

APPENDIX 1

ADVICE

I am asked to advise on the question of attaching conditions to a hackney carriage driver's licence and issues relating to zoning.

I will deal firstly with the question of conditions.

Following the *Wathan* case it is clear that s57(1) LGMP Act 1976 does not provide a power to attach conditions to a hackney carriage driver's licence. It merely provides for the right of a licensing authority to require information from an applicant for the purpose of deciding if conditions should be applied where a power exists to do so. The power must be derived from somewhere other than s57.

The DfT argue (correctly) that the *Wathan* case does not decide the issue as to whether or not s46 TPC Act 1847 "implies" a power to impose conditions; ultimately this point would have to be decided by a court. However, I think that the reasoning of the DfT is speculative and weak: it tends to assume what it sets out to prove. In their note to local authorities of July 2005 they say at para. 5:-

"However this was [ie the fact that s57 does not confer a power to impose conditions], in our view, because s57 impliedly assumes that there was already such a power presumably deriving from section 46 of the 1847 Act"

This amounts to the assertion that s57 "impliedly assumes" a power which is itself "implied" by s46. There is however no evidence cited to support this assumption which must in my opinion be treated as unreliable.

If conditions are imposed then the question arises as to how they might be challenged. This would most likely be by way of Judicial Review. Such an application would have to be made within 3 months of the decision being formally made. However future a new applicant for a licence may also be able to challenge the issuing of a licence with conditions attached. Also if a licence were revoked or suspended as a result of a breach of a condition, the lack of a power to impose conditions could be raised by a licence holder on appeal to the magistrates.

However what are under consideration by Wiltshire might legitimately be described more as "guidance" than "conditions", the breach of which would lead immediately to a sanction. As I understand it the way the scheme will work is that "points" will be imposed on a licence holder for breach of any of the guidelines. Once a certain number have been accumulated then consideration will be given to whether or not to impose a sanction. In effect the guidance would inform the assessment of whether or not the licence holder remains a "fit and proper person" to hold a licence or whether there are other substantial reasons for imposing a sanction. As such the guidance acts more as a background policy against which conduct is considered rather than inflexible conditions imposed on a licence.

On the question of tariffs and zones the situation is, I think, more clear cut. The only options available to a new authority is to leave the old zones as they are or impose one zone. If the option is for one zone then the tariff must apply throughout that zone. To do otherwise would effectively create a new zone which the authority does not have the power to do.

Finally, bye-laws have to be formally revoked by applying to the original confirming authority. A local authority cannot simply chose not to enforce its own bye-laws.

B.R. Hodkinson
Senior Solicitor
Prosecutions and Licensing.

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