

Chichester District Council's Fees Policy for the Hackney Carriage and Private Hire Licensing Regimes (Appendix 1)

The Local Government (Miscellaneous Provisions) Act 1976 (The 1976 Act) has been amended by the Deregulation Act 2015 (The 2015 Act).

As of 1st October 2015 Local Authorities are required to offer 3 year Hackney Carriage (HC) and Private Hire (PH) Driver Licences and 5 year PH Operator Licences as the norm and only issue licences for shorter periods 'as appropriate to the circumstances of the case'.

In light of the above a comprehensive review of Chichester District Councils HC and PH Licensing Fee structure has been undertaken.

This policy has been developed with reference to the following documentation:

- LGA Open for business - LGA guidance on locally set fees (Nov 2015)
- James Button Bulletin - 'Licensing Fees – An Update' (June 2013)
- James Button Bulletin (Dec 2015)
- Button on Taxis: Licensing Law and Practice (Third Edition)
- All Wales Licensing Expert Panel – Taxi Fees Toolkit v2.1

The policy relates to the following matters:

- The legal principles that govern the setting of fees;
- The fee payable in each circumstance;
- The method of apportionment of those costs in setting those fees;
- Propose implementation date;
- How surpluses and deficits are to be treated; and
- Other matters that are deemed to be relevant.

1. Key principles for the setting of licence fees

Outlined below is a list of key principles that need to be considered when Local Authorities are setting a fees policy. It is worth noting that some of these cases are not specific to HC or PH Licensing regimes, but provide strong guidance as to how fees should be set.

1. There must be a proper determination of the authorisation fee (See Hemming [2013] EWCA Civ 591).
2. A clear understanding of the policy and objects of the regime in question is required (See R v Manchester City Council ex parte King (1991) 89 LGR 696; also R (on the application of Davis & Atkin) v Crawley Borough Council [2001] EWHC 854 (Admin)). Particular attention needs to be had to those statutory

provisions where a power is given to the local authority for the determination of an authorisation fee and other administrative fees.

3. Although the European Service Directive does not apply to HC or PH Licensing Regimes it is useful to make reference to its core principle for fee setting – *non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible* – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.
4. Different fee levels for different types of application. A Local Authority is entitled to set either the same or different fee levels for different types of applications: i.e. grant, renewal, variation, alteration or transfer. *R v Greater London Council, ex parte Rank Organisation [1982] LS Gaz R 643.*
5. Recovery of deficit. In *R v Westminster City Council, ex parte Hutton (1982) 83 L.G.R. 461* it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of the shortfall (Hutton at p518). This longstanding principle was confirmed in *Hemming [2012]*.
6. Accounting for surplus. In *Hemming [2012] EWHC 1260 (Admin)* and *[2013] EWCA Civ 591* the court determined surpluses as well as deficits are to be carried forward. The Local Authority is not entitled to make a profit (*R v Manchester ex parte King 1991 89 LGR 696*).
7. Rough and ready calculations. In *Hemming [2012] EWHC 1260 (Admin)* and *[2013] EWCA Civ 591* the court did not require pin-point precision year on year. The Local Authority does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it 'all comes out in the wash'. And the adjustment does not have to be precise – a rough and ready calculation which is broadly correct will suffice.
8. Anticipated costs. Cases demonstrate that the fee level may be fixed by reference to anticipated costs of administering the authorisation scheme.
9. Over-estimation. If the fee levied in the event exceeds the cost of operating the scheme, the original decision will remain valid provided it can be said that the Local Authority reasonably considered such fees would be required to meet the total cost of operating the scheme. *R v M ex parte King*.

2. Legal framework

Under Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976 Chichester District Council, as Licensing Authority, "*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 a Private Hire Vehicle in any case in which they think it is appropriate to do so.”

It is clear from the above and from the significant case law outlined in Section 1 that the fees for both hackney carriage and private hire drivers have to be reasonable and with a view to recovering the costs of issue and administration of the licenses. Administration is interpreted to encompass compliance with the terms of the licence i.e. investigating complaints, conduct issues that might result in Committee Hearings etc. However, this Section of the Act makes no provision for recovering the costs of enforcement in relation to driver licenses.

