

AGENDA ITEM 4

AD HOC RURAL, ECONOMIC & ENVIRONMENTAL AFFAIRS COMMITTEE

17TH MARCH 2016

REPORT OF THE HEAD OF REGULATORY SERVICES

FEEES FOR TAXI LICENCES 2016/17

1.0 PURPOSE OF REPORT

1.1 To determine the fees for the taxi vehicle, driver and operators licences for 2016/17 and to present the costs and income for 2015/16 as separate accounts for vehicles, drivers and operators. This follows the resolution of this Committee on 13th January 2016 to that effect, following representations received and recent case law.

2.0 RECOMMENDATIONS

2.1 It is recommended that the Committee:

- (i) **Notes and endorses the approach to calculating the fees for taxi licences as set out below.**
- (ii) **Notes the separate accounts produced for 2015/16 for taxi vehicle, driver and operators licences (as attached at Appendix A).**
- (iii) **Approves the level of fees, as set out in Appendix B to this report, with effect from 1st April 2016 (subject to statutory notifications and consideration of any objections arising), or propose an alternative level of fee based on a lower level of deficit recovery (see para 3.4.9 below).**

3.0 KEY ISSUES

3.1 Members will recall that a significant review of charges was undertaken in 2013. This was influenced by the Deloitte's report into the level of charges that highlighted the need for Councils to maximise the recovery of expenditure from charges and levies, within the scope of the authority permitted, in view of other constraints on finances, i.e. that Council Tax could no longer be used to subsidise expenditure where scope existed to recover costs of the service concerned. Taxi licences of the nature addressed here were highlighted as an example of this, in that they were covering less than the costs incurred, which were therefore being made up by the Council Tax payers of the Borough.

There have been recent changes to the provision of the service that effect its cost and receipts:

- The introduction of 3 and 5 year licences under the Deregulation Act 2015 (with effect from 1st October 2015)
- Internal changes to staffing and resource allocation to the Licencing service, which includes the activity of dealing with licence applications.

3.2 Members will recall agreeing to an increase in charges for taxi vehicle, driver and operators licences on an interim basis at its meeting on 2nd September 2015. The basis for their interim status was to enable the results of a fresh

approach to their calculation to be undertaken in the light of recent case law, independent advice and following changes to resource allocation.

3.3 2015/16 Methodology

3.3.1 In 2015/16 costs were calculated on the basis of a reasonable estimate of the proportion of the overall licencing budget that was dedicated to the production of the licences, including reasonable administrative and other costs. The approach to this was as follows, in common with previous years:

- Direct costs. The proportion was derived from a measurement of the time spent by the relevant members of staff on the issuing and administration of the relevant licences as a proportion of all of their working time. This was based on time recording undertaken in 2013.
- A similar methodology was adopted for the calculation of indirect costs. This includes the costs of the administrative staff, who contribute significantly to the issuing and administration of such licences. This was also based on measurement, in this case 36% of their time.
- Further refinement was made to exclude other indirect costs which, whilst relevant to the overall licensing function, make no contribution to taxi licencing activities, specifically for example, costs incurred by Building Control.
- Enforcement and compliance costs were not recorded and were excluded.

3.3.2 This approach has been presented to a leading solicitor on this subject. It has been advised that there is no prescribed approach and it was legitimate to use time recording exercises, over a period of time, to assess costs. It was also confirmed that it was reasonable, where necessary, to extrapolate a years' figures from the data collected which is in line with the methodology applied by the Council.

In addition it was confirmed that it is legitimate to factor in all the additional costs of the licensing regime. The Local Government Association's Guidance 2015 contains a reasonably comprehensive list. However, the Solicitor disagrees with the LGA view regarding the recovery of the costs of appeals and considers that this is possible, provided account is taken of any costs received from the losing party in subsequent years.

3.3.3 In order to provide assurance on this matter, the Council has commissioned our Internal Audit Team to undertake a review of the 2015/16 calculations. The Audit concludes that:

"The trading account for 2015/16 has been reviewed by Internal Audit and the figures applied have been verified against supporting evidence and calculations.

