

FEES TO BE CHARGED FOR THE LICENSING OF PRIVATE HIRE AND HACKNEY CARRIAGE LICENSING 2019-20

Submitted by: Head of Environmental Health

Portfolio: Finance & Resources

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fees to be charged in relation to the licensing of Private Hire and Hackney Carriage Licensing.

Recommendations

That Committee agree the fees to be charged for the licensing of Private Hire and Hackney Carriage Licensing for 2019/20.

Reasons

Decisions relating to the setting of non-statutory fees and charges for taxi licensing have been delegated from Council to Public Protection Committee.

1. Background

- 1.1 The approval of certain fees and charges relating to the licensing of Private Hire and Hackney Carriage licensing regimes are Council functions.
- 1.2 Council at their meeting on 22nd February 2017, delegated this function to Public Protection Committee.

2. Private Hire and Hackney Carriage

- 2.1 A report was presented to Public Protection Committee on 23rd October 2018 in respect of the proposed fees and charges for Private Hire and Hackney carriage driver, vehicle and operator fees and charges for 2019/20. The committee recommended agreement to the proposals and that the fees and charges should be advertised and a period of consultation undertaken in accordance with the requirements of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.2 The Local Government (Miscellaneous Provisions) Act 1976 (sec. 70) states the following in relation to Operator and Vehicle licence fees:

“(1) Subject to the provisions of subsection (2), a district council may charge such fees for the grant of vehicle and operators’ licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part:
(a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
(b) the reasonable cost of providing hackney carriage stands; and

(c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.

(2) The fees chargeable under this section shall not exceed—

- (a) for the grant of a vehicle licence in respect of a hackney carriage, twenty-five pounds;
- (b) for the grant of a vehicle licence in respect of a private hire vehicle, twenty-five pounds;
- and
- (c) for the grant of an operator's licence, twenty-five pounds per annum;

or, in any such case, such other sums as a district council may, subject to the following provisions of this section, from time to time determine.

(3) (a) If a district council determine that the maximum fees specified in subsection (2) of this section should be varied they shall publish in at least one local newspaper circulating in the district a notice setting out the variation proposed, drawing attention to the provisions of paragraph (b) of this subsection and specifying the period, which shall not be less than twenty-eight days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made.

(b) A copy of the notice referred to in paragraph (a) of this subsection shall for the period of twenty-eight days from the date of the first publication thereof be deposited at the offices of the council which published the notice and shall at all reasonable hours be open to public inspection without payment.

(4) If no objection to a variation is duly made within the period specified in the notice referred to in subsection (3) of this section, or if all objections so made are withdrawn, the variation shall come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later.

(5) If objection is duly made as aforesaid and is not withdrawn, the district council shall set a further date, not later than two months after the first specified date, on which the variation shall come into force with or without modification as decided by the district council after consideration of the objections.

(6) A district council may remit the whole or part of any fee chargeable in pursuance of this section for the grant of a licence under section 48 or 55 of this Act in any case in which they think it appropriate to do so."

- 2.3 The advertisement was placed in the Sentinel newspaper on 30th November 2018 and copies placed at Castle House and Kidsgrove Town Hall. The consultation period ran from publication until 28th December 2018.
- 2.4 No comments, objections or representations were received in respect of the proposed fees and charges.
- 2.5 The Deregulation Act 2015 amended the Local Government (Miscellaneous Provisions) Act 1976 in relation to the duration of licences for hackney carriage and private hire drivers and private hire operators.
- 2.6 Section 10, subsection 2 of the Deregulation Act 2015 changed the law in such a way as to establish a standard duration of three years for hackney carriage and private hire driver licences. The section specifies that a licence may be granted for a period of less than three year but only in circumstances of an individual case, not because of a blanket policy.

2.7 Subsection 3 of the Act changed the law in such a way as to establish a standard duration of five years for a private hire vehicle operator licence. The section specifies that a licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of blanket policy.

