KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Case No: AC-2024-LON-001583

Neutral Citation Number: [2024] EWCH 3356 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 December 2024

Before :

MR JUSTICE LINDEN

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Between :

WELWYN HATFIELD BOROUGH COUNCIL **Appellant**

- and –

(1) WEST AND CENTRAL HERTFORDSHIRE MAGISTRATES COURT
(2) JAMAL MIAH
(3) REHMAT ALI CHOUDHRY
(4) USMAN MUMTAZ
(5) ARFAT AKHTAR
(6) KHALID MONJU
(7) GULRAIZ KHAN **Respondents**

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Mr Josef Cannon KC (instructed by **WHDC Legal Services**) for the **Appellant.**
The Respondents did not appear and were not represented.

Hearing date: 3rd December 2024

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JUDGMENT

Mr Justice Linden :

Introduction

1. This is an appeal by way of case stated from a decision of District Judge Margaret Dodd, sitting at the St Albans Magistrates' Court on 9 February 2024.

2. The District Judge allowed appeals by the 2nd to 7th Respondents ("the Respondents") against Welwyn Hatfield Borough Council's ("the Council's") refusals, in 2022, to renew their hackney carriage vehicle licences. The Council's refusals had been on the grounds that renewal would be contrary to its Standard Conditions for the licensing of such vehicles ("the Standard Conditions") which required that vehicles other than those with wheelchair access were less than 8 years old.

3. The District Judge held that there were exceptional circumstances which meant that the Council should have departed from this aspect of the Standard Conditions. These were the fact that the Covid 19 pandemic and consequent lockdowns had taken place during the relevant 8 year period, and the effect which this had had on the Respondents. She held that, instead of refusing the Respondents' applications, the Council should have renewed their licences for a year. The decisions of the Council were therefore wrong and the appeals were allowed. However, the District Judge recognised that this was a pyrrhic victory for the Respondents because they had in fact been driving for more than a year since the decisions appealed against. She therefore did not order any continuation or renewal of their licences.

4. Against that decision the Council now appeals. The questions in the Case Stated which this court has been asked by the District Judge to consider are as follows:

> "(i) Was I correct to ask myself whether the decision of the local authority in each case "was wrong", and in that context, "what would I have done"? ("Question 1")
>
> (ii) Was I correct to find that the COVID-19 pandemic, in itself, was sufficiently exceptional to justify, in each case, a departure from the lawfully-adopted policy of the local authority? ("Question 2")
>
> (iii) Was I correct to find, in each case, that the Appellants had been affected financially by the COVID-19 pandemic sufficient to warrant a departure from the said policy, in circumstances where none of the Appellants produced any documentation showing any such financial effect? ("Question 3")
>
> (iv) Was I correct, having found that each appellant should have been granted an additional 12 months for his vehicle beyond the 8th anniversary of its first registration, and given that in each case, by dint of the appeals and the effect of section 77 (2) of the Local Government (Miscellaneous Provisions) Act 1976, each appellant had been permitted to continue to operate their Hackney carriages for more than 12 months from the date their applications to renew their licences had been refused, to allow the appeals?" ("Question 4")

The hearing before me

5. The Respondents filed written submissions dated 29 November 2024, which I read carefully and comment on below. However, they were not represented at the hearing and did not attend.

6. Mr Josef Cannon KC attended on behalf of the Council and made submissions in support of the appeal. However, it was clear to me that, in the finest traditions of the Bar, he was at pains to avoid taking any unfair points and to draw to my attention the points which might be taken against him. I am grateful for his assistance.

Preliminary issue

7. In their written submissions the Respondents raised a preliminary issue as to whether the appeal was in time. At the outset of the hearing Mr Cannon took me through the chronology of the appeal by reference to Part 35 of the Criminal Procedure Rules and Practice Direction 52E in the Civil Procedure Rules which applies once a case has been stated.

