

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015

ALL WARDS

**LICENSING FEES AND CHARGES, INCLUDING OBJECTION TO HACKNEY
CARRIAGE AND PRIVATE HIRE FEES AND CHARGES**

1. Summary

- 1.1 At a meeting of the Licensing and Public Protection Committee on 18 March 2015, the Committee resolved to adjust the fees for all relevant licensing functions, including hackney carriage and private hire vehicles and drivers by varying degrees.
- 1.2 Under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, a Local Authority is required to advertise changes to its fees and charges in respect of hackney carriage and private hire vehicles for 28 days before it can apply the new fees and it must consider any objections. A number of objections have been received.
- 1.3 The Licensing and Public Protection Committee must consider these objections before deciding whether to implement the fee structure that it approved on 18 February 2015.
- 1.4 This report also contains a proposal to reduce the Hackney Carriage and Private Hire carry forward balance over a period of three years along with a proposed revised fee structure.

2. Recommendations

- 2.1 Members are asked to consider the objections appended to this report.
- 2.2 Members are asked to consider the proposal detailed in 4.9 and either:
 - 2.2(i) agree the revised fee structure as detailed in Appendix 1, to be effective from 1st September 2015 (subject to the statutory notice period)
 - Or
 - 2.2(ii) retain the fee structure as approved on 18 February 2015, to be effective from 1st August 2015.

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3. Background

- 3.1 In accordance with the Corporate Charging Policy and Financial Regulations the fees and charges for the various licensing functions are reviewed on an annual basis. A report was presented to the Licensing and Public Protection Committee on 18 March 2015, which detailed the proposed variations to the fees.
- 3.2 The fees and charges that were approved by the Committee are detailed within Appendix 1.
- 3.3 Members will note a blanket percentage change has not been applied, but that each fee has been adjusted to take into account changes in overhead costs, processing times and also the cost of physical items such as badges/plates. Keeping figures in round pounds reduces the cost and time associated to staff in the Licensing office dealing with small amounts of change.
- 3.4 The fees proposed for 2015/2016 were originally calculated during 2014/2015. In order to ensure the fees accurately reflect the true cost of administering and processing the licences these calculations are based on the finalised accounts from 2013/2014. This is more reliable than trusting in projections and estimates.
- 3.5 The time taken to process and administer each licence type is verified each year to ensure the calculations are accurate. Costs for peripheral items such as vehicle plates, badges, semi-permanent door signs, meter testing etc. are added in after the time is calculated. This accounts for the variance in cost between the different types of vehicle licence.
- 3.6 Under Section 70(2) of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 76), a Local Authority is required to advertise changes to its fees and charges in respect of hackney carriage and private hire vehicles by placing an advert in a local newspaper for 28 days before it can apply the new fees and it must consider any objections. Although it must consider them it does not have to vary the proposal as a result of them. There is no requirement upon the Local Authority to advertise an alteration to driver fees, although all applicable fees were included in the advertisement. An advert was placed in the Birmingham Post on 5th March 2015. A copy of the advertisement is attached as Appendix 2.

4. Response to Objections to the Hackney Carriage and Private Hire Fees

- 4.1 The Licensing Service has received 21 written objections to the proposed fees and charges, one of which is in the form of a petition with 117 signatures. These objections are attached at Appendix 3(a) to (d).
- 4.2 The report presented to the Committee in March proposed using surplus fees to implement service improvements, such as channel shift, new IT equipment

for the Licensing Service and improved computer systems on the understanding that investing in service improvements now will be likely to produce greater efficiencies in the future that should result in lower fees over the longer term.

