



## Report to Policy Committee

**Author/Lead Officer of Report: Catherine Hughes,  
Service Manager, Private Housing Standards  
Tel: 0114 273 4257**

**Report of:** *Janet Sharpe*  
**Report to:** *Housing Policy Committee*  
**Date of Decision:** *14<sup>th</sup> September 2023*  
**Subject:** *Review of HMO Fees and Charging Structure*

Has an Equality Impact Assessment (EIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
If YES, what EIA reference number has it been given? 2286				
Has appropriate consultation taken place?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Does the report contain confidential or exempt information?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-				

### **Purpose of Report:**

Cabinet first approved a mandatory licensing scheme for Houses in Multiple Occupation (HMOs) in April 2006, as prescribed within the Housing Act 2004. Substantial changes to the scheme were approved in 2018 when the definition of licensable HMO properties was expanded, and new building standards were imposed.

Following a detailed review of current fees and charging arrangements, we are asking Committee to approve increases to the HMO licence fees and amendments to the charging structure.

**Recommendations:**

It is recommended that the Housing Policy Committee:

1. Approve the changes to the HMO licence fees and charging structure as detailed
2. Agree to implement the revised fees and new charging structure for new applications from 31<sup>st</sup> October 2023 and renewals from 31<sup>st</sup> December 2023.

**Background Papers:**

*UK Guidance on the Provision of Services Regulations*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/975587/provision-of-services-guidance-march-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975587/provision-of-services-guidance-march-2021.pdf)

*Open for business - LGA guidance on locally set licence fees*

[https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness\\_02\\_web.pdf](https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf)

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: <i>(Insert name of officer consulted)</i> <i>Helen Damon</i>
		Legal: <i>(Insert name of officer consulted)</i> <i>Catherine Ferguson</i>
		Equalities & Consultation: <i>(Insert name of officer consulted)</i> <i>Louise Nunn</i>
		Climate: <i>(Insert name of officer consulted)</i> <i>Darryl Smedley</i>
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	<b>EMT member who approved submission:</b>	<i>Ajman Ali, Executive Director, Neighbourhood Services Directorate</i>
3	<b>Committee Chair consulted:</b>	<i>Councillor Douglas Johnston</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Committee by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	<b>Lead Officer Name:</b> <b>Catherine Hughes</b>	<b>Job Title:</b> <b>Service Manager</b>
	<b>Date:</b> <i>1<sup>st</sup> September 2023</i>	

## Introduction

1. Sheffield City Council operates a mandatory licencing scheme for Houses in Multiple Occupation (HMOs) occupied by five or more unrelated people who share amenities, a duty under Part 2 of the Housing Act 2004. There are currently around 12,000 people living in around 2000 licenced HMOs within Sheffield. Market data suggests that several hundred properties may be operating illegally as unlicensed HMOs.
2. The majority of Sheffield's licensed HMOs offer a good standard of accommodation and HMO landlords should be acknowledged for their role in contributing to the diversity of housing stock within the City. HMOs meet the housing needs of the workforces in many industries, in health and other front-line services, also accommodating many students from colleges and universities. This form of housing is also accessed by a higher proportion of migrant workers and vulnerable younger adults.
3. People living in HMOs can encounter a range of problems relating to their accommodation, including overcrowding, inadequate access and exit routes, damp and cold, trip hazards, unsafe gas and electrical installations, lack of fire protection, lack of natural light and ventilation, all of which are known to have a significant impact on the health, wellbeing, and safety of occupants. The inspection and licencing of HMOs, together with the imposition and enforcement of licencing conditions, benefits the tenants by addressing these problems, and by ensuring that landlords are 'fit and proper' and competent to manage their properties.
4. Sheffield City Council has exercised its powers to charge mandatory HMO licence fees under Part 2 Sections 63(3) and (7) of the Housing Act 2004. The Act empowers local authorities to charge a fee in relation to the granting of a licence, and it is for each authority to determine the level of fee payable.
5. Fees should be charged in accordance with the Hemming and Gaskin court judgements in relation to the European Provision of Services Directive 2006, implemented in the UK Provision of Services Regulations 2009. The effect of these judgements is that the licence fees must be charged in two parts. The costs of processing the licence application (Part 1) should be charged separately to the costs associated with the ongoing administration and enforcement of the licensing scheme (Part 2). Extracts from the relevant statutory guidance are given in **Appendix 1**.
6. Local authorities are not allowed to demand fees in the Part 1 charge for anything other than the costs of administering and processing the licence application. The Part 1 application fee is non-refundable should the application be unsuccessful. Local authorities are not permitted to make a profit from the licensing scheme and any surplus will be ring-fenced for use on the scheme. Fees and charges should be reviewed periodically and adjusted to reflect changes in operating costs. The licensing scheme should be operated on a full cost recovery basis with all the costs for the scheme to be borne by the licence-holding beneficiaries and no additional burden to be placed on the public purse.

