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

CO/89/98

Royal Courts of Justice
Strand
London WC2

Wednesday 21st October 1998

B e f o r e:

MR JUSTICE TUCKER

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NOTTINGHAM CITY COUNCIL

-v-

MOHAMMED FAROOQ

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(Computer-aided Transcript of the Stenograph Notes of
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MR CLIVE LEWIS (instructed by the City of Nottingham, Legal Services Division, Nottingham NG1 4BT) appeared on behalf of the Appellant.

The **RESPONDENT** did not appear and was not represented.

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

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Wednesday 21st October 1998

JUDGMENT

MR JUSTICE TUCKER: This is an appeal by way of case stated by the Nottingham City Council (to whom I shall refer as 'the Council') against a decision of the Nottingham Justices, whereby the Justices allowed an appeal by the respondent, Mr Mohammed Farooq, against a decision of the Council that it was not satisfied that Mr Farooq was a fit and proper person to hold a private hire vehicle licence under section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act'). Neither the respondent nor the Justices have been represented before me.

The respondent held a private hire driver's licence issued by the appellant authority under section 51 of the 1976 Act.

On 19th June 1996 the respondent pleaded guilty to two offences, one of theft and one of attempting to obtain property by deception. On that conviction, on his plea, he was fined. In breach of the conditions of his licence, he failed to inform the appellants of those two convictions.

On 27th March 1997 the respondent applied to renew

his licence. The application form included two questions which required the disclosure of any conviction which the applicant might have for any offence. The respondent recorded no response to the first question, and in response to the second indicated in terms that he had no convictions.

On 17th June 1997 the appellants refused to renew the respondent's licence on the grounds that his convictions, and also his failure to report them or to disclose them, rendered him unfit to hold such a licence. The respondent had a right to appeal from that decision to the Magistrates' Court pursuant to section 52 of the 1976 Act.

On 20th October 1997 he did appeal and his appeal was heard by the Justices.

The respondent gave evidence before the Justices. He maintained that he had accepted responsibility for the two offences of dishonesty though he had not in fact committed them. His story was that he did so in order to assist a friend. It might have been thought to be an implausible and unacceptable account, but that is not the view which the Justices took of it. Moreover, the respondent explained to the Justices that he had overlooked the requirement to report any conviction and that he had completed the application to renew his

licence in haste because of a forthcoming holiday and also assuming that only motoring convictions would be relevant.

As I have said, the Justices accepted his account. They were not persuaded by the submissions made on behalf of the appellants before them, and they declined to follow the advice of their own clerk that they could not go behind the convictions. Accordingly they allowed the respondent's appeal.

In the Case which has been stated by the Justices, they set out the facts. They record the contention on behalf of the respondent that the court was not bound to follow the council's decision, and that on a balance of probabilities the court could not find that the respondent was not a fit and proper person to hold a licence. The Justices were referred to the Department of Transport's Circular 2/92 setting out guidance in these matters, and it was submitted to them that that guidance, though no doubt persuasive, was not binding on the court. The Justices were informed that the respondent had acted as a taxi driver for eight years without any complaints, and there were placed before the Justices a reference as to good character from his former employer. They were referred to a number of cases.

In the Case at paragraph 7 the Justices state:

> "We were advised by our clerk that we must give due consideration to the case law to which we were referred, and in particular to the requirement in Stepney Borough Council v. Joffe to find that the Council's decision to refuse to renew the respondent's licence was wrong."

That is a reference to the case reported in [1949] 1 KB 599.

The Case continues:

> "We had seen the respondent giving evidence in court and we formed the opinion that any failure on his part to reveal the convictions was due to his foolishness and ignorance rather than a deliberate attempt to deceive. We therefore concluded that the decision of the Council had been wrong."

What is to be derived from the case of Stepney Borough Council v. Joffe is the following observation made by Lord Goddard CJ at the foot of page 602 and the top of the following page:

> "It seems to me that (the relevant section) gives an unrestricted right of appeal, and if there is an unrestricted right of appeal, it is for the court of appeal to substitute its opinion for the opinion of the borough council. 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 it ought not lightly, of course, to reverse their opinion."

