Neutral Citation Number: [2025] EWHC 567 (Admin)

Case No: AC-2024-LON-002225

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/03/2025

Before :

LORD JUSTICE DINGEMANS
AND
MRS JUSTICE FARBEY

- -

Between :

SAMIT BISWAS	**Claimant**
- and –	
TRANSPORT FOR LONDON	**Defendant**

- -
- -

Jack Nicholls (instructed by **Foskett Marr Gadsby & Head LLP**) for the **Appellant**
David Patience (instructed by **Transport for London**) for the **Respondent**

Hearing date: 27 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MRS JUSTICE FARBEY :

Introduction

1. The appellant appeals against conviction by way of Case Stated following a trial before District Judge Neeta Minhas ("the DJ") sitting at City of London Magistrates' Court on 14 June 2022. The appellant contends that the DJ was wrong in law when she found him guilty of four charges of being the operator of a vehicle used as a private hire vehicle on a road in London when a private hire vehicle licence was not in force for that vehicle, contrary to section 6 of the Private Hire Vehicle (London) Act 1998 ("the 1998 Act" or "the Act"); and two charges of being the operator of a vehicle used as a private hire vehicle on a road in London when the driver was not the holder of a private hire vehicle driver's licence, contrary to section 12 of the Act.

2. In the Case Stated the DJ asks the following questions:

> "i. Did I err in law or fact in finding that at the material times the defendant was an 'operator' within the meaning of section 1 of [the Act]?
>
> ii. Did I err in law or fact in finding that at the material times, the vehicles were 'private hire vehicles' within the meaning of section 1 of [the Act]?
>
> iii. Did I err in law or fact in finding that at the material times, the vehicles were being 'used as a private hire vehicle' within the meaning of section 6 and/or section 12 of [the Act]?
>
> iv. Did I err in law or fact in finding the vehicles and drivers at the material times were subject to the Transport for London private hire vehicle licensing requirements?
>
> v. Was I entitled to convict Mr Biswas?"

Statutory provisions

3. It is convenient to set out at this point the key provisions of the Act that this court, like the DJ, must consider.

4. Section 1 of the Act established the parameters of the private hire vehicle licensing regime in London by defining key terms, as follows:

> "(1) In this Act—
>
> (a) *"private hire vehicle"* means a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver for hire for the purpose of carrying passengers, other than a licensed taxi or a public service vehicle;

> (b) *"operator"* means a person who makes provision for the invitation or acceptance of, or who accepts, private hire bookings; and
>
> (c) *"operate"*, in relation to a private hire vehicle, means to make provision for the invitation or acceptance of, or to accept, private hire bookings in relation to the vehicle.
>
> (2) Any reference in this Act to a vehicle being *"used as a private hire vehicle"* is a reference to a private hire vehicle which—
>
> (a) is in use in connection with a hiring for the purpose of carrying one or more passengers; or
>
> (b) is immediately available to an operator to carry out a private hire booking.
>
> (3) Any reference in this Act to the operator of a vehicle which is being used as a private hire vehicle is a reference to the operator who accepted the booking for the hiring or to whom the vehicle is immediately available, as the case may be."

5. Under section 6(1) – (3) of the Act, it is an offence for a private hire vehicle to be used without the requisite licence, as follows:

> "(1) A vehicle shall not be used as a private hire vehicle on a road in London unless a private hire vehicle licence is in force for that vehicle.
>
> (2) The driver and operator of a vehicle used in contravention of this section are each guilty of an offence.
>
> (3) The owner of a vehicle who permits it to be used in contravention of this section is guilty of an offence."

6. Under section 6(4), it is a defence for the driver or operator to show that he exercised "all due diligence" to prevent the vehicle being used in contravention of the requirement for the vehicle to have a private hire licence.

7. Under section 12, it an offence for a private hire vehicle to be used when the driver does not hold the requisite licence, as follows:

> "(1) No vehicle shall be used as a private hire vehicle on a road in London unless the driver holds a private hire vehicle driver's licence.
>
> (2) The driver and operator of a vehicle used in contravention of this section are each guilty of an offence.
>
> (3) The owner of a vehicle who permits it to be used in contravention of this section is guilty of an offence."

