



City of Westminster Cabinet Report

Decision Maker:	Cabinet
Date:	15th July 2019
Classification:	General Release (Appendix 2 and Appendix 3 – Exempt from public disclosure)
Title:	Fees & Charges Review
Wards Affected:	All
Key Decision:	Yes
Financial Summary:	During 2018/19, Westminster City Council received c£855m of income of which c£140m was from fees and charges, approximately 16%. The income from fees and charges help to manage demand and cover costs for providing services. Changes proposed to fees and charges for 2019/20 are anticipated to deliver £1.6m of the savings target for the year.
Report of:	Gerald Almeroth, Executive Director of Finance and Resources

1. Executive Summary

- 1.1. During 2018/19, Westminster City Council received c£855m of revenue of which c£140m 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 element of the Council's total income generation is from fees and charges (16.3% of its income comes from fees and charges) it is vital to support and monitor this income flow, as any major changes due to external influences could have impact on the Council's overall financial position.
- 1.3. All fees and charges have been reviewed for 2019/20. Of the 39 Service areas in scope for fees and charges review, 11 have already made changes to fees and charges for 2019/20, 15 have reviewed charging and require authorisation as part of this paper, 7 are set by statute and 6 propose no change.
- 1.4. The fees and charges review process and report remains a key component of the Medium Term Planning (MTP) process. Fees and charges will contribute a net £1.614m to 2019/20 MTP savings, therefore authorisation of changes is required to ensure delivery of these committed savings.
- 1.5. It remains beneficial or even a contractual requirement for some service areas to change their charges outside of this review cycle but the process and acceptability of changes are still intended to be reviewed as part of the fees and charges process.
- 1.6. The monitoring, review and innovation in fees and charges is an important aspect of managing the Council's finances. 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.
- 1.7. 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 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
- 2.2 That Cabinet is recommended to:
- a) Approve changes to fees and charges as outlined in Appendix 2 and 3 of this report
 - b) Note the changes already approved by other committees/members for 2019/20 highlighted in Appendix 2 of this report.
 - c) Note the fees for which no increase is proposed for 2019/20. Details of these fees are included in Appendix 2 of this report.
 - d) Note the overall proposed contribution from fees and charges to the Medium Term Plan (MTP) for 2019/20 and 2020/21 as highlighted in table 2 of section 7 of this report
 - e) Note the fees and charges policy at Appendix 1

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. 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 of 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

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. A number of services successfully deliver a position of cost recovery. Currently 28 out of 39 are budgeted at a cost neutral position in 2019/20. 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 controllable charges currently budgeted at a loss has not proposed a change)

6.4. To review 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 (£1.614m from 6 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 fee review process has been aligned to allow Cabinet to review the position and authorise changes annually in a coordinated manner.

- 6.6. However, it is noted that there are some exceptions to the process. For certain services, the approval of fees and charges is delegated to Committees and/or 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

- 7.1. Year on year, fees and charges continue to be a source of additional income and savings for the Council's MTP, allowing the safeguarding of the Council's budget position.
- 7.2. Fees and charges related MTP proposals are anticipated to deliver a net £1.614m of savings/income in 2019/20. 2019/20 savings proposals have been authorised at Full Council through the Council tax report.
- 7.3. £1.364m of 2019/20 MTP savings relate to fees and charges requiring approval in this report, therefore approval is required to assist with the delivery of these savings. Fees and charges requiring authorisation will generate income of £85.2m in 2019/20. Full year impact of increases represents an average growth in income of 2.1%.
- 7.4. At present, £3.390m of proposals have been proposed in relation to fees and charges for 2020/21 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:

Service	Net Savings/(pressures)	
	19/20 £000's	20/21 £000's
Public Protection and Licensing	234	300
Libraries	300	(100)
Physical Activity, Sports and Leisure	400	2,200
Parking	250	50
Highways & Road Management	200	690
Waste & Parks	330	200
Registrars	(100)	150
City Promotions, Events and Filming	-	(100)
Total	1,614	3,390

Table 2: MTP targets related to fees and charges

8. Risks

- 8.1. The Council faces continued pressure to find new income and savings to balance its annual budget. Central Government funding continues to decrease with councils expected to find answers internally to the continuous pressure on reducing public sector spend.
- 8.2. Any change in the overall economic outlook (or indeed business confidence) has the potential to impact on such commercial income streams. Customer needs and behaviours continue to change which brings new challenges and opportunities to the Council.
- 8.3. Certain income streams are more sensitive to the state of the general economy than others. The Council has seen pressures in 2018/19 on parking; planning/development control; and highways & road management. There are many drivers for change but pressures are likely to continue across chargeable services, so the Council has to continue to analyse and review charging models and strategies to ensure it manages demand and income effectively.
- 8.4. The risk areas below will impact demand for products:
- Demography
 - Technology
 - Financial Framework
 - Legislative Framework
 - Brexit
 - Inflation
 - Competition

9. Policy

- 9.1. The policy for fees and charges setting is included in this report 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; the principles of the charging culture; and to help the Council maximise income in specific areas to support the continued provision of services that matter to the Council and its communities. No changes to the policy are proposed.
- 9.2. 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
- 9.3. 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.
- 9.4. 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.
- 9.5. It is worth noting that as the Council continues to make cost 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: Gerald Almeroth,
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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 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. 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.