

Report of the Licensing Task and Finish Group

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1. Purpose of the Report

To present to District Executive the findings of the Scrutiny Task and Finish Group established to investigate various aspects of South Somerset District Council's Licensing Service.

2. Forward Plan

This report appeared on the District Executive Forward Plan with an anticipated Committee date of 3rd December 2015.

3. Public Interest

Scrutiny Task and Finish Groups are a way of allowing elected members of South Somerset District Council to consider policy matters in depth, gathering information and evidence, before making recommendations to District Executive. This report sets out the work carried out by such a group of members who looked at two aspects of the Council's Licensing function. Firstly, adopting a principle of total cost recovery where possible within the service and secondly, reviewing the current delegation arrangements with Town Councils.

4. Recommendations

That District Executive:

- (1) Recommend to Council that 6 months' notice be given to both Yeovil and Wincanton Town Councils, in accordance with the Delegation Agreement, to terminate all delegated Licensing functions. Upon the expiry of the 6 month period, the relevant Licensing functions will be carried out by the Licensing team of SSDC.
- (2) Note the findings of the Task and Finish Group in relation to the over or under recovery of fees and charges within the Licensing Service and in particular endorse the principle of total cost recovery where possible.
- (3) Recommend to Council that members lobby via the LGA for Government to reassess all Statutory fees in relation to Licensing Act 2003 and Gambling Act 2005.
- (4) Note that further work will be carried out by the Licensing Manager and the Financial Services Team to present an amended set of fees and charges to be recommended via the budget setting process, prior to inclusion in the budget proposals for 2016/17.

5. Background

A Scrutiny Task and Finish Group was established by South Somerset Council's Scrutiny Committee and consisted of the following elect Members:

Councillors Martin Wale (Chair),
Jason Baker
Mike Beech
Gye Dibben

Val Keitch
Tony Lock
David Norris

The Task and Finish Group was commissioned to look into 2 specific elements of the authority's Licensing Service, namely:

- the potential of introducing a principle of total cost recovery where possible and to propose amendments to the current fee structure to reflect this ; and
- reviewing the current delegation arrangements that exist between South Somerset District Council (SSDC), Wincanton Town Council (WTC) and Yeovil Town Council (YTC).

This report outlines the recommendations of the Task and Finish Group and the evidence members considered in reaching their recommendations.

In the current financial climate for local authorities, all avenues to maximise income in order to maintain service standards must be explored – reviewing Licensing fees and charges with a view to establishing total cost recovery is an important part of this ongoing work.

6. Review methodology

As with all Scrutiny Task and Finish work, members first agreed their Terms of Reference, in this case, that they would:

- conduct the review as commissioned by the Scrutiny Committee;
- submit regular update reports to the Scrutiny Committee
- Conduct detailed research and analysis in order to make well-evidenced recommendations to the Executive, Licensing Committee and Council as appropriate;
- To engage members, officers, members of the community and external witnesses in the review as appropriate.

In addition to these more general Terms of Reference, members agreed the following specific review Aims and Objectives:

- To fully understand the proposals of the Licensing Service operating on a total cost recovery basis, to include the legislative framework and ethical implications.
- If the principle of total cost recovery is accepted, then this Task and Finish Group will aim to make evidence based recommendations to the relevant decision making bodies, outlining a schedule of fees for the Licensing Service that allows for total cost recovery, where possible. Members must ensure that the authority has robust evidence to show the exact cost and the correlation between service costs and the fees charged.
- To better understand the national picture in relation to setting fees for Licensing Services, such as government guidance and legislation, and to address any issues that may improve the experience of local authorities through bodies such as the LGA.

- To look at other areas of potential income generation such as introducing charges for pre-application advice and providing a 'check and send' service.
- The review will also look to address the recommendations of an Internal Audit report of the Licensing Service which indicated that the practice of delegating some licensing functions to Yeovil and Wincanton Town Councils should be reviewed. The review of this particular element should look to assess if this practice meets the needs and expectations of South Somerset District Council as well as those of our customers

Members were clear that this review did NOT include looking at the setting of Taxi Fares – this is an entirely separate issue.

Members of the Task and Finish Group decided to conduct the review in two phases – the first of which would consider the issue of Licensing fees and charges, the second would investigate the issue of licensing functions delegated to Town Councils.

