

(1) Jackson and (2) Noble v East Riding of Yorkshire Council

Hull Crown Court, 30 July 2018

Mr Recorder Withington, plus two Justices of the Peace

NOTE OF JUDGMENT 14:004

1. By notices of appeal dated 29 Nov 2017 WJ and AN challenge a decision of Beverley Magistrates' Court on 28 Nov 2017 to dismiss their appeals against decisions on 6 March 2017 and which were confirmed in writing on 13 March 2017 that their joint PHO licence be revoked ...
2. There is a similar appeal made by WJ made against the revocation of her PH and HC driver's licence.
3. The appellants are represented by Mr Schiller and the Council by Mr Philip Kolvin QC. We are grateful to both for their submissions and focus on the salient issues to assist the court in determining the central issues in dispute in the case.
4. We have been provided with three bundles ... We have heard oral evidence from both the Appellants and from the Council: Mr Benjamin Eagle, Ms Tina Holtby, Atwood, Glass. and PCSO Humphrey. We have had regard to all the evidence before us. It is not possible to make findings of fact on every issue but we do so on the salient issues necessary to determine the appeal.
5. The PHO is in joint names but the focus of the Respondent Council's concerns relate to Ms Jackson alone. No criticism is made of Ms Noble but her position as joint licensee stands or falls with Ms Jackson.
6. There is agreement as to the law. the powers of the Council acting by its Licensing Committee enable it to revoke a driver's licence or PHO licence under ss.61/62 of the LG (MP) Act 1976 and the ground relied upon is effectively "any other reasonable cause". That is informed by what is a fit and proper person. This court accepts there is a paramount public interest that

drivers and operators meet high standards of behaviour and the importance in particular in meeting safety and welfare of their passengers. We have in mind the observations of Bingham LJ in *McCool v Rushcliffe BC* where it is said: “*One must as it seems to me bearing in mind the objectives of the licensing regime ...*”

7. It is also agreed between us that the fit and proper person test as defined by the Council must apply. That is within our law bundle, at p.74-76, and in particular we note that starting at para 23.5 the policy says as follows: “*The licensing authority has a duty to take a robust stance ...*” At para 23.7 the policy says this: [reads]. The policy concludes at para 23.8 ... [reads]
8. It is not for this court to go behind that test but it is common ground that we should apply it in reaching our determination of the case. It is accepted the ultimate test to be applied is whether, based on up to date evidence, we are satisfied that the Licensing Committee’s decision was wrong. The burden is on the Appellants to prove it was wrong: *Hope and Glory*. We have sought to approach this case on basis of Burton J, which was commended by Toulson LJ, quoted at [34]: “*What the appellate court will have to do ...*”
9. We have and bear in mind the observations of LCJ Goddard referred to in [32] namely: a court ought to pay great attention to the fact that the duly elected and constituted local authority have come to an opinion on the matter but we remind ourselves that Toulson LJ said at [45] that the weight to be attached to those reasons is a matter for our judgment based on fullness and clarity of those reasons.
10. We consider the following are the key dates in the chronology:
 - (1) Ms Jackson has been a hackney carriage driver since 2012 and she has held a PHO since 10 Nov 2015. Somewhat unusually this licence was effectively dormant because no vehicles were initially attached to it but after her purchase of Marina Cars on 24 Aug 2016 she acquired and began to operate at least 12 vehicles under the name Wendy’s Wheels.

(2) The first inspection took place only 24 hours later on 25 Aug 2016 followed by a second on 14 Sept 2016 and there was a formal meeting between herself and the Council on 26 Sept 2016 which resulted in a final written warning being issued to her on 18 Oct 2016 which we have in our exhibits bundle p.7.

