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R v Liverpool Corporation, ex parte Liverpool Taxi Fleet  
Operators Association

COURT OF APPEAL, CIVIL DIVISION

[1972] 2 QB 299, [1972] 2 All ER 589, [1972] 2 WLR 1262, 71  
LGR 387, 136 JP 491

**HEARING-DATES:** 11, 14 FEBRUARY 1972

14 FEBRUARY 1972

**CATCHWORDS:**

Road traffic - Hackney carriage - Licence - Grant of licence - Natural justice - Duty of licensing authority to act fairly - Duty to give a hearing to all those affected by decision to grant or refuse applications for licenses - Council as licensing authority resolving to increase total number of licences for taxi cabs within area - Resolution made without giving taxi cab owners' association an opportunity to be heard - Association previously assured that they would be given opportunity to make representations - Resolution also disregarding previous owners' association an opportunity to be heard - Association previously assured that they would be given opportunity to make representations - Resolution also disregarding previous undertaking to association that no further licences would be issued until proposed legislation controlling private hire cars in force - Council not at liberty to disregard undertaking - Undertaking compatible with council's statutory duties - Order prohibiting council from acting on resolution until representations by interested persons heard and other matters, including undertaking, considered - Town Police Clauses Act 1847, s 37.

**HEADNOTE:**

Since 1948 the number of licences for taxi cabs in the city of Liverpool had been limited to 300 by the licensing authority, Liverpool Corporation. The corporation derived their licensing powers from the Town Police Clauses Act 1847, s 37 a, which applied to hackney carriages. The taxi cab owners wanted the number of licences to remain at 300 but the taxi cab drivers wanted the number increased to meet competition from unlicensed private hire cars. In 1970 the taxi cab owners' association ('the association') took the matter up with the corporation after learning that the corporation proposed to increase the number of licences. On 24th July 1970 the town clerk wrote to the association's solicitors saying that no decision on the matter had been taken and that interested parties would be fully consulted before any decision was taken. That assurance was reaffirmed by the town clerk in a further letter to the solicitors, dated 28th October 1970, stating that the association would be given an opportunity to make representations at the appropriate time.

a Section 37 is set out at p 592 d and e, post

In July 1971 the matter of taxi cab licences was considered by a sub-committee of the corporation, before whom the association were represented by counsel. The sub-committee proposed that an increase above the existing 300 licences should be made by the issue of 50 licences in 1972 and a further 100 licences in 1973, and that after 1st January 1974 no limitation should be placed on the number of licences issued. The sub-committee's proposals were considered by the city council on 4th August 1971, and the city council resolved to approve the proposals subject to further consideration of the proposals for unlimited licences after 1st January 1974.

At the city council meeting of 4th August, however, the chairman of the subcommittee gave an undertaking that no licences additional to the existing 300 licences would be issued until proposed legislation to control private hire cars had come into force. The chairman's undertaking was put into writing in a letter dated 11th August, from the town clerk to the solicitors for the association. The proposed legislation was expected to come into force early in 1973.

It appeared that the corporation were then advised that the chairman's undertaking was unlawful and that the corporation were not bound by it. Accordingly, the sub-committee met again on 16th November and, without informing the association, put forward new proposals for the increase of licences, namely, that from 1st January 1972 a further 50 licences would be issued in addition to the existing 300 licences; that from 1st July 1972 50 more licences would be issued, and that from 1st April 1973 there would be no limit on the issue of licences. The association were not officially told of those proposals but got to hear of them indirectly. They asked for a further hearing at which they could be represented, and if there were any new facts. On 7th December 1971, the day before the subcommittee's proposals were to be considered by its parent committee, the town clerk replied by letter to the association that there were no new material facts but that if the owners were aware of any new matters they should let the town clerk have details of them by return of post. It was impossible for the association to reply before the meeting of the parent committee on 8th December; at that meeting the parent committee confirmed their sub-committee's proposals. On 22nd December the city council met and also adopted the sub-committee's proposals of 16th November, resolving to increase the number of licences in accordance with those proposals. The city council rescinded their earlier resolution of 4th August.