Based upon Internal Audit's review of the Council's taxi licensing trading account, we can confirm that the trading account is consistent with the underlying records and the overall forecast deficit for 2015/16 is fairly stated.

The allocation of costs to the different types of licences has been based upon a time recording exercise conducted by the service in 2013 and the time recordings were reviewed and considered reasonable and realistic by the

Head of Regulatory Services. In Internal Audit's opinion, it is appropriate to use officers' time recording as the basis for calculating the cost allocations and testing has confirmed that the allocations applied reflect the times recorded.

It should be noted that if costs are under or over recovered in any one year, there is an opportunity to reflect this in the subsequent year's fee".

3.3.4 Fees are set for the any given year in advance of the commencement of the financial year. They are therefore based on the best information available at the time of setting and involve some degree of estimation of the cost likely in the year ahead, to which they relate. It is in the nature of such activity that demands on the service may result in a departure from these estimations, during the course of the year (for example, there may be more or less applications than anticipated, the frequency of hearings or appeals may fluctuate, unexpected 'one off' costs may occur etc). Following the work undertaken by Internal Audit a further review of cost input has taken place, resulting in the refinement the proportion of costs based on the staff time recording exercise to ensure the time taken on each type of licence is fully aligned with the time recording information. This has resulted in a refinement to the allocations to reallocate the costs within the overall taxi licencing activity across each type of licence.

3.3.5 The outcome of this and the associated account projections are outlined in for each type of licence in Appendix A, which is based on actual expenditure and income up to 1st March 2015, with estimates of that likely to be incurred/received in the remaining month of 2015/16. This confirms the position that in all categories fees remain below cost recovery and currently operating at a deficit.

3.4 Calculation Methodology for 2016/17

3.4.1 The Council has obtained details of the approach suggested by the Melton Mowbray Taxi Association in order to measure costs and set fees for 2016/17 and future years. This is modelled upon an approach used by Bournemouth District Council provided by the Association, Bournemouth itself had acquired the methodology from a group of Authorities in Wales and these have provided a calculation toolkit. The approach provides detail on how to calculate an hourly rate for the staff involved in the production of licences, identifies other 'chargeable' costs and applies the time taken by staff on each stage of the application types from their initial receipt through to final issuing of a licence (or refusal to issue). It makes provision for the practices followed at Melton, and allows for different hourly rates to reflect the variation in the grades of the inputs made by the staff involved. The toolkit's hourly rates make allowances for staff absence for various reasons (leave, sickness etc) and for non-productive time, and other 'direct' and 'indirect' costs such as software licences, telephones, accommodation costs, IT support, legal support etc. but care has been applied to exclude those which do not related to the licences (e.g indirect costs from Building Control, Environmental Health etc, which are present in the licensing budget because they relate to other types of licences).

3.4.2 Time recording took place over a 2 month period and this allowed us to establish and average the time required to process licence applications received in that period, rather than a single incidence. This was carried out to

increase the robustness of the approach, as it allows for variations in the licence applications concerned, i.e. the differences in time taken due to their complexity and similarly different staffing inputs, also arising from complexity or issues arising.

- 3.4.3 Previous calculations have attracted comment regarding what activity should be included within the costs of the costs of administration of the service, to which the fees should then relate and these are itemised separately in the toolkit. The remit for charging of fees is set out at paras. 6.1 and 6.2 below and can include “issue and administration” and “any reasonable administrative or other costs” of the licences concerned.

Examples of such work are policy formulation, work associated with fee setting, answering/assisting enquiries related to licences. It is considered that these activities are essential to the provision and issue of licences and also fall within the description of “administrative” and “other” costs included by the legislation. They appear within the LGA guidance referred to at para 3.3.3 above as referred to by the independent advice received.