## **Background to the review of fees and charging structure**

7. In Sheffield, mandatory HMO fees have not been increased for eleven years, having last been reviewed in 2012. Over the past five years a combination of recruitment difficulties, staffing shortages and the Covid pandemic have thus far prevented a full-scale review of scheme income, outgoings and fee levels. The standstill in fee levels has gradually led to a significant shortfall in income, with the costs of administering the scheme not being met and increasing reliance on the General Fund. More crucially, the licence fees continue to be charged as one single amount, contrary to the requirement set out in case law for fees to be charged in two parts.
8. The main priorities for the review carried out this year were:
  - to conform with the legal requirements regarding the charging of fees in two parts, making a fair apportionment of costs between the new Part 1 and Part 2 charges;
  - to set fees using a five-year budgeting exercise to achieve a self-funding, cost-neutral licencing scheme with sufficient staffing resources not only to administer HMO licence applications but to take a range of pro-active enforcement measures to tackle poor landlord practice and illegal HMOs operating in the City;
  - to consider the introduction of additional penalty charges which will pass on the costs of managing non-compliant landlords to this minority directly, rather than spreading the costs across the whole licensing scheme;
  - to improve the efficiency of the licensing scheme administration and the quality of guidance offered throughout the process; and
  - to consult with landlord partners about proposed fee structure changes and about where to focus efforts on service improvement.
9. The new fee levels have been developed to comply with European Directive principles on locally set licensing fees: that they are *non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent and accessible*.
10. As part of the budgeting exercise, a fee review mechanism has been built into the annual work programme for the licensing team such that costs will be reviewed on an annual basis to ensure that the licencing scheme continues to operate on a cost-neutral basis.
11. Current licence fee levels set in 2012 were based on an estimated 1000 HMOs requiring licencing over the following five years and a desktop-based approach to the assessment of applications rather than full property inspections. There are now nearly 2000 licenced HMOs in Sheffield; this increase partly a result of licencing reforms in October 2018 which broadened the definition of licensable HMOs. A more extensive assessment process now takes place with over 80% of applicant properties being inspected prior to issue of licence. In 2012 the projected costs of the licensing scheme over five years were estimated at £1m, whereas in 2023 this has risen to just over £2.66m.

## Review outcomes – new fee levels and charging structure

12. One central budgeting assumption is that the number of licensed HMOs in Sheffield will continue at around 2000 properties for the next five years. There are a number of market factors which may impact on overall numbers of licensed properties:
- recent mortgage rate increases which affect the affordability and availability of financing for HMO portfolios;
  - increased availability of purpose-built student accommodation in the City centre, which may draw away some of the demand for more traditional terraced HMO properties in popular student areas in the southwest of the City;
  - predicted increases in the student populations for the University of Sheffield and Sheffield Hallam University; and
  - continued population growth within Sheffield including an increase of migration into the City.

The proposed annual fee review mechanism will continue to examine HMO market trends and allow for future adjustments to account for significant changes in HMO stock numbers.

13. The review undertook a detailed time and cost analysis of the tasks carried out by the licensing team to administer each application, including checks and chasing for valid and correctly completed forms, the inspection and assessment of properties, the 'fit and proper' and competency tests for landlords and managers, the setting of various licence conditions, further compliance visits and other aspects relating to the management and enforcement of the scheme.
14. Using this analysis, a breakdown of costings has been produced to determine fee levels for new and renewal licence applications, also to determine the amounts to be divided between Part 1 (61% of the fee has been apportioned to Application costs) and Part 2 (39% of the fee has been apportioned to Scheme Administration and Enforcement costs). **Appendix 2** gives a breakdown of the how the fee is divided between Part 1 and Part 2 activities.
15. Analysis of costs revealed that although renewals are currently charged considerably less than new applications, each renewal takes almost as long to process as a new application. This is because all aspects of the property ownership and management arrangements have to be rechecked and verified as if they were with a new application, also property changes can occur during the term of a licence, for instance changes to room layouts, the provision of shared cooking or bathroom facilities, fire safety equipment, hazards following deterioration in the fabric of the building, all become evident through the renewal assessment process.
16. The analysis of costs also revealed that much more time is spent administering licence applications for larger HMOs with many more bedrooms. The current fee model does not fairly reflect the considerable added administrative burden

in licensing larger HMOs. In effect larger HMO have benefited from comparatively low licence fees when considering a fair apportionment of the scheme administrative costs as a whole.

17. **Table 1** below gives details of the proposed new fee levels. There are seven new cost bands based on the number of licensable bedrooms in each HMO property. This differs from the current fee structure which adds a small increase in licence fee per extra person housed in the HMO.
18. The second and third columns on **Table 1** show the charge for Part 1 of the fee, payable with the application form, and for Part 2 of the fee, payable at the point when a draft licence has been issued. The total new fee is given in column four, with a comparison in column five to the current fee charged for an equivalent size of HMO (the current fee is based on a midpoint comparison with new bedroom banding cost).
19. The sixth column on **Table 1** shows the percentage increase of the new fee compared to the current fee, and the seventh column shows an estimate of how many properties will fall into each of the new fee bands based on the current licensable HMO stock profile.

