



---

# NOTICE OF MEETING

---

## LICENSING COMMITTEE

**FRIDAY, 10 MARCH 2017 AT 9.30 AM**

**EXECUTIVE MEETING ROOM, FLOOR 3 OF THE GUILDHALL, PORTSMOUTH**

Telephone enquiries to Lucy Wingham 02392 834662

Email: [lucy.wingham@portsmouthcc.gov.uk](mailto:lucy.wingham@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

---

### Licensing Committee Members:

Councillors Julie Bird (Chair), Hannah Hockaday (Vice-Chair), Dave Ashmore, Jennie Brent, Ken Ellcome, Paul Godier, Scott Harris, Steve Hastings, Suzy Horton, Leo Madden, Lee Mason, Stephen Morgan, Steve Pitt, David Tompkins and Gerald Vernon-Jackson CBE

### Standing Deputies

Councillors Ryan Brent, Ian Lyon, Hugh Mason, Darren Sanders and Rob Wood

---

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the relevant officer by 12 noon of the working day before the meeting, and must include the purpose of the deputation (eg. for or against the recommendations). Email requests are accepted. Contact: Lucy Wingham as listed above.

## AGENDA

- 1 Apologies for Absence**
- 2 Declarations of Members' Interests**
- 3 Minutes of the previous meeting held on 22 February 2017 (Pages 3 - 4)**

RECOMMENDED that the minutes of the previous meeting of the Licensing Policy Committee held on 22 February 2017 be agreed as a correct record and signed by the chair.

#### **4 Annual Review of Licensing Fees (Pages 5 - 34)**

##### Purpose

The purpose of this report is for the Committee to consider a review of the non-statutory fees charged for licences/registrations which are administered by the Licensing Committee.

##### RECOMMENDATIONS

- a) That the Licensing Committee note the comments of this report and determine the level of fee to be adopted;
- b) That the approved fees be implemented with effect from 1 April 2017 unless otherwise stated within the report; and
- c) That the Director of Culture and City Development be given authority to advertise, (where appropriate) such fees and charges that are subject to any formal public statutory consultation.

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

# Agenda Item 3

## LICENSING COMMITTEE

MINUTES OF A MEETING of the Licensing Committee held on Wednesday, 22 February 2017 at 9.30 am at the Guildhall, Portsmouth.

### Present

Councillors Julie Bird (Chair)  
Hannah Hockaday (Vice-Chair)  
Dave Ashmore  
Jennie Brent  
Paul Godier  
Steve Hastings  
Leo Madden  
Lee Mason  
David Tompkins

#### 1. Apologies for Absence (AI 1)

Apologies for absence were received from Councillors Suzy Horton, Gerald Vernon-Jackson, Stephen Morgan and Ken Ellcome. Standing deputy Councillor Ryan Brent was in attendance for Councillor Ellcome.

#### 2. Declarations of Members' Interests (AI 2)

There were no declarations of interest.

#### 3. Minutes of the previous meeting held on 24 February 2016 (AI 3)

RESOLVED that the minutes of the Licensing Policy Committee held on 24 February 2016 be agreed as a correct record and signed by the chair.

#### 4. The Gambling Act 2005 - Draft Statement of Licensing Policy (AI 4)

The Licensing Manager introduced the report. Members sought clarification on Fixed Odds Betting Terminals (FOBTs) and betting shops. Following a discussion the Licensing Manager agreed to seek further information regarding the restrictions in relation to the amount of betting premises under planning legislation and agreed to circulate this information to the Planning and Licensing Committee members. The Licensing Manager also agreed to circulate information to the Licensing Committee members on the categories of gaming machines including limits on stakes and prizes.

RESOLVED that the Licensing Committee agrees the draft Gambling Act 2005 Statement of Licensing Policy as set out in Appendix A; and instructs the Licensing Manager to undertake a process of consultation and to prepare a final draft of the policy statement for further consideration by the Committee by no later than the end of July 2017, and for subsequent approval by the full Council.

**5. The Licensing Act 2003 - Draft Statement of Licensing Policy (AI 5)**

The Licensing Manager introduced the report. Members sought clarification on the Late Night Levy and the Cumulative Impact Zone in particular CCTV in Guildhall Walk. Members also requested that the information contained within paragraph 2.2 in respect of City Deal sites be amended to delete this reference.

RESOLVED that the Licensing Committee agrees, with any necessary amendments, the draft statement of licensing policy prepared in accordance with Section 5 of the Act as set out in Appendix A; and instructs the Licensing Manager to undertake a process of consultation and to prepare a final draft of the policy for further consideration by the Committee and approval by the Council by no later than end of July 2017.

