



NOTICE OF MEETING

LICENSING COMMITTEE

MONDAY, 27 NOVEMBER 2023 AT 10.00 AM

COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH

Telephone enquiries to Allison Harper 023 9268 8014

Email: Democratic@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 Jason Fazackarley (Chair), Emily Strudwick (Vice-Chair), Yinka Adeniran, Dave Ashmore, Stuart Brown, George Fielding, Ian Holder, Leo Madden, George Madgwick, Leonie Oliver, Darren Sanders, Asghar Shah, Russell Simpson, Benedict Swann and Daniel Wemyss

Standing Deputies

Councillors Kimberly Barrett, Charlotte Gerada, Lewis Gosling, Steve Pitt, John Smith, Mary Valley and Raymond Dent

(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

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: the Democratic Services Officer as listed above.

AGENDA

1 Apologies for Absence

2 Declarations of Members' Interests

3 Minutes of the Previous Meeting (Pages 5 - 12)

RECOMMENDED that the minutes of the Licensing Committee meeting held on 24 February 2023 be approved as a correct record.

4 Review of Licensing Fees and Charges (Pages 13 - 52)

Purpose of Report

The purpose of this report is for the Committee to consider a review of fees charged for licences/registrations which are administered by the Licensing Committee and delegated to the licensing service only.

This review does not include those fees and charges which are set centrally by the Government and are, therefore, not subject to local control. These include fees and charges applicable to the Licensing Act 2003 and the Gambling Act 2005.

RECOMMENDATIONS

- a) **That the Licensing Committee note the contents of this report and approve the level of fees and charges to be adopted;**
- b) **That the approved fees be implemented with immediate effect, with the exception of those fees which are required to be publicly advertised for a statutory period of 28 days;**
- c) **That the Director of Culture, Leisure and Regulatory Services be given authority to advertise (where appropriate) such fees and charges that are subject to the formal statutory consultation process;**
- d) **That the Licensing Committee approve the preparation of a further report for consideration in relation to the current policy for minimum age limits for licensed vehicles.**

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Whilst every effort will be made to webcast this meeting, should technical or other difficulties occur, the meeting will continue without being webcast via the Council's website.

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LICENSING COMMITTEE

MINUTES OF A MEETING of the Licensing Committee held on Friday, 24 February 2023 at 3.00 pm at the Guildhall, Portsmouth

Present

Councillors Scott Payter-Harris (Chair)
George Madgwick (Vice-Chair)
Yinka Adeniran
Dave Ashmore
Stuart Brown
Tom Coles
Jason Fazackarley
Charlotte Gerada
Lewis Gosling
Leo Madden
Linda Symes
Benedict Swann
Daniel Wemyss

6. Apologies for Absence (AI 1)

Apologies were received from Councillor Kimberly Barrett, Councillor Lee Hunt attended as her standing deputy.

7. Declarations of Members' Interests (AI 2)

There were no declarations of interest.

8. Minutes of the Previous Meeting (AI 3)

RESOLVED that the minutes of the previous meeting on 25 July 2022 be approved as a correct record.

9. Town Police Clauses Act 1847 and Part II, Local Government (Miscellaneous Provisions) Act 1976 - Hackney Carriage and Private Hire Matters - Amendments to Adopted Statement of Licensing Policy (AI 4)

The Licensing Manager introduced the report and drew attention to the following recommendations, particularly where they had changed in the light of the consultation responses or differed from the Department for Transport's Statutory Taxi & Private Hire Vehicle Standards (the statutory guidance):

- Recommendation 10 - The consultation had shown that giving 24 hours' notice (as opposed to 48 hours) was preferred for notifying the Licensing Authority of offences. If the arrest was on a Friday, weekend or Bank Holiday, notification would be within the next 24 hours or working day.
- Recommendation 18 - The consultation showed overwhelming support for training so mandatory annual training was proposed.

- Recommendation 21 - As well as adopting the Proposed Guidelines on the relevance of convictions and behaviour (Appendix B) it was proposed that it was appropriate for members to have sight of / consider previous licensing offences, which were absent from the statutory guidance. In addition, the statutory guidance only related to convictions but it was proposed that the policy also took behaviour into account. This would bring the process into line with long-established case law and practice.
- Recommendation 37 - Many consultation responses wanted the upper age limit of vehicles to be 12 years for all licensed vehicles, not just wheelchair accessible vehicles (WAVs). The proposed amendment would allow satisfactory vehicles to benefit from an extra four years. If a vehicle did not meet the required safety and comfort standards it would receive a "RED" indicator with a presumption the licence would be revoked. Appendix C showed vehicle failure according to age.

Simon Potter from Adams Morey, the council's nominated examiner of licensed vehicles, was in attendance to help answer members' questions.

Deputations were made by the following:

- Nizam Ahmed (taxi trade representative)
- Bruce Hall (General Manager, Aqua Cars)
- Peter Sutherland (Uber representative)
- Shahed Uddin (taxi trade representative)
- Viv Young

Deputations are not minuted but can be viewed on the council's website [Agenda for Licensing Committee on Friday, 24th February, 2023, 3.00 pm Portsmouth City Council](#)

Members' questions

In response to Mr Hall's comments about vehicles failing inspections for not having no smoking or CCTV stickers, the Chair asked if Adams Morey could keep a supply of stickers, as Mr Hall had suggested. Mr Potter agreed and said Adams Morey would keep a supply of stickers.

With regard to comments made in the deputations, the Licensing Manager reminded members that they "must have regard" to the statutory guidance (with the exception of the age limit of vehicles) and that was the purpose of the meeting. If they felt the guidance was not applicable they had to say why it was inappropriate for Portsmouth.

With regard to the certificate of conduct (recommendation 16), the current policy requires that anyone who had lived outside the UK since the age of ten needed to provide a certificate of good conduct. It had been since the age of 18 but a former Committee had said ten upwards was the age of criminal responsibility. With increasing numbers of applicants it was becoming onerous to ask them to supply a certificate from the age of ten. The Licensing Manager could not personally recall an application where a foreign conviction was attributable to a person under the age of 18. In the survey the question had the lowest amount of agreement but the consultation was sector specific and lay people might not have understood it.

With regard to PSVs and PCVs, the statutory guidance had different standards of checking than for Hackney carriage and private hire vehicle (PHV) drivers. The Licensing Office could not get involved as the Licensing Authority did not deal with PSVs and PCVs. However, under the statutory guidance a PSV operator with a vehicle with more than eight seats had to have consent from the person making the booking (recommendation 33).

