

# TONBRIDGE & MALLING BOROUGH COUNCIL

## LICENSING & APPEALS COMMITTEE

16 November 2021

### Report of the Director of Central Services and Deputy Chief Executive

#### Part 1- Public

#### Delegated

### 1 REVIEW OF FEES AND CHARGES 2022/23 - LICENSING FEES

#### 1.1 Executive Summary

- 1.1.1 The responsibility for setting the licensing fees and charges for 2020/21 is with the Licensing & Appeals Committee.
- 1.1.2 The review has been carried out by the Head of Service for Licensing, Customer Services and Community Safety and the report sets out the recommended changes to the existing fee structure.
- 1.1.3 The licensing regimes listed within this document cover a wide range of activities and services ranging from the sale and supply of alcohol to individuals keeping dangerous wild animals. The purpose of the licensing regimes are specific to the regulation that govern it but in general, licensing is required to protect the public, protect and support businesses practices and ensure fair trading; and ensure the welfare of animals.
- 1.1.4 The council has the power to set some fees for certain licensing regimes. However, a number of licensing regimes have fees that have been set by the specific Act or associated regulations. There are three fee regime types that have been set out within this document. These fee regime types relate to how the fees have been set.

Type 1	Type 2	Type 3
Fees that are set by statute for which the council has no power to amend.	A maximum fee cap set by statute that permits councils to set a reasonable fee to recover its costs up to that cap.	The relevant statute permits councils to set their own local fees that will enable it to recover its reasonable costs.
<b>Example</b> <ul style="list-style-type: none"><li>Licensing Act 2003 Lotteries</li></ul>	<b>Example</b> <ul style="list-style-type: none"><li>Gambling Act 2005</li></ul>	<b>Example</b> <ul style="list-style-type: none"><li>Taxi and Private Hire Scrap Metal</li></ul>

- 1.1.5 All of the fees within type 2 up to the relevant cap and all of the fees within type 3 fee regimes have been set to recover the council's reasonable costs in carrying out its functions for each specific regime. The fees relate to that regime only and all the income received from fees is used to offset those costs. The council cannot and does not use the income from one specific licensing regime to cover deficits in other regimes.
- 1.1.6 The council will aim to undertake a review of type 2 and 3 licensing fee regimes every year. When considering the fees the council will take into account the costs that it has incurred from the previous year and set a fee based on those costs. If the council does, in reviewing the fees identify a surplus or a deficit it will adjust the fees accordingly to either reduce the fee levels to reduce the surplus or increase the fee levels to repay that deficit in costs from previous years. This means that the fees will fluctuate year on year based on the review of income and cost associated with that relevant licensing regime.
- 1.1.7 The principal area covered by Type 3 above is that relating to Hackney Carriage and Private Hire licensing. Further detail in respect of this area is set out below

#### **European Service Directive**

- 1.1.8 The European Union Services Directive -2006/123/EC (the Directive) was given effect in UK law via the Provision of Services Regulations 2009 (SI2009/2999). This Directive and the Regulations contain provisions about the fees which may be charged under relevant licensing regimes within the scope of the Directive. In particular licensing authorities may not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence.
- 1.1.9 These provisions have been taken into account in setting the fees set out in this document.
- 1.1.10 In addition, a judgment of the Supreme Court in a case involving Westminster City Council has provided further clarification of the type of costs which may be taken into account when setting fees, and when fees may be payable. Pending further guidance from the European Court of Justice, the judgment of the Supreme Court established that a licensing regime may operate on the basis that an applicant must pay:
- i. on making the application, the costs of the application process and,
  - ii. on the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.
- 1.1.11 The council has, following this decision, reviewed the Type 3 regime fees, for which the Directive relates so that they identify the costs for processing the application through to determination (Part A) and the cost for running and the enforcement of the licensing regime (Part B).
- 1.1.12 Taxi Licensing is exempt from this ruling.

## 1.2 Summary of Numbers of licences

1.2.1 The table below shows the tracking of the number of licences Tonbridge & Malling Borough Council is responsible for validating, processing and issuing.

