

**Six Pump Court**

**NOTE ON THE CASE OF REGINA (ON THE APPLICATION OF LICENSED TAXI DRIVERS ASSOCIATION) V LONDON BOROUGH OF CAMDEN IN THE HIGH COURT OF JUSTICE QUEENS BENCH DIVISION ADMINISTRATIVE COURT CO/1782/2015**

**LICENSED BLACK TAXI CABS, MINI CABS, FAIRNESS, LEGITIMATE EXPECTATION AND THE TOTTENHAM COURT ROAD DEVELOPMENT**

**RICHARD BARRACLOUGH QC, SIX PUMP COURT CHAMBERS**

**LEADING COUNSEL FOR THE LONDON TAXI DRIVERS ASSOCIATION**

**JULY 2015**

1. London Borough of Camden has resolved to redevelop the Tottenham Court Road (“TCR”) area. This litigation focussed on the proposal to make the TCR two way for buses and cycles only. All taxis whether licensed black cabs or private hire vehicles (minicabs) are to be prohibited from using some 40% of the road between 8 am and 7pm daily. The consultation , report to Cabinet and ultimate decision were the subject of intense criticism and eventually the London Taxi Drivers Association (LTDA) sought judicial review of the decision in the High Court on the ground that the process was flawed. Essentially the ground for review was that when assessing the evidence of pollution, congestion and accident rates, Camden had failed to distinguish between licensed black cabs and minicabs. There are approximately 22,000 black cabs compared with approximately 70,000 minicabs.
2. The application was refused on paper on the ground that the proposals were at a formative stage; sufficient information and time had been given for the consultation exercise; the responses from consultees had been taken into account; the challenge was no more than a challenge to merits rather than process and the criticisms of the detail of some aspects of the process provided no grounds for an argument of irrationality/unreasonableness.
3. Reference was made to **REGINA (MOSELEY) V HARINGEY BC (2014) 1 WLR 3947** and the basic principle that whatever the consultation it must be undertaken in the context of the legitimate expectation of those who are to be deprived of a benefit or advantage which they have hitherto enjoyed. The consultation and analysis of relevant material and the decision based thereon should include the receipt and testing of all relevant information.

Thus it was argued that where in this case the exclusion of licensed black cabs was based on a specificity of reasoning in terms of pollution/congestion/accidents such reasoning should be evidence based and properly tested and considered.

1. The following was cited from the judgment in **MOSELEY**

# *“The law*

1. *A public authority's duty to consult those interested before taking a decision can arise in a variety of ways. Most commonly, as here, the duty is generated by statute. Not infrequently, however, it is generated by the duty cast by the common law upon a public authority to act fairly. The search for the demands of fairness in this context is often illumined by the doctrine of legitimate expectation; such was the source, for example, of its duty to* *consult the residents of a care home for the elderly before deciding whether to close it in* [*R*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*v*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Devon*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*County*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Council,*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Ex*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*p*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Baker*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*[1995]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*1*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*All*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*ER*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*7*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)*3 . But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted.*
2. *Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation. In* ***R (Osborn) v Parole Board [2014] AC 1115*** *, this court addressed the common law duty of procedural fairness in the determination of a person's legal rights. Nevertheless the first two of the purposes of procedural fairness in that somewhat different context, identified by Lord Reed JSC in paras 67 and 68 of his judgment, equally underlie the requirement that a consultation should be fair. First, the requirement “is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested”: para 67. Second, it avoids “the sense of injustice which the person who is the subject of the decision will otherwise feel”: para 68. Such are two valuable practical consequences of fair consultation. But underlying it is also a third purpose, reflective of the democratic principle at the heart of our society.**This third purpose is particularly relevant in a case like the present, in which the question was not: “Yes or no, should we close this particular care home, this particular school etc?” It was: “Required, as we are, to make a taxation-related scheme for application to all the inhabitants of our borough, should we make one in the terms which we here propose?”*
3. ***In R v Brent London Borough Council, Ex p******Gunning*** *(1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said, at p 189:*

*“Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third … that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.”*

