



# BARNSELEY

Metropolitan Borough Council

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## Borough Secretary's Department

Borough Secretary and Solicitor to the Council: A C Frosdick LL.B DipLG.

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My Ref: IWW/ Gen licensing

Your Ref:

Date: 20<sup>th</sup> October, 2010

Enquiries to: William Ward Dial Direct 773451

To:

The Chairman and Members of the General Licensing Regulatory Board

Borough Secretary

Executive Director Development, Environment & Culture

Head of Transportation

Fleet Services Manager

K Rowland – Licensing

G Kirk – Legal Services

Dear Councillor,

### General Licensing Regulatory Board – 27<sup>th</sup> October, 2010

I refer to the agenda and reports for the General Licensing Regulatory Board to be held on the 27<sup>th</sup> October, 2010 which were sent to you recently.

One of the items related to the proposed amendments to the Hackney Carriage Tariff (agenda item 4) and I now enclose, **for information only**, a further two documents in relation to this that have been received from the National Private Hire Association as follows:-

- (a) information of tariffs charged for 5 to 8 seat vehicles in other authority areas (Please note: only details for the first 100 authorities is provided but this, nevertheless, gives an idea of the different tariffs charged for multiple occupancy vehicles. In addition, those authorities with all Wheelchair Accessible Vehicles in their fleets are highlighted).
- (b) details of the court case "R v Liverpool City Council Ex Parte Curzon Ltd" which gives information about whether or not the maximum charge has to be levied by drivers

Yours sincerely,

William Ward

Council Governance Officer



COUNCIL	More than 4 Passenger tariff
1 ABERDEEN	Add 50% to distance fare
2 ABERDEENSHIRE	Add 50% to distance fare
3 ADUR	Add 50% to fare
4 ALLERDALE	Each person in excess of two 50p
5 ALNWICK	nil
6 AMBER VALLEY	5 or more passengers - tariff 2 applies
7 ANGUS	Where tariff 1 applies charge tariff 2 - where tariff 2 applies charge tariff 3 Etc
8 ARGYLE & BUTE	Where tariff 1 applies charge tariff 2 - where tariff 2 applies charge tariff 3
9 ARUN	Separate tariff 4 and 5 applies
10 ASHFIELD	nil
11 ASHFORD	Each person in excess of two 20p
12 AYLESBURY VALE	Each person in excess of four £1.20
13 BABERGH	nil
14 BADENOCH & STRATHSPEY	Tariffs 2 and 3 applies
15 BARNSELY	Each person in excess of two 20p Under review
16 BARROW IN FURNESS	Each person in excess of two 20p
17 BASILDON	Each person in excess of two 40p
18 BASINGSTOKE & DENE	nil
19 BASSETLAW	nil
20 BATH & N.E.SOMERSET	Each person in excess of two 30p
21 BEDFORD	Each person in excess of four £1.00
22 BERWICK ON TWEED	nil
23 BIRMINGHAM	Each person in excess of one 20p
24 BLABY	Separate Tariff B applies
25 BLACKBURN	Each person in excess of one 10p
26 BLACKPOOL	Each person in excess of one 20p
27 BLAENAU GWENT	Separate tariff 4 and 5 applies
28 BLYTH VALLEY	Separate tariff 4 and 5 applies
29 BOLSOVER	nil
30 BOLTON	nil
31 BOSTON	Tariff 3 applies
32 BOURNEMOUTH	Each person in excess of one 20p
33 BRACKNELL FOREST	Add 50% to fare
34 BRADFORD	nil

(a)

35	BRAINTREE	Tariff 2 applies
36	BRECKLAND	Add 50% to fare
37	BRENTWOOD	Each person in excess of one 20p
38	BRIDGEND	Separate Tariffs 3 and 4
39	BRIGHTON & HOVE	Separate Tariffs 6,7,8,9 and 10 apply
40	BRISTOL, CITY OF UA	Each person in excess of one 30p
41	BROMSGROVE	Add 50% to fare
42	BROXBORNE	Where tariff 1 applies charge tariff 2 - where tariff 2 applies charge tariff 3 Etc
43	BROXTOWE	Add 50% to fare
44	BURNLEY	nil
45	BURY	nil
46	BURY ST EDMUNDS	for 5 to 8 passengers 20p extra per person per mile
47	CAERPHILLY	Tariffs 3,4 and 5
48	CAITHNESS (Highlands)	Tariff 5
49	CALDERDALE	Tariffs 3 and 4 = 50% extra
50	CAMBRIDGE	nil
51	CANNOCK CHASE	Add 50% to fare
52	CANTERBURY	Each person in excess of one 20p
53	CARADON	Add 50% to fare
54	CARDIFF	Each person in excess of four £1.00
55	CARLISLE	Each person in excess of four 50p
56	CARMARTHENSHIRE	Each person in excess of four 25p
57	CARRICK	Tariffs 3 and 4
58	CASTLE MORPETH	nil
59	CASTLE POINT	Three separate Tariffs
60	CEREDIGION	Tariffs 5,6 and 7
61	CHARNWOOD	Tariffs 3 and 4
62	CHELMSFORD	Each person in excess of one 20p
63	CHELTENHAM	nil
64	CHERWELL	nil
65	CHESTER	6 or 7 seater carrying 6 or 7 passengers £3.00 extra
66	CHESTERFIELD	nil
67	CHESTER-LE-STREET	Tariffs 3 and 4
68	CHICHESTER	Each person in excess of one 30p
69	CHILTERN	Each person in excess of one 15p
70	CHORLEY	Add 50% to fare

