

Environment and Safety Committee Agenda

Thursday, 21 February 2019 at 6.00 pm

Council Chamber, Muriel Matters House, Breeds Place, Hastings, TN34 3UY.
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For further information, please contact Coral Harding on 01424 451764 or Email:
charding@hastings.gov.uk

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1.	Apologies for Absence	
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Agenda Item 4



Report to: Environment and Safety.

Date of Meeting: 21st February 2019

Report Title: Challenge to the approved change of Private Hire Operator fees.

Report By: Mike Hepworth. Assistant Director Environment and Place

Purpose of Report

To consider objection received to the proposed changes to Private Hire Operator Licence fees that were agreed on 19th November 2018.

Recommendation(s)

- 1. That councillors reconsider the proposed changes to private hire operator's licence fees, in light of the representation received following the statutory consultation,**
- 2. Councillors either proceed with the existing proposals or determine a revised proposal.**

Reasons for Recommendations

Changes to private hire operator licence fees are subject to a statutory process, and must be advertised and any objections received given proper consideration. A decision must be made by the 27th February 2019.

Introduction

1. On 19th November 2018 officers and portfolio leads considered proposals for a range of licensing fees and charges levied by the Environment and Place Directorate, which included those for hackney carriage and private hire vehicle licences and the fees for private hire operators licences. The hackney and private hire fees for vehicles and operators were then subject to a statutory consultation and public advertisement.
2. The advertisement was placed in December 2018, the consultation period ended on 31st December 2018, and the Authority has received a representation to the changes proposed to private hire operator fees but none in relation to the vehicle fee rises.
3. The fee rises for both hackney carriage and private hire vehicles can now take immediate effect, whereas the proposed fee changes for private hire operators licences must be given further consideration in light of the representation received. A decision must be made by the 27th February 2019, the second date set by the statutory consultation.
4. The representation is attached at Appendix A.

Licence Fees

5. In November 2018 significant changes to the fee structure for all discretionary licensing fees were agreed, following a comprehensive review by the Licensing Manager. In carrying out this fundamental review the Licensing Manager took account of statutory guidance from government, case law which has changed over the last few years, and the way that other local licensing authorities have adapted their systems for administering discretionary licensable activities. Based on the conclusions of this research, the Licensing Manager developed a new methodology for calculating the discretionary licence fees. Shortly after completing this methodology the government issued statutory guidance on how the licence fees for the new animal welfare licensing regime should be calculated, and reassuringly, this essentially mirrored the methodology he had already independently developed.
6. It included an analysis of the time typically spent on processing and determining each type of licence, enabling cost calculations using the appropriate hourly rates. It also incorporated recharges from other services such as legal and democratic services in relation to their input to licensing. Such as through the regular meetings of the Environment and Safety Board.
7. There are also separate calculations estimating the typical cost of checking compliance with each type of licence on an ongoing basis. This included the fees charged for private hire operators and took into account the level of involvement with different types of operator over the past few years, including calls to the department, complaint investigation, visits made and record verification. The figures prepared by the Licensing Manager as a result of the review were verified by the Council's accountants. The proposal is set out at Appendix B.