3. **Issues**

3.1 **The European Services Directive states (Art 12.2):**

“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

3.2 **Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):**

“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”

4. **Proposed Fees:**

4.1 All proposed license fees and charges are detailed in table 1:

Table 1:

Private Hire/Hackney Carriage (subject to consultation)	Fee/Charge 2018-19 (£)	Proposed Fee/Charge 2019-20 (£)	Difference (£)
OPERATORS			
Private hire operators 5 year licence			
1 vehicle	180.00	187.00	7.00
2-5 vehicles	365.00	380.00	15.00
6-15 vehicles	640.00	665.00	25.00
16-25 vehicles	1,710.00	1,780.00	70.00

26-35 vehicles	2,750.00	2,850.00	100.00
36-50 vehicles	3,810.00	3,950.00	140.00
Additional vehicle after 50 vehicles	23.00	24.00	1.00
DRIVERS			
Dual Driver Badge (Hackney Carriage and Private Hire) 3 years	240.00	250.00	10.00
Change of Address	20.00	21.00	1.00
Replacement badge	16.00	17.00	1.00
Reissue/Replacement badge (with amended details)	35.00	36.50	1.50
DBS (CRB check)	44.00	44.00	0.00
DBS (CRB (online))	58.00	64.50	6.50
Safeguarding Training	35.00	36.50	1.50
Exemption Certificates	25.00	26.00	1.00
Knowledge Test	45.00	45.00	0.00
Replacement Safeguarding training certificate (NEW)	N/A	5.00	0.00
VEHICLES			
Hackney carriage - vehicles	310.00	322.00	12.00
Private hire – vehicles	305.00	317.00	12.00
Transfer of vehicle	45.00	47.00	2.00
Change of Vehicle Registration	45.00	47.00	2.00
Failure to attend for vehicle test	110.00	114.00	4.00
Retest	40.00	41.50	1.50
Replacement plate carrier - front	10.00	10.00	0.00
Replacement plate carrier - rear	15.00	15.00	0.00
Replacement Vehicle plate - Front	10.00	10.50	0.50
Replacement Vehicle plate - Rear	15.00	15.50	0.50
Replacement Vehicle Signage (each)	3.00	3.00	0.00

Copy of paper part of licence	11.00	11.50	0.50
Exception Vehicle Test	70.00	73.00	3.00
6 Monthly Test following an Exception Test	120.00	125.00	5.00

5. **Proposal**

- 5.1 That Committee agree the fees to be charged for the licensing of Private Hire and Hackney Carriage Licensing for 2019/2020.

6. **Reasons for Preferred Solution**

- 6.1 The fees can be used to cover the cost of the following:

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

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

Third party costs – Some licensing processes will require third party input from experts,

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

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

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

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

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

Web material – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

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

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

7. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

7.1 The proposals relate to the adoption of fees and charges which would contribute to the following:

- A healthy, active and safe borough - The negative impacts that the Council, residents and local businesses have on the environment will have reduced.
- Growing our people and places - Fair, proportionate and consistent fees create an equal opportunity for business to thrive.
- Local services that work for local people - High performing services and support will be delivered for businesses and customers.

8. **Legal and Statutory Implications**

8.1 **Hemming v Westminster**

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In Hemming v Westminster, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

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

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

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

8.2 The Council will be open to challenge in the High Court should the calculation of the fees and areas charged for prove to be contrary to the Act.

- 8.3 Judicial Review of a decision may be made on the following grounds:
- Ultra vires – no power to levy a particular fee, or fees used to raise revenue unlawfully, or
 - Wednesbury rules – decision was unreasonable or irrational

9. **Financial and Resource Implications**

9.1 Should a challenge be made in relation to the fee level as detailed in the Hemming v Westminster there could be detrimental financial implications for the Council

9.2 There will be financial implications for the Council if full cost recovery is not achieved.

10. **Major Risks**

10.1 As detailed under Legal and Statutory Implications

11. **Key Decision Information**

11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

12.1 Council delegated the function of setting fees and charges to Public Protection Committee on 22nd February 2017.

13. **Recommendations**

13.1 That Committee agree the fees to be charged for the taxi licensing regime

14. **Background Papers**

LGA Guidance on Local Fee Setting