71	CHRISTCHURCH	Each person in excess of one 20p	26
72	CLACKMANNAN	Each person in excess of one 10p	10
73	CLYDEBANK	Each person in excess of one 10p	27
74	COLCHESTER	Tariffs 3 and 4	37
75	CONGLETON	nil	
76	CONWY	Each person in excess of one 20p	
77	COPELAND	Each person in excess of four 50p	
78	CORBY	nil	
79	COTSWOLD	Each person in excess of two 10p	
80	COUNTY OF HEREFORD	Each person in excess of two 50p	
81	COVENTRY	nil	
82	CRAVEN	Tariff 4	
83	CRAWLEY	Use tariff 2	
84	CREWE & NANTWICH	Each person in excess of one 30p	
85	DACORUM	Each person in excess of two 30p	
86	DARLINGTON	nil	
87	DARTFORD	nil	
88	DAVENTRY	Each person in excess of one 10p	
89	DENBIGHSHIRE	nil	
90	DERBY	nil	
91	DERBYSHIRE DALES	Each person in excess of four 50p	
92	DERWENTSIDE	Tariff 4,5 and 6	
93	DONCASTER	nil	
94	DOVER	Each person in excess of one 20p	
95	DUDLEY	nil	
96	DUMBARTON	Tariff 4,5 and 6	
97	DUMFRIES & GALLOWAY	nil	
98	DUNDEE	Each person in excess of one 30p	
99	DURHAM	Each person in excess of two 10p	
100	EASINGTON	Each person in excess of one 10p	
101	EAST AYRSHIRE		
102	EAST CAMBRIDGESHIRE		
103	EAST DEVON		
104	EAST DORSET		
105	EAST DUNBARTONSHIRE		
106	EAST HAMPSHIRE		

Nil  
 50% extra  
 Different tariff  
 Extra per person

107	EAST HERTS
108	EAST KILBRIDE
109	EAST LINDSEY
110	EAST LOTHIAN
111	EAST NORTHANTS
112	EAST RENFREW
113	EAST RIDING
114	EAST STAFFORDSHIRE
115	EASTBOURNE
116	EASTLEIGH
117	EDEN
118	EDINBURGH
119	ELLESMERE PORT
120	ELMBRIDGE
121	EPSOM & EWELL
122	EREWASH
123	EXETER
124	FALKIRK
125	FAREHAM
126	FENLAND
127	FIFE
128	FLINTSHIRE
129	FOREST HEATH
130	FOREST OF DEAN
131	FYLDE
132	GATESHEAD
133	GEDLING
134	GLASGOW
135	GLOUCESTER
136	GOSPORT
137	GRAVESHAM
138	GREAT YARMOUTH
139	GUERNSEY
140	GUILDFORD
141	GWYNEDD
142	HALTON

143	HAMBLETON
144	HAMILTON
145	HARBOROUGH
146	HARLOW
147	HARROGATE
148	HART
149	HARTLEPOOL
150	HASTINGS
151	HAVANT
152	HERTSMERE
153	HIGH PEAK
154	HINCKLEY & BOSWORTH
155	HORSHAM
156	HUNTINGDONSHIRE
157	HYNDBURN
158	INVERCLYDE
159	INVERNESS (Highlands)
160	IPSWICH
161	ISLE OF MAN
162	ISLE OF WIGHT
163	JERSEY
164	KENNET
165	KERRIER
166	KETTERING
167	KINGS LYNN & W. NORFOLK
168	KINGSTON-UPON-HULL
169	KIRKLEES
170	KNOWSLEY
171	LANCASTER
172	LEEDS
173	LEICESTER
174	LEWES
175	LICHFIELD
176	LINCOLN
177	LIVERPOOL
178	LOCHABER (Highland)

