



# City of Westminster Licensing Committee Report

<b>Date</b>	Wednesday 4 <sup>th</sup> July 2018
<b>Classification</b>	For general release
<b>Title or report</b>	Licensing Service Fee Review (excluding Street Trading regimes) August 2018 - July 2019.
<b>Report of</b>	Director of Public Protection and Licensing
<b>Decision maker</b>	Licensing Committee
<b>Wards involved</b>	All
<b>Financial summary</b>	This report sets out the fee strategy for the licensing regimes where the authority can set a fee to attempt to recover its own costs. The proposed fees will enable the authority to recover its own costs in administering and ensuring compliance within those licensing regimes.
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## 1. Executive Summary

- 1.1 The Licensing Service has brought forward this year's fee review so that it will align with the corporate approach to setting fees and charges. The Licensing Service will bring the fee review report to the Licensing Committee in July each year going forward.
- 1.2 This report sets out the fee review that has been undertaken by the Licensing Service for all licensing regimes where the council can set a fee. However, street trading fees have been excluded from this report and are subject to a separate report. It is proposed that the amended fees set out with Appendix 1 of this report will take effect from the 1<sup>st</sup> August 2018.
- 1.3 The Licensing Service, following discussions with Lords Cricket Ground, are proposing a new more transparent approach to the safety certificate fees under the Safety of Sports Grounds Act 1975.

## **2 Recommendations**

2.1 The Committee are requested to:

2.1.1 Approve the proposal to align the Licensing Services review of fees with the corporate timeframe for fees and charges so that a report will be brought to the Committee each year in July,

2.1.2 Approve the approach proposed for the fees for safety certificates under the Safety of Sports Grounds Act 1975 as set out in paragraph 6 below, and

2.1.3 Approve the proposed fees attached to this report as Appendix 1 so that they commence on the 1<sup>st</sup> August 2018.

## **3 Reasons for Decision**

3.1 The Licensing Service has for the past four years brought a report for the review of licensing fees, excluding the fees associated with the street trading licensing regime to the Licensing Committee in November each year. The fees, once agreed would then be payable from the 1<sup>st</sup> January. This process is currently outside the corporate timeframe for setting the council's fees and charges, which is carried out in July each year. By aligning the fee review with the corporate approach to setting fees and charges it will enable a standardised approach across the council.

3.2 The Licensing Service are proposing a more transparent and collaborative approach to setting the fee level for sports grounds. Because there is only one designated sports ground within Westminster the fee should be calculated in collaboration with the operator, in this case Lords Cricket Ground. This will enable better work planning, transparency in costs and expenditure and enable additional funds to be made available when more officer time is required by Lords.

3.2 The proposed fees, as attached at Appendix 1 will enable the Council to recover its reasonable costs for administering and enforcing the council's licensing regimes.

## **4 Background**

4.1 Fees set by the Licensing Service were last approved in November 2017 and came into effect from the 1<sup>st</sup> January 2018.

4.2 The Licensing Service undertakes a review annually on the fees which it has the power to set.

4.3 The fees for processing the application are estimated by assessing the time it takes for each step in the process from receipt of application to determination. This will include the time taken by internal consultees, such as the Environmental Health Consultation Team and Registrars. The fee review also takes into account any surpluses and deficits from the previous year.

4.4 The Licensing Service has also identified the estimated cost for the compliance and enforcement function carried out by the council's City Inspectors. The time has been

assigned to different roles and the costs based on hourly rates. There is also a proportion attributed to these fees for management time, which will include the costs associated with running the department and services involved with delivering a function associated with one or more licensing regimes. The fees have then been established by calculating the cost associated with each of the licensing functions.

- 4.5 Although the Council has not received any applications or issued any licences for some regimes it still must set a fee to recover the costs of carrying out that function in the event an application is made. In the cases where the Council has not processed any applications or issued licences the costs have been estimated based on similar types of application process and licences.

## **5 Fee review and financial implications**

- 5.1 The proposed fees have been calculated on a full cost basis which considers both the direct and indirect costs associated with processing, monitoring and enforcing the licences.
- 5.2 When setting fees there is a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The fee level must be set to recover the actual costs incurred by the Council in running the regime but not to make a profit.
- 5.3 Previous fee reviews have not considered any fees and charges associated with any Street Trading regime licensable under the City of Westminster Act 1999. Due to the legislative approach to setting these fees and the need for public consultation these fees will form part of a separate report.
- 5.4 The costs and charges for the Licensing Service have remained reasonably consistent from last year and as a result the majority of fees are unchanged. A handful of the proposed fee levels for this year will see a decrease. The table setting out the current fee, modelled fee, variances and projected income are shown within Appendix 1 to this report.
- 5.5 The projected income over the next year based on the projected volume of applications is £1,056,305. This income will enable the service to recover its costs in administering and enforcing these licensing regimes.
- 5.6 The licensing fees are set in two parts. Part A will be payable with the application and is a non-refundable administration fee for processing the application and carrying out any consultation and determining whether the licence should or should not be granted. If the application is successful, a second fee is payable (called a Part B fee) which covers the costs of monitoring and enforcing the licensing regime.
- 5.7 The fee for Part B covers 12 months of enforcement cost and would be refunded on a monthly pro rata basis if the licence is surrendered.

