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# NOTICE OF MEETING

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## LICENSING COMMITTEE

FRIDAY, 15 JANUARY 2016 AT 9.30 AM

THE EXECUTIVE MEETING ROOM, THIRD FLOOR, THE GUILDHALL,  
PORTSMOUTH

Telephone enquiries to Lucy Wingham 02392 834662

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

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### Licensing Committee Members:

Councillors Julie Swan (Chair), Hannah Hockaday (Vice-Chair), Dave Ashmore, Jennie Brent, Ken Ferrett, Margaret Foster, David Fuller, Paul Godier, Aiden Gray, Scott Harris, Stephen Hastings, Lee Mason, Phil Smith, David Tompkins and Gerald Vernon-Jackson

### Standing Deputies

Councillors Ryan Brent, Ken Ellcome, Lee Hunt, Ian Lyon and Rob Wood

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(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 13 January 2015 (Pages 1 - 4)**

The minutes of the Licensing Policy Committee meeting held on 13 January 2015 are attached.

RECOMMENDED that the minutes of the meeting of the Licensing Policy Committee held on 13 January 2015 be agreed as a correct record and signed

by the chair.

**4 Annual review of Licensing Fees (Pages 5 - 32)**

Purpose

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

RECOMMENDED

- a) That the Licensing Committee note the contents of the report and determine the level of fee to be adopted;
- b) That the approved fees be implemented with effect from 1 April 2016 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.

**5 Licensing Act 2003 - Statement of Licensing Policy 2016 - 2021 Approval of interim measures (Pages 33 - 36)**

Purpose

The purpose of this report is for the Licensing Committee to recommend to Full Council that it adopts the existing Statement of Licensing Policy with effect from 26 January 2016 pending the review and subsequent consultation on the proposed amendments to the Statement of Licensing Policy in accordance with the Licensing Act 2003, for the period 2016 - 2021.

RECOMMENDED that the Licensing Committee recommend to Full Council that it adopts the existing Statement of Licensing Policy with effect from 26 January 2016 as an interim measure pending the Council making a final decision on the outcome of the review and consultation on the Statement of Licensing Policy for the period 2016 until 2021.

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 Tuesday, 13 January 2015 at 9.30 am in the Council Chamber, the Guildhall, Portsmouth.

### Present

Councillors Ken Ellcome (Vice-Chair)  
Margaret Adair  
Ken Ferrett  
Margaret Foster  
David Fuller  
Colin Galloway (Standing deputy)  
Frank Jonas  
Robert New (Standing deputy)  
Eleanor Scott  
Phil Smith  
Les Stevens  
Sandra Stockdale  
Julie Swan

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

Apologies for absence were received from Councillors Hannah Hockaday, Linda Symes and Lee Mason. Apologies for absence were also received from standing deputy Councillor Hugh Mason.

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

Councillor Robert New declared an interest in agenda item 3 - Local Government (Miscellaneous Provisions) Act 1976 - review of vehicle and operator licensing fees - consideration of objections - in that a member of his extended family works for Aqua Cars.

#### 3. Local Government (Miscellaneous provisions) Act 1976 - review of vehicle and operator licensing fees - consideration of objections. (AI 3)

The Licensing Manager introduced the report and explained that at its meeting on 21 November 2014, the committee agreed to an immediate increase in fees to achieve full cost recovery and that the approved fees be implemented immediately. Delegated authority was granted to advertise such fees and charges that were subject to any formal public consultation. The purpose of this report is for members to consider objections that have been made in response to the proposed variation to the level of fees in respect of private hire and hackney carriage licences.

Deputations were heard from the following trade representatives;

Mr Chris Dixon, Hackney Carriage trade representative included the following points in his representations:

- Proposals were given last year with minimal consultation.
- The feeling was so strong amongst the trade that the then leader of the council met with the trade to explain the reasoning behind the proposals.
- The council are having to make cuts and the taxi trade need to do their bit but not to the extremes proposed.
- Would urge members to continue with a 5year cost recovery.