<b>New applications</b>						
<b>Bedrooms</b>	<b>Part 1</b> (Application processing)	<b>Part 2</b> (Licence scheme management and enforcement)	<b>Total New Fee</b>	<b>Current Fee</b>	<b>Percentage increase on Current Fee</b>	<b>Forecast number of HMO properties</b>
5	£725	£460	<b>£1,185</b>	<b>£750</b>	58%	346
6-9	£850	£540	<b>£1,390</b>	<b>£825</b>	68%	414
10-14	£1,030	£660	<b>£1,690</b>	<b>£925</b>	83%	27
15-19	£1,275	£815	<b>£2,090</b>	<b>£1,050</b>	99%	6
20-24	£1,580	£1,010	<b>£2,590</b>	<b>£1,175</b>	120%	2
25-49	£1,945	£1,245	<b>£3,190</b>	<b>£1,550</b>	106%	2
50	£2,375	£1,515	<b>£3,890</b>	<b>£1,875</b>	107%	0
<b>Renewal applications</b>						
<b>Bedrooms</b>	<b>Part 1</b>	<b>Part 2</b>	<b>Total New Fee</b>	<b>Current Fee</b>	<b>Percentage increase on Current Fee</b>	<b>Forecast number of HMO properties</b>
5	£675	£460	<b>£1,135</b>	<b>£430</b>	164%	518
6-9	£800	£540	<b>£1,340</b>	<b>£460</b>	191%	622
10-14	£980	£660	<b>£1,640</b>	<b>£500</b>	228%	42
15-19	£1,225	£815	<b>£2,040</b>	<b>£550</b>	271%	10
20-24	£1,530	£1,010	<b>£2,540</b>	<b>£600</b>	323%	3
25-49	£1,895	£1,245	<b>£3,140</b>	<b>£750</b>	319%	4
50	£2,325	£1,515	<b>£3,840</b>	<b>£880</b>	336%	1

Table 1 – New HMO Fees

20. The scale of increase in fees is undeniable, however the review in fees was also considerably overdue, and it is worth putting in context that since fees were last increased in 2012, the Retail Price Index which measures the costs of goods and services, including housing costs, rose by 55.2% until June 2023. The new distribution of charges across different property sizes and between renewal and new applications creates a fairer apportionment of licence administration costs, and the total projected scheme income will provide sufficient funding to manage an effective, adequately resourced licensing team for the City without further recourse to public funds. The increase in fees is also necessary to fund improvements already made to the licensing process whereby pre-licence property inspections have become a routine component of licensing.
21. Market data and SCC's licensing data suggest there may be several hundred unlicensed HMOs operating illegally within the city. With the adequate resources in place, it will be possible to detect and pursue many of the landlords concerned, either to bring them inside the licensing regime or prosecute unfit landlords. The fee increases build in the costs of providing the staffing resources necessary to carry out this essential pro-active detection and enforcement work which will be a key facet of the service in future.

**Benchmarking other local authority HMO fee levels**

22. The proposed new fee rate has been compared with neighbouring authorities in Yorkshire and Humber Region and with other Core Cities in England – see **Figure 1** below.

