

**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	<a href="#">Open for business: LGA guidance on locally set licence fees   Local Government Association</a>



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

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

.....  
Signed by: