
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES

Presented to the States on 24th June 2013
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for Transport and Technical Services regarding an appeal in respect of the decision of the Driver and Vehicle Standards section of the Transport and Technical Services Department to place restrictions on the PSV licence issued to the business known as 'Pet cab'.

Connétable A.S. Crowcroft of St. Helier,
Chairman, Privileges and Procedures Committee.

STATES OF JERSEY COMPLAINTS BOARD

7th June 2013

**Findings of the Complaints Board constituted under
the Administrative Decisions (Review) (Jersey) Law 1982 to consider a complaint
by Mr. R. Bisson
against the Minister for Transport and Technical Services regarding an appeal in
respect of the decision of the Driver and Vehicle Standards section of the
Transport and Technical Services Department to place restrictions on the PSV
licence issued to the business known as 'Pet cab'.**

1. Present –

Board Members

Ms. C. Vibert, Chairman
Mr. C. Beirne
Mr. G. Marett

Complainant

Mr. Robert Bisson (the Complainant)
Mr. Roger Bisson
Mr. Richard Bisson

Deputy R.C. Duhamel of St. Saviour
Deputy T.M. Pitman of St. Helier
Deputy M. Tadier of St. Brelade

Department for Transport and Technical Services

Deputy K.C. Lewis of St. Saviour (Minister for Transport and
Technical Services)
Mr. T. Dodd - Director of Transport/Deputy Inspector of Motor
Traffic
Mr. A. Muir – Head of DVS/Inspector of Motor Traffic
Mr. C. Le Maistre, Senior Traffic Officer DVS
Mr. S. de Louche, Administration Officer DVS
Advocate G. White, Legal Adviser Law Officers' Department

States Greffe

Mrs. L. Hart, Assistant Greffier of the States

The hearing was held in public at 2.30 p.m. on 7th June 2013 in Le Capelain Room,
States Building.

2. Summary of the dispute

- 2.1 The Board was convened to hear a complaint by Mr. Robert Bisson (the Complainant) against a decision of the Minister for Transport and Technical Services regarding an appeal in respect of the decision of the Driver and Vehicle Standards section of the Transport and Technical Services Department to place restrictions on the PSV licence issued to the business known as 'Pet cab'
- 2.2 The Chairman formally welcomed both parties to the meeting and outlined the terms of Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, against which the complaint would be considered. She advised that, having reviewed the summary of the complaint, the Board needed to be apprised of the details of the case, in order that it could consider the matter fully. However before the Complainant began his summary, the Chairman requested that pages 57 to 62 of the bundle circulated to all parties be removed and handed in to the Assistant Greffier of the States, as these confidential papers had been erroneously included with the information supplied by the Transport and Technical Services Department. The Chairman also requested that the Departmental officers outline the current taxi licensing system, in order to clarify the differences between the types of licences or 'plates' which were issued and the conditions attached thereto.
- 2.3 Mr. A. Muir – Head of DVS/Inspector of Motor Traffic advised that there were three types of licences issued to drivers holding Public Service Vehicle (PSV) licences – namely controlled white plates (which were commonly known as rank taxis and could be hailed on the street), restricted red plates (private hire vehicles operating as part of a company on a predominantly pre-booked basis; the legislation governing the operation of restricted cabs had been altered in 2002 to allow them to pick up fares when hailed and also to operate at the Ports during busy periods) and limousines (which were essentially a pre-booked service with no meter on board). Mr. Muir advised that restricted cab drivers generally worked for a recognised company, enabling a 24 hour service to be provided, as well as a comprehensive choice for customers should they wish to request a specific vehicular type or indeed driver. Rank taxis simply operated on a first come first served basis. Since 2006, drivers receiving their licences had been able to elect whom they chose to work for, rather than being assigned or allocated to a particular company. The companies did not recruit as such but three operated under company licences and therefore their drivers were classified as 'employees'. The Board sought clarification as to the definition of a 'company' within the Motor Traffic (Jersey) Law 1935. Article 9 of that Law enabled the Minister to attach conditions to the licence agreements in relation to the process to be followed. It was noted that this procedure had been inherited and had evolved over time. In 2002, the Minister was given powers to attach conditions to licences, in order to allow the expansion and better operation of the service to the public. The Taxi Advisory Panel had been established in 2002 and included industry representatives, stakeholders and union representatives amongst its number and the Panel had subsequently produced the conditions and criteria on which the current process had been based. It was argued that the vires of such conditions had been acknowledged during the case of Dodds versus the Minister for Transport and Technical Services (2012-JRC158) in which the

