



City of Westminster

Cabinet Report

Meeting	Cabinet
Date:	10 July 2017
Classification:	For General Release, except Appendix 2 and 3
Title:	Fees and Charges Review
Wards Affected:	All
Financial Summary:	<p>During 2016/17, Westminster City Council received c£0.9bn of income of which c£137m was from fees and charges, approximately 15%. The income from fees and charges help to manage demand and cover costs for providing services. All fees and charges have been reviewed for 2017/18. Of the 38 Services in scope for fees and charges review, 14 have already made changes to fees and charges for 2017/18, 7 have reviewed charging and require authorisation as part of this paper, 4 are statutorily set and 10 propose no change. There are also 3 services that are in the process of more in-depth service reviews.</p>
Report of:	City Treasurer

1. Executive Summary

- 1.1. During 2016/17, Westminster City Council received c£0.9bn of income of which c£137m was from fees and charges, approximately 15%. The income from fees and charges help to manage demand and cover costs for providing services.
- 1.2. All fees and charges have been reviewed for 2017/18. Of the 38 Services in scope for fees and charges review, 14 have already made changes to fees and charges for 2017/18, 7 have reviewed charging and require authorisation as part of this paper, 4 are statutorily set and 10 propose no change. There are also 3 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.
- 1.3. Fees and charges contributed to over 28% of the £42m MTP savings put forward for 2017/18.

2. Recommendations

- 2.1 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 2017/18 highlighted in section 6 of this report and in Appendix 2.
 - c) Note fees for which no increase is proposed for 2017/18. 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 2017/18 and 2018/19 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 as set out at Appendix 1
- 2.2 That Appendix 2 and 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
- 2.3 That the information set out in Appendix 2 be noted.

3. Reasons for Decision

- 3.1 To agree the Council's fees and charges policy and position.

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 with the market and that services are not being inappropriately subsidised.
- 4.2 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 fettered by a complex series of statutes and regulations. Some services are statutory and governed by specific legislation whilst other services are discretionary.
- 5.2 The Council has general power under section 93 of the Local Government Act 2003 ("LGA 2003") to charge a person for discretionary services, that is, the provision of a service where the Council is authorised, but not required, to provide the service and the person has agreed to its provision. However, the income from discretionary services must not exceed the cost of provision.
- 5.3 Powers to charge were augmented following the Localism Act 2011 and the introduction of a new general power of competence. The general power of competence is very wide such that 'local authorities should be free to do anything – provided they do not break other laws'. Unfortunately, a side-effect of the change is that the legal position on charging is further complicated. The overall position on charging may be summarised as follows:
- Authorities must not charge for a service if legislation so provides.
 - Similarly, authorities must charge for a service if legislation so provides.
 - There is a further range of services where specific legislative provisions allow authorities to decide whether to charge and how much.
 - Then there is a further range of discretionary services supported by empowering legislation where there are no legislative provisions on charging. The local authority may then use its charging powers for discretionary services under the Local Government Act 2003.
 - The general power of competence may be exercised for other services where they do not fall into the categories above. Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do so through a company. All services provided in the Council should be for a non-commercial purpose and therefore the authority *may not recover more than the cost of providing that kind of service*. Recovery is assessed taking one year with another.
- 5.4 Examples are demonstrated in the table below:

Type of charging	Examples	Statutory/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 statutory
Charges or charging scheme set by government or in legislation with little or no local input.	<ul style="list-style-type: none"> • Planning application fees. 	Generally statutory
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 with no other charging rules. • Charge for a service provided using the general power of competence. 	Either
No limit on charges	<ul style="list-style-type: none"> • Commercial property rents. 	Generally discretionary

5.5 There is some flexibility over the interpretation of ‘the authority may not recover more than the cost of providing that kind of service’:

- ‘May not recover more than the cost’ – Local Government Act 2003 states that a modified form of total cost can be used that includes overheads.
- ‘Of providing that kind of service’ – The legislation does not mandate the definition of a service. Authorities have flexibility over defining the service. The possible interpretations could range from a specialised individual service to a much broader definition at service. The ability to interpret the legislation does not override other legislation that covers that particular area.

6. Process

6.1. The introduction of a more robust approach to fees and charges reviews has had significant benefit to the Council and Services. Notably the Council has seen the following benefits:

- Greater clarity of information on charging areas
- More coordination in approach across Council
- Greater oversight of income and services for Cabinet
- Large improvements in income levels for fees and charges rising by £17m since 2015/16. (£123m outturn in 15/16 to £140m budget for 17/18)

- Greater amount of services now reaching cost recovery or better.

