

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LICENSING & APPEALS COMMITTEE**

**26 November 2019**

**Report of the Director of Central Services and Deputy Chief Executive**

**Part 1- Public**

**Delegated**

**1 REVIEW OF FEES AND CHARGES 2020/21 - LICENSING FEES**

**1.1 Executive Summary**

- 1.1.1 The responsibility for setting the licensing fees and charges for 2020/21 is with the Licensing & Appeals Committee.
- 1.1.2 The review has been carried out by the Head of Service for Licensing, Customer Services and Community Safety and the report sets out the recommended changes to the existing fee structure.
- 1.1.3 The licensing regimes listed within this document cover a wide range of activities and services ranging from the sale and supply of alcohol to individuals keeping dangerous wild animals. The purpose of the licensing regimes are specific to the regulation that govern it but in general, licensing is required to protect the public, protect and support businesses practices and ensure fair trading; and ensure the welfare of animals.
- 1.1.4 The council has the power to set some fees for certain licensing regimes. However, a number of licensing regimes have fees that have been set by the specific Act or associated regulations. There are three fee regime types that have been set out within this document. These fee regime types relate to how the fees have been set.

<b>Type 1</b>	<b>Type 2</b>	<b>Type 3</b>
Fees that are set by statute for which the council has no power to amend.	A maximum fee cap set by statute that permits councils to set a reasonable fee to recover its costs up to that cap.	The relevant statute permits councils to set their own local fees that will enable it to recover its reasonable costs.

- 1.1.5 All of the fees within type 2 up to the relevant cap and all of the fees within type 3 fee regimes have been set to recover the council's reasonable costs in carrying out its functions for each specific regime. The fees relate to that regime only and all the income received from fees is used to offset those costs. The council cannot and does not use the income from one specific licensing regime to cover deficits in other regimes.
- 1.1.6 The council will aim to undertake a review of type 2 and 3 licensing fee regimes every year. When considering the fees the council will take into account the costs that it has incurred from the previous year and set a fee based on those costs. If the council does, in reviewing the fees identify a surplus or a deficit it will adjust the fees accordingly to either reduce the fee levels to reduce the surplus or increase the fee levels to repay that deficit in costs from previous years. This means that the fees will fluctuate year on year based on the review of income and cost associated with that relevant licensing regime.

### **European Service Directive**

- 1.1.7 The European Union Services Directive -2006/123/EC (the Directive) was given effect in UK law via the Provision of Services Regulations 2009 (SI2009/2999). This Directive and the Regulations contain provisions about the fees which may be charged under relevant licensing regimes within the scope of the Directive. In particular licensing authorities may not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence.
- 1.1.8 These provisions have been taken into account in setting the fees set out in this document.
- 1.1.9 In addition, a judgment of the Supreme Court in a case involving Westminster City Council has provided further clarification of the type of costs which may be taken into account when setting fees, and when fees may be payable. Pending further guidance from the European Court of Justice, the judgment of the Supreme Court established that a licensing regime may operate on the basis that an applicant must pay:
- i. on making the application, the costs of the application process and,
  - ii. on the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.
- 1.1.10 The council has, following this decision, reviewed the Type 3 regime fees, for which the Directive relates so that they identify the costs for processing the application through to determination (Part A) and the cost for running and the enforcement of the licensing regime (Part B).
- 1.1.11 Taxi Licensing is exempt from this ruling.
- 1.1.12 A table showing the existing and proposed fees is attached as **Annex 1**.

## **1.2 Hackney Carriage & Private Hire**

- 1.2.1 Fee levels for hackney carriage and private hire licensing are subject to various statutory controls. Whilst these controls provide the Council with some discretion as to the level of fee, the cost of a licence must be related to the overall cost of the licensing scheme itself.
- 1.2.2 Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 provides that, in respect of hackney carriage and private hire drivers, the Council may charge 'such a fee as they consider reasonable with a view to recovering the costs of issue and administration'. No fee is chargeable, or recoverable, in respect of enforcement in relation to these licences.
- 1.2.3 For vehicle (both hackney carriage and private hire) and private hire operators' licences, fee levels are governed by s.70 of the 1976 Act. This section allows the Council to charge such fees as may be sufficient in aggregate to cover in whole or in part –
- (a) the reasonable cost of carrying out inspections of hackney carriages/ private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;
  - (b) the reasonable cost of providing hackney carriage stands;
  - (c) any other reasonable administrative or other costs in connection with the above and with the control and supervision of hackney carriage and private hire vehicles.

### **Fee model**

- 1.2.4 The fee model sheets for the main Taxi fee increase show officer cost and time in the validating, processing, issuing and enforcement cost where applicable. Sample sheets are shown as **Annex 2**.

### **Costs for plates, holders and door insignia**

- 1.2.5 The costs for plates, holders and door insignia are not set by the Licensing and Appeals Committee.
- 1.2.6 The costs shown are the current manufacturer's costs and are subject to change anytime during the year, without reference to the Licensing and Appeals Committee.

### **Other licensing & registration fees**

- 1.2.7 A review has also been undertaken of the fees charged for a number of miscellaneous licences/ consents, including street trading and acupuncture/ tattooing etc. The proposed fees for 2020/21 are also contained in the table at **Annex 1**.

### **1.3 Legal Implications**

1.3.1 As set out above.

### **1.4 Financial and Value for Money Considerations**

1.4.1 As set out above.

### **1.5 Risk Assessment**

1.5.1 The recommended fee levels have been calculated in order to ensure that the service remains self-financing, whilst at the same time not making a profit.

### **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **1.7 Recommendations**

1.7.1 It is RECOMMENDED that the proposed scale of fees for licences, consents and registrations set out in Annex 1 of this report be adopted with effect from the 1 April 2020.

Background papers:

Nil

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