

JERSEY / JUDGMENT

Bisson -v- Minister for Infrastructure

[2016] JRC 227 (06 December 2016)

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judgment

the commissioner: 1. In this case the Appellant ("Ms Bisson") appeals against a decision of the Respondent ("the Minister") to suspend her public service vehicle ("PSV") licence pursuant to Article 10 of the Motor Traffic (Jersey) Law 1935 ("the Law") and at the same time to suspend her badge to drive public service vehicles pursuant to Article 30 of the Law. 2. Both suspensions took effect on 19 th August, 2016, and were originally of indefinite duration. Ms Bisson appealed against that original decision. However, on 14 th September, the suspension was varied to one of six weeks with the consequence that it lasted until 29 th September. It follows that the period of both suspensions has long since expired but Ms Bisson pursues her appeal in order to establish that the decision to suspend her was wrong and should be overturned. The legal framework 3. The relevant statutory provisions have recently been amended but we describe them as at August 2016, being the time of the relevant events. 4. Article 5 of the Law provides that public service vehicles are divided into three classes, one of which is 'those used to provide a cab service'. Article 1(1) of the Law defines 'cab service' as 'a service that consists of the carriage by motor vehicles of passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at a fixed rate or for an agreed sum'. 'Cab' is defined in the same Article as 'a motor vehicle being used to provide a cab service'. 5. Article 6 of the Law provides that a person must not cause or permit a motor vehicle to be used on a road as, inter alia, a cab unless:- (i) The person is the holder of a PSV licence for the vehicle that authorises the vehicle to be used for that purpose; and (ii) The vehicle is being used and operated in accordance with the conditions set out in the licence. 6. Article 9(1) of the Law sets out the criteria which must be satisfied for the Minister to grant a PSV licence and Article 9(2) provides that he may grant such a licence subject to conditions. Article 9(3) provides that the conditions shall be such, as in the Minister's opinion, are necessary or desirable to ensure the proper operation of the vehicle and the public service to be provided by the vehicle. 7. Article 10 of the Law provides that the Minister may suspend or revoke a PSV licence either for a specified period or for an indefinite period if it appears to the Minister:- "(1) (a) that its holder is no longer a fit and proper person to operate the public service provided by the vehicle having regard to the holder's conduct, whether in respect of the provision of that public service or otherwise, the manner in which the vehicle has been used or operated or the manner in which the public service has been provided (or has failed to be provided); or