	04.10.21	20.04.21	18.12.19	05.09.19	31.05.19
		DFT return			DFT return
Scrap Metal - Site lic	2	2	3	2	2
Scrap Metal – Mobile lic	7	6	7	7	6
Lottery Licences	64	60	75	75	73
Hackney Carriage Vehicles	137	139	179	182	187
Hackney Carriage Drivers	70	78	99	106	101
Hackney Carriage Prob Driv	0	0	0	0	0
Dual Driver badges	167	166	178	175	172
Private Hire Operator	116	116	105	102	100
Private Hire Vehicles*	346	344	477	477	465
Private Hire Drivers	391	402	456	448	448
Private Hire Prob Drivers*	0	0	0	0	2
Private Hire Prob Vehicles	0	0	0	0	0

<b>Total taxi licences</b>	<b>1227</b>	<b>1245</b>	<b>1494</b>	<b>1,490</b>	<b>1,475</b>
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<b>Number of Drivers</b>	<b>628</b>	<b>646</b>	<b>733</b>	<b>729</b>	<b>723</b>
Adult Gaming Centres	1	1	1	1	1
Betting Shops	8	8	8	10	10
Boatman Licence	4	4	5	4	4
Club Premises Licence	29	29	29	29	29
Premises Licences	370	360	352		363
Dangerous Wild Animals	1	1	1	1	1
Hypnotism Licence	0	0	0	0	0
Street Traders Licence	0	0	1	1	1
Personal Licences	1747	1817	1,750	1,737	1,718
Sex Shop	1	1	1	1	1
Animal Boarding**					
Home Boarding**					
Pet Shop **					
Animal Activity	36	33	26		27
Riding Establishments					
Zoo licensing	1	1	1	1	1
<b>Total</b>	<b>3,498</b>	<b>3,568</b>	<b>3,780</b>	<b>3,763</b>	<b>3,712</b>

## Licensing Act 2003

1.2.2 The fees are set by Government, where there has been no change to fees since 2005 when Act came into force.

1.2.3 This table shows the number of premises by “type”

“Type”	Number	“Type”	Number
Brewery	4	hotel	7
café / coffee shop	12	Internet	14
Campsite	2	Leisure Centre	4
Cash and Carry	1	Market	1
Church	5	off licence	10
Cinema	0	Petrol station	14
Club	18	pub	73
Community Hall	26	restaurant	57
Conference	8	schools	8
Convenience	42	sports Club	27
Dance Studio	1	supermarket	28
Day Care Centre	1	takeaways	10
Department Store	4	theatre	1
Event bar	1	tourist attraction	3
Garden Centre	0	Vineyard	3
Golf Club	5	Wedding	5
hall	3		
high street	1	<b>Total</b>	<b>399</b>

1.2.4 This table shows the last published Home Office return for year 2017-18 for the Kent Authorities.

	Premises licences	Club premises	Total
<b>Ashford</b>	336	23	359
<b>Canterbury</b>	836	29	865
<b>Dartford</b>	319	27	346
<b>Dover</b>	378	45	423
<b>Gravesham</b>	296	31	327
<b>Maidstone</b>	458	34	492
<b>Sevenoaks</b>	387	45	432
<b>Folkstone &amp; Hythe</b>	411	51	462
<b>Swale</b>	533	33	566
<b>Thanet</b>	545	41	586
<b>TMBC</b>	<b>314</b>	<b>31</b>	<b>345</b>
<b>TWBC</b>	398	32	430
<b>TOTAL</b>	<b>5,211</b>	<b>422</b>	<b>5,633</b>

## Licensing Act 2003 fee income

### Personal Licences

Licensing Act Fee	Fee	Annual Budget	To end of September
Personal Licence	37	(2,500)	(1,347)

### Premises Licences plus other Licensing Act 2003 licences

Licensing Act Fee	Fee	Annual Budget	To end of September
Annual Fee	Various (see next table)	(93,000)	(28,860)

### Annual fee income

In general terms, the amount a premises licence holder pays in Annual fees depends on their rateable value, with additional payment when a premises capacity is significantly increased, or when in a town centre they have “multiplier status”.