179	LONDON
180	LUTON
181	LUTON (AIRPORT)
182	MACCLESFIELD
183	MAIDSTONE
184	MALVERN HILLS
185	MANCHESTER
186	MANSFIELD
187	MEDWAY
188	MELTON
189	MENDIP
190	MERTHYR TYDFIL
191	MID BEDFORDSHIRE
192	MID DEVON
193	MID SUFFOLK
194	MID SUSSEX
195	MIDDLESBROUGH
196	MIDLOTHIAN
197	MILTON KEYNES
198	MOLE VALLEY
199	MONMOUTHSHIRE
200	MORAY
201	NAIRN (Highlands)
202	NEATH PORT TALBOT
203	NEW FOREST
204	NEWARK & SHERWOOD
205	NEWCASTLE UPON TYNE
206	NEWCASTLE-U-LYME
207	NEWPORT
208	NORTH Ayrshire
209	NORTH DEVON
210	NORTH DORSET
211	NORTH EAST DERBYSHIRE
212	NORTH EAST LINCOLNSHIRE
213	NORTH HERTS
214	NORTH KESTEVEN



215	NORTH LANARKSHIRE (central)
216	NORTH LANARKSHIRE (north)
217	NORTH LANARKSHIRE (south)
218	NORTH LINCOLNSHIRE
219	NORTH NORFOLK
220	NORTH SHROPSHIRE
221	NORTH SOMERSET
222	NORTH TYNESIDE
223	NORTH WARWICKS
224	NORTH WEST LEICESTER
225	NORTH WILTSHIRE
226	NORTHAMPTON
227	NORWICH
228	NOTTINGHAM
229	NUNEATON & BEDWORTH
230	OADBY & WIGSTON
231	OLDHAM
232	ORKNEY ISLANDS
233	OSWESTRY
234	OXFORD
235	PEMBROKE
236	PENDLE
237	PENWITH
238	PERTH & KINROSS
239	PETERBOROUGH
240	PLYMOUTH
241	POOLE
242	PORTSMOUTH UA
243	POWYS
244	PRESTON
245	PURBECK
246	READING
247	REDCAR & CLEVELAND
248	REDDITCH
249	REIGATE & BANSTEAD
250	RENFREWSHIRE

251	RESTORMEL
252	RHONDDACYNON TAFF
253	RIBBLE VALLEY
254	RICHMONDSHIRE
255	ROCHDALE
256	ROCHFORD
257	ROSS & CROMARTY (Hg/lands)
258	ROSSENDALE
259	ROTHER
260	ROTHERHAM
261	RUGBY
262	RUNNYMEDE
263	RUSHCLIFFE
264	RUSHMOOR
265	RUTHERGLEN
266	RYEDALE
267	SALFORD
268	SALISBURY
269	SANDWELL
270	SCARBOROUGH
271	SCOTTISH BORDERS
272	SEDFIELD
273	SEDGEMOOR
274	SEFTON
275	SELBY
276	SEVENOAKS
277	SHEFFIELD
278	SHEPWAY
279	SHETLAND ISLANDS
280	SHREWSBURY
281	SKYE & LOCHALSH (Hg/lands)
282	SLOUGH
283	SOLIHULL
284	SOUTH AYRSHIRE
285	SOUTH BEDFORDSHIRE
286	SOUTH BUCKINGHAM

287	SOUTH CAMBRIDGE
288	SOUTH GLOUCESTER
289	SOUTH HAMS
290	SOUTH HOLLAND
291	SOUTH KESTEVEN
292	SOUTH LAKELAND
293	SOUTH LANARKSHIRE(clydsle)
294	SOUTH NORTHANTS
295	SOUTH RIBBLE
296	SOUTH SHROPSHIRE
297	SOUTH SOMERSET
298	SOUTH STAFFORDSHIRE
299	SOUTH TYNESIDE
300	SOUTHAMPTON
301	SOUTHEND-ON-SEA
302	SPELTHORNE
303	ST ALBANS
304	ST. HELENS
305	STAFFORD
306	STAFFS MOORLANDS
307	STEVENAGE
308	STIRLING
309	STOCKPORT
310	STOCKTON ON TEES
311	STOKE ON TRENT UA
312	STRATFORD ON AVON
313	STROUD
314	SUFFOLK COASTAL
315	SUNDERLAND
316	SURREY HEATH
317	SUTHERLAND (Highlands)
318	SWALE
319	SWANSEA
320	SWINDON
321	TAMESIDE
322	TAMWORTH

323	TANDRIDGE
324	TAUNTON DEANE
325	TEIGNBRIDGE
326	TELFORD & WREKIN
327	TENDRING
328	TEST VALLEY
329	TEWKESBURY
330	THANET
331	THREE RIVERS
332	THURROCK
333	TONBRIDGE & MALLING
334	TORBAY
335	TORFAEN
336	TORRIDGE
337	TRAFFORD
338	TUNBRIDGE WELLS
339	TYNEDALE
340	UTTLESFORD
341	VALE OF GLAMORGAN
342	VALE OF WHITE HORSE
343	VALE ROYAL
344	WAKEFIELD
345	WALSALL
346	WANSBECK
347	WARRINGTON
348	WARWICK
349	WATFORD
350	WAVENEY
351	WAVERLEY
352	WEAR VALLEY
353	WELLINGBOROUGH
354	WELWYN HATFIELD
355	WEST BERKSHIRE
356	WEST DORSET
357	WEST LANCASHIRE
358	WEST LINDSEY

