



Report to Licensing (Regulatory) Committee

Date: 23 March 2021

Title: Taxi and Private Hire Licensing Fees and Charges

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Recommendations:

That the proposed fees and charges set out at Appendix 2 are agreed for consultation purposes and statutory advertising requirements.

1. Background

- 1.1 Taxi licensing fees are currently being charged separately in the legacy district council areas, with different licence fees, charges and fee structures being applied. A table of the existing fees charged in the legacy district council areas is provided at Appendix 1. Further to the approval of the new Taxi and Private Hire Licensing Policy at the Council meeting on the 24th February 2021, it is now necessary to align all fees and charges relating to taxi licensing to enable full implementation of the policy and consistency across the Council area. New fees would come into effect from the implementation date of the Policy, currently scheduled to be the 6th September 2021.
- 1.2 Taxi fees are required by law to be cost neutral and the relevant legislation and case law set out the elements of the licensing process which can be included in the calculation of fees.
- 1.3 The relevant legal provisions are set out in the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') and specifically section 53 with respect to driver licences and section 70 in relation to vehicle and operator licences, both of which permit the recovery of a reasonable fee for the grant of a licence.
- 1.4 Despite an apparent disparity between sections 53 and 70 of the Act regarding whether the power to set fees is an executive or non-executive function, Regulation 2(6) of the Local Authority (Functions and Responsibilities) (England) Regulations 2000 requires that *"where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge, is not to be the responsibility of an*

executive of the authority". As a result, fee setting for taxi licensing is a non-executive function.

- 1.5 This report seeks the approval of proposed fee levels for the purposes of consultation and statutory advertising requirements. If approved, a further report will be brought before this Committee with a recommendation to implement the final proposed new fees and charges, subject to any amendments following consultation.

2. Main content of report

- 2.1 Section 53 of the Act specifies that the costs related to issue and administration of licences can be recovered in driver's licence fees. In respect of vehicle and operator licences, section 70 specifies that the reasonable cost of inspecting vehicles, the reasonable cost of providing hackney carriage stands and any reasonable administrative costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles can be included in the fees.
- 2.2 Until recently, the costs of enforcement could not be included in the calculation of fees for driver licences. The judgment in the Court of Appeal case of *R (app Rehman) v Wakefield City Council [2020] R.T.R. 11 (2019)*, however, determined that "administration" can include the cost of enforcement or compliance against licensed drivers. The same principles also apply to the enforcement of vehicles and operators.
- 2.3 Licence fees cannot, however, be used for enforcement activities against unlicensed operators and it is therefore necessary for the cost of enforcement of unlicensed drivers, vehicles and operators to be met out of general funds. This work forms a very small part of the overall work of the taxi licensing service with the vast majority of activity directed at the licensed trade.
- 2.4 The Council cannot make a profit from licence fees and any surplus or deficit must be carried forward and form part of any subsequent review of fees. The legacy council budget position for taxi licensing differs considerably by council area with Aylesbury Vale area carrying a small budget surplus of £100K in 2020/21 and Chiltern, South Bucks and Wycombe carrying a historical combined budget deficit of £186k over the 2018/19 and 2019/20 period. The Aylesbury Vale area reserve fund is routinely used at financial year end to offset staffing costs within the service and to fund service improvements including IT and digital development which represents an appropriate and legitimate approach and is in accordance with the associated requirements in the Act. Current budget projections indicate that any Aylesbury Vale surplus will be fully utilised within the service by the 6th September 2021 when the new Taxi and Private Hire Licensing Policy is implemented. Should this not be the

case then it will be included in the rolling review of fees and charges within the service going forward.

- 2.5 The Council has the option to seek to recover the deficit in the taxi licensing budgets within the Chiltern, South Bucks and Wycombe areas by including this in the new fees and charges proposed. Given that the deficit budget position pre-dates the formation of Buckinghamshire Council, and that the licensed trade will see some increases in fees and charges associated with the implementation of the new statutory standards and Policy changes, it is not proposed that this option is pursued. However it is clearly necessary that the service moves to a cost neutral budget position where the cost recovery process adequately funds the service that must be provided.
- 2.6 The general methodology behind this review of fees has been determined by the Act and the document 'Open for business: Local Government Association (LGA) guidance on locally set licence fees'. This guidance has been used as a starting point only because it does not take into account the specific statutory restrictions applicable to taxi and private hire fees and therefore not all the costs listed as recoverable in the guidance have been included in the fees. It was last revised in June 2017 and so also does not take into account the decision in the recent Wakefield case in relation to enforcement costs.
- 2.7 The LGA guidance acknowledges that the EU Services Directive, applicable to most forms of licensing, does not apply in the case of taxi and private hire licensing but the principles, however remain helpful. The core principles are that fees should be non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent; and accessible.
- 2.8 The LGA guidance draws attention to two important judicial decisions in relation to fees. The first is *R (Cummings) v Cardiff [2014]* which rules that the charges within a licensing regime for different categories of licence should be accounted entirely separately and should not subsidise each other.
- 2.9 The second is *Hemming v Westminster*. Strictly speaking this does not apply to taxi and private hire licensing as this case proceeded under the auspices of the EU Services Directive from which transport services are specifically excluded. The principle ruling was that application fees relate solely to the costs of authorisation i.e. reviewing the application and granting or refusing it. Successful applicants should subsequently be charged an additional fee relating to the costs of on-going maintenance and enforcement. Whilst this is not necessarily applicable to taxi and private hire licensing it would be prudent to bear in mind the principle and might inform the Council's refund policy in respect to unsuccessful applications.
- 2.10 The LGA guidance acknowledges that Councils are free to design their licensing service in a manner that best serves the needs of their community and recover the

costs accordingly. It provides a number of elements that Councils may wish to consider. These include administration, visits, third party costs, liaison with interested parties, management costs, local democracy costs, staffing on-costs, development, determination and production of licensing policies, web material, advice and guidance, setting and reviewing fees, monitoring and inspection visits and maintaining statutory registers.