Royal Court dismissed an appeal against a decision to suspend the appellant's PSV licence and badge for operating in contravention of conditions attached to the licence.

3. Summary of the Complainants' case

- 3.1 Mr. Roger Bisson, on behalf of the Complainant, advised the Board that the complaint hinged upon three main issues and he sought to address each of these individually. These had been outlined in detail in an electronic mail (e-mail) communication to Mr. Muir dated 9th April 2013 and referred to the Minister's powers to vary the conditions attached to a licence, the Complainant's entitlement for a review and an assumption that the imposition of conditions was ultra vires. It was noted that Article 9(2) of the Motor Traffic (Jersey) Law 1935 provided that the Minister 'may grant a public service vehicle licence unconditionally or subject to conditions, which shall be set out in the licence' whilst Article 9(3) stated that 'the conditions shall be such, as in the Minister's opinion, are necessary or desirable to ensure the proper operation of the vehicle and the public service to be provided by the vehicle'. Mr. Roger Bisson contended that the conditions subsequently placed upon the Complainant's licence were ultra vires and therefore failure to act in accordance with the conditions had no true legal effect. He suggested that the licence should be suspended or revoked in order to enable an appeal process through which the validity of the conditions could be challenged. He disputed the relevance of the Dodds case and that the Minister had 'Law making' powers in respect of a licence.
- 3.2 Mr. Roger Bisson argued that the Minister had an implied duty under Article 38 of the Motor Traffic (Jersey) Law 1935 to ensure the availability of an 'adequate, efficient and reasonably priced cab service available throughout Jersey at all time'. He contended that if the Minister wished to introduce a framework for the service then this should be a matter put before the States Assembly for consideration. Furthermore Mr. Roger Bisson argued that, although the Complainant had not exercised his right of appeal to the Royal Court provided by Article 9(7) of the Motor Traffic (Jersey) Law 1935, Article 11 of the Administrative Decisions (Review) (Jersey) Law 1982 provided that the Appeals process was available in addition to and not in derogation of any other remedy available to a Complainant. It was noted that no response to his electronic mail correspondence (e-mail) of 9th April 2013 had been received from the Department to date.
- 3.3 The Complainant advised the Board that he had simply wished to run a business. He had identified a gap in the market and instead of carrying pets on a discretionary basis, as was the current practice, he had wished to provide a dedicated pet transportation service. He had been under the impression that his application was for a car which was able to carry pets (with the capacity to take animals on a stretcher or in a body bag if necessary) and which would provide a unique service Island-wide. However apparently there had been some confusion. Mr. Roger Bisson advised that the Complainant believed that he had applied for a restricted taxi cab licence to operate an enhanced service *in conjunction* with the ability to carry ordinary fare paying passengers. Operating the business solely as a pet transportation service was never

considered viable, particularly as the business was liable to high levels of competition from cab companies responding to the competitive threat once demand was established, given that all taxis were licensed to carry animals at the discretion of the driver.

