

Taxi Licensing Points Schemes, Suspension and Revocation

Are Taxi Penalty Points Schemes Lawful?

Local authorities have powers to suspend or revoke taxi drivers (hackney carriage and private hire) licences under section 61 of the Local Government (Miscellaneous Provisions) Act 1976 but these are regarded by many Councils as limited and severe.

As a result a number of local authorities have developed "penalty points schemes" to enable action to be taken in relation to more minor problems which do not of themselves justify suspension or revocation. These are similar to the penalty points which can be awarded to motorists on their DVLA licenses, with a "tariff" of points for misdemeanours and a maximum number of points that can be attached to a licence. Once that limit is reached, the driver is taken before committee to consider whether or not action should be taken against the licence.

Such schemes have been declared lawful, providing there is a adequate consideration of the sanction by the Council see - *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin) where Mr Justice Singh said (at para 65)

"In my view, there is nothing wrong in principle with the defendant authority such as the present, adopting the policy, which seeks, both in fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgment of the local authority, a person is not a proper person to continue to enjoy the relevant licence."

There cannot be an automatic suspension or revocation, and even when the maximum number of points and the scheme has been amassed, the Council must consider the case on its own particular merits.

In relation to any action being taken under section 61(1)(b), which allows suspension or revocation for "any other reasonable cause" the question is whether a person remains a fit and proper person to continue to hold a drivers licence.

The judge said that this was not purely discretion, it required a "judgment to be performed on whether the statutory question has been answered in favour of or against the relevant driver" (at para 70). If the answer to that judgment is against the driver (i.e. he is not fit and proper) there then still exists discretion as to what action to take against the licence.

There are two other important aspects of this judgment which must be considered.

Suspension of a drivers' licence as a punishment?

Can a drivers' licence be suspended as a punishment? There has been debate over this question for many years, and the position is now clear (see extract from the judgment below) and suspension of a drivers licence can be used as a sanction, which will of necessity be a lesser sanction than revocation. To that extent this judgment may prove useful to local authorities.

Suspension or Revocation?

Mr Justice Singh makes it clear that suspension of a drivers licence is a final decision on the question of a person's fitness and propriety and suspension cannot be used as an interim measure pending further investigation into a drivers conduct and ultimate fitness and propriety.

This is addressed directly at paragraphs 103 to 105 in the following way:

"103. In my judgment, the way in which the concept of suspension is used by Parliament in section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether a ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.

104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of 1 year, will constitute sufficient sanction in the interests of the public.

105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976 Act. It does not use, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation."

However, this vital part of the judgment will prevent local authorities suspending a drivers' licence pending further investigation. Until now, many authorities have suspended a drivers' licence following serious complaint or allegation (e.g. violence, sexual assaults, dishonesty etc) to protect the public while an investigation takes place. Following the investigation the decision may be taken in the light of the additional evidence to either revoke the licence or lift the suspension. This judgment prevents that approach.

How should local authorities react to serious complaints or allegations?

It would appear that the only approach that can be taken is to decide upon the sanction on the basis of the allegation and suspend or revoke this drivers' licence (which could

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be with immediate effect in the interests of public safety under s61(2B). The delegations to allow such decisions to be taken quickly need to be clearly set out.

In addition, it is essential that the driver has a chance to answer the allegations and put forward his case. This can be a short period of time, communicated by telephone, test, e-mail, fax or in person, but failure to factor this into the process would lead to a successful challenge.

If the driver then appeals, any new evidence resulting from the investigation can be adduced at the magistrates' court to justify the decision.

It is also important to have a mechanism to enable the driver to be relicensed (or the suspension lifted) if the investigation does not reveal sufficient evidence to justify the earlier decision. Clearly, a suspension can simply be lifted, although the delegation to do so needs to be clear.

In relation to a revocation, the licence cannot be re-instated and will need to be re-issued. It would seem reasonable in these circumstances to accept the pre-grant enquiries (e.g. medical tests, knowledge, CRB checks etc) that existed in relation to the previous licence, up to the point at which they would have required renewing had the licence not been revoked. Again, the delegation to enable this decision to be taken quickly is important, as in both these cases there is no justification in preventing the driver from working.

I would suggest these decisions should be delegated to an officer in consultation with the Chair or Deputy of the Licensing (or appropriate) committee. This will continue member involvement, whilst allowing for speed of decision making.

In relation to costs on a successful appeal, *Bradford MBC v Booth* [2000] All ER (D) 635 will continue to apply, and provided the authority did not act negligently, capriciously or incompetently in arriving at its decision it should not be penalised in costs even if the subsequent decision of the magistrates is to uphold the appeal. As the law now prevents suspension for the purposes of investigation it is difficult to see how an authority that had acted in this way could be said to have acted improperly.

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