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Mr John Littlemore
Head of Housing & Community Services
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Our Ref: DBW / Streamline
Your Ref:
Date: 29 August 2013
Please ask for: David Wilson

By First Class post and email to:
johnlittlemore@maidstone.gov.uk

Dear Mr Littlemore,

Hackney carriage licensing – proof of extension and amalgamation of zones
Local Government (Miscellaneous Provisions) Act 1976, Part II – proof of adoption
Taxi ranks – proof of lawful creation, especially at Maidstone East Station
Hackney carriage unmet demand survey

Thank you for your letter, dated 22 August 2013, forwarded to me by your senior licensing officer, Lorraine Neale, on even date.

Having taken my client's instructions, I can advise that, pending the outcome of the appeal to the Divisional Court in Aylesbury Vale District Council v Call a Cab Ltd, my client does not propose to pursue the extension and adoption issues further at this time, but reserves its absolute right to resurrect and pursue either or both of these matters at any time in the future.

However, My client is now concerned by the assertions made in your letter, dated 2 August 2013, with regards to the hackney carriage unmet demand survey that the rank provision at Maidstone East Station has not been lawfully created by the Council.

In your letter you asserted:

> "The 'rank' at the [Maidstone] East Station is on land in the ownership of the rail network and any vehicles using it require permits from Meteor, it is not a public highway rank. The Council understood there to be 5 spaces for use by Hackney Carriages and this area was notified to Amey as it was considered to be an area where there is demand. I am told that the current lined spaces, as photographed by your client, were painted during 2012."

Since as long ago as 1925, the creation of taxi ranks at railway stations in areas to which hackney carriage licensing applied under the Town Police Clauses Act 1847 have had to be created by councils, firstly by way of byelaws made under section 68 of the said Act and more recently, subject to the adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976, in accordance with the provisions of section 63 of the said 1976 Act.

In this regard, please note the provisions of section 76 of the Public Health Act 1925, which I reproduce below for your ease of reference:

> **76 As to public vehicles taken at railway stations.**
>
> In any area within which the provisions of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street:
>
> Provided that—
>
> (a) the provisions of this section shall not apply to any vehicle belonging to or used by any railway company for the purpose of carrying passengers and their luggage to or from any of their railway stations or railway premises, or to the driver or conductor of such vehicle;
>
> (b) Nothing in this section shall empower the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, or in any yard belonging to a railway company, except with the consent of that company.

As you will appreciate, the effect of the above was to extend hackney carriage licensing to privately owned railway land to which the provisions of the 1847 Act, with respect to hackney carriages, had not necessarily applied before the said Act was enacted.

Somewhat fortuitously, the whole legislative framework regarding the creation and management of hackney carriage ranks and hackney carriages at railway stations, including the operation of permit schemes, was considered by the High Court, Chancery Division in Jones & Tighilt v Greater Western Ltd [2013] EWHC 1485 (Ch) as recently as late April this year.

For your ease of reference, I enclose a copy of the very detailed and comprehensive 78 page judgment (although it should be acknowledged that the last nine pages are

concerned with post judgment matters) of His Honour Judge McCahill QC, sitting as a High Court Judge.

Whilst I am sure you and your lawyers will read and consider the whole judgment, I respectfully refer you to paragraphs 202 – 204 at which the court said:

> 202. The effect of the 1925 and 1976 legislation was, in my judgment, merely to extend the licensing system and regime created by the 1847 Act and the taxi byelaws to private land, albeit only with the consent of the landowner. It created no new rights.
>
> 203. Moreover, the consent of the landowner to the fixing of the stand on his land, a stand which was to be subject to the regulatory regime of the taxi byelaws, is, in my view, entirely different and separate from the necessary permission which must be obtained from the landowner to go on to private land to access that stand.
>
> 204. In other words, a landowner's right to withhold permission to taxi drivers to go on to his land is not spent once he has given his consent to taxi byelaws fixing a stand on his land until that byelaw is amended.

As the Council seems not to have extended any taxi rank at Maidstone East Station in 2012, that part that is an extension of the previous rank (if it were ever legally created) has not been legally created and calls into question the legality of this rank and all others within the Borough.

In the circumstances, I should be obliged if the Council would kindly provide copies of all the byelaws made under section 68 of the Town Police Clauses Act 1847 creating, amending or revoking any such rank prior to the (unproven) adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976 on 5 June 1978 and / or the resolutions and published statutory notices made thereafter under section 63 of the said 1976 Act in relation to taxi ranks.

As for the hackney carriage unmet demand survey, having raised concerns in this letter and in earlier correspondence, my client acknowledges that it is for the Council alone to decide whether to take action to alleviate its concerns and, should the Council not do so, it would then be a matter for my client to pursue, if it considered the Council had failed to ensure that its decision-makers had been presented with all relevant information and no irrelevant or inaccurate information.

Whilst not expressed as a request for information under the Freedom of Information Act 2000, I trust the Council will be able to provide the requested information regarding taxi ranks (which I trust will be readily to hand in any event) within the 20 working days in which the information would have to be provided under the 2000 Act.

I look forward to hearing from you; and thank you in anticipation of your further prompt and kind attention to these matters.

Yours sincerely,

David B Wilson
Licensing Consultant, Mediator and Trainer

Email: david.wilson@a2zlicensing.co.uk
Mobile: 07794 776383

Claim No 2BS30445

Neutral Citation Number: [2013] EWHC 1485 (Ch)

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BRISTOL DISTRICT REGISTRY

Date: Thursday, 25 April 2013

Before:

HIS HONOUR JUDGE McCAHILL QC
(Sitting as a High Court Judge)

- - - - - - - - - - - - - - - - - - - -

Between:

(1) PATRICIA JONES **(2) MOURAD TIGHILT** (Suing on behalf of themselves and all other members of the Bristol Branch of the NationalTaxi Association)	**Claimants**
and	
FIRST GREATER WESTERN LIMITED	**Defendant**

- - - - - - - - - - - - - - - - - - - -

- - - - - - - - - - - - - - - - - - - -

MR D FLETCHER (instructed by Stones LLP) appeared on behalf of the Claimants

MR E PATON (instructed by Burges Salmon LLP) appeared on behalf of the Defendant

- - - - - - - - - - - - - - - - - - - -

JUDGMENT

Introduction

1. The core issue in this case is whether the defendant, First Greater Western Limited ("FGW") - as the private lessee and station franchise operator of railway premises, namely Bristol Temple Meads ("BTM"), within which are located Hackney Carriage stands fixed by local byelaws ("the taxi byelaws") - is lawfully entitled to introduce and enforce a permit scheme.

2. This permit scheme requires Hackney Carriage drivers to pay an annual fee for the privilege or opportunity of plying for hire from within the station forecourt or for standing for hire at those prescribed taxi stands, as well as requiring them to conform to certain standards of conduct whilst at BTM, on pain of having their permit revoked.

3. The scheme, which came into practical effect on 1 March 2012, does not prevent (1) licensed Hackney Carriage drivers without permits or private hire vehicles from dropping off passengers at the station entrance; or (2) private hire vehicles from picking up passengers who had pre-booked a private hire vehicle to pick them up from the forecourt at Bristol Temple Meads.

The defendant

4. FGW is a passenger railway franchise holder, operating train services on the great western section of the national rail network, from London Paddington to the south west of England and South Wales.

5. FGW is wholly owned by First Rail Holdings Limited, which is itself wholly owned by First Group plc.

6. FGW is a commercial undertaking, employing railway assets for profit in accordance with a franchise agreement with the Secretary of State for Transport dated 12 December 2005. FGW's activities include carrying passengers in exchange for fares and entering commercial arrangements with third parties to exploit its land by way of concessions.

7. As part of its railway services, it is the current operator of BTM which was leased to it by the freehold owner, Network Rail Infrastructure Limited ("Network Rail") by a lease dated 30 September 2009 for a term starting on 1 October 2009 and ending at 2 am on 13 October 2013, some five to six months hence.

8. The lease includes the station approach land accessed from the public vehicular highway on the south west known as Temple Gate. This approach land includes the access road and pavements known as Station Approach, car parks and 46 taxi stands located in two ranks, one for four taxis, the other for 42. There is also an additional pedestrian side access to the station, from the northern direction of Avon Street, via a pedestrian bridge over the Floating Harbour.

9. FGW took over as the operator in 2006 from Great Western Trains Company Limited ("GWTC") by a transfer scheme dated 31 March 2006.

Nationlisation of the railways

10. By way of background history, the railways and other forms of private inland transport had been nationlised under the Transport Act 1947, which had also created the British Transport Commission.

11. Under the Transport Act 1962, the British Transport Commission was replaced by four separate organisations, one which of which was the British Railways Board ("British Rail"), which thereafter owned all railway stations, railway premises, including taxi ranks and infrastructure, as well as operating the national railway service and network.

Privatisation of the railways

12. By the Railways Act 1993, operations of British Rail were to be privatised and separated into a number of separate businesses, including businesses providing passenger and freight services using rolling stock, which were known as the Train Operating Companies; and a business which managed the infrastructure, namely the track and railway properly, to be called Railtrack plc.

13. GWTC, initially a subsidiary of British Rail, had taken over operation of BTM from the British Railways Board in December 1994 as part of the preparations for privatisation of the railways under the Railways Act 1993.

14. GWTC was subsequently sold by British Rail to private operators, to which the relevant Track Agreement and Station Franchise Agreement were granted. The newly privatised business, GWTC, ran BTM and the rail network from February 1996 to December 2005.

15. Following the insolvency of Railtrack plc in 2002, it was restructured as National Rail Infrastructure Limited, called Network Rail, in October 2002.

16. For a more detailed history of the privatisation process, the parties are referred to paragraphs 4.3 to 4.9 of the second witness statement of Mr Bartlett at pages 41 to 42 in bundle C.

17. Both FGW and GWTC are subsidiaries of First Group plc and, as both trade or traded as ‘First Great Western’, third parties, including the public, would not have noticed any practical difference upon the change of operator in 2006.

The claimants

18. The claimants, representing the members of the Bristol Branch of the National Taxi Association, initially brought an application for an interim injunction to restrain the implementation of the scheme. The application for the injunction was compromised on the terms of an order and undertakings agreed at court on 9 March 2012. Those undertakings were slightly varied by orders of 19 April 2012, 28 February 2013 and, most recently, 26 March 2013.

19. The orders and undertakings enabled a category of claimant taxi drivers, protesting against the permit scheme but wishing to ply for hire on the station land in the interim, to pay an equivalent sum into court in lieu of the permit fee. They were the ‘B List’ and then the ‘B1 List’ claimants, who pending trial were also bound by undertakings to comply with the defendant's terms and conditions for permit holders.

20. I shall refer in the rest of this judgment to licensed Hackney Carriages as ‘taxis’ and to their drivers as ‘taxi drivers’.

21. The claimant Association comprises between approximately 180 and 200 taxi driver members, referred to on ‘List A’ attached to the pleadings, some of whom do not ply for hire from BTM at all (‘List C’). It is currently the only taxi association in Bristol. It follows that

there are many taxi drivers who do ply for hire at BTM who are not members of the claimants' Association. Former taxi associations, active in the 1970s and 1980s, have been disbanded or no longer exist.

The licensing authority

22. The relevant taxi licensing authority is Bristol City Council ("BCC").

23. A taxi driver requires her or his own personal licence as a driver to ply for hire in a taxi. The taxi vehicle itself must also be separately licensed by its proprietor. The taxi licence or 'plate' is marketable, but it must be sold with the vehicle to which it relates.

Taxi statistics and the introduction of the permit scheme

24. Since deregulation there is now no limit on the number of taxis that can be licensed by BCC. In 2011, there were about 771 taxis, of which 581 then plied for hire from BTM. When the permit scheme came into effect on 1 March 2012, there were about 900 taxis, of which 252 held FGW permits and a further 74 operators, the 'B List'taxis, had paid into court the equivalent of the FGW permit fee of £375 under the terms of that interim court order, which allowed them to use their taxis to ply for hire at BTM, without formally submitting to the new permit scheme. They displayed a modified form of permit on the windscreen of the taxi.

25. As at 1 April 2013, 58 taxis held permits issued for the new year and a further 203 vehicles held 'B' or 'B1' list authorisations, having paid into court the equivalent of the 2013/2014 fee effective from 1 April 2013, namely £400.

26. The most expensive permit fee currently charged elsewhere by FGW is in the region of £700. It can therefore be confidently predicted that, if FGW is successful in this litigation, the BTM permit fee will soon rise to that level or beyond since BTM is the station with the highest footfall of passengers under FGW's control and management.

27. The current comparatively low permit fee is, according to FGW, a reflection of the fact that the last permit fee had been charged in 1974 and, therefore, FGW wished to increase the fee gradually. The claimants regard the current comparatively low entry level fee as a cynical ploy by FGW, since FGW's long-term intentions are obvious.

28. FGW manages 210 stations, at 41 of which it operates a permit scheme because of the number of passengers frequenting that station and the number of taxi drivers who convey them. However, BTM is the only FGW station, of which I am aware, where localbyelaws regulating the taxis are in force and, if FGW succeeds in this case, will remain in force alongside the terms and conditions of the permits. In addition to levying a charge, the permits also seek to regulate the behaviour of taxi driverswhen on BTM premises. The defendant will enforce the permit conditions as partof the operation and management of the station.

The permit

29. The permit and its conditions are set out between pages 211 and 218 of the Core Bundle. I should refer to some of the conditions at this stage. The parties to the agreement are expressed to be FGW, the licence holder, which is the proprietor of the vehicle, and any applicable driver. In the permit, "*Driver means (except where specifically mentioned otherwise) the licence holder holding the licence for the vehicle issued under the Town Police*

Clauses Act 1847 and any additional driver named above." The permit agreement enabled additional drivers, beyond the Owner driver, to become parties to the agreement.

Permit conditions

30. Clause 4 of the permit cast upon the licence holder a number of obligations,

including clause 4(c):

> *"(c) Comply in all respects with any regulations, conditions of licence and bye-laws of the council and in particular with such of the said regulations and bye-laws as relate to any uniform to be worn by and the conduct of drivers while on duty."*

31. Clauses 4(e) and (f) require the licence holder to:

32. *"(e) Comply with the requirements of every statute regulation or bye-law relating to motor vehicles (so far as applicable to taxis) and with the bye laws and regulations of the company and the requirements and directions of the Police (including officers of British Transport Police) and other authorised officials*.

33. *"(f) Ensure that the manager of the station be furnished with full particulars of any parcel or package or other articles left or deposited in any taxi by any passenger carried to or from the station as soon as practicable after the discovery of such parcel package or other article."*

34. Clauses 5, 6, 13, 15 and 16 of the permit place upon the driver of any

taxi a number of other obligations and restrictions when at BTM:

> *"5. The driver of any taxi shall not ply for hire at the station except in accordance with this agreement and the company's requirements hereunder.*
>
> *"Whilst upon entering or leaving the station of the company the driver will not:*
>
> > *"(a) Drive dangerously, recklessly or carelessly*
> >
> > *"(b) Tout for hire either by word, signal or otherwise*
> >
> > *"(c) Unreasonably refuse a fare when not engaged*
> >
> > *"(d) Leave any taxi unattended*
> >
> > *"(e) Be under the influence, whilst driving, of alcohol, non prescribed drugs or any other controlled substance*
> >
> > *"(f) Use any insulting or abusive or offensive language, or be guilty of any indecent or improper conduct*
> >
> > *"(g) Cause or permit any nuisance, annoyance or obstruction, danger, damage, loss or inconvenience to the company or to their servants or agents, or to any person or property being adjacent thereto or to any person hiring or seeking to hire any taxi for the purpose of being carried to or from the station.*
> >
> > *"(h) Dispose of litter, e.g. cigarettes, food, drink and packaging, etc. whilst on the station premises, anywhere other than in the designated refuse containers.*

"6. In the event that the rank or designated feeder lane to the ply for hire rank is full, drivers shall not attempt to ply for hire from any other part of the company's premises.

"7. The company's staff at the railway station may require the permit holder to collect passengers from a different part of the station (other than the taxi rank). All permit holders must comply with these requests.

"13. Termination or suspension - the company or any authorised person may at any time terminate or suspend this contract by written notice served on the driver of the vehicle at that time but without prejudice to any other rights or remedy, which they may possess.

"15. The company may terminate this contract:

"(a) If the sum due under clause 11 [that is the permit fee] ... *[is] not paid.*

"(b) If the licence holder/driver fails to comply with any other obligations on their part herein contained in this agreement.

"(c) If the licence holder/driver shall act contrary to the provisions of this agreement.

"(d) If the licence holder is unable to satisfy his/her debts or if the licence holder shall compound or make any arrangements with his/her creditors.

"16. The company reserves the right not to renew any licence holder/driver's agreement. The company will use its discretionary power not to disclose any information to the licence holder/driver with regard to this decision."

35. I have recited the material provisions, but the whole permit agreement has to be looked at to see the full extent of the control which it exercises on taxis and their drivers. As I have already indicated, the parties to the permit agreement are the proprietor of the licensed taxi, as well as any other authorised driver of that vehicle, on the one hand, and FGW on the other. FGW have also retained the power both to limit the number of permits and, under clause 15, to terminate or revoke any permit it granted for breach of any of the permit conditions.

The unique position of BTM

36. No other FGW station the subject of an FGW permit scheme is regulated by taxi byelaws.

FGW's primary submission in summary

37. Mr Paton, counsel for FGW, has distilled the core issue thus: do the claimant taxi drivers have a *right* to conduct their business at the taxi stands on the defendant's land at Temple Meads Station without the defendant's permission, so that the defendant cannot oblige them to obtain an annual permit to do so?

38. He answered his own question in his written skeleton argument as follows:

39. (1) The real issue is not whether the claimants are barred for ever from conducting their trade at Temple Meads, it is whether they will have to obtain a permit for the privilege of doing so, abide by the defendant's terms and conditions of access when on its land and pay

a fee, having not paid any fee or been required to sign up to terms and conditions of behaviour for the preceding 38 years.

40. In this respect, it is a question of whether the current operator of the station can reintroduce the permit arrangements in place prior to 1974 when taxi drivers paid British Rail for the privilege of conducting their trade on its land. The premium charged in 1973 was £25 per year. There was no suggestion that, at that time, there was any reason why British Rail could not control access over its land or require payment for the right to conduct a trade on it.

41. Mr Paton added that such had been the clear legal position in relation to land owning railway companies even before British Rail existed. He referred to Perth General Station Committee v Ross [1897] AC 479, where it was held there was no right of access to the staion for hotel porters; and to Barker v Midland Railway Company (1856) 18 CB 46, where it was held there was no right of access to the station for bus drivers.

42. This, therefore, he submitted is the modern day starting point for any analysis, namely that station premises are private land.

43. (2) His second overarching point was that the claimants have focused in particular on the cost of purchasing a permit. The current asking price for that privilege is £400 (£375 last year). On the claimants' own stated case and figures - specifically their figures for alleged loss of earnings in the brief interim period of 12 days between 1 March and 12 March 2012, before the compromise in the injunction proceedings was implemented, and now set out in the amended schedule of damages - the annual value of the privilege of conducting their business on the station land to each of them was claimed, in that schedule, to lie in the approximate range of between £9,000 and £24,000 per annum, with the majority of claimants in the upper end of that bracket.

44. The current cost levied, therefore, is some 1 to 2 per cent of the benefit to begained from access to the defendant's property and to its customers, disgorgedby its own trains on delivering them to its own station.

45. So, for FGW the position is straightforward: As landowner, it has an unqualified private right to determine who, and on what terms, it permits to come on to the land of which it is lessee, and that includes the station approach road and taxi stands, even if, as was the case, the position of those taxi stands within BTM had been fixed as Hackney Carriage stands, with the consent of British Rail in 1974, by the taxi byelaws.

46. The taxi byelaws, according to FGW, merely extended BCC's supervisory and regulatory regime over taxi drivers, confined normally to the public highway, to private railway land, but conferred no right of access for taxi drivers to BTM land including those stands.

47. Mr Paton submitted that this proposition had been clearly established by the Divisional Court in the case of Hulin v Cook [1977] RTR 345, a unanimous decision of Lord Widgery CJ, Melford Stevenson and Slynn JJ. That judgment was delivered by the Divisional Court on 22 June 1977, in respect of an offence allegedly committed at Cardiff Railway Station on 15 September 1975.

48. Mr Paton accepted that I, sitting in this case as a High Court Judge, am not technically bound by another High Court or Divisional Court decision.

49. Nevertheless he submitted that the recognised position is that set out in the following passage in Halsbury's Laws, volume 11, Civil Procedure, at paragraph 98:

> *"Where, however, a judge of first instance, after consideration, has come to a definite decision on a matter arising out of a complicate and difficult enactment, the opinion has been expressed that a second judge of first instance of coordinate jurisdiction should follow that decision and the modern practice is that a judge of first instance will, as a matter of judicial comity, usually follow the decision of another judge at first instance unless he is convinced that that judgment was wrong."*

50. Reference was made, in the footnote to that extract from Halsbury's Laws, to the case of Huddersfield Police Authority v Watson [1947] KB 842.

FGW has also sought to justify the permit scheme under powers conferred on it by the Railway Byelaws 2005 made by the Strategic Rail Authority under the Transport Act 2000.

The claimants' case in summary

51. Mr Fletcher, on behalf of the claimants, has attacked the permit scheme and/or FGW's right to charge taxi drivers for plying for hire from BTM on the following bases.

52. (1) The fixing of taxi stands within BTM impliedly granted taxi drivers the free right to go on to BTM to ply for hire within BTM or to park at the taxi stands pending hire, absent any revocation or amendment of the relevant taxi byelaw which had fixed the location of the stands within BTM.

53. Mr Fletcher's submission was that a taxi stand is either public or private. He gave the example of a private stand within a hotel. He submitted that a stand cannot be both public and private, which he argued is precisely what FGW was trying to achieve.

54. (2) He also argued that Hulin v Cook is an unsatisfactory authority because:

55. (i) The facts were not fully explored and some important matters were either unknown or assumed;

56. (ii) Unlike the instant case, there had been no attack on the permit scheme which was operated at Cardiff; rather that was a case where there was a conflict between the taxi byelaws and the then current railway byelaws, whereas he submitted that clash has been removed by the modern 2005 railway byelaws;

57. (iii) There had not been a full analysis of the legislation under which the taxi byelaws in that case had been made;

58. (iv) Since that case the position has been materially affected by section 63 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act");

59. (v) FGW's powers under the permit scheme could have the effect of reducing the number of taxi drivers at BTM, whereas the 1976 Act had enacted a statutory procedure to be followed if the number of taxis at each stand was to be varied;

60. (vi) The effect of the permit scheme would be double regulation of taxi drivers, namely by BCC and by FGW.

61. (3) In any event, as an alternative submission, Mr Fletcher argued thirdly that the Station Approach is a public vehicular and pedestrian highway by virtue of section 31 of the Highways Act 1980 as a result of its presumed dedication after public use for 20 years both

on foot and with vehicles. Therefore, taxi drivers have that right, free of charge, to access BTM land, because it is subject to and burdened with public vehicular rights.

62. FGW resisted the public highway argument on the grounds, inter alia, that:

63. (a) Any use was permissive and not as of right;

64. (b) The creation of any public or private right of way by prescription or user is, in fact, prevented by section 57 of the British Transport Commission Act 1949;

65. (c) Any such public vehicular right was extinguished by the Natural Environment and Rural Communities Act 2006; and

66. (d) Even if there had been a presumed dedication, that could be negatived by evidence showing that there was no such intention to dedicate. Such evidence exists and should be accepted in this case.

