

Licensing Section
Birmingham City Council
Crystal Court
Aston Cross Business Village
50 Rocky Lane
Aston
Birmingham
B6 5RQ

Our Ref: DBW / SC&C
Your Ref:
Date: 31 March 2015
Please ask for: David Wilson

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

Dear Sir / Madam,

**Local Government (Miscellaneous Provisions) Act 1976, section 70
Objection by Star Cars to hackney carriage and private hire licensing fees**

I act on behalf of Star Cars, a well-respected and long-standing licensed private hire operator within the City.

Please accept this letter as my client's objection to the changes to the various fees relating to hackney carriage and private hire licensing, as determined at the Meeting of the Licensing and Public Protection Committee on 18 February 2015, subject to the statutory objection process and publication of the statutory notice in the Birmingham Post on 5 March 2015.

Before addressing the substantive issues, the Council may care to consider whether it is satisfied the published statutory notice is correct in that it fails to refer to section 53(2) and does not specify the duration for which operator licences shall be granted or renewed.

The Council might also care to have regard to section 55(2) of the said Act, especially as it will, from 1 October 2015, be amended to require the Council to grant and renew such licences for the current maximum duration of five years.

In that regard, the Council should refer to the Deregulation Act 2015, which only received Royal Assent on 26 March 2015. Section 10 of the Act requires councils to grant driver licences for three years and operator licences for five years. That section and the one concerning private hire operator subcontracting are included in the Deregulation Act 2015 (Commencement No 1 and Transitional and Saving Provisions) Order 2015 (SI 2015 No 994), which was only made on 27 March 2015 and published 30 March 2015. Article 11 brings section 10 into force on 1 October 2015.

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Despite previous requests that the Council prove it adopted Part II of the Local Government (Miscellaneous Provisions) Act 1976, the Council has failed to do so.

Indeed, the Council only managed to produce one of the two statutory notices it was required to publish and did not prove timely service of notice on parish and community councils.

As the Council could neither administer private hire licensing nor charge fees for hackney carriage or private hire licensing under the Act, if it has not adopted it, the Council is asked to present all evidence of or relating to an adoption or attempted adoption of the Act when this objection is to be determined by the Licensing and Public Protection Committee.

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

- The officer report fails to make clear that the principles in the sex establishment licensing fee case of *R (on the application of Hemming and others) v Westminster City Council* that was heard in the High Court in 2012 and then appealed to the Court of Appeal and heard in 2013 before being heard recently by the Supreme Court (formerly the House of Lords) on 13 January 2015 applies to all licence type fees and not just to sex establishment licence fees. Their Lordships' judgments are expected imminently.
- The officer report does not mention, let alone produce a copy of the inconclusive decision of the External Auditor in relation to an objection made to the Council's annual accounts for the year ending 31 March 2013, which prevents Members of the Licensing and Public protection Committee from making their own judgement on those matters.
- 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 neutral case citation [2014] EWHC 2544 (Admin).

In this case, the court quashed the fees set by Cardiff City Council 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.
- Overall, the officer report presented to the Licensing and Public Protection Committee on 18 February 2015 did not make the Committee sufficiently aware of all relevant financial information concerning surpluses and deficits in respect of each licence type and the processes for time recording and fee calculation as required by *R (Georgiou) v London Borough of Enfield* [2004] EWHC 779 (Admin) and *R v South Glamorgan County Council, ex parte Harding* [1998] COD 243.

In view of the foregoing, the Licensing and Public Protection Committee is asked to defer considering hackney carriage and private hire licensing fees until:

- (i) the Supreme Court gives its judgment and officers have an opportunity to consider its impact, if any, on the setting of fees in the future;
- (ii) officers have quantified the officer time and cost of a five year operator licence; and
- (iii) officers have prepared a more comprehensive report setting out the law, dealing with five year operator licences and address the deficiencies in relation to the presentation of financial information, the absence of which both prevents anyone from making intelligent objection and the Committee from making a well-informed decision.

As the Council did not comply with the requirements set out by the High Court in *Cummings v Cardiff* when the Licensing and Public Protection Committee set the fees on 18 February 2015, the process is fundamentally legally flawed and will, if necessary, be challenged by my client, as other clients have already begun the process of judicially reviewing Shropshire Council for precisely this reason.