359	WEST LOTHIAN
360	WEST OXFORD
361	WEST SOMERSET
362	WEST WILTSHIRE
363	WESTERN ISLES
364	WEYMOUTH & PORTLAND
365	WIGAN
366	WINCHESTER
367	WINDSOR & MAIDENHEAD
368	WIRRAL
369	WOKING
370	WOKINGHAM
371	WOLVERHAMPTON
372	WORCESTER
373	WORTHING
374	WREXHAM
375	WYCHAVON
376	WYCOMBE
377	WYRE
378	WYRE FOREST
379	YNYS MON
380	YORK



(b)

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
CROWN OFFICE LIST

CO/1338/91

Royal Courts of Justice  
Strand  
London WC2

Friday, 12th November 1993

A

Before:

MR. JUSTICE McCULLOUGH

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C

R E G I N A

-v-

D

LIVERPOOL CITY COUNCIL

Ex Parte CURZON LIMITED

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E

Computer Aided Transcript of the Palantype Notes of  
John Larking Verbatim Reporters  
Chancery House, Chancery Lane, London WC2A 1QX  
Telephone No. 071 404 7464  
(Shorthand Writers to the Court)

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F

MR. PUGH (represented by Mr. A.R. Korn on 12.11.93) (instructed  
by Messrs. Brian Camp & Co., Merseyside) appeared on behalf of  
the Applicant

G

MR. W. BRAITHWAITE Q.C. (represented by Mr. Curtis on 12.11.93)  
(instructed by the City Solicitor, Liverpool City Council)  
appeared on behalf of the Respondent

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H

J U D G M E N T  
(As approved by the Court)

Friday, 12th November 1993

J U D G M E N T

A MR. JUSTICE McCULLOUGH: Curzon Limited operate hackney  
carriages (in other words, taxis) in Liverpool. The company is  
aggrieved by two decisions of the City Council's Taxis Sub-  
Committee.

B The submissions raise two interesting points of general  
importance concerning the operation of taxis. The first is  
whether a driver is obliged to charge a passenger the full fare  
prescribed in the table of fares made by the licensing authority,  
C or whether he may charge less. The second is what is meant by  
the "accuracy" of a taximeter in the relevant legislation.

In Liverpool the licensing of hackney carriages, their  
proprietors and drivers, is governed by the Town Police Clauses  
D Act 1847 and Part II of the Local Government (Miscellaneous  
Provisions) Act 1976. The licensing authority is the Liverpool  
City Council, which is a district council. The fixing of fares  
is governed by section 65 of the 1976 Act. Section 65 (1)  
E provides:

"A district council may fix the rates or fares within  
the district as well for a time as distance, and all  
other charges in connection with the hire of a vehicle  
or with the arrangements for the hire of a vehicle, to  
F be paid in respect of the hire of hackney carriages by  
means of a table (hereinafter in this section referred  
to as a 'table of fares') made or varied in accordance  
with the provisions of this section."

Section 68 of the Act of 1976 concerns the fitness of  
hackney carriages (and also private hire vehicles, with which,  
G this case is not concerned). It provides:

"Any authorised officer of the council in question or  
any constable shall have power at all reasonable times  
to inspect and test, for the purpose of ascertaining

H:



A its fitness, any hackney carriage ... licensed by a district council, or any taximeter affixed to such a vehicle, and if he is not satisfied as to the fitness of the hackney carriage ... or as to the accuracy of its taximeter he may by notice in writing require the proprietor of the hackney carriage ... to make it or its taximeter 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 such authorised officer or constable is so satisfied:

B Provided that, if the officer or constable is not so satisfied before the expiration of a period of two months, the said licence shall, by virtue of this section, be deemed to have been revoked and subsections (2) and (3) of section 60 shall apply with any necessary modifications."

C The suspensory provisions of section 60 of the 1976 Act are as follows:

"(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend ... a vehicle licence on any of the following grounds:

D (a) that a hackney carriage ... is unfit for use as a hackney carriage ...;

(b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or

(c) any other reasonable cause.

E "(2) Where a district council suspend ... any licence under this section they shall give to the proprietor of the vehicle notice of the grounds on which the licence has been suspended ... within fourteen days of such suspension ...

F "(3) Any person aggrieved by a decision of a district council under this section may appeal to a magistrates' court."

