

Report to: Licensing and Environmental
Regulation Committee (LERC)

Date: 30th September 2015

Report of: Director of Environmental Services

Report No: LERC/01/15

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Report Title: Licensing Fees Review 2015-2016

Non Confidential: This report does not contain information which warrants its
consideration in the absence of the press or members of the public.

Purpose: The report informs members of the annual fees review, and sets out the
proposed fee structure, as required by the Provision of Services
Regulations 2009.

Recommendations:

LERC is asked to:

1. Approve the proposed principles and methodology for setting the fees.
2. Consider the objections set out in Appendix D and following consideration of these objections approve the implementation of the revised fees from 1st October 2015.
3. Approve the carrying forward of any surplus or deficit to future financial years and for such surplus or deficit to be considered in the setting of future locally set fees.
4. Approve a phased approach to any annual renewal fee increases.
5. Delegate authority to the Director of Environmental Services to resolve any current and future challenges in relation to licensing fees.
6. Delegate authority to the Director of Environmental Services to determine the appropriate refund level in relation to unsuccessful applicants.

Decision

SUMMARY OF REPORT:

This report contains proposals for fees to be levied by Regulatory Services, Licensing Unit across the range of licensable activities for which the Unit has responsibility.

The proposals reflect changes as a result of the Provision of Service Regulations 2009 and the Hemming v Westminster judgement which requires the cost of the application process and the cost of any compliance and enforcement activities associated with the licensing regime to be separately accounted for.

Some fees are fixed by statute and cannot be varied by the Council.

The Deregulation Act 2015 requires Councils to issue 3 year licenses for Hackney and Private hire drivers and 5 year licenses for Private hire Operators from 1st October 2015. Shorter licenses can be issued in individual circumstances.

Background Doc(s):

BACKGROUND INFORMATION

Licensing Act 2003
Gambling Act 2005
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Provision of Services Regulations 2009
R (Hemming and others) v Westminster City Council judgement.
LGA Guidance on locally set fees 2013: Open for business.
Working papers – fee calculations.
Bolton Council Internal Audit Report : Licensing Fee Calculation ref 02/14/AH/ES
Proposals for increased period of validation of Private Hire and Hackney Carriage Vehicles ECME/49/14
Deregulation Act 2015

Signed:

Leader / Executive Member

Monitoring Officer

Date:

1. Background.

- 1.1 The Licensing Unit is responsible for the administration of a wide range of functions where statute requires a licence, permit or consent to be issued and for discharging the related enforcement functions.
- 1.2 The functions include private hire and hackney carriage licensing, alcohol and entertainment licences; casino and betting licensing together with street trading, charity collections and sex shops etc.
- 1.3 Most, but not all, of the functions carried out by the unit permit the Council to charge a fee. In each case the circumstances, in which a fee can be charged, and sometimes the fee itself (or maximum fee) is dictated by statute.
- 1.4 The last review of fees was carried out to set the 2010-2011 fees, a decision was taken not to increase the fees from those set in 2008.
- 1.5 New legislation and guidance on fee setting has been introduced and fees should be reviewed annually and adjusted as and when appropriate. This is to ensure fees (excluding those set by statute) are levied at an appropriate level to recover the full costs incurred by the unit from the licence applicant/holder.
- 1.6 The proposed fees have been independently calculated by the Council's financial officers and the methodology used has been scrutinised and approved by Internal Audit.
- 1.7 A complete list of the current and proposed fees is show at **Appendix A and B.**
- 1.8 The proposed fees were published on 3rd September 2015 for a period of 28 days. Comments were received and can be found in Appendix D.

2. Review of Costs.

- 2.1 The Provision of Services Regulations 2009 requires the Council to set fees that only recover the cost incurred; and the Hemming v Westminster judgement clarified which of those costs Local Authorities may charge for. In the light of this legislation and subsequent judgements a review of the fees has been undertaken and the results are documented within the report.
- 2.2 An analysis of the time spent by officers has been used to assist with fee setting. This analysis provides the proportion of staff time spent on various licensing activities. Some management tasks cut across a range of different activities and these costs have been apportioned.

- 2.3 Guidance on the new fee setting is set out in the recently published LGA Guidance document 'Open for Business'. Audit has confirmed that the methodology used for calculating the proposed fees is in keeping with the LGA guidance.

