

2<sup>nd</sup> April, 2009.

The Borough Solicitor,  
Northampton Borough Council,  
The Guildhall,  
St. Giles Square,  
Northampton,  
NN1 1DE.

Dear Sir,

**Freedom of Information Act – 2000  
Local Government (Miscellaneous Provisions) Act 1976  
Licensing of Taxis, Drivers and Operators**

Further to the Statutory Notice published by the Council advising the decision of the Cabinet on 25<sup>th</sup> February, 2009, which confirmed the proposed revision of fees and charges for the licensing of taxis decided at the meeting of the Licensing Committee held on 4<sup>th</sup> November, 2008, we enclose herewith our detailed Statement of Objection to these proposals.

This objection is submitted in the context of the detailed commentary on this matter which we had submitted to each member of the Cabinet prior to the meeting of 25<sup>th</sup> February, following the discussions held at the office of the Chief Executive of Northampton Borough Council – Mr. David Kennedy.

Our Objection document includes a number of specific requests for clarification or response from the Council and we would be pleased to have confirmation of the means by which those requests will be addressed and responded to. In particular, with respect to the Appendix to our document which sets out our comments submitted to the Cabinet on 25<sup>th</sup> February, we specifically sort confirmation from the Council of any evidence it has to support the proposed fee (£30) to be demanded in respect of any cheque not honoured in payment of fees.

In the Executive Summary to our document we have requested details of any evidence that the Councils used as 'comparators' to support the fees proposed by Northampton Borough Council have in fact subjected their own fees to 'challenge'.

Please acknowledge receipt of this our objection to the proposed fees and advise which meeting of any body of the Council will consider any objections received and the date and location of any such meeting.

We look forward to hearing from you in due course.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'K. Willsher', with a horizontal line drawn underneath.

Please reply to:-Mr. K Willsher  
12 Gregory Street  
Northampton  
NN1 1TA  
k.willsher@tesco.net

**Local Government (Miscellaneous Provisions) Act 1976**

Section 70 – Fees and Charges – Objection submitted under sub-section 70(3)

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Appendix – Submission to Cabinet 25<sup>th</sup> February, 2009

## 1) INTRODUCTION.

The Objectors submit the detailed grounds for their objection to the proposed revision of fees for the grant of Hackney Carriage, Private Hire Vehicle and Operator licences.

In preparing our objection we have been mindful of the basis on which the revised fees were presented to the Licensing Committee on 4<sup>th</sup> November, 2008.

It is our opinion that the revision of fees proposed by the Borough Solicitor cannot be substantiated by the report as submitted to the Licensing Committee on that date.

It is our opinion that a revision of fees determined solely by reference to variations in the Retail Prices Index [RPI] cannot be considered to be 'reasonable' in the context of the authority to set fees as provided in Section 70 of the Act

The Resolution of the Committee purported to implement an annual revision of fees to be determined by movement in the RPI – this to be effective from 1<sup>st</sup> April, 2010.

[We note that proposal was deleted from the Report and proposed fee levels considered by the Cabinet on 25<sup>th</sup> February, 2009].

Particularly, we are concerned that no financial estimates of income to be derived from the revised fees or costs to be incurred in the future were presented to the members. Neither was any information provided in relation to the financial performance of the taxi licensing department in the previous financial year or for any interim period in the current year.

More importantly, we do not believe it is either lawful or reasonable to determine a revision of fees on the basis of the Report to the Licensing Committee of 4<sup>th</sup> November, 2008.

Setting fees by reference to the RPI indicates an abdication of responsibility on the part of the Committee to set fees which will recover no more than the 'reasonable cost' of the functions set out in the Act at s70 and s53.

Furthermore, the increases are excessive in the context of the activity concerned and are not justified by any arguments presented.

We have incorporated the submission we made to the Cabinet in February for its meeting on 25<sup>th</sup> February and believe the comments therein remain valid today.

## 2) EXECUTIVE SUMMARY

The Objectors have considered the information provided to the trade by the Council and submitted to the Licensing Committee.

We do not believe that it is lawful for the Council to vary fees by reference to movement in a general index of retail prices. The responsibility of the Council is to exercise its power to set fees which are 'reasonable' and as may be 'sufficient in the aggregate' to cover the cost of those matters referred to at S70 (1) a) b) and c).

The determination of a variation of these fees by use of a proxy indicator of cost inflation is NOT 'reasonable'.

We are very concerned that the increases in fees will place a considerable strain on individuals and Operators in particular at a time of general contraction in taxi related activity.

We believe the comparative information provided by the Council in respect of licence fees in nearby authorities is not a reasonable justification in itself for raising fees Northampton Borough.

Have any of those authorities carried out a Best value review?

We are concerned that the financial and other effects of the introduction of the Licensing Act 2003 may not have been accurately reflected in the allocation of costs for the Licensing Section.

For these reasons we believe the Council **must set aside** the resolution of the Licensing Committee of 4<sup>th</sup> November, 2008 AND confirmed by the Cabinet on 25<sup>th</sup> February, 2009.

