



<u>Committee and Date</u>
Strategic Licensing Committee
6 March 2019

<u>Item</u>
6
Public

Hackney Carriage and Private Hire Licensing Fees 2019-2020

Responsible Officer Mandy Beever, Transactional and Licensing Team Manager
e-mail: mandy.beever@shropshire.gov.uk Tel: 01743 251702

1. Summary

This report sets out the objection 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 2019.

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 objection 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** with effect from 1 April 2019, this being a date not later than 2 months after the 4 February 2019.

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; hence, the importance of undertaking robust processes to set discretionary fees and charges.
- 3.2 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. This duty is reflected in the recommendation set out at paragraph 2.1 above. Historically, the Council has also consulted on driver licence fees and consequently it is recommended that this practice continues. In relation to hackney carriages, the fees for each zone are considered separately.

With respect to the remaining discretionary fees, it is suggested that publishing the Council's intentions, prior to the fees coming into force, is sufficient and this reflects previous practice.

- 3.3 The duty under Section 70 of Local Government (Miscellaneous Provisions) Act 1976 was fulfilled between the 7 January 2019 and 3 February 2019, with the necessary notice published in the Shropshire Star on the 5 January 2019. 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 "Get involved" page on the Council's website on the 7 January 2015.
- 3.4 The Councils fees are set in accordance with the Court of Appeal Judgement in the case of R Hemming and others v Westminster City Council. The judgement held that there were three elements that made up the licensing fees that were subject to challenge. These were:
- (a) the administrative cost of investigating the background and suitability of applicants for licences;
 - (b) the cost of monitoring the compliance of those with licences with their terms; and
 - (c) the cost of enforcing the licensing regime against unlicensed operators.
- 3.5 Of these three elements, it was held that Westminster City Council was entitled to charge for the first two elements, i.e. the costs of processing the application itself and the costs of monitoring compliance by licence-holders, but was no longer entitled to include the third element, i.e. the costs of enforcement against unlicensed operators, in the fee.
- 3.6 As a result of the Hemming judgement and irrespective of the wording in other UK licensing legislation, the costs associated with the licensing procedures that the Council may legally recover in fees consists of administrative costs, the costs of investigating the background and suitability of applicants for licences and the costs of monitoring the compliance of those with licences with their terms. These will certainly include the costs that are directly attributable to licensing procedures and a proportion of indirect costs. The Council must be in a position to demonstrate that the costs included in any fees calculations are reasonable and proportionate to the cost of the licensing procedures.
- 3.7 Fees cannot exceed the cost of the licensing procedures and they cannot be used to recover the costs associated with enforcing the licensing regime against unlicensed operators. In addition, fees cannot be used to finance the delivery of other Council services.

Consultation Responses

- 3.8 There were four responses in total received during the consultation, one was withdrawn, and two consisted of questions which were responded to separately. In the final response the consultee was not clear with regard to the actual fee they were objecting to. The consultee referred to the 'transferring of plates being far too expensive'. Officers provided clarification as set out in **Appendix A, (Part 2 of 2)**,

but the objection was not withdrawn and no additional objection was received from the consultee. As a result officers have not proposed any amendments to be made to the fees published during the consultation.

- 3.9 An Equality and Social Inclusion Impact Assessment has not been undertaken as the report does not concern the implementation of a new policy; the focus of the report is the review of licensing costs to ensure the Council is in a position to recoup its costs on a cost recovery basis in line with current legislative requirements.
- 3.10 There is no anticipated environmental impact associated with the recommendations in this report.
- 3.11 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 domestic licensing legislation and takes into consideration relevant European provisions and case law.
- 3.12 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's Constitution.

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 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 3 October 2018 in Appendix F to the report entitled "Licensing Fees and Charges 2018 – 2019".
- 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 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 (as set out in see paragraph 3.4 above) 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 The detailed fee variations including surplus/deficit adjustment proposed for the 2019/20 fees are set out in **Appendix B**.
- 4.6 The increases associated with the driver, hackney carriage (zones 1, 2, 3, 4, & 5), private hire vehicle and operator 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.
- 4.7 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.
- 4.8 The proposed fees have been broken down into different categories which include standard private hire vehicles, novelty private hire vehicles and executive private hire vehicles. There are now two hackney carriage and private hire joint drivers licence fees the first one is a direct comparison to the fee which has been previously set. The second includes an additional fee for the safeguarding awareness course, this has been calculated at a reduced rate compared to renewing a hackney carriage and private hire joint driver's licence and booking a separate safeguarding training course. The fees have been set out in this way to provide choice and greater transparency for the hackney carriage and private hire trade.
- 4.9 An assumption has been made about the number of renewals that will take place in 2019/20 in order to recover or redistribute the deficits and surpluses. Until the end of the 2019/20 financial year it will not be known whether the assumptions about the number of renewals were accurate or not. The actual activity in 2019/20 will again change the cumulative position and further adjustments will be required in this rolling annual process. The adjustments to correct any material discrepancy in the recovery or redistribution of the deficits and surpluses will be made against 2020/21 fees and so on until the recovery of the surplus or deficit reaches a satisfactory position.
- 4.10 Where licenses have a renewal period of greater than one year, the recovery or redistribution calculation is spread across the same period.
- 4.11 Where legislation allows the Council to recover licensing costs, it is important that this is undertaken effectively. Losses that are not funded by other means, including being subsidised by council tax payers, may result in a reduction in the Council's

ability to effectively deliver the overall licensing regime in the Shropshire Council area. However, it is 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 3 October 2018 as part of the report entitled “Licensing Fees and Charges 2018 – 2019”. As a result of this report, the Committee instructed the Trading Standards and Licensing Operations Manager 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 3.2 and 3.3 above. The objection 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)

- Supreme Court Judgement in the case of R (on the application of Hemming and others v Westminster City Council – 29 April 2015 - [2015] UKSC 25 on appeal from [2013] EWCA Civ 591
- Court of Justice for the European Union Judgement in the case of Hemming [2016] EUECJ C-316/15 (16 November 2016)
- Report to the Strategic Licensing Committee on 3 October 2018 entitled Licensing Fees and Charges 2018 – 2019 <http://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=166&MId=3730&Ver=4>

Cabinet Member (Portfolio Holder)

Councillor Gwillam Butler, Portfolio Holder for Communities and Place Planning

Local Member

Not applicable – report has county wide application

Appendices

Appendix A, Part 1 of 2 – Summary of Consultation Response

Appendix A, Part 2 of 2 – Consultation Response

Appendix B – Proposed fees in relation to driver, hackney carriage (zones 1, 2, 3, 4 & 5), private hire vehicle and operator licences.