*Clearly Hodgson J accepted Mr Stephen Sedley QC's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved. The Court of Appeal expressly endorsed them, first in* [*Ex*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*p*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Baker*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*[1995]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*1*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*All*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*ER*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*73*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9) *, cited above (see pp 91 and 87), and then in* [*R v*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*North*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*and*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*East*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*Devon*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*Health*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*Authority,*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*Ex*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*p*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*Coughlan*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*[2001]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*QB*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9)[*213*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I5B8B1FC0E42811DA8FC2A0F0355337E9) *, para 108. In* ***Ex p Coughlan*** *, which concerned the closure of a home for the disabled, the Court of Appeal, in a judgment delivered by Lord Woolf MR, elaborated, at para 112:*

*“It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good* ***\*3958*** *deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.”*

*The time has come for this court also to endorse the Sedley criteria. They are, as the* [*Court*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*of*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Appeal said*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*in*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*R*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*(Royal*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Brompton*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*and*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Harefield*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*NHS*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Foundation*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Trust)*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*v*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Joint*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Committee*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*of*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Primary*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*Ca*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)*re* [*Trusts*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*(2012)*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*126*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*BMLR*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657)[*134*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=IA205F1C08A7911E1A2CFAE335CC78657) *, para 9, “a prescription for fairness”.*

1. *Two further general points emerge from the authorities. First, the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting.**Thus, for example, local authorities who were consulted about the Government's proposed designation of Stevenage as a “new town” (*[*Fletcher*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*v*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*Minister*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*of*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*Town and*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*Country*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*Planning*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*[1947]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*2*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*All*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*ER*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9)[*496*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I6073CE20E43611DA8FC2A0F0355337E9) *, 501) would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged. Second, in the words of Simon Brown LJ in* [*Ex*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*p*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*Baker*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*[1995]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*1*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*All*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9)[*ER 73*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I86021020E43611DA8FC2A0F0355337E9) *, 91,**“the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit”.*
2. *Sometimes, particularly when statute does not limit the subject of the requisite consultation to the preferred option, fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options. For example, in* [*R*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*(Medway*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Council) v*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Secretary*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*of*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*State*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*for*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Transport,*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Local*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Government*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*and*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*the*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*Regions*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*[2003]*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*JPL*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9)[*583*](http://login.westlaw.co.uk/maf/wluk/ext/app/document?crumb-action=reset&docguid=I7A61DE70E42811DA8FC2A0F0355337E9) *, the court held that, in consulting about an increase in airport capacity in South East England, the Government had acted unlawfully in consulting upon possible development only at Heathrow, Stansted and the Thames estuary and not also at Gatwick; and see also R (Montpeliers and Trevors Association) v Westminster City Council [2006] LGR 304 , para 29.”*
3. LTDA did not argue that Camden was not entitled to reject the majority of the responses which were in opposition to the proposals. If however Camden chose to do so it was all the more important that the process by which it reached the decision should be properly conducted. Otherwise it would be vulnerable to the criticism that having declared itself to be committed to a proposed plan as it did in 2011 Strategy, it was inclined to ignore the majority who opposed the plan in favour of a predetermined and fixed state of mind.
4. The response to the point that in virtually every respect concerning accidents, pollution and congestion, the decision maker had conflated taxis and minicabs was to aver that the data were collected by third parties and that it was permissible to have regard to such data.
5. LTDA argued that there is a significant difference between licensed black cabs and minicabs both as to legal status and numbers (see **EVENTECH LTD V THE PARKING ADJUDICATOR**). The Defendant it was said chose to ignore both. If most of the pollution, congestion and accidents were attributable not to licensed taxis but to minicabs it would be irrational to exclude licensed black cabs from the area on that ground. The decision to do so then appeared, it was argued, to be in the broadest of terms, politically driven. Camden knowing that the interests of licensed black cabs and minicabs are dissonant, should have sought to draw or at least address the distinction between the two in these respects. It failed to consider accident statistics for the one area where black cabs and buses share space, namely Oxford Street.
6. Licensed black cabs have a major role to play in the transport of Londoners and visitors to London including the disabled. It was argued that if there were flaws in the process it is beyond doubt that the LTDA’s members would be left with a sense of injustice. They were to be deprived of the right to ply their trade as they have done hitherto and to serve the public and their customer base. Their capacity to trade would thereby be inhibited by reason of a flawed process.
7. Camden argued that it was entitled to combine licensed black cabs with minicabs. LTDA countered that if this contention is correct then it is difficult to see where there can ever be a distinction between the two. It followed that the distinction drawn by the ECJ in **EVENTECH LTD V THE PARKING ADJUDICATOR C-518/13** would be negated.
8. The **EVENTECH** case involved the disputed lawfulness of a policy implemented by Transport for London and by a majority of London Boroughs which consists in permitting London black cabs to use most London bus lanes during the hours when bus lanes are operational while prohibiting minicabs from using those bus lanes except for the purpose of picking up and setting down passengers who had pre booked such a vehicle. The judgment of the Second Chamber in part reads as follows:

