



Committee and Date
Strategic Licensing Committee
25 September 2013

Item
6
Public

Licensing Fees and Charges 2014 - 2015

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1. Summary

- 1.1** This report sets out the statutory fees that Shropshire Council is required to charge for specific licences under the Licensing Act 2003 and the Gambling Act 2005. The report also proposes revised fees for the period 1 April 2014 to 31 March 2015 in respect of those licenses and licensing related activities where the authority has the discretion to determine the relevant fees; this includes, but is not limited to hackney carriage, private hire vehicle and operator licences.

2. Recommendations

- 2.1** That the Committee notes the statutory fees that Shropshire Council is required to charge in respect of the specified licences under the Licensing Act 2003 and the Gambling Act 2005 as listed in **Part 1 of Appendix A** to this report and agrees to implement these fees (or if subject to statutory amendment, the relevant amended fees) together with any other statutory fees that may be brought into force in the intervening period being included in the Fees and Charges 2014/15 report that will be presented at the Council meeting on 13 November 2013.

- 2.2 a)** That the Committee agrees, with any amendments, to implement the proposed fees relevant to those licences and licensing related activities where the authority has the discretion to determine the fees as listed in **Part 2 of Appendix A** to this report and agrees to these fees being included in the Fees and Charges 2014/15 report that will be presented at the Council meeting on 13 November 2013 and instructs

the Head of Public Protection to publish on the Council's website the intention of the Committee to revise the fees as set out in **Part 2 of Appendix A**.

- 2.3 a)** That the Committee agrees, with any necessary amendments, to implement the proposed fees in respect of driver, hackney carriage, private hire vehicle and operator licences as detailed in **Part 3 of Appendix A** and instructs the Head of Public Protection, in accordance with the provisions of Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, to publish in the Shropshire Star a notice setting out the proposed fees and specifying a period from 30 September 2013 to 30 October 2013 (this being not less than 28 days) within which and the manner in which objections to the proposed fees can be made.

AND

- b)** Where no objections to the proposed fees are received by 30 October 2013 or if all objections so made are withdrawn by the said date the Committee agrees to implement the proposed fees on 1 November 2013 and agrees to these fees being included in the Fees and Charges 2014/15 report that will be presented at the Council meeting on 13 November 2013.

OR

- c)** Where objections to the proposed fees are received by 30 October 2013 and are not withdrawn by the said date, the Licensing & Safety Sub-Committee consider the objections with a view to setting the date of 2 December 2013 (being a date not later than 2 months after the 1 November 2013) when the proposed fees shall come into force with or without modification. In addition, the Committee agrees to the proposed fees as set out in **Part 3 of Appendix A** being included in the Fees and Charges 2014/15 report that will be presented at the Council meeting on 13 November 2013 as '*provisional fees*' and that the actual fees will be confirmed prior to 2 December 2013.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman and judicial review. It is reasonable to assume that in the current economic climate, the likelihood of customers adopting this approach may increase.
- 3.2** The consequences of such a challenge are clearly demonstrated in the Court of Appeal judgement given in respect of the recent R Hemming and others v Westminster City Council case (the Hemming case – see paragraph 5.4 below), which involved the licensing of sex shops in Soho and Covent Garden. 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.
- 3.3** To reduce the risk of challenge to the Council, officers have undertaken work to develop a financial spreadsheet to calculate licensing fees. It is based on drawing together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with all licencing procedures, 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. In addition, it aims to demonstrate that the cost of enforcing the licensing regime against unlicensed operators is not charged to those who are licensed.
- 3.4** An Equalities Impact Needs Assessment has not been undertaken as the report does not concern the implementation of a new policy.
- 3.5** There is no anticipated environmental impact associated with the recommendations in this report.

- 3.6** The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations are in line with current legal procedures laid down in relevant licensing legislation and take into consideration the provisions of the Services Directive and the implications of the recent Hemming case judgement that directly affects the setting of licensing fees.
- 3.7** 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. In relation to hackney carriages, the fees for each zone are separately set. 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 an acceptable approach.
- 3.8** 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 B**. However, due consideration must also be given to the provisions of the Services Directive and the judgement in the Hemming case.

4. Financial Implications

- 4.1** An exercise has been undertaken involving managers, licensing officers and finance officers to capture the detail involved in all licensing procedures where the Council has the discretionary power to set fees. The procedures were 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 time and management time spent on licensing administration and monitoring compliance of those operators and vehicles already licensed but excludes time spent on enforcing unlicensed operators/businesses. In addition, a proportion of all relevant 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, other corporate recharges, etc.

