

**COUNCIL REPORT**

**6<sup>th</sup> January 2016**

**FINAL APPROVAL OF TAXI FEES FOLLOWING CONSULTATION.**

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**PURPOSE OF THE REPORT**

1. On 16<sup>th</sup> September 2015 Council approved a fee structure for taxi licensing in the town subject to comprehensive consultation being undertaken with the trade. Now that this consultation process has concluded and representations have been taken into account, an amended fee structure is placed before the Council for final approval.

**BACKGROUND**

2. The Local Government (Miscellaneous Provisions) Act 1976 provides that a District Council may charge for licensing vehicles and drivers engaged in the Private Hire or Hackney Carriage trade. Fees may also be charged for the licensing of Private Hire Operators. The legislation specifies which elements of the entire service can be taken into account when calculating the respective licence fees.
3. Since April 1998 it has been Middlesbrough Council's policy to ensure that the Taxi Licensing function is self-funding. It therefore operates within a ring-fenced budget, which has enabled any deficit or surplus to be carried forward.
4. Following a complaint in 2014, the Local Government Ombudsman found that the Council did not hold the historical data on which its fees had originally been based, it could not, with any certainty, justify its current charges.
5. It was therefore agreed that the Council would review its fees, consult with the trade on its proposals and confirm what it would do with the surplus that had accrued in the account.
6. Given the scale of such an undertaking, a suitable template was sought to aid the process. Nationally, only one credible model was identified; that used successfully on North Tyneside by Capita Local Government following a similar challenge to its fees. Adopting Capita's method, a comprehensive list of fees was formulated.

7. Also in line with the Ombudsman's direction, a proposal to deal with the accrued surplus held within the ring-fenced account was formulated.
8. In the interests of transparency, and given the comparative complexity of the fees calculation, it was further proposed that the statutory 28 day minimum period for initial consultation be doubled to provide the trade with additional time to consider, seek clarification and comment on the fees.
9. Full Council considered the proposals on 16<sup>th</sup> September 2015 and decided that:
  1. *Council approved the proposed taxi licensing fee structure, subject to the consideration of any objections raised during the up-coming consultation period.*
  2. *Council would retain £48k of the £185k taxi licensing surplus within the 2014/15 taxi licensing budget; this sum being equivalent to 10% of the budget. The remaining £137k surplus would be used to reduce the newly calculated vehicle licence fee by £50 per application/renewal until such time as the surplus was depleted.*
  3. *The proposal to have an extended initial consultation period doubled from the legal minimum of 28 days to 56 days was approved.*
  4. *The proposal to review the fees calculation process on a three yearly basis, in accordance with the delegation set out in the Constitution, unless particular circumstances demanded that it should be carried out earlier was approved.*
10. Following this decision, consultation commenced. The required advertisement was placed in the local newspaper and all members of the trade were sent a letter inviting both written responses and the opportunity to meet with officers.
11. In addition to a petition containing 174 signatures, written responses were received from 93 members of the trade or nominated representatives, each of which received a reply. Two meetings were also arranged at the request of consultees. A summary of the written responses, the replies provided and the points discussed at the meetings is attached as Appendix A. All of the letters and the meeting notes from which this summary is drawn are held in the licensing office and are available for inspection if required.
12. A comparison table containing the fees considered on 16<sup>th</sup> September and those now proposed following the consultation process is also attached as Appendix B.
13. During the consultation period, the Authority received a letter from an interested party proposing an application for judicial review concerning elements of the Council's fees process. With regard to the points raised, the following legal advice was provided:
  - a. It is necessary to account for fees under the separate regimes separately.
  - b. It will be necessary to take into account accrued surpluses and deficits under each regime, even if, due to the prior practice of record keeping, it is necessary to make estimates of the accounting position. In carrying out that exercise it will be necessary to determine (or where necessary estimate) regime by regime, income received and costs permitted to be brought into

account under section 53(2) and 70(1) of the Local Government (Miscellaneous Provisions) Act 1976 respectively.

- c. It is not permissible to cross-finance deficits in one regime using surpluses from another regime.
- d. The Council is entitled to retain a measure of liquidity within the accounts for each regime: such is responsible accounting practice.

