



Committee and Date
Strategic Licensing Committee
10th December 2014

Item
7
Public

Licensing Fees and Charges 2015 - 2016

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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.
- 1.2 The report also proposes revised fees for the period 1 April 2015¹ to 31 March 2016 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 and private hire vehicle and drivers licences and to private hire 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 set out in **Part 1 of Appendix A** and agrees to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2015 and instructs the Head of Public Protection to include the fees in the 2015/16 annual fees and charges report that is presented to the Council and further

¹ The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2015. 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.

instructs the Head of Public Protection to implement, as appropriate, any other statutory fees that may be brought into force during the 2015/16 financial year.

2.2 That the Committee agrees 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 on the 1 April 2015 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** and further instructs the Head of Public Protection to include the fees in the 2015/16 annual fees and charges report that is presented to the Council.

2.3 a) That the Committee agrees to implement, with any necessary modification, the proposed fees relevant to driver, hackney carriage, private hire vehicle and operator licences as set out 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 those fees that it is proposed will be varied and specifying a period from 12 January 2015 to 15 February 2015 (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 15 February 2015 or if all objections so made are withdrawn by the said date the Committee agrees to implement the proposed variation to the fees on 16 February 2015 or where objections to the proposed variation to the fees are received by 15 February 2015 and are not withdrawn by the said date, the Committee consider the objections at a meeting on the 18 March 2015 with a view to setting the date of 1 April 2015 (being a date not later than 2 months after the 16 February 2015) when the proposed variation to the fees shall come into force with or without further modification.

2.4 That the Committee instructs the Head of Public Protection to include the proposed fees, as set out in **Part 3 of Appendix A**, in the 2015/16 annual fees and charges report that is presented to the Council and that in respect of those fees that are

subject to a proposed variation that these are recorded in the said annual report as *'provisional fees under consultation between 12 January 2015 and 15 February 2015; fees to be confirmed by 31 March 2015'*.

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 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 (the Hemming case – see paragraph 5.2 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 undertook work in 2013 to develop a financial modelling tool to calculate licensing fees from 2014/15 onwards. The 2014/15 financial year is the baseline year against which fees and charges, in the following two years of a three year cycle, are being compared.
- 3.4 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 and to reflect the way in which the licensing function is now being resourced. Overall, the tool remains 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.

- 3.5** An Equalities Impact Needs Assessment has not been undertaken as the report does not concern the implementation of a new policy.
- 3.6** There is no anticipated environmental impact associated with the recommendations in this report.
- 3.7** 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 judgement that directly affects the setting of licensing fees.
- 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. 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 Committee's intentions, prior to the fees coming into force, will be sufficient and this reflects previous practice.
- 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 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** 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 those operators and vehicles already licensed 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.

- 4.2** 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** As a result of this work, the proposed fees have been calculated and are set out in **Parts 2 and 3 of Appendix B**.
- 4.4** For comparison purposes, the discretionary fees for 2014/15 charged by Telford & Wrekin Council and Cheshire East Council are included at **Appendix C**. These fees are included for 'bench marking' purposes only and have not directly influenced the calculation of the proposed Shropshire Council fees.
- 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 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.
- 4.6** The Council has control over those licence fees that it has the discretion to set but only on a cost recovery basis. At this time, officers are satisfied that the income received from these discretionary fees has not generated a surplus or significant

deficit either overall or with respect to individual licence types based on 2013/14 fees and income. Consequently, the discretionary licence fees calculated for 2015/16 are based solely on the costs forecast at the commencement of the 2014/15 financial year for 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.

4.7 The detailed proposals for the 2015/16 fees are set out in the relevant appendices. The proposed percentage fee variations are summarised below:-

- a) Public health licence fees have increased by 22% where inspection of premises is required; however, there is a decrease of 36% for individuals who wish to register without associated premises.
- b) Boarding and breeding animal licence fees have increased by 11% for new applications. Officer resource is focussed on ensuring compliance is achieved when a business first seeks registration and is, therefore, generally greater than that required to maintain compliance on renewal. Consequently, a new single renewal fee has been introduced, irrespective of the size of the establishment. However, where applicants wish to increase the size of their business to such an extent that the number of animals involved falls within a new category, a new licence will be required and the relevant higher fee will apply.
- c) Dangerous wild animals and riding establishment licence fees have increased by 22% and a new renewal fee has been introduced. This reflects the move to a single licence category compared with three previously. The fee for licensing pleasure boats and vessels has similarly increased by 22%.
- d) Pet shop licences have increased by 8% and a new renewal fee has been introduced.
- e) Zoo licences (new and renewal), on the face of it, have increased significantly. However, this reflects the change from calculating the majority