The council's resolution of 22nd December 1971 was contrary to the undertaking given by the chairman of the sub-committee on 4th August and repeated in the letter of 11th August. The association applied to the Divisional Court *ex parte* for orders of prohibition, mandamus and certiorari against Liverpool Corporation. The Divisional Court refused the application. On appeal, notice was served on the corporation who were heard in argument.

Held - (1) The association were entitled to relief against the corporation for the following reasons --

(i) The corporation in considering applications for hackney carriage licences under the 1847 Act were under a duty, in exercising that administrative function, to act fairly; the court was concerned to see that the policy adopted by the corporation with regard to licences was adopted after due and fair regard to all the conflicting interests, for even where the corporation's function was administrative the court would not hesitate to intervene if it was necessary to

secure fairness. The duty to act fairly meant that the corporation should be ready to hear persons or bodies whose interests were affected which included the association. Further, it meant that the corporation were not at liberty to disregard the undertaking given by the chairman of the sub-committee, a any rate not until they had given due and proper consideration to the representations of all those interested, and even then (per Lord Denning MR) only if they were satisfied that the public interest required departing from the undertaking. For so long as the undertaking was compatible with the corporation's statutory duty, as the undertaking in question was, the corporation must honour it (see p 594 a to e and g h, p 596 b to d and g to j and p 597 a to c and g, post); dictum of Sankey J in *R v Brighton Corpn, ex parte Thomas Tilling Ltd* (1916) 85 LJKB at 1555 applied; dictum of the Earl of Birkenhead in *Birkdale District Electric Supply Co Ltd v Southport Corpn* [1926] AC at 364 and *William Cory & Sons Ltd v London Corpn* [1951] 2 All ER 85 considered.

(ii) Accordingly, the corporation had acted wrongly at the meetings in November and December 1971 of their sub-committee, the parent committee and the city council, for at those meetings they had taken decisions without giving he association an opportunity of being heard, and had broken the undertaking given to the association by the letter of 11th August 1971 without any sufficient cause or excuse (see p 594 j, p 597 f and p 598 h and j, post).

(iii) The association were persons aggrieved because they were persons whose interests might be prejudicially affected by what had taken place and who had a genuine grievance because something had been done which affected them. The association therefore had a locus standi to apply for relief (see p 595 a and b, p 597 f and p 598 h and j, post); *Attorney-General of the Gambia v M'Jie* [1961] 2 All ER 504 and dictum of Lord Denning MR in *Maurice v London County Council* [1964] 1 All ER at 782 applied.

(2) It was sufficient to grant an order prohibiting the corporation, their committee and sub-committee, from acting on the resolutions of 16th November, 8th and 22nd December 1971, and in particular from granting, pursuant to the Town Police Clause Act 1847, any further licences additional to the existing 300 licences, without first hearing any representations by interested persons including the association and any other relevant matters including the undertaking given by the chairman of the sub-committee. That would mean that the corporation could look at the matter afresh, hearing all interested parties, before they concluded what was the right policy to adopt regarding the issue of licences. The relief granted would assist the corporation to perform its statutory duties (see p 595 b to d, p 596 g, p 597 f and g, p 598 j and p 599 a, post).

**NOTES:**

For the licensing of hackney carriages, see 33 Halsbury's Laws (3rd Edn) 792, 793, para 1359, and for cases on the subject, see 45 Digest (Repl) 153-155, 601-613.

For modification or waiver of its powers by a corporation, see 9 Halsbury's Laws (3rd Edn) 65, para 132.

For the circumstances in which an order of prohibition will be granted, see 11 Halsbury's Laws (3rd Edn) 114-124, paras. 213-229.

For the Town Police Clauses Act 1847, s 37, see 28 Halsbury's Statutes (3rd

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Edn) 78.