8. Under section 12(4), there is a defence of "all due diligence" for an operator in similar terms as for the section 6 offence.

Issues

9. On behalf of the appellant, Mr Jack Nicholls raised four grounds of challenge which may be summarised as follows:

    i. The DJ effectively reversed the burden of proof (which lay entirely on the respondent) by holding against the appellant that he had not proved any exemption from the licensing requirements of the Act.

    ii. The DJ reversed the burden of proof by asking whether the appellant had proved that the vehicles were not ambulances or patient transport falling outside the statutory scheme.

    iii. The DJ erred in concluding that the appellant's vehicles were made available "for hire" under section 1(1)(a) of the Act.

    iv. The DJ erred in concluding that the appellant's vehicles were used "for the purpose of carrying passengers" under section 1(1)(a) of the Act.

10. On behalf of the respondent, Mr David Patience submitted that the DJ had made no error of law and that her application of the statutory provisions to the facts of the case was not open to criticism in this court. I am grateful to both counsel for their helpful submissions.

Form of the Case Stated

11. It is well-established that this court will only consider the facts set out in the Case Stated (see, for example, *Wheeldon v Crown Prosecution Service* [2018] EWHC 249 (Admin), para 45, per Holroyde LJ). In the present case, in addition to the Case Stated sent to this court under rule 35.3 of the Criminal Procedure Rules, the DJ has provided the judgment that she wrote at the time of the proceedings before her. The DJ has indicated that the judgment should be treated as incorporated into the Case Stated. It was common ground before us that the judgment could properly form part of the Case Stated and that this court could and should consider both documents. As indicated to counsel at the hearing, the court is willing to take this approach and to treat the judgment as part of the Case Stated.

Factual background

12. The facts as they appear from the Case Stated (including the judgment) are as follows.

13. The appellant was the director of Advatech Healthcare Europe Ltd trading as Hippo Mobility. Under his direction, the company contracted with local authorities to provide transport services for children with special educational needs ("SEN"). The respondent is responsible for the granting of private hire licences for vehicles and drivers in the Greater London area.

14. The offences of which the appellant was convicted relate to the period 1 November to 22 November 2020. During that period, the company and the appellant provided four

vehicles with drivers for the purpose of transporting children with SEN to and from school in three London boroughs (Bromley, Enfield and Hillingdon). The transport services were provided for commercial reward under a separate contract with each local authority.

15. In her judgment, the DJ found that each of the four vehicles seated either "nine or five passengers." That was an error. The correct position is that each of the vehicles was able to seat either nine or five people including a driver (in other words, they could seat eight or four passengers). The DJ corrected her error in the written Case Stated and it was common ground between the parties that all the vehicles seated "fewer than nine passengers… with a driver" and that they met this aspect of section 1(1)(a) of the Act. The DJ's error is irrelevant to any of the grounds of appeal and may be disregarded.

16. Returning to the facts, neither the company nor the appellant held a private hire operator's licence for any of the four vehicles. Two of the vehicles transported children without a driver holding a private hire vehicle driver's licence.

17. Each of the vehicles was registered with DVLA either as an ambulance or as a disabled passenger vehicle. They were each subject to an exemption from road tax on the basis that they were ambulances (see section 5 and paragraph 6 of Schedule 2 to the Vehicle Excise and Registration Act 1994, under which a vehicle that satisfies the statutory definition of an ambulance is exempt from road tax). The drivers were required to complete short online training courses in basic first aid, preventing falls, and safeguarding duties. Each of the vehicles carried oxygen. The drivers were trained to administer oxygen to the passengers if needed. Drivers were required to have an enhanced certificate from the Disclosure and Barring Service. The vehicles were adapted for passengers using a wheelchair.

18. At the time of the offences, the company was a licenced private hire vehicle operator for two local authorities outside the Greater London area, namely Castlepoint Borough Council and Southend on Sea Borough Council. It follows that the appellant had some awareness of the need to operate transport under licence.

