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Institute of Licensing

25th

National Training Conference 2021

THE CURIOUS CASE OF ...

MARK STEVEN CARTLEDGE

V

GEDLING BOROUGH COUNCIL

Gerald Gouriet QC

Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDR T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com

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INTRODUCTION

We all know -

- A person who is refused renewal of his hackney carriage driver's licence may appeal the refusal to a magistrates' court: section 61(3) LGMPA 1976.
- Until the time for appealing has expired (21 days), and if an appeal is lodged until the appeal is disposed of, the driver may continue in business as a hackney carriage driver: section 77(2) LGMPA 1976.

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77 Appeals

(2) If any requirement, refusal or other decision of a district council against which a right of appeal is conferred by this Act—

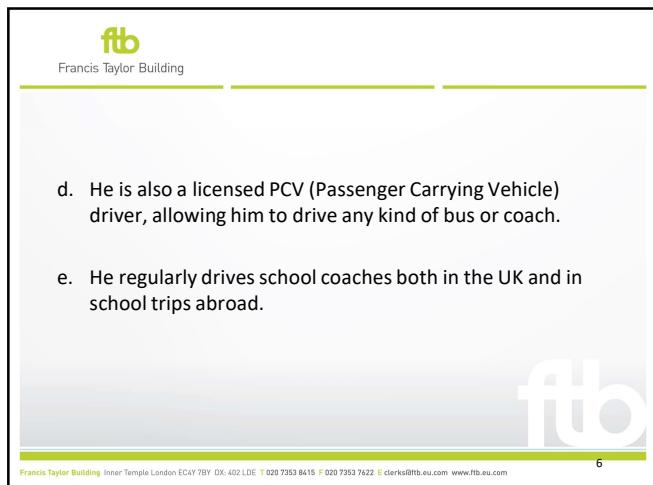
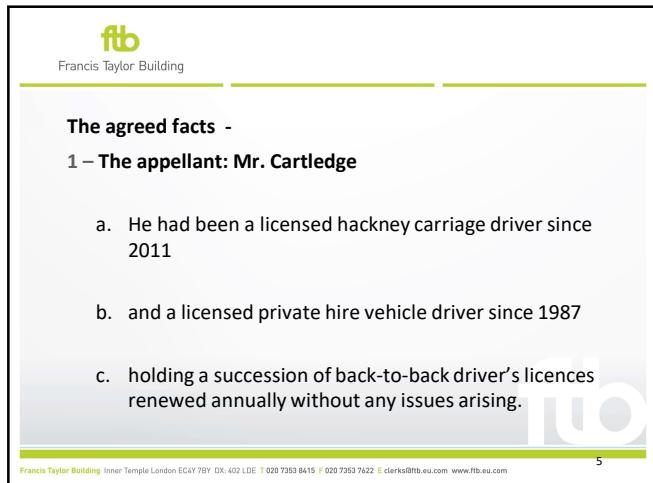
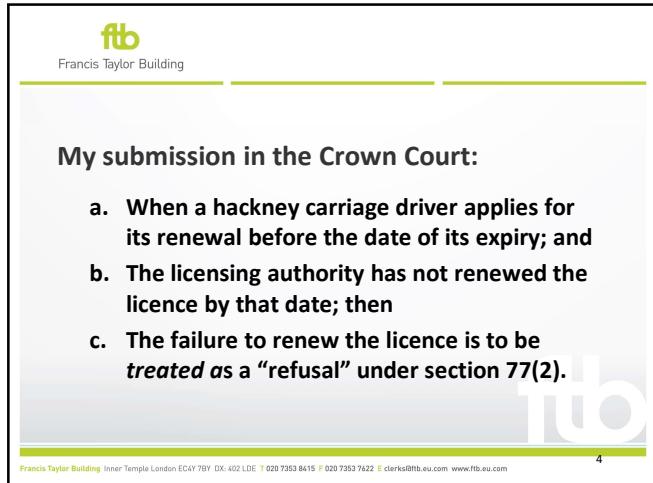
(b) makes it unlawful for any person to carry on a business which he was lawfully carrying on up to the time of the requirement, refusal or decision;

then, until the time for appealing has expired... etc

(ii) that person may carry on that business.

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2. The Licence

- a. renewed on 22 August 2016, valid for three years until **21 August 2019**.
- b. On **24 April 2019**, Gedling Council sent Mr. Cartledge a letter to remind him that his licence was due for renewal on 22 August 2019.
- c. The letter detailed an 'Application Process' which could be commenced by telephoning the council's Customer Services Team
- d. On **10 June** the appellant telephoned the number given in the letter and made an appointment to attend the council offices on **19 June 2019**.

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3 – The safeguarding training

- a. His application on 19 June was **not accepted**, due to his **not having current safeguarding refresher training**
- b. (He did, however have *current safeguarding training in respect of his PCV licence*).

