

IN THE NOTTINGHAM MAGISTRATES' COURT

BEFORE DISTRICT JUDGE (MC) SPRUCE

Hearing 18 and 25 January 2021

MULTIPLE APPELLANTS IN TAXI LICENSING APPEALS

-V-

NOTTINGHAM CITY COUNCIL

Introduction

1. The legal argument in support of these appeals was heard before me across two days, on 18 and 25 January 2021. Skeleton arguments were provided in advance of the hearing and the Court had reference to an agreed bundle of material to assist with the referencing and decision-making.
2. The Court authorised Mr Geoffrey Blakey to present arguments on behalf of the only two appellants who had indicated any formal authority for him to do so. Rights of audience for Mr Blakey are not automatic but were nevertheless granted, limited to the oral presentation of the written legal arguments, but not to any further substantive hearing, should there be one, without further order.

The Court took a pragmatic view to take account of the difficulties which refusal of that application might present for Mr Singh and Mr Amin, in terms of the disadvantage they would likely experience in finding themselves unrepresented, having anticipated that they would be so, and thereby avoiding a potential application for further adjournment to seek legal advice. Written arguments had already been submitted by Mr Blakey, who purported to have some experience in dealing with these types of matters. There has already been considerable delay with these appeals and, on balance, the Court took the view that it would be better to grant Mr Blakey a right of presentation, to move matters forward.

Summary of the Appellants' Legal Challenges

3. I believe that the challenges can be adequately summarised as follows –
- a. The policy applied by the Council's officers in reaching the decision to refuse the renewal of the Appellants' taxi licences is *the wrong policy*. The Council have applied the Age and Specification Policies (approved at Regulatory and Appeals Committee on 18 December 2017, to have effect from 1 January 2018 – Bundle N81 and N86) to the decisions. Instead, it is submitted, that the aforementioned policy was *superseded by the Council Plan* (which represents a new Hackney Carriage policy).
 - b. In consequence of point a. (above), the *wrong policy has been enforced*. The new policy (the Council Plan) is the one that should have been applied to considerations of the applications under the renewal process.
 - c. In respect of the original Age and Specification Policies, *the consultation exercise which led to the approval of that policy was flawed*. There was no consultation on the change which required Hackney Carriage vehicles to be a minimum of Euro 6 diesel. This was a key change to the original consultation document, which had a substantial material impact on the minimum age requirements of the vehicles (and therefore a substantial adverse impact on the Appellants). The defective consultation means that the approved policies cannot be relied upon.
 - d. The original Age and Specification Policies have been *vitiated by fraud*. It is submitted that the deceitful, wrongful and unlawful conduct of officers of the Council, means that the original policy is of no effect.

The Council Plan 2019 - 2023 is the new Policy

4. The primary argument put forward on behalf of the Appellants was that the original Age and Specification Policies had been replaced by democratic vote of Nottingham Electors in 2019, on the manifesto of the subsequently successful political group. The full Council Meeting on 20 May 2019 adopted the *policies* of the manifesto, thereby replacing and superseding the existing Age and Specification Policies.
5. Attention was drawn to the Report of the Leader (Bundle X135) dated 20 May 2019 which commences, *“the City Council is required to adopt policies for the current term of office”*. There then follows a document entitled *Nottingham Labour Manifesto 2019* (X137) which introduction concludes –

“the commitments in this manifesto will form the basis of our plans for Nottingham over the next 4 years if we are elected to lead the council and set the direction for our city for years after that” (X137).

The document goes on to set out Labour’s vision for Nottingham with specifics for proposed change to various projects, living conditions and dynamics for the future direction of the City. Under the heading (X147) *“to make living in Nottingham even better we will also”*, there is a list of 10 proposals. Item 6 records the following (X148) –

“Ensure that Nottingham’s Hackney carriage fleet is ultra-low emissions, reduce the maximum age of taxis from 15 to 12 years and exclude dirty diesel taxis from the city centre”.

It is this one sentence, articulated in the manifesto, which the Appellants’ submit represents the *replacement policy*.