67. (4) Mr Fletcher's fourth point was that FGW had relied upon its powers, in whole or in part, contained in the Railway Byelaws in imposing the permit scheme. Either it had no such power under the byelaws as a matter of interpretation of the 2005 byelaws, when compared with their predecessor, or, even if it did have relevant powers under the Railway Byelaws 2005, it was seeking to use those byelaws for an improper and ulterior purpose, namely to raise revenue, a function for which the powers had not been granted.

68. In either event he said that the scheme was beyond the powers of FGW and should be restrained by injunction, requiring FGW to reconsider its position with a view, if so advised, to introducing a new permit scheme wholly within its powers. He submitted that this argument still applied, even if FGW had purported in fact to introduce the scheme both under its powers as a private landowner and in the exercise of statutory powers. The fact that it had relied, albeit in part, on a byelaw power it did not possess, infected the whole scheme which should be struck down, until it was properly reconsidered and then reintroduced on a wholly correct legal basis.

69. (5) If the taxi drivers used the station approach road and stands only by reason of FGW's permission and not by right, either as a highway or under the taxi byelaws, and even if the permit scheme is not beyond the powers of FGW, nevertheless the permit scheme violated the taxi drivers' rights under Article 1, Protocol 1, that is the peaceful enjoyment of possessions, under the European Convention of Human Rights and Fundamental Freedoms as incorporated in and enforceable by the Human Rights Act 1998.

70. This argument, as well as a purported claim for damages under the Human Rights Act 1998, is premised on an assertion that "in relation to their management of the accesses to Temple Meads Station the defendant are a public authority as defined in section 6 of the Human Rights Act 1998".

71. The claimants do not say on this argument that they should have had more time or notice of the implementation of the permit scheme; they claim that the defendant could not withdraw the permission at all save in pursuit of a legitimate aim and, in doing so, in striking a fair balance between their own rights and the public interest and/or the livelihood of the claimants.

72. This human rights argument has, therefore, given rise to the subsidiary issues of whether:

73. (1) In exercising their function of controlling access to BTM, FGW was, for these purposes, a public authority;

74. (2) The permission granted to the taxi drivers to access BTM was a possession for the purposes of Article 1, Protocol 1 of the Convention and the Act;

75. (3) In revoking the permission, FGW interfered with or deprived the taxi drivers of their possessions; and

76. (4) Even if it did, it was in the public interest and subject to the conditions provided for by law? In short, was it a justified and proportionate control on a fair balance struck between the demands of the general interests of the community and the protection of the fundamental rights of the taxi drivers?

Compromise

77. FGW has also contended that the claimants had compromised their claim against FGW as a result of an agreement between Mr Bartlett of FGW and Mr Lloyd, then Chairman of the claimant Association, at some time between Friday 27 and Monday, 30 January 2012. Whilst there remains a stark conflict of evidence between Mr Bartlett and Mr Goldring on behalf of FGW on the one hand and Mr Lloyd and Ms Jones of the claimants on the other hand, over what was said or not said at the time, I am satisfied, as I made clear during final submissions, that Mr Bartlett knew that Mr Lloyd had no authority to bind the individual members of the claimant Association; and that, in the end, it was for each taxi driver to decide whether or not to apply for a permit if he or she wished to ply for hire from BTM.

78. In any event, even if it had been successful, such a defence of compromise would not have been a complete answer to the claim since many taxi drivers ply for hire from BTM who are not members of the claimant Association or who only became members in February 2012, after the date of the alleged compromise.

Pleadings and overview

79. These various arguments on both sides have, of course, featured in the pleadings. Indeed, as a result of an amendment allowed by me at the beginning of the trial, the claimants' case was finally set out in the re-re-re-amended particulars of claim.

80. Of all the issues in the case, the claimants have accepted that their principal claim relates to the implied grant of free access to BTM for taxi drivers under the taxi byelaws. It is therefore necessary to consider the legislative framework and content of these byelaws before conducting an historical review of the period between 1974 -- and I add the relevant byelaw first came into effect on 6 December 1974 -- and 2010/2011 when FGW first raised the possibility of a permit scheme at BTM with both BCC and the taxi drivers.

81. It seems to be common ground that the private permit scheme operated by British Rail up to 1974 was legally unobjectionable. It was unchallenged that BTM, the station forecourt, the approach road and the taxi rank were privately owned by British Railway, as shown in the Perth and Barker cases, and now, under its lease, by FGW.

82. The question is whether that ownership is subject to any prior rights in favour of the taxi drivers.

Withdrawal of permission

83. Before privatisation there had been two unsuccessful attempts, namely in 1985 and 1991, by British Rail to reintroduce a permit scheme, when taxi byelaws were already then in existence. These attempts came to nothing, and the idea just seemed to peter out in the face of opposition from BCC and the taxi drivers. Indeed, when FGW resurrected the notion of a permit scheme with BCC in 2010/2011, BCC again raised legal arguments why such a scheme could not or should not be introduced.

84. However, BCC took a completely different view of the situation on 26 January 2012 when it notified the claimant Association that it would not be supporting the taxi drivers in their dispute with FGW. Their final position was expressed in letter dated 22 February 2012 to Ms Jones, the current Chair of the claimant Association. It is set out at D4/997 and CCB/120 as follows:

85. *"Dear Sir/Madam.*

"RE: PERMIT SCHEME AT BRISTOL TEMPLE MEADS RAILWAY STATION.

"You may be aware that with effect from 1 March 2012 hackney carriages licensed by Bristol City Council will only be able to ply for hire at Temple Meads station if in possession of a permit issued by First Great Western (FGW). The taxi rank at Temple Meads remains in operation however access will be restricted to permit holders only. Hackney carriages operating as private hire vehicles will continue to be able to access the station for dropping off and picking up of pre booked fares.

"FGW first made the council aware of their intentions to introduce a permit scheme in November 2010. The original proposals were to go live in March 2011. The proposed permit fee at the time was significantly higher than the current fee.

"Since the council became aware of this issue we have raised a number of concerns with FGW regarding the scheme resulting in a series of communications between the two parties. This has resulted in the implementation date being deferred and a lower permit fee. However we have reached a position that whilst we will continue to discuss the matter with FGW the Council is not able to prevent FGW from reviewing the basis on which they permit access to their land, which is essentially a matter between the company and the affected drivers."

86. This was repeated in the minutes of the Hackney Carriage and Private Hire Forum between BCC and the claimants and other taxi proprietors on Friday, 11 May 2012, which is at D4/1080.

87. There Mr Carter, the head of enforcement of the taxi byelaws, is reported as having said this under item 2:

88. *"NC [that is Mr Carter] provided background to Bristol City Council's (BCC) approach to the Permit scheme. Advised that BCC first became aware of the proposals 18 months ago when approached by First Great Western (FGW). Since that time BCC have been in dialogue with First and raised a number of concerns over the proposed scheme. Unfortunately a stage had been reached where FGW decided to proceed with the scheme.*

89. *"BCC had brokered an agreement in 1974 with FGW predecessors and the then taxi association. However FGW have withdrawn from that agreement to allow free access at Temple Meads rank.*

90. *"NC stated that Byelaw 16" -- that is the byelaw which incorporated the Temple Meads stands within the taxi byelaws -- "did create a public rank, but the land was owned by the rail operator and, as the landowner, they have the power to restrict access. NC made reference to a similar situation at Cardiff General Station where case law had been established, Hulin v Cook, regarding access.*

91. *"Enforcement on the rank will still be carried out by BCC Enforcement Officers."*

92. FGW had revoked or purported to revoke the permission of taxi drivers to access and ply for hire from BTM, by letters dated 4 November 2011 both to the claimant Association, see claimants' core bundle page 90, and to all taxi drivers:

93. *"Dear Tim.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Temple Meads Railway Station and revocation of permission to access land to tout for trade.

"Further to our discussions with yourselves and Bristol City Council regarding the Temple Meads forecourt, I thought I would let you know that FGW is now moving forward with introducing a permit scheme for any taxis which wish to ply for hire at Temple Meads Station. The intention is to introduce this scheme from 1 February 2012.

"I am consequently writing to you on behalf of FGW as the representative of the NTA to give you, the NTA and your members formal notice that FGW is withdrawing its current permission to access railway property at and leading up to Bristol Temple Meads station with effect from 1 February 2012. Please can you pass this notice on to NTA and its members. We are also writing directly to each of the taxi drivers identified in the Council's register to inform them of this change.

"The withdrawal of permission is to allow the introduction of the permit scheme from that date. It is therefore our intention to conduct and conclude the introduction of the permit scheme in time to 'go live' on 1 February 2012. We are writing directly to each of the taxi drivers identified in the Council's register to inform them of this change and have set up a dedicated mailbox (fgw.taxis@firstgroup.com) to answer any further enquiries they might have about it. We would also be happy to engage with you and the NTA on their behalf to ensure everyone understands what is happening and how to ensure they can apply if they choose to do so. If you would like a meeting with us (and, if they are willing to attend, the Council who we have briefed on the plans) then please do let me know when would be convenient.

"Whilst I appreciate that nobody welcomes the prospect of the payment of any additional fees, it is important that the anomaly situation at Temple Meads is brought to an end and that we start to build a relationship that further improves our customer service in line with out other taxi driver relationships across FGW.

"FGW have appointed Cabfind as our agents for the introduction of the permit scheme at Temple Meads. They will shortly be writing to all drivers with further details and how to apply.

"We are hopeful that this change of arrangements can be introduced smoothly to ensure that there is no adverse effect upon the service provided to customers on 1

February 2012. In order to ensure that, we would be happy to take you through the arrangements and to discuss with you how they will be introduced."

94. FGW's letter to the individual taxi drivers, whose names they obtained from the register held by BCC, is at claimants' core bundle page 91.

95. *"Dear Sir/Madam.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Temple Meads Railway Station and revocation of permission to access land to tout for trade.

"As you may be aware, Bristol Temple Meads Station, and the station approach road leading from Temple Gate Road to the front of the station, as well as the current taxi stand in front of Temple Meads Station, are leased to and controlled by First Greater Western Ltd ('FGW').

"Currently access to this land for taxi drivers (including yourself) to ply for hire is permitted according to a general permission granted on behalf of the railways. FGW has, however, decided to terminate that permission. Please therefore take notice that permission to access railway land for the purposes of plying for hire as a Hackney Carriage will cease on 1 February 2012. Until that date FGW continues to extend its permission on a temporary basis so you will not observe any immediate changes.

"From 1 February 2012 FGW will be introducing a permit scheme to ply for hire on railway land leading to and at the entrance to Bristol Temple Meads Station. The aim of the introduction of the permit scheme is to realise a more consistent approach to taxi standards through the building of a closer relationship with taxi drivers and your representative associations that will benefit both FGW customers and other key parties.

"The scheme will bring Bristol Temple Meads in line with all other FGW taxi ranks and will work in conjunction with the existing taxi byelaws applying across the rest of the city. All currently licensed taxi drivers can apply for a permit and all will be considered in accordance with the rules of the scheme.

"FGW have appointed Cabfind as our agents for the introduction of the permit scheme at Temple Meads. They will shortly be writing to you with further details of the scheme, including details of forthcoming advertisements in trade magazines and information on how to apply for a permit.

"In the meantime should you have any further enquiries in relation to the introduction of the scheme please direct them to the email address fgw.taxis@firstgroup.com.

"Please note that the scheme, when introduced, will not affect the picking-up and dropping-off of pre-booked customers by licensed taxi drivers."

96. FGW subsequently wrote again, on 20 January 2012, to all taxi drivers who had not by then applied for a permit, notifying them further of the introduction of the permit scheme and the withdrawal of any permission to ply for hire at BTM. This letter is set out at D4/925.

97. *"Dear Sir/Madam.*

"Introduction of Permit Scheme for Hackney Carriage Drivers at Bristol Temple Meads Railway Station.

"As set out in our letter to you of 4th November 2012 (copy text attached for your reference) First Greater Western Ltd ('FGW') is introducing a permit scheme for access to Bristol Temple Meads Railway Station to ply for hire from 1 February 2012.

"According to our records you have not yet applied for a permit under this scheme and consequently (subject to having a permit issued to you by FGW) you will not be permitted to ply for hire as a Hackney Carriage at Temple Meads Station (including all railway land leading to it, including station approach) or use the taxi stand at Temple Meads Station at any time after 00.01 hours on 1 February 2012. For the avoidance of doubt FGW's permission for you to ply for hire at Temple Meads station and access its land to use the taxi stand is withdrawn at that time and you should not attempt to access the station, including the station approach, with intent to ply for hire or to park your vehicle, without a permit.

"You will continue to be permitted access to the station for the sole purpose of setting down passengers who have in good faith retained your services to carry them to Temple Meads Station. However, once setting down any such passengers you will be required to leave Temple Meads Station promptly without picking up any customers or attempting to park your vehicle at the station.

"You should note there will be stewards at Temple Meads Station from the 1 February to direct you on where to stop to unload and to assist you with maintaining a free flow of traffic. Please co-operate with their instructions.

"Any attempts to ply for hire without permission from FGW may be considered a breach of the railway byelaws and result in a formal warning that may impact upon any future application you may wish to make to ply for hire at Temple Meads station.

"If you have mislaid your application form for a permit to ply for hire or have any other enquiries or need any further assistance to apply please contact Cabfind directly.

"Cabfind "Permits Department "Egerton House."2 Tower Road.

"Birkenhead. "Wirral. "CH41 1FN.

"permits@cabfind.com. "T: 0843 658 1190 "F: 0843 658 1191."

98. The reference to the railway byelaws, present in that letter of 20 January, was not in the letters of 4 November 2011.

99. It will be observed, therefore, that those letters, even with that reference to railway byelaws, are silent as to the powers relied on to impose the scheme or to withdraw the consent or permission previously enjoyed by taxi drivers, as opposed to a possible breach of byelaws for plying for hire without FGW's permission.

100. There is no reference, in that correspondence, to the railway byelaws as the source of the power to introduce the permit scheme. If anything, looking at that correspondence in the round, the source appears to stem more from FGW's position as the lessee and controller of BTM from references such as permission to ‘access its land’.

Legislative framework: Statutes

Town Police Clauses Act 1847

101. Section 37 provides:

"The commissioners may from time to time licence to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the General Post Office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance), hackney coaches or carriages of any kind or description adapted to the carriage of persons."

102. Section 47 imposed a penalty on those who plied for hire without a licence.

103. Section 68 states:

"The commissioners may from time to time (subject to the restrictions of the and the special Act) make Bye laws for all or any of the purposes following; (that is to say),

"For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

"For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:

"For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of cheek strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

"For fixing the stands of such hackney carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:

"For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

"For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof."

104. That legislation envisaged plying for hire on the public highway only and not on private land. However, railway passengers would need to be conveyed to and from railway stations even though railway stations were, of course, private property. This issue was addressed in section 76 of the Public Health Act 1925 which provided:

"In any area within which the provisions of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street:

"Provided that-

"(a) ...

"(b) Nothing in this section shall empower the local authority to fix the site of the stand or starting place of any hackney carriage in any railway station or railway premises, or in any yard belonging to a railway company, except with the consent of that company."

105. So, with the consent of the railway company, a taxi stand could be fixed on private railway premises which were then regulated by the licensing authority *as if* the railway station or premises were a stand for Hackney Carriages or a street.

106. This was the state of the law at the time the alleged offence in Hulin v Cook was committed. It is the state of the law at the time of the decision of the Divisional Court in Hulin v Cook.

107. After that case, the Local Government (Miscellaneous Provisions) Act 1976 was enacted. That Act received the Royal assent on 15 November 1976. Section 63 of that Act is in the following terms.

"Stands for hackney carriages.

"(1) For the purposes of their functions under the Act of 1847, a district council may from time to time appoint stands for hackney carriages for the whole or any part of a day in any highway in the district which is maintainable at the public expense and, with the consent of the owner, on any land in the district which does not form part of a highway so maintainable and may from time to time vary the number of hackney carriages permitted to be at each stand.

"(2) Before appointing any stand for hackney carriages or varying the number of hackney carriages to be at each stand in exercise of the powers of this section, a district council shall give notice to the chief officer of police for the police area in which the stand is situated and shall also give public notice of the proposal by advertisement in at least one local newspaper circulating in the district and shall take into consideration any objections or representations in respect of such proposal which may be made to them in writing within twenty-eight days of the first publication of such notice.

"(3) Nothing in this section shall empower a district council to appoint any such stand-

"(a) So as unreasonably to prevent access to any premises;

"(b) so as to impede the use of any points authorised to be used in connection with a local service within the meaning of the Transport Act 1985 or PSV operator's licence granted under the Public Passenger Vehicles Act 1981, as points for the taking up or setting down of passengers, or in such a position as to interfere unreasonably with access to any station or depot of any passenger road transport operators, except with the consent of those operators;

"(c) on any highway except with the consent of the highway authority;

"And in deciding the position of stands a district council shall have regard to the position of any bus stops for the time being in use.

"(4) Any hackney carriage byelaws for fixing stands for hackney carriages which were made by a district council before the date when this section comes into force in

the area of the council and are in force immediately before that date shall cease to have effect, but any stands fixed by such byelaws shall be deemed to have been appointed under this section.

"(5) The power to appoint stands for hackney carriages under subsection (1) of this section shall include power to revoke such appointment and to alter any stand so appointed and the expressions 'appointing' and 'appoint' in subsections (2) and (3) of this section shall be construed accordingly."

108. It can be seen, therefore, that the 1976 Act contained a consultation requirement and process before varying the number of Hackney Carriages to be at each stand. Moreover, that Act extended to any land not forming part of the highway and not just railway premises as the 1925 Act had provided with the consent of the owner.

Legislative framework: Taxi Byelaws

109. There are, and for many years have been, byelaws in Bristol "with respect to Hackney Carriages and motor vehicles let for hire". They have been amended many times. The amendment to byelaw 16, to bring the stands at BTM within the byelaws, was made by the city on 30 October 1974 and confirmed by the Secretary of State on 5 December 1974. Those byelaws came into effect on 6 December 1974.

110. They are similar to the equivalent byelaws operating in Leeds, Manchester Victoria, Leicester and Cardiff Central railway stations.

111. The structure of the Bristol taxi byelaws as follows.

112. Paragraph 1 is an interpretation paragraph.

113. Paragraphs 2 to 9 are provisions:

"For regulating the conduct of the proprietors and drivers of Hackney Carriages plying within the district in their several employments and determining whether such drivers shall wear any and what badges."

114. Of note, within that group of byelaws 2 to 9 are the following.

115. Byelaw 2:

"The driver of a hackney carriage when standing, plying or driving for hire shall conduct himself in an orderly and proper manner towards every person seeking to hire or hiring or being conveyed in such carriage and shall comply with every reasonable requirement of any such person."

116. Byelaw 3:

"The driver of a hackney carriage shall, when plying for hire in any street and not actually hired,

"(a) proceed with reasonable speed to one of the stands fixed by the byelaw in that behalf.

"(b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand.

"(c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately behind the carriage or carriages on the stand and so as to face in the same direction.

"(d) from time to time when any other carriage immediately in front is driven off or moved forward cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward."

117. Byelaw 9:

"The driver of a hackney carriage shall

"(i) if the taximeter is fitted with a flag or other device bearing the words 'FOR HIRE':

"(a) when standing or plying for hire keep such flag or other device locked in the position in which the words are horizontal and legible;

"(b) as soon as the carriage is hired by distance, and before commencing the journey, bring the machinery of and the taximeter into action by moving the flag or other device so that the words are not conveniently legible and keep the machinery and taximeter in action until the termination of the hiring;

"(ii) if the taximeter is not fitted with a flag or other device bearing the words 'FOR HIRE':

"(a) when standing or plying for hire keep the taximeter locked in the position in which no fare is recorded on the face of the taximeter and operate the sign provided in pursuance of Byelaw 11 so that the words 'FOR HIRE' are clearly and conveniently and legible by persons outside the carriage;

"(b) as soon as the carriage is hired whether by distance or by time, operate the said sign so that the words 'FOR HIRE' are not conveniently legible by persons outside the carriage;

"(c) as soon as the carriage is hired by distance, and before commencing the journey, bring the machinery of the taximeter into action by moving the key or other device fitted for the purpose so that the word 'HIRED' is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring.

"(iii) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hire which is during the hours of darkness as the defined for the purpose of Road Transport Lighting Act, 1957, and also at any other time at the request of the hirer."

118. Clauses 10 to 13 (including 10A, 11A, 11B and 11C) of the byelaws regulate how such Hackney Carriages are to be furnished or provided, including, under Byelaws 10 and 11, the requirement of a taximeter with a ‘For Hire’ flag or otherwise with a ‘For Hire’ sign to be operated so as to indicate to those outside the taxi whether it is for hire. Byelaw 10A qualifies Byelaws 10 and 11 in the case of an EU compliant taximeter. Byelaw 11A further requires a taxi to display a ‘Taxi’ sign on its roof, and to keep it illuminated, during the hours of darkness, when the taxi is standing, plying or being driven for hire.

119. Clauses 14 and 15 are for regulating the manner in which the number of each carriage corresponding with the number of its licence shall be displayed.

120. Byelaw16 is the relevant byelaw for fixing the stands of such Hackney Carriages.

121. Including the amendment to byelaw 16, effective on 6 December 1974, the following was stated under byelaw 16:

> *"Each of the several places specified in the following list shall be a stand for such number of hackney carriages as is specified in the list.*
>
> *"1. Temple Meads Station.*
>
> > *"(a) Stand for four carriages on the north-east side of the station approach.*
> >
> > *"(b) Stand for 42 carriages in the central area. (Carriages are to stand three-abreast and to be moved in rotation to the stand ((a) above) when the circumstances permit."*

122. Byelaw 16 then continued with details of 20 other stands in the city.

123. Ms Jones told me that, during the daytime, there are 114 rank spaces in Bristol, of which 46 are at Bristol Temple Meads.

124. Byelaw 17 is for the fixing of rates or fares to be paid for such Hackney Carriages within the district and for securing the due publication of such fares.

125. Byelaws 18 to 20 are the permitted fares for distance. Byelaw 21 provides for penalties for the breach of the byelaws.

126. Byelaws 22 to 24 are inapplicable to Hackney Carriages. They apply to motor vehicles let for hire.

127. Finally, Byelaw 25 dealt with the repeal of previous byelaws.

128. I have now given the structure of the byelaws, their groupings and what they regulate or purport to regulate.

<u>S.167 Criminal Justice and Public Order Act 1994</u>

129. I make reference to this section here as part of my overall review of the legislative framework, although this section is principally relevant to Mr Fletcher's submissions on the correct interpretation of the Railway Byelaws 2005 made by the Strategic Rail Authority and how those byelaws compared and contrasted with their predecessor byelaws made by the British Railways Board.

130. I now quote from section 167 of the 1994 Act which has, as a general heading, the words, "Taxi touts". The heading of the section, 167, is, "Touting for hire car services".

> *"(1) Subject to the following provisions, it is an offence, in a public place, to solicit persons to hire vehicles to carry them as passengers.*
>
> *"(2) Subsection (1) above does not imply that the soliciting must refer to any particular vehicle..."*

131. This is then followed by these words:

" ... nor is the mere display of a sign on a vehicle that the vehicle is for hire soliciting within that subsection."

132. I observe that the statute specifically stated that displaying a 'For Hire' sign is not soliciting for the purposes of this offence. That is a point to which I shall return when dealing with the authorities to which Mr Fletcher referred me. The statute continued:

"(3) No offence is committed under this section where soliciting persons to hire licensed taxis is permitted by a scheme under section 10 of the Transport Act 1985 (schemes for shared taxis) whether or not supplemented by provision made under section 13 of that Act (modifications of the taxi code).

