

Committee: Joint Regulatory Service Partnership Committee

Date: 15 October 2019

Wards: All

Subject: Discretionary Fees and Charges

Lead officer: Chris Lee, Director for Environment & Regeneration

Lead member: Councillor Caroline Cooper-Marbiah, Cabinet Member for Commerce, Leisure and Culture

Contact officer: Cathryn James, Interim Assistant Director, Public Protection
Nick Steevens, Head of the Regulatory Services Partnership

Recommendations:

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1. Members note and comment on the framework for the setting of discretionary fees within the Regulatory Services Partnership and the timetable for a fundamental review of the fee structure.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report seeks to outline the framework for the setting of discretionary fees and charges within the Regulatory Services Partnership.
- 1.2. The Regulatory Services Partnership (RSP) delivers Licensing functions on behalf of Merton, Richmond and Wandsworth Councils. The partnership is responsible for a broad array of licences and permits ranging from riding establishments to scrap metal dealers. The purpose of these licensing regimes is specific to the regulations that govern them, but in general, licensing regimes exist to protect the public, protect and support businesses practices and ensure fair trading; and ensure the welfare of animals.
- 1.3. The fees applicable for the issue of licences and permits by the RSP fall under three fee types which can be categorised as statutory, capped or discretionary. Discretionary licences and permits are set with regard to the relevant case law and guidance.
- 1.4. With the recent changes to the RSP which have brought the services under the same roof a review of the fee structure is required to ensure that the issue of discretionary licences and permits is consistent across the three authorities.

2 DETAILS

- 2.1. The RSP is responsible for the issue and oversight of approximately 6,000 licences and permits across the Boroughs of Merton, Richmond Upon Thames and Wandsworth. A breakdown of these licences by authority and type can be found in Appendix 1.
- 2.2. The fee applicable for each licence or permit can be classified as either statutory, capped or discretionary. The types of licence issued by the RSP within each category is shown below.

Statutory:

- Licensing of pubs, clubs, restaurants and bars for the sale of alcohol, the provision of regulated entertainment and the provision of late night

refreshment, including transfers, change of DPS, change of premises licence holders etc..

- Issuing of Temporary Event Notices

Capped:

- Licensing of premises that provide gambling e.g. betting shops, bingo halls and amusement with prizes machines, where the maximum fees levels are set by Regulations.

Discretionary:

- Licensing of animal welfare activities e.g. pet shops, dog breeding and boarding establishments, catteries, horse riding establishments, dangerous wild animals
- Licensing of street trading including tables and chairs on the highway
- Licensing of special treatments e.g. tattooing, skin piercing, beauty therapies, sauna and massage establishments
- Licensing of scrap metal dealers
- Licensing of Houses in Multiple Occupation
- Licensing of Explosives including fireworks
- Licensing of Auction Houses
- Licensing of Hypnotism

3 DISCRETIONARY FEE STRUCTURES

- 3.1 For discretionary licensing, the fee structure and cost of issuing the licence or permit is set at a local level, typically by a Licensing or other Committee in accordance with each Council's Constitution. Whilst this ensures that there is local control and oversight of fee structures and fee setting, this also results in significant differences in the way in which these fee structures are constructed. Appendix 2 provides a comparison of the current differences between the discretionary fee structures of the three partner authorities within the RSP.
- 3.2 Since the RSP has moved to a single location the need to review the fee structures has become increasingly important in order to provide clarity for applicants and officers within the RSP who now administer the same licenses across the three boroughs but with notably different categorisation.

4 DISCRETIONARY FEE SETTING

- 4.1 When setting licence fees regard must be had to the European Union (EU) Services Directive. In 2015 the Supreme Court (Hemmings v Westminster) clarified the matters that a local authority can take into account when setting a locally determined fee on the basis of the Services Directive. The judgment makes it clear that fees must be proportionate, but can be set at a level enabling the authorities to recover from licenced operators the full costs of managing and enforcing the licensing scheme, including the costs of investigating and prosecuting those operating without the necessary licence.

4.2 Guidance from the Local Government Association also assists Councils in establishing discretionary fees which can include costs associated with:

- a) Initial visit(s)
- b) Third party costs (vets fees)
- c) Liaison with interested parties (stakeholders)
- d) Management costs
- e) Local democracy costs
- f) On costs
- g) Development, determination and production of licensing policies
- h) Web material
- i) Advice & Guidance
- j) Setting & reviewing fees

4.3 When calculating the ongoing enforcement element the following can be included:

- a) The cost of risk based visits to premises in between licensing inspections and responding to complaints. These figures can be based on average officer time, travel and on costs
- b) Expenditure associated with arranging committee meetings to respond to problems
- c) Management of licensing registers and national reporting
- d) The cost of enforcing against unlicensed businesses excluding any court costs as may be recovered through the courts

4.4 In accordance with the Supreme Court judgement, any fee or charge for a discretionary licence should be split into two parts, whereby the applicant must pay:

- a) An initial payment on making the application, to cover the costs of the application process and,
- b) A second payment upon the application being successful, to cover the costs of the running and enforcement of the licensing regime

The applicant will only receive the licence or permit once the licensing authority receives the second payment.

5 REVIEW OF DISCRETIONARY FEE STRUCTURES

5.1. Appendix 2 indicates that the fee structures between the three authorities differ notably. As cited above, the need for a single fee structure across the RSP is desirable for both officers and customers.

5.2. In order to develop a single fee structure the following actions are due to commence within the RSP:

- a) Starting Autumn 2019, project teams will be set up to review the current fee structures
- b) The project teams will propose a single fee structure taking into account the current arrangements and best practice from other authorities

- c) The proposed single fee structures will be reviewed by the RSP Board
- d) Subject to agreement by the RSP Board the fee structures will be put to the relevant Committees for each authority for agreement
- e) The changes to the fee structures will take effect from 2021/22

6 CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1. As indicated in 5.2, the proposed single fee structure will be placed onto the forward plan for each authority for consideration at the relevant Committees.

7 TIMETABLE

- 7.1. It is proposed to bring a revised fee structure into effect ready for the 2021/22 financial year.

8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1. There are no resource implications resulting from this report

9 LEGAL AND STATUTORY IMPLICATIONS

- 9.1. The Legal Implications are addressed in the body of the Report. The Local Government Association Guidance, "Open for business LGA guidance on locally set licence fees" (2017) helpfully addresses the legal position on such fees.

10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1. None

11 CRIME AND DISORDER IMPLICATIONS

- 11.1. None

12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 12.1. None

13 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Licences by authority and type
- Appendix 2 – Fee Structure Comparison

14 BACKGROUND PAPERS

Open for business: LGA guidance on locally set licence fees:

<https://local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>