**CASES-REF-TO:**

Attorney-General of the Gambia v N'Jie [1961] 2 All ER 504, [1961] AC 617, [1961] 2 WLR 845, Digest (Cont Vol A) 155, 917b.  
 Birkdale District Electric Supply Co Ltd v Southport Corpn [1926] AC 355, 95 LJCh 587, 134 LT 673, 90 JP 77, 13 Digest (Repl) 275, 978.  
 Cory (William) & Sons Ltd v London Corpn [1951] 2 All ER 85, [1951] 2 KB 476, 115 JP 371, 47 Digest (Repl) 750, 898.  
 Lever (Finance) Ltd v Westminster Corpn [1970] 3 All ER 496, [1971] 1 QB 222, [1970] 3 WLR 732, 134 JP 692, Digest (Cont Vol C) 967, 51c.  
 Maurice v London County Council [1964] 1 All ER 779, [1964] 2 QB 362, [1964] 2 WLR 715, 128 JP 311, Digest (Cont Vol B) 607, 616a.  
 R v Brighton Corpn, ex parte Thomas Tilling Ltd (1916) 85 LJKB 1552, 114 LT 800, 80 JP 219, 45 Digest (Repl) 153, 603.  
 R v Southampton Corpn, ex parte Lankford (27th October 1960) unreported  
 R Weymouth Corpn, ex parte Teletax (Weymouth) Ltd [1947] 1 All ER 779, [1947] KB 583, [1947] LJR 899, 177 LT 210, 111 JP 303, 39 Digest (Repl) 280, 185.  
 Robertson v Minister of Pensions [1948] 2 All ER 767, [1949] 1 KB 227, [1949] LJR 323, 21 Digest (Repl) 399, 1259

**CASES-CITED:**

R v Blackpool Corpn (1899) The Times, 7th December.  
 R v Paddington Valuation Officer, ex parte Peachey Property Corpn Ltd [1965] 2 All ER 836, [1966] 1 QB 380.  
 R v Prestwich Corpn, ex parte Gadz (1945) 109 JP 157.  
 Ridge v Baldwin [1963] 2 All ER 66, [1964] AC 40.  
 Sagnata Investments Ltd v Norwich Corpn [1971] 2 All ER 1441, [1971] 2 QB 644.  
 Veitch v Caldicott (1945) 173 LT 30.

**INTRODUCTION:**

Appeal. This was an appeal by the Liverpool Taxi Fleet Operators' Association and the Liverpool Taxi Owners' Association, the applicants, whereby they sought an order that the decision of the Divisional Court (Lord Widgery CJ, Phillimore LJ and Lawson J) dated 21st January 1972, refusing the applicants leave to apply for orders of prohibition, mandams and certiorari against Liverpool Corporation, be set aside and reversed, and that the applicants should be granted leave to apply for the orders. The facts are set out in the judgment of Lord Denning MR.

**COUNSEL:**

C E F James for the applicants. M Morland for Liverpool Corporation.

**PANEL:** LORD DENNING MR, ROSKILL LJ AND SIR GORDON WILLMER

**JUDGMENTBY-1:** LORD DENNING MR.

**JUDGMENT-1:**

LORD DENNING MR. This case concerns the number of taxi cabs on the streets of Liverpool. Since 1948 Liverpool Corporation have limited the number of taxi

cabs to 300. The taxi cab owners want it to remain at 300. But the taxi cab drivers want the numbers increased. They point out that in recent years a great number of private hire cars have come on to the streets. These private hire cars are not licensed. There is no control over them. These vehicles do not have to come up to any required standard. The taxi drivers feel that they are taking custom which should belong to them. The mischief is such that Liverpool Corporation are promising a Bill before Parliament to bring these private hire cars under control. In addition Liverpool Corporation have passed a resolution to increase the number of taxi cabs. The owners seek to prohibit them from doing so. They say the corporation passed the resolution without hearing their case properly and contrary to an undertaking.

