

**LEISURE, ENVIRONMENT AND COMMUNITY COMMITTEE -  
PART I – NOT DELEGATED**

**11. REVIEW OF LICENSING FEES AND CHARGES**

**1 Summary**

1.1 To consider a review of discretionary fees and charges, with any adjustments to take effect from 1 April 2021.

**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 2020-2023 also recognised a licensing fee review which should consider locally set fees on all types of licensing applications to ensure cost recovery. This comprehensive review was undertaken within the last year and new fees came into effect from 1 April 2020.

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** related 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 was 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 The review benchmarked fees against adjacent licensing authorities (Watford Borough Council and South Bucks and Chiltern District Council).
- 2.7 As part of the review there were 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.
- 2.8 The review set 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 was 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.
- 2.9 As a result of the comprehensive fee review (with new fees introduced from 1 April 2020), some fees were already increased by 6-15%. These increases had regard to full/partial cost recovery and to the lack of any previous inflationary increases for a significant period of time. At the time of the review it was agreed fees would be monitored annually with a full review after 3 years. In light of these previous scale of increases it is not considered appropriate to further increase the fees this year.
- 2.10 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.
- 2.11 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.
- 2.12 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 the fees were revised for 20/21 to correspond with the Watford fees. It is proposed this continues to ensure some consistency.
- 2.13 Demand is small, vulnerability is not an issue with regard to these services.

### **3 Options and Reasons for Recommendations**

#### **3.1 Licensing**

- 3.1.1 It is recommended that licensing fees are not increased at this time, however, the use of these services will continue to be monitored.

## 3.2 Environmental Health (commercial)

3.2.1 Any change in fees will only affect new applications and will not affect existing registrants. TRDC currently have 6 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.

3.2.2 There is an existing two tier fee structure. From 1 April 2021 it is proposed we charge £178 for a premises registration (current charge £173) and individual practitioners £55.50 (we currently charge £54). This is an approximate 3% increase on current fees and is calculated based on cost recovery for the activity of processing the application.

## 4 **Policy/Budget Reference and Implications**

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

## 5 **Financial Implications**

As part of the Council's strategic, service and financial planning process for 2021/22, the assumption for services to factor into their forecasts a 3% 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.

### 5.1 Licensing

5.2.1 The recent comprehensive licensing fee review was based on cost recovery in accordance with legislation. Fees were agreed based on partial cost recovery having regard to the level of the proposed fees and benchmarking with adjacent authorities. There are no proposals to further increase fees at this point and any increase would need to be part of a wider review.

### 5.2 EHC Functions

5.2.1 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, licensing 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).

## 7 Equal Opportunities Implications

### 7.1 Relevance Test

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

## 8 Staffing Implications, Environmental, Community Safety and Public Health Implications, Customer Services Centre Implications, Communications and Website Implications

8.1 None specific

## 9 Risk and Health & Safety Implications

9.1 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.

9.2 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).

<b>Nature of Risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> <i>(tolerate, treat, terminate, transfer)</i>	<b>Risk Rating</b> <i>(combination of likelihood and impact)</i>
With respect to increasing licensing charges, there would remain the possibility of a challenge against any rise	Potential challenge by Judicial Review and resulting damages and/or restitution claims.	Full review of current fees/any increase after 3 years – planned for 2023/24 (in Regulatory Services Service Plan 2021-2024)  Ongoing monitoring of fees	Treat	3-6 Low
Increasing fees may result in a reduction in service use and a corresponding	Decreased income	Use of service and caseload monitored.	Treat	6

decrease in income				
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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.

<b>Very Likely</b> ----- <b>Likelihood</b> ----- <b>Remote</b>	<b>Low</b>	<b>High</b>	<b>Very High</b>	<b>Very High</b>
	4	8	12	16
	<b>Low</b>	<b>Medium</b>	<b>High</b>	<b>Very High</b>
	3	6	9	12
	<b>Low</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
	2	4	6	8
	<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>
	1	2	3	4
	<b>Impact</b>			
	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%))

9.3 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.

**10 Recommendation**

10.1 That the Committee agree the following recommendation:

- i) There is no change to the fees and charges associated with the Licensing service. The existing fees and charges are accepted into the Committee's budgets, which are recommended to the Policy and Resources Committee.
- ii) Fees and charges for Environmental Health Commercial services (skin piercing and tattooist services) are increased as detailed in the report in line with inflationary increases.

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**Data Quality**

Data rating:

<b>1</b>	<b>Poor</b>	
<b>2</b>	<b>Sufficient</b>	
<b>3</b>	<b>High</b>	<b>x</b>

**Background Papers: None.**

**APPENDICES / ATTACHMENTS**

Appendix 1: Existing licensing fees and charges

Appendix 2: Benchmarking data for licensing