

Service Director of Environment and
Regulatory Services
Derby City Council
The Council House
Corporation Street
Derby
DE1 1FS

Our Ref: KJR
Your Ref:
Date: 17 January 2014
Please ask for: Kevin Rowland

By email to:
licensing@derby.gov.uk

Dear Sir,

Local Government (Miscellaneous Provisions) Act 1976
Formal Objection to the proposed variation of Licence Fees

I act on behalf of Chads Cars Ltd, Unit 4 Parker Centre, Mansfield Road, Derby and Albatross Cars, 14A Midland Rd, Derby, DE1 2SN. I can confirm that authorisations from both companies have previously been provided to Derby City Council.

For the sake of clarity I can confirm that between them, Chads Cars and Albatross Cars, operate approximately 50% of all the private hire vehicles within the city of Derby.

Following the trade meeting earlier this week it was my intention to write to the Council separately regarding both the proposed fees increase and the decision of the District Auditor, however, with hindsight I believe that I can address both issues within a single letter, because the issues to be raised are one and the same.

For the sake of clarity I can confirm that this objection relates solely to the legality private hire operator licence fees as detailed in the statutory advert published on the 23 December 2013. However, should the Council accept that the proposed fees for private hire operators are incorrect then this will have a direct impact on the proposed licence fees for private hire vehicles, because they will by implication also be incorrect.

As you will no doubt be aware we have previously submitted an objection to the Council's accounts on behalf of Mr Matkin and that objection was recently determined by the Auditor in accordance with the Audit Commission Act 1998.

Part of that objection related to the issue of private hire operator licence fees and the manner in which they were calculated and charged by Derby City Council.

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Unfortunately, we were not given the opportunity to comment on the draft findings of the Auditor. While not a legal requirement it seems to be standard practice elsewhere in the Country for an Auditor when investigating a complaint of this nature to issue a draft decision to both parties in advance of his final decision, so as to obtain final comments from all parties and so as to enable the draft decision to be amended, if necessary. On this occasion, while the Auditor provided me with a copy of the Council's initial views in respect of the objection, I was not provided with the opportunity to comment further. Thus we believe the Auditors finding to be at odds with both the legislation and the findings of Auditors elsewhere in the Country.

As you will appreciate the cost of challenging the Auditors decision through the Courts in respect of this matter, would not only be considerable, but time consuming for all parties concerned. Therefore we will not be challenging the findings through the Courts, but reserve the right to raise the issues again by way of a further objection to the accounts of Derby City Council in the future.

Within your response to the Auditor in respect of the objection to the accounts the Council argues that the private hire operator application fee is reasonably justifiable because it uses a graduated licence fee for private hire operators to ensure that "no one [private hire] operator subsidises another". The Council are, by their own admission, clearly requiring private hire operators to subsidise the proprietors of hackney carriages and private hire vehicles by incorporating a charge for the 'control and supervision' of these vehicles within the private hire operator licence fees.

Within the last paragraph on page four of the decision notice the Auditor sets out that it can be argued that the costs of "control and supervision" of operators, that is the costs of enforcement action against operators are costs that are "*other costs in connection with the foregoing and the control and supervision of hackney carriages and private hire vehicles*".

Firstly, a private hire operators licence is only relevant in relation to the 'operation' of a private hire vehicle and is not relevant in relation to the operation of a hackney carriage (see the definition of 'private hire vehicle' in section 80 of the LG(MP)A 1976). Thus the "control and supervision" of hackney carriages is irrelevant in respect of this matter and any costs relating to the control and supervision of hackney carriages must by definition be met from the hackney carriage licence fee.

In the case of *Kelly V Liverpool City Council* [2003] EWCA Civ 197, [2003] 2 All ER 772 it was clear that different fees can be levied in respect of hackney carriages, private hire vehicles and private hire operators licences and that those costs attributed to each licence ought only to be relevant to the specific licence.

Indeed James Button in *Button on Taxis, Licensing Law and Practice*, Third Edition, at paragraph 4.16 states:

4.16 the overall effect of the provisions contained within LG(MP)A 1976, in respect of these licences, would appear to be, therefore, that, in relation to drivers, the cost of issue and Administration can be recovered; in relation to vehicles, the cost of the inspection, ranks, control and supervision (including enforcement), and the administration connected with it, can be recovered;

and, in relation to operators licences, it appears that only the cost of Administration is recoverable.