"(4) It is a defence for the accused to show that he was soliciting for passengers to be carried at separate fares by public service vehicles on behalf of the holder of a PSV operator's licence for those vehicles whose authority he had at the time of the alleged offence.

"(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

"(6) In this section-

"'public place' includes any highway and any other premises or place to which at the material time the public have or are permitted to have access (whether on payment or otherwise); and

"'public service vehicle' and 'PSV operator's licence' have the same meaning as in Part II of the Public Passenger Vehicles Act 1981."

133. That section applies, as case law has established, to Hackney Carriages. It is not limited to private hire vehicles. It is an offence for both private hire vehicles and licensed Hackney Carriages to solicit passengers, otherwise than by displaying a 'For Hire' sign.

134. Mr Fletcher drew this section to my attention, and its analysis, in the Administrative Court by Pitchford J in the case of R (on the application of Robert David Oddy) v Bug Bugs Limited and others [2003] EWHC 2865.

135. Having read the report, I am satisfied that, but for one matter, the headnote is accurate:

136. The first defendant owned a number of bicycle rickshaws called pedicabs which were non-motorised and powered only by pedal power. The first defendant hired pedicabs to the second and third defendants. The second and third defendants were riding along the road when they were each hailed by passengers and by request transported them. The drivers charged each passenger a separate and distinct fare which was collected at the end of the journey. A private prosecution was brought on behalf of the Licensed Taxi Drivers Association charging the first defendant with owning a pedicab which was plying for hire notwithstanding that it was an unlicensed hackney carriage contrary to section 7 of the Metropolitan Carriage Act 1869. The second defendants were charged with soliciting persons in a public place to hire a pedicab to carry them as passengers contrary to section 167 of the Criminal Justice and Public Order Act 1994 which I have just recited.

137. The district judge, before whom the prosecution was conducted at first instance, decided that the pedicab was not a hackney carriage within the 1869 Act but a stage carriage

for the purposes of section 4 of that Act because of the method of charging. The District Judge also dismissed the charges against the second and third defendants ruling that although a pedicab came within section 167, the drivers were not soliciting because they had done nothing to actively invite passengers and that they acted as would a licensed hackney carriage driver in responding to a hail from a member of the public. The prosecution appealed against the acquittal by way of case stated.

138. The headnote stated that the appeal would be allowed. In fact, that is incorrect. Reading the judgment, the appeal was not allowed.

139. Pitchford J held that the pedicabs operated by the defendants were to be classified by stage carriages rather than hackney carriages for the purpose of the Metropolitan Carriage Act 1869.

140. Therefore, he agreed with the District Judge.

141. He also held that Section 4 of the Act was a deeming provision which caught all carriages falling within its terms. The method of charging was determinative of the status of the vehicle. As pedicab passengers all paid separate fares the vehicles were stage carriages. There was nothing to show that anything without predetermined stops would not be a staged carriage nor did the absence of a conductor alter its status. Accordingly, there was no requirement for the pedicabs to be licensed.

142. That was also the decision to which the judge below had come.

143. He then went on further to hold that the drivers were not soliciting within the meaning of section 167 of the 1994 Act. Again, the same decision as the judge in the court below. He considered that, subject to the exceptions provided by section 167 what would amount to soliciting would depend upon the nature of the activity proved and the circumstances of the case. The terms plying for hire and soliciting were not coterminous, which meant that the draftsman had to have something more in mind than just the presence of a vehicle in the street. Moreover the purpose of the section was to prevent touting by unscrupulous unlicensed cabs. Having regard to the dictionary definition of soliciting, which was asking for or trying to obtain from someone or accosting someone, what would be needed for soliciting was some sort of invitation on the part of the driver. That had not occurred on the facts of the instant case and the district judge had been correct to rule as she had.

144. That is the headnote, which is in error in saying that the appeal was allowed when it was not. It was not even allowed on the question of costs, which is not dealt with in the headnote but is dealt with in the context of the judgment.

145. It is necessary, even though I have said the headnote is accurate, to refer to certain passages of the judgment, because they are important.

> *"36. The appellant's case before the District Judge was that the mere appearance of the pedicab constituted an invitation to hire; as such, custom was being solicited. He relied upon the decision of this court in Behrendt v Burridge 63 Criminal Appeal Courts 202. There the prosecutor charged the defendant with an offence contrary to section 1 of the Street Offences Act 1959 which provided:*
>
> > *"'It shall be an offence for a common prostitute to loiter or solicit in a street or other public place for the purpose of prostitution.'*

"37. The defendant, a prostitute wearing clothing which, by the standard of 1976, was revealing, sat silent and motionless behind a bay window, illuminated by a red light, to advertise her services as a prostitute. The Divisional Court held that she was soliciting, in the sense of tempting or alluring prospective customers to visit her for the purposes of prostitution. No movement, signal or words were required. In giving the leading judgment of the court, Mr Justice Boreham said:

> *"'In my judgment the facts here are conclusive against the defendant, and, as I see them, in the light of the law which is to be applied to them, there is but one answer. This young woman, sitting on a stool scantily clad, in a window bathed in red light and in an area where prostitutes were sought, might just as well have had at her feet an advertisement saying "I am a prostitute. I am ready and willing to give the service of a prostitute and my premises are now available for that purpose." It is clear, in my judgment, that she was soliciting in the sense of tempting or alluring prospective customers to come in for the purpose of prostitution and projecting her solicitation to passers-by.'*

"38. Further authorities upon the meaning of soliciting, within the context of section 1(1) Street Offences Act 1959 and section 32 Sexual Offences Act 1956 were drawn to my attention. It was the prostitute who was guilty of soliciting by his or her physical presence. It was not enough for a written advertisement to be placed by him or her, or on their behalf, in a public place. (See Weitz and Another v Monaghan [1962] WLR 262 and Burge v Director of Public Prosecutions [1962] WLR 265).

"39. The respondents' argument before the District Judge was that the terms of section 167(2) of the 1994 Act were critical. The mere display of a sign on the vehicle that the vehicle is for hire does not amount to soliciting. In the context of this legislation, advertisement on the vehicle itself is not soliciting. If, by the mere presence and availability for hire of the conveyance, the pedicab operator was soliciting within the meaning of section 167(1), then so must a licensed cab, since that is exactly what a licensed cab does. On the contrary, submitted Mr Wolfe, Parliament specifically exempted from consideration signs specifying availability for hire. It cannot have been the intention of Parliament that the other distinguishing features of the cab, such as its shape, colour and size, constituted soliciting.

"40. Mr Francis recognised the problem with the application of Behrendt v Burridge to the context of taxi cabs. He made two distinctions between the hackney cab and the pedicab. First, the taxicab, subject to limited exception, was obliged by the terms of its licence to carry the passenger where he wanted to go. The pedicab, being unlicensed, had no such obligation. The driver could accept or refuse the fare. Second, the taxicab is licensed and a pedicab is not.

"41. Mr Francis submitted, boldly, that section 167 has no application to the activities of licensed cab drivers. Accordingly, construction of the word 'solicit' cannot be affected by the activities of such cab drivers. He relies, first, on section 167(3). Mr Francis suggests that subsection (3) demonstrates an intention that licensed taxi drivers should not be penalised for performing their ordinary functions. I do not see how that submission supports the appellant's case. On the contrary, I would have thought the draughtsman found it necessary to include it to express exclusions in

subsections (2) and (3), which otherwise might have attributed to a conclusion of soliciting.

"42. The inference is that none of the other features of a London cab and its normal work could, alone, amount to soliciting. In other words, being in the street waiting to be paid was not regarded by the draughtsman as soliciting. Had it been, then given the intention behind subsection (2), at least it, too, would have been excluded. Mr Wolfe submitted that there is no justification for the assertion that black cabs are excluded from the generality of section 167. I agree. Black cab drivers are, subject to the exceptions, just as capable of committing the offence of soliciting as any other driver, licensed or unlicensed.

"43. Mr Francis referred me to extracts at pages 236 and 238 of the appeal bundle. He wished me to draw from the statements of Ministers a conclusion that section 167 was aimed only at unlicensed taxi drivers. As I read the passage, what was aimed at was touting by the unscrupulous, particularly at London stations and Heathrow. The government recognised the current touting problem was created by the drivers of unlicensed cabs. It is not the case, in my judgment, that Parliament had any intention of exempting licensed cab drivers altogether. In my view, had that been the intention then Parliament would undoubtedly have said so.

"44. The Oxford English Dictionary describes the meaning of 'solicit' as:

> *"'(1) Ask for or try to obtain (something) from someone. Ask for something from. (2) Accost someone and offer one's or someone else's services as a prostitute.'*

"45. Mr Francis argues that by a combination of actions and words, the second and third respondents did ask for or try to obtain from someone. The evidence of what they did was agreed. Mr Oddy described the first transaction with Mr Mlynarski as follows:

> *"'We parked and went to Blackfriars Road. Richard Massett and I waited on the pavement on the west side of Blackfriars Road, adjacent to the northbound carriageway, close to the junction with Stamford Street. Steve McNamara stood behind us by the side of a bus shelter, from which position I knew he would be filming with a video camera. Within a few minutes of our arrival in Blackfriars Road, a Bugbugs pedicab approached from the direction of Chancel Street. I put my hand out in the manner one would do when hiring a taxi. The rider, a man, stopped the pedicab and Richard asked him if he was for hire. He said he was. I asked if he would take us to Waterloo Station and he agreed to do so.'*

"46. An hour and a half later, Mr Oddy and his colleagues were back at Blackfriars Road. The second incident is described by Mr Richard Massett:

> *"'Steve McNamara and I waited for some time. Another pedicab came by. Steve put his hand up to hail it in the manner one would hail a taxi. The pedicab, ridden by a man, coming from the direction of Chancel Street, stopped. I asked the man if he was for hire and he said he was. I believe it was Steve who asked if he would take us to Waterloo. He agreed and said it would be £2.50 each. We got in and the rider took us south along Blackfriars Road,*

turning left into Stamford Street. On the way, he stopped, at our request, by a shop. I stayed on the vehicle and Steve McNamara went into the shop. I engaged the rider in conversation. Amongst other things, I asked him if he owned the bike. He said he didn't and that it was owned by Bugbugs.';

"47. Mr Wolfe has provided for me a copy of the Stroud Judicial Dictionary meaning of the word 'solicit'. In it is cited the decision of this court in Darroch v The Director of Public Prosecution [1990] 91 Cr App R 378 in which Behrendt v Burridge was relied on by the prosecutor. The appellant was charged with persistently soliciting a woman for the purposes of prostitution, contrary to section 2, subsection 1 of the Sexual Offences Act 1985. He was observed on several occasions driving his car slowly around a red light district. On one occasion he beckoned a woman towards him. As he was driving with the woman in his car, he was stopped and arrested. He was convicted by the Justices and appealed.

"48. The court found that in order to be persistent, at least two acts of soliciting were required. One of the acts relied upon was the beckoning of the woman to the car. The court found that the Justices were fully entitled to regard that as an act of soliciting. As to cruising in a motor vehicle, however, Watkins LJ said at page 383 of the report:

"'I entirely agree that it is necessary for the prosecution to establish that the defendant, of whom it is said he has been soliciting a prostitute, had given some positive indication, by physical action or words, to the prostitute that he requires her services.'

"49. It seems to me that subject to the exception specifically provided by section 167 of the 1994 Act, what may amount to soliciting would depend upon the circumstances under consideration. Whether an activity proved against a defendant amounts to a request to another, will depend upon the nature of the activity proved and the circumstances in which the activity took place. In Behrendt, the appearance of the woman amounted to an invitation; in Darroch, cruising in a red light district, alone, did not.

"50. My attention has been drawn to cases on the meaning of plying for hire. The term appears particularly in the context of plying for hire without a licence. It is apparent that the term 'plying for hire' may include soliciting, but soliciting is not required before a carriage is plying for hire. It can be plying for hire merely to wait in the street, available to passengers (see Sales v Lake [1922] 1KB 553 at pages 557 to 558). Later cases suggest that it is the exhibition of the vehicle for hire through the agency of the driver which is the essence of the offence of plying for hire, unlicensed, under section 7 Metropolitan Police Public Carriage Act 1869 (see Cogley v Sherwood [1959] WLR 781 and Nottingham City Council v Wooding [1994] RTR 72).

"51. I do not consider, in the light of these authorities, that the terms 'plying for hire' and 'soliciting' are co-terminous. This, in my view, serves to demonstrate that the draughtsman of section 167 of the 1994 Act had in mind something more than the presence of a vehicle in the street. The District Judge concluded:

"'I found that the drivers were not soliciting for the following reasons:

"'i) The Statute does not provide a definition of soliciting.

"'ii) The dictionary definition is " . . . ask for or try to obtain . . . from someone . . . ask for something from. 2) Accost someone".

"'iii) The pedicab drivers according to their own evidence, the evidence of Mr Oddy and the video did nothing to actively invite passengers and, as above, acted as would a licensed hackney carriage driver in responding to a hail from a member of public.

"'iv) The case of Behrendt v Burridge (1976) 63 Cr App R 202 is not applicable. The decision therein related to the Street Offences Act 1959 and the issue was one of soliciting for the purposes of prostitution, an entirely different set of facts and law.'

"52. In my view, the District Judge was right. What was required to establish soliciting in this context was some form of invitation to a prospective hirer. There was none. Only when hailed by Mr Oddy and Mr Massett did the drivers indicate they were available for hire. At that moment it is possible to conclude that the driver was plying his pedicab for hire but not, in my view, that he was soliciting custom. This conclusion may be tested by further reference to the facts in Darroch. Had the driver been stopped by the prostitute who offered him her services, would the driver, by accepting that offer, have been soliciting her services? I think not. I would answer the District Judge's third question in the affirmative."

146. What was being argued there, on behalf of the appellant taxi driver association, was that the get up and the presentation of the pedicab was effectively a representation that it wanted and was soliciting custom.

147. In paragraph 41 of that report, the submission of counsel for the appellant taxi Association was recorded:

"Mr Francis submitted, boldly, that section 167 has no application to the activities of licensed cab drivers. Accordingly, construction of the word 'solicit' cannot be affected by the activities of such cab drivers. He relies, first, on section 167(3)."

148. Section 167(3) refers to a defence where there are schemes for shared taxis.

"*Mr Francis suggests that subsection (3) demonstrates an intention that licensed taxi drivers should not be penalised for performing their ordinary functions. I do not see how that submission supports the appellant's case. On the contrary, I would have thought the draughtsman found it necessary to include it to express exclusions in subsections (2)* [ie the reference to the 'For Hire' sign] *and (3), which otherwise might have attributed to a conclusion of soliciting."*

149. The clear suggestion by Pitchford J was that a taxi, displaying itself as being for hire by an illuminated sign or some other communication, was soliciting custom, and it was only the provision in that statute, which deemed it not to be soliciting, which prevented the commission of that offence.

150. Further elucidation of the relationship between soliciting and plying for hire was given in the case of Sales v Lake [1922] 1 KB 553, at pages 557 to 558 in the judgment of the Lord Chief Justice, Lord Trevithin, and at pages 561 and 562 in the judgment of Avory J, with whom McCardie J agreed.

151. That case concerned a charabanc and a company organising a trip, if it had enough customers. It would pick people up on the way. Again, there was a suggestion that this was unlawfully plying for hire.

152. The Lord Chief Justice said this:

> *."The charabanc therefore would not be within para. 17(2) of the Order unless it 'plies for hire in any street, road or place.' In my judgment a carriage cannot accurately be said to ply for hire unless two conditions are satisfied. (1) There must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them, and (2.) the owner or person in control who is engaged in or authorizes the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers."*

153. Avory J said:

> *"The cases of Bateson v Oddy and Allen v Tunbridge are perhaps the most favourable authorities in support of the appellant's contention. In neither of these cases, however, was it necessary to prove that the carriage was plying for hire in a public street, road or place, and as Montague Smith J said in the latter case 'plying for hire' is very different from a customer going to a job-master to hire a carriage, and I think Mr Meadows White was right in his argument in that case when he said 'plying for hire' means soliciting custom without any previous contract."*

154. Then, at the end of his judgment, Avory J continued:

> *"McCardie J desires me to say that he has read the judgment which I have just delivered, and that he agrees with it."*

155. So, two members of the three person court held that "plying for hire" meant soliciting custom without any previous contract.

156. In summary, therefore, there is something of an overlap between the concepts of plying for hire and soliciting.

Hulin v Cook

157. Having summarised the relative legislative background, I now consider Hulin v Cook, a case which Mr Paton has submitted provides the clear answer to the core issue in this case. I take the facts from the headnote of the case which, after reciting sections 37, 45 and 68 of the Town Police Clauses Act 1847 above, went on to summarise the facts as follows:

158. The driver of a hackney carriage held a duly authorised licence granted by the city of Cardiff council for the use of a hackney carriage under the council's byelaws with respect to Hackney Carriages in the City of Cardiff, dated 12 February 1971, made in accordance with section 68 of the Town Police Clauses Act 1847. By byelaw 16 - the same byelaw number, as it so happens, as obtains in Bristol - a stand for hackney carriages was provided in Central Square and there was no stand in the square other than at Cardiff Central Station, which was owned by British Railways Board. Mr Cook, the driver, who plied for hire at the station, was not on the list of persons having permission of an authorised person to ply for employment of any description while upon the railway in accordance with byelaw 22(2)(c) of British Railways Board Byelaws 1965 made under section 67 of the Transport Act 1962.

159. I add that byelaw 22(2) of the British Railways Board Byelaws then provided:

"No person while upon the railway, shall, except by permission of an authorised person ... (c) …ply for ... employment of any description."

160. Mr Cook was charged with contravening that byelaw. He submitted that he had no case to answer at the end of the prosecution's case, in that, by virtue of section 76 of the Public Health Act 1925, the council's licence exempted him from the requirement of the board's byelaw. The magistrate was of opinion that section 76 of the Act of 1925 had the effect of making the provisions of sections 37 to 68 of the 1847 Act and the council's byelaws of 1971 applicable to licensed hackney carriages on railway premises as on the streets, and he upheld the submission and dismissed the information.

161. The prosecution, that is British Railways, appealed against the fact that these men were found not guilty. The decision of the Divisional Court was made, as I have said, by Lord Widgery CJ, Melford Stevenson and Slynn JJ.

162. They allowed the appeal. They held that sections 37 to 68 of the Town Police Clauses Act 1847 did not create new rights or any new and separate privilege of plying for hire; and that the combined effect of sections 37 and 45 of the 1847 Act was restrictive of the right of all citizens to ply for hire on all road business providing for an authority to issue licences to ply for hire; and that an offence was committed by a person who plied for hire without a licence.

163. They went on to hold that section 76 of the Public Health Act 1925 extended the licensing system under the 1847 Act to the area of railways and railway premises which were private property; and that section 76 of the 1925 Act itself conferred no new right so that a hackney carriage driver plying for hire within the confines of railway property required not only a licence issued by the local authority under the Act of 1847 but also a permission in accordance with byelaw 22(2)(c) of the British Railways Board Byelaws 1965.

164. Accordingly, they held that the magistrate below had erred in upholding the submission that there was no case to answer and remitted the case back to the magistrate to carry on and hear the case.

165. That is a summary of the facts and the decision in the headnote. It is an accurate headnote, having read the judgment.

166. The arguments which had been advanced in the court below and which were recorded in the case stated by the magistrate are set out at page 347 in the judgment:

"It was contended by the prosecutor in reply to a submission by the defendants of no case to answer: (a) under section 57 of the British Transport Act 1949 no rights could be acquired over railway property; (b) British Railways Board having set aside a site for a hackney carriage stand under section 67 of the Transport Act 1962, had the right to make orders governing its use; (c) byelaw 22(2)(c) of the British Railways Boards Byelaws 1965 gave British Railways Board power to prevent a lawfully licensed hackney carriage proprietor from plying for hire on their property unless with their authority; and (d) section 76 of the Public Health Act 1925 did not detract from the board's right as a landowner to specify who should or should not enter upon its property whether he had previous permission to enter or not."

"It was contended by the defendants in a submission of no case to answer, that (a) section 76 of the Public Health Act 1925 applied to the stand for hackney carriages at

the station and the stand fell within the Town Police Causes Act 1847 and the Cardiff City Council Byelaws. Consequently British Railways Board could not determine by subsequent regulations which individual licence holders should be permitted to ply for hire at the stand; (b) the City Council Byelaws limited the number of hackney carriages but imposed no limitation on individual licensees; (c) byelaw 22(2)(c) of British Railways Board was ultra vires because it imposed a fresh set of rules; and (d) there was a conflict between statute and byelaws and statute must prevail."

"The magistrate was of opinion that, by virtue of section 76 of the Public Health Act 1925 (no contention of absence of consent under proviso (b) of that section having been raised), the provisions of the Town Police Clauses Act 1847 and the Cardiff City Council byelaws were applicable to licensed hackney carriages on railway premises as on streets; there being no restriction by the council limiting the individual licensees to specific stands, the driver could not be restricted from plying for hire at any stand; and that where a conflict existed between statute and byelaws, the statute must prevail. Accordingly the submission was upheld and the informations were dismissed."

167. The judgment of the Lord Chief Justice begins at page 348:

"One begins, I think, logically by looking at the byelaw which is said to have been infringed, 22(2):

"'No person while upon the railway, shall, except by permission of an authorised person:... (c) tout, ply for, or solicit alms, reward or custom or employment of any description.'

"The magistrate found as a fact that the defendant Cook, the driver, had been plying for hire in the Cardiff General Station, so there was on the face of it a finding of fact that byelaw 22(2)(c) had been breached. The reason why the magistrate did not accept that situation and proceed to a conviction on the strength of it was that it was argued before him, and argued successfully, that a line of legislation running in parallel with that which gave British Railways Board power to make byelaws had in fact exempted the driver from any responsibility towards British Railways Board even when he was plying for hire on a station the property of the board.

"I note in passing that Mr Moseley has helpfully co-operated in many ways in this case, not least by accepting that the byelaws were intra vires British Railways Board by virtue of section 67 of the Transport Act 1962, which gives wide power to the board to make byelaws of that kind. As I say, the whole argument for the defence was that, although on the face of it there had been a breach of byelaw 22, there was in fact an excuse to be found in this parallel legislation, as I have described it.

"What does the parallel legislation amount to? It amounted to this. One starts with the Town Police Clauses Act 1847, section 37 of which authorised the commissioners to license vehicles to ply for hire within the prescribed distance in the town, city or place concerned. One finds, therefore, the conception at a very early stage of the local authority issuing licences to people who are to exercise the function of plying for hire within the city. The same Act provided by section 45 that there should be a penalty to be obtained from anyone who plied for hire who had not obtained a licence duly granted to him under section 37. One gets the conception -- perhaps a little novel

in 1847 but common enough today -- of a citizen being told that he can do a certain thing only if he is prepared to take out a licence for the privilege, and that situation has prevailed in regard to taxi cabs since 1847.

"What one must notice at once in my judgment, because it is fundamental to the whole of this case, is that section 37 and the remaining provisions of the Act of 1847 did not create new rights. No doubt the owner of a cab was entitled to drive down any street in Cardiff which was a public street because any citizen has access to a public highway. But that statute does not superimpose on that right of a member of the public any new and separate privilege of plying for hire. All that the Act of 1847 says is that the authority can issue licences to ply for hire, and if anyone plies for hire without a licence he commits an offence. The combination of those two provisions in sections 37 and 45 of the Act of 1847 does not, as I say, create any new right; it is restrictive. it restricts the previous right of all citizens to ply for hire on all roads, and provides that, within Cardiff at all events, no one shall ply for hire unless he has the appropriate licence.

