by the relevant officer. After setting out the specific number of points that were imposed in respect of the individual matters, the letter continued:

"In conclusion the penalty points accrued amounted to 16 and as a result you have exceeded maximum 10 penalty points permitted within a 3 year period accordingly your Hackney Carriage/Private Hire driver's licence has been revoked."

The court has been informed that Mr Morrissey appealed against the decision to suspend in his case on 5th July 2011 and that appeal is pending before the Magistrates' Court awaiting the outcome of this claim for judicial review. The court has also been informed that subsequently Mr Morrissey has been granted a further licence, albeit I was informed for a relatively short period. The significance of that is something to which I will return.

Statutory Framework

43. As is well known the two principal Acts which govern this area of law and practice are the Town and Police Clauses Act 1847 at sections 37 to 68 and the Local Government (Miscellaneous) Provisions Act 1976, Part 2. The 1847 Act is concerned only with Hackney Carriages. In particular, section 46 provides that drivers are not to act without first obtaining a Hackney Carriage licence.

44. My attention has been drawn, as I have said, to section 68 which empowers the making of bylaws regulating Hackney Carriages, for example, regulating the conduct of proprietors and drivers of Hackney Carriages and determining whether such drivers shall wear any and what badges.

45. Part 2 of the 1976 Act applies to both Hackney Carriages and private hire vehicles. In particular section 51 requires there to be a licence to drive a private hire vehicle. Such a licence is not to be granted unless a Council is satisfied the applicant is a fit and proper person to hold a driver's licence. Similarly, section 59 requires a licence for the purpose of driving a Hackney Carriage and again, such a licence is not to be granted by a Council unless it is satisfied the applicant is a fit and proper person to hold a driver's licence.

46. Section 61 of the 1976 Act is central to the present claim, it provides:

"(1)Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—

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

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

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

(b)any other reasonable cause.

(2)(a)Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him in accordance with section 54 of this Act....

(2A)Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

(2B)If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when

the notice is given to the driver."

47. On behalf of the claimants in the present case it has been submitted that the relevant notices which were sent to Mr Singh and Mr Morrissey did not invoke subsection (2A) and did not purport to be made immediately on the basis of the interest of public safety nor did they explain why. This is not surprising, submit the claimants, because that was not a ground which was being invoked by the defendant.

48. Returning to the language of section 61(3) provides:

"(3)Any driver aggrieved by a decision of a district council under [subsection (1) of] this section may appeal to a magistrates' court."

Section 68 of the 1976 Act, which I have mentioned already, in the context of notice of unfitness in the case of Mr Morrissey provides that any authorised officer of the Council has power to expect the test for the purpose of ascertaining its fitness any Hackney Carriage or private hire vehicle licenced by the Council and if he is not satisfied as to its fitness, may by notice in writing require the proprietor of the Hackney Carriage or private hire vehicle to make it available for further inspection and testing, at such reasonable time and place as may be specified in the Notice and suspend the vehicle licence until such time as he or she is so satisfied.

49. The observation has been made on behalf of Mr Morrissey, that that provision relates only to the proprietor not the driver and relates to suspension of the vehicle licence, not the drivers licence.

Alternative Remedy

50. A mainstay of the defendant's submissions before the court has been that the present claim for judicial review should be refused on the ground that there is available to the claimants an adequate alternative remedy, namely an appeal to the Magistrates' Court under section 61(3) of the 1976 Act. In support of that submission reliance has been placed on the well known authority of *R v Chief Constable of Merseyside Police, ex p Calveley* [1986] QB 424, a decision of the Court of Appeal. In that case and in many others since it has been made clear that judicial review is a remedy of last resort. It is also a discretionary remedy. The court will usually, in the exercise of its discretion, refuse to entertain an application for judicial review where there is an adequate alternative remedy available, for example, by way of appeal.

51. That well known principle was applied in a context similar to the present in R v Blackpool Borough Council, ex p Red Cab Taxis Ltd [1994] RTR 402, a judgment of Judge J (as he then was). In support of that submission it has been observed on behalf of the defendant that there is a well known and long line of authority to the effect that an appeal in a context such as the present to the Magistrates' Court is by way of rehearing. It is convenient to summarise that line of authority by going to a recent decision of Stadlen J in R on the application of Melton v Uttlesford District Council [2009] EWHC 2845 (Admin).

