
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES (R.67/2013) – RESPONSE OF THE MINISTER

Presented to the States on 2nd August 2013
by the Privileges and Procedures Committee

STATES GREFFE

FOREWORD

Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 requires the Privileges and Procedures Committee [PPC] to present to the States the findings of every Complaints Board hearing and the response of the Minister when a Board has asked a Minister to reconsider a decision. On 24th June 2013, PPC presented to the States the findings of a Complaints Board held on 7th June 2013 to review a decision of the Minister for Transport and Technical Services (R.67/2013). The Minister has now reconsidered the decision as required by the Board, and the Committee is therefore presenting his response to the States as required by Article 9(9).

REPORT

Having considered the comments in the Report ([R.67/2013](#)), I can now advise the States of the action I propose to take.

It was recommended at paragraph 5.8 of the Report that condition 11 of the Complainant's licence should be annulled and replaced with a version which is unambiguous, enforceable and as explicit as practicable. The existing conditions of the licence were approved by Ministerial Decision dated 18th January 2013. To revoke the Ministerial Decision would require the revocation of the Complainant's licence, which can only be done on the grounds at Article 10(1) of the [Motor Traffic \(Jersey\) Law 1935](#), i.e. where the holder is no longer a fit and proper person or where the vehicle has been used or operated in contravention of a condition set out in the licence. It would not be right to revoke the licence on one of those grounds only to issue another licence, with amended conditions, immediately after.

In addition, it is not at all clear how the above recommendation is consistent with the Board's finding at paragraph 5.4 of the Report that there is nothing in law that enables the Minister to impose a rule that the cab can only operate in conjunction with the welfare of an animal. If there is some condition that in the Board's view could lawfully limit the cab service to an animal-related service, it would have been helpful for the Board to have suggested the wording that it considered acceptable. It is also unclear what condition would be acceptable to the Board given its comments at paragraph 5.5 of the Report regarding the viability of the business if the carrying of regular passengers is not allowed.

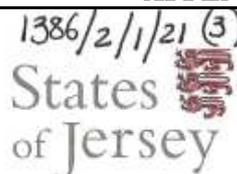
In light of the above, and bearing in mind his wish that the licence had never been issued, the Complainant will be invited again, as he has been already, to surrender his licence. The Complainant remains on the waiting list for an "ordinary" restricted taxi-cab licence and for the avoidance of doubt the grant of the conditional licence which is the subject of present focus (and the events surrounding it) have not altered the position that the Complainant would otherwise have occupied on that list. The Complainant will then be treated in the normal way based on his position in that list when making any further application.

Minister for Transport and Technical Services

APPENDIX

Minister for Transport and Technical Services

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Mrs L Hart
 Assistant Greffier of the States
 States Greffe
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12 July 2013

Your Ref:
 Our Ref: 201-25-02.20130004/GW



Dear Mrs Hart

I refer to the hearing of the States of Jersey Complaints Board (the "**Board**") on 7th June, 2013, of the complaint by Mr Robert Bisson (the "**Complainant**") regarding "*Pet Taxi-Cab*" and restrictions placed on the PSV licence issued in respect of it.

I have been invited by the Board, at paragraph 5.9 of its written report (the "**Report**"), to consider the comments in the report and to advise the Board of any action I proposed to take. In doing so I wish to highlight a number of concerns I have in relation to the proceedings and findings of the Board.

1. There has at no point been clarity or consistency from the Board as to what decision is actually being complained of, or even who made the decision. The decision has been variously described as follows:
 - (a) a decision of the DVS to place restrictions on the PSV licence, as per the heading of the Greffe's letter of 28th May, 2013 *[which decision allowed a statutory right of appeal under Article 9(7) of the Motor Traffic (Jersey) Law 1935 (the "Motor Traffic Law"), which right was not exercised by the Complainant];*
 - (b) a decision of the Minister regarding an appeal in respect of the decision of the DVS to place restrictions on the PSV licence, as per the heading of the bundle enclosed with the said letter of 28th May *[there has been no appeal so such a complaint should not have proceeded to be heard by the Board];* and
 - (c) a refusal by the Transport and Technical Services Department to alter the restrictions placed upon the PSV licence, per the first paragraph of the Greffe's letters of 12th April, 2013 and 16th May, 2013 *[this would be a separate decision after the issue of the licence (so a different decision to (a) above), and we contend that the Minister has no express statutory power to alter conditions].*

