

LICENSING COMMITTEE (NON-LICENSING ACT 2003 FUNCTIONS)

Agenda Item 16

Brighton & Hove City Council

Subject: Licence fees 2024/25
Date of Meeting: 12 October 2023
Report of: Executive Director of Housing,
Neighbourhoods & Communities
Contact Officer: **Name:** Jim Whitelegg, Regulatory Services Manager **Tel:** 29-2438
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Ward(s) affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 This report sets out the proposed licence fees and charges for 2024/25 relating to Street Trading, Sex Establishments and Sex Entertainment Licences, Gambling premises, Taxi Licensing, Body piercing, Scrap metal and Animal Activity Licences.

2. RECOMMENDATIONS:

2.1 That the committee approves the following licence fees for 2024/25:

- Taxi Licence fees - as set out in Appendix 1.
- Sex Entertainment Venues and Sex Establishments fees – as set out in Appendix 2.
- Street Trading fees – as set out in Appendix 2.
- All Gambling Act 2005 fees – as set out in Appendix 2.
- Body piercing – as set out in Appendix 2.
- All Animal Activity Licences fees - as set out in Appendix 3.

A list of agreed fees for 2023/24 and proposed fees for 2024/25 is included in Appendices 1-3.

*Note: If the above recommendations are not agreed, or if the committee wishes to amend the recommendations, then the item will **normally** need to be referred to the Strategy, Finance & City Regeneration Committee meeting on 9 February 2024 to be considered as part of the overall 2024/25 budget proposals. This is because the 2024/25 budget proposals are developed on the assumption that fees and charges are agreed as recommended and any failure to agree, or a proposal to agree different fees and charges, will have an impact on the overall budget proposals, which means it needs to be dealt with by Strategy, Finance & City Regeneration Committee as per the requirements of the constitution. This does not fetter the committee's ability to make recommendations to Strategy, Finance & City Regeneration Committee.*

3. CONTEXT/ BACKGROUND INFORMATION

3.1 In order to ensure that council tax payers are not subsidising work concerning licensing

administration, income is raised by licence fees with the aim of covering the cost of administration of each regime within the constraints of regulation. Licence fees should not be used to raise surplus revenues. The regulation of setting fees is detailed and changes as a result of legislation and cases; outlined below.

Licence Fee Setting – general principles

- 3.2 There must be a proper determination of the authorisation fee (see Hemming 2015, 2017] UKSC).
- 3.3 A clear understanding of the policy and objects of the regime in question is required. It follows that the relevant considerations for vetting an applicant for a street trading licence will be different to those required for a sex establishment (see *R v Manchester City Council ex parte King* (1991) 89 LGR 696; also *R (on the application of Davis & Atkin) v Crawley Borough Council* [2001] EWHC 854 (Admin)). Particular attention needs to be had to those statutory provisions where a power is given to the local authority for the determination of an authorisation fee and other administrative fees.
- 3.4 Applicability of the European Services Directive (see Hemming [2015, 2017] UKSC: The Directive applies to street trading and sex licensing; not gambling or taxis. *The UK left the EU on 31 January 2020, and the transition period (during which EU rules continued to apply in the UK) ended on 31 December 2020. The Services Directive therefore no longer applies to the UK, or to EEA businesses or individuals providing services in the UK. However, the European Union (Withdrawal) Act 2018 preserved the Provision of Services Regulations 2009 (as amended in 2014) for UK nationals and businesses established in the UK and formed under UK law. Regulation 18(4) applies to fees in the same way as the former Directive.*
- 3.5 Different fee levels for different types of application. A licensing authority is entitled to set either the same or different fee levels for different types of applications: i.e. grant, renewal, variation, alteration or transfer. *R v Greater London Council, ex parte Rank Organisation* [1982] LS Gaz R 643.
- 3.6 Recovery of deficit. In *R v Westminster City Council, ex parte Hutton* (1985) 83 L.G.R. 461 it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of the shortfall (Hutton at p 518). This longstanding principle was confirmed in Hemming [2012].
- 3.7 Accounting for surplus. In Hemming [2012] EWHC 1260 (Admin) and [2013] EWCA Civ 591 the court determined surpluses as well as deficits are to be carried forward. The licensing authority is not entitled to make a profit. (*R v Manchester ex parte King* 1991 89 LGR 696).
- 3.8 Rough and ready calculations. In Hemming [2012] EWHC 1260 (Admin) and [2013] EWCA Civ 591, the court did not require pin-point precision year on year. The council does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it 'all comes out in the wash' eventually. And the adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do.
- 3.9 Anticipated costs. Cases demonstrate that the fee level may be fixed by reference to anticipated costs of administering the authorisation scheme.

