

Newcastle Crown Court;

His Honour Judge Carr

1. We dismiss the Appeal by Durham City and we order that they pay the costs of Mr Fets. These are the reasons for our decision:
2. This is an appeal by Durham City Council against the decision of Durham Magistrates on 18th November 2004 when they allowed an Appeal by Adrian Fets and reversed the decision of Durham City Council whereby the Council sought to impose a condition that Hackney Carriages in Durham be white in colour. The Magistrates concluded that Mr Fets had satisfied them that the condition that Hackney Carriages in Durham be white in colour was not reasonably necessary.
3. In this Appeal we heard evidence over several days and on 31st August 2005 we dismissed the Appeal because we also, just as the Magistrates, conclude that Mr Fets has satisfied us that the condition that Hackney Carriages in Durham be white in colour is not reasonably necessary.
4. The origins of the policy are not that clear. In 2003 the City Council commissioned a survey upon the demand for hackney carriage services, which was carried out by Transportation Planning International Ltd, known as the TPI Survey. That survey made no mention of colour policy. Mr David Stewart told us that a colour policy would have been raised by him in a meeting of the Economic Scrutiny Panel on 1st March 2004. In the TPI Survey there had been a Public Attitude Survey in which only 12.7% of those members of the public questioned could demonstrate a satisfactory level of understanding of the difference between Hackney Carriages and Private Hire vehicles. Mr Stewart felt that the difference in colour between the two would lessen the confusion. He also told us that Durham County Council were seeking to align the colour in taxis within the county, namely colour white, but this was secondary. Further, there was a public safety issue which was linked to enforcement and that a one colour policy would assist in this.
5. Following the Economic Scrutiny Panel meeting on 1st March 2004 Mr Stewart told us there were a number of meetings with the two Trade Associations to discuss, inter alia, the colour policy. It has been said that one or both of these associations agreed with the colour policy and that the disagreement related only to whether silver or white should be the colour. We conclude on the totality of the evidence in relation to this that in reality neither Trade Association agreed to a one colour policy. What is clear is that the Trade Associations felt they had no option but to agree the policy. Certainly,

we have seen no evidence that the City informed the Trade Association that they had a right of challenge in the Courts in relation to the colour policy.

6. On 2nd August 2004 Durham City Council's Cabinet approved a colour policy, that as of 1st September 2004 newly licensed Hackney Carriages in Durham City must be white and that newly licensed Private Hire vehicles may be any colour other than white. On 18th August 2004 Mr Fets lodged his complaint to Durham City Magistrates Court against the imposition of such a condition upon his licence. They upheld his complaint on 18th November 2004.

7. The relevant legislation is Section 47 of the Local Government (Miscellaneous Provisions) Act 1976. Section 47(1) states a District Council may attach to the grant of a licence for a Hackney Carriage, under the Act of 1847, such conditions as the District Council may consider reasonably necessary. Subsection 3 of Section 47 states that any person aggrieved by any conditions attached to such a licence may appeal to a Magistrates Court.

8. We have been referred to a number of authorities such as Westminster City Council (2002 EWHC104 Admin.), Reading Borough Council (2004 EWHN765 Admin.), Wirral NBC case (of 1983 3CMLR150), Luton Borough Council case (1995, COD231) and Blackpool Borough Council ex-parte Redcabs (1994 QVD).

9. Of these authorities we find the decision of Mr Justice Judge (as he then was) in the Redcab case, of assistance more so than those authorities which are primarily focussed on Judicial Review. Clearly, Section 47(3) of the relevant Act gives Mr Fets a right to appeal to the Magistrates Court. What does he have to show in order to be successful in that appeal? We conclude that the law is that the burden is on Mr Fets to show that it was not reasonably necessary to attach the condition, of which he complains, to his licence. On Appeal to the Crown Court the same rule applies.

