PLYING FOR HIRE

NOTE

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1. The purpose of this note is to set out the law on plying for hire, with particular emphasis on the tension between the activities of hackney carriages (which can ply for hire - it is their defining characteristic) and other vehicles, including - now - licensed private hire vehicles. As will be apparent, what is plying for hire is (in my view rightly) highly fact-specific, and individual private hire issues are best referred to a suitably competent lawyer. This note gives an overview. It is up to date as of May 2017. No liability is accepted for its content.

No comprehensive or authoritative definition of plying for hire: Cogley *v.* Sherwood

2. Any consideration of what "plying for hire" means begins with *Cogley* v. *Sherwood* [1959] 2 Q.B. 311.

3. The case concerned an operation at what is now Heathrow Airport. In each of the two terminals there was a staffed desk where cars could be booked for immediate transport at a fixed schedule of fares. This service was advertised by signs on the desks and elsewhere in the airport. The waiting vehicles were on standings where there was no indication that they were for hire. At least one of the standings (and possibly the other) were not open to the public. Once a booking was made, the passenger was escorted from the desk by a staff member to the waiting vehicle. The vehicles were not licensed. Two drivers, and the company that owned the vehicles they were driving, were prosecuted for and convicted by the magistrates of plying for hire. The defendants appealed by way of case stated to the Divisional Court. The

appeal was heard by three judges: the Lord Chief Justice, Lord Parker, and Donovan and Salmon JJ.

4. The case is important both for the general propositions made about what is "plying for hire" and its review of the authorities up to 1959.

5. In giving his judgment, Parker L.C.J. began (at 323-324):

> *The court has been referred to a number of cases from 1869 down to the present day dealing with hackney carriages and stage carriages.* ***Those decisions are not easy to reconcile****, and like the justices, with whom I have great sympathy,* ***I have been unable to extract from them a comprehensive and authoritative definition of "plying for hire".*** *One reason, of course, is that these cases all come before the court on case stated, and* ***the question whether a particular vehicle is plying for hire, being largely one of degree and therefore of fact****, has to be approached by considering whether there was evidence to support the justices' finding.*

6. He continued (at 324): "**In those circumstances it was unnecessary, and clearly inadvisable, for the court to attempt to lay down an exhaustive definition**".

7. He said that the proper course was to start with the words of the Metropolitan Public Carriage Act 1869 (which in s.7 creates an offence of plying for hire in London without a licence). He said:

> *the first thing that strikes one is that the Act is dealing with carriages plying for hire, not with the persons carrying on the business of letting out carriages. It is the carriage that must ply for hire, and, though a human agency must clearly be involved, the Act is directing one's Attention to the carriage under consideration and posing the question: is* ***it*** *plying for hire"*[1].

8. He drew from this that s.7 was "*prima facie* dealing with a **particular carriage whose owner or driver invites the public to be conveyed in it**"[2].

[1] Original emphasis.

[2] In fact, s.7 of the 1869 Act differs from s.45 of the Town Police Clauses Act 1847 (which relates to the provinces) in that s.7 of the 1869 Act refers to the position when the "carriage plies for hire", whereas s.45 of 1847 Act refers both to "a hackney carriage plying for hire" and to "any person … driving, standing or plying for hire with any carriage". Perhaps because *Cogley* was a London case this distinction does not appear to have been drawn to the Divisional Court's attention. I return to this distinction in paragraph 44 *et seq* below.

(1) In support he relied on *Allen* v. *Tunbridge* (1871) L.R. 6 C.P. 461 at 485 (an 1869 Act case) where Montague Smith J. had said:

> *… if the **proprietor of a carriage sends it to a place** for the purpose of picking up passengers, that is a plying for hire within the Act. That is a **very different matter from a customer going to a job-master to hire a carriage.***

(2) *Allen* v. *Tunbridge* had been applied in *Armstrong* v. *Ogle* [1926] 2 K.B. 438, an 1847 Act case, where Lord Hewart C.J. focused on the quoted distinction drawn by Montague Smith J., and said:

> *The contrast is between **a particular and definitive private hiring** and **a public picking up of passengers**.*

9. Having cited these two cases, Parker L.C.J. turned to *Case* v. *Storey* (1869) L.R. 4 Ex. 319 and *Clarke* v. *Stanford* (1871) L.R. 6 Q.B. 357.

