

CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 19th January 2015
Report of: Miss Kim Evans – Licensing Team Leader
Subject/Title: Review of Licensing fees and charges for the financial year 2015/2016
Portfolio Holder: Cllr Les Gilbert – Localism and Enforcement

1.0 Report Summary

- 1.1 To seek Members approval to the review of the licensing fees and charges for the issuing and renewal of licenses, consents and permits issued by the Licensing Team.

2.0 Recommendation

- 2.1 That Members confirm the fees payable as set out in appendix A.

3.0 Reasons for Recommendations

- 3.1 A review of the fees payable in respect of various types of licence and permits administered and enforced by the Licensing Section has been made for the next financial period. For the fees to be lawful and levied correctly a review of all licensing fees and charges needs to be made followed by publication in a newspaper.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Members

6.0 Policy Implications

- 6.1 The fees proposed are compatible with our charging strategy.

7.0 Financial Implications

- 7.1 Where possible, the licensing service aims to recover all reasonable costs. In a number of areas, statute dictates whether a fee may or may not be charged and the level of that charge.

8.0 Legal Implications

- 8.1 Regulation 2 (6) of the Local Authorities (Functions and Responsibilities) Regulations 2000 confirms that where the issuing of any licence, permit, or consent is a Council function, the fee must also be set by the Council. The Council has made provision in its Constitution for the setting of fees to be delegated to the Licensing Committee.
- 8.2 The Licensing Act 2003 (along with all licences except those relating to taxis and gambling) are also subject to the EU Service (2006). This directive, which has been incorporated in UK law by the Provision of Services Regulations 2009, confirms:
1. Fee charges must be proportionate to the cost of the process
 2. Fees cannot be used as either a deterrent or to raise funds
 3. Enforcement should not be included in the fees
- 8.3 Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Licensing Authority to charge fees for the grant of licences in respect of hackney carriage and private hire drivers, vehicles, and operators. The fees must be set for these licences on the basis that it only recovers costs which it is entitled statutorily to recover.
- 8.4 In respect of vehicle and operators' licences the Act states that the Council may charge such fees as may be sufficient in the aggregate to cover in whole or in part:
- § The reasonable cost of inspecting Hackney Carriages and Private Hire vehicles to ascertain whether any such licence should be granted or renewed.
 - § The reasonable cost of providing Hackney Carriage stands
 - § Any reasonable administrative or other costs in connection with the above and with the control and supervision of Hackney Carriages and Private Hire vehicles
 - § The Act, which dates from 1976, also states that the fee for vehicle and operator licences shall not exceed £25 or such other sum as the Council may from time to time determine. In the light of current costs £25 is not seen as a realistic fee to impose. The fee has not been set at this rate for a significant number of years.
- 8.5 In respect of drivers' licences the Act states that the Council may charge, 'such a fee as it considers reasonable with a view to recovering the costs of issue and administration associated with the grant of Hackney Carriage and Private Hire drivers' licences'.
- 8.6 Any other fees are restricted by legislation (eg Licensing Act 2003) and the Council has no power to vary such fees. There is no power to levy a fee for any Charitable Collection authorisations.
- 8.7 Additionally, there is some case law that has further developed the requirements in relation to the setting of all fees:

- § The Licensing Authority cannot make a profit and must carry forward surplus - R v Manchester CC ex parte King (1991) and R (app Simply Pleasure and Ors) v Westminster CC (2012)
- § Deficits can be recouped through increasing fees (this can be done at any time including mid year) - R v Tower Hamlets LBC ex parte Tower Hamlets Combined Traders Association (1994) and R (app Simply Pleasure and Ors) v Westminster CC (2012)
- § Only administration and issue costs can be taken into consideration - R (app Simply Pleasure and Ors) v Westminster CC (2012)
- § Compliance with a licence or conditions etc is compliance rather than enforcement - R v Associated Octel co Ltd (costs) (1996)

9.0 Risk Management

- 9.1 There is a right to object to most fees set following publication of the Statutory Notices. If valid objections are received the matter would be referred back to the Members of this Committee for determination

10.0 Background

- 10.1 The Authority may charge a fee for the issuing or renewal of various licences for which they have a statutory duty to issue. Certain fees are set either by Statute or Regulations but some fees can be set by Local Authorities to cover the cost of administration, compliance and some elements of enforcement; Locally Set Fees.
- 10.2 The service where possible aims to recover operating costs and where the Council has the discretion to set the fees, they are subject to review which can take into account operating costs, inflation, purchase costs etc.
- 10.3 The current Locally Set Fees have remained the same since 2011 and took account of the Council's aim to recover reasonable costs, taking into account the relevant statutory powers that fall within the remit of the service.
- 10.4 A number of fees are fixed by Statute, these are highlighted in Appendix A.
- 10.5 Fees have remained at current levels for several years and whilst the licensed trade have been affected by the economic downturn and have pressed the Council to support them by keeping costs down. The Licensing Team has been able to make efficiency savings that have alleviated most budgetary pressures. However, this has been through a reduction in staffing levels, which impacts on the level of service, to the licence holders and residents, we can provide.
- 10.6 It is intended to allow for a retest fee in respect of Hackney Carriage and Private Hire vehicles to apply. A fee of this type has not previously been charged, but an increase in the number of vehicles being licensed and a continued failure rate of approximately 50% has resulted in a budgetary pressure, which the service is unable to absorb.

- 10.7 The Licensing Authority did previously consult the Licensed Trade in relation to a retest fee. This consultation took place as part of a wide consultation process that included the changes to the driver knowledge tests, updated convictions policy, and the penalty points scheme.
- 10.8 The comments made during the consultation, which ran between March and June 2013, in relation to a retest fee are set out at appendix B.
- 10.9 It is anticipated that imposing a retest fee, which has financial implications for the vehicle proprietor, will help to drive up vehicle standards across Cheshire East. This administrative approach will also be supported by compliance checking by the Licensing Team, which will take steps to suspend vehicle licenses as appropriate.
- 10.10 The Council's conditions and the legislation impose a responsibility to ensure their vehicles are in a suitable and safe condition on the vehicle proprietor. It is therefore, essential that all licence holders ensure that regular maintenance checks are carried out on their vehicles so that vehicles pass their tests. It is not the responsibility of the Council and the residents of the Borough to subsidise the vehicle testing process when that costs is a result of poor standards within parts of the licensed trade.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

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