At paragraph 84 of his judgment Stadlen J said:

"It is undoubtedly the case that the appeal both to the Magistrates Court and to the Crown Court operates as a rehearing in which the court is required to substitute its own decision on the application for that of respectively the Council and the Magistrates' Court: see Sagnata Limited v Norwich Corporation [1971] 2 QB 614 and Stepney Borough Council v Joffe [1949] 1 KB 599."

It should be observed that the decision of Sagnata was that of the Court of Appeal and the decision in Joffe was that of the Divisional Court with the Lord Chief Justice, Lord Goddard presiding. On the other hand as was held by Lord Goddard LCJ in the latter case in a passage approved by the Court of Appeal in the former:

"That does not mean to say that the Court of Appeal, in this case the Metropolitan Magistrate, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter and ought not lightly of course, to reverse their opinion. It is constantly said (although I am not sure that it is also sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right."

At paragraph 85 Stadlen J continued:

"On the facts of this case the question for the Crown Court was whether the Council and the Magistrates' Court were wrong to conclude that Mr Melton should not be granted a licence because they were not satisfied that he was a fit and proper person to hold a drivers licence (see section 51(1)(a) of the 1976 Act). On its face that required the Crown Court to reach its own independent view of whether Mr Melton was a fit and proper person. At the same time it would appear that the Crown Court was obliged to ask itself

whether the decision actually reached was wrong ... "

Later in his judgment, at paragraph 87, Stadlen J referred to a decision by Scott Baker J (as he then was) in R (on the application of Westminster City Council) v Middlesex Crown Court [2002] EWHC 1104, to which I will now turn. In that judgment at paragraph 21, Scott Baker J said:

"...how a Crown Court or Magistrates Court should approach an appeal where the Council has a policy.

'In my judgment it must accept the policy and apply it as if it was standing in the shoes of the Council considering the application. Neither the Magistrates Court nor the Crown Court is the right place to challenge the policy. The remedy, if it is alleged that a policy has been unlawfully established, is an application to the Administrative Court for judicial review. In formulating a policy the council no doubt first consult various interested parties and then take into account all the various relevant considerations."

52. On behalf of the defendant, reliance is placed upon a recent decision by the Crown Court at Cardiff in Hoque v Cardiff City Council on 20th January 2012. This was an appeal from a Magistrates' Court, in a similar matter to the present. At page 17B of the transcript His Honour Judge Wynn Morgan was recorded to have said:

"The issue for us is have you, the respondent, proved on the balance of probabilities that the revocation of his licence, the imposition of this number of points was appropriate in this case."

At page 18G to 19F His Honour Judge Wynn Morgan continued:

"We are in fact going to allow this appeal for this reason, as it may be a very narrow reason and it is important that we spell it out as clearly as possible. Putting to one side for the moment the number of penalty points that were imposed by the Public Protection Committee, which we understand is the subject of judicial review in any event and without making any comment about them either on approval or criticism, it seems to us that we can properly infer, from the absence of prosecution by the police, that these tyres were defective but not so defective as to cause major anxiety ...

Now in fact what the Public Protection Committee did was to revoke his licence which we consider in contrast to what the criminal proceedings would have produced something unfair because the appellant is a man of good character, there has never otherwise been any complaint about his conduct as a taxi driver and we also take into account the fact there is no suggestion

he did not immediately comply with the exemption notice....

So we sympathise with the approach to this case, which might say that somebody who is driving around as taxi driver with four defective tyres is not a fit and proper person. Nevertheless had the full force of the law been brought to bear in this situation this appellant would not have found himself in the predicament he presently finds himself and it is for that reason that we are minded to allow the appeal and that reason only. We make no criticism of the view taken by the Public Protection Committee in that regard. Appeal allowed."