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2. Requests for clarification were made by letter from me to the Assistant Greffier on 23rd April, 2013, by letter from Alan Muir to the Assistant Greffier on 23rd May, 2013, by email from Advocate White of the Law Officers' Department to the Assistant Greffier on 30th May, 2013 and by email from Advocate White to the Greffier on 31st May, 2013. Principles of natural justice demand that the respondent party knows the case against it, and the failure to properly identify the decision in question has prevented the respondent party from being able to properly prepare its response in advance of the hearing on 7th June, 2013, thus rendering the proceedings unfair. This question has never been directly answered, and even after the hearing, the Report refers at paragraph 2.1 to "*a decision of the Minister for Transport and Technical Services regarding an appeal...*", which suggests that the Board remains under a misunderstanding as to the facts of the case (i.e. that there has been an appeal or a decision regarding an appeal), despite that the relevant documents and information were provided within the required timeframe. It is completely unclear how the Board has managed to reach a conclusion about a complaint against a decision regarding an appeal when there has been no such decision and in circumstances where the Complainant has offered no evidence to suggest that there has been such a decision or appeal. Furthermore, paragraph 5.2 of the Report refers to "*the Minister's decision to restrict the operation of the business*", and yet there has been no decision in these terms.
3. The Report does not accurately reflect the oral submissions of the respondent party and those who spoke on its behalf. The following examples demonstrate this.
 - a) The explanation of the current taxi licensing system at paragraph 2.3 of the Report, which in particular purports to clarify the differences between the types of licences or 'plates' which are issued, does not accurately reflect the explanation provided by Alan Muir at the hearing. For example, the Report appears to equate white plates with controlled taxi-cabs and red plates with restricted taxi-cabs. However, Mr. Muir in fact explained that both white and red plates relate to restricted taxi-cabs, but that white plates are issued to individuals and red plates are issued to companies.
 - b) At paragraph 4.2 of the Report it is stated that Advocate White of the 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*". However, Advocate White's comment related to the subject matter of the chapters of the "*revised edition*" in Jersey law, i.e. agriculture, animals, aviation, etc., and he did not state that "*animal*" is defined in the Interpretation (Jersey) Law 1954. For example, in Article 52 of the Road Traffic (Jersey) Law 1956, "*Duty of driver of vehicle in case of accident*" which all public service vehicle drivers should have a reasonable understanding of to obtain a badge, "*animal*" means "*any horse, cattle, ass, mule, sheep, pig, goat or dog*".
4. The Board appears to have generally attached undue weight to the Complainant's oral evidence at the hearing. The guidance issued by the Board states that, at a hearing, all of the papers will be taken as read and that none of the papers should be read out. However, the wording of the Report is indicative of a lack of understanding of the factual background and is suggestive of the papers submitted by the respondent party not having been fully read.

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It is unclear how the Board could be under any illusion that the kind of licence that would be available to the Complainant had not been made abundantly clear to him, having regard to the chronology at pages 72-76 of the bundle of papers that was presented to it, and the documents therein referred to (particularly the Department's letter to the Complainant of 28th January advising him of my decision to make a licence available to him which included a copy of the conditions of licence and states "*Pet Taxi-Cab will not be licensed to be hailed on-street or used for normal restricted taxi-cab passenger carrying services*").

5. The Board's findings state in paragraphs 5.2 and 5.5 that there was or had been "*confusion on both sides*". The documentary evidence we submitted clearly details the facts and demonstrates that neither I nor the Department was in any doubt when considering and making any decision on the Complainant's proposal and the Complainant was apprised of any possible conflicts his proposed business might have with current policies.
6. Furthermore, the Board considered that the decision to issue the licence with condition 11 "could not have been made by a reasonable body of persons '*after proper consideration of all of the facts*". As noted in page 74 of the bundle, "The report and draft MD was considered by TTS Management Team". This reasonable body of people, none of whom had a direct interest in the operation of taxi-cabs, was presented with and considered all of the facts and decided to forward the report to me for my consideration.
7. The wording used in the Report is indicative of a lack of understanding of the relevant legal framework. For example, there is a reference at paragraph 5.2 to the "*licence agreement*". It is not clear what is meant by this phrase but the licence is not an agreement, it is a licence granted by the Minister in accordance with Article 9 of the Motor Traffic Law. At paragraph 3.5 the Board questioned why the Complainant "*had taken so long to appeal the conditions*", but the Complainant had not appealed the conditions. Article 9(8) of the Motor Traffic Law requires a person who wishes to appeal against a condition to lodge a notice of appeal with the Royal Court within 29 days of the grant of the licence. No such appeal was commenced, after the licence was granted on 18th February, 2013 and this is evident from the Complainant's email to me of 24th February, 2013, which is referred to at the said paragraph 3.5 and is reproduced at pages 74-75 of the bundle.
8. At the hearing itself it was unfair to the respondent party to be asked by a member of the Board for further documents when it was clear from the guidance issued by the Board and from the correspondence from the Greffe that no further papers could be submitted after the written submission was made on my behalf. It is further the case that the Board is tasked with reviewing an administrative decision in relation to a particular complaint and not to scrutinise whether the general policy of regulation of taxis (which I considered and applied in taking my Ministerial decision on 18th January 2013) is at variance with the views and recommendations of the Jersey Competition Regulatory Authority.
9. As a result of the above, it appears that the Board has mis-directed itself. It is stated at paragraph 5.2 of the Report that the Board "*acknowledged that it had a duty to determine whether the Minister's decision to restrict the operation of the*

