

REGULATORY SERVICES COMMITTEE – 4 DECEMBER 2019

PART I – NOT DELEGATED

5. REVIEW OF LICENSING FEES AND CHARGES (DCES)

1 Summary

- 1.1 To consider a review of discretionary fees and charges, with any adjustments to take effect from 1 April 2020.
- 1.2 The fees and charges are coming to the Committee before going out for public consultation. The report has also been presented to the Leisure, Environment and Community Committee on 27 November 2019. Officers will provide feedback at the meeting on any points raised.
- 1.3 The fees and charges relating to Environmental (commercial services) included in the report (Paragraphs 2.21 to 2.24, 4.2.2, 5.7 and 13.2) do not require consideration by this Committee as they are in the remit of the Leisure, Environment and Community Committee.

2 Details

- 2.1 This report covers the discretionary fees charged for services provided by some of the enforcement components of Regulatory Services, which includes Licensing and Environmental Health Commercial (EHC).
- 2.2 As part of the Regulatory Services Committee work programme it was agreed in December 2018 that the Licensing department would undertake a review of the licensing fees. The Regulatory Services Service Plan 2019-2022 also recognises a licensing fee review which should consider locally set fees on all types of licensing applications to ensure cost recovery.
- 2.3 The European Union Services Directive 2006/123/EC (the Directive) was given effect in UK law via the Provision of Services Regulations 2009 (SI2009/2999). This Directive and the Regulations contain provisions about the fees which may be charged under relevant licensing regimes within the scope of the Directive. In particular licensing authorities may not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence. In *R(Hemming) v Westminster City Council* (2017) the Supreme Court established that a licensing regime may operate on the basis that an applicant must pay:
 - i) On making the application, the costs of the application process and,
 - ii) On the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.
- 2.4 The licensing fee review therefore **only** relates to fees and charges for which the Directive relates and are comprehensively set out at **Appendix 1**. Licensing fees such as premises licences, temporary event notices, personal licences, gambling licenses and small lotteries are set by The Licensing Act 2003 (Fees) Regulations 2005 and thus are not subject to the review (noted as 'set by Government' at **Appendix 1**).
- 2.5 The fee review has been undertaken on the basis that the following are taken into account:

- Administration work
 - Costs of developing policies for each area
 - Any special equipment, materials or resources required
 - Background checks that have to be undertaken
 - Monitoring and compliance, as appropriate
 - Costs associated with legal advice and hearings
 - Overhead costs incurred by the service
- 2.6 A previous licensing fee review relating solely to private hire operators, private/hire/hackney carriage vehicle licences and private/hire/hackney carriage driver licences was undertaken in 2015 as a result of the Deregulation Act 2015. The new fees for the abovementioned licences were implemented on 1st October 2015. The key changes of the Deregulation Act required that applicants pay a larger initial fee upfront with driver licences now valid for a period of three years as opposed to annually, with operator licences now valid for five years and a requirement for licensees to provide an annual Enhanced Disclosure and DVLA check to the Council (at no added cost to the Council).
- 2.7 Notwithstanding the above, the Licensing department has not undertaken a thorough review of all licensing fees for a significant period of time due to staff turnover and resources. As a result fees relating to street trading, scrap metal collectors and sites, and sex entertainment venues have not been reviewed for a considerable period of time.
- 2.8 Consequently, since the beginning of 2019 the Lead Licensing Officer in conjunction with Finance have undertaken a review of the licensing fees. The review has taken into account the application process, including administrative tasks and officer time taken when running the licensing service as well as monitoring and compliance of licensees, as appropriate. The review also compared the fees against adjacent licensing authorities (Watford Borough Council and South Bucks and Chiltern District Council).
- 2.9 As part of the review there are also various new fees and charges which have been incorporated following the recent implementation of the Private Hire and Hackney Carriage Enforcement Policy 2019 (adopted 1 October 2019). These include the ability for applicant's to apply for a dual licence up to 1 year (£188) or 3 years (£498) so they can operate as both a private hire and hackney carriage driver rather than applying for separate applications. Other new fees include charging for replacement brackets (£9), door stickers (£5), exemptions (£65), operator replacement licence (£10), change of address/details (£8.50) and advertising (£25). Further changes include introducing a tiered fee charging structure for private hire operators with those with a higher number of licenced vehicles paying more than an operator with just one licensed vehicle. All new fees are set out at **Appendix 1**.
- 2.10 The review sets out that the majority of existing fees relating to taxi licensing (private hire and hackney carriage drivers and vehicles and operators), scrap metal, sexual entertainment and street trading should be increased to ensure that the fees cover the licensing service moving forward on a cost recovery basis. It should be noted that this is a partial cost recovery excluding some on costs, regard being had to the current level of fees and benchmarking with adjacent Authorities (**Appendix 2**). Where fees are paid at the commencement of a 3 and 5 year licence the fees are aligned into the relevant year's budgets.