### 3) CONTEXT

- i) Best Value and the Audit Commission report  
- 'Positively charged' January, 2008

Has the Council carried out any 'Best Value' challenge in relation to its responsibilities for licensing services and Hackney Carriage and related licensing in particular?

The presentation of comparative data in relation to fees charged by other authorities is not useful except in the context of a 'Best Value Review' or benchmarking where reliable data can be collected and assurance obtained that the comparisons are being made on the basis of comparable activity and working practices.

We note the recommendations of the Audit Commission Report – 'Positively Charged' – January 2008, which urges councils, when setting discretionary fees, to have regard to the powers they have to set fees up to the reasonable cost of providing such services; and that in determining such fees the Members of the relevant council body should be apprised of sufficient financial information to allow them to understand the extent to which any service is proposed to be provided to licensees or service users at less than the cost to the authority of its provision. (See Legal Issues para. 4)

We do not believe the council could meet that recommendation on the basis of the proposed methodology for setting fees used in the report to the Licensing Committee on 4<sup>th</sup> November, 2008.

- ii) The Licensing Act 2003

We are concerned that the introduction of this act and consequent increase in the workload of the Licensing Section of the council may have had an adverse effect on the financial and staffing resources of the section.

Regular comment in local authority media and the Report from the Local Government Association 'New Burdens' supports the concerns expressed regularly elsewhere that the introduction of the Licensing Act has placed an increasing financial burden on authorities.



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The following extract from the report highlights the concern of many authorities.

**LGA 'new burdens' report**

**'Licensing'**

'Recent research by the LGA has identified that the cumulative cost to councils from the Licensing Act 2003 is over £100m, or nearly £5 per household. The research shows that, contrary to the government's commitments when the Act was passed, the cost of administering the fee regime is not covered by fee income from licensed premises, with the burden instead falling to council tax-payers. The research shows that councils have subsidised the implementation of the Act by at least £17m every year since 2004-05'.

We ask Northampton Council to advise the excess costs over income associated with Liquor licensing since the implementation of the Licensing Act 2003. We ask this in the context that, unlike taxi licensing, the Council has no discretion in the setting of licence fees for that activity, which has fees provided for and set out in a schedule to the Licensing Act 2003.

We note also that the total staff salary and associated costs advised to us under a Freedom of Information Request [NBC 211- 856] on 4th August, 2008 were stated at £224,244 for the financial year 2007/08 in respect of taxi licensing activity. The equivalent cost for 2004/05 was cited in an earlier disclosure as £118,170.

To date no satisfactory explanation of this almost 90% increase in costs attributed by the Council to the carrying out of taxi licensing has been provided.

We believe a thorough review of cost charging and overheads apportionment is required. Otherwise we cannot be assured that the introduction of the considerable additional duties placed on the Licensing Service by the Licensing Act 2003 have not had an unjustified and unreasonable affect on the costs allocated to taxi licensing activity,

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#### **4) LEGAL ISSUES**

The Council has not to date provided the information we requested on 13<sup>th</sup> March, 2009.

Information provided previously has not confirmed that the Council maintains a Subjective Cost centre within its accounting systems which identifies and collects costs/income for taxi licensing distinct from any other licensing activity.

We do not believe that the Council can satisfy the requirements of S70 of the relevant Act unless it maintains such independent accounting records.

We are aware that a District Audit Office for an authority in Wales has advised the necessity, in its opinion, that a Council should be able to identify the cost of taxi licensing activity separately; and that in the absence of such independent accounting records it would be difficult to demonstrate that the provisions of Section 70 were being met.

Therefore, we would ask that the Council makes provision in future to satisfy that opinion and that on this occasion and henceforth fees are set on the basis of sufficient financial and management information to meet the requirements of the Act.

Having regard to the comments above, we ask the Council to defer implementation of the increases proposed until such time as verifiable financial cost and income estimates for the operation of taxi licensing activity it carries out.



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## **5) CONCLUSION**

The Objections and comments we have set out above are in our view sufficient grounds to seriously question the reasonableness of the fees proposed.

We have also drawn our concerns in this matter to the attention of the Council in the meeting held with officers, a Councillor and Mr. Brian Binley MP, which was convened by the Chief Executive at the Guildhall on 16<sup>th</sup> February, 2009.

**Therefore, we ask the Council to reconsider the proposed increases in fees and to defer implementation of any increases pending consultation with the trade and a further report to the Licensing Committee and Cabinet which will be based upon accounting and other information to support the fees proposed as being no more than sufficient in the aggregate to cover the cost of taxi licensing services.**

## APPENDIX

Cabinet Meeting - Wednesday, 25<sup>th</sup> February, 2009.

Agenda item 10 - Review of Private Hire Drivers, Hackney Carriage Drivers, Private Hire Operators and Vehicle Licence Fees – Report  
( pp183 -187 – Documents pdf).

Commentary from the Hackney Carriage and Private Hire Trade bodies.

This Commentary has been prepared to highlight a number of concerns in respect of the proposals to increase fees, as resolved by the meeting of the Licensing Committee held on 4<sup>TH</sup> November, 2008, and referred to the Cabinet for consideration, approval and adoption, subject thereafter to the provisions for Statutory advertising in accordance with the Local Government (Miscellaneous Provisions) Act 1976.