8. In the review all fees have now been split into Part A (application) and Part B (licence preparation, issue and on-going compliance). This process has been introduced following the recent High Court case against Westminster City Council, it enables applicants to see exactly what fee would be retained and what would be refunded in light of a failed application. The fees can be levied individually or as a whole at the time of the application.
9. Since 2013 we have charged operators on a banded basis (12 bands) depending on the number of licensed vehicles in their fleet. This system was decided by committee following extensive consultation that year. Responses received in 2013 (including from Mr Torab), are attached at Appendix C.
10. The proposal agreed on 19th November 2018 and set out in Appendix B has sought to simplify the system down from twelve bands (12) to four (4), and in fact six (6) of the previous bands were never used. However, it enables the charges to increase in increments that accommodate all of our existing operators in a way that we believe is fair and reasonable.
11. The objector argues that there is no additional work involved in issuing a private hire operator's licence. This is not correct, the legislation requires us to prepare and issue a licence and conduct such enquiries as is appropriate to do so.
12. In addition, part of the licensing function is to enforce the conditions of the operator licence, and this involves at least two visits to the operator to check their records are in order and maintained in accordance with the statutory requirements. We also visit operators on a regular basis, (large ones weekly) to collect applications, deliver licences and plates and investigate complaints, including viewing CCTV. Clearly there is a lot more work involved in checking the records for operators with multiple vehicles. It is almost inevitable that over time we receive more complaints about an operator with many vehicles than just one, and all complaints are investigated.
13. The power to levy an operators fee is given by Section 70 Local Government (Miscellaneous Provisions) Act 1976 which states; "A district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part :- (a) the reasonable cost of the carrying out by and on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed; (b) the reasonable cost of providing hackney carriage stands; and (c) any reasonable administrative or other costs in connection with the foregoing and the control and supervision of hackney carriage and private hire vehicles".
14. Although these proposals have been opposed by one of the larger operators, we believe that the way we have structured the charging bands is fair, and that the fee level, which has reduced in these proposals, accurately reflects the work involved in the licence administration.
15. Mr Torab suggests a different type of charging regime, which is not considered appropriate because it would increase the operator fees, the Authority must be seen to charge the fee that covers the reasonable cost of administering the operator licence system. If Mr Torab's counter proposal was introduced, it would

actually generate more fee income than the proposal that the Council advertised in December and wouldn't comply with the principles set out in the EU Service Directive.

16. All discretionary fees must be 'reasonable' and based upon a cost recovery model and not incorporate a 'profit margin'. This principle has been reiterated through the EU Service Directive, which states that: "any charges provided for by a competent authority, which the applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities".

Legal Considerations

17. The objection raised by Mr Torab of 247 New Carmiles Ltd, questions the Council's proposals, he also says that he feels he is being discriminated against as a result of his ethnic origin/religion.
18. This suggestion is untrue and without basis, the fee/band review was conducted by the Licensing Manager and based purely on the evidential workload identified by the department over the past few years. No account was taken as to the ethnic origin or religious beliefs of any of the operators.
19. In his response Mr Torab also states that when the decision to change to a banded system occurred in 2013, no consultation took place and he was only informed of the final decision. This again is untrue, he responded to the consultation in 2013 and I have included his response on that occasion within Appendix C, this was subsequently considered by committee as required by the legislation. No further challenge was received.

Options (Giving reasons)

20. To decide that the new operator licence fee proposals are reasonable and proportionate, take account of the costs incurred by the Authority and should be implemented.
21. To decide that the new operator licence fee proposals are not reasonable and proportionate and should be replaced with a new system or new scale of fees.

Wards Affected

All wards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness
Crime and Fear of Crime (Section 17)
Risk Management
Environmental Issues

Economic/Financial Implications
Human Rights Act
Organisational Consequences
Local People's Views
Anti-Poverty

Additional Information

Appendix A. Operator representation.
Appendix B. Operator fee proposal agreed on 19th November 2018.
Appendix C. Representations to 2013 operator fee changes.

Officer to Contact

Bob Brown Licensing Manager
bbrown@hastings.gov.uk
01424 783249

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New Carmiles Ltd

1 Manor Road, Hastings, East Sussex, TN34 3LL

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email:newcarmiles@yahoo.com

Fax:01424 202220

19/12/2018

Dear Sir,

RE: Proposed distribution of Operators Bands

After seeing the article in the Hastings Observer regarding the above I am writing to inform you about my objections to the way different bands are set regarding the new operator's Licence fees.

For the past three years I have been concerned about why there had been an increase of over 2000% and also why the different bands did not correspond to the size of bigger firms.

Five years ago, the decision was made, no consultation took place and I was only informed of the outcome.