"So the matter rested for quite a long time, and it was not until 1925 that any change of real consequence occurred. That was in section 76 of the Public Health Act 1925. Prior to the passing of the Act of 1925 it had been established (as we have been told by Mr Scrivener, and it has not been challenged by Mr Moseley) that a person plying for hire from private property did not commit an offence under the Town Police Clauses Act 1847, and since that had caused a certain amount of difficulty, particularly in railway stations which were private property, section 76 of the Act of 1925 deals with that situation. Section 76 provides:

> *"'In any area within which the provision of the Town Police Clauses Act 1847, with respect to hackney carriages are in force, those provisions and any byelaws of the local authority with respect to hackney carriages shall be as fully applicable in all respects to hackney carriages standing or plying for hire at any railway station or railway premises within such area, as if such railway station or railway premises were a stand for hackney carriages or a street.'*

"Reflect again on the situation before that section was passed. The licensing system of the Act of 1847 was in force but no right had been conferred on a licensee. It is contended however that under section 76 some new right to ply for hire was thereby conferred, but, in my judgment, that is not so. The position after the passing of the Act of 1925 was that the licensing system under the Act of 1847 was extended to a new area. It was extended to the area of the railways and to railway premises, and anyone wishing to ply for hire on railway premises thereafter required a licence under the Act of 1847, despite the fact that the property was private property, but nothing in the way of a further right was thereby conferred.

"Once the Act of 1925 was passed, the position in Cardiff, and for all I know in other places as well, was simply this. The typical taxi driver who wished to serve customers in the area, whether they came from airport, railway stations, bus stations or elsewhere, would need the ordinary 1847 Act licence in order to carry on his trade in Cardiff at all. In addition to that, if he wanted to serve passengers in the Cardiff General Station, he would have to make his peace with the Railway Board in as much as he would require their consent under their byelaws before he could ply for hire

within the confines of the railway property. That, in my understanding of the position, is how the law now stands, and it follows from that that the magistrate was in error when he considered, as he evidently did from the form of his case, that the effect of section 76 was to give a new right which had not previously existed in that it licensed taxi drivers to ply for hire in Cardiff."

168. The ratio which I take from that case is that the legislation referred to, namely the Acts of 1847 and of 1925, together with the fixing of the stand on railway premises, with railway consent, under the Cardiff taxi byelaws created or conferred no new right on the taxi driver to go on to the railway premises without the owner's consent. The 1925 Act merely extended the licensing system and regulatory regime to the stands on railway premises.

169. Mr Fletcher has questioned the correctness of this decision and/or its applicability to the facts of this case. He argued that I should not just follow it slavishly, but rather look at the matter entirely afresh and come to my own independent view of the legislative framework, particularly in light of the legislation enacted in 1976 which was not on the statute book on the date of Mr Cook's alleged offence.

170. I have, therefore, approached the case with an open and fresh mind, resolved to reach my own independent view, before considering whether I am free to do so on the basis of the doctrine of precedent or of judicial comity.

Is this case distinguishable from Hulin v Cook?

171. In his written skeleton argument, supplemented by oral opening and closing submissions, Mr Fletcher submitted that there were grave problems with the propriety of the decision in Hulin v Cook.

172. He made the following submissions.

173. (1) No argument appears to have been addressed to the legality of a permit scheme in that case which, assuming it was operating in a station with a byelaw stand, appears not to have been challenged either by the licensing authority to or by the driver. Thus the issue raised in the case which I am deciding -- whether a permit scheme can lawfully be introduced at all -- was not addressed at all and not tested. The court, in Hulin v Cook, merely assumed that the Cardiff scheme was valid.

174. In my judgment, the case before the stipendiary magistrate and before the Divisional Court was argued on the basis that the stand was a taxi byelaw stand on the private premises of Cardiff Railway Station. That is explicit in the judgment. It is not an assumption.

175. Moreover, Mr Fletcher's point fails properly to consider the historical analysis of the legislation conducted by the Lord Chief Justice under which he concluded that neither the 1847 Act nor the 1925 Act nor the taxi byelaws conferred any right on the taxi driver to go on to railway premises. That was the important point.

176. The taxi driver had no right to go on to the railway premises other than with the consent of the railway owner. If the taxi driver had no other right of access, how could a permit scheme allowing access only with that permission be unlawful?

177. In any event, as the Lord Chief Justice pointed out, *"the whole argument for the defence was that, although on the face of it there had been a breach of byelaw 22, there was in fact an excuse to be found in this parallel legislation"*.

178. In other words, it was argued on behalf of the taxi driver that the 1847 and the 1925 Acts, together with the taxi byelaws, entitled the taxi driver to do what he did, and his right to do so could not subsequently be revoked by a later scheme, namely the Railway Byelaws. Put differently, the council's licence exempted him, he said, from the requirement of the board's byelaws. That contention was expressly rejected by the Divisional Court.

179. So far as the absence of any contention by the licensing authority in that case is concerned, it will be remembered that, in the instance case, whatever BCC's original views were, its final and considered view was that *"BCC is not able to prevent FGW from reviewing the basis on which they permit access to their land, which is essentially a matter between the company and the affected drivers"*.

180. Mr Fletcher's second point was that no argument appears to have been addressed to the legal consequences of the fixing of a stand by byelaw -- and these are the important words -- *with the consent of the railway company*; and no argument appears to have been addressed as to the consequences of section 63 of the 1976 Act. Neither of these issues is addressed in the judgment of Hulin v Cook.

181. Of course, the 1976 Act was wholly irrelevant to Hulin v Cook since the alleged offence in Hulin v Cook had occurred before the enactment of the 1976 Act.

182. However, I consider that the 1976 Act makes no difference to the situation. I accept the 1976 Act created a public duty of consultation, (see section 63(2)) before varying the number of hackney carriages *to be at each stand*. But this is entirely different from the power of a landowner to regulate who can *access* his land and who can solicit custom there, as well as to regulate behaviour of taxi drivers once on the private land.

183. Whilst it is correct that the Lord Chief Justice made no express reference in Hulin v Cook to the need for the consent of the railway owner to the fixing of a stand on railway premises under the 1925 Act, the case had proceeded on the basis. As I have already read out in the case stated, no contention of absence of consent under proviso (b) of section 76 had been raised.

184. However, I acknowledge that the argument was not expressly advanced that, once a railway owner had given his consent to the fixing of the stand within the railway station, the right of access to the stand could not be denied until the byelaw was amended to delete that stand. Namely -- and this is Mr Fletcher's submission -- the power to refuse permission to access railway land was *spent*, once the position of the stand was fixed by a local byelaw enacted with the consent of the railway owner.

185. However, in my view, this was, in real terms, dealt with by the Lord Chief Justice in his analysis of the purpose of the 1925 Act. He said that the position after the Act of 1925 was that the licensing system under the Act of 1847 was extended to a new area. It was extended to the area of the railways and to railway premises; and that anyone wishing to ply for hire on railway premises thereafter required both a licence under the Act of 1847, and "would have to make his peace" -- in the words of the Lord Chief Justice -- with the Railways Board, in as much as he would require their consent under their byelaws -- which is what the Lord Chief Justice was referring to -- before he could ply for hire within the confines of the railway property.

186. In my judgment, there is no difference between requiring the landowner's consent under the byelaws and the landowner's consent *qua* landowner under a permit scheme. The

right to give consent or permission under the railway byelaws was ultimately derived from and built on the Railways Board's position as the owner of the land itself -- the private owner of the private land.

187. Mr Fletcher's third submission, suggesting that Hulin v Cook was wrongly decided was that, in dealing with section 76 of the 1925 Act, the court treated it as simply extending the jurisdiction of the licensing authority to such taxis as plied for hire at railway premises (that is the first part of the section), and did not go on to consider the legal consequences of the proviso (b), (ie the fixing of the stand with the consent of the railway company).

188. It can be seen that that ground of objection is substantially same as the preceding one, namely stemming from the legal consequences of proviso (b) to section 76 with which I have just dealt. In other words, it seems to me that argument 3 does not add anything to my decision on argument 2.

189. Mr Fletcher's fourth submission was that no argument appears to have been addressed to the point that, if a railway company is permitted to control those accessing the stand by a permit scheme, the licensing authority no longer controls either the stand or the number of taxis accessing it, thereby defeating the statutory purpose of the stand, namely the fixing power in section 68 of the 1847 Act and in section 63 of the 1976 Act.

190. This submission was expanded orally by Mr Fletcher into two distinct strands. The first one is the generic one, that a taxi stand must either be public or private, but it could not be both. The taxi drivers, he submitted, could not be subjected to double regulation, namely by both BCC and by FGW. The second strand was tha,t in attempting to regulate or control the taxi drivers, FGW was usurping, trespassing or displacing the statutory functions of BCC, as the relevant licensing authority.

191. He drew my attention, as indeed did Pauline Powell of BCC in the correspondence which had gone on between the lawyers in this case, to Byelaw 3 of the byelaws which I have read out, namely that licensed Hackney Carriage drivers have a duty in certain situations to proceed directly to the Temple Meads taxi stand, regardless of whether or not they do have a public right of access. It is said that the obligation, set out in Byelaw 3, surely must convey the notion that one cannot expose a taxi driver to criminal prosecution, for not doing that which he is prevented by somebody else from doing. Because that would be a curious state of affairs, the argument is that Byelaw 3 supports the contention that there has been this implied grant of a right to access Bristol Temple Meads.

192. The question was asked rhetorically: how can taxi drivers discharge that obligation on them imposed by the taxi byelaws, if they have no *right* of access and require the permission of FGW to do so? Without being disrespectful, the simple answer to the question is: buy a permit. A taxi driver would thereby be able to discharge his duty under Byelaw 3 in any event.

193. However, even if a taxi driver declined to buy a permit, in my judgment Byelaw 3 must be read subject to the condition precedent that taxi driver must have the prior consent or permission of the landowner before going on to private land. In other words, it would be a defence to any criminal prosecution, alleging an infraction of Byelaw 3, for the taxi driver to raise the fact that his permission to the access the land, on which the taxi stand was fixed, had been withdrawn by the landowner.

194. In any event, FGW is not seeking any amendment to the taxi byelaws in Bristol. It wants the existing byelaws to continue to apply to and to be enforced at the taxi stands at BTM. The permit scheme at BTM is not seeking to alter the maximum or minimum number of taxis standing on each stand; it is seeking to regulate the number of taxis accessing and seeking to trade from BTM, as well as the conduct of taxi drivers.

195. A comparison of the taxi byelaws and the conditions of the permit show that there are many aspects of management and control, of interest and relevance to a railway operator, which would not be covered by the taxi byelaws. I do not accept Mr Fletcher's fundamental submission that taxi stands must be either public or private but not both. I see no reason, in principle, why a taxi stand on private land should not be subject to both the regulatory regime of the licensing authority in relation to matters within that authority's jurisdiction, whilst simultaneously be subject to the management restriction and controls imposed by landowner as condition of access to the land on which the stands are located.

196. Taken to its logical conclusion, the claimants would argue that they have an enshrined right of access to BTM for so long as the byelaws fix the stand within those railway premises, and that that right can only be abrogated by an amendment to the relevant byelaw.

197. Yet under the 1976 Act any private property -- not just railway property -- can have a taxi stand fixed on it with the consent of the owner. It is no longer just railway property for which special provision has been made. In my judgment, it would be a curious consequence of Mr Fletcher's argument that a landowner would have his land subject to rights of way which he could not control or limit, which were not rights in fee simple or for a term of years, whose continued existence was dependent upon a licensing authority's decision to amend or not to amend a byelaw by deleting a particular stand.

198. Finally, as a general point, Mr Fletcher submitted that the facts as revealed in the report of the case were murky or shadowy and that, overall, the case was unsatisfactory.

199. For all of those reasons, therefore, he submitted that Hulin v Cook ought not to be relied upon as an authority on the issues raised in this case.

Was Hulin v Cook correctly decided?

200. Approaching afresh, as I do, the legislative framework in this case, in the light of Mr Fletcher's attack on that decision, and coming to my own view independently of that authority, I am nevertheless in total in agreement with the analysis of the legislation by Lord Widgery in Hulin v Cook.

201. Even if I were not convinced that the decision was manifestly correct, I would, nevertheless, have followed it, unless I was convinced it was wrong. On any view, it would be hard for anyone to conclude with the necessary conviction that the Lord Chief Justice's analysis, with which the two other members of the court agreed, was so flawed as to justify that conclusion.

202. The effect of the 1925 and 1976 legislation was, in my judgment, merely to extend the licensing system and regime created by the 1847 Act and the taxi byelaws to private land, albeit only with the consent of the landowner. It created no new rights.

203. Moreover, the consent of the landowner to the fixing of the stand on his land, a stand which was to be subject to the regulatory regime of the taxi byelaws, is, in my view, entirely

different and separate from the necessary permission which must be obtained from the landowner to go on to private land to access that stand.

204. In other words, a landowner's right to withhold permission to taxi drivers to go on to his land is not spent once he has given his consent to taxi byelaws fixing a stand on his land until that byelaw is amended.

205. In 1974, British Rail never agreed to surrender, nor did it surrender, its right to control access by taxi drivers to its land, merely because it consented to the inclusion of the stands at BTM in Byelaw 16. Indeed, as an entirely separate matter, it is difficult to see how, but for the byelaw argument, the 1974 agreement is legally enforceable today. The taxi drivers are different, the associations are different from 1974. This was, in 1974, a unilateral and gratuitous concession by British Rail which, at best, was a personal arrangement which did not bind successors in title.

206. It follows, therefore, that, subject to the contention that the station approach road is a public highway, taxi drivers have no right of access to Bristol Temple Meads Railway Station without the permission of FGW. If they wish to pick up passengers at BTM, subject to the highway argument, then they must buy a permit for that trading opportunity.

History: 1974 to 1991

207. Up to 1974, British Railways ran a private permit scheme for taxi drivers seeking to ply for hire from Bristol Temple Meads. Although there were taxi stands at BTM at that stage, they were not hackney carriage stands, but represented a purely private arrangement between taxi drivers and British Rail.

208. There plainly had been some difficulties about ensuring an adequate supply of taxis and/or of complaints by passengers causing British Rail to want to suspend its private permit scheme and to ask the local licensing authority to take responsibility for the ranks. It was hoped that this would create an improved taxi service at BTM.

209. Page 25 of the claimants' core bundle is a letter from British Rail to the City Clerk:

"The District Council and I have a common aim in seeking to provide adequate availability of taxis to meet demand at Bristol Temple Meads at all periods of the 24 hours. In recognition of this I have stated my willingness to withdraw the existing licensing arrangement, which provides me with limited control over the licence holders, in favour of arrangements within the terms of agreement reached between the District Council, the Taxi Proprietors Association and British Railways, designed to make Temple Meads an open and free station to all Hackney Carriages licenced by the Local Authority and for the Local Authority to exercise control over Hackney Carriages serving Temple Meads Station.

"I have a continuing responsibility to the rail traveller who requires a taxi from Temple Meads station and until I am satisfied that the revised arrangements have resulted in a lasting improvement which justifies the arrangements becoming permanent I must regard them as experimental and temporary. Should there be no improvement, or should there be a decline in availability I would need to be in a position to meet my responsibility towards the rail passenger by taking back control of the taxi arrangements."

210. The negotiations for this arrangement between British Rail, BCC and the taxi trade association are summarised at pages 22 to 26 of the claimants' core bundle. These negotiations culminated in an agreement or understanding between the parties, set out at

pages 27 and 28 in the claimants' core bundle, comprising nine numbered paragraphs and a final paragraph signed in manuscript,dated 10 May 1974:

> *"City of Bristol*
>
> *"City Clerk's Department*
>
> *"The following is a document setting out the terms of an agreement made between British Railways (Western Region), The Bristol Taxi Owners Association and the Bristol Taxi Drivers and Owners Association. This agreement is to take effect from the 1st April 1974.*
>
> *"(1) That Temple Meads Station be open and free of charge to all public hackney carriage vehicles licensed by the City Council of Bristol.*
>
> *"(2) That for an experimental period the British Rail contract system operating at Temple Meads Station be formally terminated on 31st March 1974 and that no charge be made to the hackney carriage drivers and proprietors when operating from Temple Meads after 25th March 1974.*
>
> *"(3) During the period of experiment the City Council of Bristol be given the consent to enable the Taxi stand at Temple Meads to be treated as a public stand and thus become temporarily subject to the same byelaws as other taxi stands in the City."*

211. Paragraphs 1, 2 and 3 above seem to me to be dealing with British Rail's prospective consent to the byelaw.

> *(4) That adequate provision of parking space free of charge be made available in the high level car park to accommodate taxis wishing to use the facilities of the Taxi rest (and that this provision should amount to at least 23 parking spaces for the taxi trade associations which it is understood is the number allocated prior to 31st March 1974). This provision is however subject to a review of the parking facilities at present afforded in the station approach area.*
>
> *"(5) The liaison with the Railway Police, the Police Authority and the City Council of Bristol be maintained in order to control the are of Temple Meads frequented by the hackney carriages.*
>
> *"(6) That only taxis waiting to feed into the stand provided can park in the taxi-cab waiting area compound on the Incline at Temple Meads Station.*
>
> *"(7) That reviews be held after periods of six months and twelve months experience from the date of introduction of the arrangements which for this purpose shall be deemed to be the 1st April 1974.*
>
> *"(8) That after the period of twelve months mentioned in paragraph (7) above British Rail shall have the right to withdraw from the arrangements set out in this document and agreed in the event of the management of British Rail deciding that it would be in the best interests of British Rail customers or business to do so.*
>
> *"(9) That the Taxi trade association are free to operate the taxi rest facilities and appoint a person to manage it on their behalf subject however to negotiating a proper market rent with British Rail for the property concerned.*

"The above terms and conditions are acceptable to British Railways (Western Region), The Bristol Taxi Owners Association and the Bristol Taxi Drivers and Owners Association which bodies have indicated this by the signature below of their authorised officer."

212. In other words, the reviewability and revocability of the arrangement were still retained by British Rail, notwithstanding its consent to the experimental period and to the inclusion of the stand within the byelaws.

213. At pages 30 - 32 of the claimants' core bundle are the minutes of a meeting of Monday, 6 January 1975 between representatives of BCC and British Rail. It will be remembered that, by January 1975, the byelaws had just been amended and came into effect on 6 December 1974.

214. Some salient features of those minutes are as follows:

"2(c) The station rank and waiting area had now been included in the City Byelaws covering Hackney Carriages with effect from 6th December, 1974.

"4(a) Mr Windsor said he would be looking to the Local Authority to assess the position as to whether the City has a sufficient number of taxis operating and he considered there would be a progressive increase the size of the fleet.

"7. Mr Viney [of BCC], *in agreeing that the Council can only work within the framework of the present legislation suggested that as the new bye-laws had only come into effect on the 6.12.74 we should agree to extend the 12 months trial period to evaluate its effects.*

"8. In response to Mr Catherall's request to state their position on the next future step, Mr Viney stated that it was his council's wish that the present experimental arrangements be allowed to continue and that the council on their side would proceed with the various measures open to them to gain some betterment in the service ..."

215. That document, created after the byelaw came into effect, envisaged an extension of the ongoing review and, in my judgment, the reservation to British Rail of its right to withdraw from the scheme, if it were so advised.

216. In my judgment, this period of 12 months from 1 April 1974, which was being considered in the agreement, was an experimental period during which the stands at BTM would be operated *as if* they were already controlled by byelaws, because the City had only approved the amendments to the byelaws in October 1974, and they only came into effect on 6 December 1974.

217. It seems to me that the experimental period would continue, as those minutes clearly indicated, even though the amended byelaw was in place, on the understanding that British Rail's rights were reserved and that the experimental byelaws would be revoked, in any event, if the experiment were not a success.

218. At that time, there was a clear implication that the amendment of the byelaw to include BTM and its revocation would take place at the request of British Rail. Attitudes between British Rail and BCC had not hardened. It seemed then, as is implicit in that documentation, that what British Rail gave, British Rail could take away, with BCC doing

what British Rail requested, since everything proceeded on the common understanding that British Rail was the owner of the relevant land.

219. British Rail then tried to change the arrangement in 1985. I refer, at this stage, to the letter dated 6 June 1985 from British Rail, from Mr Sach, its customer services manager, to the City Clerk of BCC.

> *"Dear Sir.*
>
> *"Re: Taxi Franchise at Temple Meads Station.*
>
> *"The present arrangements whereby taxis licensed by the City Council may ply for hire on the rank at Temple Meads without charge has now been in operation since 1974.*
>
> *"As you are doubtless aware, it is the requirement of the Secretary of State for Transport that the Inter City Sector of B.R., should become fully self supporting before the end of the decade and that the cost of the tax payer in real terms of providing provincial Services should be reduced. As Temple Meads Station exists to serve these two business sectors we are fully committed to reducing costs where possible and to maximising the revenue which we obtain for the station, including not only fares but also such things as Station Trading, and my attention is now focusing on the question of taxi franchise.*
>
> *"Facilities for taxis are very good, comprising a stand for 4 cabs and a reserve stand for 42.*
>
> *"Free parking is made available to Drivers visiting the cafe, which is the subject of a tenancy. The latter leads to a good deal of litter which B.R., has to clear. Lastly, of course, the franchise itself is a very valuable one and the growth of long distance rail travel has tended to make it more valuable.*
>
> *"Taking account of the foregoing, I have concluded that the case for introduction of charges for a franchise is a very strong one. Charges are raised at all neighbouring main stations, in excess of £100 per taxi, per annum, and I would envisage £100 as the likely charge at Bristol/*
>
> *"There would be advantages to us and the trade if I were to negotiate a collective agreement with the taxi association and I would be grateful to you if you could let me know the names and addresses of the secretaries and whether all the licensed taxi drivers are in fact members, and I shall be grateful for your general comments and advice on this whole issue.*
>
> *"The Temple Meads stand is now supervised by your Inspectorate and I would like this to continue.*
>
> *"Dependent upon your response, I will make an approach to the Associations and put more definite proposals to them, perhaps followed by a meeting including you or one of your officers if you consider this appropriate."*

220. That prompted a letter from the City Clerk's department in July 1985 to Councillor Fisk, which is at the claimants' core bundle at page 40.

> *"Dear Mr Fisk.*

"Taxis -- Temple Meads Station.

"I understand from Mr Jennings that British Rail have convened a meeting for next week to confirm arrangements for the allocation of licences to taxis to ply for hire at Temple Meads Station.

"Since I was the Committee Solicitor in the 1970s involved in the negotiations for the opening up of Temple Meads Station to any licensed Public Hackney Carriage, I thought it might be useful if I set down a few notes about the situation as it then existed.

"It must be remembered that the incline approach to Temple Meads Station is private property owned by the British Railways Board and to the best of my knowledge they have taken steps to ensure that the public have not been granted rights of way over the land. It therefore follows that taxis, indeed any vehicle, entering the land does so with the consent of British Railways Board who have the legal right to control access.

"The situation, as it existed in the 1970s, was that any Public Hackney Carriage or Private Hire Vehicle was allowed to set down passengers at the Station. However, only those taxis which had been granted a franchise by British Railways Board were allowed to ply for hire at the taxi rank and pick-up passengers.

"As I recall some 150 taxis had been granted a franchise for which they paid an annual fee and there were constant complaints from people arriving at the Station to the effect that the taxi service was abysmal. The reason being that in those days taxi drivers were, perhaps, more choosy than they are today, tended to work shorter hours and there were never sufficient taxis at the Station to meet the demand, particularly at peak times.