- 2.11 In respect of private hire operators, prior to the introduction of the Deregulation Act, it appears that there were approximately 62 operators licenced with the Council in year 2014/2015. Following the implementation of the said Act there was a sharp rise in 5 year applications in years 2015/2016 (23 licences) and 2016/2017 (32 licences). It is then evident that there was a significant fall as it is likely that the number of operators in Three Rivers had peaked and thus had already been licenced. Given that the majority of licences are based on 5 years, those operators, if they wish to renew, are required to apply again. It is therefore likely that in years 2020/2021 and 2021/2022 the department should see a further rise in operator licence applications given the 5 year cycle. Whilst it is likely that the number of operators renewing may not be as high as in previous years, even if only 50% were to renew, this would still be a notable increase on years 2017/2018 to the current period in 2019/2020 but there would be a notable fall from 2020/2023 onwards due to the 5 year cycle.
- 2.12 As part of the fee review it should be noted that a new tiered charging structure is proposed which seeks to charge a fee based on the number of vehicles licenced by an operator. Currently there is a fixed fee for all operators, regardless of how many vehicles they have licenced with the Council. The new fees would therefore require an operator with one licenced vehicle applying for a 5 year licence to pay £973.50 (1% rise on the current fee) whereas a fee for an operator with 11 plus vehicles for a 5 year licence would require a fee of £1,816.50.
- 2.13 In addition the fees allow for operators to apply for a one year licence. However, a one year licence will only be granted by the Lead Licensing Officer in very special circumstances which will reduce the risk of existing operators applying for a one year licence. Nevertheless, based on the proposed fees it would be extremely difficult to quantify how existing volumes and income would be affected, other than acknowledging that income is likely to be up over the course of the next two financial years as established operators renew their licences with the Council based on past trends.
- 2.14 With regards to vehicle licences each vehicle needs to be licenced annually. Over the last 5 years the number of applications has fluctuated between 498 (in year 2015/2016), 430 (in year 2017/2018) and 441 (in year 2018/2019). The new vehicle fee is proposed to be £184 (up from £133, a 38% rise) with the renewal fee set at £153.50 (up from £133, a 15% rise).
- 2.15 Due to changes in policy it is recognised that the number of new licenced vehicles may reduce over the next few years due to recent policy changes (e.g. compliance with euro 5 emissions and stricter conditions relating to vehicles over 10 years old). However, the new fee is still lower than adjacent authorities and has been carefully calculated to consider the cost of processing new vehicle licences.
- 2.16 The majority of vehicle applications received by the Licensing department relate to renewals which will see a 15% rise in the fee to cover the service cost.
- 2.17 In respect of driver licence applications, the volume over the last 5 years peaked in 2015/2016 and 2016/2017 following the Deregulation Act with a sharp fall in 2017/2018). Given the predominant three year cycle of applications, volumes rose in 2018/2019 and again this financial year (2019/2020). What is apparent is that there is a reduction in the amount of drivers applying for a licence with Three Rivers over the 5 year period. This is potentially down to various factors, such as the market within the district being saturated, advances in technology such as Uber (mobile applications) and the additional requirements needed to become a licenced driver at Three Rivers following stricter policies changes. As set out in **Appendix 1** the new fee for drivers is rising by £28 for new one year licences and £10 for renewal of one year licences, rising by £56 for new two licences and £42.50 for renewal of two year

licences and £46 for new three year licences and £11.50 for renewal of three year licences.