“Black Cabs and minicabs

3   *In London, both Black Cabs and minicabs are vehicles which carry passengers for consideration. Both require licences issued by London Taxi and Private Hire, which is part of TfL. Those licences are issued under different statutory provisions and are subject to different conditions according to whether they are issued to Black Cabs or to minicabs.*

*4        A licence to operate Black Cabs is issued under the provisions set out in the London Cab Order 1934. That order was made pursuant to the power conferred by section 6 of the Metropolitan Carriage Act 1869, section 8(2) of which provides that a taxi is permitted to ‘ply for hire’ in London only when the driver holds a licence issued by TfL under section 8 of that Act.*

*5        It follows that only a taxi which is licensed in accordance with the London Cab Order is permitted to ‘ply for hire’ in London, a concept which is defined as soliciting or waiting for passengers without any pre-booking. According to the referring court, a survey carried out in 2009 indicates that 8% of the journeys made by Black Cabs are subject to pre-booking, 52% are due to a passenger hailing the taxi in the street and the majority of other journeys result from a passenger being picked up at a taxi rank…*

*6        A licence for minicabs is issued in accordance with the provisions of the Private Hire Vehicles (London) Act 1998. Minicabs are not permitted to ‘ply for hire’ in London and accordingly can pick up only people who have pre-booked their services. As regards people who have pre-booked, it is common ground that minicabs are in competition with Black Cabs.*

*7        Further, it is apparent from the file that, since the London Hackney Carriage Acts 1831 and 1853, Black Cabs are subject to the rule of ‘compellability’, which requires that where a taxi has agreed to pick up a passenger at a taxi rank or in the street, the taxi must take the passenger where he wishes to go, within a prescribed distance or up to a prescribed journey time. No such obligation is imposed on minicabs.*

*8        Black Cabs are instantly recognised by reason of their shape and size and the illuminated ‘Taxi’ sign, since they must comply with conditions of fitness which contain a number of standards with which currently only two vehicle makes comply. Minicabs, on the other hand, can be of any colour and any design, and consequently some 700 different makes and models of minicabs are currently licensed.*

*9        The fares of Black Cabs are strictly regulated and can be charged only by reference to a taxi meter. The drivers of minicabs are, for their part, free to set their own fares and minicabs do not have a meter, the fare to be paid being quoted when the minicab is booked, irrespective of the duration of the journey, whereas Black Cab fares vary depending upon that duration.*

*10      Black Cabs must be adapted for wheelchair access. There are no accessibility requirements for minicabs.*

*11      Before being licensed, Black Cab drivers must undertake an examination known as the ‘Knowledge of London’, which may require two to four years of preparation. Minicab drivers must before being licensed undertake a topographical test, which generally takes a day. Black Cab drivers must also take the Driving Standards Agency Advanced Driving Assessment, whereas there is no similar requirement for minicab drivers…..*

*52      Further, having regard to the characteristics of Black Cabs, as described in paragraphs 4 to 11 of this judgment, the competent national authorities could reasonably take the view that the access of those taxis to bus lanes is liable to enhance the efficiency of the London road transport system and that, consequently, the criterion for the granting of the right at issue, namely the provision of taxi services in London, is liable to achieve the realisation of the objective concerned…..*

*59      In that regard, it must be stated, first, that the identification of the factual and legal situation of Black Cabs and minicabs cannot be confined to that prevailing in the market sector in which those two categories of conveyors of passengers are in direct competition, namely the pre-booking sector. It cannot seriously be doubted that all the journeys made by Black Cabs and minicabs are liable to affect the safety and efficiency of the transport system on all the road traffic routes in London.*

*60      Secondly, it must be taken into consideration that, by virtue of their legal status, only Black Cabs can ply for hire; they are subject to the rule of ‘compellability’; they must be recognisable and capable of conveying persons in wheelchairs, and their drivers must set the fares for their services by means of a taxi meter and have a particularly thorough knowledge of the city of London.*

*61      It follows that Black Cabs and minicabs are in factual and legal situations which are sufficiently distinct to permit the view that they are not comparable and that the bus lanes policy therefore does not confer a selective economic advantage on Black Cabs…..*

