

KNOW YOUR RIGHTS *by Alan Fleming*

Many years ago, when I first became a licensed cab driver in London, the first thing that went through my mind when I walked out of the door at the PCO was what's in store for me. Like many other drivers who entered into the trade for the first year I worked nights. I used to frequent the normal watering holes and would listen to the banter of the older and more experienced drivers. It did not take me very long to discover that I had entered into a world where the cab driver was a target for every crank out there on the streets. I soon learned that although those drivers were more experienced in knowing all the ins and outs of the job, their knowledge of the laws that govern us was very limited.

I used to hear tales told by drivers of how they were called to Scotland Yard in those days, to answer a complaint from a member of the public. They would always boast how they laid down the law to the cab enforcement officer who was interviewing them, but the outcome of the meeting was always the same, the complaint would go on record. I have always been a person who believes in the English principle of law, that a man is innocent until proven guilty and I could tell from what I heard that for London cab drivers the reverse was the rule. For the first two or three years I went about listening to the stories of those older and wiser drivers and by listening to them I learnt quite a lot.

It had not taken me too long to discover that the London cab driver was treated like a second class citizen, so I decided to learn about the laws that govern us. I decided to go to the Law Library in Holborn and find out about the laws we have to abide by. I discovered what I wanted to know in Halsbury's Laws of England.

I soon discovered that those laws were not there just to protect the public they were also there for the protection of the driver. Unfortunately those parts of the law that were there to protect the driver are never invoked by the PCO, or indeed Scotland Yard who were the licensing authority for the trade. And to this day things have not changed.

PUBLIC CARRIAGE OFFICE COMPLAINTS PROCEDURE

For some time now I have had a bee in my bonnet about the way the PCO have adopted their own procedure for dealing with complaints against drivers. As all drivers are aware, complaints are made directly to the PCO which is unlawful. The correct way for a member of the public to make a complaint is before a magistrate and not to the PCO. The complaint has to be made within 7 days, recently changed to 28 days, from when the alleged incident occurred.

This is covered by section 39 of the London Hackney Carriage Act of 1843. Both complainant and driver should come before the Court and if the complainant cannot prove their case then the driver is awarded costs for his loss of earnings. If the driver is found to be innocent then he is awarded compensation under sect. 56 of the London Hackney Carriage Act of 1831, this to be paid by the complainant.

The Public Carriage Office will always claim they have the right to take and determine the outcome of a complaint due to section 30 (1) of the 1934 London Cab Order. Further they claim that their view is supported by three judicial reviews on the matter. Irrespective, their procedures are unlawful, the reason being that the cases have always been argued wrongly. The argument has always been does the Public Carriage Office have the right to use a totting up process on complaints? The straight answer is they do, but only if the complaint has been proved at a Magistrates Court and the driver found guilty. The 1934 Cab Order only gives them the right to suspend or revoke a license for any matter coming to their attention after the license was granted. However, that can only be done if the driver has been found guilty in a Magistrates Court. The Public Carriage Office have put aside the lawful remedy and adopted their own procedures. This is born out by a former Assistant Commissioner Mr Paul Manning. He once wrote to me in answer to an article I had written - these were his words. He said: "You are quite right the public can make complaints in the way you have described." He then went on to say the following. "However, I will not resurrect legislation made 150 years ago in favour of the system we have adopted." So there you have it, the Met Police and the PCO seem to have usurped the authority of Parliament.

SUSPENSION OR REVOCATION OF YOUR LICENSE

When you receive a letter from the PCO with a copy of the letter of complaint, it is important that you answer the complaint. If you do not, at some time in the future that will count against you if you have to go to court. When you are appealing against a PCO decision to revoke or suspend your license, the Magistrate will ask you if you answered the complaint at the time of receiving it. If you have not, then the complaint will be taken as a matter of fact.

Most drivers will never have to go through this process; unfortunately there are those that do and it is never a pleasant exercise for them. When you get a letter from the PCO stating that they are considering suspending or revoking your license, do not ignore it. You will be given 14 days to respond giving your reasons why this should not be considered. Within 28 days you will receive a reply; you may be lucky and only get a written warning. On the other hand you will be told that the authority has decided to suspend your license for a determined period or revoke it.

How you deal with this is as follows, you obviously will want to continue working as long as possible and this is how you do it. You must apply for a reconsideration hearing under Sect. (17) of the 1985 Transport Act. This will take about a month for the authority to arrange. You are then given a date to attend the PCO where you will make your case before the representative of the authority. The authority will then have to respond to your submissions within 28 days so you will have gained time to carry on working. If the decision goes against you, you can appeal to a Magistrates Court; this will take another couple of months. It is at this stage that you will need to be legally represented. Hopefully the outcome of your appeal will be in your favour if you have good counsel. While your appeal process is ongoing you will be able to continue driving. However, if it is a medical reason why your licence has been revoked you will have to hand in the licence, within 5 days. In this situation you should not request a personal hearing but appeal straight to the Magistrates Court.

