

*74 **Chauffeur Bikes Ltd v Leeds City Council**



No Substantial Judicial Treatment

Court

Divisional Court

Judgment Date

12 October 2005

Report Citation

[2005] EWHC 2369 (Admin)
[2006] R.T.R. 7

Queen's Bench Divisional Court

(Keene L.J. and Poole J.):

October 12, 2005

Licences; Motorcycles; Private hire vehicles; Safety; Suitability;

H1 LICENSING

H1. Private hire vehicle

H1.

Suitability for use—Application for private hire vehicle licence for motorcycle—Council's refusal to grant licence upheld on ground motorcycle unsafe for such use—Whether safety relevant when considering suitability for proposed use— [Local Government \(Miscellaneous Provisions\) Act 1976, s.48\(1\)\(a\)](#) .

H2. [Section 48\(1\) of the Local Government \(Miscellaneous Provisions\) Act 1976](#) provides:

“Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence: Provided that a district council shall not grant such a licence unless they are satisfied—(a) that the vehicle is—(i) suitable in type, size and design for use as a private hire vehicle; (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage; (iii) in a suitable mechanical condition; (iv) safe; and (v) comfortable ...”

H3. [Section 80\(1\)](#) provides:

“... ‘private hire vehicle’ means a motor vehicle constructed or adapted to seat fewer than eight passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of

carrying passengers.”

H4. The applicant company wished to operate a motorcycle, designed to carry a passenger, as a private hire vehicle. It applied to the respondent council for a private hire vehicle licence to be granted, pursuant to [s.48 of the Local Government \(Miscellaneous Provisions\) Act 1976](#) , but the council refused the application. The applicant appealed successfully to the magistrates’ court. On the council’s appeal against that decision, the Crown Court held that it was necessary, under [s.48\(1\)\(a\)](#) , to consider not just whether the motorcycle in question was safe in itself but whether it was safe for use as a private hire vehicle and it concluded that it was not and that, therefore, the licence should be refused and the appeal allowed. *75

H5. On the applicant’s appeal:

H6. Held, dismissing the appeal, that, under [s.48\(1\)\(a\)\(i\) of the Local Government \(Miscellaneous Provisions\) Act 1976](#) , if a vehicle, because of its type, size or design, was unsafe to be used as a private hire vehicle, then it was unsuitable for such use; that, therefore, a motorcycle could be in a safe condition for a motorcycle but it could still, for safety reasons, be judged to be unsuitable in type, size or design for private hire use ([18]); and that, on the evidence, the Crown Court had been entitled to find that the motorcycle in question was unsuitable and unsafe for private hire use ([19], [23]).

H7 No cases were referred to in the judgments or cited in argument.

Case stated by the Crown Court at Leeds (Mr Recorder Roberts and two justices)

CS1. On October 26, 2004 the court heard an appeal by Leeds City Council against a decision of the Leeds Magistrates’ Court on February 18, 2004.

CS2. The decision of the magistrates’ court was to allow the appeal of the applicant, Chauffeur Bikes Ltd, against a decision by the prosecutor’s licensing committee to refuse an application by the applicant for a private hire vehicle licence for a Pan-European Honda touring motorcycle.

CS3. The court heard evidence from Paul Varnsferry, Police Sergeant Thompson and Desmond Broster on behalf of the prosecutor, and from Bryan Roland and Colin Dale on behalf of the applicant. In addition the court had the benefit of a bundle of reports and other documentation which was also received in evidence at the hearing of the appeal.

CS4. The licensing regime for private hire vehicles was to be found in the [Local Government \(Miscellaneous Provisions\) Act 1976](#) . In particular [s.48](#) of that Act dealt with the licensing of private hire vehicles. [The case stated set out [s.48\(1\)\(2\)](#) and continued:]

CS5. It was necessary for the court to determine a number of issues of law raised by both the council and the applicant.