Phase One: Establishing a Principle of total cost recovery where possible within the Licensing Service.

7. Service Context

The cost to the Council of the Licensing Service last financial year is £89.5k and about 21% of costs within the service are not covered by fees – the ambition of the Service Manager is to reduce this to between 5 and 10% and how to achieve this is one of the main objectives of this Task and Finish Group.

Some fees are statutory and were set in 2005 – these fees don't cover the costs of administering the service but at present, they can't be changed – Local Authorities have been consulted on these fee levels, but there was a poor response nationally to the consultation and the Government took this to mean that there was no call to amend the statutory fee levels. The Local Government Association (LGA) are currently doing some work in this area and a recommendation of this Task and Finish review is that their findings are reported to the LGA to support the ongoing lobbying of central government for a more realistic fee structure.

Where fees are not set by a statutory framework, there is some local discretion. However, fees must only cover costs and there must be no profit or surplus generated. Each regime needs clear separation.

Members were reminded of the need to be aware of the possibility of legal challenge to any proposed changes to Licensing fees and charges – any fees generated must accurately reflect the actual cost of delivering the service, fees should not be set to generate a surplus but if a surplus is generated, it must be used for service enhancement and not used to cross-subsidise other services. Consistent generation of a surplus should be reflected in reduced fees and charges to the customer.

To allow members to make sound evidenced based proposals for an amended fee structure, the Licensing Manager, working with finance officers have produced a spreadsheet for every

licence to show the time taken to process, this data has been collated along with the number of licences processed. This then shows an hourly rate that can be reflected in the schedule of fees and charges. The collation of this data formed a vital part of the evidence considered by the Task and Finish Group and will enable the authority to defend any potential challenges.

8. Total Cost Recovery

Members of the Task and Finish Group were supported by the Licensing Manager in this element of their work. The first meeting of the process set out the statutory context within which Licensing Fees and Charges are set.

At the first Task and Finish Group meeting, members established their support for a more rigorous approach to operating Total Cost Recovery where possible. Based on this, officers have developed a robust method for the setting of fees.

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. As already mentioned elsewhere in this report, 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.

9. Method of fee construction

A rational system of apportionment of costs to calculate the fee level for each individual type of application received and authorisation issued is proposed by the Task and Finish Group. This system of fee calculation is to be kept under constant review and amended whenever changes in procedures or processes occur.

The fee construction system contains a combination of four elements:

- Application Processing,
- Consumables,
- Administration,
- Monitoring Compliance.

10. 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.

11. 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.

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 Application processing above this cost element makes up part of the fee every time an application is submitted

12. 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.

13. 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

14. Review of fee levels

The Task and Finish Group recommend that the Licensing Manager will review in detail 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.

15. 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.

16. SSDC Statutory Fees.

Type of Application	Current Statutory Fee	Cost to SSDC	Shortfall per application
Premise Licence Grant	190.00	497.25	-307.25
Premise Licence Variation	190.00	425.04	-235.04
Minor Variation	89.00	200.11	-111.11
Replacement Licence	10.50	25.41	-14.91
Change of Name/Address	10.50	29.74	-19.24
Vary DPS	23.00	84.50	-61.50
Transfer	23.00	84.50	-61.50
Personal Licence Grant	37.00	58.28	-21.28
Change of Address	10.50	24.09	-13.59
Temporary Event Notice	21.00	66.03	-45.03
Gambling Grant	1275.00	563.34	711.66
Gambling Variation	1275.00	301.20	973.80
Gambling Transfer	1020.00	61.94	958.06
Gambling Reinstatement	1020.00	61.94	958.06
Machine Notification	50.00	119.73	-69.73
Gambling Permit	150.00	262.14	-112.14

Type of Application	Current Statutory Fee	Cost to SSDC	Shortfall per application
Society Lottery	40.00	119.73	-79.73

