

WEST DUNBARTONSHIRE COUNCIL

Report by Head of Legal, Democratic & Regulatory Services

Licensing Committee: 28 August 2013

Subject: Review of licence fees

1. Purpose

- 1.1** To inform the committee about the income and expenditure associated with various types of licensing functions, and to seek agreement on principles that should govern a review of the fees charged to applicants.

2. Recommendations

The committee is asked to agree that:

- 2.1** the Council should be seeking to achieve full cost recovery when setting licence fees,
- 2.2** officers are asked to produce a further report that sets out a revised fee structure that meets that requirement and is fair.

3. Background

- 3.1** The Clydebank Public Hire Association (CPHA) made representations to the Council's licensing team in 2012 about West Dunbartonshire Council's fee for a taxi/private hire car driver's licence being the highest in Scotland. The Section Head (Trading Standards & Licensing) had already committed to reviewing the licensing fee structure, and this review was brought forward in light of the CPHA's representations.

Licences within scope of the Services Directive

- 3.2** Many licences administered by the Council are subject to the European Services Directive 2006/123/EC ('the directive'). The directive allows service providers to move more freely within the EU by making it simpler for EU nationals to apply for licences in other EU states. The directive was implemented in the UK by the Provision of Services Regulations 2009 (the '2009 regulations').
- 3.3** Licences within scope of the directive include market operators, metal dealers, pet shops, and street traders for example. The 2009 regulations state that any charges 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*".

- 3.4** A question arises as to whether Councils can charge fees that, in addition to recovering the costs of processing the application, also recover the cost of enforcement. In May 2013, in the case of *R (Hemming and others) v Westminster Council*, the English Court of Appeal held that there is a need to *"distinguish between the costs of monitoring compliance and enforcement in respect of licensed operators, and the costs of enforcement against unlicensed operators...It is clear and undisputed that costs incurred in investigating the suitability of an applicant for a licence can be reflected in the fee. In the case of an application to renew a licence, I consider that the costs of monitoring the applicant's continued suitability can include the costs of monitoring compliance with the terms of their licences in the past"*. The court held that Councils cannot use fees to recover the cost of enforcement against unlicensed operators. This is an English appeal case and so is not binding on Scottish courts, but it is persuasive.
- 3.5** The Court of Appeal decision related to the regulation of sex shops within the city of Westminster, and in Westminster a significant amount of enforcement activity related to unlicensed operators. However in West Dunbartonshire the costs of enforcement against unlicensed and licensed operators are inextricably linked. Officers deal with any unlicensed operators they come across as part of their routine visits to licensed operators. In practice, officers come across very few unlicensed operators, the main ones tending to be window cleaners and street traders. Even if those costs could be separated, the costs of enforcement activity aimed at unlicensed operators would be negligible.

Licences not within scope of the Services Directive

- 3.6** Areas of licensing that are outwith the scope of the directive include taxis & private hire, knife dealers, dog breeders, and storage of explosives and petroleum. With respect to those areas of licensing that are outwith the scope of the directive, there is no need to comply with the directive and the 2009 regulations. However the Council must still comply with UK legislation such as the Civic Government (Scotland) Act 1982 (the '1982 Act'). The 1982 Act states that licensing authorities shall seek to ensure that the total amount of fees is *"sufficient to meet the expenses"* incurred by them in carrying out their functions. This means that licensing authorities should operate on the basis of full cost recovery but should not seek to make a surplus on licence fees. Taxi and private hire fees have to be accounted for separately from other civic government fees.
- 3.7** The Scottish Government's best practice guidance to taxi licensing authorities states, *"As enforcement activity is part of the licensing regime, it is recoverable through the fees charged for licenses"*.

Other issues

- 3.8** For those licences that are regulated by legislation other than the 1982 Act, some have fees fixed by parliament (for example, storage of petroleum and explosives). However with respect to those where the Council sets the fee (for

example, animal welfare and houses in multiple occupation) the Council should, as a matter of good practice or as a legal requirement, seek to ensure full cost recovery when setting fees. Alcohol and gambling licences are administered by West Dunbartonshire Licensing Board.

- 3.9** In most cases, the Council's fees have increased by inflation based on a baseline fee set several years ago. It can therefore be unclear why our fees differ from other Councils. The business community has accused councils in general of a lack of transparency when setting fees. A thorough review of the fee structure is therefore timely.

4. Main Issues

- 4.1** Due to the principle of full cost recovery, any review of fees has to be linked to expenditure on licensing functions. Rather than calculate taxi expenditure in isolation, all licensing expenditure has been calculated, including those licences administered by the Licensing Board. This is because the employees within the licensing team are multi-functional, so any data on expenditure requires staff time to be apportioned to the various different activities carried out.

