

Strategic Licensing Committee – 18 March 2015

**Hackney Carriage and Private Hire Licensing
Fees and Charges 2015 – 2016**

Objection to variation of fees

Yet again the taxi and private hire trade are facing increased licence fees. It's not been made clear that despite Shropshire council's radical cuts to service that the trade have the burden of increased fees year on year.

Although calculation of expenditure have treated hackney carriages as being funded from a single pot where as they operate out of five separate zones and costs vary enormously.

Drivers (zone3) Oswestry have very limited access to licensing officer's limited enforcement and ranks.

. The information currently presented to Strategic Licensing Committee is incomplete and members will not be able to ensure that the Council is about to introduce fees that would cause the Council to be guilty of making unlawful charges, which may become the subject of objections to the District Auditor under the provisions of section 17 of the Audit Commission Act 1998. Any investigation by the District Auditor might cost the Council something in the region of £50,000 (from its central funds as they cannot charge the costs to taxi licensing) and might be required to refund any sums held in the future to have been overcharged. Local trade already are struggling to survive in these difficult times and are serving local communities across the whole of Shropshire.

Thomas Mark Higgins (Badge Number JD0 834)

Officer response to objection made by Thomas Mark Higgins

The current proposals mean that:

- hackney carriage and private hire driver and vehicle licence fees will increase by between £2 and £35
- knowledge test resit fee will reduce by £20
- driver training assessment fee will reduce by £4

- private hire operators face the most significant increases of between £42 and £369¹; however, the significant majority of operators face an increase of between £42 and £102
- fees for replacing plates, door signs, badges and the basic administration fee remain the same

Shropshire Council has not made radical cuts to the hackney carriage and private hire licensing service. It has redesigned the way in which the service is delivered utilising largely centrally based resources to better provide the administrative element of the licensing function and to increase the resources that are available to carry out compliance checks and enforcement activity associated with licensed vehicles and operators. The resources dedicated to compliance checks and enforcement are likely to further increase as the Council continues to review and strengthen its safeguarding role.

The proposed fee increases for hackney carriage licences are between £2 and £10. The calculation of these fees are considered on the basis of five separate zones. However, the way in which hackney carriage licensing is delivered both from an administrative and enforcement perspective means that the costs associated with hackney carriage licensing do not vary across the zones and hence the hackney carriage licence fee is calculated to be the same for all five zones. At present, the costs incurred by the Highways Service for providing hackney ranks is not built into the fee calculations.

The information presented to the Strategic Licensing Committee is based on the available financial information and is as complete as it can practically be at this time. There is a clear and reasoned process that has drawn together the financial information and enabled the calculations to be undertaken as robustly as possible. The process has been scrutinised by senior Council finance officers to ensure accuracy and to demonstrate reconciliation of the calculated figures by way of the Council's accounting mechanisms. This is carried out in order to demonstrate to internal and external auditors that the introduction of the proposed fees is lawful.

¹ The £369 increase is an anomaly due to a typographical error made in the 2014/15 fees and charges report.

Licensing
Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Our Ref: DBW / Central & Diamond
Your Ref:
Date: 15 February 2015
Please ask for: David Wilson

**By First Class post and email to:
licensing@shropshire.gov.uk**

Dear Sir / Madam,

**Local Government (Miscellaneous Provisions) Act 1976, sections 53 and 70
Objection by Central Taxis (Shrewsbury) and Diamond Cars (Shifnal)**

I act on behalf of Central Taxis of Shrewsbury and Diamond Cars of Shifnal, the two largest private hire companies in the county.

Please accept this letter as their joint objection to the changes to the various fees relating to hackney carriage and private hire licensing.

Whilst one understands the Council's desire to set fees for the forthcoming financial year, it is disappointing to note that:

- The officer report, which refers to the Court of Appeal judgment in R (on the application of Henning and others) v Westminster City Council, did not mention that Westminster had appealed to the Supreme Court (formerly the House of Lords) or suggest that the setting of fees should be deferred until the Supreme Court gives its judgment.