8. I was quite satisfied that there was nothing in the preliminary point. As noted above, the decision was taken on 9 February 2024. The Council's application to state a case was made on 29 February and therefore by the 21 day deadline under CPR Rule 35.2(1)(a). The District Judge circulated a draft of the Case on 10 March 2024 and there was then a period of 15 days during which the parties had the opportunity to comment on the draft (Rule 35.3(6)(b)). The Council submitted comments but the Respondents did not. The final version of the Case Stated was sent out by the Magistrates Court on 12 April but the date of the first draft (10 March) was not amended. This caused some confusion but, in short, there were then 10 days to file an appellant's notice at the High Court (see Practice Direction 52E at [2.2]) and this was done on 18 April. Although the notice was initially rejected it was subsequently accepted as having been lodged on that date.

Background

9. Pursuant to section 47 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act"), in 2009 the Council set out its Standard Conditions for the Licensing of Hackney Carriage Vehicles. This document provided so far as material as follows:

> "Age of vehicles
>
> 4.1 All vehicles are to be licensed for a period of 1 year. If in that year they attain the age of eight years for saloon type vehicle or ten years for Wheelchair Accessible, from first date of registration, they will only be licensed to that date. Any vehicle aged over the prescribed age limits may apply for an Advanced Engineers Report, at the applicants' expense. If the vehicle successfully passes this examination, it shall be licensed for a further 12 months… "

10. All of the Respondents had vehicles which did not have wheelchair access. All had previously applied for annual renewal of their vehicle licences when they were less than a year away from the 8 year point and had been granted renewals up to that point. These renewals included declarations which each Respondent signed to say that they accepted the Standard Conditions.

11. The standard letters which each Respondent received, refusing their most recent applications for a further renewal, informed them that their applications had been refused because their vehicles had now reached the age of 8 years. The relevant provisions of the Standard Conditions were set out and they were told that the reasons for the decision were that there did not appear to be exceptional circumstances which would warrant a departure from the Standard Conditions.

12. A new policy had been introduced by the Council in 2020 which required all vehicles to have wheelchair access. This did not affect the outcome of the Respondents' applications for renewal of their existing licences but it did mean that the result of the refusals by the Council was that they would need to purchase vehicles which had wheelchair access, which were more expensive.

The District Judge's decision

13. At the hearing on 9 February 2024, the Council called one of its officers whose role it is to ensure compliance with the Standard Conditions by licensed vehicle drivers. His evidence was that the condition that a taxi be no older than 8 years was in the interests of public safety. He also emphasised that the drivers were aware of this provision and had accepted the Standard Conditions. He said that there were no barriers to the Respondents working during the pandemic and they could have done so. And he said that there had been no proof of exceptional circumstances: the Respondents had not submitted accounts to show the financial impact of the pandemic on them.

14. The Respondents each submitted witness statements and they were represented by the same Counsel. At least one, but not all, of them gave live evidence. In the Case Stated, the District Judge notes that the Respondents explained that because of the pandemic and the consequent lockdowns *"trade was very slow and they could not afford to replace vehicles. Quite simply there was no demand for taxis."*. One driver said that his income had reduced from £16,000 to £9,000 *"during the pandemic"* but the Respondents did not otherwise give specific evidence about the effect of the pandemic on their incomes or provide documentary evidence to demonstrate this impact. The Respondents said that it was difficult to find a suitable compliant vehicle and the cost of a replacement was prohibitive. Estimates of the costs of a compliant vehicle were given. "*The general position of the drivers was that they were not in a financial position to comply with the new conditions"*.

15. Having briefly set out the background, the District Judge's findings and conclusions were as follows:

> "The appeal is a hearing de Novo not a review and my decision is based on what the court would have done had it been making the original decision.
>
> I have listened to some evidence and submissions. It is common ground that the vehicles in question were all older then the required or permitted age, it is also common ground that the period we are concerned with covered the period of COVID and the lockdowns.
>
> Brexit/Ukraine also although the impact on inflation maybe recent than the period concerned with.

