

JERSEY / JUDGMENT

Bisson v Minister for Infrastructure

[2019] JRC 133 (10 July 2019)

[2019] JRC 133

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the commissioner: 1. The Appellant appeals against the decision of the Minister for Infrastructure ("the Minister"), taken on 15 th March, 2019, to revoke her Public Service Vehicle Licence ("PSV Licence") and Public Service Vehicle badge ("Badge"). The Minister considered that as a consequence of the Appellant's conduct over some three years, she was no longer a fit and proper person to hold a PSV Licence and Badge. 2. The power to revoke a PSV Licence is contained in Article 10 of the Motor Traffic (Jersey) Law 1935 ("the Motor Traffic Law"), which is in these terms:- "10 Suspension or revocation of public service vehicle licences (1) The Minister may revoke a public service vehicle licence or suspend its validity, either for a specified period or for an indefinite period, if it appears to the Minister - (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)..." 3. The power to revoke the authority given by the Badge is contained in Article 30(1) of the Motor Traffic Law, which is in these terms:- "30 Revocation or suspension of authority given by a badge (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." 4. Articles 10(3) and 30(4) of the Motor Traffic Law provide an unqualified right of appeal against decisions of the Minister to revoke. It was not in contention that the test on such an appeal is as set out in the case of JT (Jersey) Limited v Jersey Competition Regulatory Authority

[2013] JRC 238 , where Sir Michael Birt, then Bailiff, said this at paragraph 71:- "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." and at paragraph 74:- "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 JCRA 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 JCRA bearing in mind its expertise and experience." These passages are equally applicable to appeals under Article 10(3) and Article 30(4) of the Motor Traffic Law, substituting references to the JCRA by references to the Minister. 5. If an appeal is allowed under Article 10(3) of the Motor Traffic Law, then the powers of the Court are set out in Article 10(5);- "(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. (6) The Royal Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs." The Court has the same powers if an appeal is allowed under Article 30(4) save for provisions relating to the return of the Badge. 6. Also relevant to note at this point is the Driver and Vehicle Standards ("DVS") Code of Conduct for taxi drivers, the following of which are material:- " ... 2. You should be courteous. ... 11. You should normally take a hirer to the destination requested but may end a hire at any time or place if the hirer - Acts in a disorderly manner; Smokes in your taxi-cab; Continues to eat or drink in your taxi-cab after you have asked them to stop doing so; Continues to play a radio, tape or disc after you have asked them to stop doing so Continues to distract your attention while driving after you have asked them to stop doing so. ... 19. You should not involve yourself in conflict with other road users, other PSV drivers or members of the public, but should refer any complaint to the Driver and Vehicle Standards Department." The case for revocation 7. By letter dated 16 th January, 2019, Mr Gordon Forrest, Head of the DVS, wrote to the Appellant setting out the grounds upon which he was minded to recommend to the Minister that the Appellant's PSV Licence and Badge should be revoked. He referred to the previous occasions on which the Appellant's PSV Licence and Badge had been suspended:- (i) On 19th August 2016, they were suspended, initially indefinitely but ultimately for a six week period, for illegally accessing the public rank at the Weighbridge, St Helier. As a white plate holder, she was, at the time, not permitted access to the public rank. The Appellant appealed against that suspension. In its judgment of 6 th December, 2016, the Court rejected the Appellant's assertion that she thought she was permitted to use the public rank, and held that the suspension was proportionate and that the Appellant had not been discriminated against on the basis that she was a person undergoing a gender transition. That decision was upheld by the Court of Appeal on 29th March 2017 (JCA051). Quoting from paragraphs 37 and 38 of the Court of Appeal judgment:- "37 There is no dispute of any substance as to the

essential facts before the decision-maker, and before the Royal Court. It is common ground that the appellant used the taxi-rank, and picked up passengers, and that this was in clear breach of the terms of her licence. The main area of contention was whether the appellant did in fact believe that the existence of the web-site entry excused her otherwise unlawful conduct. There was material before the decision-maker, essentially the May to July 2016 correspondence, to support a reasonable and rational conclusion that the purported reliance was not to be accepted. In the course of her submissions to this court, the appellant revealed what may have been the real motive for her breach of the rules, and Code of Conduct. 'I'll be truthful. I went on the rank because they were doing what they wanted and ignoring me.' We are satisfied that the appellant has failed to make good her allegations that the contents of the website entry justified or excused her actions such that it was wrong for the DVS/Respondent to impose a period of suspension. The appellant has also failed to satisfy the Royal Court, or this Court, that the six week suspension was disproportionate or discriminatory, or wrong in any other way." (ii) On 4 th January, 2018, they were suspended for a two week period, as a result of complaints made by members of the public in respect of what was alleged to be her abusive behaviour in October and November 2017 due to three incidents when she had abused passengers who had misgendered her while transporting them as passengers. That suspension was not appealed. (iii) On 5 th September, 2018, they were suspended for a four week period for the following reasons put forward by Mr Forrest:- (a) Continuing to order well-meaning passengers out of her vehicle because they had misgendered her; (b) Ignoring the queuing system on the taxi rank; (c) abusive communications with the DVS. That suspension was successfully appealed by the Appellant on the grounds of procedural unfairness, in that none of the specific matters relied upon by Mr Forrest in his affidavit as justifying the decision to suspend were ever put to the Appellant, which meant that the DVS never heard any explanation which the Appellant might have had to offer prior to reaching its decision, and took this decision in the absence of knowledge of any extenuating or mitigating circumstances which she might have put forward. However, in its judgment of 7 th March 2019 *Bisson v Minister for Infrastructure*

