

# LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 15

Brighton & Hove City  
Council

<b>Subject:</b>	<b>Licence fees 2013/2014</b>		
<b>Date of Meeting:</b>	<b>22 November 2012</b>		
<b>Report of:</b>	<b>Head of Planning and Public Protection</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Tim Nichols</b>	<b>Tel:</b> 292163
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<b>Ward(s) affected:</b>	<b>All</b>		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the proposed licence fees and charges for 2013/14 relating to Street Trading, Sex Establishments and Sex Entertainment Licences, Gambling premises, taxi licensing and other licensing functions.

#### 2. RECOMMENDATIONS:

- 2.1 That the committee approves the following variation to licence fees:
- Hackney carriage driver fee + 10%, hackney carriage vehicle fee -7%, private hire driver fee +10%, private hire vehicle fee – 7%.
  - Sex entertainment venues and sex establishments are amalgamated and the fee for both is set at £6,500.
  - Street trading fees - frozen
  - All Gambling Act 2005 fees are increased by £40 then a 10% increase is applied annually in 2014/15 and 2015/16 to remove the shortfall (except where already set at the maximum e.g. Adult Gaming Centres/Family Entertainment Centres)

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 In order to ensure that council tax payers are not subsidising work concerning licensing administration, income is raised by licence fees which aim to cover the cost of administration of each regime within constraints of regulation. Licence fees should not be used to raise revenue.
- 3.2 **Hackney Carriage & Private Hire**
- 3.3 The Council must be able to show that it calculates hackney carriage and private hire licensing fees in accordance with the specific requirements of the Local Government (Miscellaneous Provisions) Act 1976. This requires that such fees have to be reasonable to recover the cost of issue and administration. They cannot be used to raise revenue. The Act allows the following costs to be recovered in the fees:

- The reasonable cost of carrying out vehicle inspection to decide if a licence should be granted
- The reasonable costs of providing hackney carriage stands
- Any reasonable administrative or other costs in connection with vehicle inspection and providing hackney carriage stands and
- Any reasonable administrative or other costs in the control and supervision of hackney carriage and private hire vehicles.

The Council aims to be transparent in recording or presenting its method for calculating licence fees. This report aims to do that.

- 3.4 A trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results are set out in the table below.

Financial Year	Balance on Taxi License Fees £000*
2011/12 Actual	(8)
2012/13 Forecast	(2)
2013/14 Forecast	(3)
Total	(13)

- A positive figure represents a surplus

- 3.5 The initial cost projections for 2013/14 show that if none of the license fee levels are increased for 2013/14 a slight deficit will occur overall in Taxi Licensing. Forecasts show that the income due from driver licences for both Hackney Carriages and Private Hire Vehicles will not be sufficient to cover the costs of the service. However, a surplus is predicted from current Vehicle Licences for both Hackney Carriages and Private Hire Vehicles. It is therefore proposed to reduce the license fee for Hackney Carriage Vehicles and Private Hire Vehicles by 7%. In order to address the balance, it is proposed to increase the Hackney Carriage Driver Licence and the Private Hire Driver Licence by 10%. The costs of administering the service will continue to be reviewed, as the council is committed to keeping the costs as low as possible, thereby allowing fees to be set at the minimum level. Detailed Trading Accounts are attached in Appendix 2.

### **Sex establishments and Street trading**

- 3.6 R v. Manchester ex parte King - fees should be set at a level reasonably expected to cover costs. Surplus should be reinvested in service.

The Provision of Services Regulations 2009 is likely to have the effect that fees may need to accommodate “charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.” Recent case law, Hemming (and others) v Westminster City Council (2012), has held that this cannot include the cost of investigating and prosecuting persons, firms or companies who operate sex establishments within the Council’s area without a licence.

- 3.7 A trading position has been established, taking into account all expenditure that the Council has incurred in administering the service, including both direct and indirect costs. (Indirect costs for example would include an element of management time to oversee the activity, a legitimate expense in administering the licensing function). The results are set out in the table below.

Financial Year	Sex establishments and sex entertainment venues £000*
2011/12 Actual	(7)
2012/13 Forecast	28
2013/14 Forecast	14
Total	35

- A positive figure represents a surplus

The cost of providing the service exceeded income during 2011-12, and there was therefore a deficit on the Trading Account. The council is committed to keeping the cost of administering the service as low as possible, and the indications are that there will now be a surplus for 2012-13. It is therefore proposed to amalgamate the fees for sex establishments and sex entertainment venues, and to charge a fee of £6,500 for either. Detailed Trading Accounts are attached in Appendix 2.

