

# Licensing Committee



18 October 2022

<b>Title</b>	Review and Setting of Fees & Charges for the licensing of Hackney Carriages, Private Hire, and Private Hire Operators
<b>Purpose of the report</b>	To make a decision
<b>Report Author</b>	Lucy Catlyn, Principal Licensing Officer
<b>Ward(s) Affected</b>	All Wards
<b>Exempt</b>	No
<b>Exemption Reason</b>	Not applicable
<b>Corporate Priority</b>	Recovery, Service Delivery
<b>Recommendations</b>	<b>Committee is asked to:</b> - <ul style="list-style-type: none"><li>• Approve the proposed fees and charges set out at Appendix B for consultation purposes and statutory advertising requirements.</li></ul>
<b>Reason for Recommendation</b>	In accordance with the Constitution, Committee is asked to approve the Licensing Fees for Taxi and Private Hire Licensing.

## 1. Summary of the report

- 1.1 This report seeks the approval of proposed fee levels for the purposes of consultation and statutory advertising requirements.
- 1.2 The proposed fees have been revised taking into account the cost of living pressures likely to affect the taxi trade as well as the legislative requirements and the most up to date caselaw and guidance, as well as changes to the licencing procedure for efficiency purposes.

## 2. Key issues for Taxi and Private Hire Licensing Fees:

- 2.1 Spelthorne Borough Council in its role as the Licensing Authority (LA) is responsible for licensing Taxis and Private Hire drivers, vehicles, and operators.
- 2.2 The taxi licensing regime is a “two tier” system involving five categories of licence, hackney carriages, and private hire: -
  - Tier 1 – the licensing of hackney carriage drivers and hackney carriage vehicles.
  - Tier 2 - the licensing of private hire drivers, vehicles, and operators.
- 2.3 Spelthorne Borough Council licenses (at the 31 March 2022) the following: -

- 12 Operators
  - 45 Hackney Carriage Drivers (mixture of 3-year and 1-year licences)
  - 37 Private Hire Drivers (mixture of 3-year and 1-year licences)
  - 65 Hackney Carriage Vehicles
  - 52 Private Hire Vehicles
- 2.4 A list of the current fees is attached at **Appendix A**.
- 2.5 A list of the proposed fees is attached at **Appendix B**.
- 2.6 If approved, the proposed fees will be subject to a full consultation process with the licensed trade and other relevant parties. It is proposed that this consultation period will begin in October 2022.
- 2.7 Following the statutory consultation process, and if no objections are received, the fees will take effect on 28 November 2022.
- 2.8 If objections are received, a further report will be presented to the Licensing Committee meeting setting out the results of the consultation and any amendments made to the proposed fees as a result. The Licensing Committee will determine the fees as well as the date from which it will take effect.
- 3. Options analysis and proposal**
- 3.1 **Option 1** – to agree to consult with the taxi trade on the proposed fees keeping the wheelchair accessible vehicle discount. **(This is the preferred option)**
- 3.2 **Option 2** – to agree to consult with the taxi trade on the proposed fees with the wheelchair accessible vehicle discount removed.
- 3.3 **Option 3** – to agree the proposed fees with other amendments provided that such amendments are permitted by legislation.
- 3.4 **Option 4** – not to agree the proposed fees - while this is an option it is not realistic taking into account the legal considerations outlined in section 7 below.
- 4. Financial implications**
- 4.1 In 2021-2022, the annual income from hackney carriage and private hire regime was £53,175. Based on the assumption that the numbers and types of applications remain unchanged, the anticipated annual income would be £54,575 if the existing wheelchair accessible vehicle discount is kept, and £56,373 if the wheelchair accessible vehicle discount is removed.
- 4.2 Under the new fee structure, the annual income would be £1400 more than the 2021-2022 income if the wheelchair discount is kept. If the reduced fee given for wheelchair accessible vehicles is removed the overall income would increase by £3198.
- 4.3 The tables below set out the increases and decreases of the various fee structures. Where fees have increased, this is due to additional regulation and changes to the Taxi and Private Hire licensing policy.
- 4.4 Owing to the likely cost of living impact on the taxi trade and the reduced income they received during the COVID-19 pandemic, it is proposed to not charge for all aspects of regulatory work and Licensing Sub Committee hearings undertaken by the Licensing Service for this financial year.
- 4.5 Further, for the financial year 2023/24 it is proposed that a proportion of the costs for any Licensing Sub-Committees held for Hackney Carriage and Private

Hire are included in the application fee for renewals and new drivers, together with a proportion of costs for the regulatory work and amendments to the Taxi and Private Hire Licensing Policy. This will allow for a stepped increase of taxi fees in subsequent years.

4.6 Below is an illustration of how much applicants would be paying to renew both their vehicle and driver badge:

<b>Renewals of badges &amp; vehicle</b>	<b>Number projected 23-24</b>	<b>Current Fees Total</b>		<b>Proposed Fees Total</b>	<b>Difference in £ Total</b>
Hackney Carriage driver renewal 1 year and 1 year vehicle renewal	37 HC Drivers & 65 HC vehicle	£515		£435.91	Minus £79.09
Hackney Carriage driver renewal 3 year and 1 year vehicle renewal	8 HC Drivers & 65 HC vehicle	£745		£674.71	Minus £70.29
Private Hire driver renewal 1 year and 1 year vehicle renewal	31 PH Drivers & 37 PH vehicles	£455		£428.35	Minus £26.65
Private Hire driver renewal 3 year and 1 year vehicle renewal	6 PH Drivers & 37 PH vehicles	£663		£631.03	Minus £1.97
Wheelchair Accessible Vehicle	15 PH 0 HC	£155 PH £175 HC		£119.88 £121.36	Minus £35.12 Minus £53.64

4.7 It is proposed that the operator licence fee is simplified to a 1 year fee or a 5 year fee, instead of a fee structure which charges per vehicle. This would also simplify record keeping.

