



## Public Document Pack

# Uttlesford District Council

Chief Executive: Peter Holt

## SUPPLEMENTARY PACK

### Council

**Date:** Monday, 26th February, 2024

**Time:** 7.00 pm

**Venue:** Council Chamber - Council Offices, London Road, Saffron Walden,  
CB11 4ER

**Chairman:** Councillor G Driscoll

**Members:** Councillors M Ahmed, A Armstrong, H Asker, G Bagnall, S Barker,  
N Church, M Coletta, A Coote, C Criscione, J Davey, A Dean,  
B Donald, J Emanuel, J Evans, C Fiddy, M Foley (Vice-Chair),  
R Freeman, R Gooding, N Gregory, N Hargreaves, R Haynes,  
P Lees, M Lemon, J Loughlin, T Loveday, S Luck, C Martin,  
D McBirnie, J Moran, E Oliver, R Pavitt, A Reeve, N Reeve,  
B Regan, G Sell, R Silcock, M Sutton and M Tayler

## ITEMS WITH SUPPLEMENTARY INFORMATION PART 1

### Open to Public and Press

**5a Proposed 2024/25 Licence Fees for Hackney Carriage and  
Private Hire Drivers, Vehicles and Operators** 3 - 37

To consider the proposed Licence fees for the period of 1 April 2024  
to 31 March 2025 relating to Hackney Carriage and Private Hire  
Drivers, Vehicles and Operators.



# Uttlesford District Council

Chief Executive: Peter Holt

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## **General Enquiries**

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<b>Committee:</b>	Council	<b>Date:</b>	Monday,
<b>Title:</b>	Proposed 2024/25 Licence Fees for Hackney Carriage and Private Hire Drivers, Vehicles and Operators		26 February 2024
<b>Lead Member:</b>	Councillor Alex Armstrong, Chair of the Licensing and Environmental Health Committee		
<b>Report Author:</b>	Jamie Livermore, Senior Licensing & Compliance Officer, 01799 510326		

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## Summary

1. This reports sets out the procedure for the setting of Licence fees for applications within the remit of the Licensing & Environmental Health Committee, and updates Members on the proposed Licence fees effective from 1 April 2024 relating to Hackney Carriage and Private Hire Drivers, Vehicles and Operators.
2. At the Licensing & Environmental Health Committee of 23 January 2024, Members resolved to refer the approval of the proposed fees to full Council following the end of the consultation period and the production of the full report findings.

## Recommendations

3. It is recommend that Council approve the 2024/25 fees proposed within Appendix A of this report.

## Financial Implications

4. The Local Authority is required to review its fees and charges as part of its annual budget setting process. In accordance with both legislation and

guidance, it is appropriate for fees and charges associated with the Licensing regime to be set as cost-recoverable.

## Background Papers

5.

**Appendix A:** Proposed Licence fees for 2024/25, and costs/income from 2022/23, 2023/24 and 2024/25

**Appendix B:** Responses and objections received from the public consultation

**Appendix C:** Local Government Association Guidance on locally set Licence fees (Dec 2023)

**Appendix D:** S70 Local Government (Miscellaneous Provisions) Act 1976

## Impact

6.

Communication/Consultation	Statute requires notice of proposed changes to be published in at least one local newspaper for a period of at least 28 days.
Community Safety	None
Equalities	Any changes in fees must be communicated to all existing licence holders, and consultation on any proposed changes will be conducted with interested parties and the wider public to ensure there is an opportunity to contribute to any such decision.
Health and Safety	None



Human Rights/Legal Implications	The Local Authority is permitted to charge a reasonable fee for the grant of a licence with the view to recovering the costs of the issue, administration and supervision of such licences.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

### Situation

7. In accordance with S70 of the Local Government (Miscellaneous Provisions) Act 1976, the Local Authority is required to consult with interested parties where there is any proposal by it to vary the existing fee structure. The requirement relates only to vehicle and operator licences, however the Authority has previously done and continues to include driver fees within this consultation for full transparency.
8. Consultation for the upcoming financial year was necessary as there are small increases compared with the previous year's period. The proposed fees and current fees are both illustrated in **Appendix A** for Members' assistance.
9. The reason for the increase relates only to national inflationary changes, the Council wide staff pay award, and any staff salary increments applicable within the Licensing Team. Therefore, increases have been kept to a minimum, however, still necessary in order to fully recover the permitted costs associated with the issue, administration and supervision of the licensing regime.
10. **Appendix A** additionally shows the movement on the licensing reserve. The

licensing reserve holds the income that pays for the cost of work required in future years of Driver and Operator licences, which are generally issued for 3- and 5-year durations respectively. The surpluses transferred to the licensing reserve in 2023/24 and 2024/25 are caused by an increase in the volume and cost of driver licences being issued compared to the previous years, so that more income is transferred to the reserve than taken from it.