(1) In *Case* v. *Storey*, an issue was whether the carriage was "standing or plying for hire" within the London Hackney Carriage Act 1831. Kelly C.B. said "Those words must mean that **the carriage is to be at the disposal of any one of the public who may think fit to hire it**". On the facts, this was not applicable: a railway company permitted carriages to come on its private land at Kings Cross Station to "await the arrival of the trains in order to provide accommodation for the arriving passengers". Kelly C.B. said:

> *In one sense, these cabs are undoubtedly plying for hire, but they **are not so plying in a general sense**, but only to such an extent and subject to such regulations as the license given to them by the railway company may admit. To what extent, and subject to what regulations, must depend on the particular terms of the license in each case. For example, there might be an agreement between a company and the cabmen they allowed to enter their station as to the order in which passengers should be taken up, and so forth. But whatever particular arrangement there might be, the hackney carriages subject to it could not be said to be "standing or plying for hire", **which must mean ready at any moment to be hired by any one of the public**.*

(2) In *Clarke* v. *Stanford*, a case on similar facts to *Case* v. *Storey*, plying for hire was found. The case concerned Harrow Station, which was private land owned by the railway company. The railway company entered into an agreement with C for him to supply carriages to stand at the station to await the arrival of trains decanting passengers. The drivers were instructed not to invite the passengers by speech, but to wait until called for by a servant of the railway company or one of the passengers. C, and a driver, G, were prosecuted for plying for hire without a licence in breach of s.7 of the 1869 Act. In contrast to the 1831 legislation considered in *Case* v. *Storey*, the 1869 Act did not require the plying for hire to be in a public place. C and G's appeals against conviction were dismissed. In arriving at this decision:

(a) Cockburn C.J. said (at 359):

> *The words of the present statute, "plying for hire," are satisfied by the facts which exist in the present case. Carriages are admitted within the premises of the railway company at Harrow under a contract, by which they engage to convey any passengers who come by railway, and although it is not expressly so found in the case, yet it is clear that the appellants' carriages are exclusively for the use of passengers who come by the railway. I assume that the use of the carriage is confined to the purposes of the passengers coming by railway; still that is a plying for hire. The case put by Mr. Bosanquet, of a carriage being on a man's own premises ready to go out if required, is not what can be understood as "plying for hire" within the meaning of this Act. But* ***where a person has a carriage ready for the conveyance of passengers, in a place frequented by the public, he is plying for hire, although the place is private property. The public is entitled to travel by railway, and has a right to pass over the premises of the railway to get out, and if a man is standing on those premises with his carriage to take the public, he is plying for hire.*** *The legislature has omitted the words "public place," and this appears to have been done intentionally and advisedly.*

(b) Mellor J. said:

> *…what is the carriage there for? Though the driver makes no sign, he is there to be hired by persons who arrive by train, and* ***there is no restriction as to the persons who, arriving by train,***

> ***shall hire the carriage****: it is therefore plying for hire, within the meaning of the statute.*

10. Having reviewed these two further authorities, Parker L.C.J. continued (at 325-326):

> *In the ordinary way, therefore, I should, apart from authority, have felt that* ***it was of the essence of plying for hire that the vehicle in question should be on view, that the owner or driver should expressly or impliedly invite the public to use it, and that the member of the public should be able to use that vehicle if he wanted to.***

11. Parker L.C.J. drew a distinction between the situation where the exhibited vehicle can be hired (even if the hire involves some interaction with an office) and one where there has to be interaction with an office, and that might not secure that particular vehicle (at 326):

> *Looked at in that way, it would matter not that the driver said: "Before you hire my vehicle, you must take a ticket at the office,"* ***aliter***[3]***, if he said: "You cannot have my vehicle but if you go to the office you will be able to get a vehicle, not necessarily mine"****.*

12. He distinguished (at 326) two further cases, *Gilbert* v. *McKay* [1946] 1 All E.R. 458 and *Cavill* v. *Amos* (1899) 16 T.L.R. 156, on the basis that both involved carriages that were "in fact there and on view".