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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 is unclear how the Board could have reached this position when there was documentation before it to show that the Complainant did, or at the very least should have, understood the nature of the licence at the time of issue. The letter from DVS to the Complainant at pages 96-98 of the bundle shows that the conditions had been sent to him (and in particular that condition 11 had been explained to him) on 28 January, 2013. However, it was not until February (as evidenced by the letter at page 99 of the bundle and the chronology at page 74) that the Complainant formally submitted an application, presented his vehicle, and was issued with a licence. (It may be worth noting that the Complainant contacted a number of States Members indicating concerns about the conditions that were to be applied, prior to submitting his formal licence application, but did not contact me or the Department with any concerns). Furthermore, Article 10(1) of the Motor Traffic Law only allows the Minister to revoke a licence where the holder is no longer a fit and proper person or where the vehicle has been used or operated in contravention of a condition set out in the licence.

10. At paragraph 5.6 of the Report the Board concludes that condition 11 of the licence is essentially unworkable. Despite acknowledging that the condition had been clarified by TTS, the Board appears to have based its decision on the irrelevant consideration of how easy or difficult it would be for a casual observer to know whether an animal was on board, or whether an unaccompanied occupant was on a legitimate return journey. The legality of the condition cannot depend on whether a member of the public would know whether it is being complied with, and it is not the duty of members of the public to enforce conditions. The police of course have wider powers for the purpose of investigating any alleged offence under Article 6 of the Motor Traffic Law. In any case, it is not possible for the casual observer to know whether various other standard conditions that are applied to "ordinary" licences are being complied with, such as a requirement that 80% of work must be pre-booked, or that the driving of a taxi-cab must be the main employment/income of the licence holder. Furthermore, it is open to the Complainant to log his bookings in writing to help prove compliance with condition 11 (and with condition 6), but when invited to do so he insisted that he keeps the bookings only in his head. The Board has ignored the requirement of condition 6 that there be pre-booking of all journeys in the Complainant's cab. It is at the booking stage that it can be established whether an animal is to accompany the passenger at any stage of the pre-booked journey.

11. The arguments advanced by the Complainant to support the contention that condition 11 is unworkable tended to centre around the suggestion that the concept of "animal" is ambiguous, and have included queries such as whether a human is an animal and whether transporting a long-dead animal would involve the welfare of an animal. Although it is perfectly clear that the word "animal" in condition 11 does not and was never intended to include humans, the reality is that the condition was never intended to be construed narrowly, and if for example, an animal were being carried on only one leg of a three leg journey, or a pet had died and the owner was collecting its body, this would not have been treated as a breach of the condition. If the Complainant has come into difficulty it is because he has chosen to ignore the conditions entirely, for example by touting for business in the early hours of the morning.

