

## Aylesbury Vale District Council v Call a Cab and Ahtiq Raja

The council prosecuted Call a Cab Limited (CACL) for acting as a private hire operator without a licence under section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976, together with its director for aiding and abetting the commission of the offences.

CACL is a limited company which does not hold an operator's licence. The council believes that for the journeys concerned it acted as an operator for the vehicles concerned, meaning it made "provision for the invitation or acceptance of bookings":

The journeys we are concerned with were made by council employees acting as "test purchasers". This was done to ensure that an accurate record of the booking and the journey could be kept. In each case the "customer" called a telephone number which is advertised by CACL on its website, its cards and the doors of private hire vehicles. The telephone was answered by an employee of CACL. The details of the journey given by the customer. A vehicle arrived to collect the customer and take them to the destination. Sometimes the customer received a text message shortly before they were picked up giving details of the vehicle with the message such as "Thank you for having Call a Cab Limited arrange your travel needs on your behalf".

There was no contact between the customer and anyone other than CACL from the time the call was made until the time the car arrived to collect them.

The case was heard at Aylesbury Magistrates' Court on 6 February 2013 and Friday 8 March 2013.

The defendants denied the offences claiming that Call a Cab Limited did not require a licence because it was not acting as an operator itself but was instead acting as an intermediary on behalf of licensed operators.

As part of their case, the defendants also argued that the council had not properly adopted the relevant provisions of the 1976 Act and therefore was not a 'controlled district' which is an essential element of the offences.

Section 45 of the 1976 Act states that a council shall not pass a resolution to adopt private hire controls unless they have:

- (a) Published in two consecutive weeks, in a local newspaper circulating in their area, notice of their intention to pass the resolution; and
- (b) Served a copy of the notice, not later than the date on which it is first published in pursuance of the foregoing paragraph, on the council of each parish or community which would be affected by the resolution, or in the case of such a parish which has no parish council, on the chairman of the parish meeting.

The council passed a resolution to adopt the provisions on 8 March 1989 and was able to provide evidence of the newspaper advertisements. The council, however, could not prove that the notices to the parish councils and meetings had been sent because its correspondence files had been destroyed. For this reason, the Court dismissed the council's case.

The Court **did not** rule on other procedural and substantive points arising in the case, including whether Call a Cab Limited had been operating without a licence.

## **Aylesbury Vale District Council v Call a Cab Limited**

**Aylesbury Magistrates' Court (DJ Pattinson) 8<sup>th</sup> March 2013**

A prosecution of a taxi company has failed for reasons which will amount to a wake-up call for taxi licensing authorities across the country. 24 years to the day after adopting the private hire licensing regime, Aylesbury Vale District Council's prosecution of a local operator was dismissed because of alleged procedural failures in the adoption process.

The Council prosecuted Call a Cab Limited for operating without a licence under section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976, together with its director for aiding and abetting the commission of the offence. The company claimed that it was not an operator but an intermediary, acting as a taxi management service, finding operators to meet the customer's journey requirements rather than accepting the booking itself. According to the Council, even if this was true, it did not change the company's status as an operator, given the definition of an operator in section 80 of the Act as someone making provision in the course of business for the invitation or acceptance of bookings for a private hire vehicle. Furthermore, said the Council, not all customers would have been aware that they were dealing with an intermediary rather than a taxi operator.

However, the company argued that it was an essential element of the offence under section 46(1)(d) that the operation occurred in a controlled district, defined in section 80 as an area for which the Act was in force by virtue of a resolution passed by a district council. The Council produced a resolution passed 24 years earlier on 8<sup>th</sup> March 1989, but the company argued that upon construction it did not amount to a proper resolution for the purposes of the Act.

The company had another string to its bow. Following the House of Lords judgment in *Boddington v British Transport Police* [1999] 2 AC 143 it argued that it was entitled to show on balance of probabilities that the resolution was procedurally invalid. Section 45(3) provides that no resolution should be made unless the Council has placed a statutory notice of intention to adopt in a local newspaper and has served the same on parishes and parish meetings in its area. In the case of Aylesbury Vale there are 85 parishes and 27 parish meetings. While it was accepted that newspaper advertisements had been placed, the company did not accept that notices had been duly sent, let alone received. It argued that non-receipt by one parish was sufficient to vitiate the resolution.

The Council had the difficulty that it had long since destroyed its correspondence files and so could not bring evidence that the notices were sent. The company, on the other hand, had researched Buckinghamshire County Council archives and discovered the parish records for 12 of the parishes, whose detailed minutes did not demonstrate receipt of any such notice, even though the minutes apparently recorded all manner of information from the trivial to the important. The Council argued that an absence of note in 12 sets of minutes out of 85 parishes did not amount to proof that the notices had not been received at all. The company argued that if a random sample of 12 had no record of receipt, and the records were (as they appeared to be)

a complete account, then given that the Council itself had no evidence that the notices were sent, the conclusion on balance must be that they were not.

The Council also argued that, since the case of *R v Secretary of State for the Home Department ex parte Jeyanthan* [2000] 1 WLR 354, the Courts have not treated every procedural lapse as nullifying the administrative act in question. However, the company pointed to the words of Lord Woolf MR in that case, namely that one has to focus on what Parliament considered should be the result of non-compliance. In the case of the Local Government (Miscellaneous Provisions) Act 1976, section 45(3) amounted to a prohibition on passing a resolution unless the procedural requirements had been met