



Report to Licensing (Regulatory) Committee

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Title: Taxi and Private Hire Licensing Fees and Charges

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Recommendations:

That the proposed fees and charges set out at appendix 1 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. 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 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, it was generally thought that the costs of enforcement could not be included in the calculation of fees for driver licences. The judgement 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 and costs awarded following Court proceedings. 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 In part the historical budget deficit in the Chiltern, South Bucks and Wycombe areas can likely be attributed to the choice in the market introduced by the Deregulation Act 2015 which removed the restriction that limited sub-contracting to within District boundaries. This means that private hire operators are permitted to sub-contract bookings between licensed operators, and as a consequence a journey booked with an operator in one District may be undertaken by a vehicle and driver licensed in another District, (providing the booking has been passed to a licensed operator in the second District). Following the introduction of the Act Aylesbury Vale area saw a significant increase in application numbers whilst Chiltern, South Bucks and Wycombe areas saw a corresponding fall in licence application numbers. The economies of scale associated with the staffing and operation of the services may have meant that had fees been reviewed at this time it could have been difficult to provide a cost neutral service whilst maintaining reasonable fee levels.
- 2.6 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.
- 2.7 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.
- 2.8 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.

- 2.9 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. This means that driver licence fees cannot subsidise vehicle or operator licence fees and vice versa.
- 2.10 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.
- 2.11 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.
- 2.12 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 1.
- 2.13 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.

- 2.14 Fees which are paid by the applicant 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. 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.
- 2.15 Following unitarisation the Licensing Service is currently engaged in service improvement under the Better Buckinghamshire programme which will result in the legacy district council area licensing teams being brought together into a single licensing service for Buckinghamshire. This process is underway and a single taxi licensing team will be in place prior to the implementation of the new Buckinghamshire Council Taxi and Private Hire Licensing Policy (currently scheduled for the 6th September 2021). A new single online digital application process for taxi licensing is also in development and will be implemented alongside the new Policy. This will ensure that applicants are able to access and receive the service in the same way across the whole of the Buckinghamshire area and will have their applications processed in a single back office system to consistent service standards. The proposed fees have been costed based on the developing new team structure, processes and digital solutions to ensure that they as far as possible reflect the cost of this new harmonised approach.
- 2.16 In arriving at the proposed fee levels Officers have considered the steps required for each licence type in order to process, validate, review, and grant or refuse a licence including external cross-check requirements such as Disclosure and Barring Service checks, knowledge tests and mechanical vehicle checks. A time estimate of activity required at each step has been carried out based on an understanding of the existing processes and digital systems currently in place and this has been combined with the digital development work underway with the Councils software providers. This information has then been considered in relation to historical application volumes, pre-Covid-19, for each licence type as well as staffing costs, direct and indirect costs (as per the LGA guidance) associated with the taxi licensing service to arrive at the proposed fee levels. The methodology and approach used as well as costings have had input and oversight from Finance Business Partner colleagues.
- 2.17 The new Buckinghamshire Council Taxi and Private Hire Licensing Policy implements the Statutory Taxi and Private Hire Vehicle Standards which were introduced in July 2020 by the Department for Transport and aim to protect children and vulnerable adults from exploitation. Councils must have regard to these new standards and it is expected that they will be adopted unless there is compelling local reason not to do so. The Standards and Policy introduce a number of new requirements for existing and new drivers including an enhanced check with the Disclosure and Barring Service

(DBS) every 6 months during the duration of each 3 year licence, English language testing for new and existing drivers, safeguarding training for new drivers and operators and refresher training for existing drivers. In addition Operators must submit annual Basic Disclosure Certificates from the DBS. The proposed fees reflect the additional resource and associated costs that it is considered are necessary within the licence application processes and during the duration of the licence to deliver these requirements. Given that the Statutory Standards by their nature predominantly relate to the drivers of taxi and private hire vehicles, it is in this area that increases in activity impact proposed fee levels. Case law judgments indicate that Licensing Committee's should not take financial considerations into account when reaching taxi licence decisions and that the over-riding objective must be public safety. This is of relevance here and means that whilst the Council are mindful of fee impacts on the taxi trade, this should not take precedence in decision making at the expense of public safety.

- 2.18 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.
- 2.19 A benchmarking exercise has been carried out of current fee levels charged by neighbouring local authority areas (12) and this is attached as Appendix 2. The majority of local authorities included in this benchmarking exercise have not yet reviewed their fees following the introduction of the Statutory Standards in July 2020 and it is considered reasonable to assume that they may increase fee levels at the point that they carry out fee review given that licensing authorities must adopt the new standards (and associated workload activity) unless there is compelling local reason not to do so. Despite this, benchmarking indicates that the proposed fees for Buckinghamshire remain lower for vehicles and operators than almost all of our neighbouring authorities, and that the proposed fees for drivers are in the mid-range of fees currently charged.
- 2.20 A comparison of the proposed and existing taxi licensing fees is provided at Appendix 1 and sets out the proposed fees against the comparative licence fees currently charged in the legacy district council areas under the four existing Taxi Licensing Policies. Also provided is the related percentage increase or decrease between the existing fee by area and the proposed fee. This comparison illustrates that the proposed fees for licensing vehicles and operators are generally lower than those currently charged in the legacy areas. As previously discussed the increased activity associated with the licensing of drivers means that the proposed fees for drivers are higher than those charged in the legacy areas, with drivers currently licensed in the Aylesbury Vale and Wycombe areas most impacted and drivers currently licensed in the Chiltern and South Bucks areas least impacted. Worthy of note is that when considered over the duration of a 3 year driver licence the proposed cost per annum for a licence is £106.00. In addition a significant number of drivers are also vehicle

proprietors (and a lesser number operators) and will therefore 'benefit' from lower proposed fees in these areas. Whilst the Service is mindful of the impacts of an increase in fee to licensed drivers, the legislative framework on cost recovery and the increased activity associated with the implementation of the Statutory Standards means that fees must increase in this area.

- 2.1 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. However, Councils are required 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.

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 fees are required to be cost neutral and a reasonable fee must be charged to cover the cost of the service. Legally the Council cannot make a profit from taxi licensing.

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 – the legislative framework is such that it is difficult for Councils to incentivise the use of environmentally friendly vehicles through reduced fee levels as the costs associated with processing and administering a vehicle licence are the same. In effect a reduced fee would mean that other vehicle licence holders were subsidising the use of these vehicles. The Policy instead incentivises the use of less polluting vehicles through the provision of extended vehicle age limits
- 6.5 Sustainability – N/A
- Equality – a full equalities impact assessment has been carried out and is attached as Appendix 3. The EQIA will continue to be reviewed and updated at regular intervals as the Policy and associated activity progresses through the decision making and implementation process.
- 6.6 Data – N/A
- 6.7 Value for money – while the paramount consideration is passenger safety, the Licensing Service has ensured that the costs involved in delivering the service are kept to a minimum. Following the implementation and embed of a new single taxi licensing service structure for Buckinghamshire it may be possible to realise additional service efficiencies. This will be captured as part of the rolling fee review process.

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>