To consider the question, I must first state the jurisdiction of Liverpool Corporation. They are the licensing authority for taxi cabs in the city. They derive their powers from the Town Police Clauses Act 1847 which applies to hackney carriages. There were horse drawn carriages in those days, but now they are motor driven. Section 37 provides:

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

By s 43 a licence was to be in force for one year only. That Act was explained by Lord Goddard CJ in *R v Weymouth Corpn, ex parte Teletax (Weymouth) Ltd* n1:

n1 [1947] KB 583 at 589, cf [1947] 1 All ER 799 at 780

'It also seems reasonably clear that what Parliament had in mind was that it was desirable that the commissioners should be able to control the number of carriages which plied for hire in a given area, and should also be entitled to prescribe the kind and the description of the carriages... I have no doubt they... certainly could take into consideration the number of cabs which were already licensed, so that there would not be an undue number or, on the other hand, if they found there were not enough for the reasonable requirements of the public, they would be able to license more from time to time as they thought fit.'

The licence is a licence for the vehicle. It is not a licence for the owner or the driver. Accordingly the owner of a vehicle can transfer his vehicle during the year to a buyer. The buyer can use it under the licence for the rest of the year. When the owner applies for the licence to be renewed for another year, the corporation can take into consideration not only the then proprietor, but also any new applicant. We were referred to an unreported case on that point: *R v Southampton Corpn, ex parte Lankford* n2.

n2 (27th October 1960) unreported

In the middle of 1970, when the owners heard that the corporation proposed to increase the number of taxi cabs, their association took up the matter. On 24th July 1970 the town clerk of Liverpool wrote to the solicitors for the taxi owners' association, saying:

'No decision has been taken on the number of hackney carriage plates and,

before any such decision was taken, you have my assurance that interested parties would be fully consulted.'

That was re-affirmed on 28th October 1970 when the town clerk wrote:

'I have no doubt that your clients will be given an opportunity to make representations, at the appropriate time, should they wish to do so.'  
In July 1971 the matter was considered by a special sub-committee of the Environmental Health and Protection Committee of the corporation. The taxi cab owners were represented by counsel. The sub-committee recommended an increase above 300 hackney carriage licences, to this extent; there should be 50 more licences in the year beginning in January 1972 (making 350) and a further 100 licences in the year beginning January 1973 (making 450), and thereafter an unlimited number. On 4th August that recommendation came up for consideration by the city council themselves. The minutes were approved subject to some matters being sent back. In addition the chairman of the sub-committee gave an undertaking of 11th August (which was put into writing by the town clerk in a letter):

'The Chairman of the [sub-committee] gave an undertaking in Council that no plates in addition to the existing 300 would be issued until the proposed legislation had been enacted and had come into force.'  
After the meeting the chairman of the sub-committee, Alderman Craine, came out to the representatives of the taxi cab proprietors. The treasurer of the association asked:

'Is it right Alderman Craine that no licences will be issued until legislation controlling private hire vehicles is in force?'  
The alderman replied: 'I have just stated that publicly. I have just made an announcement to that effect.'

So there was a clear undertaking, namely, no more than 300 licences until the legislation about private hire cabs was in force. It was expected that the Bill would be introduced towards the end of 1971, passed in 1972 and in force early in 1973. So things should have rested there until 1973. But not a bit of it. Behind the scenes the corporation seem to have been advised that that undertaking was not lawful and they ought not to hold themselves bound by it. So, without a word to the taxi cab owners or their association, the special sub-committee met on 16th November 1971; they rescinded the earlier resolution and put forward a new recommendation, namely, that from 1st January 1972 a further 50 licences would be issued bringing the total to 350; and that from 1st July 1972 a further 50, bringing the total to 400; and no limit from 1st April 1973.

The association got indirectly to hear of that recommendation. (They were never told officially.) So their solicitors asked for a further hearing. They asked if there were any new facts and requested that their clients should be given an opportunity of making further representations. On 7th December 1971 the town clerk replied:

'There are no new important material facts... If there are any such new matters of which you yourselves have become aware, please let me have details of them by return.'  
The meeting was to be on the next day, 8th December. So it was quite impossible for the owners to make any reply by return.

