

# North Yorkshire Council

## Environment Executive Members

26 January 2024

### Fees and Charges - Hackney Carriage and Private Hire Licensing

#### Report of the Assistant Director - Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours

##### **1.0 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to present a proposal for the review of all fees and charges relating to the Council's hackney carriage and private hire licensing functions.

##### **2.0 BACKGROUND**

- 2.1 In accordance with section 53 and section 70 of the Local Government (Miscellaneous Provisions) Act 1976, the Council may charge a reasonable fee with a view to recovering costs relating to hackney carriage and private hire licences.
- 2.2 Licence fees should be calculated on a cost-recovery basis in order for the associated costs of the service to be met by individuals and businesses benefiting from the licensed activity. Any failure to recover costs in this regard would result in a subsidisation of private enterprise at the expense of other services that the Council provides to its taxpayers.
- 2.3 The licensing authority cannot make a profit from licence fees. Any surplus or deficit must be carried forward and taken into account for any future fee revisions.
- 2.4 The current fees relating to hackney carriage and private hire licensing functions are attached at Appendix A along with the proposals for the year beginning 01 April 2023.

##### **3.0 PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENCE FEE REVIEW**

- 3.1 According to the Department for Transport's Taxi and Private Hire Vehicle Licensing Best Practice Guidance (November 2023), "it is essential to a well-functioning taxi and private hire vehicle sector that those administering and enforcing the regime are well-resourced... Licensing authorities should regularly review their fees to reflect changes to costs, both increases and reductions".
- 3.2 The cost of the service is determined by several factors including staffing (salaries, National Insurance contributions, pensions etc), accommodation, utilities, IT support, legal costs, software, insurance, printing and postage. The licence fee for each application is then dependent on several other factors including, where applicable, the time spent on administration, inspections, complaints, compliance checks, committees, consultations and advertising.
- 3.3 Service costs associated with specific applications must be recovered accordingly. For instance, any costs relating to hackney carriage stands and the Council's hackney carriage table of fares must only be recovered from hackney carriage vehicle licence fees whereas other costs (such as policy and service development) will apply to all licence fees.

- 3.4 The costs associated with hackney carriage and private hire licensing functions in North Yorkshire have been calculated with due regard to the relevant legislation, case law and guidance. The relevant cost calculations are attached at Appendix B.
- 3.5 Any surplus or deficit must be carried forward and taken into account for any future fee revisions. Although the accounts for the predecessor authorities have not yet been finalised, the data indicates that no overall surplus has been carried forward from the district accounts. Income data from April 2023 to March 2024 will be considered ahead of the next fee review.
- 3.6 The proposed fees arising from the cost calculations reflect an increase in relation to some licences and a reduction in relation to others to account for changes in personnel, salaries, overheads and operational service delivery.
- 3.7 In accordance with Best Practice Guidance recently published by the Department for Transport, the proposed fees relating to private hire operators have been revised to no longer take into account the number of vehicles being operated.
- 3.8 In accordance with section 70 of the Local Government (Miscellaneous Provisions) Act 1976, the Council must publish a notice in a local newspaper setting out any proposed variation to the fees. The notice must also be displayed at the Council offices for a period of at least 28 days.
- 3.9 The notice must specify a date, not less than 28 days from the date of publication, by which objections must be made. If no objections are lodged, the fees will come into effect on that date. The matter will be referred to the Corporate Director for further consideration if any objections are received.

#### **4.0 CONTRIBUTION TO COUNCIL PRIORITIES**

- 4.1 The Council is committed to protecting communities, safeguarding children and ensuring the safety and wellbeing of the public.
- 4.2 A regular review of licence fees is essential to ensure that the licensing regime is adequately resourced to deliver its public protection functions. Effective delivery in this regard also supports economic growth.

#### **5.0 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council may consider retaining the existing licence fees. However, any failure to recover costs permitted by statute would require an unnecessary subsidisation of the hackney carriage and private hire licensing regime at the expense of the Council's taxpayers.

#### **6.0 FINANCIAL IMPLICATIONS**

- 6.1 The proposed fees have been calculated with a view to recovering all costs associated with the applications concerned (where permitted by statute).
- 6.2 Any income received must only be used to fund service delivery relating to hackney carriage and private hire licensing and therefore it must be emphasised that a review of the fees will not lead to any additional revenue for the Council.

#### **7.0 LEGAL IMPLICATIONS**

- 7.1 The legislative framework for setting hackney carriage and private hire licence fees has been explored at paragraphs 2 and 3 of this report.

- 7.2 In accordance with R (on the application of Cummings) v Cardiff City Council [2014] EWHC 2544 (Admin), the Council must separate its income when collecting licence fees for different licence types to prevent cross-subsidy and the Council must not use licence fees as an income-generating scheme. In the event of any surplus arising from income in relation to a particular licence type, the surplus must be used to reduce the relevant fees charged at the next review.
- 7.3 In accordance with Rehman (On Behalf of the Wakefield District Hackney Carriage and Private Hire Association), R (On the Application Of) v The Local Government Association [2019] EWCA Civ 2166, the cost of monitoring and enforcing the behaviour of licensed drivers can be recovered as an 'administration' cost. However, the cost of enforcement relating to unlicensed activities cannot be recovered through licence fees.
- 7.4 The licence fees cannot be varied unless the Council has satisfied the public notice requirements in section 70 of the Local Government (Miscellaneous Provisions) Act 1976 and considered any objections received during the specified period (as set out in paragraphs 3.7 and 3.8 of this report).

## **8.0 EQUALITIES IMPLICATIONS**

- 8.1 On 21 February 2023, the Executive of North Yorkshire County Council resolved to waive the fees relating to wheelchair accessible vehicles until such time as an Inclusive Service Plan is completed, and any subsequent changes to the Hackney Carriage and Private Hire Licensing Policy are implemented.
- 8.2 This approach was intended to encourage the provision and retention of licensed wheelchair accessible vehicles in North Yorkshire. The costs associated with applications in respect of wheelchair accessible vehicles have been subsidised by the Council's general fund (not by other licence holders) since 1 April 2023.
- 8.3 The formulation of a new Inclusive Service Plan is underway with a view to identifying potential methods of improving service provision for wheelchair users. Its recommendations will be considered alongside the full review of the Hackney Carriage and Private Hire Licensing Policy.
- 8.4 The proposed review of licence fees recommends a continuation of existing arrangements in relation to wheelchair accessible vehicles to make the necessary provision while the policy review progresses.

## **9.0 CLIMATE CHANGE IMPLICATIONS**

- 9.1 The proposed fees are not considered to be at a level that would discourage the trade from investing in high quality, low-emission vehicles.

## **10.0 POLICY IMPLICATIONS**

- 10.1 In accordance with the Council's Fees and Charges Policy, the default charging method is to recover the full costs (including overheads, capital charges and recharges) with a view to ensuring no element of subsidy from local taxpayers. The Policy is attached at Appendix C.
- 10.2 HM Treasury's Managing Public Money publication promotes a standard approach to calculating costs and setting charges. Annex 6.1 of the document explores how to calculate the cost of public services. The relevant extract is attached at Appendix D.

