



Report No:

Public Agenda Item: **Yes**

Title: **Hackney Carriage & Private Hire Licence Fees 2020-21**

Wards Affected: **All**

To: **Licensing Committee**

On: **13 February 2020**

Key Decision: **Yes**

Change to Budget: **Yes**

Change to Policy Framework: **No**

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## **1. What we are trying to achieve**

- 1.1 This report requests that Members consider an objection received to the advertised increase in the fees relating the Torbay Council Drivers Licence, which is required to drive Hackney Carriages and Private Hire Vehicles. Members are asked to make a recommendation to Full Council on whether the increase is reasonable, with a view to recovering the cost of issue and administration.

## **2. Recommendation(s) for decision**

- 2.1 That the Licensing Committee agrees to

Recommend to Full Council that the fees set for 2020/21 in relation to Torbay Council Drivers Licence be agreed at the level as advertised on 15<sup>th</sup> January 2020.

## **3. Key points and reasons for recommendations**

- 3.1 Torbay Council is the Licensing Authority in respect of the Licensing of Hackney Carriage vehicles and Private Hire vehicles, their drivers and operators within Torbay.
- 3.2 The Licensing of the above functions is legislated in the main through the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 part II (the 1976 Act)

- 3.3 Under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, there is a requirement for Torbay Council to advertise its fees with respect to Vehicles and Operators if they are set above the specified fee. To demonstrate transparency all the fees and charges were advertised, all be that most had not changed. In line with the advert, representations could be made over a period of 28 days and considered by the Council. In retrospect it was realised that Driver Licences fees did not require to be advertised, but having received a representation it is only right and proper that it is considered.
- 3.4 Mr Le Huray makes a number of valid points in his representation though most relate to none fee setting matters. Those that relate to fee setting matters are covered in detail below, but in summary the author of the report believes Torbay Council complies with the legal requirements and subsequent best practice when setting its fees. Its methodology allows for projected income and costs, and this has been reviewed and supported by the Finance Team. In practice Drivers Licence fees have not risen during the period of 2013/14 through to 2018/19, while a new on line system was implemented and the Council moved from one year to three licences as required by legislation.
- 3.5 Projected calculations based upon known costs and income for fee setting in 2019/20 and now in proposed fee setting in 2020/21 show that Torbay Council was moving into a significant potential deficit unless it put its fees up. This it has therefore done. The fee calculation spreadsheet, can be seen in Appendix 3, and will be referred to at the hearing to provide clarification to Members and those present how these figures are arrived at.
- 3.6 The provision to challenge Torbay Councils fee setting in this regard is byway of Judicial Review.

**For more detailed information on this proposal please refer to Annex A.**

**Steve Cox**

**Environmental Health Manager (Commercial)**

## Annex A – Supporting information to Report

### A1. Introduction and history

A1.1 Torbay Council is the Licensing Authority in respect of the Licensing of Hackney Carriage vehicles and Private Hire vehicles, their drivers and operators within Torbay.

A1.2 The Licensing of the above functions is legislated in the main through the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 part II.

A1.3 On the 15<sup>th</sup> January 2020, Torbay Council, by way of Public Notice, advertised its fees and charges regarding its Hackney Carriage and Private Hire licensing function allowing members of the public to raise objections in the following 28 days.

A1.4 Section 70(2) of the 1976 Act provides that the fee that can be charged for vehicle licences and operator licences shall not exceed £25 or *“such other sums as a district council may, subject to the following provisions of this subsection, from time to time determine”*. The “following provisions” referred to are contained in sections 70(3) to (5), which provide:

*“(3)(a) If a district council determines that the maximum fees specified in subsection (2) of this section should be varied they shall publish in at least one local newspaper circulating in the district a notice setting out the variation proposed, drawing attention to the provisions of paragraph (b) of this subsection and specifying the period, which shall not be less than twenty-eight days from the date of the first publication of the notice, within which and the manner in which objections to the variation can be made.*