> The 8yr policy is just that and not a rule and to justify an exception to it there needs to be exceptional circumstances. It is clear from the documents that the local authority when considering renewal of the licences did not consider that COVID and the lockdown and the consequences for the income of the drivers and their ability to purchase new vehicles, were exceptional.
>
> The policy is entirely a matter for the Council, and I don't question it. The drivers should all have known about it; I also agree that COVID affected all sorts of businesses, but I am just dealing with these appellants.
>
> I have seen no documents to show the effect on income or the increased costs of compliant vehicles but have given consideration to all evidence, either in witness box or in statements.
>
> I do consider the pandemic gave rise to exceptional circumstances and as such I allow the appeal. The pandemic and its consequences had a massive and continuing effect on all sorts of businesses and organisations which will in some cases take years to recover, if indeed they ever do. The decision not to find exceptional circumstances was wrong. The fact they have been able to drive pending appeal does not matter, the decision was wrong.
>
> In allowing the appeal and allowing a further year of licenced does not and cannot be an indication that the arguments put forward can be resurrected annually. Each appeal must always be viewed on its merits, but to repeatedly use the same argument could well be an abuse of process. The Local Authority policy is clear." (emphasis added)

16. The District Judge also provided her answers to each of the four questions in the Case Stated, to some of which I will refer below.

Legal framework

The jurisdiction of the Magistrates' Court

17. Part II of the 1976 Act deals with hackney carriages and private hire vehicles. Section 47 provides:

> **"Licensing of hackney carriages**
>
> (1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.
>
> (2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.
>
> (3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrate's court."

18. Section 60 of the 1976 Act provides as follows:

> **"Suspension and revocation of vehicle licences**
>
> (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke, or (on application therefor under section 40 of the Act of 1847 or section 48 of this Act, as the case may be) refuse to renew a vehicle licence on any of the following grounds:-
>
> (a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
>
> (b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Act by the operator or driver or;
>
> (c) any other reasonable cause.
>
> (2) Where a district council suspend, revoke to renew any licence under this section they shall give to the proprietor of the vehicle notice of the ground on which the licence has been suspended or revoked or on which they have refused to renew the licence within fourteen days of such suspension, revocation or refusal.
>
> (3) Any proprietor aggrieved by a decision of a district council under this section may appeal to a magistrates' court."

19. By section 77 of the 1976 Act, sections 300 to 302 of the Public Health Act 1936 ("the 1936 Act") have effect as if Part II of the 1976 Act were part of the 1936 Act. Section 77 also provides that, in broad terms, a person may carry on any business affected by a decision of the sort in issue in the present case until the outcome of any appeal under the 1976 Act.

20. Section 300 of the 1936 Act states that where any enactment in the 1936 Act provides for an appeal to a court of summary jurisdiction against a refusal or other decision of a council "*the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings.*". (See, also, Rule 34 of the Magistrates' Courts Rules 1981 (as amended)). Section 300(2) sets a 21 day deadline for any such appeal.

21. Section 302 of the 1936 Act provides that:

> "**Effect of decision of court upon an appeal**.
>
> Where upon an appeal under this Act a court varies or reverses any decision of a council, it shall be the duty of the council to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register."

<u>The jurisdiction of the High Court on an appeal by way of case stated</u>

22. Section 111(1) of the Magistrates' Courts Act 1980 provides, so far as material, that:

> "Any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court

> may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved;…."

23. Mr Cannon relied on *DPP v Ziegler & Others* [2022] AC 408 in which the Supreme Court emphasised that appeals under section 111(1) are concerned with questions of law which are raised for the opinion of the High Court. Accordingly, such an appeal will be allowed where there was an error of law material to the decision reached which was apparent on the face of the case stated or if the decision was one which no reasonable court, properly instructed as to the relevant law, could have reached on the facts found. Although *Ziegler* was a criminal matter, this does not affect the approach which I am required to adopt for present purposes.

24. If an appeal is allowed, the powers of the High Court are as stated in Section 28A of the Senior Courts Act 1981. In short the High Court may reverse, affirm or amend the determination in respect of which the case has been stated; or remit the matter to the magistrates' court having stated its opinion on the questions in the appeal, and may make such other order in relation to the matter as it thinks fit.