10.3 The Local Government Association (LGA) has published guidance on locally set fees (June 2017) setting out the legislation, case law and details of the costs that may be recovered. The guidance is attached at Appendix E.

## **11.0 REASONS FOR RECOMMENDATIONS**

11.1 The Council is expected to conduct regular reviews of licence fees to ensure that, where statutory powers exist, the cost of the hackney carriage and private hire licensing regime is recovered from applicants and licence holders.

### **12.0 RECOMMENDATION**

12.1 It is recommended that the Corporate Director of Environment, in consultation with the Executive Member for Managing our Environment to approve the proposed variation to hackney carriage and private hire licence fees and to approve the publication of the relevant statutory notices, with or without amendments.

### **APPENDICES:**

Appendix A – Current licence fees and proposed licence fees  
Appendix B – Cost calculations  
Appendix C – North Yorkshire Council’s Fees and Charges Policy  
Appendix D – Extract from ‘Managing Public Money’ (HM Treasury)  
Appendix E – Local Government Association guidance on locally set fees

### **BACKGROUND DOCUMENTS:**

Department for Transport’s Taxi and Private Hire Vehicle Licensing Best Practice Guidance (November 2023)

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Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

Hackney Carriage and Private Hire Licence Fees

Hackney Carriage and Private Hire Driver Licence

Current	Proposed
New (3 years): £400	New (3 years): £430
New (1 year): £320	New (1 year): £265
Renewal (3 years): £265	Renewal (3 years): £285
Renewal (1 year): £235	Renewal (1 year): £140

Private Hire Operator Licence

Current	Proposed
<u>1-year licence</u> 1-2 vehicles: £370 3-10 vehicles: £530 11-50 vehicles: £690 50+ vehicles: £950  <u>5-year licence</u> 1-2 vehicles: £490 3-10 vehicles: £690 11-50 vehicles: £850 50+ vehicles: £1,170	<u>1-year licence (any number of vehicles)</u> £240  <u>5-year licence (any number of vehicles)</u> £650

Hackney Carriage and Private Hire Vehicle Licence

Current	Proposed
HCV new: £350	HCV new: £365
HCV renewal: £280	HCV renewal: £295
PHV new: £330	PHV new: £350
PHV renewal: £265	PHV renewal: £290
Transfer (HCV or PHV): £50	Transfer (HCV or PHV): £55
Change of registration: £50	Change of registration: £55

## Cost calculations (drivers)

New Driver		One year				Three year			
		LM	SLO	LEO	TLO	LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	15.00	20.00	0.00	5.00	15.00	20.00
Processing application (validation, NR3, supporting documents)		0.00	10.00	20.00	25.00	0.00	10.00	20.00	25.00
Data entry		0.00	10.00	15.00	20.00	0.00	10.00	15.00	20.00
DBS processing (identification, submission, assessment, recording)		0.00	5.00	15.00	15.00	0.00	5.00	15.00	15.00
Knowledge test		0.00	0.00	42.86	0.00	0.00	0.00	42.86	0.00
DBS Update Service checks (biannual)		0.00	5.00	5.00	5.00	0.00	30.00	30.00	30.00
DVLA checks (including annual check)		0.00	5.00	5.00	5.00	0.00	15.00	15.00	15.00
Issue licences, badges		0.00	0.00	10.00	10.00	0.00	0.00	10.00	10.00
Committee reports/hearings (on application only)		42.86	17.14	17.14	0.00	42.86	17.14	17.14	0.00
Total time (minutes)		42.86	57.14	145.00	100.00	42.86	92.14	180.00	135.00
<b>Time cost (£)</b>		<b>£29.73</b>	<b>£36.14</b>	<b>£81.13</b>	<b>£45.46</b>	<b>£29.73</b>	<b>£58.27</b>	<b>£100.72</b>	<b>£61.38</b>
Annual costs (£)		£55.63				£166.88			
Applications per year	350								
Badge and necklace (£)	£15.00								
<b>Total cost (£)</b>		<b>£263.09</b>				<b>£431.97</b>			

Driver Renewal		One year				Three year			
		LM	SLO	LEO	TLO	LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	5.00	15.00	0.00	5.00	5.00	15.00
Processing application (validation, NR3, supporting documents)		0.00	5.00	10.00	15.00	0.00	5.00	10.00	15.00
Data entry		0.00	5.00	5.00	15.00	0.00	5.00	5.00	15.00
DBS Update Service checks (biannual)		0.00	0.00	5.00	5.00	0.00	0.00	30.00	30.00
DVLA checks (including annual check)		0.00	0.00	5.00	5.00	0.00	0.00	15.00	15.00
Tax check		0.00	0.00	5.00	10.00	0.00	0.00	5.00	10.00
Issue licences, badges		0.00	0.00	10.00	10.00	0.00	0.00	10.00	10.00
Total time (minutes)		0.00	15.00	45.00	75.00	0.00	15.00	80.00	110.00
<b>Time cost (£)</b>		<b>£0.00</b>	<b>£9.49</b>	<b>£25.18</b>	<b>£34.10</b>	<b>£0.00</b>	<b>£9.49</b>	<b>£44.75</b>	<b>£50.01</b>
Annual costs (£)		£55.63				£166.88			
Applications per year	500								
Badge and necklace (£)	£15.00								
<b>Total cost (£)</b>		<b>£139.39</b>				<b>£286.14</b>			

## Cost calculations (private hire operators)

PHO (new and renewal)		One year				Five year			
		LM	SLO	LEO	TLO	LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	10.00	30.00	30.00	0.00	10.00	30.00	30.00
Processing application (validation, supporting documents, consultation)		0.00	5.00	30.00	30.00	0.00	5.00	30.00	30.00
Data entry		0.00	5.00	15.00	30.00	0.00	5.00	15.00	30.00
DBS basic (annual checks where applicable)		0.00	0.00	5.00	5.00	0.00	0.00	25.00	25.00
Committee reports/hearings (on application only)		17.14	6.86	6.86	5.00	17.14	6.86	6.86	5.00
Determine application		5.00	5.00	5.00	0.00	5.00	5.00	5.00	0.00
Issue licence		0.00	0.00	10.00	10.00	0.00	0.00	10.00	10.00
Total time (minutes)		22.14	31.86	101.86	110.00	22.14	31.86	121.86	130.00
<b>Time cost (£)</b>		<b>£15.36</b>	<b>£20.15</b>	<b>£56.99</b>	<b>£50.01</b>	<b>£15.36</b>	<b>£20.15</b>	<b>£68.18</b>	<b>£59.10</b>
Annual costs (£)		£97.06				£485.31			
Applications per year	35								
<b>Total cost (£)</b>		<b>£239.57</b>				<b>£648.10</b>			