A1.5 The Act goes on to say

*(4) If no objection to a variation is duly made within the period specified in the notice referred to in subsection (3) of this section, or if all objections so made are withdrawn, the variation shall come into operation on the date of the expiration of the period specified in the notice or the date of withdrawal of the objection or, if more than one, of the last objection, whichever date is the later.*

*(5) If objection is duly made as aforesaid and is not withdrawn, the district council shall set a further date, not later than two months after the first specified date, on which the variation shall come into force with or without modification as decided by the district council after consideration of the objections.*

A1.6 As members will note, there is no reference in Section 70 of the Act regarding Driver Licences, as this is covered under section 53 (2) which states:

*“Notwithstanding the provisions of the Act of 1847, 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”.*

Therefore there is no legal requirement on local authorities to advertise driver fees

A1.7 Torbay Council have however created an expectation with its Public Notice, see Appendix 1, that it will consider any representation, and since the Council has received such a representation, see Appendix 2, then it is only right and proper that due scrutiny is given to the process of setting fees.

A1.8 All fees set by Torbay Council for the Hackney Carriage and Private Hire licensing function are based upon the previous full year, in this case 2018/19, to enable an accurate picture of income and expenditure, though some level of estimation of officer time is used, which is permissible. This is done across the whole licensing function, to apportion officer's time per function. The Audit Commission, who were asked to consider this point as part of a review of the fee setting in Guildford, concluded the following.

*'In my view the legislation allows a council to set fees which recover its reasonable costs in administering the licensing of drivers, vehicles and operators. The legislation does not, in my view, require councils to make a precise calculation so as to arrive at income which exactly meets the cost of the administration of the various licences. Councils are required, however, to take a reasonable approach and should aim to set a fee that is sufficient to cover the cost but not make a surplus.'*

A1.9 Torbay Council separates out the three strands of Hackney Carriage and Private Hire licensing, that being Vehicles, Operators and Drivers into separate budgetary streams and these are calculated separately. This is following good practice and again is the way the Audit Commission recommended it should be done in their 2010 report.

A1.10 The fees for 2020/21 are based upon the actual income and costs from 2018/19, as the income and cost base for 2019/20 is not yet known and won't be until the end of the financial year. Estimations are also made for future years to attempt to understand the budgetary direction of travel. This is to avoid too much surplus or deficits being made, though good practice allows for this to be evened out over a 3 year period.

A1.11 The methodology spreadsheet, has been reviewed by the Council's finance team and meets the Council's requirements for on costs methodology. The fee calculation spreadsheet, can be seen in Appendix 3, and will be referred to at the hearing to provide clarification to Members and those present how these figures are arrived at. The first page is the general costs. The second is the actual income for 2018/19 and the projected income in subsequent years. The third is an updated spreadsheet dated 5<sup>th</sup> February 20, which had the actual figures to date for applications for 2019/20, which are unlikely to now change significantly. The remainder is again projected. What it demonstrates is that there can be significant differences between projected and actual income, which is why the matter must be reviewed annually.

A1.12 Mr Le Huray's, in his representation, makes a number of points, however most of the items relating to the number list fall outside of the remit of fee setting and relate to policy or matters outside of the control of the Licensing Authority. It is point five that this report is written with regard to. If members wanted to consider the other points, then this would need to be done at another time, but any changes to the Policy would require a process to be followed.

A1.13 The following points are raised within Mr Le Huray's representation, and are addressed here. The first relates to Torbay Council raising money to fill a greater budgetary gap. This is simply not the case in Torbay and those Council's that have tried to do this have been challenged legally and suffered significant financial detriment. An example of this is the recent Wakefield case, which an overly broad interpretation was made on administration costs, to include enforcement against drivers and that case was found against Wakefield Council.