- (b) that the vehicle to which the licence relates has been used or operated in contravention of a condition set out in the licence." 8. Article 28(1) of the Law also requires a person driving a public service vehicle on a road to be the holder of a badge that authorises a person to drive public service vehicles of the type in question. 9. A badge may also be revoked. This is dealt with in Article 30(1) of the Law which provides as follows:- "(1) The Minister may, by written notice served on the holder of a badge, revoke or suspend, either for a specified period or for an indefinite period, the authority the badge gives the person to drive a public service vehicle if the Minister is satisfied that, by reason of the person's conduct, or a physical or mental disability, the person is, either permanently or for the time being, not a fit person to drive a public service vehicle of the type specified on the badge." 10. As is well known, there are different types of cab. These are defined in the Motor Traffic (Taxi-Cabs - General) (Jersey) Order 2002 ("the Order") as a 'controlled taxi-cab', a 'restricted taxi-cab' and a 'limousine taxi-cab'. We are concerned only with the first two of these categories. 11. The essential difference between a controlled taxi-cab and a restricted taxi-cab is that the former can wait at and use taxi ranks without restriction, whereas the latter may only use a taxi rank in certain limited circumstances. Thus Article 2 of the Order provides:- "2. A controlled taxi-cab may:- (a) stand on a taxi rank; and (b) pick up passengers at a taxi rank." 12. The position in relation to a restricted taxi-cab is dealt with by Article 3 of the Order which provides as follows:- "3(1) Except as provided by paragraph (2), a restricted taxi-cab must not:- (a) stand on a taxi rank; or (b) pick up passengers at a taxi rank. (2) A restricted taxi-cab may pick up passengers at a taxi rank established at the Airport, Albert Pier or Elizabeth Harbour if no controlled taxi-cab is standing on the taxi rank." 13. Controlled taxi-cabs are identified by having a yellow licence plate whereas restricted taxi-cabs have a white licence plate (or a red one where the driver is employed by a restricted taxi-cab company). 14. The importance attached to restricted taxi-cabs adhering to the rule in relation to not using taxi ranks is shown by Article 11(1) of the Order which, so far as relevant, provides as follows:- "11. Enforcement (1) If a cab is allowed to stand on a taxi rank or is used to pick up a passenger at a taxi rank ... contrary to Article 3(1) ..., that action is to be taken to be a breach of the cab's public service vehicle licence and renders the licence liable to be revoked or suspended in accordance with Article 10(1)(b) of the Law." 15. The point is repeated in the Code of Conduct issued by the Driver & Vehicle Standards Department ("DVS") for the guidance of drivers and licence holders of a cab. The Code of Conduct states on its face that a failure to comply with any requirement of the Code will be taken into account by the Minister when considering whether the person concerned is a fit and proper person to continue to hold a taxi-cab licence (being the expression in the Code which covers both controlled taxi-cabs and restricted taxi-cabs) and/or badge and whether the vehicle is fit to continue to be used as a taxi-cab. 16. Paragraph 18 of the Code provides (so far as relevant):- "18.... If your taxi-cab is a restricted taxi-cab you must not pick up passengers from, on or near a taxi rank or stand on any taxi rank although you may pick up a passenger at the taxi rank at the Airport, Albert Pier or Elizabeth Harbour if no controlled taxi-cab is available to do so." Nature of this appeal 17. The Law provides for a right of appeal to this Court against the suspension or revocation of a PSV licence or of a badge. 18. In relation to a PSV licence,

Article 10(3) provides:- "(3) The holder of a public service vehicle licence may appeal to the Royal Court against a decision by the Minister to revoke the licence or suspend its validity. ...

(5) When it determines an appeal the Royal Court may:-

(a) annul or confirm the decision of the Minister; or

(b) substitute for that decision any decision the Minister could have made." 19. The corresponding right of appeal in relation to a badge is contained at Article 30 in the following terms:- "(4) The holder of a badge may appeal to the Royal Court against a decision by the Minister to revoke or suspend the authority given by the badge. ...

(6) When it determines an appeal the Royal Court may:-

(a) annul or confirm the decision of the Minister; or

(b) substitute for that decision any decision the Minister could have made." 20. On behalf of the Minister, Advocate Meiklejohn accepts that the approach of the Court should be that described in *JT (Jersey) Limited v Jersey Competition Regulatory Authority*

[2013] JRC 238 where, at paragraph 71, the Court summarised the position where the right of appeal was unqualified - i.e. not subject to a qualification such as the appeal only being allowed if the original decision was 'unreasonable'