## Cost calculations (hackney carriage vehicles)

		One year			
New HCV		LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	15.00	25.00
Processing application (validation, supporting documents)		0.00	10.00	20.00	30.00
Vehicle suitability check		5.00	10.00	25.00	15.00
Data entry		0.00	10.00	15.00	30.00
HC fare review		3.24	1.62	1.62	1.62
Administration/consideration of tests		0.00	5.00	30.00	20.00
Determine application		5.00	5.00	5.00	0.00
Issue licence, tariff card, order plates etc		0.00	0.00	10.00	25.00
Committee reports/hearings (on application only)		21.18	8.47	6.35	0.00
Total time (minutes)		34.42	55.09	127.97	146.62
<b>Time cost (£)</b>		<b>£23.88</b>	<b>£34.84</b>	<b>£71.61</b>	<b>£66.66</b>
Annual costs (£)		£129.66			
Applications per year	170				
Plates, door stickers	£40.00				
<b>Total cost (£)</b>		<b>£366.64</b>			

		One year			
HCV Renewal		LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	15.00	25.00
Processing application (validation, supporting documents)		0.00	10.00	15.00	25.00
Data entry		0.00	5.00	5.00	15.00
HC fare review		1.62	0.81	0.41	0.41
Administration/consideration of tests		0.00	5.00	20.00	20.00
Determine application		5.00	5.00	5.00	0.00
Issue licence, tariff card, order plates etc		0.00	0.00	10.00	25.00
Committee reports/hearings (on application only)		10.53	4.21	4.21	0.00
Total time (minutes)		17.15	35.02	74.62	110.41
<b>Time cost (£)</b>		<b>£11.90</b>	<b>£22.15</b>	<b>£41.75</b>	<b>£50.19</b>
Annual costs (£)		£129.66			
Applications per year	570				
Plates, door stickers	£40.00				
<b>Total cost (£)</b>		<b>£295.65</b>			



## Cost calculations (private hire vehicles)

		One year			
New PHV		LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	15.00	25.00
Processing application (validation, supporting documents)		0.00	10.00	20.00	30.00
Vehicle suitability check		5.00	10.00	25.00	15.00
Data entry		0.00	10.00	15.00	30.00
Administration/consideration of tests		0.00	5.00	30.00	20.00
Determine application		5.00	5.00	5.00	0.00
Issue licence, order plates etc		0.00	0.00	10.00	25.00
Committee reports/hearings (on application only)		10.29	4.11	4.11	0.00
Total time (minutes)		20.29	49.11	124.11	145.00
<b>Time cost (£)</b>		<b>£14.07</b>	<b>£31.06</b>	<b>£69.45</b>	<b>£65.92</b>
Annual costs (£)		£129.66			
Applications per year	350				
Plates, door stickers	£40.00				
<b>Total cost (£)</b>		<b>£350.16</b>			

		One year			
PHV Renewal		LM	SLO	LEO	TLO
Receiving application (appointments, payments, documents etc)		0.00	5.00	15.00	25.00
Processing application (validation, supporting documents)		0.00	10.00	15.00	25.00
Data entry		0.00	5.00	5.00	15.00
Administration/consideration of tests		0.00	5.00	20.00	20.00
Determine application		5.00	5.00	5.00	0.00
Issue licence, order plates etc		0.00	0.00	10.00	25.00
Committee reports/hearings (on application only)		7.20	2.88	2.88	0.00
Total time (minutes)		12.20	32.88	72.88	110.00
<b>Time cost (£)</b>		<b>£8.46</b>	<b>£20.79</b>	<b>£40.78</b>	<b>£50.01</b>
Annual costs (£)		£129.66			
Applications per year	500				
Plates, door stickers	£40.00				
<b>Total cost (£)</b>		<b>£289.70</b>			

## Cost calculations (all vehicles)

<b>Vehicle transfer</b>		<b>LM</b>	<b>SLO</b>	<b>LEO</b>	<b>TLO</b>
Receiving application (appointments, payments, documents etc)		0.00	5.00	5.00	20.00
Processing application (validation, supporting documents)		0.00	5.00	5.00	20.00
Data entry		0.00	5.00	5.00	15.00
Issue licence		0.00	0.00	10.00	15.00
Total time (minutes)		0.00	15.00	25.00	70.00
Applications per year	30				
<b>Time cost (£)</b>		<b>£0.00</b>	<b>£9.49</b>	<b>£13.99</b>	<b>£31.82</b>
<b>Total cost (£)</b>		<b>£55.30</b>			

<b>Vehicle registration change</b>		<b>LM</b>	<b>SLO</b>	<b>LEO</b>	<b>TLO</b>
Receiving application (appointments, payments, documents etc)		0.00	0.00	5.00	10.00
Processing application (validation, supporting documents)		0.00	0.00	5.00	10.00
Data entry		0.00	0.00	5.00	10.00
Issue licence, order plates etc		0.00	0.00	10.00	25.00
Total time (minutes)		0.00	0.00	25.00	55.00
Applications per year	10				
Plates	£16.00				
<b>Time cost (£)</b>		<b>£0.00</b>	<b>£0.00</b>	<b>£13.99</b>	<b>£25.00</b>
<b>Total cost (£)</b>		<b>£54.99</b>			

## Annual costs

	Drivers					Vehicles					Operators				
	HOS	LM	SLO	LEO	TLO	HOS	LM	SLO	LEO	TLO	HOS	LM	SLO	LEO	TLO
Policy and service development	75.00	100.00	15.00	25.00	15.00	67.50	90.00	13.50	22.50	13.50	7.50	10.00	1.50	2.50	1.50
Enforcement operations	0.00	10.00	20.00	200.00	0.00	0.00	40.00	80.00	800.00	0.00	0.00	0.00	0.00	0.00	0.00
Enforcement actions (suspensions, warnings etc)	0.00	30.00	30.00	120.00	0.00	0.00	70.00	70.00	280.00	0.00	0.00	0.00	0.00	0.00	0.00
Visual vehicle inspections	0.00	0.00	0.00	0.00	0.00	0.00	400.00	300.00	1000.00	0.00	0.00	0.00	0.00	0.00	0.00
Operator/booking record inspections	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50.00	50.00	100.00	0.00
Complaints and investigations	25.00	50.00	100.00	300.00	50.00	22.50	45.00	90.00	270.00	45.00	2.50	5.00	10.00	30.00	5.00
Committee hearings and appeals (outside application periods)	20.00	150.00	50.00	50.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Fee setting and budget management	10.00	10.00	5.00	0.00	0.00	9.00	9.00	4.50	0.00	0.00	1.00	1.00	0.50	0.00	0.00
System maintenance	0.00	10.00	5.00	0.00	5.00	0.00	9.00	4.50	0.00	4.50	0.00	1.00	0.50	0.00	0.50
Data protection and FoI requests	1.50	7.50	7.50	5.00	7.50	27.00	135.00	135.00	90.00	135.00	1.50	7.50	7.50	5.00	7.50
Training and research	75.00	50.00	30.00	100.00	100.00	67.50	45.00	27.00	90.00	90.00	7.50	5.00	3.00	10.00	10.00
Procedures, forms, guidance and website	15.00	25.00	25.00	15.00	15.00	13.50	22.50	22.50	13.50	13.50	1.50	2.50	2.50	1.50	1.50
Staff (performance, meetings etc)	50.00	50.00	37.50	125.00	125.00	45.00	45.00	33.75	112.50	112.50	5.00	5.00	3.75	12.50	12.50
Additional items (address change, copy licences, queries etc)	0.00	100.00	100.00	50.00	100.00	0.00	90.00	90.00	45.00	90.00	0.00	10.00	10.00	5.00	10.00
<b>Total time (hours)</b>	<b>271.50</b>	<b>592.50</b>	<b>425.00</b>	<b>990.00</b>	<b>417.50</b>	<b>252.00</b>	<b>1000.50</b>	<b>870.75</b>	<b>2728.50</b>	<b>504.00</b>	<b>26.50</b>	<b>97.00</b>	<b>89.25</b>	<b>166.50</b>	<b>48.50</b>
<b>Total cost (£)</b>	<b>£14,210.12</b>	<b>£24,664.33</b>	<b>£16,125.43</b>	<b>£33,236.75</b>	<b>£11,388.61</b>	<b>£13,189.50</b>	<b>£41,648.38</b>	<b>£33,038.15</b>	<b>£91,434.65</b>	<b>£13,748.16</b>	<b>£1,386.99</b>	<b>£4,037.87</b>	<b>£3,386.34</b>	<b>£5,589.82</b>	<b>£1,322.99</b>
Active licences			1,791					1,489					162		
Total annual cost per licence	£7.93	£13.77	£9.00	£18.56	£6.36	£8.86	£27.97	£22.19	£61.41	£9.23	£8.56	£24.93	£20.90	£34.51	£8.17
			£55.63					£129.66					£97.06		