On 8th December the Environmental Health and Protection Committee met. They

confirmed the sub-committee. On 22nd December the city council met. They confirmed the committee and adopted the recommendation. The result was that the corporation resolved to increase the number from 300 to 350 from 1st January to July 1972, and to 400 from 1st July 1972; and after 1st April 1973 unlimited. That was quite contrary to the undertaking which had been most explicitly given in August. On getting to know of this, the taxi cab owners moved the Divisional Court ex parte for orders of prohibition and certiorari. The Divisional Court refused the application. We desired to hear the corporation. So notice was served on them. We have had the full argument before us today.

First I would say this: when the corporation consider applications for licences under the Town Police Clauses Act 1847 they are under a duty to act fairly. This means that they should be ready to hear, not only the particular applicant, but also any other persons or bodies whose interests are affected. In *R v Brighton Corpn, ex parte Thomas Tilling Ltd* n3 Sankey J said:

n3 (1916) 85 LJKB 1552 at 1555

'Persons who are called upon to exercise the functions of granting licences for carriages and omnibuses are, to a great extent, exercising judicial functions; and although they are not bound by the strict rules of evidence and procedure observed in a Court of law, they are bound to act judicially. It is their duty to hear and determine according to law, and they must bring to that task a fair and unbiased mind.'

It is perhaps putting it a little high to say they are exercising judicial functions. They may be said to be exercising an administrative function. But even so, in our modern approach, they must act fairly; and the court will see that they do so.

To apply that principle here: suppose the corporation proposed to reduce the number of taxi cabs from 300 to 200, it would be their duty to hear the taxi owners' association, because their members would be greatly affected. They would certainly be persons aggrieved. Likewise suppose the corporation propose to increase the number of taxi cabs from 300 to 350 or 400 or more; it is the duty of the corporation to hear those affected before coming to a decision adverse to their interests. The town clerk of Liverpool was quite aware of this and acted accordingly. His letters of 24th July 1970 and 28th October 1970 were perfectly proper.

The other thing I would say is that the corporation were not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty. It is said that a corporation cannot contract itself out of its statutory duties. In *Birkdale District Electric Supply Co Ltd v Southport Corpn* n4 the Earl of Birkenhead said that it was --

n4 [1926] AC 355 at 364

'a well established principle of law, that if a person or public body is entrusted by the Legislature with certain powers and duties expressly or impliedly for public purposes, those persons or bodies cannot divest themselves of these powers and duties. They cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties.'

But that principle does not mean that a corporation can give an undertaking and

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break it as they please. So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so compatible. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say; and then only if they are satisfied that the overriding public interest requires it. The public interest may be better served by honouring their undertaking than by breaking it. This is just such a case. It is better to hold the corporation to their undertaking than to allow them to break it. Just as it was in *Robertson v Minister of Pensions n5* and *Lever (Finance) Ltd v Westminster Corpn n6*.

n5 [1948] 2 All ER 767, [1949] 1 KB 227

n6 [1970] 3 All ER 496, [1971] 1 QB 222

Applying these principles, it seems to me that the corporation acted wrongly at their meetings in November and December 1971. In the first place, they took decisions without giving the owners' association an opportunity of being heard. In the second place, they broke their undertaking without any sufficient cause or excuse.

The taxi cab owners' association come to this court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a 'person aggrieved', and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a genuine grievance because something has been done or may be done which affects him: see *Attorney-General of the Gambia v N'Jie n7* and *Maurice v London County Council n8*. The taxi cab owners' association here have certainly a *locus standi* to apply for relief.

n7 [1961] 2 All ER 504, [1961] AC 617

n8 [1964] 1 All ER 779 at 782, [1964] 2 QB 362 at 378, per Lord Denning MR

We have considered what the actual relief should be. On the whole we think it is sufficient in this case to let prohibition issue. The order should prohibit the corporation or their committee or sub-committee from acting on the resolutions of 16th November 1971, 8th December 1971 and 22nd December 1971; in particular, from granting any further number of licences pursuant to s 37 of the Town Police Clauses Act 1847 over and above the 300 currently existing, without first hearing any representations which may be made by or on behalf of any persons interested therein, including the applicants in this case and any other matters relevant thereto, including the undertaking recorded in the town clerk's letter of 11th August 1971. If prohibition goes in those terms, it means that the relevant committees, sub-committees and the corporation themselves, can look at the matter afresh. They will hear all those interested and come to a right conclusion as to what is to be done about the number of taxi cabs on the streets of Liverpool.