The vast majority of TMBC Annual fees are due in November of each year – As the Annual fee has to be paid on the anniversary of the grant of the licence.

Category Level and amount	Number of premises	Number of Club premises certificates	Total premises in Category	Total income “£”
“A” - £70	45	9	54	3,780
“B” - £180	196	16	212	38,160
“C” - £295	49	3	52	15,340
“D” - £320	17	0	16	5,120
“E” - £350	39	1	41	14,350
Number of premises with no annual fee*	24	0	24	0,00
<b>Sub total</b>	<b>370</b>	<b>29</b>	<b>399</b>	<b>76,750</b>
Additional Fee for Hop Farm Event licence				8,000
Additional Fee for Humphrey Bean				640
<b>Total</b>	<b>370</b>	<b>29</b>	<b>399</b>	<b>85,390</b>

- - A premises has no annual fee to pay where there is no sale of alcohol

## Numbers of Taxi and Private Hire tracking Drivers

	Before Lockdown	First Lockdown begins	Pubs reopen	Eat out to help out	10pm curfew for Pubs / Hotel etc.	Three-tier system	Second lockdown begins	Second lockdown ends - New three tiers	New Tier 4 comes into force for South East	Third lockdown begins	Roadmap Step 1	Roadmap Step 2	Roadmap Step 3		Step 4	
	18 Dec 19	26 Mar 20	4 Jul 20	3 Aug 20	22 Sep 20	14 Oct 20	5 Nov 20	2 Dec 20	21 Dec 20	6 Jan 21	8 Mar 21	12 Apr 21	17 May 21	14 Jun 21	19 Jul 21	04 Sep 21
<b>HDL</b>	99	95	84	85	85	83	84	81	81	81	79	78	79	76	77	70
<b>Dual</b>	178	178	176	172	167	167	165	164	163	165	166	165	163	164	167	167
<b>PHDL</b>	456	436	428	426	424	425	422	414	409	407	404	402	400	387	387	391
<b>Total</b>	<b>733</b>	<b>709</b>	<b>688</b>	<b>683</b>	<b>676</b>	<b>675</b>	<b>671</b>	<b>659</b>	<b>653</b>	<b>653</b>	<b>649</b>	<b>645</b>	<b>642</b>	<b>627</b>	<b>631</b>	<b>628</b>
<b>Difference between key milestones</b>		-24	-21	-5	-7	-1	-4	-12	-6	0	-4	-4	-3	-15	4	-3
<b>Difference before lockdown</b>		-24	-45	-50	-57	-58	-62	-74	-80	-80	-84	-88	-91	-106	-102	-105

## Vehicles

	Before Lockdown	First Lockdown begins	Pubs reopen	Eat out to help out	10pm curfew for Pubs / Hotel etc.	Three-tier system	Second lockdown begins	Second lockdown ends - New three tiers	New Tier 4 comes into force for South East	Third lockdown begins	Roadmap Step 1	Roadmap Step 2	Roadmap Step 3		Step 4	
	18 Dec 19	26 Mar 20	4 Jul 20	3 Aug 20	22 Sep 20	14 Oct 20	5 Nov 20	2 Dec 20	21 Dec 20	6 Jan 21	8 Mar 21	12 Apr 21	17 May 21	14 Jun 21	19 Jul 21	04 Oct 21
<b>HCV</b>	179	179	149	152	159	159	150	149	151	149	149	140	140	140	141	137
<b>PHV</b>	477	425	379	389	385	389	386	366	377	375	355	347	342	359	359	346
<b>Total</b>	<b>656</b>	<b>604</b>	<b>528</b>	<b>541</b>	<b>544</b>	<b>548</b>	<b>536</b>	<b>515</b>	<b>528</b>	<b>524</b>	<b>504</b>	<b>487</b>	<b>482</b>	<b>499</b>	<b>500</b>	<b>483</b>
<b>Difference between key milestones</b>		-52	-76	13	3	4	-12	-21	13	-4	-20	-17	-5	17	1	-13
<b>Difference before lockdown</b>		-52	-128	-115	-112	-108	-120	-141	-128	-132	-152	-169	-174	-157	-156	-173