G On 23rd November 1990 the Taxis Sub-Committee resolved to rescind the then current table of fares and to introduce a new table with effect from 3rd December 1990. The old table had provided for surcharges on fares between midnight and 5.00 or 6.00 a.m. The new table introduced a separate charging pattern

between midnight and 5.00 a.m., with journey charges twenty-five per cent higher than during the day. This meant that taxis would have to be fitted with meters capable of charging at two different rates. Not all taxis were so fitted. This difficulty was met by allowing those taxis not so fitted to continue to charge, both by day and by night, according to the old table until 3rd March 1991. By that date all cabs were to be fitted with a meter capable of displaying the new fare structure. It is convenient to refer to "one-tier" and "two-tier" meters.

By 11th April 1991 there were still a number of taxis which did not have two-tier meters. These included taxis operated by Curzon Limited whose drivers were content to charge their night-time passengers the daytime rate. On that date the Sub-Committee, having considered a joint report from the City Engineer and the City Solicitor on the topic, resolved that:

- "(a) the City Engineer be instructed to request all proprietors who have not yet equipped their vehicles with meters capable of operating the new two-tier scale of fares to bring their vehicles for an inspection by the City Engineer within seven days of receipt of written notice from the City Engineer; and
- "(b) in the event that the vehicles are not equipped with the meters capable of operating the new two-tier scale of fares, the City Engineer be given authority to issue the appropriate Notice prohibiting those vehicles from being used as taxicabs until equipped with a meter capable of operating the new fare structure to the satisfaction of the City Engineer."

On 1st May 1991 the City Engineer wrote to Curzon Limited in the following terms:

"By resolution of the Taxis Sub-Committee on 11th April 1991, taxicab proprietor's licenses in respect of the following vehicles is summarily suspended until such time as they are equipped with a taximeter

capable of displaying the current taxicab rates of fare."

A There were then set out four vehicles' registration numbers and licence plate numbers.

B "If within a period of two months you are unable to satisfy that the vehicles have been equipped with a suitable taximeter, the said licences shall by virtue of section 68 of the Local Government (Miscellaneous Provisions) Act 1976 be deemed to be revoked. Please contact the licensing office if you wish to arrange for the vehicles to be tested with an approved taximeter. The licence plates in respect of the vehicles should be returned to me within seven days."

C On 22nd May 1991 the City Engineer sent a further letter to the company. It referred to another four of their vehicles, but was otherwise in the same terms as the earlier letter.

D Curzon Limited challenges the lawfulness of the second of these suspensions (not the first) and the lawfulness of the resolution of 11th April 1991 on which they were based. The absence of challenge to the first is, I take it, in recognition of the need for an applicant for judicial review to come promptly to the court.

E On 8th June 1991 one of Curzon Limited's taxis, DJD 926 V, which was still fitted with a one-tier meter, was stopped by employees of the council at about 1.40 a.m., i.e. during the period of the higher night-time rate. DJD 926 V was not amongst  
F the eight vehicles mentioned in either of the letters. The council employees told the driver to go at once to the licensing office so that the licence plates could be removed from the  
G vehicle. The driver said that he would rather they removed the plates there and then, so that he could just go home. This was done. Curzon Limited challenges the lawfulness of this action.

On 11th June 1991 the City Engineer issued the company with a notice (called a "stop notice") suspending the licence of DJD 926 V on the grounds that it had a "defect", namely, that its taximeter was "incapable of displaying authorised rate of fare". The suspension was to operate until the "defect" was rectified. Curzon Limited challenges the lawfulness of this notice.

Underlying each of the company's challenges is the contention that a driver is not obliged to charge his passengers the rate prescribed in the table of fares. He can, if he chooses, keep his old meter and charge his night-time passengers the daytime rate. Provided his meter correctly displays the daytime fare, which is all that he requires the passenger to pay, it is accurate; the vehicle is not for that reason defective and there is no reason to suspend the vehicle licence.

The 1976 Act applies only in areas where the Act of 1847 is in force. A number of its provisions are relevant.

Section 68 of the Act of 1847 provides:

"The commissions may from time to time (subject to the restrictions of this ... Act) make byelaws for all or any of the purposes following; (that is to say,)"

Then follow six paragraphs, of which the fifth reads:

"For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares."

Section 54 of the Act of 1847 provides:

"If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriages to take for any job a sum less than the fare allowed by this ... Act, or any byelaw made thereunder, such proprietor or driver shall be liable to a penalty ... if he exact or demand for such job more than the fare so agreed upon."

Section 55 of the 1847 Act provides:

A "No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw made under this ... Act, shall be binding on the person making the same; and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid ..."

B The Liverpool City Council, in the exercise of their powers under section 68 of the 1847 Act, made byelaws on 21st April 1980. Some of these have been referred to in argument.

C Clause 5 appears in a group of clauses headed, "Provisions regulating how hackney carriages are to be furnished or provided." This shows that clause 5 was made in the exercise of the power conferred in the third of the six paragraphs of section 68 of the Act of 1847, which reads:

D "For regulating ... how such hackney carriages are to be furnished or provided."