[2019] JRC 037 , the Court made it clear that the Appellant had succeeded purely on procedural grounds, saying this:- "40 We would not wish the Appellant to misunderstand her success in this case. She has succeeded purely on procedural grounds. Had these not occurred and had we been satisfied that the factual bases for the Minister's decision were made out, we would have upheld the Minister's decision to suspend her PSV licence and badge. We endorse the Minister's view that it is not acceptable for a cab driver to demand that a passenger leaves a cab mid-journey simply because the passenger has innocently misgendered the Appellant. The provision of a satisfactory cab service in the Island is an important public service and the Minister is entitled to expect those who are licensed to act as cab drivers to act in a proper manner. The appropriate response for the Appellant in the event of a passenger innocently misgendering her is to politely point out that she is a woman and to politely ask the passenger to address her as such thereafter. Nothing further

is required. Nor is it acceptable for a cab driver to write abusive and insulting emails to the DVS as a regulator of the industry or make phone calls or make voicemails of a similar nature. Finally, the Minister is entitled to expect drivers to behave reasonably and join the queue in their turn so as to avoid a free for all. Again the Court would repeat what it said at para 49 in its earlier judgment in Bisson:- "...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." 8. The Court, on this latter occasion, was concerned with the Appellant's conduct that led up to her suspension on 5 th September, 2018. The appeal was heard on 7 th February 2019, and the judgment issued, as we have said, on 7 th March 2019. The Court did say this at paragraph 41:- "41 We wish to emphasise to the Appellant that, should she in future abuse passengers and/or order them out of her taxi for innocently misgendering her, the Minister may well consider he has no alternative but to suspend her for longer periods or even revoke her PSV Licence and badge." 9. However, the Court was not concerned with what had happened after the 5 th September, 2018 which is set out in Mr Forrest's letter of 16 th January, 2019. Quoting from that letter:- "Ongoing Behaviour Regrettably, these suspensions and warnings have had little effect on your attitude towards the public, the DVS, its employees, and others, particularly the Law Officers' Department. Complaints against your behaviour, rather than diminishing on account of you understanding why sanctions have been taken against you, have actually increased at an alarming and unacceptable rate. In particular, over the last few weeks, there have been seven complaints made against you, six of which came from members of the public with whom you have come into conflict with whilst operating your public service vehicle. Not only is your behaviour damaging to the industry and the Island but it has, and continues to occupy, an inordinate amount of public officials' time." (his emphasis) 10. Of the seven complaints received since the September 2018 suspension, copies of the first six were sent to the Appellant on 17 th December, 2018, eliciting this response from the Appellant:- "Thank you for your email and letter. I have sent a copy of it to the Bailiff's Chambers and to the Chief Minister's department. As you have not responded to my complaints I cannot respond to yours. Complaint numbers are CF93677774 and CF87667735. Clearly all complaints are disgracefully written and your department is prejudiced forwarding them to me suggesting I am a pervert and paedophile." 11. The Appellant sent a further communication on th December, 2018:- "Dear Mr Le Marquand, I am offended at your letter and its contents. As Social Security will impose sanctions on me if I do not respond to you, I give this response. Complaints 1 and 2. The passenger was arguing with me. I had to stop the car for my and their safety. I said nothing offensive to them. It's what they said to me that's the problem. They also admit to holding me captive like a hostage (without force) would you like me to do this to you. They are not trained psychiatrists. Passengers asked to Beachcombers then told me once at the Beachcombers that it was the name of house. Without giving the address. They have the wrong gender. I am not a man they are rude. Complaint 4. This has no bearing on my taxi licence. My taxi is my private car unless I have a passenger on board. The St

Clement's Honorary Police is discriminating me for advising you of this. Contrary to Human Rights Jersey Law 2000 punishment without law unfair trial. Complaint 5. This driver ... was causing conflict. Have you written to him. I am licensed for the correct number of passengers. He should mind his own business and not be so disgusting and rude informing passengers of my transition. This is against the law and worthy of a £10,000.00 fine. Gender Recognition (Jersey) Law 2010. Complaint 5. They insulted my driving. I do not drive a fairground ride. They were told if they do not like my driving I will stop my car and get another taxi. I trust these answers meet your request deadline. Does your letter mean I am on Santa's naughty list and he will not visit me this year! I am disgusted at the unreasonableness of you raising a week before Christmas." 12. In the view of Mr Forrest, the Appellant did not appear to deny these complaints and did not appear to demonstrate any awareness or regret for her actions. Mr Forrest then set out in his letter of the 16 th January 2019 particulars of two incidents that had taken place on the 20 th December and Boxing day 2018, both of which had been recorded by the Appellant on her in-car video recorder, and accordingly, over which there is little dispute as to what actually happened. We take Mr Forrest's descriptions of the two incidents as follows:- Incident concerning Ms T In the most recent complaint in respect of your behaviour, received by the DVS on 20 December 2018, you took offence at your female passenger asking you a perfectly benign question whether or not you accepted payment by card. You immediately responded in a rude, unhelpful and aggressive manner and when she asked you to stop the conversation, the manner of which was clearly upsetting her, you stopped the taxi-cab and ordered her out. The passenger refused as she had heavy shopping and it was raining, you then told her to "zip it". She described you as being angry, abusive and hostile. The conversation continued, you stopped the car a second time on Mont Millais and told her to get out again. The passenger again refused and your response was to order her to "zip it then, do you understand?" When you reached the destination it transpired that your card terminal was not working and you demanded the passenger's credit card to process the payment on your phone, without offering a proper explanation to the passenger as to what you were doing and how the payment would be processed. The female passenger was eventually reduced to tears, saying that 'By this time I was shaking, crying and in stunned shock' and the following evening when she missed her bus, she was too anxious and upset to get a taxi such was the effect you had on her the previous evening. Such aggressive and abusive behaviour towards a member of the public is totally unacceptable. I have also had the opportunity to view the footage of this incident which you voluntarily presented to the Law Officers' Department on a USB stick and it confirms the events as reported by your passenger in her complaint about your unacceptable behaviour. Furthermore the footage also demonstrates that you continually refused to give the passenger your name when repeatedly asked, only reluctantly and eventually providing your PSV badge number after having been asked a number of times. The footage then shows that, after the incident, you telephoned somebody and described the passenger in shockingly unacceptable terms. I also note that your aggressive stance towards her seemed to increase when she informed you of her gov.je email address, winding your front passenger window down and shouting