Section 70(1) of the 1976 Act allows the Council to charge “*such fees for the grant of vehicle and operators licences as may be resolved by them from time to time and is maybe sufficient in the aggregate to cover in whole or in part.....*”

- a) *the **reasonable cost of 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 and other costs** in connection with the foregoing and with the **control of the supervision** of Hackney Carriages and Private Hire Vehicles”*

In relation to the fees for hackney carriage and private hire vehicles, however, fees can be set to recover the cost not only of issue and administration of licenses but also the cost of providing taxi ranks and other enforcement costs.

3. Summary of legal framework and case law

In summary, the 1976 Act and associated case law enables a Local Authority to reclaim costs for:

- the issue and administration (including compliance) of a HC and/or PH Driver Licence;
- the issue and administration (including compliance) of a Private Hire Operator Licence;
- the issue, inspection, control and supervision (including enforcement) of HC and PH Vehicle (An additional charge can be levied against the HC Vehicle Licence for rank provision and maintenance).

It is worth reiterating that the local authority is prevented from:

- Making a profit (Any surpluses to be paid back over the course of time by recalibrating fees at a lower level);
- Recovering costs in relation to unsuccessful applications for the grant of new licences i.e. new applications that are refused by Committee;
- Recovering any enforcement costs in relation to HC and PH drivers, as well as, PH Operators;

- Recovering enforcement costs associated with unlicensed drivers/operators/vehicles;
- Recovering costs associated with Freedom of Information and Data Protection Act requests as separate provision is made for this; and
- Appeals against decisions made by the Committee. With enforcement action there is the possibility to recover some or all of the cost through the court process, however, this would be at the court's discretion.

4. Methodology for breakdown of tasks and time allocation

Each application type has been broken down into its constituent parts in order to identify clearly:

- Each task involved in the process;
- The average amount of time taken to complete each task; and
- The job role of the officer completing the task.

To determine what tasks are involved with a process, reference has been made to the Taxi Fees Toolkit v2.1 devised by All Wales Licensing Expert Panel, as well as, the experience of officers.

In general tasks fall into 5 main categories:

- Application – Includes enquiry, validation, data entry, technical issues etc
- Committee Hearing (Application) – Includes investigation, drafting of report, hearing preparation and attendance, drafting of decision notice etc.
- Committee Hearing (Disciplinary) - Includes investigation, drafting of report, hearing preparation and attendance, drafting of decision notice etc.
- Issue of Licence – Production of licence, badge, plate etc, checking of licence
- Other – Policy development (Review of fees policy), project work (Implementation of on-line DBS service), Compliance (investigating complaints, Operations such as Op Cabbie), General Admin (Developing/Maintaining template letters and website)

The average amount of time taken to complete each task and who completes it is based upon officer experience. It is the intention of the Licensing Team to introduce a time recording system to help better track time spent on tasks.

5. Methodology for determining fees

The time allocated to each task is fed through the relevant spreadsheet for that application type. The spreadsheets have been designed to apply the following to the time allocations:

- A co-efficient for those tasks that only occur periodically i.e. Hearings
- Any tasks that have been attributed with an annual time allowance have been divided by the average number of licence holders in that particular category, in order to share the cost of these tasks out equally i.e. Policy development

- Salary + 'On-Cost' figures (Salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position)
- The spreadsheets take into account the service recharges for each strand of taxi licensing, along with any material costs associated with the issue of a licence i.e. plate, badge etc.
- Finally, to calculate the fees for 3 year driver licences and 5 year private hire operator licences, the cost of certain tasks that are ongoing year on year have been multiplied by the duration of the licence.

Co-efficient - A co-efficient has then been applied to certain tasks which are not undertaken for every application type. A prime example of this would be hearings, as only a small minority of applications are required to be placed in front of the Committee. Therefore a co-efficient based on previous hearing numbers along with officer experience and expectations of future potential hearings has been applied to such tasks.

Other tasks are based on an annual time allocation, which are tasks such as policy, project work, compliance etc. The cost for these tasks can be spread across the average number of licence holders in a year for that particular strand i.e. driver, vehicle, private hire operator. This breaks the cost of these tasks down into an equal share incorporated into the fee payable for that specific application type.

Salary and 'On-Costs' - The 'On-costs' (Salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position). This is National Insurance, pension contributions etc.

