

CABINET

14 JUNE 2011

REPORT OF THE CABINET MEMBER FOR FINANCE, REVENUES AND BENEFITS.

Title: Charging for Credit Card use	For Decision
<p>Summary:</p> <p>When making payments to the Council, customers have the option to use their credit cards. This is becoming an increasingly popular choice and charges from credit card companies last year cost the Council £93k This is likely to rise as customers adopt methods of payment such as telephone and internet. For most forms of debt the Council can legally pass these charges on to the customer and many local authorities are starting to do so. This report suggests that the Council begins to make charges for the use of credit cards when customers make payments to the Council.</p> <p>Wards Affected: All</p>	
<p>Recommendations</p> <p>The Cabinet is recommended to agree that:</p> <ul style="list-style-type: none">(i) a surcharge equivalent to the lowest level of bank charge made to the Council for the use of a credit card by a customer (currently 1.1785%) be introduced.(ii) these charges be introduced from 1 October 2011	
<p>Reason</p> <p>The recommendations of this report will contribute toward the Council's values in relation to performance and efficiency.</p>	
<p>Comments of the Chief Financial Officer</p> <p>It is expected that the number of credit card transactions will consistently exceed 50,000 for the foreseeable future for total payments to the tune of £6.3m. It currently costs the council approximately £93k in bank charges to process those, which the council tax payers are subsidising.</p> <p>Whilst the council is not allowed to make a profit by charging more for the transactions, legally they are allowed to recover up to what it costs. By passing on 1.1785% to the users, the council will recoup £56k and is based on charging the lowest charge paid by the council.</p> <p>Currently the council systems do not allow individual charges to be calculated efficiently, and /or set varying levels of charges. In addition, the option of charging the average cost is restricted because it would mean some users paying more than the actual cost attributable to their particular transaction. The council is, therefore, losing out on a potential £14k by charging at the lower rate.</p>	

A further 23k of costs relate to parking fees and is not allowed by statute to be charged.

Comments of the Legal Partner

The law in relation to credit charge surcharges permits the Council to charge Service Users credit card surcharges on payments made to the Council, provided that:

- (i) The credit card surcharges are set at such a level so as to ensure that the Council does not make a profit from the surcharges; and
- (ii) No surcharges may be applied to Penalty Charge Notices.

In general, legislation in the United Kingdom does not prohibit suppliers of goods and services (local authorities included) from passing on 'merchant fees' (paid by the Council to credit card companies) to service users, via surcharges.

Although there is nothing in general preventing credit card surcharges being levied, the Council is restricted in terms of the amount of surcharge it can charge by the provisions of the Local Government Act 2003. The Act provides the statutory basis for local authorities to levy charges for discretionary services, which are services the Council is authorised (but not required by statute) to provide. The provision of credit card services for payments would fall within this definition of a 'discretionary service'.

Section 93(3) of the Act requires that, in respect of charges for discretionary services "taking one financial year with another, the income from charges under that subsection does not exceed the costs of provision"

In simple terms, this means that the Council is not entitled to make a profit from charging the customer for using credit cards. Costs to the Council vary depending on the type of card used and the volume of transactions. Consequently this report recommends that a surcharge be made at the lowest level of charge to the Council, currently 1.1785%.

It should be noted however, that as a result of recent case law, the Council may not add a fee in relation to car parking notices. Local authorities have the power to issue civil penalties for parking violations under the Traffic Management Act 2004 and under secondary legislation), however the Council may not add a fee in relation to car parking notices. A local authority cannot add any kind of service or administrative charge to a PCN (including credit card surcharge fees) because the charge would then exceed the applicable amount

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1. Background

- 1.1 Since the Council introduced the facility for customers to pay by credit card it has become an increasingly popular option. During 2009/10 £6.3M was paid to the Council in this way costing the council £93K in credit card charges. Many organisations, and an increasing number of local authorities, now charge customers a fee for using their credit cards. This report recommends that this Council should begin to charge a surcharge for the use of credit cards where ever it can legally do so from 1 October 2011.

2. Proposal

- 2.1 In 2007/8 29,660 transactions were carried out using a credit card when paying this Council and in 2009/10 50,150 transactions were completed. This represents a 59% increase in two years. The costs of these transactions in 2009/10, which were recharged to departments of the Council were £93,633, an average of £1.87 per transaction. The increasing popularity of this method of payment has caused an escalating pressure on departmental budgets.
- 2.2 Customers using credit cards are, in effect delaying their eventual payment date, although the Council receives the payment within 3 working days. With some restrictions the Council is entitled to pass on the bank charges caused by this method of payment thereby ensuring that Council Tax payers as a whole do not subsidise this option. However, the Council may not legally make a profit from the charging of a surcharge to cover these costs.
- 2.3 During 2009/10 £6,335,905 were paid to the Council by credit card. The level of bank charges made on these payments depends on the card used and the volume of transactions through that type of card. The Councils systems are not sufficiently sophisticated to recharge the exact cost of each transaction. In order to recoup the total costs of the associated charges a fee of 1.5% of the value of the payments would have to be made. That being the average percentage cost of all transactions.
- 2.4 However, if the average cost was recharged some customers would pay in surcharge more than the actual cost to the Council. The legislation covering the recharging of these costs is unclear as to the legitimacy of so doing. Therefore, it is proposed in this report that the surcharge be set at the lowest level of charge incurred by the Council in order that no one pays more than the cost to the Council. The lowest level of charge is currently 1.1785%. Of course this is subject to change from time to time and so the recommendation is phrased in such a way as to avoid the need to return for a new decision whenever charges are amended.
- 2.5 In order to give officers time to implement the charging of this fee a start date of 1 October is recommended. Whilst it is not ideal to implement this charge part way

through the financial year if this is delayed until 1 April 2012 the Council will have to fund credit charges for all of 11/12.

3. Financial Issues

- 3.1 In 2009/10 Departments were recharged £93k for bank charges associated with payment by credit cards. If the authority passed on these charges to the customer where it is legally entitled to and at the rate recommended in this report, there would be a saving to the Council of £56k. The income lost by charging the lowest level of charge rather than the average is £14k. The Council is not legally able to pass on charges for Parking Notices and therefore, these costs, currently £23k, would continue to be incurred and recharged to the Car Parking budget.

4. Legal Issues

- 4.1 The Council is not entitled to make a profit from charging the customer for using credit cards. It is unclear from the legislation if this relates to the overall cost to the Council in relation to their use or applies to every individual transaction. Costs to the Council vary depending on the type of card used and the volume of transactions. Consequently in order to avoid the possibility of challenge this report recommends that a surcharge be made at the lowest level of charge to the Council, currently 1.1785%

- 4.2 The Council may not add a fee in relation to car parking notices.

5. Other Implications

5.1 Risk Management.

There may be dissatisfaction amongst customers who use credit to pay their bills to the council. It is also unknown how many customers would switch to other methods of payment such as cash or cheque resulting in increased costs elsewhere. The Council will produce a communications message explaining that credit card payers are taking an advantage in using this payment method by delaying the time when the payment leaves their bank account. That advantage should not be subsidised by other charge payers in the Borough and so it is appropriate that these charges should be passed on.

6. Options appraisal

- 6.1 Consideration might be given to charging for Debit Card use when customers make payment to the Council. The charge for the use of a debit card is 17.58p and the cost to the Council in 2009/10 was £23,300. Given the relative costs of other payment methods it is thought that the Council should not dissuade customers from this method of payment.

7. Background Papers Used in the Preparation of the Report:

None

8. List of appendices:

None