

# Allerdale Borough Council

Council – 3 March 2021

## Proposed Review of Licensing Fees and Charges

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<b>Portfolio holder</b>	Councillor Jim Lister
<b>Report from</b>	Gillian Collinson, Senior Licensing and Compliance Officer
<b>Wards affected</b>	All wards
<b>Is this a key decision</b>	Yes

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### **1.0 The reason for the decision**

- 1.1 The proposed fees attached to this report as Appendix 1 will enable the Council to recover its reasonable costs in processing and determining applications and ensuring compliance with the appropriate legislation and the conditions of the licence.

### **2.0 Recommendations**

- 2.1 That the statutory fees are noted that the Council is required to charge in respect of the specified licences under the Licensing Act 2003 and the Gambling Act 2005 as set out in Part A of Appendix 1 and recommends that the authority implements these fees (or if subject to statutory amendment, the relevant amended fees) on 1<sup>st</sup> April 2021.
- 2.2 That the Council recommends that the authority implements, with any necessary modification and with effect from 1<sup>st</sup> April 2021 the proposed fees as set out in Part B of Appendix 1 that relate to those licences and licensing related activities where the authority has the discretion to determine the fees.
- 2.3 That the Council recommends that the authority implements, with any necessary modification and with effect from 1 April 2021 the proposed fees as set out in Part C of Appendix 1 that relate to those licences and licensing related activities where the authority has the discretion to determine the fees with the exception of those fees in 2.4a) and 2.4b) below which are subject to advertisement

2.4a That the Council proposes to vary the fees relevant to driver, hackney carriage, private hire vehicle and operator licences as set out in Part C of Appendix 1, with any necessary modification and instructs the Licensing Department, in accordance with the provisions of s70 Local Government (Miscellaneous Provisions) Act 1976 to publish in the local newspaper, a notice setting out those fees that it is proposed will be varied and specifying a period from 12<sup>th</sup> April 2021 (this being not less than 28 days) within which and the manner in which objections to the proposed fees can be made.

**AND**

2.4b Where no objections to the proposed variation in fees are received by 12<sup>th</sup> April 2021 or if all objections so made are withdrawn by the said date, the Council agrees to implement the proposed variation to the fees on 12<sup>th</sup> April 2021 or where objections to the proposed variation to the fees are received by 12<sup>th</sup> April 2021 the Council agrees to consider the objections at a meeting on 19<sup>th</sup> May 2021 with a view to setting the date of 19<sup>th</sup> May 2021 (being a date not later than two months after 12<sup>th</sup> April 2021 when the proposed variation to the fees shall come into force with or without further modification.

2.5 That the Council introduces hackney carriage and private hire driver licences for the duration of 3 years in accordance with the Deregulation Act 2015 from 12<sup>th</sup> April 2021 should there be no objections as per 2.4(b) above, or 19<sup>th</sup> May 2021 in the event that there are objections as per 2.4(b) above and;

2.6 That the Council introduces private hire operator licences for the duration of 5 years from 12<sup>th</sup> April 2021 in accordance with the Deregulation Act 2015 should there be no objections as per 2.4(b) above, or 19<sup>th</sup> May 2021 in the event that there are objections as per 2.4(b) above.

**3.0 Background and Introduction**

3.1 The principle of cost recovery under licensing legislation is not limited to the licensing of hackney carriages and private hire vehicles, operators and drivers. This report also considers other areas to which this principle extends, including sex establishments, scrap metal dealers and various licences under the Gambling Act 2005.

3.2 The principle was confirmed by a Court of Appeal judgement in the case referred to later in this report: the *Hemming* case. The judgement held that there were three elements that made up the licensing fees that were subject to challenge.

