

**Report of Assistant Director of Culture and
Regulation to the General Licensing
Regulatory Board to be held on
3 July 2013**

**REVIEW OF APPROACH TO LICENSING ENFORCMENT AS A RESULT
OF RECENT CASE LAW**

1. Purpose of the report

- 1.1 The purpose of the report is to apprise Members of a recent High Court Queen's Bench Division case ruling of **R (Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)** in respect of taxi licensing affecting the manner in which suspension of a taxi driver's licence can be used as a means of punishment.

2. Recommendations

- 2.1 For Members to note the contents of the Report. In particular as a result of the court ruling the Council's Licensing Department to be able to exercise the power of *revocation of a taxi licence with immediate effect* under its existing delegated powers contained within the Council's Constitution, in circumstances where a serious complaint or allegation is received against a driver which if substantiated would cast doubt over the fitness and propriety to continue to hold a taxi licence. The primacy of such action is to ensure the protection of public safety.
- 2.2 That Members approve the mechanism for the effective restoration of a licence to a driver where his licence is revoked in the interests of protection of public safety (under 2.1 above) should he be cleared of the allegations or charges he was subjected to.

3. Background

Hackney Carriage / Private Hire Vehicles – Powers of suspension and revocation

- 3.1 When considering an application for the grant of a licence, the Council's General Licensing Regulatory Board must be satisfied that the applicant is a "fit and proper" person to hold a licence, and may refuse the application if it is not so satisfied. The term 'fit and proper' covers a wide array of matters.

3.2 Where a complaint, allegation or details of a prosecution is received by the Council's Licensing Section about a driver, it will take whatever steps are reasonably necessary for the purpose of protecting the public. A number of powers are provided within the Local Government (Miscellaneous Provisions) Act 1976 for the revocation, suspension or refusal of renewal of licences issued in respect of hackney carriage and private hire drivers, vehicles and operators. These are:

3.2.1 (a) Drivers

In respect of hackney carriage and private hire drivers, section 61 permits the Council to suspend, revoke or refuse to renew a driver's licence 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 Town Police Clauses Act 1847 or of Part II of the 1976 Act; or
- (b) any other reasonable cause.

A decision to suspend or revoke a licence under section 61 will take effect 21 days after notification of the decision. The Council may, however, direct that a suspension or revocation shall have immediate effect, if this appears necessary in the interests of public safety.

3.2.2 (b) Vehicles

Two distinct enforcement powers exist in respect of hackney carriage and private hire vehicles. Section 60 allows for the suspension, revocation or refusal to renew a vehicle's licence on any of the following grounds:

- (a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
- (b) any offence under, or non-compliance with, the provisions of the 1847 Act or of Part II of the 1976 Act by the operator or driver; or
- (c) any other reasonable cause.

In addition, section 68 provides a power for the inspection and testing of vehicles and their taximeters, and the suspension of licences if they are found to be unsatisfactory. Under this power, suspensions remain in place until the vehicle has been re-inspected and found to be satisfactory, but the licence shall be deemed to have been revoked if such re-inspection has not been completed within a period of two months from the initial inspection.

3.2.3 (c) Operators

In respect of private hire operators, section 62 permits the Council to suspend, revoke or refuse to renew an operator's licence on any of the following grounds

- (a) any offence under, or non-compliance with, the provisions of this Part II of the 1976 Act;
- (b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
- (c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
- (d) any other reasonable cause.

4. Recent case law - R (Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)

4.1 (a)'Suspension' as a sanction available

As part of the recent court ruling in the case of ***R (Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)***, (copy attached at Appendix 1) the Hon. Mr Justice Singh decided that suspension of a driver's licence could be used as a sanction, as an alternative to revocation or other sanction in appropriate cases.

- 4.2 In accordance with the judgement the Council may now take action to suspend a licence under the above powers in order to ensure the remedy of a defect (for example, a fault on a vehicle affecting its roadworthiness or appearance), or as a sanction against a licence-holder following an incident of non-compliance.

4.3 (b) Suspension cannot be used as an 'interim measure'

However Mr Justice Singh further made clear that suspension of a drivers' licence is a **final decision** on the question of a person's fitness and propriety and therefore suspension cannot be used as an interim measure pending further investigation into a drivers' conduct and ultimate fitness and propriety.

- 4.4 This represents a significant change from the way in which the power of suspension has previously been used by officers within the Council. Until now, officers' have suspended driver licences following serious complaints or allegations (e.g. violence, sexual assaults, dishonesty etc) which if substantiated would cast doubts over their fitness and propriety to continue to hold such a licence. This action was taken to ensure the protection of public safety was not compromised whilst investigations took place. Following the completion of the investigation the matter would then be referred to Board for a decision to be taken in light of the additional evidence to either revoke the licence or lift the suspension.

4.5 This court ruling prevents that approach.

5. **Proposal and justification**

5.1 In accordance with the judgement, where the Licensing Section *now* receives an allegation or complaint which is of a particularly serious nature and give rise to a genuine and urgent concern for the protection of public safety, the officers' may give consideration to the ***immediate revocation*** of a licence.

5.2 It is expected that such action will usually relate to drivers and as such be taken under section 61 of the 1976 Act – however, where allegations concern the suitability of a vehicle or operator, similar action may be taken under the respective powers.

5.3 Such action will be reserved for the most serious allegations only – for example, if a licence-holder is linked to a sexual or violent offence, an incident of hate crime, disqualification from driving, or is subject to a medical condition affecting their ability to safely drive, which calls in question whether the Council would be fulfilling its public protection duty by continuing to licence that individual pending the investigation into the allegations.