at her as she left the vehicle 'you work for the government, you should know better, you should know better!'. Boxing Day Incident "I also note that from the footage you provided to the Law Officers' Department on the USB stick that on December 26 th 2018 at around 22:45, a second incident was recorded whereby you asked a passenger who was intoxicated to stop eating. Rather than asking him in an appropriate and measured manner to stop, or asking him to let you keep his takeaway bag in the front of the vehicle, you reacted disproportionately by immediately threatening to eject him from your taxi-cab on Victoria Avenue, nowhere near his final destination in St Ouen nor the taxi rank from which you had picked him up. Once he had apologised and said he would not eat, the journey continued. You then told him 'be quiet and don't say anything'. He apologised, however at a later stage he seemingly addressed you saying 'thank you very much, by the way, you are a good man', for which you stopped your vehicle in the proximity of Jubilee Hill, very close to your passenger's destination, and asked him to get out and to pay for the journey up to that point. You failed to explain to him what he had said that offended you when he asked and appeared to expect him to know, and did not offer him the chance to apologise so you could complete the journey. When your passenger could not get out to pay you, you took the totally disproportionate decision to take him all the way back to town to the police station and to call the police. The recording confirms that throughout the exchange of words during this time, your passenger repeatedly insisted 'I would like to pay my fare.' This is completely intolerable behaviour i.e. to eject a young intoxicated person late at night away from their destination and any public rank without good reason. I have spoken to you before about your need to have more patience and not react disproportionately to incidents. Telling passengers to 'zip it' or to sit in silence is not something PSV drivers have a right to do. You can, in accordance with Article 10 of the Taxi-Cabs Order and Clause 11 of the Code of Conduct, request passengers to stop distracting you, eating, or acting in a disorderly manner etc. but it is disproportionate and unrealistic to expect passengers to sit in silence. You applied for a purple PSV licence plate and the accompanying ability to use the public ranks. It is obvious that not every taxi passenger, particularly those who you pick up late at night (and even more so during the festive period), will sit there in absolute silence throughout the journey and indeed there is no requirement for them to do so. Whilst the passenger's later behaviour in this particular incident was not acceptable, I am satisfied that you caused and provoked this incident by your unnecessary and over the top reactions to him making noise and inadvertently misgendering you.' 13. The DVS had emailed the Appellant about the incident concerning Ms T, to which she responded by e-mail on 21 st December, 2018 as follows:- "I note the complaints are not all in accordance with your own process as they are not written on your own complaint form as you have previously to....myself. One rule for one and another for others. It's interesting that [MsT] made this last complaint as she is not a member of the public but an employee of our corrupt government. Making this entrapment. The passenger was aware of the law and she used her work email for the credit card receipt. Its funny that during her journey she only had a disagreement with a driver who takes card and no arguments with those who refuse card. Therefore, I will refuse card like all other taxis." 14. Mr Forrest went on in his

letter of the 16 th January, 2019, to complain about correspondence from the Appellant to the DVS, the Law Officers' Department and others, which was rude and abusive. Quoting again from his letter:- "In addition to the suspensions which you have incurred during the past three years, and despite such warnings, you have repeatedly sent verbally abusive emails to the DVS (principally my Senior Traffic Officer) as well as to other officers of the States of Jersey and the Law Officers' Department. Your suspension in September 2018 was partly due to your unacceptable voicemail outburst to the DVS: 'I don't want to deal with your department ever, ever again because your department disgusts me in every kind of possible way. You are a filthy disgusting, terrible department'. The Law Officers' Department have also provided me with a litany of abusive emails that you have sent them during the course of the litigation regarding your suspension in September, whereby you deliberately address a male advocate as 'Ms', refer to releasing your bowels, use terms such as 'paedophile' and 'vagina', and ask 'how would like someone to knock on your office door and ask 'Have you still got your willy?' and 'Does the Bailiff wait for you to return from the toilet so he can carry on working?'. When previously questioned about the manner of your correspondence, you have shown no remorse, and have stated that you enjoy the battle with the DVS. You have offered no comfort that this behaviour will cease going forward, despite having been given numerous opportunities to rectify it. I quote from my letter to you dated 5 th September, 2018, when a final opportunity was afforded by me: 'In my opinion, there is enough evidence for me to propose to the Minister that he revokes both your licence and badge, however I prefer to afford you a final opportunity during the period of suspension to reflect on your behaviour and to convince me that going forward you are capable of meeting the standards required to continue as a PSV licence and badge holder.' 15. The letter of 16 th January, 2019, terminated with the following:- "Revocation The DVS can no longer tolerate your continued irrational and uncontrolled behaviour towards members of the public and public officials. I am minded to recommend to the Minister under Article 10(1)(a) of the Law to revoke your Licence and under Article 30(1) of the Law to revoke your Badge. I am considering making this recommendation because, on the basis of your conduct, I consider that you are no longer a fit and proper person to hold a licence to operate your public service vehicle (Article 10(1)(a) (a) of the Law) or a badge authorising you to drive a tax-cab (Article 30(1) of the Law). The minister has a duty to ensure an adequate, efficient and reasonably priced cab service available throughout Jersey at all times. Your actions continue to damage not only the reputation of the taxi-cab industry within Jersey but potentially the Island as a whole, particularly as PSV drivers will often be one of the first and last persons that a visitor to the island encounters. It is also implicit in the Minister's duty that he must ensure that the taxi-cab industry is safe for all passengers. Your continued behaviour in ejecting or seeking to eject members of the public far from their destination and refusal to desist and change your behaviour presents a significant risk to public safety and cannot be tolerated any further.