The meeting concluded at 10.35 am.

.....  
Signed by the chair, Councillor Julie Bird.



**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 10 MARCH 2017

**Subject:** ANNUAL REVIEW OF LICENSING FEES

**Report by:** LICENSING MANAGER

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

---

**1. Purpose of report**

The purpose of this report is for the Committee to consider a review of the non-statutory fees charged for licences/registrations which are administered by the Licensing Committee.

**2. Recommendations**

- a) That the Licensing Committee note the comments of this report and determine the level of fee to be adopted;
- b) That the approved fees be implemented with effect from 1 April 2017 unless otherwise stated within the report; and
- c) That the Director of Culture and City Development be given authority to advertise, (where appropriate) such fees and charges that are subject to any formal public statutory consultation.

**3. Background**

3.1 It has always been the aim of the Committee to work towards total cost recovery, where possible, in undertaking the various licensing functions. For some licences/permits, no fee is payable or the licensing fees are controlled centrally by Government. In these cases, the Council cannot vary the fees to take into account local administrative costs.

3.2 However, members should be aware that the EU Services Directive 2009 makes specific provisions in relation to the setting of fees for certain types of licences. In general terms, charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. Councils must not use fees to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

A copy of the LGA Guidance on locally set fees is attached as Appendix A together with an update on the legal challenge for setting licensing fees in respect of sex establishments (*Hemmings v Westminster City Council*) outlining the ruling of the European Court of Justice in November 2016.

- 3.3 In summary, the above case and the final ruling of the European Court of Justice confirmed that Licensing Authorities were not permitted to use the fee setting mechanism to raise revenue for the Council in accordance with the provisions of the EU Services Directive. It confirmed that licensing authorities were permitted to charge for the cost of the administration of the licensing regime including compliance checks on licensed premises but the compliance aspect of the licensing fee should not be charged upon application but split between an initial application fee and, if the licence was subsequently granted, an additional fee should be payable to recognise any compliance costs.
- 3.4 Given that this ruling was only published at the latter part of 2016, further work will now need to be undertaken by the Licensing Authority in the forthcoming financial year (17/18) to enable full compliance with the Courts ruling, specifically division and allocation of all on costs associated with the authorisation and application procedures and the subsequent compliance costs should be a licence be granted.
- 3.5 On 5 November 2008, the Licensing Committee resolved that it would review, on an annual basis, those fees where the Council has discretion to set the amount to be charged (as opposed to statutory fees which have been fixed by Parliament) to take into account inflationary and other increased costs (Minute No. 15/08 refers).
- 3.6 Due to increasing budget pressures on the Council, the Committee will need to consider whether it wishes to continue to work towards the licensing service achieving total cost recovery on those fees where it has the discretion to set the amount and thereby reducing any deficit which has been identified and otherwise has to be met by the Council tax payer.
- 3.7 To achieve this objective, the Licensing Service in conjunction with Financial Services have developed a model to undertake a thorough analysis of the costs associated with each of the various licensing functions and what increases, if any, are necessary to the existing licence fees to meet total cost recovery.
- 3.8 This analysis took into account the on-costs for employees, supplies and services, agency and other contracted services so that the licensing budget meets the cash limit requirement as set down in the Council's budget and continues to rectify any deficits, or indeed identify any surplus.
- 3.9 At the meeting of the Licensing Committee on 15 January 2016, it was determined that a staged approach over 5 years to achieve cost recovery for private hire operators would continue subject to annual review but not for hackney carriage vehicle and driver licences as analysis and revenue projections appeared to establish that the increase in fees over the previous

years had addressed the deficit problem. However this position now needs to be reviewed given further analysis this year as set out in the finance comments at paragraph 7.4 of this report. Members will need to consider whether it is appropriate and proportionate to re-commence a period of deficit recovery as proposed in Appendix B of this report.

### 3.10 Summary of proposed changes for consideration

- **Private Hire Vehicles and Drivers**

No increases in fees are proposed. However it is proposed to amend the current system of charging for a higher licence fee for those vehicles over 6 years old. Having regard to the change in policy<sup>1</sup> in respect of vehicle age and testing requirements, it is proposed to introduce a single fee for the grant or renewal of vehicle licences regardless of the age of the vehicle.

The new minimum testing arrangements for vehicles are set out below:

**0 - 3 years old** - one full ("Max") mechanical inspection every year;

**3 - 5 years old** - two vehicle mechanical inspections every year, the second test to be approximately 6 months after the first test and to comprise of a "mini" test for lighting equipment, exhaust, fuel and emissions; and vehicle body and structure. **Should the vehicle fail ANY of the mini test criteria, a full inspection and test will subsequently be booked and completed, at the additional expense of the vehicle proprietor.**

**5 - 8 years old** - two full vehicle mechanical inspections every year.

The principle reason for recommending the introduction of a single fee is to streamline the existing administrative arrangements in the interests of greater efficiency and reduce the risk of error in terms of fees charged.