3. Fee Setting

- 3.1 The table and narrative below explains which fees are set by statute (nationally and which fees are set by the Council (locally). Following the principles of the legislation and LGA guidance mean that there will need to be a variation to a number of Council set fees as the cost of delivering individual areas is inconsistent with the current fees.

Area	Fee setting
Licensing Act	By statute (based on rateable value)
Hackney Carriage Drivers	Council
Hackney Carriage Vehicles	Council
Private Hire Drivers	Council
Private Hire Vehicles	Council
Private Hire Operator	Council
Gambling	By statute (maximum fee set)
Other fees, including scrap metal, sex establishments, street trading	Council

- 3.2 Breakdown by activity:

3.2.1 Licensing Act

The activity comprises the day to day administration tasks associated with the maintenance of records of premises licences and personal licences issued under the provisions of the Act and the acceptance and processing of applications, variations, and reviews, arranging hearings etc, together with conducting enforcement activity to secure compliance with the provisions of the Act and licence conditions.

Income is received in relation to new licences, variations, changes and amendments; together with annual renewal fees which premises licence holders are obliged to pay the Licensing Authority.

The fees are currently set by statute, based on the rateable value of the premises, and cannot be amended; therefore there are no proposals to change the licensing fee. Please see Appendix B for the breakdown of fees.

3.2.2 Hackney Carriage Licensing

The activity includes the acceptance, processing and maintenance of hackney carriage vehicle and driver licences including Disclosure and Barring Service (DBS) check; insurance checks, monitoring of licence plates, disability access, advertising etc. Monitoring of compliance with the licence conditions is carried out to ensure compliance with the relevant legislation, bye-laws and local conditions. Where non-compliance is identified enforcement activities are carried out to secure compliance.

The fees are set locally by the Council, and must now be based on the principle of cost recovery. Currently the full cost of licensing the hackney carriage function is not recovered. This report seeks to amend the fees associated with these licences, please see appendix A for the proposed breakdown of fees.

3.2.3 Private Hire Licensing

The activity includes the acceptance, processing and maintenance of private hire vehicle and driver licences including DBS check; insurance checks, monitoring of licence plates etc.

Monitoring of compliance with the licence conditions is carried out to ensure compliance with the relevant legislation and local conditions. Where non-compliance is identified enforcement activities are carried out to secure compliance.

The fees are set locally by the Council, and must now be based on the principle of cost recovery. Currently the full cost of licensing the private hire function is not recovered. This report seeks to amend the fees associated with these licences, please see appendix A for the proposed breakdown of fees.

3.2.4 Gambling Act

The activity includes the acceptance and processing of licence and permit applications for betting shops; casinos; track betting licences; adult gaming centres and family entertainment centres (amusement arcades); lotteries and gaming machines in other premises.

Monitoring of compliance in relation to this activity includes inspection of licensed premises and the investigation of unlicensed gambling activity.

A maximum fee level is set by statute. The Council currently sets fees at 70% of the maximum level. Bolton's fees are currently comparable to those set across AGMA Local Authorities; therefore there are no proposals to change the licensing fee. Please see Appendix B for the breakdown of fees.

3.2.5 Other fees related activity

Other fees related activity includes issuing street trading licences and consents, licensing of sex shops, scrap metal collector and site licences and enquiries from insurance companies and solicitors.

A limited amount of compliance monitoring and enforcement activity is undertaken concerning general inspection and illegal street trading.

The fees are set locally by the Council, and must now be based on the principle of cost recovery. This report seeks to amend the fees associated with these licences, please see appendix A for the proposed breakdown of fees.

3.2.6 Non- fee earning activity

The activity includes the issuing of permits for charity collections (on street and house to house) and the acceptance of financial returns, relating to those collections, and the registration of second hand goods dealers.

Compliance monitoring and enforcement is carried out to check registrations and to prevent illegal charity collections.

There is no provision to allow for fees to be charged in relation to this area of work.