## North Yorkshire Council

### Fees & Charges Policy

#### 1.0 Introduction and Context

- 1.1** Income generation is an important part of the Council's overall resources. Fees and charges can help to achieve income to support frontline service delivery and future investment, can influence customer behaviour and can help to ensure the council's policy objectives are achieved.
- 1.2** In total in 22/23 the former eight councils in North Yorkshire expect to generate £113m from discretionary fees and charges - 11% of total income budgeted for the year. An effective Fees and Charges Policy will help to maximise income raised and lower the burden to Council Tax payers of providing various council services, instead ensuring that where appropriate, it is the direct users of these services that are paying towards the costs of these services.
- 1.3** The principle aims of this Fees and Charges Policy are to support future budget setting and medium-term financial planning processes and to provide a framework for the Council's approach to charging for services.
- 1.4** With this in mind, this Policy has been developed, to provide Service Managers with a centralised framework to consider when reviewing their fees and charges, helping to ensure a consistent approach across the Council.

#### 2.0 Scope

**2.1** This Policy applies to:

- Non-Discretionary (Statutory) Services that a Local Authority is mandated, or has a duty to provide, where charging is permissible in the legislation;
- Discretionary Services that a Local Authority has the power, but is not obliged, to provide and may cost recover for providing such services.

**2.2** This Policy does not apply to:

- Any service where there is no ability to cost recover (charge) for such services;
- Council Tax and Business Rates – local taxation charges are covered by separate legislation;
- Fees and Charges that are set in statute and regulations, for example, Planning Application Fees;
- Services that are free of charge at the point of delivery, under legislation, for example domestic general waste collection;
- Contributions to the cost of care, as defined by social care legislation;
- Housing Revenue Account (HRA) housing rents – a separate HRA rents policy covers these particular charges;
- Services traded through North Yorkshire Education Services (NYES) and
- Wholly controlled companies – as separate legal entities (within the NYC Group) fees and charges are set separately in accordance with their approved objectives, business plans and governance arrangements.

#### 3.0 Roles and Responsibilities

- 3.1** Within the Council's Constitution, Directors are responsible for establishing and reviewing fees and charges for their directorate in accordance with this corporate policy framework, the legal framework which enables such charges and the approved budget envelope.

**3.2** The Corporate Director of Resources is responsible for reviewing this policy and providing advice and guidance for its implementation.

#### **4.0 Objectives**

**4.1** With the ever-increasing budget pressures facing the public sector, it is important for the Council to increase resilience and independence wherever possible. One of the main areas this can be explored through is Fees and Charges.

**4.2** In line with the Council's savings requirements and commercial stance, it is vital to regularly review the continuing provision of those discretionary services where the council is unable, or unwilling, to recover the full costs of service. It is also important to ensure that where there is an opportunity to introduce new fees and charges, this opportunity is investigated fully to understand the implications of doing so.

**4.3** The Fees and Charges Policy therefore has the following objectives:

##### **4.3.1 Maximising consistency across services:**

As part of local government reorganisation, there is a need to move towards a consistent approach to fees and charges to ensure charges reflect service costs and are fair across the whole of North Yorkshire. This Policy acknowledges that there will be different fees and charges in operation across North Yorkshire as services work towards single operating models. This Policy does not specify if, when or how the various fees and charges across all 8 former councils should be harmonised but as services are brought together, it provides a unified set of principles for services to follow.

Any departure from the agreed Policy should be clearly documented and clearly explained. A corporate list of fees and charges is maintained by Finance and will allow Directors and Service Managers to record when a charge was last reviewed and what was considered. To assist with this process, a Fees and Charges calculation tool/guidance has been developed. (Link to Intranet)

##### **4.3.2 Ensuring Fees and Charges are robust and up to date:**

All fees and charges are to be reviewed on an annual basis. Whilst it is acknowledged that a full review of each fee and charge implemented by the Council is not practicable each financial year, it is considered that as a minimum the fees and charges already charged by the Council are to be adjusted in line with inflation each year. This will ensure that any inflationary change to the costs of providing a service will be matched by a corresponding change to the charge made for the service. The inflation rate to be applied each year will be notified by the Corporate Director of Resources as part of the budget setting process. All fees and charges must be subject to a detailed review at least every 3 years.

##### **4.3.3 Ensuring that Fees and Charges are clearly understood:**

As part of the review of Fees and Charges, the cost of providing each service, and any legislation pertaining to this service, is to be considered. As services start to work together under local government reorganisation and budgets are re-worked, services will be better placed to understand the costs of providing services and will help inform future decisions around fees and charges. The Fees and Charges calculation tool will allow Directors and service Managers to calculate the cost of providing a service and record any relevant legislation and store this information for future reference.

##### **4.3.4 Maximising Council income:**

When reviewing existing fees and charges, or when considering the implementation of a new charge, the charge should be set at such a level as to maximise the income received by the Council. Please see (Link to intrant) for further guidance on the approach to use when determining a fee and charge.

Service income budgets will rise in line with inflation in each year. As budgeted income targets are set to increase, it is important for fees and charges to be regularly reviewed and updated to help in meeting this increased level of budgeted income.

It is also important to ensure that fees and charges are reflective of the council's costs of service provision, to ensure that services are not being inadvertently subsidised without a positive decision to this effect.

## 5.0 Implementation

5.1. The following costing approach to fees and charges should be adopted:

- When introducing or reviewing a fee or charge, the Council will follow one of three models set out below.
- As a general rule, Fees and Charges should be aimed towards full-cost recovery, including an appropriate share of corporate and departmental overheads.
- If the Council is unable, or unwilling, to recover the full costs of providing a discretionary service, then as part of the annual review, the continued provision of this service should be considered along with the rationale of the charging policy adopted.
- When finalising the costs of each fee and charge, consideration should be given to any wider implications of setting the charge at the proposed rate, to avoid any unintended consequences.