53. Normally the defendant's submissions would be well founded in a case of this type. As I have said, judicial review is a discretionary remedy and moreover is a remedy of last resort. Where there is an appeal available as there is in the present context to a Magistrates' Court and thereafter to the Crown Court, in particular the appeal to the Magistrates' Court is by way of rehearing, as clearly it is on authorities to which I have referred, there would usually be very good reason in the exercise of the court's discretion to refuse to entertain a claim for judicial review. This is so even though the claimant may wish to argue in the Administrative Court a ground of public law, which will not necessarily be on all fours with the grounds which would be argued before the Magistrates' Court. But this is a commonplace situation in public law proceedings. This is because, not least, the outcome of an appeal, on the merits, for example on the facts, may be such as to render any point of public law academic if a claimant succeeds in his appeal, on the merits, there may well be nothing for him to complain about, however interesting a point of public law may seem to be.

54. However, in the exercise of the court's discretion I have come to the conclusion that it would not be right to refuse to entertain this claim for judicial review on this ground, in the present case. In particular, I bear in mind the statement of the principle set out by Scott Baker J in the Westminster case, and followed as I understand it by Stadlen J in Melton where, as here, the claimant wishes to challenge the lawfulness of a policy adopted by a local authority, it would appear that in the Magistrates' Court proceedings, that court is entitled to and indeed obliged to apply the Council's policy. It steps, as it were, into the shoes of the Council.

55. As Scott Baker J made clear, the appropriate forum in which the lawfulness of a policy should be challenged in such circumstances is in the Administrative Court. There are also good practical reasons why this should

be so. The Administrative Court is well used to dealing with issues of public law.

56. In those circumstances and particularly bearing in mind that permission has already been granted in this case, having regard to the overriding objectives in the Civil Procedure Rules, I have decided that the court's discretion should be exercised in considering this claim for judicial review in full; on its legal merits.

57. Before I leave this topic I should also note that it was a subsidiary part of the defendant's submissions before me that in any event the claim for Mr Morrissey should be refused because he has now received a further licence. Accordingly it was submitted that the claim for judicial review has become academic in his case. Again, in the exercise of the court's discretion, I do not think that would be the right or just course to take.

58. I have been informed that the licence in Mr Morrissey's case is for a relatively short duration. It would appear, on the limited information before the court, to have been something of a stop gap measure. Everyone it is clear is awaiting the outcome of the present proceedings.

59. In any event, to have on his record the previous matters that Mr Morrissey would then have to live with is something, which, in my judgment, he is perfectly entitled to ask this court to review in the Administrative Court in the normal way. If necessary, for example, this court can make a declaration as to the lawfulness of a past event. It is a highly flexible and discretionary remedy that can be used by the court to do justice in the individual case.

60. Even if I were persuaded at the end of the case not to quash a particular decision, as I have said it might well be that if I accepted Mr Morrissey's submissions on the substantive merits that the court would in its discretion grant an appropriate declaration.

61. Accordingly I turn to the substantive merits of the various grounds which have been advanced on behalf of the claimants. Although this is not the numbering system which has been used by the parties at various stages in this case, I hope it will be convenient if I divide the arguments on behalf of the claimant's in the following way.

The first main ground of challenge

62. The first main ground of challenge on behalf of the claimants is that the penalty scheme in itself was ultra vires and unlawful. This argument is developed in the claimant's skeleton argument at paragraphs 97 to 107. The submission is put simply and succinctly that there is no power to discipline drivers in the circumstances in which the defendant authority sought to do so. It is submitted that when reference is made to the genesis of the policy, in 1988 and in the subsequent documents, particularly the documents of 2nd May 2001 and 10th May 2001, it is clear that the rationale which motivated the adoption of the policy was that there was perceived by the Council to be a deficiency in the legislation covering the disciplining of licensed drivers. The claimants submit that any such deficiency in the legislation is to be remedied, if it is to be remedied at all, by legislation.

63. It is no part of the functions of an executive body such as the defendant authority, submit the claimants, to seek to create what they have described as a parallel scheme, alongside the legislative claim. They submit that what the Council purported to do here was not to exercise its powers under section 61 of the 1976 Act but instead to create its own scheme for disciplining drivers short of suspending or revoking their licences as is permitted by section 61.