Clause 5 provides:

E "The proprietor of a hackney carriage shall cause the same to be provided with a taximeter so constructed, attached and maintained as to comply with the following requirements, that is to say:

F "...  
"c. When the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures a fare not exceeding the rate which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance in pursuance of the byelaw in that behalf."

G Clause 17 was one of two clauses which appeared under the heading, "Provisions for fixing the rates or fares to be paid for hackney carriages within the district and securing the due publication of such fares." So it was made in the exercise of

the power conferred in the fifth of the six paragraphs of section 68 of the Act of 1847.

A Clause 17 provides:

B "The proprietor or driver of a hackney carriage shall be entitled to demand and take for the hire of the carriage the rate or fare prescribed by the table of fares made or varied from time to time by the council under section 65, Local Government (Miscellaneous Provisions) Act 1976, or any statutory amendment thereof, the rate for the fare being calculated by distance and time unless the hirer express at the commencement of the hiring his desire to engage by time only.

C Provided always that where a hackney carriage furnished with a taximeter shall be hired by distance and time the proprietor or driver thereof shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for any extra charges authorised by the table of fares which it may not be possible to record on the face of the taximeter."

D In this connection section 65 (5) and (6) of the 1976 Act are also material. Section 65 (5) provides:

"A table of fares made or varied under this section shall have effect for the purposes of the Act of 1847 as if it were included in hackney carriage byelaws made thereunder."

E Section 65 (6) provides:

F "On the coming into operation of a table of fares made by a council under this section for the district, any hackney carriage byelaws fixing the rates and fares or any table of fares previously made under this section for the district, as the case may be, shall cease to have effect."

G Since the making of the byelaws in 1980 there have been a number of occasions when the council has fixed a table of fares under section 65 of the 1976 Act. By the operation of section 65 (6), such of the 1980 byelaws as were made under the power created in the fifth paragraph of section 68 of the Act of 1847 ceased to have effect when the first such table was introduced.

This would include clause 17. But clause 5, which was made under the power in the third paragraph of section 68, survives.

A Mr. Pugh, for the company, submits that a driver may, if he chooses, charge his passengers less than the fare prescribed in the current table of fares. Mr. Braithwaite, for the council, submits not. He contends that the Acts of 1847 and 1976 give a  
B district council the right to regulate the fares which are to be charged in hackney carriages which it has licensed. By "regulate" he means prescribe what must, rather than what may, be charged. He stresses the word "fix" and the phrase "to be  
C paid" in section 65 (1): "may fix the rates or fares ... to be paid". He says that these words demonstrate that Parliament did not intend that the licensing authority could only prescribe maximum rates or fares.

D The same words are to be found in section 68 of the 1847 Act. It is agreed that the words "may fix the rates or fares ... to be paid" in section 65 (1) of the 1976 Act must bear the same meaning as in the earlier Act.

E The principal argument against Mr. Braithwaite's submission is the existence of section 54 of the 1847 Act. This expressly contemplates a driver agreeing beforehand with his passenger to  
F do a job for less than the fare allowed by the byelaws. The table of fares fixed by a district council takes effect as if it were part of the byelaws: section 65 (5) of the 1976 Act. Thus section 54 contemplates a driver making a prior agreement to charge less than the fare allowed in a table of fares fixed under  
G section 65 of the 1976 Act. The word "allowed" in section 54 may be significant.

Mr. Pugh also submits that there are other indications in the 1847 Act and in the city council's byelaws which support his submission.

In this connection the only other statutory provision to which he drew attention was section 55 of the Act of 1847. His point is that, while section 55 prohibits and penalises the enforcement of any agreement to pay more than the fare allowed by the byelaws, it contains no similar prohibition in relation to an agreement to pay less than that fare. I attach little weight to this. The function of section 55 was to make it an offence to charge more than the fare allowed by the byelaws. Even if Parliament had intended to prevent a driver from charging less than the fare allowed by the byelaws, it might not have thought it necessary to subject the driver who did so to a penal sanction.

Consideration of the terms of the byelaws is of limited value. Byelaws could not give to the council a power which was not conferred on it by the Act under which they were made. But it is useful to see whether they are consonant with the limitation which Mr. Pugh submits the statute imposes on licensing authorities. Clause 5 c. of the city council's byelaws refers to what a driver is "entitled to demand". The same phrase was found in clause 17. "Entitlement" is the language of permission, not compulsion. Clause 17 imposed (with a minor exception) a prohibition on a driver charging more than the fare displayed on the meter, but none on his charging less. These provisions are consistent with Mr. Pugh's submission as to the effect of the statutes.



