

# Licensing Committee



5 December 2023

<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> - 1. Approve the proposed licensing fees and charges set out at Appendix B for consultation purposes and statutory advertising requirements.
<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 Licensing Committee's approval of proposed fee levels for the purposes of consultation and statutory advertising requirements.
- 1.2 The proposed fees are 2022/23 agreed fees with an additional 5% increase to cover increased costs to the service. The fees were revised in 2022/23 in line with 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:

- 1.1 Spelthorne Borough Council in its role as the Licensing Authority (LA) is responsible for licensing Taxis and Private Hire drivers, vehicles, and operators.
- 1.2 The taxi licensing regime is a "two tier" system involving five categories of licence, hackney carriages, and private hire: -
  - (a) Tier 1 – the licensing of hackney carriage drivers and hackney carriage vehicles.
  - (b) Tier 2 - the licensing of private hire drivers, vehicles, and operators.
- 1.3 Spelthorne Borough Council licenses (at the 31 March 2023) the following: -
  - (c) 12 Operators

- (d) 59 Hackney Carriage Drivers (mixture of 3-year and 1-year licences)
- (e) 42 Private Hire Drivers (mixture of 3-year and 1-year licences)
- (f) 62 Hackney Carriage Vehicles
- (g) 48 Private Hire Vehicles

- 1.4 A list of the current fees is attached at **Appendix A.**
- 1.5 A list of the proposed fees is attached at **Appendix B.**
- 1.6 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 December 2023.
- 1.7 Following the statutory consultation process, and if no objections are received, the fees will take effect on 1 April 2024.
- 1.8 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. **(This is the preferred option)**
  - 3.2 **Option 2** – to agree the proposed fees with other amendments provided that such amendments are permitted by legislation.
  - 3.3 **Option 3** – 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 If the proposed percentage fee increase is not agreed then the income from the hackney carriage and private hire regime will not cover the costs.
- 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. For the avoidance of doubt, the Licensing Authority supports and continues to support the trade investigating any concerns and is under an obligation to ensure the safety of the travelling public. 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.

## 10. Sustainability/Climate Change Implications

10.1 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.

## 11. Timetable for implementation

Licensing Committee to agree proposed fees	22 November 2023
Public Consultation	1 December 2023 for 28 days
End of Consultation	2 January 2024
If no objections fees take effect	1 April 2024
If objections received Licensing Committee to be convened	February 2024 Licensing Committee to determine when fees take effect. <b>Fees must be implemented on or before</b>

## 12. 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 2022/23**
- **Appendix B – Proposed fees**
- **Appendix C – Equality and Diversity Assessment One**
- **Appendix D- Equality and Diversity Assessment Two**