

The Highland Licensing Committee

Meeting – 7 October 2014

Agenda Item	6
Report No	HLC/060/14

TAXI TARIFF APPEAL DECISION

Report by the Legal Manager

Summary

This Report invites the Committee to note the decision of 11 September 2014 by the Deputy Traffic Commissioner for Scotland in Taxi Fare Scale Appeal TX-125 by Mr Andrew MacDonald and others against The Highland Council. The decision is attached at Appendix 1.

1. Background

- 1.1 In November 2013, a review of the taxi fare scale which had been fixed on 21 January 2013 was commenced pursuant to the requirements of section 17 of the Civic Government (Scotland) Act 1982. Following this review, on 1 April 2014 the Committee agreed to alter the existing taxi fare scale to (a) increase the flag drop for Tariffs 1, 2 and 3 by 30 pence, and (b) increase the £6.50 call out charge to £7.50.
- 1.2 This decision was timeously appealed by Mr Andrew MacDonald, supported by 160 other taxi operators. The appeal focused on that part of the Council's decision to increase the flag fall on each of Tariffs 1, 2 and 3 by 30 pence. In summary, in his appeal Mr MacDonald proposed instead that there be a 50 pence increase to each of the tariffs, with an overall objective of achieving "equilibrium" with Perth & Kinross scales. This was in line with the proposals and representations which had previously been put by the Inverness Taxi Alliance to the Committee during the review process.
- 1.3 Following submission of the Council's statement of reasons and observations on the appeal, the Deputy Traffic Commissioner fixed a hearing on the appeal. The hearing took place on 8 July 2014. Mr MacDonald was present, assisted by Miss Helena MacLeod, secretary and treasurer of the Inverness Taxi Alliance. Mr James Blackburn, representing the interests of taxi drivers and operators based in Lochaber, was also present and, although not an appellant, was permitted by the Depute Traffic Commissioner to participate in the hearing. Mr Blackburn, supported by 42 other Lochaber drivers and operators, had previously submitted a representation to the Committee against any increase in the scales.

2.0 Appeal decision

- 2.1** The Deputy Traffic Commissioner issued his decision on the appeal in September 2014. He rejected the arguments put forward by, or on behalf of, the appellant in support of achieving “equilibrium” between the Highland Scales and those fixed by Perth and Kinross and in support of fixing a 50 pence increase in each tariff. He found fault, however, with the process of consultation which the Council had undertaken during the review. As a direct result, he declined to confirm the scales fixed by the Committee on 1 April 2014 (i.e. the 30 pence increase) and instead altered the scales to those previously fixed on 21 January 2013. Consequently, the scales remain unaltered.
- 2.2** In terms of the legislation, it was a requirement that at the start of the review process the licensing authority “consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area” and then “Following such consultation (i) review the existing scales, and (ii) propose new scales”. The proposed new scales then required to be advertised and further representations (from any party) invited. Those further representations required to be considered before the authority confirmed the scales.
- 2.3** At the start of the review process, the Council had written to taxi operators recognised as representing operators in their area, and also to all holders of taxi booking office licences, advising them of the review and inviting them to submit written representations in relation to the review. A number of written representations were received in response and these were considered by the Committee at its meeting on 4 February 2014. Following consideration of the written representations, the Committee then proposed new scales. These were then published and further representations (from any party) were invited in accordance with the legislation. The further representations received were considered by the Committee at its meeting on 1 April 2014 before confirming the new scales.
- 2.4** The Deputy Traffic Commissioner considered that the initial stage of this process was flawed. He noted that after writing to the operators in November 2013 inviting written representations, and after receiving written representations in response, “*there had been no dialogue with any taxi operators/drivers prior to the representations going to committee*”. This, he said, confirmed a concern he had had “*that the consultation process had not truly involved consultation with the taxi trade*”. He referred to the Concise Oxford Dictionary which defines consultation as “*a meeting arranged to consult*”. He found that there had been no meeting therefore no consultation.

3.0 Implications

- 3.1** While it might be still be argued that the steps taken by the Council in writing to representative operators and to booking office licence holders, inviting written

representations, and then in considering those written representations prior to proposing new scales, complied with the letter of law in terms of section 17(4A) of the Act, the reality is that both the Office of the Traffic Commissioner for Scotland and the taxi trade expect there to be greater dialogue between the Council and the trade during the review process.

- 3.2** Even before the appeal hearing had taken place, the Committee had in fact recognised the benefit of greater dialogue and had established a sub-committee to meet regularly with members of the taxi trade for discussion.
- 3.3** Within those meetings improvements to the tariff review process, to allow greater dialogue with operators prior to any new scales being proposed at the next tariff review, are already under discussion with the trade.
- 3.4** In the meantime, notice of the scales fixed following the appeal has been advertised on 19 September 2014 and they come into effect from 29 September 2014. As they involve no alteration to the scales previously fixed in January 2013, there will, in consequence, be no need for meters in taxis licensed to operate in the Highland area to be recalibrated.

4.0 Recommendation

- 4.1** That the Committee note the decision of 11 September 2014 by the Deputy Traffic Commissioner for Scotland in Taxi Fare Scale Appeal TX-125 by Mr Andrew MacDonald and others against The Highland Council.

Date: 17 September 2014

Author: Susan Blease

Designation: Principal Solicitor – Regulatory Services

Appendix 1 – Appeal decision

**Office of the
Traffic Commissioner**

Office of the Traffic Commissioner for Scotland
Level 6
The Stamp Office
10 Waterloo Place
Edinburgh
EH1 3EG

RECORDED DELIVERY
Mr Michael Elsey
Senior Licensing Officer
Highland Council
Town House
INVERNESS
IV1 1JJ

Direct Line: 0131 200 4940
fax: 0131 229 0682
E-Mail: susan.short@otc.gsi.gov.uk
Web Site: www.vosa.gov.uk

Our Ref: SwS/TX125

11 September 2014

Dear Sir

SECTION 18 OF THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982

I refer to your appearance at a Taxi Farescale Hearing held in the Council Chamber, Town House, Inverness on Tuesday, 8 July 2014.

Please find enclosed a copy of the Deputy Traffic Commissioner's decision in respect of this matter.

Yours faithfully

Miss S W SHORT
Office of the Traffic Commissioner

**UNDER THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (As Amended)
("the Act")**

AND

**THE LICENSING and REGULATION of TAXIS (APPEALS in RESPECT of TAXI
FARES)(SCOTLAND) ORDER 1985
("the Rules")**

DECISION

OF

**RICHARD HAMILTON McFARLANE
DEPUTY TRAFFIC COMMISSIONER FOR SCOTLAND**

IN THE TAXI FARE SCALE APPEAL – TX 125

BY

**Mr ANDREW MacDONALD
'Eskadale', 74 Ballifeary Road, Inverness IV3 5PF**

APPELLANT

Against

**THE HIGHLAND COUNCIL
COMHAIRLE na GAIDHEALTACHD
Town House, Inverness IV1 1JJ**

RESPONDENTS

PREAMBLE AND LEGISLATIVE FRAMEWORK

1. In terms of Section 2 of the Act, the Respondents, The Highland Council, is the licensing authority with *inter alia* the responsibility to fix, from time to time, the scales for taxi fares and other charges ("scales") for their area.
2. The procedure for fixing the scales is regulated by Sections 17 and 18 of the Act which are in the following terms:-

"17. Taxi fares

(1) The fares for the hire of taxis in any area and all other charges in connection with the hire of a taxi or with the arrangements for its hire shall be not greater than those fixed for that area under this section and section 18 of this Act.