6. Reference was made to the adoption of this ‘policy’ at the full Council Meeting on 20 May 2019. Further reference, in support, was made to the subsequent Report of the Leader (dated 11 November 2019) as being further authority and confirmation that a new policy had been adopted, in particular –

“5 Background (including outcomes of consultation). Council Plan 2019 - 2023.
5.1 The Labour Groups Manifesto 2019 was formally adopted as the basis of Nottingham City Council policy at City Council on 20 May 2019 following extensive consultation with the public. The commitments within the Manifesto form the basis of the Council’s policies and priorities over the next 4 years and have been incorporated into our strategic planning processes” (C14).

“7. Legal and Procurement Colleague Comments.

7.1 The Council Plan 2019-2023 is based on the policies approved by Council in May 2019. Legal advice should be sought in terms of implementation of the deliverables proposed in the delivery of the plan as appropriate” (C16).

7. The proposition is that all of this supports a conclusion that the original Age and Specification Policies have been *replaced*. A fully constituted Council approved the Manifesto policies in May 2019 and subsequently approved the colour printed plan in November 2019 (C20), which additionally references –

*“Nottingham City Council Plan 2019 – 2023. Living in Nottingham –
We will also Ensure that Nottingham’s Hackney carriage fleet is all true low emissions, reduce the maximum age of taxis from 15 to 12 years and exclude dirty diesel taxis from the city centre”.*

8. Various references were made to the Nottingham City Council Constitution as a guide to the basic principles of how the Council works (Dividers A and B), which were presented as a means to support the proposition that the Council have both the authority and function to agree the major policies and policy framework (A3).

Alternatively: The Council Plan is not the Policy - it is a manifesto commitment towards a vision for the City which is designed to inform a future policy direction

9. It was represented on behalf of the Council, that the Council Plan 2019 - 2023, cannot be the policy. It does not have the same legal status as a policy and has not been through the same process of consultation as the Age and Specification Policies, which was subsequently formally adopted as the policy. The Council Plan has not been formally adopted as a policy. The Council Plan is a *manifesto* proposed by the Labour Party, subsequently approved at a Council meeting. However, nothing within that approved manifesto has replaced or purported to replace the Age and Specification Policies.
10. The Court heard representations as to what a *policy* might be. It was recognised that there is no strict definition and that the word 'policy' can potentially represent a number of meanings in different contexts.

It seems logical therefore that this Court should examine those competing *contexts* as well as reflecting on what might be the *purpose* of having a policy.

11. The Council drew attention to the judgement of Lord Reid in *British Oxygen Co v Board of Trade* [1971] A.C.610, 625D.

“The general rule is that anyone who has to exercise a statutory discretion must not “shut his ears to an application”. [A....] large authority may have had to deal with a multitude of similar applications and they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that, provided the authority is always willing to listen to anyone with something new to say”.

Drawing upon those observations, this Court’s interpretation is that the purpose of having a *policy* in this context, is to provide a settled way in which an authority will approach the many decisions it has to make in whatever area of business

that might be. On this interpretation, a policy is a *tool for decision-making* with the aims to promote consistency and transparency by setting out, in advance of those decisions, *specific and precise criteria* to apply to individual cases. Those precise criteria should guide decisions, but (following Lord Reid's observations) must not be enforced so rigidly that justifiable exceptions cannot be made, where appropriate.

12. Applying that interpretation of 'policy' to the competing considerations in this case, it is not possible to conclude that the (albeit adopted) Council manifesto is a decision-making tool. The Council Plan is not a 'policy' in that sense.

“Ensure that Nottingham’s Hackney carriage fleet is ultra-low emissions, reduce the maximum age of taxis from 15 to 12 years and exclude dirty diesel taxis from the city centre”.

