



<u>Committee and Date</u>
Strategic Licensing Committee
25 January 2017

<u>Item</u>
6
Public

LICENSING FEES AND CHARGES 2017-2018

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1. Summary

- 1.1 This report proposes revised fees for the period 1 April 2017¹ to 31 March 2018 for licences and licensing related activities where the authority has the discretion to determine the relevant fees, this includes hackney carriage and private hire vehicle and drivers' licences, private hire operator licences, public health licences, animal licensing and other miscellaneous licences.
- 1.2 This report also 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.

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 set out in **Part 1 of Appendix A** and recommends that the authority implements these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2017 and instructs the Trading Standards and Licensing Operations Manager to arrange for the fees to be included in the 2017/18 annual fees and charges reports that are presented to Cabinet and Council and

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.

further instructs the Trading Standards and Licensing Operations Manager to implement, as appropriate, any other statutory fees that may be brought into force during the 2017/18 financial year and to publish all relevant statutory fees on the licensing pages of the Council's website as soon as is practicable.

2.2 That the Committee recommends that the authority implements, with any necessary modification and with effect from 1 April 2017, the proposed fees as set out in **Part 2 of Appendix A** that relate to those licences and licensing related activities where the authority has the discretion to determine the fees and instructs the Trading Standards and Licensing Operations Manager to arrange for the proposed fees to be included in the 2017/18 annual fees and charges reports that are presented to Cabinet and Council and further instructs the Trading Standards and Licensing Operations Manager to publish the fees, as agreed by Council, on the licensing pages of the Council's website as soon as is practicable.

2.3 a) That the Committee proposes to vary the fees relevant to driver, hackney carriage, private hire vehicle and operator licences as set out in **Part 3 of Appendix A**, with any necessary modification, and instructs the Trading Standards and Licensing Operations Manager, 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 those fees that it is proposed will be varied and specifying a period from 30 January 2017 to 26 February 2017 (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 variation in fees are received by 26 February 2017 or if all objections so made are withdrawn by the said date the Committee agrees to implement the proposed variation to the fees on 27 February 2017 or where objections to the proposed variation to the fees are received by 26 February 2017 and are not withdrawn by the said date, the Committee agrees to consider the objections at a meeting on the 22 March 2017 with a view to setting the date of 1 April 2017 (being a date not later than 2 months after the 27 February 2017) when the proposed variation to the fees shall come into force with or without further modification and further instructs the Trading Standards and Licensing Operations

Manager to publish the agreed fees on the licensing pages of the Council's website as soon as is practicable.

- 2.4 That the Committee instructs the Trading Standards and Licensing Operations Manager to arrange for the proposed fees as set out in **Part 3 of Appendix A**, with any necessary modification, to be included in the 2017/18 annual fees and charges reports that are presented to Cabinet and Council and that in respect of those fees a note is recorded in the said annual reports stating '*Provisional fees under consultation between 30 January 2017 and 26 February 2017; fees to be confirmed by the Strategic Licensing Committee by 22 March 2017*'.

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.
- 3.2 As reported to the Committee in previous years, a case of significant importance to the Council and to all licensing authorities is that of *R (on the application of Hemming and Others) v Westminster City Council*.
- 3.3 Timothy Hemming, who owns and operates a sex shop in Soho and holds a sex establishment licence entitling him to do so, and six of his fellow sex shop operators from Westminster, challenged Westminster City Council for charging for licensing enforcement in its fees. Their case was that it was unlawful under European law to include costs of enforcement activities against unlicensed operators in determining the licence fees payable by licensed operators.
- 3.4 On 29 April 2015 the Supreme Court delivered a unanimous decision which overturned a Court of Appeal ruling and confirmed licensing authorities could include the costs of regulatory and enforcement activities, including enforcement to address unlicensed activity, in determining the licence fees to be paid by licensed operators. The costs charged for the clerical and administrative aspects must be reasonable and proportionate to the actual costs of those procedures. This

decision supports the efforts of this Council to recover regulatory and enforcement costs from those who are licensed.

