



Committee and Date

Licensing & Safety Sub-Committee

28 November 2013

Item

5

Public

Hackney Carriage and Private Hire Vehicle Licensing Fees and Charges

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1. Summary

- 1.1** This report sets out the objections to be considered by the Licensing & Safety Sub-committee following the consultation 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 that will come into force on the 2 December 2013. The report sets out the variations proposed to the fees and includes suggested modifications where this is appropriate.

2. Recommendations

- 2.1** That the Sub-committee, in accordance with the provisions of Section 70 (5) of the Local Government (Miscellaneous Provisions) Act 1976, considers the objections received and set out in **Appendix A**, together with the associated officer responses, as a result of the consultation 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 2 December 2013, this being a date not later than 2 months after the 1 November 2013.

- 2.2** That the Sub-committee agrees to the proposed fees, as agreed and implemented under recommendation 2.1, being included in the Fees and Charges 2014/15 report that will be presented, by the Head of Finance, Governance and Assurance (Section 151), to Cabinet on the 11 December 2013 (or any other date, if this is amended) and to any subsequent Council meetings as appropriate.
- 2.3** That the Sub-committee instructs the Head of Public Protection to make the hackney carriage table of fares card available as a 'pdf' downloadable document from the Council's website to allow hackney carriage drivers to print additional cards themselves should they so wish; and to instruct the drivers that they must take appropriate steps to ensure the card is sufficiently robust to withstand wear and tear and to reduce the risk of it becoming defaced and/or illegible.

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 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 recent 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.
- 3.3** To reduce the risk of challenge to the Council, officers have undertaken work to develop a financial spreadsheet to calculate licensing fees. It is 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.

- 3.4** An Equalities Impact Needs Assessment has not been undertaken as the report does not concern the implementation of a new policy.
- 3.5** There is no anticipated environmental impact associated with the recommendations in this report.
- 3.6** 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 take into consideration the provisions of the Services Directive and the implications of the recent Hemming case judgement that directly affects the setting of licensing fees.
- 3.7** There is a statutory duty on the Council to consult 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 consulted on driver licence fees; consequently, on the 25 September 2013, the Strategic Licensing Committee agreed that this practice was to continue. In relation to hackney carriages, the fees for each zone are separately set.
- 3.8** The duty under Section 70 of Local Government (Miscellaneous Provisions) Act 1976 was fulfilled between the 30 September 2013 and 30 October 2013, with the necessary notice published in the Shropshire Star on the 30 September 2013. The notice was also available for inspection, without payment, at the Council offices in Shrewsbury, Wem, Oswestry, Bridgnorth and Ludlow as detailed in the formal notice. It was also published through the "Have your say" page on the Council's website, together with a press release that was issued through the Council's

Newsroom webpage. Copies of the relevant documents evidencing this process are attached at **Appendix C**.

- 3.9** The Sub-committee's legal authority to agree the recommendations 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, due consideration must also be given to the provisions of the Services Directive and the judgement in the Hemming case.

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 the costs of running the Licensing & Safety Sub-Committee (although not necessarily the Strategic Licensing 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 25 September 2013 in Parts 2 and 3 of Appendix B to the report entitled "Licensing Fees and Charges 2014 – 2015".

- 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 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.
- 4.5** Each category of licence fee has been considered separately. However, the total recoverable licensing costs associated with driver, hackney carriage, private hire vehicle and operator licences for 2013/14 are estimated to be £500,088. Whilst this is the total amount that the 2013/14 fees are aiming to recover, the actual recovery must relate to the separate licence categories.
- 4.6** In the current economic climate, any future losses that are not funded by other means, including being subsidised by council tax payers, may result in further staff redundancies and a reduction in the Council's ability to effectively deliver the overall licensing regime in the Shropshire Council area. However, it must be recognised that not all licensing costs are recoverable.

5. Background

- 5.1** Detailed background information about designing fees on a cost recovery basis was provided to the Strategic Licensing Committee on the 25 September 2013 as part of the report entitled "Licensing Fees and Charges 2014 – 2015". 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. This process was carried out as described in paragraph 3.8 above. The content of the objections received are set out in **Appendix A** to this report; however, the identities of those who submitted objections have been removed in line with information governance requirements.

Where objectors asked specific questions and it was appropriate to provide a response, officers have done so; these responses are also included within **Appendix A**.

