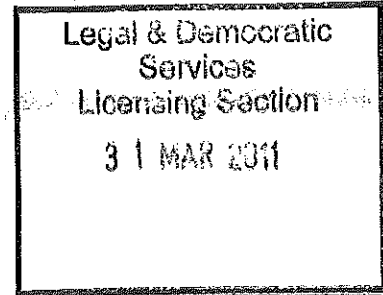


30th March, 2011.

Director of Corporate Resources, Law and Governance,
Dudley Metropolitan Borough Council,
5 Ednam Road,
DUDLEY
West Midlands,
DY1 1HL



Local Government (Miscellaneous Provisions) Act 1976
Licensing of Hackney carriages, Private Hire Vehicles and Operators
S70 – Fees and charges for licences - proposed variations approved Taxis Committee

Dear Sir,

Further to the statutory notice placed by the Council in pursuance of S70 (3) of the above Act I write on behalf of Dudley Taxi Alliance to lodge a **formal Objection** to the proposed fees as advertised.

At this time, we wish to place on record our view that the fees for the licensing of Hackney carriages, Private Hire vehicles and operators [as well as Driver Licences – not amenable to objection under s70(3)] are conditioned by the ruling of the District Auditor in Guildford (September 2010), which held that licence fees should be accounted for separately by type and transparently with NO recovery of costs in connection with enforcement activities related to driver or operator licensing – copy attached.

The report presented to the Dudley MBC Taxis Committee (and associated financial report) does not demonstrate that the Council, in deciding on the various sums to be demanded for the grant or renewal of licences has considered the level of particular fees in the context of the findings of the District Auditor in Guildford. Specifically the fees for licences to drive licensed vehicles are not to include any recovery of costs of enforcement in relation to drivers.

In the same decision the Auditor confirmed his opinion, on legal advice that the fees for the grant of operator licenses are not to include any costs in relation to enforcement activity by an authority against operators.

Therefore, we would wish to see the Council reconsider the fees for the licensing of vehicles, operators (and drivers) to reflect that opinion. Please acknowledge receipt of this Objection.

Yours faithfully,

For and on behalf of Dudley Taxi Alliance

Mohammed Ali
23, Tanfield Road
Dudley
DY2 8XF

Enclosure: Letter District Auditor(Guildford District Council) – to taxi trade representatives.

Our reference PG/JB/FH

10 September 2010

Mr Mark Rostron
Vice Chairman and Secretary
Guildford Hackney Association
17 Lower Guildford Road
Knaphill
Woking
Surrey, GU21 2EE

Direct line 01483243346
Direct fax 01483243357
Email p-grady@audit-
commission.gov.uk

Dear Mr Rostron

**Guildford Borough Council: Objection
Audit of Accounts for the year ended 31 March 2009
Decision and Statement of Reasons**

I am writing to advise you of my decision and the reasons for my decision on the objection made by Mr Williams-Wynn to the accounts of Guildford Borough Council (the Council) for the year ended 31 March 2009. You act as Mr Williams-Wynn's representative. The objection and my decision relate only to the financial year 2008/09 and not to any earlier years, the audits of which are now closed.

The objection

The objection was set out in your letter of 19 August 2009. In your letter and in subsequent correspondence you refer to the fees that the Council set and charged for licences for Hackney Carriage Drivers and Cars, Private Hire Drivers and Cars and Taxi Company Operators. You stated that the Council did not comply with the Local Government (Miscellaneous Provisions) Act (1976) and that the fees were unlawful. You made three assertions in the objection:

- the Council did not properly advertise fees over £25;
- the Council did not keep proper records of costs and fees for each type of licence;
and
- fees were in excess of costs.

You asked me to issue a report in the public interest under section 8 of the Audit Commission Act 1998 and to consider making recommendations to the Council concerning the repayment and continuing collection of those fees.

Audit Commission, 1st Floor, City Executive Centres, Crossweys, 28-30 High Street,
Guildford, Surrey, GU1 3HY
T 01483 243346 F 01483 243357 www.audit-commission.gov.uk

Work carried out

In reviewing your objection I have:

- considered all the written correspondence from both you and the Council, whether specifically referred to in this letter or not;
- collated those documents that I consider to be material to deciding the objection and shared those documents with you and the Council;
- considered relevant statute and case law, in particular the relevant sections of the Local Government (Miscellaneous Provisions) Act (1976);
- reviewed the evidence supporting the Council's income and expenditure on taxi licensing in 2008/09;
- provided you and the Council the opportunity to make further comments;
- met with you and Mr Williams-Wynn;
- carried out such further work that I consider appropriate and shared the results of that work with you and the Council;
- considered carefully all the further representations made whether specifically referred to in this letter or not; and
- taken my own legal advice

Findings

I deal in turn with the three assertions made in the objection. My conclusions are based on the evidence that has been made available to me during my review.