13. Firstly, it is absent of the specific criteria which might assist a public body to make decisions in individual cases. This is in marked contrast to the Age and Specification Policies (N86-87).
14. Secondly, the Council Plan has not been subject to the same process of consultation with interested parties, nor formally adopted as a policy. The Age and Specification Policies were consulted upon and adopted as the policy. That suggests that it was *intended to be* the criteria governing the licensing of Hackney carriage and private hire vehicles.
15. Thirdly, the *context* in which the statement at paragraph 12 (above) is made, is clearly one of *aspiration and commitment*, rather than a basis upon which to make decisions. A brief analysis of where that commitment to reduce the maximum age of taxis from 15 to 12 years (X147-148) appears in the documentation, is to find it alongside more generalised aspirations such as *encouraging purpose-built student accommodation; campaigning for the electrification of the Midland Mainline; encouraging the creation of lifetime homes wherever possible; and providing a network of community-based libraries.*

16. Fourthly, there are similar issues around the *language*, undermining an argument that the adopted Council Plan actually represents the taxi licensing policy.

The Report of the Leader (20 May 2019) is headed – “Adoption of the **plans** set out in the Labour Manifesto **as the basis of** Council policies” (X135).

There is clear reference to adoption of *plans* rather than *policies*; only then, that these plans will be *the basis of* the policies (not the policies themselves). This is not, in my view, the language of individual decision-making policy.

There are analogous references in the Report of the Leader (11 November 2019) Paragraph 5.1 (C14) makes reference to the “*Manifesto*” (not policies) being formally adopted; and that “*the commitments within the Manifesto formed the basis of the council’s policies and priorities over the next 4 years, and have been incorporated into our strategic planning [present tense] processes*”.

All of that language suggests that these are commitments, ideas and (at best) policies *in the making*, rather than finalised.

In contrast, the Age and Specification Policies document actually describes itself as a ‘*Policy*’ and sets itself a definite date for implementation.

17. The Appellants made great play of paragraph 7.1 (C16) which states that the Council Plan “*is based on the policies approved by Council in May 2019*”. However, there is no consistency of language within this very short document and, in my assessment, this is a good example of how the word ‘policies’ is interchangeable with ‘aspirations’, ‘proposals’ or ‘commitments’. Just because the adviser recording the minutes uses the word ‘policies’, it does not make it so. It is not capable of changing the contents of the manifesto into policy, when in all other respects it is not.
18. Fifthly, the Council drew attention to the following paragraph in the same document (C16) - Equality Impact Assessment (EIA), Paragraph 8 -

“Has the equality impact of the proposals in this report been assessed? No.”

“EIA is not required at this stage. Individual departments will undertake an EIA as part of their delivery plans for Council Plan priorities, and should they propose any changes to functions, policy or services”

The implication is clear; that individual departments will subsequently make changes i.e. another stage is envisaged [before policy changes].

19. Finally, there is no audit trail (nor indeed anything) to suggest that the original Age and Specification Policy has been revoked. There is no indication that anyone thought that the introduction of the Council manifesto plans was superseding any other policy (including the Age and Specification Policies).

It is inconceivable that no one would have brought that to the attention of the Council officers who continued to apply the ‘old policy’.

Conclusion: The Age and Specification Policies are the correct policies to be applied to the decision-making.

20. For all of those reasons my firm conclusion is that the Age and Specification Policies (approved in December 2017, to take effect on 1 January 2018) are the actual policies affecting licensing decisions.

For clarity, the Council Plan 2019 - 2023, is not the policy.

The Applicant’s first submission is rejected.

21. The Appellants second submission - namely that the Council officers have applied and enforced the wrong policy in respect of the renewal applications - is similarly dismissed. It is effectively the same argument.

The Age and Specification Policy is of No Legal Effect –

The Consultation exercise was flawed and the original policy is vitiated by fraud

22. It was further represented, on behalf of the Appellants, that the *consultation exercise* in respect of the original Age and Specification Policies, which subsequently led to the approval of that policy, *was flawed*.

In consequence, the deficiencies of consultation are undermining of the Age and Specification Policies, making the policies *legally of no effect*. Neither the Council, nor the Court are entitled to rely upon it as valid policy to be applied to the decisions under consideration.

It was represented that any refusal decisions on the renewals are null and void.