It showed a steady rise of fees for different bands up to 80 cars and same fee for all fleets over 81.

At the time this decision was made, we were a fleet of 83 cars putting us in the sane band with a fleet of 200 cars. You can see a fleet, half of our size was set to pay half as much and so on all the way down to a single operator, yet a firm over three times as big was paying what we pay.

On this basis I raised my concerns, not getting any response, I wrote to the Mayor.

Eventually a review was triggered, however I feel we have yet again been discriminated against to the benefit of bigger firms.

Although there has been a decrease in these fees, the different bands are yet again in favour of bigger firms. To place a fleet of 71 cars in the same category as a fleet of over 200 cars is simply unjust.

In your argument you have mentioned the work carried out by your selves regarding the Operators.

May I remind you the work and the service you need to provide in regards to the Licensed vehicles and Drivers has already been paid for when you issued these licences. So in hindsight you are double charging for the same service. There is no additional work because of the existence of the Operator.

Once again, against all the existing concerns, you have placed a firm of 71 cars in the same group as 210 cars. How can you justify a fleet of 21 cars paying the same as 70 cars or a fleet of 71 paying the same as a fleet of over 210 cars?

Unfortunately I feel I am being discriminated against as a result of my ethnic origin/religion. I feel the system has been unjust and works in favour of a few.

My proposal to put an end to all discrepancies for the future are;

1: A set fee of £120+£5 per vehicle

You will find this is almost what you are proposing now.

In my case, at this moment with 64 vehicles, I will be paying an extra £42 a year. I am happy to do so as long as I know everyone is on the same level.

2: Break the bands into more categories up to 220 vehicles.

For Example,

1	£123
2 to 20	£188
21 to 35	£296
36 to 70	£403
71 to 120	£692
121 to 170	£981
171 to 220	£1271
221 and over	£1561

You will find in both proposals the revenue gained by the council will even be slightly greater and everyone will be on the same level.

I understand and am happy to contribute to the economy and the running of HBC, however this must be done in a fair and proper manor.

I request this objection be noted and passed on to the committee that makes the final decision on this matter.

Please do not hesitate to contact me if I can be of more assistance.

Yours sincerely,

**Iraj Torab
Managing Director,**



	New/renewal application		Total fee due		Variation	Re-score	Appeal
	Part A (application fee)	Part B (for granted licences)					
Main Activity							
Dual driver application	£40.07	£336.36	£376.36				
Hackney Vehicle	£94.60	£123.81	£218.41				
Private Hire vehicle	£94.60	£123.81	£218.41				
Temporary vehicle	£34.93	£72.42	£107.35				
PHO Single	£67.63	£55.99	£123.62				
PHO Small	£76.23	£111.56	£187.79				
PHO Medium	£76.23	£326.53	£402.76				
PHO Large	£81.97	£1,189.73	£1,271.70				

Additional activities (for more than one activity an additional fee is due under part A) (same as unannounced inspection fee, RA and rate, grant/refuse)

Driver Tests	£	50.00					
2nd application	£	75.00					
	£	-					
	£	-					

Once you complete the activity tabs, fees will appear here. You may then round up or down as you wish.

	Hourly rate inc on costs & uplift
A Admin	14.00
O Officer	17.20
M Manager	34.40
LS Sol	51.33

PART A

	Time taken (mins)	Who (A/O/M)	Cost £
Private Hire Operator (single vehicle)			
Receive and enter application	30	A	7.00
Process payment	5	O	1.43
Officer consideration, enquiries and arrange appt	30	O	8.60
Grant/refuse (to include time for report writing and preparing reasons)	70	O	20.07
Prepare paperwork (advise if granted or otherwise and rating with reasons) and despatch	25	A	5.83
Inspection:			
P H Operator Single	30	O	8.60
Travel time (to and from)	30	O	8.60
Travel expenses (average mileage in cost) (15 miles)	leave blank	O	7.50
PART A TOTAL			67.63