4. **Future Fee Levels.**

- 4.1 The Local Government (Miscellaneous Provisions) Act 1976 sets out the statutory framework to which councils must adhere to when setting fees for private hire and hackney carriage licensing. It allows the Council to recover its “reasonable costs” which include and not limited to staffing costs, appropriate overhead costs and accommodation. Fees have not been increased since 2007- 2008 and therefore inflation has not been reflected for a number of years.
- 4.2 The service has received 2 challenges based on the Hemming v Westminster judgement in respect of the sex shop licence fee. There has also been a challenge regarding the private hire operator fees. Consequently the new the fees have been reviewed based on the legislation and the challenges from traders.
- 4.3 As a result of the challenges, invoices raised by the service are currently in dispute and interim payments made. The report asks that delegated authority be given to the Director of Environmental Services in order to resolve the current fee disputes and also any potential future disputes.
- 4.4 Unsuccessful Applicants - The most recent Hemming V Westminster judgement identifies that unsuccessful applicants are entitled to a partial refund of their fee. The cost of the application process is not to be refunded but any compliance and enforcement elements will need to be refunded. The report asks that delegated authority be given to the Director of Environmental Services to determine the appropriate refund level in relation to unsuccessful applicants.

Fees that are not proposed to change:

- 4.5 **Licensing Act 2003 fees** - which governs Alcohol related fees are currently fixed by the Government and cannot be varied by the Council.
- 4.6 **Gambling Act 2005 fees** - have a maximum set by the Government. The Council fees are currently set at 70% of the maximum permitted. An exercise has been undertaken to review the fees against other AGMA authorities. It is proposed not to amend the current fees at this point as they are already in line with neighbouring authorities.
- 4.7 **Other fees** - such as scrap metal licences, DBS and providing information to solicitors/ insurers are considered to be currently accurate and are not proposed to change.

Fees that are proposed to change:

- 4.8 **Operator Fees** - As outlined above, the Council has received a challenge to the cost of private hire operator fees. It is proposed to change the operator licence fees so that the fees are more reflective of the associated costs. This entails retaining a narrower sliding scale dependent on the number of vehicles and this can be justified based on different numbers of compliance interventions depending on the size of the operator. Ensuring that all locally set fees are based on cost recovery assists the Council in avoiding any legal challenges to the fees set.
- 4.9 **Hackney Carriage Fees** - will be slightly higher than the private hire fees as the licences require additional work such as ensuring disabled access etc.
- 4.10 **12 Month Licenses** - The Executive Cabinet Member has already approved the introduction of a 12 month vehicle licence fee Ref: ECME/49/14. By changing the renewal timescales from every 6 months to every 12 months this has allowed for some reduction in officer time and will assist in offsetting the overall cost increases and are reflected in the fees set.
- 4.11 **Sex Shop Fees** - Having applied the financial methodology for cost recovery, sex shop license fees would need to decrease to ensure the Council is only recovering costs in this area.
- 4.12 **Street Trading Fees** - The methodology has also shown that other activities such as street trading consents charges would also need to increase to ensure the fee recovers the appropriate costs.
- 4.13 **Fees which will no longer apply** - The service currently has a number of individually set smaller fees such as replacement badges and stickers. In accordance with the LGA, these fees will no longer apply. This will reduce the amount of income by approximately £70,000.
- 4.14 **Initial Application Fees** - It is important to note that initial application fees are only relevant to some fees, those which involve significantly more work at first application and not to those where there is a presumption to grant.

5. The Deregulation Act 2015.

- 5.1 The Deregulation Act 2015 received Royal Assent on 26th March 2015 with changes to hackney carriage and private hire legislation coming into effect from the 1st October 2015. The whole Act

consists of a range of changes to many regulatory functions including provisions that will affect taxi and private hire licensing.

- 5.2 The provisions are that hackney carriage and private hire **driver licences** should be issued for three years and private hire **operator licences** for five years, unless there are reasons for not doing so.
- 5.3 Currently, hackney carriage and private hire driver's licences and private hire operator licences in Bolton are issued for one year; therefore, it is necessary for the licensing regime, including fees and charges, to be reviewed to enable compliance with the Deregulation Act.
- 5.4 Extension of the licence period will also have implications on the Council's policies and conditions. A separate report will cover the policy implications of these changes in relation to licensing matters. However it is important to take account of the proposed changes to license periods as part of this report due to the knock on implications for fee setting.
- 5.5 The Act establishes a standard duration of **three years** for taxi and private hire vehicle driver licences. It specifies that a licence may be granted for a period of less than three years but only in the circumstances of an individual case, not because of a blanket policy
- 5.6 For private hire vehicle operator licences a standard duration of **five years** will apply. A licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of a blanket policy.
- 5.7 There is currently no detailed information or operational guidance on these deregulation measures available from the Government or other organisations.