11. The consultation commenced on the 18 January 2024 lasting for a period of 28 days, with a final date for objections of 15 February 2024. In accordance with the statutory requirements, the proposals were published on the Authority's website, in a local newspaper, and sent directly to existing licence holders by way of email. Licensing Officers had additionally offered to hold both an in person and online meeting with members of the taxi and private hire trade, however there was no take up on an in person meeting and the one licensed driver who signaled intent to attend the online meeting did not show.
12. The consultation resulted in a total of 29 responses, 25 of which were objections to the proposals. Those responses are shown in **Appendix B**. Where requested, individual responses have been given by Licensing Officers.
13. The feedback from the consultation shows that close to 50% of the responses reference either or both the presence of 'touting' and UBER at Stansted Airport, but both of these are unrelated matters to the setting of licence fees.
14. Members are advised to refer to **Appendix C** and **D** for further information and clarification on Licence fee setting from the Local Government Association and Local Government (Miscellaneous Provisions) Act 1976 respectively.

## Appendix A

### PROPOSED CHANGE IN HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING FEES

	2023/24	Notes	24/25 prop
Driver - 3 years	226		239.50
Vehicles	145	1	171.00
Transfer fee	116.5		123.50
Operator	549.5		583.00

Note 1: Vehicle fee for 23/24 of £145 includes a £16 discount

### HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING COSTS AND INCOME

	Notes	2022/23 Actuals	2023/24 Forecast	2024/25 Forecast
Salaries		213,418	218,495	269,397
Other employee related	1	3,759	3,849	4,745
DBS/Driver checks		9,684	11,520	11,520
Other (materials etc.)		54,261	64,951	65,411
Recharges from other departments				
Management and corporate overheads		20,982	21,481	26,486
Accounts		1,184	1,212	1,494
Legal		19,147	19,603	24,169
Audit		6,747	6,908	8,517
HR		10,793	11,050	13,624
Printing		1,116	1,142	1,408
Mailroom		8,659	8,865	10,930
Customer services		12,592	12,892	15,895
ICT		43,204	44,231	54,536
Offices		9,291	9,512	11,728
Safeguarding		19,777	20,896	21,732
Total costs		434,614	456,607	541,593
Income		431,565	482,735	549,098
Deficit/(surplus)	2	3,049	-26,128	-7,504

#### Notes

1. travel and training and clothing

2, The surpluses represent income received for Driver licenses for the cost of work that the licensing team will need to conduct in future years to 'support' these licenses. These surpluses are taken to the licensing reserve and drawn down in future years to meet the costs incurred.

**MOVEMENT ON LICENSING RESERVE**

	<b><u>2022/23</u></b>	<b><u>2023/24</u></b> Forecast	<b><u>2024/25</u></b> Forecast
Opening balance	65,507	62,458	88,585
Transfer to reserve	46,157	60,813	59,256
Transfer from reserve	49,206	34,685	51,752
Closing balance	62,458	88,585	96,090

## Appendix B

Which of the following licen Please write your comments in the box below to support your objection	
Driver;Vehicle;Operator;	Fees donot need to be increased. Sufficient cost already . Cost of living is difficult for drivers. They will not renew if badge and vehicle fees are increased.
Driver;Vehicle;Operator;	Please do as you think is best for you.
	<p>I cannot understand for the life of me how you can justify these increases . It seems that for the last few years the costs associated with me doing my job and running my business have increased very regularly where as the service I now receive from Licensing at Uttlesford is significantly less than say 10 years ago.....therefore I'm paying more for a significantly less than average service, this doesn't sit well with me as I'm very much a 'value for money' kind of person . It seems the onus is now always with us as drivers and operators with regard to adminstration etc, being told not to enquire by phone or email re progress on various applications , I find that quite insulting. Its all very one sided . My personal opinion is that the Licensing dept is not what it was when I started out and that these price hikes are completely unjustified especially as the services we receive as residents in Uttlesford for the high cost of council tax is not good value either.</p> <p>The Licensing section on your website and payment portal are awful . So no i definitely do not feel comfortable with another price hike . Thank you.</p>
Driver;Operator;Vehicle;	<p>I was never told that I had to pay any fees when I started employment with Kinect. I'm now un-employed £8,000 in credit card debt, just had my van along with all my tools stolen so unable to earn any income and will probably have my driving license suspended and now claiming universal credit. I haven't got the money to pay my heating bill never mind a fee that I spent 1 month of my time for free training for the license so if you insist your have to take me to court. I can't be clearer than that.</p>
	<p>We have such a shortage of drivers in Uttlesford and it's becoming so hard to get new drivers and with increased fees every year it's just not fair.</p> <p>You wonder why people break the rules, you as a council need to do more to help us recruit new drivers by making this process easier ... with all the other add on to getting the license it's just not going to be viable much longer ?</p>
Operator;Driver;	We need help not increased fees
Driver;Vehicle;	Too expensive

Dear Licensing team,

Firstly, the rationale behind this increase has not been adequately communicated. The lack of transparency about the reasons for this hike raises questions and concerns. Stakeholders like us need to understand why such changes are necessary, especially when they directly affect our financial obligations.