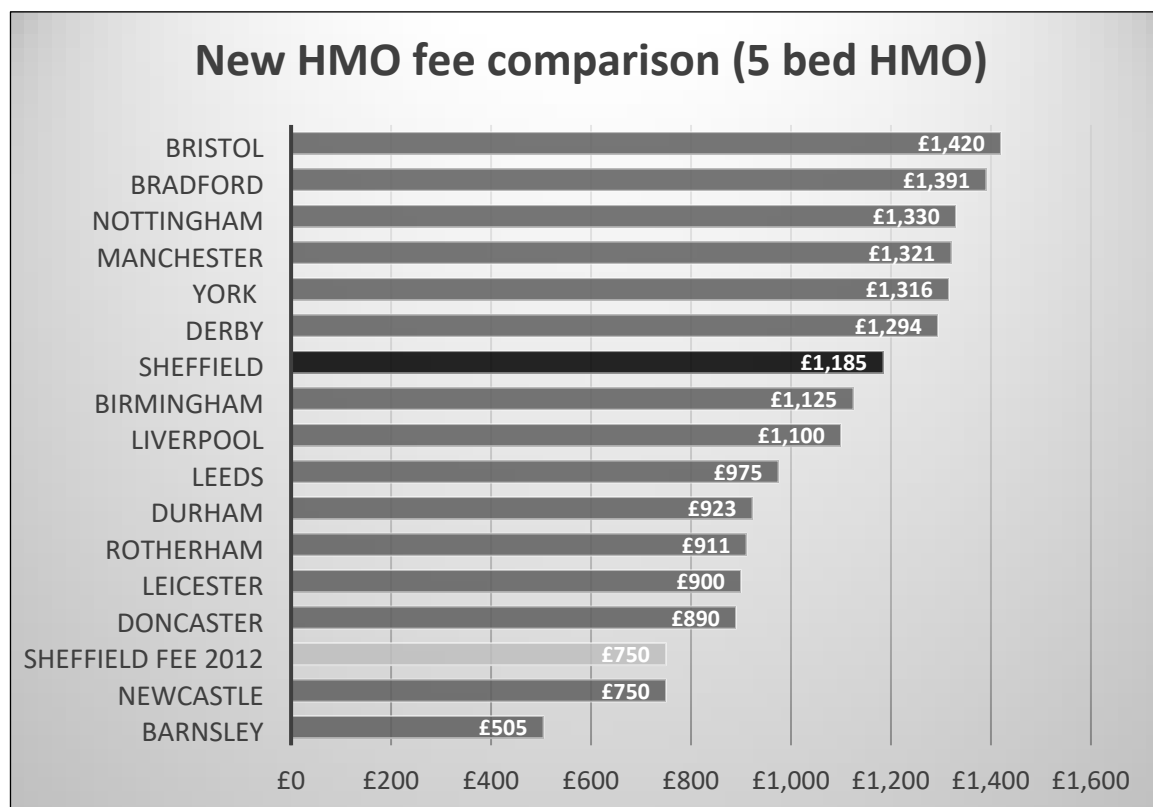


Figure 1 – Comparison with other local authority licence fees

23. The new fee is higher than in several neighbouring authorities, e.g., Rotherham, Barnsley, and Doncaster but lower than in York, Derby and Bradford. In comparison with the Core Cities of Nottingham, Birmingham, Liverpool, Manchester, Bristol, Newcastle and Leeds, most of whom share a similar scale and complexity of licensing activity to ours, Sheffield's new fee is only slightly above the Core City average level of £1,151.
24. There are many reasons for variations in fee levels between authorities: in several cases the fees have not been reviewed recently, also licensing processes vary considerably, with some authorities not inspecting properties as a matter of course. SCC officers aim to carry out pre-licence assessments for all licence applications and will carry out at least one compliance inspection for every licenced property, as this is the most effective way to ensure adequate property standards and management arrangements are in place.
25. There are approximately 12,000 bedspaces within HMO licencing and the various forms of interventions taken by the HMO licensing team achieve tangible benefits for tenants. At licence renewal, some form of improvement is required to 80% of those bedspaces, so around 10,000 bedspaces for young people, those on lower incomes and many categorised as belonging to vulnerable groups are benefiting from the compliance and enforcement work carried out by the HMO licensing team. In addition to this, licensing officers have imposed fines of £360k over the last five years in civil penalties – sending an important message that non-compliant landlords will be found out and will be punished.

#### **Other proposed changes within the charging structure**

26. The overall cost of administering the HMO licencing scheme is greatly impacted by the willingness of landlords to engage with the Council, meet appointment times and comply with the requirements for submitting a valid application and the conditions of licence.
27. The revised fee structure will introduce additional charges to penalise *non-compliant* landlords, such as charges for invalid applications where there is a repeat failure to submit the required documentation; charges for failing to attend for on-site inspections or for cancelling at short notice; and a charge added to the cost of a licence where landlords are found to have been operating an unlicenced HMO. The additional charges will help to pay for the time spent chasing non-compliance and fund pro-active work to detect and manage unlicenced HMO landlords.
28. The new charging structure offers a green incentive for landlords to prioritise action to improve the energy efficiency of HMO accommodation by offering a fee discount for all new or renewal applications which meet a higher energy efficiency standard than the minimum required under the Domestic Minimum Energy Efficiency Standard Regulations (MEES) - level C or above rated on their Energy Performance Certificate (EPC) from September 2023 and level B or above from 2025.



29. A comparison table showing differences between the current and new fee charging structure is provided in **Appendix 3**.
30. Alongside fee and charging structure changes, we propose to introduce reduced-term licences, typically of one-year duration. They will be used in two separate circumstances:
- Where the licence applicant requires planning permission to operate the HMO and had either not applied or is awaiting a planning decision
  - Where the management practices, competency or certain 'fit and proper' concerns regarding the licence holder or manager exist to the extent that a five-year licence should not be granted

The reduced-term licences will be charged the same fee as for a five-year licence and part of this extra income generated will cover the costs of increased monitoring to ensure standards are being met.

31. The proposals also include removing the licence application fee for applicants whose property has been signed over to the Council to assist Sheffield City Council in providing accommodation to meet its homelessness duties. Application processing costs will be met by Sheffield City Council where licence applicants are signatories to the Private Rented Solutions Scheme.
32. The current paper licence application process typically uses dozens of sheets of paper. The review consultation suggested that the majority of landlords would prefer to move to an all-digital application process, therefore the proposal includes ending paper licence applications entirely and moving to an all-digital application – to increase efficiency and to protect the environment by reducing the use of paper and other resources wherever possible. A new charge for providing duplicate paper copies of licences will be levied.
33. New optional charged-for services for landlords will be introduced to assist with HMO licensing. This will include a pre-application advice visit to assist landlords who might be considering the suitability of a property for use as an HMO. Officers will also provide assistance with online applications, charged at an hourly rate.
34. The review has underlined the requirement for SCC to improve the quality of information and guidance provided alongside the application process. This measure should help to improve acceptance rates for applications and reduce the number of follow-up compliance issues generated, ultimately helping to reduce licencing costs for compliant landlords who present good quality, well-managed properties to add to the stock of licenced HMOs across the City.

#### **HOW DOES THIS DECISION CONTRIBUTE?**

35. The proposed changes to HMO fees and charging structure will ensure that the licensing scheme continues to build a strong presence within the City, protecting tenants from poor practice and unsafe properties; making it harder for people in need of housing to be exploited by unscrupulous landlords, targeting illegal and unlicensed HMOs across Sheffield.