64. In my judgment that argument is not well founded. I accept the arguments in this regard on behalf of the defendant. In my judgment, what the defendant sought to do and has done is to adopt a policy to govern the exercise of its undoubted discretion under section 61 of the 1976 Act. A public authority is perfectly entitled to adopt policies which will regulate the exercise of a given discretionary power. In my judgment there is nothing wrong in principle with a licensing authority, such as the present, taking the view that the public interest justifies adopting a policy which would not lead to the suspension or revocation of a driver's licence, for example, for a single incident.

65. In my view, there is nothing wrong in principle with the defendant authority such as the present, adopting the policy, which seeks, both in fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgment of the local authority, a person is not a proper person to continue to enjoy the relevant licence.

66. How a defendant authority such as the present goes about formulating such a policy is perhaps of more critical importance and it is something to which I will return.

67. In conclusion, on this first ground of challenge the question of vires as such I reject the claimant's submissions.

The claimant's second main ground of challenge.

68. This is developed at paragraphs 82 to 96 of the claimant's skeleton argument. The submission in essence is that the policy in force at the material time called for "automatic" revocation on the accumulation of 10 penalty points. Accordingly it is submitted this was not a proper exercise of discretion as required by section 61 of the 1976 Act.

69. Before addressing that submission in more detail, I would note that in my view section 61 does not confer only a discretion. In my view, it includes an element what may be called the exercise of a judgment in particular in subsection (1)(b) which requires there to be any other reasonable cause. It was common ground before me, in substance, for present purposes, that means whether a person continues to be a fit and proper person to hold a driver's licence.

70. As I have said, that is not a pure exercise of discretion, it is rather an exercise which calls for judgment to be performed on whether the statutory question has been answered in favour of or against the relevant driver.

71. That is a threshold question before which the exercise of discretion does not exist. Even once the threshold question has been answered against a driver, there still exists in the local authority a discretion. Section 61 provides that in those circumstances a Council may, not that it must, suspend or revoke a licence. So at that stage of the process discretion does come into it. That discretion of course must be exercised lawfully according to well known principles of public law.

72. Turning directly to the arguments on behalf of the claimants, as was readily accepted by the parties before me, the arguments can be framed in a variety of ways. How they are formulated does not in the end perhaps matter. What does matter is the substance of the argument.

73. In my judgment, the claimant's arguments in this regard are well founded. In my judgment, the adoption of the policy by the defendant Council has led to an erroneous approach in law being taken to its functions under section 61 of the 1976 Act.

74. There are three ways at least in which the point can be formulated and was on behalf of the claimant. These three submissions in essence summarise the fundamental defects in law, as I see them to be in the policy of the Council as adopted and applied. The first is that the policy calls for the automatic revocation of a licence if 10 points have been accumulated in a 3 year period. That, on its face, leaves no room for judgment or discretion.

75. I will return in a moment to the evidence as to how matters were actually carried out in practice.

76. The second fundamental defect is that this means that there is no consideration required, or it would appear perhaps even permitted by the policy of the underlying facts which lay behind the earlier imposition of points which a driver may have. That may, as the case of Mr Singh illustrates, be some years before the decision of the Committee which eventually decides to revoke a licence.

77. Fundamentally, as was put by the claimants and I accept, this leads to the wrong question being asked. Not the statutory question of whether there is any reasonable cause, in other words whether in all the circumstances of the case a driver is a fit and proper person to continue to enjoy licence, rather the question at worst could be reduced to a mathematical one of whether, for example, six points plus four points equals 10 points.

78. The third fundamental defect, in my judgment, again accepting the claimant's submissions in this regard is that the policy does not recognise that the outcome even of concluding that a person is not a fit and proper person is not necessarily revocation, it may be under section 61 the sanction of suspension.

79. I turn briefly in this regard to the new policy as reformulated in December 2011. That, in my judgment, may have the effect of mitigating to some extent the inflexibility of the earlier formulation of the policy. However what it does not do, in my judgment, is address all of the fundamental defects which I have identified. For example it still does not direct the local authority to ask itself the right question in law under section 61 and the Committee may well still be distracted, in my view, by the wrong question, for example a mathematical question. Further and in any event the reformulated policy still does not recognise that the appropriate sanction, even when a reasonable cause has been established, would be that of suspension and not revocation.