The Case continues in paragraph 8:

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> "We were further advised by our clerk that we could not look behind the convictions recorded against the respondent in June 1996. However, we accepted the respondent's evidence on oath that he had entered guilty pleas to those offences in an attempt to help his friend, and that he had not himself committed the offences."

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They continue in paragraph 9 to express their opinion that:

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> "a) Having seen and heard the respondent in the witness box giving evidence on oath, that while he had behaved foolishly, he was not unintelligent...
> b) The respondent had been extremely foolish in stating in both forms that he had no convictions for any offence whatever. We accepted that he had not read the forms carefully, because he was rushed because he was going away abroad the next day. He understood that by giving permission for a check to be made with the police, the convictions would be disclosed in any event, but believed that only motoring convictions were required to be reported on the application forms. We did not consider that he had been deliberately deceitful.
> c)... We therefore came to the conclusion, on the balance of probabilities, that the council had come to the wrong decision, and that it would be wrong for the respondent to be denied the opportunity of earning a living for himself and his family because of his failing to declare the convictions for which he felt no responsibility.
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> For these reasons, we did not feel that the respondent was not a fit and proper person to hold a taxi driver's licence,....."

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The Justices then pose five questions on which the opinion of this Court is sought. I shall come to them

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in a moment.

However, before doing so it is material to bear in mind what the objectives are of this licensing regime, and here I adopt respectfully part of the judgment of Lord Bingham CJ giving judgment in the so far unreported case of McCool v. Rushcliffe Borough Council on 1st July 1998, where, at page 3 of the transcript, the Lord Chief Justice said:

> "One must, as it seems to me, approach this case bearing in mind the objectives of this licencing regime which is plainly intended, among other things, to ensure so far as possible that those licenced to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest [which is the material word for the purposes of the present case], and not persons who would take advantage of their employment to abuse or assault passengers."

With that in mind I turn to the first of the questions posed by the Justices, which was this:

> "Were we, the Justices, acting as a civil appeal court, entitled to review the merits of the respondent's convictions for theft and deception?"

To that my answer is unhesitatingly "No". The reason for that is that the convictions were recorded on a plea of guilty, and if they had been contested would have had to be proved so as to make the Justices sure of

their truth. In other words, the Justices would have had to be satisfied beyond reasonable doubt of the respondent's guilt, whereas in a civil case a very different standard of proof applies, that is to say balance of probabilities.

In my opinion it is not open to Justices on a civil appeal such as this to review convictions, and I am glad to see that my opinion coincides with that of the Justices' clerk. If authority were to be needed, it is to be found in two cases. First of all a decision of Sedley J in Adamson v. Waveney District Council [1997] 2 All E.R. 898, which was also a case relating to whether the applicant was a fit and proper person to hold a hackney carriage licence. At page 904 of his judgment Sedley J said:

> "Once some or all of the spent convictions are admitted in evidence, either before the local authority committee or before justices, the applicant is then entitled naturally to be heard, not by way of suggesting that the convictions were incorrectly arrived at but in order to persuade the judicial authority that they are either, in truth, irrelevant or such, by reason of their age, circumstances or lack of seriousness, that they should not jeopardise his application. All of that is simple natural justice."

Therefore of course it would be open to a respondent in the present situation to explain how the offences came to be committed; to put forward mitigating

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circumstances relating to them and matters of that sort, but it is certainly not open to him to impugn those convictions, particularly where, as here, they were recorded on his own pleas of guilty.