- 2.18 In regards to scrap metal licences (for 3 years) and sexual entertainment venues, the volumes of applications are relatively low and the fees received are combined with other premises licences which are hard to predict. The existing scrap metal licence in the district has also already renewed and thus will not need to pay next year. It is not considered that the fee increases of approximately 3% for new applications will have a significant impact on the budget.
- 2.19 For street trading there is an increase in the fee for the new application of 6% (from £207 to £220.50, a rise of 6%). The volume of street trading applications received by the Licensing department are relatively low so any financial risk is low.
- 2.20 The estimated total increase in revenue as a result of the review is approximately £8,520 based on existing volumes. This proposed increase would partially cover the costs of progressing the relevant licences by the licensing department.
- 2.21 With regard to fees for Environmental Health services, the principles of Article 13(2) of the governing EU Directive require that fees can only be set upon cost recovery and not set artificially high, to obtain revenue or seek to deter applications. Further legal implications are provided below.
- 2.22 The fees and charges relating to EHC functions concern skin piercing practitioner registrations, for both premises and the individuals attached to those premises. The fees are a one-off payment for a simple initial registration and not a periodic charge.
- 2.23 The Environmental Health (commercial) service has been provided by WBC for TRDC since 1 May 2019. Fee setting remains the responsibility of each individual authority although the fees are collected by and remain with WBC. As part of the budget setting process last year in anticipation of the service delegation the fees were revised for 2019/20 to correspond with the Watford fees. It is proposed this continues to ensure some consistency.
- 2.24 Demand is small, vulnerability is not an issue with regard to these services.

3 Options and Reasons for Recommendations

3.1 Licensing

Following discussion at Committee, there are three options available for Members with regard to licensing fees:

Option 1: Increase fees as proposed based on partial cost recovery.

- 3.1.2 Members note and agree the report and proposed fees and authorise Officers to present the licensing fee review to the Regulatory Services and Licensing Committees on 4 December before going out to public consultation in December.
- 3.1.3 Following the results of the consultation the report will be presented to the Leisure, Environment and Community Committee on 15 January, Policy and Resources Committee on 21 January 2020 and then Full Council on 25 February 2020 with the fees being effective from 1 April 2020 if agreed.
- 3.1.4 Note: With an increase in licensing fees as proposed it should be acknowledged that there may be a reduction in the take up of new applications and/or renewal applications. This is due to more stringent policy requirements, security checks, medical requirements and the advances in other technology. The service will be

monitored and any reduction in service use and resulting reduction in income will be reported through the budget monitoring process.

Option 2: Increase the fees by the agreed 4% inflationary increase

3.1.5 As part of the Council's strategic, service and financial planning process for 2020/21, the Policy & Resources Committee approved (Minute No PR 31/19 refers) the assumption for services to factor into their forecasts a 4% increase in all fees and charges that are not set by statute. However, Heads of Service would need to take account of demand, affordability and vulnerability.

3.1.6 Due to the delays in the licensing fee review the discretionary licencing fees have not been the subject of any inflationary increases over the last few years. The majority of the fees proposed exceed the proposed 4% inflation rate. However, the proposed fees are based on partial cost recovery and have been carefully determined and are based on this.

Note: This option would not cover service cost provision.

3.1.7 **Option 3: Determine the licensing fees should remain as existing with no increase (including inflation).**

Note: It should be noted that the current fees do not cover service cost provision.

4 Policy/Budget Reference and Implications

4.1 The recommendations in this report are within the Council's agreed policy and budgets.

4.2 Following the implementation of the Hackney Carriage and Private Hire Policy 2019 on 1 October 2019 a number of new fees need to be taken into account before we can apply the following:

- Processing dual applications for both hackney carriage and private hire driver licences
- Charge of advertisements on taxis
- Apply charges for replacement door stickers
- Vehicle exemptions

4.2.1 Failure to implement the new charges would impact the effectiveness of the policy and also result in added costs to customers seeking to apply for both licences. No performance indicators would be affected by the licensing fee review.