(3) Further concerns were expressed which led to a reference to the Licensing Committee which convened on 13 March 2017 and resulted in a decision adverse to Ms Jackson and the business, which we have in our core bundle at p.13. There was equally a decision made in relation to her driver's licence at p.25 of the core bundle. The reasons of the Licensing Committee were that there had been: (i) failure to comply with hackney carriage legislation because on 3 Feb 2017 there had been a contravention of s.62 TCPA 1847: wilfully leaving a hackney carriage unattended on the rank at the Promenade; (ii) failure to comply with the Council's policy and a failure to promote the aims of policy. On 18 Oct 2016 a final written warning was issued ... Operator did not appeal this decision. There were further complaints in Jan 2017 relating to Facebook posts which were accessible to public, showing a complete disregard for policy ... derogatory and offensive language ... (iii) the PHO confirmed there was no employer's liability insurance in place ... Essentially the same reasons were relied on by the Licensing Committee to revoke the driver's licence, save for the last which is obviously inapplicable to her as a private driver.

11. The Justices considering the appeal provided written reasons for their decision. They essentially found as follows: (1) Ms Jackson had consistently failed to comply with record keeping requirements and requests for adequate records to be kept; (2) there had been a lack of professionalism and inappropriate conduct, and it was likely she did use offensive language – the Facebook posts provided examples of likely language she used; (3) she had given a plausible explanation for the mobile phone incident; (4) the Fairway notice – ... fit and proper proprietor would have assisted the police with their

enquiries. They also noted the speeding points and defective tyre; (4) Ms Jackson's conduct warranted warnings and she did not address issues within the reasonable period of time allowed. For those reasons Justices found ... Ms Jackson was not a fit and proper person to hold these licences and the Council was not wrong in revoking in the licences.

12. It is obviously right that matters have progressed since that decision. We have been informed of a number of matters and been invited to give them consideration when deciding whether the Licensing Committee's decision was correct.

13. The first relates to the installation of an electronic booking system – "Taxihub" – a well known system and which automatically populates information required ...

14. There have also been a series of other matters.

15. One is an incident of Ms Jackson driving through a red or amber traffic light on 21 Dec 2017 which resulted in a written warning. A Facebook entry relating to the consumption of an energy drink on 1 April 2018. An incident which alleges she was driving while writing on her hand or clipboard ... An incident involving a driver employed by her when a passenger was caused to fall from a vehicle which was proceeding before he had fully entered it.

16. We considered it appropriate to carefully consider in the first instance the decision of the Licensing Committee and whether the evidence we have justified their findings and, in due course, the decision of the magistrates and whether their findings remain appropriate and whether the Appellant has demonstrated that they were wrong. ...

17. The decision of the Licensing Committee. The first finding they made was that Ms Jackson had wilfully left a hackney carriage unattended on a rank on 3 Feb 2017. This related to a parking of her vehicle when Ms Jackson was attending a nail bar. There is a modicum of agreement because Ms Jackson

in evidence said she had dropped a customer off and then had spent longer chatting in the nail bar than she ought to have done. The evidence she had acted inappropriately was in the evidence of Mr Hollund, which was largely unchallenged before us. [Reads from his witness statement at p.102 Core Bundle], "*Wendy you cannot leave a taxi ...*" "*No I won't lie to you, I was getting my nails done ...*" Mr Hollund's account was unchallenged. He agreed that Ms Jackson had not been abusive and there had been no subsequent repetition. We are quite satisfied that Ms Jackson knowingly parked wrongfully on the rank when she was going to nail bar for her own purposes and she knew in doing so she was contravening the rules. Therefore we are quite satisfied that the Licensing Committee was correct she had left her hackney carriage unattended on that occasion.

