

Report to Environment and Licensing Committee

Subject: Review of Taxi Licence Fee Setting

Date: 24 January 2023

Author: Chief Executive

Purpose

To update members on the review of taxi licensing fee setting, including the findings of Independent Assessment of Gedling Borough Council's Taxi Licence Fee Setting prepared by CIPFA.

Recommendation(s)

THAT:

- 1) That members note the findings, including the financial implications.**

1 Background

- 1.1 The fixing of fees for hackney carriage and private hire drivers, vehicles and operators is a function of the Environment and Licensing Committee as laid out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 1.2 Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') allow the council to charge fees for the grant of licences in respect of hackney carriage and private hire drivers, vehicles and operators. The legislation specifies the elements that can be included in the calculation of the licence fees.
- 1.3 The Council cannot make a profit from licence fees and there must be a carry forward of any surplus, but there can also be a carry forward of a deficit to enable future recovery. The reconciliation of any surplus or deficit will take place over a three-year cycle.
- 1.4 In order to ensure compliance with the Act and relevant general principles

developed through case law the Council should hold separate memorandum accounts for drivers, vehicles and operators. Historically, the Council has not held these memorandum accounts in this manner.

- 1.5 Members will recall that on the 17 May 2022 the Environment and Licensing Committee were informed of the objections received regarding the proposed hackney carriage and private hire driver, vehicle and operator licensing fees for 2022/23 and also the changes that had occurred regarding the taxi licensing application process, including moving some services online. It was recommended that the fees remain the same as the 2021/22 rate whilst a review of the setting of taxi licence fees and the presentation of the taxi licence budget be undertaken to ensure transparency and to consider the impact of the changes in processes that had occurred. Members resolved that the modified fees for 2022/23 should come into force, which replicated the current 2021/22 fees ensuring no increase in the fees to allow a full review to be undertaken.
- 1.6 The Council undertook a thorough review of its taxi licensing fee setting both retrospectively for 2016/17 through to 2021/22 and forward looking from 2022/23. The review consisted of an appraisal of the full costs attributable to the taxi licencing service for each year from 2016/17 to 2021/22, together with an analysis of the time spent by all officers in the delivery of the service by licence type, to enable the production of the required memorandum accounts for Driver, Vehicle and Operator licences. Similarly the forward look from 2022/23 consisted of a revised timesheet analysis to reflect the changes to the taxi licencing process that have been introduced to enable the production of estimated memorandum accounts to provide the basis for future fee setting. The Council then instructed CIPFA to undertake an independent assessment of its taxi licencing fee setting regime, following the internal review. The full Report can be found at **Appendix A**.
- 1.7 CIPFA confirmed that taxi and private hire licensing fees cannot be used as a general source of raising revenue and a licensing authority must, when setting fees, consider any previous surplus and, if they so choose, deficit, and adjust the level of fees accordingly, such adjustment happening on a three yearly cycle. A licensing authority should not cross subsidise income because, in doing so, the authority would recover costs for some licences that are not permitted as a head of recovery for that particular licence.
- 1.8 As the Council had not historically maintained separate memorandum accounts for the fees levied under sections 53 and 70 of the Act an exercise was completed by finance officers in conjunction with licensing and customer services colleagues in order to provide memorandum accounts which took the cost centre for Taxi Licensing and allocated or apportioned all transactions to either driver, vehicle or operator to produce a net position on each of the three licence types going back over the last six financial years.

- 1.9 The overall position shows that in only one year (2019/20) has the Council achieved greater income than costs. Over the seven years reviewed the overall level of subsidy borne by the Council has totalled £312,500, (this includes the original estimated subsidy for 2022/23).
- 1.10 The exercise involved recording the time spent by officers on different activities and applying the hours identified to the different types of licence according to the percentage of the total volume of licences taken up by that licence type. CIPFA were satisfied with this manner of calculation.
- 1.11 The Council undertook a retrospective analysis of costs for each type of licence. The calculations were based on a retrospective detailing of activity. This analysis showed that there has been over-recovery for vehicle and operator licences and that driver licenses have been significantly subsidised. See table at paragraph 4.2.
- 1.12 Due to the discovery of the over-recovery the Council intends to set up a process to allow all affected licence holders to receive a refund for the average of the amount over charged per licence. Members will be updated as to the progress of this in due course.
- 1.13 CIPFA's assessment of the headings provided in the workflow and spreadsheets was that all of the inclusions are appropriate and all fall, with one exception (Translation Services – which is a minor aspect acknowledged as being deminimus), within the requirements of the legislation. In their view the headings of cost were appropriate and there was nothing that they would not expect to find to support the activity.
- 1.14 CIPFA commented the Council's fee structure is clear and does not depend on officer decision/interpretation and overall the Council's fee setting displayed consistency throughout the period. In previous fee setting reports the Council has stated that the service is delivered at a cost requiring a subsidy from the taxpayer to break even and said that the proposed fees were designed to ensure that the service operates towards a full cost recovery basis, and areas of increased costs have been highlighted.
- 1.15 CIPFA confirmed that the evidence shows that overall the Council has continued to subsidise the licensing services for which these fees and charges are levied and the Council has under recovered its costs throughout this period. The fees charged have failed to cover the Council's costs of providing the licensing services. The Council were considered to have taken a reasonable and proportionate approach when setting fees historically.
- 1.16 CIPFA also noted that the Council recognises that the manner in which the Taxi Licensing service is operated has changed in recent years with increased use of on-line facilities, introduced in the last year with 2022/23 being the first full year.

- 1.17 It was, however, highlighted that previous fee setting reports have not set out for members the officer calculations of costs or income and therefore transparency in decision making was limited. This has not allowed scrutiny of how well the Council was achieving its aim of full costs recovery. Also absent in the reporting was any assessment detailing the carry forward of any surplus or deficit. This is something that will be addressed going forward, with members being provided with a more detailed explanation of the costs of providing the services and any surplus or deficit from the preceding financial year, and the impact that this may have on the fees to be set for the subsequent financial year.
- 1.18 Regarding the Council's future arrangements, CIPFA were provided with spreadsheets that captured the time spent on different licence types to reflect our current arrangements and a methodology flowchart was provided demonstrating where the information was derived from and its final destination.
- 1.19 CIPFA commented that the costs are now related much more closely to the costs for individual licences and minimises the risk of cross subsidy. The new fee structure would produce almost the same income as the existing fee structure. The calculations show a true reflection of the costs and do foreshadow significant changes in the levels of some fees. It is anticipated that the Council will adopt a phasing in of the new level of fees, balancing the maintenance of minimum subsidy with the legal requirements.
- 1.20 It is anticipated that the proposed fees for 2023/24 will not include any treatment of under or over recovery for 2022/23 as this will not be known at the time of fee setting and instead this will be dealt with in the fee calculation for 2024/25.
- 1.21 Summary of CIPFA recommendations:
- The Council should continue to maintain the records that enable them to have separate memorandum accounts for s.53 and 70 of the Act.
 - The Council should consider phasing in of the new level of fees.
 - In future, to ensure that reporting on fee setting to members details the costs and potential income of any new fee structure, with separate calculations for individual types of licences to prevent cross subsidy, the retrospective three year position on surplus or deficit and the likely subsidy required.
 - The Council should carefully monitor time allocations to ensure their accuracy against particular types of licence. CIPFA suggests, as a minimum, a detailed triennial analysis of activity and processes related to the carrying out of particular policy requirements to ensure that time

taken and costs incurred matches the Council's requirements and there is no cross subsidy.

- Over time the Council could address the charging of Corporate overheads to the service (e.g. local democracy costs which are not currently charged).

2 Proposal

- 2.1 That members note the findings of the internal taxi licencing fee setting review and the CIPFA independent assessment of Gedling Borough Council's taxi fee setting, including the financial implications.

3 Alternative Options

- 3.1 To not note the findings of the assessment and financial implications, this is not recommended as it may negatively affect any future fee setting decisions.

4 Financial Implications

- 4.1 The findings of the assessment show that the Council has:

- undercharged for drivers licences in each year 2016/17 through to 2021/22;
- overcharged for vehicle licences in 2016/17, 2018/19, 2019/20, 2020/21 and 2021/22, and undercharged in 2017/18;
- overcharged for operators licences in each year from 2016/17 through to 2021/22.

- 4.2 The table below summarises the memorandum accounts for each licence type based on the review findings for 2016/17 through to 2021/22 and confirmed by CIPFA:

| | Driver Licence £ | Vehicle Licence £ | Operator Licence £ |
|--------------------------------|---------------------|----------------------|-----------------------|
| 2021/22 | 74,415 | (11,692) | (223) |
| 2020/21 | 85,002 | (21,936) | (725) |
| 2019/20 | 61,477 | (62,774) | (1,321) |
| 2018/19 | 70,431 | (14,407) | (2,810) |
| 2017/18 | 83,471 | 6,925 | (2,093) |
| 2016/17 | 55,932 | (20,302) | (5,370) |
| Total deficit/(surplus) | 430,728 | (124,186) | (12,542) |

- 4.3 The Council intend to offer a refund to those proprietors who were over charged, equivalent to the amount of the overcharge per licence plus interest, which will result in a cost to the Council of approximately £150,000, subject to approval of the budget by Cabinet at its meeting on 24 January 2023.

5 Legal Implications

- 5.1 The statutory power for the setting of taxi licence fees for drivers, vehicles and operators is governed by sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976. These sections dictate the parameters of what can and cannot be charged for when setting a particular fee.
- 5.2 There has also been substantial litigation on the subject of licensing fees, resulting in a number of general principles that ought to be followed. Taxi and private hire licensing fees cannot be used as a general source of raising revenue and the Council must, when setting fees, consider any previous surplus and, if they so choose, deficit and adjust the level of fees accordingly, such adjustment happening on a three yearly cycle. The Council should not cross subsidise income because, in doing so, the Council is recovering costs for some licences that are not permitted as a head of recovery for that particular licence.
- 5.3 Whilst as a whole the Council has subsidised the taxi licensing service the internal review and assessment from CIPFA show that there was over-recovery for vehicle and operators licences. As historically, the Council did not hold separate accounts for driver, vehicle and operator licences the Council could therefore be at risk of a successful claim if it did not take steps to address this.

6 Equalities Implications

- 6.1 None.

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 None.

8 Appendices

- 8.1 Appendix A – Gedling Borough Council: Independent Assessment of Taxi Licence Fee Setting – Final Report – November 2022.

9 Background Papers

- 9.1 Report to Environment and Licensing Committee – Proposed Taxi Licensing Fees for 2022/2023 – 17 May 2022.

Statutory Officer approval

Approved by Chief Financial Officer

Date: 13 January 2023

Approved by Monitoring Officer

Date: 13 January 2023