If members are not persuaded to charge a single fee then the alternative option will be to introduce three separate vehicle licence fees to recognise each of the above brackets of vehicle mechanical inspection criteria.

**Drug screening fees** - It is proposed to decrease the current cost of drug testing for driver licences. This is to reflect a reduction in the cost of the test kits and laboratory fees and therefore the fee should reduce accordingly.

---

<sup>1</sup> With effect from 1 April 2016, all private hire and hackney carriage vehicles shall be under 3 years of age on first licensing and may remain licensed until 8 years of age (provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines). Minute No. 9/2016 refers.

- **Sex Establishment Licence and Scrap Metal Dealers fees**

In accordance with the EU Services Directive and European Court of Justice, the fees associated with the grant or renewal of sex establishment licences and site licences in respect of scrap metal dealers need to reduce to ensure that no surplus revenue is received in relation to these licensing functions.

- **Amenities on the Highway, Street Trading Consents,**

No further increases in fees charged are considered necessary as the current licence fee meets the cost of administration and compliance checking.

- **Hackney Carriage Vehicle and Driver Licences**

As referred to in paragraph 3.9 above, a deficit totalling £40k has been identified in relation to the hackney carriage licensing function (£13k in respect of vehicles and £27k in respect of drivers).

It has been proposed that recovery of this deficit is introduced over a 5 year period, subject to annual monitoring and adjustment where necessary.

In addition, it is proposed to adopt a similar amendment as outlined for private hire vehicles and replace the higher licence extension fee with a single fee.

#### **4. Reasons for recommendations**

The reason for the recommendations is to ensure that the Committee consider the principle of working towards the licensing service achieving total cost recovery, where it has discretion to set fees, and to determine the appropriate level of charges having regard to legislation, case law and LGA guidance.

#### **5. Equality impact assessment (EIA)**

No equality impact assessment is required as the review of the annual fees does not represent a change in policy or provision of service.

#### **6. Legal Implications**

The legal implications are embodied within the report.

#### **7. Finance Comments**

7.1 The Licensing Committee have been made aware of recommendations in terms of cost recovery and the amounts required to reduce/eliminate any deficit or surplus on the licensing budget in terms of fees charged.



7.2 The recommendation put forward for consideration is based upon a thorough analysis of the costs associated with each of the licensing functions.

7.3 It is acknowledged that the review of fees in 2016 identified that the projected level of income for hackney carriages for the 2016/2017 fiscal year would be sufficient based upon the existing fees at that time and it was therefore recommended that there would be no requirement for the fees for vehicle and driver licences to increase.

7.4 However, the income anticipated at that time has not met the projected level and, taken together with an updated analysis of officer time, a deficit on the activity is indicated. Therefore it is necessary for the Committee to review the current level and determine the most appropriate method of reducing the identified deficit of £13k in respect of hackney carriage vehicles and £27k in respect of hackney carriage drivers. The committee may wish to consider reinstating the staged approach for recovery over a five year period.

Options for working towards cost recovery are set out in Appendix B - Table of Existing and Proposed fees.

7.5 Members should be cognisant that any decision as regards setting of fees that cannot be shown to be justified or reasonable could give rise to legal challenge by licence holders.

.....  
Signed by:

**Appendices:**

Appendix A Copy of the LGA Guidance on locally set fees (including an update on the European Court of Justice Ruling regarding Hemmings v Westminster City Council);

Appendix B Table of Existing and Proposed Fees;

Appendix C Summary Analysis of the Licensing Budget.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/  
rejected by ..... on .....

Signed by:

# Open for business

LGA guidance  
on locally set fees



# LGA guidance on locally set fees

Councils are responsible for administering a range of licences and approvals resulting from both national legislation and discretionary functions that are agreed locally. For the majority of these regimes the costs are recovered through fees set by each council and paid by the licence applicant. Locally set fees are a vital means of ensuring that costs can be recovered by each and every council, rather than relying on subsidy from local tax payers.

While the licensing role within local government may be long established, the decisions that are being made by individual councils in this area are facing increased scrutiny from businesses, the public and in the media, particularly in relation to fee setting. Recent case law resulting from the European Services Directive, the introduction of new licences for scrap metal dealers and the pending introduction of locally set fees for alcohol licensing have all placed an added emphasis on the need for every council to set fees in a legally robust and transparent manner.