- 4.3 Appendix 3c which is a letter from a2z Licensing Ltd refers to an objection made by the objector in 2013 to the Council's accounts for 2012/2013. The objection was based on the fact that the Licensing Service had charged fees to operators to amend their licences during the currency of the licence and charging drivers for replacement licences or to transfer their vehicle licence. The objector alleged that this practice was unlawful and that the Licensing Service may only make a charge for the grant of a licence, and may not charge a fee during the currency of a licence. The challenge to the Licensing Service accounts also included an objection to the practice of the Licensing Service charging for Data Protection enquiries for information, whether from drivers concerning their own records or from third parties (often insurance companies).
- 4.4 The Licensing Service obtained advice from counsel. That advice concluded that the Service was not acting unlawfully by applying charges within the currency of the licences in question. In respect of the charges that were applied to data protection requests the advice concluded that whilst the Licensing Service was compliant with the Data Protection Act, it was acting in contradiction to the Council's overarching data protection policy which is that charges should not be levied for the provision of information under the Data Protection Act. As a consequence, the Service made refunds to any individual or third party that has paid a fee of either £10 (for individuals) or £30 (for third parties) since the fees were introduced in 2011. Nineteen third parties were refunded (totaling £570) and twenty-two individuals (totaling £220).
- 4.5 The Licensing Service has stopped charging for all data protection requests. It will only make a charge in future subject to the City Council's Data Protection Act policy changing.
- 4.6 The District Auditor's conclusions did not support the objection and consequently the Licensing Service did not alter its charging arrangements in this respect. The matter has been closed by the District Auditor and does not require revisiting.
- 4.7 Having regard to the case law referred to within the objection: R (on the application of Cummings) v Cardiff City Council, [2014] EWHC 2544 (Admin) it should be noted that, in that case it was held that the Licensing Authority had not had regard to or accounted for any surplus or deficit in their carry forward balances.
- 4.8 Whilst it is not accepted that this same accusation could be levelled at this Committee, a set of revised fees have been calculated utilising a proportion of the existing carry forward surplus.

- 4.9 The amount of carry forward balance available in respect of hackney carriage and private hire fees was £341,000 at the end of 2013/14. Having regard to the legal advice and best practice advice, it is proposed that the carry forward reserves be 'run down' over a three year period. To this end, the calculations have been made utilising a third of this figure (£113,667). This has a positive impact on the fees by either reducing them, or lowering the proposed increase. A table detailing the proposed revised fees, the previous year's fees, and those already agreed by your Committee is attached at Appendix 1.
- 4.10 By not utilising the entire carry forward balance, the service is able to maintain a degree of protection from sharp increases to the licence fees in the event of anticipated expenditure such as the replacement licensing software package which will be required in 2015/2016.

5 Legal Framework

- 5.1 The Council has control over hackney carriage and private hire licence fees but only on a cost recovery basis. The fees proposed in this report are calculated to recover the full cost of carrying out the service. This includes all direct costs and overheads, any recharge of officers' time in appropriate cases when carrying out inspections of premises and other compliance duties (where applicable).
- 5.2 The fees proposed fulfil the main requirement of assuring that full costs are recovered from the income generated in a reasonable and proportionate manner.
- 5.3 The legal requirement for a Licensing Service to recover only "reasonable costs" takes precedence over the City Council's Corporate Charging Policy and the requirement to maximise income. Licence fees prescribed by statute also take precedence over the Corporate Charging Policy. In setting the fees we have also taken account of the Court of Appeal decision of 24th May 2013 in the case of Hemming v Westminster City Council. Brief details of the case are provided below.
- 5.4 The case of R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25 focused on whether the local authority's scheme of charging fees for licensing sex shops (under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) in Soho was permitted by European Services Directive 206/123/EC as implemented by The Provision of Services Regulations 2009 which became law on 28 December 2009.
- 5.5 Westminster's fee was calculated so as to cover the cost of: enforcing the licensing regime against unlicensed operators and monitoring compliance by licensed operators (accounting for around 90% of the fee); and administering the application.

- 5.6 The sex shop owners brought a judicial review in 2011 claiming that Westminster's setting of the fee was unlawful. They argued, inter alia, that since the Provision of Services Regulations 2009 had come into effect the council was disentitled from including in the fee the cost of enforcing the licensing system against unlicensed operators.
- 5.7 The High Court and Court of Appeal had held that Westminster's fees for sex establishment licences were contrary to the European Services Directive because the fee charged included the costs of enforcing against unlicensed operators.
- 5.8 At the beginning of this year, Westminster took the case to the Supreme Court which in April allowed part of Westminster's appeal i.e. that licensing authorities can fund enforcement activities against unlicensed operators through licensing fees but referred a relatively narrow issue about the precise way in which the fee was charged and collected to the European Court of Justice.
- 5.9 Despite the fact that the European Services Directive does not have direct applicability to the fees under consideration (Taxi and Gambling are exempt) and the Hemming case will now continue in Europe, it is considered that local authorities need to review their licensing charge arrangements in the light of this decision and determine whether there is a need to make changes at this stage.
- 5.10 It must be noted that irrespective of the above ruling the Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman, complaints to the External Auditor by way of an objection to the Council's annual account and judicial review.