The DJ's material findings in the Case Stated

19. The DJ found at paragraph 7 of the judgment (as incorporated into the Case Stated) that the vehicles were made available "for hire" on the basis that they were provided to the local authorities in exchange for commercial reward. She recorded at paragraph 13 of the judgment that she had considered not only the legislation and but also the guidance issued by the Department for Transport. She considered whether or not the appellant provided ambulance or patient transport services, in the following terms:

> "I find the vehicles are adapted and capable of carrying wheelchair using passengers, but they are not ambulances or formal patient transport services because they do not provide medical transport, care or services. I find the persons transported by [the appellant] are not patients but in fact students with additional needs travelling to and from school. I find the drivers employed by [the appellant] are required to undertake an enhanced DBS check and have some additional training e.g. first aid, preventing falls and administering oxygen in case of

> emergency but they are not designated providers of medical or healthcare services addressing the needs of a patient. They have limited additional training beyond that of a general driver, provided by 20-30 minute online courses. As a result of all of the above, I find [the appellant] does fall within the [respondent's private hire vehicle] licensing scheme."

20. Against this background, the DJ found that the elements of each offence were proved. She went on to consider in paragraph 14 of the judgment whether the defence of "all due diligence" could be relied upon under sections 6(4) and 12(4) of the Act. She found that the appellant could not rely on that defence which, we understand, was not in any event raised by the appellant.

21. In summary, as set out at paragraph 14 of the Case Stated, the DJ found the appellant guilty of each offence on the grounds that:

> "i) The services provided by Hippo Mobility did fall within the ambit of the Transport for London private hire licensing scheme;
>
> ii) The exemption from the licensing scheme for ambulance or patient services did not apply;
>
> iii) And the defence of due diligence within the Act could not be successfully relied upon."

Discussion

Issue 1: Burden of proof: exemption

22. Mr Nicholls submitted that the DJ misdirected herself in law because she was bound to consider whether the vehicles were being used as private hire vehicles by reference only to the language of section 1 of the Act. As set out in paragraph 14 of the Case Stated, she had instead considered whether the appellant's vehicles met an exemption from the licensing scheme for ambulances or patient transport and found that no such exemption applied. By focusing on whether the appellant had proved an exemption, the DJ had in effect reversed the burden of proof which lay entirely on the respondent.

23. In response, Mr Patience submitted that the DJ refers to an "exemption" in a single part of the Case Stated. He observed that there is no mention of an exemption in the judgment which refers only to the undisputed proposition that there is no exception within the 1998 Act for ambulances or patient transport services. He submitted that the DJ had not reversed the burden of proof.

24. I agree with Mr Patience. The DJ's findings of fact deal with the various strands of the evidence which might in themselves suggest that the vehicles were used for medical purposes. In the context of the Case Stated as a whole, it is clear that she dealt with these various strands in order to rule out the possibility that the vehicles had a medical function that fell outside the private hire regime. She indicated that there was in any event no statutory exception for ambulance and patient transport. She may have been better advised to use the word "exception" rather than "exemption" in the written Case Stated because the latter word reflects the judgment more faithfully. However, this

small slip is immaterial to any of the questions we have to decide. It makes no difference. The DJ did not reverse the burden of proof.

Issue 2: Burden of proof: use of guidance

25. Mr Nicholls further submitted that the DJ effectively reversed the burden of proof by asking whether the appellant had proved that the vehicles were not ambulances or patient transport by reference to guidance produced both by the Department for Transport and by the respondent. The guidance dealt with the circumstances in which an ambulance or patient transport may be operated so as not to count as transport for private hire. Mr Nicholls submitted that, at the instigation of the respondent, the DJ used the guidance as a tool of interpretation of the primary legislation, which was impermissible on conventional principles.

26. Mr Patience submitted that the references to guidance made no difference to the DJ's decision which was firmly founded on the language of the statute. She had considered various pieces of guidance about what counts as medical transport not at the instigation of the respondent but out of generosity to the appellant, who had relied on guidance about medical transport as part of his case that the four vehicles were not private hire vehicles.