- 3.4.4 However, it is inevitable that for any sampling period it may not incorporate all of the activities associated with a function and/or may not do so in a manner representative of the whole year concerned. In these circumstances an alternative estimation of time input is required and the following observations are made in respect to this exercise:

- Hearings (for drivers): there was no hearing within the recording period. However, a detailed measure was made of the most recent (October 2015) and these have been applied.
- Hearings (Vehicles and Operators): whilst possible, these are extremely rare and no data is available as to their time/cost demands. A default of 0 has therefore been applied.
- Appeals: These are similarly rare and none occurred during the recording period; a default of 0 has also been applied.
- Policy: The time recording period occupied a part of the year when work on Policy production/review was limited (the main input into the 2015/16 review of Policy was undertaken in advance of the recording period, with assessment of the results of consultation yet to take place) and as such is considered to be under represented.
- Compliance: no data was collated in respect of activity in relation to compliance and a default of 0 has therefore been applied.
- Work on fees, policy, general administration, and registers: this work applies equally to all of the licences and as such is divided into 3 equal parts.

In view of the above, it is considered necessary that further recording will be needed in order to establish fees for future years. Additional comment on some aspects is provided below. It should also be noted that as this is the first year the Council has utilised the tool kit it will take a few years to refine the inputs and capture all the relevant information required. This is in line with the experience of the Authorities who created the toolkit and is reasonable to expect.

- 3.4.5 Based on the above, use of the toolkit has resulted in the following costs per

application type:

- Drivers Licences: £363 (3 year)
- Vehicle Licences: £156 (1 year)
- Operators Licences:£779 (5 year)

3.4.6 The use of the toolkit differs fundamentally to previous approaches to calculation and variances are therefore to be expected. The toolkit has produced costs and fees at variance with those previously produced. It should be noted that the model allows for factoring in the impact of multiple year licences and those are higher than those currently charged as a result of this method.

3.4.7 **Renewals**

No data was recorded specifically relating to applications for the renewal of licences as opposed to their initial application. In recognition that the process for renewal applications do not engage the full process associated with new applications, it is considered that a 'discount' on the fees of 10% is appropriate to reflect the differences.

3.4.8 **Deficit and surpluses**

Recent case law has identified that surpluses and deficits should be included in the fees, and the toolkit makes provision for this. Equally importantly, it establishes that there should be no 'cross subsidy' between types of licences.

As outlined in Appendix A the 2015/16 calculations for Melton reveal the following deficits for each Licence respectively and these have been included in the calculation of costs stated at 3.4.5 above:

- Drivers Licences: £9,187
- Vehicle Licences:£4,244
- Operators Licences:£862

3.4.9 However, the Committee may not wish to recover the deficits in a single exercise and the following table sets out the approximate impact of varying levels of recovery on application fees for 2015/16:

Licence cost	50%	100%
Drivers	£303.00	£363.00
Vehicle	£129.00	£156.00
Operators	£736.00	£779.00

3.4.10 **Enforcement**

The Council has traditionally excluded the costs of enforcement from the calculation of fees. However, the legislation allows for time spent on compliance with existing licences (as opposed to enforcement of unlicensed activity) in relation to vehicles such as the checking of vehicles. Melton has not identified time or costs spent on these activities separately and therefore has no reliable basis to distinguish them and as such they are excluded. However, this will be collected on future occasions in order that the costs can be considered in future years.

3.4.11 Multiple year licences (i.e. 3 year driver and 5 year operator licences)

The Council introduced 3 and 5 year licences in October 2015 following their introduction through the Deregulation Act 2014. Recent case law and legal advice confirms that because the processes involved in their production are the same as single year licences, their costs should be the same as for the same licence with a duration of one year. The toolkit makes allowance for such licence periods and the costs described above reflect the 3 and 5 year 'lifespan' of Driver and Operator Licences respectively.

4.0 POLICY AND CORPORATE IMPLICATIONS

4.1 The fees proposed are accommodated within the corporate charging policy which recognises that discretion is limited because some fees are set by legislation (either directly or through disciplines such as 'cost recovery' requirements).

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 Local Government funding continues to be reviewed and there is great uncertainty surrounding funding in later years although almost certainly will be reduced. This is reflected in the Council's MTFs and places a greater onus on the Council to seek to maximise its income from other sources and ensure where necessary relevant services are operating on a cost recovery basis.