- 3.4 The Complainant advised that on 3rd December 2012, he had sent an e-mail to the Department clarifying that the pet carriage aspect of the business was complementary to the provision of a normal passenger service and that it was not an option on a stand-alone basis. When he met with the Department on 5th December 2012, he reiterated this position and was asked to revise his business plan to reduce the number of vehicles he proposed to use from two to just one. The Chairman questioned why the business plan had not included any cash flow forecasts or projections. The Complainant advised that he had been working on a part time basis for G4S, Luxicabs and the Animal Shelter at the time of his application and he did not envisage that the business could be his sole source of income in its present guise. Written formal conditions were not sent to the Complainant until 28th January 2013. When he had realised that the conditions would preclude him taking regular passengers, he claimed to have spoken to Mr. C. Le Maistre, Senior Traffic Officer, Driver and Vehicle Standards (DVS) and advised that he did not wish to accept the plate, but had been told that he would not be issued with another. The Complainant claimed that acceptance of the plate had led to discriminatory action by other drivers and had affected his ability to gain employment with other cab companies. It was acknowledged that the taxi industry was quite protective, but the Chairman opined that she was certain it had not been the Minister or Department's intention to impact upon the Complainant's career prospects. Mr. Roger Bisson contended that, as the Minister effectively controlled the operation of the industry via the granting of licences, he was responsible for the inevitable reaction to the licence being issued. Despite the conditions imposed, other drivers regarded the Complainant as a 'queue jumper' who had tried to circumvent the waiting list on the pretext of offering a niche service. The Complainant advised that Code 5 of the Code of Conduct issued to Taxi cab drivers by the DVS Department stated that drivers should not normally refuse a hire, yet there was anecdotal evidence that drivers often refused to take passengers accompanied by pets and that even guide dogs had been turned away.
- 3.5 Having received the formal list of conditions on 28th January 2013, spoken to Mr. Le Maistre on 8th February and accepted the plate on 18th February, it was not until 24th February that the Complainant contacted the Minister. The Board questioned why the Complainant had taken so long to appeal the conditions imposed upon his licence. The Complainant advised that he had been under the impression that refusing the plate would preclude his chances of getting an unrestricted 'white' plate in the future.
- 3.6 The Board heard from Deputy M. Tadier who reasoned that the licence should not have been issued and that, under Article 9(2)(b) of the provisions of the Administrative Decisions (Review) (Jersey) Law 1982 the decision had been 'unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory'; and under Article 9(2)(e) it was 'contrary to the generally accepted principles of natural justice'. Deputy Tadier considered

that the actions of the Department in issuing the licence had been well intentioned but unsustainable as a consequence of the conditions imposed. The Complainant was therefore unable to offer the service as anticipated and had to supplement his earnings through part time employment. The imposition of Condition 11, which required the Complainant to carry passengers 'directly associated with the welfare of any animal to be carried in the vehicle', resulted in an overly complicated and inflexible system which limited the scope of the business. Deputy Tadier outlined a scenario which illustrated the cumbersome and unworkable approach which would have to be adopted if the Complainant was to abide fully with Condition 11. After questioning the definition of 'animal' contained within Condition 11, Deputy Tadier suggested that, had a so-called 'red' company plate been issued instead, the Complainant could have employed other drivers in order to provide a comprehensive 24 hour service and could have carried regular passengers thereby making the business viable. Furthermore the consequence of Condition 6, which stated that all work had to be pre-booked, was that the Complainant would be the only taxi unable to pick up an injured animal if hailed on the street, despite being the only taxi specifically equipped to deal with this situation.

