

Reigate and Banstead BC v Pawlowski

Queen's Bench Division (Administrative Court)

13 July 2017

Case Analysis

Where Reported

[2017] EWHC 1764 (Admin);

Case Digest

Subject: Licensing **Other related subjects:** Road traffic; Civil procedure

Keywords: Costs; Driving licences; Fit and proper persons; Hardship; Local authorities' powers and duties; Private hire vehicles; Reasons; Revocation; Suspension

Summary: The court discussed the use of the power to suspend a private hire vehicle driver's licence under the [Local Government \(Miscellaneous Provisions\) Act 1976 s.61](#).

Abstract: A local authority appealed by way of case stated against a decision to allow the respondent's appeal against the revocation of his private hire vehicle driver's licence.

The respondent had been charged with being in charge of a motor vehicle having consumed excess alcohol. The local authority was notified and decided to revoke his licence. The respondent was later found not guilty following a trial and appealed against the revocation of his licence under the [Local Government \(Miscellaneous Provisions\) Act 1976 s.61\(3\)](#). The question for the justices was whether the respondent was a fit and proper person to hold a private hire vehicle driver's licence. They concluded that he was and allowed his appeal. The local authority was ordered to pay the respondent's costs after the justices found that he had suffered "some financial difficulty" following the revocation of his licence.

The court was asked to determine whether

(1) in light of [R. \(on the application of Singh\) v Cardiff City Council \[2012\] EWHC 1852 \(Admin\), \[2013\] L.L.R. 108](#), the justices had erred in law in deciding that the local authority's decision to revoke was wrong and that it should have suspended the licence instead;

(2) the justices had erred in making an order for costs in favour of the respondent or in failing to give sufficient

reasons for that order.

Held: Appeal dismissed.

(1) **Power to suspend** - The question of whether the local authority was wrong to revoke the respondent's licence and ought to have suspended it instead did not properly arise for the decision of the justices. Their observations in that regard constituted neither the substantive decision nor the grounds for that decision. They had not erred in failing to give any further or other reasons for their observations because they were not required to give reasons for observations that did not constitute their decision on the appeal before them (see para.20 of judgment).

(2) **Costs** - The local authority had claimed that "some financial difficulty" fell short of the requirement of "substantial hardship" as required by [*R. \(on the application of Perinpanathan\) v City of Westminster Magistrates' Court* \[2010\] EWCA Civ 40, \[2010\] 1 W.L.R. 1508](#). However, "substantial hardship" was not a statutory formula and was not to be treated as one. The basic test was what was just and reasonable. Usually in licensing cases it would not be just and reasonable to make an adverse costs order against the regulatory authority. However, financial hardship resulting from the exercise of the regulatory powers against which a successful appeal had been brought might do so. Use of the word "substantial" indicated that, if such hardship was to be relied on, it had to have some substance, rather than being merely trivial or insignificant. There was no error of law in the justices' approach, *Perinpanathan* considered. Although it would have been better for the justices to say more about their reasoning, the local authority could not have been unclear about the basis on which the decision was made and could not properly claim to have been seriously prejudiced by the economical way in which the justices expressed their decision (paras 34-35).

(3) **Observations on the power to suspend** - *Singh* established that it was unlawful for a local authority to use suspension as a holding operation pending further investigation. Accordingly, a local authority could not lawfully suspend by reason of a criminal charge on a "wait and see" basis. If it suspended the licence, it had to do so by way of a substantive decision on the fitness of the driver to hold the licence. Once it was seen that suspension was not a holding operation but a substantive decision, it became apparent that suspension would rarely be the appropriate course where a

driver was charged with a matter for which, if convicted, he would be subject to revocation of his licence. If such a charge merited action, and if the action was not by way of an interim measure pending determination of the facts at criminal trial, revocation would generally be the appropriate course. To suspend a licence because an allegation was made and then revoke it because the allegation was proved was contrary to the decision in *Singh*. That was not to say that, once a decision had been taken to suspend upon notification of a charge, no subsequent decision to revoke could ever be taken. It was possible to envisage a case where facts thereafter emerging from the criminal trial put a different complexion on the matter. The initial suspension would not necessarily rule out a subsequent revocation in such circumstances, having regard in particular to the fact that the local authority's powers were conferred for purposes of public protection. Any decision to revoke would be subject to a statutory right of appeal. Further, if it should later transpire, for example by reason of acquittal at trial, that the former licence-holder was indeed a fit and proper person to hold a licence, provision could be made for expeditious re-licensing, *Singh* considered (paras 22-26).

Judge: Judge Keyser QC

Counsel: For the appellant: Peter Savill. For the respondent: Benjamin Douglas-Jones.

Solicitor: For the appellant: In-house solicitor. For the respondent: Blackfords LLP.

Significant Cases Cited

R. (on the application of Singh) v Cardiff City Council
[\[2012\] EWHC 1852 \(Admin\)](#); [\[2013\] L.L.R. 108](#); [Official Transcript](#); QBD (Admin); 23 May 2012

R. (on the application of Perinpanathan) v City of Westminster Magistrates' Court
[\[2010\] EWCA Civ 40](#); [\[2010\] 1 W.L.R. 1508](#); [\[2010\] 4 All E.R. 680](#); [\[2010\] 4 Costs L.R. 481](#); [\[2010\] L.L.R. 514](#); [\(2010\) 160 N.L.J. 217](#); [Times, March 2, 2010](#); [Official Transcript](#); CA (Civ Div); 04 February 2010

All Cases Cited

R. (on the application of Singh) v Cardiff City Council
[\[2012\] EWHC 1852 \(Admin\)](#); [\[2013\] L.L.R. 108](#); [Official Transcript](#); QBD (Admin); 23 May 2012

R. (on the application of Perinpanathan) v City of Westminster Magistrates' Court

[\[2010\] EWCA Civ 40](#); [\[2010\] 1 W.L.R. 1508](#); [\[2010\] 4 All E.R. 680](#); [\[2010\] 4 Costs L.R. 481](#); [\[2010\] L.L.R. 514](#); [\(2010\) 160 N.L.J. 217](#); [Times, March 2, 2010](#); [Official Transcript](#); CA (Civ Div); 04 February 2010

**Significant
Legislation Cited**

[Local Government \(Miscellaneous Provisions\) Act 1976 \(c.57\) s.61](#)

[Local Government \(Miscellaneous Provisions\) Act 1976 \(c.57\) s.61\(3\)](#)

Legislation Cited

[Local Government \(Miscellaneous Provisions\) Act 1976 \(c.57\) s.61](#)

[Local Government \(Miscellaneous Provisions\) Act 1976 \(c.57\) s.61\(3\)](#)

© 2017 Sweet & Maxwell