Costing Model	Objective	Key Considerations
<b>1. Full Cost Recovery</b>	To cover the full costs of delivering the service ensuring no element of subsidy from local taxpayers.	<ul style="list-style-type: none"> <li>• This is the Council's default charging method;</li> <li>• Charges should recover the full costs, including overheads, capital charges and recharges;</li> </ul>
<b>2. Cost Plus</b>	To cover the full costs of delivering the service plus a margin to contribute to re-investment in services.	<ul style="list-style-type: none"> <li>• In limited circumstances it may be appropriate to add a margin to full cost recovery, for example to contribute to re-investment in services where the income will not generate a surplus or profit against the service in totality. Guidance from Finance should be obtained before considering such charges</li> </ul>
<b>3. Subsidised</b>	To cover all or part of the costs of service delivery with support from local taxpayers.	<ul style="list-style-type: none"> <li>• The level of subsidy should have regard to the full cost of service delivery and there should be a clear and agreed rationale for subsidy</li> </ul>

- 5.2 Fees and Charges should be benchmarked against other local authorities to help identify potential best practice. When appropriate to the Fee and Charge in question, benchmarking against other relevant competitors in the market should also be undertaken.
- 5.3 Each Directorate is responsible for ensuring that their Fees and Charges are appropriately monitored and up to date. Each Directorate's list of Fees and Charges is to be overseen by the Directorate's lead Finance Business Partner.
- 5.4 Annual reviews should consider the following factors:
- Inflationary pressures, and when a flat rate uplift might not be the most appropriate option due to specific changes to the cost-of-service delivery;
  - Service-level budget targets, with the context of council-wide targets and advice from lead Finance Business Partners;
  - Cost of administration;
  - Scope for new charging areas, this might be entirely new discretionary service to deliver, or existing services that are currently not charged for;
  - Demand/volume and sensitivity to price changes;
  - Use stakeholder engagement and comparative data, where appropriate, to ensure that charges do not adversely affect the take up of services or restrict access to services (other than where this is a desirable outcome).
- 5.5 If a decision is taken to not increase some fees and charges the budget shortfall that this creates will need to be bridged through other operational and cost savings. Conversely, if charges are increased above inflation this can contribute to Directorate savings targets.
- 5.6 Service users should be given a reasonable period of notice before the introduction of new or increased charges and there may be a requirement to consult.
- 5.7 To ensure cost effectiveness and efficiency when setting and amending charging levels, the following are to be considered:
- The desirability of increasing the Council's market share e.g., temporarily reducing a fee or charge in order to stimulate demand for a service, leading to increased income generation;
  - Obstacles to maximising full cost recover when providing the service;
  - Future investment required to improve or maintain the service;
  - If full cost recovery would require a sudden and large uplift and may reduce market share, it may be prudent to phase-in that price rise over a longer period with a temporary agreed discount;
  - The desirability of reducing the uptake of a given service, i.e., raising charges during peak times.
- 5.8 Once the review of existing fees and charges has been completed, or any proposal for a new fee or charge has been developed, these will need to pass through each Directorate's agreed approval process before implementation.
- 5.9 Further guidance is available as part of the Fees and Charges Calculation Tool.
- 6.0 Regularity of Review**
- 6.1 The Policy is to be reviewed every four years as a minimum and any required amendments will be subject to approval of the Executive.

## Annex 6.1

# How to calculate charges

This annex discusses how to calculate the cost of public services for which a fee is charged.

### Introducing a new or updated charge bearing service

**A6.1.1.** Public sector organisations planning to set up or update a service for which a fee may be charged shall ensure early engagement with Treasury. Advice should be sought at the earliest opportunity if there are any variations on the standard model. Proposed variations may be agreed in certain instances, considering each on its merits. Each will need to be justified in the public interest and on value for money grounds.

**A6.1.2.** Practical issues which organisations will need to consider when setting up or refreshing a charge bearing service include: the definition of the service and its rationale; the proposed financial objective (for instance, full cost recovery; 70% of full cost plus a 30% public subsidy); how the service is to be delivered and which organisation is to deliver it; whether the provider should retain any income from charges; the proposed charging structure (for instance, a single service or several sub-services). Organisations will also need to refer to the checklist in box 4.9 of factors to consider when planning policies and projects.

### Measuring the full cost of a service

**A6.1.3.** With agreed exceptions, fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So to set fees for public services it is essential to calculate the cost of providing them accurately.

**A6.1.4.** The main features to be taken into account in measuring the annual cost of a service are set out in box A6.1A. Not everything in the list will apply to every service and the list may not be exhaustive. It is important that the calculation is comprehensive, including all relevant overheads and non-cash items.

**A6.1.5.** So far as possible the calculation should use actual costs, where they are known. For services just starting, there may be no alternative to using best estimates, geared to estimated consumption patterns.

**A6.1.6.** Start-up costs which are capitalised in the accounts and the cost of fixed capital items are scored in the accounts in full. These costs should be attributed to the cost of the service as the depreciated value each year.

**A6.1.7.** Start-up costs which cannot be capitalised in the accounts are scored as they are incurred. Such costs may be recovered through fees and charges by spreading them over the first few years of service provision. It is also good



practice to set fees to recover costs which cannot be capitalised in the accounts and which have been incurred to improve efficiency and effectiveness so that charges are lower or offer better value. This needs explicit Treasury agreement and may require statutory backing.

A6.1.8. For services which are charged at different rates, the same procedure should be used to set the different rates. That is, the cost of any premium service should be objectively justifiable by its additional cost (e.g. where faster shipping is offered); or conversely any discount should be justifiable by saving to the supplier (e.g. using the internet rather than over the counter). Note, however, that sometimes the legislation permits differential pricing unrelated to the relative underlying costs – though even then there should be good policy reason for the difference.

**Box A6.1A: elements to cost in measuring fees**

- Accommodation, including capital charges for freehold properties
- Fixtures and fittings
- Maintenance, including cleaning
- Utilities
- Office equipment, including IT systems
- Postage, printing, telecommunications
- Total employment costs of those providing the service, including training
- Overheads, e.g. (shares of) payroll, audit, top management costs, legal services, etc
- Raw materials and stocks
- Research and development
- Depreciation of start upstart-up and one-off capital items
- Taxes: vat, council tax, stamp duty, etc
- Capital charges
- Notional or actual insurance premiums
- Fees to sub-contractors
- Distribution costs, including transport
- Advertising
- Bad debts
- Compliance and monitoring costs
- Provisions

But not:

- Externalities imposed on society (e.g. costs from pollution and crime)
- Costs of policy work (other than policy on the executive delivery of the service)
- Enforcement costs<sup>92</sup>
- Replacement costs of items notionally insured
- Start-up costs (those which are capitalised in the accounts) and one-off capital items

## Financial objectives

**A6.1.9.** The standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery. It normally means recovering the standard cost of capital, currently 3.5% in real terms. Some exceptions are noted in section 6.4.