"Also, taxis which had not been granted a franchise arriving at the Station, finding a queue of passengers waiting, and no taxi at the rank were tempted to pick up a passenger. That driver would be spotted by the next franchise driver to arrive which led to a heated argument though I do not think that there was any actual physical violence. This state of affairs caused embarrassment to the passengers and led to complaints.

"After discussions commenced, largely at the initiative of your then Licensing Officer, British Railways Board agreed to open the Station to any Public Hackney Carriage without payment of fee and, at the same time, arrangements were put in hand for the improvement of the taxi rank and for the provision of the overflow reserve rank. The service so far as passengers were concerned was greatly enhanced, there were no longer any rows between taxi drivers and the spin-off so far as your Licensing Section were concerned was that they were able to keep an eye on a far greater number of taxis simply attending Temple Meads Station on a regular basis.

"My personal view is that we should try to meet British Rail to ask them to reconsider their decision to grant a franchise and to take whatever steps we can to impose pressure to avoid what appears to be almost a fait accompli.

"Should you require any further information, or if you feel I can assist in any way, please let me know."

221. The relevant taxi Association also wrote to the City Clerk in July 1985. That is CCB/42.

"Dear Sir.

"Temple Meads Station -- taxi operations.

"Prior to 1st April 1974, the facility for hackney carriages to stand at Temple Meads station was restricted to 100 of those taxis licensed by the City of Bristol and those taxis so permitted made a payment to British Rail for the privilege. After 1st April 1974 this arrangement changed and any of City's hackney carriages could stand, free of charge, on the rank at Temple Meads station. This system has applied from 1974 to the present time. The change took place following complaints from passengers waiting an excessive time at the station, criticism of the system from local M.P.s and Councillors and pressure from the taxi trade.

"We have now been advised by British Rail that they intend to re-introduce a charge of £120 per annum on those taxis who wish to stand on Temple Meads station. We have, together with other interested parties, including the Hackney Carriage Department of the Council, been invited to a meeting on 8th August 1985 to discuss this proposals.

"We are very concerned about this. We feel it to be a retrograde step which will be against the interests of passengers arriving at Temple Meads station and requiring taxis. The number of such passengers fluctuates; the station is not as busy as it once was, but occasionally, particularly on a Sunday, demand can be high. The more taxis permitted to stand at Temple Meads, the quicker the public can leave the station. To impose a charge will certainly lead to a reduction in the number of taxis standing at Temple Meads. This cannot benefit the public. It is also a further financial imposition on the taxi trade which has been badly hit by the recession.

"When the discussions prior to 1st April 1974 were taking place, the taxi trade received the support of Bristol City Council in their request that the station be open and free to all Bristol hackney carriages. We hope that the Council will, at this time, feel able to support us when we express our concern to British Rail over the proposal they are making."

222. The Bristol Public Hackney Carriage Association, as it then was, felt that the introduction of a permit scheme was a retrograde step.

223. On 13 August 1985, the City Solicitor wrote to British Rail. That is at the claimants' core bundle, CCB/45:

"Dear Mr Markham.

"Taxi Services at Temple Meads Station.

"I refer to the recent meeting between your Mr. Sachs and representatives of the Taxi Trade to discuss the implementation of your proposals for a taxi franchise at Bristol Temple Meads to which the City Council was invited. I thought it might be useful if I set down in writing the main points which were made by the City Council's representatives at that meeting.

"1. The Council considers that the provision of a good and reliable service to be of paramount importance. Failure to provide and maintain that service will inevitably result in unsatisfied customers (your passengers) and will lead to complaints to both yourself and the Council and will create a very bad first impression to visitors to the City.

"2. In order to provide that service it is necessary to have adequate taxis available during periods of peak demand and it is by no means certain that adequate numbers of taxi owners will make applications to you for a franchise.

"3. It will, without doubt, be necessary for you to carefully police the taxi rank and the station approach to ensure that only franchise drivers operate out of the station. In the interest of members of the public your staff will also need to be on hand to settle disputes and complaints. The policing of both private hire vehicles and public hackney carriages and attending to complaints is presently undertaken by staff of the City Clerk's Licensing Section and it is the City Council's view that if you are to properly police the situation you will no doubt expand more than you anticipate receiving by way of franchise.

"4. As a result of the 1974 Agreement the taxi rank at Bristol Temple Meads is a public rank, that is, it is subject to byelaws which have been made by the City Council and have been confirmed by the Secretary of State. If you are to 'close' the station except to franchise taxis then it will be necessary for those byelaws to be withdrawn. This will drastically reduce the powers and authority of the City Council's Licensing Officers at the station. Further, since the byelaws were made for 'good rule, order and management' it will be necessary to convince the Secretary of State, who will have to confirm the amending byelaws, as to why the present state of affairs make the old byelaws no longer necessary.

"5. Whilst the taxi rank remains a public rank, any public hackney carriage licenced by the City has the right to ply for hire. In the event of the City Council refusing to amend the byelaws it will be necessary for you either physically prevent licensed public hackney carriages from using the public rank or seek your own private statutory powers to rescind the byelaws.

"6. As you are aware the City Council will shortly be looking in detail at proposals for the tourist and visitor development of the Temple Meads Complex as a whole, in partnership with yourselves, the English Tourist Board, the County Council and the Manpower Services Commission.

"The provision of an efficient and effective taxi service for your rails customers would seem to be a key element in such arrangements and I would suggest that your current proposal be held over until these other issues are considered.

"Whilst writing, I would like to reiterate the very valid point which was put forward by the Taxi Trade during the meeting. British Rail Property Board does receive a considerable income for what is a very small room used by the Taxi Trade as a 'cabman's rest'. If you implement your proposals then it is more than likely that fewer taxis will be attracted to the station and as a result there would be a reduction in trade which could lead to the closure of the 'cabman's rest'.

"You will recall that it was at the time of the 1974 Agreement that you first introduced a rental for the occupation of that room to replace the income which you had previously received from the franchise. That income presently amounts to some £5,000 per annum. It occurs to me that perhaps some of this money which is paid to your Property Board should be transferred to your Operations Department though this is, of course, an internal matter for your consideration.

"I look forward to hearing from you after you have had an opportunity of considering the views put forward at the meeting together with the contents of this letter. We would also ask you to consult with your Passenger Consumer Association and obtain their views on your proposals.

"If you are then still mindful to proceed with your proposals the City Council's representatives would wish to have a meeting with you in order that they may discuss the matter further.

"Meanwhile, if you require any further information of if there is any way in which I can assist you in this matter, please do not hesitate to let me know."

224. Although that letter represented a more resistant view by the City Council, it still appeared to accept that British Rail had the right physically to prevent licensed public hackney carriages from using the public rank even if the taxi byelaws were not amended.

225. On 19 September 1985, British Rail replied to the City Solicitor at CCB/49:

"Dear Mr Pitt.

"I am now able to reply more fully to your letter dated 13th August 1985. I will comment on the points made in the same order.

"1. I quite agree that the provision of a good service to our passengers is of very great importance and I would not wish to jeopardise this in any way. There are, however, numerous major stations at which excellent taxi service is provided under a charged system.

"2. I believe that the proposed charge of £120 is sufficiently reasonable to attract an adequate number of taxis. In the event of a shortage market forces will doubtless attract additional franchise holders and experience at other stations suggests that there will be an adequate number of applicants.

"3. British Rail will judge the level of staff and British Transport Police presence that will be necessary when the new arrangements apply. As you will be aware, the change we propose follows the 'Open and Charged' principle approved by the Director General of Fair Trading arising out of his investigation into the Board's arrangements at Brighton. It would be the view of the Director General that many of the problems to which you refer will be resolved by market forces which any open system, whether charged or uncharged, without quantitative restraint, will allow to operate."

226. The following paragraph is particularly germane:

"4. Though the public have unfettered access to Temple Meads Station for the purpose of railway business it is not a public highway, and your taxi byelaws only apply by virtue of the consent that the board agreed to give for an experimental

period in the 1974 Agreement . The introduction of an 'Open and Charged' arrangement at Temple Meads means that the experimental period will be brought to an end and that British Rails will no longer consent to the application of the bye-laws to its private property or to the designation of land not a public highway as a taxi stand. Under the Local Government (Miscellaneous Provisions) Act 1976, such consent is a pre-condition to designation. Certainly this is the basis of an arrangement which the Board is currently finalising with Newcastle City Council for the use of the taxi rank at Newcastle Central Station to be designated under the City Taxi Bye-Laws."

227. At that stage, British Rail was asking or hinting that the byelaws should be changed, to delete the Temple Meads stands from Byelaw 16 The letter continued:

"5. With every respect, my advice is that this point is based on a misconception and ignores the fact that British Rail's consent in this matter was for an experimental period, which experiment will be brought to an end when the 'Open and Charged' arrangements are introduced.

"6. We are also interested in the matter of tourist development but I repeat that I am confident that an efficient taxi service can be provided under a changed arrangement.

"The matter of the taxi driver's cafe is quite independent of the franchising issue. The current rental is a commercial rental, reflecting the market value and is collected by our Property Board as such.

"We have considered carefully the view expressed at the meeting held on 5th August 1985 and summarised in your letter, but I have concluded that it would be in the best interest of the business to go ahead with the introduction of charges. I wonder, however, whether your Council would be interested in an arrangement similar to that which has been negotiated successfully with Newcastle, and has operated without difficulty there for some 15 months? In that case, the City Council have negotiated an agreement whereby all licenced taxis in Newcastle will be permitted to ply for hire and a proportion of the licence fee that the Local Authority collect relates to the station franchise and is paid to British Rail.

"I would be glad to hear your views on this possibility."

228. Finally, at CCB/51, the City Clerk replied effectively saying that by no stretch of the imagination could it be thought that they were still dealing with an experimental period. Nevertheless, the letter still seemed to contemplate the fact that it was open to British Rail to reintroduce a private permit system.

229. The council discussed the problem at its meeting on 21 October 1985, but the correspondence then seemed to end in 1985. No permit scheme was introduced in 1985, and the subject raised its head again in 1991.

230. At CCB/61 is a letter dated 21 January 1991 from BCC to British Rail. This letter appears to raise the argument, for the first time, that it would be illegal for British Rail either to close the taxi rank or to impose a permit fee:

"Taxi Licence Fee -- Temple Meads Station.

"Thank you for your letter dated 9th January. I assume that you are still prepared to have a Taxi rank at the top of the incline for the convenience of your passengers and that the only matter which has changed is that, quite understandably, you wish to achieve some revenue from the facility.

"As you will be aware from your reading of previous correspondence, the Taxi rank on the incline at Temple Meads Station was not provided under the Local Government (Miscellaneous Provisions) Act but in pursuance of the Town Police Clauses Act and under bye-laws made by the City Council to which British Rail did not object and in which there is no saving provision for British Rail. The Bye-law was made following negotiations and with the full agreement of British Rail but is not dependent upon British Rail's consent.

"It is my interpretation of the situation that the Taxi Rank must remain open to all Public Hackney Carriages licensed by the City Council until such time as the City Council resolves to amend or revoke the bye-law, which, incidentally, will also require Ministerial consent. When I last discussed your difficulties with your predecessor it was agreed that British Rail would not be taking any steps to close the rank because at that time you had proposals to close the incline to all traffic and to create a new main entrance off of Temple Way.

"I am happy to give you an assurance that the City Council, through its Health and Public Protection Committee, will consider any approaches which you may wish to make concerning the amendment of the bye-laws but it is my view that it would be illegal under the present bye-laws for you to either close the Taxi rank, or indeed impose a charge on any Public Hackney Carriage licensed by the City Council to ply for hire from the Taxi rank.

"I look forward to hearing from you in due course."

231. On 12 March 1991, the legal department of British Railways Board sent a letter to its own Area Manager in Bristol, but the full addressee is not entirely clear. That is at CCB/62. Again, that letter is suggestive of the fact that the consent of British Railways was still necessary for the byelaw to make the taxi stand at BTM a taxi byelaw. The author of the letter wrote:

"I would suggest, however, that the wording of Section 76(b) [of the 1925 Act] *makes such consent essential to the operation of the Bye-laws at all to the extent that if revoked, the local authorities will fail regarding the railway premises."*

232. Throughout all that correspondence, no one referred to Hulin v Cook, the Divisional Court's decision which had been delivered in June 1977. In my review of the historical correspondence so far, I have been considering the period between1985 and 1991.

233. Whatever may have been the view of British Railways at that time – and it seemed to include trying to persuade BCC to amend Byelaw 16 to delete the reference to the stand at BTM, the position today is that FGW has no desire to withdraw its consent to the application of the taxi byelaws to the ranks at BTM. FGW merely argues that the *presence* of the ranks confers *no right of access* to them because, as landowner, it can still give or withdraw its permission, conditionally or unconditionally, to taxi drivers to go onto its land. That was the view to which BCC finally came in January 2012, as expressed in its letter to Ms Jones on 22

February 2012. However, as in 1985 so in 1991, British Rail did not introduce any permit fee in 1991 and the correspondence stopped.

History: 2010 to 26 January 2012

234. FGW started to raise the possibility of introducing a permit scheme in late 2010. There had been a long and detailed history of congestion and complaints about the layout and use of the taxi rank at BTM.

235. In his witness statement at C/38 Mr Bartlett, between clauses 2.5 and 2.6 attempted to explain and justify the introduction of the permit scheme then.

236. He said this:

> *"FGW consequently began considering the introduction of a permit scheme at BTM in around August 2010 and took steps to engage with the relevant stakeholders from around November 2010...*
>
> *"FGW decided to introduce a Permit Scheme at BTM in order to impose greater practical and administrative control over the forecourt of its station. Its aims in doing so included:*
>
> > *"(a) To gain greater control over the drivers providing taxi services on its land;+*
> >
> > *"(b) To reduce instances of unacceptable behaviour of such drivers on the forecourt including illegal parking, bad language used in the presence of passengers, overcrowding, disregard to the instructions of station staff for the management of the station, interference with the use of Station Approach by other legitimate traffic and disputes between drivers in the presence of or involving passengers;*
> >
> > *"(c) To improve overall safety of the forecourt, including by a reduction in the number of taxis and therefore the risks associated with the overcrowding of the forecourt;*
> >
> > *"(d) To improve safety for all station customers and taxi drivers by reducing the risk of road traffic accidents;*
> >
> > *"(e) To obtain a reasonable income flow from the conduct by taxi drivers of their business on railway land, in part to fund the above objectives; and*
> >
> > *"(f) To facilitate the remodelling of the Station Approach to improve the flow of traffic and provide better provision for the appropriate number of taxis and buses."*

237. I am satisfied that the dominant motive in introducing the permit scheme was to generate income for FGW. BTM was fairly unique in not requiring taxi drivers to pay for the opportunity to ply for hire at BTM, given the significance of the station to the region.

238. Moreover, I am of the view that FGW would have wished to introduce the scheme, even if none of the revenue derived therefrom, or merely a very minimal part of it, was used to improve facilities for taxi drivers and taxi users of BTM. It was the commercial opportunity which FGW felt it could and should exploit. Why should it not generate some

income from those who traded from its premises, in the same way as it charged shopkeepers or store holders?

239. However, I am also satisfied that, in fact, FGW's intention is to, and that they will, use a substantial proportion of the permit income, but not all, to improve taxi facilities and the layout of the approach road with a view to improving or relieving the congestion at BTM and increasing the throughput of cars, taxis with paying passengers and traffic in and around FGW's land in front of BTM.

240. This was not, in my judgment, merely an exercise in the commercial exploitation of its assets by FGW motivated by the simple desire for profit. I am satisfied that the permit fee income would be substantially reinvested in a way which would financially benefit taxi drivers, even if it was intended, as was the case, that FGW would still derive a not insignificant profit from the exercise overall.

241. I accept that FGW's desire effectively to manage and control taxi drivers trading from their premises is a genuine one and not a sham. The conditions on the permit are not, in my view, mere window dressing, giving a veneer of respectability to a scheme of naked profiteering.

242. I see no reason why FGW should not wish to have a contractual relationship with and/or have control over and/or derive an income from all who trade and make a profit from FGW's premises and FGW's passengers.

243. Details of the steps taken by FGW to introduce the permit scheme, along with an analysis of its consultations and correspondence with the claimants and BCC are set out in paragraphs 14 and 15 of Mr Bartlett's first witness statement at C/11 to C/14, which I accept is an accurate summary of those efforts. Particular landmarks within that general body of correspondence are as follows.

<u>History: 4 August 2010 – 19 April 2011</u>

244. 4 August 2010: FGW had initial internal e-mails on the possibility of a permit scheme at BTM.

245. November 2010: FGW started its consultation process with BCC.

246. 21 February 2011: Mr Bartlett contacted the Bristol Branch of the NTA to discuss permit implementation.

247. 1 March 2011:There was a meeting between Mr Bartlett, Mr Lloyd and Patricia Jones (then the NTA secretary).

248. 21 March 2011: There was a meeting between BCC and members of the taxi trade.

249. 13 March 2011: NTA stated they relied on the 1974 agreement as the basis of resisting the permit scheme.

250. 13 March 2011:NTA provided FGW with a copy of that 1974 agreement.

251. 19 April 2011: Mr Lloyd, Chair of the claimant then, directed that any further communications which FGW wished to have with the claimants should be directed to BCC and not to the NTA.

<u>Mouchel Report: 18 February 2011</u>

252. As part and parcel of its desire to implement a permit scheme, FGW commissioned what has been called the Mouchel report, which was dated 18 February 2011.

253. This was a report commissioned by FGW to provide an evidential basis for the permit scheme, including the number of taxis required to operate an efficient service from BTM, and the income derived by taxi drivers from plying for hire at BTM. The report also dealt with known problems of congestion and conflict.

254. In this context, I refer to the following paragraphs of the Mouchel report and also the summary and conclusions.

> *"1 Introduction.*
>
> *"1.1 Study background and brief.*
>
> *"Mouchel Ltd was appointed by First Great Western to undertake a review of the current demand for hackney carriage services at Bristol Temple Meads station. The survey seeks to identify the valuation in demand and the impact this has on the service to passengers and the waiting times for the hackney carriage vehicles serving them. The aims of this review are to understand the likely number of vehicles required to provide a service to rail passengers based on a reasonable understanding of the level of remuneration for each taxi. This information will be used alongside the introduction of a permit system for the rank at this location.*
>
> *"The study began with a site visit to the station on 14 January 2011 which was a follow-up to a pre-appointment site visit on Friday 17th December 2010. These visits identified the current provision for those wishing to arrive and depart from the station by both private hire car and hackney carriage. They also identified current known problems with the operation of licensed vehicle services at the station. Locations for the observation cameras were agreed, together with the requirements for health, safety and security documentation to allow the survey to take place.*
>
> *"1.2 Study Aims and Objectives.*
>
> *"This report forms a review of the demand for hackney carriages at Bristol Temple Meads station. It focuses on current demand identified through video surveys and recording of hackney carriage vehicle plate numbers as they entered and left the station area.*
>
> *"1.3 Study outputs and outcomes.*
>
> *"This study provides documentation of the observations undertaken of the operation of the taxi rank at Bristol Temple Meads station. It provides an evaluation of the level of demand in order to identify the minimum and maximum level of vehicles required to provide adequate service to the rail users of this station. It also establishes the current level of average remuneration per vehicle based on current fares.*
>
> *"4 Summary and Conclusions.*
>
> *"4.1 Background.*
>
> *"This report forms a review of the demand for hackney carriages at Bristol Temple Meads Station. It focuses on current demand identified through video surveys and recording of hackney carriage vehicle plate numbers.*

"4.2 The taxi fleet and industry structure.

"The Bristol City Council hackney carriage fleet available to serve passengers at Bristol Temple Meads Station amounts to some 771 vehicles, all of which are wheelchair accessible. There is no limit on this number of vehicles, and they are supplemented by a slightly larger fleet of private hire vehicles which people can book before arriving at the station.

4.3 Rank activity.

"The rank saw some 489 passengers on the Friday, 692 on the Saturday and 637 on the Sunday during the hours observed. The highest hourly number of passengers was 85 on the Saturday (in the 13:00 hour), followed by 82 on the same day in the 20:00 hour. Sunday generally had higher passenger volumes overall, though the maximum number recorded was 79 persons -- a level achieved over two consecutive hours (18:00 and 19:00). The highest number of passengers on Friday was 55 at 18:00.

"Saturday saw an increase in the number of vehicles serving the rank, and some reduction in the wait times of hackney carriages for fares, although it also saw some passengers waiting when no vehicles were immediately available for hire. Despite that, no-one waited over 7 minutes on the Saturday. In general most waiting resulted from waiting for a vehicle to move up the rank.

"During the high demand day some 316 passengers were observed to experience a wait for a hackney carriage. A significant number of waits were restricted to 1-5 minutes with the vast majority within the 10 minute threshold when the delays might be considered significant. Very few passengers experienced a wait of over 10 minutes -- just 4 on the Friday, none on the Saturday and 7 on the Sunday.

4.4 Overall conclusions.

"Taking all observed supply and demand into consideration we would conclude that at the time of the survey, there is a good service of hackney carriages to the rank at Bristol Temple Meads Station.

"The survey was undertaken at a time of year when demand was 'typical' and that we have not omitted any key observable demand either within the main centre or at any other location within the licensing area. Our surveys tested times of high demand and found the service generally able to react to the demand in a positive manner 4.5 recommendations.

"The current service at Bristol Temple Meads seems to generally meet the passenger needs generated by the station. At present, there is a plentiful supply of hackney carriages available from Bristol City Council, all of which are wheelchair accessible. Some 581 different vehicles were observed serving the rank during our sample observations. This level of provision of vehicle only occasionally had difficulties in meeting observed passenger demand. However, for most of the time the balance of vehicle waits for passengers was quite long, so for much of the time demand would be met by a lesser number of vehicles being available.

"The main issue needing to be addressed to ensure that hackney carriages can more promptly serve their potential passengers, and that passengers can quickly identify their vehicle. At present, there is a significant confusion resulting in passengers

waiting longer at a given point than is necessary. Hackney carriages are hindered from serving passengers by other vehicles -- including other hackney carriages -- setting down in the same area as the rank.

"There is no clear point at which people should wait for hackney carriages. This means that the exit from the station is blocked by passengers waiting for hackney carriages, and encourages entry into one vehicle at a time.

"The current layout of the rank also leads to the following safety issues:

"Vehicle conflicts arising from set downs and pick-ups occurring in the same space.

"Blocking of the passenger exit of the station from queues of people waiting for hackney carriages.

"Passengers passing through the waiting taxis to gain access to the car park and cycle area.

"Passengers set down are usually in a hurry and take less care in a more dangerous environment.

"However, First Greater Western did agree that, despite the safety concerns noted, there was no history of any accidents at this location and that the current layout had in fact operated relatively satisfactorily for a considerable time, although it was also very clear that improvement was overdue.

"In order to resolve these issues, we would recommend a five space rank be introduced located a little further round the kerb from the current location, towards the airport bus stop. Barriers and signing should be used to encourage passengers to queue further away from the station exit. This arrangement would also encourage passengers to enter more than one hackney carriage at a time. It would also prevent set-downs occurring between the head of the current rank and the airport bus. It would also encourage those crossing to the car park and cycle spaces were crossing between the waiting hackney carriages queue and the set down queue.

"The arrangement would allow a small set down area to be provided at the rear of the rank, which would need to be strongly enforced. This would ensure passengers being set down, who are often in a hurry, would be alighting on to the pavement and in a safer location.