- 3.10 Over-estimation. If the fee levied in the event exceeds the cost of operating the scheme, the original decision will remain valid provided it can be said that the district council reasonably considered such fees would be required to meet the total cost of operating the scheme. R v M ex parte King.

Hackney Carriage & Private Hire

- 3.11 The Council must be able to show that it calculates hackney carriage and private hire licensing fees in accordance with the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. This requires that such fees have to be reasonable to recover the cost of issue and administration of licences. They cannot be used to raise revenue or fund activities such as taxis marshals. This has been confirmed in a recent court case Cummings and Others v Cardiff City Council which also confirmed that fees set must have regard to any surplus or deficit in previous years for each regime (hackney carriage or private hire).

The recent Court of Appeal case: R. (on the application of Rehman) v Wakefield City Council, December 2019, established that costs of administration under S53(2) of the above act could include the costs of enforcement against drivers of hackney carriages and private hire vehicles.

The Act allows the following costs to be recovered in the fees:

- The reasonable cost of carrying out vehicle inspection to decide if a licence should be granted.
- The reasonable costs of providing hackney carriage stands.
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and
- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles.

- 3.12 In recent years, the taxi industry has witnessed significant changes in regulations and safety requirements that necessitate a comprehensive evaluation of licencing fees to take into account the increased officer time required to administer licences and the additional checks now necessary to ensure public safety. There has also been reduction in the number of licences, impacting on income which owing to the increased regulations and safety requirements has not seen a corresponding reduction in officer time. There was a shortfall of approximately £40k last year and we are anticipating a deficit this financial year. Therefore, the proposed increases are necessary to fully recover our costs and to ensure that the council tax payers are not subsidising work concerning the licensing administration.
- 3.13 Private Hire operators play a crucial role in passenger safety. There have been a number of conditions imposed on Operators to enhance public safety; these include DBS checks on all directors, as well as ensuring that operators have policies in place to deal with any convictions that their staff may have during the course of the licence. Brighton and Hove City Council has historically had very low operator fees compared to neighbouring authorities, for example in Brighton and Hove we charge £595.00, whereas Lewes and Eastbourne charge £3500.00 for a 5-year licence.
- 3.14 In conclusion, the need to increase licensing fees for taxi drivers, particularly operators, is driven by the increased officer time required to administer licenses and the additional

checks necessitated by enhanced safety measures. By implementing higher licensing fees, the authority can ensure public safety, allocate resources, continue to streamline administrative processes, and continue to support technological advancements for the application process within the taxi industry. These measures will contribute to a safer and more efficient taxi/private hire and operator service that meets the evolving needs of the trade, of passengers and of regulatory standards.

- 3.15 A benchmarking exercise has also been carried out to review our taxi fee levels against other local authorities (both neighbouring and similar authorities). This has highlighted that our fees are significantly lower, especially for Private Hire Vehicle Licences and Private Hire Operator Licence fees. The increases proposed in Appendix 1 addresses this anomaly and ensures that they are set at a level that reasonably reflects the costs involved in the issue and administration of these licences, whilst still remaining lower than our neighbouring and similar authorities.

Sex Establishments and Street Trading

- 3.16 Sex Establishments: The administration of Sex Establishments and Sex Entertainment venues (SEV)s is broken down as follows:
There are 2 Sex Establishments in total, for which renewal applications are processed annually, including officers carrying out annual inspections to ensure compliance with their licence. It is unlikely that a further sex establishment licence would be granted as this would be contra policy.

SEVS: There are 3 SEVs in total. SEV fees are based on licence renewals. It is unlikely that a further SEV licence would be granted as this would be contra policy. Annual inspections are carried out to ensure compliance with their licence.

- 3.17 The proposed fees are set to rise by an average of 5%.

