



Report of: Director of Leisure and Wellbeing Services

**Contact for further information: Paul Charlson (ext 5246)
(E-mail: paul.charlson@westlancs.gov.uk)**

SUBJECT: LICENSING FEES & CHARGES 2017/18

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

- 1.1 To consider revised proposed changes in licensing fees and charges for the period 1 April 2017 to 31 March 2018 following a decision of the European Court of Justice.

2.0 RECOMMENDATIONS

- 2.1 That with effect from the 1 April 2017, the proposed changes in Hackney Carriage and Private Hire licensing fees and charges contained in Table 1 in this report is approved.
- 2.2 If the recommendation at Paragraph 2.1 is approved, that delegated authority is granted to the Director of Leisure and Wellbeing Services to give notice under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 of the Council's intention to vary the fees and charges for vehicle, driver and operator licences.
- 2.3 That with effect from the 1 April 2017, the proposed fees and charges contained in Table 2 in this report is approved.
- 2.4 If the recommendations at Paragraph 2.1 and 2.3 are approved, that delegated authority is granted to the Director of Leisure and Wellbeing Services to amend those licences referenced in this report and related Policies so that the payment of the licence fee relating to the cost of administering and enforcing the relevant licensing framework (successful application fee) is made a condition of that licence.

3.0 BACKGROUND

- 3.1 Members will recall the report to this Committee on 6 December 2016, which was approved at that time.
- 3.2 However, a decision of the European Court of Justice (ECJ), published by the Local Government Association since this matter was reported to Members in December 2016, requires that the previously proposed licence fee structure be amended.

4.0 ISSUES

- 4.1 Reference to the landmark Supreme Court case of R (on the application of Hemming and Others) v Westminster City Council [2015] UKSC215 has been made in previous reports to Members regarding the setting of licensing fees.
- 4.2 Members will recall the case originally related to licensing fees for sex establishments, but has since had much wider implications in determining the correct interpretation of the 2006 EU Services Directive, which is applied in the UK by the Provision of Services Regulations 2009. The Supreme Court had overturned an earlier Court of Appeal ruling by concluding that the Services Directive 2006 does not prevent licensing authorities from charging licence fees that are proportionate to the cost of administering and enforcing the relevant licensing framework.
- 4.3 In making its decision, the Supreme Court identified two different approaches to charging fees:
- Whereby a council charged a fee upon application (covering the cost of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or;
 - Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.
- 4.4 The Supreme Court found that both approaches were permissible under the Services Directive. Accordingly, Members will be aware that the Council, like many other authorities, adopted the 'type B' approach as this was considered to be the most practical method to administer. However, the Supreme Court sought an opinion from the ECJ regarding how such fees should be levied. Specifically, whether a 'type B' approach to fee setting is compatible with the Services Directive.
- 4.5 The ECJ ruling states that the 'type B' approach of fee setting is not compatible with the Services Directive, arguing that the Directive '*precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of an authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.*'

4.6 Accordingly, this report is presented to Members to allow the proposed licence fees for 2017/18 to be amended to ensure compliance with the 'type A' approach. Taking this into account, only slight differences have been made to a minority of individual total licence fees to that presented to Members in December 2016; however the composition of each fee and the manner in which fees are administered has changed. Members will note that each licence fee comprises of an initial application fee, which will be charged on application and relates solely to the cost of authorisation procedures (i.e. the costs associated with reviewing an application and granting / refusing a licence), and a successful application fee that relates to the cost of administering and enforcing the relevant licensing framework.

4.7 It is also worth noting that the Supreme Court view was that there is nothing to stop licensing authorities making the successful application fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received:

'...nothing in article 13(2) precludes a licensing authority from charging a fee for the possession or retention of a licence, and making this licence conditional upon payment of such fee. Any such fee would however have to comply with the requirements, including that of proportionality, identified in section 2 of Chapter III and section 1 of Chapter IV. But there is no reason why it should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.'