**RECEIVED
12 SEP 2014**

(2) The licensing authority must fix scales for the fares and other charges mentioned in subsection (1) within 18 months beginning with the date on which the scales came into effect.

(3) In fixing scales under subsection (2), the licensing authority may –

- (a) alter fares or other charges,*
- (b) fix fares or other charges at the same rates.*

(4) Before fixing scales under subsection (2), the licensing authority must review the scales in accordance with subsection (4A).

(4A) In carrying out a review, the licensing authority must –

- (a) consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area,*
- (b) following such consultation –*
 - (i) review the existing scales, and*
 - (ii) propose new scales (whether at altered rates or the same rates),*
- (c) publish those proposed scales in a newspaper circulating in its area –*
 - (i) setting out the proposed scales,*
 - (ii) explaining the effect of the proposed scales,*
 - (iii) proposing a date on which the proposed scales are to come into effect, and*
 - (iv) stating that any person may make representations in writing until the relevant date, and*
- (d) consider any such representations.*

(4B) In subsection (4A)(c)(iv) “the relevant date” is a date specified by the licensing authority falling at least one month after the first publication by the authority of the proposed scales.

(4C) After fixing scales under subsection (2), the licensing authority must give notice in accordance with subsection (4D).

(4D) The licensing authority must –

- (a) set out, and explain the effect of, the scales as fixed,*
- (b) notify the persons mentioned in subsection (4E) of –*
 - (i) the date on which the scales as fixed are to come into effect, and*
 - (ii) the rights of appeal under section 18*

(4E) Those persons are –

- (a) all operators of taxis operating within their area, and*
- (b) the persons and organisations consulted under subsection (4A)(a).*

(5) Notice shall be given for the purposes of subsection 4(D)(b) above by –

- (a) its being sent by recorded delivery letter to the last known addresses of the persons and organisations referred to in subsection (4E) above so as to arrive there, in the normal course of post, not later than 7 days after the scales are fixed under subsection (2) above; or*
- (b) personal service of the notice upon those persons with in that time.*

18 Appeals in respect of taxi fares

(1) Any person mentioned in subsection (1A) may, within 14 days of notice being given under section 17(4C), appeal against those scales to the traffic commissioner for the Scottish Traffic Area as constituted for the purpose of the Public Passenger Vehicles Act 1981.

(1A) Those persons are –

- (a) any person who operates a taxi in an area for which scales have been fixed under section 17(2), and*
- (b) any person or organisation appearing to the traffic commissioner to be representative of such taxi operators.*

(2) The traffic commissioner may hear an appeal under this section notwithstanding that it was not lodged with him within the time mentioned in subsection (1) above.

(3) On an appeal under subsection (1) above, the traffic commissioner may—

- (a) confirm or alter the scales; or*
- (b) may decline to proceed—*
 - (i) at any stage in the appeal, if he considers the case for the appellant is not representative of the view of a substantial proportion of the operators of taxis operating in the area of the licensing authority;*
 - (ii) if less than two years have elapsed since he decided an appeal against a decision of the same authority in respect of the same scale, and he considers it inappropriate that he should consider the matter again.*

(4) An appeal under this section shall have the effect of suspending the decision referred to in subsection (1) above until the date when the appeal is abandoned or, as the case may be, when notice is given to the appellant advising him of its disposal.

(5) Where he alters scales under subsection (3)(a) above, the traffic commissioner may substitute a different date for the coming into effect of these scales.

(6) The Secretary of State may by order made by statutory instrument make rules as to procedure in relation to appeals under this section.

(7) The decision of the traffic commissioner on an appeal under this section shall be final.

(8) The traffic commissioner shall give notice of his decision in writing to the appellant and to the licensing authority and notice shall be given to the appellant by—

(a) its being sent by recorded delivery letter to his last known address or, as the case may be, to them so as to arrive, in the normal course of post, not later than five days after his decision; or

(b) personal service of the notice on the appellant within that time.

(10) A licensing authority shall pay the expenses incurred under this section by the traffic commissioner in relation to appeals under this section.

18A Publication and coming into effect of taxi fares

(1) Following the fixing of scales by a licensing authority under section 17(2), the licensing authority must –

(a) determine the date on which the scales are to come into effect, and

(b) publish the scales in accordance with subsections (3) to (5).

(2) The scales may come into effect no earlier than seven days after the date on which they are published.

(3) The licensing authority must –

(a) give notice of the scales by advertisement in a newspaper circulating in its area, and

(b) specify in that advertisement the date on which the scales are to come into effect.

(4) The authority must give notice of the scales –

(a) where no appeal has been lodged under subsection (1) of section 18, as soon as practicable after the expiry of the period of 14 days mentioned in that subsection,

(b) where such an appeal has been lodged, as soon as practicable after the determination of the appeal.

(5) For the purposes of subsection (4), an appeal is determined on the date on which the appeal is abandoned or notice is given to the appellant of its disposal.”

3. The existing scales are as follows:-

**“THE HIGHLAND COUNCIL
TAXI FARES**

With effect from midnight 21st January 2013, the maximum fares will be as follows:-

Tariff 1

- For the first 785 yards or part £2.50
- For each additional 130 yards or part .10p

*General effect – the price of a hire £3.30 for the first mile plus £1.40 per mile thereafter plus extras**

Tariff 2; applies on Good Friday, Easter Monday and May Day and between 9.00pm and 7.00am on any day, all day on Saturday and Sunday and when 5 or more passengers are being carried at any time of any day or night, for example by a “London” style taxi or by a “people carrier” or by a minibus, except where Tariff 3 applies.

- For the first 560 yards or part £3.00
- For each additional 92 yards or part .10p

*General effect – the price of a hire: £4.40 for the first mile plus £1.90 per mile thereafter plus extras**

Tariff 3; applies on Christmas Day, Boxing Day, New Years Day and 2nd January. It also applies when 5 or more passengers are being carried between 9.00pm and 7.00am, all day on Saturday and Sunday and on Good Friday, Easter Monday and May Day for example, by a “London” style taxi or by a “people carrier” or by a minibus.

- For the first 444 yards or part £3.60
- For each additional 74 yards or part .10p

*General effect – the price of a hire: £5.40 for the first mile plus £2.40 per mile thereafter plus extras**

Extra Charges

- Waiting time for first 2 minutes .10p
- For each additional period of 20 seconds or part thereafter .10p
- Booking ahead e.g. by telephone .50p
- Any bridge tolls or ferry charges, where applicable.

In addition, provision has been made for a supplementary booking charge of up to a maximum of £6.50 to compensate for the cost of the outward journey for hires which commence 3 miles or more away from the taxi or taxi base (whichever is the nearer) and the customer wishes to travel further away. This charge may only be demanded if the customer is informed of the amount of the charge at the time of booking.

When a taxi (or private hire car fitted with a taxi meter) is called but not used, a charge shall be allowed as if it had been occupied from the time it left the stance or garage.

Soiling Charge – maximum of £60.00, payable by an offending passenger, where a vehicle requires to be removed from service for cleaning in order for it to be restored to a usable state and condition.”