5.2 As a result of the objections received, officers have suggested two modifications to the fees that were originally proposed; these have already been included in the relevant entries in **Appendix B**. They are:-

- a) The cost of the driver's badge 3 year renewal is reduced from £172 to £156. This reduces the percentage increase compared to the current fee from 26% down to 15%. The calculation of the fee originally proposed incorporating compliance monitoring costs; these particular costs cannot legally be recovered as part of a driver's licence fee and must be borne by the Council.
- b) The cost of replacing the hackney carriage plasticised fare card following damage or loss is reduced from £9 to £2.50. The calculation of the fee originally proposed had 'double counted' the production costs by including both the direct cost from the external printers and the cost that would have applied if the production of the card had been undertaken by licensing staff. There is no comparison with current fees as no charge has been made for providing replacement fare cards prior to the current proposals.

5.3 In addition, steps have been taken to clarify or address the following issues that were raised during the consultation process. These are:-

- a) To make the hackney carriage fare card available as a downloadable 'pdf' document from the Council's website to allow hackney carriage drivers to print additional cards themselves should they so wish. Officers suggest that drivers are instructed to take steps to ensure the card is sufficiently robust to withstand wear and tear and to reduce the risk of it becoming defaced and/or damaged. This is the basis of the recommendation set out at 2.3 above.
- b) To make it clear in subsequent fees and charges reports and documents whether the private hire vehicle door signs are or are not included in the

relevant private hire vehicle licence fees. This has been included in the relevant entries in **Appendix B**.

- c) To identify more specifically what the £10 'licence holder transfer/change of details' charge related to; again this has been incorporated in the relevant entry in **Appendix B**.
- d) To clarify the reason for the £2 difference in cost of the internal and external plates. The officer explanation provided by email on the 25 October 2013 referred to the actual cost of the plates (a difference of only £0.24) but omitted to include the cost of the internal plate pouch/holder, which is an additional £1.48. The internal plate entry in **Appendix B** has been amended to clarify this issue. The full £2 difference is generated as a result of rounding to the nearest whole pound and adopting the normal mathematical rule to achieve this. (**Note:** For all replacement plates and similar items, only staff time taken to record receipt of the request and to produce the item, together with the direct costs incurred are included; no account is taken of indirect costs associated with producing these items.)

- 5.4** The fees from other local authorities were included in the report to the Strategic Licensing Committee to provide Members with a benchmark or a 'sense check' to inform their discussions. These fees did not influence the Shropshire approach to the financial analysis or the fees that were finally calculated and proposed. This was carried out entirely independently of any other local authority.
- 5.5** The challenge that has been raised in respect of the increasing scale of fees for private hire operators, depending on how many vehicles they operate, is addressed through previously issued officer responses dated 25 October 2013 and 18 November 2013; these responses are produced in **Appendix A**.
- 5.6** There is the suggestion, in several of the objections, that the Council has made a profit out of taxi licensing in recent years. Officers are of the opinion that the financial analysis that has been undertaken is sufficiently robust to demonstrate that this is not the case based on the information available.

- 5.7** The basis of a number of other comments that were submitted as objections focuses on the quality, level and locality of service provision and enforcement rather than direct objections to the actual fees proposed. These comments have been noted and officers remain committed to delivering improvements that reduce costs. However, the service will not be delivered in the same way that it has been delivered in previous years. This is simply not sustainable in the current economic climate.
- 5.8** There are a number of objections that focus on hackney carriage and private hire licensing policy matters rather than fees. These include zones in respect of hackney carriages, the extent of the application forms, the purpose and basis of the knowledge test, the number of MOT tests required, the criteria for determining a fit and proper person and the DBS process. The overarching licensing policy in this area is due for a significant revision in 2014/15; accordingly, all policy related comments will automatically be considered as part of the formal policy consultation process next year.
- 5.9** With respect to the invitation to the Council to prove the adoption of the relevant legislation, this is a matter that will be addressed separately from setting the fees.

6. Additional Information

- 6.1** The Local Government Association is currently consulting on guidance for locally set licensing fees. The work that has already been undertaken to determine Shropshire Council's proposed fees has largely followed the principles currently contained in the draft guidance; however, there may be specific details that will require revision once the guidance is finalised.
- 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 15 December 2010 on Establishing Fair Licensing Fees in Shropshire
- Report to Strategic Licensing Committee on 17 January 2012 on Hackney Carriage and Private Hire Fees and Charges
- Report to Strategic Licensing Committee on 21 March 2012 on Fees and Charges for Hackney Carriage and Private Hire Licences
- Report to Strategic Licensing Committee on 12 March 2013 on Fees and Charges for Licensing
- Report to Strategic Licensing Committee on 25 September 2013 on Licensing Fees and Charges 2014 - 2015
- 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 Draft guidance on locally set fees (consultation ends on 29 November 2013)

Cabinet Member (Portfolio Holder)

Councillor Steve Charmley

Local Member

Not applicable

Appendices

Appendix A – Objections

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