PART B

	Time taken (mins)	Who (A/O/M)	Cost £
Issue paperwork (inc. licence)	30	A	7.00
Advise renewal required in writing 3 months prior to expiry	10	A	2.33
TOTAL	leave blank	O	9.33
Policy work etc	480	M	275.20
Compliance and complaints/service requests	900	O	258.00
Training officers cost	leave blank	O/M	200.00
Predicted training costs	leave blank	O	200.00
Previous year surplus/deficit	leave blank	leave blank	
TOTAL			933.20

The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

Cost divided over licences

Number of licences issued by authority	20		46.66
PART B TOTAL			55.99
New/ Renewal	Part A	Part B	Total
	67.63	55.99	123.62

	Hourly rate inc on costs & uplift
A Admin	14.00
O Officer	17.20
M Manager	34.40
LS Sol	51.33

PART A

Private hire Operator (small 2-10 vehicles)	Time taken (mins)	Who (A/O/M/LS)	Cost £
Receive and enter application	30	A	7.00
Process payment	S	O	1.43
Officer consideration, enquiries and arrange appt	30	O	8.60
Grant/refuse (to include time for report writing and preparing reasons)	70	O	20.07
Prepare paperwork (advise if granted or otherwise and rating with reasons) and despatch	25	A	5.83
Inspection:			
PH Operator small	60	O	17.20
Travel time (to and from)	30	O	8.60
Travel expenses (average mileage in cost) (15 miles)	Leave blank	O	7.50
	n/a		
PART A TOTAL			76.23

PART B

Issue paperwork (inc. licence)	30	A	7.00
Advise renewal required in writing 3 months prior to expiry	10	A	2.33
	Leave blank	O	
TOTAL			9.33
Policy work etc	720	M	412.00
Compliance and complaints/service requests	2160	O	619.20
Training officers cost	Leave blank	O/M	200.00
Predicted training costs	Leave blank	O	200.00
Previous year surplus/deficit	Leave blank	Leave Blank	
TOTAL			1,431.20

The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

Cost divided over licences

Number of licences issued by authority	14		102.23
PART B TOTAL			111.56
New/ Renewal	Part A	Part B	Total
	76.23	111.56	187.79

	Hourly rate inc on costs & uplift
A Admin	14.00
O Officer	17.20
M Manager	34.40
LS Sol	51.33

PART A

Private Hire Operator Medium (11 - 70 vehicles)	Time taken (mins)	Who (A/O/M)	Cost £
Receive and enter application	30	A	7.00
Process payment	5	O	1.43
Officer consideration, enquiries and arrange appt	30	O	8.60
Granty/refuse (to include time for report writing and preparing reasons)	70	O	20.07
Prepare paperwork (advise if granted or otherwise and rating with reasons) and despatch	25	A	5.83
Inspection:			
P H Operator Medium	60	O	17.20
Travel time (to and from)	30	O	8.60
Travel expenses (average mileage in cost) (15 miles)	n/a	O	7.50
PART A TOTAL			76.23

PART B

Issue paperwork (inc. licence)	Time taken (mins)	Who (A/O/M)	Cost £
Advise renewal required in writing 3 months prior to expiry	30	A	7.00
Leave blank	10	A	2.33
TOTAL			9.33
Policy work etc	720	M	412.00
Compliance and complaints/service requests	2700	O	774.00
Training officers cost		O/M	200.00
Predicted training costs		O	200.00
Previous year surplus/deficit		Leave blank	
TOTAL			1,586.00
Number of licences issued by authority	5		317.20
PART B TOTAL			326.53
New/ Renewal	Part A	Part B	Total
	76.23	326.53	402.76

The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

	Hourly rate Inc on costs & uplift
A Admin	14.00
O Officer	17.20
M Manager	34.40
LS Sol	51.33