- 3.7 Deputy Tadier considered the licence divisive. It was acknowledged that there already existed tensions within what was a very competitive industry and the Complainant was perceived by other drivers as having 'jumped the queue'. Subsequent to the issue of his plate, other drivers had started agreeing to carry animals, which impacted further upon the viability of the business. The Complainant advised that the original intention had been to provide an animal *friendly* service rather than one restricted solely to pet transport.
- 3.8 Deputy T.M. Pitman supported the Complainant's efforts to provide an enhanced service, but considered the licence was too restrictive and made the business unviable. Given the size of the Island and the market share available, it was not realistic to expect the Complainant to be able to operate within the strictures of the licence agreement. He accepted that there had been failings on both sides, but hoped that a compromise could be reached. The Complainant was trying to build a business in a very difficult economic environment, but without a flexible approach it would not be able to flourish.
- 3.9 Deputy R.C. Duhamel emphasised that the Complainant's intention had always been for the service to be complementary rather than a core function of his business. Given the nature of the conditions imposed, expecting the business to be the Complainant's main source of income was also very restrictive, if not unrealistic. Deputy Duhamel also considered that the wording of Condition 11 was poor and was open to interpretation.
- 3.10 The Complainant advised that his meeting with the Department on 5th December 2012, had lasted just 45 minutes and, after advising him to revise his business plan, no follow up meeting had been arranged to discuss the matter further. He contended that the Department had not responded to his questions regarding the restrictive nature of the conditions. All drivers were currently able to carry pets at their discretion and the existing mobility cab company did not only carry disabled passengers. The plate issued did not allow him to employ other drivers and therefore prevented him operating a 24 hour service. He was unable to compete on a level playing field if he could

not also carry regular passengers and was at a disadvantage having to develop the market share of a business in competition with others able to provide a more comprehensive service. He maintained that he had always expected to be able to take regular passengers.

- 3.11 The Complainant advised the Board that he wished the plate had never been issued. He had been repeatedly pulled over by the police on suspicion of breaching the conditions of the licence, even when driving the car off meter with another person in the vehicle and he was facing a Parish Hall Inquiry on 17th June 2013 in this connexion. It had been alleged that the Complainant had been working in contravention of both Condition 11 and Condition 6 of his licence, which stipulated that all work had to be pre-booked. Mr. Richard Bisson stated that the police had advised the Complainant that they would stop his car if no animal was visible.

4. Summary of the Minister's case

- 4.1 Deputy K.C. Lewis, Minister for Transport and Technical Services, advised the Board that he considered the Complainant's application had been handled fairly and in accordance with the relevant processes and policies. The Complainant had submitted a request for an all inclusive qualification and safe pet transfer service. He only had a few months PSV experience and was therefore not yet eligible for a restricted licence, which was normally only issued at least 2 years after an application to be added to the waiting list. However, the Complainant had identified a gap in the market – a specific service which the Minister was minded to support, subject to the imposition of certain conditions. The scope of the business and the associated conditions were made abundantly clear to the Complainant and it was contended that when he formally applied for his licence he did so in full knowledge of the conditions which would be attached. The Complainant was under no obligation to accept the licence and it would not have been issued to a third party had he refused it. He had not appealed the decision via the available Royal Court process and was at liberty to relinquish the licence at any time. The Minister could only legally revoke the licence if the holder was no longer a fit and proper person or operated the taxi cab in contravention of a condition of the licence. The Minister considered he and his Department had made every effort to support the Complainant in establishing his business and the fact that it was not as successful as he had anticipated was regrettable, but the licence could not be revoked or altered.
- 4.2 Advocate G. White, Legal Adviser, Law Officers' Department, advised the Board that there was no ambiguity as to the definition of an animal in accordance with the Interpretation (Jersey) Law 1954 and he reminded the Board that the Royal Court had upheld the Minister's decision to impose conditions in the Dodds' case. He therefore considered that placing conditions on the licence had not been ultra vires.
- 4.3 Mr. Muir speculated that the Complainant may have been confused at times, but was positive that the Minister and Department had always been explicit about the licence on offer. He conceded that, regretfully, he had not explained in writing to the Complainant that there would be a delay in receiving the