This guidance aims to help councils understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses. It does not contain a fees calculator because this assumes a uniformity of service design and associated costs and it is vital that councils are free to design the service that best serves the needs of their community and recover costs accordingly.

# 1. Key issues

## Understanding businesses and supporting growth

Councils across the country are working hard to encourage economic growth in their area by providing practical support to businesses, tackling barriers to growth and creating the right conditions for businesses to thrive again. Regulation and licensing are key parts of the support package available to businesses through their council.

In the risk based world of regulation, licensing has become an anomaly that can imply a standard approach is required for every business, in so far as every business is required to apply for a licence. This contrasts with the operation of Trading Standards services where, broadly, the legislation sets out expectations and all businesses are expected to meet them with no paperwork needed. However, where it is appropriate and proportionate, licensing provides the opportunity to impose specific conditions to tackle issues in specific areas or properties that may not otherwise be available if the licensing system were not in place.

While we cannot alter the law that governs each licensing regime easily, it is possible to consider how resources can be focused on risk; whether business support is effective and how the burden of inspections can simply be removed where it is not necessary. A streamlined approach to licensing will ensure that fees are kept to a minimum and businesses can be encouraged to prosper.

## Designing your service based on local priorities and need

While economic growth is a priority for every council in the country, there is also the need to ensure that licensing regimes can continue to protect communities and visitors; manage public health risks; and remain responsive to local concerns. The balance of all these factors, including the drive to encourage business growth, will vary for each local area. Councils can take the opportunity to work with businesses, community groups and residents to design a licensing service based on local priorities and understand the implications that this will have for the fees charged.

## How does the European Services Directive impact on locally set licence fees?

The European Services Directive<sup>1</sup> aims to make it easier for service and retail providers to establish a business anywhere within Europe. The principle of ensuring that regulation is transparent and that the burdens placed on businesses are kept to a minimum resonates entirely with the way councils work. However, the legal requirements in the Directive do have practical implications for local licensing regimes, including fee setting.

---

<sup>1</sup> EU Services Directive - <http://tinyurl.com/EUServD>

Further guidance about the entirety of the European Services Directive is available on the Department for Business, Innovation and Skills (BIS) website<sup>2</sup>. Councils should specifically note that the Directive does not apply to licensing of taxi or gambling activities, however, the principles remain a helpful way of providing a transparent and business-friendly approach to licensing.

## Principles of the Services Directive

The general principles of the Services Directive apply to all processes and administrative procedures that need to be followed when establishing or running a service or retail business, including the setting, charging and processing of fees for licences. The core principles of the Directive – non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.

Most principles are self-explanatory, but the principle of ‘non-discrimination’ requires a little more explanation. In the Services Directive it is defined as meaning “the general conditions of access to a service, which are made available to the public at large by the provider [and] do not contain discriminatory provisions relating to the nationality or place of residence of the recipient.”

This applies at the local level when considering fee setting meaning that all applicants must be treated equally irrespective of location and/ or nationality. Councils should not, for instance, seek to subsidise businesses operating in one geographical area by offering comparatively lower fees than required of those operating in another. Such an approach discriminates against those businesses located elsewhere in the locality.

## Administering payment of fees

Under the Services Directive councils need to ensure that full details of any fees are easily accessible online, including the ability to make payments online.

Councils should be able to separate out the cost of processing an initial application from those costs associated with the on-going administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.

In practice, where the number of rejected applications is low, the simplest approach will be to charge the full fee from the outset but to ensure that any rejected applications receive a refund aligned to the on-going costs of delivering the licensing regime. Alternatively, where permitted by legislation, councils can choose to charge an initial administration fee paid by all applicants and only request a further fee from those applicants that are successful. Councils will need to consider whether this approach will create additional work and chasing late payments could have a detrimental impact on relations with businesses. Councils could opt to include the payment of the second fee as a condition of the licence if this was possible under the individual licensing laws.

---

<sup>2</sup> BIS guidance on the EU Services Directive - <https://www.gov.uk/eu-services-directive>

The process adopted and information available about this should be simple and cost effective for both the council and businesses.

## Reasonable and proportionate

The Directive also includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. **Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.**

## Hemming v Westminster

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In *Hemming v Westminster*<sup>3</sup>, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

A full briefing on the case can be found on the LGA website<sup>4</sup>. The case is on-going at the time of writing and decisions may yet be appealed by Westminster City Council.

## Keeping fees under review

Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund.

To ensure that fees remain reasonable and proportionate it is necessary to establish a regular and robust review process. This has particular advantages in the early stages of a new licensing regime, as with the Scrap Metal Dealers Act, where fees have been set on best guess estimates of the number of applications that will be received.