This advice has been applied during the consultation and will be relied upon as the fee introduction and reconciliation process progress.

14. As the Authority did not receive formal withdrawal of any of the objections raised during the 56 day consultation, statute demands that a further period, not exceeding two months was set aside for the Council to consider the enduring issues, after which the fees must be implemented with or without modification.

## ISSUES RESULTING FROM THE CONSULTATION

15. It will be noted from Appendix A that consultees raised some issues of general relevance to the taxi trade. This report however, is exclusively concerned with the disposal of the surplus and establishment of fees.
16. **Disposal of the surplus.** A significant feature of the proposed fees which remains unchanged from the 16<sup>th</sup> September report is the realignment of vehicle and driver costs. Vehicle licences reduce from current levels by an average of £230/£175 for new applications/renewals whilst driver licences rise by £149/£57. This is a result of the artificially low fees previously levied on drivers (who are generally of limited means) and the consequential burden borne by vehicle proprietors. Despite the laudable motives for this cross-subsidy (and the fact that it was introduced with the support of proprietors and operators) such cross-financing is not legally permissible. (see 13c above). This raises two related issues:
  - i. A number of members of the trade who bore the burden of the cross-subsidy are now demanding redress.
  - ii. As the cross-subsidy renders past fees unlawful, any surplus accrued (plus any additional sums received by the Authority as a result of this arrangement) must be returned directly to those who overpaid, rather than being dealt with through future discounts as decided by Council on 16<sup>th</sup> September (see 9.2. above). This effectively rules out the need to consider the surplus as an integral part of this fee-setting process.
17. Although this means that the proposed fees now represent a clean start, the issue of previous charges levied on vehicle proprietors and renewing operators must still be addressed. Acting on the advice including that at 13b above therefore, it is proposed that a further report detailing proposals for appropriate restitution will be placed before Council for approval and implementation before the end of the financial year, as stated in the Ombudsman's decision. Members should note, however, that this approach will change the previously agreed decision set out at paragraph 9.2 above.
18. However, given the circumstances and the reason why the subsidy was introduced, it is not proposed to institute "claw-back" action against the drivers who have to date

benefited from the cross-financing arrangement. Equally, a proportion of any surpluses that may accrue in the future as a result of the new fee structure will be retained as advocated at 13d.

19. **Establishment of fees.** Although the consultation raised a number of issues requiring further investigation, many responses simply identified the increase in drivers' fees and the problems this poses in the current economic climate. Whilst this is clearly a concern (and a major reason for not seeking claw-back), from a legal perspective the proposed fees must, and do, reflect the true costs associated with administering the service.
20. **Vehicle Re-test fees.** As can be seen from Appendix A, virtually all respondents identified the cost of vehicle re-tests (which were proposed to rise from £48 to £68) as a cause for concern. Whilst £68 represents the true cost of operating the system (comprising a £35 charge from Authority's Cargo Fleet testing station and a costed £33 administration charge) it is recognised that this current system, though comprehensive, is expensive.
21. In order to address this concern, discussions have taken place with testing station management and an alternative operating model produced. Costed fees for this amended process, which will be operated solely by depot staff, are £38 for a full retest (£46 if this involves a taxi meter test) and £23 for a partial retest (£31 if this involves a taxi meter test).
22. Four consultees also sought the consideration of vehicle testing being outsourced. In common with all other Tees Valley Authorities, Middlesbrough Licensing Officers consider the advantages of uniformity and accountability provided by the current arrangement to outweigh other considerations, particularly now that testing fees are well within the nationally set limit for a standard (less comprehensive) MoT.
23. **Driver Testing.** One consultee raised two issues concerning the process by which a person who is already licensed as either a Private Hire or Hackney Carriage driver, becomes licenced to drive both types of vehicle. Firstly, the accuracy of the description "Driver Licence Upgrade" was queried. For avoidance of doubt this has been changed on the table of charges - see Appendix B - to read "Conversion to Dual Licence". Secondly it was questioned why, when a licenced driver of either discipline has already been tested on the large proportion of information common to both, is the proposed cost of conversion so high (£71). Examination of the costing calculation revealed that it contained a charge for a complete "Knowledge" test. This has been amended to only include the cost of administering the previously untested elements, resulting in a reduction of the proposed fee to £42.
24. **Unlawful items of charge.** The same consultee contended that it was illegal to charge a separate fee for a private hire vehicle owner to switch operator. (This had been presented as a separate charge because only a small proportion of owners switch operators; it was therefore considered unfair to impose the cost on all by incorporating it into the overall licence fee). Although this is a common practice, legal advice suggests that the Authority does not have the power to specifically levy such a fee and it should indeed be built into the cost of the overall licence. However, it was further suggested by the consultee that if the cost were simply added to the general

