

Committee: Licensing & Environmental Health

Date:

Title: Fees and Charges Setting

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Item for decision:
Yes

Summary

1.1. Members will recall that as part of the current financial year fee setting and charges process, officers undertook to compare Uttlesford District Council ("UDC") practices with other authorities to ensure that UDC processes were consistent with current awareness and good practice as well as compliant with statutory and regulatory requirements.

Recommendations

2.1. Members approve the general principle that, unless the fee is set by statute, licensing fees will be set on a cost recovery basis according to current practice, aligned to the licensing department hourly rate, produced according to corporate accounting procedures (Statement of Recommended Practice) and scrutiny of external auditors.

Financial Implications

3.1. The Council as the Licensing Authority is responsible for administering a number of statutory and discretionary licensing regimes. Certain licensing fees and charges are prescribed by Central Government. However, a number of discretionary charges and fees must be set annually at a level that it is reasonably believed will cover the costs of providing the service, and in accordance with the legal principles involved. The fees which are implemented take account of inflationary pressures incurred by the Council ensuring that costs incurred in delivering the service are fully recovered. This is necessary to ensure that council taxpayers are not subsidising work concerning licensing administration.

3.2. Members are asked to note that case law has established that if there is any surplus or deficit in the fees generated then that must be taken into account when setting the following year's fees

Background Papers

4.1. None

Impact

5.1.

Communication/Consultation	The taxi and private hire trade are always notified of decisions which affect their industry.
Community Safety	The fundamental purpose of the private hire vehicle licensing regime is to establish a position where passengers can use these vehicles with a high degree of confidence about their safety. This principle is at the heart of the Statutory Taxi and Private Hire Vehicle Standards. Licensing authorities are required to have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children and vulnerable adults.
Equalities	<p>Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.</p> <p>The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.</p> <p>The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the keyways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.</p> <p>Licensing Policies and Licensing decisions must all have regard to the Council's Equalities duties.</p>

	It is not expected that this awareness of process for setting fees and charges will impact on protected characteristics.
Health and Safety	The fundamental purpose of the private hire and hackney carriage licensing regime is to establish a position where passengers can use these vehicles with a high degree of confidence about their safety. This principle is at the heart of the Statutory Taxi and Private Hire Vehicle Standards. Licensing Authorities are required to have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children and vulnerable adults.
Human Rights/Legal Implications	<p>If the Council does not have an effective fee setting process that is subject to proper oversight by Councillors it will not be able to demonstrate that it has in place adequate means to safeguard Council assets and services, and it could be subject to criticism from the Council's external auditor or the public.</p> <p>Fees and charges may also be challenged in the High Court (Judicial Review). It is therefore important that the process the Council follows is fair, open, and transparent.</p>
Sustainability	There are no significant sustainability implications as a result of this report.
Ward-specific impacts	None
Workforce/Workplace	<p>The fees and charges setting existing processes can be managed from within the current resource although the Licensing Committee are asked to note potential future potential procedural changes may impact</p> <p>the current capacity of the service</p>

Situation

6.1. The statutory principle in relation to the setting of fees is that they should be reasonable and should relate to the costs of performing the function, including staffing, administration, testing, inspections, hearings, regulation and appeals.

6.2. The Licensing Committee's responsibilities are set out in the Council's Constitution and include setting and reviewing licensing fees other than those set by statute.

6.3. The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed annually to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits may be carried forward to future years to be redistributed (within the ring-fenced licensing budget), or recouped, as applicable.

Licence Fee setting general principles

6.4 Recovery of deficit. In *R v Westminster City Council, ex parte Hutton* (1985) 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 p 518). This longstanding principle was confirmed in *Hemming* [2012].

6.5 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 licensing authority is not entitled to make a profit. (*R v Manchester ex parte King* 1991 89 LGR 696).

6.6 Rough and ready calculations. In *Hemming* [2012] EWHC 1260 60 (Admin) and [2013] EWCA Civ 591, the court did not require pin-point precision year on year. The council 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' eventually. And the adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do.

Hackney Carriage and Private Hire

6.7 The Council must be able to show that it calculates hackney carriage and private hire licensing fees in accordance with the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. This requires that such fees have to be reasonable to recover the cost of issue and administration of licences. This has been confirmed in the court case *Cummings and Others v Cardiff City Council* which also confirmed that fees set must have regard to any surplus or deficit in previous years for each regime (hackney carriage or private hire).

6.8 Hackney Carriage and Private Hire are recalculated using updated hourly rates which include support and on-costs

6.9 During the 2025 fee setting and charges process a trade representation suggested that further detail should be provided in calculating the hourly rate for the licensing service, to include extensive breakdown justification to the trade. It had been suggested that this practice had been endorsed by a previous administration.

6.10 Clarification from the trade making such representation as to what specific format they would specifically prefer was sought so that this could be presented for Members consideration, but the opportunity was not taken up.

6.11 In calculating the service hourly rate accountants take into consideration all aspects of performing the function as set out at 6.1, but also training requirements, IT support, accountancy support, the Council are subject to both internal and external audit.

6.12 An analysis of 6 authorities has taken place all align with the UDC model.

6.13 Notwithstanding that the UDC process is therefore considered reasonable and transparent, based on updated hourly rates the Licensing Committee could decide to maintain the current process for setting fees and charges pursuant to current awareness and the now established practice of not only UDC, but also of the other sample authorities (including 3 unitary Councils and 3 District/Borough Councils) or tailor a different approach, noting that changes to current transparent and reasonable practices would incur additional officer time (accountancy and service area) which would not be recovering the full cost incurred to the authority for delivering the service, whilst further noting the requirement to ensure that council taxpayers are not subsidising work concerning licensing administration.