Mr Viv Young, Hackney Carriage trade representative who included the following points in his representations:

- The room is packed with a number of disgruntled drivers who work 12-15 hour days to survive.
- Many need financial assistance to help make ends meet.
- The taxi industry has never been as quiet, particularly so after 10pm, as it is at the moment.
- The city is a ghost town.
- All the drivers are increasing their working hours but for what?
- The taxi trade does not have the benefit of being subsidised like the buses.
- Appreciate that the council are under huge financial pressures.
- Apologise for the number of emails I have sent but I believe this shows my passion for the industry.

Mr Perry McMillan, Unite trade union representative included the following points in his representations:

- We are in a time of recession and taxi work is a difficult job to be in.
- There is a mis-understanding, taxi drivers do not earn a lot these days certainly not in this city.
- There is a huge amount of trust in our line of work.
- Members have let us down and need to build that trust back up in the city.
- These drivers are the city's eyes and ears.

Mr Dave Griffiths, Unite trade union representative included the following points in his representations:

- The trade were not happy with the previous decision but accepted that spread over 5years was the better deal.
- Would urge members to do the same today.

Mr Bruce Hall, General Manager Aqua Cars Limited included the following points in his representations:

- Drivers understand that the council need to recover costs and that the 5year option was the better deal.
- Not one member knows how much a driver licence costs. Still waiting for FOI response from Portsmouth.
- Would urge members to keep to the 5year plan.

## **RESOLVED**

**(1) That the committee considered the objections received in response to the proposed variation to licensing fees.**

**(2) To introduce an immediate increase in fees to achieve full cost recovery for private hire vehicle and driver licenses be implemented.**

**(3) The fees for private hire operators, hackney carriage vehicle and driver licences be recovered over a period of 5 years to achieve full cost recovery.**

**4. Licensing Act 2003 - Local Neighbourhood Notification Scheme - Proposed Amendments (AI 4)**

The Legal Advisor introduced the report and explained that following changes to both the Licensing Act 2003 and statutory guidance in relation to the withdrawal of the "vicinity" test for valid representations to be made and considered, and legal advice regarding the "Albert Hall" case it is proposed to amend the current system of notifications of licensing applications to members of the public. Members of the public are also now able to receive notification of licensing applications via registering with the public access on the council website.

**RESOLVED that the Licensing Committee minute 5/2006 be rescinded and substituted with:**

**(1A) That, as a matter of local policy, the Head of Health, Safety & Licensing be authorised to continue with an amended neighbourhood notification scheme for the grant (and major variation) of premises licences and club premises certificates pursuant to section 2, Local Government Act 2000 in order to promote the social well-being of the area and to bring licensing applications to the attention of persons likely to be affected;**

**(1B) That the Head of Health, Safety & Licensing be given delegated authority to administer the neighbour notification scheme for licensing applications consistent with those mentioned in (1A) above by way of:**

- Notification of licensing applications to all members via the weekly Members' Information Service (MIS) and notification of licensing applications to ward councillors'.**
- Notification of licensing applications via public access on the council website.**
- Notification of licensing applications via site notices at the discretion of the Head of Health, Safety & Licensing and after having regard to the circumstances of any individual application received.**

**5. Schedule 5, Local Government (Miscellaneous Provisions) Act 1982 and sections 115A - 115K Highways Act 1980 - Provision of Highway Amenities - Determination of Delegation Powers and other Associated Matters (AI 5)**

The Licensing Manager explained to the committee that following legal advice from the City Solicitor the policy itself does not need council approval but those matters relating to delegation to the Licensing Committee and officers still require ratification by Council. Therefore members were requested to rescind the previous Licensing Committee minute 9/2014 and substitute that decision with the recommendations outlined in the report.