5.8 The splitting of the fees into two parts has been established following the ruling by the Supreme Court for the Hemming case. This approach is in compliance with the Provisions of Services Regulations 2009.

## **6 Safety of Sports Grounds**

6.1 The council is the licensing authority for the designated sports grounds that are located within Westminster under the Safety of Sports Grounds Act 1975 (1975 Act). Lords Cricket Ground is the only designed sports ground under the 1975 Act.

6.2 The council can determine a fee in respect of an application for the issue, amendment, replacement or transfer of a safety certificate. The fee that the council sets cannot exceed the costs associated for the work actually and reasonably done by or on behalf of the authority in respect of the application under the 1975 Act. The Council began to charge a fee for this work in 2013, when the fee was set based on a fixed number of hours worked by officers.

6.3 Since 2013 it has been found that the time spent by Officers working under the provisions of the 1975 Act on the certificate varies. In some years, the work has exceeded the number of hours that were used to calculate the fee and in others, it has been less. During this period, the amount of money paid by Lords Cricket Ground has been sporadic and has not fully covered the cost of the process. This is due to the discussions during the season on work requirements and cost.

6.4 Following discussions with Lords Cricket Ground it has been proposed to amend the approach that we have previously used to set the fee for their safety certificate. This new approach would establish a planning element prior to the season so that an agreement can be reached on the work that is required under the 1975 for that year. This would encourage engagement and transparency associated with this rather than the current approach where the Licensing Service will set out what it believes will be the required hours with no discussion with certificate holder.

6.5 The proposed fee for the Safety Certificate for Lords Cricket Ground will be based on the number of officer hours that both Lords and the council anticipate will be needed for this coming year. The Licensing Service will provide the certificate holder with a quarterly update on the amount of hours undertaken during that quarter under the 1975 Act.

6.6 If the work exceeds the hours set prior to quarter four that year then an additional fee will be chargeable based on the hourly rate for the officers involved. An agreement will be reached between Lords Cricket Ground and the Licensing Service on the officers required and the costs for those officers prior to payment.

6.7 If the hours are exceeded in quarter four then those additional hours will be recorded and added to the fee level in the next financial year. The certificate holder will be notified of this and advised of the additional hours beyond the set fee level.

- 6.8 If the officers do not work the hours that have been used to calculate the annual fee then the surplus for that year will be carried over to the next financial year. The fee level proposed for that year will take into account any surplus or deficit.
- 6.9 For this year the agreed level of officer hours for a replacement safety certificate will be 80 hours, which is made up of 55 hours for a Senior Licensing Surveyor and 25 hours for an Environmental Health Officer. The total fee for the replacement of a safety certificate will be £8,070. The hourly rate for these officers are £102 for the Senior Licensing Surveyor and £98 for an Environmental Health Officer. The proposed fee levels are provided in Appendix 1 to this report.
- 6.10 The proposed approach will provide a greater level of transparency between the council and Lords and enable better planning for future works carried on at the ground. The annual fee report will also provide an update on the hours used per year.

## **7 Legal implications**

- 7.1 The Council can set its own fees for the regimes listed in Appendix 1 of this report.
- 7.2 All of the regimes (excluding Gambling) are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that any licensing fees charged in relation to “authorisations” must be reasonable and proportionate to the costs of processing applications. As stated above, the Hemmings case confirmed that when setting licence fees, authorities can recover the costs of processing the application and where applications are successful, the costs of monitoring and enforcing the licensing regime as a whole, provided such costs are charged in two parts (part A and part B). The proposed fees must not be used to make a profit.
- 7.3 If the proposed fee structure results in a surplus or loss for the financial year there will be an appropriate reduction or increase in fees as the case may be for the following financial year.

### Appendices

Appendix 1 – Proposed Fees August 2018 – July 2019

**If you have any queries about this report or wish to inspect any of the background papers, please contact:**

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Background Papers

Licensing Fee Review Excel Spreadsheet