4.8 Accordingly, and if Members approve the proposed fees contained in this report, a further recommendation seeks approval for delegated authority to the Director of Leisure and Wellbeing Services to amend those licences referenced in this report and related Policies so that the payment of the licence fee relating to the cost of administering and enforcing the relevant licensing framework is made a condition of that licence.

5.0 PROPOSED FEES

5.1 Hackney Carriage and Private Hire

The proposed changes in Hackney Carriage and Private Hire fees and charges are detailed in Table 1.

Table 1

Driver Licence Applications – Hackney Carriage, Private Hire and Dual			
	Existing (2016/17)	Proposed (2017/18)	Proposed fee comprised of (a) initial fee; and (b) successful application fee
Driver Licence New (3 year licence)*	£148.28	£149.57	N/A
Driver Licence Renewal (3 year licence)*	£98.86	£99.06	N/A
* Applications incur additional fees not set by the Council. These include online Disclosure and Barring Service (DBS) enhanced disclosure, medical examination and			

DVLA mandate. The online DBS service includes a £9.60 validation fee plus the cost of the disclosure.

Vehicle Licence Applications – Hackney Carriage and Private Hire

Hackney Carriage New (12 month licence - incl. plate)	£256.15	£211.71	(a) £84.91; (b) £126.80
Hackney Carriage Renewal (12 month licence - incl. plate)	£242.03	£199.82	(a) £73.02; (b) £126.80
Private Hire Vehicle New (12 month licence - incl. plate)	£229.56	£191.90	(a) £82.93; (b) £108.97
Private Hire Vehicle Renewal (12 month licence - incl. plate)	£215.44	£181.99	(a) £73.02; (b) £108.97
Private Hire Operator Licence Applications (5 year licence):			
1 - 10 Vehicles	£215.65	£178.29	(a) £99.04; (b) £79.25
11 - 20 Vehicles	£271.85	£275.37	(a) £102.06; (b) £173.31
21 - 30 Vehicles	£428.37	£432.86	(a) £115.87; (b) £316.99
31 - 40 Vehicles	£543.70	£549.74	(a) £123.88; (b) £425.86
41 - 50 Vehicles	£708.56	£711.23	(a) £156.49; (b) £554.74
Over 50 Vehicles	£808.37	£810.29	(a) £176.31; (b) £633.98
Hackney Carriage and Private Hire Licensing – general			
Transfer of Vehicle Licence (change of owner)	£16.48	£18.81	N/A
Replacement Vehicle Plate	£16.48	£18.81	N/A
Replacement Driver Badge	£16.48	£18.81	N/A
Duplicate Driver Licence	£16.48	£18.81	N/A
Duplicate Vehicle Licence	£16.48	£18.81	N/A
Re-sit Knowledge Test	£16.48	£18.81	N/A

5.2 Members should note that other fees are levied in addition to the relevant fee for Hackney Carriage and Private Hire licences, but these costs are dictated by third parties (for example, Disclosure and Barring Service (DBS) enhanced disclosure and medical examination) and are borne by the applicant.

5.3 If the Committee resolves to approve the fees detailed in Table 1, the Council is required to give notice under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 of its intention to vary the fees and charges for vehicle, driver and operator licences. The Notice will be published in the local press, on the Council's website and in the Licensing Reception at Robert Hodge Centre. Objections against the proposed increases can be made within 28 days from the date of the Notice. If any objections are received, the matter will be reported back to the next meeting of the Committee for further consideration.