<b>Renewal of Operator Licence</b>	<b>Number projected 23-24</b>	<b>Current Fees</b>	<b>Proposed Fees</b>	<b>Difference in £</b>
Operator 1 year	There will be 11 going forward as proposing to no	£212 1 PHV £264 2-5 PHV £377 6-20 PHV £57 per hour for 21 or more	£349.92 regardless of how many vehicles	Cannot calculate difference as no longer charging by number of vehicles – however it is an increase of

	longer charge by number of vehicles			£137.92 based on the current fees for a one vehicle operator.
Operator 5 year	1	£925 1 PHV £1157.00 2-5 PHV £1717.00 for 6-20 PHVs £57 per hour for 21 or more	£978.06	Cannot calculate difference as no longer charging by number of vehicles— however it is an increase of £53.06 based on the current fees for a one vehicle operator.

4.8 If the same number of applications are made for change of vehicle as of 2021-22 this would total 29 applications. These applications are made when drivers change vehicle part way through their licence term and the remaining licence period is transferred to their new vehicle. It is proposed that the fees for change of vehicle are increased significantly to cover the full cost of inspection (which is the same amount of work as a renewal), processing the application and granting the licence.

	Current Fees	Proposed Fees	Difference in £
Change of Vehicle	£102	£167.88	Plus £65.88

4.9 Currently new drivers pay one fee for a licence which includes one attempt at the following:

- Conditions test
- Geographic test
- English and Numeracy test.
- Disclosure and Barring Service Check (DBS)
- processing and granting the application.

The new proposed fee structure complies with case law (Hemmings) and also simplifies the process for new drivers applying to separate the fees for individual items.

New Drivers	Current Fees	Proposed Fees	Difference in £
New Driver Hackney Carriage Fee	£305 1 Year	£231.36 for processing and granting only.  £197.69 Tests & DBS	Plus of £124.05.

		Total = £429.05	
New Driver Hackney Carriage Fee	£513 3 year	£376.81 for processing and granting only.  £197.69 Tests & DBS  Total = £574.50	Plus of £61.50.
New Driver Private Hire Fee	£295 1 year	£231.36 for processing and granting only.  £177.66 Tests & DBS  Total = £409.02	Plus of £114.02.
New Driver Private Hire Fee	£494 3 year	£386.82 for processing and granting only.  £177.66 Tests & DBS  Total = £564.48	Plus of £70.48.

## 5. Risk considerations

- 5.1 Fees may be challenged in the High Court (Judicial Review) or by complaint to the Local Auditor. It is therefore important that the process the Council follows is fair, open, and transparent.

## 6. Procurement considerations

- 6.1 There are no procurement considerations.

## 7. Legal considerations

- 7.1 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,
- 7.2 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.
- 7.3 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.

- 7.4 Taxi fees are required by law to be cost neutral thereby reducing the risk of local tax payers subsidising businesses, and thus ensuring that businesses do not pay more than they should.
- 7.5 The fixing of fees proposed in the attached fee schedules at Appendix B for is a function of the Licensing Committee as laid out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 7.6 The judgment in the Court of Appeal case of R (app Rehman) v Wakefield City Council [2020] R.T.R. 11 (2019) 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.
- 7.7 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.
- 7.8 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 was last revised in June 2017 and so does not take into account the decision in the recent Wakefield case in relation to enforcement costs
- 7.9 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.
- 7.10 The LGA guidance draws attention to two important 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 taxi licence should be accounted entirely separately and should not subsidise each other.
- 7.11 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 when considering the requests to refund application fees for unsuccessful applicants.

## **8. Other considerations**

- 8.1 There are none.

## **9. Equality and Diversity**

- 9.1 An equality impact assessment has been carried out and these are attached at **Appendix C and D**. No significant impacts were identified through the

assessment. If the Council decides to remove the discount for wheelchair assessable vehicles it may impact on the number of vehicles which are licensed as a financial incentive is offered. If this was to be taken away then it could have an impact on equality. It is recommended therefore that the wheelchair accessible vehicle discount is retained.

**9.2 Sustainability/Climate Change Implications.**

9.3 Taxi and Private Hire vehicles help reduce the need for private ownership of cars. They also play a pivotal role in transporting children to/from school and supporting the night-time economy. They can also help reduce emissions to the atmosphere.

**10. Timetable for implementation**

Licensing Committee to agree proposed fees	18 October 2022
Public Consultation	28 October 2022 for 28 days
End of Consultation	25 November 2022
If no objections fees take effect	28 November 2022
If objections received Licensing Committee to be convened	December 2022 Licensing Committee to determine when fees take effect. <b>Fees must be implemented on or before 25 January 2023</b>

**11. Contact**

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**Background papers:**

LGA Guidance on locally set fees:

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

**Appendices: -**

- **Appendix A – Current Fees & Charges 2019/2020**
- **Appendix B – Proposed fees**
- **Appendix C – Equality and Diversity Assessment One**
- **Appendix D- Equality and Diversity Assessment Two**