Lord Neuberger, Lord Mance, Lord Clarke, Lord Reed and Lord Toulson heard the appeal on 13 January 2015. Licensing authorities and licensing practitioners the length and breadth of the country anxiously await their Lordships' opinions.

- The officer report does not mention that the fees set in 2013 are subject to an on-going investigation by the External Auditor or suggest that the setting of fees should be deferred until the conclusion of that investigation, which might sensibly also follow the Supreme Court giving judgment in the Hemming case.

Principal:
David B Wilson Cert HELL, MLO, MBII,tp

Website:
www.a2zlicensing.co.uk
Email:
enquiries@a2zlicensing.co.uk

In association with:
a2z Licensing Ltd
3 Biddick Hall Cottages, Lambton Park, Chester-le-Street DH3 4PH
Tel: 0191 2449638 / 0191 3857313
86 Hallam Grange Rise, Lodge Moor, Sheffield S10 4BG
Tel: 0191 2449637

- The officer report does not mention the High Court judgment and declaration made in R (on the application of Cummings) v Cardiff City Council on 18 June 2014. I attach a copy of the court's order and declaration for your information, although the judgment itself is available under the case citation [2014] EWHC 2544 (Admin).

In this case, the court quashed the fees set by Cardiff because: (i) the level of fees set failed to have regard to and / or account for any surplus or deficit generated in previous years (dating back to 2009); and (ii) the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have been accrued: both between each regime and in respect of each licence within those regimes.

In this regard, the court declared that:

- (i) A local authority when determining hackney carriage and private hire licence fees under section 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by section 53 and 70.
- (ii) A local authority must keep separate accounts for and ensure when determining hackney carriage and private hire licensing fees under sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 that any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes, and between each licence within those regimes, are only accrued and a surplus from one licensing regime shall not be used to subsidise a deficit in another.

In view of the foregoing, the Council is asked to defer considering this (and any other) objection in relation to hackney carriage and private hire licensing fees until the Supreme Court gives its judgment and the External Auditor has presented his decision and statement of reasons.

As the Council did not comply with the requirements set out by the High Court in Cummings v Cardiff when the Strategic Licensing Committee set the fees on 10 December 2014, the process is fundamentally legally flawed and will, if necessary, be challenged by my clients.

Should the Council consider that the fees will only be determined and set at a further meeting of the Strategic Licensing Committee on 18 March 2015 (or any other date), may I respectfully draw to your attention that the fees were set on 10 December 2014 and would, according to the Council's statutory notice, take effect on 16 February 2015 unless objection is made and not withdrawn.

Contrary to popular belief, the statutory process is an objection process and not a consultative process.

If, despite the foregoing, the Council proceeds to consider the substantive objections to the detail of the proposed fees, my clients raise the following specific issues:

- The officer report makes broad statements to justify fee increases (para 4.8), but does not address the detail licence-by-licence and fee-by-fee.
- The fees in relation to driver licence fees are to go up by £18 for a three-year licence and £35 for a new one-year licence to increase the effectiveness of the administration process specifically for safeguarding purposes, but there is no detail as to what that entails or why the amount of the increase is almost double for a one-year licence than that for a three-year licence.
- In relation to vehicle licensing, the officer report appears to offer no explanation as to why changes are proposed. However, Appendix A Part 3 shows that there are no changes to be made to the costs of exterior or interior plates, the provision of fare cards or private hire door signs. In the circumstances, the proposed increases can only relate to staff costs and centrally charged overheads, but again there is no specific detail.
- Although it is not explained in the officer report, the effect of the proposed fee changes to hackney carriage and private hire vehicle licensing is to make the fees for both types of vehicle the same, although the private hire fees also include an additional £13 in relation to a pair of door signs.

To avoid giving the impression that fees for private hire vehicle licences are inexplicably higher than they are for hackney carriages, the Council could set the fees at the same level, i.e. charging separately for door signs for private hire vehicles.