4. Consistent with the legislation the respondents require to review these scales within 18 months of said 21st January 2013.
5. The review began with the respondents embarking upon the consultation process as they were required to do in terms of Section 17 of the Act. The first step taken by the respondents was to write to all licensed drivers/operators in their area per their letter of 26th November 2013.
6. In response to this letter, the respondents received representations from (a) Mr Evan Jessiman of Highland Drivers Association (“HDA”) dated 5th January 2014 and (b) the Inverness Taxi Alliance (“ITA”) dated 9th January 2014.
7. These representations were considered by the respondents’ Licensing Committee (“the Committee”) when it met on 4th February 2014 at which time the decision was taken to propose (a) increases to Tariffs 1,2 and 3 by 30p and (b) an increase of the £6.50 charge to £7.50.
8. In terms of Section 17(4A) of the Act these proposed new scales were advertised in the local press on 10th February 2014.
9. In response to the publication of the proposed scales, the respondents received representations from (a) 43 taxi drivers/operators based in Lochaber dated 18th February 2014 (b) Mr Chris Campbell dated 8th March 2014 and (c) the ITA dated 9th March 2014.
10. These representations, incorporated in a report from the respondents’ Legal Manager, were considered by the Committee at its meeting on 1st April 2014 when it was agreed that the scales be altered as previously proposed. It was also agreed that a working group comprising the Chair and Vice-Chair of the Committee and Councillor Duffy be set up to meet regularly with the taxi trade and to develop a collaborative working relationship.

11. Intimation of these new scales, to take effect from 26th May 2014, was sent to each taxi operator per the respondents' letter dated 1st April 2014 and published on the respondents' website on 3rd April 2014.
12. Per his letter dated 10th April 2014 the Appellant, Mr Andrew MacDonald, appealed that part of the decision of the respondents to increase the 'flag fall' on each of Tariffs 1, 2 and 3 by 30p."
13. On 7th May 2014, the Office of the Traffic Commissioner ("the OTC") received the respondents Statement of Reasons and other documentation from them as required by Rule 2. Also included were observations from the respondents on the appeal.
14. On 1st July observations on the Statement of Reasons from the appellant were received by e-mail at the OTC.

THE APPEAL

15. In his letter dated 10th April 2014 the appellant:-

- (a) requested the Traffic Commissioner to fix a hearing for his appeal against the respondent's increases to each of the three tariffs;
- (b) proposed an increase of 50p to each of the tariffs (the respondents propose a 30p increase for each) with an overall objective to achieve "equilibrium" with the 2012 Perth & Kinross Council scales;
- (c) offered an alternative proposal, namely an increase in yardage for the initial flag fall for all three tariffs, a decrease in the yardage for additional yardage after the initial flag fall for tariffs 1 and 2 with no change to tariff 3;
- (d) submitted that the Taxi Trade in Inverness is "thoroughly disappointed" about the lack of representation and effective dialogue from the Committee.
- (e) complained (i) any change in the scales would generate significant income for the respondents arising from the costs of recalibrating all the taxi meters and (ii) notwithstanding the economic climate, the respondents increased their taxi operator and other licence fees in 2013;
- (f) recognised the differences between conditions for taxi operators in the City of Inverness and the rural areas. He recorded that more than forty taxi drivers in Lochaber objected to the proposed increase in the scales with the request that they be licensed separately from Inverness; and
- (g) raised concerns about the overprovision of taxi licence plates issued by the respondents

16. In all of this he is supported by 160 operators of taxis.

THE RESPONDENTS' STATEMENT OF REASONS

17. In their Statement of Reasons the respondents detail the steps they took in reviewing the scales for 2014. *Inter alia* they considered (a) the current scales in their area (b) the scales in other Scottish Local Authority areas (c) all representations from the ITA which included (i) their contention that the majority of their journeys in Inverness City were short and therefore consumed more fuel (ii) a comparison of the scales with those applied by Perth and Kinross Council (iii) a comparison of the cost of living based on Council Tax rates Bands B to E as applied by the respondents and Perth & Kinross Council to their respective areas (iv) a comparison of taxi and private hire car licensing fees and meter test fees (v) a comparison of the costs of running a vehicle in 2011 and 2013 based on data supplied by the Automobile Association ("the AA") (vi) a comparison of Scottish fuel costs with the United Kingdom average costs (vii) the ITA contention that owing to the greater volume of traffic and under provision of rank spaces, the consumption of fuel by taxi operators in Inverness was higher and (viii) the last increase in the initial flag fall for Tariff 1 was in September 2006 when it was increased from £2.00 to £2.50 and for Tariffs 2 and 3 the last increase occurred in January 2007 when they were increased from £2.50 to £3.00 and from £3.10 to £3.60 respectively (d) the representation from HDA seeking an increase in the initial flag fall for all three tariffs, the introduction of a surcharge for luggage, no increase in yardage and waiting time, a surcharge for credit card payments, a change to the commencement time to Tariff 2 from 21.00hrs to 19.00hrs, an increase in the supplementary booking charge (for journeys commencing three miles or more away from the taxi or taxi base (whichever is the nearer) from £6.50 to £10.00 (e) representations from 43 taxi drivers and operators in Lochaber against any increase in the scales (f) a representation from Mr Chris Campbell advocating an increase in the scales (g) tables showing the cost effect of the ITA proposals and the HDA proposal on the current scales and (h) tables showing the percentage cost effect of the ITA and HDA proposals on the existing scales.
18. I considered the basis of the appeal and the respondents' position in answer to it, together with the further written submissions/representations from the parties. In light of what had been submitted I decided that to enable me to fully understand the respective positions of the parties a public hearing ("Hearing") was necessary. In fixing the Hearing I declined the respondents' invitation to determine the appeal by written submissions as otherwise provided for in Rule 8.

THE PUBLIC HEARING

19. The Hearing took place on 8th July 2014. The appellant, Mr Andrew MacDonald was present. He was assisted by Miss Helena MacLeod, secretary and treasurer of the ITA. Also present was Mr James Blackburn representing the interests of taxi drivers and operators based in Lochaber.
20. In attendance for the respondents were Councillor Maxine Smith, Michael Elsey, their Senior Licensing Officer, and Mr Alaisdair Mackenzie their Legal Manager. The respondents were represented by their Principal Solicitor (Regulatory) Ms Susan Blease.

21. Observing the proceedings were Messrs Roy Cumming, George Fox and Victor Rawlins all taxi drivers/operators based in Inverness.
22. Parties were agreed that I should adopt their respective submissions and the statement of Councillor Smith as evidence. No formal evidence was led. The Hearing took the form of Ms Blease questioning Miss MacLeod, with contributions from the appellant and with me clarifying/developing areas of concern and/or interest as and when I considered it appropriate.
23. In the event, the Hearing developed into three principal sections which focused on (a) the pre review of scales consultation process, (b) the different conditions for taxi operators in Inverness City and Lochaber and (c) the fixing of the scales by the respondents.

The Consultation Process

24. In preparing for the Hearing I noted that the respondents, per their letter of 26th November 2013, had written to all taxi operators in their area. A copy of the letter was produced at the Hearing. It is in the following terms:-

“Dear

***CIVIC GOVERNMENT (SCOTLAND) ACT 1982
REVIEW OF HIGHLAND TAXI TARIFF***

I refer to the above and would advise you that the Highland Council will shortly be commencing a review of the taxi tariff.

You will be aware that the current tariff came into effect on 21st January 2013 and the Council has a statutory duty to carry out a review within 18 months of this date.

The process for reviewing the tariff is set out in the Civic Government (Scotland) Act 1982 and takes a number of months to complete due to the various requirements set out in the Act which require to be complied with.

The processes to be undertaken and timetable for the review is attached to this letter for your information.

I hereby invite you to submit written representations in relation to the review of the taxi tariff to Mr Michael Elsey, Highland Council, Chief Executive Services, Town House, Inverness IV1 1JJ which should be received no later than 5pm on Friday 10th January 2014.