5.4 All reasonable steps shall be taken to allow the licence-holder to answer the allegations and put his case, prior to a decision being made. This will not necessarily mean at a formal hearing, but may include a telephone call, interview, email or letter. Where possible, the Licensing Section shall take further steps to try and establish the facts behind the allegation prior to determining whether to take action – however, it is noted that this may not always be possible, for instance, if a criminal investigation is ongoing. That said, the Council's primary responsibility in this legislative area is ensuring the safety of the public, and in the absence of a power of interim suspension, revocation will be considered where appropriate

5.5 The power to take such action shall be determined by the Assistant Chief Executive (Legal and Governance), and the Assistant Director (Culture and Regulation), pursuant to their existing delegated powers under the Council's Constitution (copy attached at Appendix 2) following consultation with the chair or vice-chair of the General Licensing Regulatory Board. A formal record of this process with reasons shall be kept, to be referred to in the event of an appeal to a magistrates' court against the revocation of the licence. Written notice of a decision to revoke a licence and the drivers' 21 days right of appeal to the magistrates' court shall be given in accordance with legal requirements.

5.6 It should be noted that receipt of an allegation or the fact that charges have been brought are not confirmation of an individual's misconduct in

respect of that matter, and as such any action taken will be to ensure the protection of public safety and does not seek to prejudge judicial or other processes which will be followed, nor should a revocation of a licence in such manner be taken as any kind of evidence or statement on the conduct of the individual concerned.

5.7 In addition irrespective of whether an appeal is lodged at the magistrates' court by the driver, the driver may within 21 days of receiving written notification of the officer's decision request the Council's General Licensing Regulatory Board to consider the matter. The options available to the Council's General Licensing Regulatory Board will be for it to either:

- a) upholding the officers' decision of revocation, or
- b) direct the issuing of a new driver licence (once a licence is revoked it cannot be reinstated).

If the driver does not request for the matter to be referred to the General Licensing Regulatory Board, the decision of the officer to revoke will remain effective subject to any contrary decision, upon appeal, by the magistrates' court.

5.8 In the event of revocation of a licence in such circumstances, should the allegation subsequently be found to be baseless or any charges dismissed, the former licence-holder shall be permitted to make a new application to effectively reinstate his previous licence, without payment of an application fee or, at officer's discretion, being required to submit to the full range of checks that would ordinarily be required on a new application. The processing of any such application shall, insofar as is possible, be expedited. Any licence granted as a result of such application shall be valid for a duration not exceeding the period left on the previous licence at the time of revocation.

6. Compatibility with European Convention on Human Rights

6.1 The contents of the report will not involve interference with Convention Rights.

7. Crime and Disorder Implications

7.1 None

8. Financial Implications

8.1 Where the Council's General Licensing Regulatory Board overturns the officers' decision of immediate revocation and an appeal has been lodged by the driver at the magistrates' court, the Council may need to consider reimbursing the driver the court issue fee for lodging the appeal which will subsequently have to be withdrawn at court.

8.2 In relation to costs on a successful appeal at the magistrates' court, the leading case of *City of Bradford Metropolitan District Council v Booth*

[2000] LLR 151 which decided that the civil law proposition of 'costs following the event' was not applicable in licensing cases will continue to apply. Therefore provided the Council did not act 'unreasonably, improperly or dishonestly' it should not be penalised in costs even if the subsequent decision of the magistrates is to uphold the appeal.

9. List of Appendices

Appendix 1 - case of R (Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)

Appendix 2 - extract of delegated powers under the Council's Constitution

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Date: 14 June 2013

APPENDIX 1

Judgments

QBD, ADMINISTRATIVE COURT

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

Before:

MR JUSTICE SINGH

Between:

THE QUEEN ON THE APPLICATION OF SINGH

Claimant

v

CARDIFF CITY COUNCIL

Defendant

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165 Fleet Street London EC4A 2AG
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(Official Shorthand Writers to the Court)

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**

Judgment

As Approved by the Court

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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 Cum-

mings 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 licencing 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 piss 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 it's 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 Hogue 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 re-formulation 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, pro-

vided 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 licence 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.

Extract from the Constitution - Powers of the Panel

To determine hackney carriage and private hire licence applications which have not been determined by the Assistant Chief Executive (Legal & Governance) and the Assistant Director (Planning & Regulatory Services) pursuant to their delegated powers.

2. To suspend and / or revoke hackney carriage and private hire licences where adverse reports have been received in those instances where the Assistant Director (Planning & Regulatory Services) has referred the matter to the Board for a decision as to whether disciplinary action would be appropriate.

3. To determine appeals against the suspension or revocation of hackney carriage or private hire operators, vehicle and drivers' licences.

4. To determine applications for or suspension / revocation of licences or appeals against suspension or revocation of licenses falling within the remit of the General Licensing Regulatory Board when referred to it for a decision by the Assistant Director (Planning & Regulatory Services).

Extract from the Constitution - Delegations to officers

And, notwithstanding the generality of the above:

(b) Under the Town Police Clauses Act 1847 and Part II of the Local Government (Miscellaneous Provisions) Act 1976 to:

(i) issue hackney carriage licences and private hire licences, when he is satisfied that the application fulfils the statutory requirements and any criteria or policies of the Council for the time being in force;

(ii) in consultation with the Chairman and Vice-Chairman of the Licensing Regulatory Board, refuse applications for hackney carriage and private hire licences where he is not satisfied that the application fulfils the statutory requirements and any criteria or policies of the Council for the time being in force, subject to any such decisions being reported for information to the next meeting of the Licensing Regulatory Board; and

(iii) to suspend Hackney Carriage and Private Hire Vehicle Licences on vehicle defects being found.

(iv) to suspend or revoke licences in other circumstances (than) those at (iii) above, and to report the action to a subsequent meeting of the General Licensing Regulatory Board or Sub-Committee.

