

BIRMINGHAM CITY COUNCIL

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

21 JUNE 2017

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 15 February 2017, 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 15 February 2017.
- 1.4 In the interim period between the approval of the revised fees and the report detailing objections being available for presentation to Members, the accounts for the financial year 2016/2017 have been finalised pending external audit. These accounts indicate that any furtherance of the proposed revised fees as agreed in February 2017 would be inappropriate.

2. Recommendations

- 2.1 Members are asked to rescind the February 2017 approval of the revised fees and charges in relation to Hackney Carriage and Private Hire Fees.
- 2.2 Officers are to calculate proposed revised fees and charges as soon as reasonably practicable, having regard to the finalised accounts for 2016/2017 and also to the comments raised as objections to the previous proposed structure.

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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 15 February 2017, which detailed the proposed variations to the fees.
- 3.2 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 23rd February 2017.

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

- 4.1 The Licensing Service received objections to the proposed fees and charges, one of which is in the form of a petition with 396 signatures.
- 4.2 The report presented to the Committee in February proposed the adoption of separate fees for the two component parts of the transactions; the processing of the application, and the licence itself. This is the approach recommended as part of the outcome of the Hemming case, and is the approach adopted for other service areas such as Sex Establishments and Scrap Metal Licensing. Whilst it is acknowledged that the EU Services legislation, under which the Hemming judgement was made, does not apply to transport services, such as taxi and private hire licensing, the principle remains sound.
- 4.3 The vast majority of objections are simply that, statements of objection, without rationale. The objection received from Mr. Bridge of a2z Licensing, on behalf of 24/7 Carz is more detailed in its objection.
- 4.4 The fundamental objection relates to the separation of application fee and licence fee, which requires additional administrative time.
“The only objection made is to the separation of licence grant by a two stage process of application for licence and then grant of the licence which increases the cost of licences by 5 minutes of staff time per licence”.
- 4.5 Additional points are raised by Mr. Bridge in relation to the application of the carry forward balance utilization. Ordinarily these matters would simply be addressed when the fees are next calculated, they do not form part of the actual objection to the proposed 2017/2018 fees. The full objection can be found at Appendix 1. However, in the interim the accounts for the financial year 2016/2017 have been finalised (pending external audit) and these

indicate that a review of the proposed revised fees would be opportune at this time.

- 4.6 The point raised by Mr. Bridge, is not without merit. Unfortunately, the Licensing Service is not as close to achieving channel shift - the moving to online applications – as we would have hoped. When still dealing with hard copy applications and documents the proposed fee structure would, potentially require two visits to the Licensing Offices.
- 4.7 It is suggested that, whilst the two figures remain appropriate to be calculated separately, the fee charged should be the total amount payable. Should an application be unsuccessful, for whatever reason, the 'licence fee' element of the fee would be refunded. The additional time factored in for the multiple transaction times is therefore redundant and can be removed. This point will be taken into account when calculating the further revised fees.
- 4.8 This revised method would still ensure that payment is received before any processing is carried out on the application, but acknowledges the fact that the majority of transactions are granted – particularly with regard to renewal applications.
- 4.9 This would also mean no new application can be made without payment of the appropriate amount. Existing applications will continue to be processed.

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 outcome and impact of the Hemming case was explained in detail in the February report to your Committee.
- 5.3 Despite the fact that the European Services Directive does not have direct applicability to the fees under consideration (Taxi and Gambling are exempt), 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.
- 5.4 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 Further to the right to object as detailed in 3.2 above, there are three possible ways in which the fees could be challenged:

- Judicial review of the Council decision based on the decision being Ultra Vires or considered to be unreasonable or irrational (known as Wednesbury Principles).
- Through the District Auditor – if a Birmingham resident objects to the Local Authority accounts on the grounds that an item is contrary to law or
- If the Council proposes to set an unlawful fee. This must be reported to and considered by the Monitoring Officer.

6.2 Proposed fees are calculated having regard to finalised accounts in accordance with best practice advice and also with regard to significant case law. There is no statutory method in which to calculate the fees. As another year of accounts have been finalised before the previous fee revisions have taken effect, it would be appropriate to withdraw the previous proposed fees and charges, and to recommence the process, thereby, hopefully avoiding unnecessary challenge.

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.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil

OBJECTIONS TO THE PROPOSED FEES AND CHARGES

Objection on behalf of 24/7 Carz



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Our Ref: Fee17-
18/247/GB
Your Ref:
Date: 22 March 2017
Please ask for: Giles Bridge

Sent by email only to:
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Dear Mr Neville,

Objection to creating separate payments for application and grant of licences, roll over of surplus and DBS certificates

I am writing on behalf of 24/7 Carz as a result of the Trade Meeting on the 14th of February 2017 and also the meeting with Emma Rohomon on the 23rd of March 2017 to discuss the calculation of licence fees. In response to the consultation and on behalf of 24/7 Carz we would like to make the following submissions. The only objection made is to the separation of licence grant by a two stage process of application for licence and then grant of the licence which increases the cost of licences by 5 minutes of staff time per licence.