"In order to encourage proper use of the new arrangements marshalls may be needed for extended periods for the first few weeks, until the new layout becomes familiar to passengers.

"We believe that this new arrangement would also reduce the current potential conflicts to a reasonable degree, with safety benefits."

255. The Mouchel report was largely focussed on the number of taxis trading from BTM at different times, with a view to identifying what income was likely to be generated from that traffic.

256. However, as the summary and conclusions themselves also indicated, the report did deal with current layout problems and suggested solutions to them. So, whilst predominantly a document gathered for an evidential base to justify a permit scheme, it also touched upon

what was necessary in order to alleviate the congestion and layout problems at Bristol Temple Meads.

257. Armed with that Mouchel report, FGW began to move in earnest towards the introduction of a permit scheme.

History: May 2011 – January 2012

258. On 4 May 2011, Mr Bartlett sent an e-mail to Mr Carter indicating that FGW intended to implement the scheme in June 2011.

259. On 9 June 2011, Mr Bartlett contacted Mr Carter stating that the defendant would implement the permit scheme with effect from 1 September 2011.

260. On 14 June 2011, FGW formally notified BCC of its withdrawal of the 1974 permission.

261. As I have already indicated, on 4 November 2011, FGW formally notified each registered Hackney Carriage driver and the Association of its withdrawal of permission and implementation of the permit scheme with effect from 1 February 2012.

262. On 20 January 2012, it sent the reminder letter, which I have read out, to each registered Hackney Carriage driver of withdrawal of permission and the implementation of the permit scheme with effect from 1 February 2012.

263. Finally, on 26 January 2012, at the meeting between BCC and the claimant Association, BCC informed the Bristol Branch of the National Taxi Association that they would not oppose permit implementation.

Legal debate between BCC and Burges Salmon

264. Pauline Powell, a senior solicitor at BCC, wrote to FGW on 14 June and 5 July 2011 raising legal arguments against the introduction of the permit scheme. Those are essentially the arguments which Mr Fletcher has adopted and developed in the case before me.

265. On 28 July 2011, Burges Salmon wrote to Pauline Powell setting out, in great detail, its legal claims to be entitled to introduce the permit scheme, purporting to address all the legal points which had been previously raised by her, and specifically drawing her attention to Hulin v Cook.

266. Pauline Powell replied to Burges Salmon's letter on 26 August 2011 and 10 January 2012, eliciting a reply, dated 19 January 2012, from Burges Salmon again dealing with BCC's responses.

267. This correspondence -- and I mean no disrespect because it is probably the original formulation of claim and counterclaim and defence -- is now merely rehearsed in the arguments which have been deployed by counsel in front of me.

268. Essentially Burges Salmon argued that FGW was entitled to introduce the permit scheme (i) both as a private landowner and under the railway byelaws; (ii) the public had acquired, by prescription or user, no right of way over the station approach because of section 57 of the British Transport Commission Act 1949; (iii) because FGW is not a public authority or amenable to judicial review, for these purposs; and (iv) in any event, taxi drivers had no human rights to access private property to carry on their business for free. Therefore, there was no justifiable public law or human rights attack on the withdrawal of this permission.

27 January 2012 to 15 February 2012.

269. Notwithstanding this correspondence, which had been engaged in by Pauline Powell in her dialogue with Burges Salmon, on 26 January 2012, BCC informed the Bristol Branch of the NTA that they would not oppose permit implementation. This meant that, from then on, the claimants could no longer rely on BCC to represent their interests against FGW, leaving the claimants and other taxi drivers to resolve the issue with FGW direct.

294. It is at this point that the alleged compromise of the claimants' rights against FGW was made between Friday, 27 January 2012 and Monday, 30 January 2012 between Mr Bartlett for FGW and Mr Lloyd for the claimants. It was the evidence of Mr Lloyd and Ms Jones that they, in their dealings with FGW on and after 27 January 2012, were only engaged in a fact-finding mission, with a view to reporting to the general body of the Association at a meeting which had been pencilled in for Sunday, 29 January 2012.

270. In the end, that meeting was called off or cancelled because no suitable venue was available. Moreover, Mr Lloyd and Ms Jones said that their fact-finding exercise continued at the meetings which they had on Wednesday, 1 February 2012 with Mr Bartlett of FGW and with Mr Goldring and Mr Bradshaw of Cabfind and, on 9 February 2012, with Mr Bartlett.

271. Mr Lloyd was adamant that, at no stage, had he ever given any indication that the claimant would drop its objection to the permit scheme or even that he was prepared to make any commitment as to what his personal recommendation to that meeting would be. However, as he told me in evidence, Mr Lloyd's personal view was that, following the withdrawal of support by BCC on 26 January 2012, the permit scheme probably would be implemented, given the cost of litigation and the limited number of members in the claimant Association.

272. In the end, a meeting of the taxi drivers took place on 13 February 2012, at which the members were said to have voted unanimously to seek an injunction. At the end of that meeting, Mr Lloyd resigned as Chair of the claimant organisation. There had been some general dissatisfaction expressed at the AGM. The meetings of that meeting, at D4/993 recorded:

"There followed a long and heated discussion about TMS. The overwhelming view was that the committee should not have met with FGW at all and we should continue to fight FGW with or without BCC."

273. On 10 February 2012, FGW received an application from Mr Lloyd for a permit.

274. Mr Bartlett's evidence was that, on Friday, 27 January 2012, he and Mr Lloyd had two telephone conversations during which it was agreed conditionally that FGW would delay implementation of the permit scheme by one month to 1 March 2012, in exchange for the claimant Association and its members agreeing to the permit scheme. Those conversations on the Friday, the 27th, were taking place against the background of both Mr Lloyd and Mr Bartlett knowledge that there was a planned meeting for the taxi drivers due to take place on the Sunday of that weekend.

275. On Monday, 30 January 2012 Mr Lloyd telephoned Mr Bartlett to tell him that the meeting had not taken place but that he, Mr Lloyd, had had conversations during the day -- hence the lateness of the telephone call -- with key members of the claimant Association. It

must be said at this point Mr Bartlett's evidence became somewhat inconsistent. He said both that the Association had agreed to drop its objection to the permit scheme and that, at a meeting yet to take place, Mr Lloyd would recommend to the membership that its objection should be dropped.

276. Whichever version was correct -- and I prefer the second formulation -- I am satisfied that Mr Lloyd did lead Mr Bartlett to believe that the claimant Association's opposition to the scheme was or would be withdrawn, in exchange for one month's delay in the implementation of the scheme to enable drivers to buy the relevant permits.

277. Moreover, I accept the evidence of Mr Bartlett and Mr Goldring in relation to the meeting of 1 February 2012. This had proceeded on the basis that Mr Lloyd and Ms Jones were resigned to the fact that the scheme would be implemented without further objection.

278. In the end, the defence of compromise failed because there was no concluded agreement, since Mr Bartlett knew that the membership had to vote at a forthcoming meeting and, in the end, it was down to each individual taxi driver to decide whether to apply for a permit or not.

279. Even if there had been any such concluded agreement, it would be difficult to know who was bound by it and whether, in fact, the agreement was sufficiently certain to be enforceable in law.

280. Nevertheless, given the stark conflict of evidence and the strong feelings which this dispute has provoked, it is necessary for me to explain why I have preferred the evidence of Mr Bartlett and Mr Goldring. Moreover, a lot of time and money has been spent in trying to identify accurately whether the meeting with Mr Bartlett and Mr Goldring took place on 30 January 2012, as Mr Lloyd and Ms Jones had previously maintained, or, as now conceded, on 1 February 2012.

281. In turn, this has questioned the authenticity of certain documentation relied on by the claimants, and the truthfulness of certain passages in the witness statements of Mr Lloyd and Ms Jones.

Assessment of witnesses

282. Mr Bartlett struck me as a confident, honest and reliable witness. The accuracy of his recollection was undoubtedly impaired by the fact that he had made no notes of the telephone conversations which he had on 27 and 30 January 2012 or of the meetings on 1 and 9 February 2012. Nevertheless, unless Mr Bartlett was deliberately setting a false trail -- an idea which I unreservedly reject -- his genuine state of mind can be deduced from other contemporary documentation in the case, starting with a voicemail message which Mr Bartlett left at 15.29 hours on 27 January 2012 for his solicitor at Burges Salmon, Mr Tucker.

283. That voicemail was as follows:

> *"Hi Ian it's Kevin, Kevin Bartlett from First Great Western. Just a quick courtesy call really late on Friday and I will follow it up with just a quick email with you on that one.*

"We just literally got out of some discussions with the NTA who have now acknowledged our rights to seek to apply permit fees there in terms of the railway land, the station approach and forecourt.

"They are going to be recommending to the trade on Sunday that they pay the permit fees and stuff and as a result of that they are looking for a stay of implementation date up until the 1st of March. We have agreed in principle to that subject to the finally confirmation that the trade will pay the permit fees and agreement of a press statement that hopefully we will get out on Monday.

"So just wanted to say thanks for all your efforts and stuff. Still a little bit of a way to go to get that Monday agreement piece and stuff but we are going to probably release on Monday and stand down the piece on Wednesday.

"No doubt with all the effort there that everybody has put in it has been instrumental to at least allowing us to get to this point so again thank you. No doubt speak again Monday just to confirm 100 per cent that touch wood I think we have got the result we wanted to in the best way.

"Have a great weekend. Catch up with you on Monday. Thanks very much goodbye."

284. That was the voicemail received at Burges Salmon. That was sent at 15.29 hours on Friday, 27 January 2012.

285. There are other documents which were sent, which are contemporary to the conversation which took place on the Friday, 27 January, which clearly evidence a state of mind, possessed by Mr Bartlett, that he thought he had got a conditional agreement.

286. At D4/933, at the same time, 15.29, is a letter or e-mail from Tracy McMurtrie, Head of Client Services at Cabfind Limited. She is reporting on a conversation which she had had with Mr Bartlett in the following terms:

"All,

"Kevin has advised that the National Taxi Association are in looking to discuss an agreement to buy permits now, as they have had confirmation that the land belongs to FGW. The NTA are meeting on Sunday to discuss and we will have a further update on Monday.

"It looks like the operation will be called off next week and the agreements may be:

"Permits live on 1st March 2012 but all applications and payments be received by 10th February 2012 to allow us time to process.

"Kevin has asked me to pass on thanks for all the work and dedication that has gone into this project."

287. At D4/936 on the Friday, at 1600 hours, is another e-mail from Kevin Bartlett headed, "BTM Taxi Permit Update", to a number of members of staff:

288. *"Dear all.*

"Following agreement today with the Bristol National Taxi Association (NTA) the go-live date for the introduction of taxi permits at BTM station will be postponed until 1 March 2012.

"On Sunday The NTA will be holding a meeting with the drivers. The meeting will acknowledge FGW's rights to the station (including Station Approach) and therefore our right as private landowners to apply a permit fee for taxis seeking to ply for hire. Whilst the meeting will no doubt be heated it is strongly expected drivers will agree to the NTA's recommendation to accept the permit introduction. Subject to this agreement the implementation date will be postponed until 1 March 201 2..."

289. At CCB/101, at 16.28 on Friday, 27 January 2012, is an email Kevin Bartlett wrote to Dan Panes. This is now to do with press releases:

"Dear Dan/John.

"Following a provisional agreement with NTA to delay the introduction of permits at BTM suggest the following points to be used in a press release on Monday.

"Following acknowledgement by the NTA of FGW landowner rights under the Railway Byelaws we have agreed with FGW to delay the introduction of taxi permits at Temple Meads Station until 1 March 2012."

290. He was there sketching out what might have been going into a press release if everything had proceeded on the Sunday, as he had understood it would on the Friday evening.

291. All those communications, therefore, were on Friday, 27 January 2012. Whilst the emphasis shifts from document to document, the simple gist of what Mr Bartlett thought was going on is clear.

292. I turn now to Monday, 30 January 2012. Again, contemporaneous documents are quite important. At D4/945 is an e-mail from Mr Bartlett, timed at 13.39 hours, to Mr Lloyd:

"Further to our conversation on Friday 27 January 2012.

"I wonder if you are able to confirm that following the meeting on Sunday with your members that you now have acceptance in principle for the need for taxi permits in order to ply for hire at Temple Meads Station from 1 February 2012.

"Whilst we are content to delay the introduction of permits until 1 March 2012 this is conditional upon acceptance of your recommendation that those drivers who wish to ply for hire at the station will need to apply for permits in February and ideally by 10 February 2012 to ensure the processing of applications in time.

"It would be appreciated if you could confirm by 1700 hours today that the principle was agreed with the drivers. If I do not hear from you by 1800 hours today I take it that you are unable to provide that assurance and we will contact drivers with a revised plan for permit introduction.

"We have arranged a next meeting on Wednesday 1 February, however, please feel free to call me if there is anything you would like to discuss with me ahead of that meeting."

293. At D4/947 is the e-mail written by Mr Bartlett to Mr Lloyd after a telephone conversation which Mr Bartlett had with Mr Lloyd on Monday, 30th. The e-mail is timed, on 30,January 2012 at 17.43 hours:

294. *"Hi Tim.*

"Many thanks for the call confirming your recommendation to taxi drivers of the agreement to the FGW permit scheme. I am happy to confirm the postponement of any enforcement until 1 March 2012.

"I am pleased we have agreed a way forward and one I genuinely believe will benefit both our customers and the taxi drivers in the medium term.

"I attach some draft words for a joint press release (see below). Please feel free to amend as you feel and pass back to me. It would be good to get this issued as early as possible tomorrow so that all interested people can see that together we have reached agreement. If it helps to talk through any of the draft please feel free to call me.

"In the meantime I look forward to meeting you on Wednesday at Temple Meads Station at 1200."

295. There then followed the proposed text of a suggested press release, which was never issued, because neither Mr Lloyd nor the claimants ever returned any approved press release.

296. Mr Lloyd accepted, or did not dispute, that he received that e-mail, in the sense that it came into his inbox. His evidence is that he does not accept that he ever read it.

297. At this point it is important to know that that e-mail was sent out at 17.43. Five minutes later, at 17.48 hours, Mr Lloyd himself was writing an e-mail to Mr Kent, a councillor of BCC, and, therefore, must have been on line writing that e-mail. He was responding to an e-mail that Mr Kent had sent to him on Monday, 30 January at 16.24 hours, stating that he had heard that FGW was postponing the implementation of the permit scheme until 1 March. He also complained about some scurrilous comments that had been appearing on a web page adverse to BCC.

298. It is interesting to observe that, in his e-mail to Mr Lloyd, Mr Kent had offered to assist in discussing the details of the permit scheme with Mr Bartlett and to mediate between the parties. In his reply to him, at 5.48 pm, Mr Lloyd apologised for the scurrilous comments but explained that "feelings were running high" and the "trade was feeling beaten up again". The important point is not so much the content of the e-mail, but that Mr Lloyd was on line within five minutes of Mr Bartlett's sending him the e-mail set out above.

299. As I said, Mr Lloyd did not dispute that he had received that e-mail from Mr Bartlett, but did not accept that he had ever read it. I find that odd because of that five minute gap between it being sent and Mr Lloyd himself being on line writing his e-mail to Mr Kent.

300. I am afraid I do not accept Mr Lloyd's evidence that he did not read that e-mail. The title of the e-mail which was sent by Mr Bartlett to him was, "Implementation of FGW Taxi Permits at Temple Meads". If Mr Lloyd had read that e-mail sent at 17.43 on Monday, 30 January 2012, as I am satisfied he did, he would immediately have disputed its content with Mr Bartlett unless, of course, the contents were true. It was Mr Lloyd's evidence that his recommendation to the membership was never something which he would discuss or even trade with Mr Bartlett, yet the first line of Mr Bartlett's e-mail recorded that he had confirmed that he would recommend the permit agreement to taxi drivers.

301. I find that Mr Lloyd, on the balance of probabilities, did receive and read this e-mail. He did not dispute or contradict its content because, I am satisfied, it had accurately confirmed his telephone conversation with Mr Bartlett. This e-mail, written by Mr Bartlett so shortly after the relevant telephone conversation, does not speak in terms of a concluded

agreement but merely that he, Mr Bartlett, had secured Mr Lloyd's recommendation to the taxi drivers at a meeting yet to take place.

302. On 1 February 2012, FGW unilaterally released to BBC News an article that the claimant had dropped its opposition to the scheme. A brief narrative in the following terms was placed on the BBC News Bristol website:

> *"Taxi permit scheme at Bristol Temple Meads is postponed.*
>
> *"A scheme designed to cut congestion at the taxi rank at Bristol Temple Meads railway station has been postponed to allow drivers more time to sign up.*
>
> *"The permit system by First Great Western (FGW) means taxi drivers will have to pay £375 per year to use the railway station as a base.*
>
> *"The National Taxi Association (NTA) in Bristol objected but dropped its opposition after taking legal advice.*
>
> *"Now the dispute has been resolved, FGW has postponed the scheme until 1 March.*
>
> *"FGW, which owns the land at the front of the station, said the scheme would ease congestion, and that charging for permits was normal at other stations.*
>
> *"Part of the money raised from the permits will be used to improve the access and exit points on to the A4 from Station Approach."*

303. The following day, 2 February, that same article appeared on the website of the National Taxi Association.

304. In my judgment, this material clearly showed that it was Mr Bartlett's genuine belief that the claimants' opposition to the introduction of the permit scheme had all but disappeared. Mr Bartlett is plainly a professional and intelligent man. I reject Mr Lloyd's suggestion that Mr Bartlett only heard what he wanted to hear or had misunderstood what he had been told by Mr Lloyd.

305. Whilst I fully accept that the successful introduction of a permit scheme was a matter of great importance to Mr Bartlett, since it was his job to get it through, it is, in my view, highly improbable that his enthusiasm for his own scheme caused him to get everything so fundamentally wrong in his recording of the conversations he had had with Mr Tim Lloyd.

306. From his own personal point of view, Mr Lloyd considered that the scheme would go through in any event. He was the Chair of the claimant Association. Yet, his evidence was that he had given no indication at all of any recommendation that he might make on 27 January 2012, nor that he had made any conditional agreement on that date, even though that conversation took place against a background of BCC having withdrawn its support on the previous day and an anticipated meeting of members on Sunday, 29 January 2012.

307. In his witness statement, Mr Lloyd's evidence had initially been that there had been no telephone conversation with Mr Bartlett on Monday, 30 January. Yet, he accepted in his evidence that he had had telephone conversations with Mr Bartlett on that date.

308. Again, he alleged that, on 30 January 2012, he gave no indication to Mr Bartlett that he would recommend acceptance of the scheme. He also confirmed that he had not conducted any straw poll or taken any soundings of members between 27 and 30 January before his call. However, Mr Bartlett's evidence was that the reason for the delay in making

the call on Monday, 30 January was because he had had to speak to a number of key members in the Association to get a consensus.

309. It was suggested that the reason why Mr Lloyd and Ms Jones had originally stated in their witness statements that the meeting with Mr Bartlett had taken place on 30 January was to show that Mr Bartlett could not have had any telephone conversation on that day with Mr Lloyd, so that there never could have been any compromise agreed by telephone.

310. I reject that conspiracy theory. The error in that evidence really came from the fact that Mr Lloyd had taken the date of the meeting from Ms Jones, and Ms Jones had wrongly inserted the date at the top date in the diary, Monday, 30 January, as opposed to the bottom of the page, Wednesday, 1 February.

311. Although I reject the conspiracy theory, I am not convinced that the diary entries made by Ms Jones were contemporary. This explains why the error over the date of the meeting was made. At least one entry related to what Mr Lloyd, not Ms Jones, had done.

312. For example, the entry for 27 January reads:

> *"Tim Lloyd contacted FGW to arrange meeting. Agreed delay of start date from 1 February to 1 March as nothing heard from Tim Kent."*

313. That is merely a recording of what she had been told rather than a personal observation made by Ms Jones but of what she had been told.

314. So the diary is, to a certain extent, an aide memoire of significant or landmark dates.

315. That entry for Friday, 27 January in the diary is also interesting because the earliest that the deferment of the implementation of the scheme to 1 March 2012 could have been agreed was at 15.29 on 27 January. Yet, when on Monday, 30 January 2012 at 4.24 pm Mr Kent e-mailed Mr Lloyd, Mr Lloyd replied at 5.48 pm saying:

> *"We appreciate your offer of assistance with FGW and will call you if needed."*

316. This is hardly supportive of the diary entry that the introduction of the scheme had been delayed a month because nothing had been heard from Mr Kent, because when Mr Kent did offer help it was not immediately accepted.

317. As far as the meeting of 1 February 2012 is concerned, the account of Mr Goldring and Mr Bartlett is far more consistent with Mr Bartlett's account of what had happened on 30 January 2012 than a mere silent fact-finding exercise conducted by Ms Jones and Mr Lloyd. The prevailing atmosphere at the meeting was one of resignation to the introduction of the scheme.

318. For those reasons, where the evidence of Mr Bartlett and Mr Goldring conflicts with the evidence of plaintiff Lloyd and Ms Jones, I prefer the evidence of Mr Bartlett and Mr Goldring.

319. In the end, however, nothing turns on that conflict of evidence, since no successful defence of compromise has been established.

320. I merely add, for the sake of completeness, that there had been an NTA meeting on 1 February 2012 (wrongly minuted at page 979 as 31 January 2012), at which reference was made to the earlier meeting which had taken place on 1 February 2012.

321. On 3 February 2012, a meeting took place of the Hackney Carriage and Private Hire Forum, attended by representatives of BCC and the taxi trade. It is interesting because of the comments ascribed to Mr Lloyd at 987:

> *"Nick Carter provided an update on the issue of permits at Temple Meads Railway Station. TL raised that because of additional cost of permits trade would seek a supplemental on tariff for every job coming out of Temple Meads."*

322. This reads to me as if the permit scheme was already a fait accompli, and now the important issue was how the cost of the permit could be met by taxi drivers through an increase by BCC in the tariff for passengers taking a taxi at Temple Meads Station.

323. On 5 February 2012, Mr Bartlett wrote an amicable e-mail to Mr Lloyd and Ms Jones referring to their meeting on 1 February 2012, at page 1000, which contained no hint of any obstruction or any resistance to the implementation of the permit scheme.

324. A further meeting took place between Mr Lloyd, Ms Jones and Mr Bartlett on 9 February 2012.

325. The AGM of the taxi drivers finally took place on 13 February 2012.

BCC letter 22 February to 1 March 2012

326. As I have already indicated, on 22 February 2012, Mr Jonathan Martin, the Regulatory Compliance Unit Manager at BCC, wrote to Ms Jones indicating that BCC was not able to prevent FGW from reviewing the basis on which FGW permitted access to their land, which was essentially a matter between FGW and the affected drivers.

327. The permit scheme came into effect on 1 March 2012 and was policed initially by Cabfind and, latterly, by G4S. A substantial part of the time spent on site by Cabfind and G4S was really policing taxis to see whether they had the relevant permits. However, I am also satisfied that those organisations were genuinely policing taxi driver behaviour and taxi drivers' compliance with the relevant rules and regulations.

328. Again, this was not mere window dressing, although I accept that there was a much greater presence by these organisations at the initial stages of the introduction of the scheme than later on. The various records kept by those organisations and what they were doing indicate that they were doing more than merely checking whether the drivers had the necessary permits.

Issue of proceedings and injunction hearing

329. As a result of the instructions given by the members at the AGM, the High Court proceedings were issued. An application for a without notice injunction by the claimants was refused. At the inter parties hearing, the application was compromised by the undertakings pending trial, to which I have referred above.