Submissions

You have 14 days from receipt of this letter to provide me with reasons in writing as to why I should not recommend to the Minister that your PSV Licence and Badge be revoked. The submissions should be addressed to me at DVS using the address at the head of this letter. Once I have considered your submissions, I shall decide whether to make a recommendation of revocation to the minister or whether to impose a lesser sanction, or none at all. You will be notified of the outcome without delay and, if applicable, be reminded of your appeal rights under the Law." (his emphasis) 16. The Appellant responded by letter dated 28 th January, 2019, which we would summarise by way of overview as follows:- (i) The suspensions of 19 th August, 2016, and 4 th January, 2018, were spent. The validity of the suspension of 5 th September, 2018, was (then) before the Court. The Appellant had complied with the Code of Conduct issued by DVS and it was others who started the conflict. (ii) The Code had not been updated for some time, and was not complied with by other taxi drivers. (iii) She was the object of victimisation. She was not treated like everybody else, and was used as a social guinea pig, a target for other people's problems. (iv) Mr Forrest was abusing the fit and proper status and should be sending himself to a psychiatrist, as he too could be transgender. The Appellant would be interested in seeing his psychiatric report. (v) Her pet dog, who has a smaller brain, was not cruel in the way others were in Jersey, treating her so badly; she could see the hate when they were misgendering her, which causes her distress. (vi) She had said nothing offensive to passengers

- it was what they said to her that was the problem; in most cases, misgendering her. (vii) In relation to the complainant Ms T, she said this :- "Before Ms T got into my car you will note that she said 'Do you want me to take the car behind or this taxi'. My response was take whichever taxi you like. To be asked this question by an employee of the States of Jersey would suggest to me she did not want to travel in a disabled taxi. Which is entirely bigoted and discriminatory. Ms T would not say this to all taxi drivers. So I believe she singled me out and was deliberately hostile and was a decoy for your department. Then she asked about credit cards. She clearly knew the law as she admitted this herself in my taxi and was looking for an argument. I can only assume this was one of your mystery shoppers. Used to subject me to discriminatory behaviour." (viii) Mr Forrest should question his own department's ethics and fairness in dealing with the Appellant, compared to how they dealt with everyone else. (ix) In relation to the Boxing day incident, she said this:- "I make no comment to your judgement of the Boxing Day incident as your version is incorrect. How can it be acceptable for a man to hit a woman or want to hit a woman. Seeing anyone receive such abuse you yourself should be setting an example and dealing with offenders instead of using their behaviour as an excuse to victimise others." (x) The Appellant denied sending verbally abusive e-mails, saying it was up to Mr Forrest whether he took offence to them. (xi) All of the Appellant's complaints about other drivers had been ignored. (xii) Mr Forrest made her sound like a terrorist, and that she is some sort of extremist. She asked how her gender could be so damaging to the Island, which is her home, where she intended to stay. (xiii) Looking at the way she had been treated, the States of Jersey did not seem to like transgender employees, and she was being subjected by the DVS to discrimination. The

action Mr Forrest was proposing to take was completely inappropriate and disproportionate. (xiv) The DVS was not acting fairly in what should be an inclusive society, free from intolerance and discrimination. (xv) The DVS had not provided taxi drivers with conflict resolution training. Bus drivers and prison officers are trained not to discuss personal details, and yet she had to advise passengers of her correct gender and sexual orientation. (xvi) The DVS had made her life difficult and at times unbearable since February 2013. She had lost a marriage and contact with close family, relatives and friends. She had been isolated and left with nothing. (xvii) It did not matter how many times she begged or pleaded with Mr Forrest not to take her Badge or Licence, Mr Forrest did it anyway. He paid no attention to anything the Appellant wrote. She guessed the matter would end up back in the Royal Court. 17. Mr Forrest waited until the Court's judgment of the 6 th March, 2019, had been issued before preparing his report to the Minister on the 14 th March, 2019, in which he recommended the revocation of the PSV Licence and Badge. He e-mailed the Appellant at 8:45 on the morning of 15 th March, enclosing a copy of the report, with its appendices, saying that it would be considered by the Minister that day and that he would inform the Appellant of the Minister's decision once he had met with him. The decision to revoke was taken later that day and communicated to the Appellant at 16:27. She was told that she had 29 days in which to appeal. 18. In her notice of appeal of 18 th March, 2019, the Appellant set out numerous grounds of appeal, many of which are not relevant, but which we summarise by way of overview as they give context to the decision of the Minister:- (i) There was no disciplinary hearing. The Minister sat in private with Mr Forrest on 15 th March, 2019, at a meeting at which the Appellant was not represented. (ii) She did not enjoy battles with the DVS and as a consequence of the revocation, had lost her job and been left with no money, no friends, no family and no support. (iii) She had received no training for lone workers and taxis dealing with aggressive or abusive passengers, or in the health and safety of passengers. (iv) The DVS had no proper complaints procedure to adhere to. (v) The removal of her livelihood was contrary to her rights under the European Convention on Human Rights. She referred in particular to her right to the protection of her property under the First Protocol and her right to freedom of expression under Article 10 of the Convention. (vi) The decision was discriminatory, based on a complaint she had made about St Clement's Honorary Police Officers misgendering her. It had been acknowledged by the Attorney General and dealt with informally by the police. (vii) The Court, in its judgment of 7 th March, 2019, had given the DVS a licence to treat her as it wished, and it made no note of her complaints of bad behaviour and bad governance. (viii) The Minister of Home Affairs had misgendered and shouted at her. (ix) The Customs Department had misgendered her. (x) The Minister was conflicted, as the Appellant had reported him for breaching the Planning Law on 7 th August, 2007, and this in relation to his home, Fern Cottage. (xi) The decision was Wednesbury unreasonable. (xii) It was wholly unfair and discriminatory of the Court to allow the respondent to inform all cab drivers of her gender recognition certificate, making the judgment (we assume of the 7 th March, 2019) public, contrary to her Convention rights to privacy. (xiii) She was being deliberately forced out of the taxi industry unjustly, when other taxi drivers have been reported to DVS and the police, and had gone without