6. Implications for Resources

- 6.1 If the Committee agrees to vary the fees and charges from those that were approved on 18 March 2015, there will be a further requirement to advertise the new fees and charges for a period of 28 days before they could be charged.
- 6.2 If the Committee is minded to agree to the proposal detailed in paragraph 4.9 and the subsequent proposed revised fees in Appendix 1, this will reduce the amount of ring fenced carry forward reserve by £113,667 this year, and will impact on the way future fees are calculated.
- 6.3 This report does not affect fees and charges in relation to other areas of the Licensing Service.

7. Implications for Policy Priorities

- 7.1 The Licensing and Public Protection Committee has a stated public priority to improve the standard of all licensed persons, premises and vehicles in the City; this can only be achieved with an effective, efficient and appropriately resourced Licensing Service.

8. Implications for Equality and Diversity

- 8.1 No specific equality factors have been identified in this report.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: nil

APPENDIX 1

		2014/15 (current)	Agreed 2015/16	Proposed Revised 15/16
Hackney Carriage	Vehicle	£253	£245	£230
	Vehicle renewal	£129	£135	£125
	Driver grant 1 year	£239	£280	£265
	Driver grant 2 year	£299	£335	£315
	Driver grant 3 year	£358	£395	£370
	Driver renewal 1 year	£117	£150	£140
	Driver renewal 2 years	£218	£225	£210
	Driver renewal 3 years	£262	£280	£265
Private Hire	Vehicle	£239	£270	£250
	Vehicle renewal	£117	£155	£145
	Vehicle (with meter)	£262	£270	£253
	Vehicle (with meter) renewal	£154	£158	£148
	Driver* grant 1 year	£239	£280	£265
	Driver* grant 2 years	£299	£335	£315
	Driver* grant 3 years	£358	£395	£370
	Driver* renewal 1 year	£117	£150	£140
	Driver* renewal 2 years	£217	£225	£210
	Driver* renewal 3 years	£262	£280	£265
	Operator	£1,430	£1,345	£1,260
	Operator renewal	£805	£895	£840
	Operator 1-5 Vehicles only	£805	£1,120	£1,050
	Operator 1-5 Vehicles only renewal	£447	£670	£630
Other / Additional Charges	Amendments to Private Hire Operator Trading Name/Address	£447	£170	£160
	Replace/Lost/Stolen Vehicle Identity Plate/Door Plates	£36	£60	£50
	Replacement/Lost/Stolen Driver Identity Badge	£30	£35	£35
	Replacement/Copy Paper Licence	£30	£35	£35
	Administration fee for DBS check	£10	£35	£35
	Replacement/Transfer of Vehicle Licence	£75	£90	£85
	Hackney Carriage Knowledge Test Folder	£20	£30	£30
	Hackney Carriage Knowledge Test	£70	£85	£85
	Private Hire Knowledge Test Folder	£15	£25	£25
	Private Hire Knowledge Test	£40	£50	£50
	Verbal Communication Test	£28	£42	£42
	Photocopying	£0.20	£0.20	£0.20