<sup>3</sup> Court of Appeal ruling for *Hemming v Westminster* – 24 May 2013  
<http://cornerstonebarristers.com/wp-content/uploads/2013/05/Hemming-APPROVED-Judgement.pdf>

<sup>4</sup> <http://www.local.gov.uk/regulatory-services-and-licensing>



Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, *Hemming v Westminster* stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year<sup>5</sup>, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered<sup>6</sup>, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of *R v Tower Hamlets LBC (1994)*<sup>7</sup> may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

## Open route for challenge

In the interests of transparency it is helpful to give an indication of how the fee level has been calculated; the review process in place and a contact method for businesses to query or challenge the fees. Open consultation with businesses and residents to design a local service, including understanding the implications for fees, helps to provide a robust answer to challenge.

It may also prove helpful to engage elected members in the scrutiny of fees. They will use their knowledge as local representatives to consider councils’ assumptions and challenge them where necessary.

Councils may want to consider the following elements when setting licence fees. It should be noted that this list is for consideration only, as councils may choose not to charge for all the elements listed, or there may be additional areas of work carried out during the licensing process that were not highlighted during the development of this guidance.

Individual pieces of legislation may also have specific items that may or may not be chargeable under the scheme. The lists below will apply for most schemes, but should always be checked against the relevant piece of legislation. If councils have any concerns, they should seek the advice of their in-house legal department.

5 *R v Manchester City Council ex parte King* (1991) 89 LGR 696. <http://tinyurl.com/qyc97bz>

6 *R v Westminster City Council ex parte Hutton* (1985) 83 LGR 516.

7 *R v London Borough of Tower Hamlets ex parte Tower Hamlets Combined Traders Association*, 19 July 1993; [1994] COD 325 QBD Sedley J. Although the decision was about the London Local Authorities Act 1990, it would appear to have general effect as a principle. <http://tinyurl.com/oxmfuj6>

# 2. So what can be included in a licence fee?

## Initial application costs could include:

- **Administration** – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.
- **Initial visit/s** – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.
- **Third party costs** – Some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.
- **Liaison with interested parties** – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.
- **Management costs** – Councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the ‘on-costs’ attached to officer time referenced below.
- **Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.
- **On costs** – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.
- **Development, determination and production of licensing policies** – The cost of consultation and publishing policies can be fully recovered.
- **Web material** – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.
- **Advice and guidance** – This includes advice in person, production of leaflets or promotional tools, and online advice.
- **Setting and reviewing fees** – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

## Further compliance costs could include:

- **Additional monitoring and inspection visits** – Councils may wish to include a charge for risk based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.
- **Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.
- **Registers and national reporting** – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

## Unrecoverable costs

It is worth considering that the costs of defending appeals in the magistrate's court or via judicial review can be recovered through the courts. Including these costs within the fees regime could lead to recovering the costs twice, which would be inconsistent with the Services Directive.

Hemming v Westminster also means that costs of enforcement action against unlicensed premises cannot be recovered through the licence fee.

There is currently no guidance or case law describing the point at which recoverable compliance costs switch over to unrecoverable enforcement costs. It should be noted that Hemming v Westminster is likely to be appealed to the Supreme Court with a possible reference being made to Europe for determination. If that happens, there may be more to follow on this issue with, hopefully, greater clarification on the legal position. We are aware that some councils have drawn the line at the point where it looks probable that the licence will be revoked, while others include everything up until the point where the appeals goes to the magistrates' court. These approaches have not yet been tested in court.

## Further support

The practical approach to designing a local licensing service, allocating costs accurately and considering legal implications can be a difficult task; therefore it is strongly recommended that licensing teams work with their legal advisors and finance teams to make the best use of all expertise.

In addition, councils should consider working collaboratively with neighbouring authorities to provide mutual support. Working with other councils and reviewing fees set by similar authorities can be an extremely valuable way of ensuring that fees are not perceived to be disproportionate by businesses.

## Acknowledgments

This document was put out to public consultation between 5 and 29 November 2013. It has been reviewed and cleared by the LGA's in-house legal team and external Counsel.

We are very grateful to all those listed below who responded to the consultation exercise:

**The Home Office**

**Bolton Council**

**Bristol City Council**

**Broadland District Council**

**Members of the LGA Licensing Forum**

**Oxford City Council**

**Southampton City Council**

**West of England Group of Local Authorities**





**Local Government Association**

Local Government House  
Smith Square  
London SW1P 3HZ

Telephone 020 7664 3000  
Fax 020 7664 3030  
Email [info@local.gov.uk](mailto:info@local.gov.uk)  
[www.local.gov.uk](http://www.local.gov.uk)

© Local Government Association, January 2014

For a copy in Braille, larger print or audio,  
please contact us on 020 7664 3000.  
We consider requests on an individual basis.