Year on year the level of services putting forward Medium Term Plan (MTP) proposals to fees and charges has grown. We have also seen an increase in the number of services and charges now offered by the Council (up to 38 services under scrutiny through this process with new chargeable services now available to Schools through traded services Service Level Agreement (SLA) and new services offered in City Management & Communities due to new legislation e.g. code of construction practice and food hygiene revisits).

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.

As the process has improved a number of services have successfully reached a position of cost recovery or surplus which potentially restricts current and future changes to fees. Currently 21 out of 38 are budgeted at a cost neutral or surplus generating 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 2 of the 17 areas currently budgeted at a loss have not proposed changes)

The process and results continue to improve and the aspiration remains that all services align in setting new charges in July of every year. As the introduction of this requirement was new for 2017/18 there are still a number of services that for various reasons have not been able to align to the process in 2017 but will work to align to the process where possible for 2018.

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:

- Prepared changes to fees and charges, taking into account the charging policy of the Council, strategic aims of the service and legal implications highlighted services have.
- 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 (£1.945m from 12 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 and actual performance and information on why the service is chargeable and how it delivers it service.

6.2. 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 was highlighted as part of last year's charging report that certain changes to fees and charges would be made externally to the proposed coordinated July sign off. The below provides an overview of those fees and charges authorised outside of this report and the reasons for this and a table summarising all services already agreed is included below. It

is noted that the services below will still be encouraged where possible to align to the process in 2018:

- *Groups/boards established with power to authorise charges*
For certain services the approval of fees and charges are delegated to Committee's or Boards. The Council's Licensing Committee currently approves fees and charges for the service and did so in November 2016 to ensure 17/18 income and saving targets could be delivered with a full year effect. Also the Westminster Adults Education Service (WAES) have a controlling board that separately delivers strategy and direction. Decisions on charges and funding remain with those Committee's and services.

Both WAES and Licensing (5 services) have been approved outside of this process by their relevant authorising groups.

- *Services with significant lead times in implementation/delivery of service*
The process agreed by Cabinet last year requested all services to approve fees in July. For certain services the timeframe from authorisation to the actual potential implementation of charges will have an impact on income and service delivery. Services have therefore changed fees earlier in the year. Registrars for example if changes cannot be implemented until July will not likely impact the service and its income until the following year as services such as weddings are often booked 12 months in advance. Also Schools SLA agreements are updated in February/March of every year to allow schools to agree on service requirements before the end of the school year and for changes in service levels and buy in to be implemented ahead of the next school year in August/September. If approval cannot be given until July as part of this process the changes will not impact on income and service delivery until the following years SLA.

Both Schools Traded Services (4 Services) and Registrars have therefore authorised fees earlier in the year to take in to consideration lead times of implementation.

- *Services that have committed to an MTP saving with a full year impact*
The majority of the fee changes highlighted below are linked to and agreed in principle through the annual medium term planning process and built into service budgets from the 1st April each year. Services therefore undertake their consultation and approval processes to ensure income/saving targets can be delivered in year, taking account of implementation timeframes. The majority of the charges highlighted in the table below will deliver related savings/income targets for 17/18. Delays and/or changes to proposed sign offs would result in a delay or loss of income to the Council.

Taking commercial waste fees and charges as an example. This is a service that also requires a longer lead in time in comparison to other services from fees authorisation to implementation (to allow for print run of new contracts/fees tables and a months' notice to customers).

As the commitment to MTP savings for 17/18 were suggested before the introduction of the remit for all services to change fees and charges in July this has meant that for 17/18 these services have been allowed to continue with changes

ahead of this report but in future this is not seen as a reason for services not to align with the process.

Commercial Waste is the key example here but also Registrars, WAES, licensing and parking also have MTP targets to meet in 2017/18.

- Services with contract provisions that potentially allow for changes*

Within certain contractual arrangements the provider of the service has the ability to suggest changes to charges that would not need full Cabinet approval to be considered and implemented. This is prevalent in delivery of the Council's sports and leisure facilities where charges can be increased by inflation without the need for further consultation. Under the terms of leisure management contract for the seven sports centres and the community use agreements for Academy Sport and St Augustine's, the contractors/providers are able to request fees and charges to be increased in accordance with the Retail Price Index (RPI).
- Services with significant economic/political sensitivity*

Certain decisions due to the sensitivity of subject matter and impact both financially and environmentally have been made outside of this process. Notably parking services charges have been agreed through Leader and Cabinet Member authorisation earlier in 2017.