Mr Potter sympathised with the restrictions under which the trade worked. Standards had been tightened up after being relaxed slightly during Covid. Vehicles were unlikely to be failed on only cosmetic issues alone. Adams Morey will report certain issues as an "advisory", for example, for two weeks or a month for the issue to be fixed. Failing a vehicle for a split rubber seal on a door might sound trivial but when seals split they get dirty and could make passengers' clothes dirty. Adams Morey charged less than the maximum MOT fee and there was no cost for a re-test. In fact, the re-tests cost Adams Morey money.

The Principal Licensing Officer explained that while proprietors may not be front-facing staff, the Licensing Authority have had experience of some who have changed insurance details and given false information. DBS checks could relate to matters relating to dishonesty in respect of proprietors.

The Licensing Manager said a link to the survey had been sent to each individual licensed taxi and PHV driver, operator and proprietor. The Licensing Office had engaged with trade representatives to positively encourage contributions. In response to comments that the number of responses from drivers was not very high, the Licensing Manager said it was the highest response seen when consulting on policy, perhaps because of social media platforms like My Portsmouth. As the policy affected drivers' livelihood it would be odd for them not to complete it, which was why the Licensing Office had engaged with drivers, operators, proprietors and trade representatives and urged them to contribute. There were about 1,300 drivers in Portsmouth.

Some members were concerned about the number of responses to the survey. They suggested using formats other than just online the next time there was a survey. A content analysis of the open comments would be helpful. As some questions were not understood it might be helpful to test questions first. Trade unions could be included. The Licensing Manager said the trade representatives had good coverage of the city and Licensing had worked with Corporate Communications as the survey was very specific to a particular strand of industry and dealt with complex matters. Some operators had contact with trade unions so Licensing were confident they were aware of the survey. However, members' comments and suggestions would be taken on board for next time, to which the Chair agreed.

With regard to proposed mandatory training for the Licensing Committee, there was no specified format or length, but it was part of the whole ethos of members' role as the Licensing Authority. Members had statutory functions, for example, relating to alcohol, gambling, sex establishments, and they needed to understand their roles. Training ensured the Licensing Authority could demonstrate its understanding of the function and role. Training was provided annually to members wishing to serve on the Licensing Committee and members were asked to consider whether this should be a mandatory requirement in future. The Licensing Manager strongly advocated for

the requirement for mandatory training to ensure that members were provided with the necessary skills to undertake their duties.

The Legal Adviser said that some statutory regimes required training and he strongly endorsed the recommendation. It was becoming increasingly important to fend off legal challenges. There was increasing indication that training was fundamentally important, for example, from the LGA Councillor Handbook and the Task and Finish Group which reported to the government. There were specific pieces of legislation that referenced best practice in respect of members having training. The key was that training was regular, not once in a blue moon. If training was not received and documented it potentially opened up challenges to all decisions made by members, not just those relating to taxis and PHVs. The Legal Advisor's advice was that documented training was essential to protect the Committee's decisions from legal challenge.

The Chair agreed that training was important and said members could not sit on a sub-committee if they had not been trained.

In response to comments that cosmetic issues in relation to the suitability of licensed vehicles were not important, as long as vehicles were kept in good repair, the Licensing Manager said vehicles had to be comfortable as well as safe, which meant not having rubbish on the front seat or stained seat covers. They were professional vehicles and like buses they were expected to be clean. Licensing officers have done spot checks and have photographic evidence of unsatisfactory vehicles. If there were no standards then dirty vehicles would not be an exception. It was a tightrope between protecting the public and not being too punitive towards drivers and proprietors. Members agreed it was a difficult balance. The Chair suggested the issue should be on the agenda for the consultative group to consider, for example, how many spot checks were done and how many issues were found. The Licensing Manager agreed and acknowledged that the cosmetic side of vehicle testing was unpopular with the trade. Licensing officers could work with Adams Morey to help inform policy.

With regard to use of bus lanes and livery for taxis and PHVs, the Licensing Manager said the DfT's consultation upon updated best practice guidance, which had been put out for consultation in March 2022, proposed that taxis and PHVs should be prevented from being the same colour.

Sales of diesel and petrol vehicles were being phased out by 2030, two years after the policy expired, which from a licensing perspective had to be re-examined every five years so would be reviewed before then. Issues with infrastructure in Portsmouth were acknowledged but they were not part of the Licensing Authority's remit. Members had to consider the policy based on today's evidence. The policy can be reviewed at any time should there be a change in material circumstance and in any case should return to the Committee every five years. The Committee still had the discretion to license vehicles outside the policy if they were exceptional and had merit. If there were reasons to change the policy it would return to the Committee.

With regard to the balance between safeguarding the public and reducing burdens, the Licensing Manager explained the policy focused on safeguarding and protection, the same as any licensing regime which protected the public. It had to consider what

"fit and proper" meant to the public and the applicant. Recommendation 20 was an attempt by the government to say what the Committee should consider, which meant putting the public first and the financial implications of losing a licence etc. should not be taken into account.

The Legal Advisor said there had been a sea change in the national approach to safeguarding because of inappropriate use of taxis and PHVs, for example, involvement in drug peddling, county lines, child abuse etc., so safeguarding was at the forefront of licensing. Local authorities needed to have very strong local reasons not to adopt the statutory guidance.

The Licensing Manager agreed the trade would need time to adopt any new standards and that this would impact resources. Priorities would be addressed in a staged, transitional approach. For example, the DBS checks moving from every three years to six months would have massive resource implications for the Licensing Office. It was encouraging drivers to do this online so they did not have to come into the office.

The Committee adjourned for a short break from 4.27 to 4.34 pm.

Members' comments

Members agreed public safety was paramount and there was nothing in the recommendations that was not common sense. Everything the Licensing Authority did such as having CCTV in vehicles was to protect the public. If someone did not want a DBS check it might raise suspicions as to why. The standards protected the public and the trade. They were important as people were entitled to get in a clean vehicle.

Members had high regard for the taxi trade, who were also residents, and had learnt much from representatives in the process of setting policy.

In Section 8.2 "him" should be "him or her."

The Licensing Manager explained the policy required the same passenger details as the statutory guidance but was worded slightly differently. Mr Hall said it was not always possible to get passengers' names when bookings were made from, for example, restaurants or hotels where table or room numbers were given. Getting passengers' names and contact details might be helpful for tracking down passengers who were sick in the vehicle to make them pay for the damage.

Members agreed new councillors should have training but refresher training could be used for those who have already been on the Committee. In view of the number of political parties and movement between them it would help if all members had training on a two-year training cycle (mid-term) so they would be able to sit on the Committee. Some members thought two hours annual training was not a problem. Learning & Development had contacted the Licensing Manager about different formats of training, such as recordings which members confirm they have attended. Officers needed to ensure members were aware of new legislation. After the local elections Democratic Services would remind members to attend training. Some members were on a working group looking at member training and others were

invited to contact the Senior Local Democracy Officer if they wanted to know what the group was doing.