10. We now turn to an examination of the reasons for which the City Council says it relied upon in reaching its decision to have a colour policy of white for Hackney Carriages. We deal with them as they are listed in paragraph 23 of the appellant's submissions.

1, Ease of identification for members of the public

It is said that 12.7% of those questioned in the survey could demonstrate a satisfactory level of understanding of the difference between Hackney Carriage vehicles and a Private Hire vehicle. We do not believe that a colour policy will have any or any

significant effect on the public's body of knowledge as to the legal differences between a Hackney Carriage and a Private Hire vehicle. It was this reason Mr Stewart put forward as the origins of this policy. It is said that a uniform colour is the most potent way of ensuring clear identification. Since a private individual can drive a white car which is not a Hackney Carriage we do not see any force in this argument. What does make easy identification is the taxi signage, which is already present on a city taxi. The City Council has not produced any evidence at all to show that the public have any difficulty in recognising a Hackney Carriage.

2, Ease of identification for enforcement

There is no enforcement problem in Durham City. If there is the City would have produced evidence before us, this the City did not do.

3, Public Safety

It is said that by introducing the policy it makes it less likely that unlicensed vehicles can be passed off as Hackney Cabs, therefore not only protecting the public but in consequence encourage more of the general public to use taxis. We have heard no evidence to suggest that there is a passing off problem in the city. Since contiguous District Councils do have a white colour policy, for the city to have the same it is likely to encourage Hackney Carriages licensed by other authorities to ply for hire in the city when they drop off a fare in the city. In other words, a white colour policy will do precisely what the city says it wants to prevent. We do not think that the colour of a taxi, as such, will encourage a person to use a taxi if they otherwise would not have done so.

4, Image

It is said that white taxis would have a raised profile on the streets and encourage the public to use them as part of an overall Public Transport Provision. We believe that white is a colour that will deteriorate quickly, both of itself and in bad weather. We therefore, even if image was a relevant factor, disagree that the image of Durham City public transport will be enhanced in the way suggested. Durham City has its own colours, neither of which are white.

5, Having a standard fleet

It is said that standardisation for Hackney Carriages county-wide is a legitimate consideration - this mayor may not be right. The problem here is that the County

Council has done no research whatsoever into the repercussions of a county-wide policy of this nature. Two areas spring immediately to mind: first the question of vehicles licensed in one district plying for hire in another and second the availability of white vehicles as taxis. To push a policy without having done any preparatory research gives us no confidence in that policy, particularly when it relates to the conditions upon which persons earn their livelihood. We accept that there are different shades of other colours and that black and white may well have less shades than these colours. White does, however, have different shades to it.

11. We accept that the timescale by which the policy is to come into force is a reasonable one. However, it is clear to us that the policy has not been worked through before its implementation. Initially, no thought had been given as to what happened when a licensed vehicle needed to be repaired and to say that we were surprised to find out that a vehicle which had been licensed then needing repair was substituted, had to come back white is understating our reaction.

12. We now turn to the Respondent's case. No reference is made to colour being used as a way of distinguishing between Hackney Carriage and Private Hire vehicle in the TPI report, The Office of Fair Trading report or The Best Practice Guidance issued by The Department of Transport. The suggestion that a person being carried in a Private Hire vehicle may not be insured fails to take into account that there is no problem of Private Hire vehicles unlawfully plying for trade and that, in any event, the Motors Insurers Bureau Agreement would give protection.

13. The city's Director of Legal Services in a letter dated 11th November 2004 specifically said:

"Nor am I aware of any particular safety problems with taxis".

14. As recently as 14th June 2005 the Director wrote:

"I have liaised with the Licensing Manager and we have been unable to find any trace of a successful prosecution brought by the City Council for illegal plying for hire within the last 3 years".

15. There is no evidence, in our Judgement, that there is an issue of public safety in so far as the hire trade in the city of Durham is concerned. The Respondent submits, and with this we agree, that harmonisation across the county is more likely to lead to illegal plying for hire by other taxis.

16. The Council failed to do any research into the availability of white cars. In our view, the City Council did no preparatory work into the consequences of bringing into force the colour white policy. Had it done so, it would have been clear that the popularity of white as a colour for a car has significantly reduced over the last few years. Any observant motorist would have been able to see this. We are satisfied that the research efforts into the availability of suitable white cars carried out by the Respondent is extensive and reliable. The Appellant's evidence on this we find sketchy and carried out as an afterthought.

17. We conclude that in so far as second hand white cars are concerned there is only, at best, a very limited amount available and certainly not in sufficient quantities to allow a taxi driver to find a replacement within a reasonable length of time.

18. Insofar as the availability of new white cars is concerned Mr Fets, who is an honest witness, told us he had to wait 9 weeks for delivery. This is an unreasonable burden for any taxi driver to have to carry - for without his car he may not be able to earn his living.

19. The City's suggestion that a car could be obtained and re-sprayed, at a significant cost to the taxi owner, was yet another example of failing to do the necessary research. Had the City done so, they would have found out that a vehicle being purchased on Finance, as most taxis are, cannot be re-sprayed without the consent of the Finance Company. Our opinion is that such consent was not likely to be easily obtained.

20. The Respondent also states that white cars depreciate faster than any other colour of vehicle. We accept this as an acknowledged fact. Having said this, the use of any vehicle as a taxi is likely to have a significant effect upon its trade-in value in any event.

21. The Respondent has carried out research in relation to how many other Authorities have a white colour condition. Out of 396 Licensing Authorities 313 had no mandatory policy. White is the mandatory colour in just 7% of all Licensing Authorities. 80% of all Licensing Authorities have no colour policy. These figures lead us to conclude that there is no compelling reason why Local Authorities should have a colour policy but, as always, we have to look at the local reasons for and against such a policy.

22. We are satisfied, as the Magistrates were, that there has been no assessment made by Durham City Council as to why a colour policy is reasonably necessary for Durham. We have not heard one word from any member of the public expressing any concern as

to how the taxi business was operated in Durham pre the introduction of a colour policy. We are satisfied that 3 distinctive features, the sign on top, the logo on the doors and the plate itself, are sufficient for a member of the public to clearly identify a Durham Hackney Carriage and distinguish it from a Private Hire vehicle. We are satisfied that the present distinguishing features are adequate to deter passing off by unlicensed vehicles and thereby sufficient to secure passenger safety. We also accept that the City Council carried out adequate consultation with the trade. Lack of sufficient research into the needs for such a policy, however, as to what was to happen if a car needed to be repaired and the position that a car that had a licence could not be re-licensed if it was not white, clearly is unacceptable.

23. We differ from the Magistrates with regard to their findings on unavailability of white vehicles. We conclude that this is not just inconvenience but is a significant problem. It is not reasonable for a self-employed person to run the risk of no work for 9 weeks because of a waiting list for white cars. And it is not reasonable for a self-employed person to be required to have his vehicle re-sprayed at a significant cost or not to be able to have it re-sprayed at all because it has been purchased on finance.

24. We therefore conclude, as did the Magistrates, that Mr Fets has satisfied us that the condition that Hackney Carriages in Durham be white in colour is not reasonably necessary and accordingly we dismiss this Appeal by the Durham City Council.

25. Mr Singh, in his closing submissions in writing, referred to other grounds upon which we should dismiss the Appeal. We have not dealt with those but indicate that he did address us on these matters.

26. So there we have it Mr Fets. Those are our reasons, now you can spend your time earning your living again.

27. Mr FETS: That will be nice

28. CLERK TO THE COURT: Court Rise

We hereby certify that this Judgement was approved by His Honour Judge Carr on the 10th October 2005.

<http://www.youtube.com/watch?v=dXcNfA4qebQ&feature=related>

Alistair Turnbull & Jackie.....my favourite carpetbaggers from Edinburgh

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