PART A

	Time taken (mins)	Who (A/O/M)	Cost £
Private Hire Operator (71+ Vehs)			
Receive and enter application	30	A	7.00
Process payment	5	O	1.43
Officer consideration, enquiries and arrange appt	30	O	8.60
Grant/refuse (to include time for report writing and preparing reasons)	70	O	20.07
Prepare paperwork (advise if granted or otherwise and rating with reasons) and despatch	25	A	5.83
Inspection:			
P H Operator Large	80	O	22.93
Travel time (to and from)	30	O	8.60
Travel expenses (average mileage in cost) (15 miles)	n/a	O	7.50
PART A TOTAL			81.97

PART B

Issue paperwork (inc. licence)	30	A	7.00
Advise renewal required in writing 3 months prior to expiry	10	A	2.33
TOTAL	Leave blank	O	9.33
Policy work etc	720	M	412.80
Compliance and complaints/service requests	5400	O	1,548.00
Training officers cost	Leave blank	O/M	200.00
Predicted training costs	Leave blank	O	200.00
Previous year surplus/deficit	Leave blank	Leave blank	
TOTAL			2,360.80

The cost is calculated per licence as the total for each activity has been divided by the number of licences issued entered

Cost divided over licences

Number of licences issued by authority	2		1,180.40
PART B TOTAL			1,189.73
New/ Renewal	Part A	Part B	Total
	81.97	1,189.73	1,271.70

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247 Transport Solutions Ltd

Tel: 01424 247247
Fax: 01424 437777

Drury Lane
St Leonards on Sea
East Sussex
TN38 9BA

25th January 2012

Hastings Borough Council
Town Hall
Queens Road
Hastings,
East Sussex
TN34 1QR

REF: Objection To Private Hire Operator Fee Increase: LGMPA Section 70

Dear Sir/Madam

On behalf of my company 247 Transport Solutions Ltd., I am writing to lodge a formal objection to the proposed increase in operator licence fees as advertised in the Hastings Observer.

The grounds for my objection are as follows:-

1. Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 states:- "(1) Subject to the provisions of subsection (2) of this section, a district council may charge such fees for the grant of vehicle and operator's licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part –
 - (a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
 - (b) the reasonable cost of providing hackney carriage stands; and
 - (c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles."

On our understanding of the wording of the legislation in relation to the charging of fees, particularly following the Richmond on Thames case mentioned below, we see no power to charge for the cover of any work in relation to operators, save for the actual issue of the operator licence.

The fact that a particular private hire circuit has a larger number of vehicles operating from its base does not in any way generate more work for the council's licensing department, commensurate with the incredible increase in operator fees proposed by this council. Each operator only requires one operator licence to be granted for that operator.

2. We believe that, according to the report issued by the Audit Commission in connection with the charging of fees in Guildford, licence fees may only cover enforcement on vehicles – not drivers and operators. So on that basis also; we believe it is unlawful for the council to make a presumptive charge on the operator purely based on the number of vehicles for which he provides work.
3. We believe that the main controlling issue of the Auditor's decision in the Guildford case was based on the decision of the House of Lords in **R –v- Richmond-on-Thames Borough Council ex parte MaCarthy Stone Developments Ltd**, which highlighted the fact that :

“The rule was that a charge could not be made unless the power to charge was given by express words or necessary implication. Those last words imposed a rigorous test going far beyond the proposition that it would be reasonable or even conducive or incidental to charge for the provision of a service.”

We are fully aware that some other councils charge in a manner which is similar to that proposed by this council. But we believe that at this very moment in time, following the Guildford report, many of those councils are reviewing the policy in this direction.

We are also fully aware that the Audit Commission will shortly disappear from functionality, but we know that the Local Government Ombudsman will take over the role of examining the legitimacy of fees charged by councils, and we have to advise that if the council is to proceed with this extensive proposed fee structure, we will report to the appropriate authority immediately.

Yours faithfully



Chris Vale
247 Transport Solutions Ltd.