(1) In *Gilbert* v. *McKay*, A had an office in Rupert Street in Soho with a sign on the outside reading "Cars for hire". Several unlicensed cars belonging to him were parked outside in the street. Members of the public would go into the office and pay a fare to A or his manager. There was therefore no contract with the driver. They would then get into a car, be driven away, and the rank of cars would move forward. A was convicted of breach of s.7 of the 1869 Act and appealed by way of case stated. Lord Goddard L.C.J. said:

> ***Whether a car is plying for hire or not is essentially a question of fact which has to be decided by the application to a great extent of the rules of common-sense****, and nobody is more able to do that than the*

[3] I.e. "otherwise"

magistrate who state this case, and this particular case there is no doubt there was a plying for hire. ***What was being maintained was a stand, if I may use the word, for cars in the street.*** *These cars were being used and left outside this office to be hired in* ***exactly the same way as taxicabs drive up and stand on an ordinary hackney carriage stand in the street****.*

Various tests have at one time and another been laid down to decide whether or not a vehicle is plying for hire. Channell J. said in Cavill *v.* Amos (1900) 64 J.P. 309 at p.310:

> "In ordinary cases, in order that there should be a plying for hire the carriage itself should be exhibited."

It is quite possible that there can be a plying for hire where it is not exhibited, but where it is being exhibited that is the most important fact.

The only reason why I think it is necessary to say very little more than that we agree with the magistrate is that I think he has gone further in giving his reasons both in the case and the considered reasons than is necessary for the purpose of deciding the particular case. He said in his reasons:

> "I was further of the opinion that, if the cars had been concealed in a private yard or garage, the result would be the same provided that the cars were ready to be appropriated to an immediate hiring."

I express no opinion whatever as to whether that is a necessary conclusion or not; in fact I am not going to say any more than I do not necessarily agree with that remark the magistrate. ***There may be cases in which, although the cars were standing in some yard and not actually seen by the public, it might be possible to find that there was a hiring.*** *In any case, that part of the magistrate's finding is not necessary for this case, and I prefer to say no more about it.*

(2) In considering *Gilbert* v. *McKay*, Parker L.C.J. said (at 326) that he assumed that members of the public could not chose their vehicle, "but be that as it may" he distinguished the case from the facts in *Cogley* because "the vehicles were clearly on view, they were standing, like taxis might stand on a rank, outside offices bearing the sign "Cars for Hire"".

(3) In *Cavill* v. *Amos*, C was waiting on the stand at Harwich pier with a hackney carriage licensed to carry 5 passengers in a single carriage. He was asked by a member of the public if he could take 9 passengers. C said he had a suitable carriage at his stables. 5 of the party went with him in his carriage to his stables, where they and the other 4 got into C's unlicensed wagonette, the others having followed on foot. C took his badge off and drove them. He was prosecuted for plying for hire with an unlicensed vehicle. Channell J. said: "In ordinary cases, in order that there should be a plying for hire, the carriage itself should be exhibited. **It is, however, possible that a man might ply for hire with a carriage without exhibiting it, by going about touting for customers**". He found that there was no plying on the facts of the case: "**The appellant was touting for passengers for his licensed carriage. He did not solicit persons to go in the wagonette in the first instance, and therefore there was no plying for hire with the wagonette**".

13. In rejecting the suggestions in *Gilbert* v. *McKay* and *Cavill* v. *Amos* that plying for hire could occur without exhibition of the vehicle, Parker L.C.J. said (at 326) "**For myself, I think it is of the essence of plying for hire that a carriage should be exhibited**".

14. The case of *Griffin* v. *Grey Coaches Ltd* (1928) 45 T.L.R. 109 presented the Divisional Court in *Cogley* v. *Sherwood* with a further difficulty.

(1) *Griffin* v. *Grey Coaches* concerned a stage carriage (in this case a motor charabanc) plying at regular hours between London and Brighton. The question was whether it was plying for hire in Brighton. There were extensive advertisements exhibited at an office in Brighton, advertising the times and departures of the charabancs, and tickets could be purchased at the office up to 10 minutes before the advertised time, but not afterwards. At the time when the tickets were purchased there was no charabanc in the garage, one not arriving to take on passengers until 20 minutes later. Lord Hewart C.J. found that there was a plying for hire. He said (at 111):

> *What is* ***the real difference, apart from mere accidental difference, between that state of affairs and the state of affairs which exists where the driver of the coach, by gesture and words, invites the members of the public to board, and travel upon, a vehicle which they can see?*** *It may be, as has been said, that the particular coach was not appropriated to the particular journey. It was waiting to be appropriated; it was in a proper and convenient place for that purpose.*

(2) In *Cogley*, Parker L.C.J. accepted (at 327) that "plying for hire" within s.7 must have the same meaning for stage carriages as hackney carriages. He said, however, that in the case of stage carriages "it may well be far easier to find a plying for hire" and that the advertisement of a regular scheduled service may suffice even though a particular vehicle is not on view when a ticket is bought. He found that *Griffin* was distinguishable.