17. SSDC Discretionary Fees

Type of Application	Current Fee	Cost to SSDC	Shortfall per application
Taxi Driver 1 Year	58.00	160.00	-102.00
Taxi Driver 3 Year	80.00	258.00	-178.00
HC Vehicle	225.00	245.00	-25.00
Private Hire Vehicle	225.00	220.00	5.00
PH Operator (3 yr) (now 5yr)	85.00	820.00	-735.00
Animal Boarding	110.00	170.00	-60.00
Home Boarding	75.00	170.00	-95.00
Pet Shops	110.00	200.00	-90.00
Dangerous Wild Animals	110.00	245.00	-135.00
Street Trading Casual	13.00	57.00	-44.00
Street Trading Permanent	1600.00	1357.00	243.00
Road Closure	55.00	211.92	-156.92
Scrap Metal Dealer	800.00	700.00	100.00
Scrap Metal Collector	660.00	660.00	0.00
Skin Piercing - Premise	95.00	120.00	-25.00
Skin Piercing - Personal	95.00	120.00	-25.00

18. Conclusions on current fee levels

The Statutory Fees (those set by Government) are not adequate to cover the Council's costs in dealing with those applications and members should be recommended to lobby, through the LGA ,to request a reassessment of all Statutory Fees in relation to Licensing.

Phase Two – Licensing Functions Delegated to Town Councils.

19. Delegated Arrangements

The existing delegation arrangements with Wincanton and Yeovil Town Councils were last reviewed in 2005. Currently Wincanton and Yeovil Town Councils have delegated Licensing Arrangements – Wincanton have a delegated Taxi Licensing function whilst Yeovil Town Council have delegated authority for Taxis, Street Collections, house to house collections and Street Trading.

In April 2014 an Internal Audit report was produced by the South West Audit Partnership into Town Council Licensing – that review recommended that the agreement of delegation be reviewed to ensure that it is fit for purpose and cost effective to still delegate licensing functions. The Task and Finish Group used this as the basis for their work.

South Somerset District Council is the only authority in the country to delegate Licensing functions to Town Councils. When these arrangements were introduced, the Local Government landscape was very different to today and whilst members remain committed to the principles of empowered local communities, they are ever mindful of the need to deliver the best value for money to all residents.

Members of the Task and Finish Group wanted to hear the views of the two Town Councils before making any recommendations and so meetings were arranged with the Clerks of both authorities. Each Clerk was asked to provide the same information and full notes of the meetings can be found at Appendix 2 to this report. Members of the Task and Finish Group were very grateful to the Clerks for sparing the time to support this review.

Based on the information gathered members of the Task and Finish Group made the following conclusions:

20. Yeovil Town Council

Last financial year, their income figure for Taxi Licensing was £5,902.50 with a stated expenditure of £1,251. Street Trading income was £14,500. The interim Town Clerk was unable to provide further detail on expenditure for Street Trading.

Staff time administering the Licensing function at was estimated to be 500 hours p.a. – 50-60% of time. SSDC's Licensing Manager's view is that a figure of 10 hours a week for the number of licenses processed seemed a little high.

The Yeovil Town Council Clerk expressed no concerns about ceasing the delegated Taxi Licensing arrangements but expressed a preference to retain the Street Trading function citing potential impact on the budget. Members of the Task and Finish Group noted this, but were mindful of the fact that there should be no budgetary impact in ceasing the delegation arrangements as there can be no surplus generated through Licensing or cross subsidising.

21. Wincanton Town Council

Currently there are 34 drivers licensed by Wincanton Town Council (2 of which will not be renewing in 2016), there are 20 Hackney Carriage vehicles and 10 Private Hire vehicles. For the period April 2014 – March 2015 income was stated as being £10,167.50 with an expenditure of £1,977. The Deputy Town Clerk, who has responsibility for Licensing, spends on average 4.38 hours per week on Licensing matters – 23% of her time.

22. Issues

Members were informed that there would be no staffing implications to either of the Town Councils should the delegated Licensing arrangements cease – this was confirmed by both Clerks when asked.

Wincanton Town Council expressed a strong preference for retaining the current delegation arrangements, citing high levels of customer satisfaction and the significant distance taxi drivers would be expected to travel from Wincanton to Yeovil should the arrangements end. The Task and Finish group noted that SSDC's Area East office at Churchfields in Wincanton is open on weekdays from 9.00 a.m. to 1.00 p.m. Informal discussions with the largest private hire firm based in Wincanton indicated no serious concerns about dealing directly with SSDC via the Churchfields office or in Yeovil – all Taxi inspections are carried out in Yeovil anyway.

Members of the Task and Finish Group felt very strongly that any concerns about potential loss of income could not be taken into consideration as Licensing income can only be spent on administering the licensing function.