- as follows:- "71. We have carefully considered the correct approach to be adopted in appeals under the [Telecommunications (Jersey) Law 2002] and have concluded that the Court should allow an appeal if it is satisfied that the decision of the JCRA was wrong; it does not have to go further and conclude that the decision was plainly wrong or so wrong as to be unreasonable, let alone attaining the higher threshold of being *Wednesbury* unreasonable. ..." 21. The Court further summarised the position at paragraph 74 as follows:- "74. In summary, adapting what was said in *Interface* to reflect our decision in this case, the Court will look at three aspects on an appeal: (i) It will consider whether the decision was one which the JCRA was empowered to make, i.e. was the decision *ultra vires*? (ii) It will look at the correctness and fairness of the procedure in order to decide whether the proceedings of the JCRA were in general sufficient and satisfactory. (iii) It will look at the merits of the decision (as well of course as considering matters such as whether the JRCA took into account any irrelevant factors or failed to have regard to relevant factors) and decide whether the appellant has satisfied it that the decision was wrong. In reaching its conclusion, it will give due weight to the decision of the JRCA bearing in mind its expertise and experience." 22. We agree with the Minister that those passages are equally applicable to appeals under Article 10(3) and 30(4) of the Law, substituting references to the JCRA by references to the Minister. The background 23. As has been well publicised, the Minister wishes to introduce certain changes to the cab system, including increased accessibility for wheelchair users. He therefore wishes to see increased numbers of Wheelchair Accessible Vehicles ("WAV"). 24. On 28 th September, 2015, the Minister announced certain proposed changes. A summary of that announcement was subsequently placed - it is not clear when -

on the gov.je website and appeared in the following form (so far as relevant):- "UPCOMING CHANGES FOR TAXI-CABS... On Monday 28th September 2015, the Minister for the Department for Infrastructure announced some forthcoming changes to the taxi industry in Jersey that would be introduced between 2016 and 2019. The changes will: make fares and taxi-cabs easier to understand make taxi-cabs more available provide more wheelchair accessible vehicles raise standards CHANGES FROM MARCH 2016 The first phase of changes start in March 2016, they include: redefinition of taxi types taxis will be the term for vehicles that can go on the public ranks cabs will be the term for those vehicles not permitted to go on the ranks any taxi-cab (currently rank or private hire vehicle) that is wheelchair accessible can use the public taxi ranks all rank taxis will be capable of being pre-booked new taxi-cab drivers must have undertaken disability awareness and customer service training new taxi-cab drivers will be subject to a medical every three years updating the code of conduct all taxi-cabs will carry child booster seats CHANGES FROM JULY 2016 The second phase of changes start in July 2016, they include: simplified tariff of charges for all taxi-cabs option to charge a booking fee for pre-booked journeys introduced recognisable branding for taxi-cabs introduced specification for taxi meters introduced enhanced requirements for all drivers (same as those for new drivers introduced in March) revised disciplinary code CHANGES FROM OCTOBER 2016 The third phase of changes start in October 2016, they include: ..." [emphasis added in relation to the second bullet point under 'Changes from March 2016'] The entry on the website goes on to list a fourth phase of changes which will start in January 2018 and a fifth phase which will start in January 2019. 25. These changes required amendments to the Order and to the Motor Traffic (Public Service Vehicles) (Conditions of Fitness) (Jersey) Order 2003 . It is common ground that these amendments were not in fact made by the Minister by way of amending order until 12 th September, 2016, and did not come in to force until 19 th September, 2016. For those restricted taxi-cabs which are WAV, they are, following the amendments, identifiable by purple plates as opposed to white plates. 26. The PSV licence issued to Ms Bisson permitted her to operate her cab only as a restricted taxi-cab, not a controlled taxi-cab. She had successfully completed the wheelchair training course and had purchased a WAV prior to the events summarised below. 27. On 23 rd May, 2016, Mr Gordon Forrest, the head of DVS, telephoned Ms Bisson to inform her that, even though she had completed the wheelchair training course, the law drafting that had to be carried out before any purple plate could be issued to her or any other WAV driver who would be eligible to access the public ranks, was likely to take some time. Ms Bisson replied by email the same day referring to the telephone conversation and saying that she was deeply disappointed to be given the news and that, having invested in the wheelchair training course, she could have used the money more wisely towards her gender transition. She went on to ask Mr Forrest "please advise me of a date that I can expect to turn my life around". 28. According to Mr Forrest, Ms Bisson emailed him again on 10 th June, 2016, asking him to advise on a date when the purple plates would be issued, although we have not been provided with a copy of that email. Mr Forrest states that he was reluctant to reply as it was uncertain how long the law drafting would take and he had informed Ms Bisson in a letter dated 19 th December, 2014, that he was no longer prepared to enter into