**A6.1.10.** One other exception is commercial services, i.e. those services which compete or may compete with private sector suppliers of similar services. These should aim to recover full costs including a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk. The normal range of rates is 5-10% but rates as high as 15% may be appropriate for the very highest risk businesses.

**A6.1.11.** Great care should be taken in pricing commercial services where public sector suppliers have a natural dominant position. The market prices of competitors will often be a good guide to the appropriate rate of return if there is genuine competition in the market. Where there are limited numbers of buyers and sellers in a market, it may be better to take other factors into account as well. These might include past performance, the degree of risk in the underlying activity and issues bearing on future performance.

## Accidental surpluses and deficits

**A6.1.12.** Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid-year adjustment to fee levels if this is feasible.

**A6.1.13.** It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing through a s102 order (see paragraph 6.3.3).

**A6.1.14.** Where significant surpluses have arisen, these should usually be refunded to the payees at the earliest opportunity.

<sup>92</sup> See HMT guidance on receipts

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226421/PU1548\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/226421/PU1548_final.pdf)

# Open for business

LGA guidance  
on locally set licence fees



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# Introduction

Councils are responsible for administering a range of licences and approvals relating to both national legislation and discretionary functions that are agreed locally. For the majority of these regimes the costs are recovered through fees set by each council and paid by the licence applicant. It is an accepted principle in relation to these schemes that those who benefit from the system (eg licence holders) should cover the cost of it. Locally set fees are a vital means of ensuring both that full costs can be recovered by each and every council, reducing the risk of a subsidy from local tax payers, and that businesses do not pay more than they should.

While the licensing role within local government may be long established, the decisions that are being made by individual councils in this area are facing increased scrutiny from businesses, the public and in the media, particularly in relation to fee setting. Recent case law resulting from the European Services Directive, the introduction of new licences for scrap metal dealers and the potential introduction of locally set fees for alcohol licensing have all placed an added emphasis on the need for every council to set fees in a legally robust and transparent manner. In particular, a recent case under the Services Directive has significant implications for the way in which councils apply their licence fees.

This guidance aims to help councils understand the full breadth of issues that should be considered when setting local licence fees in order to meet legal obligations and provide the necessary reassurances to local businesses. It does not contain a fees calculator because this assumes a uniformity of service design and associated costs, when it is vital that councils are free to design the service that best serves the needs of their community and recover costs accordingly.

# Key issues

## Understanding the role of licensing

Licensing is an integral part of councils' broader regulatory services. Regulatory services are increasingly recognised as being at the heart of councils' approaches to economic growth, and it is believed that over fifty per cent of a business' contact with a council takes place through regulatory services. Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.

While economic growth is a priority for every council in the country, there is also the need to ensure that licensing regimes can continue to protect communities and visitors; manage public health risks; and remain responsive to local concerns.

Licensing also has an important role to play in helping councils shape the areas in which people live and work; by determining what types of premises open there, how long they are open for, and what sort of activities take place. Councillors, as democratic representatives of local communities, should be able to take licensing decisions that are in line with the preferred wishes of those communities.

The balance of all these factors will vary for each local area. Councils can take the opportunity to work with businesses, community groups and residents to design a licensing service based on local priorities and understand the implications that this will have for the fees charged.

All of this work requires funding, and it is an accepted principle that licensed activities should be funded on a cost-recovery basis, paid for by those benefiting from the licensed activity, rather than drawing on the public purse.

Where councils have the flexibility to set local fees, it is possible to consider how resources can be focused on risk; whether business support is effective; and how the burden of inspections can simply be removed where it is not necessary. A streamlined approach to licensing will ensure that fees are kept to a minimum and businesses can be encouraged to prosper.

## How does the European Services Directive impact on locally set licence fees?

The European Services Directive<sup>1</sup> aims to make it easier for service and retail providers to establish a business anywhere within Europe. The principle of ensuring that regulation is transparent and that the burdens placed on businesses are kept to a minimum is an objective that all councils can support. However, the legal requirements in the Directive do have practical implications for local licensing regimes, including fee setting.

Further guidance about the entirety of the European Services is available on the GOV. UK website<sup>2</sup>.

1 EU Services Directive:  
<http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32006L0123&qid=1446478137741>

2 BIS guidance on the EU Services Directive:  
<https://www.gov.uk/eu-services-directive>

Councils should specifically note that the Directive does not apply to licensing of taxis, or gambling activities; however, the principles remain a helpful way of providing a transparent and business-friendly approach to licensing.

## Principles of the Services Directive

The general principles of the Services Directive apply to all processes and administrative procedures that need to be followed when establishing or running a service or retail business, including the setting, charging and processing of fees for licences. The core principles of the Directive – non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible – apply to fee setting and are already practiced by a large number of councils with the aim of ensuring a fair and transparent approach for local businesses and communities.

Most principles are self-explanatory, but the principle of ‘non-discrimination’ requires a little more explanation. In the Services Directive it is defined as meaning ‘the general conditions of access to a service, which are made available to the public at large by the provider [and] do not contain discriminatory provisions relating to the nationality or place of residence of the recipient’.

This applies at the local level when considering fee setting meaning that all applicants must be treated equally irrespective of location and/ or nationality. Councils should not, for instance, seek to subsidise businesses operating in one geographical area by offering comparatively lower fees than required of those operating in another. Such an approach discriminates against those businesses located elsewhere in the locality.

The importance of this approach has also been established by case law on taxi and PHV licensing which, as it is not covered by the Services Directive, demonstrates that some core principles are shared between UK and EU legislation.

Cummings v Cardiff ruled that the charges within a licensing regime for different categories of licence should not subsidise each other; so a surplus gained on hackney carriage licences should not reduce the cost of a private hire vehicle licence. This can be logically extended to mean that the fees received under one licensing regime must not subsidise fees charged under another. For instance, a surplus generated by taxi fees must be reinvested back into taxi licensing and not used to reduce the cost of, for instance, a scrap metal dealers licence.

All councils should therefore ensure that they have individual, discrete cost-calculations for each of the licensing regimes that they operate. This may require a change in the way that some councils operate.

One of the LGA’s priorities for ongoing Brexit negotiations is that fees covering licensing continue to be upheld in domestic law.

## Administering payment of fees

Under the Services Directive councils need to ensure that details of any fees are easily accessible online, including the ability to make payments online.

Councils should be able to separate out the cost of processing an initial application from those costs associated with the ongoing administration of a scheme, because this latter element cannot be charged to unsuccessful licence applicants.

This was a key issue in the Hemming v Westminster case (see case law, page 13), in which the Supreme Court asked the European Court of Justice (ECJ) to rule on how Westminster applied its licence fees. The Supreme Court identified two different approaches to charging fees:

- (a) Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the ‘type A’ approach.



- (b) Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the ‘type B’ approach.

The ECJ published its ruling on the issue on 16 November 2016, following an earlier opinion by the Advocate General in July 2016.

The ECJ ruled that the type B approach of fee setting is not compatible with the Services Directive, arguing that the Directive ‘precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.’