3.2.1 The administrative cost of investigating the background and suitability of applicants for licences.

3.2.2 The cost of monitoring the compliance of those with licences with their terms; and

3.2.3 The cost of enforcing the licensing regime against unlicensed operators.

- 3.3 The Supreme Court ruled that licensing authorities could include all these activities including the costs of enforcement against unlicensed operators in the fee. However, the situation is different in the case of hackney carriage and private hire drivers' licences in line with the provisions in the Local Government (Miscellaneous Provisions) Act 1976. The recent *Wakefield* judgement has confirmed the costs of enforcing the behaviour of licensed drivers can be recovered through the driver's licence fee under s53(2). However, the cost of monitoring and enforcing driver conduct cannot be taken into account in fixing the vehicle licence fee under s70.
- 3.4 The Court of Justice of the European Union (CJEU) has subsequently also determined that that only successful applicants can be required to make a contribution towards regulatory and enforcement costs, which has led to certain fees being payable in two parts.
- 3.5 Certain licences under the Gambling Act 2005 incur fees that are deemed to be discretionary but are subject to a statutory maximum. All the Gambling Act 2005 licence fees that are subject to a statutory maximum are included in the proposals in Part B of Appendix 1.
- 3.6 There are no discretionary Licensing Act 2003 fees proposed in Part B of Appendix 1, other than for providing a copy of information contained in an entry of the public register. The remainder are statutory and are contained in Part A.
- 3.7 As a result of the *Hemming* case rulings and licensing legislation, the costs associated with the licensing procedures that the Council may legally recover in fees consists of administrative costs, the costs of investigating the background and suitability of applicants for licences and the costs of monitoring the compliance of those with licences with their terms. Where applicable, the cost of enforcement against unlicensed operators is also included in the fee. These will include the costs that are directly attributable to licensing procedures and a proportion of indirect costs. The Council must be in a position to demonstrate that the costs included in any fees calculations are reasonable and proportionate to the cost of the licensing procedures.
- 3.8 Fees cannot exceed the cost of the licensing procedures and cannot be used to finance the delivery of other Council services.
- 3.9 The current licence fees were implemented at different times:
- 3.9.1 Licensing Act 2003 fees are statutory have been unchanged since 2005 with the exception of new fees being added for new types of applications.
- 3.9.2 Gambling Act 2005 fees are statutory and have been unchanged since 2007. Some gambling fees have a maximum value and these have remained unchanged. Some gambling fees have been reviewed as part of this overall review process.
- 3.9.3 Sexual Entertainment Venues are governed by legislation which was adopted on 6 April 2011. The fees were set for the year 2014/15 and have not been reviewed since.

- 3.9.4 Taxi fees were set for the 2011/12 financial year. In 2013/14 there was a reduction in the transfer fee for vehicle licences. No other changes have been made since.
- 3.9.6 Scrap metal fees were set on 13 November 2013. The Executive sets scrap metal fees and charges, and a separate report will be produced in this regard.
- 3.9.7 Hypnotism fees have not been reviewed for a number of years.
- 3.10 The Council has undertaken a review of the current fees and charges to which the Council, as Licensing Authority, has the power to set.

The fees are estimated by assessing the time it takes for each step in the process from receipt of application to determination. This includes time spent by departments other than the Licensing Department, such as Democratic Services, Legal Services, Finance and Customer Services.

- 3.11 The Council has also identified the estimated cost for the compliance and enforcement function carried out by the Licensing Officers. The time has been assigned to different roles and the costs based on hourly rates. There is also a proportion attributed to these fees for management time which will include the costs associated with running the Licensing Department and services involved with delivering a function associated with one or more licensing regimes. The fees have then been established by calculating the cost associated with each of the licensing functions.
- 3.12 In calculating these fees, the Council has taken into account the requirements under the EU Services Directive and the Supreme Court's ruling in the *Hemming* case. As the 2020/21 financial year has not concluded, this review has not considered any surplus or deficits from this financial year. The surpluses/deficits from the 2020/21 financial year will be considered as part of the 2021/22 fee review. The fees and charges will be renewed annually, with ongoing review and monitoring of processes and time recording.
- 3.13 Although the Council has not received any applications or issued any licenses for some regimes, it still must set a fee to recover the costs of carrying out that function. In the cases where the Council has not processed any applications or issued licences, the costs have been estimated based on similar types of application process and licences. Similarly, a full review of the licensing processes has recently been undertaken. Some application types have not been received since that review, therefore those fees have been set based upon the new, streamlined processes. This will be reviewed on an ongoing basis.

### Gambling Premises

- 3.14 The Gambling Act 2005 regulates the licensing regime associated with gambling premises. The Council is the Licensing Authority under this regime and has the power to set fees locally. However, the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (2007 Regulations) impose a cap on the maximum amount of fee that the Licensing Authorities can charge.