18. The Licensing Committee also found the final written warning [p.7 Core Bundle] was correctly given. That final written warning had no appeal from it and contained a number of salient criticisms, which we have carefully analysed. It began with notification of a written warning for points on her driving licence – which were accepted and it was common ground - 3 remain active until Nov this year.
19. We also heard from Glasscott in relation to the condition of vehicle, esp. the tyre, and we consider that finding is well founded.
20. We have also found, and this is amply demonstrated by the documentary evidence, that there has been a wholesale disregard up until recently with the installation of an electronic system, of the requirement for comprehensive documentary records to be kept with regard to each individual booking. We have had particular regard to the exhibits bundle and documents found at pp.124 and 133 in which Mr Eagle on 10 Nov 2015 and then following on 25 Aug 2016 set out in clear and unambiguous language the requirements of documentary records each operator was required to meet. We are satisfied that that information could not be clearer and there was no reasonable excuse, even in absence of an electronic system, for Ms Jackson to have failed to keep accurate records.

21. We are also satisfied that the comments and criticisms made in the Fairway letter ... this incident was subject to effectively unchallenged evidence from PCSO Humphries. It arose in this way: Ms Jackson was driving a vehicle with a person known to her as a drug dealer in the rear passenger seat, there was an incident involving another vehicle which cut across her and which aggravated her passenger who threw a bottle which struck the rear window of other vehicle and led to the other vehicle retaliating while Ms Jackson continued her journey and led to a bottle being thrown at or through her window. PCSO Humphries said in her opinion that Ms Jackson did not consider this incident as serious and regarded it as amusing. We consider that this does represent a serious error of judgment on behalf of Ms Jackson. We consider it understandable she would not want to divulge the name of individual concerned, given that she was under no legal compulsion to do so, but we do regard her conduct as demonstrating a lack of appreciation as to the seriousness of this incident, which did escalate into a serious road rage incident which placed her and passenger at risk. We find as a fact that we are concerned that she failed to stop her vehicle or otherwise prevent the incident escalating by requiring her passenger to leave the vehicle. We find the Fairway letter was fairly and reasonably sent to her and calls into question her fitness as a driver and PHO.

22. The Licensing Committee made findings as to the Facebook messages. Firstly, on 14 Jan 2017 13.46, she says "*They are all out of order ...*" Whilst Ms Jackson says that was not in reference to any particular licensing officer, it seems to us that is manifestly untrue and is a plain reference to Ms Holtby who was attempting to regulate operation of Wendy's Wheels. We note that, in particular, a fit and proper person must maintain proper relations with the licensing authority, and therefore this is a serious matter. The messages continue [pp.32-33] in a page for the business which features its name and telephone number and photo of her taxi. She makes a number of assertions [pp.33-35]. A flavour can be derived from the message on 16 Jan 2017: "*... trust me our paths will cross very soon.*" In relation to these matters, Ms Jackson said she that was experiencing personal issues and that provides

(our characterisation) an explanation rather than an excuse. We do not regard even a serious breakdown as justifying the aggressive and threatening messages associated with her business on its Facebook page. The policy makes requirements for a relationship of co-operation with the Council and the importance of avoiding abusive or threatening conduct. These messages plainly fall foul of those requirements of the fit and proper person test.

23. The final matter related to a lack of employer's liability insurance. Ms Jackson said that this did not form part of her licence conditions and she promptly and immediately rectified the situation. The latter is certainly true, but we do find it extraordinarily troubling that a person employing people would not be aware of the compulsory requirement to have employer's liability insurance in place. We find the Licensing Committee were perfectly justified in making that criticism at that stage.

24. The magistrates' decision. We note the common ground [p.37] and the extensive findings made by the Justices relating to record keeping. Their first criticism was that there had been a wholesale and lengthy failure without proper excuse to ensure documentary records, which were required of her, were maintained as specified by Mr Eagle in his emails ... fundamental concern whether she is a fit and proper person.

25. Equally this court was most concerned by evidence which we had received at [Exhibits Bundle p.305] which related to an incident on or about 15 July 2017 relating to a job carried out by Mr Hunter ... email sent by Louise Attwood to Wendy's Wheels. In short, it was accepted there had been a decision by Ms Jackson to effectively recreate [records], in order to retrospectively authorise the journey taken by Mr Hunter, where it was not otherwise a lawful journey he had undertaken. It was said that by placing details into the record it does not legitimise the booking and condones ... we entirely echo that sentiment. It is a matter of profound concern that Ms Jackson would associate herself with any amendment to documentary records which give ostensible authorisation to an otherwise unlawful journey.