*includes restricted private hire

Copy of Press Advertisement from 5th March 2015

Public Notices			
BIRMINGHAM CITY COUNCIL			
LOCAL GOVERNMENT (MISCELLANEOUS PROVISION) ACT 1976.			
HACKNEY CARRIAGE AND PRIVATE HIRE VARIATION OF LICENCE FEES			
Notice is hereby given that the Licensing Committee at its meeting on 18th February 2015 determined that the fees charged by the council, for Vehicle, Driver and Operator Licences granted under Part 2 of the Act, shall be varied in accordance with the provisions of section 70 (3) of the said Act as follows:- These changes are in line with the City Council's Corporate Charging Policy and have been calculated to ensure full cost recovery for the delivery of the service.			
		2014/15	Proposed 2015/16
Hackney Carriage	Vehicle	£253	£245
	Vehicle renewal	£129	£135
	Driver grant 1 year	£239	£280
	Driver grant 2 year	£299	£335
	Driver grant 3 years	£358	£395
	Driver renewal 1 year	£117	£150
	Driver renewal 2 years	£218	£225
	Driver renewal 3 years	£262	£280
Private Hire * Includes restricted private hire	Vehicle	£239	£270
	Vehicle renewal	£117	£155
	Vehicle (with meter)	£262	£270
	Vehicle (with meter) renewal	£154	£158
	Driver* grant 1 year	£239	£280
	Driver* grant 2 years	£299	£335
	Driver* grant 3 years	£358	£395
	Driver* renewal 1 year	£117	£150
	Driver* renewal 2 years	£217	£225
	Driver* renewal 3 years	£262	£280
	Operator	£1,430	£1,345
	Operator renewal	£805	£895
	Operator 1-5 Vehicles only	£805	£1,120
	Operator 1-5 Vehicles only renewal	£447	£670
Other / Additional Charges	Amendments to Private Hire Operator Trading Name/Address	£447	£170
	Replace/Lost/Stolen Vehicle Identity Plate/Door Plates	£36	£60
	Replacement/Lost/Stolen Driver Identity Badge	£30	£35
	Administration fee for DBS check	£10	£35
	Replacement/Transfer of Vehicle Licence	£75	£90
	Hackney Carriage Knowledge Test Folder	£20	£30
	Hackney Carriage Knowledge test	£70	£85
	Private Hire Knowledge Test folder	£15	£25
	Private Hire Knowledge Test	£40	£50
	Verbal communication Test	£28	£42
	Photocopying	£0.20	£0.20

A copy of this notice will be available for inspection by members of the public during normal office hours. Monday to Friday at the address below for a period of 28 days from the date of this notice. Any objections should be made in writing to that address or to licensing@birmingham.gov.uk before the end of the 28 day period.

Licensing Section, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham, B6 5RQ.

Should no objections be received, these changes will have effect from 6th April 2015

APPENDIX 3(a)

Objection	Details
I'm a Private Hire driver for almost twenty years, I am emailing to object to the proposed Private Hire License fees, i along with numerous licensed Private Hire drivers cannot see any justification in such a high increase in Private Hire License and renewal fees. I along with hundreds of Private Hire drivers would like to request to the Birmingham City Council Licensing to review the increase and freeze the fees as we feel we already pay high rates for private Hire License fees. Thank you	Name and Badge Number supplied
To whom it may concern,My name is xxx, and i am self-employed with xx as a private hire driver, badge number xx.This email is regarding the rise in fees which have suddenly come about and i, along with my colleagues, feel very strongly against this. It is especially unfair that the cost is higher than black cab fees! It is very difficult to keep up with expenses and living costs as it is, and this is a plea to the council to keep the fees as they are or many people will soon be out of jobs.I hope to hear from you very soon.kind regards,	Name and Badge Number supplied
To who it may concern,.I xx, holder of Private Hire driver badge no.x and Private Hire vehicle plate no.x hereby object to the proposed increase in licensing fees.There is no justification for such a huge increase.	Name and Badge Number supplied
As a private hire driver for the last 24 years I have seen many changes within birmingham city licensing come and go. Some good, some ridiculous (roof signs that made the cars non aerodynamic and visual to customers only for black cab drivers to object then have then removed as well as plate stickers in the windows).With this came increases in license fees and decreases when it was proven that certain expensive alternatives (roof signs) weren't the way forward but this now seems to have changed. After re-licensing my car last I noticed an A3 sign not so visually placed explaining an ibrar an increase so far above and beyond the rate of inflation and consumer price index that it was and kmo st stratospheric.WHY as a licensed private hire driver,was I not informed of this proposal?WHY was it advertised in such a sneaky and underhanded way?WHAT justification do licensing believe they have to justify such a price hike (22% + 25%)?WHY with such a stupidly high increase has private hire been deemed to be more expensive to re-plate or license compared to a hackney carriage vehicle ?, does licensing fear them that much that we are picked on like the raindeer jumper given by grandma at Christmas or could it be a preference to Hackney drivers that continually manifests itself year on year as private hire cars are continuously unfairly penalised on vehicle quality yet hackney carriage vehicles are rust buckets being held together by the car wrap placed on them to hide such rust but at no point even though I personally supplied video evidence of rust eaten doors on a 2 week prior licensed hackney carriage vehicle I was told that i have to make a statement and fill in all sorts of time consuming forms.No doubt had this been reversed and I had been in the wrong then I'm sure licensing would have been dragging me kicking and screaming.To this day even though I've pointed out this flaw NO stipulation has been put in place to ensure all black cabs are submitted for MOT free from car wrap.THIS with statement multitude of other reasons and the fact toy have statement surplus of almost £400,000 from licensing nor being used which means we should be getting a decrease not increase.MY VOTE IS NO TO THE INCREASE AND I'LL BE LETTING ALL OF MY FRIENDS AND COLLEAGUES KNOW THIS AND WILL FLIGHT THIS WITH MY MP AND COUNCILLORS OF NEED BE SINCERELY	Name and Badge Number supplied