80. Before I leave this topic, I should express my endorsement of a point which is made on behalf of the claimants in this context. This is that the adoption and application of the policy in this case can lead to the risk of arbitrary and unequal treatment. This is illustrated, in my view, by a point which is being made on behalf of the defendant rather than rebutted by it. To explain this it is appropriate at this juncture to refer to the evidence on behalf of the defendant as set out in the witness statement of Claire Hartrey who is employed by the defendant as group leader for licensing.

At paragraph 11 of her witness statement Miss Hartrey states:

"Prior to 6th December 2011 [when the new policy was formulated] the Committee also had discretion as to the number of points to impose in any individual case and it frequently exercised that discretion to avoid revocation of the licence."

At paragraph 16 of her witness statement, Miss Hartrey specifically refers to the Committee Meeting on 7th June 2011 and how the case of Mr Singh was dealt with. She says that she was at that Committee Meeting and can state that the Committee imposed the four points consciously with the intention of revoking his licence and did revoke the licence.

81. At paragraph 22, in relation to Mr Morrissey and the meeting of Public Protection Committee on 5th July 2011 Miss Hartrey says:

"The Committee could have dealt with the matter in his absence, however the Committee was aware that the revocation of the licence was a possible outcome and wanted to give Mr Morrissey the opportunity to attend before it and give his explanation before making a final. It recognised more than one outcome was possible."

82. Accordingly it is submitted on behalf of the defendant that there is in practice a discretion exercised and that the policy is not applied in the automatic or inflexible way which on its face it might seem to call for.

83. In my judgment these submissions do not adequately answer the fundamental defects which I have already identified. One of the reasons why public law recognises and indeed encourages the adoption of policies to govern the exercise of discretionary powers is not only that they assist decision makers within the relevant authority. As importantly, if not more

importantly, policies signal to members of the public how discretionary powers will be exercised. In that respect they form an important function in maintaining the rule of law, because they assist individuals to be able to regulate their conduct to predict with some reasonable certainty how they will be treated by a public authority, depending on what they do.

84. The letter, for example, which was sent to Mr Singh in 2009, after he had accumulated his first six points could not have been clearer that if he crossed the 10 point threshold his licence would be revoked. That was on its face consistent with the policy as then formulated. It is fundamental defects of that sort which have led me to conclude, in agreement with the claimants in this case, that the policy as such is unlawful.

85. If an unlawful policy has been taken into account in the decision making process then it will normally follow in administrative law proceedings that the resulting decision is also unlawful. It would not matter for that purpose that a lawful decision could have been taken if a discretionary power had been exercised in a lawful manner. For example, having regard to relevant considerations and not having regard to irrelevant ones.

86. Accordingly, the conclusion to which I have come is that, not only was the policy in this case unlawful but the individual decisions applying that policy in the particular cases of the individuals before the court were also unlawful.

87. Before I leave this topic I will return to the risk of arbitrary and unequal treatment which I mentioned a moment ago. On behalf of the claimants it was submitted that one could envisage the following scenario. There may be before the Committee two drivers, whose material circumstances are identical in relation to the individual incidents before the Committee A and B. A has no previous points accumulated. The appropriate penalty points in his case for an incident before the Committee would be two points and that is what the Committee imposes.

88. When it comes to the case of B, the Committee is facing exactly the same situation in the immediate scenario before it. However it is also aware without knowing any of the underlying facts that B already has eight previous points on his record within the relevant 3 year period. It is easy to envisage that there may be an "adjustment" of the appropriate number of points which should be imposed on the immediate occasion in order to avoid the apparently unwelcome result that there will be revocation of the licence in B's case.

89. But it is difficult to avoid the conclusion that such treatment would be arbitrary and unequal as between A and B. Furthermore, it is not obvious how this facilitates the public interest. It may be that in fact B is a driver who is no longer a fit and proper person to hold a licence. However, the adoption of application of the policy that Council has prevents the Council from asking itself and answering the right question. What it should be asking is whether B is in all the circumstances of this case, including the underlying facts of the incidents including the incidents on the previous occasions, is a fit and proper person, in other words whether there is any reasonable cause to suspend or revoke his licence.