*63      In the light of all the foregoing, the answer to the first and second questions is that the practice of permitting, in order to establish a safe and efficient transport system, Black Cabs to use bus lanes on public roads during the hours when traffic restrictions relating to those lanes are operational, while prohibiting minicabs from using those lanes, except to pick up and set down passengers who have pre-booked such vehicles, does not appear, though it is for the referring court to determine, to be such as to involve a commitment of State resources or to confer on Black Cabs a selective economic advantage for the purpose of Article 107(1) TFEU….”*

1. William Davis J refused permission to seek judicial review on paper. An oral hearing was requested of Knowles J who refused permission. In so far as it impacted on the **EVENTECH** point his judgment was as follows:

*“The Association contends that the decision of the cabinet was based on flawed consultation and to use the phrase used on its behalf in written materials, will trigger the launch of a wider project known as the West End Project.*

*The consultation is said to be flawed because it did not distinguish between PHVs and taxis but combined the two when considering accident, air quality and congestion statistics. The impact is said to be that permitting taxis to have unrestricted access to TCR was misrepresented and the Cabinet was misled in relation to need for the elderly, disabled, and others to use taxis. The Association seek an order that the decision is quashed and the consultation quashed.*

*The Decision was preceded in time by a transport strategy in 2011 and will be followed by compliance with statutory requirements. As the Association recognises, road traffic regulations orders and the process required for those lie ahead.*

*The suggestion was made that the 2011 transport strategy caused the cabinet to approach its decisions this year with a closed mind. There is no arguable material to support the suggestion of a closed mind. Of course it was proper to have regard to the strategy as well as other relevant material. The strategy is characterised by the Association as biased in favour of walking and cycling but the references relied on do not arguably support it. Mr Barraclough indicated in oral submissions that the suggestion of a closed mind comes from the flaws in the consultation and cabinet report this year then if that is right, the underlying question remains whether the consultation and process was flawed and flawed sufficiently to warrant intervention by way of judicial review.*

*I am quite satisfied that it was not.*

*It is quite true that consultation material, statistics and analysis did combine PHVs and taxis when addressing congestion, air quality and accidents. That may not be ideal but could be taken into consideration…..*

*…It may be that more granular analysis was desirable but that does not mean it is available or that cabinet should have asked for it. It may be that some material not available at the time of the decision may play a part later in the decision.*

*Cabinet knew what it had, and what it did not. It did not have an analysis of Oxford Street that the LTDA wanted, but it cannot be said that it had to conduct that analysis before it could reach a decision. TfL’s data had its limitation, but it was what it was, and it was apparent what it was.*

*The Cabinet had the benefit of responses from the Association and members of the public who did raise point about taxis.*

*The existence of option 2 indicated that taxis on one hand and PHVs on the other can be considered separately. That does not mean that for some purposes they cannot be considered together and that some evidence will consider them together.*

*The context of the decision of the Second Chambers in* ***R v Parking Adjudicator ex parte Eventech*** *is not the context in the present case. The context there concerned the realisation of a safe and efficient system within the bus lane system and whether taxis were given an unlawful economic advantage.*

*In written submissions Mr Barraclough emphasises the significant differences between PHVs and taxis both as to legal status and number. That is correct, but whilst those differences exist it is possible to identify other characteristics that they have in common.*

*It is not correct in my judgment, as Mr Barraclough urged in writing, that the Cabinet has chosen to ignore both of the differences, that is of legal status and numbers to which he referred. …..*

*The circumstances may adjust in the future….. and to give two examples that are identified in the project to which the Council’s decision relates, first, after 12 months when there is(to be) a review, or second, referenced in the material, if an ultra-low emission zone under consideration by Mayor of London comes into effect.”*

1. It will remain to be seen what impact further representations in the light of any ultra low emission zone decision, further evidence in relation to the three areas, congestion, pollution and accident rates and any consultation or enquiry held when it comes to the Highways procedures might have on the issues raised in this case.
2. As things stand it appears that, when it is considered to be appropriate the distinction between licensed black cabs and minicabs is drawn but otherwise no advantage is to be given to the licensed black cab.

**RICHARD BARRACLOUGH QC**

**6 PUMP COURT TEMPLE LONDON**

**LEADING COUNSEL FOR LONDON TAXI DRIVERS ASSOCIATION**