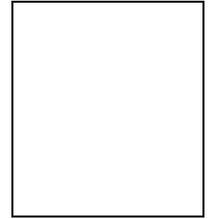




SHEFFIELD CITY COUNCIL Licensing Sub Committee Report



Report of: Chief Licensing Officer and Head of Licensing

Date: 29th March 2021

Subject: Determination of Licence Fees

Author of Report: Steve Lonnia

Summary: To determine the licence fees for the 2021/22 financial year

Recommendations: The Chief Licensing Officer and Head of Licensing following detailed consultation with the Councils Legal and Finance officers recommends that the committee accept the proposed “no Increase or change” in any fees.

Background Papers: None

Category of Report: OPEN

**REPORT OF THE CHIEF LICENSING OFFICER & HEAD OF LICENSING
TO THE LICENSING COMMITTEE**

No: 10/21

Licensing Fees Review

Determination of Licence Fees for the 2021/22 Financial Year

1.0 PURPOSE AND OUTCOMES

1.1 The purpose of this report is for members to determine all the fees that are set by the Licensing Authority an example of the systems impacted includes but is not a comprehensive list:

- Taxis (hackney carriage & private hire vehicles / drivers and operators)
- Animal Health (pets shops, animal boarding establishments, dangerous wild animals; riding establishments and breeders of dogs);
- Street Trading (football, static, mobile, schools, and short term consents);
- Scrap Metal Dealers;
- Sex Establishment Licensing (sex shops and sexual entertainment venues);
- Gambling Premises (casino, bingo, betting and track premises etc.);
- Approved Marriage Premises (secular and religious);
- Pavement Café Licences;
- Second Hand Dealers Registration;
- Skin Piercing / Tattooists; and
- Safety of Sports Grounds (Part)
- Commons Act 2006 – Landowner Statements.

1.2 To note, the following fee(s) are prescribed by the Secretary of State. These are “Statutory” fees and cannot be changed by the Local Authority. These are:

- Licensing Act 2003
- Gambling Act 2005 (certain fees).

1.3 To inform members of the systems that are administered by the Licensing Service, where the legislation states we are unable to charge a fee:

- Safety of Sports Grounds (Part);
- Street Collections;
- House to House Collections;
- Hypnotism; and
- Commons Registration / Town & Village Greens
- Children’s Permits

1.4 The intended outcomes of this report are to ensure that:

- That the Council is aware of, recognises and works with businesses of all types to ensure that they have ample time to recover from the financial impact of the current pandemic;
- That all fees are determined on an annual basis whether they remain the same, increase or decrease;
- That members approve no increase or change in any fees at this moment in time; and
- That a fees report is placed before the Licensing Committee in September 2021 to review the current fees moving forward.

2.0 FAIR CHARGING POLICY

2.1 It is agreed that fees and charges should be set in a consistent way across the Council and that we are transparent about the fees we expect people to pay.

2.2 Licence fees must also be set in accordance with the relevant individual piece of legislation; The Provision of Services Regulations 2009; and any other associated legislation / regulations. Members should note that some systems do not fall within the scope of these regulations, one particular system is Taxi Licensing (licensing of vehicles, drivers and operators) and another is the Gambling Act (Premises licences etc.) system.

2.3 To ensure consistency of approach we have decided to deal with all fees in the same way, using the same process. Adopting the same process as set out in the Provision of Service Regulations 2009 for all fees will make it easier for our customers to understand.

2.4 The fees have been set so that they enable the service and the Council to deliver on our priorities and also on the principle of the polluter pays where it is appropriate.

2.5 The Council intends to recover the reasonable costs of the Licensing Service with regards to the administration and enforcement of the terms and conditions of each of the above individual licensing systems where permitted. Each licensing system has its fee calculated separately to ensure we are only recovering the costs in relation to that individual system.

3.0 CASE LAW

3.1 In order for the service to equalise revenue and expenditure, it is not sufficient to make an estimate of costs in the forthcoming year and see to equalise them with revenue. We must also ensure that any surpluses and deficits are brought forward. This was established in two cases, that deficits can be brought forward in R (Hutton) v

Westminster City Council in 1985 and that surpluses can be brought forward in R (Hemming and Others) v Westminster City Council.

- 3.2 It is clear from R v Manchester City Council. Ex p. King, The Times, April 3, 1991 that the power to set fees does not permit the Council to raise revenue generally. The Council must only recover the reasonable costs of that individual system to which the fee relates.
- 3.3 It has also been established in many cases such as R-v-The Greater London Council Ex Parte The Rank Organisation Limited where it was stated “the level of fees was a matter of policy and as long as the total fee income did not exceed the cost of the licensing system the court should not and could not see to interfere”.
- 3.4 The case of R (Hemming and Others) v Westminster City Council has changed the way we must consider setting fees and what legitimate costs we can recover.

Keith J upheld that the procedures the costs of which could be recharged to licensees are;

“.... the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed, and when you talk about the cost of those procedures, you are talking about the administrative costs of vetting the application and the costs of investigating their compliance with the terms of the licence. There is simply no room for the costs of authorisation procedures to include costs which are significantly in excess of those costs...”

- 3.5 Members should note that the Council can only recover the actual costs of delivering each individual system from the fees it charges applicants / licensees. It cannot make a surplus from fees and must not use fees to cross subsidise any other licensing system or to offset other budgets or raise income generally.
- 3.6 The overarching principle and starting point for the setting of fees is that the Local Authority must only recover its reasonable costs of administering that individual system and enforcing the terms and conditions of those licences where applicable and that no irrelevant factors are taken in to account when setting such fees.

4.0 PROVISION OF SERVICES REGULATIONS 2009

- 4.1 These regulations came into force on 28 December 2009; Para 18(4) states any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of these procedures and formalities.