## LGA advice note - European Court of Justice ruling in Hemming v. Westminster case

### December 2016

#### Purpose

This note provides advice to LGA members on the issue of licence fees, following the recent European Court of Justice (ECJ) ruling in the Hemming v. Westminster case relating to licensing fees for sex establishments. The case relates to the correct interpretation of the 2006 EU Services Directive, which is applied in the UK by the Provision of Services Regulations 2009. However, the Directive does not apply to taxis or gambling activities.

#### Background

In April 2015, the Supreme Court ruled in favour of Westminster City Council in a long running dispute relating to the licence fees charged to a group of sex establishments in Westminster. The Supreme Court overturned an earlier Court of Appeal ruling by concluding that the Services Directive 2006 does not prevent licensing authorities from charging fees that are proportionate to the cost of administering and enforcing the relevant licensing framework, to those who receive licences.

However, the Supreme Court sought an opinion from the ECJ regarding how such fees should be levied. It identified two different approaches to charging fees:

- Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
- Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

The Supreme Court found the type A approach of charging two fees is permissible under the Services Directive but considered that the type B approach of charging a single fee was more problematic.

#### European Court of Justice Ruling - implications

The ECJ published its ruling on the issue on 16 November 2016, following an earlier opinion by the Advocate General in July 2016.

It is important to note that the **ruling of the ECJ applies solely to the issue that was referred to it**, that is whether a type B approach to fee setting is compatible with the Services Directive.

The ECJ ruled that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive '*precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.*'

Therefore, **licensing authorities will need to amend their fee structures to ensure that application fees relate solely to the cost of authorisation procedures** (ie, the costs associated with reviewing an application and granting / refusing a licence). **Under the type A approach, on which the Supreme Court ruling still holds, successful licence applicants should subsequently be charged an additional fee** relating to the costs of administering and enforcing the relevant licensing framework.

It is worth noting on this point that the Supreme Court view – which again still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received:

*‘...nothing in article 13(2) precludes a licensing authority from charging a fee for the possession or retention of a licence, and making this licence conditional upon payment of such fee. Any such fee would however have to comply with the requirements, including that of proportionality, identified in section 2 of Chapter III and section 1 of Chapter IV. But there is no reason why it should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.’*

### **Wider issues**

The opinion of the Advocate General and the commentary contained in the judgement of the ECJ went beyond the specific issues that had been referred to it, and make further challenges on the issue of licensing fees highly likely. Of particular concern, both the opinion and the commentary in the ruling appeared to reopen the issue of whether including the costs of administering and enforcing licensing regimes within licence fees is compatible with the Services Directive, with a strong indication that the Advocate General and ECJ believed that it is not.

**While the Supreme Court’s view on this issue remains in place at the current time, meaning councils can continue to include these costs in their licence fees**, it seems inevitable that there will be a further challenge on this issue at some point in future.

### **Claims for restitution**

As has happened already, licensing authorities will inevitably receive claims for restitution following the ruling of the ECJ. Some opportunistic businesses and legal advisors are likely to seek reimbursement of the whole of previously paid type B licence fees, on the grounds that they have now been ruled incompatible with the Services Directive. However, the only legitimate claim for restitution from type B fees relates to the loss of interest that a licence holder can be deemed to have suffered by virtue of paying the entirety of the fee upfront, rather than the fee being split into two payments on application and on successfully being awarded a licence.

Claimants should be expected to identify what they think these realistically minimal costs amount to. However, in order to defend these claims, councils will need to be able to identify the proportions of their fees that related to authorisation procedures and to administration and enforcement.



### **Next steps**

The LGA is holding discussions with Government about this issue, and will continue to emphasise the need for licensing regimes to be self-funding, a view which we believe Government shares. The long term outcome of this case is clearly closely linked to future negotiations on the terms of Britain's exit from the European Union, and this will therefore be a key priority for us in our work on Brexit.