Methodology

- 4.2** For the purposes of the review, licences have been grouped into five broad types: (1) Alcohol, (2) Gambling, (3) Taxis and private hire, (4) Other Civic Government licences (e.g. street traders, public entertainment etc), and (5) Other Licences (e.g. petroleum, animal welfare, houses in multiple occupation etc).
- 4.3** Some licences are issued every three years so income can vary from year to year. Income projections have been used to determine the average income per year for the next three years.
- 4.4** Salary costs have been apportioned to each of the five areas of licensing activity based on how much time is spent on each of them. Also included are a pro rata share of the costs of the Regulatory Services central administrative team, Environmental Health and Trading Standards officers' costs, the salary costs of the Section Head (Trading Standards & Licensing), the Manager of Regulatory Services, and elected members.
- 4.5** The licensing team's non-salary costs have been estimated for the coming year based on previous expenditure. This includes a recharge for central support costs for services provided centrally by Legal Services, Democratic Services, Human Resources, Finance and ICT etc.

Expenditure on licensing functions

- 4.6** Appendix 1 shows the data that has been gathered.

- 4.7** Members should bear in mind that these calculations should not be treated as exact. Estimates have had to be made based on professional judgements such as the amount of time spent on the various areas of licensing activity and elected members' time. Despite the legal requirement as noted in paras 3.3 and 3.6 above, it is not possible to charge fees that exactly meet expenses, so in practice a small deficit or small surplus will be acceptable.
- 4.8** The salaries shown in Appendix 1 are the 2012/13 salaries plus 1%. The salary costs would need to be amended if the final pay award for 2013/14 is higher or lower than the 1% offered by the employers.
- 4.9** The deficit on taxi and private hire licensing is estimated to be £489 per year (about 0.3% of expenditure). However, due to the uncertainties noted above, this can be regarded, broadly speaking, as breaking even.
- 4.10** The other two areas of licensing incur deficits i.e. £26509 per year for other Civic Government licences (45% of expenditure), and £21321 on Other Licences (72% of expenditure). Despite the inexact nature of the data noted above, it would be safe to assume that the Council is not recovering all its costs on these areas of licensing activity.

Suggested changes

- 4.11** The deficits could be reduced by raising fees or reducing expenditure or a combination of both. By far the biggest expenditure is on staffing. However reduced staffing would lead to a lower standard of service and lead to a greater risk that licences are granted automatically if the Council cannot make a decision in the time allowed.
- 4.12** The Council should be seeking to ensure full cost recovery (apart from those few fees fixed by parliament). The committee is asked to agree that, taking into account the inexact nature of the data, officers should be asked to submit a further report that details proposed changes to licence fees so that:
- 4.12.1** overall fee income for taxi and private hire licensing is maintained at its current level, and
- 4.12.2** overall fee income for Other Civic Government licences and for Other Licences is based on the principle of full cost recovery.

Options for consideration

- 4.13** In addition to the changes to overall fee income, it may be advisable to vary the balance between fees within each group. For example, it would be possible to reduce the taxi drivers' licence fee by increasing the taxi operators' fee and/or taxi booking office fee or by charging for other services (such as inspecting any external advertising applied to a taxi).
- 4.14** The fees charged by other Councils may be different due to differing expenditure or because they have not gathered such detailed data on costs

recently. Nevertheless, the fee structures used by other Councils will be examined to identify any good practice prior to proposing any amendment to our own fees.

Wheelchair-accessible vehicles

- 4.15** The Clydebank Public Hire Association (CPHA) has asked that the taxi licence fee for wheelchair-accessible vehicles (WAVs) should be reduced to compensate for the increased cost of purchasing a WAV, and to give operators of non-WAVs an incentive to replace their vehicle with one that better meets the requirements of disabled customers.
- 4.16** Any discount for WAVs would probably have to be associated with an increase in fee for non-WAVs because the Council is, broadly speaking, breaking even on taxi and private hire fees. Members should note that the fleet operated by members of the CPHA is 100% wheelchair-accessible, whereas the fleet in Dumbarton and the Vale of Leven is about 8% wheelchair-accessible. Any variation in fees would therefore have a strong geographical bias. Members should also note that the Council does not specify a maximum age limit for purpose-built WAVs, unlike other vehicles.
- 4.17** It is suggested that fees for WAVs are not discounted compared to non-WAVs because any discount is likely to be insufficiently large to encourage operators of non-WAVs to change their vehicle.

5. People Implications

- 5.1** There are no people implications.

6. Financial Implications

- 6.1** Licensing authorities should operate on the basis of full cost recovery but should not seek to make a surplus on licence fees. The Council should seek to maximise its income from licensing fees to help offset the reduction in grant-aided expenditure.

7. Risk Analysis

- 7.1** Failure to recover costs could mean that the Council is setting fees contrary to legislative requirements.

8. Equalities Impact Assessment (EIA)

- 8.1** All applicants pay the same fee for carrying out the same activity. An impact assessment revealed that there is the potential for fees to discriminate indirectly if certain protected groups tend to have a higher than average tendency to engage in particular licensable activities. This potential would be considered carefully in any further report to committee describing detailed proposals for amending fees for particular types of licence.

9. Consultation

- 9.1** No consultation has been carried out. However members are asked to agree that officers should consult affected licence holders on any changes, subject to the principles agreed above.

10. Strategic Assessment

- 10.1** Full cost recovery of licensing expenditure will aid strong financial governance and sustainable budget management.

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Appendices: Review of licence fees – financial data

Background Papers: None

Wards Affected: All