direct email exchanges with her because of what he regarded as incessant correspondence bordering on harassment in the past. He therefore did not reply to her email of 10 th June. 29. On 11 th July, 2016, Ms Bisson emailed Mr Forrest. The email contained the following passages:- "I think your department is deliberately putting off the issue of the purple plate. As far as I am concerned if this is to continue I will drive on the rank with or without the purple plate . As the colour makes no different. The fact the decision has been made makes it part of the road traffic law. The minister can do as he wishes." [emphasis added] . 30. On the same date, Mr Forrest emailed David Doré, director of Red Cabs, the company to which Ms Bisson was affiliated, as follows:- "Thank you for copying me in to your correspondence with [Ms Bisson]. I have previously stated that purple plates cannot access the ranks until the amended legislation is put in place. As you are aware, Law Drafting time is at a premium and that the Law Draftsmen are subject to a continuously heavy workload. We are currently awaiting the amended drafting regarding accessing the ranks and will let all drivers concerned know when they will be in a position to do so. It is, regrettably, not possible to put an exact date on it, however it will be as soon as legally possible. Until that time, it would be inadvisable for any driver who is currently not permitted to access the ranks to attempt to do so as this would constitute a clear breach of their PSV conditions. I would be grateful if you would inform [Ms Bisson] accordingly." 31. Shortly before this on the same day Mr Doré had sent an email to Ms Bisson which contained the following passage:- "I appreciate that you are feeling the pressure of being in limbo whilst waiting for the purple plate paperwork to come out of the system - but please, please do not simply drive on to the ranks. Both because I don't want to see you off the road/back of the Q but also from purely selfish reasons I would like Red Cabs to still exist when my number comes up for a plate!". Events of 16th August 2016 32. On 16 th August, 2016, Ms Bisson parked her cab (which it is acknowledged is a WAV) at the taxi rank at the Weighbridge for the purpose of picking up passengers. According to Mr Forrest's affidavit, she did so on some eight or nine occasions, picking up a fare on all occasions but one. Ms Bisson told us that she had only picked up a fare on some six occasions that day. 33. We do not think that anything turns on the exact number of occasions. What is clear is that her presence provoked an angry reaction from the rank taxi drivers who became agitated and aggressive. One taxi driver went so far as to block Ms Bisson's vehicle so as to prevent her from leaving. The police became involved and told this driver to move his taxi. The driver told the police that he could not move his vehicle as he thought he may have a fuel leak. However he rapidly changed his mind about this after the police officer informed him that his taxi would be towed to DVS for inspection as he should not be driving it on the road knowing it may have a serious defect. 34. Mr Forrest was informed of this the next morning and interviewed Ms Bisson at DVS in the company of traffic officer Richard Le Marquand, who took notes. It is fair to say that Ms Bisson does not accept the accuracy of the notes, but ultimately we do not think that anything turns on that. The key point to emerge from the meeting was that Ms Bisson told Mr Forrest that she had accessed the gov.je website (as set out at paragraph 24 above) in which it said that WAVs could access taxi ranks from March and she had therefore understood that she could pick up passengers from taxi ranks. Mr Forrest reminded her of the various exchanges which we