Any representations submitted should clearly detail whether an increase/decrease or status quo is recommended and should be accompanied with supporting information and/or evidence where possible.

*Yours sincerely
Legal Manager”*

25. Ms Blease submitted that the respondents had complied with Section 17 of the Act “to the letter”. She argued that any consideration I might give to that process was outwith my remit. She confirmed that this letter was the only communication from the respondents to all licensed operators in their area ahead of the respondents reviewing the scales – the first stage of which (after the consultation process) was the meeting of the Committee on 4th February 2014. A few representations had been received in response to the letter. There had been no follow up to those representations – there had been no dialogue with any taxi operators/drivers prior to the representations “going to committee”.
26. This confirmed a concern I had that the consultation process had not truly involved consultation with the taxi trade.
27. I was interested to note the ‘hearsay evidence’ of Councillor Alan Duffy who had contributed to the discussion at the Committee meeting held on 4th February 2014. Ms Blease confirmed to me that he had made some enquiries “off his own bat”. It appears that he had asked taxi drivers and members of the public about their views of the cost of the hire of a taxi. He had been informed that members of the public did not want an increase in the fares. He received a mixed reaction from the taxi drivers he had spoken to – a reaction which I think concerned him in the knowledge that both the ITA and HDA were in favour of an increase which, as he understood the position, was not necessarily truly representative of the views of all operators and/or drivers he had spoken to. He learned that some drivers were finding it hard to get customers because the fares were so high.
28. Ms Blease complained that the respondents had not been put on notice in the appeal process about the apparent failure to consult with the Trade. I do not agree. *Inter alia* the appellant complains in his “appeal letter” that “*The Trade in Inverness is thoroughly disappointed about the lack of representation and effective dialogue from the Licensing Committee*”.
29. Mr Blackburn informed me that he and his colleagues in Lochaber had tried to form an association on many occasions but it had not worked out in “their area” – they thought it was a waste of time. He submitted that they would get involved if they thought something constructive would come of it. Based on past experience anything they asked for never came to fruition and there was the perception that anything that is done is done with regard to operators in Inverness.
30. Ms Blease explained that the respondents had not previously indulged in dialogue – it was, however, something she believed they would have to address in the future. She added that whilst it would be a matter for the Committee, she understood that it had conceded that it would like more of a dialogue with the taxi trade in the future and there were plans to arrange meetings for this purpose (Paragraph 10 above refers).

The Respondents' Area for the Purposes of the Act

31. As the discussion developed on the topic of consultation, another topic of concern to me namely, the nature of the area licensed by the respondents once again reared its head. I say "once again" because it is a topic which I considered and attempted to address in my decision in the Taxi Farescale appeal by John Munro against Highland Council dated 24th May 2001. I referred to my decision in that case and read the following extract from it under the heading of "Recommendations and Comments":-

".....18. The responsibility devolving on the Respondents as "constrained" by the Act to fix Taxi Fair Scales in their area is considerable. Like the respondents I can only competently consider an appeal against the proposed Taxi Fare Scales for in Section 18(1) of the Act. It would be open to me (in other circumstances) to make a determination by "re-writing" the proposed Taxi Fare Scales. However, it is not competent for me to fix different rates for different parts of the area.

19. Prior to the last reorganisation of Local Government the area was divided into eight separate District Council areas, two of which did not even license taxi operators - those operators now require to be licenced and in the event regulated by the respondents through the licensing system.

20. It appears to me that the costs of operating taxis vary greatly given the difference in the nature of the journeys generally undertaken in those different parts of the area. It is, therefore, understandable why some operators did not seek an increase in the proposed Taxi Fare Scales.

21. The consequence for operators smaller in number serving the smaller communities is that they are never likely to be able to prosecute a competent appeal to a Traffic Commissioner. They are unlikely to be able to produce a substantial proportion of the operators operating in the area of the Licensing and in this regard the yardstick in defining a "substantial proportion" has always been assumed to be more than one third of operators (in the area) - Scottish Development Department Circular No. 25/1986, paragraph 2.39 refers.

22. That said the Traffic Commissioner has discretion in the matter in terms of Section 3(b) of the Act. The Traffic Commissioner may decline to proceed with an appeal if he considers the appellant is not representative of the view of a substantial proportion of the operators of taxis operating in the area. This in practice may be a significant hurdle for smaller operators to overcome. The framing of this part of the legislation is not ideal as was recognised in the case of Glasgow District Council -v- The Traffic Commissioner, Scottish Traffic Area 1990 SCLR 736.

23. The appellant in this case is based in Inverness and therefore had a better prospect of securing the support of a sufficient number of his colleagues to enable him to prosecute this appeal.

24.Clearly, following on from the Local Government Reorganisation the area for which the respondents now have responsibility for the licensing of taxi operators is very large indeed. It is not necessarily the size of the area that gives rise to the difficulties as have been hereinbefore identified, but the very different communities within the area that is served by the taxi trade.

25. It may, therefore, be necessary for consideration to be given to a change in the criteria for an operator or operators to be able to pursue an appeal such as this and/or Licensing Authorities, such as the respondents, to be able to divide their area into a number of (sub) areas for their licensing of tax operators - this would no doubt require a change in the legislation.

26. As an afterthought I wonder if the respondents could fix more than one taxi fare scale for different parts of their area."

32. The appellant in his "appeal letter" made reference to this issue as he recognised "*....the differences between conditions in the City of Inverness and the rural areas, more than 40 taxi drivers in Lochaber objected to the price increase and asked to be licensed separately from Inverness operators.*"
33. Councillor Smith readily recognised the problem. She described the dichotomy of Lochaber operators not wanting an increase in the scales whereas Inverness operators did and asked "*what is the solution?*"
34. During the course of the discussions, reference was made to the respondents' observations that when the scales are fixed they are maximum charges for the hire of a taxi, with the trade being under no obligation to charge the maximum permitted fare.
35. I was sceptical as to whether, in practice, this happened. Mr Blackburn questioned how would a member of the public know which driver/operator was not charging the maximum rate? I wondered how the charge would be calculated? It also occurred to me that there may be commercial risks associated with charging reduced fares. However one of the observers told me that he was aware of a part of the area where operators did not charge the maximum fare and he put it simply – "*if the fare was £5 they would charge £4.*" That same area, which I do not require to identify for the purposes of this decision, also did not demur from any increases in the scales as it did not charge the maximum – predictably there would not be any objection to that from the taxi travelling public.
36. Mr Blackburn considered that the fares he and his colleagues were charging were exorbitant for the work they were doing. He also recognised that for an elderly person living at a remote location reliant on taxis for say their weekly shop, could result in the taxi fare costing more than the weekly shop.
37. Mr MacDonald, the appellant, in offering an "overview" of the position suggested that his position was more conciliatory than I might imagine because his position is entrenched in the historic lack of dialogue with the respondents.

The Fixing of the Proposed Scales

38. The appellant's position is comprehensively detailed in the ITA Proposal dated 9th January 2014, the ITA Representation of Proposal dated 9th March 2014 and observations on the respondents' Statement of Reasons dated 1st July 2014. All these documents had been prepared by Miss MacLeod which is why it was she and not the appellant who was questioned by Ms Blease during the course of the Hearing.