A It is possible that section 54 could have had some part to  
play, even if Mr. Braithwaite's submission about the construction  
of section 68 is correct. This presupposes that Parliament,  
while giving to licensing authorities a power to fix rates that  
drivers were required to charge, recognised that an authority  
might prefer to prescribe only a maximum rate. Even so, I am  
B persuaded that the statutes do not empower a district council to  
impose on drivers, whether by making byelaws or fixing a table  
of fares, a fare structure to which they must adhere. Such doubt  
C as there is should be resolved in favour of the less restrictive  
construction. It is my view that the statutes prevent a driver  
from charging more than the fares prescribed, but not less; they  
do not empower a district council to prevent him from charging  
less.

D The great majority of drivers will, no doubt, want to charge  
the full prescribed fare. But if others do not, they may, at  
least before the commencement of the hiring, agree to take less.  
Whether a district council may prevent a driver, at the end of  
E or during the period of hire, from waiving part (or, indeed, the  
whole) of the charge which the law entitles him to demand is  
perhaps less clear, in that no section in either Act expressly  
contemplates such waiver. Mr. Braithwaite said that, other than  
F that such a driver would commit no criminal offence, he reserved  
the question.

G I see nothing in the Acts which gives power to the council  
to prevent such waiver. There must have been, during the 146  
years since 1847, many thousands of occasions when passengers  
have discovered that the fare exceeds the amount of money they

are carrying and drivers have let them off the difference. Waiver in similar circumstances is commonplace in many areas of life. In my judgment, short of a contractual restriction, there is nothing to prevent a driver from doing this if he wants.

I turn to the second issue, which is what is meant by the "accuracy" of a taximeter in section 68. The material words in section 68 are, "Any authorised officer ... shall have power ... to inspect and test ... any taximeter ... and if he is not satisfied ... as to the accuracy of [the] taximeter he may ..." etc. Mr. Braithwaite submits that to be "accurate" a meter must display the fare that the passenger is liable to pay. Mr. Pugh submits that an "accurate" meter is one which accurately measures time and distance, and that no more is required. A meter is that which measures; a taximeter does not measure the fare: it merely displays it. No accuracy of display is required. I do not accept this. Accuracy, in my view, goes also to the display of a fare. An accurate meter must accurately measure time and distance and must accurately translate this into a fare. What fare, is a matter to which I will return.

I want first to consider whether "accuracy" is directed both to the function of the meter and to the manner in which the driver operates it, or whether it is directed only to function. Consider the driver of a taxi with a two-stage meter who forgets to switch his meter from one rate to the other at midnight or 5.00 a.m. Mr. Braithwaite contends that after midnight the forgetful driver's meter will still be accurate, because although it is displaying less than the rate according to the table of fares, it is displaying all that he can charge. But, says Mr.

Braithwaite, forgetfulness at 5.00 a.m. renders the meter inaccurate as it thereafter displays a fare that the driver cannot lawfully demand. Mr Braithwaite draws an analogy with a watch. The watch may be capable of functioning properly, but if its wearer has forgotten to put it forward when British Summer Time ends, it is no longer accurate. The meter does not show the correct fare.

In my judgment, this is not the sense in which the word "accuracy" is used in section 68. The section contemplates not perpetual inspection but periodic inspection. The officer or constable requires to be sure that, provided the meter is operated as it should be, it will accurately display the required fare. The accuracy to which the section is directed is accuracy of mechanical or electrical function, not accuracy of driver user. A meter remains accurate in this sense despite the forgetfulness of the driver to change the rate at 5.00 a.m. (which will result in too high a fare being displayed) or to change it at midnight or to start the meter at the beginning of the journey or, where extra charges for luggage or additional passengers are permitted, to put such charges on to the meter (all of which will make for the display of too low a fare). Where through forgetfulness too low a fare is displayed, clause 17, while effective, prevented the driver from recovering more. Where too high a fare is displayed, clause 17, while effective, prevented him from recovering the excess. And in that event the driver offends against clause 5 c. of the byelaws.

Mr. Braithwaite's submission that an accurate meter is one which displays the fare prescribed in the table of fares assumed

that the council was empowered to require a driver to charge according to the current table of fares, which is a proposition I have rejected. He concedes that if, as I have held, a driver is entitled to charge what he likes up to a prescribed maximum, his meter is accurate if it is set according to his own scale of charges. This effectively concludes the second question against the council.

I can see why he made the concession. It fits well with clause 5 c. of the byelaws. What the passenger wants to know is what he has to pay. The driver is only entitled to charge what is displayed on his meter. More accurately, this was the position while clause 17 was effective. Despite its repeal, the public perception remains, I believe, the same. If the driver is only going to charge, say, half the rate allowed in the table of fares, then half that rate is what the passenger will expect to see on the meter. Similarly, as with the drivers of Curzon Limited's cabs, if they are only going to charge day rates at night, then what the meter should show is the fare according to the day rate. The concession makes it unnecessary for me to consider whether, even although a driver proposes to charge less than the fare allowed by the table of fares, his meter should nevertheless display the fare according to the table of fares, leaving it to him to tell the passenger that he will take less.