punishment. (xiv) The revocation was solely based on gender, made by persons of the opposite gender, making the decision discriminatory and sexist. (xv) In including details of earlier suspensions and court judgments, the Appellant was effectively being tried twice for the same offence, as all the accusations showed deliberate misgendering. All the complaints flowed from what had now been determined an illegal suspension. (xvi) Another taxi driver had been convicted for assault without his licence being revoked and the Appellant had not assaulted anyone, but faced a lifetime revocation, which was wholly disproportionate and unfair. (xvii) The contents of Mr Forrest's report of 14 th March, 2019, were designed to manipulate and provide the Court with an unfair conscious bias, designed to prejudice the Appellant. The report was highly toxic and made spurious allegations. (xviii) Mr Forrest had himself owned a motor car which was driven with defective nearside brake light on 25 th May 2018. (xix) The Court is ultra vires in adjudicating the appeal, as it regulates the regulator by ignoring the Gender Recognition (Jersey) Law 2010 . (xx) The Jersey Financial Services Commission had misgendered the Appellant in 2019. The Court should regulate the regulator rather than focusing on one person, which was victimisation. (xxi) The Appellant had only been given two days' notice to respond to the allegations made against her, which was plainly unfair, as she had made complaints regarding the DVS which had been ignored by it. (xxii) On 4 th March, 2019, a traffic officer at the DVS shared information about a third party with the Appellant which was none of the Appellant's business, and in breach of data protection. (xxiii) The Appellant had never been given the opportunity to work unhindered without some kind of abuse from other taxi drivers or members of the public. (xxiv) The DVS had not implemented any of the recommendations contained in the Taxi Regulatory Reform - Recommendations (October 2013). (xxv) Another taxi driver had fallen asleep at the wheel and hit three cars in procession, but still drives a taxi. (xxvi) Another taxi driver allegedly aimed his taxi at a parking control officer, and was only suspended for a week, as reported in the Jersey Evening Post on 29 th January 2019. (xxvii) The DVS refused to allow the Appellant to drive any normal car, advising her that she had to remain in a wheelchair accessible vehicle for five years, again treating her less favourably. (xxviii) The Appellant had made complaints to the police, who had treated her with hostility. Two officers had misgendered her regularly and nothing had been done, and this had been reported to the Attorney General, and nothing had happened. (xxix) The letter of revocation failed to notify her of the number of days she had in which to file an appeal. We would interpose to note that the letter of the 15 th March, 2018, clearly did specify the number of days in which to appeal. (xxx) In the case of Bisson -v- Minister

[2015] JRC 084 , the Commissioner, in his judgment, did not treat the Appellant with respect, and made fun of the Appellant for not completing a successful Order of Justice. (xxxi) On 3 rd July, 2018, at the DVS, a traffic officer checking her vehicle had misgendered her, without apology. (xxxii) On 13 th July 2018, at the taxi rank, the Appellant refused to carry a passenger who had addressed her as "Sir", as a result of which, a security marshal had sworn at her. (xxxiii) On 14 th August, 2018, two taxi drivers had purchased wigs and paraded around the Appellant's car wearing them and laughing at her. (xxxiv) On 2 nd

September, 2018, the Appellant had been subjected to abuse when pulling up at the Weighbridge rank ahead of other taxis who had refused to move forward, and which, she assumed, were not working. (xxxv) Mr Forrest had allowed abusive behaviour by other taxi drivers. (xxxvi) The decision to revoke is a restraint on trade. (xxxvii) Mr Forrest had sent a letter to the Appellant's brother on 2 nd August, 2018, which questioned the state of her mental health. (xxxviii) The Appellant had been involved in so many cases before the Court that she could not now be treated fairly. 19. The Appellant filed an affidavit dated 30 th April, 2019, in support of her appeal, which covers very similar ground, but reiterating that it was unfair for the Minister to hold a disciplinary hearing without the right of the Appellant to be accompanied by a legally competent person or even a witness. Previous meetings held with the DVS had never been described as disciplinary meetings. No procedural process has been adhered to by the DVS and there are no published guidelines. 20. In her affidavit of 22 nd May, 2019, she exhibited a number of documents, including:- (i) A news report of a taxi driver reported driving at a traffic warden published on 29 th January, 2019. (ii) Two copies of her gender recognition certificate issued on 12 th January, 2018, under the provisions of the Gender Recognition (Jersey) Law 2010 , showing that, as from that date, the Appellant's gender was female. In one of the certificates, the name of the Law was incorrectly set out. (iii) A press release of 10 th April 2015, from Trans* Jersey, highlighting the difficulties the Appellant was having changing the title on documents. (iv) Three letters from the States of Jersey Police dated 3 rd May 2018, 31 st January 2019 and 17 th May 2019, rejecting complaints made by the Appellant against States of Jersey Police and staff, all of which were regarded as fruitless. (v) Extract from Insights posted on 24 th May, 2016, about the Appellant's successful complaint to the Jersey Employment and Discrimination Tribunal of discrimination by Condor Ferries. (vi) A letter from the Chief Nurse of Health and Community Services dated 14 th September 2018, relating to complaints made from the Appellant in relation to her gender. (vii) A copy of an e-mail from Planning and Building Services confirming that planning and building permission was required for work to Fern Cottage, St Saviour - according to the Appellant, the property belonging to the Minister. (viii) An e-mail from Jersey Customs and Immigration Service apologising for an officer referring to the Appellant as "Sir" in a telephone call made on Friday 15 th February 2019. (ix) Copy e-mail correspondence with the Jersey Financial Services Commission regarding the Appellant's complaint about being called "Sir" about ten times. (x) An e-mail from the Connétable of St Clement, apologising for the Appellant being misgendered by being called "Sir" during a road check and on the telephone, for which there was an apology. (xi) A letter from the Ministry of Justice dated 12 th March 2019, declining to consider the Appellant's complaints about the Jersey judicial service. (xii) A news report of an advocate who was fined £4,000 for having a dog out of control on four separate occasions. (xiii) A disclaimer notice from the Jersey Taxi Drivers' Association, issued, we were told on 29 th June 2018, making it clear to its customers that the Appellant (we believe) is not a member of the Association, and would never be allowed to become a member because of her poor disciplinary record and discourtesy shown towards members of the public who use the taxi ranks. The Association