15. The other members of the Divisional Court in *Cogley* v. *Sherwood*, Donovan J. and Salmon J., both agreed with Parker L.C.J. that exhibition of the vehicle was a necessary component of plying for hire.

16. Donovan J. said (at 329) that the term "ply for hire" connoted "some exhibition of the vehicle to potential hirers as a vehicle which may be hired". He gave an example:

> *It is a fairly common sight today to see in smaller towns and villages a notice in the window of a private house "Car for Hire." If the car in question is locked up in the owner's garage adjacent to the house, it could not in my view reasonably be said that at that moment the car was "plying for hire." If a customer wishes to hire it, he comes and makes his terms with the owner. On the return journey the owner might exhibit a sign on its windscreen, as some of them do, "Taxi" and then clearly he would be plying for hire. Similarly, if he left the car outside his house, the same notice on the car would involve, I think, that the car was then plying for hire, and the notice in the window might also then have the same effect.*
>
> *The essential difference in the circumstances that I have compared is that in the one case the car is not exhibited at all, whereas in the other it is, coupled with the notification that it may be hired.*

17. Donovan J. found support in that (1) there was no decided case where a hackney carriage was held to be plying for hire where it was not exhibited so as to be visible to would-be customers, and (2) that as s.7 referred to the vehicle plying for hire, he found it very difficult to say that a vehicle which is not "exhibited in some way" was plying for hire[4].

18. Salmon J. said that if he was approaching the matter afresh, he would have thought that a vehicle plies for hire "if the person in control of the vehicle exhibits the vehicle and makes a present open offer to the public, an offer which can be accepted, for example, by a member of the public stepping into the vehicle". However, the "ingenuity" of the trade in seeking to circumvent the legislative provisions had meant that the courts had had to deal with such attempts. The result was that a powerful argument could be made out that s.7 meant something different from its ordinary meaning, to the point where the court was driven "to the brink" of saying that whenever a private hire firm had a fleet of cars in its garage and advertised for customers, it was plying. He thought (at 331) that was "quite wrong":

> ***It was never within the contemplation of the legislature that the job-master*** *(who was the counterpart in 1869 of the car hire service of 1959)* ***should be within the Act****, as was pointed out by Montague Smith J. in* Allen *v.* Tunbridge *as long ago as 1871. I do not feel that we are constrained by authority to cross the brink. Although authority precludes a finding that the making of a present open offer is a necessary part of "plying for hire", I do not feel compelled by any authority to find that a vehicle plies for hire unless it is exhibited.*

An important earlier case: Sales v. Lake

19. *Sales* v. *Lake* [1922] 1 K.B. 553 was a stage carriage case under the 1869 Act. It was not cited to the court in *Cogley* v. *Sherwood.*

20. A company advertised daily excursions from London to Brighton, starting at Charing Cross and picking up passengers en route at Grosvenor Gardens in Belgravia, Vauxhall Bridge Road, and other places. Tickets were sold in an office and customers would specify where they wanted to be picked up. On the basis of ticket sales, a

[4] But see paragraphs 44 *et seq* below.

charabanc was then hired. L was driving a particular charabanc. It was contended he was plying for hire when he picked up passengers in Grosvenor Gardens. The stipendiary magistrate found there was no plying for hire and the court dismissed the prosecutor's appeal.