We would be grateful if any council receiving a new challenge on licence fees and the issue of enforcement costs following the ECJ ruling could make us aware of this at [rebecca.johnson@local.gov.uk](mailto:rebecca.johnson@local.gov.uk)



# Briefing

Layden House, 76-86 Turnmill Street, EC1M 5LG  
Email [info@local.gov.uk](mailto:info@local.gov.uk)  
Tel 020 7664 3000 Fax 020 7664 3030  
[www.local.gov.uk](http://www.local.gov.uk)

**This page is intentionally left blank**

Table of Existing and Proposed Fees

<b>PART ONE - IMMEDIATE INCREASE/DECREASE TO ACHIEVE COST RECOVERY - WEF 1 APRIL 2017</b>			
<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
<b>Private Hire and Hackney Carriage Licences</b>			
<b>Private Hire Vehicles<sup>1</sup></b>			
Grant or Renewal	164.00	180.00	Having regard to the change in policy <sup>2</sup> in respect of vehicle age and testing requirements, it is proposed to introduce a single fee for the grant or renewal of vehicle licences regardless of the age of the vehicle. (See paragraph 3.10 of the main report for further information).
Renewal Extension	269.00	<b>REMOVE</b>	See note above for removal of this charge as this fee has become redundant having regard to the change in vehicle age policy.
Grant - January only	75.00	75.00	
Car-to-car transfer fee	126.00	126.00	
Car-to-car transfer fee - Admin fee	26.00	26.00	
Temporary car-to-car transfer fee	64.00	64.00	
Vehicle Inspection and Re-test fee	49.00	49.00	

<sup>1</sup> These fees are subject to public consultation.

<sup>2</sup> With effect from 1 April 2016, all private hire and hackney carriage vehicles shall be under 3 years of age on first licensing and may remain licensed until 8 years of age (provided the vehicle is mechanically fit and supported by an evidenced service history in line with the manufacturer's guidelines). Minute No. 9/2016 refers.

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
Certificate of compliance - Duplicate copy	10.00	10.00	
Section 49 Transfer - Admin fee	45.00	45.00	
Change of Vehicle Registration Number	45.00	45.00	
Plate Issue Fee	10.00	10.00	
<b>Private Hire Drivers:</b>			
Grant or renewal - 1 year	95.00	95.00	
Grant or renewal - 3 years	257.00	257.00	
Replacement badge	13.00	13.00	
DBS administration fee	11.00	11.00	
Geography test - Each separate attempt	12.00	12.00	
Drugs Test	62.00	50.00	Decrease in cost of drug screening to reflect a reduction in the cost of test kits and laboratory fees.
<b>Amenity on the Highway Permits:</b>			
<b>Goods on the highway;</b>			
Grant	296.00	296.00	
Renewal	169.00	169.00	
Variation	73.00	73.00	
Transfer	40.00	40.00	

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
<b>Table and chairs on the highway:</b>			
Initial application fee	127.00	127.00	
<b>Additional fee and subsequent renewal fee:</b>			
Highway area up to 5 m2	244.00	244.00	
Highway area between 5 m2 and 10 m2	483.00	483.00	
Highway area between 10 m2 and 15 m2	728.00	728.00	
Highway area between 15 m2 and 20 m2	966.00	966.00	
Highway area greater than 20 m2	1207.00	1207.00	
A Board Application	75.00	75.00	
<b>Street trading consents:</b>			
Grant or renewal	1736.00	1736.00	
<b>Scrap Metal Dealers:</b>			
Site Licence - Grant and renewal	1000.00	450.00 <sup>3</sup>	See paragraph 3.10 of report for reasons for reduction in fee.
Site Licence - Variation	100.00	100.00	
Collectors Licence - Grant and renewal	300.00	300.00	
Collectors Licence - Variation	100.00	100.00	
Replacement Licence	25.00	25.00	

<sup>3</sup> Reduction in fee to have immediate effect.

Licence Type:		Existing Fee: £	Proposed Fee: £	Comments:
<b>Sex Establishments:</b>				
Grant	11,400.00	5,000.00 <sup>4</sup>		Having regard to the ruling of the European Court of Justice in relation to the setting of fees, it is necessary to reduce further the cost of the licence fee in relation to the grant and renewal of licences so as to ensure that the revenue raised does not create a surplus above the cost of administration and authorisation (including compliance).  Given that this ruling was only published at the latter part of 2016, further work will now need to be undertaken by the Licensing Authority in the forthcoming financial year (17/18) to enable full compliance with the Courts ruling, specifically division and allocation of all on costs associated with the authorisation and application procedures and the subsequent compliance costs should be a licence be granted.
Renewal	3800.00	3,000.00		
Transfer	1000.00	500.00		
Variation	1000.00	500.00		

<sup>4</sup> Reduction in fees to have immediate effect.