4.2.2 EHC functions

Any change in fees will only affect new applications and will not affect existing registrants. TRDC already have five tattoo studios in the district. We also have twenty one other establishments offering a range of other skin piercing services, such as acupuncture, ear piercing and dry needling. This includes six new premises (3 acupuncture and 3 semi-permanent make up) registered in the last year.

There is an existing two tier fee structure. From 1 April 2020 it is proposed we charge £173 for a premises registration (current TRDC charge £168) and individual practitioners £54 (we currently charge £52.50). This is an approximate 3% increase on current fees and is calculated based on cost recovery for the activity of processing the application.

5 Financial Implications

5.1 Licensing

The licensing fee review is based on cost recovery in accordance with legislation. Fees are proposed based on partial cost recovery having regard to the level of the proposed fees and benchmarking with adjacent authorities. The majority of fees exceed the level of agreed inflationary increase at TRDC (4%) but they have been calculated (**Appendix 1**) against the costs associated with processing a licence. It is acknowledged there is a possibility of a reduction in applications, however, this will be monitored and reported as appropriate through budget monitoring.

5.2 Option 1 – Partial cost recovery

5.2.1 Although the legislation allows for full cost recovery - if the fees are calculated on a full recovery basis the price charged would be significantly higher than currently proposed and would not be comparable to neighbouring Authorities. This could lead to significant reduction in volumes and subsequently income.

Service	2020/21 Current MTFP Budgets	Estimated revised income	Additional Income
	£	£	£
Drivers	(76,060)	(73,300)	2,760
Vehicle	(71,570)	(80,480)	(8,910)
Operator	(11,540)	(13,420)	(1,880)
Other Licence Fees	(61,160)	(63,570)	(2,410)*
Gambling	(1,380)	(1,380)	0
Street Trading	(3,810)	(1,890)	1,920
Total	(225,520)	(232,650)	(8,520)

*Majority of the fees are set by statute except for scrap metal

5.3 Option 2 – Increase the fees by the agreed 4% inflationary increase in line with P&R recommendation.

5.3.1

Service	2020/21 Current MTFP Budgets	Estimated revised income after based on 4% increase	Additional Income
	£	£	£
Drivers	(76,060)	(79,100)	(3,040)
Vehicle	(71,570)	(74,430)	(2,860)

Operator	(11,540)	(12,000)	(460)
Other Licence Fees	(61,160)	(61160)	(0) *
Gambling	(1,380)	(1,440)	(60)
Street Trading	(3,810)	(3,960)	(150)
Total	(225,520)	(234,540)	(6,110)

**Majority of the fees are set by statute except for scrap metal*

5.4 **Option 3 – Fees to remain as existing**

5.4.1 No budgetary implications.

5.5 It would be appropriate to monitor the fees annually with a full review after three years to ascertain whether the estimated projections are correct and that any new processes which are implemented by the department have been taken into account.

5.6 It should also be noted that as part of the consultation process there will be fees associated with advertising.

EHC Functions

5.7 Due to the low churn rate in this industry, the relatively small sums involved and the fact that all registrations are one-off payments, the financial implications are minimal. WBC retain all fee income.

6 Legal Implications

6.1 In December 2009 the Provision of Services Regulations 2009 came into effect. Regulation 18(4) states that any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

6.2 Licensing authorities may only set fees which are reasonable and proportionate to the cost of the licensing process and the issuing of the licence (R (Hemming) v Westminster City Council (2017)). Further, licencing authorities' entitlement to recover from the licensing fee the costs of the licensing regime are governed by the empowering statutes (Wakefield District Private Hire & Hackney Association –v- Wakefield MBC (2018)). If any set fees are considered unreasonable the Council could be liable to challenge by way of Judicial Review which could have both financial (claims for damages and/or restitution) and legal consequences (see risk section below). As a result, the Lead Licensing Officer has undertaken an extensive review which only covers the time/cost of progressing the relevant applications.