- 2.11 The legislation does not require the Council to make a precise calculation so as to arrive at an income which exactly meets the cost of the administration of the various licences. Councils are required, however, to take a reasonable and proportionate approach and should aim to set a fee level that is sufficient to cover the cost but not make a surplus. On that basis it is proposed that a full service review of fees is carried out on a rolling three year basis, thus affording the opportunity to reconcile any surplus or deficit accrued. In addition to this, the fees will be reviewed annually in relation to any increase in RPI and where appropriate an increase will be applied to the fee to recover related increased costs to the Council. The Government are currently reviewing RPI and may replace it with another inflationary measure. If this is the case an annual increase in relation to any new measure prescribed, where appropriate, will be applied to the fee to recover related increased costs to the Council.
- 2.12 A comprehensive review of the cost of delivering taxi licensing services has been carried out and new fees are proposed that reflect both the full staffing costs of running the service as well as the support service costs. As required this review has factored in recoverable costs incurred by the Council such as Democratic Services and Committees, corporate governance, office accommodation, IT provision, administration, supplies and services etc. It does not include Freedom of Information requests, Data Protection Act requests or activity related to unlicensed drivers, operators or vehicles. A fee schedule of the new proposed fees and charges is provided at Appendix 2.
- 2.13 The cost of implementing the provisions of the Statutory Taxi and Private Hire Vehicle Standards, which were published in July 2020 and which have been included within the new policy, have also been taken into consideration. The Standards impose various significant new requirements on both the trade and the Council and as a result their implementation will inevitably affect fee levels.
- 2.14 A full report setting out the requirements of the new Statutory Standards and their impact was presented to this committee on the 3rd February 2021.
- 2.15 Where the fee pays for a service provided to the Council by a supplier, such as DVLA checks, or a physical item such as a plate or bracket for a vehicle, this has been factored into the fee. DBS fees are set partly by the DBS and partly by our supplier and vary to a small extent annually. The DBS fee is therefore detailed separately and

will be increased annually to reflect supplier cost increases. This will not require a formal approval process. The cost of physical supplies also varies dependent on supplier costs and will be increased annually to reflect supplier cost increases. This will not require a formal approval process.

- 2.16 Fees which are paid directly to an external supplier for services required as part of the application or licensing process, such as medical examinations and testing for driving standards and English language, have not been included.
- 2.17 Currently licensed vehicle inspection arrangements differ within the legacy council areas. As such separate fees have been calculated for the cost of carrying out vehicle inspections. Work is currently being carried out with the aim of aligning testing processes for all licensed vehicles for the future.

3. Next steps and review

- 3.1 If approved, the proposed fees will be subject to a full consultation process with the licensed trade and other relevant parties. Section 70 of the Act sets out statutory advertising requirements in relation to vehicle and operator licences which require that an advert must be published within a local newspaper and at least 28 days provided for comments to be made. It is proposed that this consultation period will begin after the May elections have taken place and the purdah period has ended.
- 3.2 Following the statutory consultation process, a further report will be presented to this committee at the next meeting on 30th June 2021, setting out the results of the consultation and any amendments made to the proposed fees as a result.
- 3.3 If approved, the final proposed fees will take effect across the whole Council area from the current scheduled date of the implementation of the new taxi policy, 6th September 2021.

4. Other options considered

None. Taxi licensing is required by law to be cost neutral and so a reasonable fee must be charged to cover the cost of the service.

5. Legal and financial implications

Sections 53 and 70 of the Act allow for the recovery of a reasonable fee for the grant of a driver, operator and vehicle licence. The fees must be set at a level which ensures that the Council does not make a profit and any deficit or surplus should be taken into consideration in subsequent fee reviews, to be recovered or refunded over a rolling three year cycle.

6. Corporate implications

- 6.1 Protecting the vulnerable – The licensed trade provide an important service in transporting members of the public, some of which are vulnerable due to their age or for other reasons. Taxi fees should be set at a level which ensures that all necessary checks and testing can be carried out to ensure that new applicants are “fit and proper” to hold a licence and for compliance checks and appropriate enforcement measures to be undertaken with existing licence holders where required.
- 6.2 Property – N/A
- 6.3 HR – N/A
- 6.4 Climate change – N/A
- 6.5 Sustainability – N/A
- 6.6 Equality – a full equalities impact assessment has been carried out
- 6.7 Data – N/A
- 6.8 Value for money – while the paramount consideration is passenger safety, the Licensing Service will ensure that the costs involved in delivering the service is kept to a minimum.

Key documents:

DfT Taxi and Private Hire Vehicle Licensing: best practice 2010

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf

“Open for Business”, LGA Guidance on locally set fees:

<https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>