have summarised above in which she had been told that nothing had changed because of the need for law drafting, but Ms Bisson reiterated that that had been some time ago and she had relied on what was on the website. The meeting lasted approximately 30 minutes. 35. The same day Red Cabs suspended Ms Bisson on the grounds that she had broken the applicable rules by picking up customers from the Weighbridge taxi rank and the suspension was expressed to last until DVS had investigated the matter and thereafter Red Cabs had also concluded its own investigation. 36. On 19 th August Mr Forrest, acting under delegated authority from the Minister, wrote to Ms Bisson suspending her PSV licence and also her badge. As stated earlier, that suspension was indefinite at that stage but, following further enquiries and consideration, Mr Forrest wrote on 14 th September confirming that her badge and PSV licence would be reinstated on 30 th September, but pointing out that, in accordance with the conditions of her PSV licence, she would not be able to operate her vehicle as a white plate driver unless her suspension with Red Cabs had ceased or she became affiliated to another recognised taxi-cab company. This appeal 37. We agree with Advocate Meiklejohn that Ms Bisson's notice of appeal relies essentially on three grounds:- (i) She relied on the contents of the gov.je website referred to earlier and therefore believed that she was entitled to use the Weighbridge taxi rank. (ii) The decision to suspend her PSV licence and badge was disproportionate given the impact on her livelihood. (iii) The decision was discriminatory. 38. We shall consider each of these in turn.

- (i) The gov.je website 39. Ms Bisson told us that she accessed the website a day or two before 16 th August, 2016, and, as a result, believed that as from March 2016 she was permitted to use the rank because her vehicle was a WAV. Mr Forrest pointed out to her during the course of the interview on the following day that, given their various exchanges after March 2016, he did not accept that she did not know the true position. 40. In our judgment, Mr Forrest was perfectly entitled to reach that conclusion and indeed it was the natural conclusion to reach. The website states that the change permitting the driver of a WAV to access the taxi ranks would come into effect in March 2016. Yet Ms Bisson had been told on a number of occasions after March 2016 that the change was not yet in place because of the need for law drafting. She was first informed of this on 23 rd May, 2016, by Mr Forrest on the telephone and expressed her deep disappointment. She specifically asked him to advise her of a date when she could expect to 'turn my life around' , which is clearly a reference to when the change would come into effect. 41. On 11 th July, she emailed Mr Forrest accusing the DVS of deliberately putting off the issue of the purple plate (i.e. the special category for WAVs). She went so far as to threaten that, if this were to continue, she would drive on the rank with or without the purple plate (see the emphasised passage quoted at para 29 above). In our judgment, that showed very clearly that Ms Bisson knew that the change in the legislation had not yet come in to force and indicated a wiliness to ignore the law if it did not come about soon. 42. The fact that the amending legislation was not yet in place was reinforced by Mr Forrest's email to Mr Doré of 11 th July and Mr Doré's email to Ms Bisson imploring her not simply to drive on to the ranks whilst waiting for the purple plate paperwork to come out of the system because he did not wish to see her off the road. This must have made it

absolutely clear to Ms Bisson that the law change was not yet in force and that there would be consequences if she were simply to anticipate the change by driving on to the taxi ranks.

43. In those circumstances, we do not accept that, when she accessed the gov.je website, she can have genuinely believed that the change concerning WAVs had come into effect in March 2016. If it had come into effect in March 2016, all the conversations and emails we have just referred to after March 2016 would have been completely erroneous and misleading. 44.

Even if the website were considered sufficient to raise a query in Ms Bisson's mind as to whether the change had in fact come into effect in March 2016, we have no doubt that, given the various exchanges which she had had with DVS after March 2016, it was incumbent upon her to check the position once again prior to taking the matter into her own hands and unilaterally deciding to use the taxi ranks. In this respect, it is of note that all PSV licences contain a condition that the holder must 'adhere to the Code of Conduct at all times' and that the Code of Conduct states at para 20 'you should make yourself aware of the laws governing your profession and observe the rules of the road'. In our judgment, the DVS was perfectly entitled to conclude that the action of Ms Bisson in simply going ahead to use the ranks despite her various exchanges with Mr Forrest and Mr Doré between May and July was quite inconsistent with a PSV licence holder's duty to familiarise herself with the applicable rules.