Some members thought the colour of vehicles was not very important; the light on top of the vehicle was a clearer indication of whether a vehicle was a taxi or a PHV. On the other hand, one colour for all vehicles would show the public it was licensed.

Members agreed to accept recommendation 37 that the upper age limit for vehicles be amended from eight to 12 years. They also agreed that the consultative group should consider extending the upper age limit to 14 or 15 years in view of the cost of vehicles, especially wheelchair adapted ones. They wanted to make drivers' lives easier not more difficult. The vehicle inspection data showed that sometimes older vehicles were better than newer ones though it was not fully conclusive as it was not broken down for vehicles older than nine years.

DECISIONS

- 1. The Licensing Committee considered the recommendations numbered (1) to (37) in the report attached as Appendix A and duly noted/determined amendments as set out in the recommendations save for the incorporation of refresher training in addition to training for new members on the Licensing Committee at recommendation 18.**
- 2. The Licensing Committee agreed that the amendments to the policy will come into effect on 1 April 2023.**

10. Vehicle Specification Requirements - Salvaged Vehicles (AI 5)

The Principal Licensing Officer gave a verbal update on a proposed period of formal consultation on the suitability of licensing vehicles with a category N or S salvage marker. Portsmouth did not follow the same policy as other areas, so officers needed to see other authorities' policies on these vehicles. Consultation would be with the trade, Association of British Insurers, the Lloyds Syndicate and Adams Morey to see if there was scope to licence them. Feedback was welcome and there would be a report back to the Committee.

Mr Potter explained Category N meant non-structural damage though it included damage to the brakes, steering and suspension. Category S meant structural damage. Both categories were recorded in V5 logbooks but only when changes were made.

Members thought it was sensible to investigate further but wanted to avoid licensing vehicles where the chassis had been welded together from different ones.

DECISIONS

The Licensing Committee noted the current policy on salvaged vehicles and instructed the Licensing Manager to carry out a period of formal consultation with all interested parties and to report back with recommended good practice advice and policy guidance on the suitability or otherwise of licensing vehicles with either a category S or category N marker recorded.

The meeting concluded at 5.06 pm.

Signed by the chair, Councillor Scott Payter-Harris

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Agenda Item 4



Portsmouth
CITY COUNCIL

Title of meeting: LICENSING COMMITTEE
Date of meeting: 27 NOVEMBER 2023
Subject: REVIEW OF LICENSING FEES AND CHARGES
Report by: LICENSING MANAGER
Wards affected: ALL
Key decision: NO
Full Council decision: NO

1. Purpose of report

- 1.1 The purpose of this report is for the Committee to consider a review of fees charged for licences/registrations which are administered by the Licensing Committee and delegated to the licensing service only.
- 1.2 This review does not include those fees and charges which are set centrally by the Government and are, therefore, not subject to local control. These include fees and charges applicable to the Licensing Act 2003 and the Gambling Act 2005.

2. Recommendations

- a) That the Licensing Committee note the contents of this report and approve the level of fees and charges to be adopted;
- b) That the approved fees be implemented with immediate effect, with the exception of those fees which are required to be publicly advertised for a statutory period of 28 days; and
- c) That the Director of Culture, Leisure and Regulatory Services be given authority to advertise (where appropriate) such fees and charges that are subject to the formal statutory consultation process.
- d) That the Licensing Committee approve the preparation of a further report for consideration in relation to the current policy for minimum age limits for licensed vehicles.

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 on-costs but is still under a statutory obligation to provide a licensing regime or indeed provide the regime with no income derived. For this reason, reference to those licensing functions has been excluded from this report as the Committee cannot alter or amend those fees and charges. It is also important to stress that licence fee income is ring-fenced to the particular licence and cannot be used to cross subsidise another licence.

- 3.2 The Local Government Association (LGA) has published guidance for licensing authorities on locally set licensing fees and this is attached as **APPENDIX A** to this report. For ease of reference, extracts from this guidance are provided below (in italic) as well as additional commentary from your reporting officer:

3.3 **Understanding the role of licensing**

Licensing is an integral part of councils' broader regulatory services. Regulatory services are increasingly recognised as being at the heart of councils' approaches to economic growth, and it is believed that over 50% of a business' contact with a council takes place through regulatory services. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring that they adhere to important safeguards.

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.

Licensing also has an important role to play in helping councils shape the areas in which people live and work; by determining what types of premises open there, how long they are open for and what sort of activities take place. Councillors, as democratic representatives of local communities, should be able to take licensing decisions that are in line with the preferred wishes of those communities.

The balance of all these factors 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.

All of this work requires funding, and it is an accepted principle that licensed activities should be funded on a cost-recovery basis, paid for by those benefitting from the licensed activity, rather than drawing on the public purse.

Where councils have the flexibility to set local fees, 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.

- 3.4 Following on from the above narrative, it is important to stress that the primary objective for regulating functions under the control of the licensing authority (under delegation to the Licensing Service) is to provide protection to the public and to ensure that suitable safeguards are in place within the various licensing regimes both within the administrative and compliance framework.
- 3.5 A review of Regulatory and Licensing Services was undertaken in the Autumn of 2022 and, following a formal consultation process, the two services were amalgamated in February 2023. The overriding purpose of making these changes was to provide more cost-effective services; introduce further efficiencies for both the services and Directorate; streamline the work of both services and to build resilience for the future. The amalgamation has introduced a central resource team to deliver the various statutory administrative functions of both services to provide effective support and share knowledge within the newly created Service.
- 3.6 As the licensing manager, I would like to draw the Committee's attention to the dedication and adaptability of the new resource team in delivering the ongoing improvements to ensure that demands on the service can be met now and in the future.
- 3.7 **Reasonable and proportionate**

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 premises types from operating within an area.

- 3.8 **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.

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.

Councils that divert fees income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law.

- 3.9 The last licensing fee review was undertaken and implemented in November 2019. With the onset and transmission of the Coronavirus in March 2020, which had a direct impact on the economy and the livelihoods of those licence holders who were affected, the fee review was stalled having regard to those exceptional circumstances. There has been a residual negative impact from these circumstances upon persons holding licences which has not just impacted Portsmouth, but nationally.

Combined with the effects of the Coronavirus, the current economic downturn and rise in inflation this has had a detrimental effect upon the licensing budget and those additional costs can no longer be absorbed or indeed sustained. Effectively, there has been an 18% increase in inflation since the fees were last reviewed.

