
TITLE: REVIEW OF LICENSING FEES

COMMITTEE: LICENSING COMMITTEE

DATE: 12 OCTOBER 2016

AUTHOR: SENIOR LICENSING OFFICER

[R98]

1.0 ISSUE

1.1 This report sets out the statutory fees that East Cambridgeshire District Council is required to charge for specific licences under the Licensing Act 2003 and the Gambling Act 2005.

1.2 The report also proposes revised fees for the period 1 April 2017¹ to 31 March 2018 in respect of those licences and licensing related activities where the authority has the discretion to determine the relevant fees; this includes, but is not limited to hackney carriage and private hire licences, and animal licences.

¹ The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2017. This is because the Council must follow the process prescribed by Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 to vary these fees and the actual date that the fees become legally effective is dependent on whether or not objections are made as part of the prescribed process. Whilst not legally required to do so, the Council has historically applied the same process to hackney carriage and private hire vehicle drivers licences.

2.0 RECOMMENDATION(S)

2.1 That Members:

- i) note the statutory fees that East Cambridgeshire District Council is required to charge in respect of the specified licences under the Licensing Act 2003 and the Gambling Act 2005 as set out in Appendix 1 and Appendix 2, and agree to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2017.
- ii) instruct Officers to implement, as appropriate, any other statutory fees that may be brought into force during the 2016/17 financial year.
- iii) instruct Officers to include the agreed fees in the 2017/18 annual fees and charges report that is presented to full Council.

2.2 That Members:

- i) agree to implement, with any necessary modification, the proposed fees relevant to those licences and licensing related activities where

the authority has the discretion to determine the fees, as set out in Appendix 3 and Appendix 4, on the 1 April 2017.

- ii) agree to implement immediately, with any necessary modification, the proposed fees relevant to scrap metal licences, as set out in Appendix 4, with an understanding that if Council do not approve the measure, refunds will be given
- iii) instruct Officers to include the fees in the 2017/18 annual fees and charges report that is presented to full Council.

2.3 That Members:

- i) agree to implement immediately, with any necessary modification, the proposed fees relevant to driver licences, as set out in Appendix 5, with an understanding that if Council do not approve the measure, refunds will be given.
- ii) agree to implement, with any necessary modification, the proposed fees relevant to hackney carriage vehicle, private hire vehicle and operator licences, as set out in Appendix 5.
- iii) instruct Officers in accordance with the provisions of Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, to publish a notice in a local newspaper setting out those fees that it is proposed will be varied to be advertised for a period not less than 28 days.
- iv) instruct Officers to include the proposed fees, as set out in Appendix 5, in the 2017/18 annual fees and charges report that is presented to full Council, and that in respect of those fees that are to be advertised in accordance with Section 70 mentioned above these are recorded in the said annual report as 'provisional fees under consultation to be confirmed by 31 March 2017'.

3.0 SUMMARY

- 3.1 With the exception of statutory fees set by central government the Council is responsible for setting fees and charges for the licensing regulations it is responsible for enforcing. The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman or via a judicial review.
- 3.2 The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of R Hemming and others v Westminster City Council case, which involved the licensing of sex shops in Soho and Covent Garden.
- 3.3 The judgement has made it clear that local authorities may become liable for substantial costs if it is found that procedures for setting fees have not been