REFUSING TO BE HIRED

London Hackney Carriage Act 1831 Sect (35)

I am quite sure most drivers know when it is lawful to refuse. Most drivers know they can refuse if the journey is more than 12 miles or more than one hour in duration, or twenty miles at Heathrow. However, there are a few more that drivers do not know and are as follows. A driver is at liberty to refuse a hiring if he is stationary due to prevailing traffic conditions. This has been so since Lord Chief Justice Goddard laid down his judgement in Hunt v Morgan 1949. A driver does not have to accept a hiring if he is parked on an officially designated parking bay, or on a hotel forecourt where hackney carriage law does not apply. You do not have to carry more than the permitted number of persons you are licensed to carry. A driver can refuse if he is asked to carry inflammable or combustible materials or any form of goods or luggage that the driver considers would be dangerous in transit. You are also not obliged to accept multiple destination hirings.

What is not generally known is that whilst a cab is in motion, it is not plying for hire, even when the light is on. The light in fact is irrelevant as it is only required to be alight during the hours of darkness. It is a common misconception of the general public and for them is confusing. A cab is only plying for hire if it is found standing and this is covered by Sect.35 of the 1831 Act. What this means is that if you respond to someone hailing you and you stop for them, you are found standing. It is at that point that you are plying for hire lawfully, just as if you were on a rank.

There is one reason for refusal I doubt drivers will know of and I am not surprised, as you would need to have a degree in medical science if you did.

A driver is not compelled to accept a hiring if he suspects that a person has a contagious or notifiable disease, the list is as follows. Hemorrhagic fever, Lhassa fever, Smallpox, Green Monkey fever, Typhus, Typhoid Diphtheria to name but a few. As you can see you would need a degree in medical science to know any of the above diseases. These diseases are all listed under the Public Health Act 1985.

LEAVING CAB ON RANK UNATTENDED

London Hackney Carriage Act (1853)

This you see everywhere you go and is an absolute offence which means there is no defence. Well there is, but the onus is on the driver to prove it. There are only two defences to this and they are as follows. You can leave a cab on a rank if it is incapacitated for a reasonable time to effect its removal or to carry out a repair. The second is if you have been taken ill and arrangements have been made for the cabs removal.

NOT HAVING BADGE OR BILL

London Hackney Carriage Act (1843 Sect. 17)

The law in regard to these two offences is quite blunt and there is no defence to either at all. If you have lost either, you must report the loss as soon as possible to the police who will give you a form to say you have reported it. You must then report that loss to the PCO and inform them of your having reported it to the police. The police seem to think that whilst you are driving your cab you must wear your badge, and they are quite wrong. This section of the Act states the following. Every licensed driver shall at all times wear his badge during his employment. Therefore you only have to wear your badge whilst working so when are you working? For the definition of this we have to refer to the judgement in Hunt v Morgan you are only working when found standing or you are hired. The moving vehicle does not ply for hire so at that point you are not working.

UNLAWFUL PLYING FOR HIRE

London Hackney Carriage Act 1843 section 33

Many drivers will know that it is an offence to ply for hire in any street road or place other than on an authorised standing. What this means is that you cannot take up a position and wait to be hired, if you are not on a rank.

In May 2008, the Transport for London Act came into force now this act will have serious consequences for drivers from time to time. What this Act does is to make it easier for the appointed TFL officer to issue fixed penalty notices for some of the above offences. Many of you will not know that under Sect. 16 of the 1843 act your details can be given to who ever requires them.

This has toughened up the Act to give you more protection, however! It does not go far enough. The law now states that TFL may give a driver's details to any person who they consider has reasonable cause for requiring the information. This comes under clause 12 of the Act and amends sect. 16 of the 1843 Act

Clause 14 amends Sect. 38 of the 1843 act in which complaints had to be made within 7 days. This has been extended now to 28 days.

Clause 15 amends the 1907 Stage Carriage Act so that driver and passenger can negotiate a fare for a journey going outside of London. If no agreement is reached then the fare must be as per the meter. This section is ambiguous as it implies that a driver must accept the fare so this is going to cause problems.

FPN's can be issued for carrying excess passengers and plying for hire outside of your licensed area. They will also be issued for not wearing your badge or being in possession of your bill. Further for leaving your cab unattended on a rank. As I said earlier the laws are there to protect both the public and the driver, so put this article away somewhere for future reference.

Good luck to you all and good hunting.

(Editor's note: This article has been written by Alan Fleming and any driver wishing to contact Mr Fleming can do so on the telephone number below. This article is informative but any opinion contained in it is not necessarily that of Taxi Globe.)

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Taxidivers & Owners Legal Protection Ltd is the brainchild of Alan Fleming, formerly the Chairman of The London Cab Drivers Club Ltd. Alan said: "Taxidivers & Owners Legal Protection Ltd will be a non-political organization and will provide legal cover and representation for fully paid-up members. A legal firm, based in the City of London, who has a vast knowledge of Hackney Carriage Law have been appointed by our insurers. Our subscription rate is exceptionally low due to low overheads, which have been brought about by careful and economic planning. We intend to use modern communication, to cut down on administrative costs."

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