26. We are also satisfied the justices were entitled to find that there had been a lack of professional co-operation between Ms Jackson and the Council. On her own account, relations with the Council are at a low ebb and we accept the evidence of Ms Holtby that there has been inappropriate language and a lack of professionalism which is perhaps characterised by Ms Jackson's upset that an immediate attempt to regulate her business was made by the Council and which has led her to adopt a confrontational attitude with the Council. The Council were perfectly entitled to undertake a prompt investigation of the business, where 12 cars were suddenly installed, and it was hardly surprising that concerns should be expressed where (well-founded) proper arrangements were found not to be in place 24 hours after registration had been undertaken.

27. The Magistrates were not prepared to make adverse findings relating to mobile phone on Christmas day. Equally we are not satisfied of inappropriate conduct based on that incident. We note it may be surprising a phone may be collected from a shop, but we are satisfied that there is no adverse inference to be drawn because of the prompt shutting of that shop on Christmas day and because it had not promptly re-opened owing to the bank holiday on Boxing Day. Whilst as a matter of fact she received a call in relation to returning the call before making any positive attempts to return it, we are not able to make a finding of inappropriate behaviour. We disregard this matter in its totality.

28. The magistrates also found that a stepped approach had been taken by the Council and it seems to us that that fairly represents the evidence. A formal warning was followed by a final written warning before then proceeding to revocation. In our judgment, a driver and PHO should comply from the very outset of commencing business and we reject the criticism on Ms Jackson's behalf that the original letter of Mr Eagle in November, which gave rise to an impression there would be no inspection within 3 months, was in some way prescriptive or proscriptive as to when an inspection would take place. We form the view that the Council was perfectly entitled to inspect when they

consider it appropriate. ... well-founded because concerns were raised from the beginning of business.

29. Our conclusion is that there is ample evidence to conclude that the Licensing Committee's and Magistrates' Court's decisions were correct.

30. We must take into account more recent evidence.

31. The first relates to Ms Jackson passing through an amber light on 21 Dec 2017. We have viewed the footage and we regard it as particularly relevant because it was 3 weeks after the decision of the Magistrates' Court, when we would have expected the very highest of standards of driving, given the concerns expressed and the presumed hope of Ms Jackson of persuading this court that she had changed her previous approach and was now to be commended for achieving the highest standards of driving. In our judgment the finding her conduct warranted a warning [p.356] and the decision by Mr Abbot to reject the appeal was a fair and legitimate one. He found there was sufficient time to stop the vehicle ... given the previous history, a formal written warning was appropriate. We don't demur from his assessment and whilst we observe that someone passing through an amber light is not uncommon, we are equally satisfied that Ms Jackson could have stopped before the light given her speed. This is illustrative of her general approach of pushing the concept of legality to its absolute limits. This is relevant to her driving standards.

32. Our attention has been drawn to a further Facebook posting at [p.275] 1 April in which Ms Jackson made a "*note to self ...*" We do not find this is a matter of any significance and make no criticism of Ms Jackson. Unlike her plainly inappropriate posts, this was an attempt at humour and not a reference to her driving in a state of fatigue or that she was reliant on these kinds of stimulants to maintain her driving ability.