- Despite having raised this query in 2013, officers have still failed to provide a rational explanation as to why the licence fees for the renewal of a vehicle licence, whether it be a hackney carriage or a private hire vehicle, is more than it is for the initial grant of a licence. Firstly, one would imagine that the costs of data input in relation to a vehicle licence renewal would be less than those at initial application when all the data has to be input. The costs of issuing a renewal application should form part of the fee of the licence to which a renewal would relate and not to the renewed licence, because the costs of issuing the renewal will not be recovered, if a renewal application is not made.
- The lawfulness (or more particularly, the unlawfulness) of the Council's fee structure for private hire operators, based on "the size of the operation", i.e. the number of private hire vehicles under the operator's control was raised when fees were set in 2013 and featured prominently in the objection to the External Auditor. As stated in the officer report (para 4.9), this is only the second year of operation of this charging

structure and consequently, early enough for the Council to reverse it, without exposing itself to significant claims for repayment in relation to unlawfully charged fees. By charging an operator a fee for each vehicle working for them, the Council is subsidising the costs of vehicle or driver licensing (subject to it being entitled to levy a charge against either of those licences in the first place) by charging a fee to a different licence type (the private hire operator licence fee) contrary to the declaration made by Mr Justice Hickinbottom in R (on the application of Cummings) v Cardiff City Council [2014] EWHC 2544 (Admin), referred to above. The officer calculations in relation to the 2013 fees shows that the total cost of a private hire operator's licence was only £86.40, which was made up of staff costs of £25.18 and £61.22 of other costs.

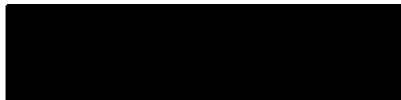
- The assertion that "losses that are not funded by other means, including being subsidised by the council tax payer, may result in the Council's ability to effectively deliver the overall licensing regime" (para 4.10) is wrong. Whilst confirmed by the declaration made in Cummings v Cardiff, it was widely (correctly) believed that losses and surpluses should be carried forward, although it is now also clear that applies to each individual licence type and not in relation to the combined taxi accounts. The Council appears to have subscribed to that view, because in 2012 it was reported that a £60,000 deficit had been eliminated.
- All hackney carriage and private hire licensing fees are said "also [to have been] affected by the changes made to the way in which average hourly officer rates are now calculated and charged" (para 4.8). But no information is provided as to how they were calculated in the past, how they have now been calculated or why it was considered necessary to make such changes.
- Despite a detailed breakdown having not been provided to Strategic Licensing Committee when it resolved to set the fees the subject of this objection on 10 December 2014, information provided by officers in early 2014 in relation to the fees set in 2013, showed that up to 80 per cent of a licence fee related to non-staff costs and as little as 20 per cent related to the staff costs of providing the service. Even in relation to the fee in respect of which the smallest element of the fee related to non-staff costs, this still amounted to 40 per cent of the fee. Following years of austerity and the Council's repeated restructuring and cost saving endeavours, it is unbelievable that the average non-staff costs still make up about 60 per cent of each hackney carriage and private hire licence fee.
- As the Council has resolved, subject to the making and consideration of objections, to reduce some fees, it is assumed there must be a surplus on the account for that particular licence type / item of charge. That information has not been disclosed.
- The issue of past surpluses and deficits is one that remains unaddressed. On 21 March 2012, Councillor Peter Adams reported to the Strategic Licensing Committee that an existing deficit of £60,000 had been eliminated by increased fee revenue. Despite that announcement, at the same meeting, Strategic Licensing Committee resolved to increase the fees and did so again on 28 November 2013. In the

circumstances, it appears that the Council made a profit in 2011 / 2012 and ought, therefore, to have accrued larger surpluses in each subsequent year, namely 2012 / 2013, 2013 / 2014 and 2014 / 2015 and is seeking to further increase fees for 2015 / 2016. The Council will appreciate that if, as expected by my clients and others in the trade, it has unlawfully set fees and accrued substantial surpluses in past years, it is likely to find itself in the position of Cardiff in the Cummings case. In that case, Cardiff was ordered to pay the five defendants that brought claims in excess of £90,000 in respect of damages and interest in relation to fees charged from 1 May 2009. Cardiff was also ordered to pay the defendants' legal costs.