Objection	Details
would like to register my objection to the plan to raise licence fees by well above the rate of inflation. You have a ring fence around our licence fees and a healthy bank balance. So how can you justify raising the fee. You have not consulted any operators or drivers before making this decision which I find alarming. I would wish to lodge a complaint against this action.	Name and Badge Number supplied
30th March 2015 Licence number: xI am strongly against the proposed 22% licence fee increase.	Name and Address Supplied
I strongly object to proposed licensing fee increases currently being considered as there is no justification whatsoever particularly in view of the service level provided currently by Licensing.	Name supplied
I am sending this email to inform you that I am objecting to the price increase of private hire badge fees that you are thinking of proposing how can you justify a 20% price increase i think its outrageous im also speaking on behalf of over 500 drivers	Name Supplied
Dear Sir/Madam,I object to the proposed increase in license fees. Yours faithfully,	Name supplied
There is talk of the license fees going up by 22% this is ridiculous as the inflation rate is running at less than 2% this is totally unjustified there will be many complaints sent to governmrnt about this -- birmingham city council did similar to this a few years ago and were ordered by the government to bring increases in line with inflation	Name Supplied
Object fee increases a private hire badge	Name Supplied
Don't increase the badge fee	Name supplied
Hello there I am a p.h.d. And I would like to reject the increase in the fee which you want to make it more then what it is, You should think of making it cheaper and make your drivers save money. I sure if you look at the others council there fee are less then Birmingham Licening fee. And the other council give them the right to work anywhere thats why you got less drivers coming to Birmingham, You people should look in to this matter and think why and how we can make it better then the others.	Name Supplied
Hi i object to the fee increase	No details given
i think its outrages the thinking of increasing the BADGE FEES AND OTHER FEES	No details given
I strongly object to this price rise ,can you please tell me what is the justification for this licence price rise,I will be very grateful. But knowing birmingham council you won't.	No details given
I've just read about the price increase for a private hire badge and I would like to say that I am very dissatisfied with licensing. There is no justification for this price increase and I shall be discussing this with my local councillor.	No details given
No to any increase.	No details given

PETITION WITH 117 SIGNATORIES (redacted personal data)

C/O CHRIS NEVILLE

LICENCING SECTION

CRYSTAL COURT

ASTON CROSS BUSINESS VILLAGE

57 ROCKY LANE ASTON BIRMINGHAM B65RQ

DEAR SIR we the Birmingham hackney carriage drivers object strongly to Birmingham city councils licensing departments proposal to increase the licensing fees on the grounds that the fees are already too high and with the current financial climate we the hackney carriage drivers feel this proposal to be inappropriate and unjustified also we feel the rise in fees is discriminating the drivers who are ill and disabled through no-fault of their own who have to renew their licences annually. We strongly recommend that the committee does not approve this proposal. We are also forwarding a signed petition by hackney carriage drivers who are against the increase in licensing fees thank you we await in anticipation for your reply.

REGARDS RMT MEMBERS AND NON MEMBERS