**RESOLVED that Licensing Committee minute 9/2014 be rescinded forthwith and substituted with:**

- 1) **The Licensing Committee formally adopts the highway amenity policy and recommends to full Council the delegation of this function to the Licensing Committee together with:**
- **Delegation to the Head of Health, Safety and Licensing to carry out the administration of all highway matters pursuant to sections 115A -115K of the Highways Act 1980. To include the power to grant, vary, transfer and renew (but not to refuse or revoke) any individual highway amenity permission for a period of not more than 12 months and subject to such standard and special conditions as considered appropriate.**
  - **Delegation to the Head of Health, Safety and Licensing to recommend to the Licensing Committee, from time to time, such fees and/or other reasonable expenses/charges as may be appropriate to recover the costs of administration and compliance with highway amenity permissions.**
  - **Delegation to the Head of Health, Safety and Licensing to refund such fee(s) for unsuccessful applications as considered appropriate on individual merit.**
  - **Delegation to the Head of Health, Safety and Licensing to give notice of intended refusal/revocation or non-renewal of any amenity permission on individual merit.**
  - **Delegation to the Head of Health, Safety and Licensing to establish, amend, vary and/or substitute any hearing procedures, application forms, notes of guidance and other documentation commensurate with these proposals.**
- 2) **That the Licensing Committee establishes a panel (drawn from not less than 3 members of the Licensing Committee) to determine and adjudicate on any contested highway amenity applications (where permission is likely to be refused, revoked or not renewed) and whose decision will be final.**

The meeting concluded at 11.20 am.

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Signed by the chair of the meeting, Councillor Ken  
Ellcome



**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 15 JANUARY 2016

**Subject:** ANNUAL REVIEW OF LICENSING FEES

**Report by:** LICENSING MANAGER

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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**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 contents of this report and determine the level of fee to be adopted;**
- b) **That the approved fees be implemented with effect from 1 April 2016 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. 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.

A copy of the LGA Guidance on locally set fees is attached as Appendix A as well as an update on a Supreme Court ruling - Hemming v Westminster City Council referred to in the Guidance.

3.3 On 5 November 2008, the Licensing Committee resolved that these fees are to be reviewed on an annual basis to take into account inflationary and other increased costs (Minute No. 15/08 refers).

3.4 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, where it has discretion to set fees and no longer carry a deficit which has to be met by the Council tax payer.

3.5 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.

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 the current deficit.

3.6 At the formal meeting of the Licensing Committee on 10 January 2014, it was determined that a staged approach over 5 years to achieve cost recovery would be implemented in respect of certain hackney carriage and private hire fees subject to annual review.

The fees in respect of amenities on the highway, sex establishments and street trading were implemented with immediate effect to achieve cost recovery.

3.7 The Committee subsequently considered an annual review of licensing fees at its meeting on 21 November 2014 and decided upon an immediate increase in fees to achieve full cost recovery and that the approved fees be implemented with immediate effect save for those charges that were subject to any formal statutory consultation period.

Following public consultation, objections were received in respect of the fees to be charged in relation to the proposed increases.

3.8 The Committee met on 13 January 2015 to consider the objections and to determine the fees to be charged and resolved:

- i) To introduce an immediate increase in fees to achieve full cost recovery for private hire vehicle and driver licences;



- ii) That the fees for private hire operators, hackney carriage vehicle and driver licences be recovered over the period of 5 years recommended in 2013 to achieve full cost recovery.

### 3.9 **New fees and charges proposed to be introduced**

It is proposed to introduce new fees and charges to reflect legislative changes in terms of the duration of certain licences and also to recoup the costs of administering the licensing function. The proposals are set out below:

- **De-Regulation Act 2015 - Duration of Private Hire Operators Licence, Private Hire and Hackney Carriage Drivers Licences**

The Act has amended sections 53 and 55 of the Local Government (Miscellaneous Provisions) Act 1976 so that private hire and hackney carriage drivers licences shall remain in force for three years from the date the licence was first granted or for a lesser period as the council think appropriate in the circumstances of the case.

The same provision extends to private hire operators where a licence shall remain in force for five years or for a lesser period as the council think appropriate in the circumstances of the case.

It is therefore necessary for the Committee to set an appropriate level of fee relative to the extended period of time that a licence may be granted. The proposed fee as set out in Appendix B reflect a saving to the applicant in terms of the costs associated with the longer period of licensing.

- **Section 49 Transfer of Ownership - Admin Fee**

At present, the Licensing Authority makes no charge for the administrative processes associated with the updating of records where a vehicle proprietor transfers his/her interest in a vehicle to another person/company. Given the need for the Authority to achieve cost recovery where possible, it is considered appropriate for a reasonable fee to be charged to reflect the on-costs associated with this process.

- **Change of Vehicle Registration Number - Admin Fee**

As per the comments above, no fee is currently charged to update licensing records in those circumstances where a vehicle proprietor changes a vehicle's registration number (ie "personalised number plates"). As there is a cost implication in terms of officer time in processing such changes a minimal charge is proposed to recoup those costs.