Recharges – Details of service recharges associated with each strand of taxi licensing has been provided by the Council's Finance Team. Recharges cover services utilised by the Licensing Team in delivering the HC and PH Licensing regimes, such as IT, Finance, Customer Service Centre, along with other standard costs such as building provision, heating, lighting etc. The fees for Legal and Member Services have been removed from the recharges and costed through the task and time spreadsheet, as the cost of these support services are very much dependent upon the number of hearings held each year and this can fluctuate significantly year on year.

Licences of longer duration - For calculating the 3 year driver licence fee and 5 year private hire operator fee, there are some tasks that are a flat rate, linked solely to the application itself, that will not change regardless of the duration of the licence i.e. the production of the licence, badges etc will be the same cost regardless of whether a licence is issued once a year or every 3 years if a driver or 5 years if a private hire operator. There will be some tasks where the costs need to be tripled (drivers) or multiplied by a factor of five (PH Operators) as these will be annual costs that need to be extended across the full duration of the licence.

6. Publication of proposed fees

The proposed fees to be charged feature as part of the report to the General Licensing Committee and will be publicised in accordance with Section 70 of the 1976 Act (Please see Section 6 for further details).

In addition, the proposed fees and this policy will be published on Chichester District Council's website at www.chichester.gov.uk. A copy of the calculations that support this policy will be made available for viewing during the consultation period at the Council Offices.

7. Committee approval & consultation process

In the first instance the proposed fee structure has to be considered and approved by the General Licensing Committee (The 'Committee'), after which a public consultation must be undertaken in accordance with Section 70 of the 1976 Act.

The Local Authority must publish a consultation notice (The 'Notice'), in at least one local newspaper circulating in the area.

The Consultation period must be at least **28 days** and commence from the date the Notice appears in the local paper.

8. Objections

Any objection(s) must be submitted in writing to Chichester District Council within the consultation period.

If no objections are received then the fees will become active on the specified date as stated in the Notice.

Alternatively, if objections are made during the consultation period, then these will need to be considered by the Committee to determine whether to make any amendments to the proposed fees. The Committee have the ability to make any modifications as deemed necessary. Under these circumstances the fees will not come into effect on the specified date stated in the Notice. Once the Committee have met and considered the objections then a new date for implementation can be set, however this must be within 2 months of the original specified date.

Although Section 70 relates to vehicles and operators it is considered good practice for the same method to be used in relation to determining driver fees.

9. How surpluses and deficits are to be treated and reviewing the fees policy

A local authority can only charge in order to recover costs. Therefore, the fees will need to be reviewed regularly to determine whether a surplus or deficit has inadvertently been made. Adjustments to fees will be made on a 3 year basis in order to allow for surpluses and deficits to be addressed through annual fluctuations in application numbers. Any changes to the fees are subject to consultation with the trade, which is a statutory requirement, and the approval of the Committee.

If there are any significant changes to legislation, application numbers, tasks undertaken by the Licensing Team etc that have a significant impact upon costings for any or all application types then consideration will be given to undertaking an

additional review of the fees. Once again this will be subject to consultation with the trade, which is a statutory requirement, and the approval of the Committee.

10. Other matters

Cost of Rank Provision - Different fees can be set in relation to hackney carriage vehicles and private hire vehicles to enable the cost of taxi ranks to only be recovered in respect of hackney carriage vehicles. However, the Chichester District only benefits from a small Hackney Carriage Fleet with the main two ranks being North and South side of Chichester Train Station. Therefore at this current time it is not felt appropriate to be levying an additional charge for the creation and maintenance of ranks.

Refunds - Under the 1976 Act fees are payable for the grant of the licences so the whole fee is payable on issue with no statutory provision for a refund.

Issuing driver and operator licences for a lesser period - It is important to consider what circumstances may be appropriate for a driver or operator licence to be issued for a shorter period than the standard three or five years. After careful consideration it is felt that this is best assessed as '**appropriate to the circumstances of the case**'. Factors that may influence this include, but are not limited to – medical issues, financial constraints, conduct/driving issues leading to a driver/operator being on a probationary period etc.

Charges levied by external partners - The services provided by a number of different agencies are utilised by CDC as part of the application process i.e. DBS Criminal Record Check, DVLA Driver Licence Check etc. The Council reserves the right through this policy to amend our fees in line with any changes to the fee made by the agency offering the service.

Inflation - It is acknowledged that as the fees will be considered as part of a 3 year cycle this will not capture inflation year on year. Consideration has been given to this point, but it is felt that this can be redressed when reviewing the calculations.