CS6. The competing submissions summarised briefly were as follows. (a) The council submitted that the legislature never intended motorcycles to be considered for use as private hire vehicles at all. The main basis for that submission was that in [s.51\(1\)\(b\)](#), which dealt with driver licensing, it was a requirement for an applicant for a private hire driver's licence to have been authorised to drive a motor car for at least 12 months. Subject to that primary submission, the council further submitted that there was an overlap between the issues of "suitability" and safety in [s.48\(1\)\(a\)\(i\) and \(iv\)](#). (b) The applicant submitted that there was no overlap between "suitability" and "safety". The applicant further argued that a restrictive approach should be taken to the criteria set out in [s.48\(1\)\(a\)](#). For example, it was submitted that "safe" did not mean safe as a private hire vehicle, because those words had been deliberately omitted from [s.48\(1\)\(a\)\(iv\)](#) by the draftsman. That [*76](#) contrasted with [s.48\(1\)\(a\)\(i\)](#) which specifically required suitability to be considered in the context of use as a private hire vehicle.

CS7. The court's determination of the issues of law were as follows. (i) [Section 48\(1\)](#) referred to "any vehicle" in the context of licensing private hire vehicles. In the judgment of the court, that allowed consideration of the proposed use of a motorcycle as a private hire vehicle. (ii) Although the court accepted that in [s.51](#) of the 1976 Act the draftsman did not consider the position in relation to other types of vehicle licences apart from a licence to drive motor cars, in the judgment of the court, that was not a safe basis for construing either the intention of the legislature or other sections of the same Act. A simple oversight by the draftsman was not a matter from which any inference could be drawn either as to statutory construction or disposition towards one type of a vehicle or another. (iii) There was an overlap between "suitability" and "safety". In the judgment of the court, the court's discretion had to be exercised with a view to the ultimate use of the vehicle as a private hire vehicle. That end objective had to inform the court's consideration of all the criteria in [s.48\(1\)\(a\)](#). (iv) The issues of "suitability" and "safety" were inexplicably intertwined, and the court would not be performing its task under [s.48](#) (in an appellate capacity) if it were to deconstruct the words of [s.48](#) to the extent that they lost the primary meaning which Parliament intended to invest in them. (v) It was a contradiction in terms to take a restrictive view of what was safe because when considering what was safe it was necessary to have regard to all factors in their proper context.

CS8. Against the determination of the issues of law that governed the court's approach to the issue of the licensing of the particular vehicle as a private hire vehicle, the court made the following findings of fact. (i) People sat on a motorcycle not in it. (ii) The contribution to the weight of the machine by adding a passenger and the positioning of the weight of that passenger could affect the handling of the machine. (iii) Those carried on the machine were exposed to the weather. (iv) The only conceivable protection against injury in the event of an accident consisted of the clothing and helmet worn by the rider. (v) The surface area of the tyres in contact with the road was comparatively small. (vi) The motorcycle was susceptible to side winds because of its two-wheeled configuration and its side area. (vii) Inexperienced passengers might intuitively counterbalance against the leaning over motion of a motorcycle by sitting upright in a way which might destabilise the machine. (viii) Inexperienced passengers might react unexpectedly during the course of exposure to the ordinary incidents of motorcycle riding and thus create a dangerous situation. (ix) A motorcycle driver might have to react suddenly to a gust of wind, a slippery surface or a motorist who had not seen him. The presence of an inexperienced passenger on the machine at that time who was not reading the road ahead might make the difference between a recovery from that situation and losing the balance of the machine resulting in an accident. (x) Sudden adverse weather conditions might affect the stability of the bike, and there was no way of predicting sudden changes in weather. No condition could be attached to any licence that could guard against that potential danger. (xi) The application made by the applicant had been thoroughly researched, conscientiously presented and plainly made with the best of intentions, seeking to [*77](#) co-operate with the council in providing as safe a service as it would be possible to provide based on the use of a two-wheeled motorcycle.

CS9. In the light of the foregoing determination of issues of law and findings of fact, in the court's judgment, the proposal to use the Honda Pan-European motorcycle as a private hire vehicle in Leeds should be refused because it was unsuitable

and unsafe for such use.