23. This first argument was set out at paragraphs 14 – 16 of Mr Blakey’s skeleton argument, drawing upon Lord Woolf’s commentary around the essential features of the law on consultation by public authority. I do not seek to repeat that here.
24. It was represented that there was no consultation on the change which required Hackney Carriage vehicles to be a minimum of Euro 6 diesel. This was a key change to the original consultation document, which had a substantial material impact on the minimum age requirements of the vehicles - the difference between vehicles being no older than 4 years and 3 months or alternatively an age of 10 years (the result, a substantial adverse impact on the Appellants).
25. Through some perseverance, the Court was eventually able to see the basis of this argument. Essentially, the argument was that the requirements contained within the *approved* Age and Specification Policies (N86-87) were unrepresentative (even misleading) of those matters consulted upon, as contained within the original consultation draft (M70-71).

26. Critically, that “*all Hackney Carriage vehicles will be required to be a minimum of Euro 6 diesel or ZEC ULEV*” from 1 January 2020 (N87). This is the provision upon which these Appellants now fall foul, and hence gives rise to complaint.

The complaint is that neither the change to Euro 6 taxis, nor the change to four years and three months was in the list of proposed changes.

27. The Appellants criticism (suspicion) is further fuelled by the fact that the approved Age and Specification Policies document (post consultation) still contains a watermark bearing the logo “*Consultation Draft*”. It was represented, on behalf of the Appellants, that the watermark was left on the post-consultation document to make it *look like* the pre-consultation document. The Council response is that it is simply a mistake of failing to remove the watermark from the final document (a matter which was subsequently rectified and to no disadvantage).
28. It is certainly possible to see a cause for discontent. The minutes which purport to be the audit trail between the consultation draft and the final policy document detail a number of changes as a result of the consultation (N83 – paragraph 2.7). However, they fail to detail the specific change (see paragraph 26 above) which give rise to these complaints and appeals. It is, arguably, *unclear* how the first document transitions to the second.
29. The Appellants further argue that these inconsistencies of transition from draft consultation to final policy document represents dishonesty, deceit and fraud. The further and final submission is that this *fraud* operates to vitiate the Age and Specification Policies, rendering the policy of no legal effect.
30. The bald suggestion is that Council officers have deliberately concealed the changes by making dishonest statements. They have failed to make it clear (either in paragraph 2.7, which purports to explain the changes but does not; nor at the Council meeting ratifying the final policy) why they have settled on the proposal for a significantly shorter ‘shelf-life’ for taxis than that proposed in the original consultation document. It is further ‘concealed’ by ‘the watermark’.

31. The submission was that “*a massive change*” has not been drawn to the attention of the Committee deliberately, surreptitiously and dishonestly (albeit that, when asked, no reason was proffered as to why the officials might behave in this way).

The Council’s submissions in response

32. The ‘*improper and insufficient consultation*’ point was not wholly clear from the initial skeleton argument and Ms Clover, for the Council, was only able to respond in final submissions. Nevertheless, those counter submissions were clear.
33. It was countered that the fact of consultation does not preclude the Council from introducing a more onerous policy (than the one set out in the consultation draft). Furthermore, the adopted policy will stand until the point that the approved and adopted policy is challenged.
34. Any challenge to the policy is not permissible in this [the Magistrates’] Court. Whether the challenge is to *how the policy came about* (the insufficient consultation point) or the *circumstances as to how the policy was subsequently adopted* by the Council members (the fraud submission), it is not open to the magistrates to look behind it. The Magistrates’ Court has no option but to follow and apply the adopted policy.
35. It was further represented that any challenge to the policy would need to be dealt with by a higher tribunal through the mechanism of Judicial Review.
36. The Appellants’ suggestion of fraud and impropriety by Council officers was vehemently rejected.

It was pointed out that the approving Councillors had plenty of information to trigger their minds to the changed wording. There was no obligation to go back out to consultation. In addition, the Court would need to know much more about how the wording change came about than was available to consider here.

At the approving meeting, in December 2017, the members had a summary of the consultation responses (including the taxi drivers' main response requesting that a 10-year limit should not be imposed). The consultation responses were a clear roadmap to what had gone before, which mitigates against any suggestion that they were *misled* about the policy that they were now being asked to adopt.