1) The Council did not advertise fees in excess of £25

Section 70(2) of the 1976 Act provides that the fee that can be charged for vehicle licences and operator licences shall not exceed £25 or "such other sums as a district council may, subject to the following provisions of this subsection, from time to time determine". The "following provisions" referred to are contained in sections 70(3) to (5), which provide:

"(3)(a) If a district council determines 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 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.

A council may determine a maximum fee other than the £25 stated by the Act, provided the council follows the procedures set out in sections 70(3), (4), and (5). These require that if a council determines that the maximum fee of £25 should be varied they shall publish a notice in a local newspaper which sets out the proposed variation. The notice must be available for public inspection for 28 days from the date of publication at the offices of the council. The notice must also explain how objections can be made to the proposed variation to the fees. If there are no objections, or any objections are withdrawn, then the new maximum fee comes into operation at the end of the notice period or after the last objection has been withdrawn. If objections are made and not withdrawn then the council must set a date not later than 2 months after the end of the 28 day notice period on which the new maximum fee will come into operation with or without modification as decided by the council after considering the objections.

You alleged the Council did not properly advertise the fee as required by section 70. On the basis of the evidence presented to me the last occasion when the Council properly varied the maximum fee was around March 2003. The Council advertised a maximum fee of £271 for the year 2003/04.

The fee charged in the year 2008/09 was £328. I note also that the fee for 2009/10 was £341. Both of these fees are more than the last advertised fee. While the Council states that it has consulted on the fees with the Taxi Advisory Group, in my view the Council has not complied with the legislative requirements for setting fees for vehicle licences and operator licences in 2008/09.

In my view the Council set fees in 2008/09 in excess of the varied maximum fee, in breach of the provisions of section 70, resulting in an unlawful item in the Council's 2008/09 accounts. In my view the unlawful item is the amount of fees collected that is in excess of the total fees that would have been collected based on the last advertised maximum fee of £271. The total unlawful income for 2008/09 is estimated to be in the region of £25,000.

2) The Council did not keep proper records of costs and fees for each type of licence

I considered the quality of records supporting the costs and fees in the taxi licensing service. I also reviewed the quality of record keeping supporting the different types of licence.

Records of costs of the department

I reviewed the Council's records of the costs of the taxi licensing service in 2008/09. I carried out further audit work on some of the specific costs included within the taxi licensing fees. My further audit work focused on costs in respect of vehicle tests, overheads/recharges, other non-staff costs, and salaries. In total these costs represent about 95% of the total costs of the service.

Vehicle tests, overheads/recharges and other non-staff costs

In my view the Council's accounting records adequately supported the costs of vehicle tests, overheads and other non-staff costs in 2008/09.

Salaries

Salaries costs in taxi licensing were £128,516 in 2008/09. A salaries budget of £133,040 was used to inform the setting of the fee for 2008/09. The underspend against the salaries budget was, however, more than offset by overspends against the budget for other costs. This resulted in the taxi licensing service making an overall deficit for the year of £21,251.

The salaries costs represent roughly half of the total expenditure incurred by the taxi licensing department. In other documentation, the Council referred incorrectly to a staff establishment of 2.82 Full-Time Equivalent (FTE) staff. The establishment in the budget is, in fact, 3.82 FTE staff. This includes a post which was vacant at the time of setting the budget for 2008/09. The vacant post meant that, at the time of setting the budget, only 2.82 FTE posts were filled.

The proportions of time allocations (the FTE values) used to inform the budget and the fee were set during the Council's budget setting round for 2008/09. They were decided by the Licensing Services Manager and the Head of Environmental Health and Licensing, who agreed the proportions of salary to be charged. As such it was an assessment of workload by the people most closely involved in the service. The salary proportions were based on their observations of how the post holders historically split their time across the licensing functions: taxi licensing, gambling licences and Licensing Act activities.

However, the Council did not keep any record of this meeting, of the basis of the staff allocations or of any further rationale supporting the precise reasons for the values used.

The taxi licensing service does not use any time recording system. The service had considered introducing such a system in the past but declined to do so, on the basis that the cost of such a system would outweigh the benefits. I have not, therefore, been able independently to verify the accuracy of the salary allocations used.

In my view there is scope for the Council to keep better records of the costs and fees for each type of licence, and of the basis of apportionment of salaries costs.

Records in respect of different types of licence

You alleged the Council has not accounted properly for the different types of licence. You referred to an extract from the book *Button on Taxis (Licensing Law and Practice) 2009 Edition* by Jim Button. Button interprets the legislation, in chapter 4.17, as requiring “*at least two identifiable accounts relating to the fees levied under each section, and if different fees are levied under each section in respect of the different licences covered by the provision, there must be a separate breakdown for each*”.