Moreover, this increase seems disproportionate in the current economic climate. Many of us are already grappling with financial challenges, and this additional burden could be detrimental. The earnings in our sector have not seen a commensurate rise, making it increasingly difficult to absorb these escalated costs. This disparity between rising operational expenses and stagnant income levels is a serious concern that needs addressing.

I understand there may be underlying reasons for this decision that are not immediately apparent. However, without a clear explanation, it is challenging to appreciate the necessity of this increase. It would be greatly beneficial if the Licensing Authority could provide a detailed breakdown of why this increase is essential and how the additional funds will be utilized.

Furthermore, I kindly request that the Authority consider the current economic pressures on businesses and individuals in our sector. An open dialogue about these issues would be greatly appreciated. We are not opposed to change but believe that it should be justifiable, transparent, and, most importantly, manageable within our economic constraints.

In closing, I earnestly urge you to reconsider this decision or at least provide a more detailed explanation to those it affects. We will engage in constructive discussions to find a more feasible solution.

Thank you for your attention to this matter. I look forward to a prompt and considerate response.

Driver;

Driver;Vehicle;Operator; No

I would like to see the increase in fees being used to allow PH operator drivers to use bus lanes - this would assist PHD's in promptly servicing our customer needs by reducing the time between pick up & drop off and also it would assist with congestion at major intersections etc (e.g Army & Navy roundabout in Chelmsford).

Driver;

In a time of cost of living, where money is being squeezed just to make ends meet. Other drivers will not be able to afford making ends meet. Electricity/gas has increased, food bill has increased and now if licence fee increases then it will have a detrimental effect on us. Unfortunately it appears that there has been a shortfall in Uttlesford budget somewhere and money was wasted in certain projects. As a result the recovery of these losses have been passed onto us and this is immoral, unethical and will have a huge backlash on Uttlesford as it will prevent others joining up and going elsewhere or other professions

Driver;

I work from the airport at stansted and I object to the proposed increase in fee on the following basis,

1. Even though i have raised the issue of unlicensed touts operating at the airport on a daily basis with your own enforcement dept, I have yet to see a member of your team at the airport other than to check our tyres. I have been forced to try and chase them away myself and it would seem that Uttlesford CC and Stansted Airport have no regard to the safe onward journey of people using the airport and I can only presume that it will take some tragic accident or serious criminal act before any action is taken

2. There are 100's of Uber drivers operating from the airport on a daily basis who are not licensed by your yourselves so why should I renew your license, I note that Chelmsford Council have banned TFL licensed drivers from operating in their area but as far as I can see Uttlesford CC are unwilling to protect the living of drivers who pay for a License so

Driver; If you can't protect the interests of drivers who already have to pay a fee what possible justification could you have for increasing it?

Driver; I am no longer a driver and cannot afford those fees

Driver; It is difficult to make money this days and taxi business is very quite and I am not working at the moment. First year drivers fee should be free as I paid lots of money for training and not using my badge at the moment. I might start driving when season starts.

Driver; I am looking forward to have vehicle and operator licence soon. Right now we are having difficulty with cost of living as well. there is £60 differences between new and existing fee. That is not a lot but when you look after your family we all thinking about our budget. Please keep existing fee at least for end of this year.

Driver; I work & have worked for the taxi concession at Stansted Airport for more than 20 years. In those years fees to the company running the taxi company, to the owners of the Airport & yourselves have gone up & up not to mention fees for green penny coarse , medical & police checks = all of which are a necessity in a professional, rightful way of running & policing this business = creating jobs ( including your own ) and making profit for local businesses etc = All this is under threat as our revenue is down hugely to the presence of UBER taxis coming in from other areas taking more than 50% of our work in an illegal operation working from row G in the orange short stay car park & ranking up in other areas around the Airport & off Airport areas . It is my understanding that these Uber drivers are generally not licensed with you , do not jump through the same hoops & legal , medical checks our / your driver's have to do & pay nothing at all to the Airport, local business & importantly yourselves = my question & objection if you like is why is this unfair playing field being allowed to carry on in your district under your watch ?? What awful happening is to occur with one of these unregulated, unchecked vehicles & drivers before we all stand as one together against what could be a potential disaster = this should be dealt with immediately & paid for by the revenue created by your fees taken from ALL drivers working out of the Uttlesford area

Driver;None;	I do strongly object to the the increase in fees, I work from the official and legitimate taxi service at Stansted Airport, however Uber drivers (TFL licensed) are allowed to operate from here and literally take business away from licensed Uttlesford drivers. Add the fact that touts are also a huge problem and presence at the Airport, yet nothing is done to stop either of these practices. It makes the increase in licensing fees unjust, when more should be done to protect your own Uttlesford drivers.
Driver;	I object to the fees being put up because I feel uttlesford do nothing about Uber drivers in this area and if you wanted to you could as Chelmsford have already sorted this problem in their area . This has a massive effect on our earnings especially being at airport , i would be happy to accept this increase if you was to help with this problem . As it stands with earnings I probably will not renew my licence as it simply isn't worth it . I hope you will take into consideration my comment on this .
Driver;Vehicle;	What's the justification for the fees to be increased? Also it leaves members with less funds available
Driver;	I am licenced with Street Cars at Stansted Airport. How can you justify an increase in your fees when you Do nothing to prevent the numbers of Touts at the airport who are carrying Airport passengers illegally, every day, and it seems with impunity, because we see no signs of any action from yourselves. You allow operators such as Uber to operate at Stansted , and to rank up for free. drive off with their passengers having paid a minimum pick up fee from £7. We, on the other hand , will have to pay out at least £500 to get our 3 year licence, and the see a large proportion of our fares go to pay the Airport and the operator, leading to these ride aps being able to undercut our London fares massively, whilst often asking up double our fares to go to a local hotel. There are often a great many of their cars parking up at the mid stay car park or the motorway services waiting for a fare. How do I justify renewing my licence next year when it seems you do nothing to justify your licence fee
Driver;	I object to the increase in fees, especially as Uber drivers are allowed to operate at Stansted Airport, also nothing is done about the touts, taking business from the official taxis.
Driver;	Hello....im happy with the increase of the licence fees...But i do have a couple of concerns...can you please explain why uber hasn't been banned from uttlesford but has been else where in Essex example chelmsford, southend. Also the touting problem at the airport is getting worse than better....many thanks
Driver;	Absolutely nothing is done to stop illegal and unlicensed taxi drivers to operate from Stansted Airport. Only council in Essex allowing Uber to illegally operate and bend the rules.
Driver;	I think it's unfair to keep increasing the fees when us working at the airport have Uber and touts affecting our earnings, we fill something needs to be done about uber and the touts who are there on a daily basis
Driver;	I'm objecting as I believe that Uttlesford District Council has done nothing to stop illegal taxis operating at Stansted Airport as well as Uber. Therefore I believe that our work has drastically reduced and causes huge losses.



Council hasn't done anything to stop the touts coming in at the airport and uber operating with TFL License which has effected our earnings massively.

Specially the amount of money uber is charging that is ridiculously lower than normal rates running around in the area.

They can run the business with them rates because they do one way from here and easily get a job in london or surrounding areas where as we can't.

My objection is to either stop them from coming up here or make them to increase their prices sensible.

Please try to understand we have invested money on license but since this uber been allowed in with their ridiculous prices it has badly effected our income which reflected us bearing the household expenses.

Driver;

I work at Stansted Airport and I'm sure you are aware that untold amounts of Uber drivers are parking up at local services and taking Uttlesford licensed drivers work away when they are licensed by TFL, some 30 miles away.

But nothing is being done to protect the livelihoods of Uttlesford licensed drivers from these people who are taking Uttlesford Licensing Authority for incompetent fools.

I don't take their view and I support Uttlesford Council.

But you wish to take more money from us. We are easy targets because we play by the rules.

Other Licensing authorities have banned Uber and protect their drivers.

Alternatively, it is not difficult to catch out and report Uber drivers as their whereabouts is obvious but nothing is being done to prevent their blatant disregard for the rules.

Driver;

Regards

I objection to the licensing fees because. 1there is not enough licensing officers on the ground to stop all of these touts that we have up at stansted airport. I have lost count how many time I have had arguments with these people it is a joke .and so you are not doing anything to stop the uber taxi come up for london and just parking up and sitting there waiting for a job to come though. What they are doing is legal. And it is not just yhe airport it in bishops s as well .all in is doing is putting all the local taxi companies out of work .many councils have just banned uber because of this reason they can see that they are trying to take over .and this is what will happen hear soon if you do not do something then you have many people unemployed because you could not be bothered to do anything about is problem

Driver;

Above average price hikes at a time when cost of living is already high.

Pure grifting from the council to get easy money from license holders who have no other option than to pay. Disgusting and a change of council and MP is required.

None;

Driver;

Seems a natural increase as every other bill is increasing !

## LGA guidance on locally set licensing fees

This guidance aims to help councils to understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses.

14 Dec 2023 | 10.74

### Introduction

Councils are responsible for administering a range of licences and approvals relating to both national legislation and discretionary functions that are adopted locally. For the majority of these regimes the costs are recovered through fees set by each council and paid by the licence applicant. It is an accepted principle in relation to these functions that those who benefit from the system (such as licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring both that full costs can be recovered by each and every council, reducing the risk of a subsidy from local taxpayers, and that businesses do not pay more than they should.