written conditions, although he was adamant that this had been explained verbally in detail during the meeting on 5th December 2012. Mr. Muir advised that this had been reiterated in the letter of 28th January 2013 and it had been explained that the Minister was not likely to grant a licence whereby the Complainant could operate as a normal restricted taxi cab. Mr. Muir contended that the notion of the pet element being complementary to a regular passenger service was only mentioned after the business plan had been submitted and he was confident that the proposal had not been presented to the Minister on that basis. The Complainant had claimed that he would service Islanders' pet transport needs and also carry animals injured on the Island's roads. He had claimed to have undertaken market research which supported the proposal. The Complainant had assured officers that the idea had been tried and tested elsewhere and had proven to be successful and he did not doubt that this would also be the case in Jersey. Initially the Complainant had proposed to use two vehicles and intended purchasing a new car for this purpose. Mr. Muir claimed he had cautioned the Complainant about this expenditure and questioned whether he had 'done his sums' to support this outlay. The Complainant had confirmed that he had indeed certified the financial projections and expected that the business would be a success. The Complainant had given the impression that the Animal Shelter supported the business model and it was possible he would gain work for his business through this connection. Mr. Muir advised the Board that ultimately the decision to proceed rested with the Complainant. Had he applied for a regular licence he would not have been considered, particularly given that he only had some 6 months' PSV experience. The conditions represented the Minister's expectations as to what was required to operate an adequate taxi cab service and therefore some of the conditions imposed upon the Complainant's licence were specific to his business, such as Condition 11 and Condition 6 (stating the work had to be 100 per cent pre-booked, which was often reduced to 80 per cent in respect of other licence holders). As the Complainant had not wished to operate on an account basis and wished to run a meter, the conditions associated with that type of plate were fully explained at the meeting on 5th December 2012. Mr. Muir questioned the delay in appealing the conditions and highlighted that the Complainant had equipped his vehicle and had decals fitted in the intervening period in readiness to commence work.

- 4.4 The Board was advised by Mr. T. Dodd, Director of Transport/Deputy Inspector of Motor Traffic, that several of the normal conditions imposed upon drivers, such as those relating to mileage levels, had not been applied to the Complainant's licence, and that the majority of those remaining were standard for all drivers, particularly condition 2 regarding the main source of income and employment. The Board was advised that this had been discussed with the Complainant and he had been advised that the Department expected he would build up the business over time and accepted that he would be working part time for a third party in the beginning.
- 4.5 The Board questioned whether a compromise could be reached whereby the plate was surrendered and the Complainant's position on the waiting list for a white plate was reinstated. Mr. Muir maintained that the Complainant had been assured that he was still on the waiting list and that hopefully a position should arise by 2015. The Board was advised that the Complainant could effectively continue with his business under the current licensing conditions

and then apply for a white plate when he arrived at the top of the list, or he could surrender the existing plate and wait until then to commence his enterprise. Mr. Muir reiterated that this was made apparent to the Complainant when he applied for the licence.

- 4.6 Mr. Muir acknowledged that the Department had attempted to help a person rather than assess the viability of a business. The Department had taken at face value the Complainant's assertions that the business model would work. The Board questioned why the Department had recommended that a licence be issued based on such limited information. Mr. T. Dodd advised that the previous Minister had decided to shift the emphasis away from the Department 'picking winners and losers' and the rigorous assessment of business plans previously undertaken by officers had been abandoned, thereby allowing market forces to prevail. Officers now simply made a recommendation to the Minister as to whether an additional plate should be issued. The Board questioned whether this could be construed as a tacit acceptance of the validity of the business plan. Mr. Muir advised that the ability of a company to substantiate business was closely assessed, given that other drivers would be working for that company, but it was not deemed DVS' role to scope the viability of an individual driver's employment prospects. DVS just had a duty to ensure that potential drivers had a realistic expectation of the risks associated with the industry.
- 4.7 The Board questioned why, given the 'arm's length' approach to assessing business plans, the Department had advised the Complainant to alter his business plan in relation to the number of vehicles proposed. Mr. Muir advised that the Complainant would have required two licences and, if the intention had been to run a regular cab company (albeit with the pet transport aspect as an adjunct) he would have had to apply for red (company) plates for the vehicles and become a trading company. However, the Complainant had never proposed operating as a regular cab company during discussions with the Department, and the focus had remained on the pet transport business proposal. The Board was advised that there were sustainability issues relating to companies and of the 19 licences issued to companies since 2006, only 6 were still in operation. Mr. Muir advised that the Complainant had implied that the existing cab companies would be happy to pass any pet transport fares on to him and this would ensure the viability of the business.
- 4.8 Mr. Le Maistre opined that the Complainant had misconstrued the meaning of his comments on 8th February 2013, when he had allegedly stated that if Mr. Bisson refused to put the plate on the vehicle he would 'not be issued with another plate'. Mr. Le Maistre advised that he had been referring to the specially issued plate and not to a regular white plate. The Board was advised that there was a three year waiting list for a regular white plate and these usually became available only when another driver retired or surrendered a plate. The licence offered to the Complainant had been a specially issued additional plate and was not transferable. Mr. Le Maistre had advised the Complainant that he would remain on the white plate waiting list irrespective of his decision to accept the plate on offer. The Board was advised that although the Complainant did not appear on the digital waiting list, his position upon that list remained intact. Furthermore, the Complainant had been advised that when a white plate became available for him in 2015 as