4.2 The regulations suggest that all fees within the scope of the directive be separable in to two parts. Firstly the pre application costs, mainly the administrative costs incurred when dealing with the application from when it is first received up until it being determined (issued/refused). Secondly the on-going costs of monitoring and enforcing the terms and conditions of that licence where applicable. This is to show clearly which part of the fee is repayable should an application (applicant) be unsuccessful.

5.0 ADOPTION OF LEGISLATION

5.1 The legislation administered and enforced by the council's licensing service is either imposed by statute or adopted individually by the Council.

5.2 The following pieces of legislation are imposed on the Council by statute:

- Licensing Act 2003
- Gambling Act 2005
- Pet Animals Act 1951
- Animal Boarding Establishments Act 1963
- Riding Establishments Act 1964
- Breeding of Dogs Act 1973
- Dangerous Wild Animals Act 1976
- Zoo Licensing Act 1981
- Marriages Act 1949
- South Yorkshire Act 1980 – Second Hand Dealers
- Safety at Sports Grounds Act 1975 (As Amended)
- Town Police Clauses Act 1847 – Hackney Carriages

5.3 The following pieces of legislation are adopted by the council;

- Local Government (Miscellaneous Provisions) Act 1976 – Part II, Private Hire and Hackney Carriage Licensing
- Local Government (Miscellaneous Provisions) Act 1982 – Street Trading
- Local Government (Miscellaneous Provisions) Act 1982 – Sex Establishments / Sexual Entertainment Venues
- Local Government (Miscellaneous Provisions) Act 1982 – Acupuncture, Ear Piercing, Tattooists, Electrolysis and Semi Permanent Skin Colouring
- Highways Act 1980 – Pavement Café Licences
- Scrap Metal Dealers Act 2013

5.4 Those that are adopted by the council must follow strict procedural requirements including:

- Specifying the day and date the provisions come into effect
- Placing a public notice in a local newspaper

Please note: the above is only an example of the procedural requirements and are not an exhaustive / detailed list.

- 5.5 The City Councils Director of Legal & Governance has confirmed that the Council has properly adopted the above pieces of legislation where necessary and evidence is retained in the Councils archives (minutes etc.).

6.0 FEES STRUCTURE

- 6.1 Members should note that the licensing budget has now been split in to four separate accounts, Taxi Licensing, Licensing Act, Safety at Sports Grounds and General Licensing.

- 6.2 As members are aware from previous reports it is a legal requirement under the European Services Directive to show application fees in two parts. These are the pre application costs in dealing with the application itself and post application costs which are the ongoing costs of managing the licence and enforcing the terms and conditions.

- For example: a licence fee that is £100 would show the fee in two parts - £75 pre costs and £25 post costs

- 6.3 The service would like applicants to pay both fees up front as over 95% of licences are granted and therefore it is more cost effective and is easier to administer.

- However, an applicant must be able to pay the fee in two separate parts and all fees will be advertised this way;
 - Pre costs (cost of administering / determining the application)
 - Post costs (enforcement of terms / conditions and ongoing administration)

If an applicant would prefer to pay the two fees separately then there will be an additional administration cost of £20 for processing the fee. If the applicant chooses to pay the fee upfront then the post costs would be refunded where an application is unsuccessful.

- 6.4 The service has calculated the fees and income based on the potential of receiving both paper and electronic applications so that we understand the financial impact upon the service of proposing no increase.
- 6.5 If a deficit and/or surplus is achieved at the end of the financial year then this may be carried forward in to following year's budget, or the relevant fees reduced accordingly and / or the money re-invested within the service if it is required / necessary.

7.0 PROPOSED NO INCREASE OR CHANGE IN ANY FEES

- 7.1 Due to the financial impact of the ongoing pandemic it is felt that this is not the right time to propose any increase or change in any licence fees. Many licensed businesses have been severely impacted upon by Covid-19 and find themselves under significant financial pressures.
- 7.2 Although we are proposing no increase or change at this time we have still undertaken a budget / fee setting process, so that we can understand the financial impact upon the council in the short term.
- 7.3 We propose to undertake a further review of all fees in September 2021 at which time it will be assessed as to whether a proposed increase or change in fees is appropriate and / or required at that moment in time.

8.0 FINANCIAL IMPLICATIONS

- 8.1 Members should be aware that there has been no increase in staffing costs (pay award) this year, and as long as the projected numbers of licences / applications remain roughly the same then there should be no significant financial impact.
- 8.2 If members decide that they wish to increase or change fees then they should instruct the Chief Licensing Officer & Head of Licensing to prepare a separate report that will be submitted as soon as possible.
- 8.3 This report has been signed off by Corporate Finance on the 18th March 2021

9.0 LEGAL IMPLICATIONS

- 9.1 There are no legal implications for the Council arising from this report.
- 9.2 Members should always be aware that the setting of fees can be legally challenged by way of Judicial Review.
- 9.3 This report has been signed off by Legal Services on the 18th March 2021.

10.0 RECOMMENDATIONS

- 10.1 The Chief Licensing Officer and Head of Licensing following detailed consultation with the Council's Legal and Finance Officers recommends that the Committee accept the proposed no increase or change in any fees. This position is to be reviewed in September 2021.

10.2 Members must carefully consider all the information provided in this report and any written or verbal information received at the meeting before determining that there will be no increase or changes in fee(s).

11.0 OPTIONS OPEN TO THE BOARD

11.1 To determine (approve) this report that no increase or change in fees is required at this moment in time taking into consideration the current pandemic.

11.2 To determine that following a review of the fees a further report is required to consider any proposed increase or changes in fees in September 2021.

Stephen Lonnia
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March 2021