



<u>Committee and Date</u>
Strategic Licensing Committee
6 <sup>th</sup> January 2016

<u>Item</u>
8
<u>Public</u>

## LICENSING FEES AND CHARGES 2016-17

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### 1. Summary

- 1.1 This report proposes revised fees for the period 1 April 2016<sup>1</sup> to 31 March 2017 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 agrees to implement these fees (or if subject to statutory amendment, the relevant amended fees) on the 1 April 2016 and instructs the Head of Public Protection to include the fees in the 2016/17 annual fees and charges report that is presented to the Council and further instructs the Head of Public Protection to implement, as appropriate, any other statutory fees that may be brought into force during the 2016/17 financial year.

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<sup>1</sup> The fees applicable to hackney carriage, private hire vehicle and operator licences may become effective on a date prior to the 1 April 2016. 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 so, the Council has historically applied the same process to hackney carriage and private hire vehicle drivers licences.

- 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 2016 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 2016/17 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 11 January 2016 to 14 February 2016 (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 14 February 2016 or if all objections so made are withdrawn by the said date the Committee agrees to implement the proposed variation to the fees on 15 February 2016 or where objections to the proposed variation to the fees are received by 14 February 2016 and are not withdrawn by the said date, the Committee consider the objections at a meeting on the 30 March 2016 with a view to setting the date of 1 April 2016 (being a date not later than 2 months after the 15 February 2016) 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 2016/17 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 11 January 2016 and 14 February 2016; fees to be confirmed by 30 March 2016'.

## 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 A case of huge importance to licensing authorities is that of *R (on the application of Hemming and Others) v Westminster City Council*. On 29 April 2015 the Supreme Court delivered a unanimous decision which overturned the Court of Appeal ruling on licensing enforcement charges.

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.

The Supreme Court ruled that licensing authorities could include the costs of regulatory and enforcement activities 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 recognises the commercial benefit of enforcement measures taken against unlicensed operators or licensed operators trading outside the terms of their licences to law abiding licensees. Competition they would otherwise face from rogue operators is minimised by effective enforcement. It is common sense that fees should 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 of regulation and enforcing the licensing scheme in question.

There should still be caution as the matter is not completely resolved. The Supreme Court requires the European Court of Justice to determine whether only successful applicants can be required to make a contribution towards regulatory and enforcement costs.

- 3.3 To reduce the risk of challenge to the Council, a new financial modelling tool was introduced in 2013 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 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 will be included in licence fees in line with the judgement of the Hemmings case but it will not be included for joint hackney and private hire drivers' badges and Private Hire Operators in line with the Local Government (Miscellaneous Provisions) Act 1976.
- 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.

- 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 the case of joint hackney/private hire drivers' licence and operators' 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 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 (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 costs associated with enforcing unlicensed operators/businesses are recoverable by the Council but we have excluded these costs from the calculation of Joint Driver's badges in line with the Local Government

(Miscellaneous Provisions) Act 1976. We will also include the costs of providing advice to those who may consider applying for a licence in the future.

- 4.5 The Council has control over those licence fees that it has the discretion to set but only on a cost recovery basis. The surplus or deficit in 2014/15 for each licence type has been identified and has been added or subtracted from the discretionary licence fees calculated for 2016/17. These fees have been forecast 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.
- 4.6 The detailed proposals for the 2016/17 fees are set out in the relevant appendices. The proposed percentage fee variations are summarised below:-
- a) Public health licence fees have decreased by 12% where inspection of premises is required and there is a decrease of 29% for individuals who wish to register without associated premises. The income received for public health licence fees in 2014/15 did not generate a surplus or significant deficit.
  - b) Boarding and breeding animal licence activity in 2014/15 contributed to the deficit of £20,019 across animal health licences. The calculated fees have therefore increased to reflect the level of activity involved with these licences. New application fees for boarding have increased by 24% for up to 10 animals and up to 42% for over 10 animals. New application fees for breeding have increased by 24% for up to 10 animals and up to 51% for over 10 animals. New applications require greater officer resource to focus on ensuring compliance when a business first seeks registration than on renewal. Consequently, the initial renewal fees calculated (which were calculated irrespective of the size of the establishment) have decreased. However, the inclusion of the recovery of the deficit in the calculation of renewal fees has had the effect of increasing the fees by 93%. 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 work in 2014/15 contributed to the deficit of £20,019 across animal health licences. The licence fees have therefore increased to reflect the level of activity involved with these licences. New application fees have increased by 46%. The inclusion of the recovery of the deficit in the calculation of renewal fees has had the effect of increasing the fees by 71% for renewal applications. Again, new applications require greater officer resource to ensure compliance than on renewal. These fees are based on applications up to 5 animals, with an hourly rate set at £24/hour for additional hours.
  - d) The fee for licensing pleasure boats and vessels did not generate a surplus/deficit and the calculated fee has decreased by 12%.
  - e) The licensing of pet shops in 2014/15 contributed to the deficit of £20,019 across animal health licences. The licence fees have increased to reflect the

