

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 policy¹ 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.

¹ 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.

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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: