



Date	1 December 2021
Classification	For general release
Title or report	Licensing Service Fee Review 2021-2022
Report of	Director of Public Protection and Licensing
Decision maker	Licensing Committee
Wards involved	All
Financial summary	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 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. It is proposed that the amended fees set out in Appendix one of this report will take effect from the **2 December 2021**.
- 1.2 In August 2021 the annual inflation rate in the United Kingdom increased to 3.2 percent. This was the rate of Consumer Price Inflation (CPI) and since CPI relates to consumer goods it is the most appropriate measure of inflation to apply in this circumstance whilst maintaining a cost recovery process when reviewing fees.
- 1.3 This report is written in line with the corporate timeframe for setting the council's fees and charges, which is carried out each year. By aligning the fee review with the corporate approach to setting fees and charges it enables a standardised approach across the council.

2. Recommendations

- 2.1 The Committee is requested to:

Approve the proposed fees attached to this report as set out Appendix one hereof so that they commence on the **2 December 2021**.

3 Reasons for Decision

- 3.1 The proposed fees, as attached at Appendix one, 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 September 2020 and came into effect from the 1 November 2020. However, street trading licensing fees were not included as they had previously been agreed by the Licensing Committee and only fully came into force in July 2020.
- 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 each type of application are estimated by assessing the time it takes for each step in the process from receipt of application to determination. This includes the time taken by internal consultees, such as the Environmental Health Consultation Team and Registrars.
- 4.4 In the last annual fee review the Licensing Service estimated the cost for the compliance and enforcement function carried out by the council's City Inspectors. The time was assigned to different roles and the costs based on hourly rates. There was also a proportion attributed to these fees for management time, which included the costs associated with running the department and services involved with delivering a function associated with one or more licensing regimes. The fees were then established by calculating the cost associated with each of the licensing functions.
- 4.5 Although the Council does not receive any applications or issue any licences for some regimes it still must set a fee to recover the costs of carrying out that function. In this instance the costs are estimated based on similar types of application processes and licences.
- 4.6 In August 2021 the annual inflation rate in the United Kingdom increased to 3.1%, the proposed increase is in accordance with the rate of inflation.

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 plus a 3.1% inflation increase.
- 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 The table setting out the current fee and proposed fee are shown within Appendix one to this report.

Licensing costs associated with Premises

- 5.4 Premises licensing fees for regimes including massage and special treatment premises, marriage venues and sex establishments are set in two parts. 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.
- 5.5 Fees have to be charged in two parts. Part A is 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.
- 5.5 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.
- 5.7 The 3.1% inflation increase has been added to both Part A and B of the premises licensing fees.

6 Street Trading Licensing

- 6.1 Street trading fees are set under the provisions of the City of Westminster Act 1999. There are two types of fees for street trading, the application fee for processing and grant of a licence and a daily fee for each day the licence is given which is full cost recovery for costs associated with cleansing, administration and enforcement.
- 6.2 Any variation to the street trading charge is governed by Section 22 of the Act. Any proposed fee must be subject to a 28-day consultation period with existing licence holders and those that represent licence holders. During the consultation period any questions must be fully addressed and whilst answers are being provided the 28-day time period is extended.
- 6.3 The different types of street trading licences include market pitches, isolated pitches, casual traders, exhibition sites and tables and chairs.
- 6.4 Street trading fees for markets were reviewed and approved by Committee in November 2018 where a 2-year phased increase was agreed. Phase 1 came into effect on 01 April 2019. Phase 2 was due to take effect on 01 April 2020 but was suspended due to Covid-19 until 01 July 2020.
- 6.5 Casual trading fees were reviewed with the market fees in November 2018. The application fee for registration was increased to take effect from April 2019 but no change was made to the daily pitch charge.
- 6.6 Isolated pitch fees and Exhibition charges were last reviewed in June 2006 when the fees were increased to recover the costs of the Council as well as to recover an accumulative deficit on the street trading account.

6.7 A full review of the charges relating to street trading licensing will be conducted in 2022. Therefore the only consideration in this report for street trading will be the proposed 3.1% increase for tables and chairs licences.

7 Legal implications

7.1 The Council can set its own fees for the regimes listed in Appendix one of this report.

7.2 All of the licensing regimes (excluding Licensing Act and Gambling Act) 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.

8. Equalities Implications

8.1 The council must have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

8.2 Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

8.3 The council believes that these proposals do not adversely impact or unlawfully discriminate against any protected characteristics.

9. **Financial Implications**

- 9.1 Should Members agree the proposed inflation increase to the Licensing Fees, the proposed fees are attached at Appendix one

Appendices

Appendix one – Proposed Fees December 2021 – November 2022

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

Mr Andrew Ralph, Head of Service for Licensing & Regulatory Services.

Background Papers

Licensing Fee Review Excel Spreadsheet