330. Finally, at a meeting of the Hackney Carriage and Private Hire Forum on Friday, 11 May 2012, attended by representatives of BCC and the trade, Mr Carter, at D4/1080, referred to the fact that Hulin v Cook really had dealt with the legal position.

Status of Station Approach: private land or highway dedicated under section 31 of the Highways Act 1980

331. Pauline Powell of BCC's legal department had originally raised the question of whether the station approach road was a public highway, but then conceded that it could not have become so by virtue of prescription or user by the public over many years, because of section 57 of the British Transport Commission Act 1949.

332. However, Mr Fletcher has resurrected the argument, relying on the use of the public, both on foot and with vehicles, for 20 years between 1974 and 1994 by virtue of section 31 of the Highways Act 1980, which replaced the earlier Acts of 1932 and 1959.

333. BTM is not shown on the list of highways maintainable by BCC at public expense kept under the Highways Act 1980. Nor is BTM shown on the Definitive Map kept under the Wildlife and Countryside Act 1981.

334. In short, no official document records any public right of way over BTM, whether on foot or with a vehicle.

335. The starting point for this argument is, of course, 1974. At this time, at least up until April 1974, taxi drivers paid for the privilege of plying for hire from BTM. Their usage was, therefore, with the express permission of the freehold owner whom they paid for the privilege of access.

336. Between 1974 and 4 November 2011, I am satisfied that taxi drivers continued to use BTM with the permission of the railway owner, granted initially in that April 1974 document and not withdrawn until the letters to BCCand to the taxi drivers on 4 November 2011.

337. I have already held that this permission was not spent, when British Rail consented to the amendment to taxi Byelaw 16, effective 6 December 1974, to include the taxi stands at BTM.

338. Indeed, in its letter, dated 19 September 1985, to the principal solicitor at BCC, British Rail said that although the public had unfettered access to BTM for the purpose of railway business, *"it is not a public highway"*.

339. The end point is 1 May 2006, because of section 67 of the Natural Environment and Rural Communities Act 2006. Of course, the claimants' case is that BTM became a public vehicular highway long before the commencement of the 2006 Act. However, under the Act all existing public vehicular rights of way not shown on the Definitive Map or Statement were extinguished, unless one of the exceptions was establish. The exemption relied on here is that set out in section 67(2)(a) of the 2006 Act, namely that:

> *"It is over a why whose main lawful use by the public during that period of five years ending with the commencement was use for mechanically propelled vehicles."*

340. However, since it must have been a public highway before 2 May 2006 it must have been such no later than 1 May 2006. Yet, FGW only took over the franchise at BTM on 1 April 2006, and its lease of the premises began on 1 October 2009.

341. The claimants' case is based on section 31 of the Highways Act 1980.

> *"31. Dedication of way as highway presumed after public use for 20 years.*
>
> *"(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway*

unless there is sufficient evidence that there was no intention during that period to dedicate it.

"(1A) Subsection (1)-

"(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

"(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.

"(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

"(3) Where the owner of the land over which any such way as aforesaid passes-

> *"(a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and*
>
> *"(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

"The notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

"(4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice as is mentioned in subsection (3) above, so, however, that no injury is done thereby to the business or occupation of the tenant.

"(5) Where a notice erected as mentioned in subsection (3) above is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner of the land to dedicate the way as a highway.

"(6) An owner of land may at any time deposit with the appropriate council-

> *"(a) a map of the land on a scale of not less than 6 inches to 1 mile, and*
>
> *"(b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;*
>
> *"And, in any case in which such a deposit has been made, statutory declarations made by that owner or by his successors in title and lodged by him or them with the appropriate council at any time-*
>
> > *"(i) within ten years from the date of the deposit, or*

"(ii) within ten years from the date on which any previous declaration was last lodged under this section.

"To the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or since the date of the lodgment of such previous declaration, as the case may be, are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

"(7) For the purposes of the foregoing provisions of this section 'owner', in relation to any land, means a person who is for the time being entitled to dispose of the fee simple in the land; and for the purposes of subsections (5) and (6) above 'the appropriate council' means the council of the county, metropolitan district or London borough in which the way (in the case of subsection (5)) or the land (in the case of subsection (6)) is situated or, where the way or land is situated in the City, the Common Council.

"(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

"(7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.

"(8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.

"(9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.

"(10) Nothing in this section or section 32 below affects section 56(1) of the Wildlife and Countryside Act 1981 (which provides that a definitive map and statement are conclusive evidence as to the existence of the highways shown on the map and as to certain particulars contained in the statement)...

"(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.

"(11) For the purposes of this section 'land' includes land covered with water.

"(12) For the purposes of subsection (1A) 'mechanically propelled vehicle' does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle)."

342. The evidence in support of public use on foot or by vehicles as of right, as opposed to by taxi drivers, is very limited. The evidence suggests that the use of the approach road by

pedestrians or by vehicles was for railway purposes. Of course, there can be no dedication to the public as a highway by an owner who has given permission to the public to use the way.

343. In my judgment, all those who have accessed to BTM on foot or with vehicles have done so with the permission of the relevant owner, who has invited them on to the premises for railway purposes. Such users are using the approach to the station not as of right, but with permission. The supplementary witness statements of Mr Lloyd and Ms Jones dealing with this stated that such use was largely for depositing or collecting passengers or for accessing the parking areas.

344. In my view, taxi drivers specifically have used BTM with permission granted under the 1974 agreement until 4 November 2011. Those accessing the station on foot or with ordinary vehicles have done so either to visit the railway premises or to use the paid parking spaces within the concourse. The payment of a parking fee negates any user as of right.

345. Ms Jones drew my attention to members of the public who, as pedestrians, use the side entrance or the footpath on the main approach either as a short cut or to get to the taxi rank within the station. She also mentioned that members of the public driving cars would drive on to and around the station approach road, effectively making an enlarged U-turn to avoid travelling further and negotiating a rather difficult roundabout.

346. However, such persons or users have not been witnesses in this case; and this evidence generally falls far short of what one would expect or what is required to provide 20 years user as of right, as opposed to an implied permission, even in those cases. The claim in this case for public vehicular rights on a public highway is really based on vehicular use by taxi drivers, not by others.

347. The claimant Association has sought a declaration against this defendant, FGW, that the station approach is a public highway. Neither the Highway Authority, BCC, nor the Crown, is a defendant in these proceedings and would therefore not be bound by the outcome in any event.

348. Moreover, there are difficulties lying in the path of such a claim based on section 31 of the Highways Act 1980, in that this declaration is sought against the current lessee and not against the freeholder. Although the parties have reserved the right to argue this point, should the need arise, there is some suggestion (see Halsbury's Laws, volume 55, 2012, paragraph 117 and Sauvain's Highway Law, 3rd edition, paragraphs 2-32 and 2-33) to the effect that the lessee cannot dedicate a highway so as to bind the owner of the freehold reversion in the absence of consent, actual or inferred, of the owner and the freehold. This aspect of the case, namely the state of mind of the owner of the freehold, has not been examined in any great detail in any of the evidence.

Contrary intention to dedicate established or not?

349. Even if the claimants had been able to prove 20 years user by the public as of right, the presumed designation as the highway can be rebutted if there is sufficient evidence to establish that there was no intention during the relevant period to dedicate it.

350. In my judgment, a contrary intention has been established by the following:

351. (1) Up to 1976, there was a notice or plaque which stated 'Private Road No Thoroughfare'. Somebody removed that notice in 1976. This is based on the evidence of one of the claimants' witnesses, Mr Lines.

352. (2) In 1985 and 1991, British Rail was asserting that BTM was not a highway to BCC and was asserting private rights.

353. (3) Works were carried out to the station forecourt in July 1992, and the approach road was closed with the traffic diverted on to a parallel road. This is not perhaps the strongest of points. Mr Fletcher has drawn my attention to authorities (eg Fernlee Estates v City and County of Swansea and NAW [2001] EWHC 360 (Admin.) and Jones v Bates [1938] 2 All ER 237), which would suggest that that may not be sufficient. Nevertheless, there is no evidence that that closure was taking place under some notification under the Highways Act closing an existing public way. It is more consistent with a private landowner closing its own land and creating a diversion, because, after all, it was essential that traffic could get to the front of Bristol Temple Meads Railway Station. In reaching this conclusion, I have not overlooked the webpage document which Mr Fletcher handed to me, dated 23/8/2012, cfrom the web archive at the National Archives.

354. (4) The thrust of the evidence of John Pengelly of Network Rail. This evidence was effectively unchallenged, albeit it was subject to the criticism that it was largely expressions of opinion. It gave many reasons why it would be quite contrary to policy for any public right to be dedicated.

355. (5) Section 57 of the British Transport Commission Act 1949 demonstrated a contrary intention. I shall return to this.

356. In summary, I am satisfied that there has not been 20 years user as of right by the public for the purposes of section 31 of the Highways Act 1980. Even if such user had been established, I am satisfied that there was no intention by the owner to dedicate it to the public as a highway.

357. In the light of this finding, there was no public right of way in existence over the station before the commencement of the 2006 Act. It is therefore not necessary for me to consider whether the exception to the extinction of a public vehicular highway has been made out under the 2006 Act, because there was no antecedent public way.

Section 57 of the Transport Commission Act 1949

358. I have thus far dealt with the issue of the alleged existence of a public vehicular right on conventional principles. I now turn to a very important statutory provision, section 57 of the Transport Commission Act 1949.

> *"57. As from the passing of this Act no right of way as against the Commission shall be acquired by prescription or user over any road footpath thoroughfare or place now or hereafter the property of the Commission and forming an access or approach to any station goods-yard wharf garage or depot or any dock or harbour premises of the Commission."*

359. This Act is both a public and local act. It is not a private Act (see section 3 of the Interpretation Act 1978). The observation in Freedman by Hoffmann J (as he then was), that the Act was a private one, must have been per incuriam. The relevant authorities had not been cited to him.

360. Section 57 of the 1949 Act is still in force, and through a combination of Transport Act 1962 and the Railways Act 1993 (Consequential Modifications) (No. 2) Order 1999. The references to the Transport Commission in the original statute are to be read as referring

initially to the British Railways Board and thereafter to any Train Operating Company, including FGW.

361. Mr Fletcher abandoned his contention that the 1949 Act was impliedly repealed by the Highways Act 1959. However, he argued that the 1949 Act did not apply where dedication was not incompatible with the statutory functions of the railway operator. He asked rhetorically: how could dedication in this case be incompatible when what was being dedicated was a public right to approach the railway itself? Such a right, he argued, must be highly compatible with the railway's functions, because people have to get to the station in the first place.

362. Mr Fletcher also argued that section 57 should be given a narrow construction and should be confined to private rights of way, not public ones. However, the draftsman plainly had in mind the difference between public and public rights of way. In section 28 of the same Act of 1949, he actually referred to private rights of way. Moreover, section 57, if it were confined to private rights of way would require a dominant tenement, for a private right of way, an easement, requires both a dominant tenement and a servient tenement. That requirement seems inconsistent with the content of section 57 which prevented the acquisition of any right over land forming an access or approach to any station. In my judgment, that speaks far more of a public right to get to the station than it does a private one.

363. In conclusion, I am of the view that section 57 of the 1949 Act is apt to cover both public and private rights of way. It is a freestanding section unaffected by section 31(8) of the Highways Act 1980 or by Westmorland [1958] AC 126 relied upon by Mr Fletcher which, in my judgment, has no application to the current situation.

Railway Byelaws and their interpretation

364. As a result of a change in the railway byelaws, the question has arisen whether there was any prohibition thereunder on taxis plying for hire within BTM.

365. In the original railway byelaws, promulgated by British Railways Board, Byelaw 22 was in the following terms:

> *"Noise, disturbance, sale of goods, touting, et cetera".*
>
> *22(1):*
>
> *"No person, while upon the railway shall, to the annoyance of any other person, sing, perform on any musical or other instrument or use any gramophone, record player, tape recorder or portable wireless apparatus.*
>
> *"(2) No person while upon the railway, shall, except by permission of an authorised person:*
>
> > *"(a) display or exhibit any printed, written or pictorial matter or any article for the purpose of advertising or publicity, or distribute any book, leaflet or other printed matter or any sample or other article; or*
> >
> > *"(b) sell or expose or offer for sale any article or goods whatsoever; or.*
> >
> > *"(c) tout, ply for, or solicit alms, reward or custom or employment of any description."*

366. Those byelaws were made on 6 August 1965 and came into operation on 1 September 1965. They were subsequently amended on 16 August 1980, 30 August 1981 and 1 August 1986. They were, it seems to me, the relevant byelaws in force until the new byelaws were made by the Strategic Rail Authority in 2005. These are the current byelaws.

367. It is apparent, when one looks and holds side by side the 2005 byelaws made by the Strategic Rail Authority and the old byelaws made by British Rail, that they do seek to cover the same material, because the mischief and the conduct which one would want to regulate is the same, of course, notwithstanding the passage of time.

368. It is clear that the essential content of the old byelaws has been recast and modernised. This is not simply a case of old byelaws between the same parties, that is the organisation and the public, being amended. Whilst the same topics have been revisited in the new byelaws, they have been expressed in more modern language. The byelaws have been entirely reorganised to reflect a more modern and user-friendly approach.

369. I read, therefore, the equivalent of the old byelaws 22, which is now contained in Byelaw 7:

"Music, sound, advertising and carrying on a trade

"(1) Except with written permission from an Operator no person on the railway shall, to the annoyance of any person:

"(i) sing; or

"(ii) use any instrument, article or equipment for the production or reproduction of sound."

370. Gone, therefore, are references to gramophones and the language of a technology long since disappeared.

"(2) Except with written permission from an Operator no person on a railway shall:

"(i) display anything for the purpose of advertising or publicity, or distribute anything;"

371. Gone are phrases such as "pictorial matter" in this modern byelaw.

"(ii) sell, expose or offer anything for sale;"

372. Again, that has been tidied up and modernised.

"(iii) tout for, or solicit money, reward, custom or employment of any kind".

373. I shall read, again, the old 22(2)(c):

"tout, ply for, or solicit alms, reward or custom or employment of any description."

374. The modern version is:

"tout for, or solicit money, reward, custom or employment of any kind".

375. Specifically, the words "ply for" have been removed from the modern byelaw; but also the word "alms" has been replaced by the word "money"; the word "description replaced by the word "kind".

376. Mr Fletcher has therefore argued that control over taxis plying for hire has now been removed from the byelaws and, with that removal, any right by FGW to introduce a permit scheme based upon the powers within that byelaw, which formerly contained the words "ply for".

377. I was initially attracted to Mr Fletcher's argument of construction. But, these are new byelaws created by a new authority. Although based on the former British Rail Byelaws, they have obviously been refreshed and -- if I may use the vernacular -- revamped.

378. Comparisons with former byelaws are therefore of limited value, when a modernisation process has taken place. In my view, the removal of the words "ply for", just as the substitution of the word "money" for alms", is part of this modernisation, rather than a change of intention or meaning.

379. In my judgment, a taxi standing or plying for hire at BTM is still soliciting custom within the meaning of the Raiway Byelaws 2005, despite the removal of the phrase "plying for hire". This a taxi driver cannot do at BTM without the consent of FGW.

380. Bugbugs [2003] EWHC 2865 (Admin) and the 1994 Act, with its need for a specific exclusion from the definition of soliciting of the display of a 'For Hire'sign, support this conclusion.

381. In any event, I am satisfied that the same result could have been achieved in the modern byelaws under the section headed, "Control of Premises" by Byelaws 13 and 14:

382. *"Unauthorised access and loitering*

"(1) No person shall enter or remain on any part of the railway where there is a notice:

"(i) prohibiting access; or

"(ii) indicating that it is reserved or provided for a specified category of person only, except where he belongs to that specified category."

"Traffic signs, causing obstructions and parking".

(1) No person in charge of any motor vehicle …shall use it on any part of the railway in contravention of any traffic sign.

(2) No person in charge of any motor vehicle …shall leave or place it on any part of the railway … (ii) otherwise than in accordance with any instruction issued by or on behalf of an Operator or an authorised person.

383. Those byelaws would also cover the situation, in my judgment, In the end, I have not accepted Mr Fletcher's attractive argument based upon the textual analysis. It seems to me that to do so would be to ignore what had happened in 2005.

384. Words were changed, even though the basic structure and the subjects covered were the same. "Ply for" was no doubt correctly considered by the draftsman to be adequately covered within words of "touting" and "soliciting".

Why was the permit scheme introduced?

385. There were mixed motives for doing so. The dominant motive was to generate money, much of which was to fund an effective private policing system and the remodelling of BTM to provide a more efficient taxi service. The motives were mixed, but there was no sham. Income was necessary to improve the efficiency of traffic circulation, the increased flow of taxi traffic and, therefore, the income of taxi drivers.

Under what right or power was the permit scheme introduced or permission revoked?

386. In my judgment, it was introduced by FGW as landowner. This is the major thrust of what FGW argued to BCC and to the claimants, albeit backed up by the byelaws. Independently of the private rights as landowner, I am satisfied that the byelaws too, given my construction of them, also conferred power on FGW to restrict taxis soliciting custom without proper authorisation.

Ulterior motive or improper purpose

387. Mr Fletcher's argument here is that, since plying for hire was no longer prohibited by the Railway Byelaws 2005, the scheme was ultra vires. I reject this argument for two reasons. First, as landowner, FGW was entitled to impose conditions of entry on all those taxi drivers who sought to gain access to trade from FGW land. Secondly, as I have indicated, on a proper construction of the byelaws, there was no logical reason to exclude taxis and private hire vehicles from byelaw control at BTM. Why should the taxi trade be exempt from railway byelaw control? Is the answer because it is regulated by taxi byelaws? No. The taxi byelaws are only one dimension of the need for FGW, as a railway operator, to manage and control its land and the activities, commercial or otherwise, conducted there.

388. If the objection be that the byelaws are being used to raise revenue, not the purpose of the power granted by the byelaw, the answer is: why not? No one questions the power of the railway operator to charge WH Smith or other traders for the privilege of trading from railway premises for profit. In Hulin, it was not suggested that the permit scheme was ultra vires.

389. However, even if there were some limitation imposed on what FGW could introduce as a permit scheme under the byelaws, which I reject on the facts of this case, it had an unqualified right to do so as landowner.

Is the permit scheme invalid?

390. In my judgment, no. Even if the byelaws did not permit its introduction, and even if FGW had wrongly invoked byelaw powers, its position as private landowner, with power to control those who came on to its land, justified and rendered lawful the permit scheme. No possible prejudice was suffered by the claimants thereby, and the outcome would not have been different in any respect. The permit scheme would have been introduced, as FGW was resolved to introduce it from late 2010 onwards.

Human Rights Act

391. If the taxi drivers had accessed BTM to ply for hire before 1 March 2012 only with the permission of FGW, and not as of right under the taxi byelaws or as a public highway, then the claimants' case is that the withdrawal of this permission by FGW, a public authority for this function, violated the property rights of the taxi drivers under Article 1 of Protocol 1

of the European Convention of Human Rights and Fundamental Freedoms and the Human Rights Act 1998 in an unjustifiable way.

392. The Human Rights Act had also separately been advanced on the additional basis that FGW had no right to revoke permission and introduce the permit scheme and so had acted unlawfully. I have, of course, already rejected the premise of that aspect of that human rights claim for damages.

393. The current argument, still advanced by Mr Fletcher, is that the mere withdrawal of permission violated the human rights of taxi drivers. That, in turn, raised four subsidiary questions.

(1) Is FGW a public authority, when controlling access by taxi drivers to its own land?

(2) Is the permission to ply for hire at BTM free of charge a possession within the meaning of Article 1?

(3) Has FGW interfered with or deprived them of it?

If the answer to any one of those three questions is in the negative, then the human rights claim fails. If all three of those questions are answered in the affirmative, then the human rights claim will succeed if:

(4) On a fair balance, FGW cannot establish that the withdrawal of permission was justified and proportionate.

Is FGW a public authority, for the purposes of the Human Rights Act, when exercising its function of managing and controlling which taxi drivers can access its land or access to its land generally?

394. Mr Fletcher submitted that FGW was a public authority for these purposes because it was invoking its byelaw powers to introduce and enforce the permit scheme.

395. Mr Paton rejected this analysis, arguing that the byelaws were merely grafted on to the bedrock of rights and powers which FGW had as property owner, and that, in introducing the permit scheme, FGW was not acting as a public authority, but merely as a landowner regulating who, and on what terms, could access its land.

396. On this issue, I prefer Mr Paton's submissions (see paragraphs 51 to 56 of his skeleton, (set out in part below) to those of Mr Fletcher (see paragraph 5.3 on page 18 to 20 of Mr Fletcher's skeleton).

397. In my view, Mr Paton's submissions are much more consistent with the authorities. I do not propose to dwell, at great length, in a recitation of what those submissions are, but I must at least highlight what are the stepping stones. The stepping stones start with R v Great Western Trains Co, Ltd, ex parte Frederick, (QBD, Popplewell J, 19 May 1997), where it was held that a decision by Great Western Trains Company Limited, in relation to control of taxis and giving the contract to do so to one particular company, was merely ancillary to the provision of railway services and was not part of its body function and was not statutorily underpinned and contained no sufficient public law element to be amenable to judicial review.

398. While that case was considering the public/private distinction for the purposes of judicial review, a line of cases has set out clearer guidelines for this principle of what is or when is an organisation acting as a public authority,

"52. While that case [ex parte Frederick] *was considering the public/private distinction for the purposes of judicial review, this is a similar (although not quite the same) issue as what constitutes a 'public authority' under section 6 HRA 1998. The latter issue has been carefully considered by the higher courts in recent years: see YL v. Birmingham City Council [2007] UKHL 27, Aston Cantlow PCC v. Wallbank [2004] 1 AC 546 and R.v London and Quadrant Housing Trust, ex. p. Weaver [2009] EWCA Civ 587 for a review and restatement of the tests applied on this point.*

"53. Applying the factors and tests from those cases, any claim that the Defendant is carrying out a 'public function' when controlling access to its land at the station approach must fail. The Defendant is a private company limited by shares, and lessee of that land. Whatever arguments one might make about the running of trains and similar core functions of the railway industry being of a public nature, and therefore the Defendant being a 'hybrid' body with some 'public functions; (but cf. the Railtrack case below), the control of vehicular access to private land consisting of a station approach is par excellence a private act and private aspect of the Defendant's operations.

399. Section 6(3) Human Rights Act 1988 states:

"(3) In this section 'public authority' includes-

"(a) a court or tribunal, and

"(b) any person certain of whose functions are functions of a public nature"...

"(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private."

400. So, one can be, for different purposes, both a public authority and not a public authority under the Human Rights Act legislation.

401. In my judgment, applying the factors and tests from those cases set out in Mr Paton's skeleton argument, it seems to me that any claim that the defendant is carrying out a public function, when controlling access to its land at the station approach, must fail.

402. The defendant is a private company, limited by shares, and lessee of that land. Whatever arguments one might make about the running of trains and similar core functions of the railway industry being of a public nature, and therefore the defendant being a hybrid body with some public functions, the control of a vehicular access to private land, consisting of a station approach, strikes me as a private act and private aspect of the defendant's operations, notwithstanding the existence of and any reliance on the railway byelaws by FGW, because FGW is fundamentally relying on its rights as a private landowner.

403. Despite Mr Fletcher's submissions to the contrary, I am not satisfied that any of the factors and tests for public functions of private bodies set out in the case law are met here. In this case, I am satisfied that it is a matter of the private relationship between, and the respective private rights of, the two parties.

