

## **Licensing Committee**

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<b>Date of Meeting:</b>	10 JANUARY 2022
<b>Report Title:</b>	Review of Licensing Fees and Charges
<b>Report of:</b>	Jayne Traverse, Executive Director - Place
<b>Report Reference No:</b>	To be provided by Democratic Services
<b>Ward(s) Affected:</b>	All Wards

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### **1. Executive Summary**

- 1.1. To seek Members' approval to increase the licensing fees and charges for the issuing and renewal of licenses, consents and permits issued by the Licensing Team with effect from April 2023.

### **2. Recommendations**

- 1.1. That the Licensing Committee resolves to:
- 1.1.1 Confirm the fees payable as set out in appendix 1.
  - 1.1.2 Authorise the Licensing Team Leader to publish the Hackney Carriage and Private Hire Licensing fees in accordance with the relevant legislative provisions.
  - 1.1.3 That delegated authority be given to the Director of Environment and Neighbourhood Services to consider any objections received and determine the final fees payable in consultation with the Chairman of the Licensing Committee.

### **3. Reasons for Recommendations**

- 3.1. A review of the fees payable in respect of various types of licence and permits administered, enforced by the Licensing Team, has been undertaken. For the fees to be lawful and levied correctly a review of all licensing fees needs to be undertaken and the fees confirmed by Committee.

- 3.2.** Regulation 2 (6) of the Local Authorities (Functions and Responsibilities) Regulations 2000 confirms that where the issuing of any licence, permit, or consent is a Council function, the fee must also be set by the Council. The Council has made provision in its Constitution for the setting of fees to be delegated to the Licensing Committee.

#### **4. Other Options Considered**

- 4.1.** Consideration has been given to not increasing the fees payable. However, the costs associated with providing the service have increased and it is necessary for the service to be, so far as possible, cost neutral.
- 4.2.** In proposing these increases we have considered whether or not it is appropriate to increase driver licence fees. We have noticed a trend, which is not limited to Cheshire East, of a lack of new applicants for driver licenses. This is compounded by the number of exiting drivers choosing not to renew their licences because of the COVID pandemic or moving into different occupations. Given these issues, it has been decided not to propose an increase in driver fees, except those costs that are generated externally, such as costs for Disclosure and Barring checks.
- 4.3.** The fees and charges were reviewed for the financial year 2021-2022 and it was determined, in consultation with the then Chairman of the Licensing Committee, that the fees would not be increased. This decision was taken for a number of reasons;
1. The impact of the COVID pandemic on the trade was significant with various lockdowns affecting their most lucrative income streams.
  2. The Licensing Team operated for most of the pandemic with below establishment levels of staffing. This meant that any in year cost increases could be off set against the reduction in staff costs. The Team has been back to full complement since 1<sup>st</sup> November 2021.

#### **5. Background**

- 5.1.** The Licensing Authority may charge a fee for the issuing or renewal of various licences for which they have a statutory duty to issue. Certain fees are set either by Statute or Regulations, but some fees can be set by Local Authorities to cover the cost of administration, compliance and some elements of enforcement; Locally Set Fees. The Council is not able to make a general profit from licensing fees.
- 5.2.** Where possible, the Licensing Team aims to recover operating costs and where the Council has the discretion to set the fees, they are subject to review which can take into account operating costs, inflation, purchase costs etc.
- 5.3.** A number of fees are fixed by Statute which are not referenced in this report. These relate to Licensing Act 2003 fees and Gambling Act 2005 fees. There

are also some licences issued for which the Council cannot set a fee such as Street Collection Permits and House to House Collection Licenses.

- 5.4.** Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Licensing Authority to charge fees for the grant of licences in respect of hackney carriage and private hire drivers, vehicles, and operators. The fees must be set for these licences on the basis that it only recovers costs which it is entitled statutorily to recover.
- 5.5.** In respect of vehicle and operators' licences the Act states that the Council may charge such fees as may be sufficient in the aggregate to cover in whole or in part:
- The reasonable cost of inspecting Hackney Carriages and Private Hire vehicles to ascertain whether any such licence should be granted or renewed.
  - The reasonable cost of providing Hackney Carriage stands.
  - Any reasonable administrative or other costs in connection with the above and with the control and supervision of Hackney Carriages and Private Hire vehicles.
- 5.6.** The Act, which dates from 1976, also states that the fee for vehicle and operator licences shall not exceed £25 or such other sum as the Council may from time to time determine. In the light of current costs £25 is not seen as a realistic fee to impose. The fee has not been set at this rate for a significant number of years.
- 5.7.** In respect of drivers' licences the Act states that the Council may charge, 'such a fee as it considers reasonable with a view to recovering the costs of issue and administration associated with the grant of Hackney Carriage and Private Hire drivers' licences'.
- 5.8.** Any other fees are restricted by legislation (e.g. Licensing Act 2003) and the Council has no power to vary such fees. There is no power to levy a fee for any Charitable Collection authorisations.
- 5.9.** The Licensing Act 2003 (along with all licences except those relating to taxis and gambling) are also subject to the EU Service Directive (2006). This Directive, which has been incorporated in UK law by the Provision of Services Regulations 2009 and reaffirmed by the European Union (Withdrawal) 2018 Act confirms:
- Fee charges must be proportionate to the cost of the process
  - Fees cannot be used as either a deterrent or to raise funds
  - Enforcement should not be included in the fees

