

Report for: Regulatory Committee 17th January 2017

Item number:

Title: Review of Fees and Charges 2017-18 - Licences

Report

authorised by: Tracie Evans – Chief Operating Officer

Lead Officer: Hannah Le Vay, Budget & MTFS Senior Programme Manager

Ward(s) affected: ALL

Report for Key/

Non Key Decision: Key.

1. Describe the issue under consideration

- 1.1. The Council's income policy requires an annual review of the level of the fees and charges levied upon service users with a view to ensuring that income is set at the correct level to ensure full cost recovery.
- 1.2. Cabinet will consider changes to the full range of fees and charges at their meeting on 14th February 2017, however a small number of items (relating to certain approvals, consents, permits and licenses) cannot be made by the Executive and are, therefore, reserved for consideration and decision by the Council's Regulatory Committee.
- 1.3. A separate report is being presented to the Regulatory Committee on the results of reviews of fees and charges under the Gambling Act 2005 and of street trading activities. This report is concerned with the remainder of the licensing fees and charges that need to be considered by the Regulatory Committee.

2. Cabinet Member Introduction

- 2.1. It is important that, as part of our on-going financial planning, we comply with the Council's policy to review annually our fees and charges taking account of issues such as the general economic climate and the Council's overall financial position.
- 2.2. Taking all relevant factors into account I believe that the increases in fees and charges proposed in this report are appropriate.

3. Recommendations

- 3.1. To approve the increases to the Council's licensing fees and charges, as set out in the attached Appendix A, with effect from 1st April 2017.

4. Reason for Decision

- 4.1. It is a requirement of the Council's income policy to review fees and charges annually so as to ensure that levels of fees and charges should be maximised and are commensurate with the full recovery of costs. This should take into account all

relevant factors including the effect on service users and any consequent demand for services. Fees and charges need to be set correctly so as to comply with the requirements of the Provision of Services Regulations 2009, based on the EU Services Directive. Under these regulations any charges which applicants incur under a licensing 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. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.

5. Alternative options considered

- 5.1. This report summarises the conclusions after consideration of a range of alternative approaches dependent on the particular legislation, services and relevant factors. As such a range of alternative options ranging from no increase to differentiated rates of increases have been considered and reflected in this report.

6. Background information

- 6.1. The Regulatory Committee have responsibility for the determination of certain specified fees and charges, including:
 - Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991
 - Fees for applications for Pet Shops, Animal Boarding/Breeding, Performing Animals and Horse Riding Establishments
 - Fees for applications for Hypnotism, Sex Shops, Sexual Entertainment Venues, Poisons and Scrap Metal & Motor Salvage Operators licences.
 - Gambling Act 2005 and Licensing Act 2003.
- 6.2. The requirement or ability to levy a fee or charge for these matters are provided for in statute, either being set down as a fixed amount (statutory prescribed) that the Council cannot vary/set, or by providing the authority with the power to set a fee/charge in accordance with the requirement of the legislation (eg. up to a maximum amount, or cost recovery only, or reasonable cost etc) (statutory/discretionary).
- 6.3. This report meets the requirements of the Council's income policy for the 2017-18 financial year and as such contains details of the current and proposed levels of fees and charges to take effect from 1st April 2017. Increases have been calculated in order to reflect increases in the costs of providing the services. Appendix A contains the full details of current licensing fees and charges, the proposed charge and corresponding increases.
- 6.4. Officers have noted the comments made at this committee in February 2016 about applying suitable rounding to proposed changes in fees and charges, and the figures presented in this report reflect that principle.

7. Contribution to strategic outcomes

- 7.1. The Council also has a set of strategic and policy objectives, and fees and charges should be set in accordance with such objectives.
- 7.2. The principles underpinning the Council's external income policy are that all fees and charges are reviewed annually and income is maximised within current service and policy objectives. The competitiveness of the market in which the service operates and the effect of price on demand and overall income yield should be considered. Some services are restricted to cost recovery.
- 7.3. As a minimum, fees and charges should be increased by a minimum of RPI (annual average as at October 2016 is 1.5%). However, some charges remain unchanged from 2016-17 as these charges are already set to the statutory maximum.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Chief Finance Officer

- 8.1. The estimated financial effect arising from the implementation of the 2017-18 fees and charges rates as set out in this report (assuming no impact on volumes) is an increase in income of approximately £2k.

Assistant Director of Corporate Governance

- 8.2. The Assistant Director of Corporate Governance has been consulted in the preparation of this report and comments as follows.
- 8.3. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provides that decisions on fees for certain approvals, consents permits and licenses (for example premises licences) may not be made by the Executive (Cabinet). These fees will be set by the Regulatory Committee and are the subject of this report.
- 8.4. Certain fees for services provided by local authorities are prescribed in the parent legislation or in regulations made under the parent legislation. In such instances the Council has no discretion as to the level of the charge. Where this is the case it is set out in Appendix A.
- 8.5. There is a further range of services where specific legislative provisions allow authorities to decide whether to charge and how much.
- 8.6. In addition, section 93 Local Government Act 2003 permits local authorities to charge for discretionary services, provided that there is no alternative power allowing the local authority to charge and provided that there is nothing in the parent legislation preventing the local authority from charging for these discretionary services. Where the Council charges for such discretionary services, it has a duty to secure that, taking one financial year with another, the income from charges does not exceed the costs of provision. Section 93 permits the Council to charge only some persons for providing the discretionary service and also permits the Council to charge different persons different amounts for providing a service.
- 8.7. In instances where the section 93 Local Government Act 2003 charging powers for discretionary services do not apply, the Council may be able to rely upon charging powers under section 1 of the Localism Act 2011 (general power of competence).

Similarly, under this provision, the Council may not recover more than the cost of providing that service. Recovery is assessed taking one year with another.

- 8.8. In the 2015 case of *Hemmings v Westminster* the Supreme Court confirmed that fees could include (i) authorisation procedure costs AND (ii) enforcement costs, but these must be reasonable and proportionate, and be charged separately. It was confirmed by the European Court of Justice in 2016 that the two elements cannot both be charged upfront and the second part should be charged upon grant of a Licence.
- 8.9. The Council must ensure that all fees are justified in how they are calculated, and these must be reviewed and updated each year.
- 8.10. In reviewing fees and charges, the Council needs to demonstrate that regard has been had to overarching Public Sector Equality Duty under section 149 of the Equality Act 2010.

Equalities

- 8.11. The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - advance equality of opportunity between people who share those protected characteristics and people who do not;
 - foster good relations between people who share those characteristics and people who do not.
- 8.12. The proposals within this report are to increase fees and charges by relatively small amounts. These changes will have a low impact overall and are not expected to have a disproportionate impact on any protected groups.

9. Use of Appendices

Appendix A
Appendix B

Schedule of Licensing Fees 2017-18
Equalities Impact Assessment