



City of Westminster

Cabinet Report

Meeting or Decision Maker: Cabinet

Date: 9th July 2018

Classification: For general release
(Appendix 2 and Appendix 3 – Exempt from public disclosure)

Title: Fees & Charges Review

Wards Affected: All

Key Decision: Yes

Financial Summary: During 2017/18, Westminster City Council received c£0.914bn of income of which c£141m was from fees and charges, approximately 15.5%. The income from fees and charges help to manage demand and cover costs for providing services

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1. Executive Summary

- 1.1. During 2017/18, Westminster City Council received c£914m of revenue of which c£141m was from fees and charges, Fees and charges are set to help manage demand and cover the costs of providing services. There has been steady growth in fees and charges with more services now reaching a cost recovery position.
- 1.2. As a significant proportion of the Councils total income generation is from fees and charges (15.5% of its income from Fees and charges) it is vital to support and monitor this income flow, any major changes due to external influences could have impact on the Councils overall financial position. So the monitoring, review and innovation in fees and charges will become an increasingly important task for the Council.
- 1.3. All fees and charges have been reviewed for 2018/19. Of the 39 Services in scope for fees and charges review, 10 have already made changes to fees and charges for 2018/19, 8 have reviewed charging and require authorisation as part of this paper, 3 are statutorily set and 16 propose no change. There are also 2 services that are in the process of more in-depth service reviews and changes requiring greater work and

scrutiny, these services are proposed to be reviewed and approved outside of this process at a later date.

- 1.4. Fees and charges contributed £2.445m to 18/19 MTP savings. Authorisation of changes to fees and charges is therefore required to ensure delivery of these committed savings, so the fees and charges review process and report remains a key component of the MTP process.
- 1.5. As part of the fees and charges review process services continue to improve in relation to the alignment of changes to fees and charges. Even services for which authorisation of changes is delegated to committees or officers there has been a move to align dates of review, notably licensing committee will now review and authorise changes in July. Therefore, the annual review process and policy is clearly having an impact on fees and charges activity. This is supplemented by the work of the differential services workstream, which offers further review and analysis on a number of services to ensure income is being maximised.
- 1.6. It remains beneficial or a contractual requirement for some service areas to change charges outside of this review cycle but the process and acceptability of changes will still be reviewed as part of the fees and charges review process.
- 1.7. The annual reporting of fees and charges gives an opportunity for summarising and oversight of fees and charges income as well as giving services a platform for approval of changes and additions to fees and charges, which is of benefit to both service leads and members.
- 1.8. The process also allows challenge on a regular basis to ensure that all have considered inflationary rises, cost recovery and adequate pricing strategies. Ownership of the process with one team also gives better oversight of initiatives, models and processes applied by all different services which can lead to improvements in sharing of best practices and opportunities across a wider platform.

2. Recommendations

- 2.1 That Appendix 2 and Appendix 3 be exempt from public disclosure by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972, as amended – information relating to the financial and business affairs of the authority; and
- 2.2 That Cabinet is recommended to:
 - a) Approve changes to fees and charges as outlined in Appendix 3 of this report
 - b) Note changes already approved by other committees/members for 2018/19 highlighted in Appendix 2 of this report.
 - c) Note fees for which no increase is proposed for 2018/19. Detail of these fees are included in Appendix 2 of this report.
 - d) Note overall proposed contribution from fees and charges to the Medium Term Plan (MTP) for 2018/19 and 2019/20 as highlighted in table 2 of section 7 of this report
 - e) Agree that all areas of fees and charges work towards alignment of date of approval and that this is coordinated on an annual basis as part of an annual Fees and Charges report
 - f) Note the fees and charges policy

2.3 That the information set out in Appendix 2 be noted.

3. Reasons for Decision

To agree the Council's fees and charges position and changes for the coming year.

4 Background

4.1 Given the continuing financial challenges that Westminster faces, there is a need for a continuous review of prices, service offering and appropriate generation of income to avoid service reductions as a result of the financial pressure the Council faces. It is particularly important to ensure in the current financial climate that prices are competitive within the market and that services are not being inappropriately subsidised.

4.2 The amount that can be recovered from charging for a service cannot exceed the costs incurred in providing it unless the service is provided on a commercial basis through a company. However, the objective of setting fees and charges is not limited to cost recovery, wider objectives include responding to demand for services by way of example. It is also important to consider changes in the context of a complex set of statutes and regulations.