Therefore, **licensing authorities will need to amend their fee structures for fees covered by the Services Directive to ensure that application fees relate solely to the cost of authorisation procedures** (ie, the costs associated with reviewing an application and granting / refusing a licence). **Under the type A approach, on which the Supreme Court ruling still holds, successful licence applicants should subsequently be charged an additional fee** relating to the costs of administering and enforcing the relevant licensing framework. An example of amended licensing fees which separate out administration and enforcement costs can be found on Westminster council’s website<sup>3</sup>.

It is worth noting on this point that the Supreme Court view – which again still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received:

‘...nothing in article 13(2) precludes a licensing authority from charging a fee for the possession or retention of a licence, and making this licence conditional upon payment

<sup>3</sup> [https://www.westminster.gov.uk/sites/www.westminster.gov.uk/files/licensing\\_fees\\_list.pdf](https://www.westminster.gov.uk/sites/www.westminster.gov.uk/files/licensing_fees_list.pdf)

of such fee. Any such fee would however have to comply with the requirements, including that of proportionality, identified in section 2 of Chapter III and section 1 of Chapter IV. But there is no reason why it should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.’

Not all legislation in England and Wales permits councils to separate out elements of the fee in this way. For instance, the Licensing Act 2003 has fees set nationally, which constrains councils’ ability to adopt this approach. It is therefore unclear whether a council could offer a refund of the enforcement element if an application is refused under this Act: the LGA view is that this is not possible, as the legislation requires that the specified amount (fee) must be paid on application.

Nevertheless, despite these constraints, councils should calculate the notional costs of administration and enforcement separately and make applicants aware of the two elements to the fee. In addition to meeting the transparency requirements of the Services Directive, this enables councils to examine the efficiency of their internal processes and make improvements where necessary. The process adopted and information available about this should be simple and cost effective for both the council and businesses.

## Reasonable and proportionate

The Directive also includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

## Keeping fees under review

Fees should be broadly cost neutral in budgetary terms, so that, over the lifespan of the licence, the budget should balance. Those benefitting from the activities permitted by the various licences should not, so far as there is discretion to do so, be subsidised by the general fund.

To ensure that fees remain reasonable and proportionate it is necessary to establish a regular and robust review process. This has particular advantages in the early stages of a new licensing regime, as with the Scrap Metal Dealers Act, where fees have been set on best guess estimates of the number of applications that will be received.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Councils that divert fees income from the relevant licensing scheme to fund other licensing work, or to fund other council activities, will be breaking the law.

Where fees charged result in a surplus, both *Hemming v Westminster* and *Cummings v Cardiff* state that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year<sup>4</sup>, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return.

Deficits can similarly be recovered<sup>5</sup>, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of *R v Tower Hamlets LBC (1994)*<sup>6</sup> may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

## Open route for challenge

In the interests of transparency it is helpful to give an indication of how the fee level has been calculated; the review process in place and a contact method for businesses to query or challenge the fees. Open consultation with businesses and residents to design a local service, including understanding the implications for fees, helps to provide a robust answer to challenge.

It may also prove helpful to engage elected members in the scrutiny of fees. They will use their knowledge as local representatives to consider councils’ assumptions and challenge them where necessary.

4 *R v Manchester City Council ex parte King (1991)* 89 LGR 696.  
<http://www.lawindexpro.co.uk/cgi-bin/casemap.php?case=197719&rf=scu%2520target=>

5 *R v Westminster City Council ex parte Hutton (1985)* 83 LGR 516.

6 *R v London Borough of Tower Hamlets ex parte Tower Hamlets Combined Traders Association*, 19 July 1993; [1994] COD 325 QBD Sedley J. Although the decision was about the London Local Authorities Act 1990, it would appear to have general effect as a principle.  
<http://www.lawindexpro.co.uk/cgi-bin/casemap.php?case=197718&rf=scu%2520target=>

# So what can be included in a licence fee?

Councils may want to consider the following elements when setting licence fees. It should be noted that this list is for consideration only, as councils may choose not to charge for all the elements listed if they do not apply locally, or there may be additional areas of work carried out during the licensing process that were not highlighted during the development of this guidance.

Individual pieces of legislation may also have specific items that may or may not be chargeable under the scheme. The lists below will apply for most schemes, but should always be checked against the relevant piece of legislation. If councils have any concerns they should seek the advice of their in-house legal department.

## Initial application costs could include:

**Administration** – this could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

**Initial visit/s** – this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs' include travel costs and management time.

**Third party costs** – some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.

**Liaison with interested parties** – engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

**Management costs** – councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.

**Local democracy costs** – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

**On costs** – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

**Development, determination and production of licensing policies** – the cost of consultation and publishing policies can be fully recovered.

**Web material** – the EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

**Advice and guidance** – this includes advice in person, production of leaflets or promotional tools, and online advice.

**Setting and reviewing fees** – this includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

## Further compliance and enforcement costs could include:

### **Additional monitoring and inspection visits**

– councils may wish to include a charge for risk based visits to premises in between licensing inspections and responding to complaints. As with the initial licensing visit, councils can consider basing this figure on average officer time, travel, administration, management costs and on costs as suggested above.

**Local democracy costs** – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to review existing licences or respond to problems.

**Registers and national reporting** – some licensing schemes require central government bodies to be notified when a licence is issued. The costs of doing this can be recovered.

## Charging for action against unlicensed traders

Councils' ability to charge for these costs as part of a licensing scheme depends on the licensing scheme in question. In *Hemming v Westminster* (see page 13), the Supreme Court ruled that the Services Directive made no mention of enforcement costs. Councils' ability to charge these costs to applicants for licences is therefore dependent on the UK legislation.

The Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme; in this case, the licensing scheme for sex shops.

However, legal interpretation of taxi and PHV licensing suggests that councils do not have the power to recover the costs of any enforcement against licensed or unlicensed drivers at all, although they may recover the costs of enforcement against vehicles<sup>7</sup>. The LGA believes that section 70(1) of the 1976 Act makes it clear that the costs of enforcement against licensed operators can also be recovered through a fee; however, the position on recovering these costs is contested.

Home Office guidance under the Scrap Metal Dealers Act, which councils must have regard to, prevents the recovery of enforcement costs against unlicensed dealers only. Great care must therefore be taken when setting fees to check what is and is not permitted under that specific licensing regime.

## Unrecoverable costs

It is worth considering that the costs of defending appeals in the magistrate's court or via judicial review can be recovered through the courts. Including these costs within the fees regime could lead to recovering the costs twice, which would be inconsistent with the Services Directive.

<sup>7</sup> <http://www.guildford.gov.uk/cHttpHandler.ashx?id=6647&p=0>

Do	Don't	Maybe
Check the relevant legislation	Use a surplus from one fee to subsidise another	Include the costs of enforcement against unlicensed traders
Calculate processing costs and enforcement costs separately and ensure that any fees covered by the Services Directive are charged to applicants and new licensees in two stages	Allow fees income to be drawn into the council's general fund	Include a condition on the issued licence that requires the payment of the enforcement part of the fee, where this is not charged upfront
Clearly communicate to applicants the elements that make up the fee	Allow fee levels to roll-over each year without a review	
Ensure fees are determined by the right person	Forget to ask the courts to award costs during a prosecution	
Include staff on-costs		
Include training costs for officers and councillors		

# Further support

The practical approach to designing a local licensing service, allocating costs accurately and considering legal implications can be a difficult task; therefore it is strongly recommended that licensing teams work with their legal advisors and finance teams to make the best use of all expertise.