- 4.2** In relation to the consideration of applications, it is reasonable to recover the costs of running the Licensing & Safety Sub-Committee (although not the Strategic Licensing Committee) from licensing fees and consequently these costs have, where possible, been incorporated into the overall figures.
- 4.3** As a result of this work, the proposed fees have been calculated and are set out in **Parts 2 and 3 of Appendix B**.
- 4.3** For comparison purposes, the discretionary fees for 2013/14 charged by Telford & Wrekin Borough Council and Cheshire East Council are included at **Appendix C**.
- 4.4** 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 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 that the costs associated with enforcing unlicensed operators/businesses must be borne by the Council. This will include the costs of providing advice to those who may consider applying for a licence in the future.
- 4.5** Each category of licence fee has been considered separately. However, the total recoverable licensing costs for 2013/14 are estimated to be £734,657. Whilst this is the total amount that the 2013/14 fees are aiming to recover, the actual recovery must relate to the separate licence categories. In 2011/12 licensing income was £726,043; this fell to £673,059 in 2012/13. The reduction in income is partly as a result of the decrease in the number of out of area hackney carriage and driver licence applications that are now being processed; however, it is also due to the

Council's fees not being set at a level sufficient to recover the costs that can legally be recovered.

- 4.6** In the current economic climate, any future losses that are not funded by other means, including being subsidised by council tax payers, may result in further staff redundancies and a reduction in the Council's ability to effectively deliver the overall licensing regime in the Shropshire Council area. However, it must be recognised that not all licensing costs are recoverable.

5. Background

- 5.1** In 2012 the Committee was informed of work that was undertaken to determine the cost of licensing activities associated only with hackney carriage and private hire licences. This led to a range of charging proposals aimed at achieving cost recovery for these types of licences for which the Council has the discretion of setting the fees.
- 5.2** Based on the financial information available in 2012, the Council made the decision not to implement full cost recovery and the hackney carriage and private hire related fees were set accordingly. Further work was also required to be undertaken to re-design processes to make them as lean and effective as possible to keep costs to a minimum. This work was carried out in early 2013 with new leaner processes implemented from June 2013.
- 5.3** The principle of cost recovery under licensing legislation is not limited to the licensing of hackney carriages and private hire vehicles, operators and drivers. It also extends to sex establishments, street trading, acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing, electrolysis, zoos, dog breeding, animal boarding, pet shops, riding establishments, dangerous wild animals, performing animals, scrap metal dealers, pleasure boats/vessels, distribution of free printed matter, together with the issuing of various licences under the Gambling Act 2005.

- 5.4** The principle has recently been confirmed by a Court of Appeal judgement in the case referred to in paragraph 3.2 above; the Hemming case. The judgement held that there were three elements that made up the licensing fees that were subject to challenge. These were:
- (a) the administrative cost of investigating the background and suitability of applicants for licences;
 - (b) the cost of monitoring the compliance of those with licences with their terms; and
 - (c) the cost of enforcing the licensing regime against unlicensed operators.
- 5.5** Of these three elements, it was held that Westminster City Council was entitled to charge for the first two elements, i.e. the costs of processing the application itself and the costs of monitoring compliance by licence-holders, but was no longer entitled to include the third element, i.e. the costs of enforcement against unlicensed operators, in the fee.
- 5.6** Certain licences under the Gambling Act 2005 are subject to statutory maximum fees and currently the Council is charging the statutory maximum in each case where this is applicable. However, the Council is under a duty to determine the fees and to ensure they are an accurate reflection of the costs incurred. For these reasons, all the Gambling Act 2005 licence fees that are subject to a statutory maximum are included in the proposals in **Part 2 of Appendix A**.
- 5.7** Officers are of the opinion that the Gambling Act 2005 fees will need further consideration. However, it is suggested that this is undertaken in consultation with the Gambling Commission and also with the Local Government Association (LGA). The LGA has indicated its intention to issue a licensing fee toolkit in the near future; however, the LGA has not yet made this available.
- 5.8** Under the Vehicles (Crime) Act 2001, the Council has previously registered motor salvage operators and charged a fee for this registration process. Scrap metal dealers were also subject to a registration process but the Council was unable to make a charge. The implementation of the Scrap Metal Dealers Act 2013 now

means that buyers/sellers of scrap metal and motor salvage operators are controlled by a single Act under which local authorities have been given the power to set fees (in line with specific guidance) from 1 September 2013 ahead of receiving applications from 1 October 2013 onwards. On this basis, **Part 2 of Appendix A** includes proposed fees in respect of site and collector's licences under the Scrap Metal Dealers Act 2013. Licences issued for scrap metal dealers will not take full effect until 1 December 2013.