5.2 Members should also note that the provisions of the Deregulation Act took effect on 1st October 2015 and that many driver and operator applications now have a lifespan of 3 and 5 years respectively. The affect of this will impact on income levels in 2016/17 and future years which are likely to see fluctuating income levels compared to those in previous years. Officers will look at remodelling these as part of the future budget setting and MTFs processes.

6.0 LEGAL IMPLICATIONS/POWERS

6.1 The legislation relating to such licences is found in the Local Government (Miscellaneous Provisions) Act 1976. Both relevant aspects of the legislation describe the scope to make charges as "reasonable with a view to recovering the costs of issue and administration" of the licences concerned.

6.2 S53. provides that "a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so."

6.3 S70. provides that "a district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part—

- (a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed; .
- (b) the reasonable cost of providing hackney carriage stands; and .
- (c) any reasonable administrative or other costs in connection with the

foregoing and with the control and supervision of hackney carriages and private hire vehicles..

Part (b) above is not applicable as the Council has no such stands; such matters are the responsibility of the Highways Authority.

6.4 Independent advice has been taken from a leading Solicitor in respect of the approach the Council has adopted. It provides a legal overview and a commentary on the interpretation applied by various High Court cases, including the comments made on enforcement costs above. This recommends the use of the toolkit employed for 2016/17 (see section 3.4 above) whilst pointing out that there is no prescribed approach. It also recommends a 3 – year rolling average of costs is used, to take account of fluctuations in the nature of licences, for example, peaks in the occurrence of hearings or appeals in a single year, however it is considered that because of the issues discussed in para 3.4.4 above and annual refresh would be better suited to our circumstances. It also advises on the grounds of challenge to any fees set via Judicial Review or the Local Audit and Accountability Act 2014 and stresses the need for the fee setting to be carried out on a reasonable and transparent basis.

6.5 The advice provides helpful comment in regard to the challenge to the detail of input into costs as follows, which appear to relate closely to our recent experiences:

it appears that your authority has taken a reasonable and reasoned approach to setting taxi licence fees for the forthcoming year and you should be in a reasonably strong position to successfully resist any formal challenge.

There will be constant criticism of the fees that you are proposing and there will be a continual attempt to challenge those informally by means of questions raised to both officers and members. Ultimately it will be necessary at some point to make a decision in the light of the evidence available and then be in a position to justify the fees that have been decided, rather than continually trying to accommodate every criticism that is raised.

As can be seen, if significant and accurate criticisms are brought during the currency of the licence fee, they can be reassessed for subsequent years.

7.0 **COMMUNITY SAFETY**

7.1 While community safety is at the heart of licensing issues there are no direct links to community safety arising from this report.

8.0 **EQUALITIES**

8.1 There are no equalities implications associated with this report.

9.0 RISKS

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant				
	D	Low				
	E	Very Low		1		
	F	Almost Impossible				
			Negligible 1	Marginal 2	Critical 3	Catastrophic 4

IMPACT

Risk No	Risk Description
1	Charges are challenged by judicial review or Audit procedures

9.1 The background to the risks described above are also referred to in the Legal Implications section of this report and (Section 6) and its wider content. Contact has been made with the originators of the toolkit and they have advised that they use of it has developed in successive years based on a better understanding of inputs and responding to criticism lodged at various stages.

10.0 CLIMATE CHANGE

10.1 There are no climate change implications associated with this report.

11.0 CONSULTATION

11.1 No further consultation has been undertaken. The issue addressed in this report has arisen from consultation carried out in July 2015 in connection with a proposal to increase fees.

12.0 WARDS AFFECTED

12.1 All wards may be affected as applications could come from anywhere in the Borough.

Contact Officer J Worley Head Of Regulatory Services

Date: 11th March 2016

Appendices : Appendix A: cost calculations 2015.16

Appendix B : proposed fees for 2016/17

Background Papers: Report to Committee plus Appendices A and B 3rd June 2015; Report to Committee 2nd September 2015 and 4th November 2015