- **Plate Issue Fee**

There has been a long standing policy of charging a "plate deposit" against the issue of a licence plate to be affixed to the vehicle to denote that it is a licensed private hire or hackney carriage vehicle. The design and specification of the plate has changed over the course of time and the holding of a "deposit" against the issue of a plate is now considered to be an inefficient process for both the proprietor and Licensing Authority.

It is proposed to charge a significantly reduced fee which reflects the cost of producing the actual plate as opposed to a deposit based system.

3.10 The proposed fees set out in Appendix B to this report follow the principle of cost recovery and refers to the decision of the Licensing Committee in January last year to recover fees for private hire operators, hackney carriage vehicle and driver licences over a reducing 5 year period as first commenced in 2013.

3.11 **However, as part of this year's analysis of officer time allocations and anticipated expenditure in order to project the costs to be apportioned to each licensing function, it has been identified that the projected level of income for hackney carriages for 2016/17 will be sufficient based upon the existing charge and therefore there will be no requirement for the fees for hackney carriage vehicles and drivers to increase this year (16/17 financial year).**

Therefore, the only licence fee which will continue to be recovered over the reducing 5 year period will be for Private Hire Operators as follows:

- Year 3 - 2016/17 (with effect from 1 April 2016)
- Year 4 - 2017/18 (with effect from 1 April 2017)
- Year 5 - 2018/19 (with effect from 1 April 2018)

3.12 All other fee increases are proposed to take effect from 1 April 2016 with the exception of the following charges where an immediate increase/charge of a fee is proposed (subject to public consultation for those fees connected with vehicle and private hire operator licences):

- Section 49 Vehicle Transfer - Admin Fee
- Change of Vehicle Registration Number - Admin Fee
- Plate Issue Fee
- Driver's Licence - 3 year fee
- Private Hire Operator - 5 year fee

3.13 Appendix C is a summary of the analysis of the Licensing Budget which identifies both revenue and expenditure under each licensing function.

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

The reason for the recommendations are 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 the 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 recommendation in terms of cost recovery and the amounts required to reduce/eliminate the current deficit on the licensing budget in respect of hackney carriage and private hire licences.
- 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 Members should be cognisant that any decision as regards the 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 Supreme Court 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.

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<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.

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<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.

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

4 <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)

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We consider requests on an individual basis.



## New Supreme Court ruling in licensing case of Hemmings



On April 29th 2015 the Supreme Court delivered judgment in *R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25*, in what was a significant case for regulators and the regulated of licensing or other similar regulatory regimes.

The full UKSC judgment and press summary are [available here](#).

Lord Mance gave judgment on the appeal by Westminster City Council, as the licensing authority, against a decision of the Court of Appeal in favour of the respondents, who are licensees of sex shops in Westminster.

The case concerned the situation of an applicant who applied for the grant or renewal of a sex establishment licence for any year and who had to pay a fee made up of two parts. One part was payable regarding the administration of the application and was non-refundable and another part (which was considerably larger – £29,435 in 2011/12) for the management of the licensing regime and was refundable if the application was refused.

The central issue for the court was whether it was legitimate under domestic and or European Union Law for Westminster City Council to charge the fee for the management of the regime. One of the arguments run by the Respondent (Hemmings) was that following the introduction of the Provision of Services regulations 2009 (SI 2009/2999 to give effect to Directive 2006/123/EC), Westminster City Council were no longer entitled to include within their fee the cost of running and enforcing the licencing regime.

The Supreme Court disagreed. Paragraph 17 of the judgment reads, “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 a

fee". The judgment went on to say that any such fee would need to be proportionate but that there was no reason why it should not be set at a level enabling the authorities to recover from licenced operators the full costs of running and enforcing the licensing scheme including the costs of enforcement of proceedings against those operating sex establishments without licences.

The court went on to consider two schemes used by licensing Authorities concerning with the way in which the fees were required. Scheme A, required the applicant on making the application to pay the costs of authorisation procedures and formalities and on the application being successful, a further fee to cover the costs of running and enforcing the licensing regime. Scheme B, required the applicant on making the application to pay the costs of the authorisation procedures and formalities and at the same time pay a further fee (which is returnable if the application is unsuccessful) to cover the costs of the running and enforcement of the licensing regime.