and its members felt strongly that this person is tarnishing the reputation of all decent taxi drivers in Jersey, and is not a fit and proper person to hold a PSV Licence. It stated that the Association had written to the Head of DVS saying that enough is enough, and requesting that something be done. Recusal 21. The Appellant had given notice to the Court that she intended to apply to have the Commissioner recused from presiding over the appeal for the reasons set out in paragraph 18 (xxx) above namely that in the case of Bisson -v- Minister

[2015] JRC 084 , the Commissioner, in his judgment, did not treat the Appellant with respect and made fun of the Appellant for not completing a successful Order of Justice. In the event, she did not make that application, but notwithstanding, the Commissioner referred to the test, namely whether a fair-minded and informed observer would conclude that there was a real possibility or real danger that he was biased (Re Esteem

[2001] JLR 169) and concluded that there was no such real possibility or danger. In particular, the appellant had been unable to point to anything in the judgment that showed that the Commissioner had treated her with disrespect. The only reference to an Order of Justice prepared by the Appellant was in fact made by a different judge at an earlier hearing (paragraph 12 of the judgment). Evidence on behalf of the Minister 22. Mr Forrest filed an affidavit exhibiting the relevant correspondence, in particular in relation to the complaints and the responses of the Appellant. The Appellant questioned the validity of his affidavit on the basis that the signature page contained no date. The exhibit page is clearly dated 15 th April, 2019, and we are satisfied that that is the date upon which it was sworn before an Advocate of the Court. 23. Mr Forrest sets out the history of complaints received from members of the public in respect of the conduct of the Appellant, which involved, in the main, being ejected from the Appellant's taxi and being subjected to abuse for misgendering her. Complaints were received on 19 th September, 2017, 16 th October, 2017, 18 th November, 2017, th December, 2017, and 20 th July, 2018 leading up to the th September, 2018, suspension and, of course, the seven complaints that followed as detailed above. There seems to be no dispute as to the Appellant ejecting passengers in this way, and indeed, she has produced video footage showing her doing just that. 24. Mr Forrest goes on to describe the abusive e-mails, telephone calls and voice messages from the Appellant. A warning letter had been sent to her sent on 20 th March, 2017:- "It has been brought to my attention by other departments and noted by me personally that much of the content contains abusive and at times personal comments that are totally unacceptable. This is consistent with the nature of your emails going back a number of years and in particular since you were suspended in August/September 2016. There are various examples which I could refer you to where you have used many derogatory terms towards officers of the above mentioned departments and have made outrageous comments regarding fascism, Nazism, slavery and cancer. You have been warned by the Law officers' Department about this rude and insulting approach and yet have continued to ignore such warnings." 25. That letter went on to warn:- "Your behaviour casts serious doubt on whether, should you choose to reapply for the grant of a PSV Licence, you can be

considered to be a fit and proper person for the purposes of Article 9(1) of the Motor Traffic Law. It also, for the same reasons, raises serious doubts as to whether you can be considered a fit person to hold a badge for the purposes of Article 30 of the Motor Traffic Law." 26. Mr Forrest explains that at a meeting on 25 th July, 2018, the Appellant was repeatedly questioned as to how she intended to deal with similar situations should they occur in the future, but gave no assurances that she was prepared to take a different approach, or indeed, showed no remorse or indication that she felt she had done anything wrong. That combined with the abusive communications and the Appellant ignoring the queuing arrangements on the waiting area behind the Weighbridge rank by bypassing it and parking incorrectly in the rank ahead of other waiting rank drivers, led to the decision on 5 th September, 2018, to suspend the Appellant's PSV licence and Badge for a period of four weeks. As explained above, that decision was quashed by the Court on the grounds of procedural unfairness in that the Appellant had not been asked to give her side of things in relation to any of the matters relied upon. 27. Notwithstanding the reported suspension on 5 th September, 2018, complaints in relation to her conduct continued, leading to Mr Forrest's letter of 16 th January, 2019, notifying the Appellant that he was minded to recommend to the Minister that her PSV Licence and Badge be revoked, as detailed above. Decision 28. Turning to the first three tests to be applied in an unqualified appeal of this kind, it is not in dispute that the Minister has the power to revoke the Appellant's PSV Licence and Badge under the provisions of Article 10(1) and 30(1) of the Motor Traffic Law. 29. We note that there is a difference between the two articles, namely that under Article 10(1)(a), the Minister may revoke a PSV Licence if the 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 ", whereas, under Article 30(1), the Minister may revoke the Badge if the holder is not a " fit person to drive a public service vehicle of the type specified on the badge. " The former is concerned with the provision of a public service provided by the vehicle having regard to the holder's conduct and the latter, with the fitness of the person to drive that vehicle. Nothing in our view turns upon the point, as the Minister relies upon the same underlying conduct of the Appellant in respect of both revocations. 30. In our view, the Minister was entitled to look at the whole history of the Appellant's conduct as a taxi driver, including the conduct that led up to the suspensions on 19 th August, 2016 and 4 th January 2018 and the purported suspension on 5 th September, 2018, which was set aside on procedural grounds only. Complaints have, of course, continued since those suspensions. On this occasion, through Mr Forrest's letter of the 16 th January, 2019, the Appellant has been given an opportunity to respond in relation to all of the complaints and has done so. 31. Article 38 of the Motor Traffic Law requires the Minister " to ensure that, in so far as it is practical to do so, there is an adequate, sufficient and reasonably priced cab service available throughout Jersey at all times" and pursuant to Article 9 "that the cab service is operated by fit and proper persons." 32. It is not in dispute that the DVS has received the complaints from members of the public, summarised above, and, for the most part, the Appellant does not deny that incidents took place: indeed, some of them have been videoed by her. The underlying theme that emerges from the evidence is of the