1) Fees for 17-18

The report to the Licensing and Public Protection Committee on the 15th February 2017 noted that the European Services Directive does not have direct applicability to hackney carriage and private hire licences, but stated that best practice means that the principles can be applied to all licence types, para 1.13 at page 2. Whilst this is correct and is given support from Open for Business: LGA guidance on locally set fees¹, which at page 6 states,

"Councils should specifically note that the Directive does not apply to licensing of taxis, or gambling activities; however, the principles remain a helpful way of providing a transparent and business-friendly approach to licensing."

¹ http://www.local.gov.uk/documents/10180/5860714/115-496+OpenForBusiness_02+FINAL.pdf Nov 2015

24/7Carz believe that there is a means by which the council can respect the guidance set out in Open for Business without the need for licence holders to submit two separate fees and the council have the extra administrative burden of processing two payments rather than one. From the meeting with Emma Rohomon we note that 5 minutes has been calculated as the time necessary to process applications in two separate fee transactions

In relation to the vast majority of renewals of licences there is no issue about renewal, which follows through almost automatically. The change to have a two stage process of application and then renewal creates a bureaucratic step for no purpose, especially as the Service Directive is not applicable to taxi licensing. 24/7 Carz and their drivers are grateful that the council have worked out the application and licence costs, which is useful and necessary, this in and of itself would mean that the council is complying with the approach suggested in Open for Business by the LGA. Separating out the costs therefore allows for the correct amount to be refunded to those applicants who have the application refused.

Creating a two-stage process of application and then licence issue, where there was previously just one stage creates a small amount of extra work and inconvenience for operators, drivers and vehicle proprietors. The inconvenience is greater for those who are proprietor of multiple vehicles, with attendant additional banking and staffing costs in complying with the system. The inconvenience caused to the council is significant and will lead to a significant increase in staff time spend administering the renewal of licences, which will inevitably have an effect in increasing licence fees in the future.

A solution would be to allow both parts of the fee to be paid on one occasion in a single payment. If there has to be a repayment of the licence fee, this poses no issues, as the amount of the licence fee separate from the application fee is known. From the discussions with Emma Rohomon it is appreciated that there is an administrative process that is required in refunding part of the fee. It is submitted that the extra bureaucracy that this involves is much less than processing 2 payments and adding 5 minutes of staff time as an additional cost to all licences. Having a single payment for renewals would therefore save 5 minutes of staff time per licence at £3.71 per minute, which would equate to a £18.55 in those licence fees. Reducing those licence fees by £18, would allow for the costs of administering those few refunds, where a licence is not actually issued after the application has been processed.

2 Carry forward balance

From the meeting with Emma Rohomon we note that the proposed licence fees are based upon allowing for a reduction in all licences through the carry forward balance to be applied to all licences. The amount involved this year is small given the fact that the balance being carried forward is being reduced. For private hire vehicles the reduction is £1.77 and for Private Hire drivers the amount is £2.16. The result is that those who have been granted a new licence and have not contributed to that surplus also benefit. Given the fact that the amounts this year are small, no objection is taken to this occurring this year. 24/7Carz would ask that for future years the carry forward balance reduction is not applied to the grant of licences but is applied only to licence renewals, as the best means of ensuring that any reduction in licence fees goes to those who have contributed to the surplus.

3 DBS Certificates

Whilst the cost of DBS certificates is a small proportion of the licence fee the fact that obtaining a DBS certificate costs more in Birmingham than in other authorities is a concern for a proportion of our drivers. This small additional cost adds, to a small degree, to the reasons why drivers are reluctant to licence with Birmingham. I have done a quick review of the fees of DBS certificates of other West Midlands authorities and Birmingham is I am afraid the most expensive.

By way example DBS certificates for other local authorities cost the following: Dudley £80.18, Sandwell £44 and Solihull £54. I appreciate that other licensing authorities such as Sandwell may charge for administering the DBS system elsewhere in the licence fee. Wolverhampton have outsourced it to a company called Personnel Checks, which has the benefit of relieving the council of an administrative burden. A number of local authorities now require drivers to sign up to the DBS update service at £13 per annum, direct debit scheme.

24/7 Carz would be grateful if Birmingham Council would consider reviewing the DBS system to reduce the costs and administration involved for drivers.

Can I also thank Emma Rohomon for the help she provided in explaining the tables and the basis upon which the proposed fees were calculated. Please do not hesitate to contact me if you have any questions or queries arising out of this letter.

Yours sincerely,

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