The appeal

25. Mr Cannon said that, in effect, the grounds of appeal were the questions which were asked in the Case Stated, and which I have set out above at [4].

Questions 1 and 4

26. Mr Cannon's central argument under Grounds 1 and 4 was that the District Judge asked the wrong question in determining whether the decisions of the Council were "wrong" or, if she asked the right question, she gave the wrong answer:

    i) Ground 1 argues that in this type of appeal the role of the Magistrates' Court was to hear the matter "de novo" i.e. afresh and for itself. The District Judge had to reach her own decision on the factual position as it was at the time of that decision. Rather than do this, she asked herself whether the Council's decisions were wrong at the time that they were made: what she would have decided if she had been considering the original applications at the point when the Council considered them.

    ii) Ground 4 argues, effectively in the alternative, that if the District Judge did ask the right question she had to take into account the fact that, by the time of her decision, more than a year had elapsed since the Council's decisions during which the vehicles had been used by the Respondents. Given her own view that the Council should have granted renewals of no more than a year, the only answer open to her was that there should be no further renewals and that the appeals therefore failed.

Questions 2 and 3

27. Under Grounds 2 and 3 Mr Cannon relied on *R (Westminster City Council) v Middlesex Crown Court and Chorion Plc* [2002] EWHC 1104 (Admin) where Scott Baker J said this at [21]:

> **"***The approach of the Crown Court*
>
> 21. How should a Crown Court (or a Magistrates Court) approach an appeal where the council has a policy? In my judgment it must accept the policy and apply it as if it was standing in the shoes of the council considering the application. Neither the Magistrates Court nor the Crown Court is the right place to challenge the policy. The remedy, if it is alleged that a policy has been unlawfully established, is an application to the administrative court for judicial review. In formulating a policy the council will no doubt first consult the various interested parties and then take into account all the various relevant considerations."

28. He went on to refer to Glidewell LJ's judgment in the Divisional Court in *R v Chester Crown Court ex parte Pascoe and Jones* [1998] 151 JP 752, 755. Consistently with established public law principles as to the application of policies by public bodies Glidewell LJ said:

> "..licensing justices are entitled to adopt a general policy to be applied in the majority of cases to which a particular part of the policy applies. But they must always be prepared to consider each application on its merits and to allow exceptions to the general policy. Thus they are required to consider in relation to any particular application whether the circumstances of the application do justify an exception. If that is true of licensing justices, the same must be true of the crown court…on appeal were to depart from that policy, it would produce most unfortunate results…".

29. At 757 he said:

> "I agree that where there is the general policy and an applicant is seeking to persuade a court (licensing justices in this case) to make a proper departure from that general policy, that amongst the most important of the matters which the court or the justices must consider is the reason for the policy and whether, if they were to grant what is sought by way of exception, those reasons would still be met."

30. In the light of these passages, Mr Cannon rightly accepted that public bodies such as the Council should always be prepared to consider each application on its merits and to allow exceptions to the general policy where this is justified by the circumstances. The same was true of the Magistrates' Court. However, consideration must be given to the reason for the policy and whether, if an exception were made, it aims would still be met. The burden of showing that an exception should be made lies on the person who seeks it and it is necessary to consider whether the object of the policy would be damaged by such an exception: see *Chorion* at [23] and [24].

31. Mr Cannon argued that, in effect, the District Judge had decided that the Covid-19 pandemic, in and of itself, was an exceptional circumstance which justified departure from the Standard Conditions. Insofar as she had gone further than this she had relied on unevidenced assertions by the Respondents about the financial impact of the pandemic. Even had such assertions been supported by evidence, the financial impact on a given Respondent did not provide a justification for departing from the Standard Conditions. Any justification would need to be consistent with the aims of, and rationale for, the relevant provision. Here, the aim of the 8 year provision was to maintain standards of vehicle safety, comfort and appearance. Evidence about reduced use of a

vehicle because of the pandemic would therefore be potentially relevant and capable of providing a justification for departing from an approach based simply on the age of the vehicle given that, in these circumstances, its age might not reflect its usage. But the cost of a replacement vehicle was irrelevant, and permitting exceptions based on this consideration would undermine the policy behind the 8 year rule.