Button argues that the overall effect of the provisions in the 1976 Act are that, “*in relation to drivers, the costs of issue and administration can be recovered; in relation to vehicles, the costs of 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 costs of administration are recoverable*”.

The Council’s view was that the costs of enforcement activity, a minor part of the whole costs of licensing taxis, can be included within the fee set under section 70 and that the reference to control and supervision must also cover drivers and operators.

Having sought and considered legal advice on this point, I do not agree with the Council’s position that enforcement costs (control and supervision) relating to operators’ and drivers’ licences are recoverable under the Act. In relation to licences for drivers, section 53(2) only provides that the costs of issue and administration are recoverable. Section 53(2) makes no reference to any other type of cost being recoverable. In relation to vehicle and operator’s licences, section 70(1)(c) provides enforcement costs are recoverable for vehicle licences only. It does not refer to enforcement costs being recoverable for operator’s licences. In my view, enforcement costs in respect of drivers (section 53(2)) and operators (section 70(1)(c)) are, by their omission from the wording of the legislation, not recoverable under the Act.

In my view the Council has not taken full account of the differences in the wording under the Act between section 53 and section 70 and the different licences. To enable the Council to demonstrate it has set an appropriate fee sufficient to cover its costs, it should be able to show:

- in the case of drivers’ licences (section 53) its estimate of costs of issue and administration; and
- in the case of vehicle and operators’ licences (section 70), how it has estimated its reasonable costs in respect of:
 - inspections of vehicles (section 70(1)(a));
 - the provision of hackney carriage stands (section 70(1)(b));
 - administration and other costs relating to vehicle and operators’ licences (section 70(1)(c)); and

- control and supervision (enforcement) of vehicle licences.

In setting the fee, the Council was not originally able to show how it had set the fees for each type of licence, taking into account the above legislative requirements. The initial management accounts failed to distinguish between section 53(2) and section 70 as well as the differing licences issued. Subsequently, however, the Council has produced management accounts which do provide separate breakdowns for drivers' licences (section 53(2)), vehicle licences (section 70) and operators' licences (section 70).

3) Fees were in excess of costs.

Section 53(2) of the 1976 Act provides that:

"...a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration..."

Section 70 of the 1976 Act provides that;

"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."

In my view the legislation allows a council to set fees which recover its reasonable costs in administering the licensing of drivers, vehicles and operators. The legislation does not, in my view, require councils to make a precise calculation so as to arrive at income which exactly meets the cost of the administration of the various licences. Councils are required, however, to take a reasonable approach and should aim to set a fee that is sufficient to cover the cost but not make a surplus.

You alleged the Council has allocated its costs in an arbitrary way, so that it is not possible to know whether those costs are correct or whether the Council has made a profit.

I have referred, above, to the further work I carried out on some of the specific costs included within the taxi licensing fees. I concluded the Council's accounting records adequately supported the costs of vehicles tests, overheads and other non-staff costs in 2008/09. I concluded there was scope for improvement in the quality of record keeping maintained by the Council in respect of salary apportionments and in accounting for the different types of license. I have considered whether these deficiencies in the record keeping have, or are likely to have, resulted in fees being recovered in excess of costs.

In my view the Council did not recover fees in excess of its reasonable costs. The following considerations are relevant.

- The Council's financial records show that the service made a deficit in 2008/09 of £21,251 – that is, costs exceeded fees by £21,251.
- The Council has already acknowledged that its fees charged in excess of the last advertised maximum fee were unlawful and that it intends to repay those excess fees. Repayment of the unlawful fees would significantly increase the size of the deficit which the service made in 2008/09.
- I have reviewed accounting records for vehicle tests, non staff costs and overheads and in my view these records adequately support the expenditure in the accounts.
- I have concluded, in the absence of documented evidence, that I am unable independently to verify the accuracy of the salary allocations used in setting the fee. However, I have seen no evidence that staff costs were significantly overstated. The job descriptions of the individuals whose time has been allocated to taxi licensing show that they all work within the taxi licensing service and all carry out duties relating to taxi licensing. Information which the Council has provided from its general ledger shows that the Council has incurred the cost of those individuals' salaries. Taking into account the increased deficit which the taxi licensing department will have incurred following the repayment of the unlawful element of the fees levied, staff costs would need to have been overstated by more than £46,000 (56%) for the service to be in a position where fees were in excess of costs in 2008/09. Although I am unable independently to verify the salary allocations, in my view it is unlikely that these allocations would have been overstated by a margin as large as 56%.