36. The move to an all-digital application process and the green discount for properties with higher energy performance ratings will contribute to efforts to combat climate change.
37. The economic impact of the revised fees will be applicable mostly to HMO landlords and possibly their tenants if some or all the additional fee costs are passed on in rental charges. We would maintain that the wider protections offered by the licencing scheme more than outbalance the additional costs involved.
38. Links to the City-wide objectives in SCC's Corporate Plan 2022-23 can be illustrated as follows:
- ***fair, inclusive and empowered communities*** - HMO licensing protects HMO tenants by imposing minimum standards for their accommodation, and by giving them a means to raise concerns about the condition of their housing or the management practices of their landlords;
  - ***strong and connected neighbourhoods*** – Working in partnership with many of Sheffield's excellent HMO landlords, a well-resourced HMO licensing team will be able to respond to reports of illegal HMOs and take action against them;
  - ***tackling inequalities and supporting people through the cost of living crisis*** The availability of good quality HMO accommodation is an important contributor to the diversity of Sheffield's housing stock, and offers a relatively low-cost housing option for workers in key industries, students and others on low incomes;
  - ***healthy lives*** Amongst the property conditions which are checked by HMO inspectors, issues which could directly impact on the health and wellbeing of tenants, such as damp and mould, inadequate heating will be detected and addressed;
  - ***clean economic growth*** – incentives for greener properties with higher energy performance; and
  - ***happy young people, safe and opportunities to reach potential*** - The large number of students occupying high quality licenced HMOs in Sheffield illustrates the importance of the HMO sector in meeting the needs of young people and helping them to succeed in their studies.

## HAS THERE BEEN ANY CONSULTATION?

39. The Council is not required to consult on the revised fee and charging structure, however following Local Government Association best practice guidance on the setting of licensing fees, the Private Housing Standards team carried out a consultation exercise with landlords and managing agents over May and June 2023, including an online survey which achieved responses from a significant proportion of HMO landlords and managing agents. A summary of the consultation survey responses is given in **Appendix 3**.
40. In addition to this, the proposed policy and charging structure changes were presented for discussion at the SNUG University and Landlords Partnership

meeting on 4<sup>th</sup> May 2023. A further meeting organised with landlords' representative organisation NRLA, scheduled for July, will now be taking place at the beginning of October.

## **RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

### **Equality Implications**

41. The effect of the move to all-digital applications on older or disabled licence holders should be considered. These groups are known to have less access to the internet and to be less digitally enabled. Many current HMO landlords are from older generations, and HMO property ownership is commonly used to replace or augment pension income. Less is known about any levels of disability amongst this group as this information is not gathered on the licence application.
42. We have a reasonable expectation that people will only access the licensing scheme as part of their business of letting and managing HMOs, therefore that they will take a businesslike approach, having the capability and resources to either complete the digital application themselves or to employ someone else to do this on their behalf. Many landlords already employ a property manager or a letting agent, who carries out licence renewals as part of their service. Our proposed revisions to service also include charged-for assistance from an SCC officer to complete an online application, which should ensure that the accessibility of the service is not compromised.

### **Financial and Commercial Implications**

43. By increasing the fees charged for the License, the Service will be covering all costs associated with it and therefore other budgets and services will not have to subsidise this area. The financial implications of not approving the increase in fees would be a continued adverse effect on the General Fund budget for this and future years. The shortfall in income would put pressure on other services to maintain a balanced position overall.

### **Legal Implications**

44. The Council as local housing authority has power under section 63 of the Housing Act 2004 to fix a fee for applications for licences for houses in multiple occupation (HMOs). The Council may take account of all its costs of running the licensing scheme (costs under Part 2 and Chapter 1 of Part 4 of the Housing Act 2004) when setting the licensing fee. The fee should be transparent, accountable and reflect the actual cost of licensing and this determination can be potentially legally challenged by way of Judicial Review in the High Court.
45. The case of R (on the application of Gaskin) v Richmond upon Thames LBC [2019] is authority for the principle that in letting and managing property for profit, an HMO landlord provides a service for the purposes of the Provision of Services Regulations 2009. As such, in operating a regime of HMO licensing in

accordance with Part 2 of the Housing Act 2004, local housing authorities will be running an authorisation scheme for the purposes of the Services Regulations 2009. As a result, the practice of charging a single fee for administering and enforcing an HMO licensing regime in accordance with Part 2 of the Act may infringe the Provision of Services Regulations 2009, on the basis that it is not limited to the costs of the procedures and formalities of the authorisation scheme. However, charging a separate fee upon grant of an HMO licence, following payment of an initial fee for consideration of the licence application, which is limited to the costs of enforcing the authorisation scheme would not infringe the Provision of Services Regulations 2009.

46. The HMO licence can be granted for a period not exceeding 5 years. The Council may choose to grant a licence for less than 5 years in certain circumstances and can specify such a criterion subject to compliance with Part 2 of the Housing Act 2004.

### **Climate Implications**

47. There will be a limited positive environmental benefit resulting from the changes to the fee charging structure. Firstly the green incentive of £50 discount for properties with a higher EPC rating than that of the legal minimum will provide encouragement to landlords to prioritise energy efficiency improvements across their HMO housing stock. When promoting the incentive, Council officers will emphasise the benefits derived from reducing carbon emissions from domestic dwellings.
48. Secondly, the move to an all-digital application process will reduce the use of paper and other office consumables for both applicants and SCC. The aim is to move to a fully online service where landlords will be able to access digital copies of all the current licences, avoiding need for hard copy storage and retrieval. Vehicle use to carry out property inspections is the most significant contributor to carbon emissions for the scheme, and this is expected to continue at the same level following the review of HMO fees and remains an essential element of the licensing scheme.