The Respondents' submissions

32. The Respondents' written submissions, with respect to them, contained a good deal that was not relevant to the issues in the appeal and was relevant to a claim for judicial review which, I understand, they brought in 2023 albeit permission was refused. For example, they argued that the 8 year policy at [4.1] of the Standard Conditions "is neither reasonably necessary or a reasonable cause" whereas it was not the function of the Magistrates' Court or this Court, at least in the context of this appeal, to decide whether such a rule should have formed part of the Standard Conditions. Similarly, the Respondents complained about the Council's policy on wheelchair accessibility when this was not an issue in the appeal. And they complained about other aspects of the Standard Conditions which are not relevant to the issues in the appeal, and about an alleged lack of consultation in relation to the Council's requirements.

33. So far as relevant, the Respondents' submissions argued that there were exceptional circumstances which justified departure from the Standard Conditions and the District Judge was entitled to come to this conclusion. Moreover her approach had been correct in that, although the appeals before her were heard de novo, she correctly replaced the erroneous decision of the Council's Licensing Officer with her own judgment and discretion.

Discussion of Questions 1 and 2

34. The question of the role of the appellate court in a given case turns on the construction of the statute which confers jurisdiction on the court and any relevant procedural rules or practice directions. In the present case the terms of section 60 of the 1976 Act, read with section 300 and 302 of the 1936 Act, are not particularly informative in themselves. As noted above, section 60 merely states that there is a right of appeal and section 302 provides that it is the duty of the Council to give effect to any variation or reversal of its decision by granting any necessary consent, certificate or other document, and making any necessary entry in any register.

35. However, the caselaw in relation to materially similar statutory provisions in a similar context indicates that the hearing in the Magistrates' Court should be de novo. Thus, in *Stepney Borough Council v Joffe* [1949] 1 KB 599 the Court of Appeal considered section 25(1) of the London County Council (General Powers) Act 1947 which provided that any person aggrieved by the revocation of a street trader licence *"may appeal to a petty sessional court"* and that "*on any such appeal the court may confirm, reverse or vary the decision of the borough council"*. The issue before the Court of Appeal was whether a magistrate could, on such an appeal, substitute their opinion as to the suitability of the street trader for that of the borough council. The Court of Appeal held that they could. At 602-603 Lord Goddard CJ said this:

> "It seems to me that s. 25, sub-s. 1, gives an unrestricted right of appeal, and if there is an unrestricted appeal, it is for the court of appeal to substitute its opinion for the

> opinion of the borough council. That does not mean to say that the court of appeal, in this case the metropolitan magistrates, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and it ought not lightly, of course, to reverse their opinion…..The words of s.25, subs-s 1, are very wide. The magistrates is given power to "confirm reverse or vary the decision of the "borough council," and that being so, it seems to me that once the licensee appeals to him he is bound to form an opinion upon the matter and "confirm, reverse or vary the "decision of the borough council" according to the judgment which he forms."

36. As to the precise focus of a hearing in which the appellate court is deciding the matter for itself, in *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2009] EWHC 1996 (Admin) a public house appealed to the Magistrates' Court against a requirement, as a condition of its licence, that no customers were to be permitted to drink outside after 6pm. The District Judge ruled that his approach to the appeal would be to note the decision of the licensing committee and reverse it only if it was wrong; he would not be concerned with the decision making process undertaken by the committee.

37. Burton J rejected an application for judicial review of the decision of the Magistrates' Court which contended that the District Judge's approach was wrong. He referred to what Lord Goddard CJ said in *Joffe* and to *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 and held, on the basis of what Edmund Davies LJ had said in the latter, that the appeal *"must be – and is – a complete rehearing de novo and not an 'appeal proper' and certainly not a judicial review, much more than that"* [36]. This meant that further evidence was admissible in the context of the appeal.

