



COMMITTEE: LICENSING & REGULATORY

DATE 26TH FEBRUARY 2020

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TITLE OF REPORT: Case Report on R v Wakefield

**Report of Philip Soderquest, Head of Housing & Public Protection**

**Cabinet Member:** John Riddle

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**Purpose of report:** To advise Members of recent Appeal Court decision relating to matters that can be included when calculating fees that can be charged for certain types of licences for taxi and private hire drivers and vehicles.

**Recommendations:** That Members note the report

**Link to Corporate Plan:** This report is relevant to the “How and Living” priorities included in the NCC Corporate Plan 2018-2021

### **Key issues**

1. The Court was asked to consider two issues. Firstly, were all licensing regimes to be self-financing and not to be subsidised by the local council tax payer? There are five licensing regimes under the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA) covering hackney carriage and private hire drivers and vehicles and private hire operators. The Appeal Court held, essentially that each regime would have to stand alone and there should be no cross-subsidising between them.
2. The second question was whether the enforcement costs of monitoring driver behaviour could be included in the licence fee under Section 70 of the Act which covers fees for vehicles and operators licences. The Court held that they could not.
3. However, Wakefield Council argued that the costs of issue and administration of a driver's licence, covered under Section 53 of the Act, could include the costs of monitoring driver behaviour and the Court agreed with that.
4. This meant that the Council lost the Appeal on both grounds BUT were able to establish that fees including the cost of driver monitoring could be charged, but under a different section to the one they had originally used. It is likely that the Council will have to pay all the costs in this case, but may be able to recover them as part of the costs of administration.
5. The Council has not been given leave to appeal to the Supreme Court but may yet find a way to do so. No action should be taken until such times as the Council confirms that it is not pursuing the matter further.

## **Background**

1. In January 2018 Wakefield Council adopted fees for licences for Private Hire and Hackney Carriage drivers and vehicles and Private Hire Operators. These costs, in relation to vehicles included recovery of all or part of the cost of supervising the conduct of drivers licensed to drive such vehicles using the powers under Section 70 of the Act. This was objected to by the Wakefield District Hackney carriage and Private Hire Association in the person of the Association Chair, Abdul Rehman, and the Association applied for judicial review.
2. LGMPA 1976 Section 70(1) covers Fees for vehicle and operators' licences and states "(1) ... a district council may charge such fees... 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; ....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. It is clear from this that authorities could include in fees the costs of enforcement inspections looking at the condition of the vehicle, such as its lights or its tyres, but could not include the costs of inspections that looked at driver behaviour such as a private hire driver touting for business or using a taxi rank.
3. The Court then looked at LGMPA Section 53, which covers Drivers' licences for hackney carriages and private hire vehicles and states "... 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 ...."
4. The prevailing best practice advice outlined in the leading textbook on the issue, Button on Taxis, interprets this as meaning "the costs of assessing the suitability of the applicant ... and the costs of the issue of the badge and other associated administrative tasks." He goes on to say that "no provision can be made for the costs of enforcement undertaken by the authority against either licensed or unlicensed drivers," and discusses the reasons why he supports his position.
5. The Wakefield decision has changed this as the Court accepted the argument that "that the relevant words in Section 53 are "the costs of issue and administration". The costs of "administration" must be something other than, and in addition to, the costs of "issue". There is no difficulty in interpreting "administration" in its statutory context as extending to administration of the licence after it has been issued. It naturally includes the costs of suspension and revocation, which are events expressly mentioned in Part II of the 1976 Act. Suspension and revocation rest on non-compliance with the requirements and conditions for continuing to hold the licence. As we have said, it would therefore have been obvious to Parliament, when enacting the 1976 Act, that costs would be incurred by the district council in monitoring compliance with such requirements and conditions."

## **Implications**

1. The wider interpretation of the word 'administration' in Section 53 to include enforcement may yet be challenged on the grounds that in Section 70 administrative costs are separated from the costs of inspection, control or supervision of vehicles.
2. The matters will be discussed by the North East Strategic Licensing Group to ensure uniformity of approach across the region. Once it has been confirmed that there will be no further appeals in this case, a review of fees charged for drivers' licences under Section 53 will be necessary and a new scale of fees will be brought back to this Committee for discussion.

<b>Policy</b>	The Authority's Hackney Carriage and Private Hire Licensing Policy will require amendment. The revised Policy will be brought back to this Committee for consideration
<b>Finance and value for money</b>	It is likely that this will lead to the revision of fees chargeable for drivers' licences under Section 53 of the Act.
<b>Legal</b>	N/A
<b>Procurement</b>	N/A
<b>Human Resources</b>	N/A
<b>Property</b>	N/A
<b>Equalities (Impact Assessment attached)</b>	N/A
<b>Risk Assessment</b>	N/A
<b>Crime &amp; Disorder</b>	N/A
<b>Customer Consideration</b>	Fees for hackney carriage and private hire drivers licences may increase.
<b>Carbon reduction</b>	N/A
<b>Health and Wellbeing</b>	N/A
<b>Wards</b>	All

### **Background papers**

Appendix 1: Court report of R (on the application of Abdul Rehman, on behalf of the Wakefield District Hackney Carriage and Private Hire Association) and the Council of the City of Wakefield and the Local Government Association.

## **Report sign off**

***Authors must ensure that officers and members have agreed the content of the report:***

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