In addition, councils should consider working collaboratively with neighbouring authorities to provide mutual support. Working with other councils and reviewing fees set by similar authorities can be an extremely valuable way of ensuring that fees are not perceived to be disproportionate by businesses.

This document sets out high-level, overarching principles for fee setting that apply across most licensing regimes. It is always important to check the specific details of the regime in question.

The All Wales Licensing Expert Panel has compiled a series of helpful documents to assist councils with the practical aspects of setting fees, including data capture guidance and a basic time recording method. They can be accessed at:

<http://www.npt.gov.uk/default.aspx?page=11958>

The following links will take you to relevant legislation or guidance for the most common licensing regimes, current at the time of publication:

Licensing Act 2003

<https://www.gov.uk/government/publications/alcohol-licensing-fee-levels>

Gambling Act 2005

<http://www.legislation.gov.uk/ukpga/2005/19/section/212>

and

<http://www.legislation.gov.uk/uksi/2007/479/contents/made>

Scrap Metal Dealers 2013

<http://tinyurl.com/SMDAfees>

Taxis and PHV Licensing (Local Government Miscellaneous Provisions Act 1976)

<http://www.legislation.gov.uk/ukpga/1976/57/section/70>

Sexual Establishments (Local Government Miscellaneous Provisions Act 1982)

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/3>

Street Trading (Local Government Miscellaneous Provisions Act 1982)

<http://www.legislation.gov.uk/ukpga/1982/30/schedule/4>

Provision of Services Regulations 2009  
(The UK legislation applying the EU Services Directive to UK law)

<https://www.detini.gov.uk/publications/guidance-business-provision-services-regulations>

# Case law

## Hemming v Westminster

The Hemming v Westminster case tested the degree to which fees and processes must be proportionate, as well as the administrative processes for calculating fees, in the context of licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

The case has passed through a number of courts, including the Court of Appeal, Supreme Court and European Court of Justice, with different elements of the case being settled at different stages.

In 2013<sup>8</sup>, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This meant that the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee. The Court of Appeal held that such costs could not be deemed to fall within the EU Services Directive 2006 and associated UK Provision of Services Regulations 2009.

The Directive states that charges levied by a competent body on applicants under an authorisation scheme must be reasonable and proportionate to the cost of the 'procedures and formalities' of the scheme and must not exceed these costs. However, the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement also found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

The judgement would have left Westminster, and potentially other councils, liable to refund the proportion of sex shop licence fees deemed to be unlawful, dating back to the introduction of the Regulations in 2009.

Westminster appealed the Court of Appeal's judgement on the recovery of enforcement costs, and the case was heard by the Supreme Court in January 2015. Other matters determined by earlier hearings, such as the need to review fees annually and the requirement for councils to ring-fence income from licensing fees so that any surplus or deficit is carried forward to the next year's budget, were not contested.

The council's position that it was lawful for it to seek to recover all enforcement costs was supported by the LGA, which submitted written interventions to the Supreme Court. A range of regulatory bodies, as well as HM Treasury, also submitted written interventions in the case.

<sup>8</sup> Court of Appeal ruling for Hemming v Westminster – 24 May 2013  
<http://cornerstonebarristers.com/wp-content/uploads/2013/05/Hemming-APPROVED-Judgement.pdf>

The Supreme Court ruled<sup>9</sup> that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. Crucially, it reasoned that the Services Directive deals only with the issue of authorisation procedures and fees relating to applications to exercise a service activity (such as operating a sex shop). The Supreme Court sought an opinion from the European Court of Justice regarding how such fees should be levied. It identified two different approaches to charging fees:

- whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
- where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.

The Supreme Court found the type A approach of charging two fees is permissible under the Services Directive but considered that the type B approach of charging a single fee was more problematic.

The ECJ published its ruling on the issue on 16 November 2016, following an earlier opinion by the Advocate General in July 2016, and concluded that only type A fees are permissible under the Services Directive.

However, the opinion of the Advocate General and the commentary contained in the judgement of the ECJ went beyond the specific issues that had been referred to it. Of particular concern, both the opinion and the commentary in the ruling appeared to reopen the issue of whether including the costs of administering and enforcing licensing regimes within licence fees is compatible with the Services Directive, with a strong indication that the Advocate General and ECJ

<sup>9</sup> <https://www.supremecourt.uk/cases/uksc-2013-0146.html>

believed that it is not. **While the Supreme Court's view on this issue remains in place at the current time, meaning councils can continue to include these costs in their licence fees**, it seems inevitable that there will be a further challenge on this issue at some point in future.

Where councils receive claims for previously paid type B licence fees on the grounds that they have now been ruled incompatible with the Services Directive, the only legitimate claim for restitution relates to the loss of interest that a licence holder can be deemed to have suffered by virtue of paying the entirety of the fee upfront, rather than the fee being split into two payments on application and on successfully being awarded a licence.

The fact that the opinion expressed by the Advocate General in July appears to dissent from the view expressed by the Supreme Court as regards the legality under the Services Directive of including enforcement costs in licence fees is not relevant to claims for reimbursement. The opinion is just that - an opinion - rather than a ruling, and did not form part of the final ECJ ruling on the narrow issue at stake.

The LGA has received legal guidance on the form of words that councils can use in respect of such claims. This is available from [rebecca.johnson@local.gov.uk](mailto:rebecca.johnson@local.gov.uk)

## Cummings v Cardiff<sup>10</sup>

Cardiff Council had proposed a significant increase to hackney carriage and private hire vehicle charges in July 2013. Cummings and other claimants then challenged Cardiff City Council to a judicial review over the way these costs had been calculated. In 2014, Mr Justice Hickinbottom granted the claim for the review on the grounds that:

- the level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 1 May 2009

<sup>10</sup> <http://www.stjohnschambers.co.uk/dashboard/wp-content/uploads/Cummings-Others-v-Cardiff-11.pdf>



- the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have accrued
- the level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area.

The Judge also made declarations that:

- (1) A local authority when determining hackney carriage and private hire licence fees under ss.53 and 70 of the LG(MP) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by ss.53 and 70 above.
- (2) A local authority must:
  - keep separate accounts for hackney carriage and PHV licence fees under ss.53 and 70 of the LG(MP) Act 1976
  - ensure that any surplus or deficit identified under each part of the hackney carriage and private hire licensing regimes is only applied to the part of the system from which it has been raised/lost
  - ensure that any surplus from one licensing regime shall not to be used to subsidise a deficit in another.

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This document was updated in 2017 to reflect the ECJ decision *Hemming v Westminster*.

The original document was put out to public consultation between 5 and 29 November 2013 and updated in November 2015 to reflect the Supreme Court decision in *Hemming v Westminster*. On both occasions it was reviewed and cleared by the LGA's in-house legal team and external Counsel: similar, the amendments in 2017 were based upon guidance from Counsel.

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- Southampton City Council
- West of England Group of Local Authorities



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