(a) The appellant's case to support an increase in the scales

39. The appellant submits that the majority of taxi journeys in Inverness are in the daytime based on Tariff 1 rates. The average distance of these journeys, generally within the city boundaries, is between 1.5 and 1.75 miles. Most of the fuel used in taxi vehicles is consumed during these short trips. This is where the greatest expense is incurred by taxi operators hence the focus on seeking an increase in Tariff 1.
40. The appellant also had the objective to achieve equilibrium with Perth & Kinross Council scales. This would require (a) an increase of 50p to Tariff 1 from £2.50 to £3.00 with a 95 yard increase in the initial flag from 785 to 880 yards and a decrease of 20 yards from 130 to 110 yards for each additional 110 yards or part thereof (b) an increase of 80p to Tariff 2 from £3.00 to £3.80 with a 320 yard increase from 560 to 880 yards in the initial flag and a decrease of 4 yards from 92 to 88 yards for each additional 88 yards or part thereof and (c) an increase of 90p to Tariff 3 from £3.60 to £4.50 with a 436 yard increase from 444 to 880 yards in the initial flag with no change to the yardage of 74 yards for each additional mile or part thereof.
41. The appellant offered an alternative proposal of a 50p increase in the Tariff 1 flag from £2.50 to £3.00 with no change in the yardage. He believed that the general effect of this when converting from yards to miles would correspond to a 50p increase for the first mile from £3.30 to £3.80 with no further increase to each mile thereafter.
42. Miss MacLeod agreed with Ms Blease that any increase in Tariff 1 would have the greatest impact for both the trade and the public. The general effect of the appellant's proposed increases would be, for Tariff 1 a 15% increase for the first mile and a 14% increase for each mile thereafter, for Tariff 2 a 12% increase for the first mile and a 5% increase for each mile thereafter and for Tariff 3 a 6% increase for the first mile and no percentage increase for any mile thereafter.
43. The appellant asserted that the respondents required to assess the data relating to the motoring and wages costs produced by the relevant industry bodies since the last review. As the last review took place in 2012 Ms Blease was curious why the appellant invited the respondents to consider such data from 2006. Miss MacLeod explained that "they" were focusing on the "flag fall". It had not changed since September 2006. It was only on reading the Statement of Reasons that Miss MacLeod realised she should have been comparing the two sets of data in terms of the income that can be generated through the flag fall and the expenses incurred in operating a taxi – a like for like data-set comparison. Ms Blease questioned whether this was the correct approach as the fares in 2012 had not been increased but they had in 2011. Miss MacLeod explained that it was an increase in the flag fall that was being sought. She made the distinction between an increase in fares and an increase in the flag fall.

She understood that a decrease in the yardage would increase the fare. This approach had been undertaken with reference to the Perth & Kinross scales.

44. Ms Blease pointed out that any changes to the scales, for all tariffs, in 2006 became effective from 27th January 2007 (Miss MacLeod thought any change to Tariff 1 had been effective from 4th September 2006 but accepted she was wrong). Since then there had been changes to the tariffs in 2008 and 2011. In arriving at these changes the respondents had taken into account the percentage cost increases of motoring and fuel for the intervening years. She was concerned that the appellant was now asking the respondents to look at the percentage cost increases in fuel and motoring, or some of them, from 2006 to 2014 – as these had already been taken into account at each review it appeared that the appellant was taking them into account again. She challenged Miss MacLeod that this was double counting. Miss MacLeod explained that because the respondents were comparing the flag fall increase requested by the appellant with the percentage increase in the operating costs at this time, it was appropriate to refer back to the costs involved in 2006. The two of them “begged to differ”.

(b) Fuel and vehicle costs

45. With reference to fuel reports produced by the AA, in December 2013 the appellant submitted that Scotland had the highest fuel costs in the United Kingdom – petrol 131.6p – diesel 139.4p per litre respectively. Inverness drivers had experienced a rise in fuel consumption due to a greater volume of local traffic and related congestion especially during peak times.
46. In response to the respondent’s Statement of Reasons, Miss MacLeod in the letter of observations dated 1st July 2014 the appellant had set out a “Comparison of Fuel Costs and Vehicle Running Costs between 2006 and 2014”. When asked by Ms Blease why she had selected as a starting date January 2006 she could not remember.
47. Ms Blease pointed out that in September 2006 the percentage increases in petrol and diesel would have been 2% less when compared with these costs in June 2014. Miss MacLeod maintained that this was still a significant increase in cost – it was still a 45% increase in diesel, with in excess of 90% of operators using diesel fuelled vehicles. She apologised for not considering the September 2006 costs. Separately, Ms Blease reminded Miss MacLeod that a 50p increase on the flag took place on 27th January 2007 and referred her to the “AA Fuel Price Report – January 2007” which was the same point of reference, the AA, that she had used in her calculations. She pointed out that had Miss MacLeod gone with the January 2007 date as her comparison date for the fare increase, she would have ended up with a higher percentage difference because the cost of fuel had gone down. Her contention was that the appellant should have used the later date when the fares were last changed, namely in July 2011 when the cost of fuel was more than in June 2014. Miss MacLeod maintained that the starting point for the comparison of data should be 2006.
48. Ms Blease then considered the average price of new vehicles noting that Miss MacLeod had taken averages for 2011 and 2013. Her data disclosed that there had been an increase in the running costs for petrol vehicles of 4.8% and for diesel 2.7%

from 2011 to 2013. She had done her calculations with reference to Category 3 vehicles but accepted the values of the vehicles can change a great deal over the years, with vehicles changing from one category to another. In her original submission she had calculated that for a Category 3 vehicle from 2011 to 2013 the increase in running costs in petrol and diesel vehicles had increased by 4.8% and 2.7% respectively. In the letter of observations dated 1st July 2014 for a Category 2 vehicle she had calculated the increase in the running costs of petrol and diesel vehicles had increased by 17.23% and 24.42% respectively. She agreed with Ms Blease that the price range of vehicles within each category may change and the cost analysis is geared towards that. In revisiting her calculations, she had changed from Category 3 to Category 2 vehicles as the situation was very different in 2006 and decided it was best to highlight the percentage increase for Category 2 vehicles for 2011 and 2013. Ms Blease assumed the costs under each category were geared up with each successive year so irrespective that the price range of vehicles in each category may change – the cost analysis was geared towards that. Ms Blease queried if Miss MacLeod had selected one category, say Category 3, as representative of the type of vehicle used by taxi operators why would that category change? Miss MacLeod did not know – she could not say what type of vehicle would be operated and it was always possible that they could change from one category to another. Her approach had been to try and identify like for like.

49. Ms Blease then referred Miss MacLeod to her calculations of the “Total of standing and running costs per mile” and submitted that if Miss MacLeod had based all her calculations on Category 3 vehicles (as she had for 2014) the percentage increase in the running cost figures would have been significantly less than those calculated by her for 2006. Ms Blease had also carried out calculations for 2007 as there had been the 50p increase in the flags and had arrived at another smaller percentage increase for Category 3 vehicles. She carried out the same exercise for 2008, the year where there had been a 3% to 14% increase in fares, and arrived at a decrease in the cost of running a Category 3 petrol vehicle but an increase in the running cost of a diesel vehicle (when compared with a Category 2 vehicle). Taking 2011 which Ms Blease continued to argue should be the year used for the starting point of such calculations, she calculated that a Category 3 petrol vehicle would have been a 15.5% decrease in the cost of running a Category 3 vehicle between 2011 and 2014 and a 1% decrease for petrol vehicles. Miss MacLeod did not disagree describing the 2011/2014 figures as “an interesting statistic”.
50. Ms Blease ‘put it’ to Miss MacLeod that by switching from Category 3 vehicles to Category 2 vehicles in her calculations had the result of suggesting much higher motoring costs than if she had continued to use Category 3. Miss MacLeod explained that she had been working on the assumption that in 2006, running costs, vehicle costs and purchase costs were much cheaper in 2006 and that is why she switched to Category 2 in drawing up her comparative figures. It had not occurred to her to produce figures for both sets of categories against the background that there is a mix of Category 2 and 3 vehicles used by the trade in the area.
51. There had been no significant change in the cost of insuring their vehicles.