21. Lord Trevethin C.J. said:

> ***In my judgment a carriage cannot accurately be said to ply for hire unless two conditions are satisfied. (1) There must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them, and (2) the owner or person in control who is engaged in or authorizes the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers.***

22. He went on:

> *If I may so express myself he must have appropriated, or be able at the time to appropriate a carriage to the soliciting or waiting. Unless there is a carriage so appropriated or capable of appropriation it is in my opinion a misuse of words to say that it is plying for hire;* ***the proper phrase would be that a man is soliciting or waiting for persons to make a contract with him which he proposes to fulfil by providing the necessary carriage.***

23. He concluded that there was no evidence that the charabanc was ever plying for hire, because at the time when the advertisements and tickets were issued, which was the only time when passengers were being solicited, no carriage was appropriated to the journey. Indeed, if less than 15 persons booked, the Company had the right to cancel the journey.

24. In *Greyhound Motors Limited* v. *Lambert* [1928] 1 K.B. 322 the operator argued that his appeal against his conviction for plying for hire should be allowed following *Sales* v. *Lake.* But, unlike in *Sales* v. *Lake*, tickets to board Greyhound's coach, as it went from Hammersmith to various stops in London on its way to Bristol, could be purchased by any member of the public from his various offices 10 minutes before the coach arrived at those stops. It was found to be plying for hire within London. The route and timetable was advertised to the public by posters. Salter J. found (at

329) that the "soliciting" within the *Sales* v. *Lake* test "**would be partly by the posters and partly by the fact that this vehicle was** seen and known to pass along this route every day at fixed times".

The first "parked up" cases: Rose *v.* Welbeck Motors Ltd *and* Newman *v.* Vincent

25. *Rose* v. *Welbeck Motors Limited* [1962] 1 W.L.R. 1010 and *Newman* v. *Vincent* [1962] 1 W.L.R. 1017 were separate appeals that both came before the same court on the same day. Both were London cases involving the 1869 Act.

26. In *Rose*, a minicab was parked on a bus standby for about 50 minutes, moving when a bus was in the way. The court found that it was plying for hire.

27. In *Newman* the car was only there for 20 minutes, but it did have a notice attached to the passenger-side sun visor, which said "Mini-cab Booking". Lord Parker C.J. said:

> *It is quite true that in some respects this is a weaker case than the case of* Rose *v.* Welbeck Motors Ltd*., in which we have just given judgment, because the period of time in the present case was 20 minutes and, although the vehicle was on a public street, it was not at a bus turn-round, and may well have given the appearance of waiting outside a private house. On the other hand, it has* ***the exceptional feature of the sun vizor*** *but,* ***more important to my mind, the evidence that its appearance and conduct was such that two members of the public came up and asked if it was for hire****. For my part, I find it quite impossible in those circumstances to say that there was not a prima facie case of the vehicle's plying for hire in the sense of being on view to the public and inviting the public to use it.*

Vant v. *Cripps*: more notices and signs

28. Notices and signs also featured in *Vant* v. *Cripps* (1963) 62 LGR 88. A vehicle was parked outside a house, once on the street and once in the driveway. The rear of the vehicle bore a sign, 8" x 6", which said "Barry's Taxis, Moortown" and gave a telephone number. On the house itself was an electric light with a rectangular globe which had the word "Taxi" on it and the same telephone number. Lord Parker C.J. found that the vehicle was plying for hire: the facts showed that members of the public assumed the arrangement to be such that the vehicle was available in the business for hire without a previous contract being made. Ashworth J. agreed, and

referred to Donovan J.'s illustration in *Cogley* v. *Sherwood* (see paragraph 16 above) - "If one substitutes for the notice in the window the lettering on the electric light globe, that passage fits the case".

Private hire vehicles in the provinces: Local Government (Miscellaneous Provisions) Act 1976

29. It is now an appropriate point in the chronology to introduce the Local Government (Miscellaneous Provisions) Act 1976, which extended the scheme of local regulation found in Plymouth under the Plymouth City Council Act 1975 to other provincial (not metropolitan) authorities that chose to adopt it. With the exception of Plymouth (where the 1975 Act is still in force), all local authorities outside London have now done so.

30. Under the scheme of the 1976 Act, three licences are required. One to use or permit the use of a private hire vehicle ("PHV") in a controlled district (the vehicle licence), one to drive such a vehicle (the driver's licence) and one to "operate" such vehicle (the operator's licence).

31. To "operate" means "in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle".

32. It will be appreciated that the "operator" is the regulatory equivalent of the "job-master" referred to in the plying for hire authorities.