CS10. The granting of such a licence would be viewed by the public as an endorsement of that form of transport as a private hire vehicle and would encourage them to think that the dangerous potential which had been demonstrated to the court on the evidence for an accident had been carefully weighed and discounted to the extent they could be assured of safe and suitable transport in such a vehicle.

CS11. Whilst that would necessarily represent a commercial advantage to the operator, it would not reflect the preponderance of the evidence which the court had heard as to the fragility of the safety of such machines for use in the particular way with potentially inexperienced passengers in potentially all sorts of adverse conditions.

CS12. Accordingly, the appeal was allowed.

CS13. The applicant appealed.

CS14. The questions for the opinion of the court were: (1) whether the Crown Court erred in finding that the requirements of [s.48\(1\)\(a\)\(i\)](#) and [\(iv\)](#) of the 1976 Act overlapped; (2) whether the Crown Court erred in finding that the meaning of “safe” within [s.48\(1\)\(a\)\(iv\)](#) meant safe for use as a private hire vehicle; and (3) whether the Crown Court erred in finding that the vehicle in respect of which a private hire licence was sought, namely a Honda Pan-European motorcycle, was unsuitable and unsafe for use as a private hire vehicle.

H8Representation

Peter Maddox for the applicant company.
Ruth Stockley for the council.

H9 Representation

Solicitors for the company: Kearns & Co , Swansea.
Solicitors for the council: Solicitor, Leeds City Council .

JUDGMENT

KEENE L.J.

1. This is an appeal by way of case stated from the decision of the Crown Court at Leeds dated October 26, 2004. It concerns the licensing of a motorcycle as a private hire vehicle. The appellant sought a licence for a Honda Pan-European touring motorcycle for use as a private hire vehicle. The respondent local authority, the Leeds City Council, refused the application, but the matter was then taken on appeal to the Leeds Magistrates’ Court, which allowed the appeal. However, the local authority then appealed successfully to the Crown Court.

2. The local authority is given the power to grant or refuse private hire licences by [s.48\(1\) of the Local Government](#)

(Miscellaneous Provisions) Act 1976 (“the 1976 Act”). The proviso to that subsection, however, prevents the local authority from granting such a licence unless it is satisfied as to certain matters. The proviso reads as follows, in so far as it is relevant for the purposes of this appeal:

“Provided that a district council shall not grant such a licence unless they are satisfied—(a) that the vehicle is—(i) suitable in type, size and design for use *78 as a private hire vehicle; (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage; (iii) in a suitable mechanical condition; (iv) safe; and (v) comfortable.”

3. Such a licence may be granted in respect of a “vehicle” and there is now no dispute that that word in itself does not exclude motorcycles. Indeed a motorcycle could, on the face of the language, come within the terms of the definition of a private hire vehicle, a definition to be found in s.80(1) of the 1976 Act. That states that private hire vehicle: “means a motor vehicle constructed or adapted to seat fewer than eight passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of carrying passengers.”

4. The issue in the present case centres on the question of safety. The Crown Court heard oral evidence from both sides, and it had a number of reports before it. As a result, it concluded that a private hire licence should be refused for the Honda motorcycle because it was unsuitable and unsafe for use as a private hire vehicle.

5. It is clear that the court’s conclusion as to unsuitability was based on safety considerations. The case stated refers to a number of factors in that connection, for example:

“Design features

- (i) People sit on the motorcycle not in it.
- (ii) The contribution to the weight of the machine by adding a passenger and the positioning of the weight of that passenger can affect the handling of the machine ...
- (v) The surface area of the tyres in contact with the road is comparatively small.
- (vi) The motorcycle is susceptible to side winds because of its two wheeled configuration and its side area.

Safety issues

- (vii) Inexperienced passengers may intuitively counterbalance against the leaning over motion of a motorcycle by sitting upright in a way which may destabilise the machine.
- (viii) Inexperienced passengers may react unexpectedly during the course of exposure to the ordinary incidents of motorcycle riding and thus create a dangerous situation.”

There is also reference to the effect of adverse weather conditions and the reaction of inexperienced passengers to a slippery road surface and to other hazards.