The trade has a number of serious concerns in respect of the rationality and methodology used by the Council in preparing the recommended increases in fees for taxi licensing.

These were expressed at the meeting of the Licensing Committee, and subsequently at a meeting of trade representatives held on 16 02 09 with the Chief Executive and other officers, which was facilitated and attended by Mr. Brian Binley MP.

As reported, the trade has requested the council to present a considerable amount of information in respect of past and current costs for the taxi licensing activities it undertakes. Without the ability to consider the operational costs of taxi licensing activity segregated from other licensing functions carried out by the council, it is not possible for the trade OR the council to judge whether the fees to be demanded in future OR indeed at present, are not more, in the aggregate, than the reasonable costs of taxi licensing activity as currently administered.

Therefore, the trade believes that any variation of the current scale of fees **should be deferred** pending the resolution of the several matters of concern raised at the meeting held on Monday 16<sup>th</sup>. February, 2009. At that meeting we were advised that the information we have requested should be available within 2/3 weeks.

As noted at Options - 3.3.3 'Delay implementation' - the council could defer this matter pending the detailed review proposed.

**As there is currently no certainty as to the actual position in respect of taxi licensing expenditure it cannot be asserted that deferring any increase in fees would necessarily mean any additional support from the General Fund for the period of such a deferral.**

In the following paragraphs, statements in *italic* are extracts from the Cabinet report for 25<sup>th</sup> February, 2009. Comments from the trade are in standard text.

Report references.

### *1 Purpose*

*1.1 The purpose of this report is to increase fees... ..*

**The purpose of the report is to allow the Cabinet to consider the recommendations and decide in whole or part on one or more of the Options set out at 3.3.2**

### *2 Recommendations*

*2.1 In the light of the current cost to the council of the relevant licensing functions... ..*

**No costs information was presented to the Committee when it considered the proposals made in the report to the Committee on 4<sup>th</sup> November, 2008.**

### *3 Report background*

*3.1.2 there has also been a significant increase in the number of licences to be issued.*

**The consequence of that will have been an increase in revenue. Depending upon the impact of marginal income increase set against the marginal costs increase it does not follow necessarily that the balance of costs over income will have deteriorated to the detriment of the council General Fund.**

*3.1.4 the Licensing Committee considered the proposed fees with reference also to the amount of inflation that had taken place in the last six years*

**The use of a ‘proxy indicator’ – The General Index of retail prices ( as proposed) – is not relevant or lawful in the context of the requirements set out in S53 and S70 of the Act, with respect to the determination of fees and charges.**

**We are pleased to note that the council, following our comments made at the meeting on 16<sup>th</sup> February, 2009 do not propose now to use changes in the RPI in future to determine variation of fees: as was set out in the recommendations of the committee on 4<sup>th</sup> November, 2008.**

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*3.1.6 As a consequence of that meeting [16<sup>th</sup> February, 2009] it is proposed to advertise the fees as proposed by the Licensing Committee bearing in mind that they do not, on current estimates, reach the level where all costs will certainly be recovered.*

**This statement pre-judges the decision of the Cabinet**

*3.1.8 Driver licence fees*

*Recovery of money when cheque not honoured      Current Nil    Proposed £30*

*Vehicle fees    Recovery of money when cheque not honoured... .. as above*

**The Government and Consumer Council do not support the imposition of flat rate fees for these matters.**

**In order to comply with the spirit of the Act, charges of this kind, should not be other than the actual costs incurred by the Council in resolving payment of fees due.**

**Has the council any evidence of the costs of such recovery?**

*3.2 Choices (Options)*

*3.3.1 Allow fees to remain unchanged*

*... .. This would mean that the Council Tax Payer meets a greater part of the costs that [sic] would be the case if these charges were raised now.*

**This statement is only valid if the council is in fact NOT recovering the full costs of administering licences.**

**The use of references to the ‘Council Tax Payer’ meeting ‘greater costs’ are emotive, since any charge on the General Revenue Fund would be a sum funded from ALL sources of Council revenue including the Uniform Business Rates to which Operators and others in the trade contribute.**

*3.3.3. Delay implementation –*

**As noted previously, the Trade would support this Option for adoption by the Cabinet.**

**Any shortfall in the revenue anticipated from increases proposed at the Licensing Committee [4<sup>th</sup> November 2008], resulting from a deferral at this stage, can be recovered (if necessary) through the level of fees determined following the detailed review proposed to be conducted with input from the trade.**

**It should be noted that the fees as approved by the Committee were intended for implementation on 1<sup>st</sup> January, 2009.**

**The trade hopes that Cabinet members will accept that its concerns flow from a number of long-standing issues which it is hoped will be addressed for the future, including the setting of fees in an open and transparent manner as required by the relevant legislation.**

**The trade looks forward to participating in the review to be carried out into this matter and the resolution of our current concerns.**

**Kevin Willsher**

  
[21 02 2009.]