Bob Brown

From: Chris Vale [chris.vale@247.uk.com]
Sent: 28 January 2013 14:42
To: Phil Scott Cllr (Internet)
Cc: Bob Brown
Subject: OPERATOR LICENCE FEES

Dear Phil

I have Objected to the Operator Licence fee increase as it only really affects 2 Operators (247 and New Carmiles) and for our fees to go up to £2,000 a year I believe is too much of increase in one go. Yes we can pass the extra fees over to our owner drivers but I believe it would be better for the trade if my suggestions were used.

Can my following suggestions be passed on to Councillors please

1. **£25 increase on all PH Vehicle Licences and an Increase on Hackney Carriage Vehicle Licence Fees.**
2. **Increase on all Operators Licences to max of £400 a year**

I also believe that the Hackney Carriage Vehicle licensing fees should be structured differently to Private Hire Vehicle licensing fees, the reason why I suggest this is that overheads are already kept to a minimum for a Hackney Carriage Vehicle, premises, superior phone & computer systems, radios & multiple staff being employed 24 hours a day 7 days a week are not necessary with a Hackney Carriage operator. On top of this Hackney Carriage vehicles are free to ply for hire in the various ranks throughout the town and also generate revenue providing 'Flag Down' work.

We at 247 Transport Solutions have invested over £200,000 into advanced Closed Circuit Television systems & data communications systems throughout our fleet of vehicles in the space of 24 months without ANY council funding, we provide employment for nearly 200 staff in the local area, we are also committed to reducing our carbon footprint by researching and investing into vehicles that are more energy efficient and emit less toxic fumes. (Our aim is to run a fleet of vehicles which produce less than 100g/km Co2 per vehicle). An increase in operators fees could have an undesirable impact into us continuing to employ these strategies.

If my suggestions are used I believe Hastings Borough Council will generate more revenue this way while the operators can spread the cost of the increases throughout a 12 month period.

Kind Regards

Chris

247 Transport Solutions Limited
 Drury Lane
 St Leonards On Sea
 East Sussex
 TN38 9BA

Tel: 01424 - 247 247

IMPORTANT: This electronic message is for exclusive use of the intended recipient(s), and

New Carmiles Ltd.

1 Manor Road

Hastings

East Sussex

TN34 3LL

20.12.2012

Tel: 01424 441234

Fax: 01424 202220

Ref: Private Hire Operator Charges

Dear Mr. Brown,

Thank you for your letter dated 11.12.2012.

Having read your new proposal, we strongly oppose this idea.

In regards to the extra work carried out by the council we feel that no "extra" work has been carried out in regards to the operator licence holder.

If you are referring to the extra work that has been carried out in regards to hackney licence holders and vehicle licence holders, this would be the work that had to be carried out as part of the service which you have been paid for annually by these people.

As an operator we have not created any extra work, as a matter of fact, we feel that because these cars and these drivers are now under the one roof, we have made your work so much easier, and half the time, we are dealing with complaints and paperwork on your behalf. As far as we know there has been NO complaints NOR extra paperwork regarding our office and its personnel.

You also refer to these extra charges being carried out in different towns and districts, what you do not mention is that lower fees are also applicable in different areas, you can not just move the goal posts because this a practice in other districts.

A change from £88.00 annually to £1,400.00 is NOT in line with the rate of inflation, it is NOT acceptable , nor will it stand in any court of law.

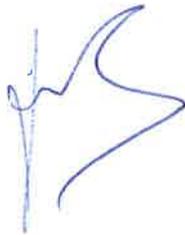
I seriously hope you reconsider this proposal as it is not being thought through carefully, and we feel we are being punished and charged for a service which you have already been paid for by other parties.

I hope also, that this does not lead to an unnecessary legal costs, which may occur that will inevitably be paid for by the tax payer.

Yours sincerely,

Managing Director

Iraj Torab

A handwritten signature in blue ink, consisting of a vertical line on the left and a large, stylized loop on the right.

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