45. We shall refer in the postscript to the unsatisfactory nature of the posting on the website but, on the particular facts of this case and having regard to Ms Bisson's earlier exchanges with the DVS, we do not regard the website as providing any excuse for what she did. We do not regard the decision to suspend Ms Bisson's PSV licence and badge as being wrong on this ground. (ii) Proportionality 46. We fully accept that the suspension of a PSV licence and a badge has serious consequences for the cab driver in question and prevents that driver from earning a living as a cab driver during the period of suspension. It is therefore a serious step to take and must be justified by a public interest which requires such a step. 47. The Minister argues that there is such a public interest in this case. In our judgment he is correct. 48. The distinction between those cabs entitled to pick up passengers from a taxi rank and those who may not do so is long standing and currently finds legislative force in the provisions of the Order. The Order could not be clearer in providing that restricted taxi-cabs may not pick up fares from taxi ranks other than at the Airport and the Harbour in certain specified circumstances. The gravity which the Order attaches to the need to comply with this distinction is emphasised by Article 11(1) which specifically provides that, if a restricted taxi-cab is used to stand on a taxi rank or to pick up a passenger at a taxi rank, this is to be treated as a breach of the relevant PSV licence and renders that licence liable to be revoked or suspended in accordance with Article 10(1)(b) of the Law. 49. The Court accepts that, as long as the distinction between controlled taxi-cabs and restricted taxi-cabs exists in law, it is entirely proper for the Minister (through DVS) to enforce that law. Those who join the cab profession know that it is a regulated occupation and that disciplinary steps can be taken to enforce the regulatory rules. If it were to become known that the Minister would not strictly enforce the rules, we can readily understand that a free-for-all would result. The strength of feeling which may result from non-enforcement is shown by the reaction of the controlled taxi-cab drivers to the conduct of Ms Bisson on 16 th August and this is clearly not in the

public interest. 50. Accordingly, given the clear warning in the Order that, if the driver of a restricted taxi-cab picks up passengers from a taxi rank, that will be treated as a breach of the conditions of his or her PSV licence rendering it liable to revocation or suspension and given the need for discipline in the regulation of cabs generally, we see nothing disproportionate in suspension being imposed on a driver of a restricted taxi-cab who on at least six occasions in one day breached the prohibition against picking up from a taxi rank. We readily accept that it is the threat of suspension or revocation which ensures compliance with the distinction between restricted taxi-cabs and controlled taxi-cabs. 51. The decision which was ultimately taken was suspension for six weeks and it is that decision which we consider to be proportionate in all the circumstances. Had the indefinite suspension been maintained, Ms Bisson's arguments would have had much greater force and would indeed have raised an issue as to proportionality, at any rate in the case of a first offender. However, that is not the position. (iii) Discrimination 52. Ms Bisson contends that the decision to suspend her PSV licence and badge was discriminatory. We take this to be an assertion that the decision discriminated against her on the basis that she is a person undergoing a gender transition. 53. In support of this assertion, Ms Bisson referred to the following:- (i) In 2015, DVS had sent a letter to her with the incorrect title on it. We understand that the letter referred to her as Mr Bisson rather than Ms Bisson. The department apologised at the time and said that a mail merge spreadsheet had not been updated with regard to her title. The update had been carried out and the error should not occur again. (ii) Despite this, she was sent a letter dated 21 st July, 2016, addressed to Ms Erin Bisson. When she drew this to Mr Forrest's attention during the interview referred to earlier, he replied that he was not aware of any additional mistake but assured her that, if there had been, it had not been done intentionally or maliciously. (iii) Ms Bisson also referred to an incident on 19 th August when, at a meeting at which Ms Bisson was present together with Mr Forrest and PC Perrett, Mr Forrest turned to PC Perrett and said that he would just go and get ' his' notes as opposed to 'her' notes from the previous meeting, this being a reference to Ms Bisson. Mr Forrest said that this was a slip of the tongue which had resulted in proceedings being issued against him in the Jersey Employment and Discrimination Tribunal. (iv) Finally, Ms Bisson alleged that, at the same meeting on 19 th August, Mr Forrest had referred to her as a 'man in a dress'. This is denied by Mr Forrest. 54. We can understand that that these incidents were upsetting for Ms Bisson. However, we do not consider that these matters or any of the other matters mentioned by Ms Bisson give grounds for believing that the decision in this case was taken on a discriminatory basis i.e. because Ms Bisson is in gender transition. We are quite satisfied that DVS (and therefore the Minister) would have reacted in a similar fashion to any other driver who acted as Ms Bisson did in deliberately breaching the Order by picking up passengers on the taxi rank when her vehicle was a restricted taxi-cab. Whilst we have no doubt that Ms Bisson believes there to have been discrimination, we do not find that the decision in this case was taken on a discriminatory basis. 55. It follows that, for the reasons we have given, we dismiss the appeal against the decision of the Minister (through DVS) to suspend the PSV licence and badge of Ms Bisson for six weeks as set out in the letters from the DVS dated 19 th August and 14 th September, 2016. However, we wish to touch briefly