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12. It is unclear why, at paragraph 5.1 of the Report, 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. The grounds set out at Article 9(2) relate to a decision, act or omission which was the subject matter of the complaint.
13. At paragraph 5.3 of the Report it is stated that the Board was concerned that future licence applications by the Complainant could be affected if he were to be charged at his forthcoming Parish Hall enquiry for breaching the conditions of his licence. However, the question of whether a person is charged for an offence is not a factor that would be taken into account upon any future application. If a person is found guilty of a criminal offence, that may be another matter, but it is hoped that if the allegations are mistaken, mischievous or malicious, possibly as a result of animosity that other plate holders have towards the Complainant following the creation of an additional plate, as is suggested, then the Complainant should neither admit to the allegations at a Parish Hall enquiry nor be found guilty by the courts.
14. Paragraph 5.4 of the Report appears to suggest that the grounds upon which conditions may be attached to a licence are to be found at Article 38 of the Motor Traffic Law. However, the only restriction on the kind of conditions that can be imposed is at Article 9(3) of the Motor Traffic Law, which provides that any conditions must in the Minister's opinion be necessary or desirable to ensure the proper operation of the vehicle and "*the public service to be provided by the vehicle*". Article 38 relates to the Order-making powers of the Minister and is not relevant. Requirements prescribed under such an Order would not need to be attached as conditions to individual licences. The Board has not referred to Article 9(3) in its findings (paragraphs 5.1 – 5.9) and despite expressing the view that the Royal Court would have rejected the conditions applied to the Complainant's licence, has failed to provide sufficient analysis as to why that would be the case.
15. The Board contended at paragraph 5.4 that the conditions under consideration in the case of *Dodds v Minister for TTS* were covered by Articles 38(1) and 38(2)(e) of the Motor Traffic Law, but the condition that requires licence holders to operate from a recognised cab company is not a matter that has been prescribed by Order under Article 38; it is a condition to which the licence is subject under Article 9(2) following grant by the Minister.
16. The Report refers at paragraph 2.2 to the confidential papers that had been "*erroneously included with the information supplied by the Transport and Technical Services Department*". Although the wording is somewhat ambiguous, it might be inferred from this wording that the said Department had provided confidential papers in error, when in fact it had provided them solely for the Board on the basis that the information was confidential and on the express condition that it should not be copied or made available to anyone other than the Board. The purpose was to demonstrate the reality of the number of people on the waiting list for an "*ordinary*" restricted taxi-cab licence which explained my Ministerial Decision of 18th January 2013 that I could not justify increasing the number of "*ordinary*" restricted taxi-cab licences to grant such a licence to the Complainant. It is only because of the specialist service of only carrying

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passengers accompanied by an animal that I could justify increasing the number of restricted taxi-cab licences, and I stand by that decision.

17. Given that a copy of the Report has been forwarded to the media and presented to the States, and bearing in mind the above comments, it is unsatisfactory that we were not afforded the opportunity to comment on a draft of the Report. I note that under Practice Direction RC10/01, the practice of the Royal Court is, where judgment has been reserved and a written judgment is to be handed down at some later date without being read aloud, to distribute a confidential draft judgment to the parties' advocates (or to a party where that party is not represented) prior to it being formally handed down, one of the purposes of which is to enable the advocates to submit suggestions to the Court about typing errors, factual errors, wrong references and other minor corrections of that kind.

18. Notwithstanding the concerns I have raised relating to the proceedings and the findings of Board. I recognise that this was not a straightforward hearing for the Board and I appreciate its finding that I and the Department acted in good faith and were well intentioned, which has certainly always been the case.

Having considered the comments in the report I shall now, as requested, advise the Board of the action I propose to take.

It was recommended at paragraph 5.8 of the Report that condition 11 of the Complainant's licence should be annulled and replaced with a version which is unambiguous, enforceable and explicit as practicable. The existing conditions of the licence were approved by Ministerial Decision dated 18th January, 2013. To revoke the Ministerial decision would require the revocation of the Complainant's licence, which can only be done on the grounds at Article 10(1) of the Motor Traffic Law, as set out above, i.e. where the holder is no longer a fit and proper person or where the vehicle has been used or operated in contravention of a condition set out in the licence. It would not be right to revoke the licence on one of those grounds only to issue another licence, with amended conditions, immediately after.

In addition, it is not at all clear how the above recommendation is consistent with the Board's finding at paragraph 5.4 of the Report that there is nothing in law that enables the Minister to impose a rule that the cab can only operate in conjunction with the welfare of an animal. If there is some condition that in the Board's view could lawfully limit the cab service to an animal-related service, it would have been helpful for the Board to have suggested the wording that it considered acceptable. It is also unclear what condition would be acceptable to the Board given its comments at paragraph 5.5 of the Report regarding the viability of the business if the carrying of regular passengers is not allowed.

In light of the above, and bearing in mind his wish that the licence had never been issued, the Complainant will be invited again, as he has been already, to surrender his licence. The Complainant remains on the waiting list for an "ordinary" restricted taxi-cab licence and for the avoidance of doubt the grant of the conditional licence which is the subject of present focus (and the events surrounding it) have not altered the position that the Complainant would otherwise have occupied on that list. The Complainant will then be treated in the normal way based on his position in that list when making any further application.

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Yours sincerely



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