Appellant taking offence at being misgendered by passengers and reacting by removing those passengers from her cab, often some distance from the destination, and/or verbally abusing them. The abusive nature of the Appellant's communications with the DVS is self-evident. 33. The Appellant asserts that the decision to revoke is based entirely on her gender, and has been made by persons of the opposite gender, which she says makes it discriminatory and sexist. There is no evidence to support this assertion and we reject it. 34. The Appellant complains that as a litigant in person she is at an unfair disadvantage. She produced a letter from Legal Aid Jersey declining legal aid on the basis of the written opinion from Viberts. Looking at the published judgments on JLJB, it is fair to say that the Appellant now has some considerable experience of conducting proceedings as a litigant in person, and the Court permitted her to be assisted at the hearing by her brother. Article 6 of the Convention does not give a litigant in civil proceedings a right to legal representation, and the fact that the Appellant represents herself does not render the proceedings unfair. The Court gave her ample opportunity to present her case. 35. As the Court commented in the judgement of the 7th March, 2019, the Appellant is sensitive if persons misgender her (paragraph 10) and feels aggrieved that the DVS has, she alleges, done nothing to pursue her complaints about other taxi drivers misgendering her (paragraph 42). The Court invited the DVS to consider whether it would be appropriate to circulate all the taxi drivers to point out that the Appellant is in law a female and that it is not acceptable for them to deliberately misgender her (paragraph 43). 36. The difficulty is that these observations were made by the Court on the 7th March, 2019, based on the Appellant's conduct up to the 5th September, 2018 suspension. No less than seven complaints from the public followed that suspension. We have little documentation in relation to the Appellant's own complaints to the DVS and no evidence from the DVS as to how those complaints have been processed, but unacceptable as deliberate misgendering by other taxi drivers is, assuming that the complaints are made out, the Minister is concerned with the public and the provision of an important service to them. 37. The complaints from the public show that when they have misgendered the Appellant, often at night when it is difficult to see clearly, it has been innocent and the Appellant's over reaction to it has been equally unacceptable. 38. A good example is the complaint to the DVS by Ms A on the 16th October, 2017. She and her sister had been driven by the Appellant to their home. When they got there the sister said to Ms A something along the lines of "I'll give him £10", which led to what she described as a tirade of abuse and foul language. 39. It is the appellant's over reaction to such innocent misgendering that underlies most of the complaints that have been made regularly by the public over some three years leading up to Christmas 2018. The Appellant appears to make no allowance for the possibility that those members of the public who misgender her, do so innocently and she showed no intention of ameliorating her conduct, despite numerous warnings. 40. In her second supplemental written submission received after the hearing, the Appellant referred in particular to the conduct of another taxi driver, who she said had paraded round her car wearing a wig, goading her and causing conflict. The Appellant had clearly made a complaint to the police sometime in 2019 about this conduct, as in or around the

19 th June, 2019, they had informed her that on the advice of the Law Officers Department " a harassment notice" (presumably under the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008) was not going to be sought against that driver. The fact that this driver was able to continue earning his living despite this and other complaints about him to DVS showed, the Appellant argued, that the motivation behind the revocation was retaliatory. We reject as unsupportable the suggestion that Mr Forrest and the Minister, in recommending and revoking the PSV Licence and Badge respectively, were motivated by a desire to retaliate against the Appellant for making this and earlier complaints about other drivers. 41. We do not regard the lack of conflict resolution training by the DVS, of which the Appellant complains, as providing her with any excuse for what are palpably breaches of the Code of Conduct, in particular the duty to be courteous to the public and to avoid conflict. 42. Having considered the evidence, we are not persuaded by the Appellant that the decision of the Minister to revoke her PSV Licence and Badge was wrong. This is, as we say, an important public service and it is important that drivers are courteous (Clause 2 of the Code of Conduct), take passengers to their destination unless there is good reason to end the hire (Clause 11 of the Code of Conduct), and do not involve themselves in conflict (Clause 19 of the Code of Conduct). The Minister was entitled on the evidence before him to find that the Appellant had been in repeated breaches of these important duties. 43. The decision to revoke her Licence deprives the Appellant of her livelihood, and it must therefore be proportionate. We have considered this carefully and note the following:- (i) The Appellant's misconduct has been persistent over many years. (ii) The sanctions imposed by the DVS have been measured, with suspensions imposed on 19 th August, 2016, 4 th January, 2018 and 5 th September, 2018, the last being set aside on purely procedural grounds. (iii) The Appellant had therefore received repeated warnings as to her conduct and, notwithstanding the complaints that led up to the 5 th September, 2018, suspension, her misconduct continued with the DVS receiving no less than a further seven complaints. The Court dealing with the 5 th September, 2018, suspension was concerned only with the complaints that led up to that suspension. (iv) Having set out his position in his letter of 16 th January, 2019, Mr Forrest then waited until the judgment of 7 th March, 2019, had been issued and would therefore be taken into account by the Minister. The procedural defect highlighted by the Court had already been remedied by that letter. The Appellant had been given clear notice of all of the complaints against her and had responded to them. 44. Given this long history and the multiple opportunities given to the Appellant to correct her behaviour and given the Appellant's combative and uncompromising response of 28 th January, 2019, in our view, the Minister had little option but to accept the recommendation of Mr Forrest and revoke her PSV Licence and Badge. In our view the decision was proportionate. 45. We turn finally to the correctness and fairness of the procedure, and whether the proceedings of the DVS and the Minister were in general sufficient and satisfactory. 46. There is a published Code of Conduct for taxi drivers to which we have referred, but there is no published disciplinary procedure to deal with complaints from the public about the conduct of taxi drivers, so we must examine the fairness of the actual procedure adopted in the case of the Appellant. 47. The