33. In *Blue Line Taxis (Newcastle) Limited* v. *The Council of the City of Newcastle upon Tyne* [2012] EWHC 2599 (Admin), Hickinbottom J. referred (¶7), apparently with approval, to the description in the Law Commission's Consultation Paper[5] of operators as "the lynchpin of the current private hire vehicle licensing scheme"[6].

[5] http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp203_taxi-and-private-hire-services.pdf

[6] This case is a recent example of a private hire operator receiving no judicial sympathy in respect of practical difficulties for its operation arising from the nature of the regulatory scheme; so: "The problem ... is not for Newcastle Council as licensing authority ... but for Blue Line as operators". It is striking how modest Blue Line's proposal (to use the same telephone number in two local authority areas) now seems.

34. A PHV is defined (s.80(1)) as "a motor vehicle ... other than a hackney carriage or public service vehicle ... which is provided for hire with the services of a driver for the purpose of carrying passengers".

35. Because by definition a PHV cannot be a hackney carriage, it follows that a PHV cannot ply for hire, because only licensed hackney carriages may ply for hire: s.45 of the 1847 Act.

36. To emphasise this distinction, a vehicle cannot be licensed as a PHV if it is of such design and appearance as to lead any person to believe that it is a hackney carriage: s.48(1)(a)(ii).

37. All three licences (vehicle, driver, operator) must be in place (s.46(1)(e)) and all three have to be issued by the same authority: *Dittah* v. *Birmingham City Council* [1993] RTR 356.

38. PHVs must be "pre-booked", as the operator is obliged (s.56(2)) to make a record of the particulars of bookings accepted by him "before the commencement of each journey".

39. A licensed PHV with a duly licensed driver and operator can undertake journeys anywhere in England and Wales: *Adur District Council* v. *Fry* [1997] RTR 257. This is because the definition of "operate" does not include the actual provision of the journey.

40. Whilst it used to be the position that a booking could only be sub-contracted to an operator licensed by the same authority (*Shanks* v. *North Tyneside Borough Council* [2001] EWHC 533 (Admin)), s.11 of the Deregulation Act 2015 has inserted a new s.55A in the 1976 Act which, since 1 October 2015, has permitted subcontracting to, *inter alia*, licensed operators elsewhere in the country.

PHVs and plying for hire

41. In *Milton Keynes Borough Council* v. *Barry* (3 July 1984, unreported) (DC), B was driving a PHV with the words "Quick Cars" displayed on the front doors. He made a drop off at a bus station, and remained in situ, where he radioed his operator to say that he was clear. He was close to, but not on, a hackney carriage rank. Two minutes later a couple approached him and asked to be taken to a destination. B said he could not do that but he informed his operator of the request by radio. The operator said he could undertake the journey.

(1) Watkins L.J. found that B was plying for hire. He said:

> *I fail to understand how any reasonable bench of justices could have avoided inferring from the circumstances as found that the respondent, in remaining where he was,* ***adjacent to the Hackney carriage rank, was there in the hope and expectation that he would be able, within a relatively short period of time, to attract custom to himself and avail himself of it as and when presented****. It was not known nor could it have been by anyone just how long he would have to wait for further instructions from his employers. It may have been two or three minutes. It may have been quarter of an hour or a good deal longer than that. Presumably, therefore, the respondent would have remained where he was for whatever period of time elapsed between his arrival at the bus station and further instructions coming from his employers.*
>
> *It cannot have been without his contemplation, in my judgment, that during that time,* ***he being in the position he was and bearing all the hallmarks upon his cab of a person who was employed for the purpose of carrying passengers, that he would be approached or was likely to be approached by people who wished to avail themselves of the services of a taxi****. Taking all those considerations into account and looking squarely at them, I do not comprehend how any reasonable bench of justices could have avoided coming to the conclusion that this respondent was plying for hire. In coming to the conclusion which they did they it seems to me failed to see what was staring them in the face, namely, a less than innocent sojourn by this respondent in his position adjacent to the Hackney carriage rank.*

(2) McCullough J. agreed:

> *On the facts* ***found a strong prima facie case was raised that Mr Barry was parked where he was with the intention that members of the public would see his vehicle and, in particular, its sign saying***