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The other case to which I would refer is that of Hunter v. Chief Constable of the West Midlands Police and Others [1982] A.C. 529, and to the speech of Lord Diplock where, at page 542, his Lordship said:

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> ".....this is the first case to be reported in which the final decision against which it is sought to initiate a collateral attack by means of a civil action has been a final decision reached by a court of criminal jurisdiction. This raises a possible complication that the onus of proof of facts that lies upon the prosecution in criminal proceedings is higher than that required of parties to civil proceedings who seek in those proceedings to prove facts on which they rely. Thus a decision in a criminal case upon a particular question in favour of a defendant, whether by way of acquittal or a ruling on a voir dire, is not inconsistent with the fact that the decision would have been against him if all that were required were the civil standard of proof on the balance of probabilities. This is why acquittals were not made admissible in evidence in civil actions by the Civil Evidence Act 1968. In contrast to this a decision on a particular question against a defendant in a criminal case, such as Bridge J's ruling on the voir dire in the murder trial, is reached upon the higher criminal standard of proof beyond all reasonable doubt and is wholly inconsistent with any possibility that the decision would not have been against him if the same question had fallen to be decided in civil proceedings instead of criminal. That is why convictions were made

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admissible in evidence in civil proceedings by the Act of 1968."

So, although I have already indicated my answer to the question, my complete answer to the first question is this: that Justices acting as a Civil Appeal Court are not entitled to review the merits of the respondent's convictions for theft and deception.

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The second question is:

"Where the respondent had not previously notified the Council that he proposed to put forward evidence to the effect that he was not guilty of the offence for which he was convicted, should the Justices have adjourned to enable the Council to have the opportunity to deal with the evidence adduced by the respondent?"

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In my opinion, having regard to the view I have expressed on the first question, the second does not arise, but I will give a full answer in these terms. As the Justices are not entitled to consider evidence that the applicant was not guilty of an offence for which he was convicted, they do not need to adjourn to deal with the evidence adduced by the applicant in that regard.

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Then I come to the third question which is:

"In concluding that the incorrect completion of the forms for renewal of the respondent's licence, by omitting reference to the convictions, was through foolishness and ignorance rather than deliberate deception, was the court entitled to hold that the respondent was nonetheless a fit and proper person within the meaning of

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> section 61 of the Local Government (Miscellaneous Provisions) Act 1976 to hold a licence?"

My answer to that question is in these terms. The Magistrates' Court is not precluded from finding that they are not satisfied that a person is not a fit and proper person within section 61 of the 1976 Act to hold a licence merely because he has not been guilty of deliberate deception. Failing to comply with the requirements of the 1976 Act due to extreme foolishness rather than deliberate deception is not a basis for holding that they are satisfied that the person is a fit and proper person to hold a driver's licence.

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The Justices' fourth question is:

> "Where a local authority had decided that a person was not a fit and proper person within the meaning of section 61 of the Local Government (Miscellaneous Provisions) Act 1976 because he made a false statement for the purposes of obtaining a combined hackney carriage driver's licence and private hire vehicle driver's licence and where the Justices are satisfied as a fact that the statement was false, should the Justices, in considering an appeal against the decision, have regard to whether the statement was made knowingly or recklessly in determining whether the person was a fit and proper person?"

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Pausing there. It is, of course, material to consider the terms of the appropriate section of the 1976 Act, which is section 57, subsection (1) of which provides:

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> "A district council may require any applicant for a licence...to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted....."

Subsection (3) of that section provides:

> "If any person knowingly or recklessly makes a false statement or omits any material particular in giving information under this section, he shall be guilty of an offence."

So my answer to the fourth question is this. The Magistrates ought to consider whether an applicant making a false statement to obtain a licence did so knowingly or recklessly in considering whether he is a fit and proper person to hold a licence.

The fifth and final question which the Justices ask is:

> "Was the decision one which no reasonable court could reach in the light of the case law in Stepney Borough Council v. Joffe and the guidance contained in DOT Circular 2/92, Annex D, 13/97?"

I have already referred to the decision in the Case mentioned by the Justices. As to the circular, that contains guidelines relating to the relevance of convictions. The general policy is set out, including the fact that the overriding consideration should be the protection of the public.

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So far as offences of dishonesty are concerned, they are referred to under paragraph 3(g) of the document in these terms:

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> "Hackney carriage and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of three to five years free of convictions should be required before entering an application."

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Therefore, in answer to the question which the Justices posed, I am obliged to say that the decision was not one that the Magistrates' Court could reasonably come to on the material before it.