### **OTHER IMPLICATIONS**

#### **Health Impact**

49. HMO licensing improves living conditions in some of the highest risk properties that are often occupied by some of the most vulnerable people, by ensuring licensed HMO's provide safe accommodation which is maintained and provides appropriate amenities. HMO licensing helps drive up standards in the private sector, as it requires properties to be maintained to the required standard throughout the licence period. Proactive enforcement of the scheme will bring more properties into the licensing regime which would otherwise go undetected.
50. Mandatory HMO Licensing was introduced to address health and safety standards in high-risk HMO properties. Many high risk hazards are identified, removed or reduced in licensed HMOs because of the routine inspection

programme operated as part of the scheme. Compliance monitoring helps mitigate accidents in the home and supports improved health outcomes by addressing inadequate property management standards, which may otherwise go undetected.

### **Stakeholder and Community Impact**

51. The change in the approach to fee payment would apply to all owners of licensable properties. There should be no adverse impact on any group of individuals with a protected characteristic. The change will however affect unsuccessful applicants as their initial application fee will not be returned if the application is unsuccessful.
52. It is difficult to assess the likely impact of this rise in fees on the market of HMO landlords and properties across the City, however the new fee levels still represent a small proportion of the typical rental income from HMO properties; a proportion which reduces again for larger size properties which can achieve much higher rental yields. HMO landlords may seek to pass on the cost of licence fee increases to tenants, however a well-regulated and self-sustaining licensing scheme which adds significantly to the safety, security and wellbeing of tenants might be considered good value for the extra cost of at most £30 per tenant per year.
53. Adequate resourcing of HMO licensing will help SCC enforce the requirements of the scheme, ensuring landlords of licensable HMOs exercise appropriate management and supervision of HMOs under their control to help reduce any adverse impact on the neighbourhood and local community. This includes the expectation that licence holders follow protocols for dealing with complaints of anti-social behaviour occurring within the HMO by tenants and their visitors.

### **ALTERNATIVE OPTIONS CONSIDERED**

54. **Do nothing.** This would result in the Council continuing to charge the current lower HMO licence fees, preventing full cost recovery for the licensing scheme, and reducing the Council's capacity for detecting and enforcing against landlords operating illegally. This puts the Council at risk of legal challenge for charging in advance for costs other than those directly associated to the authorisation of a licence application. The fees are intended to off-set the cost to the Authority of administering the licensing scheme and must be split between costs incurred before and after deciding to issue a licence. There is no safe legal alternative to a split fee regime, therefore the option to do nothing has been ruled out on that basis.
55. **Split the fee charges to conform to case law precedent but leave fee levels unaltered.** This would be the most straightforward option to remove the risk of challenge to the single part licence fee, however our review of the costs incurred by the Council in running the Mandatory HMO licensing scheme revealed that the current HMO licensing fees are not achieving full cost recovery. The proposed revised fees given in **Table 1** have been calculated to achieve full cost recovery in performing HMO licensing activities. The local

authority has a duty to administer funds in such a way as to protect the interests of council taxpayers, with the accepted principle that licensed activities should be funded by those benefitting from them, rather than council taxpayers. This option was ruled out on that basis.

56. **Split the fee charges and apportion the increased costs equally across all licence holders.** This option would require a further increase in licence fees as the anticipated costs for managing non-compliance would need to be incorporated into the fee income generated from all licences, rather than additional charges being applied when non-compliance is detected. Our fee review included consideration of officer time spent assessing applications, inspecting properties and detailing licence conditions, and it was both clear and unsurprising that larger properties took proportionately greater amounts of officer time throughout the licensing process. To apportion costs equally across all licence holders would not be *fair* or *reasonable* and would put the Council at risk from legal challenge, so this option was also ruled out.

## **REASONS FOR RECOMMENDATIONS**

57. The services provided by the City Council's Private Sector Housing Service detailed in this report have been reviewed and determined not to be achieving full cost recovery at their current levels. To achieve full cost recovery, new fee and charging structures are presented for decision by committee members.
58. The implications of the two landmark rulings R (Gaskin) and R (Hemming) are significant for any local authority that does not currently operate a Directive-compliant licencing fee regime. The report advises recommended changes to SCC's HMO licence fees and charging structure are approved to ensure compliance.

## Appendix 1 – Relevant Statutory Guidance on the setting of licensing fees

### Provision 18 of UK Statutory Instruments: The Provision of Services Regulations 2009

#### Authorisation schemes: general requirements

**18.**—(1) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must—

- (a) be clear,
- (b) be made public in advance, and
- (c) secure that applications for authorisation are dealt with objectively and impartially.

(2) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must not—

- (a) be dissuasive, or
- (b) unduly complicate or delay the provision of the service.

(3) Authorisation procedures and formalities provided for by a competent authority under an authorisation scheme must be easily accessible.

(4) 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 those procedures and formalities.

### UK Guidance on the Provision of Services Regulations

Department for Business, Energy & Industrial Strategy (March 2021)

(Extract from pages 18 & 19)

#### Fees

Fees charged by a competent authority 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 those procedures and formalities. See regulation 18(4) of the Regulations.

#### **Fees should not be used as an economic deterrent to certain activities or to raise funds.**

If a business believes the fee to be disproportionate, they can contest it with the competent authority concerned. Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of its fees having been used to subsidise successful competitors.