In all the circumstances, the Council is asked to resolve not to implement the proposed fee increases, as agreed on 10 December 2014 or any such increases (but to implement the fee reductions) and to await the handing down of their Lordship's opinions (judgments) in the Supreme Court in the Hemmings case and the conclusion of the on-going investigation of the External Auditor.

If, however, the Council wishes to proceed to determine the objections to the fees, please also accept this letter as notification under Procedure Rule 14 of the Constitution of Council of my request to address Strategic Licensing Committee in relation to this matter on behalf of my aforementioned clients, Central Taxis and Diamond Cars.

Yours faithfully,



David B Wilson

Licensing Consultant, Mediator and Trainer
Consulting Editor, Paterson's Licensing Acts 2015

Email: david.wilson@a2zlicensing.co.uk
Mobile: 07794 776383

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES
BEFORE THE HON MR JUSTICE HICKINBOTTOM

Claim No CO/12090/2013

BETWEEN:



THE QUEEN ON THE APPLICATION OF

- (1) CARL CUMMINGS
- (2) SUPATAX 2000 LIMITED
- (3) PRIMEOUTLET LIMITED
- (4) STEPHEN MEARS
- (5) FARZAND ALI

Claimants

-v-

THE COUNCIL OF THE CITY AND COUNTY OF CARDIFF

Defendant

ORDER

UPON the Claimants' application to amend their claim and the final hearing of the claim for judicial review

AND UPON HEARING Leading and Junior Counsel for the Claimants and Leading and Junior Counsel for the Defendant

IT IS ORDERED THAT:

1. The Claimants' application to amend is refused.
2. The claim for judicial review be granted.
3. The decisions of the Defendant made on 3 June 2013 as they relate to hackney carriage and private hire vehicle and respective drivers' licence fees be quashed on the basis that they are unlawful for the following reasons:
 - 3.1 the level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 1 May 2009;
 - 3.2 the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under

which they have accrued: both between each regime and in respect of each licence within those regimes; and

3.3 the level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area.

4. It be declared that:

4.1 A local authority when determining hackney carriage and private hire licence fees under section 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by section 53 and 70.

4.2 A local authority must keep separate accounts for and ensure when determining hackney carriage and private hire licence fees under sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 that any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes, and between each licence within those regimes, are only accounted for and taken into account within the regime under which they have accrued and a surplus from one licensing regime shall not to be used to subsidise a deficit in another.

5. The Defendant do pay the Claimants the following sums by way of restitution in respect of sums unlawfully obtained from the Claimants in respect of hackney carriage and private hire license fees from 1 May 2009 (but on the footing and basis that this order and subsequent payment shall not of itself prevent the Claimants from pursuing any claim that (i) the Defendant is obliged to make restitution in respect of such payments prior to 1 May 2009 and (ii) the Defendant is under an obligation to make restitution in respect of any greater sum should the Defendant's decisions of March 2014 re-calculating the sums that should have been claimed for the period after 1 May 2009 be set aside):

5.1 The Defendant shall pay the First, Second and Third Claimant £84,314 and £7,861 interest within 21 days of the provision by the First, Second and Third Claimant to the Defendant of details of a bank account into which the payment is to be made;

5.2 The Defendant shall pay the Fourth Claimant £77 and £10 interest; and

5.3 The Defendant shall pay the Fifth Claimant £343 and £36 interest.

6. The following costs order be made:

6.1 The Claimants to pay the Defendant's costs of the application to amend the claim.

6.2 The Defendant do pay the Claimants' costs of the claim up to 5 May 2014.

6.3 The Claimants do pay the Defendant's costs of the claim from 5 May 2014.

In each case, in default of agreement the costs shall be assessed on the standard basis, and the costs of the Claimants and the Defendant shall be set-off against each other.