90. Without being aware of all that full information the Committee is simply unable, by reason of a policy which the Council has currently adopted to ask and answer that right question. Instead, it is precisely because it feels constrained by the automaticity of the policy and the prospect of revocation, even after the reformulation of the policy in December 2011, which will normally follow if 10 points are accumulated, that the Council feels the need, as it were, to "adjust" the appropriate number of penalty points for the incident now before the Committee.

91. For all those reasons, as I have said, I conclude the claimant's arguments in this regard are well founded and the claim for judicial review will be granted on this basis. I turn more briefly to other arguments.

Fettering of discretion

92. It is unnecessary in the light of what I have already said to deal with this way of formulating the claimant's argument in further detail although they are developed at paras. 108 to 120 of the skeleton. This is in essence another way of putting the argument that I have already accepted in relation to the second ground, namely that before December 2011 the policy was rigid and inflexible.

Irrationality

93. The fourth ground is that the claimants also complained that the penalty points system is inherently irrational. They said relevant considerations could not be considered. This again, it seems to me, is subsumed within the second main ground of challenge which I have already accepted and it is unnecessary to lengthen this judgment unduly by setting out in more detail

some relatively subsidiary contentions, as I understood them to be, in the specific cases of Mr Singh and Mr Morrissey. As I understood them those were raised by way of illustration to demonstrate the inherent unlawfulness of the policy under challenge. It is not necessary for me to say more about those subsidiary arguments in the light of my overall conclusion on the main argument for the claimants.

Human rights considerations

94. It appeared at first sight from paragraphs 127 to 138 of the claimant's skeleton argument that they also advanced as a separate head of judicial review, that there was a breach in the present circumstances of Article 6 of the Convention rights by virtue of section 6(1) of the Human Rights Act 1988. As things developed at the oral hearing before me, as I understood it became common ground that in fact this was not an independent ground of challenge to the policy or the decisions in these cases. However, it was, as it were, by way of response to the defendant's suggestion there was an adequate alternative remedy available.

95. For reasons I have already set out, I have rejected the defendant's argument in respect of the adequate alternative remedy point. Accordingly, as it seems now, it is not necessary to say much on this human rights point. What I would observe however is that, in my view, the imposition of points as such, short of revocation or suspension does not constitute the determination of anyone's civil rights or obligations. Even if it did, it is well established that in administrative decision making contexts such as the present, there is no requirement under Article 6 for the initial decision maker to be an independent and impartial Tribunal, provided the system overall does permit access to a court or Tribunal which has those characteristics of independence and impartiality. In the present context if it were necessary to do so, a person could apply for judicial review even though an appeal under section 61(3) of the 1976 Act is not available to the Magistrates' Court.

96. When it comes to the final decision to revoke or suspend a licence, as I have said, there is an appeal available to the Magistrates' Court; indeed such an appeal will be by way of rehearing, as I have already said.

97. Accordingly, just as judicial review will often suffice to render the overall system fair and compatible with Article 6, so in my judgment, the ordinary case where there is an appeal available to a Magistrates' Court, and thereafter to the Crown Court, has the consequence that even if the

determination, even if the revocation or suspension of a driver's licensed constitutes a determination of a person's civil rights and obligations which I am inclined to accept, the system overall is, in my view, compatible with the requirements of Article 6.

Legitimate expectations and review of points for Mr Singh

98. At paragraphs 139 and 141 of the claimant's skeleton argument, a separate and subsidiary argument was made that Mr Singh was treated unlawfully because he asked for a review of his decision to take place; he was given an impression that such a review would take place but in fact did not place on 9th August.

99. Suffice it to say that on the evidence before the court, which I have summarised earlier, I am not persuaded by this subsidiary argument on behalf of this claimant. In my view, the defendant did not act unlawfully in the manner asserted under this head. There was no legitimate expectation created the defendant would do anything other than what it did do. It was perfectly entitled to take the view that it had already reached a decision to revoke Mr Singh's licence and that if he felt aggrieved by that decision it informed him he could appeal against him.

Revocation and suspension in the case of Mr Morrissey

100. The claimant submitted that in any event, quite apart from his other arguments what happened in this case was that on 5th July 2011 the defendant decided to suspend his licence rather than to revoke it. It was submitted, as it were, that the defendant authority was therefore "functus officio". It was submitted there is no power of interim suspension in section 61 of the 1976 Act.