Should the Council consider that the fees will only be determined when this objection (and any others) are considered at a Meeting of the Licensing and Public Protection Committee, may I respectfully draw your attention to the fact that the fees were set on 18 February 2015 and would, according to the Council's statutory notice, take effect on 1 April 2015 unless objection is made and not withdrawn.

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

Despite the statutory period for objection having not closed at the time of writing, at <http://www.birmingham.gov.uk/cs/Satellite?c=Page&childpagename=SystemAdmin%2FCFPageLayout&cid=1223092597491&packedargs=website%3D4&pagename=BCC%2FCommon%2FWrapper%2FCFWrapper&rendermode=live> the Council proclaims, before having determined objections, “Licence fees are subject to change from 1 April 2015. The new fees valid from this date for the year 2015/16 can be found in the attachment below.”

The attachment 292249HC&PH_Fees_&_Charges_2015.16.pdf details the fees currently under consideration.

Together, this statement and the attached document gives a very clear impression that the Council has already pre-determined this matter and will, no matter how valid any objections might be, proceed to uphold the decision made by the Licensing and Public Protection Committee on 18 February 2015.

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

- As referred to above, officers have failed to present the information referred to at paragraph 1.8 of the officer report presented to the Meeting of the Licensing and Public Protection Committee on 18 February 2015.
- At paragraph 1.9 it is stated that: “The costs of delivering the service as a whole have increased as a consequence of higher corporate recharges for centrally delivered services.” Following many years of austerity, it is difficult to understand how any costs should have increased, let alone those relating to corporate recharges when one would have expected centrally delivered services to have been cut more than frontline services. In any event, no explanation of information has been provided to explain this assertion.
- Whilst any reduction in operator fees is welcome, surely officers are not seriously suggesting that it costs £170 to change a name on an operator licence, although it is acknowledged that the proposed fee is not as unrealistic as the previously charged fee of £447.
- Inexplicably, the proposed fees for hackney carriages are lower than those for private hire vehicles. In the absence of any explanation for this, it is difficult to understand what the difference is in the licensing process that could account for such an anomaly.
- Ignoring the fact that driver licence fees are probably amongst the highest in the country, there is no explanation as to why a two-year licence costs £55 more than a one-year licence and that a three-year licence costs £60 more than a two-year

licence. As section 53(2) does not permit the recovery of compliance and enforcement costs in relation to driver licence fees it is difficult to appreciate what it is the Council thinks it does in years two and three to justify any additional charge.

- The Council could avoid making a loss on the driver knowledge test folder by making them freely available on its website and charging the full costs of production, if a person opts not to avail themselves of the freely available online version. It is understood that copyright has been relied upon to justify not making this available online, but as this is the Council's material there is no reason why it should not make the material freely available, especially when the Council makes most information freely available on its website under the OGL (Open Government Licence).
- Since the Council made it more difficult for a person to become licensed in order to reduce the number of licensed drivers and vehicles, annually more people are awarded doctorates by the University of Birmingham than pass the Council's driver knowledge tests! Whilst the Council might be pleased that it has achieved its objective, the unintended consequences are that the public opt to use unlicensed people advertising their 'taxi services' on social media (Facebook Taxis), which places them in great danger, and reduces the Council's fee income, which undermines its ability to police the licensed and illegal unlicensed trades. For specific details of the reduction in numbers, please refer to the table on page 8 of the CTS Hackney Carriage Unmet Demand Survey Report (July 2014).

In all the circumstances, the Licensing and Public Protection Committee is asked to resolve not to implement the fee increases it agreed at its meeting on 18 February 2015 or any such increases (but to implement the fee reductions) and to direct officers to present a further report when all matters raised herein can be properly addressed by them in a further report.

If, however, the Council wishes to proceed to determine the objections to the fees, please also accept this letter as my formal request to address the Licensing and Public Protection Committee in relation to this matter on behalf of my aforementioned client, Star Cars.

Yours faithfully,



David B Wilson

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

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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 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