#### **Court judgments to reinforce regulation 18(4)**

Competent authorities should take note of two judgments where fees charged at the point of application were found to be unlawful because of non-compliance.

The UK court ruled in the case of *Gaskin v London Borough of Richmond*, that the owner of a house in multiple occupation (HMO) was providing a “service” for the purposes of the Regulations. The licensing provisions of the Housing Act 2004 Part 2 were acting as an authorisation scheme for the purposes of the Regulations. The competent authority was not entitled to demand that the owner pay an application fee of £1,799 when applying to renew his licence for the HMO which encompassed the costs of enforcing the licensing scheme. This fee infringed regulation 18(4) as it was not limited to the costs of the procedures and formalities of the authorisation scheme under Part 2 of the Act.

The UK court ruled in the case of *Hemming v Westminster City Council* that the Council could not include the costs relating to the management and enforcement of the authorisation scheme within the payment of a fee, even if the enforcement part of the fee is refundable should the application be refused.

## Appendix 2

### Breakdown of new fee elements between Part 1 and Part 2 based on a five-bedroom HMO

Description of cost element (Average costs per licence)	Part 1 Charge	Part 2 Charge	Total
Checks for correctly completed application with required documentation, guidance and support given	£107		
Assessment of property and of landlord/managing agent competency	£180		
Cost of producing licence	£291		
Property inspection including HHSRS assessment		£97	
Compliance costs, detection and enforcement, scheme management		£268	
Transport, supplies and services, hardware, IT licences, telephones	£53	£34	
Central costs – Finance, IT, HR and Legal Services	£94	£61	
<b>Total Licence Fee cost</b>	<b>£725</b>	<b>£460</b>	<b>£1,185</b>



## Appendix 3

### Current and new charging structure comparison

Description	Current	New
New application licence fee	£750 (for a 5 person HMO)  £25 per additional person on a licence	Part 1 application fee £725 payable with application Part 2 licence fee £460 payable within 14 days of issue of draft licence Total fee £1,185 (for a 5-bedroom HMO) Seven fee bands based on licensable number of bedrooms
Renewal application licence fee	£430  £10 fee for each additional person on a licence	Part 1 application fee £675 Part 2 licence fee £460 payable within 14 days of issue of draft licence Total fee £1,135 (for a 5-bedroom HMO) Seven fee bands based on licensable number of bedrooms
Transfer fee – where a licence is taken over by another property owner or family member mid-term	£360	Removed. New application required.
Refunds	50% refund	Full refund if duplicate fee or property falls outside of mandatory licensing 82% of Part 1 fee for new applications or 86% for renewals refunded if application withdrawn prior to property assessment Part 2 not charged if withdrawn prior to issue of draft licence. Part 1 retained.
<b>Discounts</b>		
Discretionary Discount for Higher EPC ratings	Not applied	£50 applied to Part 2 fee
<b>Other Applicable Fees</b>		
Late application fee	£150 charge where renewals are over 2 months late	Other sanctions applied
Invalid application	Not applied	£150 where valid application not submitted at point of application, applied to Part 1 fee
Additional Compliance Monitoring Fee	Not applied	£500 applied to Part 2 fee on failure to apply to the local authority for a licence
Missed appointment	Not applied	£100 per instance, applied to Part 2 fee
Appointment cancelled within 24 hrs	Not applied	£100 per instance, applied to Part 2 fee
<b>Optional Services subject to resource availability</b>		
Pre-application advice visit with floorplan drawing	Not available	£350
Officer assistance with online application	Not available	£40 per hour/ part hour
Copy of paper licence	No charge	£50

## Appendix 4

# HMO Licensing Review 2023

## Private Housing Standards

### Summary of findings from the Survey of Landlords and Managing Agents

#### 1. Introduction

- 1.1. As part of the Sheffield City Council's review of HMO Licensing, landlords and managing agents were contacted by email at the beginning of May 2023 and invited to complete a short online survey. A small number of landlords with no email address were sent a paper copy of the survey. In total, emails were sent to 921 recipients and 25 hard copies were posted out. Fifty-one survey responses were received during the five-week consultation period.
- 1.2. Based on answers given on numbers of properties owned or managed, we estimate that the responses account for between 200 and 500 licenced properties – which equates to 10% - 25% of all licensed HMO properties in Sheffield.

#### 2. Application process

- 2.1. Three quarters of respondents reported that they had made a licence application in the last two years. Sixty percent of respondents said they found the application process to be straightforward. When asked about difficulties using the current application process, 21% had difficulties with application form, 21% also reported difficulties adding the correct signatures, 16% had a problem with adding the correct supporting documentation and 6% had trouble working out the correct fee.
- 2.2. We asked for further details of any kind of difficulty with the application process, and a representative selection of answers is given below:

*“Form was unclear in places”*

*“Can the application be made digital?”*

*“We had difficulty with the payment ... we expected to pay at the end of the application process but the process had been set up so that you pay separately and somehow have to link evidence of payment to the application”*

*“We had to seek assistance as we did not know whether to renew the licence or start again, due to the significant changes”*

*“The forms are confusing”*

*“Response timescale was a problem”*

*“Process is cumbersome with multiple repetitive tasks. Seems long drawn out particularly for smaller 5-6 bed HMO’s”*

*“The review needs to consider how to make the whole application process more user friendly ...Please look at everything from the point of view of the applicant”*

### **3. Training and Guidance**

3.1. The survey asked about how landlords and managing agents keep up to date with changes in law and regulations affecting HMOs. Ninety-two percent responded that they accessed online newsletters, training or webinars, while 52% said they used the SCC website, and 16% advice from letting agents and 18% word of mouth from other landlords.