(c) Comparison of Living Costs 2006 - 2012

52. Miss MacLeod had included in the letter of observations dated 1st July 2014 a comparison of living costs with reference to Band D Council Tax for all the local authority areas in Scotland. She did not attach much weight to these costs but had included them as part of the submission for equilibrium with Perth & Kinross Council. She observed the rate set for that area was marginally higher than the rate set by the respondents i.e. the cost of living is marginally higher there than in the Highlands.

(d) Licence Fees

53. Miss MacLeod expressed concern about the annual increase in fees for licence applications and renewals. Ms Blease informed her that these fees had increased from £291 in 2008 to £384 in 2014 – an increase of £93. She wondered whether Miss MacLeod wished me to take this unavoidable outlay into account when making my decision. She also wondered whether this increase over an eight year period merited the 15% increase in the scales as sought by the appellant. After discussion Miss MacLeod invited me to take this outlay into account.

(e) Clarification of the identity of the appellant

54. Ms Blease quoted from the top of page 2 of the letter of observations dated 1st July 2014 – *“The ITA is the only trade association who seeks the views of all operators/drivers extending far and beyond the city environs”*. She understood the appeal was on behalf of the Inverness taxi drivers. Miss MacLeod told her that the appellant was Mr MacDonald. She pointed out that there are a lot of taxi drivers operating on a regular basis in Inverness who were not licensed by the respondents – her fiancée is one such operator/driver. She agreed that the majority of operators who had supported the appeal operated out of Inverness – the others had wanted to show support for the appeal. Ms Blease observed that the letter of appeal dated 10th April 2014 repeatedly made reference to the appellant representing operators in Inverness. Later on in the discussion, Miss MacLeod confirmed to Ms Blease that the appeal was really being prosecuted on behalf of drivers/operators who chose to work out of Inverness whether or not they were licensed in Inverness.
55. The 160 drivers/operators supporting the appeal represented 37% of all operators/drivers licensed by the respondents. Ms Blease suggested the other 63% were either content with the proposed changes to the scales or are accepting of it. Miss MacLeod disagreed. She explained that there was a very small window of opportunity to gather support for the appeal as provided for in the legislation.

(f) The Minutes of the Licensing Committee Meeting held on 4th February 2014

56. In response to the comments made by the appellant in the letter of observations dated 1st July 2014, Ms Blease explained that the minutes merely recorded what the Committee members had said during the course of the discussion – which was not necessarily the view of the Committee. Miss MacLeod explained that she only had the Minutes “to go on” as the basis on which the Committee had arrived at its decision. She complained that she did not have access to the Minutes for a significant period of time - they were not to be found on the website in March 2014. She only had sight of

them on 7th May 2014 – this was the first of her learning “how the judgement was born out”. This has always been a major bone of contention for her and her colleagues not knowing the reasons or justification as to how the respondents (a) had arrived at a 30p increase in the three tariffs and (b) the rejection of the ITA fully argued and vouched proposals without any explanation.

57. Ms Blease then queried Miss MacLeod’s contention that “*All operators/drivers would have the ability to generate an extra 50p for an average short journey, particularly on the tariff 1 rate where the majority of fares are consumed. It is entirely not factual to say that the drivers of larger companies would benefit from the larger increase*” and suggested that the same would apply with a 30p increase. Initially, Miss MacLeod disagreed pointing out that not all drivers got to Tariff 2 or 3 with the majority of drivers, driving saloon cars, only driving Tariff 1 journeys in the day time. After some discussion Miss MacLeod agreed with Ms Blease and accepted her contention in this regard, namely that all drivers would receive an increase albeit 20p less than the ITA proposal for a Tariff 1 journey which type of journey is the journey most regularly undertaken by drivers in Inverness. Mr Blackburn confirmed that in his area the majority of journeys were mainly around the town with a few rural journeys. No one was able to say whether the Inverness drivers had more journeys than other drivers operating outwith Inverness.
58. With regard to Miss MacLeod’s contention that the average Scottish Tariff does not compensate adequately for the issues that are specific to the Highland Region and in particular the City of Inverness, Ms Blease suggested that the proposed increase of 30p would take the tariffs above that average. Miss MacLeod agreed that it would be 10p above the current average of £2.70p (for Tariff 1). She pointed out that the Scottish average 1 mile cost is 4% above the rate presently allowed by the respondents – for 2 miles it is 10%, 5 miles - 20% and 10 miles - 24%. Exponentially the longer the journey the greater the increase in the percentage difference between the Scottish average and the rates presently allowed in the respondents area.
59. Miss MacLeod was at pains to emphasise that the main point was that the majority of journeys are short journeys. It is on that flag fall area that the appellant wished to make the greater impact with less of a focus on the longer journeys all, with a view to being aligned with the Perth & Kinross scales which the appellant and his colleagues considered to be fair when compared with the Scottish average. Their flag is 10% higher than the Scottish average, 1 mile is 9% higher, 2 miles is 3% higher 5 miles is 2% lower and 10 miles is 10% lower. She identified that the 2 mile journey was the “break even” point and it was the first 2 miles that they were focusing on.
60. Again with reference to the 1st July observations, Ms Blease was curious to know why the appellant considered the Perth & Kinross area to be a “like-for-like” neighbouring area with the respondents’ area when the their area was about a third of the land area of Scotland and the Perth & Kinross area was miniscule by comparison and must have different considerations to take account of. Miss MacLeod explained that they had looked at Invernesshire to begin with and they considered that Perth & Kinross was second below that. They had looked at all the other major Scottish areas and satisfied themselves that the Perth & Kinross area was the most “like-for-like” area with the fairest scales which they considered to have been thought through very carefully.

61. Miss MacLeod added that prior to this Hearing, through the ITA, the views of many drivers had been sought. There was unanimous agreement for the 50p increase that was being sought. They had gone through a very full consultative process with the drivers and operators.

Concluding submission by Ms Blease

62. Ms Blease considered the appeal to “Inverness centric”. Section 2 of the Act, however, made it incumbent on the respondents, as the licensing authority, to review and fix the scales for the whole of their area. There are other areas other than Inverness such as Lochaber who did not want any increase at all as opposed to the appellant who sought a 50p increase on the Tariffs for the respondents to consider.
63. She submitted that there cannot really be any comparison of the needs of the drivers and the public in Perth & Kinross with the needs of the drivers and more so the needs of the public in the Highlands where there are so many more remote areas with less public transport and a greater reliance on taxis. This aspect was discussed and considered by the Committee who were conscious of the rural areas and the Inverness area.
64. Ms Blease considered that with the appellant restricting the figures in the 1st July observations to Category 2 figures, produced a distorted illustration of percentage increased costs which when considered with Category 3 figures which related to vehicles that could equally be driven by Inverness drivers, produced far lower percentages. She submitted that in any event the appropriate date to take the cost increased figures from is the date the figures were last increased, namely July 2011, and not 2006. She argued that for the appellant to take the figures from 2006 to 2014 involved double counting of the intervening cost increases as the increase in fuel and motoring costs were taken into account by the ‘working group’ at its meeting on 17th March 2011.
65. Ms Blease recognised that there were two different proposals the respondents’ and the appellant’s, neither of which was based on any mathematical formula, with each party believing their proposal to be the more reasonable. The crucial difference between the two proposals is that the appellant’s proposal tends to reflect the wishes of the Inverness taxi drivers whereas the respondents’ proposal, through the Committee’s discussion and decision, was to reach a compromise between the appellant’s proposal of a 50p increase on the three tariffs and the representation from Lochaber seeking a freeze – the respondents reached a compromise looking at their whole area rather just looking at the needs of the Inverness drivers.
66. As the Act requires the respondents to fix the scales for their area, they believe they have done that by looking at the whole of the Highlands and not just the needs of the Inverness City area. She invited me to determine that the respondents’ proposal be the preferred proposal.