The court ruled that Scheme A was within the law but in respect of Scheme B it ruled that the answers to questions raised were not clear. One of these questions was whether this scheme and in particular the element of having to pay the fee for the enforcement and running of the regime even if subsequently unsuccessful in the application and even though this was returnable, amounted to a charge by Westminster council on the licensee. The Court directed that Westminster should continue only with Scheme A whilst it referred the issue relating to scheme B to the Court of Justice in Luxembourg.

Commentary provided by [Stuart Jessop](#) of Six Pump Court Chambers

## LICENSING SERVICE - PROPOSED FEES AND CHARGES

**PART ONE - IMMEDIATE INCREASE TO ACHIEVE COST RECOVERY (WEF 1 APRIL 2016 - except where otherwise indicated)**

<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	164.00	
Renewal – Extension	269.00	269.00	
Grant – January only	75.00	75.00	
Car-to-car transfer fee	126.00	126.00	
Car-to-car transfer – Admin fee	26.00	26.00	
Temporary car-to-car transfer fee	64.00	64.00	
Vehicle re-test fee	49.00	49.00	
Certificate of Compliance - Duplicate Copy	10.00	10.00	
<b>Proposed New Charges<sup>2</sup>:</b>			
<b>Section 49 Transfer - Admin Fee</b>	Nil	£45.00	To reflect cost of officer time in processing applications
<b>Change of Vehicle Registration Number - Admin Fee</b>	Nil	£45.00	To reflect cost of officer time in processing change of details
<b>Plate Issue Fee</b>	Nil	£10.00	Charge for cost issuing vehicle licence plate following removal of plate deposit charge.

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

<sup>2</sup> To come into immediate effect pending consultation

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
<b>Private Hire Drivers:</b>			
Grant or renewal - 1 Year	95.00	95.00	
<b>Grant or renewal - 3 Years<sup>3</sup></b>	N/A	220.00	Represents a saving of 22% over 3 years.
Replacement badge	13.00	13.00	
DBS Administration Fee	11.00	11.00	
Drugs Test	44.00	62.00	Cost of screening by laboratory has increased incrementally since introduction of charge.
Geography Test – Each Separate Attempt	12.00	12.00	
<b>Hackney Carriage Vehicles:<sup>4</sup></b>			
Grant or renewal	219.00	219.00	
Renewal - Extension	371.00	371.00	
Car-to-car transfer fee	132.00	132.00	
Car-to-car transfer – Admin fee	27.00	27.00	
Temporary car-to-car transfer fee	66.00	66.00	
Vehicle re-test fee	52.00	52.00	
Certificate of Compliance - Duplicate Copy	10.00	10.00	
<b>Proposed New Charges:<sup>5</sup></b>			
<b>Section 49 Transfer - Admin Fee</b>	Nil	45.00	To reflect cost of officer time in processing applications
<b>Change of Vehicle Registration Number</b>	Nil	45.00	To reflect cost of officer time in processing change of details
<b>Plate Issue Fee</b>	Nil	10.00	Charge for cost issuing vehicle licence plate following removal of plate deposit charge.

<sup>3</sup> New fee having regard to the provisions of the Deregulation Act 2015 and to come into immediate effect.

<sup>4</sup> These fees are subject to public consultation

<sup>5</sup> To come into immediate effect pending consultation

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
<b>Hackney Carriage Drivers:</b>			
Grant or renewal - 1 Year	105.00	105.00	
<b>Grant or renewal - 3 Years<sup>6</sup></b>	N/A	246.00	Represents a saving of 22% over 3 years.
Replacement badge	13.00	13.00	
DBS Administration Fee	11.00	11.00	
Drugs Test	44.00	62.00	Cost of screening by laboratory has increased incrementally since introduction of charge.
Geography Test – Each Separate Attempt	12.00	12.00	
<b>Amenities 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	N/A	40.00	New fee to allow a permit to be transferred to another person/company.
<b>Tables and chairs on the Highway:</b>			
Initial application fee	127.00	127.00	
Additional fee and subsequent renewal fee:			
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	

<sup>6</sup> New fee having regard to the provisions of the Deregulation Act 2015 and to come into immediate effect.