Appellant complains that there was no disciplinary hearing in this case, but there is no requirement under the Motor Traffic Law for a hearing to be held, and it would be unduly burdensome to place such an obligation upon the Minister. 48. Procedural fairness has been described as a flexi-principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair, with the content of the duty depending on the particular function and circumstances of the individual case. (See *R (Shoosmith) v Ofsted*

[2011] EWCA Civ 642 at paragraph 52). As Sir John Dyson SCJ explained in the case of *In re Application for Judicial Review by JR17*

[2010] UKS 27 at paragraph 50:- "The right to have a reasonable opportunity of learning what is alleged against the person when putting forward his or her answer to it 'is one of the fundamental rights according to the common law rules of natural justice.'" 49. In our view, fairness in this case required the following, namely the Appellant being given:- 1. Prior notice of what was intended; 2. Adequate disclosure of the evidence that would be relied on; and 3. The opportunity to make representations. 50. In this case, the Appellant was given prior notice of what was intended. In his letter of 16 th January, 2019, Mr Forrest stated very clearly in the second paragraph that he was minded to recommend revocation and added bold emphasis on that particular point:- "Your misconduct has regularly continued and increased, and has therefore prompted me to take further action. I am minded to recommend to the Minister to revoke your PSV Licence and Badge . The reasons for this decision are explained fully in this letter." 51. We agree, therefore, with Advocate Meiklejohn that the Appellant would have been in no doubt as to the severity of the sanction she was facing and that the representations she was invited to provide would be important and would be her chance to put her case forward. 52. Mr Forrest then went on to make it clear the procedure that would follow:- "As detailed at the foot of this letter, you have the opportunity to make representations to me before I make the final decision on this recommendation, and your representations will be shared with the Minister, should I make such recommendation." 53. Accordingly, the representations the Appellant was being invited to submit in response to this letter would be shared with the Minister, and this would be her sole opportunity to make her case as to why the PSV Licence and Badge should not be revoked. There was no indication or expectation that the Appellant would be invited to repeat her submissions or a variance of them at the stage the matter went to the Minister. At the conclusion of the letter, Mr Forrest again underlines that he is minded to recommend revocation and says:- "You have 14 days from receipt of this letter to provide me with reasons in writing as to why I should not recommend to the Minister that your PSV Licence and Badge should be revoked. The submissions should be addressed to me at DVS using the address at the head of this letter. Once I have considered your submissions, I shall decide whether to make a recommendation to the Minister, or whether to impose a lesser sanction, or none at all. You will be notified of the outcome without delay and, if applicable, be reminded of your appeal rights under the Law." 54. Mr Forrest's letter sets out very fully the evidence upon which his recommendation would be based, so we are satisfied that the Appellant had prior notice of what was intended,

adequate disclosure of the evidence that would be relied upon and an opportunity to make representations to the Minister. That she did by her lengthy letter of 28 th January, 2019.

55. Having waited for the Court's judgment of th March 2019, Mr Forrest then prepared his report to the Minister on 14 th March, 2019. As we said above he e-mailed the Appellant at 08:45 on the morning of 15 th March, 2019, enclosing a copy of the report, with its appendices, saying that it would be considered by the Minister that day and that he would inform the Appellant of the Minister's decision once he had met with them. The decision was taken later that day, and communicated to the Appellant at 16:27. 56. This aspect of the procedure gave us cause for concern, namely that the Appellant had not been given sufficient time to respond to Mr Forrest's report and to make representations on it to the Minister. We invited further written submissions from the parties in relation to this. The Appellant did not seem to us to address the issue we had raised, but in any event, we have concluded that this did not render the procedure unfair for the following reasons:- (i) The letter of 16 th January, 2019, stated that, if so minded, Mr Forrest would be making a recommendation to the Minister that the Appellant's PSV Licence and Badge would be revoked. The Appellant's representations would be shared with the Minister, but the Appellant would not otherwise be involved in that process. (ii) The report set out and relied upon the same evidence as set out in Mr Forrest's letter of 16 th January, 2019, and so no new evidence was put forward to the Minister upon which the Appellant had not been able to respond. (iii) The report did contain a brief commentary on aspects of the Appellant's letter of 28 th January, 2019, which, in Mr Forrest's view, were either inaccurate or irrelevant, which in our view was appropriate, in providing a report to the Minister. (iv) Inviting the Appellant to respond to the report, apart from delaying the matter, would simply have given her an opportunity to repeat what she had said in her letter of 28 th January, 2019, in respect of the evidence relied upon. 57. We consider, therefore, that the proceedings were, in general, sufficient and satisfactory.

Conclusion

58. Having addressed all three aspects of the test on this appeal, we conclude that the Minister had the power to make the decision to revoke the Appellant's PSV Licence and Badge, the proceedings were in general sufficient and satisfactory and the Appellant has not satisfied us that the decision was wrong. 59. We confirm the decision of the Minister and dismiss the appeal. *Authorities Motor Traffic (Jersey) Law 1935. JT (Jersey) Limited v Jersey Competition Regulatory Authority [2013] Bisson v Minister for Infrastructure*

[2019] JRC 037 Gender Recognition (Jersey) Law 2010 Bisson -v- Minister

[2015] JRC 084 Re Esteem

[2001] JLR 169 Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 R (Shoesmith) v Ofsted

[2011] EWCA Civ 642 Page Last Updated: 26 Jul 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2019/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/bisson-v-minister-for-infrastructure-2019-jrc-133-10-july-2019>

Prepared on 26 October 2026 · Esheria