

Judgment 32/2009

**Margo v Environment Department – Royal Court
(Civil Action File 1367) – 8 July 2009**

Road Traffic (Permits to Drive Public Service Vehicles) Ordinance, 1986 – appeal from revocation of Public Service Vehicle Permit – appellant’s conviction for holding mobile phone while driving – Department took the most drastic option open to it, namely revocation of the Permit – Jurats held that the decision was unreasonable –appeal allowed with costs

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1367

The 8th day of July, 2009 before Richard John Collas, Esquire, Deputy Bailiff; present: Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquires, Reverend Peter Gerald Lane, Barbara Jean Bartie, David Osmond Le Conte, Esquire, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire, and Constance Helyar-Wilkinson, Jurats

In the Appeal of MALCOLM MARGO (“the Appellant”) against the decision of the ENVIRONMENT DEPARTMENT (“the Respondent”) made on the 1st day of June, 2009.

THE COURT, having heard the Appellant in person and Advocate P. Nicol-Gent for the Respondent herein, unanimously ALLOWED the appeal and AWARDED Court costs in favour of the Appellant.

S M SIMMONDS
Her Majesty’s Deputy Greffier

OFFICIAL TRANSCRIPT

smon/MargoJment 8.7.09

WEDNESDAY 8TH JULY 2009

IN ROYAL COURT 1

Before

**Richard John Collas, Esq., Deputy Bailiff
and 9 Jurats**

MALCOLM MARGO

- v -

THE ENVIRONMENT DEPARTMENT

Judgment of the Court

THE DEPUTY BAILIFF:

1. I am now going to deliver the decision of the Court. Just for the record the findings of fact are the findings of the Jurats and the directions on the law are my directions.
2. The Court's decision is that the Court has noted that Mr. Margo was born in January 1945, so under the provisions of the Road Traffic Permits to Drive Public Service Vehicles Ordinance 1986, his licence had been renewed annually on several occasions up to and including December 2008. On each of those occasions he had convictions recorded against him but not withstanding those convictions the licence was renewed, thereby indicating that the Department considered him to be a fit and proper person, not withstanding those convictions, and so the Department renewed his licence on each of those occasions including, as I say, in December 2008.
3. Then in 2009, I think the date was February 2009, yes, in February 2009, he received the additional conviction for holding a mobile phone whilst driving a vehicle and for that he was fined £180 and disqualified from driving for 2 months. That is a serious offence as is reflected in the sentence imposed by the Magistrate's Court. The Department considered it to be the straw that broke the camel's back and rendered Mr. Margo to be someone who is not a fit and proper person to hold a public service vehicle licence.
4. The Court has had available to it the detailed minutes of the Department's meeting on 26th May and are very grateful for seeing those minutes. The Court considers that the Department was correct to review Mr. Margo's licence in the light of his convictions including that most recent conviction. The Department were right to call him in to the

meeting and to have the opportunity to comment before they decided what to do in the light of those convictions.

5. There were a number of options available to the Department; under Section 9 of the Ordinance they could have revoked, suspended or varied the permit if they considered that by reason of his conduct he was not a fit and proper person to hold the permit. They could also have given him a verbal and/or a written caution or they could have done nothing. Instead the Department decided to take the most drastic of the options available to it.
6. Now, I have reminded the Jurats that the burden of proof in this matter is on the Department to show that the decision was reasonable and that the standard of proof in this case is the civil standard of the balance of probabilities and I have also reminded them as to what the test of reasonableness amounts to, quoting the famous and well known words of Lord Hailsham, the Lord Chancellor in the case of *In re: W* that were referred to by the Guernsey Court of Appeal in the *Walters v. Housing Authority* appeal, in which Lord Hailsham said:

“Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no Court should seek to replace the individual’s judgment with his own.”

And it goes on to say:

“... this is the approach that the Jurats should be directed to adopt towards the decision...” in this case the Department *“... insofar as they are free to consider such decision. If the Jurats then consider, having weighed up all the evidence, that the decision reached by the Department was unreasonable, they should so say and the Court would in consequence allow the appeal.”*

7. Having done that and having taken account of the evidence and all the circumstances the Jurats consider that the decision to revoke Mr. Margo’s public service vehicle licence, being the most drastic of the options that were available to the Department, was an unreasonable decision and they therefore allow the appeal and do so unanimously.
8. And we do that on the understanding that the matter will now go back to the Department to be reconsidered, and so Mr. Margo can’t start driving a public service vehicle immediately because the licence has been revoked, it needs to be reissued before he can do that. So it goes back to the Department for reconsideration. Thank you.
9. I don’t know whether you wish to apply for costs, I know you haven’t incurred legal fees but you will have incurred Court costs in the matter, costs often follow the event, do you wish to make any application?

MR. MARGO: Court costs and my costs.

THE DEPUTY BAILIFF: Yes, so it would just be the Court fees that you've had to pay to get the matter before the Court.

ADVOCATE NICOL-GENT: I can't resist that, sir.

THE DEPUTY BAILIFF: No, in that case there will be an order for costs.

I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

Suzanne M. O'Neill
Friday 10th July 2009