<b>Licence Type:</b>	<b>Existing Fee: £</b>	<b>Proposed Fee: £</b>	<b>Comments:</b>
<b>A Board Application</b>	N/A	£75.00	New charge following policy review and change to permit A Boards in certain locations.
<b>Sex Establishments</b>			
Grant	11400.00	11400.00	
Renewal	3800.00	3800.00	
Transfer	1000.00	1000.00	
Variation	1000.00	1000.00	
<b>Street Trading Consents:</b>			
Grant or renewal	1736.00	1736.00	Although it has been identified that the current fee is creating a surplus, this situation is likely to be reversed given a likely review by officers of the policy relating to street trading in the city in year 16/17.
<b>Scrap Metal Dealers</b>			
Site Licence - Grant and Renewal	1000.00	1000.00	
Site Licence - Variation	100.00	100.00	
Collector's Licence - Grant and Renewal	300.00	300.00	
Collector's Licence - Variation	100.00	100.00	
Replacement Licence	25.00	25.00	

## PART TWO - PHASED INCREASE TO ACHIEVE COST RECOVERY

Licence Type	Existing Fee	Fee Year 3 2016/17	Fee Year 4 2017/18	Fee Year 5 2018/19	Officer Comments
<b>Private Hire Operators:<sup>7</sup></b>					
Grant or Renewal - 1 Year	476.00	541.00	616.00	700.00	This is a 13.88% increase in fees each year.
<b>Grant or Renewal - 5 Years<sup>8</sup></b>	N/A	2705.00	3080.00	3500.00	This represents an overall saving of 24% over 5 years.  Whilst this does not provide any reduction - this method of fee increase will achieve cost recovery against the current deficit.

<sup>7</sup> These fees are subject to public consultation

<sup>8</sup> New fee having regard to the provisions of the Deregulation Act 2015 and to come into immediate effect pending consultation

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**Licensing  
Cost Recovery Model**

	LOCALLY SET FEES		PHO	PHV Renewal	PHV Extension	PHD	HCV Renewal	HCV Extension	HCD	AOH	ST	SE Renewal	SE Grant	GA	TOTAL FEES
	Private hire	Other	Private Hire Vehicle	Private Hire Vehicle	Private Hire Driver	Hackney Carriage	Hackney Carriage	Hackney Car Drive	Amenities on Highway	Street Trader	Sex Shop	Sex Shop	Sex Shop	STATUTORY	
<b>TOTAL EXPENDITURE 2014/15</b>	537,201	16,804	105,577	69,319	118,955	45,385	36,925	61,394	34,234	33,529	15,080			235,955	773,156
<b>TOTAL INCOME 2014/15</b>	(540,194)	(16,800)	(134,992)	(39,867)	(118,908)	(61,807)	(20,557)	(61,285)	(34,322)	(36,456)	(15,200)			0	(540,194)
<b>RECOVERY</b>	(2,993)	4	(29,415)	29,453	46	(16,423)	16,368	109	(88)	(2,927)	(120)			235,955	232,962
<b>TOTAL EXPENDITURE 2015/16</b>	526,230	21,651	169,590	0	126,510	79,375	0	68,801	31,626	24,494	4,183	0	0	19,995	546,225
<b>TOTAL INCOME 2015/16</b>	(540,213)	(16,825)	(174,859)	0	(118,908)	(82,397)	0	(61,246)	(34,322)	(36,456)	(3,800)	(11,400)	(11,400)	(19,995)	(560,208)
<b>RECOVERY</b>	(13,983)	4,826	(5,269)	0	7,602	(3,022)	0	7,555	(2,696)	(11,962)	383	(11,400)	0	0	(13,983)
<i>With actual time allocation</i>	3%														
<b>TOTAL EXPENDITURE 2016/17</b>	552,402	22,102	171,703	0	129,605	80,875	0	71,971	26,854	34,666	14,626	0	0	0	552,402
<b>TOTAL INCOME 2016/17</b>	(553,593)	(19,123)	(174,859)	0	(118,908)	(82,397)	0	(72,329)	(34,322)	(36,456)	(15,200)	0	0	0	(553,593)
<b>RECOVERY</b>	(1,191)	2,980	(3,156)	0	10,697	(1,522)	0	(358)	(7,468)	(1,790)	(574)	0	0	0	(1,191)
<i>With budgeted time allocation</i>	0%														
<b>TOTAL EXPENDITURE 2017/18</b>	558,256	20,857	172,243	0	122,494	81,147	0	76,867	33,709	36,236	14,703	0	0	0	558,256
<b>TOTAL INCOME 2017/18</b>	(559,855)	(22,113)	(174,859)	0	(118,908)	(82,397)	0	(75,601)	(34,322)	(36,456)	(15,200)	0	0	0	(559,855)
<b>RECOVERY</b>	(1,600)	(1,255)	(2,616)	0	3,586	(1,250)	0	1,266	(613)	(220)	(497)	0	0	0	(1,600)
<i>With budgeted time allocation</i>	0%														

