

Report of the Chief Licensing Officer and Head of Licensing to the Licensing Committee on Thursday 17th September 2015

Deregulation Bill 2015

Private Hire & Hackney Carriage Drivers Licenses

1.0 Purpose of Report

- 1.1 To review the current policy in relation to the duration of Private Hire and Hackney Carriage Drivers licences.
- 1.2 To determine the fees to be charged for new licences.

2.0 The Legal Situation

- 2.1 Section 10 of The Deregulation Bill 2015 comes into force on the 1st October 2015. The section amends Section 53 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.2 The Government have introduced the Deregulation Bill as part of their commitment to cut bureaucracy in business. One of the main changes that it has introduced is with regards to Private Hire & Hackney Carriage Drivers Licences to amend Section 53 as follows;

(1) (a) Every licence granted by a district council under the provisions of this Part of this Act to any person to drive a private hire vehicle shall remain in force for three years from the date of such licence or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.

(1) (b) Notwithstanding the provisions of the Public Health Act 1975 and the Town Police Clauses Act 1889, every licence granted by a district council under the provisions of the Act of 1847 to any person to drive a hackney carriage shall remain in force for three years from the date of such licence or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case.

3.0 Background

- 3.1 The last review of the driver's policy took place in February 2012. The resolution of the Sub Committee at that time was to make no changes to the new driver's licences issued for probationary periods, of 9, 12, months prior to issuing a full licence for 18 months where appropriate.
- 3.2 In Sheffield the standard licence period has been 18 months for over 15 years and we undertake a DBS check every 3 years (2 licenses).

- 3.3 There is currently a condition on all private hire drivers' licences that the applicant / licence holder has to submit details of any convictions, cautions, or driving offences, within 14 days of the date of conviction during the term of the licence.
- 3.4 Members will be aware that we are currently drafting a new Private Hire & Hackney Carriage Drivers Policy that will be ready for formal consultation in September.
- 3.5 Members must note that applications will still be referred to Licensing Committee that do fulfil the existing criteria or meet our current referral policy and these will be dealt with on a case by case basis and may still be granted shorter term licences.

4.0 Consultation

- 4.1 A draft of this report was circulated to representatives of the trades associations on the 28th August 2015 and was discussed at a consultation meeting with the representatives of the trade associations on the 2nd and 10th September 2015
- 4.2 Representatives of the trade associations have been invited to attend this meeting and advised that, subject to the consent of the Chair, they may address the meeting.
- 4.3 Any written representations received will be made available at the meeting.

5.0 Financial Implications

- 5.1 There are significant financial implications to the Council arising from this report. If members determine to move to a three year licence this would see a financial impact every 18 months.
- 5.2 The initial impact would commence around April 2017 when we would have a significantly reduced number of renewals if all licences are granted for three years. The reduction in income would continue every 18 months until the level of new applications and renewals began to balance out.
- 5.3 The service will have to consider the impact from these changes in legislation each year as it determines the new budget and fees.
- 5.4 Section 53, Sub-section (2) Notwithstanding the provisions of the Act of 1847 states, "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 fee as they consider reasonable with a view to recovering the costs of issue and administration"
- 5.5 Attached at "Appendix A" is a table of proposed fees for Private Hire & Hackney Carriage Drivers Licences.

6.0 Fair Charging Policy

- 6.1 It is agreed that fees and charges should be set in a consistent way across the Council and that we are transparent about the fees we expect people to pay.
- 6.2 Licence fees must also be set in accordance with the relevant individual piece of legislation; the Provision of Services Regulations 2009; and any other associated legislation / regulations.
- 6.3 The fees have been set so that they enable the service and the Council to deliver on our priorities and also on the principle of the polluter pays where it is appropriate.
- 6.4 The Council intends to recover its reasonable costs of the Licensing Service with regards to the administration and enforcement of the terms and conditions of each of the above individual licensing systems. Each licensing system has its fee calculated separately to ensure we are only recovering the costs in relation to that individual system.

7.0 Case Law

- 7.1 It is clear from R v Manchester City Council Ex p. King, The Times, April 3, 1991 that the power to set fees does not permit the Council to raise revenue generally.
- 7.2 It has also been established in many cases such as R-v-The Greater London Council Ex Parte The Rank Organisation Limited where it was stated “the level of fees was a matter of policy and as long as the total fee income did not exceed the cost of the licensing system the court should not and could not see to interfere”.
- 7.3 The case of R (Hemmings and Others) v Westminster City Council has changed the way we must consider setting fees and what legitimate costs we can recover.

Keith J upheld that the procedures the costs of which could be recharged to licensees are;

“..... the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed, and when you talk about the cost of those procedures, you are talking about the administrative costs of vetting the application and the costs of investigating their compliance with the terms of the licence. There is simply no room for the costs of authorisation procedures to include costs which are significantly in excess of those costs”.

- 7.4 Members should note that the Council can only recover the actual costs of delivering each individual system from the fees it charges applicants/licensees. It cannot make surplus from fees and must not use fees to subsidise any other licensing system or to offset other budgets or raise income generally.
- 7.5 The overarching principle and starting point for the setting of fees is that the Local Authority must only recover its reasonable costs of administering that individual system and enforcing the terms and conditions of those licences where applicable and that no irrelevant factors are taken into account when setting such fees.

8.0 Recommendations

- 8.1 That the Licensing Committee instruct the Chief Licensing Officer & Head of Service to make arrangements for the grant of a three year licence as from 1st October except in cases where licensing committee determine otherwise.
- 8.2 That Licensing Committee approve the fees at "Appendix A".
- 8.3 That members make no further decisions upon any driver policy matters until the new policy is presented to the Licensing Committee later this year.

9.0 Options

- 9.1 To instruct the Chief Licensing Officer & Head of Service to grant 3 year licences as from the 1st October 2015 except in circumstances where shorter term licences are thought appropriate on a case by case basis.
- 9.3 To consider the proposed fees set out at "Appendix A" and determine the appropriate level of fees to be charged as from 1st October 2015.

Steven Lonnia
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