of the fee on an hourly basis to one which is fully inclusive. This ensures that applicants fully understand the extent of the cost at the outset of the application process and specifically accounts for the extensive inspection regime associated with the whole period of the licence. The 2014/15 basic licence fee was previously based on the licensing process taking 5.5 hours; the revised fee accounts for a total of 21 hours for a new licence and 18 hours for a renewal. This equates to a pro rata hourly rate increase of 19% for a new licence and 13% for a renewal.

- f) With respect to scrap metal dealers, the fee regime was new in 2014/15. Since then a further four licence categories have been developed to reflect the options available within the applicable legislation. The existing collectors licence has increased marginally by 2%. However, a significant increase is proposed for new scrap metal dealer sites. This reflects the increased officer resource required to carry out the necessary compliance checks over the whole licence period.
- g) Both new and renewal sex establishment licence fees have increased significantly. This is largely as a result of the extensive time required by a specialist licensing officers to manage the administrative process; in particular, managing the consultation process which inevitably leads to a significant level of representations and associated work. In previous years, the time taken has been underestimated.
- h) Street trading consent fees have decreased marginally by 2%.
- i) The fees for the distribution of free printed matter have increased significantly for a weekly permit. This reflects the extent of the administrative process that is required initially; however, the proposed increases reduce to 11% as the period of the permit extends from a month to a year.
- j) The fee for producing a copy of the public register under the Licensing Act 2003 and the Gambling Act 2005 reflects the actual costs incurred. It also continues to promote the 'self-service' behaviour shift that is already evident in this area.
- k) For hackney carriage and private hire licence fees, all fees for the replacement of lost/stolen/damaged items and the administrative charge

remain the same as those agreed in 2014/15; the proposed variations are listed below:-

- New drivers badge increased by 17%
- Renewal drivers badge increased by 12%
- Driver knowledge test resit reduced by 26%
- Driver training assessment reduced by 13%
- New private hire vehicle increased by 5%
- Renewal private hire vehicle increased by 8%
- Licence transfer private hire vehicle increased by 10%
- New hackney carriage increased by 3%
- Renewal hackney carriage increased by 1%
- Licence transfer hackney carriage increased 8%
- New and renewal private hire operators increased from 8% (specific increases are dependent on the size of the operation)

- l) All discretionary fees with a statutory maximum for licences granted under the Gambling Act 2005 remain unchanged from those fees agreed in 2014/15.

4.8 The increases associated with the hackney carriage and private hire licences are linked to the additional resources that are being directed towards increasing the effectiveness of the administration process specifically for safeguarding purposes. In addition, increased compliance checks and investigation work are being carried out by officers who are not based directly within the licensing team. The fees are also affected by the changes made to the way in which average hourly officer rates are now calculated and charged.

4.9 With reference to the private hire operators licences, the new fee regime (fee level dependent on the size of the operation) that was implemented in 2014/15 is again being proposed for 2015/16. As it will only be the second year of operation, the Council is not yet in a position to fully assess the impact on cost recovery of the new regime for this particular licence type. At this stage, it is anticipated that the regime ought to operate for at least a further two years to enable a robust assessment to be undertaken; however, an early indication of its effectiveness is

likely to be available in late 2015 and this will further inform future fee setting decisions.

- 4.10** 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 must be 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** 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.

- 5.4** 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**.
- 5.5** Caravan sites are currently licenced 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**.
- 5.6** The government has recently consulted on its intention to move from centrally set to locally set licence fees under the Licensing Act 2003 and local authorities are now waiting for the outcome of this consultation. In the meantime, we retain the nationally determined statutory fees. On this basis, 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.
- 5.7** The financial modelling tool, referred to in paragraph 3.3, 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** 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.

- 5.9** 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.

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.
- 6.3** The process that has been undertaken to determine the fees for 2015/16 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
- 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

Cabinet Member (Portfolio Holder)

Councillor Steve Charmley

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

Appendix C - Licensing Fees 2014/15 - Comparison with Neighbouring Unitary Authorities (discretionary fees only)