Miscellaneous licences

5.4 Table 2 details the proposed changes in the following licensing fees and charges for 2017/18.

Table 2

	Existing (2016/17)	Proposed (2017/18)	Proposed fee comprised of (a) initial fee; and (b) successful application fee
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Street Trading			
New application (12 month consent)	£359.88	£289.93	(a) £190.87; (b) £99.06
New application (6 month Occasional Consent)	£226.45	£202.31	(a) £142.87; (b) £59.44
New application (3 month Occasional Consent)	£133.22	£121.15	(a) £87.40; (b) £33.75
New application (7 day Occasional Consent)	£62.54	£56.57	(a) £29.04; (b) £27.53
Renewal (12 month consent)	£288.21	£243.12	(a) £144.06; (b) £99.06
Variation	£96.43	£94.12	(a) £44.69; (b) £49.43
Replacement Consent	£16.48	£18.81	N/A
Sexual Entertainment Venue licence			
New / renewal	£3,512.24	£2766.82	(a) £1624.58; (b) £1142.24
Skin Piercing etc. registration			
New registration	£105.31	£106.28	N/A
Second Hand Goods Dealer registration			
New registration	£82.38	£91.06	N/A
Animal welfare licences – cat/dog boarding, dog breeding, pet shop			
New / renewal (12 month licence)	£148.28	£163.31	(a) £103.87; (b) £59.44
Animal welfare licences – riding establishment			
New / renewal (+ vet fee) (12 month licence)	£232.67	£225.93	(a) £126.87; (b) £99.06
Animal welfare licences – dangerous wild animals			
New / renewal (+ vet fee) (2 year licence)	£259.15	£258.56	(a) £119.88; (b) £138.68
Animal welfare licences – zoo			
New / renewal (+ vet fee) (6 year licence)	£2,174.82	£2474.68	(a) £717.66; (b) £1757.02
Scrap metal dealers			
Site Licence New (3 year licence)	£280.09	£308.80	(a) £130.49; (b) £178.31
Site Licence Renewal (3 year licence)	-	£239.12	(a) £60.81; (b) £178.31
Additional named site on Site Licence (per site)	£181.05	£189.54	(a) £107.13; (b) £82.41

Collectors' Licence New	£131.81	£145.50	(a) £66.25; (b) £79.25
Collectors' Licence Renewal	-	£106.25	(a) £27.00; (b) £79.25
Site Licence Variation	£82.35	£91.06	(a) £51.44; (b) £39.62
Collectors' Licence Variation	£82.35	£91.06	(a) £51.44; (b) £39.62
Inconsequential administrative changes or replacement licence	£16.48	£18.81	N/A

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 6.1 These services have the potential to impact upon many areas within the Community, particularly upon taxi services and the travelling public within West Lancashire. Therefore the proposal links with the following aspect of the Community Strategy: Transport (issue B).

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 Based on the current number of licences and income previously received, the estimated income from the abovementioned licence fees during 2017/18 remains unchanged from that estimated in the report of 6 December 2016 at £139,650. The corresponding estimated chargeable service cost of those licences is £140,586. As the budget for 2017/18 is yet to be agreed, exact service costs cannot be determined at time of writing this report. However, the estimated income is sufficient to match expenditure based on the current budget 2016/17.
- 7.2 The proposed fees detailed in this report may result in a variation in licence fee income, but this is only in relation to the cost of the relevant licensing regime. It must be demonstrated that licence fee income is reasonable and proportionate. Income must not significantly exceed licence costs and any resultant surplus or deficit is considered when setting the fees for the following year. These issues have been identified in the budgetary process and will receive due consideration.

8.0 RISK ASSESSMENT

- 8.1 The timing of the ECJ decision is frustrating, as this matter had already been presented to Members to allow sufficient time for implementation prior to the start of the 2017/18 financial year. If Members approve the recommendations contained in this report, and if there are no objections to the proposed fees, these will be implemented from 1 April 2017. However, if any objections are received, these will be determined by the Committee on 6 April 2017 and the resultant approved fees will be implemented from 7 April 2017.
- 8.2 The 2006 EU Services Directive, which is applied in the UK by the Provision of Services Regulations 2009, does not apply to taxis or gambling activities. However, Officers have taken the precautionary approach of adopting the

principles of the Hemming Case in all of the licence fees contained in this report, as future challenges can be expected. Nevertheless, the Council has a legal duty to carry out the functions of the legislation that dictates the proposed fees and charges contained in this report. Therefore the proposed fees and charges contained in this report are levied at a rate that serves to cover the costs to the Council. Accordingly, there is a potential impact upon the taxi trade, the travelling public and operators of the other licensed activities contained in this report.