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# Agenda Item 5



Portsmouth  
CITY COUNCIL

**Title of meeting:** LICENSING COMMITTEE / FULL COUNCIL

**Date of meeting:** 15 JANUARY 2016 / 9 FEBRUARY 2016

**Subject:** Licensing Act 2003 - Statement of Licensing Policy 2016 - 2021 Approval of interim measures

**Report by:** Nickii Humphreys, Licensing Manager

**Wards affected:** All

**Key decision:** No

**Full Council decision:** Yes

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## 1. Purpose of report

- 1.1 The purpose of this report is for the Licensing Committee to recommend to Full Council that it adopts the existing Statement of Licensing Policy with effect from 26 January 2016 pending the review and subsequent consultation on the proposed amendments to the Statement of Licensing Policy in accordance with the Licensing Act 2003, for the period 2016 - 2021.

## 2. Recommendations

- 2.1 That the Licensing Committee recommend to Full Council that it adopts the existing Statement of Licensing Policy with effect from 26 January 2016 as an interim measure pending the Council making a final decision on the outcome of the review and consultation on the Statement of Licensing Policy for the period 2016 until 2021.

## 3. Background

- 3.1 Section 5 of the Licensing Act 2003 ("the Act") requires the Council to prepare and publish a statement of its licensing policy every 5 years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the Act.
- 3.2 Before determining its policy for any 5 year period, or if revising a policy within a period, the licensing authority must consult with persons listed in section 5(3) of the Act. These are:
- The chief officer of police for the area;
  - The fire and rescue authority for the area;
  - Persons/bodies representative of local holders of premises licences;

- Persons/bodies representative of local holders of club premises certificates;
- Persons/bodies representative of local holders of personal licences; and
- Persons/bodies representative of businesses and residents in its area.

3.3 A draft statement of licensing policy is in the process of being prepared in accordance with the Act and a separate report will be considered by the Licensing Committee for approval of its contents and to agree the timetable of consultation.

The majority of proposed changes to the existing statement of licensing policy will reflect amendments to the Statutory Guidance issued in accordance with section 182 of the Act and legislative changes brought into effect since the policy was last reviewed.

3.4 Due to pressures on the licensing service which include work on a total review of policy considerations for the private hire and hackney carriage licensing functions, the timescales for preparing and consulting on the new statement of licensing policy have slipped behind schedule.

3.5 As mentioned in paragraph 3.1, the authority must, by law, have a licensing policy in place with effect from January 2016 in order to continue to carry out its statutory function in relation to individual applications made under the Act. To allow a full and proper consultation process to take place in respect of the proposed amendments to the statement of licensing policy, it is proposed that the existing licensing policy be continued with effect from 26 January 2016 and, following completion of the consultation process, the new statement will be referred to Full Council by the Licensing Committee for consideration and adoption.

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

4.1 To ensure that the Council meets its statutory obligations under the Licensing Act 2003 by implementing interim measures to enable the Licensing Authority to carry out its statutory function pending review and consultation on the proposed new policy.

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

5.1 A preliminary EIA will be undertaken in due course upon preparation of the draft statement of licensing policy.

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

6.1 All legal comments are contained within the body of the report.

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

7.1 There are no financial implications in respect of this report.

.....  
Signed by:

**Appendices:**

**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:

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