Licensing decisions that are made by councils can face scrutiny from businesses, the public and in the media, particularly in relation to fee setting. Therefore, every council should ensure it sets fees in a legally robust and transparent manner.

This guidance aims to help councils to understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses. It does not contain a fees calculator because this assumes a uniformity of service design and associated costs, when it is vital that councils are free to design services that best serve the needs of their community and recover costs accordingly. Whilst this guidance is focused primarily on licensing fees, the principles of good fee setting apply equally to other fees set by council regulatory services (and beyond) so officers working in those fields may also find this guidance useful.

## **Key issues for consideration**

### **Balancing the need for funding with a proportionate approach**

Regulatory services are at the heart of councils' approaches to economic growth. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.

To ensure that councils can promote growth and protect the public, there is a need to ensure that licensing and wider regulatory regimes are adequately resourced. This requires funding, and it is an accepted principle that licensed activities should be paid for by those benefiting from the licensed activity, rather than drawing on the public purse.

Where councils have the flexibility to set local fees, it is possible to consider how resources can be focused on risk; whether business support is effective; and how the burden of inspections can be removed where it is not necessary. A streamlined approach to licensing will ensure that fees are kept to a minimum and businesses can be encouraged to prosper. However, councils should ensure they are accurately setting their fees, including checking that the hourly rates of licensing and other officers are correct and considering wider costs such as administration or on-site costs, to enable full cost recovery.

## What are the Provision of Services Regulations 2009 and how do they impact on locally set licence fees?

Whilst the detail of what may or may not be chargeable under a licensing scheme is sometimes set out in individual pieces of legislation, or is established through case law, councils need to be aware of and comply with the **Provision of Services Regulations 2009**. These Regulations have important implications for licence fee setting, and there have been legal challenges to licensing fees based on the Regulations in the past.

The Provision of Services Regulations protect UK businesses and consumer rights by maintaining obligations on UK competent authorities to ensure that their regulation of service activity through authorisation schemes is proportionate, justified in the public interest and such authorisation schemes are administered in a fair, accessible and transparent way.

They were first introduced in 2009 and transposed the European Union Services Directive 2006, which aimed to make it easier for businesses to provide cross-border services with other European Economic Area countries by lowering non-tariff barriers to trade. This included reducing administrative and regulatory burdens on businesses providing a service activity. The European Services Directive no longer applies to UK law following the UK's exit from the European Union. However, the European Union (Withdrawal) Act 2018 preserved the Provision of Services Regulations 2009 under UK law, so councils still need to comply with the requirements of the Regulations. For example, the principles of no profit-making, no cross subsidies between licence types or leakage to the General Fund, taking forward deficits and surpluses when deciding following years' fee levels, and using fees to cover enforcement costs where relevant domestic legislation allows still apply.

Councils should note that the Government has been conducting a review of the Regulations and intends to reform the Provision of Services Regulations using the powers within the Retained EU Law (Revocation and Reform) Act.

**[Further guidance about the Provision of Services Regulations is available on the Department for Business and Trade's website. \(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/975587/provision-of-services-guidance-march-2021.pdf\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975587/provision-of-services-guidance-march-2021.pdf)** Councils should specifically note that the Regulations do not apply to the licensing of taxis or gambling activities; however, the principles remain a helpful way of providing a transparent and business-friendly approach to licensing.

### **Principles of the Provision of Services Regulations**

The general principles of the Regulations apply to the processes and procedures applied by competent authorities (regulators and councils) who administer authorisations schemes. These provide benefits to service providers when seeking a relevant authorisation, such as a licence, in order to establish their business.

The core principles of the Regulations – **justified by an overriding reason relating to the public interest (such as public safety, public health or public policy); proportionate to the public interest objective; clear and unambiguous; objective; made public in advance; transparent and accessible** – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.

Councils should also ensure that the principle of non-discrimination applies. When considering fee setting, councils should ensure that all applicants are treated equally irrespective of protected characteristics, location and/ or nationality. However, councils do have a discretion not to impose a full cost recovery charge, provided this is to achieve a legitimate aim.

The importance of this approach has also been established by case law on taxi and PHV licensing which, although not covered by the Regulations, illustrates an important precedent which councils should adhere to. *Cummings v Cardiff* ruled that the charges within a licensing regime for different categories of licence should not subsidise each other; so, a surplus gained on hackney carriage licences should not reduce the cost of a private hire vehicle licence.

This can be logically extended to mean that the fees received under one licensing regime must not subsidise fees charged under another. For instance, a surplus generated by taxi fees must be reinvested back into taxi licensing and not used to reduce the cost of, for instance, a scrap metal dealer's licence. Councils should also be aware of the R (Rehman) v Wakefield case, which made it clear that driver enforcement costs cannot be covered by vehicle licences, but they can be covered by driver licence fees.