Concluding remarks by the appellant, Mr Andrew MacDonald

67. The appellant did not consider a mathematical formula would necessarily reflect the reality of the situation.

68. He referred to the respondents' (continual) references to traditional approaches and fairly common practices which he suggested was perhaps where the problems lay, together with the diverse nature of places such as Lochaber and Inverness. He understood the constraints of the legislation.
69. He then informed me that for the 52 week period to 5th April 2014 he worked 2086.5 hours which generated an income of [*redacted*]. This equated to a 42.12 hour week with a net return of £5.75 per hour, with no allowance for the depreciation of his vehicle or replacement of it or for tax assessment. He was paying a minimal amount of hire purchase for his vehicle – he knew of several drivers who were paying up to £175 per week certainly in excess of £100 per week to hire a vehicle and they were struggling to make a living. He wondered how some younger taxi drivers were able to make a living and bring up a family. His income was supplemented by the old age pension. He suggested that the respondents' should be ashamed that many of 'their' taxi drivers were earning less than the minimum wage.
70. He did, however, recognise the conciliatory approach which the respondents had talked about which he suggested was in its infancy. It was something he very much welcomed. The very late in the day acceptance that dialogue was absolutely essential if a resolve was to be reached. He believed there are one or two indications the old "town burgh set up" which still issues the (licence) plates might be an answer to the problem of the disparity of the various regions. He had spent all of his working life in the Highlands and was intimately acquainted with them. It was his objective to solve the problem for all regions within the area. He understood that it was not the wish of the Inverness drivers to have a 50p increase in the tariffs if the plates were capped. This was an issue he believed the respondents have traditionally ignored and continue to ignore. He argued that if the number of plates in Inverness City was capped then the income might rise. He suggested that if the appeal had been perceived to be focused on Inverness City then they might have to take the "hit" in the number of taxis that are licensed there.
71. In seeking the appeal they did not intend to be confrontational. The appeal had been initiated as he believed that the trade was being systematically ignored.

Concluding remarks by Mr James Blackburn

72. Mr Blackburn questioned *"If Mr MacDonald felt he was being neglected in Inverness then what about us?"* In answer he submitted that *"we, in Lochaber, had been neglected for years."*
73. He explained that he had attended the Hearing because following the meeting of the Committee on 1st April 2014, it had been reported in the paper that Lochaber was irrelevant and that had "put his (and his colleagues) hackles up".
74. He was keen that the respondents looked into what had been talked about during the course of the Hearing. He would endeavour to get some interest in an association in Lochaber which he anticipated would be difficult because of the neglect over many years had given rise to a certain mistrust between the drivers in Lochaber and the respondents which he would like to see mended. In an attempt to achieve this he suggested that they might care to visit them and other locations in the west.

75. He submitted that the Tariff 1 flag had been fixed at £2.50 since 4th September 2006. Ms Blease did not agree.

Considerations and Reasons for my Decision

76. In an attempt to keep matters in context I return to Section 18(1) of the Act which states that any person who operates a taxi in an area for which scales have been fixed may appeal those scales to the traffic commissioner within 14 days of receiving notice thereof (Section 18(1A)(a)). So too may any person or organisation appearing to the traffic commissioner to be representative of such taxi operators (Section 18(1A)(b)). Any appeal must be directed to the new scales.
77. As the deputy traffic Commissioner assigned to this appeal I have discretion to determine the procedure at the hearing (Rule 5(2)). I can entertain oral, documentary or other evidence of any fact which appears to me to be relevant to the appeal notwithstanding that such evidence would be inadmissible in a court of law (Rule 5(3)).
78. There are two stages that the respondents must implement in fixing the scales. Firstly, it must carry out a review of the existing scales. Secondly, it must fix the scales.
79. In carrying out the review the respondents must consult with persons or organisations appearing to them to be or to be representative of the operators of taxis operating in their area. I am not persuaded that by writing their said letter of 26th November 2013 to each operator inviting representations achieves that – that is not what Section 17(4A) of the Act requires. It certainly put the operators on notice that a review of the scales was being undertaken.
80. What the Act appears to envisage is that in each licensing area there are persons or organisations representative of taxi operators in any such area. This is no doubt predicated on the premise that each area has such representative persons or organisations. It therefore follows that any such persons or organisations require to make their existence known to, in this case, the respondents and for the respondents to satisfy themselves that they are truly representative of the operators of taxis in their area. As it happens in the area of the respondents there is the ITA an organisation promoted principally by the appellant and Miss MacLeod. There is the HDA which may be solely Mr Jessiman – there is also Mr Blackburn.
81. I do not agree with Ms Blease that the consultation process is outwith my remit. It is a very important part of the prelude to the respondents reviewing the scales. I believe I am entitled to examine the steps taken by the respondents as required by Section 17 of the Act.
82. Some three representations were received by the respondents in response to their said letter of 26th November 2013 which were considered by the Committee on 4th February 2014. As I understand the position, this is all the respondents did with regard to consultation with the trade.
83. In my view this is unsatisfactory. It does not amount to consultation. I am fortified in this with reference to Section 17(4A)(b) which requires the respondents following

such consultation to review the existing scales and to propose new scales whether at altered rates or not. The Concise Oxford Dictionary defines consultation as “*a meeting arranged to consult*”. There has been no meeting therefore there has been no consultation. Accordingly, the respondents appear to have failed to consult with persons or organisations appearing to them to be representative of the operators of taxis within their area prior to completing the review process and proposing new scales.

84. The consultation process, as part of the mandatory review of the scales, is regulated by Section 17 of the Act which makes it a mandatory requirement for the respondents to “*consult with persons or organisations appearing to it to be, or to be representative of the operators of taxis operating within its area*”. How this mandatory requirement is satisfied is entirely a matter for the respondents.
85. It occurs to me that it would be impossible for the respondents to consult with every operator of a taxi – presumably that is why the legislation is framed as it is affording the respondents discretion to consult with persons or organisations which appear to it to be representative of the operators of taxis operating within its area. This again is a matter for the respondents to address but in other areas a formula along the lines set out in Section 18 of the Act is applied but not such a high proportion of operators (usually not less than a third of operators is deemed to be a “substantial proportion”) is required to satisfy the representative requirement.
86. Accordingly, it is up to the respondents to identify and keep under review which persons or organisations appear to it to be representative of the operators of taxis in their area and involve them in the consultation process.
87. I had no difficulty in determining on the papers submitted to me that the appellant was representative of a substantial proportion of the operators of taxis operating in the respondents area and that he was entitled to pursue his appeal (Section 18 (1A)(b) of the Act).
88. I was, however, very concerned about the position of Mr Blackburn. He had responded to the Notice advertising the proposed scales complaining that (a) they might be ‘alright’ for operators of taxis in Inverness (b) rural taxis should be licensed separately (c) there had been no consultation and (d) he and his colleagues did not want an increase in the scales. There are 43 names typed after his text – no signatures. He also responded to the respondent’s letter dated 1st April 2014 in which notice was given of the new scales per his letter of 3rd April 2014 in which he intimated that he and his colleagues wished to appeal the new scales and seeking advice on how to proceed. There does not appear to have been any follow-up to this intimation of an appeal.
89. Be that as it may, Mr Blackburn raised an issue which I had identified in my earlier decision in May 2001. When I referred to it and read an extract from it none of the respondent’s representatives who were present had any knowledge of it (all parties were provided with a copy of it). It seems to me that some 13 years later the Taxi Trade is facing similar, if not the same problems, as it did then.