3.2. Asked about preferred format for training, respondents were asked to rank three alternatives:

- E-classroom with live facilitator – ranked highest with a score of **1.75**
- Online self-directed learning with exercises to be submitted as part of course validation – ranked nearly as high with a score of **1.80**
- In-person training with a facilitator in a city centre location ranked lowest with a score of **2.25**

3.3. Asked which areas they would like guidance about on the SCC website, their choices are ranked by the percentage of respondents who selected each area:

- Required standards for different types of HMO properties – **88%**
- Duties and responsibilities of an HMO licence holder and/or manager – **82%**
- Explanation of rules relating to planning permission and HMOs – **74%**
- Examples of HMO property defects which require immediate or urgent action – **66%**
- Examples of poor management practices which have resulted in improvement notices, civil penalties or prosecutions – **54%**

3.4. A further comment was made regarding other areas where guidance would be useful:

*“A section online where we can quickly see the changes that have been made to standards, expectations and application process with dates so it's easier for us to determine what's changed since our last application. An evolving facility online which is updated regularly where FAQ's from HMO landlords have been answered so that we can see the council responses to queries they may be receiving again and again to save everyone time but also so we can get the approved council view rather than an inspector's opinion which can sometimes vary”*

### **4. Policy changes**

4.1. When asked, 92% of respondents indicated that they would be happy to change to an all-electronic licence application process, while 8% said they

preferred to use a paper-based application even if there was a small additional charge for this.

- 4.2. We asked if respondents agreed that it was right to pass on additional costs to non-compliant landlords to offset the additional officer time spent dealing with enforcement or checking compliance. Eighty percent of respondents either agreed or strongly agreed with this. Asked to give a reason for their answer, the following comments were given:

*“Why should I subsidise these landlords?”*

*“We need a better reporting system to crack down on Landlords who do not comply, tied in with higher fees and a 3-strike system, and penalties that remain on their record for 10 years.”*

*“While it is much fairer to charge compliant landlords less and impose extra charges on non-compliant landlords, this may lead to the less scrupulous landlords simply not registering their properties as HMOs”*

*“At the moment there doesn’t appear to be any upside to being a compliant good landlord, prosecution of or penalties for rogue landlords would tip this in the right direction.”*

*“Clear warnings about additional fees and the action needed to avoid these would need to be given.”*

## **5. Optional Services**

- 5.1. The survey asked for feedback on a number of proposed optional services. The following list ranks the numbers of respondents who “somewhat agreed” or “definitely agreed” that these would be of interest:

- Check and send - **80%**
- Pre-application advice visit - **68%**
- Floorplan drawing - **55%**
- Virtual inspection - **55%**

- 5.2. Replies were also posted asking for ideas on other services to be provided:

*“Online FAQs with real queries and responses”*

*“A more thorough check between planning and HMO regulations”*

*“Advice about regulation, for example if property requires licence or not”*

*“The licence is every five years and every time there are changes that have to be implemented which incur costs. Can the HMO official give us some guidance about these changes beforehand?”*

## **6. General Comments about HMO Licencing Review**

- 6.1. Twelve responses were made when the survey asked for further comment on any aspect of the HMO Licencing Review, a selection of these giving the main themes as follows:

*“The department need to put its own house in order and become more landlord friendly and officers more standardised in their approach to implementing legislation”*

*“I would like to praise the efforts of the licensing team. I found them to be helpful, professional and willing to give advice”*

*“Inspectors need to focus on important issues to ensure safety e.g. fire exits rather than petty issues which appear to change from inspection to inspection”*

*“The current time scales from renewal application to receiving the licence is currently outrageously long.”*

*“It would be good to see the ongoing status of an application / renewal with indicative target timescales, especially where there are any delays”*

*“There needs to be definite criteria that the inspectors work to. I find inspections vary from inspector to inspector.”*

## **7. Conclusions**

7.1. The survey responses provide useful information about the perceptions of the HMO licensing service from its customers. Comments have focussed attention on:

- the mechanics of the application process,
- consistency of approach by inspecting officer,
- the availability of guidance on changes to HMO standards,
- requests for FAQs featuring real questions and answers provided by the inspecting team,
- clarity on timescales for each stage of the process, and
- keeping customers well informed throughout the process.

All these areas will be examined as part of the HMO licensing review.

7.2. The survey responses also indicate broad support for new policy initiatives - a move to all-electronic applications, passing on the additional costs incurred where possible to non-compliant landlords, and the proposed introduction of optional services to assist with HMO licensing.

7.3. A number of responses bore witness to the significant ‘stakeholder’ role that many multi- HMO landlords and managing agents have assumed through successive cycles of licencing activity and engagement with the Council’s Private Housing Standards team. Several expressed a wish to develop a more partnership-based approach to working with the licencing team to help drive up standards in HMO provision across the City. Having established a communication channel with this group, there is now an opportunity to build on this by planning more regular sector engagement, and SCC officers will be looking at ways to achieve this.

This page is intentionally left blank