



<u>Committee and Date</u> Strategic Licensing Committee  18 March 2015
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<u>Item</u>  6  <u>Public</u>
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## Hackney Carriage and Private Hire Licensing Fees and Charges 2015 – 2016

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### 1. Summary

- 1.1** This report sets out the objections to be considered by the Strategic Licensing Committee in respect of the variations proposed to the fees in relation to driver, hackney carriage (zones 1, 2, 3, 4 & 5), private hire vehicle and operator licences. The report aims to enable the Committee to make a decision in respect of the fees that will take effect from 1 April 2015.

### 2. Recommendations

- 2.1** That the Committee, in accordance with the provisions of Section 70 (5) of the Local Government (Miscellaneous Provisions) Act 1976, considers the objections received, together with associated officer comments, as set out in **Appendix A**, following the legally prescribed objection process that was undertaken in respect of the variations proposed to the fees in relation to driver, hackney carriage (zones 1, 2, 3, 4 & 5), private hire vehicle and operator licences and agrees, with any further modifications if necessary, to implement the variations proposed to the fees as set out in **Appendix B (Parts 1 and 2)** with effect from 1 April 2015, this being a date not later than 2 months after the 16 February 2015.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1** The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman, complaints to the External Auditor by way of an objection to the Council's annual account and judicial review. It is reasonable to assume that in the current economic climate, the likelihood of customers adopting this approach may increase.
- 3.2** The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of the R Hemming and others v Westminster City Council case (the Hemming case – see paragraph 5.4 below), which involved the licensing of sex shops in Soho and Covent Garden. The judgement has made it clear that local authorities may become liable for substantial costs if it is found that procedures for setting fees have not been correctly followed and if the fees are not reasonable and proportionate to the costs of the licensing procedures. Westminster City Council appealed the Court of Appeal decision with the case heard by the Supreme Court on 13 January 2015; however, the judgement has not yet been made public by the Supreme Court.
- 3.3** To reduce the risk of challenge to the Council, officers undertook work in 2013 to develop a financial modelling tool to calculate licensing fees from 2014/15 onwards. The 2014/15 financial year is the baseline year against which fees and charges, in the following two years of a three year cycle, are being compared.
- 3.4** The modelling tool developed in 2013 has been further updated, modified and refined to take account of changes recommended by the Council's finance officers and to reflect the way in which the licensing function is now being resourced. Overall, the tool remains based on drawing together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with all licencing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their

licences. In addition, it aims to demonstrate that the cost of enforcing the licensing regime against unlicensed operators is not charged to those who are licensed.

- 3.5** An Equalities Impact Needs Assessment has not been undertaken as the report does not concern the implementation of a new policy.
- 3.6** There is no anticipated environmental impact associated with the recommendations in this report.
- 3.7** The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations are in line with current legal procedures laid down in relevant licensing legislation and takes into consideration the provisions of the Services Directive together with the implications of the Hemming case judgement (whilst acknowledging the outstanding Supreme Court appeal) that directly affects the setting of licensing fees.
- 3.8** It should be noted that the provisions of the Services Directive do not apply to hackney carriage and private hire licensing activities; however, the principles remain a helpful way of providing a transparent and business-friendly approach to such licensing and it is, therefore, appropriate to consider the provisions of the Directive as part of the hackney carriage and private hire fee setting process.
- 3.9** There is a statutory duty on the Council to follow a prescribed process to allow objections to be made when it proposes to vary licensing fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. Historically, the Council has also applied this process to driver licence fees; on the 10 December 2014, the Strategic Licensing Committee agreed that this practice was to continue.
- 3.10** The duty under Section 70 of Local Government (Miscellaneous Provisions) Act 1976 was fulfilled between the 12 January 2015 and 15 February 2015, with the necessary notice published in the Shropshire Star on the 15 February 2015. The notice was also available for inspection, without payment, at the Council offices in Shrewsbury as detailed in the formal notice. It was also published through the

“Have your say” page on the Council’s website on the 12 January 2015, together with a press release that was issued through the Council’s Newsroom webpage on the 13 February 2015. Copies of the relevant documents evidencing this process are attached at **Appendix C**.

- 3.11** The Committee’s legal authority to agree the recommendation is based within Section 53 and Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, together with the delegated functions set out in the Council’s constitution. The relevant extracts from the legislation are provided in **Appendix D**. However, despite the fact that the Services Directive does not have direct applicability to the fees under consideration and the Hemming case judgement is currently the subject of an outstanding appeal, it remains appropriate that due consideration is given to both.

#### **4. Financial Implications**

- 4.1** An exercise has been undertaken involving managers, licensing officers and finance officers to capture the detail involved in all licensing procedures where the Council has the discretionary power to set fees, including those specifically relating to driver, hackney carriage, private hire vehicle and operator licences. The procedures were considered from receipt of application to the issue of the final licence or permit with both variable and fixed costs being considered. These costs include officer time and management time spent on licensing administration and monitoring compliance of those already licensed but excludes time spent on enforcing unlicensed operators/businesses. In addition, a proportion of all relevant indirect costs that can reasonably be attributed to licensing procedures have been included; for example, office accommodation, ICT, travelling, legal costs, advertising, equipment, postage & printing, subscriptions, telephone costs, other corporate recharges, etc.
- 4.2** In relation to the consideration of applications, it is reasonable to recover a proportion of the costs of running both the Strategic Licensing Committee and the Licensing & Safety Sub-Committee from licensing fees and consequently these costs have, where possible, been incorporated into the overall figures.