- 3.5 The Supreme Court's decision recognised the commercial benefit of enforcement measures taken against unlicensed operators or licensed operators trading outside the terms of their licences to law abiding licensees. It is clear that competition that law abiding licensees would otherwise face from rogue operators is minimised by effective enforcement. It is common sense that fees ought to comprise a sum to cover the administrative cost of issuing the licence and a sum representing the licensees' share of the cost to the licensing authority for regulating and enforcing the licensing scheme in question.
- 3.6 However, because the law in question is underpinned by a European Directive (the Service Directive 2006/123/EC), the Supreme Court requested a further ruling from the Court of Justice for the European Union (CJEU) to determine whether only successful applicants can be required to make a contribution towards regulatory and enforcement costs. The CJEU heard the case on the 16 November 2016 and confirmed that this was the case.
- 3.7 In practice, the ruling means that where the Council intends to recover regulatory and enforcement costs, it cannot include these costs in the fee that is payable at the time any application is submitted. Such costs are only payable after the decision has been taken to grant or renew a licence. This means that for those licences that incur post application regulatory and enforcement costs, the fees will now be charged in two parts:
- (a) the first part will be payable at the time an application is submitted and will aim to recover the costs associated with the administrative procedures and formalities of the application process (this includes the costs of undertaking all the required checks relevant to each licence type); and
 - (b) the second part will be payable by the applicant only once the licence is granted or renewed and will aim to recover the costs associated with the ongoing regulation and enforcement of the licencing regimes.

- 3.8 There are a number of licences that currently do not incur post application regulatory and enforcement costs. This is because the work undertaken as part of the application process is deemed to be proportionate to the level of risk associated with the activity that is controlled by these particular licence types. For these licences, there will only be one fee payable and this will be at the point of application.
- 3.9 The Services Directive does not directly apply to hackney carriage, private hire and gambling related licences. Nevertheless, consideration was given to voluntarily adopting the two-part fee system across these particular licence types to aid uniformity of practice across all licence types. It has, however, been concluded that the administrative burden and associated increase in cost (which would have to be passed onto licensees) outweighs the aspiration for uniformity. Consequently, for all hackney carriage, private hire and gambling related licences, a single fee will continue to be payable at the point of application.
- 3.10 To reduce the risk of challenge to the Council, a financial modelling tool was introduced in 2013 to calculate licensing fees from 2014/15 onwards. Fees are now being compared on an ongoing rolling basis and this will continue into the future.
- 3.11 The modelling tool developed in 2013 has been further updated, modified and refined to take account of changes recommended by the Council's finance officers, the recent CJEU ruling and to reflect the ongoing changes to the way in which the licensing function is resourced. Overall, the tool draws together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with all licensing 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. It also aims to demonstrate that the cost of enforcing the licensing regime against unlicensed operators has been considered and is included in licence fees in line with the judgements from the Hemming case. Enforcement costs are not included for joint hackney and private hire drivers' licenses in line with specific provisions of the Local Government (Miscellaneous Provisions) Act 1976.

- 3.12 An Equality and Social Inclusion Impact Assessment has not been undertaken as the report does not concern the implementation of a new policy; the focus of the report is the review of licensing costs to ensure the Council is in a position to recoup its costs on a cost recovery basis in line with current legislative requirements.
- 3.13 There is no anticipated environmental impact associated with the recommendations in this report.
- 3.14 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 takes into consideration the provisions of the Services Directive and the implications of the Hemming case rulings.
- 3.15 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 it is recommended that this practice continues. In relation to hackney carriages, the fees for each zone are considered separately. With respect to the remaining discretionary fees, it is suggested that publishing the Council's intentions, prior to the fees coming into force, will be sufficient and this reflects previous practice.
- 3.16 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 rulings in the Hemming case.

4. 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, has been undertaken and this continues to

evolve through an iterative process to further develop, improve and refine the processes involved. Managers, licensing officers and finance officers have collaborated in this work. 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 compliance of both those already licensed and those who are unlicensed but exclude time spent enforcing matters that relate to joint hackney and private hire drivers' licences. 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, advertising, postage & printing, subscriptions, telephone costs, training and other corporate recharges.

- 4.2 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees and the Licensing Panel from licensing fees and consequently these costs have been incorporated into the overall figures.
- 4.3 The forecasted fees are based on undertaking the administrative procedures and formalities associated with the relevant 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 and enforcement for unlicensed activities where it is permitted. Where relevant the fees have been split into two parts to take account of the recent CJEU ruling referred to in section 3 above. As a result of this work, the proposed fees have been calculated and are set out in **Parts 2 and 3 of Appendix A**.
- 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 to reflect immediately previous deficits or surpluses, although this is the approach that is currently being adopted. In any case, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. The Hemming case rulings make it clear that costs associated with enforcing unlicensed operators/businesses are recoverable by the Council but these costs are excluded from the calculation for the joint hackney and

private hire drivers' licenses in line with provisions in the Local Government (Miscellaneous Provisions) Act 1976. In addition, costs of providing advice to those who may consider applying for a licence in the future are included.