I would say that the trouble has arisen because the corporation was advised that this undertaking was not binding on them, whereas it certainly was binding unless overridden by some imperative public interest. I am sure that all concerned have been acting as best they can; but nevertheless prohibition in my

view should issue so as to prevent the corporation committee acting on those resolutions.

**JUDGMENTBY-2:** ROSKILL LJ.

**JUDGMENT-2:**

ROSKILL LJ. Lord Denning MR has read the undertaking as it was given by the town clerk's letter of 11th August 1971, and as it is recorded in the affidavit of Mr Lynch, the treasurer of the second of the associations who are the applicants on this motion. Although there were two undertakings, they were in substance identical and their giving is not disputed. Nor is it disputed that the passing by the Liverpool Corporation of the resolution of 22nd December 1971 was in flagrant contradiction of the undertaking which was given both in council and privately. Thus the issue arises: can the applicants enforce that undertaking before this court, or is it to be treated as of no effect? Although admittedly given, is it to be ignored and treated as a promise in no way binding on him who gave it or the local authority on whose behalf and with whose authority it was given? The applicants seek orders of prohibition, mandamus and certiorari. For my part I see no ground for allowing an order of certiorari to go. The resolution of 22nd December is not suggested to have been ultra vires. Moreover, now to quash it, as Lord Denning MR has pointed out, causes difficulties in relation to the earlier resolution of 4th August, which was rescinded by the resolution complained of. Nor can I see any ground for an order of mandamus, for I see no failure by Liverpool Corporation to exercise a power which it is required by Parliament to exercise. It seems to me that if any redress can be given, it must be redress by way of an order of prohibition. The applicants have not sought relief, as perhaps they might have done, by way of injunction or declaration.

It has been said by counsel on behalf of the corporation that the undertaking given by Alderman Craine does not bind the council. He has sought to persuade this court that that is so because to oblige the council now to honour that undertaking would be to fetter the corporation's freedom of action in the performance of its statutory duty to consider other applications for licences after the respective dates mentioned in the resolution of 22nd December 1971. It is said that the corporation having lawfully passed that resolution, no prior undertaking, however clearly given, however much in conflict with the resolution, can be allowed to stand in the way of implementing that resolution. It is said that this court should refuse to grant the relief claimed because the court is under as great a duty to protect the interests of possible future licensees as to protect the interests of those who at present hold a monopoly of the existing licences. For my part, I do not think this court is under any duty to protect the interests of either rival group of licensees or would-be licensees. Its duty is to see that in dealing with the conflicting interests the council acts fairly between them. It is for the council and not for this court to determine what the future policy should be in relation to the number of taxi licences which are to be issued in the city of Liverpool. It is not for this court to consider population growths or falls or the extent of the demand for taxis within or without the city or whether there should be more licences issued in the future than in the past or whether the present grave unemployment position on Merseyside is a relevant consideration. All those are matters for the council. This court is concerned to see that whatever policy the corporation adopts is adopted after due and fair regard to all the conflicting interests. The power of the court to intervene is not limited, as once was