101. I would accept those argument on behalf of the claimant Mr Morrissey, in this case.

102. Returning to the language of section 61, I remind myself that this was not a case in which any attempt was made to activate the suspension of the licence to have immediate effect pursuant to the interest of public safety basis in subsection (2B) . The notice sent to Mr Morrissey did not purport to invoke that provision or to make the suspension immediately effective.

103. In my judgment, the way in which the concept of suspension is used by

Parliament in section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether a ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.

104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of 1 year, will constitute sufficient sanction in the interests of the public.

105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976 Act. It does not use, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation. For those reasons I accept that aspect of Mr Morrissey's claim for judicial review also.

Conclusion

106. For the reasons I have given, this claim for judicial review is granted and I will hear counsel as to any question of remedies or consequential matters.

107. MR WALTERS: Thank you my Lord. If I could refer to the two grounds as obviously section 6 of the original claim form and I hope it was correctly in the bundle. I have it inserted because it was omitted from my bundle but would have been before the court.

108. MR JUSTICE SINGH: This is in which bundle?

109. MR WALTERS: It should have appeared after the documents starting on page 17, but in my only going through to 27, the documents in support of the section 6 is page 11, a remedy. Is that....

110. Can I hand it in? The one addition, there is an error there because the typing says "16th April 2011" and should of course refer to that foot reference 1993

111. MR JUSTICE SINGH: Have you got this?

112. MR WALTERS: The part of the original claim

113. MR JUSTICE SINGH: This is a working document as to remedies being sought.

114. MR WALTERS: That was in fact enclosed as section 6 of the claim form lodged in court. That is right.

115. MR JUSTICE SINGH: I note the time and I particularly have to have regard to the interests of court staff. What I am going to ask the parties is whether it will be possible to reconvene at 10.30 tomorrow?

116. MR MORGAN: I cannot I am afraid, I am in London tomorrow in a Tribunal case.

117. MR JUSTICE SINGH: Are you available this week or early next week?

118. MR MORRIS: Tuesday of next week, yes. But not until

119. MR JUSTICE SINGH: Mr Walters. What I would like it may be possible for the parties to agree a draft order for my consideration in the light of my judgment. For understandable reasons you have only just heard my reasons, so you may want to think about the point. You may be able to agree all outstanding matters including I imagine remedies costs and the question of possible permission to appeal.

120. MR WALTERS: My Lord, yes, I am fairly confident that I am free next Tuesday. Let me just check.

121. MR JUSTICE SINGH: What I suggest is that you use the time in the meantime to talk and if you can agree a draft order for my endorsement, then I will consider it and that can probably be dealt with by email by Monday. But if agreement or final agreement is not possible, then I will provisionally list this case on 10.30 on Tuesday, so we can reconvene to have any further adjudication as required.

122. MR MORRIS: I am sorry to be difficult, I am, but could it be later for Tuesday, the reason being I am away, out of the country at the weekend. So I

will not be

123. MR JUSTICE SINGH: Can you do Wednesday?

124. MR MORRIS: Yes.

125. MR WALTERS: Unfortunately I am due to be giving a workshop and speech at Royal Town Planning Institute.

126. MR JUSTICE SINGH: I better say Tuesday, I cannot make it later than Wednesday next week as I have a two day hearing on Thursday and Friday and then I do not sit, and it is the end of term and I am not in Cardiff after that. I am afraid although it is inconvenient I am going to have to say 10.30 on Tuesday. That is the provisional listing, it will have to be confirmed in any event because it may depend on my other commitments but bearing in mind the time this evening, I am going to leave it there for now. It may be, as I said, that parties can agree matters in a draft order for my consideration by email in which case you will not have to attend.

127. MR WALTERS: One very brief point on there. That is likely to mean that costs, unless agreed, will go to detailed assessment rather than summary.

128. MR JUSTICE SINGH: I think so. In a case of this length and complexity, I would order that in any event. Do you want this back?

129. MR WALTERS: If possible.

130. MR JUSTICE SINGH: I am sorry to have kept everyone later, but I am grateful to everyone for their assistance in this case.

IDFIMH