**5.10.** Additionally, there is some case law that has further developed the requirements in relation to the setting of all fees:

- The Licensing Authority cannot make a profit and must carry forward surplus - R v Manchester CC ex parte King (1991) and R (app Simply Pleasure and Ors) v Westminster CC (2012)
- Deficits can be recouped through increasing fees (this can be done at any time including mid year) - R v Tower Hamlets LBC ex parte Tower Hamlets Combined Traders Association (1994) and R (app Simply Pleasure and Ors) v Westminster CC (2012)
- Only administration and issue costs can be taken into consideration - R (app Simply Pleasure and Ors) v Westminster CC (2012)
- Compliance with a licence or conditions etc. is compliance rather than enforcement - R v Associated Octel co Ltd (costs) (1996)

**5.11.** The legislation and associated case law have been considered by Officers when calculating the proposed fee.

**5.12.** It is envisaged, subject to consultation and the consideration of any objections, that the increase in fees would take effect on the 1<sup>st</sup> April 2023.

## **6. Consultation and Engagement**

**6.1.** In respect of certain fees, there is a requirement to publicise any increases in a local newspaper. This allows a period for objections to be made. How this consultation takes place is set down within legislation.

## **7. Implications**

### **7.1. Legal**

**7.1.1** The statutory power to levy a fee for licensable activities such as taxi driving does not give a local authority a free hand in relation to the scale of the fee that is going to be levied. Any increase upon the livelihood of those affected by the it has to be taken into account as does the scale of the increase.

**7.1.2** Members should not approve an increase in licensing fees:

- For drivers of hackney carriages and private hire vehicles that are not reasonable to cover the cost of issue and administration.
- For hackney carriage and private hire vehicles and Operators that are more than sufficient in aggregate to cover the costs in Paragraph (what is currently 7.1.3).
- For street traders and sexual entertainment venues that are not proportionate to the cost of the process and which include enforcement in the fee.

- 7.1.3 Licensing fees which are neither reasonable nor proportionate are susceptible to challenge on public law grounds by way of judicial review.

## **7.2. Finance**

- 7.2.1. Where possible, the Licensing Team aims to recover all reasonable costs. In a number of areas, statute dictates whether a fee may or may not be charged and the level of any charge.
- 7.2.2. The Licensing Team and their Lead Finance Partner carefully monitor licensing fee income through the financial year. If at any time, it was considered there would be a short fall between income and expenditure the fees could be reconsidered and increased, subject to notice and consultation, implemented at any time (including mid year).

## **7.3. Policy**

- 7.3.1. The fees proposed are compatible with our charging strategy

## **7.4. Equality**

- 7.4.1. There are no direct equality implications. The fees are calculated on a cost recovery basis and will not disproportionately affect those with a protected characteristic

## **7.5. Human Resources**

- 7.5.1. There are no human resource implications save to say that the cost recovery calculation will include increases in staffing costs

## **7.6. Risk Management**

- 7.6.1. There are no direct risk management implications

## **7.7. Rural Communities**

- 7.7.1. As the Licensing Authority we are aware that rural communities can rely on licensed vehicles where other forms of public transport are be limited. This is a further reason why there has not been a proposal to increase the fees relating to driver licenses.

## **7.8. Children and Young People/Cared for Children**

- 7.8.1. Our colleagues in Children Services have made us aware of their statutory responsibilities in ensuring children attend school, this includes using taxis to fulfil contracts. There is a lack of capacity in the market that is affecting their ability to provide that service. This is a further reason for not proposing any increase in driver fees. The Licensing Team will also be considering how best to support our colleagues in their statutory duties.

## **7.9. Public Health**

- 7.9.1. There are no direct implications for public health

## **7.10. Climate Change**

7.10.1. There are no direct implications for climate change

<b>Access to Information</b>	
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Appendices:	Appendix 1 – Table of Proposed Fees and Charges
Background Papers:	None