- 3.10 Without an increase in fees, the licensing budget will be in a deficit position going forward and this position will be in direct conflict with the key principles of cost recovery referred to above and under which the Licensing Committee has previously managed its budget.

Failure to take action in relation to increasing fees and charges will mean that the council tax-payer will be required to subsidise the activities of licence holders.

- 3.11 The LGA guidance recommends that a review each year of the annual fees allows for the fine tuning of fees and enables councils to take steps to avoid either a surplus or deficit in future years. When reviewing this year's annual fees, a robust and formative approach has been taken to anticipate, based on the current climate, that increases to fees next year could potentially be avoided but a review next year will be necessary to ensure that the budget remains in a cost recovery position.

- 3.12 The licensing service has, and will always be, subject to legislative changes introduced by Government in terms of the safeguarding of members of the public. This involves undertaking further checks upon both new applicants and existing licence holders and implementing statutory guidance which has further resource implications for the service. However, the effective delivery of those functions and providing a regulatory framework to protect the public remains of key importance both to the Council itself and the local community.

- 3.13 An example of such a change relates to the current permits for amenities on the highway. The Government has announced that they intend to introduce a permanent pavement licensing regime for the use of tables and chairs on the



highway which was introduced as a temporary measure during the Coronavirus pandemic. The draft legislation envisages that persons who previously applied for such use of the highway will now be required to apply via this alternative route. The material effect of this will be that the Government will most likely set the licensing fee at a central level and this is likely to be significantly less than the fees that local licensing authorities can currently set/control.

Looking ahead, there will be further legislative changes in relation to the Gambling Act and the PROTECT duty under the Terrorism (Protection of Premises) Bill which will further impact on the functions and resources of the service.

3.14 **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 of 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.

3.15 The Licensing Service, in conjunction with Finance 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 the requirement for cost recovery.

3.16 This analysis takes 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 will identify any deficit or surplus position.

3.17 The proposed fees as set out in **APPENDIX B** to this report will enable the Licensing Committee to be reasonably assured, under current economic pressures, that full cost recovery can be achieved, where possible, in relation to the cost of administration and compliance checks for the various licensing functions.

3.18 In preparing the proposed fees, further savings from within the service have been identified and incorporated into the licensing budget in order to minimise the impact of increased fees on licence holders. This includes:

- The deletion of a FTE Band 8 post upon the retirement of the present postholder;



- Streamlining the requirements for licence discs to be displayed on licensed vehicles which, in turn, has reduced printing costs;
- Recovering prosecution costs, where possible, arising from legal proceedings;
- Sourcing "best value" goods and services;

Further efficiencies and savings continue to be explored and actioned and, going forward, will ensure that the service undertakes its various statutory functions effectively for the benefit of both licence holders and members of the public alike.

- 3.19 To enable the Licensing Committee to further consider the impact of the proposed increase in fees, **APPENDIX C** to this report provides a breakdown of the effect of the proposed increases on an annual, weekly and daily basis for private hire and hackney carriage licence holders.
- 3.20 The Committee should be aware that the proposed fees have been calculated using the latest data and analysis to justify the proposals put forward for consideration, having regard to statutory limitations and case law. Any arbitrary deviation for the fees prepared within this report that cannot be shown to be justified or reasonable may result in legal challenge by licence holders. Any proposed amendments, including any changes to the proposed fees that would result in the licensing budget being in a deficit position, will need to be accompanied by full and comprehensive reasons for those changes, given the subsidisation of licensable activities will have a direct bearing upon the general fund.
- 3.21 Equally, the adopted statement of licensing policy advises that any proposal to decrease fees and charges by way of presumed cost saving should be treated cautiously as the overall test is to ensure public safety and confidence in the licensing regime.
- 3.22 Representatives from the hackney carriage and private hire trade have been informed of the proposals within this report and have been invited to make representations to the Committee in relation to the proposals put forward for consideration.
- 4. Statutory consultation process for amending fees and charges**
- 4.1 In accordance with section 70 of the Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to publicly advertise any variation of licensing fees associated with **vehicle or operator licence fees**. This is by way of formal notice in at least one local newspaper circulating in the district and which must set out the proposed variation. This notice requires any objections to the proposed variation to be made within 28 days of the publication



date of the notice. The notice must also be deposited at the offices of the Council for the same time period.

- 4.2 If no objections are received within the 28 day consultation period, or if any objections are subsequently withdrawn, the variation shall come into effect on the following day after the consultation period, or when any objections are withdrawn, whichever is the later.
- 4.3 If objections are made and not withdrawn then a further meeting of the Licensing Committee will be required (not later than 2 months after the closing date for objections) to consider the objections received and on that date the variation shall come into effect with or without any modification.
- 4.4 There are no statutory consultation provisions for any other licensing fees and charges set out in this report.

5. Relevant case law

- 5.1 There are numerous cases over the years where fees and charges set by licensing authorities have been challenged via the Courts. These cases provide judicial guidance as to how local authorities must exercise their statutory duties in relation to determining fees. The Committee may wish to have regard to the following cases where the Courts have established the principles that licensing authorities must follow.

5.2 **Hemming v Westminster (2017)**

This case focussed on the degree to which fees and processes must be proportionate, as well as the processes employed to calculate fees chargeable by the licensing authority. The facts of this case are set out in the LGA guidance at Appendix A but, in summary, the Courts held that:

- The fees set must not exceed the costs of administering the licensing regime;
- The cost of visits to licensed premises to monitor compliance could be recovered through fees;
- Fees must be reviewed annually;
- Councils are required to ring-fence income from licensing fees so that any surplus or deficit is carried forward to the next year's budget.
- The Supreme Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme (but not enforcement against unlicensed operators, a novel approach was suggested by the Supreme Court by



way of use of a separate "retention fee" for those costs. There being no specific legal or statutory power to levy such a fee, it is advised this approach is not adopted);

- The Court set out the preferred approach in respect of how fees were charged so that the administrative costs and compliance costs were recovered.

5.3 **Cummings v Cardiff (2014)**

In this case, Cardiff Council had proposed a significant increase to hackney carriage and private hire vehicle charges. The Council were then subject to a Judicial Review over the way these costs had been calculated. The Judge in these proceedings found against Cardiff as follows:

- The level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to May 2009;
- The level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have accrued;
- The level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area;
- A local authority, when determining hackney carriage and private hire licence fees must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees;
- A local authority must:
 - Keep separate accounts for hackney carriage and PHV licence fees;
 - Ensure that any surplus or deficit identified under each part of the hackney carriage and private hire licensing regimes is only applied to the part of the system from which it has been raised/lost;
 - Ensure that any surplus from one licensing regime shall not be used to subsidise a deficit in another

6. **Proposal to review the current minimum age limit policy for licensed vehicles**

- 6.1 Members will recall that at the Licensing Committee meeting held on 24 February 2023, amendments were made to the adopted statement of licensing policy having regard to the statutory Taxi and Private Hire Vehicle Standards guidance issued by the Secretary of State for Transport in July 2020.