37. It was further represented that, even if this [Magistrates] Court had jurisdiction in overseeing a challenge to the policy - which it did not - the Court would need to know far more than the Appellants were now presenting. There was simply insufficient basis for any tribunal to be satisfied that the policy had come about as a result of fraud. There was simply no evidence.
38. Further submissions in response to these arguments are set out in the Respondent Council's skeleton arguments, which also make reference to caselaw to be relied upon.

Findings on Challenges to the Age and Specification Policy

39. Whilst it is easy to see why the Appellant taxi drivers are unhappy with the position they now find themselves in, with respect to the vehicle age constraints of the Age and Specification Policies, my firm conclusion is that this Magistrates' Court does not have jurisdiction to oversee any challenge(s) to that policy.
40. The purpose of a Magistrates' Court in dealing with taxi licencing appeals is to place itself in the shoes of the Council in the *application* of its published policy.

An appeal may succeed if it is clear the Council have not followed their own published policy or have made a mistake in fact or law in their decision making. Alternatively (following Lord Reid's approach), if Council decision-makers have applied the policy so rigidly as to blindly and routinely exclude circumstances which justify an *exception*, then the Magistrates' Court may act to rectify that.

41. The purpose of a Magistrates' Court in dealing with taxi licencing appeals is not to question or overturn the policy. The following authority makes this clear -

R v Middlesex Crown Court, ex parte Westminster City Council and Chorion PLC & Fred Proud [2002] EWHC 1104 Admin.

- I. [A public body...] is entitled to have a policy;
- II. *"When a policy is formulated there are certain procedures that require to be followed, including consultation with interested parties."*
This further supports my conclusion that the Council Plan is not the policy (as no such procedures were evident in adopting the Council manifesto);
- III. *R v Westminster City Council Ex parte Chorion PLC [referenced] clearly refers to [a public body's] policy being challenged through a process of Judicial Review application;*
- IV. *"This case is not about the lawfulness of the Claimant's policy but about its application";*
- V. *"How should a [.....] Magistrates' Court approach an appeal where the Council has a policy? In my judgement 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."

42. Whilst reaching this conclusion, that this Magistrates' Court has no jurisdiction to rule on the content of, or processes underpinning the making and adopting of, the Age and Specification Policies, I make it clear that I can see no evidence of fraud or impropriety on the part of Council officers.

Judicial Review

43. The correct route of challenge to the policy is Judicial Review.
44. It has been suggested that a challenge by Judicial Review is financially prohibitive for the taxi drivers and may, in any event, now be too late in terms of the time limits to bring a challenge.
45. I concur with the suggestion of Ms Clover, for the Council, that it would be relatively inexpensive to bring such a challenge, if the taxi drivers were to join together in order to pursue their common complaint. In relation to any barrier of time, any individual at any point, may ask the Council to review its decisions and / or policies. Should the council refuse to do so, then that decision can also be challenged under a newly started clock.

Conclusion and Future Hearings

46. I make it clear that this Magistrates' Court rejects the Appellants' legal arguments in totality.

The Age and Specification Policies relating to Hackney Carriage and Private Hire Vehicles (N86-87, albeit with watermark) is clearly the document to be relied upon as 'the policy' to be applied and enforced.

Suggestions of said policies being of no legal effect on the grounds of deficiencies of consultation and processes underpinned by fraud are rejected.

Primarily, this Magistrates' Court has no jurisdiction to look behind the policy. In any event, there is insufficient or established evidence of impropriety. I adopt the Nottingham City Council's observations on this (as set out in paragraph 36 above) as my own conclusions on that otherwise moot point.

47. It remains the case, that the Appellants are entitled, before this Court, to argue a case as to why their *particular and individual* applications should have been considered as an *exception* to the Age and Specification Policies.
48. The jurisdiction and decision-making function of this Magistrates' Court is as represented in paragraph 40, above.
49. So far, I have seen no Grounds of Appeal which purport to argue that exceptions in individual cases should be made. It may very well be that the Appellants were awaiting the outcome of these legal challenges and submissions, prior to presenting their individual exceptions.

I note that the administration has fixed time in August 2021 to conclude any appeals which may continue beyond today's judgement.

District Judge (MC) Spruce

25 January 2021

[Handed down 12 February 2021]