7. The Claimants' application for permission to appeal is refused.

DATED this 18th day of June 2014

Officer response to objection made by David Wilson (a2z Licensing)

The point made concerning the lack of specific reference to the appeal to the Supreme Court in connection with the R v Westminster City Council (Hemming) case is noted. However, deferring the setting of the fees until after the Supreme Court gives its judgement is considered unnecessary. The most significant issue being considered by the appeal is whether it is lawful to incorporate, into a licence fee, the cost of enforcing against unlicensed activities. If Westminster City Council wins its appeal, the anticipated impact on Shropshire Council's hackney carriage and private hire licensing fees is likely to be minimal. This is because the majority of enforcement is undertaken in relation to licensed vehicles and operators and the fees that were set for 2014/15 and those that are proposed for 2015/16 do not include the cost of enforcing against unlicensed activities. As a consequence, it is deemed extremely unlikely to be prejudicial to licence applicants or existing licence holders if the Strategic Licensing Committee was to make a decision to set fees in advance of the Supreme Court's judgement. Deferring the decision may, in fact, have an adverse impact as subsequent fees may require a greater percentage increase than may otherwise be required in 2016/17 and beyond.

The external auditor's investigation into the fees set in 2013 is being considered separately; the outcomes, if necessary, will be presented to the Committee for its consideration in due course. On the basis that the external auditor has not advised the Council to defer setting fees until the conclusion of their investigation, it is considered appropriate for the Committee to consider the proposals and agree the fees for 2015/16.

Whilst the report to the Committee in December 2014 did not specifically refer to the High Court judgement in the Cardiff City Council case, the text of the report was drafted based on an understanding of the judgement made in this case. The report made it clear in paragraphs 4.5 and 4.6 that the process to set hackney carriage and private hire (and other discretionary) fees must take account of any surplus or deficit and must do so in relation to individual licence types.

The basis of the assertion that the Council did not comply with the requirements set out by the High Court in the Cardiff City Council case is unclear. The Council does not accept that the process is fundamentally legally flawed. The indication that the Council's process will, if necessary, be challenged is duly noted.

With respect to the details contained in the statutory notice, the fees were set on the 10 December 2014 and would have taken effect on the 16 February 2015 but for the fact that objections were received and not withdrawn and, therefore, the fees did not and cannot take effect from the 16 February. The Committee must now make a decision and agree the fees (modifying the proposed variations if the Committee so wish) that will come into effect on a date that must be not more than 2 months after the 16 February. The proposal is for the Committee to agree the fees with effect from 1 April, this being a date that is not more than 2 months after the 16 February. The 1 April date also makes financial sense for the Authority as this coincides with the commencement of the new financial year.

APPENDIX A

The report prepared for the Committee has clarified that the process is a legally prescribed process that allows objections to be made and considered rather than a consultative process in the strictest sense. Nevertheless, there is little difference, if any, in terms of the actual end result and outcome.

A number of concerns, questions and allegations are made or implied throughout the latter part of the submission. Having considered these individually, the simple fact remains that overall the Council is proposing reasonable fees based on lawful principles. Using relevant and available financial information, officers have utilised a practical, logical and documented process that is subject to continuous review to determine the proposed fees on an annual basis. A significant commitment is made by licensing practitioners, managers and finance officers to ensure licensing fees are fair and lawful. The aim is to set fees to recover the full costs, within defined legal parameters, of providing this service. There is not and never has been any intention to deliver a surplus in this service area or for one licensing regime to subsidise another. Overall, the aim has been, and continues to be, to make neither a surplus nor a deficit and to ensure applicants pay fair and lawful fees for the specific licence types for which they apply.