thought, to those cases where the function in question is judicial or quasi-judicial. The modern cases show that this court will intervene more widely than in the past. Even where the function is said to be administrative, the court will not hesitate to intervene in a suitable case if it is necessary in order to secure fairness. It has been said by counsel for the corporation that there is no precedent for this court to intervene and enforce an undertaking which he claims to be of no legal effect and thus prevent the council giving effect to delegated legislation of the validity of which there is no doubt. For my part, I am not prepared to be deterred by the absence of precedent if in principle the case is one in which the court should interfere. The long legal history of the former prerogative writs and of their modern counterparts, the orders of prohibition, mandamus and certiorari shows that their application has always been flexible as the need for their use in differing social conditions down the centuries had changed. If I thought that the effect of granting to the applicants the relief sought was to prevent the council validly using those powers which Parliament has conferred on it, I would refuse relief. But that is not the present case. It seems to me that the relief claimed will in the end, as counsel for the corporation in effect ultimately conceded, assist the council to perform rather than inhibit the performance of its statutory duties. Lord Denning MR has referred to *Brikdale District Electric Supply Co Ltd v Southport Corpn* n9. The decision of this court in *William Cory & Sons Ltd v London Corpn* n10 shows that a local authority, such as the council, cannot contractually fetter the performance of its statutory duties. But the present is not such a case. The principle applicable is plain. In matters of this kind, such as the granting of licences to hackney carriages, the local authority concerned is required to act fairly, as well as, as Lord Denning MR has said, in a quasi-judicial capacity. It has been said that the council and its relevant committee and sub-committee were never under any duty to hear any representations from the applicants. That may or may not be correct. In the light of what has happened, I do not think it necessary to express any opinion on that question. The relevant sub-committee had the advantage of hearing representations made on behalf of the applicants. Subsequently, having heard those representations, they made the recommendation which led up to the resolution of 4th August 1971 as well as, of course, to the undertaking of the breach of which complaint is made. It seems to me, therefore, that now to allow the council to resile from that undertaking without notice to and representations from the applicants is to condone unfairness in a case where the duty was to act fairly. To stop temporarily action on the resolution of 22nd December 1971 is not in any way to perpetuate that undertaking; nor should it embarrass the council in carrying out its statutory duties. The council must make up its own mind what policy it wishes to follow; but before doing so it must act fairly to all concerned, to present licensees and to future licensees and to others also who may be interested. In the end it may adhere to its present policy or it may not; but in my view this court should not allow the undertaking given by Alderman Craine on 4th August and repeated by the town clerk with the council's authority in the letter of 11th August to be set at naught. The council can at some future date, if it wishes, depart from that undertaking; but if it does so, it must do so after due and proper consideration of the representations of all those interested. I am not persuaded that any such due and proper consideration has yet been given. On the contrary, the evidence before this court shows that the passing of the resolution of 22nd December was -- as I have said -- a flagrant breach of the undertaking. Whilst I make no criticism, I think it right to draw attention to the fact that the minutes of the meeting of the relevant sub-committee on 16th November 1971 show that one member of the council who was a member of the

Environmental Health and Protection Committee, although not a member of that sub-committee, attended that meeting of the sub-committee. The earlier minutes of the meeting of the council on 4th August show that that same gentleman had unsuccessfully moved an amendment to the resolution of that date adverse to the interests of the applicants. It may well be that there was no reason why he should not have been present at the sub-committee on 16th November of the happening of which the applicants were unaware; but the fact that he was there perhaps lends some support to their submission that their interests were not properly taken into account at that meeting. I have great hesitation in differing from the Divisional Court which included on this occasion both Lord Widgery CJ and Phillimore LJ; but they did not have the opportunity of hearing the full argument of which we have had the benefit. For the reasons I have given as well as those given by Lord Denning MR I agree that orders of certiorari and mandamus should be refused, but that an order of prohibition should issue in the terms Lord Denning MR has suggested. I would accordingly grant this application.

n9 [1926] AC 355

n10 [1951] 2 All ER 85, [1951] 2 KB 476

**JUDGMENTBY-3:** SIR GORDON WILLMER.

**JUDGMENT-3:**

SIR GORDON WILLMER. I have reached the same conclusion, and I agree with the terms of the order proposed by Lord Denning MR. I confess that, as I have listened to the story of what happened in this case, I have not found the behaviour of Liverpool Corporation particularly attractive. We are not, of course, concerned with the question of how many taxi cabs there ought to be in Liverpool. That is a matter of policy, the decision of which is entrusted to the corporation as the local authority. The objection here is to the method which was adopted, or sought to be adopted, in framing the corporation's policy with regard to the number of taxi cabs. The applicants, who represent the owners of the existing licensed taxi cabs operating in the city of Liverpool, are of necessity persons who are vitally interested in that policy. During the year 1970 they received repeated assurances that they would be consulted with regard to the number of licences to be allowed. Moreover, following the publication of the proposed resolution by the special sub-committee in March or April 1971, they were specifically invited to make any representations they desired to make about the proposed resolution. As a result, they did have the opportunity of appearing by counsel and making representations in July 1971.