anticipated, he could either swap over from his existing plate or even defer his position at the top of the list until a later time. It was the Minister's view that the Department had been very accommodating and made every effort to help the Complainant.

- 4.9 The Board noted that written confirmation of the Complainant's continuing position on the waiting list was only contained within the letter from Mr. Muir to the Assistant Greffier of the States on 23rd May 2013, and it was clear by the request contained in the final paragraph of Mr. Roger Bisson's e-mail to the Department on 9th April 2013, that the Complainant remained confused about whether or not he remained on the list. This was contested by Mr. Muir who insisted that the situation had been fully explained to the Complainant when the plate was attached to his vehicle on 18th February 2013. It was noted that no response to the e-mail of 9th April 2013 had been sent by the Department, because the Administrative Appeals process was regarded as having supplanted the dialogue between the parties.
- 4.10 Mr. Roger Bisson asked the Board to consider whether the imposition of conditions on a licence was lawful within the scope of the Motor Traffic (Jersey) Law 1935 and whether the conditions were intended to allow the provision of a public service or merely to protect the interests of the taxi industry. He urged the Minister to revoke the licence in order to trigger the Complainant's right of appeal under Article 10 of the Law. The Complainant advised the Board that he had been parked up for 14 of the 16 weeks his business had been in operation, due to the restrictive nature of the conditions which made the business unviable. The Board was advised by Mr. Muir that the Minister had undertaken not to issue any new company licences during the period of the taxi review, but had decided to grant a licence to the Complainant in view of the very specialist nature of the proposed service and the minimal impact which it would have on the industry. Most drivers were not willing to carry animals as there was the potential for business to be impeded if the vehicle was soiled. The decision to grant a special licence had been well intentioned in order to enable the Complainant to service a niche client base. The Department maintained that the Complainant had been fully apprised of the nature of the licence on offer and could have chosen to refuse it at any point before it was attached to his vehicle. The Complainant countered that his intention had always been to operate a pet *friendly* taxi, not one solely servicing pets.
- 4.11 The Chairman thanked both parties for attending the meeting and they then withdrew from the meeting to enable the Board to consider its findings.

5. The Board's findings

- 5.1 The Board considered whether the complaint could be criticised on any of the grounds outlined in Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982, as having been –
- (a) contrary to law;

- (b) unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;
- (c) based wholly or partly on a mistake of law or fact;
- (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or,
- (e) contrary to the generally accepted principles of natural justice.

