

# REPORT FOR: **Council**

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<b>Date of Meeting:</b>	25 <sup>th</sup> February 2016
<b>Subject:</b>	Non-Executive fees and charges for 2016-17
<b>Responsible Officer:</b>	Michael Lockwood – Chief Executive
<b>Exempt:</b>	No
<b>Wards affected:</b>	All Wards
<b>Enclosures:</b>	Appendix 1 - Fees and Charges 2016-17 Appendix 2 – Street Trading Fees and Charges 2016-17

## **Section 1 – Summary and Recommendations**

This report sets out the proposed fees and charges for licences and other services noted in this report, and as set out in appendix 1, as well as the new fees and charges associated with Street Trading in appendix 2. The report also seeks approval to use fixed penalty notices for street trading offences.

### **Recommendations:**

1. Council approve the fees and charges listed in appendices 1 and 2 for the (financial) year 2016/17.
2. Council approve the use of Fixed Penalty Notices as a method of enforcement for street trading offences as listed in appendix 2.

## **Section 2 – Report**

### **2.1 Background & Current Situation**

The following matters are included under this report (not exhaustive):

- Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991
- Charges for notifications for Skip Licenses, Materials on Highway, Hoarding and scaffolding licences under the Highways Act 1980
- 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.
- Street Trading Fees (and associated Fixed Penalty Notices)

The fees and charges in appendix 1 were historically considered by the Licensing & General Purposes Committee, as they relate to non-executive functions. As the Licensing & General Purposes Committee no longer has regular meetings, and only meets once annually to agree sub-committees, approval of these fees and charges rests with full Council.

#### **2.1.1 Statutory Fees**

The requirement or ability to levy a fee/charge for those items listed in Appendix 1 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). Fees noted in Appendix 1 as prescribed are for noting only.

The majority of Licensing Act 2003 regime fees were originally set via the Licensing Act 2003 (Fees) Regulations 2005 and are prescribed. In a number of cases these fees do not reflect the actual cost of administering the regime.

The Home Office carried out a consultation (from 13/2/14 – 10/4/14) on the potential for local authorities to set some of these prescribed fees locally, and published its results on 25th February 2015, with the outcome that the Home Office decided not to introduce locally-set fees at the time.

The Gambling Act 2005 sets out maximum fees for gambling premises licenses and fees for permits, notifications and lotteries, and were set in 2007 when the Act came into effect. The authority can set its fees in accordance with these up to the maximum permitted level.

Section 32 of the London Local Authorities Act 1990 permits the council to charge fees and charges in respect of street trading licences on a cost recovery basis. In respect of some offences relating to street trading, fixed penalty notices can be issued, and the penalty levels are agreed through London Councils.

## 2.2 Main Options

### **Approve the recommended fees and charges and the use of Fixed Penalty Notices for street trading offences**

The fees and charges set out for approval have been reviewed and, where appropriate, varied to reflect increased costs to services in administering the process. Their approval will therefore ensure recovery of costs. The use of Fixed Penalty Notices for street trading offences will provide the Council with a range of appropriate enforcement options, and provides a potentially quicker method of dealing with an offence.

### **Do not approve the recommended fees and charges and/or the use of Fixed Penalty Notices for street trading offences**

The Council needs to set its fees and charges for the forthcoming financial year and the proposed amounts stated in the Appendix are to ensure cost recovery as far as possible. Not having the option of using Fixed Penalty Notices limits the options available to the Council to deal with offences. This option is therefore not recommended.

## 2.3 Legal Implications

As noted earlier, a number of fees and charges are prescribed by statute (eg. Licensing Act 2003 (Fees) Regulations 2005), as a set amount (noted as 'statutory prescribed' in the appendix). For other fees and charges the relevant legislation may provide that a charge can be made for providing the service but the amount of the charge is discretionary, within the remit of the legislation, often limited to cost recovery only, or a reasonable amount, or within a range/maximum amount. The authority therefore sets the amount of the charge accordingly. These are noted as 'statutory discretionary' in the appendix.

Licensing Regimes are covered by the European Services Directive. The Provision of Services Regulations 2009, which implements the Directive requires that fees charged in relation to authorisations must be reasonable and proportionate to the cost of the process. It is to be noted that the recent Supreme Court case of *Hemming v Westminster City Council* has also held that licensing authorities can recover the cost of enforcement action as well as the cost of administering the regime, although a referral on two aspects has been made to the European Court of Justice.

The Local Authorities (Functions & Responsibilities) Regulations 2000 sets out what fees & charges cannot be set by the Executive as the functions to which they relate are non-Executive functions.

## **2.4 Financial Implications**

The fees and charges for approval are set, where appropriate, to recover total cost of administering the licensing functions, where appropriate, as per legislation and guidance.

## **2.5 Risk Management**

Fees/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. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.

Large volume licences have been calculated by taking in to account the cost of the total service in providing application processing, advice and compliance visits to check applications and conditions

On low volume applications, each process has been calculated via a time and motion process based on the steps taken to deal with such applications

## **2.6 Equalities Implications**

Section 149 of the Equality Act 2010 created the public sector equality duty.

Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.

An initial Equalities Impact Assessment (screening) has been conducted and has found no adverse impacts.

Full Equality Impact Assessments were carried out for (the introduction of) Special Treatment Licensing in 2008 and for HMO licensing in 2009. These

assessments considered the fees and charges (exclusive of enforcement costs) along with benchmarking against other London Authorities. Further to representations by home operators (for special treatment licences), a reduction of up to 40% was introduced to address their concerns.

## Council Priorities

The Council's vision:

### Working Together to Make a Difference for Harrow.

The approval of fees and charges in Appendix 1 and 2 will ensure that the services can carry out the licensing functions as set, ensuring a safe environment to those conducting, subject to or affected by a licensing regime

## Section 3 - Statutory Officer Clearance

Name: Jessie Mann	<input checked="" type="checkbox"/>	On behalf of the Chief Financial Officer
Date: 15 <sup>th</sup> February 2015		
Name: Paresh Mehta	<input checked="" type="checkbox"/>	On behalf of the Monitoring Officer
Date: 15 <sup>th</sup> February 2015		

**Ward Councillors notified:** NO

## Section 4 - Contact Details and Background Papers

**Contact:** Richard Le-Brun, Environmental Services Manager,  
(Public Protection) Ext 6267

### Background Papers: Draft Fees and Charges for Licensing Activities

If appropriate, does the report include the following considerations?

1.	Consultation	No
2.	Priorities	Yes