It seems both perverse and at odds with legislation, case law and the decisions of Auditors elsewhere in the Country that a private hire operator is required to subsidise the control and supervision of hackney carriage and private hire vehicles.

In *R V Manchester City C ex p King*, the judgement sets out that a Council can only cover the cost of operation of the scheme and it must not be used as a revenue raising exercise.

In this case the Council are raising revenue from private hire operators to subsidise the 'control and supervision' of hackney carriage and private hire vehicles. This should not be the case, in real terms the proprietors of hackney carriages and private hire vehicles should meet the costs of the 'control and supervision' of their vehicles through the vehicle licence fees in a similar manner as to how hackney carriage proprietors should be required to contribute towards the cost of any hackney demand surveys and/or the provision of hackney carriage ranks and private hire vehicle licence fee should exclude these elements. In this respect James Button in *Button on Taxis, Licensing Law and Practice*, Third Edition, at paragraph 4.13 & 4.14 states:

4.13 the Liverpool¹ decision also means that the fees can be differentiated to enable the cost of hackney carriage stand provision to only be recovered from Hackney carriages that use them.

¹ *Kelly V Liverpool City Council [2003] the Civ 197, [2003] 2 All ER 772 EWCA*

4.14 the wording of LG(MP)A 1976, s 70(1)(c) clearly envisages the inclusion of the cost of enforcement, and subsequent legal proceedings, as being part of the costs relating to the vehicles themselves. This will cover enforcement of the provisions against both licensed vehicles and unlicensed vehicles. The cost of enforcement for Hackney carriages may be different from the enforcement costs in relation to private hire vehicles

Moving now to the issue of graduated licence fees for private hire operators the Council have been at pains to outline, in their response to the Auditor, that they do not undertake enforcement inspections of private hire operators and as such do not charge for this.

By definition therefore the only work that the Council complete in respect of private hire operators relates to the granting and administration of private hire operator licences.

The Council have taken the stance that the fees charged reflect the cost of the 'granting and administration' of a private hire operators licence. At the present time the cost of a private hire operators licence is calculated at £33 per vehicle and this will be reduced to £27 per vehicle should the proposed fees be approved.

However, the Council do not appear to have prepared any calculations as to how long it takes for them to administer and grant a licence and as such the figure of £27 per vehicle is arbitrary within the fee structure.

The Council argue that no one operator should subsidise another operator, however, in calculating the private hire operators licence fee at £27 per vehicle the

Council has done nothing more than identify the total apportioned costs for operator licensing and has then divided those costs by the number of private hire vehicles (see Licensing Committee report December 2013). Such a rudimentary calculation in no way ensures that operators are not subsidising each other.

By way of one example, the cost of a private hire operators licence for a person to operate one vehicle will be £33.00. The cost in officer time in dealing with the acceptance of the application form, processing the payment, verification of the information contained within the application, general administration of the application (including entering the information on the computer) and the granting and issuing of the licence will almost certainly exceed the cost charged for the licence. I presume that the Council are unable to provide detailed information as to the time/costs involved with processing individual applications - if this is the case then they cannot be certain that cross subsidisation between operators does not occur.

As previously stated the Council has confirmed in correspondence to the District Auditor that the current and proposed fees for private hire operator licences contain an element of cost for the 'control and supervision' of vehicles.

In that respect I would draw your attention to the Manchester case above which clearly sets out that cross subsidisation must not take place. I would also draw your attention to the attached decision of the Auditor in Hyndburn (paragraphs 27 – 34), who clearly sets out how a licensing accounting system should operate to ensure that it does so lawfully. I would in particular draw your attention to paragraph 29 of the decision notice.

The response provided by the Auditor in Hyndburn follows a ethos to other auditors elsewhere in the Country and it would appear that the decision of the Auditor in Derby was at odds with those decisions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin J Rowland', with a long horizontal stroke extending to the right.

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a2z Licensing Ltd

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