- 5.2 It was evident that there was confusion on both sides regarding the understanding of the licence agreement. The Board acknowledged that it had a duty to determine whether the Minister's decision to restrict the operation of the business or to deny the withdrawal of the licence could constitute an 'oppressive act' if the Complainant did not fully comprehend the nature of the licence at the time of issue. It was regrettable that there had been nothing in writing from the Department clarifying the conditions to be imposed prior to the decision being made by the Minister on 18th January 2013. It was also unfortunate that the Department did not confirm in writing to the Complainant, prior to his acceptance of the special licence, that he would retain his position on the waiting list for a regular plate. The Board considered that the misunderstanding about his position on the list had influenced the Complainant's decision to reluctantly accept the licence, even though he considered the conditions unworkable. Furthermore, the Board was concerned that the Department's software did not allow the Complainant's name to remain on the digital list because a licence had already been issued, but was retained manually by an officer. It recommended that this situation should be addressed by the Department to ensure that there existed just one official version of the waiting list.
- 5.3 Given the perceived animosity that other plate holders had regarding the creation of this additional plate, it was clear that this could potentially result in the mistaken, mischievous or malicious reporting of licence breaches. The Board considered that this could have been apparent to the Department when the licence was issued and expressed concern that, should the Complainant be charged at his forthcoming Parish Hall enquiry for breaching the conditions of his licence, this could affect his application for a white plate in the future.
- 5.4 The Board was not convinced that the reliance on the Dodds versus Transport and Technical Services case was reliable in Law. The Board contended that the two conditions under consideration in that case had not been contentious and had been covered by Articles 38(1) and 38(2)(e) of the Motor Traffic (Jersey) Law 1935. However, in relation to the Complainant's case (and more specifically Condition 11) the Board considered that there was nothing in the Law that enabled the Minister to impose a rule that the cab could only operate in conjunction with the welfare of an animal and the Board suspected that if the Complainant had pursued a Royal Court Appeal, the conditions applied to his licence would not have been deemed sufficiently robust to be substantive.
- 5.5 The Board concluded that the decision made by the Minister could be criticised on the grounds of Article 9(d) of the Administrative Decisions

(Review) (Jersey) Law 1982. It considered that the decision to issue the licence with Condition 11 imposed upon it could not have been made by a reasonable body of persons '*after proper consideration of all the facts*'. Whilst there had been some confusion on both sides, the responsibility for issuing the licence rested with the Minister and the Department and the Board considered that due diligence should have entailed more than a verbal assurance from the applicant that the business idea was viable. Had greater detail been requested from the Complainant to support his business plan, then it would have been obvious that he fully intended to carry regular passengers and that the imposition of Condition 11 essentially invalidated his proposal.

- 5.6 The Board considered that the phrasing of Condition 11 provided little or no scope for it to be enforced legitimately. The Board accepted that the Minister and his Department had acted in good faith and been well intentioned, wishing to help an individual with his business proposal, but the phrasing of Condition 11 essentially made the licence unworkable. At present the cab could only be booked if the passenger was accompanied by an animal for at least one half of the complete journey and, despite further clarification by the Department that "at least one leg of any return journey [must include an animal]" it was clear that it would be difficult for any casual observer to know whether or not there was indeed an animal on board; or whether an unaccompanied occupant was on a legitimate return journey.
- 5.7 The Board acknowledged that there had also been fault on the part of the Complainant His business plan had been inadequate and short of detail. He had delayed appealing against the conditions imposed upon the licence and had accepted the plate, even though he had realised that it would not be possible to run his business as he had intended. He had also neglected to exercise, within the prescribed time limit, the right of appeal to the Royal Court provided by Article 9(7) of the Motor Traffic (Jersey) Law 1935, against the imposition of the conditions. Furthermore the Complainant had allegedly been working in contravention of Condition 6 of his licence, which stipulated that all work had to be pre-booked.
- 5.8 The Board recognised that there was currently no provision for the Department or Minister to alter or remove conditions from an existing licence, but argued that Condition 11 rendered the licence defective and therefore deficient in Law. It recommended that Condition 11 should be annulled and replaced with a version which was as unambiguous, enforceable and explicit as practicable. The Complainant could then choose either to surrender the licence and wait his turn to be allocated a white plate, or to continue to work under revised and unequivocal restrictions.

5.9 The Board asked the Minister to consider the above comments, and to advise it within 28 days of any action he proposed to take.

Signed and dated by:
Ms. C. Vibert, Chairman

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Mr. C. Beirne

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Mr. G. Marett