So far, so good. The applicants at that date could have no possible ground of complaint against the procedure adopted. The special sub-committee before whom counsel appeared reached certain conclusions, which were later adopted by the full committee and eventually by the city council at its meeting on 4th August 1971. Again I need not go into the merits of the policy which was decided on; that is not a matter for this court. But it was accompanied by an undertaking publicly given by the chairman of the special sub-committee, the terms of which Lord Denning MR has already read. That undertaking was repeated in the town clerk's letter of 11th August to the applicants' solicitors. Naturally, following that, the applicants thought, and were entitled to think, that if there were to be any further change of policy, they would be amongst the

first people to be consulted and invited to make representations. They were, therefore, naturally surprised to learn that this same sub-committee had met on 16th November 1971, and without notice to them had recommended what amounted to an important change of policy which it could be expected would result in a very large increase in the number of licences to be issued for taxi cabs in the city of Liverpool. About this they were obviously very concerned, and wrote to the town clerk to protest at such a decision having been arrived at without any consultation with them, or without their having been given the opportunity to make representations. They received in answer a letter from the town clerk of 7th December 1971, which in effect said things. First, it said that:

'The Special Sub-Committee and the parent Committee are indeed reconsidering the matter on the basis of the information which they then had. There are no new important material facts.'  
Secondly, the letter continued:

'I am sure that the Council would not want to deprive your clients of the opportunity of drawing attention to any new important material facts of which you yourselves may now be aware. If there are any such new matters of which you yourselves have become aware, please let me have details of them by return.'  
As Lord Denning MR has pointed out, the applicants were being asked to let the town clerk have details of any new material facts by return of post -- not a very practical suggestion.

I venture to criticise that letter in two respects. First, the statement that the special sub-committee were 'reconsidering' the matter strikes me as something less than candid, in view of the fact that the special sub-committee had already on 16th November 1971 reached its decision. The second thing to which I draw attention is the fact that, as the letter states, the proposal was to rescind the previous resolution, although there were no new important material facts. As I have already pointed out, the letter invited the applicants to inform the town clerk if they had 'any new important material facts' of which they were aware. It seems to me that that request hardly met the applicants' objection, which was that, without having consulted them, the sub-committee had sought to reverse its previous decision in the absence of 'any new material facts', which was the whole point of their objection. As a matter of history, the new resolution by the special sub-committee was duly adopted by the full committee and eventually by the city council at its meeting on 22nd December 1971.

As has been pointed out by Lord Denning MR, what is now sought to be done can only be regarded as being in flat defiance of the undertaking publicly given by the chairman of the sub-committee at the meeting of the city council, and repeated privately to the applicants through the town clerk's letter. It seems to me that in these very special circumstances, having regard to the history of how this matter had been dealt with in the past, and having regard especially to the giving of the undertaking, the applicants are justified in regarding themselves as 'aggrieved' by what I can only describe as unfair treatment on the part of Liverpool Corporation. Accordingly, it seems to me that this is indeed a proper case in which this court can and should interfere, in order to ensure that a decision should be arrived at only after fair discussion and after hearing all proper representations of the parties interested. I share the hope expressed by Lord Denning MR that this will give the corporation an opportunity of tackling the problem afresh, and arriving at a fair conclusion after hearing all interested parties.

**DISPOSITION:**

Order of prohibition granted.

**SOLICITORS:**

Markbys, agents for Layton & Co, Liverpool (for the applicants); Cree, Godfrey & Wood, agents for S Holmes, Town Clerk, Liverpool.