upon the following additional matters. Postscript

- (i) Ms Bisson's current inability to operate 56. It became clear during the hearing that Ms Bisson's complaint was not just in relation to the suspension. It related also to the fact that, as a result of condition 13 on her PSV licence, she was unable to work as a driver of a restricted taxi-cab at present. That arises in the following way. 57. We were informed that it is a standard condition attached to all PSV licences relating to restricted taxi-cabs that the driver concerned must operate from an approved taxi-cab company. Ms Bisson's PSV licence contains such a condition. Condition 13 reads:- "Licence holder to work from the recognised restricted taxi-cab company or co-operative named on the application and shown overleaf and seek permission from DVS before moving to a different company or co-operative." The front sheet of the PSV licence states:- "The driver must operate solely from Red Cabs." Red Cabs was at the material time an approved restricted taxi-cab company. 58. On 28 th September, Mr Doré, (referred to earlier in this judgment) as a director of Red Cabs notified all its drivers that the company had ceased trading with effect from 25 th September, 2016, in order to avoid the company trading whilst insolvent. He said that the relevant authorities had been advised. Ms Bisson informed us that she had been unable to secure an affiliation with any other taxi-cab company and was therefore unable to operate as a restricted taxi-cab driver at present. 59. She informed us that there was a dispute as to whether Mr Doré was entitled to speak for Red Cabs (which is a limited company). She said that her brother was entitled to speak for the company and that DVS should not have accepted Mr Doré's assertion on behalf of Red Cabs that it was ceasing to trade. 60. It is not open to this Court on this particular appeal to enter into the question of whether Red Cabs has ceased to trade and whether Mr Doré was entitled to speak for it. That is a matter which must be raised by those who dispute Mr Doré's right to speak for the company with entities such as the DVS, JFSC and any other relevant body. 61. The second point raised by Ms Bisson was as to whether we would remove Condition 13 from her licence, so that she could operate without being affiliated to a restricted taxi-cab company. We informed her that this course was not open to the Court on this appeal. This was an appeal against a decision to suspend her. It was not an appeal against the imposition of Condition 13. Article 9(7) of the Law confers a right to appeal against the imposition of a condition on a PSV licence, but that must be brought within 29 days of the grant of the licence with the condition in question. It follows that, if Ms Bisson wishes to appeal against the imposition of Condition 13, she will have to mount an appeal under Article 9(7) and seek leave to appeal out of time. We are not to be taken as encouraging her to bring such an appeal as it would clearly raise an issue as to the standard conditions imposed by the Minister and whether it was now too late to appeal in any event. But, that is the course which she must follow if she wishes to question the imposition of the condition. As this Court said in *Dodds v Minister for Transport and Technical Services*