- correctly followed, and if the fees are not reasonable and proportionate to the costs of the licensing procedures.
- 3.4 When considering whether the licensing fees are reasonable and proportionate, it is also necessary to look at each regulatory power separately. In simple terms this means taxi and private hire licence holders should not be charged a fee for their licence that creates an excess which is then used to subsidise the fees paid by applicants wishing to obtain another type of licence such as an animal boarding establishment licence.
 - 3.5 In 2015 to reduce the risk of challenge to the Council, officers undertook work to develop a financial modeling tool to help calculate the licensing fees to be implemented from 2016/17 onwards.
 - 3.6 This tool collated detailed information regarding the costs associated with undertaking the administrative procedures and formalities of each specific licensing procedure, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences. As a result of this analysis it was shown that there was a substantial difference between the fees being charged and the cost to the Authority all of the licence types administered by the Authority.
 - 3.7 In November 2015 Members were presented with a report which illustrated that in order for the Authority to achieve full cost recovery of the expenditure that it was legally entitled to recover, large increases in discretionary fees would need to be made across the board. Having considered the report Members took the decision to apply the Officer's recommendation that the Authority look to recover the financial deficit over the extended 2016 to 2021 period rather than look to increase the fees to full cost recovery in one go. This decision was taken to assist the trade, and to enable officers' time to work on further data collection.
 - 3.8 There is no statutory duty on the Council to consult when setting or revising licensing fees with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. This duty is reflected in the recommendation set out at paragraph 2.3 above. Historically, the Council has also consulted on driver licence fees and consequently officers recommend that this practice continues. With respect to the remaining discretionary fees, it is suggested that publishing the Committee's intentions, prior to the fees coming into force, will be sufficient.
 - 3.9 The Committee's legal authority to agree the recommendations is based within a range of specific licensing legislation together with the delegated functions set out in the Council's constitution. Extracts from the relevant legislation are provided in Appendix 6. Due consideration must also be given to the provisions of the EU Services Directive and the judgement in the Hemming case. Members are advised that Officers have considered these requirements when compiling this report.

4.0 FINANCIAL IMPLICATIONS

- 4.1 A task to capture the detail involved in all licensing procedures where the Council has the discretionary power to set fees, using the model mentioned in paragraph 3.5 above, has been undertaken. This is the second year that this model has been used, and due to this it has been possible to use both year's figures and the results of a time and motion data collection exercise that Officer's conducted following last year's committee to produce a reliable data set.
- 4.2 The licensing procedures are considered from receipt of application to the issue of the final licence or permit with both variable and fixed costs being considered. These costs include officer, management and member time spent on licensing administration and monitoring but excludes time spent on enforcing unlicensed operators/businesses. In addition, a proportion of all indirect costs that can reasonably be attributed to licensing procedures have been included; for example, office accommodation, ICT, travelling, legal costs, advertising, equipment, postage & printing, subscriptions, telephone costs, training and other corporate recharges.
- 4.3 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees from licensing fees (unless they are already included in statutory fees) and so consequently these costs have been incorporated into the overall figures.
- 4.4 It is also necessary to reflect the cost to the licensing authority of processing applications where a fee is not permitted to be charged. It has also been considered that the costs of providing advice to those who may consider applying for a licence in the future should not be covered by those already licensed. Last year's report and figures in isolation suggested a figure of 15% of budget could not be recovered, this year's data suggests a figure of 12% of our budget cannot be recovered. We are currently recovering 63% of the licensing budget with the shortfall being covered by the general fund.
- 4.5 It is accepted that costs can be recovered over a period of time allowing surpluses to be returned to licensees and deficits to be recouped by the Council. This does not mean that fees have to be adjusted every year (although they can be) to reflect immediately any previous deficits or surpluses; however, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. The Hemming case judgement makes it clear that not all costs are recoverable and must be borne by the Council.
- 4.6 Audited income in 2014/2015 before last year's approved fees increase has been confirmed as being £125,513. At the time of writing this report the licensing income for 2015/2016 has been confirmed at £132,386. This represents an approximate £6,873 or 5.19% increase in income despite some of the increased fees from last year's report not taking effect during the

2015/2016 period. Reasons for this have been identified as being due to the one off effect of switching from six monthly taxi vehicle licensing to annual vehicle licensing, the recovery of sundry debts, and a number of house-keeping Licensing Act 2003 applications being submitted following compliance visits.

- 4.7 The total cost of running the Licensing Authority for the 2015/2016 period has been confirmed at £209,797 which produced a shortfall of £77,411. This shortfall was covered by the general fund.
- 4.8 The average figures for 2015/2016 suggest that approximately 88% of the total cost of running the service may legally be recovered. Therefore, the 2015/2016 deficit in recoverable fee income was £52,562.
- 4.9 The proposed cost of running the service for the period 2016/2017 period has been set at £229,820. This represents an 8.7% increase in proposed costs over the actual costs of the 2015/2016 period. This increase is due to two reasons. The first reason is that central recharges for IT support, reprographics, and HR support have increased, and the second reason is because the actual 2015/2016 expenditure figure on salaries was artificially low due to the way the restructuring of the licensing department was handled from an accountancy point of view. When stating in 2015 that annual budgetary increases should not exceed 1.5% Officers were unaware that the figure being used for 2015/2016 was artificially lower than it should have been.

