

Licensing Fees

Executive Portfolio Holder: Peter Gubbins
Assistant Director: Laurence Willis, Environment
Lead Officer: Nigel J Marston, Licensing Manager
Contact Details: nigel.marston @southsomerset.gov.uk or (01935) 462150

Purpose of the Report

To inform the Licensing Committee of a project to look at licensing fees in order to ensure that the Council's costs in providing the Licensing Service are being recovered in full, wherever the relevant legislation permits.

Recommendations

- (1) Licensing Committee note the report;
- (2) The Licensing Manager is to provide regular update reports to Licensing Committee on the project.

Background

Licensing fees are currently the subject of much debate and litigation. It is therefore vital that the Council have a robust method for the determination of licensing fees. This document sets out a suggested method of construction for fees which will achieve this aim.

Introduction

The Licensing Service offers advice, processes applications, monitors compliance and undertakes enforcement action across a number of different regimes;

- Animal Welfare (animal boarding, dog breeding, dangerous wild animals, pet shops and riding establishments)
- Charitable Collections (both street & house to house collections)
- Gambling Act 2005
- Licensing Act 2003
- Scrap Metal Dealers Act 2013
- Sex Establishments (shops, cinemas and sexual entertainment venues)
- Cosmetic Piercing
- Acupuncture
- Tattooing
- Street Parties
- Street Trading
- Taxis (vehicles, drivers & operators)

For most of these regimes the Council's costs are recovered through fees paid by the applicant/licence holder rather than relying on subsidy by local tax payers.

Aim

This guidance aims to provide transparency in the method of fee construction employed by the Council and to inform applicants and licence holders of the principles and processes that

have been considered so as to provide assurance that fees charged by the Council are fair, reasonable and legally robust.

Power to levy a fee

Across the licensing regimes the power to levy a fee is given to the Council by the relevant legislation. With the exception of the Licensing and Gambling Acts the Council has discretion as to the maximum level of fee it may charge but in all cases fees must be reasonable and proportionate to the cost of the processes associated with a licensing scheme. Under no circumstances can the Council use fees to make a profit or act as an economic deterrent to deter certain business types from operating within its area.

In its interpretation of the relevant legislation the Council has had regard to the Provision of Services Regulations 2009 (PSR 2009) and established case law such as R(Hemming and others) v Westminster Council.

Where locally set fees are not covered by the PSR 2009 (e.g. Taxi licensing) the principles of the regulations have still been applied to the fee construction.

Method of Fee Construction

The Council intend to utilise a rational system of apportionment of costs to calculate the fee level for each individual type of application received and authorisation issued. This system of fee calculation is to be kept under constant review and amended whenever changes in legislation, procedures or processes occur.

The fee construction system contains a combination of four elements

- (i) Application Processing,
- (ii) Consumables,
- (iii) Administration,
- (iv) Monitoring Compliance.

Each element is split down into a series of activities (set out below) against which a time allocation is given and the appropriate proportion of an hourly rate (constructed from salary costs and non-salary on costs for all officers involved in the process) is then applied and totalled to give an overall cost.

Taking each of the four elements of the fee construction method in turn an indication of the range of activities that make up each of them is set out below

(i) Application Processing

Broadly this element of the fee construction is the time taken to process an application from initial enquiry to issue of the decision.

It includes the time taken to complete the administration tasks of receiving correspondence, updating the records database with application details and officer actions, processing of payments, production and dispatch of documents including the notice of the final determination of the application.

The time allocated to the consideration (including any inspections and/or consultations/negotiations that may be required) and determination of the application by one of the officers is also reflected in the total cost.

At present no additional cost is allocated to any application that requires determination by a Committee.

This cost element is included within the fee every time there is the physical submission of an application.

(ii) Consumables

The cost allocated to this element of the fee represents any specialist materials or equipment that may be required such as the identification plates for Hackney Carriage & Private Hire Vehicles, specialist embossed security paper etc.

Not all fees carry a consumables cost as they may not require any specialist materials and all normal stationary items are already included within the on costs described earlier.

As with (i) above this cost element makes up part of the fee every time an application is submitted.

(iii) Administration

This element represents the time and costs allocated year on year to maintenance of the regime rather than those activities specific to the processing of an application.

It is made up of allocations of time and costs for generic activities as well as the more detailed provision of advice & guidance to and the processing of complaints from, service users and the public/partner agencies.

Also included within this element is the time allocated to the review and maintenance of Council Policies and Officer Guidance (including relevant training for Officers and Members). Regime wide administration tasks such as fee calculation, website maintenance, servicing regime specific forums and quality control measures are also taken into account.

Where an authorisation is issued for a period in excess of one year the annual administration element will be included with the fee levied.

(iv) Monitoring Compliance

This element comprises of the activities allocated to the monitoring of compliance with any authorisation issued. It is levied against any valid licence on an annual basis.

It includes dealing with complaints, pro-active monitoring (including inspections) and joint operations with partner agencies.

In accordance with case law and the Provision of Services Regulations no fee is levied in respect of enforcement action against unauthorised activities as the Council considers that the costs of defending appeals in the magistrate's court or via judicial review can be recovered through the courts.

With all of the above elements continual training of officers and reviews of processes are undertaken to ensure that the necessary procedures are completed in as quick a time as possible without reducing the professionalism and legality of the service.

Discounts

The fees levied by the Council have been calculated on the basis of full recovery of costs allocated directly to the service and it does not propose to offer any discounts in respect of any of the fees levied. An exception exists with those fee levied under the Gambling Act where the Council charges eighty five percent (85%) of the maximum fee permitted, as the original fee levels set by government included an element for enforcement against unlicensed operators and the Provision of Services Regulations 2009 removed the ability to charge for such activities.

Review of fee levels

The Council will seek to review in detail all fees and charges annually to ensure that they remain reasonable and proportionate. All proposed fee levels are scrutinised by Members through the democratic process before adoption.

Over or Under Recovery

In all cases where the Council has discretion over fee levels the Council seeks to set fees to achieve full cost recovery. Should an over or under recovery be identified the Council will redress the imbalance through future fee setting. Timescales for introducing alterations to fee levels in such circumstances will be set, where possible to minimise impact upon businesses and or local taxpayers.

Legal & Financial Implications

To ensure costs are allocated accurately and that all legal implications have been considered the fee construction method and calculator will be designed in consultation with the Councils legal and financial teams and both the internal and external auditors.

Implications for Corporate Priorities

This proposal will have an effect on theme 5 – It will enable the Council to continue to deliver well managed cost effective services valued by our customers.

Carbon Emissions & Climate Change Implications

None

Equality and Diversity Implications

None

Background Papers: Provision of Services Regulations 2009 (PSR 2009)
R(Hemming and others) v Westminster Council.