33. There was a further incident on 14 April 2018. A report was received from Roger Esberger [p.166 Core Bundle]. Mr Esberger said this [reads]. That

evidence is relied on by the Council who have also contacted the purported passenger and that is a Mrs Denise Seymour. There is an email from the Council to her confirming a conversation in the following terms (Exhibit 168 to Mr Eagle's statement): [reads] This is an allegation which we have to apply great care to. We have heard evidence from neither Mr Esberger nor Mrs Seymour. We bear in mind that Mr Esberger may have an axe to grind against Ms Jackson. Ms Jackson confirmed in her evidence that she does from time to time write on her hand but would not do so in a moving vehicle which she would consider dangerous, although inferentially she accepts she would do while stationary. It is said this allegation cannot be relied on because Mr Esberger is adverse to her, her own documentary records and memory reveal there were 5 people in the vehicle rather than 1 and this is an allegation we should not make adverse findings on. We do make, and bearing in mind concerns which might be expressed in relation to its reliability, notwithstanding those matters, on the balance of probabilities we are satisfied that there was an incident where Ms Jackson was writing on her hand while present in the vehicle with Mrs Seymour. We do so on basis of our assessment of Ms Jackson and her admitted propensity to write on her hand and that no reason has been given why Mrs Seymour (who is otherwise a regular and reliable customer of Wendy's Wheels) would give a false account. We are satisfied that this is an accurate report of an incident which naturally give rises to concern about Ms Jackson's driving.

34. Finally there was a matter on 25 April 2018 [p.396]. It is a most deplorable incident when a driver from Wendy's Wheels drove off while picking up a person we are quite satisfied was vulnerable and was attempting to get into the back of a car provided by Wendy's Wheels. The door was opened by this person, and notwithstanding that it must have been plain and obvious from the dashboard indicator that the door was open, and the driver cannot have failed to look behind him before setting off, he drove off causing this person to fall to the ground. That was compounded by the driver providing a false account of that incident to his controller, based on the documentary evidence we have seen. It is of course no fault of Ms Jackson, or Wendy's Wheels, that a driver would act in that way. Our concern is her response. We are satisfied

that she acted appropriately in viewing the CCTV footage which we saw and acting to suspend the driver. Whilst we express our concern that such an incident could arise, there is no basis for criticising Ms Jackson arising from her investigation and actions as a result.

35. In all the circumstances, and based on our findings of fact, the Licensing Committee was justified in making its decision. There were serious matters of concern justifying its finding that Ms Jackson both as a driver and a PHO was not a fit and proper person. We are also satisfied that the Magistrates' Court's findings were well justified based on the evidence we have heard. We apply a proportionate approach, and have had regard to matters such as the positive qualities of Ms Jackson – she has had a lengthy period of time as a driver, and we also accept she has many satisfied customers, and in those circumstances the court should not say that all things were bad. We also commend her for finally putting in place an electronic booking system in place. However, overall, and bearing in mind the requirement we have to apply the policy as to a fit and proper person, we note and have particular regard to the fact that the policy itself requires a person to be fit and proper (3.25) and remain a fit and proper person to hold a licence at all times. We are perfectly satisfied there has not been the consistent and engrained compliance and approach towards all requirements placed on a driver and PHO. We are quite unable to say the decision of the Licensing Committee was wrong. It is our judgment and finding that the respective appeals made by Ms Jackson both in relation to the PHO licence and the driver's licence are dismissed. We therefore uphold decision of the Licensing Committee in relation to both her and Ms Noble.

[Submissions as to costs: principle and quantum. Adjournment to consider decision on costs]

36. We do think it is appropriate as a matter of principle that there should be a costs order in the Council's favour given the appeal has been dismissed.

37. We have already determined the issue of costs in principle, we now deal with quantum. We have been provided with a schedule which properly excludes VAT and which claims the total sum of £29,224.00 which we understand have only been incurred since the Magistrates' Court's decision in November 2017. The lion's share of the costs relates to instructing Queen's Counsel. We have to have regard to what we consider a reasonable and proportionate amount. We are prepared to accept that this is a matter of some significance to Council and a fair amount of work was required to prepare the case and there are costs associated with the witnesses. The amount of time for preparation are on the high side. We don't criticise the costs associated with Queen's Counsel appearing on behalf of Council who presented with the case with conspicuous skill. However, we cannot say that this was not a suitable case for junior counsel.

38. Total costs: £12,000. We will order it payable in 28 days time. If alternative terms are reached that is a matter for the parties.