5.0 CONCLUSION

- 5.1 The 2015/2016 period contained the biggest shake up of fees and licensing structure in the Licensing Authority's history. Changes in legislation resulted in the Authority being required to offer three year taxi driver licences, and five year private hire operator licences. Street trading restrictions were overhauled thus enabling more income to be generated from this licence type, but this change also created additional work as new applications were received. Major changes to the way licence holders interact with the Licensing Authority were also made such as moving from six month vehicle licensing to annual vehicle licensing, and offering a new variation option to enable damaged cars to be replaced whilst retaining the same the licence number. These changes have had an inevitable impact on the analysis figures, which if taken in isolation would skew the results and produce inaccuracies, however, as mentioned in paragraph 4.1 above, as this is the second year information has been collected it has been possible to smooth out some of the peaks and troughs to produce a more reliable data set.
- 5.2 Projected income and expenditure figures available to date show that the 2016/2017 income will be in the region of £140,000 and the projected service costs as mentioned in paragraph 4.9 will be £229,820. This means that not increasing the fees will result in a deficit in recoverable fee income of approximately £63,000, which is £11,000 more than the 2015/2016 deficit.

- 5.3 The available figures (Appendix 7) show that all of the licence types subject to discretionary fees are not covering the costs of providing the service, due to this Officers recommend that Members follow the decision made by them in 2015 to increase the fees steadily over the extended 2016 to 2021 period, whilst conducting an annual review to ensure accuracy and to remain lawful. The proposed fees for 2017/2018 contained in Appendix 3, 4 and 5 are based on the table presented to Members last year (Appendix 8).
- 5.4 Scrap metal fees are included in Appendix 4 to this report due to the licensing team taking over the administration and compliance functions of this licensing regime in July 2016. No official time statistics are available due to this fact. Officers estimate that scrap metal will account for about 1% to 1.5% of resources moving forward. Scrap metal licences last for 3 years, and the majority of them are due to be renewed in January 2017. The proposed fees are based on 1% of resources and take into account the duration of licence. It is recommended that the proposed fees come into effect immediately, subject to refunds being given if Council approve a lesser figure.
- 5.5 Although paragraph 3.8 states that Officers recommend consulting on driver fees in the same way we consult on vehicle and operator fees, it is also recommended by Officers that any proposed increase in driver fees should come into effect immediately, subject to refunds being given if Council approve a lesser figure following the consultation period. The reason for this is that we have a large number of licence holders renewing before the close of the consultation period, and Officers believe it would be unfair on those renewing after the end of this period to have to pay significantly more than those renewing before.
- 5.6 There is no need to conduct an Equality Impact Assessment (EIA) as this report does not lead to the creation of a policy, or additional regulation.

6.0 APPENDICES

- | | | |
|-----|------------|---|
| 6.1 | Appendix 1 | Licensing Act Statutory Fees |
| 6.2 | Appendix 2 | Gambling Act 2005 Statutory Fees |
| 6.3 | Appendix 3 | Gambling Act 2005 – Discretionary fees |
| 6.4 | Appendix 4 | General discretionary fees |
| 6.5 | Appendix 5 | Discretionary taxi fees |
| 6.6 | Appendix 6 | Extracts from legislation regarding fee setting |
| 6.7 | Appendix 7 | 2015/16 actual income and 2016/2017 projected income (based on current approved fee levels) |

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Legislation contained in appendix 6	Room SF208 The Grange, Ely	Stewart Broome Senior Licensing Officer (01353) 616477
LGA guidance on local fee setting 2015		
Hemming v Westminster 2015		
R v Tower Hamlets LBC 1994		