

**BRIDGEND COUNTY BOROUGH COUNCIL
LICENSING COMMITTEE**

19 MARCH 2015

**REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND
REGULATORY SERVICES**

**1.0 LICENSING FUNCTIONS: DISCRETIONARY LICENCE FEES AND
CHARGES 2015/2016**

1.1 Purpose of report

1.2 To determine licensing fees and charges for 2015/2016.

**2.0 Connection to Corporate Improvement Objectives/Other Corporate
Priorities**

2.1 The duties of the Council as a licensing authority are statutory in nature but many of the licensing objectives support the principal aims of the Corporate Improvement Plan and the Council's corporate priorities.

3.0 Background

3.1 The Licensing Committee has the power to determine fees charged in respect of those licensing functions within the purview of the Licensing Committee and to hear and determine objections relating to proposed fee revisions.

3.2 Members are requested to note however, that fees for many of the licensing functions are currently set by statute and the Council currently has no discretion to vary, for example, licence fees for Licensing Act 2003 activities. This report deals with licence fees which the local authority is able to set locally, including fees for taxi licensing and gambling premises.

4.0 Current Situation/Proposal

4.1 The Local Government Association (LGA) has issued guidance to local authorities in relation to locally set fees. The guidance outlines the full breadth of issues that should be taken into account when setting local licence fees. These include the European Services Directive which applies to all processes and administrative procedures that need to be followed when running a service. The principles include non-discrimination, transparency, accessibility to services and information, and proportionality.

4.2 The LGA guidance highlights one legal challenge in respect of fee setting under the Services Directive. In the Court of Appeal ruling on the ongoing Hemming v Westminster Case, key principles have been established which govern the fee setting process.

- A Council cannot include the cost of enforcement against unlicensed operators when setting a licence fee.
- The review process should ensure that Councils take steps to avoid either a surplus or deficit in future years. The Hemming v Westminster case stated that any surplus must be used to reduce the fees charged in the following year. The LGA guidance also highlighted that deficits can similarly be recovered (R v Westminster City Council ex parte Hutton (1985)) subject to taking steps to ensure that recovery does not overburden businesses.

4.3 The LGA guidance sets out the areas of cost that can be recovered in the licence fee and accordingly the cost of replacement licences / photocard badges and for the transfer of vehicle ownership should be incorporated into taxi licence fees rather than through the levying of separate charges.

4.4 In addition to these broader principles, a recent judicial review against a Welsh local authority has made specific rulings relating to the consideration of surpluses and deficits generated from fees levied in previous years in respect of taxi licensing. In granting the judicial review in July 2014, the Honorable Mr Justice Hickinbottom ruled that in that authority:-

- The level of fees charged in respect of the three strands of taxi licensing (i.e., the licensing of taxi drivers, taxi vehicles and private hire operators), failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 2009;
- The level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have accrued, both between each regime and in respect of each licence within those regimes.

Mr Justice Hickinbottom went on to declare that:-

- When determining hackney carriage and private hire licence fees under section 53 and 70 of the Local Government (Miscellaneous Provisions) Act, 1976, a local authority must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees.
- A local authority must keep separate accounts for and ensure when determining hackney carriage and private hire licence fees that any surplus or deficit accrued under and between each of those regimes are only accounted for within the regime under which they have accrued and a surplus from one licensing regime shall not be used to subsidise a deficit in another.

- 4.5 A Statement of Accounts has been produced for the Bridgend County Borough Council Licensing service in its entirety for the period 2009/2010 to 2013-14. This shows a deficit of income on the service each year, as follows:

	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>
NET SERVICE EXPENDITURE	£93,760	£71,686	£96,825	£70,567	£28,928

- 4.6 Work is well underway to embed within the authority the good practice principles set out above. Changes to staff time recording systems and the creation of separate financial codes for each regime mean that over the course of the 2015-16 financial year, the exact cost of issuing the various types of licence can be determined and the origin of the above deficits pinpointed. Recommendations can then be made to Licensing Committee in subsequent years to ensure that these costs are fully recovered.
- 4.7 In order to allow this analysis to inform future fee setting in light of the above judgments, it is proposed that licence fees are held at the current 2013-14 levels over the course of 2015-16, and remain unchanged until they are set for the 2016-17 financial year. These fees are set out in the annex to this report.

5.0 Effect upon Policy Framework & Procedure Rules.

- 5.1 The Committee's powers to set fees are outlined within the Council's Constitution.

6.0 Equality Impact Assessment

- 6.1 A high level equality impact assessment (EIA) was undertaken on the Council's budget proposals and updated MTFs and reported to Council on 25 February 2015.

7.0 Financial Implications

- 7.1 The recent Report to Council on the Medium Term Financial Strategy 2015-16 to 2018-19 (25th February 2015) sets out how income from fees and charges will be increased by CPI (at the prevailing rate currently 0.5%) plus 1%, subject to rounding, or in line with statutory or service requirements.
- 7.2 Applying a 1.5% increase to the discretionary licensing fees set out in Annex 1 would have yielded an additional income during the 2015-16 financial year in the order of an additional **£3,240**. (*This is based on the 2013/2014 discretionary licensing base income achieved of £216,051 plus 1.5% = £219,291*)

This figure is illustrative only as it is based on the assumption that the number of licences issued remain exactly the same as in the previous year. It should also be noted that a new licensing regime was implemented in 2013-2014 resulting in an additional source of income.

7.3 This potential increase in licensing income is however far outweighed by the potential risk to the authority of future challenge if it does not fully embrace best practice recommendations and recent case law in determining its fees.

8.0 Recommendation

8.1 The Licensing Committee is recommended to approve the proposals in respect of discretionary licence fees for 2015-16 as follows:-

8.2 That in line with service requirements, there is no increase in licence fees for the 2015-16 financial year.

8.3 That the work currently ongoing to develop a framework for the precise costing of licence fees is used for fee determination in future years, taking into account any surpluses or deficits prevailing at that time.

8.4 That the administrative costs of replacement licences / photocard badges and for the transfer of vehicle ownership which have been charged separately are incorporated into the licence application fee with effect from 2015-2016.

P A Jolley

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Date: 12 March 2015

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Background Documents:

Report to Council on the Council's Medium Term Financial Strategy 2015-16 to 2018-19 (19th February 2015)

Open for Business: LGA guidance on locally set fees available from <http://www.local.gov.uk/documents>