- 4.5 Specifically in relation to the surplus or deficit arising for each licence type in 2014/15, this was added or subtracted from the discretionary licence fees calculated for 2016/17. This added or subtracted element was applied to licence renewals only. An assumption was made as to how many renewals would take place in 2016/17 in order to recover or redistribute the 2014/15 position. Until the end of 2016/17 financial year it will not be known whether the assumptions about the number of renewals were accurate or not and whether a further adjustment is required to reset the 2014/15 position. If a further adjustment is required to correct any material discrepancy in the recovery or redistribution of the 2014/15 position then this will be made against 2018/19 fees and so on until the recovery of the surplus or deficit reaches a satisfactory position.
- 4.6 In the meantime, the proposed fees in this report look to recover or redistribute any deficit or surplus arising on 2015/16 operating costs from 2017/18 licence renewals. Once again an assumption is made about how many renewals will occur in 2017/18 to ensure that recovery or redistribution is on track. Actual numbers of renewals for 2017/18 will not be known until the end of that financial year. If further adjustment is required this will be made against 2019/20 renewals and so on until the recovery of the surplus or deficit reaches a satisfactory position.
- 4.7 Where licenses have a renewal period of greater than one year the recovery or redistribution calculation is spread across the same period.
- 4.8 The detailed proposals for the 2017/18 fees are set out in the relevant appendices. The proposed percentage fee variations are summarised below:-
- a) Public health licence fees have increased by 5.5% where inspection of premises is required and by 4.2% for individuals who wish to register without associated premises. The income received for public health licence fees in 2015/16 did not generate a surplus or significant deficit. The fees for these business types are based on average sized operations. An hourly rate of

£29/hour will be charged where the work required to undertake the licensing process exceeds the average time upon which the set fees are based.

- b) There have been marginal changes in relation to boarding and breeding animal licence fees. The fee for new small establishments has increased by 0.6% and has remained the same for larger establishments with an increase of 2.2% for all renewals. The fees continue to take account of the activity in 2015/16 that contributed to a deficit of £20,683 across animal health licences.
- c) The activity relating to dangerous wild animals and riding establishments has contributed to the 2015/16 deficit of £20,683 across the animal health licences. The fees for new dangerous wild animals and riding establishment licences have increased by 1.3%. The renewal licence fees have decreased by 12.9%. The fees for these business types are based on average sized operations. An hourly rate of £24/hour will be charged where the work required to undertake the licensing process exceeds the average time upon which the set fees are based.
- d) Zoo licence activity in 2015/16 also contributed to the deficit of £20,683 across animal health licences and this has been built into the fee calculations. Zoo licences have increased by 18.1% for new applicants and 55.5% for renewals. This is partly due to additional inspection time that is now necessary to deal with the complexity of the zoo licensing process but also takes account of the deficit.
- e) There have been marginal changes in relation to pet shop licence fees and for performing animals' licences. An increase of 0.6% for new licences and an increase of 2.2% for renewals² to continue to take account of the activity in 2015/16 that contributed to the deficit of £20,683 across animal health licences. An hourly rate of £24/hour will be charged where the work required to undertake the licensing process exceeds the average time upon which the set fees are based.

² Performing animals licence are issued indefinitely and therefore do not incur a renewal fee

- f) New and renewal scrap metal site licences have been reduced by 3.3% and 2.4% respectively. New and renewal collectors' licences have been increased by 9.6% and 7.5% respectively. The fees to vary scrap metal related licences differ depending on the exact variation required but they range from a 7.4% reduction to a 14.1% increase. The scrap metal dealers' regime generated a deficit of £18,372 in 2015/16 and recovery of this has been built into the calculated fees.
- g) Both new and renewal sex establishment licence fees have decreased marginally by 1.2% and 1.5% respectively. There was no surplus or deficit generated in 2015/16.
- h) Street trading consent fees have increased by 1.3% and did not generate a surplus or deficit in 2015/16.
- i) The fees for the distribution of free printed matter did not generate a surplus or deficit and have decreased by 6.9%, 8.7% and 11.2% depending on the duration of the permit. This is largely due to changes in the level of officer responsible for processing these licenses but the continuing reduction in support costs has also had an impact.
- j) The fee for licensing pleasure boats and vessels did not generate a surplus or deficit; however, the fee has increased by 15.9% to take account of the need to liaise with the Marine Inspectorate to more effectively ensure the safety of the boats/vessels.
- k) The fee for producing a copy of the public register under the Licensing Act 2003 and the Gambling Act 2005 has increased by 5.4% and continues to reflect the actual costs incurred to undertake this administrative task. It also continues to promote the 'self-service' behaviour shift that is already evident in this area.
- l) For hackney carriage and private hire licence fees, the fees for the replacement of lost/stolen/damaged fare cards will remain at £2.50 and the replacement of lost/stolen/damaged driver's badge, vehicle plates and door

signs remains at £45 to reflect the costs of the administrative process involved in preparing the replacement items.