- [2012] JRC 158 at para 35, unless and until there is a successful appeal against the imposition of a condition on a PSV licence, the condition is valid and must be complied with. 62. For these reasons we informed Ms Bisson that we were unable to consider removing Condition 13 on her PSV licence as part of this appeal. (ii) The erroneous entry on the website 63. We

cannot leave this case without expressing concern about the inaccuracy of the entry on the website. It seems to us that it was unsatisfactory in two respects:- (i) It was left up on the gov.je website long after it had clearly become inaccurate. Thus the entry states that certain changes were to come into force in March 2016 and this was left up on the website long after March 2016 when the changes had not come into effect. We agree that this was potentially misleading. Someone looking at the website hoping to ascertain the position could easily be misled. It is only because, in this particular case, Ms Bisson had had a number of exchanges with DVS and had been informed of the true position, that we concluded that she had not in this particular case been misled or that, if she might have been, the exchanges should have at least caused her to double check the position. It seems to us that, if government departments choose to place information on the website, they are under a duty to review it as to its continuing accuracy. (ii) The entry was written in unsatisfactorily firm terms. Thus it is stated that the changes 'would' be introduced at various dates and, in relation to the changes from March 2016, it is stated 'the first phase of changes start in March 2016'. This misleadingly suggests that this will definitively happen. The department was simply not in a position to say that merely because the Minister had made a ministerial decision that that was what he wished to happen. Clearly any decision which requires an amendment to legislation is dependent upon the drafting of the appropriate amending legislation (whether primary or subordinate). Thus, what the entry on the website should more properly have said was something along the lines 'it is hoped that....' or 'the Minister intends that, subject to enacting the necessary legislation, the change will come into effect...'. This would alert the reader of the website to the fact that he or she would need to check as to whether the Minister's plans had come to fruition or not. The current wording gives the impression that it is a 'fait accompli'. (iii) It is not clear to us who has responsibility for entries on the website for the Minister of Infrastructure but we would ask the Law Officers' Department to alert the relevant department to these observations in the hope of avoiding a similar problem in future. (iii) Notification of right of appeal 64. The letter from DVS dated 19 th August suspending Ms Bisson's PSV licence and badge made no mention of her right of appeal to this Court. As Ms Bisson pointed out in her submissions, it was fortuitous that she appealed and did so within the specified time limit. 65. Cab drivers cannot be expected to be familiar with the intricacies of the various appeal procedures under the Law. Given the serious consequences for a driver of a suspension or revocation of a licence or a badge, we consider that fairness dictates that any letter from DVS suspending or revoking a licence or badge should point out to the recipient that there is a right of appeal to the Royal Court and should refer the recipient to the relevant article of the Law and the time limit for appealing. (iv) Procedural matters 66. During the hearing, Ms Bisson stated that she was not in possession of the bundle prepared by the Law Officers' Department and filed with the Court. Advocate Meiklejohn stated that a copy had been left for Ms Bisson at the Judicial Greffe and he understood that it had been collected. Following discussion, it appeared that most of the documents had been exchanged earlier and had been seen by Ms Bisson; indeed she commented on many of them. Nevertheless the Court was concerned to ensure that she had seen everything in

the bundle. Accordingly we directed that Advocate Meiklejohn supply a further copy of the bundle to Ms Bisson and that she be given time to make further written submissions following receipt of the bundle. Ms Bisson took advantage of this and filed supplemental written submissions dated 18 th November. She has also sent various emails since then. The Court has had an opportunity of considering all of these documents. 67. Ms Bisson also expressed concern as to whether her written submissions of 28 th October had been seen by the Court. We were able to confirm that the Judicial Secretary had passed copies of those submissions to all three members of the Court prior to the hearing of the appeal. Authorities Motor Traffic (Jersey) Law 1935. Motor Traffic (Taxi-Cabs - General) (Jersey) Order 2002. JT (Jersey) Limited v Jersey Competition Regulatory Authority

[2013] JRC 238 . Motor Traffic (Public Service Vehicles) (Conditions of Fitness) (Jersey) Order 2003. Dodds v Minister for Transport and Technical Services

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