5.9 Caravan sites are currently licenced by the Council under the Caravan Sites and Control of Development Act 1960 but the Council has no fee setting powers. The Mobile Homes Act 2013 amends the 1960 Act and this will allow the Council to charge fees for the licensing of caravan sites from 1 April 2014. Transitional arrangements will apply and the Council will be required to publish a fees policy prior to setting fees. The publication of the policy will be the subject of a separate report to the Council. Once the policy has been adopted, the fees will be set in accordance with delegated functions. For these reasons, there are no proposed caravan site fees contained in **Appendix B** at this point.

5.10 The government indicated some months ago its intention to extend cost recovery to licences issued under the Licensing Act 2003; however, to date legislation has not been published. The implications arising from the Hemming case judgement is likely to impact on this process and it is possible that the legislation will be forthcoming before the end of 2013. On this basis, only statutory fees under the Licensing Act 2003 are included in **Part 1 of Appendix A** and there are no proposals in **Part 2** for setting discretionary fees other than for providing a copy of information contained in an entry in the public register.

5.11 The financial spreadsheet, referred to in paragraph 3.2, has been set up to allow caravan site and Licensing Act 2003 fees to be incorporated and calculated as and when the legislation permits the Council to do so.

5.12 As a result of the Hemming judgement and irrespective of the wording in other UK licensing legislation, the costs associated with the licensing procedures that the Council may legally recover in fees consists of administrative costs, the costs of

investigating the background and suitability of applicants for licences and the costs of monitoring the compliance of those with licences with their terms. These will certainly include the costs that are directly attributable to licensing procedures and a proportion of indirect costs as referred to in paragraph 4.1 above. The Council must be in a position to demonstrate that the costs included in any fees calculations are reasonable and proportionate to the cost of the licensing procedures.

5.13 Fees cannot exceed the cost of the licensing procedures and they cannot be used to recover the costs associated with enforcing the licensing regime against unlicensed operators. In addition, fees cannot be used to finance the delivery of other Council services.

5.14 The Hemming case is particularly likely to affect nationally set fees, for example, under the Licensing Act 2003 and the statutory maximum fees under the Gambling Act 2005. The licensing fee toolkit referred to in paragraph 5.5 above will be relevant in this respect.

6. Additional Information

6.1 In respect of the discretionary fees proposed in **Part 3 of Appendix A**, namely the setting of fees for hackney carriages, private hire vehicles and operators' licenses, statutory procedures must be followed. Consequently to vary the fees from those currently set, the Council is required to follow specific procedures that allow for objections to be made and considered by the Committee. The recommendation at paragraph 2.3 addresses these statutory procedures.

6.2 The revised process that has been undertaken to determine the fees for 2014/15 will be undertaken annually with amendments being made to take account of changes in the law and Council procedures.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

- Report to Strategic Licensing Committee on 15 December 2010 on Establishing Fair Licensing Fees in Shropshire
- Report to Strategic Licensing Committee on 17 January 2012 on Hackney

Carriage and Private Hire Fees and Charges

- Report to Strategic Licensing Committee on 21 March 2012 on Fees and Charges for Hackney Carriage and Private Hire Licences
- Report to Strategic Licensing Committee on 12 March 2013 on Fees and Charges for Licensing
- Services Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
- Provision of Services Regulations 2009 - SI 2009 No 2999
- Court of Appeal Judgement in the case of R Hemming and others v Westminster City Council - 24 May 2013 - [2013] EWCA Civ 591 Case No. C1/2012/1666
- Mobile Homes Act 2013
- Scrap Metal Dealers Act 2013
- Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions Order 2013 - SI 2013 No. 1966 (C.83)
- Scrap Metal Dealers Act 2013: guidance on licence fee charges

Cabinet Member (Portfolio Holder)

Councillor Steve Charmley

Local Member

Not applicable

Appendices

Appendix A – Licensing Fees and Charges

Part 1 – Statutory Fees Gambling Act 2005 & Licensing Act 2003

Part 2 – Discretionary Fees General Licences & Statutory Maximum Gambling Act 2005 Licences

Part 3 – Discretionary Fees Drivers, Hackney Carriages, Private Hire Vehicles and Operators' Licences

Appendix B – Extracts from relevant licensing legislation providing legal framework within which local authorities may charge licensing fees

Appendix C - Licensing Fees 2013/14 - Comparison with Neighbouring Unitary Authorities (discretionary fees only)