7 Equal Opportunities Implications

7.1 Relevance Test

Has a relevance test been completed for Equality Impact?	Yes
Did the relevance test conclude a full impact assessment was required?	No

7.2 Impact Assessment

7.3 There is no detrimental impact likely towards any protected group from introducing the Policy.

8 Staffing Implications

8.1 As part of the recent implementation of the new Hackney Carriage and Private Hire Policy 2019 (1 October 2019) it was recognised that due to further checks, additional processes and more stringent requirements that there is potentially an increase in administration processes and enforcement across the district which would lead to greater legal costs when defending decisions at Court. It was recognised within the report for the new policy that resources may be stretched. The impact of the new policy and the current fee proposals on the service and resource will be monitored and the appropriate action taken.

9 Environmental, Community Safety and Public Health Implications

9.1 None specific.

10 Customer Services Centre Implications

10.1 Within the last two months a new Firmstep payment guide has been implemented by the Customer Service Centre (CSC) which has streamlined the payment process making it more efficient for both departments and the paying customer. If the new fees were agreed, the payment guide would simply need to be amended to reflect the new fees and charges. This is not likely to have a significant impact on CSC staff.

10.2 The fee reviews has been communicated to CSC staff via monthly meetings and an update will be provided prior to 1 April 2020 to ensure staff are well aware of the changes if agreed.

11 Communications and Website Implications

11.1 As part of the fee reviews a consultation period will be required for 28 days for the licensing fees. As a result it will be necessary to publish the new fees on the Three Rivers Website, Watford Observer and use social media platforms where possible.

12 Risk and Health & Safety Implications

12.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

12.2 The subject of this report is covered by the Regulatory Services Plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
With respect to increasing	Potential challenge by	Full review of any fee	Treat	Currently 9 –

licensing charges, there would remain the possibility of a challenge against any rise	Judicial Review and resulting damages and/or restitution claims.	increase after 3 years (added to Regulatory Services Service Plan 2020-2023) Ongoing monitoring of fees		High The licensing fees have not been reviewed for a considerable period of time. The risk reduces if the recommendation is accepted 2-4 Low
Increasing fees may result in a reduction in service use and a corresponding decrease in income Without the licensing fee review the service may not operate on a cost recovery basis.	Decreased income Reduction in quality of service as resources may become stretched. Increase in customer complaints.	Use of service and caseload monitored. Full review of any fee increase after 3 years (added to Regulatory Services Service Plan 2020-2023)	Treat Treat	6 Currently 6 - Medium The risk reduces if the recommendation is accepted 2-4 Low

The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely ↓ Likelihood	Low 4	High 8	Very High 12	Very High 16
	Low 3	Medium 6	High 9	Very High 12

	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
	Impact			
	Low -----> Unacceptable			

Impact Score

4 (Catastrophic)

3 (Critical)

2 (Significant)

1 (Marginal)

Likelihood Score

4 (Very Likely (≥80%))

3 (Likely (21-79%))

2 (Unlikely (6-20%))

1 (Remote (≤5%))

12.3 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

13 Recommendation

13.1 That for Licensing fees **Members agree Option 1:**

Authorise the recommendations and agree for Officers to present the licensing fee review to the Regulatory Services Committee on 4 December before going out to public consultation in December.

Following the results of the consultation the report will be presented to the Leisure, Environment and Community Committee on 15 January, Policy and Resources Committee on 21 January 2020 and then Full Council on 25 February 2020 with the fees being effective from 1 April 2020 if agreed.

13.2 **For EH fees Members agree**

The TRDC fees will be set to match those of WBC: £173 for a premises registration and individual practitioners £54.

**Report prepared by: Lorna Fryer, Lead Licensing Officer
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Data Quality

Data rating:

1	Poor	
2	Sufficient	
3	High	x

Background Papers: None.

APPENDICES / ATTACHMENTS

Appendix 1: Existing and proposed licensing fees and charges

Appendix 2: Benchmarking data for licensing