38. He went on to say, at [42] and [43]:

> "42. One submission that Mr Glen made which requires pause for thought is his pointing out that, because fresh evidence is to be allowed on both sides, there may be a situation in which the appellate court will come to a conclusion on the evidence which will be different from the conclusion of the lower court by virtue of that fresh evidence, and which might not mean that the lower court judgment was wrong. Of course it may often happen, when fresh evidence is given, that the appellate court will come to a conclusion, on information available to it which is different from that which was available to the court below, which differs from the court below but only because of the fresh evidence.
>
> 43. I conclude that the words of Lord Goddard approved by Edmund Davies LJ are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below "is wrong", that is to reach its conclusion on the basis of the evidence before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time. That is what this District Judge was prepared to do by allowing fresh evidence in, on both sides." (emphasis added)

39. I agree with Mr Cannon that the logic of this approach, which is inherent in the fact that the appeal is a rehearing de novo, is that the decision below may have been wrong at the time that it was taken but not wrong in the light of the facts as they are at the time of the appeal. And I agree that if this is the case the appeal fails, just as it would succeed

if subsequent evidence or facts supported a different decision or outcome to the original one.

40. Secondly, I agree with Mr Cannon that the District Judge's approach was to ask herself what she would have decided had she been making the decisions which the Council made in 2022. This is apparent from the way in which she framed, or did not challenge the framing of, the first question in the case stated: see [4], above. Her answer to that question was as follows:

> "I was well aware of the test to be used in cases such as this, that it was a hearing de novo and that I should put myself in the shoes of the Council making the decision in coming to my decision. It is not a review of their decision."

41. Although this may, with respect, have been missing the point of the question the District Judge's approach was clearly stated. Moreover, as noted at [15] above, in her reasons she said that the appeal was a hearing de novo but then said *"and my decision is based on what the court would have done had it been making the original decision".*

42. Thirdly, the District Judge's decision to allow the appeal only makes sense if this was her approach. In her answer to Question 4 she said this:

> "In coming to my decision, I was aware that in allowing the appeals there would be no impact on the drivers as 18 months had passed awaiting the hearing during which time the drivers had continued to work. In fact, they had been allowed to work longer than they would have done had the Council renewed the licences for 1 year initially. Nonetheless, I took the view that it would have been wrong to dismiss the appeal although appreciate allowing the appeals was a Pyrrhic victory for the Appellants."

43. She therefore, in effect, allowed the appeals but refused relief. However, she was not engaged in a judicial review of the Council's decision with a view to determining whether its reasoning was flawed. The decision of the Council was to refuse the Respondents' applications for their licences to be renewed. The role of the District Judge was to rehear their applications and decide whether their licences should be renewed, rather than to ask whether they should have been renewed in 2022. I agree with Mr Cannon that if she had adopted the correct approach the effect of her own finding that any renewal would not have been for more than 12 months was that she could only have answered the question in the negative as the Council had, albeit for different reasons. In short, like the Council, her conclusion was that the Respondents' licences should not be renewed. It followed that the Council's decision was not wrong and the appeals failed.

44. It follows from this that Grounds 1 and 4 succeed. I will therefore reverse the District Judge's decision and substitute a decision that the appeals of the Respondents were dismissed.

Discussion of Questions 2 and 3

45. Strictly, it is therefore unnecessary for me to consider Grounds 2 and 3. However, in case I am wrong on Questions 1 and 4, I will say something about them. Mr Cannon also said that Questions 2 and 3 were not entirely academic because the effect of the

District Judge's decision in the present case had been that there are a number of other appeals by taxi drivers in which they rely on the Covid 19 pandemic as an exceptional circumstance justifying departure from the Council's Standard Conditions. The Respondents' submissions also referred to other appeals which were before the Magistrates' Court.