Members of the Task and Finish Group also considered the implications for any amendments to the delegation arrangements on South Somerset District Council's own Licensing Function, such considerations focused mainly on enforcement.

Fees taken by both Yeovil Town Council and Wincanton Town Council include an element for enforcement and compliance. YTC undertake some enforcement, however they no longer have a delegated enforcement officer, so SSDC pick up enforcement work on their behalf. There is currently no recharge made for this provision. WTC undertake no enforcement, all WTC enforcement is picked up by SSDC. No recharge is made for this provision.

If delegation arrangements ceased, the additional income returned to SSDC would be estimated to be approx. £27,000 which could be used to part fund a much needed additional Enforcement Officer post at a cost of approx. £35,000 (to include on-costs)

23. Conclusions regarding delegated arrangements

Members appreciated the points raised by both Town Councils relating to retaining some or all elements of the current delegation arrangements, especially around providing services within local communities. However, based on the financial evidence considered and the indication given by customers that there would be limited, if any, change to customer satisfaction, members of the Task and Finish Group agreed to recommend **that ALL delegated licensing functions should cease, with both Town Councils being given the required notice period of 6 months as soon as a final decision has been taken by full Council.**

Members of the Task and Finish Group felt that this was the most appropriate decision for the future provision of a consistent and compliant licensing service for all residents of South Somerset.

Members of the Task and Finish Group wish to thank Nigel Marston for the support, advice and guidance he has provided members with during this review.

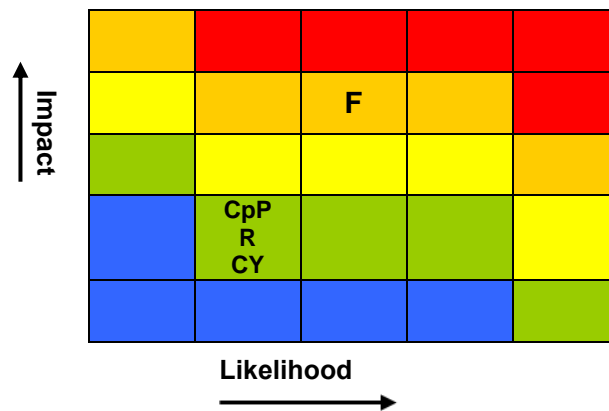
24. Financial Implications

The proposed amendments to the fees and charges applied within the Licensing Service will be included in the budget papers for 2016/17 where all financial implications will be fully explored. The Fees and Charges Register will need to be amended (if approved) to incorporate the appropriate Licence charges.

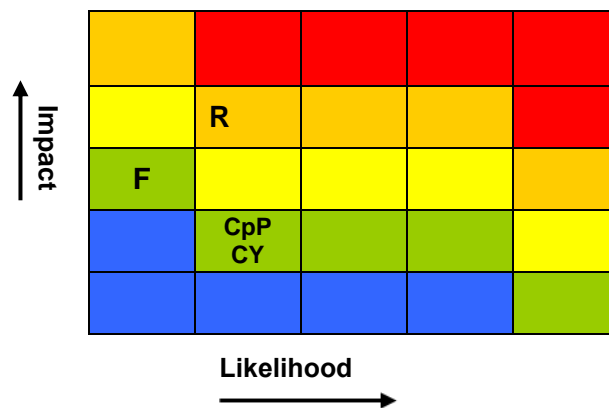
In relation to the matter of ceasing the current delegation arrangements with Wincanton and Yeovil Town Councils, it is estimated this will generate approximately £27,000 of additional income for SSDC, if realised, this will be contribute to additional enforcement capacity within the team. Any proposals for additional staff will be considered through the appropriate channels, with due regard to the principles of avoiding cross subsidisation or achieving a surplus.

25. Risk Matrix

Risk Profile before officer recommendations



Risk Profile after officer recommendations



Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

26. Council Plan Implications

Protect community health with regular safety inspections of food outlets, licensed premises, taxis and other commercial businesses.

27. Carbon Emissions and Climate Change Implications

None

28. Equality and Diversity Implications

None – Assessment completed

29. Privacy Impact Assessment

None required

30. Background Papers

Notes of meetings with Yeovil and Wincanton Town Clerks (attached).