NB: "not accepted" ???

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- c. The following day (**June 20**) the appellant telephoned the council's 'Customer Services' number **to arrange his refresher training**.
- d. The training is held once a month and places are available on a first come first served basis. He was offered either 12 July or 16 August as **the only dates available** for this course
- e. He was unable to take 12 July because he was already booked to drive a school coach trip on that day.

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- f. He completed the training (a one-hour course followed by a multiple-choice question paper) on the morning of **Friday, 16 August**
- g. Confirmation of his having satisfactorily completed the training was *there and then* emailed to the council's licensing division by the course provider.



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4 – Re-application

- a. He returned to the council offices on **Monday 19 August**, by appointment.
- b. He re-submitted the completed application form and the required documentation.
- c. His licence was not renewed on that date, however, because Gedling Council policy is that an application for renewal of a driver's licence must be made no less than 15 days before its expiry.
- d. The licence expired at midnight on 21 August.



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Late renewal

- a. The licence was renewed on 5 September (15 days after 19 August re-application)
- b. Q whether this was indeed "renewal"
- c. Collins J in *Exeter City Council v Sandle*



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Collins J:

? - Is a Hackney Carriage Licence capable of renewal after expiry?

“Answer: Yes”

? - If so, how long after expiry does it cease to be so capable?

“Answer: There is no particular period, but as I have indicated it would only be in exceptional circumstances that a delay of more than a few days would be permissible.

NB: “As I have indicated” refers to paragraph 11 of the judgment: “certainly a couple of days, perhaps three days.”

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6 - Mr. Cartledge's "Offence"

- a. On 4 September, a council enforcement officer saw the appellant standing by his parked hackney carriage.
- b. The appellant agreed he had been driving it.
- c. His licence was renewed on 5 September
- d. He was prosecuted and convicted under section 47 TPCA 1847 for driving a hackney carriage without a licence on 4 September.

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7 – The opposing submissions

Appellant:

Where an application to renew a hackney carriage driver's licence is made during the currency of the licence, a failure to renew the licence by the time it expires should be treated as a refusal to renew it *for the purposes of LGMPA sections 61(3) and 77(2)(b)(ii).*

Otherwise: absurd consequences

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7 – The opposing submissions

Respondent Council

“No requirement, refusal or other decision had been taken for which there was a right of appeal conferred by the Act. So the proper construction of s. 77(2) is not relevant.”

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Absurd Consequences

- a. Driver whose licence *revoked for cause* before renewal would be in a better position than a driver who is waiting for a decision on an uncontroversial renewal application.

- b. If the Council had refused Mr. Cartlege's renewal on 5 September, he would not have the advantage of section 77 'continuation pending appeal', because he would not have been "*lawfully carrying on [his business] up to the time of the... decision*

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THE COURT'S DECISION

- Sometimes rigidity gives rise to injustice
- Satisfied that injustice had occurred
- No suggestion that Mr. Cartledge is not a fit and proper person
- The sole reason for not renewing on 19 June was absence of safeguarding certificate
- Council should have taken 19 June as the date of his application
- The '15 days' policy would have run from then



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THE COURT'S DECISION

- In our judgment, having determined, back in June, that there was only one issue that stood between Mr Cartledge and the reissue of his licence: namely, the completion of the safeguarding course, and
- knowing that his licence would be expiring on 21 August,
- when he returned on 19 August (having completed the safeguarding course) the council, wholly unreasonably, did not do what was necessary within the 48 hours that were available to them: namely, tick the box and grant the licence.

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THE COURT'S DECISION

"Had they not adhered so rigidly to their self-imposed policy of 15 days of determination, none of this would have happened. That is what they did. In our judgment, by taking that course, they refused to grant the licence that they could have granted then and there and, accordingly, this is a case to which section 77 of the relevant legislation does apply."

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THE COURT'S DECISION

"By the arbitrary decision that they took, no matter for how short a period of time, the council's action deprived Mr Cartledge of his livelihood. That cannot, in our judgment, have been anything that legislation, however old, or whatever its origin and purpose, could have contemplated."

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THE COURT'S DECISION

“We remind ourselves of the decision in *R v Central Valuation Officer & Ors* [2003] UKHL 20 at page 116 where Lord Millett said:

The courts will presume that parliament did not intend a statute to have consequences which are objectionable or undesirable or absurd or unworkable or impracticable or merely inconvenient [my emphasis] or anomalous or illogical or futile or pointless.”

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Legislative & Regulatory Reform Act 2006

Section 21 Principles

- (1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.
- (2) Those principles are that—
 - (a)...
 - (b) regulatory activities **should be targeted only at cases in which action is needed.**

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Postscript

Section 46 Town Police Clauses 1847:

“No person *shall act as driver* of any hackney carriage licensed... to ply for hire...without first obtaining a licence.”

Not “*shall drive*”

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