27. I shall not set out the various pieces of guidance that are mentioned in the DJ's judgment because there is no need to do so. It is not clear from the Case Stated whether the appellant or the respondent placed the guidance before the DJ; nor is it clear whether one or the other party relied on any particular piece of guidance. In support of the contention that the respondent relied on the guidance, to which the appellant had merely referred in order to rebut the respondent's case, Mr Nicholls referred to an Opening Note on behalf of the respondent (not written by Mr Patience, who did not appear at the hearing on 25 January 2022 when the Note was produced). The Note deals with some of the guidance but does not form any part of the Case Stated. The court is not entitled to consider it.

28. On the basis of the Case Stated, there are no grounds for contending that, in referring to guidance, the DJ imposed a burden on the appellant to prove that his vehicles and drivers did not perform a medical function. There is nothing to suggest that her reliance on guidance reversed the burden of proof or that she did not proceed on the basis that the burden of proof in relation to each of the six charges rested on the Prosecution. There is nothing in the Case Stated to suggest that she made any error.

Issue 3: Private hire

29. Mr Nicholls submitted that the DJ erred by concluding that the appellant's vehicles were made available "for hire" within the meaning of section 1(1)(a) of the 1998 Act. He emphasised that section 1(1)(a) expressly excluded licenced taxis and public service vehicles from the scheme of the Act so that the paradigm case of a private hire vehicle was a mini-cab. The provision of specialist transport with trained drivers, health and safety equipment and wheelchair accessibility was far from the paradigm case. It was far from obvious that Parliament should be concerned in the same Act with (on the one hand) mini-cab drivers collecting passengers on the streets of London at all times of the day and night and (on the other hand) the provision of regular, specialist transport services.

30. Mr Patience relied on the DJ's finding that the vehicles were provided for commercial reward. The term "hire" in section 1(1)(a) of the Act was an ordinary English word that did not require any further interpretation by the DJ or by this court. The DJ was entitled to find that the provision of the vehicles for commercial reward amounted to "hire."

31. Attractively as Mr Nicholls made his submissions, they can be shortly answered. It is one thing to say that the local authorities engaged the appellant's company in order to discharge statutory duties to children with SEN. It is quite another thing to say that the discharge of those duties did not involve the hire of transport from private providers. There is nothing in the language of section 1 of the 1998 Act to suggest that procuring school transport cannot involve "hire."

32. Whether a vehicle is made available "for hire" will depend on the facts. As I have said, the court is limited in its consideration of the facts to the Case Stated. The DJ's Case Stated does not set out the contractual arrangements between the appellant and the local authorities. The foundation for the DJ's decision – that the vehicles were provided for commercial reward – supports the respondent's case that the vehicles were provided "for hire." This court has been provided with no other evidence from which it may conclude that the DJ's conclusion was unreasonable or wrong in law. Mr Nicholls' submissions do not succeed.

Issue 4: The purpose of carrying passengers

33. Mr Nicholls submitted that the DJ was wrong to conclude that the four vehicles were used "for the purpose of carrying passengers" within the meaning of section 1(1)(a) of the 1998 Act. In support of this submission, he contended that the DJ had erroneously treated as decisive, or given primacy to, the fact that the vehicles operated as school transport. He pointed to the DJ's finding that there was no evidence that the children were taken to hospital or other medical appointments, as well as her finding in paragraph 8 of the judgment that "the journeys were made for an educational or social purpose, not medical, given they were journeys to and from a school/educational establishment." He submitted that these findings demonstrated that the DJ wrongly regarded medical transport and school transport as serving mutually exclusive purposes with no option for transport with a mixed or blended purpose. He submitted that the DJ's overall assessment of the purpose of the transport was too narrow.

34. In *Arun District Council v Spooner* [2017] EWHC 307 (Admin) (Thomas LJ as he then was; Dobbs J), the court considered an appeal by way of Case Stated from the dismissal of charges under the licensing scheme within the Local Government Miscellaneous Provisions Act 1976 in relation to the operation of a pet ambulance service. The court found that the purpose of the hire of the pet ambulance was the carriage of pets rather than the carriage of passengers. The occasional presence of pet owners in the vehicle was ancillary to the main purpose of taking the animals to the vet and did not convert the vehicle into passenger transport.