- 6.2 In addition the Licensing Committee determined to amend its current statement of licensing policy to increase the upper age limit for licensed vehicles from 8 years of age to 12 years of age, provided:
- That the vehicle meets with the requirement of the PATN guidance as approved by the Council and is supported by an evidenced service record demonstrating an annual inspection showing compliance with the manufacturer's guidelines;
 - If a vehicle receives a "RED" indicator following its mechanical and cosmetic inspection at the Council's nominated garage then there will be a presumption that the vehicle licence will be revoked;
 - That delegated authority be given to the Head of Service to determine revocations of vehicle licences that have incurred a test failure under a "RED" indicator in consultation with the Council's approved vehicle examiner.
- 6.3 Having regard to the current economic climate and the financial burdens on vehicle proprietors as regards the purchase of new/replacement vehicles, combined with the impact of the current review of fees and charges, it is proposed that the Licensing Committee require officers to prepare and consult on reviewing the current policy which states that a new vehicle must be no more than 4 years of age when first licensed and consider whether increasing/removing that limit would be reasonable and appropriate.
- 6.4 This review and any subsequent recommendations would be required to meet the statutory requirements set out in the Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847 so far as they relate to the safety and comfort of licensed vehicles as well as any other material considerations.
- 7. Reasons for recommendations**
- To ensure that the Committee consider the principles set out in the LGA guidance to local authorities on the setting of fees and charges;
 - To ensure that the Committee consider and apply the principle of working towards the licensing service achieving total cost recovery, where it has the discretion to set fees and charges;
 - To determine the appropriate level of fees and charges having regard to legislation and case law; and
 - To review the lower age limit for licensed vehicles to identify whether there are any superficial barriers that can be lifted to ease the current economic burdens and whether that will encourage an increase in licensed vehicles within the city, without having a negative impact on the safety and comfort of licensed vehicles.



8. Integrated impact assessment

8.1 An integrated impact assessment has been prepared and is attached as **APPENDIX D** to this report.

9. Legal implications

9.1 The legal implications are embodied within the report.

10. Director of Finance's comments

10.1 The Licensing Committee has 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.

10.2 Without a fee increase this year the cost of administering the service would have a deficit of circa £78k. The proposed fees have been set to recover the cost of each of the locally determined licensing regimes. Any surplus/deficit outcomes at year end will be carried forward to the next budget. The revised income levels arising from the fees set out in this report are included within the current budget provision.

.....
Signed by:

Appendices:

- Appendix A Copy of the LGA Guidance on locally set fees
- Appendix B Table of Existing and Proposed Fees;
- Appendix C Breakdown of proposed PHV and HCV fees by year, month and week
- Appendix D Integrated Impact Assessment

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
Open for business: LGA guidance on locally set licence fees	Open for business: LGA guidance on locally set licence fees Local Government Association



Full Council - Tuesday 28 February 2023 - Budget and Council Tax 2023/24	Agenda for Full Council on Tuesday, 28th February, 2023, 2.00 pm Portsmouth City Council
Statement of licensing policy - hackney carriage and private hire	hackney-carriage-private-hire-licensing-policy-final-v3.pdf (portsmouth.gov.uk)
Licensing Committee - Friday 24 February 2023	Agenda for Licensing Committee on Friday, 24th February, 2023, 3.00 pm Portsmouth City Council
Local Government (Miscellaneous Provisions) Act 1976	Local Government (Miscellaneous Provisions) Act 1976 (legislation.gov.uk)
Town Police Clauses Act 1847	Town Police Clauses Act 1847 (legislation.gov.uk)

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

.....
Signed by:

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Open for business

LGA guidance
on locally set licence fees

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Introduction

Councils are responsible for administering a range of licences and approvals relating to 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. It is an accepted principle in relation to these schemes that those who benefit from the system (eg licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring both that full costs can be recovered by each and every council, reducing the risk of a subsidy from local tax payers, and that businesses do not pay more than they should.

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 potential 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. In particular, a recent case under the Services Directive has significant implications for the way in which councils apply their licence fees.

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, when it is vital that councils are free to design the service that best serves the needs of their community and recover costs accordingly.

Key issues

Understanding the role of licensing

Licensing is an integral part of councils' broader regulatory services. Regulatory services are increasingly recognised as being at the heart of councils' approaches to economic growth, and it is believed that over fifty per cent of a business' contact with a council takes place through regulatory services. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.

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.

Licensing also has an important role to play in helping councils shape the areas in which people live and work; by determining what types of premises open there, how long they are open for, and what sort of activities take place. Councillors, as democratic representatives of local communities, should be able to take licensing decisions that are in line with the preferred wishes of those communities.

The balance of all these factors 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.

All of this work requires funding, and it is an accepted principle that licensed activities should be funded on a cost-recovery basis, paid for by those benefiting from the licensed activity, rather than drawing on the public purse.

Where councils have the flexibility to set local fees, 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.

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

The European Services Directive¹ 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 is an objective that all councils can support. However, the legal requirements in the Directive do have practical implications for local licensing regimes, including fee setting.

Further guidance about the entirety of the European Services is available on the GOV. UK website².

1 EU Services Directive:
<http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32006L0123&qid=1446478137741>

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

Councils should specifically note that the Directive does not apply to licensing of taxis, 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.

The importance of this approach has also been established by case law on taxi and PHV licensing which, as it is not covered by the Services Directive, demonstrates that some core principles are shared between UK and EU legislation.

Cummings v Cardiff ruled that the charges within a licensing regime for different categories of licence should not subsidise each other; so a surplus gained on hackney carriage licences should not reduce the cost of a private hire vehicle licence. This can be logically extended to mean that the fees received under one licensing regime must not subsidise fees charged under another. For instance, a surplus generated by taxi fees must be reinvested back into taxi licensing and not used to reduce the cost of, for instance, a scrap metal dealers licence.

All councils should therefore ensure that they have individual, discrete cost-calculations for each of the licensing regimes that they operate. This may require a change in the way that some councils operate.

One of the LGA’s priorities for ongoing Brexit negotiations is that fees covering licensing continue to be upheld in domestic law.

Administering payment of fees

Under the Services Directive councils need to ensure that 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 ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.

This was a key issue in the Hemming v Westminster case (see case law, page 13), in which the Supreme Court asked the European Court of Justice (ECJ) to rule on how Westminster applied its licence fees. The Supreme Court identified two different approaches to charging fees:

- (a) 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.