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In those circumstances I allow this appeal. I set aside the order of the Magistrates' Court and I remit the matter to the Magistrates' Court to be determined by a differently constituted bench in accordance with the opinions which I have given.

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Are there any further applications?

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MR LEWIS: My Lord, there is an application for costs here against Mr Farooq. I ought to draw your Lordship's

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attention to a note in the White Book at 952.

MR JUSTICE TUCKER: Could I have a copy?

MR LEWIS: Shall I read out the note, my Lord?

MR JUSTICE TUCKER: Is it in volume one?

MR LEWIS: Yes, my Lord. It is order 56 rule 6.

MR JUSTICE TUCKER: Yes.

MR LEWIS: It is "Case Stated by Magistrates' Court". My Lord, in my edition, the 1999 edition, I have a note 56/6/3 which says:

> "The award of costs is governed by section 28A of the Supreme Court Act 1981,... Where both parties appear, costs usually follow the event but they will not generally be awarded against a party who is not represented unless some conduct of the respondent has contributed to the necessity for the appeal,....."

Obviously Mr Farooq has not appeared here. I do submit that the only reason we are here is because of his somewhat extravagant conduct in pleading guilty in one court and then going to another court and saying 'In fact I wasn't guilty at all'.

In my submission, my Lord, this is a reason for departing from the general rule, but it is right that I refer you to the general rule.

I have considered the question of the Magistrates' Court, my Lord. Normally the only situation in which a Magistrates' Court would be ordered to pay costs is when they have unreasonably refused to consent to an order allowing the appeal. I do not know of any precedent for this. You have a Magistrates' Court which disregarded the advice of its own clerk. I suppose they are not obliged to follow the advice of the clerk. They do not say why they did not follow it, but they are not obliged to follow it, so your Lordship may feel that the appropriate order for costs, if any, is against the respondent who has, to a large extent, brought this on himself rather than the Magistrates' Court.

MR JUSTICE TUCKER: Have you any hope that the respondent will be in a position to pay any order for costs?

MR LEWIS: We do not know, but we would like to have the opportunity of investigating, but we do not know whether he can pay. He has been told, my Lord, by my instructing solicitors that costs are unlikely because of the general rule, but it is not ruled out. So he is

aware there is a prospect of a costs order.

MR JUSTICE TUCKER: Ought I to make a final order for costs in his absence?

MR LEWIS: My Lord, you could make an order for costs to become final in six weeks, or four weeks, if he has not applied. That would be one way out, my Lord.

MR JUSTICE TUCKER: That is an approach I sometimes adopt. I had the question of an award of costs against Magistrates to consider last week, but this is not a case where you have entered into any negotiations ----

MR LEWIS: No, my Lord.

MR JUSTICE TUCKER: ---- with a view to trying to arrive at a settlement.

MR LEWIS: No, my Lord. There were discussions about the case, but we have not suggested that they ought to consent to the appeal and, to be fair to them, they clearly set out their questions very fully. They may have got it wrong, but you may feel that they have not acted improperly - surprisingly but not improperly.

MR JUSTICE TUCKER: I very much regret the fact that neither the respondent, nor in particular the Justices, have been represented before me so as to assist me with arguments, but that is not, I think, a reason for ordering that they bear the costs.

What I propose to do, Mr Lewis, is make an award of costs in your client's favour against the respondent, Mr Mohammed Farooq, but I will give him 21 days in which to show cause why that order should not be enforced. It will be open to him to address me as to why it should not be made.

Will you please, through your instructing solicitor, undertake to inform him forthwith of the Court's order?

MR LEWIS: My Lord, yes. I am happy to give that undertaking.

MR JUSTICE TUCKER: If you also please give him the address and telephone number of the Crown Office so that he can notify any resistance to the proposed order.

MR LEWIS: We have noted that, my Lord, and we give that undertaking willingly.

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MR JUSTICE TURNER: Thank you very much.

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MR LEWIS: I am very much obliged, my Lord.

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