- 4.3** As a result of this work, proposed fees for driver, hackney carriage, private hire vehicle and operator licences were calculated and presented to the Strategic Licensing Committee on the 10 December 2014 in Part 3 of Appendix B to the report entitled “Licensing Fees and Charges 2015 – 2016”.
- 4.4** It is accepted that costs can be recovered over a period of time allowing surpluses to be returned to licensees and deficits to be recouped by the Council. This does not mean that fees have to be adjusted every year (although they can be) to reflect immediately previous deficits or surpluses; however, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. The Hemming case judgement (albeit now subject to an appeal) makes it clear that not all costs are recoverable and that the costs associated with enforcing unlicensed operators/businesses must be borne by the Council. This will include the costs of providing advice to those who may consider applying for a licence in the future.
- 4.6** The Council has control over hackney carriage and private hire licence fees but only on a cost recovery basis. At this time, officers are satisfied that the income received from these discretionary fees has not generated a surplus or significant deficit either overall or with respect to individual licence types based on 2013/14 fees and income. It should be noted that in relation to hackney carriages, the fees for each zone are separately set.
- 4.7** Consequently, the hackney carriage and private hire discretionary licence fees calculated for 2015/16 are based solely on the costs forecast at the commencement of the 2014/15 financial year for undertaking the administrative procedures and formalities associated with the relevant licencing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences.
- 4.8** The detailed fee variations proposed for the 2015/16 fees are set out in **Appendix B (Parts 1 and 2)**. These are summarised below:
- New drivers badge increased by 17%
  - Renewal drivers badge increased by 12%

- Driver knowledge test resit reduced by 26%
- Driver training assessment reduced by 13%
- New private hire vehicle increased by 5%
- Renewal private hire vehicle increased by 8%
- Licence transfer private hire vehicle increased by 10%
- New hackney carriage increased by 3%
- Renewal hackney carriage increased by 1%
- Licence transfer hackney carriage increased 8%
- New and renewal private hire operators increased from 8% (specific increases are dependent on the size of the operation)

**4.8** All fees for the replacement of lost, stolen and damaged items and the administrative charge remain the same as those agreed in 2014/15.

**4.9** The increases associated with the hackney carriage and private hire licences are linked to the additional resources that are being directed towards increasing the effectiveness of the administration process specifically for safeguarding purposes. In addition, increased compliance checks and investigation work are being carried out by officers who are not based directly within the licensing team. The fees are also affected by the changes made to the way in which average hourly officer rates are now calculated and charged.

**4.10** With reference to the private hire operators licences, the new fee regime (fee level dependent on the size of the operation) that was implemented in 2014/15 is again being proposed for 2015/16. As it will only be the second year of operation, the Council is not yet in a position to fully assess the impact on cost recovery of the new regime for this particular licence type. At this stage, it is anticipated that the regime ought to operate for at least a further two years to enable a robust assessment to be undertaken; however, very early indications of its effectiveness are positive but confirmation of the detail required will not be available until late 2015 and beyond. These details, once available, will further inform future fee setting decisions.

**4.11** Where legislation allows the Council to recover licensing costs, it is important that this is undertaken effectively. Failure to do so means that the costs are subsidised

by council tax payers. In addition, resourcing those elements that cannot be legally funded through fees, e.g. enforcement of unlicensed activities, are adversely impacted as council tax funds have to be utilised to deliver licensing activities that can and should be funded through fees as well as those that cannot. This may result in a reduction in the Council's ability to effectively deliver the overall licensing regime.

## 5. Background

- 5.1** Detailed background information about designing fees on a cost recovery basis was provided to the Strategic Licensing Committee on the 10 December 2014 as part of the report entitled "Licensing Fees and Charges 2015 – 2016". As a result of this report, the Committee instructed the Head of Public Protection to publish the proposed fees in relation to driver, hackney carriage (for zones 1, 2, 3, 4 & 5), private hire vehicle and operator licences and to set out the period during which and the method whereby objections could be made.
- 5.2** This process was carried out as described in paragraph 3.10 above. The two objections received are set out in **Appendix A** to this report, together with relevant officer comments for the Committee to consider.

## 6. Additional Information

- 6.1** The Local Government Association has published guidance on locally set fees. The work that has been undertaken to determine Shropshire Council's proposed fees follows the principles contained in the guidance.
- 6.2** The revised process that has been undertaken to determine the fees for driver, hackney carriage, private hire vehicle and operator licences will be undertaken annually with amendments being made to take account of changes in the law and Council procedures.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

- Report to Strategic Licensing Committee on 10 December 2014 on Licensing

Fees and Charges 2015 – 2016

- Services Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
- Provision of Services Regulations 2009 - SI 2009 No 2999
- Court of Appeal Judgement in the case of R Hemming and others v Westminster City Council - 24 May 2013 - [2013] EWCA Civ 591 Case No. C1/2012/1666
- LGA guidance on locally set fees (January 2014)

**Cabinet Member (Portfolio Holder)**

Councillor Steve Charmley

**Local Member**

Not applicable

**Appendices**

**Appendix A** - Objections with officer responses

**Appendix B**

**Part 1** - Discretionary Fees Hackney Carriages (zones 1, 2, 3, 4 & 5) and Private Hire Vehicles

**Part 2** - Discretionary Fees Private Hire Operators

**Appendix C** - Documents evidencing the consultation process

**Appendix D** - Extracts from the Local Government (Miscellaneous Provisions) Act 1976