**PART TWO - PRIVATE HIRE OPERATORS LICENCE  
PHASED INCREASE TO ACHIEVE COST RECOVERY - WEF 1 APRIL 2017 (Ongoing 5 Year planned increase)**

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Fee Year 4 (2017/18)</b>	<b>Fee Year 5 (2018/19)</b>	<b>Comments:</b>
<b>Private Hire Operators<sup>5</sup></b>				
Grant/Renewal - 1 year	541.00	616.00	700.00	These fees replicate the previous agreed approach by the Licensing Committee to correct the current deficit over a period of 5 years.
Grant/Renewal - 5 years	2705.00	3080.00	3500.00	

**PART THREE - HACKNEY CARRIAGE VEHICLES AND DRIVER LICENCES  
PHASED INCREASE TO ACHIEVE COST RECOVERY - WEF 1 APRIL 2017 (Recommendation of a 5 year planned increase)**

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Fee Year 1 (2017/18)</b>	<b>Fee Year 2 (2018/19)</b>	<b>Fee Year 3 (2019/20)</b>	<b>Fee Year 4 (2020/21)</b>	<b>Fee Year 5 (2021/22)</b>	<b>Comments:</b>
<b>Hackney Carriage Vehicles<sup>6</sup>:</b>							
Grant or renewal	219.00	285.00	296.00	308.00	319.00	330.00	<sup>7</sup>
Renewal - extension	371.00	<b>REMOVE</b>	<b>REMOVE</b>	<b>REMOVE</b>	<b>REMOVE</b>	<b>REMOVE</b>	<sup>8</sup>
Car-to-car transfer fee	132.00	<b>132.00</b>					

<sup>5</sup> These fees are subject to public consultation.

<sup>6</sup> These fees are subject to public consultation.

<sup>7</sup> Fees shown from 2018/19 onwards are for illustrative purposes only and may be liable to change subject to annual review of fees.

<sup>8</sup> As private hire vehicles. (See paragraph 3.10 of report for further information).

Car-to-car transfer - Admin fee	27.00	27.00
Temporary car-to-car transfer fee	66.00	66.00
Vehicle inspection and re-test fee	52.00	52.00

Licence Type:	Existing Fee: £	Fee Year 1 (2017/18)	Fee Year 2 (2018/19)	Fee Year 3 (2019/20)	Fee Year 4 (2020/21)	Fee Year 5 (2021/22)	Comments:
Certificate of compliance - Duplicate copy	10.00	10.00					
Section 49 transfer - Admin fee	45.00	45.00					
Change of vehicle registration number	45.00	45.00					
Plate issue fee	10.00	10.00					
<b>Hackney Carriage Drivers:</b>							
Grant or renewal - 1 Year	105.00	123.00	142.00	160.00	178.00	197.00	9
Grant or renewal - 3 Years	246.00	289.00	332.00	375.00	418.00	460.00	
Replacement badge	13.00	13.00					
DBS administration fee	11.00	11.00					
Geography test - Each separate attempt	12.00	12.00					
Drugs test	62.00	50.00					See comments as for Private Hire Drivers.

<sup>9</sup> Fees shown from 2018/19 onwards in respect of 1 year or 3 year driver licences are for illustrative purposes only and may be liable to change subject to annual review of fees.



Licensing  
 Cost Recovery Model  
 Forecast 2016/17

LOCALLY SET FEES	PH Private Hire	HC Hackney Carriage	AOH Amenities on Highway	ST Street Trader	SE Renewal Sex Shop
TOTAL EXPENDITURE 2015/16 (ACTUAL)	376,776	120,914	18,765	22,489	1,034
TOTAL INCOME 2015/16 (ACTUAL)	(333,756)	(110,900)	(32,569)	(36,610)	10,898
RECOVERY	<b>43,020</b>	<b>10,014</b>	<b>(13,804)</b>	<b>(14,121)</b>	<b>11,932</b>
TOTAL EXPENDITURE 2016/17 (BUDGET)	321,832	150,150	32,166	37,577	13,952
TOTAL INCOME 2016/17 (BUDGET)	(319,760)	(145,011)	(35,655)	(36,456)	(15,200)
RECOVERY	<b>2,072</b>	<b>5,140</b>	<b>(3,489)</b>	<b>1,121</b>	<b>(1,248)</b>
TOTAL EXPENDITURE 2016/17 (FORECAST)	375,704	165,839	20,838	27,339	1,180
TOTAL INCOME 2016/17 (FORECAST)	(374,746)	(125,072)	(35,000)	(36,460)	(3,800)
RECOVERY	<b>958</b>	<b>40,767</b>	<b>(14,162)</b>	<b>(9,121)</b>	<b>(2,620)</b>
TOTAL EXPENDITURE 2017/18 (BUDGET)	360,250	164,585	21,728	28,505	1,230
TOTAL INCOME 2017/18 (BUDGET)	(367,327)	(125,072)	(35,655)	(36,456)	(3,800)
RECOVERY	<b>(7,077)</b>	<b>39,513</b>	<b>(13,928)</b>	<b>(7,951)</b>	<b>(2,570)</b>

**This page is intentionally left blank**