6. In addition to its conclusion on safety, as judged objectively, the case also comments at [CS10] as follows:

“The granting of such a licence would be viewed by the public as an endorsement of this form of transport as a private hire vehicle, and would *79 encourage them to think that the dangerous potential which has been demonstrated to us on the evidence for an accident has been carefully weighed and discounted to the extent they can be assured of safe and suitable transport in such a vehicle.”

7. It was argued before the Crown Court, as it has been before us, that the word “safe” in s.48(1)(a)(iv) means safe per se rather than safe for use as a private hire vehicle, because the words “for use as a private hire vehicle”, which one finds in subpara.(i) when dealing with suitability, do not appear in subpara.(iv) where safety is referred to. Therefore subpara.(iv) is confined to considering whether the vehicle is safe in itself.

8. The argument then put before the Crown Court was that, since safety was specifically dealt with in subpara.(iv), it could not be taken into account when considering whether the vehicle was “suitable in type, size and design for use as a private hire vehicle” under subpara.(i). Put very succinctly, it was said that the two subparagraphs, (i) and (iv), did not overlap.

9. The Crown Court rejected that argument. It decided that there was such an overlap between “suitability” and “safety”. In the case stated at [CS7(iii)] the Crown Court says that the powers must be exercised “with a view for the ultimate use of the vehicle as a private hire vehicle and always in regard to that ultimate use of the vehicle.”

10. The questions posed for the opinion of this court are as follows:

“(i) Whether the Crown Court erred in finding that the requirements of section 48(i)(a)(i) and (iv) of the 1976 Act overlapped.

(ii) Whether the Crown Court erred in finding that the meaning of ‘safe’ within section 48(1)(a)(iv) meant safe for use as a private hire vehicle.

(iii) Whether the Crown Court erred in finding that the vehicle in respect of which a private hire licence was sought, namely a Honda Pan-European motorcycle, was unsuitable and unsafe for use as a private hire vehicle.”

11. On behalf of the appellant Mr Maddox submits that s.48(1)(a) lists five matters separately, and that they should therefore be considered separately. In an attractively presented argument this morning he has contended that “suitability” in subpara.(i) does not cover safety. If it did, subpara.(iv) would be redundant. Suitability, it is said, is concerned with whether the vehicle is capable of being used as a private hire vehicle, which this motorcycle is because it is designed to carry a passenger.

12. Mr Maddox contends that if a vehicle is capable of carrying a passenger then that is sufficient. Moreover, it is argued

that “safe” in subpara.(iv) is not to be considered in terms of the proposed use as a private hire vehicle; had that been the intention, Parliament would have said so, as it has done with the words in subpara.(i).

13. Mr Maddox also attacks the factual conclusion reached by the Crown Court. He submits, principally, in his written argument (on which he has touched briefly and orally this morning) that the court wrongly adopted a comparative approach and *80 that its findings merely show that in certain conditions travelling on a motorcycle may be less safe than a car, but it does not follow that it is unsafe.

14. It is also said that the Crown Court was wrong to conclude at [CS10] of the case (which I have quoted earlier) that the granting of a licence amounted to some form of endorsement of the motorcycle. The granting of a licence does not assure safety, but it is merely an indication that the statutory requirements are satisfied.

15. The thrust of Mr Maddox’s argument, and indeed the effect of it, is that the district council and any court on appeal cannot lawfully consider whether the vehicle in question is safe for use as a private hire vehicle in terms of its type, size and design. The argument, as I have indicated, amounts to saying that safety in subpara.(iv) only concerns the safety of the vehicle in itself, and subpara.(i) does not include safety when considering suitability as a private hire vehicle.

16. Of course if that argument is right, the result would be that safety for the proposed use in terms of type, size or design of vehicle would not be a relevant consideration when such licences are being dealt with. That indeed is the objective which the appellant seeks to obtain.

17. It seems to me that, despite all the skill and ingenuity displayed by Mr Maddox, the proposition only has to be stated for its absurdity to be manifest. It is inconceivable that Parliament did not intend the safety of the vehicle in these respects for such use as a private hire vehicle to be taken into account. If the appellant was right, a licence under s.48 could be granted for a vehicle whose size or design made it unsafe for such use, and I cannot see that that could have been intended.