404. The claimants frame their claim in terms of the loss of their livelihood and claim damages. The defendant claims the right to control access to the land *qua* private owner. In my judgment, it is a matter of private rights and title, as in the Aston Cantlow PCC v Wallbank [2004] 1 AC 546 and YL v Birmingham City Council [2007] UKHL 27 cases; it is

far removed from any public function, such as the provision of social housing, as in R v London and Quadrant Housing Trust, ex parte Weaver [2009] EWCA Civ 587.

405. I also consider that the reasoning in ex parte Frederick applies here too. This was an ancillary and private part of the defendant's operations, as are matters of licensing other vendors at the station. Their various licence agreements are in the documentary evidence.

406. FGW is not under any statutory duty or public duty to provide taxi services. Moreover, the position was reinforced, in my judgment, by the decision of Sir Michael Turner in Cameron v Network Rail Infrastructure Limited [2006] EWHC 1133 (QBD), where he held that even the former company Railtrack plc was not a public authority for the purposes of section 6 of the Human Rights Act 1988, even in a hybrid case in relation to track safety by virtue of its status as an infrastructure controller of the national railway network at the time of the Potters Bar crash. Therefore, a Human Rights Act 1988 claim for damages was struck out on that basis. Sir Michael Turner set out a list of eight factors, at paragraph 29 of his decision, which, in his judgment, militated against Railtrack being a public authority in the relevant aspect.

407. In my view, a private railway company which withdraws a gratuitous permission to access a station approach and its taxi stands was not exercising any public function in doing so, particularly given the outcomes and reasoning of the cases to which I have referred. FGW was under no statutory or public duty to provide a taxi service to the station. What it does with its station and who it lets on to its land are private matters for it.

408. Accordingly, I answer this question in the negative. That disposes of the Human Rights Act claim.

409. Nevertheless, I now go on to deal with the other human rights arguments, in respect of all of which I again prefer the submissions of Mr Paton, set out in his skeleton argument and in his closing speech.

Is the permission to access a possession?

410. In my judgment, it is not. A bare permission or licence to be on someone else's land is the lowest of the low in English land law, providing merely protection against trespass liability for as long as the permission subsists. To categorise such permissions as possessions under Article 1, Protocol 1 would negate the property right, clearly itself a possession, of the landowner himself.

411. If a bare permission or licence over land could not be freely revoked, it is the landowner who would have suffered an interference with the enjoyment of his possession.

412. R v Waltham Forest Primary Care Trust, ex parte Malik [2007] EWCA Civ 265, approving and following the reasoning of the Divisional Court in Countryside Alliance [2007] QB 305, also makes this point clear. In Malik the claimant GP's presence on the relevant NHS performers list was not held not to be an Article 1, Protocol 1 possession. Reviewing all the English and European case law, the court held that the mere personal right to practice through being on that list and so seek future income was not a possession. This was to be contrasted with a vested right, a marketable goodwill or enforceable right to future income, or some other distinct asset, such as a milk quota, with monetary value.

413. By contrast, a personal, non-transferable and non-marketable licence with no value in itself, save for the scope it gave to earn money in the future, is, in my judgment, not an asset or possession falling within the article.

414. My attention was also drawn to R v Wirral Metropolitan Borough Council, ex parte Roydon [2003] LGR 290, where it was argued that the de-restriction of the numbers of hackney carriages was itself an interference with an Article 1, Protocol 1 right of the taxi drivers. Whilst it was recognised that a taxi licence could be a possession, the case itself was unsuccessful in that the de-restriction of the numbers in licence was not a possession.

415. Further, in R v Security Industry Authority, ex parte Nicholds [2006] EWHC 1792 (Admin.), a new statutory licence regime for door supervisors excluded people who had certain criminal convictions. It was held that doormen's pre-existing permissions to work at various premises were not Article 1, Protocol 1 possessions interfered with by the new regime. Both those cases were cited and considered in ex parte Malik.

416. In my view, the general, gratuitous, pre-2011 permission in this case falls squarely into this category, and it is in no way analogous to a valuable quasi proprietary licence such as might arise in relation to milk quota, fisheries or the sale of liquor.

417. This was a bare permission to be on land for the purpose of earning more income. That point is clear from the way in which the claimants have formulated their claim, namely the effect of this on their livelihoods. In the re-amended reply they pleaded that their "right to make a livelihood by plying for hire at the Temple Meads taxi stands" was what had been lost. In my judgment, that is really indistinguishable from the basis of an Article 1, Protocol 1 claim which was specifically rejected in Countryside Alliance (at paragraph 114), and in Malik and in Nicholds.

418. Accordingly, I answer the second question in the negative too.

Has the possession been interfered with or deprived?

419. The essence of a bare permission is that it is revocable on reasonable notice. If no point is taken, as is the case here, on the adequacy of the notice, then I fail to understand how there could be any violation where, as here, that permission has been withdrawn on what I find was reasonable notice.

The balancing exercise

420. If, however, I were wrong in all those conclusions, and if FGW were a public authority for this function, if the withdrawal of the permission was a possession and if it had been interfered with, then I would have to go on and consider the balancing exercise.

421. As I already indicated, FGW has given reasons for its introduction of the paid permit scheme at Temple Meads Station in the evidence of Mr Bartlett and in the evidence of the monitoring by Cabfind and G4S. I reject the suggestion that this is window dressing or disingenuous conduct or a pack of lies concocted to conceal the sole aim of merely deriving revenue.

422. It is true that FGW did have mixed motives, but I am satisfied that the revenue generated by the permit scheme would be substantially reinvested in improving the station forecourt layout, improving traffic flow, controlling behaviour of taxi drivers, regulating how

they use or park their vehicles whilst at BTM, to the mutual benefit of FGW, taxi drivers and their passengers.

423. These are legitimate aims connected to the defendant's business and legal obligations as occupiers of land and employer under safety law, which is also in the public interest, as is the better and more effective management and provision of taxi services at the station.

424. The suggestion that the effect of the permit scheme has been to increase queues is, in my judgment, not made out. There is conflicting evidence on it and, indeed, the matter has not been the subject of any detailed survey.

425. The scheme introduced is, in my judgment, necessary and proportionate to the aim pursued. The claimants are not being denied access to BTM. Tthey are being asked to sign up to terms and conditions of appropriate behaviour and asked to pay, currently, some £400 for the privilege of earning up to £24,500 on that land, on the claimants' own calculations. The defendant is not simply pocketing the money. The significant costs of implementing and policing the scheme and monitoring and policing the ranks were referred to in the evidence as, indeed, have been the intentions to improve the layout, the facilities and to alleviate the congestion, all ultimately, in my judgment, to the benefit of taxi drivers, as well as others.

426. In my judgment, this strikes a fair balance between the needs of the defendant, as owner of the station, and those who wish to conduct taxi business there. No taxi driver will be arbitrarily excluded from conducting their trade there, if they are licensed, sign up to the defendant's permit scheme rules and obey them.

427. Even in times of economic austerity. Even when, as I know, Bristol taxi drivers have already been required to invest heavily in improving their taxi fleet, it is still a relatively modest price to pay for such a benefit to trade on someone else's land, by conveying passengers, brought to the door of their taxis by FGW.

428. It is a permit scheme of already widespread application regionally, if not nationally.

429. In my judgment, the permit scheme is justified and proportionate on the fair balance test, even in the knowledge that the permit fee will eventually rise to at least £700 per annum from its current rate. BTM is FGW's station with the highest footfall in the region and £600 to £700 is currently charged at FGW stations with a much smaller footfall.

Conclusions

430. The claim therefore fails on all grounds. The permit scheme is lawful and justified. It is enforceable by injunction.

431. It is therefore not necessarily for me to consider the taxi drivers' claim for compensation for the period, in respect of which those who had no permit were denied access to BTM, until the undertakings were given to the court to pay into court an equivalent fee, if they wished to trade from BTM. At the outset of the trial, the parties had agreed that the assessment of any damages would be referred to a District Judge. That will not happen as the claimants' claims are dismissed.

Post Judgment discussion

That is the end of the judgment.

I'm sorry for the length [of time] it has taken to deliver it.

MR PATON: My Lord, it is now a quarter to 4. I came prepared today to argue about the order and about costs. My learned friend may wish to say that he wishes to adjourn that to a further date. I think we're in your Lordship's hands as to --

MR FLETCHER: My Lord, before we get to the matter of costs, there is the matter of permission to appeal, my Lord, that I would like to raise. Perhaps it would be convenient if I raised that now.

JUDGE McCAHILL: Yes.

MR FLETCHER: And then, as far as costs are concerned, it seems to me that is quite a substantial matter and I'm not sure we can deal with it here and now.

JUDGE McCAHILL: I don't think we could do justice to that today --

MR FLETCHER: No.

JUDGE McCAHILL: -- when you've all been so patient.

MR FLETCHER: I don't think so, my Lord. I haven't seen a schedule of costs so I don't know exactly what is being asked for.

As far as permission to appeal is concerned, my Lord, I'm not going to reiterate the arguments that you've just so carefully considered.

JUDGE McCAHILL: No.

MR FLETCHER: But my application for permission to appeal is limited to two specific issues. First and foremost, I seek permission to appeal in relation to the question of interpretation of the legislation relating to taxi licensing and the byelaws.

JUDGE McCAHILL: Do you mean the Hulin v Cook point?

MR FLETCHER: If we, just for shorthand, call it the Hulin v Cook point. My Lord, in brief, it is a point that hasn't been considered at the Court of Appeal level. It is an important point of general importance. It is important that it be clarified for everybody, for the taxi trade, and not least for these parties. And it merits being considered, in my submission, by the Court of Appeal.

This is ancient and obscure legislation on which, so far, this is only the second ever reported case that I'm aware of. So that's the first point.

The second point on which I seek permission to appeal is the question of the interpretation of the railway byelaws and the question of ultra vires, because I would wish to take further the proposition that "ply for hire" is not the same thing as "touting" and "soliciting". And, secondly, that there has been an improper use of the railway byelaw powers to support a revenue raising scheme -- the point you have just dealt with.

So far as that second point is concerned, it does obviously have certain consequences of human rights argument. But I just keep it simple. Those are the two points on which I seek permission.

JUDGE McCAHILL: Thank you very much. Mr Paton.

MR PATON: My Lord, on the first point, it is not sufficient to say just that the point is interesting and it hasn't been to the Court of Appeal yet.

The point I draw from your Lordship's judgment is that -- well, first of, all Hulin v Cook was, in itself, an appellate decision and a carefully reasoned one. It isn't the case that your Lordship has said that you are following it simply because you feel bound by it or obliged to follow it. You've separately reviewed the reasoning and the principles and come to your own view.

In my submission, it would be inconsistent for your Lordship then now to say that there's a real prospect that it was wrong and you were separately wrong as well. If this had been a case where you had felt constrained to follow it, and for that reason alone you made your decision, that's one thing. But where the reasoning has been fully considered by the Divisional Court, and a very strong Divisional Court, the mere fact that a higher court hasn't dealt with it isn't sufficient to give permission at this level. My learned friend should ask the Court of Appeal if they wish to consider it themselves.

JUDGE McCAHILL: But there are two limbs to granting permission to appeal. One is real prospect of success at an appeal. The second is some other reason why the appeal should be heard. It may be said that the Hulin v Cook point falls as much into the reason why an appeal should be heard as it does into real prospect of success.

MR PATON: My Lord, if that were true then, unfortunately, every point of law where there was a case that had been followed and cited -- including this case by the Law Commission in their report -- if in every case the criterion was that a case hadn't been to the Court of Appeal then permission would follow virtually every week. There has to be more to it than that.

In my submission, the case is clear, always has been; and is sufficiently clear, as I say, for even the Law Commission to summarise the law in their current report with citation of that case.

So it is really for the Court of Appeal to decide whether this is sufficiently important or different to raise some question that they must consider, rather than this court just saying: well, it's an interesting point, but, in this case, one where there is a clear decision on the point and which your Lordship has independently followed and for the reasons given.

JUDGE McCAHILL: It certainly took me a long time to do it.

MR PATON: Indeed. But your Lordship has given reasons for it.

As I say, if it had simply been that you had felt constrained to follow it, that's one thing. But your Lordship has explained and given reasons why you would have reached the same view for the same historical reasons and reasons of statutory analysis. So, in my submission, your Lordship, at this level, should refuse permission to appeal on both of those limbs.

JUDGE McCAHILL: What about the two limbs of the ultra vires point?

MR PATON: My Lord, it's not clear where this would take my learned friend, because the thrust of the decision, as I understand it, is that my clients acted by a combination of powers at most. And so even if a point was taken about the reliance on the railway byelaws and the question of plying, it could still do what it did and would still have done so. That's the finding of both law and fact in this case.

So it's not clear where an appeal on the question of plying and ultra vires actually takes my learned friend. So, in my submission, an appeal on that point, while it may be of academic interest, is ultimately futile given the reasoning elsewhere; and permission should be refused on that ground as well.

JUDGE McCAHILL: There is the second string to the second point, which is ultra vires because of the infection of the exercise -- sorry, I will start again. The scheme was infected by its introduction on the back of byelaw powers which it didn't have. That's the first strand. The second is: even if it did have those powers, it was using those powers for an ulterior and improper purpose: to raise revenue not regulation or control. That's the point.

MR FLETCHER: That is correct, my Lord.

MR PATON: On both those limbs, my Lord, the practical answer is the finding of fact. Well, first of all, a finding of law that my client acted under private title in right as well. And, secondly, the finding of fact that it would have brought this scheme in regardless, even just in reliance on that one private basis.

So any argument that any statutory element of its decision making vitiates the whole thing or would give rise to a real prospect that it would reconsider and act differently is fanciful, because on the clear evidence and findings of fact it was going to implement this scheme. Whether did so on a purely private or mixed basis the result would be the same.

So a fine-combed appeal on whether byelaw 7 prohibits plying for hire takes the point no further. And there isn't sufficient prospect on the facts of the whole decision being vitiated and falling, whether by infection of the public point or -- by that public point or on the ground that some ulterior purpose within the statutory part of it infects the private side as well. Because if the private right is always there and First Greater Western can rely on that, then, in a sense, picking holes in the reasoning behind the public aspect of it doesn't take things any further so, in the end, the whole thing is futile.

JUDGE McCAHILL: Thank you.

MR FLETCHER: My Lord, strictly speaking, this is an ex parte application. Secondly, I didn't put extensive argument before you because --

JUDGE McCAHILL: It is my practice to ask and call upon, so I invited him to do so.

MR FLETCHER: Absolutely. And, my Lord, my learned friend has made his submissions. My Lord, I'm not going to repeat all the submissions I made in the main case.

As far as the Hulin v Cook point is concerned, may I just remind you of the remarks made by Lord Widgery at the conclusion of his judgment that he found this to be an extremely difficult issue. I think he said a little bit more than that.

My submission is that it is a difficult issue. It was clearly considered to be so in Hulin v Cook. This has occupied a great deal of argument here. It is not a simple or straightforward issue and it does merit being considered at a higher judicial level in order to achieve certainty as to the legal position.

But, in any case, my learned friend has conflated the two tests, as your Lordship has pointed out. And I am entitled to rely upon them in the alternative. In other words, it is a point that merits consideration from the point of view of the general law.

My Lord, so far as the ultra vires point is concerned, well, of course, you have my submissions already, as made in the course of the day, that I don't accept the proposition that because FGW could fall back upon their private landowner's rights that means that relying upon their statutory powers is a kind of irrelevance that they can just -- I say what they did -- as your Lordship has just put it, what they did was infected, first of all, by a misinterpretation of their byelaw; and, secondly, by their using it for a purpose that had nothing to do with the proper purposes of order at the railway station.

My Lord, I don't want to go any further because it would be invidious for me to repeat the submissions that you've just rejected.

JUDGE McCAHILL: Thank you very much indeed. I'm going to refuse permission to appeal in this case. That does not stop anybody asking the Court of Appeal itself to grant permission.

As far as the first point is concerned - namely the need or the desirability of a higher court, looking again at that legislation and the decision of Hulin v Cook -,I am not persuaded that there is any real prospect of success in that decision being [overturned]. It has stood the test of time and has been referred to by the Law Commission.

Any point of law which is interesting, of course, might be something which might be of interest to the Court of Appeal. But I do not, in this case, regard the attack on Hulin v Cook as having any real prospect of success. Nor, because of the nature of the legislation involved, does it represent, in my judgment, a reason why an appeal should otherwise be heard.

As far as the two strands of the ultra vires test are concerned, it seems to me that the first, namely the question of construction, I have dealt with head on, in that I have found that byelaw 7 did cover soliciting but, in any event, it was covered by byelaws 13 and 14. In any event, it seems to me, as I have indicated, that the position is wholly unaffected by any attack on the byelaws, because of the fundamental right of the landowner to do what it did. So, I regret to say I see no prospect of success on attacking the decision on the basis of ultra vires in either strand which Mr Fletcher has identified. The bottom line is that this scheme was going to be introduced if the defendant, FGW, had any right to do so. It did, as a landowner.

That's not to say that Mr Fletcher will not be able to persuade the Court of Appeal of a different view. But, it seems to me that these are classically matters where the Court of Appeal should decide whether it wants to an entertain an appeal, rather than for me to give permission at this stage.

MR FLETCHER: My Lord, I'm obliged.

I think, in the usual way, we require some piece of paper from the court recording that.

JUDGE McCAHILL: Yes. It will be on the transcript, of course.

MR FLETCHER: Yes. I think there is a specific form, a particular form.

JUDGE McCAHILL: There is one. I know one, yes.

MR FLETCHER: Yes.

JUDGE McCAHILL: Right. That raises the question of when is costs going to be argued?

MR PATON: My Lord, there's also the framing of the order, which I can put in hand this afternoon and file one tomorrow.

One ancillary point that arises from the decision at first instance is the question of the funds that are currently in court paid by the claimants in lieu of permit fees for this year. It's up to your Lordship whether your Lordship wants to deal with that aspect now or as part of the order.

JUDGE McCAHILL: What I would say is I would say that I give permission for those to be paid out to the defendant on the following terms.

1. That they not be paid out for at least 21 days. And if, within 21 days, an application for permission to appeal is made then they shall not be paid out until that permission application has been disposed of, and, if granted, until the final disposal of any appeal. So that links in payment out to the fortunes of an application for permission to appeal.

MR FLETCHER: Yes. May I just address that for a moment. The problem is, my Lord, that we don't, as yet, have a judgment. Of course it will take a little while for that to emerge.

JUDGE McCAHILL: You know, pretty clearly, what I've said.

MR FLETCHER: Yes. That's true, but I wonder whether you would just extend the 21 days to 21 days from receipt of the judgment.

JUDGE McCAHILL: The trouble about the receipt of the judgment is I don't know who is paying for its commissioning. I have observed that, faithful to my request, you haven't had the monitors in front of you, for me to be embarrassed by my erms and ahs as I was delivering judgment; and also because I do actually want to look again [at it], when I have a typed version in front of me.

MR FLETCHER: It raises a secondary question, my Lord. The secondary question is when does the time for appeal run from, because it runs from the date of delivery of the judgment.

JUDGE McCAHILL: The date of order. I think it runs from today. I think it runs from today, but I take your point that surely you should be given some time to reflect upon the final words. Although, if this was a personal injury accident, you would get the result today, wouldn't you?

MR FLETCHER: Yes.

JUDGE McCAHILL: What do you say, Mr Paton? I'm quite happy to -- I can see that -- but, you see, you can't assume -- no one can assume that, given the amount of time I've already, I hope obviously, spent on this case, that I am going to be able to put aside aeons of time to trawl through the product of the stenographer's efforts.

MR FLETCHER: My Lord, I do fully understand that. I'm simply seeking certainty as to when the time is, in the usual way, so that we know. If we have to launch it within three weeks of today, so be it; but it would be helpful to have more time.

JUDGE McCAHILL: You and I have been in this position once before, Mr Fletcher.

MR FLETCHER: Yes. Yes.

JUDGE McCAHILL: Where I have, on very tight conditions, let you have something, which was my notes, to enable you to formulate grounds of appeal, on the basis that that had no authority whatsoever and you'd have the opportunity to correct your grounds in the light of the approved judgment.

Plainly, the stenographer is going to be typing up what I've been delivering all today, but that's being paid for entirely by the other side of the room.

MR FLETCHER: I think there's joint funding.

JUDGE McCAHILL: Shared for today. Thank you. That's what I asked for. Thank you very much indeed.

I have no objection -- but I will hear what is said -- to you getting the raw data that comes out today, in its unedited and unapproved form, to give you the necessary steer to wherever you want to go, in the knowledge that it has no authority, and only a final approved judgment has that imprimatur.

MR FLETCHER: Yes, my Lord. That would be very helpful.

JUDGE McCAHILL: And on the basis that that unapproved draft is not released to anybody apart from counsel and solicitors.

MR PATON: Yes.

MR FLETCHER: Yes.

JUDGE McCAHILL: So it does not get into any wider circulation, because I have emphasised that I have expressly reserved the right to make changes to it.

MR FLETCHER: Yes.

JUDGE McCAHILL: And to add or take away things that I have said.

MR FLETCHER: My Lord, that would be very helpful.

May I just say that it's not an easy case. Some extension of the normal appeal time would be helpful, in any event. The normal time would be 21 days from today. If you could make that four weeks or five weeks, that would be helpful.

JUDGE McCAHILL: I think you will have the judgment in its unapproved version by tomorrow. I think it is fair to let the dust settle. I am prepared to say -- my inclination is 35 days from today.

MR FLETCHER: Yes.

MR PATON: My Lord, I would suggest that perhaps it could be tied to the receipt of, as it were, a sort of unperfected version of the transcript, so 21 days from that being provided to --

JUDGE McCAHILL: Of course you would know that.

It has been a very long judgment. And I know everybody wants certainty, but I am going to allow time beyond the normal to reflect on how any appeal is going to be put. So I will extend to 35 days from today.

MR FLETCHER: I'm obliged, my Lord.

JUDGE McCAHILL: But I make it plain - that takes up all slack that would otherwise be inherent in that time.

MR FLETCHER: Oh yes. Yes. So, my Lord, does that operate as an extension of the time for an application for permission to appeal?

JUDGE McCAHILL: I extend the time for the filing of an appellant's notice, if so advised, to -- it's going to be seven weeks from tomorrow. Tomorrow is 26 April. So six weeks thereafter. I will extend it to 3 pm six weeks tomorrow.

MR FLETCHER: Yes.

My Lord, as far as the position with regard to the money in court is concerned, it's the same period, presumably.

JUDGE McCAHILL: Yes. I will dovetail both of those.

MR FLETCHER: Yes. I'm obliged.

JUDGE McCAHILL: I think that makes it 3 pm on Friday, 7 June Will you check that is right. I hope it is right?

MR PATON: No further applications.

JUDGE McCAHILL: Thank you very much indeed.

MR FLETCHER: My Lord, I'm afraid I make that 31 May, but ...

JUDGE McCAHILL: Do you? Ah, let me have a look.

MR FLETCHER: 35 days. You've given me 35 days.

JUDGE McCAHILL: I have. Tomorrow is Friday 26 April, isn't it?

MR FLETCHER: Yes.

JUDGE McCAHILL: Then you have Friday 3, 10, 17, 17, 24, 31 May. That's five. It is 31 May, you are right. 3 pm on 31 May.

MR FLETCHER: Yes, I believe that's the right date.

JUDGE McCAHILL: Can I finally leave the case by expressing my gratitude to, and paying tribute to the admirable and eloquent arguments of, counsel which have been of great assistance to me. Unfortunately, one side wins and one side loses, subject to what the Court of Appeal says.

Thank you very much indeed.

(4.05 pm)

(Hearing Concluded)