It should also be noted that changes are also agreed in principle through the Medium Term Planning process annually so the majority of fees and charges changes are committed to the Council outside of this process.

6.3. List of services to have authorised fees for 17/18

Taking into account reasons highlighted above the following services have set fees for 17/18:

	Area of charging	Authoriser	Date Authorised	Date Implemented	17/18 Income Budget	17/18 Cost Budget	17/18 Net Budget
Fees Already authorised	Commercial Waste	Report to Executive Director (Delegated Authority)	April 2017	June 2017	17,421,000	17,424,000	(3,000)
	Gambling Licensing	Licensing committee	November 2016	January 2017	192,400	228,000	(35,600)
	Licensing Other	Licensing committee	November 2016	January 2017	6,400	35,000	(28,600)
	Marriage Approvals	Licensing committee	November 2016	January 2017	28,000	30,000	(2,000)
	Parking	Cabinet member	January 2017	April 2017	89,198,997	32,075,194	57,123,803
	Sex Licensing	Licensing committee	November 2016	January 2017	111,200	118,000	(6,800)
	Special Treatment Premises	Licensing committee	November 2016	January 2017	700,000	700,000	-
	Sports & Leisure	Report to Executive Director (Delegated Authority)	December 2016	January 2017	2,740,150	2,951,297	(211,147)
	Registrars	Cabinet member	December 2016	January 2017	1,807,000	1,867,000	(60,000)
	Educational Psychology	Traded Services Steering Group	February 2017	March 2017	110,000	372,721	(262,721)
	Schools Safeguarding	Traded Services Steering Group	February 2017	March 2017	-	-	-
	Early Help services	Traded Services Steering Group	February 2017	March 2017	-	-	-
	Schools data services	Traded Services Steering Group	February 2017	March 2017	-	64,000	(64,000)
	Westminster Adult Education Service	WAES Resources Committee	April 2017	August 2017	1,126,452	1,126,574	(122)
	Total				113,441,599	56,991,786	56,449,813

Table 1: Fee already authorised for 17/18.

Due to the fact that certain services have MTP savings attached it is noted that delays/changes to proposed sign offs would have resulted in a delay or loss of income to the Council in 2017/18. Services already authorised have £11m of related fees and charges related MTP savings within 2017/18. However from 2018/19 any

income/savings proposals put forward should take in to account the July approval and implementation date.

Based on current sign off dates all of the above proposals are confident of delivering related savings/income targets.

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 are currently 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.

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

Fees and charges related MTP proposals are anticipated to deliver £12m of savings/income in 2017/18. This equates to 28% of all proposals put forward. 17/18 proposals have been authorised through Cabinet previously.

At present £1.945m of proposals have been suggested in relation to fees and charges for 2018/19 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	2017/18 (£000,s)	2018/19 (£000,s)
City Management and Communities	Commercial Waste	1,250	
	HMO Licences	35	
	Parking	9,350	250
	Road Management		250
	Special Treatment Premises	50	50
	Licensing	200	200
	Tables & Chairs	As above	
	Cemeteries		50
	Leisure		100
	Code of construction practice	700	
	Food Hygiene		20
Policy, Performance and Communications	City Promotions & Events	243	
Tri-Borough Children's Services	Schools SLA income - Education Psychology		150
	Schools SLA income -Schools standards		100
	Other		100
Tri-Borough Libraries & Archives	Libraries		50
	Registrars	150	
Adults Social Care	Adults Social Care		350
Growth, Planning & Housing	Planning Performance Agreements		275
Westminster Adult Education Service	Westminster Adult Education Service	42	
Total fees and charges related income opportunities		12,020	1,945
Total MTP savings proposed		42,817	23,090
% Total Savings targets generated form fees and charges		28%	8%

Table 2: MTP targets related to fees and charges

8. Policy

8.1. The policy for fees and charges setting is at 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 service 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 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: Steven Mair, City Treasurer

Background Documents - None

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. In addition to existing statutory provisions which expressly authorise charging section 93 of the 2003 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 statute/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 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.

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.