All councils should, therefore, ensure that they have individual, discrete cost-calculations for each of the licensing regimes that they operate. This may require a change in the way that some councils operate.

### **Administering payment of fees**

Under the Provision of Service Regulations councils need to ensure that details of any fees are easily accessible online, including the ability to make payments online.

Councils should be able to separate out the cost of processing an initial application from those costs associated with the ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.

### **Hemming v Westminster**

In Hemming v Westminster, the Supreme Court referred to the European Court of Justice (ECJ) the issue of how the charges were levied. The Court identified two different approaches to charging fees:

(a) Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach.

(b) Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

The Court found the type A approach of charging two fees is permissible under the European Services Directive and the Provision of Service Regulations but felt that the type B approach of charging a single fee was not compatible with the Services Directive or the Regulations.

Therefore, licensing authorities should confirm that their fee structures ensure that application fees relate solely to the cost of authorisation procedures (the costs associated with reviewing an application and granting / refusing a licence). Under the type A approach, successful licence applicants should subsequently be charged an additional fee relating to the costs of administering and enforcing the relevant licensing framework.

Not all legislation in England and Wales permits councils to separate out elements of the fee in this way. For instance, the Licensing Act 2003 has nationally set fees, which constrains councils' ability to adopt this approach. It is therefore unclear whether a council could offer a refund of the enforcement element if an application is refused under this Act: the LGA view is that this is not possible, as the legislation requires that the specified amount (fee) must be paid on application.



Nevertheless, despite these constraints, councils could consider calculating the notional costs of administration and enforcement separately and make applicants aware of the two elements to the fee. In addition to meeting the transparency requirements of the Provision of Service Regulations, this enables councils to examine the efficiency of their internal processes and make improvements where necessary. The process adopted and information available about this should be simple and cost effective for both the council and businesses.

### Reasonable and proportionate

The Regulations also includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. **Councils must not use fees covered by the Regulations to make a profit or act as an economic deterrent to deter certain business types from operating within an area.**

### Keeping fees under review

Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund.

To ensure that fees remain reasonable and proportionate it is necessary to establish a regular and robust review process. This has particular advantages in the early stages of a new licensing regime, where fees have been set on best guess estimates of the number of applications that will be received.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Councils that divert fees' income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law.

Where fees charged result in a surplus, both *Hemming v Westminster* and *Cummings v Cardiff* stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of **R v Tower Hamlets LBC (1994)** may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council taxpayers”.

### Open route for challenge

In the interests of transparency, it is helpful to give an indication of how the fee level has been calculated; the review processes in place and a contact method for businesses to query or challenge the fees. Open consultation with businesses and residents to design a local service, including understanding the implications for fees, helps to provide a robust answer to challenge.

It may also prove helpful to engage elected members in the scrutiny of fees. They will use their knowledge as local representatives to consider councils’ assumptions and challenge them where necessary.

### What can be included in a licence fee?

Local authorities and organisations such as the LGA have previously identified that cost recovery and charging models for chargeable services is a key issue affecting the financial sustainability of regulatory services, and this can in part be due to outdated charging approaches. Councils should take a holistic approach to costs and think about the total cost of putting an officer on the ground, and not just their salary cost. As such, councils should consider the following

elements when setting licence fees. It should be noted that this list is for **consideration only**, as councils may choose not to charge for all the elements listed if they do not apply locally, or there may be additional areas of work carried out during the licensing process that are not included in this guidance.

Individual pieces of legislation may also have specific items that may or may not be chargeable under the scheme. The lists below will apply for most schemes, but should always be checked against the relevant piece of legislation. If councils have any concerns, they should seek the advice of their in-house legal department.

More generally, when thinking about fees it is crucial that councils have a clear understanding of what the hourly rates of their licensing officers are. The LGA has a broad concern that councils often underestimate the overall hourly rate of officers, and this can lead to councils not recovering their costs.

#### **Initial application costs could include:**

**Administration** – This could cover basic cost of office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

**Initial visit/s** – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs' include travel costs and management time.

**Third party costs** – Some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.

**Liaison with interested parties** – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

**Management costs** – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.

**Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

**On costs** – including any recharges for payroll, accommodation, including heating and lighting, IT hardware and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

**Development, determination and production of licensing policies** – The cost of consultation and publishing policies can be fully recovered.

**Web material** – The Provision of Services Regulations require that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

**Advice and guidance** – This includes advice in person, production of leaflets or promotional tools, and online advice.

**Setting and reviewing fees** – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

**Further compliance and enforcement costs could include:**

- **Additional monitoring and inspection visits** – Councils may wish to include a charge for risk-based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.
- **Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.