35. The facts of the *Arun* case were very different. The court, however, concluded that the question whether the vehicle was hired "for the purpose of carrying passengers" under section 80 of the 1976 Act was "purely a factual question to be determined on the evidence" (para 14). There is no reason to take a different approach to the language of

the 1998 Act. The question whether the four vehicles were used "for the purpose of carrying passengers" under section 1(1)(a) of the 1998 Act is a question of fact.

36. The children travelled to, and attended, school for educational and social purposes, as the DJ found. The journey to school was not part of a medical process. Neither the DVLA registrations nor the exemptions from road tax make the DJ's conclusions unreasonable. The limited medical training provided to drivers, and the adaption of the vehicles for wheelchairs, did not compel the conclusion that the children travelled as patients.

37. The DJ was entitled to conclude that a school transport service for children with SEN was not the same as, and did not share the characteristics of, the transportation of patients for medical needs. On the facts set out in the Case Stated, the DJ was entitled to find that the vehicles transported "passengers", not patients. The "purpose of carrying passengers" was to take children to school for educational and not medical purposes.

38. I am fortified in this conclusion by section 508B of the Education Act 1996 which lays down a duty on local authorities in certain circumstances to make necessary arrangements, such as the provision of transport, for home to school travel for eligible children. Section 508B(1) refers to "the purpose of facilitating the child's attendance at the relevant educational establishment." The purpose of providing school transport is to enable children to attend school and so to receive education. That is what the DJ found.

Matters not falling within the Case Stated

39. Mr Nicholls sought to rely on other facts, such as that the appellant was a Senior Associate of the Royal Society of Medicine and that he was fully co-operative when the respondent interviewed him about the offences on 10 December 2020. He said that the appellant was a man of good character and that the appellant had intended to offer a service to vulnerable children during the difficulties and dangers that faced many vulnerable people during the Covid-19 pandemic. The appellant had viewed the provision of transport as a public service and not as private hire.

40. Mr Nicholls suggested that the offences were the result of an isolated misunderstanding that had arisen because the appellant had believed that the local authorities would deal with any licensing requirements, as happened elsewhere in England where the local authority was also the licensing authority. The appellant had not appreciated that he needed to approach the respondent as the separate licensing authority in London. This mistake had damaged the appellant's ability to obtain subsequent licences in various parts of England.

41. None of these facts is within the Case Stated and so none may be used to advance the appeal. I would, however, observe that there is nothing before the court to suggest that the failure to obtain licences for four vehicles was more than an error when attempting to carry out a public service in the pandemic.

Conclusion

42. Drawing the threads together, the DJ was entitled to conclude on the criminal standard that (i) the four vehicles were constructed or adapted to seat fewer than nine passengers and that they were made available with a driver; (ii) the vehicles were made available for hire; and (iii) the vehicles were hired for the purpose of carrying the children as passengers. She was therefore entitled to conclude that the vehicles were private hire vehicles within the meaning of section 1(1)(a) of the 1998 Act.

43. There is no dispute that the appellant was the operator of the vehicles within the meaning of section 1(1)(b).

44. None of the vehicles had a private hire vehicle licence. The "all due diligence" defence did not apply. It follows that the DJ was entitled to conclude that the appellant had contravened section 6(1) and was guilty of an offence under section 6(2) in relation to each of the four vehicles.

45. There is no dispute that drivers for two vehicles did not hold a private hire vehicle driver's licence in contravention of section 12(1). The "all due diligence" defence did not apply. It follows that the DJ was entitled to convict the appellant of two offences under section 12(2).

46. For these reasons, I would answer questions 1 – 4 in the negative and question 5 in the affirmative. Accordingly, if my Lord agrees, I would dismiss this appeal.

LORD JUSTICE DINGEMANS :

47. I agree.