

# Brighton & Hove City Council

## Licensing Committee (Non-Licensing Act 2003 Functions)

## Agenda Item 15

**Subject:** Licence Fees 2025/26

**Date of meeting:** 10 October 2024

**Report of:** Corporate Director of City Services

**Contact Officer:** Name: Jim Whitelegg / Alex Evans  
Tel: 01273 296658  
Email: alex.evans@brighton-hove.gov.uk

**Ward(s) affected:** All

### For general release

#### 1. Purpose of the report and policy context

- 1.1 This report sets out the proposed licence fees and charges for 2025/26 relating to Street Trading, Sex Establishments and Sex Entertainment Licences, Gambling premises, Taxi Licensing, Body piercing, and Animal Activity Licences.

This financial year will see an increase in license fees, primarily driven by corporate rate of inflation, which is likely to exceed previous budget projections. As a result, our fee structure for the 2025/26 financial year needs to take account of these rising costs. The majority of fee increases will be below or around 5%, except for Private Hire Vehicle Licence fees which will be brought closer to Hackney Carriage Vehicle Licence fees.

#### 2. Recommendations

- 2.1 That the committee approves the following licence fees for 2025/26:

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 2024/25 and proposed fees for 2025/26 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 Cabinet meeting on 13 February 2025 to be considered as part of the

overall 2025/26 budget proposals. This is because the 2025/26 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 Cabinet as per the requirements of the constitution. This does not fetter the committee's ability to make recommendations to Cabinet.

### **3. Context and background information**

- 3.1 In order to ensure that council taxpayers 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 20183 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 We conducted a benchmarking exercise in 2024/25 to review our taxi fee levels against other local authorities (both neighbouring and similar authorities), which highlighted that our fees were significantly lower especially in Private Hire Vehicle Licences and Private Hire Operator Licence fees. The increases proposed in Appendix 1 reasonably reflects the costs involved in the issuing and administration of Private Hire Vehicle Licences, and ensures our fees are competitive whilst remaining aligned with neighbouring authorities

### **Sex Establishments and Street Trading**

- 3.13 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.

- 3.14 The proposed fees are set to rise by an average of 5%.
- 3.15 Street Trading: During 2024/25, the majority of inspections carried out by officers were recoverable. The administration of street trading is wholly recoverable, broken down as follows:

Zone A:-

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

Zone B:-

29 traders (yearly)

11 seasonal traders

Upper Gardner Street Saturday Market:-

75 pitches this includes 11 designated food pitches.

74 pitches currently occupied with 1 pitch at no charge as payment to the market supervisor

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

### **Gambling Act 2005**

- 3.17 The proposed fees reflect the statutory maximum and are set out in Appendix 2.

## **Body Piercing**

- 3.19 The proposed fees are set to rise by an average of 5% and are set out in Appendix 2.

## **Animal Activity Licensing**

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

## **4. Analysis and consideration of alternative options**

- 4.1 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 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 2025/26 take account of inflation, particularly on staffing costs, ensuring 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 Cabinet 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 Cabinet in February 2025. Income from fees and charges is monitored as part of the Targeted Budget Monitoring (TBM) process.

Finance officer consulted: Michael Bentley Date consulted: 13/09/24

## **8. Legal implications**

- 8.1 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 consulted (16/09/24):

#### **9. Equalities implications**

There are no direct equalities implications.

#### **10. Sustainability implications**

There are no direct sustainability implications.

## **Supporting Documentation**

### **1. Appendices**

1. List of current and proposed fees and charges