18. It *may* be that the narrow construction of the word “safe” in subpara.(iv), as put forward by the appellant, is right. In other words, that subparagraph may be concerned as a criterion with whether the vehicle in question, which in terms of type, size and design is entirely suitable for private hire use, is actually safe in all respects; so that if, for example, the seatbelts in a car were too worn the vehicle would fail subpara.(iv). However that does not greatly assist the appellant. I am quite satisfied that, if that construction were right, subpara.(i) when it refers to suitability in terms of type, size and design for such use brings in safety as a relevant consideration. If, because of any of those factors of type, size and design, the vehicle is unsafe to be used as a private hire vehicle, then it is unsuitable for such use. Consequently a vehicle may be in a safe condition for a vehicle of its type, size and design (as this motorcycle apparently was) with the result that there was nothing wrong with its safety as motorcycles go; but it could still for safety reasons be judged to be unsuitable in type, size or design for private hire use.

19. As to the Crown Court’s finding that this vehicle was unsuitable and unsafe for private hire use, I cannot see that its conclusion was not open to it. It did not do any comparative exercise, i.e. merely comparing the motorcycle with a car. Most of its specific findings related simply to the safety for such a use of this motorcycle. Certainly, given that it had both oral and written evidence before it, one cannot say that the court reached an impermissible conclusion.

20. I recognise that motorcycles regularly carry pillion passengers in modern use and that they do so lawfully, implying that the process is not to be seen as inherently unsafe. But in such private activity the driver and the passenger would normally be known to one another and there would be the opportunity to take *81 precautions to assess experience and to give instructions. Private hire vehicles carry ordinary members of the public who would usually be previously unknown to the driver to any significant degree. It is therefore quite a different context. In that context, there was nothing wrong in the Crown Court's comment at [CS10] of the case stated (cited earlier), where in essence it suggested that the grant of a licence would indicate to the public that the private hire use of this motorcycle had been found to be safe. That would indeed be the case. The Crown Court's conclusion overall was not outside the range of conclusions which could reasonably be reached on the evidence it had.

21. Dealing finally with the questions posed in the case, I would answer question (i) in the negative in so far as subpara.(i) of s.48(1)(a) does embrace safety in the way outlined earlier. It is part of suitability for such proposed use. It then becomes unnecessary to give a definite answer to question (ii) about the meaning of "safe" within the meaning of s.48(1)(a)(iv) , although I have given an indication as to the way my mind approaches that matter earlier in this judgment. Question (iii) again should be answered in the negative.

22. For these reasons I, for my part, would dismiss this appeal.

POOLE J.

23. I agree.

24. This argument has been attractively presented by Mr Maddox. He makes the point that there is no reason to regard the vehicle under consideration as being unsafe in itself. Does it therefore become unsafe because people are prepared to go on it? The answer, or part of it, is, I think, that the legislation, namely the 1976 Act, permits district councils individually to consider that question. The fact that a district council, say in Kent, may come to one conclusion (as we are told was the case) does not oblige one in Yorkshire to do the same. Nor does Mr Maddox argue otherwise.

25. The question, therefore, is whether the Crown Court at Leeds erred in law in its determination of the questions stated for the opinion of the High Court at [CS14(i),(ii) and (iii)] of the case stated. In my judgment it did not. The question, as I see it, resolves itself into a simple one, namely, whether the words "suitability of type, size and design for use as a private hire vehicle" under s.48(1)(a)(i) permit the court to consider the question of safety under that subsection, given that subs.(1)(a)(iv) specifically deals with the question of safety.

26. For my part I am satisfied that it does permit such consideration. It would be extraordinary, in my view, if the court, though satisfied that the machine was safe as being well constructed and maintained, were precluded from going on to consider its safety for use as a private hire vehicle when considering its suitability for such use. Parliament cannot, I believe, have intended such a limitation, and I would refuse this appeal.

Reported by Jill Sutherland, Barrister. *82

Appeal dismissed with costs.