

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

PART 1 – PUBLIC DOCUMENT

SERVICE DIRECTORATE: Legal and Community

1. DECISION TAKEN

To set the Council's licensing fees for the financial year 2019/20 as detailed in the attached Appendix A.

2. DECISION TAKER

Jeanette Thompson, Service Director Legal and Community

3. DATE DECISION TAKEN:

18 July 2019

4. REASON FOR DECISION

- 4.1 To ensure that the Council recovers its reasonable costs of undertaking its licensing function as provided for within legislation.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 No other alternatives were considered as the decision is based upon the requirements of the Council's Medium Term Financial Strategy and a minute of the Licensing and Appeals Committee outlining the parameters to be applied when setting fees.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

- 6.1 The Executive Member for Housing and Environmental Health has been consulted and supports the decision.
- 6.2 As required by the Local Government (Miscellaneous Provisions) Act 1976, hackney carriage and private hire vehicle, driver and operator fees will be subject to a 28 day public consultation by way of a newspaper advertisement in The Comet and The Royston Crow.

7. RELEVANT CONSIDERATIONS

- 7.1 The key consideration was compliance with the Licensing and Appeals Committee minutes setting out the parameters to be followed when setting fees, whilst adhering to the *Hemming* judgement restricting Council's to recovering reasonable costs only.

RESOLVED: *That, having considered the criteria suggested within the report, the following principles for the setting of future licensing fees and charges be supported:*

- (a) *licensing fees and charges should be set having regard to the need to promote local economic growth provided that they are consistent with the following objectives:*

- (i) *That the local Council Tax payers does not, unless provided for by law or decision of the Council, subsidise the operating costs associated with businesses or other trading entities (i.e. the Council seeks to fully recover the lawful costs licensing activity);*
- (ii) *the Council may not fully recover its lawful costs associated with licensing activity if a) this would result in significant hardship to third parties, or b) the effect of fees or charges associated with licensing may encourage unlicensed activity and where formal enforcement is unlikely to be an effective control, or c) where the Council specifically wishes to encourage the growth a specific licensable activity;*
- (b) *an analysis of licensing costs, including detailed analysis of all recharges, should be undertaken every three years vis-à-vis licensing fees and charges;*
- (c) *in the years between cost reviews, fees and charges should ordinarily be subject to the Council's published inflationary increase;*
- (d) *any under/over recovery of full cost within existing licensing fees and charges should be rectified without undue delay, where legislation allows. However, where this may result in a significant increase in a licence fee/charge then consideration will be given to a phased introduction of the new levy;*
- (e) *that enforcement activities in respect of unlicensed businesses/individuals should continue with the associated costs being financed from the General Fund; and*
- (f) *that enforcement activities are periodically reviewed to ensure that they are delivered in the most cost effective manner including, where appropriate, the use of other internal departments or external statutory bodies.*

7.2 A full costing was undertaken for those fees set at a local level to ensure that all reasonable costs of administration, and enforcement where permitted by legislation, was included. The fee analysis is set out at Appendix B.

Hackney carriage and private hire vehicle, driver and operator licences

- 7.3 The decision on these fees is provisional pending the result of a public consultation. The legislation provides for the fees to be advertised to take effect from a specified date in the absence of any representations. If representations are received, they must be considered and either the fees amended or confirmed without further consultation.
- 7.4 Further efficiencies in the way that applications are processed have enabled the fee for vehicle licences to be reduced for the second year running. Considerable work with the licensed trade has been undertaken to provide a more efficient service with a move to more self-service style applications. The trade have worked with the Council to achieve this with the knowledge that fee reductions may be possible given the legislation prohibiting a profit to be made on fees.
- 7.5 To encourage the trade to move towards more environmentally friendly vehicles, officers are researching a number of options including Government funding schemes, educational work and Policy changes. As an incentive to support this work, a discounted licence fee is being offered for electric and hybrid vehicles for the first time. As the Council has declared a climate change emergency, this decision is consistent with the parameters set out by the Licensing and Appeals Committee.