- 3.15 The majority of the premises licence application fees are set at the maximum amount that the Council can charge. However, there may be some reductions in the proposed fee levels for certain application types subject to final costings. Any reductions proposed would be based on the projected time and costs associated with considering and determining the applications. The Council receives very few applications for certain types of application types each year.
- 3.16 The maximum fee level set by the 2007 Regulations has been in place since 2007.

#### Hypnotism Performances

- 3.17 In considering the resources required for the licensing of hypnotism performances within the borough as part of this year's fee review, it is proposed to reduce the fees subject to final costings for new applications. This reduction takes into account the perceived reduction in the time and resources required for considering and determining these applications.

#### Sex Shops, Sexual Entertainment Venues and Sex Cinemas

- 3.18 The Council has never issued any licences regarding sex shops, sexual entertainment venues and sex cinemas. However, time has been spent by the department, for example in establishing processes and procedures in anticipation of receiving applications, setting up the infrastructure (e.g. IT) and monitoring venues to check whether a licence is required. Consequently, the department has incurred expenditure in respect of this type of venue. Fees will be set based upon perceived time and resources required for these applications, and other similar application procedures will be taken into account.
- 3.19 Historically, the Council has not listed all three types of venue separately in its fees and charges, listing only 'Sex Establishments'. However it now recognises that the six application types are distinct and intends to list them separately in the future.

#### Scrap Metal

- 3.20 Scrap metal fees have been reviewed as part of the overall licensing review, however responsibility for fee setting for this function lies with the Executive and a separate report has been prepared.

#### Hackney Carriages, Private Hire Vehicles and Operators' Licences

- 3.21 In respect of the discretionary fees proposed in Appendix 1 Part C namely the setting of fees for hackney carriages, private hire vehicles and operators' licences, statutory advertising procedures must be followed. Consequently to vary the fees from those currently set, the Council is required to follow specific procedures that allow for objections to be made and considered.
- 3.22 The advertising requirements for taxis vary. In respect of driving licence fees (s53(2) Local Government (Miscellaneous Provisions) Act 1976, there are no statutory requirements for advertisements, notices, consultation or representations. However, Local Authorities are ill-advised not to have some level of consultation

with drivers. The Licensing Authority proposes to use the same procedure as per s70 of the Act.

3.23 S70 Local Government (Miscellaneous Provisions) Act 1976 states that a district council can charge more than the fees laid down in s70(2). If the fees exceed the following, a statutory advertising procedure must be followed:

3.23.1 Grant of a hackney carriage licence - £25

3.23.2 Grant of a private hire vehicle licence - £25

3.23.3 Grant of an operator's licence - £25

3.24 The Council intends to advertise the proposed fees between Friday 12<sup>th</sup> March 2021 and 12<sup>th</sup> April 2021. The latter date is the date by which any objections must be lodged (not restricted to licence holders), and is also the date that the revised fees would come into effect if no objections have been received, or, if objections have been received, they have been withdrawn. Any objections received must be considered by the Council and a further date set for any changes not more than two months after the initial closing date for objections (19<sup>th</sup> May 2021). The cost of advertising will be incorporated into the fees as it is a direct fee rather than general advertising.

3.25 Historically the Council has differentiated between fees for the five different types of licences: hackney and private hire drivers, hackney and private hire vehicles and private hire operators. However, it is recognised that five separate accounts need to be created to record the income and expenditure for each licence type.

### Statutory Set Fees

3.25.1 There are other licensing regimes that the Council is responsible for which have a statutory set fee. Those regimes are:

3.25.2 The Licensing Act 2003 (in respect of premises and personal licences and temporary event notices); and

3.25.3 The Gambling Act 2005 (in respect of gambling permits, notifications and lotteries).

3.26 The majority of Licensing Act 2003 regime fees were originally set via the Licensing Act 2003 (Fees) Regulations 2005 and remain unchanged since then.

3.27 The Gambling Act 2005 maximum fees for gambling premises licences and fees for permits, notifications and lotteries were set in 2007 when the Act came into effect.