It follows that the one-tier meters fitted to Curzon Limited's cabs, the drivers of which only charged the day rate at night, did not lack "accuracy" for the purposes of section 68 of the 1976 Act. Section 68 is concerned not only with the accuracy of taximeters but also with the fitness of the vehicles

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themselves. Mr. Braithwaite accepts that it would be difficult to say that taxis fitted with one-tier meters lacked the fitness to which section 68 is addressed. In the result, section 68 provided no lawful basis for the suspension of the licences of the four taxis listed in each of the letters of 1st and 22nd May 1991; nor did it for the resolution of 11th April 1991, or the removal of the licence plates from DJD 926 V, or the stop notice issued in respect of it.

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E  
Mr. Braithwaite nevertheless submitted that the suspension of the licences was lawful on the argument that section 60 (1) (c) of the 1976 Act empowered the council to suspend the vehicle licence for "any ... reasonable cause", the reasonable cause being that the council did not want the hackney carriages they had licensed to have one-tier meters. I cannot accept this. The council did not purport to suspend under section 60; they relied on section 68. In any event, taking the view I do about a driver's entitlement to charge daytime rates at night, the fact that the vehicle was not fitted with a two-tier meter would not have provided a reasonable cause for suspending its licence.

Effectively, therefore, the company succeeds in each of its challenges.

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I should perhaps add that I do not accept Mr. Pugh's subsidiary point based on the words "at all reasonable times" in section 68. He submits that it was not reasonable to stop DJD 926 V in the middle of the night and during the driver's shift. In my judgment 1.40 a.m. was not an unreasonable time in the circumstances. The inspection required could hardly have been brief; it lasted only so long as was needed to see that the

vehicle was still fitted with a one-tier meter. The driver was at work at 1.40 a.m. I do not think it was an unreasonable time to stop him for the purpose of looking to see what sort of meter he had. Had the meter been "inaccurate" it would have been lawful to suspend the vehicle's licence there and then, but the requirement that the driver immediately attend at the licensing office so that the licence plates could be removed would not have been lawful. This is made clear by the words of section 58 of the 1976 Act, which provides:

"(1) On --

...

(b) the suspension of a licence under section 68 of this Act, a district council may by notice require the proprietor of that hackney carriage ... licensed by them to return to them within seven days after the service on him of that notice the plate or disc which

(a) in the case of a hackney carriage, is required to be affixed to the carriage ..."

I turn to the question of relief. In the exercise of the Court's discretion, I decline to quash the decision contained in the letter of 22nd May 1991 or the resolution of 11th April 1991 on which it was based. The effect of these decisions is long since spent. Curzon Limited's vehicles were all fitted with new meters and were back on the road within a short time. Apart from the question of damages, to which I will come, the only appropriate remedy would be a suitably worded declaration about the freedom which a driver has to charge less than the fare prescribed in the table of fares. I will hear submissions as to the words in which a declaration might be framed.

I am not sure what the position is about the claim for damages. As pleaded it stands at £1,500, being £300 (the cost

of each two-tier meter) times 5 (being the four vehicles listed in the letter of 22nd May 1991 plus DJD 926 V). The evidence supporting this claim comes from Mr. W.A. Kelly, Curzon Limited's managing director, who says that the old meters worked perfectly well and the new ones cost £300 each. It seems to me, however, that there should be set against this: (a) the sale value (if any) of five one-tier meters, and (b) such extra income as the company has derived from the charging of the night-time rate which would not have been demanded had the one-tier meters still been used.

I will hear further submissions about this.

**MR. KORN:** My Lord, I am obliged, but I very much regret that I am not in a position to address your Lordship on either the wording of a declaration or on the appropriate measure of damages. Subject to anything which my learned friend may have to say, I am in your Lordship's hands as to both of those questions.

**MR. JUSTICE McCULLOUGH:** Do you have any ideas, Mr. Curtis?

**MR. CURTIS:** My lord, none, I am afraid. I cannot be of any more assistance than my learned friend. The only thing that occurs to me is whether we might be able to take instructions and return to you.

**MR. JUSTICE McCULLOUGH:** I think it would be possible for you to agree a form of declaration and submit it to me in writing and, if I approve it, I can then simply incorporate it in the Court order; and similarly, you might be able to agree the question of damages, and I could do the same with that. One wants to save the expense of another hearing, which would in any event have to be in Birmingham. At least that is a little nearer to Liverpool, but it would still be cheaper to do it in writing.

**MR. KORN:** My Lord, yes. May I ask for my costs?

**MR. CURTIS:** My Lord, I cannot resist that.

**MR. JUSTICE McCULLOUGH:** Yes. I am asked to request that you please submit any agreement that you make to the Crown Office -- obviously they need to be apprised of the position -- and they will send it to me. Similarly, I will send back my approval of it to them, and you will hear thereafter from the Crown Office.