## Department of Transport statistics – 31 March 2021

	Hackney Carriage				Private Hire					Dual drivers		Total drivers licences issued	Total licensed Vehicles
	Wheelchair Accessible taxis	Other taxis	Total taxis	Taxi only licensed drivers	Wheelchair Accessible taxis	Other PHVs	Total PHVs	Operator licences issued	PHV only licenced Drivers	Dual taxi/PHV driver licences	Both taxi and PHV driver licences		
Ashford	24	81	105	0	3	87	90	67	163	166	0	329	195
Canterbury	22	191	213	151	19	287	306	91	365	123	1	640	519
Dartford	74	0	74	49	2	80	82	28	87	42	0	178	156
Dover	5	64	69	0	8	90	98	28	10	248	0	258	167
Gravesham	31	97	128	0	4	44	48	19	46	157	0	203	176
Maidstone	48	0	48	11	2	133	135	34	178	78	0	267	183
Sevenoaks	5	156	161	207	17	70	87	40	82	18	0	307	248
Folkstone	7	172	179	147	5	64	69	54	88	104	0	339	248
Swale	36	148	184	0	10	41	51	37	1	310	0	311	235
Thanet	5	88	93	97	21	412	433	49	445	0	0	542	526
TMBC	4	135	139	78	18	326	344	116	402	166	0	646	483
TWBC	23	84	107	0	9	120	129	49	0	260	0	260	236
<b>Total</b>	<b>284</b>	<b>1,216</b>	<b>1,500</b>	<b>740</b>	<b>118</b>	<b>1,754</b>	<b>1,872</b>	<b>612</b>	<b>1,867</b>	<b>1,372</b>	<b>1</b>	<b>4,280</b>	<b>3,372</b>

### **1.3 Hackney Carriage & Private Hire**

1.3.1 Fee levels for hackney carriage and private hire licensing are subject to various statutory controls. Whilst these controls provide the Council with some discretion as to the level of fee, the cost of a licence must be related to the overall cost of the licensing scheme itself.

1.3.2 Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 provides that, in respect of hackney carriage and private hire drivers, the Council may charge 'such a fee as they consider reasonable with a view to recovering the costs of issue and administration'. No fee is chargeable, or recoverable, in respect of enforcement in relation to these licences.

1.3.3 For vehicle (both hackney carriage and private hire) and private hire operators' licences, fee levels are governed by s.70 of the 1976 Act. This section allows the Council to charge such fees as may be sufficient in aggregate to cover in whole or in part –

- the reasonable cost of carrying out inspections of hackney carriages/ private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
- the reasonable cost of providing hackney carriage stands; and
- any other reasonable administrative or other costs in connection with the above and with the control and supervision of hackney carriage and private hire vehicles.

#### **Costs for plates, holders and door insignia**

1.3.4 The costs for plates, holders and door insignia are not set by the Licensing and Appeals Committee.

1.3.5 The costs shown are the current manufacturer's costs and are subject to change anytime during the year, without reference to the Licensing and Appeals Committee.

1.3.6 A table showing the existing and proposed fees for 2022-23 is shown as **Annex 1**.

#### **Fee model**

1.3.7 The fee model sheets for the main Taxi fee increase show officer cost and time in the validating, processing, issuing and enforcement cost where applicable. Sample sheets are shown as **Annex 2**.

### **1.4 Legal Implications**

1.4.1 As set out above.

### **1.5 Financial and Value for Money Considerations**

1.5.1 As set out above.



## **1.6 Risk Assessment**

- 1.6.1 The recommended fee levels have been calculated in order to ensure that the service remains self-financing, whilst at the same time not making a profit.

## **1.7 Equality Impact Assessment**

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.8 Recommendations**

- 1.8.1 It is RECOMMENDED that the proposed scale of fees for licences, consents and registrations set out in Annex 1 of this report be adopted with effect from the 1 April 2022.

Background papers:

Department of Transport statistics  
Home Office statistics

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### **Adrian Stanfield**

Director of Central Services and Deputy Chief Executive