5 Legal Implications

5.1 For local authorities, charging decisions are subject to a complex series of statutes and regulations. Some services are mandatory and governed by specific legislation whilst other services are discretionary. Discretionary Services are those which the council is permitted to provide but not required to provide.

5.2 The Council has general powers to charge a person for discretionary services under section 93 of the Local Government Act 2003 ("LGA 2003") and under the power of general competence in Section 1 Localism Act 2011 ("LA 2011") .

5.3 The overall position on charging may be summarised as follows:

- Authorities must not charge for a service if legislation prohibits it from doing so.
- Similarly, authorities must charge for a service if legislation requires them to do so.
- In the absence of specific powers or prohibition on charging for services authorities may use the powers in either s93 Local Government Act 2003 or s1 Localism Act 2011 to make charges for discretionary services
- If the Council wishes to make a profit from providing a service it must provide the service through a company in accordance with section 95 Local Government Act 2003 or section 1 Localism Act 2011.

5.4 Examples are demonstrated in the table below:

Type of charging	Examples	Mandatory /Discretionary service
No charge permitted	<ul style="list-style-type: none"> • Service assessment for community care. • Housing advice • Planning application relating to a listed building 	Generally Mandatory
Charges or charging scheme set by government or in legislation	<ul style="list-style-type: none"> • Planning application fees. 	Generally Mandatory
Charging scheme set locally but must be in accordance with government-prescribed principles	<ul style="list-style-type: none"> • Community infrastructure levy. 	Either
Charge set locally, but essentially income cannot exceed the cost of providing the service.	<ul style="list-style-type: none"> • Charge for a discretionary service under either s 93 LGA 2003 or LA 2011 where there is no other power to charge for the service 	Discretionary
No limit on charges	<ul style="list-style-type: none"> • Commercial property rents. 	Generally discretionary

There is some flexibility over the calculation of costs that may be legitimately recovered.

- Guidance issued by the then Office of the Deputy Prime Minister to accompany the Local Government Act 2003 states that a modified form of total cost can be used that includes overheads
- The legislation does not define a “service”. Authorities therefore have flexibility over defining the service. The possible interpretations could range from a specialised individual service to a much broader definition at service.

6. Process

6.1. The annual review of fees and charges brings the following benefits to the Council:

- Greater clarity of information on charging areas
- More coordination in approach across the Council
- Greater oversight of income and services for Cabinet
- Improvements in income levels for fees and charges
- Greater amount of services now reaching cost recovery.

6.2. There is now greater scrutiny over services and their annual review of charging mechanisms and prices with greater oversight at both a service level and member level.

- 6.3. As the process has improved, a number of services have successfully reached a position of cost recovery, which potentially restricts current and future changes to fees. Currently 27 out of 39 are budgeted at a cost neutral position. This does suggest there is further scope for potential growth in services in future years and it is clear that those with loss making positions are those continuing to increase fees to improve their position (only 3 of the 12 areas currently budgeted at a loss have not proposed changes)
- 6.4. To coordinate a response to Cabinet summarising the Council's overall income generation from fees and charges all services, with the support of finance, have been asked to assist with the following:
- Prepare changes to fees and charges, taking into account the charging policy of the Council, strategic aims of the service and potential legal implications.
 - All Services as part of the MTP process were asked to consider relevant changes to fees and charges and the potential additional income this could generate. This has led to significant income proposals (£2.445m from 10 services, details of which are included in table 2 of this report)
 - Following this to help summarise this information all services have provided a pro-forma including both qualitative and quantitative data about the service showing individual charges, budgets, actual performance and information on why the service is chargeable and how it delivers the service.
- 6.5. Where possible the Council has attempted to align the process of fee setting to allow Cabinet to review the position and authorise changes in a coordinated manner. It has been highlighted in the past that certain changes to fees and charges would be made externally to the proposed coordinated July sign off.
- 6.6. It is therefore proposed that services aim to align further with the request to approve all fees through Cabinet in July however it is noted that there are likely to be exceptions annually to the process. As already stated for certain services the approval of fees and charges will be delegated to Committee's/Cabinet Members, an example being the Licensing Committee which approves fees for those licensing regimes where the Council has the power to set its own fees. This will remain the case, however services should still aim to align with the June /July timeframe for approval and implementation.
- 6.7. Cabinet will be informed annually as part of fees and charges reporting as to any changes that do occur outside of the process and their impact.

7. Financial Implications

- 7.1. Year on year fees and charges continues to be a source of additional income and savings for the Councils medium term plan allowing the safeguarding of the Councils budget position.
- 7.2. Fees and charges related MTP proposals are anticipated to deliver £2.445m of savings/income in 2018/19. This equates to 6.4% of all proposals put forward. 18/19 proposals have been authorised through Cabinet previously. At present £1.213m of proposals have been suggested in relation to fees and charges for 2019/20 but this is subject to change as the MTP process continues. As part of the on-going MTP process, fees and charges will continue to be reviewed to consider where additional MTP proposals could be submitted.

This is demonstrated in the table below:

Directorate	Charging Group	2018/19	2019/20
	Parking	680,000	163,000
	Road Management	150,000	200,000
	Licensing		100,000
	Fixed Penalty Notices	200,000	
	Leisure	770,000	400,000
	Pre-Application Advice	50,000	50,000
	Housing Act Notices	100,000	
	Food Hygiene	20,000	
Tri-Borough Children's Services	Schools SLA income - Education Psychology	150,000	
Tri-Borough Libraries & Archives	Libraries	50,000	300,000
Growth, Planning & Housing	Planning Performance Agreements	275,000	
Total fees and charges related income opportunities		2,445,000	1,213,000
Total MTP savings proposed		38,327,001	34,366,000
% Total Savings targets generated form fees and charges		6.4%	3.5%

Table 2: MTP targets related to fees and charges

8. Policy

- 8.1. The policy for fees and charges setting is included in this report as Appendix 1. This should be reviewed every year in line with the annual review of fees and charges, to ensure it remains reflective of the Council's priorities and the principles of the charging culture and to help the Council maximise income in specific areas to allow the continued provision of services that matter to the Council and the communities.
- 8.2. As highlighted within the policy, the Council needs to set fees and charges with full consideration of the following:
 - Legislation, in particular some fees and charges are set centrally by government;
 - Stakeholder influence and the potential for challenge;
 - Demand implications for services as a result of reviewing prices; and
 - Where the Council has discretion over the fees and charges set it should consider whether the aim is to:
 - Recover the total cost of providing a service including an overhead allocation
 - Provide a free or subsidised service to encourage use
 - Set charges in such a way as to manage demand for services
 - Be set flexibly in order to be comparable with those of competitors
- 8.3. There can be significant implications of not fully considering these areas when setting fees and charges. The Hemmings Case is an example of a challenge on the level of fees and charges set, and need for regular review. It also highlighted the requirement to take into account any accumulated deficit and surplus when undertaking any fee review, and to ensure fees were determined by the appropriate delegated party.
- 8.4. Detailed financial analysis is required in relation to cost recovery (including an allocation of corporate overheads) to ensure that the specific provisions in the Local Government Act 2003 and Localism Act 2011 as appropriate are adhered to.

- 8.5. It is worth noting that as the Council continues to make efficiencies in line with financial pressures, this could have the adverse impact of decreasing the income that the Council can obtain from fees and charges under cost recovery principles. If the Council is able to recover a cost through fees and charges it should consider whether cost reductions in these areas are appropriate.

**If you have any queries about this Report please contact:
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Appendix 1 – Charging Policy

- 1.1. The overall principal aim will be to ensure that the Council's fees and charges are set within a framework of value for public money, whereby financial, performance, access and equality are considered fully and appropriately, and decisions taken represent a transparent and balanced approach.
- 1.2. Fees and charges will be reviewed annually as part of the budget setting process and in line with the agreed corporate timeline for each relevant year to be submitted as part of the budget proposals, or other such timeline as Council may agree
- 1.3. The legal basis for charging is based on the specific provisions contained in the Local Government Act 2003, the Localism Act 2011 and various other statutes that are specific to particular services, So that in addition to existing statutory provisions which expressly authorise charging section 93 of the 2003 Act and section 1 of the 2011 Act allows a local authority to charge for any services which it has discretion to provide. Charges cannot be made for any services for which there is a duty to provide or where legislation expressly prohibits the charging for discretionary services.
- 1.4. In exercising its charging powers a local authority is under a duty to ensure that taking one financial year with another the income from any charges for a service does not exceed the cost of providing the relevant service. This means that over a realistic period of time any surpluses or under recovery of income should be addressed through a review of the charging policy. However, the reinvestment of any income generated in excess of the cost of providing the service would not represent a surplus. The underlying principle behind the legislation is that one service should not be cross-subsidising another as each service must be viewed as distinct for charging purposes. Statutory Guidance has been issued by the Secretary of State which needs to be taken into account in considering the exercise of the charging powers and which addresses the above principles in greater detail.
- 1.5. The key features included in the framework are outlined below:
 - Fees and Charges will be structured to support the Authority's priorities.
 - The income generated from Fees and Charges will be used to support the work of the Authority.
 - Fees and Charges will normally be calculated on a full cost recovery basis, depending on the state of the market and any other relevant factors. Any concessions will be specified and separately agreed.
 - Market research, comparative data, management knowledge and any other relevant information will be used where appropriate to ensure that charges are properly prepared.
 - Fees and Charges will not be used in such a way that would restrict access to information or services.
 - The impact on income from fees and charges will be taken into consideration when a decision is taken to change any services provided by the Authority.
 - The cost of collection will be considered to ensure that fees and charges are economical to collect.
 - Highlighting the impacts of not increasing charges should be an essential part of the budget setting process.