I am therefore not of the view that fees were in excess of costs.

In carrying out my further audit work in respect of the specific cost items mentioned above, I considered *inter alia* the evidence supporting the costs incurred, the bases of apportionment in respect of corporate overheads and the accuracy of apportionment calculations. However, it is not part of my role to form subjective judgements on whether individual items of expenditure are excessive.

Use of formal audit powers: decision

I have considered whether it is appropriate for me to exercise any of the formal audit powers that are available to me under the Audit Commission Act (1998). These include the power to apply to the Courts for a declaration under section 17(1) that an item of account is unlawful and the power under section 8 to issue a report in the public interest. My considerations and my decision are set out below.

Application to Court

If an item of account appears to me to be contrary to law, it is my discretion as to whether I apply to the courts for a declaration under Section 17(1) of the 1998 Act to that effect. Relevant factors which I take into account in deciding whether to exercise my discretion to apply to the courts for a declaration include:

- the significance of the issue concerned;
- the amount of the item of account involved;
- the expense of an application;
- the practical consequences of any declaration;
- whether the Council agrees or not with my view on the unlawfulness of the item in question;
- the prospects of success; and
- whether the courts would, in the circumstances, be likely to make an order under Section 17(2)(c) of the 1998 Act.

In this case, having considered the matter carefully, and having taken all representations into account, I have decided that I should not exercise my discretion to seek a declaration under Section 17(1) of the 1998 Act. While I am of the view that part of the fees raised by the Council were unlawful and therefore there is an unlawful item of account, there is, on balance, no benefit in my view from seeking a declaration to this effect from the court. My reasons for taking this decision are as follows.

- The Council accepts my view that the fees charged in excess of the last advertised fee are unlawful;
- The Council acknowledges it did not comply with legislative requirements in setting the fee and has indicated to me it intends to ensure that it properly advertises fees in future. In doing so, further unlawful fees should cease;
- The Council has informed me it intends to refund any fees which have been raised unlawfully in respect of 2008/09; and
- I can deal with the concerns that have been identified in the consideration of this objection by making recommendations to the council.

Consequently any application to the court is unnecessary because the Council has already accepted my conclusions and has agreed to address the issues raised. The benefits, if there were any, from such an application to the court would be disproportionate to the costs to public funds which would be incurred as a result of making this application.

Public Interest Report

It is a matter for me in the exercise of my discretion whether to issue a report in the public interest. Relevant factors which I take into account in deciding whether to exercise my discretion to issue a report in the public interest include:

- the amount of any unlawful item of account or loss;
- whether there were significant failings in governance;
- whether the matters that might be the subject of a report are ongoing;
- whether there has been significant publicity in respect of the issues;
- whether the auditor has recommendations to make to the Council; and
- whether the auditor believes that his independent view should be expressed in public.

For this objection the matters do not appear to me to justify such a report. The Council has agreed in principle with my conclusions. The Council has also accepted that its accounting records supporting taxi licence fees are not adequate and has agreed to improve its record keeping in future. I can deal with the concerns that have been identified in the consideration of this objection by making recommendations to the council.

I have therefore decided not to issue a report in the public interest. I believe a more appropriate way for me to report these matters is in my Annual Audit Letter, which is a public document. I will issue my letter to the Council by 30 November 2010. I intend to include the following recommendations in that letter.

Recommendation 1: Ensure that all variations to the maximum fees for vehicle licences and operator licences are properly advertised in accordance with section 70 of the Local Government (Miscellaneous Provisions) Act 1976.

Recommendation 2: Retain documentary evidence to support the basis of apportionment of staff costs to the taxi licensing service.

Recommendation 3: Consider introducing a system of time recording to provide a more robust evidence base for cost apportionment and licence fee setting.

Recommendation 4: Maintain accounting records which clearly demonstrate the costs and fees for each type of licence as set out in sections 53 and 70 of the Act.

Recommendation 5: Exclude enforcement costs from drivers' and operators' licence fees.

Rights of Appeal

You have a statutory right of appeal to the court against my decision not to make an application to the court for a declaration that an item of account is contrary to law. See Section 17(4) of the Audit Commission Act 1998.

Any appeal must be commenced in the High Court. An appeal must be made by filing an appellant's notice in the prescribed form (Form N161) at the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL, within 28 days, calculated from the date on which you receive this letter. The procedures relating to statutory appeals are set out in the Civil Procedure Rules 1998 (as amended) and supplemental Practice Directions. I suggest that anyone considering an appeal should take their own legal advice.

I have copied this letter to Guildford Borough Council.

Yours sincerely

Paul Grady
District Auditor

cc – Sue Sturgeon - Guildford Borough Council