- **Registers and national reporting** – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

### **Charging for action against unlicensed traders**

Councils' ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in question. In **Hemming v Westminster**, the Supreme Court ruled that the Services Directive made no mention of enforcement costs. Councils' ability to charge these costs to applicants for licences is therefore dependent on the UK legislation.

The Court ruled that licensing authorities are entitled under the **Local Government (Miscellaneous Provisions) Act 1982** to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme; in this case, the licensing scheme for sex shops.

Taxi and PHV licensing case law is clear that driver enforcement costs cannot be covered by vehicle licences, but they can be covered by driver licence fees. This was established by the **R (Rehman) v Wakefield** case. The LGA believes that section 70(1) of the 1976 Act makes it clear that the costs of enforcement against licensed operators can also be recovered through a fee; however, the position on recovering these costs is contested.

**[Home Office guidance under the Scrap Metal Dealers Act \(https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance\)](https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance)**,

Councils **[must have regard to this guidance \(https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance\)](https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance)**, which prevents the recovery of enforcement costs against unlicensed dealers only. Great care must therefore be taken when setting fees to check what is and is not permitted under that specific licensing regime.

### **Unrecoverable costs**

It is worth considering that the costs of defending appeals in the magistrate’s court or via judicial review can be recovered through the courts. Including these costs within the fee's regime could lead to recovering the costs twice, which would be inconsistent with the Provision of Service Regulations

Do	Don't	Maybe
Check the relevant legislation	Use a surplus from one fee to subsidise another	Include the costs of enforcement against unlicensed traders
Calculate processing costs and enforcement costs separately	Allow fees income to be drawn into the council's general fund	Include a condition on the issued licence that requires the payment of the enforcement part of the fee, where this is not charged upfront
Clearly communicate to applicants the elements that make up the fee	Allow fee levels to roll-over each year without a review	
Ensure fees are determined by the right person	Forget to ask the courts to award costs during a prosecution	
Include staff on-costs		
Include training costs for officers and councillors		

## Further support

The practical approach to designing a local licensing service, allocating costs accurately and considering legal implications can be a difficult task; therefore, it is strongly recommended that licensing teams work with their legal advisors and finance teams to make the best use of all expertise.

In addition, councils should consider working collaboratively with neighbouring authorities to provide mutual support. Working with other councils and reviewing fees set by similar authorities can be an extremely valuable way of ensuring that fees are not perceived to be disproportionate by businesses.

This document sets out high-level, over-arching principles for fee setting that apply across most licensing regimes. It is always important to check the specific details of the regime in question. The following links will take you to relevant legislation or guidance for the most common licensing regimes.

### ✓ Relevant guidance links

**Licensing Act 2003** ([//www.gov.uk/government/publications/alcohol-licensing-fee-levels](http://www.gov.uk/government/publications/alcohol-licensing-fee-levels) )

**Gambling Act 2005** (<http://www.legislation.gov.uk/ukpga/2005/19/section/212>) and **The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007** (<http://www.legislation.gov.uk/uksi/2007/479/content/s/made> )

**Scrap Metal Dealers Act 2013** (<https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>)

**Taxis and PHV Licensing (Local Government Miscellaneous Provisions Act 1976** (<http://www.legislation.gov.uk/ukpga/1976/57/section/70> ))



**Sexual Establishments (Local Government Miscellaneous Provisions Act 1982 (<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3> ) )**

**Street Trading (Local Government Miscellaneous Provisions Act 1982) (<http://www.legislation.gov.uk/ukpga/1982/30/schedule/4> )**

**Provision of Services Regulations 2009 (<https://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents>)**

## Case law

### Hemming v Westminster

[The Hemming v Westminster case \(https://www.supremecourt.uk/cases/uksc-2013-0146.html\)](https://www.supremecourt.uk/cases/uksc-2013-0146.html) tested the degree to which fees and processes must be proportionate, as well as the administrative processes for calculating fees, in the context of licensing sex establishments. The case established a number of key points about setting fees under the European Services Directive and Provision of Service Regulations.

The case has passed through a number of courts, including the Court of Appeal and Supreme Court, with different elements of the case being settled at different stages.

In 2013, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This meant that the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee. The Court of Appeal held that such costs could not be deemed to fall within the **EU Services Directive 2006** and associated **UK Provision of Services Regulations 2009**.

The Directive states that charges levied by a competent body on applicants under an authorisation scheme must be reasonable and proportionate to the cost of the *'procedures and formalities'* of the scheme and must not exceed these costs. However, the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement also found that the annual reviews were conducted by an officer of Westminster City Council who did not have delegated authority so to do, and that it was the Committee that was supposed to set the fees. However, the judgement did not suggest there was anything intrinsically wrong with an officer undertaking this function provided the function has been properly delegated (where it can be), and that the officer takes relevant considerations into account. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

The judgement would have left Westminster, and potentially other councils, liable to refund the proportion of sex shop licence fees deemed to be unlawful, dating back to the introduction of the Regulations in 2009.