Animal licences

- 7.6 A change in animal licensing legislation in September 2018 has led to a considerable increase in costs occurred when administering and enforcing animal licences.
- 7.7 A significant part of this work is currently being undertaken by Central Bedfordshire Council due to the lack of in-house expertise however plans are in place to upskill licensing officers to enable this function to be brought back in-house in 2020.

- 7.8 The new prescribed model for risk-rating businesses has introduced a tiered system of licence period based on risk to the animals, ranging from 1 year to 3 years. The number of inspections required during a licence period is a constant irrespective of the length of licence therefore shorter licence periods are more expensive to the Council.
- 7.9 Additionally, some animal licence fees had been set artificially low by the previous Head of Service to encourage unlicensed businesses to engage in the formal licensing process.
- 7.10 The result is that animal licence fees will rise significantly for 2019/20 however that rise will be much less for longer licence periods (those businesses with the highest standards).
- 7.11 Officers believe that the new level of fees are not prohibitive to existing businesses and will not result in a decrease in the number of licensed premises, whilst encouraging all businesses to seek the highest standards.

8. LEGAL IMPLICATIONS

- 8.1 Section 14.6.4(a)(viii) of the Council Constitution delegates the following powers to the Chief Executive, the Deputy Chief Executive and the Service Directors:

To set fees and charges in accordance with the Council's Financial Regulations and relevant policies, in consultation with the Executive Member
- 8.2 Section 14.6.9(b)(xiv) further delegates the Service Director: Legal and Community:

Licensing including all functions under all relevant Licensing legislation other than matters reserved to the Licensing and Appeals Committee and Full Council.
- 8.3 The setting of fees is predominately a Council function by virtue of Regulation 2(6) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, which states:

(e) where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge, is not to be the responsibility of an executive of the authority.

- 8.4 As the Scrap Metal Dealers Act 2013 and the Animal Welfare Act 2006 are not included within Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, the setting of fees for these licences is an Executive function by virtue of section 13(2) of the Local Government Act 2000.

9. FINANCIAL IMPLICATIONS

- 9.1 This decision ensures that the Council recovers its reasonable costs associated with its licensing function as provided for within legislation.

10. RISK IMPLICATIONS

- 10.1 The risk to the Council of not taking this decision is that the Council would be under or over recovering reasonable costs associated with its licensing function.

- 10.2 Over recovery of costs associated with licensing would be unlawful as a result of the *Hemming*¹ case.
- 10.3 Under recovery of costs associated with licensing would mean that businesses are being subsidised from Council funds.

11. EQUALITIES IMPLICATIONS

- 11.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 11.2 There are no equalities implications as a result of this decision.

12. SOCIAL VALUE IMPLICATIONS

- 12.1 The Social Value Act and “go local” policy do not apply to this decision.

13. HUMAN RESOURCE IMPLICATIONS

- 13.1 This decision will have no impact on staffing resources.

14 APPENDICES

- 14.1 Appendix A – Fee schedule
- 14.2 Appendix B – Fee analysis

(note this will be available by link on the delegated decision page, and will not be circulated via MIS): <https://www.north-herts.gov.uk/home/council-and-democracy/decisions/delegated-decisions-2019>

15. BACKGROUND PAPERS

- 15.1 Local Government (Miscellaneous Provisions) Act 1976
- 15.2 Licensing and Appeals Committee minutes dated 12 December 2013 (Item 6)

NOTIFICATION DATE

Date in MIS:	19 July 2019
Last date for call-in:	26 July 2019
Decision to take effect:	1 August 2019
	(1 September 2019 for hackney carriage/private hire vehicles, drivers and operators)

Signature of Executive Member Consulted

Cllr Gary Grindal was consulted and supports the new fees schedule

Signature of Decision Taker

Date

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¹ R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2017] UKSC 50 [2015] UKSC 25