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

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 for fees covered by the Services Directive 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. An example of amended licensing fees which separate out administration and enforcement costs can be found on Westminster council’s website³.

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

³ https://www.westminster.gov.uk/sites/www.westminster.gov.uk/files/licensing_fees_list.pdf

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.’

Not all legislation in England and Wales permits councils to separate out elements of the fee in this way. For instance, the Licensing Act 2003 has fees set nationally, which constrains councils’ ability to adopt this approach. It is therefore unclear whether a council could offer a refund of the enforcement element if an application is refused under this Act: the LGA view is that this is not possible, as the legislation requires that the specified amount (fee) must be paid on application.

Nevertheless, despite these constraints, councils should calculate the notional costs of administration and enforcement separately and make applicants aware of the two elements to the fee. In addition to meeting the transparency requirements of the Services Directive, this enables councils to examine the efficiency of their internal processes and make improvements where necessary. 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.

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.

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.

Councils that divert fees income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law.

Where fees charged result in a surplus, both *Hemming v Westminster* and *Cummings v Cardiff* state 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 year⁴, 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 recovered⁵, 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)*⁶ 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.

4 *R v Manchester City Council ex parte King (1991)* 89 LGR 696.
<http://www.lawindexpro.co.uk/cgi-bin/casemap.php?case=197719&rf=scu%2520target=>

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

6 *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://www.lawindexpro.co.uk/cgi-bin/casemap.php?case=197718&rf=scu%2520target=>

So what can be included in a licence fee?

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 if they do not apply locally, 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.

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 and enforcement 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.

Charging for action against unlicensed traders

Councils' ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in question. In *Hemming v Westminster* (see page 13), the Supreme Court ruled that the Services Directive made no mention of enforcement costs. Councils' ability to charge these costs to applicants for licences is therefore dependent on the UK legislation.

The Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme; in this case, the licensing scheme for sex shops.

However, legal interpretation of taxi and PHV licensing suggests that councils do not have the power to recover the costs of any enforcement against licensed or unlicensed drivers at all, although they may recover the costs of enforcement against vehicles⁷. The LGA believes that section 70(1) of the 1976 Act makes it clear that the costs of enforcement against licensed operators can also be recovered through a fee; however, the position on recovering these costs is contested.

Home Office guidance under the Scrap Metal Dealers Act, which councils must have regard to, prevents the recovery of enforcement costs against unlicensed dealers only. Great care must therefore be taken when setting fees to check what is and is not permitted under that specific licensing regime.

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.

⁷ <http://www.guildford.gov.uk/cHttpHandler.ashx?id=6647&p=0>

Do	Don't	Maybe
Check the relevant legislation	Use a surplus from one fee to subsidise another	Include the costs of enforcement against unlicensed traders
Calculate processing costs and enforcement costs separately and ensure that any fees covered by the Services Directive are charged to applicants and new licensees in two stages	Allow fees income to be drawn into the council's general fund	Include a condition on the issued licence that requires the payment of the enforcement part of the fee, where this is not charged upfront
Clearly communicate to applicants the elements that make up the fee	Allow fee levels to roll-over each year without a review	
Ensure fees are determined by the right person	Forget to ask the courts to award costs during a prosecution	
Include staff on-costs		
Include training costs for officers and councillors		

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.

This document sets out high-level, overarching principles for fee setting that apply across most licensing regimes. It is always important to check the specific details of the regime in question.

The All Wales Licensing Expert Panel has compiled a series of helpful documents to assist councils with the practical aspects of setting fees, including data capture guidance and a basic time recording method. They can be accessed at:

<http://www.npt.gov.uk/default.aspx?page=11958>

The following links will take you to relevant legislation or guidance for the most common licensing regimes, current at the time of publication:

Licensing Act 2003

<https://www.gov.uk/government/publications/alcohol-licensing-fee-levels>

Gambling Act 2005

<http://www.legislation.gov.uk/ukpga/2005/19/section/212>

and

<http://www.legislation.gov.uk/uksi/2007/479/contents/made>

Scrap Metal Dealers 2013

<http://tinyurl.com/SMDAfees>

Taxis and PHV Licensing (Local Government Miscellaneous Provisions Act 1976)

<http://www.legislation.gov.uk/ukpga/1976/57/section/70>

Sexual Establishments (Local Government Miscellaneous Provisions Act 1982)

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3>

Street Trading (Local Government Miscellaneous Provisions Act 1982)

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/4>

Provision of Services Regulations 2009
(The UK legislation applying the EU Services Directive to UK law)

<https://www.detini.gov.uk/publications/guidance-business-provision-services-regulations>

Case law

Hemming v Westminster

The Hemming v Westminster case tested the degree to which fees and processes must be proportionate, as well as the administrative processes for calculating fees, in the context of licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

The case has passed through a number of courts, including the Court of Appeal, Supreme Court and European Court of Justice, with different elements of the case being settled at different stages.

In 2013⁸, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This meant that the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee. The Court of Appeal held that such costs could not be deemed to fall within the EU Services Directive 2006 and associated UK Provision of Services Regulations 2009.

The Directive states that charges levied by a competent body on applicants under an authorisation scheme must be reasonable and proportionate to the cost of the 'procedures and formalities' of the scheme and must not exceed these costs. However, the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement also 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.

The judgement would have left Westminster, and potentially other councils, liable to refund the proportion of sex shop licence fees deemed to be unlawful, dating back to the introduction of the Regulations in 2009.

Westminster appealed the Court of Appeal's judgement on the recovery of enforcement costs, and the case was heard by the Supreme Court in January 2015. Other matters determined by earlier hearings, such as the need to review fees annually and the requirement for councils to ring-fence income from licensing fees so that any surplus or deficit is carried forward to the next year's budget, were not contested.

The council's position that it was lawful for it to seek to recover all enforcement costs was supported by the LGA, which submitted written interventions to the Supreme Court. A range of regulatory bodies, as well as HM Treasury, also submitted written interventions in the case.

⁸ Court of Appeal ruling for Hemming v Westminster – 24 May 2013
<http://cornerstonebarristers.com/wp-content/uploads/2013/05/Hemming-APPROVED-Judgement.pdf>

The Supreme Court ruled⁹ that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. Crucially, it reasoned that the Services Directive deals only with the issue of authorisation procedures and fees relating to applications to exercise a service activity (such as operating a sex shop). The Supreme Court sought an opinion from the European Court of Justice 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.

The ECJ published its ruling on the issue on 16 November 2016, following an earlier opinion by the Advocate General in July 2016, and concluded that only type A fees are permissible under the Services Directive.

However, 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. 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

9 <https://www.supremecourt.uk/cases/uksc-2013-0146.html>

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.