- 1.6 The general principle for all charging areas should be full cost recovery and the service will have to justify any deviation from this approach and highlight implicit subsidies arising from any decision not to pursue full cost recovery. In the longer term the Council should aspire to identify and highlight, within internal financial processes and to Government, implicit subsidies provided in service areas such as adult social care where regulations prevent recovery of the full costs of providing a service.
- 1.7 The income generated from fees and charges will be monitored on a monthly basis as part of the overall budget monitoring process.
- 1.8 It is proposed that, to ensure all areas regularly review and update charges, fees and charges are reviewed at the beginning of each financial year based on prior year information and current year budgets. All fees and charges will then either be approved by Cabinet or noted (having been approved by the relevant Committee) in June/July of each financial year with fees and charges changes implemented thereafter. This will be undertaken by service areas with support from finance and in conjunction with the relevant Cabinet Member. The relevant Committee will be asked to approve changes to the fees and charges for non-executive functions.
- 1.9 This will allow a schedule of fees and charges to be agreed and published each year following as part of the budget preparation, which will be updated during the year to reflect any decisions made at other agreed times. As part of this policy therefore, the opportunity will be taken on an annual basis to review the rationale behind and potential for charging for services.
- 1.10 Where full cost recovery is not the basis for the level of the fee, the default position should be an inflationary increase in line with the Retail Price Index (RPI). Decisions not to increase a charge by inflation and / or not to recover full costs will need to be justified. It should be noted that the process of fee setting may not suggest a change in fees, but should demonstrate that fees have been reviewed and an informed decision made not to change the fee.

2. What level of fee to set:

- 2.1. It is important to fully consider legislation that governs each service before setting a charging structure.
- 2.2 When charging for discretionary services, authorities can recover up to the cost of provision for each 'kind of service'.
- 2.3. Different users may be charged differentially or not at all, e.g. free or reduced fees to children.
- 2.4. Considerations that need to be taken into account are:
 - The impact of increased charges on residents and service users;
 - What level of charge the market will bear; and
 - Whether full cost recovery will create unintended consequences
- 2.5. These considerations may mean that fees are set below full cost recovery.
- 2.6. It is noted that different considerations apply in the case of parking charges, which are set on the basis of transport policy considerations alone.

3. How to decide what the scope of the service is for full cost recovery:

- 3.1. When charging for discretionary services, authorities can recover up to the cost of provision for each 'kind of service'. A 'kind of service' refers to a group of services that can realistically be classed together because they are similar or related to each other rather than each discrete service being classified on its own.
- 3.2. The level at which services are grouped at should be decided upon through professional judgment having regard to the relevant statutory guidance.

4. How to calculate fees for full cost recovery:

- 4.1. Authorities enjoy a degree of discretion in defining what the cost of provision is.
- 4.2. Prior year surpluses or deficits should be taken into consideration when calculating the new charge as services should not over-recover 'taking one year with another'. Any over- or under-recovery that resulted in a surplus or deficit of income in one period should be addressed by an authority when setting its charges for future periods so that, over time, revenue equates to cost.
- 4.3. Standard methodology for calculating the cost of a service includes:
 - Employee costs;
 - Premises and transport;
 - Supplies and services;
 - Third party payments (Services supplied and charged by external parties such as other local authorities or private contractors);
 - Transfer payments (payments transferring through the Council such as Housing benefits monies and adults social services clients);
 - Support services and overheads (including any allocation of management or commissioning costs) and
 - Depreciation.
- 4.4. Some costs such as overheads may need to be apportioned. Where these are included in the calculation, an appropriate allowance should be made for management and overheads where this is not produced automatically by accounting systems.
- 4.5. To ensure charges stand up to audit it is imperative that all apportionment and allocation of costs to various charges are carried out on the Council's financial system and have backing documents to support your method of allocation/apportionment.