> ***"Quick Cars", and would approach him in the belief that his vehicle was available for immediate hire. Within one or two minutes that is exactly what happened****. A couple approached him and after a brief radio call to his controller a contract of hire was entered into. By the time the couple approached him the driver had already told the controller that he had completed his previous engagement. Nevertheless he remained, waiting for his next engagement. How long would he have stayed had the couple not approached so soon? The inference is that he would have remained until, as would be likely early on a Saturday evening, someone passing through the bus station wanted to hire his taxi. I see nothing in the evidence to rebut the strong presumption that he was intending to exhibit his vehicle to potential hirers as a vehicle which might there and then be hired. In my judgment, therefore, conviction was inevitable.*

42. Similar findings were reached in:

(1) *Ogwr Borough Council* v. *Baker* [1989] C.O.D. 489, where the PHV was parked near to some hackney carriages outside a night club in Bridgend - it remained *in situ* for over half an hour - its windscreen bore a sticker saying "Allways" (the name of a PHV firm);

(2) *Nottingham City Council* v. *Woodings* [1994] RTR 72, where the driver, having returned from visiting nearby public conveniences, got back into a parked PHV and, in answer to a plain-clothed police officer's enquiry "Are you free?" said "Yes" - in this case the formulation in *Sales* v. *Lake* (see paragraph 21 above) was approved - the plying occurred when he answered the prospective passenger in the affirmative;

(3) *Eastbourne Borough Council* v. *Stirling* [2001] RTR 7, where PHVs were parked on a station forecourt and their drivers responded to an officer's enquiries that they did not have bookings;

(4) *Chorley Borough Council* v. *Thomas* [2001] EWHC 570 Admin, where a PHV was parked outside a pub and the driver, when asked if he was free, said that he was.

43. PHV cases that fell on the other side of the line were:

(1) *Dudley MBC* v. *Arif* [2011] EWHC 3880 (Admin) where A was in a PHV outside a cinema, who, when asked, agreed to take a plain-clothes officer to Kingswood - in that case, A did have a booking from another to go to that destination, and his belief that it was that booking was relevant to the question of whether he was plying for hire;

(2) *Gateshead* v. *Henderson* [2012] EWHC 807 (Admin), where at the time of the test purchase there was still a passenger in the back of the PHV.

Different requirements for plying for hire in the provinces than in London?

44. There is a distinction between the wording of the unlicensed plying for hire offence in s.7 of the 1869 Act (applicable in London) and the wording for the equivalent offence in the provinces under s.45 of the 1847 Act (applicable in the provinces)[7].

45. S.7 of the 1869 Act refers to the position when the "carriage plies for hire", whereas s.45 of the 1847 Act refers both to "a hackney carriage plying for hire" and to "any person … driving, standing or plying for hire with any carriage".

46. In *Cogley* v. *Sherwood* the court had placed weight[8] on the fact that the 1869 Act refers to the carriage plying for hire.

47. In *Nottingham* v. *Woodings,* Rose L.J. drew a distinction between the provincial and London statutes and concluded that exhibition of the vehicle was not necessary for it to be plying for hire *in the provinces*:

> *For my part, I accept Mr Lewis's submission that it is not a necessary ingredient of this offence under section 45, as distinct from an offence under section 7 of the Metropolitan Public Carriage Act 1869, for the car to be exhibited. Clearly, if a car is exhibited as a taxi and the driver is sitting in it,*

[7] See note 2 above.
[8] See paragraphs 7 and 17 above.

> *those are highly material circumstances when one comes to consider the question of whether he is plying for hire with a carriage. But it does not seem to me that it is a necessary ingredient in this offence that the vehicle should be exhibited in the way which was a necessary requirement in* Cogley *v.* Sherwood *and* Rose *v.* Welbeck Motors Ltd. *The vehicle must, of course, be with the accused driver because that is what section 45 requires. No doubt that will mean it is somewhere very near, but whether or not the vehicle is itself plying for hire within* Cogley *v.* Sherwood *and* Rose *v.* Welbeck Motors Limited *is not, in my view, determinative of whether or not the driver is plying for hire with a carriage.*

48. There are criticisms that can be made of this analysis. It seems odd that a vehicle that "plies for hire" in London does something different than a vehicle which is "used for plying fore hire" in the provinces. The offence in s.45 of the 1847 Act indeed has two parts, the first actually involving the carriage plying for hire and then the second where the driver plies for hire. The first limb of the offence is the proprietor offence (where the proprietor does not need to be anywhere near the carriage) and the second limb is the driver offence, where necessarily the driver needs to be either driving or in the vicinity of the carriage.