Where councils receive claims for previously paid type B licence fees on the grounds that they have now been ruled incompatible with the Services Directive, the only legitimate claim for restitution 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.

The fact that the opinion expressed by the Advocate General in July appears to dissent from the view expressed by the Supreme Court as regards the legality under the Services Directive of including enforcement costs in licence fees is not relevant to claims for reimbursement. The opinion is just that - an opinion - rather than a ruling, and did not form part of the final ECJ ruling on the narrow issue at stake.

The LGA has received legal guidance on the form of words that councils can use in respect of such claims. This is available from rebecca.johnson@local.gov.uk

Cummings v Cardiff¹⁰

Cardiff Council had proposed a significant increase to hackney carriage and private hire vehicle charges in July 2013. Cummings and other claimants then challenged Cardiff City Council to a judicial review over the way these costs had been calculated. In 2014, Mr Justice Hickinbottom granted the claim for the review on the grounds that:

- the level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 1 May 2009

10 <http://www.stjohnschambers.co.uk/dashboard/wp-content/uploads/Cummings-Others-v-Cardiff-11.pdf>

- the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have accrued
- the level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area.

The Judge also made declarations that:

- (1) A local authority when determining hackney carriage and private hire licence fees under ss.53 and 70 of the LG(MP) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by ss.53 and 70 above.
- (2) A local authority must:
 - keep separate accounts for hackney carriage and PHV licence fees under ss.53 and 70 of the LG(MP) Act 1976
 - ensure that any surplus or deficit identified under each part of the hackney carriage and private hire licensing regimes is only applied to the part of the system from which it has been raised/lost
 - ensure that any surplus from one licensing regime shall not to be used to subsidise a deficit in another.

Acknowledgments

This document was updated in 2017 to reflect the ECJ decision *Hemming v Westminster*.

The original document was put out to public consultation between 5 and 29 November 2013 and updated in November 2015 to reflect the Supreme Court decision in *Hemming v Westminster*. On both occasions it was reviewed and cleared by the LGA's in-house legal team and external Counsel: similar, the amendments in 2017 were based upon guidance from 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



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please contact us on 020 7664 3000.
We consider requests on an individual basis.

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APPENDIX B - TABLE OF EXISTING AND PROPOSED FEES

Licence Type	Current Fee	Proposed Fee
Private Hire Operator		
Grant or Renewal - 1 Year	£760	£836
Grant or Renewal - 5 Years	£3,500	£3,850
Private Hire Vehicle		
Grant or Renewal	£192	£217
Grant - January only	£75	£85
Car to Car Transfer Fee	£132	£145
Car to Car Transfer Admin Fee	£27	£30
Temporary Car to Car Transfer Fee	£100	£110
Vehicle Re-Test Fee	£52	£62
Certificate of Compliance - Duplicate	£10	£11
Section 49 Transfer - Admin Fee	£45	£50
Change of Vehicle Registration Number	£45	£50
Plate Issue Fee	£10	£11
Private Hire Driver		
Grant or Renewal - 1 Year	£110	£128
Grant or Renewal - 3 Years	£290	£336
Replacement Badge	£14	£14
DBS Administration Fee	£11	£12
Knowledge/Safeguarding Test - Each Attempt	£30	£33
English Test - Each Attempt	£20	£22
PCC Drug Screening	£50	£50
Hackney Carriage Vehicle		
Grant or Renewal	£310	£341
Car to Car Transfer Fee	£132	£145
Car to Car Transfer Admin Fee	£27	£30
Temporary Car to Car Transfer Fee	£100	£110
Vehicle Re-Test Fee	£52	£62
Certificate of Compliance - Duplicate	£10	£11
Section 49 Transfer - Admin Fee	£45	£50
Change of Registration Number	£45	£50
Plate Issue Fee	£10	£11
Hackney Carriage Driver		
Grant or Renewal - 1 Year	£162	£178
Grant or Renewal - 3 Year	£380	£418
Replacement Badge	£14	£14
DBS Administration Fee	£11	£12
Geography Test - Each Attempt	£30	£33
English Test - Each Attempt	£20	£22
PCC Drug Screening	£50	£55

Licence Type	Current Fee	Proposed Fee
Private Hire and Hackney Carriage Vehicle Livery		
Magnetic x2	£24	£48
Adhesive x2	£20	£40
Magnetic x1	£12	£30
Adhesive x1	£10	£25
Note: increase in costs due to new livery size and design		
Amenity on the Highway Permits and Pavement Licences		
Goods on the Highway		
Grant	£296	£326
Renewal	£169	£186
Variation	£73	£80
Transfer	£40	£44
Tables and Chairs on the Highway		
Initial Application Fee	£127	£140
<i>Additional fee and subsequent renewal fee:</i>		
Highway area up to 5 m2	£244	£268
Highway area from 5 m2 and 10 m2	£483	£531
Highway area from 10 m2 and 15 m2	£728	£801
Highway area from 15 m2 and 20 m2	£966	£1,063
Highway area greater than 20 m2	£1,207	£1,328
A Board Application		
Grant and Renewal	£75	£83
Pavement Licences		
Grant and Renewal	£50	£100
Street Trading Consent		
Grant and Renewal	£1,736	£2,170
Sex Establishments		
Grant	£5,000	£5,000
Renewal	£3,000	£2,250
Transfer	£500	£550
Variation	£500	£550