m) The hackney carriage and private hire licensing regime in 2015/16 resulted in a deficit of £1,452 for hackney carriages, a surplus of £8,669 for private hire vehicles, a deficit of £15,797 for drivers and a surplus of £5,800 for operators. The recovery of the deficits and the return of the surpluses have been included in the fee calculations for 2017/18. The specific licence fees are set out in the relevant appendices with a summary of the proposed percentage variations listed below:-

- New driver's badge increased by 7.8%
- Renewal driver's badge increased by 6.3%
- Driver's knowledge test resit remains unchanged
- Driver training assessment remains unchanged
- Safeguarding training is a new requirement
- New private hire vehicle increased by 4.2%
- Renewal private hire vehicle reduced by 13.4%
- Private hire vehicle licence transfer increased by 0.9%
- New hackney carriage increased by 5.2%
- Renewal hackney carriage increased by 1.3%
- Hackney carriage licence transfer increased by 3.0%
- New small operators increased by 26.8%
- New large operators increased by 0.6%
- Renewal small operator reduced by 23.8%
- Renewal large operator reduced by 11.8%

n) All discretionary fees with a statutory maximum for licences granted under the Gambling Act 2005 remain unchanged from those fees agreed in 2016/17.

o) The generic fee for administrative amendments remains unchanged.

- 4.9 Where legislation allows the Council to recover licensing costs, it is important that this is undertaken effectively. Losses that are not funded by other means, including being subsidised by council tax payers, may result in a reduction in the Council's ability to effectively deliver the overall licensing regime in the Shropshire Council area. However, it is recognised that not all licensing costs are recoverable.

5. Background

- 5.1 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.
- 5.2 The principle was 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.
- 5.3 The Supreme Court ruled that licensing authorities could include all these activities including the costs of enforcement against unlicensed operators in the fee. However, this is not applied in the case of the joint hackney carriage and private hire drivers' licence in line with provisions in the Local Government (Miscellaneous Provisions) Act 1976.

- 5.4 The CJEU has subsequently also determined that only successful applicants can be required to make a contribution towards regulatory and enforcement costs, which has led to certain fees being payable in two parts.
- 5.5 Certain licences under the Gambling Act 2005 incur fees that are deemed to be discretionary but are subject to a statutory maximum. Currently, the Council has set these fees at less than the statutory maximum. 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**.
- 5.6 Caravan sites are currently licensed by the Council under the Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013. The amendment to the 1960 Act permits the Council to charge fees for the licensing of caravan sites from 1 April 2014; transitional arrangements apply and the Council is required to publish a fees policy prior to setting fees. The Council has not yet adopted a policy; consequently, fees have not been included in **Appendix B**.
- 5.7 The financial modelling tool, referred to in paragraph 3.10, has been set up to allow caravan site and Licensing Act 2003 fees to be incorporated and calculated as and when the Council is in a position to do so both from a policy and a legislative perspective.
- 5.8 The government has previously consulted on its intention to move from centrally set to locally set licence fees under the Licensing Act 2003 but has not taken this forward at the current time. As a result, the nationally determined statutory fees are retained and the Licensing Act 2003 fees are included in **Part 1 of Appendix A**. There are no discretionary Licensing Act 2003 fees proposed in **Part 2 of Appendix A** other than for providing a copy of information contained in an entry in the public register.
- 5.9 As a result of the Hemming case rulings and 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. Where applicable the cost of enforcement

against unlicensed operators is also included in the fee. 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.

- 5.10 Fees cannot exceed the cost of the licensing procedures and cannot be used to finance the delivery of other Council services.

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' licences, 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 process that has been undertaken to determine the fees for 2017/18 is an extension of the process that commenced in 2013. This process will continue annually with amendments being made to take account of changes in the law and Council procedures and costs.

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

- 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
- Supreme Court Judgement in the case of R (on the application of Hemming and others v Westminster City Council – 29 April 2015 - [2015] UKSC 25 on appeal from [2013] EWCA Civ 591
- Court of Justice for the European Union Judgement in the case of Hemming [2016] EUECJ C-316/15 (16 November 2016)
- Mobile Homes Act 2013

Cabinet Member (Portfolio Holder)

Malcolm Price – Portfolio Holder for Planning, Housing, Regulatory Services and Environment

Local Member

Not applicable – report has county wide application

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