90. In light of this and notwithstanding the absence of a formalised appeal at his instance i.e. no authenticated petition supporting his appeal or the like, I considered it necessary to invite Mr Blackburn to the hearing as it appeared to me that he may well be representative of the Taxi Trade in Lochaber and surrounding area - he was certainly a voice for it. This invitation was made in terms of Section 18(1A)(b) of the Act.
91. I was very concerned to hear from Mr Blackburn that it appears that there has been a complete absence of dialogue between him, his colleagues and the respondents. It also appears that this has been the case for a considerable period of time, so much so that there is apathy and little, if any appetite, to constitute a representative organisation or association to consult with the respondents as they believe, based on the past, they will not be listened to.
92. During the course of his contribution to the Hearing, Mr Blackburn made a comment/observation to the effect that the questions being asked of, in particular, Miss McLeod were being asked by Ms Blease a person who does not understand the trade. I would not have been offended if he had extended that same comment/observation to include myself. Any situation in which I have the privilege to preside over involving trades, professions, walks of life and the like unless one is involved in or has had direct experience of them, then one is unlikely to be fully knowledgeable or understand and appreciate what each such discipline truly involves. Accordingly, the Hearing is an opportunity for the Taxi Trade to do its level best to give an insight into the true nature of the Trade. But with regard to the process of fixing new scales, in terms of the legislation, the Taxi Trade is in my opinion to be afforded an earlier opportunity to try and achieve that during the mandatory review of the existing scales, with an emphasis on consultation. This is when the Committee could have been provided with a fuller understanding of the Taxi Trade in their area and the issues and concerns that are clearly present with regard to, in particular, the different 'areas' in it.
93. I did not take that comment of Mr Blackburn's to be a criticism of Ms Blease. It was clear to me that she had a full understanding of the issues she required to address. She had a good grasp of the factual material and had carefully prepared for the Hearing. She also must be commended for the very fair manner in which she presented the respondents' case and for the courteous manner in which she engaged with the appellant, Miss MacLeod and Mr Blackburn.
94. I am in no doubt that the Committee fully considered all the information that was available to it at its meetings held on 4th February and 1st April 2014 and arrived at its decision to fix the scales as it saw fit so to do based on that information. The minutes of the meetings tend to suggest that a number of points/issues were raised and discussed and informed conclusions were reached on all of them.
95. As I have drafted and redrafted this decision I kept returning to the contribution by Councillor Duffy to these discussions. It appears that he brought to the table concerns expressed by some of the Inverness City operators. It is not clear to me what prompted him to take the initiative he did but it does appear to have brought a dimension to the discussions which might have benefited from further investigation.

96. As the Hearing developed and when it focused on the basis upon which the appellant sought an increase in the 3 tariffs in excess of the new scales it occurred to me that the questions Ms Blease asked of Miss MacLeod gave Miss MacLeod a greater understanding of the thinking behind the new scales. On a number of issues which I trust I have faithfully recorded in the preceding paragraphs Miss MacLeod accepted that some of her approaches to the proposal and/or alternative proposal put forward by the appellant were difficult to substantiate. My impression was that Miss MacLeod did not strongly argue, having considered her answers to these various questions, that the basis upon which the respondents had fixed the scales was unreasonable. Her main complaint in this regard is that she had no idea why the respondents had chosen to increase the 3 tariffs by 30p and reject the appellant's principal proposal for a 50p increase until she had sight of the Statement of Reasons which could only become available after the appeal had been initiated.
97. I am not persuaded that one of the appellant's objectives to have the scales brought into 'equilibrium' with those fixed by Perth & Kinross Council has a sound basis at all. I agree with Ms Blease that the two areas are markedly different, both in terms of geographical size and the communities within them, and that it is not appropriate to draw comparisons between them.
98. It occurred to me that the parties to the appeal were not far apart on the issues and factors to be taken into consideration when fixing the scales – namely the costs associated with operating a taxi and the (maximum) charges to be applied to the cost of the hire of a taxi so that the operating costs are covered and a profit can be made by the operator. It is a matter of trying to get the balance right and to be fair to the Taxi Trade and the public making use of their taxis.
99. I do not agree with Miss MacLeod who based the starting point of some of her calculations on 2006 costs. I agree with Ms Blease that the starting point should have been July 2011.
100. I do not consider the issue of licences (plates) by the respondents is within my jurisdiction and therefore will not involve myself in that aspect of the appeal.

DECISION

101. In my opinion the principal mischief in this case is the absence of meaningful dialogue between the respondents who, in terms of the legislation, have the responsibility to take the initiative, with the Taxi Trade in their area.
102. I sincerely hope that the willingness to collaborate with trade as agreed at the Committee meeting on 1st April 2014 is actioned and that all parties having relevant and competent interests in the process of reviewing the scales are able to properly consult with each other and achieve a better understanding of their respective positions.
103. Another matter that I kept returning to is the appellant's concluding remark that he was not certain that all taxi operators in Inverness were seeking a 50p increase on the three tariffs and that his principal, if not his sole objective, was to use this appeal as a vehicle to try and achieve meaningful consultation with the respondents.

104. It is in this context that I determine that the respondents have not fully discharged their obligations in terms of Section 17 of the Act. The required consultation did not take place. The focus has been undoubtedly on the Inverness operators. Whilst I understand that the Tariff 1 journeys are not dissimilar in Inverness and Lochaber I do not believe the Committee had sufficient information before it to properly review the scales for all the different rural communities in its area.
105. On the information available to the Committee it maybe that the decision that was reached was not unreasonable. As a direct consequence of the respondents' failure to properly consult with the operators of taxis in their area they did not have sufficient information to make that decision. It is in these circumstances I consider it unnecessary to consider in detail each element of the appeal and the respondents' position in response to it.
106. In terms of Section 18(3)(a) I am empowered to either confirm or alter the scales as fixed by the Committee on 1st April 2014. I am not prepared to confirm the scales. As a direct consequence of the respondents' failure to consult with the trade I alter the scales to the scales previously fixed by the respondents which were effective from 21st January 2013.
107. A consequence of my decision is that the meters in the taxis licensed to operate in the respondents' area will not require to be recalibrated.
108. In conclusion having singled out Ms Blease and also her colleagues for all the hard work they have been put into this appeal process for which I am most grateful, I must also recognise Miss MacLeod's input. She clearly has an intimate knowledge of the Taxi Trade which has come through the extensive paperwork she has generated and submitted in support of the process of the scales being reviewed and thereafter fixed. I am most grateful to her for all her hard work and the interest she has shown throughout the process.

.....
Richard Hamilton McFarlane
Deputy Traffic Commissioner for Scotland
11th September 2014