- 3.8 Following the same principles as stated previously, a trading position has been established for Street Trading, taking into account all the council expenditure incurred in administering the service. This would also include an element of management time to oversee the activity. The results are set out in the table below.

Financial Year	Balance on Street Trading Fees £000*
2011/12 Actual	14
2012/13 Forecast	18
2013/14 Forecast	19
Total	51

- A positive figure represents a surplus

Fees should be set each year to recover the expected cost of administering the service. The initial cost projections for 2013/14 imply that there will be a surplus, and therefore it is recommended that licence fee levels are frozen, in order to try and bring the position back to breakeven over time. Detailed Trading Accounts are attached in Appendix 2.

### **Gambling Act 2005**

- 3.9 Gambling fees have remained static since the implementation of the Gambling Act. However, detailed accounts show that this account is trading at a loss and that fees should be increased by £40 where they are not already set at the maximum allowed.
- 3.10 A table showing the proposed fee increases can be seen at appendix 1-7.
- 3.11 Licensing (Income and Banking) was audited between August and October 2012. The internal auditors reported that Substantial Assurance is provided on the effectiveness of the internal controls over the Licensing Income and Banking

system. This opinion means that the effective controls are in place to manage the key risks to the system.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

4.1 Council's finance officer and legal services.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

5.1 License fees are set annually at a level that it is reasonably believed will cover the costs of providing the service, and in accordance with the legal principles involved. This is necessary in order to ensure that council tax payers are not subsidising work concerning licensing administration.

Finance Officer Consulted: Karen Brookshaw

Date 09/10/2012

##### Legal Implications:

5.2 Legal constraints on setting fees

Fees must be charged in accordance with the requirements of the legislation under which they are charged. Thus for instance the Licensing Act 2003 gives the Council no discretion as they are set centrally by the relevant government department. Other legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a whole raft of activities and includes street trading and sex establishments simply states that we may charge such fees as we consider reasonable.

The term 'Reasonable' however does not imply wide discretion but incorporates important legal principles and constraints. These were highlighted in the case of *R v Manchester City Council ex parte King* concerning street trading. This case held that the fees charged must be related to the costs incurred in providing the street trading service. They must not be used to raise revenue generally. This principle is key and applies to other licensing regimes such as sex establishments. This means the fees must be set at a level reasonably expected to cover the cost of providing the service.

This principle has been reinforced by the introduction of the European Services Directive which took effect from the end of 2009. It aims to ensure that licence applications and procedures are transparent and burdens on business kept to a minimum. The processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. The domestic legislation will require "any charges provided for by a competent authority which the applicant may incur under an authorisation scheme must be reasonable and proportionate to the cost of the authorisation procedures and formalities under the scheme and must not exceed those procedures and formalities". Any fee charged for establishing a service can only be based on cost recovery and cannot be set at an artificial high level to deter service sectors from an area. The

High Court held in the recent case of Hemming (and others) v Westminster City Council (2012) that when determining what is a reasonable fee for the grant or renewal of a licence to operate a sex establishment, the Council is not, as a consequence of the European Services Directive, entitled to take into account the cost of investigating and prosecuting persons firms or companies who operate sex establishments within the Council's area without a licence. The same principle would also apply to the cost of unlicensed street traders. The Council should schedule regular fee reviews.

Therefore the trading accounts must be carefully looked at in accordance with these principles. There is a risk of challenge by way of Judicial Review in cases where fees are set at an unreasonable or unlawful level..

Lawyer Consulted: Rebecca Sidell

Date: 03/10/12

Equalities Implications:

- 5.3 There are no direct equalities implications.

Sustainability Implications:

- 5.4 There are no direct sustainability implications.

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications.

Risk and Opportunity Management Implications:

- 5.6 None.

Public Health Implications:

- 5.7 None.

Corporate / Citywide Implications:

- 5.8 The city council's ability to raise income impacts on the level of Council Tax and service levels and therefore has citywide implications. A process for a clear, accountable, transparent process for setting fees is set out in appendix 3.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 Cash freeze would create budget deficit.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 Measure to recoup some costs.

**SUPPORTING DOCUMENTATION**

**Appendices:**

- 1-7 Trading Accounts.
8. List of fees and charges.

**Documents in Members' Rooms**

1. None.
2. None.

**Background Documents**

1. None.