46. I agree with Mr Cannon's analysis of the law on the basis of the *Chorion* case i.e. that the Council was bound to consider the Respondents' applications for renewal on their merits and to be prepared to make an exception to its policy position if the circumstances justified doing so. However, it was for each of the Respondents to justify the making of an exception in his case. The Council was also right to give weight to its 8 year policy as reflected in the Standard Conditions, not least in the interests of consistency. Other hackney carriage drivers had complied with it, and incurred expense as a result, in the same or similar circumstances. There was therefore a very real issue as to the fairness of departing from the Standard Conditions in the cases of the Respondents. And the Council was right to consider whether the making of an exception would undermine or be inconsistent with the rationale for its policy.

47. Similarly, in the context of a rehearing of the Respondents' applications on appeal, the District Judge was required to consider each case on its merits and permitted to depart from the Standard Conditions where this was justified in a given case. However, in deciding whether to make an exception she was required to give weight to the views and policy of the Council, as the authority with primary statutory responsibility for licensing, and to have regard to the considerations which I have identified in the preceding paragraph.

48. I agree with Mr Cannon that, whilst the pandemic was an exceptional circumstance, in and of itself it was not capable of justifying an exception to the Standard Conditions. What was required was justification by reference to the impact of the pandemic on the particular Respondent and this required each to adduce evidence of that impact in his case. However, I do not accept Mr Cannon's characterisation of the District Judge's decision as being that the pandemic, in itself, justified the making of an exception in the Respondents' cases. As I read her decision it was the <u>impact</u> of the pandemic and, in particular, the impact on the Respondents' earnings and the consequent greater financial difficulty in purchasing a replacement vehicle. I do, however, accept that the District Judge erred in the following respects:

    i) She dealt with the matter generically rather than considering the evidence put forward by each Respondent to justify an exception in his case. I do not agree with Mr Cannon that without documentary evidence she could not accept the Respondents' evidence that they had earned less during the pandemic. Although documentary evidence would be likely to give more detail and to be clearer and more cogent, each Respondent could seek to prove his case by oral evidence alone. But I do accept that the District Judge's task was to consider the circumstances of each case individually so as to understand the precise extent of the impact and its implications, and whether these justified an exception in their particular case.

    ii) She did not address the fact that the Standard Conditions were generally applicable, and the fairness of departing from them in the cases of a handful of drivers who had been impacted by the pandemic but not the many other drivers

who had been affected by it but had, nevertheless, met the requirements of the Standard Conditions.

iii) She did not consider how the making of exceptions on financial grounds was consistent with the aims and rationale of the Council's policy position. In this connection, I agree with Mr Cannon that if, say, a driver produced evidence that they had not used their taxi for a given period of time during the pandemic there would have been an arguable case that an exception should be made to allow a renewal for an equivalent period of time so that the total period of usage of the vehicle was 8 years. This would not undermine the aims of the Standard Conditions.

iv) However, it is not immediately obvious how the financial difficulty of purchasing a replacement vehicle could justify the making of an exception without materially undermining the Council's policy. Such an approach would be likely to result in vehicles which had been in use for more than 8 years continuing to be used when the policy was that they should not be. Moreover, the logic of this approach suggests that such an argument ought to be generally available i.e. anyone who was able to show that they could not afford a new vehicle could argue for an exception. Even if the exceptions were limited to financial difficulties resulting from exceptional or unexpected circumstances, such an approach would arguably risk inconsistent decision making and thereby undermine the policy of the Council.

49. Had I not quashed the decision on Grounds 1 and 4, then, and if any useful purpose would have been served by doing so, in relation to Grounds 2 and 3 I would have been likely to remit the matter for further consideration of the evidence in the case of each individual Respondent in the light of the analysis set out above.

Answers to the questions in the Case Stated

50. I therefore answer Questions 1 and 4 in the Case Stated: "no, for the reasons which I have given". My answer to Questions 2 and 3 is "no, for the reasons which I have given.".

51. Accordingly, I allow the appeal and substitute a decision that the appeals to the Magistrates' Court are dismissed.