- 8.3 Members should also note that the opinion of the Advocate General and the commentary contained in the judgement of the ECJ went beyond the specific issues that had been referred to it, which make further challenges on the issue of licensing fees highly likely. Of particular concern, both the opinion and the commentary in the ruling appear to reopen the issue of whether including the costs of administering and enforcing licensing regimes within licence fees is compatible with the Services Directive, with a strong indication that the Advocate General and ECJ believe it is not. While the Supreme Court's view on this issue remains in place at the current time, meaning councils can continue to include these costs in their licence fees, it seems inevitable that there will be a further challenge on this issue at some point in future. Members will be made aware of such implications should they arise.
- 8.4 It is possible that licensing authorities may receive claims for restitution following the ruling of the ECJ. Some opportunistic businesses and legal advisors are likely to seek reimbursement of the whole of previously paid 'type B' licence fees, on the grounds that they have now been ruled incompatible with the Services Directive. However, the only legitimate claim for restitution from 'type B' fees relates to the loss of interest that a licence holder can be deemed to have suffered by virtue of paying the entirety of the fee upfront, rather than the fee being split into two payments on application and on successfully being awarded a licence. Given that most licence fees levied by the Council are of relatively low value, a claim for such loss of interest is remote.

Background Documents

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

None.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1. Equality Impact Assessment.

Appendix 1

Equality Impact Assessment Form



Directorate: Leisure and Wellbeing

Service: Licensing

Completed by: Paul Charlson

Date: 26/01/17

Subject Title: LICENSING FEES & CHARGES 2017/18

1. DESCRIPTION

Is a policy or strategy being produced or revised:	No <i>*delete as appropriate</i>
Is a service being designed, redesigned or cutback:	No
Is a commissioning plan or contract specification being developed:	No
Is a budget being set or funding allocated:	No
Is a programme or project being planned:	No
Are recommendations being presented to senior managers and/or Councillors:	Yes
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty (Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations):	No
Details of the matter under consideration:	

*If you answered **Yes** to any of the above go straight to Section 3*

*If you answered **No** to all the above please complete Section 2*

2. RELEVANCE

Does the work being carried out impact on service users, staff or Councillors (stakeholders):	No <i>*delete as appropriate</i>
If Yes , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered Yes go to Section 3</i>	
If you answered No to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>	

3. EVIDENCE COLLECTION

Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	All licence holders for which the Council can set the relevant licence fee.
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	All sections of the public and businesses use or operate the licences outlined in this report.
Which of the protected characteristics are most relevant to the work being carried out?	<i>*delete as appropriate</i>

Age	No
Gender	No
Disability	No
Race and Culture	No
Sexual Orientation	No
Religion or Belief	No
Gender Reassignment	No
Marriage and Civil Partnership	No
Pregnancy and Maternity	No
4. DATA ANALYSIS	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	All sections of the public and businesses use or operate the licences outlined in this report.
What will the impact of the work being carried out be on usage/the stakeholders?	Revised fees for licence applications and on-going charges.
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	The proposed fees for PH & HC licensing will be published in the local press and the Council's website. Any objections will be brought back to this Committee.
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	The proposed fees for PH & HC licensing will be published in the local press and the Council's website. Any objections will be brought back to this Committee.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
5. IMPACT OF DECISIONS	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
6. CONSIDERING THE IMPACT	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	N/A
What actions do you plan to take to address any other issues above?	No actions <i>If no actions are planned state no actions</i>
7. MONITORING AND REVIEWING	
When will this assessment be reviewed and who will	The proposed fees for PH & HC licensing will

review it?	be published in the local press and the Council's website. Any objections will be brought back to this Committee.
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