

REPORT FOR: **Council**

Date of Meeting:	22 nd February 2018
Subject:	Non-Executive fees and charges for 2018-19
Responsible Officer:	Tom Whiting – Chief Executive
Exempt:	No
Wards affected:	All Wards
Enclosures:	Appendix 1 - Fees and Charges 2018-19

Section 1 – Summary and Recommendations

This report sets out the proposed fees and charges for licences/applications for those matters listed in this report, and as set out in appendix 1.

Recommendations:

Council is requested to

1. Approve and set the fees and charges listed in Appendix 1 for the financial year 2018/19.
2. Delegate authority to the Director of Finance and relevant Corporate Director, following consultation with the relevant portfolio holders, the ability to amend fees and charges in year with the introduction of a discount rate for fees that are discretionary if there is a business need to do so.

Section 2 – Report

2.1 Background & Current Situation

The following fees & charges (amongst others) are covered in this report:

- Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991
- Fees for licence applications for Houses in Multiple Occupation and Selective Licensing under the Housing Act 2004
- 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 charges
- Other non-executive fees covered by the Environment and Culture Division

The fees and charges in Appendix 1 were historically considered by the Licensing & General Purposes Committee, as the above relate to non-executive functions. As the Licensing & General Purposes Committee no longer has regular meetings, and usually 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 (statutory) 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 but the Authority cannot change these.

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 licenses 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.

2.1.2 European Services Directive

The European Union Services Directive (2006/123/EC), brought into effect in the UK by the Provision of Services Regulations 2009, requires that fees & charges set under an authorisation scheme have to be reasonable and proportionate to the cost of the procedures and formalities of it and should not exceed these costs.

Following a ruling by the European Court of Justice in the case of Hemming v Westminster City Council it is now clear that fees charged in accordance with a scheme that falls under the provisions of the Services Directive cannot at the outset cover more than just the cost of administering and processing the application (to grant a license for example). Whilst the cost of enforcing the regime can be recovered, this cannot be wrapped up into one fee at the outset. Therefore the fees and charges should be split into:

- a. The costs of the application process; and
- b. On the application being successful, a further fee to cover the costs of the management and enforcement of the licensing regime.

Previously, the Council would charge as one fee and refund the second part if the application is unsuccessful. This is no longer permitted, and the fees need to be split and the second charge only asked for on applications which are successful.

Therefore, a number of the fees and charges within Appendix 1 are now split into the administration and the management fee and the enforcement fee. It has led to a slight increase in fees as this ruling has led to additional administration costs to the Council, especially in the processing of two sets of fees for one license.

The fees have been split to reflect the costs for each aspect and the greater part of the overall fee is the spend on the administration of the application, which includes initial inspections in a lot of licensing regimes.

2.1.3 Discretionary Fees

It is recognised that discretionary fees are set at a level that ensures cost recovery, but must also not distract from the Councils goal to be more business friendly. Recent liaison with businesses and Councillors has shown areas that may benefit from a discount scheme

It is therefore proposed that any discount regime is approved by the Director of Finance and Corporate Director in agreement with the relevant Portfolio Holder. Such discount schemes if applied would be reported as part of future fees and charges reports to Council.

Benchmarking has taken place which has led to a number of fees being adjusted to reflect consistency with neighbouring Boroughs, including A Boards.

With statutory discretionary fees, these would always remain within the costing scope set out under legislation.

The main fundamental change is seen to sex entertainment establishments in line with recent challenges in Westminster to the costs of such licences. A lot of Councils have previously set the fee to be prohibitive to such establishments appearing. These fees have therefore been adjusted to justifiable levels based on the amount of activity required in the licensing scheme. This is aimed at preventing judicial challenge and being in line with legal requirements.

2.2 Main Options

Approve the recommended fees and charges

The fees and charges set out for approval have been reviewed and varied, where appropriate, to reflect the cost in administering the process. Their approval will therefore ensure recovery of costs.

Do not approve the recommended fees and charges

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. 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 (in which case it is 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.

Some of the regimes in the appendix are covered by the European Services Directive and the Provision of Services Regulations 2009, which implements the Directive. As noted earlier this requires that fees charged in relation to authorisations must be reasonable and proportionate to the cost of the process, and the European Court of Justice ruling in the Hemming v Westminster City Council case has confirmed that a fee covering the administration costs of processing an application should be charged separately from the charge (to successful applicants) for enforcing the regime. It is not possible to charge one fee at the outset and then refund unsuccessful applicants the enforcement part of the fee. The two must be charged separately.

The Local Authorities (Functions & Responsibilities) Regulations 2000 sets out what fees and charges cannot be set by the Executive (i.e. Cabinet) as the functions to which they relate are non-Executive functions. The fees and charges in Appendix 1 are those that Council should set, with the exception of those which are prescribed, and therefore for information only.

2.4 Financial Implications

The fees and charges for approval are set to recover total cost of administering the licensing functions as per legislation and guidance. Many of the charges are being increased by 5% (rounded up or down as appropriate). This takes account of the current level of inflation as measured by the Retail Price Index, which as at October 2017 is 4% and also provides for an element of movement towards full cost recovery.

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.

Reference to recent case law around fees and charges under the Provision of Services Regulations 2009, based on the EU Directive, is covered above and has been taken into account in the splitting of the fees and charges to ensure compliance.

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 on any of the protected groups.

Fees and charges are kept under regular review to ensure that they are justifiable, fair and comparable with neighbouring Councils.

Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow.

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

Section 3 - Statutory Officer Clearance

Name: Sharon Daniels....	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 19 th February 2018		
Name: Harinder Dhaliwal.....	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 19 th February 2018		

Ward Councillors notified:	NO
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Section 4 - Contact Details and Background Papers

Contact: Richard LeBrun, Head of Service, (Community and Public Protection) Ext 6267

If appropriate, does the report include the following considerations?

1.	Consultation	No
2.	Priorities	Yes