Westminster appealed the Court of Appeal's judgement on the recovery of enforcement costs, and the case was heard by the Supreme Court in January 2016. Other matters determined by earlier hearings, such as the need to review fees annually and the requirement for councils to ring-fence income from licensing fees so that any surplus or deficit is carried forward to the next year's budget, were not contested.

The council's position that it was lawful for it to seek to recover all enforcement costs was supported by the LGA, which submitted written interventions to the Supreme Court. A range of regulatory bodies, as well as HM Treasury, also submitted written interventions in the case.

The Supreme Court ruled that licensing authorities are entitled under the **Local Government (Miscellaneous Provisions) Act 1982** to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. Crucially, it reasoned that the **European Services Directive** deals only with the issue of authorisation procedures and fees relating to applications to exercise a service activity (such as operating a sex shop).

**Therefore, the Directive does not prevent licensing authorities from charging those who receive licences, fees that are proportionate to the cost of administering and enforcing the licensing framework for that activity.**

**Cummings v Cardiff** ([https://docs.wixstatic.com/ugd/241720\\_86a9559ead8b44569ef0153631a1b766.pdf](https://docs.wixstatic.com/ugd/241720_86a9559ead8b44569ef0153631a1b766.pdf))

Cardiff Council had proposed a significant increase to hackney carriage and private hire vehicle charges in July 2013. Cummings and other claimants then challenged Cardiff City Council by way of judicial review over the manner in which these costs had been calculated. In 2014, Mr Justice Hickinbottom granted the claim for the review on the grounds that:

- 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
- 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
- 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.

The Judge also made declarations that:

(1) A local authority when determining hackney carriage and private hire licence fees under ss.53 and 70 of the LG(MP) 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 ss.53 and 70 above.

(2) A local authority must:

- keep separate accounts for hackney carriage and PHV licence fees under ss.53 and 70 of the LG(MP) Act 1976
- ensure that any surplus or deficit identified under each part of the hackney carriage and private hire licensing regimes is only applied to the part of the system from which it has been raised/lost
- ensure that any surplus from one licensing regime shall not to be used to subsidise a deficit in another.

## References

### ∨ References

R v Westminster City Council ex parte Hutton (1985) 83 LGR 516.

R v London Borough of Tower Hamlets ex parte Tower Hamlets Combined Traders Association, 19 July 1993; [1994] COD 325 QBD Sedley J. Although the decision was about the London Local Authorities Act 1990, it would appear to have general effect as a principle.



# Local Government (Miscellaneous Provisions) Act 1976

## 1976 CHAPTER 57

### PART II

#### HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

#### **70 Fees for vehicle and operators' licences.**

- (1) Subject to the provisions of subsection (2) of this section, 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 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.
- (2) The fees chargeable under this section shall not exceed—
- (a) for the grant of a vehicle licence in respect of a hackney carriage, twenty-five pounds;
  - (b) for the grant of a vehicle licence in respect of a private hire vehicle, twenty-five pounds; and
  - (c) for the grant of an operator's licence, twenty-five pounds per annum;
- or, in any such case, such other sums as a district council may, subject to the following provisions of this section, from time to time determine.
- (3) (a) If a district council determine that the maximum fees specified in subsection (2) of this section should be varied they shall publish in at least one local newspaper circulating in the district a notice setting out the

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**Changes to legislation:** There are currently no known outstanding effects for the Local Government (Miscellaneous Provisions) Act 1976, Section 70. (See end of Document for details)

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variation proposed, drawing attention to the provisions of paragraph (b) of this subsection and specifying the period, which shall not be less than twenty-eight days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made.

- (b) A copy of the notice referred to in paragraph (a) of this subsection shall for the period of twenty-eight days from the date of the first publication thereof be deposited at the offices of the council which published the notice and shall at all reasonable hours be open to public inspection without payment.
- (4) If no objection to a variation is duly made within the period specified in the notice referred to in subsection (3) of this section, or if all objections so made are withdrawn, the variation shall come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later.
- (5) If objection is duly made as aforesaid and is not withdrawn, the district council shall set a further date, not later than two months after the first specified date, on which the variation shall come into force with or without modification as decided by the district council after consideration of the objections.
- (6) A district council may remit the whole or part of any fee chargeable in pursuance of this section for the grant of a licence under section 48 or 55 of this Act in any case in which they think it appropriate to do so.

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**Modifications etc. (not altering text)**

- C1** S. 70 modified (27.11.2009) by [The Local Services \(Operation by Licensed Hire Cars\) Regulations 2009 \(S.I. 2009/2863\)](#), regs. 1, 4 Table (with reg. 3)



**Changes to legislation:**

There are currently no known outstanding effects for the Local Government (Miscellaneous Provisions) Act 1976, Section 70.