- 3.18 Street Trading: During 2022/23, the majority of inspections carried out by officers were recoverable. The administration of street trading is wholly recoverable, broken down as follows:

Zone A:-

3 pitches at 50 sq ft – all pay quarterly (2 trading, 1 vacant)
2 pitches at 42 sq ft – both vacant

Zone B:-

34 traders

Upper Gardner Street Saturday Market:-

69 pitches

- 3.19 The proposed fees are set to rise by an average of 5%.

Gambling Act 2005

- 3.20 Nationally there has been a transition of Gambling activities from the high street to online and it is likely we shall see this trend continue. The proposed fees have been increased to reflect the statutory maximum and are set out in Appendix 2.

Body Piercing

3.21 These fees have not been reviewed for several years and both a benchmarking exercise has been carried out and a desktop time and motion study undertaken to determine officer time spent on these activities and the proposed fees set out in Appendix 2 ensure that our costs are fully recovered.

Animal Activity Licensing

3.22 It is proposed to raise all fees by 5% as set out in Appendix 3.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

Fees must be set.

5 COMMUNITY ENGAGEMENT AND CONSULTATION

5.1 Council's finance officer and legal services.

6 CONCLUSION

6.1 Fees must be set.

7 FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

The fees and charges recommended in this report have been reviewed in line with the Corporate Fees & Charges Policy and all relevant regulations and legislation. Licence fees must be set annually at a level that it is reasonably believed will cover the costs of providing the service, and in accordance with the legal principles involved. The proposed fees for 2024/25 take account of the significant inflationary pressures, particularly on staffing costs, that the service is facing and ensure that costs are fully recovered. This is necessary in order to ensure that council tax payers are not subsidising work concerning licensing administration. Constitutionally, increases above or below the corporate rate of inflation must be approved by the relevant service committee or Strategy, Finance & City Regeneration Committee and can result in additional contributions toward either the cost of services and/or overheads. Where this is the case, this will be reflected in proposals for the relevant service and will be incorporated within the revenue budget report to Strategy, Finance & City Regeneration Committee and Budget Council in February 2024. Income from fees and charges is monitored as part of the Targeted Budget Monitoring (TBM) process.

Finance Officer Consulted: Michael Bentley

Date: 11/09/23

7.2 Legal Implications:

Legal constraints on setting fees are as follows:

- Fees must be charged in accordance with the requirements of the legislation under which they are charged. Thus for instance the Licensing Act 2003 gives the Council no discretion as they are set centrally by the relevant government department. Other

legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a whole raft of activities and includes street trading and sex establishments simply states that we may charge such fees as we consider reasonable.

The term 'Reasonable' however does not imply wide discretion but incorporates important legal principles and constraints. These were highlighted in the case of *R v Manchester City Council ex parte King* concerning street trading. This case held that the fees charged must be related to the costs incurred in providing the street trading service. They must not be used to raise revenue generally. Fees must be proportionate. This principle is key and applies to other licensing regimes such as sex establishments.

- This principle has been reinforced by the introduction of the European Services Directive which took effect from the end of 2009. The European Union (Withdrawal) Act 2018 preserved the Provision of Services Regulations 2009 (as amended in 2014) for UK nationals and businesses established in the UK and formed under UK law. Regulation 18(4) applies to fees in the same way as the former Directive.
- The processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. Any fee charged for establishing a service can only be based on cost recovery and cannot be set at an artificial high level to deter service sectors from an area. The applicability of the Directive has been discussed in the recent case of *Hemming (and others) v Westminster City Council* (2015) (2017) UKSC. It is permissible for enforcement costs to be included in a licence fee but this element of the fee must be levied once the application has been granted. The Council should schedule regular fee reviews.
- Therefore the trading accounts must be carefully looked at in accordance with these principles. There is a risk of challenge by way of Judicial Review in cases where fees are set at an unreasonable or unlawful level.

Lawyer Consulted: Rebecca Sidell

Date: 03/10/2023

7.3 Equalities Implications:

There are no direct equalities implications.

7.4 Sustainability Implications:

There are no direct sustainability implications.

Any Other Significant Implications:

SUPPORTING DOCUMENTATION

Appendices:

1-3 List of current and proposed fees and charges.

Documents in Members' Rooms

1. None.

2. None.

Background Documents

None