APPENDIX C - PROPOSED HC AND PH FEES - IMPACT ANALYSIS

Licence Type	Current Fee	Proposed Fee	Annual Increase	Per Week Increase	Per Day Increase
Private Hire Operator					
Grant or Renewal - 1 Year	£760	£836	£76	£1.46	£0.21
Grant or Renewal - 5 Years	£3,500	£3,850	£70	£1.35	£0.19
Private Hire Vehicle					
Grant or Renewal	£192	£217	£25	£0.48	£0.07
Grant - January only	£75	£85	£10	£0.19	£0.03
Car to Car Transfer Fee	£132	£145	£13	£0.25	£0.04
Car to Car Transfer Admin Fee	£27	£30	£3	£0.05	£0.01
Temporary Car to Car Transfer Fee	£100	£110	£10	£0.19	£0.03
Vehicle Re-Test Fee	£52	£62	£10	£0.20	£0.03
Certificate of Compliance - Duplicate	£10	£11	£1	£0.02	£0.00
Section 49 Transfer - Admin Fee	£45	£50	£5	£0.09	£0.01
Change of Vehicle Registration Number	£45	£50	£5	£0.09	£0.01
Plate Issue Fee	£10	£11	£1	£0.02	£0.00
Private Hire Driver					
Grant or Renewal - 1 Year	£110	£128	£18	£0.34	£0.05
Grant or Renewal - 3 Years	£290	£336	£15	£0.30	£0.04
Replacement Badge	£14	£14	£0	£0.00	£0.00
DBS Administration Fee	£11	£12	£1	£0.02	£0.00
Knowledge/Safeguarding Test - Each Attempt	£30	£33	£3	£0.06	£0.01
English Test - Each Attempt	£20	£22	£2	£0.04	£0.01
PCC Drug Screening	£50	£50	£0	£0.00	£0.00
Hackney Carriage Vehicle					
Grant or Renewal	£310	£341	£31	£0.60	£0.08
Car to Car Transfer Fee	£132	£145	£13	£0.25	£0.04
Car to Car Transfer Admin Fee	£27	£30	£3	£0.05	£0.01
Temporary Car to Car Transfer Fee	£100	£110	£10	£0.19	£0.03
Vehicle Re-Test Fee	£52	£62	£10	£0.20	£0.03
Certificate of Compliance - Duplicate	£10	£11	£1	£0.02	£0.00
Section 49 Transfer - Admin Fee	£45	£50	£5	£0.09	£0.01
Change of Registration Number	£45	£50	£5	£0.09	£0.01
Plate Issue Fee	£10	£11	£1	£0.02	£0.00
Hackney Carriage Driver					
Grant or Renewal - 1 Year	£162	£178	£16	£0.31	£0.04
Grant or Renewal - 3 Year	£380	£418	£13	£0.24	£0.03
Replacement Badge	£14	£14	£0	£0.00	£0.00
DBS Administration Fee	£11	£12	£1	£0.02	£0.00
Knowledge/Safeguarding Test - Each Attempt	£30	£33	£3	£0.06	£0.01
English Test - Each Attempt	£20	£22	£2	£0.04	£0.01
PCC Drug Screening	£50	£55	£5	£0.10	£0.01
Private Hire and Hackney Carriage Vehicle Livery					
Magnetic x2	£24	£48	£24	£0.46	£0.07
Adhesive x2	£20	£40	£20	£0.38	£0.05
Magnetic x1	£12	£30	£18	£0.35	£0.05
Adhesive x1	£10	£25	£15	£0.29	£0.06

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Form name	Integrated Impact Assessment
Reference	IA561655282
Date	14/11/2023



Policy details

Request date	14/11/2023 09:40
Directorate	PCC Culture Leisure and Regulatory Services
Service	Licensing
Title of policy, service, function	Review of Licensing Fees and Charges
Type of policy, service, function	Existing
What is the aim of your policy, service, function, project or strategy?	To review, on an annual basis, the level of licensing fees and charges with the aim of working towards total cost recovery, where possible, in undertaking the various licensing functions.
Has any consultation been undertaken for this proposal?	yes
What were the outcomes of the consultations?	Initial sharing of proposed fees and charges with the hackney carriage and private hire trade representatives. Some fees are required by law to undergo statutory consultation.
Has anything changed because of the consultation?	no
Did this inform your proposal?	no

Equality & diversity - will it have any positive/negative impacts on the protected characteristics?

<p>With the above in mind and following data analysis, who is the policy, service, function, project or strategy going to benefit or have a detrimental effect on and how?</p>	<p>The review of fees and charges will have a benefit to all residents and businesses in Portsmouth to ensure that the fees charged for licences achieve cost recovery wherever possible and therefore are not subsidised by council tax/businesses in the city.</p>
<p>Will any of those groups be affected in a different way to others because of your policy, project, service, function, or strategy?</p>	<p>None</p>
<p>If you are directly or indirectly discriminating, how are you going to mitigate the negative impact?</p>	<p>Not applicable</p>
<p>Who have you consulted with or are planning to consult with and what was/will be your consultation methodology?</p>	<p>Information on the proposed new fees has been shared with the taxi/private hire trade. In addition there is a statutory requirement for formal consultation once the Licensing Committee have determined the fees.</p>
<p>How are you going to review the policy, service, project or strategy, how often and who will be responsible?</p>	<p>The fees/charges will be reviewed on an annual basis with the Finance Service to ensure that the costs of the licensing function are recovered from licence holders.</p>

Crime - Will it make our city safer?

<p>Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?</p>	<p>The licensing regime is an integral part of the council's broader regulatory services. Whilst 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 and remain responsive to local concerns.</p>
<p>How are you going to measure/check the impact of your proposal?</p>	<p>Consider how resources can be focused on risk, effective business support and budget monitoring on a monthly basis to assess income against expenditure and to act on any trends appearing as part of that monitoring exercise</p>

Housing - will it provide good quality homes?

<p>This section is not applicable to my policy</p>	<p><input checked="" type="checkbox"/></p>
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Health - will this help promote healthy, safe and independent living?

<p>This section is not applicable to my policy</p>	<p><input checked="" type="checkbox"/></p>
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Income deprivation and poverty - will it consider income deprivation and reduce poverty?

<p>Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?</p>	<p>When identifying the level of fees and charges, assessments were undertaken in respect of the impact on licence holders ability to meet the costs of their licence. The fees represent a fair increase.</p>
<p>How are you going to measure/check the impact of your proposal?</p>	<p>Budget monitoring and addressing any surplus or deficit within the licensing budget.</p>

Carbon emissions - will it reduce carbon emissions?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Energy use - will it reduce energy use?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Climate change mitigation and flooding - will it proactively mitigate against a changing climate and flooding?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Natural environment - will it ensure public spaces are greener, more sustainable and well-maintained?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Air quality - will it improve air quality?

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?	Fees relating to licensed private hire and hackney carriages will have an impact on those vehicles driving in the city. However, these vehicles form part of the overall transport infrastructure. Policy requirements in relation to the specification of vehicles that may be licensed in the city are covered within separate policy considerations.
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How are you going to measure/check the impact of your proposal?	See above
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Transport - will it make transport more sustainable and safer for the whole community?

Please expand on the impact your policy/proposal will have, and how you propose to mitigate any negative impacts?	See my comments in the previous section relating to air quality and specific policies regarding sustainable taxi/private hire transport provision.
How are you going to measure/check the impact of your proposal?	As before.

Waste management - will it increase recycling and reduce the production of waste?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Culture and heritage - will it promote, protect and enhance our culture and heritage?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Employment and opportunities - will it promote the development of a skilled workforce?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Economy - will it encourage businesses to invest in the city, support sustainable growth and regeneration?

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Social value

This section is not applicable to my policy	<input checked="" type="checkbox"/>
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Involvement

Who was involved in the Integrated impact assessment?	Nickii Humphreys
Name of the person completing this form	Nickii Humphreys
Date of completion	2023-11-14