vehicle licence fee resulting in an increase, the full consultation process would have to recommence. This is an untested argument with an equally compelling counter; however, as the resulting increase would have been a few pence per vehicle, to avoid the possibility of legal argument over such a sum, it is proposed to completely remove the switching fee from the proposed charges. Operator switches will continue to be monitored however and in the unlikely event of it being necessary, fees will be adjusted in subsequent years to reclaim costs.

25. **Taxi Marshals.** A second item argued to be unlawful by the consultee is payment for the Taxi Marshals who currently patrol the Wilson Street ranks on Friday and Saturday nights. It is contended that, following the decision in **R (on the application of Cummings) v Cardiff City Council** [2014], payment for marshals is not a permissible item under the taxi licensing provisions of the Local Government (Miscellaneous Provisions) Act 1976. This view fails to recognise the materially different roles undertaken by the Marshals in each case. Rather than assisting and controlling the public, as in Cardiff and most other instances, Middlesbrough's marshals are engaged to control and supervise vehicles, preventing the widespread obstruction of the roadway which previously characterised that area of town. Such a function is therefore brought into account under section 70(1)(c) of the 1976 Act and the charge remains.

## **IMPACT ASSESSMENT**

26. A level 1 Impact Assessment has been undertaken, concluding that no relevant negative impact will result from the adoption of the measures proposed.

## **OPTION APPRAISAL**

27. The adoption of an established template has assisted considerably in the production of the required, transparent system of fees. The extended consultation period has enhanced the process allowing widespread participation by those interested in the issue and resulting in a number of refinements to the September 16<sup>th</sup> proposals.
28. The process has provided additional clarity, effectively separating the immediate priority of fee setting from the issue of the budgetary surplus and any other associated sums owed to sectors of the trade. A report resolving this second matter will be put before Council before the end of the financial year.

## **FINANCIAL CONSIDERATIONS**

29. It is a legal requirement that all fees received for taxi licensing purposes are ring-fenced to their respective function and are set on no more than a cost recovery basis. The proposed fees provide the foundation for reasonable assurance in this regard.
30. The calculation process takes into account new working practices, reduced staffing and current workload/demand. Clearly, any future variation in these factors will affect the budget's balance. It is therefore proposed to formally review the fees calculation process - in line with Capita's recommendation - on a three yearly basis (unless circumstances demand that the process is brought forward). This does not affect the

application of simple inflationary/deflationary rises or reductions which will remain subject to annual review.

31. As a result of the proposal not to claw back the subsidy previously conferred upon drivers, the cost of the proposed restitution to proprietors and/or operators may be in excess of the current surplus held within taxi accounts. The sum involved is currently being quantified using the legally advised method.

## **RECOMMENDATIONS**

32. It is recommended that the Council:
  - a) Approves the proposed taxi licensing fee structure, set out at Appendix B, which contains refinements resulting from the extended consultation procedure; and
  - b) Notes the revised method of dealing with the current budgetary surplus as set out at paragraph 17 above.

## **REASONS**

33. The recommendations provide for a transparent fee structure that reflects the time devoted to, and the functions associated with, each area of the trade on an accurate basis.
34. The recommendations draw fully on the results of the consultation process, ensuring that any necessary amendments to the scheme of fees and the disposal of surpluses are made.

## **BACKGROUND PAPERS**

**The following background papers were used in the preparation of this report:**

Summary of consultation responses attached as Appendix A.

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