Longer License Fees

- 5.8 To enable the Council to comply with the Deregulation Act on 1st October 2015, it is proposed to set longer license fees until further guidance is published and a detailed costing exercise conducted.
- 5.9 It is reasonable to assume that the true cost of longer licenses will be slightly less than multiple licences covering the same period of time. However until longer licenses are in place and service costs actually reduce the revised fees can only be calculated based on reasonable assumptions at this stage.
- 5.10 Therefore, it is recommended that an appropriate fee is set for these longer licenses on the basis that administration costs will reduce following Year 1.
- Hackney and Private Hire Drivers - a fee equating to three times the annual fee with a discount of 9% applied in Years 2 and 3
 - Private Hire Operators – a fee equating to five times the annual fee with a discount of 9% applied in Year 2, 3, 4 and 5.

6. Phased Approach:

- 6.1 LERC may wish to consider a phased approach to the introduction of full cost recovery for any increased annual renewal fees utilising reserves to offset fee increases. The cost of phasing is estimated to be approximately £137,000; the approach is shown at appendix A.
- 6.2 Phasing will not apply to an initial application fee, 3 driver license fees, 5 year Operator license fees or to fees which reduce in cost from the previous year.

- 6.3 All fees including phased fees will require 2% inflation to be added each year as part of the departmental fees and charges report.
- 6.4 As per the recommendations, it is proposed to review the fees on a regular basis, based on the correct methodology. If there is any surplus or deficit this will be reflected in any future fees.

7. Equality Impact Assessment:

- 7.1 An initial assessment has been undertaken and concludes that there will be no differential impact from this proposal, in respect of race, gender or disability.

8. Recommendations.

- 8.1 LERC is asked to:

- 1) Approve the proposed principles and methodology for setting the fees.
- 2) Consider the objections set out in Appendix D and following consideration of these objections approve the implementation of the revised fees from 1st October 2015.
- 3) Approve the carrying forward of any surplus or deficit to future financial years and for such surplus or deficit to be considered in the setting of future locally set fees.
- 4) Approve a phased approach to any annual renewal fee increases.
- 5) Delegate authority to the Director of Environmental Services to resolve any current and future challenges in relation to licensing fees.
- 6) Delegate authority to the Director of Environmental Services to determine the appropriate refund level in relation to unsuccessful applicants.

Appendix A

				1516	1617	1718		
Description	Detail	Current Fees £	Proposed Fee £ 1516	Initial Fee	Interim Fee	End Fee	Proposed 3 Year License £1516	Proposed 5 Year License £1516
Hackney : Hackney Driver Licence	1st application	80.00	195.00				550.00	
Hackney : Hackney Driver Licence Hackney Renew Vehicle	Annual renewal 12 month	41.00 136.00	82.00 189.00	55.00 154.00	69.00 172.00	82.00 189.00	231.00	
Private Hire : Private Driver Licence	1st application	80.00	195.00				550.00	
Private Hire : Private Driver Licence Private Vehicle Licence	Annual renewal 12 Month	41.00 136.00	114.00 144.00	65.00 139.00	89.00 142.00	114.00 144.00	321.00	
Private Hire Operator Licence :	1 Vehicle	140.00	268.00	183.00	226.00	268.00		1,243.00
	2-5 Vehicles	234.00	429.00	299.00	364.00	429.00		1,989.00
	6-10 vehicles	336.00	429.00	367.00	398.00	429.00		1,989.00
	11-15 Vehicles	434.00	509.00	459.00	484.00	509.00		2,362.00
	16-50 vehicles	538.00 - 1143.00	509.00					2,362.00
	Over 50 vehicles	1245 - 11343	1,233.00					5,719.00
Street Consents : Street Trading Consents Street Trading Consents Street Trading Consents Street Trading Consents	Up to 1 month 3 month 6 month 12 month	176.00 234.00 411.00 586.00	181.00 361.00 467.00 753.00	178.00 276.00 430.00 642.00	180.00 318.00 449.00 699.00	181.00 361.00 467.00 753.00		
Sex Shops : Sex Shop Licence Sex Shop Licence	1st application Annual renewal	2,165.00 2,165.00	866.00 600.00					
Scrap Metal : Scrap Metal & Motor Salvage Scrap Metal Scrap Metal	Collectors Site	450.00 650.00	450.00 650.00					
General : Providing information to solicitors/insurance co. Disclosure Barring Service Fee (as charged by DBS)	At cost (where appropriate) Per Check	 44.00	 44.00					
Fees (including phased fees) will require 2% inflation to be added as part of the departmental fees and charges report								