- f) level of activity involved with these licences. New application fees have increased by 24%. The inclusion of the recovery of the deficit in the calculation of the renewal fees has had the effect of increasing the fees by 93% for renewal applications. An hourly rate of £24 will be applied for larger premises requiring more than 3.5 hours inspection time by an officer on renewal.
- g) Zoo licences have increased by 8% for new applicants but decreased by 6% for renewals.
- h) The scrap metal dealers' regime generated a deficit of £5,893 in 2014/15. New application fees have decreased by 13% for sites and 14% for collectors. The recovery of the deficit will be applied over the next three years in line with the duration of the licences and will result in an increase of 1% for sites and 36% for collectors' applications. Other than a small increase in the fee to vary a licensee name, all other scrap metal fees calculated for 2016/17 result in a decrease in application fee.
- i) Both new and renewal sex establishment licence fees have decreased by 18 and 17% respectively. There was no surplus or deficit generated in 2014/15 but there has been a reduction in support costs which is reflected in the calculated fee.
- j) Street trading consent fees have decreased by 16% and did not generate a surplus/deficit in 2014/15.
- k) The fees for the distribution of free printed matter have decreased significantly, from between 15% and 53% depending on the duration of the permit, again reflecting the reduction in support costs.
- l) 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.
- m) For hackney carriage and private hire licence fees, the fees for the replacement of lost/stolen/damaged fare cards will remain at £2.50. However, the replacement of lost/stolen/damaged driver's badge, vehicle plates and door signs will now incur a charge of £45 to reflect the administrative process involved in preparing the replacement items.
- n) The licensing regime in 2014/15 has resulted in a deficit of £2,307 for Hackney Carriages, £16,576 for Private Hire Vehicles, £30,027 for drivers and £9,736 for Operators. The recovery of this deficit has been included in the fee calculations for 2016/17 but the cost of enforcement for unlicensed drivers has been excluded in line with the requirements of the Local Government (Miscellaneous Provisions) Act 1976. The proposed variations are listed below:-
  - New driver's badge will decrease by 9% and will be issued for three years rather than one year in line with the Deregulation Act 2015.

- Renewal driver's badge will increase by 9% (the recovery of the 2014/15 deficit will be spread across the next 3 years to reflect the licence duration)
- Driver knowledge test resit reduced by 7%
- Driver training assessment re-sit reduced by 12%
- New private hire vehicle decreased by 15%
- Renewal private hire vehicle decreased by 2%
- Licence transfer private hire vehicle has not changed
- New hackney carriage decreased by 13%
- Renewal hackney carriage decreased by 5%
- Licence transfer hackney carriage decreased by 5%
- Operators' licences have been re-categorised into small operators with 30 vehicles or less and large operators with more than 30 vehicles. All operators' licences are now issued for five years, rather than three years, in line with the Deregulation Act 2015. The fees for new operators with less than 5 vehicles has increased by 14% but all other new operators licences have decreased. The renewal fees for operators have increased for those with ten or fewer vehicles (between 17% and 54%) and they have increased by 4% for those with between 31 and 100 vehicles. Again these licences are issued for five years rather than 3 years in line with the requirements of the Deregulation Act 2015. The recovery of the 2014/15 deficit will be spread across the next 5 years to reflect the licence duration.

- o) All discretionary fees with a statutory maximum for licences granted under the Gambling Act 2005 remain unchanged from those fees agreed in 2015/16.

- 4.7 The processes associated with the hackney carriage and private hire licences include additional resources that are being directed towards increasing the effectiveness of the administration process specifically for safeguarding purposes. Despite these additional steps, many of the fees, after the recovery of the 2014/15 deficit, have reduced because of efficiencies made in the Council's support and service costs.
- 4.8 With reference to the private hire operators' licences, a new fee regime (fee level dependent on the size of the operation) was implemented in 2014/15 and continued in 2015/16. A further assessment of the impact of that regime identified a deficit generated in 2014/15. An amended fee structure is proposed to reflect officer time more accurately against the different size of operations and we will continue to review its appropriateness.
- 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, we have not applied this in the case of Drivers in line with the Local Government (Miscellaneous Provisions) Act 1976.
- 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 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.
- 5.6 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.
- 5.7 The government has previously consulted on its intention to move from centrally set to locally set licence fees under the Licensing Act 2003 and has concluded not to take this forward at the current time; however, this will be further considered in the future. Consequently, we currently 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.

- 5.8 As a result of the Hemming judgement 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.
- 5.9 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 2016/17 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
- Mobile Homes Act 2013

### **Cabinet Member (Portfolio Holder)**

Malcolm Price – Portfolio Holder for Regulatory Services, Housing and Commissioning (Central)

### **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