49. So, there may be a distinction without a difference between these two sections. In *Gateshead* v. *Henderson*[9], a 1847 Act case, an attempt to distinguish *Cogley* on the basis that it was an 1869 Act case was rejected, albeit relying on its approval in *Woodings*!

50. However, *Nottingham* v. *Woodings* remains authority for the proposition that plying for hire can occur without the exhibition of the vehicle in the provinces. It is a moot point whether (by what would admittedly be rather tortuous logic) the same principle can now be relied upon for plying for hire in London.

PHVs in London: the Private Hire Vehicles (London) Act 1988

51. The PHV licensing regime was extended to London by the Private Hire Vehicles (London) Act 1998.

[9] See paragraph 43(2) above.

52. The London PHV regime is very similar (although not identical) to that found in the provinces.

53. Particular features to note in the London regime are:

(1) a "private hire vehicle" under that Act excludes hackney carriages and vehicles licensed in Scotland as taxis and private hire vehicles (ss.1(1)(a), 36) but not PHVs licensed under the 1976 Act;

(2) "operator" is defined as "a person who makes provision for the invitation or acceptance of, **or who accepts**, private hire bookings" (s.1(1)(b));

(3) there is the concept of an "operating centre", which is "premises at which private hire bookings are accepted by an operator" (s.1(5));

(4) the operating centre has to be a physical place in London, because an application for an operator's licence "shall state the address of any premises in London which the operator proposes to use an operating centre" (s.3(3)), and the licence as granted will specify that place (s.3(6)(a));

(5) it is an offence for a London PHV operator to accept a private hire booking in London otherwise than at an operating centre specified in his licence (s.4(1))[10];

(6) pre-booking is again[11] inferred from the necessity to make records "before the commencement of each journey booked" (s.4(3)(c));

(7) sub-contracting is expressly provided for (s.5) including sub-contracting to operators licensed under the 1976 Act (s.5(1)(b)).

Has private hire licensing changed the meaning of plying for hire?

54. It has been suggested (see Button on Taxis, 3rd edition, ¶8.18) that the introduction of PHVs means that it makes sense for the plying for hire test to be developed in the light of modern circumstances. Mr Button says "Unless every [PHV] could be hidden

[10] By contrast, the 1976 Act makes no requirement as to where bookings must be accepted, but where (as is very often the case) a licence specifies an address to which it relates, the licence will only relate to operating from that address: *Kingston upon Hull City Council* v. *Wilson* [1995] WL 1082181.

[11] See paragraph 38 above.

in a garage when not carrying out a hiring, it would appear possible to argue that it was plying or standing for hire".

55. Take Donovan J.'s scenario in *Cogley* v. *Sherwood* (see paragraph 16 above): if a vehicle now displays a "taxi" sign on a return journey, is it plying for hire? It seems difficult to think this is now the law[12].

56. It is was and possibly still is fairly common for PHVs to assemble outside operator's offices: are they plying as they were in *Gilbert* v. *McKay*[13]? This is a hard case to distinguish from a typical PHV office. I suppose in a modern interpretation, if the operator on Rupert Street was a licensed PHV operator and the vehicles parked outside all licensed PHVs, then that might very well give rise to an impression that there was no plying for hire, but rather a licensed PHV business where bookings had to be made via the office.

57. I do not think that the introduction of PHVs has created an exception to plying for hire. Rather, the system is a further factual circumstance to be considered in relevant cases. The fact that a vehicle is a PHV may in some circumstances tend to suggest it is plying for hire (see *Milton Keynes Borough Council* v. *Barry* and the cases listed in paragraph 42 above) but it may also militate against such a suggestion: see *Dudley* v. *Arif*[14], and my suggestion (in the previous paragraph) of how *Gilbert* v. *McKay* might be decided today.

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[12] Although I note that some authorities insist upon signage that says "Pre-booked hires only" on PHVs. This may be construed as a rebuttal of might otherwise be a presumption caused by the exhibition of the vehicle that it was plying for hire.
[13] See paragraph 12(1) above.
[14] See paragraph 43(1) above.