A1.14 As Mr Le Huray argues, the changes from one to three year licences, will have reduced our cost base, once the system was in place, and this is reflected in the costs of a three year licence when it was introduced being 2/3rds of the cost of three one year licences, See Appendix 4. There are still annual costs of the database and its maintenance; the public register, which is a separate database; advertising of fees; the cost of undertaking all of these activities by officers; occasional committees to consider applications with its legal support and finally the on costs of all of this. So even though there is no application or granting process, these fees are associated with the administration over a three year period.

A1.15 Mr Le Huray representation also believes the move to an online system will have reduced the Council's cost base. This is certainly true in the medium term, although the set up costs were significant in terms of officer time and would have added to the cost base during its implementation. This reduction in staffing costs is reflected in the reduction by 1/3<sup>rd</sup> of the renewal fee for a three year licence. It enabled Torbay Council to hold the cost of driver's licence applications at a similar level for 5 years, partly supported by the fact that there was an interim period when the Council was also in receipt of income from single year licences still.

A small surplus had been built up during this period and officers gave due consideration to this at that time. However the projection was that surplus would in time turn to deficits as the income was reduced by 1/3<sup>rd</sup>, and that some of its costs would continue to rise. It was decided to leave the fees unaltered but to monitor the situation yearly, as it is required to do. This turned out to be the case by 2018/19, so the fees were increased this year (2019/20) and a proposed increase for next year (2020/21).

A1.16 Consideration also needs to be given also to the fact that the number of drivers renewing each year varies and this means any increase in the fee takes several years to be fully realised, as the majority of drivers will be renewing in years two and three. So any increase takes three years to be fully realised.

A1.17 The final point made by Mr Le Huray was about officers having left the authority, which is true but one officer worked throughout 2018/19 and the other left in February 2019, so based upon the current calculations this would have had little impact on the staffing cost base for that year and that is the base line that is used to set the 2020/21 fees. The other factor is the administrative work still needs to be done, and it is in fact higher paid officers that are undertaking that work currently. I am aware of one of Mr Le Huray's concerns, and that is a lack of enforcement currently taking place, but the Act does not allow this to be considered with regard to Driver Licence fee setting, so the lack of enforcement would have no impact on the driver fee, though it might regarding vehicles.

A1.18 Torbay Council is confident that its fee setting methodology complies with the legal requirements and is not set to make a profit, though in line with good practice it would hold or even reduce its fees should it be identified that it was making a consistent surplus.

A1.19 Any legal challenge to fee setting would be way of judicial review, as there is no appeal to any recommendation made.

## **A2. Risk assessment of preferred option**

### **A2.1 Outline of significant key risks**

The key risk is a challenge to the fee setting is by way of Judicial Review, though this is deemed unlikely.

## **A3. Options**

A3.1 The options are:

- (i) Recommend that the fees for Torbay Council issued Drivers Licences remains as advertise on the 15<sup>th</sup> January 2020.
- (ii) Recommend a substitute fee for Torbay Council issued Drivers Licences

## **A4. Summary of resource implications**

A4.1 There are no significant resource implications for either of the recommendations in A3.1.

## **A5. What impact will there be on equalities, environmental sustainability and crime and disorder?**

A5.1 There are no perceived equalities, environmental sustainability or crime and disorder issues stemming from this report.

## **A6. Consultation and Customer Focus**

A6.1 The Hackney Carriage and Private Hire licensing function fees and charges have been advertised for 28 days. The Full Council Budget has also been consulted upon which include these same fees.

## **A7. Are there any implications for other Business Units?**

A7.1 There are no significant implications for other business units.

## **Appendices**

<b>Appendix 1</b>	Hackney Carriage and Private Hire licensing function fees and charges advertised on the 15 <sup>th</sup> January 2020.
<b>Appendix 2</b>	Mr Le Huray's representation
<b>Appendix 3</b>	Copy of the fee calculations for Driver Licences
<b>Appendix 4</b>	Summary of Torbay Council's Driver Licence fees for the past 7 years

**Documents available in members' rooms**

None

**Background Papers:**

The following documents/files were used to compile this report:

Audit Commission Report 2010 in to Fee setting at Guildford Council