## **4.0 Content: Background Detail to Proposed Changes**

### Three yearly and five yearly licences

- 4.1 The provisions of the Deregulation Act 2015 that relate to hackney carriage and private hire licensing, came into force on 1 October 2015.
- 4.2 The Deregulation Act 2015 amends the Local Government (Miscellaneous Provisions) Act 1976 ('LG(MP)A 1976') as follows:

### **Hackney Carriage and Private Hire Drivers' Licences**

- 4.3 In relation to hackney carriage and private hire drivers' licences, the provision in s53 LG(MP)A 1976 previously required the Council to grant a licence for a period of three years or for 'such lesser period as the district council may specify in such licence'. This provision has now been amended to require the Council to grant a licence for three years or 'for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case'.
- 4.4 Officers are requesting that in light of the amendment to the legislation, members approve with effect from 12<sup>th</sup> April 2021 (should there be no objections as per 2.4(b) above), or 19<sup>th</sup> May 2021 (in the event that there are objections as per 2.4(b) above) the issue of a three year drivers' licence for all new applicants and renewals.
- 4.5 The proposed fee for the three year drivers' licence for the financial year 2021/22 is included at Appendix 1 Part C.

### **Private Hire Operators' Licences**

- 4.6 The Deregulation Act 2015 amends s55 of the LG(MP)A 1976 which relates to the duration of private hire operators' licences by substituting subsection 2 which provided:

'every licence granted under this section shall remain in force for such period, not being longer than five years, as a district council may specify in the licence'.

With

'every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case'.

- 4.7 Currently, private hire operators' licences are issued for a duration of 3 years and the fee is set accordingly. If a five year licence were to be introduced, the fee would have to be adjusted to reflect the Council's recoverable costs over the five year period.

- 4.8 Section 70 LG(MP)A 1976 allows the Council to set fees for the grant of vehicle and operators' licences which should be sufficient in aggregate to cover in whole or in part reasonable costs of inspections of vehicles and any reasonable administrative or other costs associated with the control and supervision of hackney carriage and private hire vehicles.
- 4.9 Any fee charged must be sufficient to cover all of the above costs for the full five years of the licence.
- 4.10 Officers are requesting that in light of the amendment to the legislation, members approve with effect from 12<sup>th</sup> April 2021 (should there be no objections as per 2.4(b) above), or 19<sup>th</sup> May 2021 (in the event that there are objections as per 2.4(b) above) the issue of a five year private hire operators' licence for all new applicants and renewals.
- 4.11 The proposed fee for the five year private hire operators' licence for the financial year 2021/22 is included at Appendix 1 Part C.

#### Licensing Service Review

- 4.12 A review of the licensing service has been underway for a number of months, which has involved a number of tasks, including:
- 4.12.1 Governance staff taking part in workshops to identify and streamline processes.
- 4.12.2 Review and timing of processes carried out by Customer Services staff. The main processes are telephony, processing applications and issuing licences for hackney and private hire badges, vehicles and operators.
- 4.12.3 Democratic Services providing a breakdown of the previous year's Licensing Committees and Panels, including but not limited to items raised, officer attendance, councillor expenses and training.
- 4.12.4 The introduction of new procedures to assess the suitability for hackney and private hire driver applicants, e.g.
- 4.12.4.1 Implementation of the knowledge test, including continuous improvement, invigilation of tests and monitoring and recording of results;
- 4.12.4.2 Implementation of the practical driving test, including monitoring and recording of results.
- 4.12.4.3 Introduction of right to work checks for all drivers.
- 4.12.5 Direct costs have been refreshed, which include but are not limited to basic salaries, National Insurance, superannuation for staff directly involved in the licensing processes, training, advertising and materials (e.g. taxi materials such as badges and plates).

- 4.12.6 Direct costs for additional agency staff employed to help with the fees and charges project and administrative process.
- 4.12.7 Refreshed recharges.
- 4.12.8 Reviewing and considering additional costs which have arisen since the last fees and charges review, for example subscriptions to the Institute of Licensing, specialist training and advice. These will be taken into account in setting the fees in the future.

#### Other matters to consider

- 4.13 It is important when setting fees, that the Council checks the relevant legislation. The factors that can be taken into account when setting fees vary, depending on the legislation which underpins that particular area.
- 4.14 The licensing regime is not full costs recovery, but many of the fees the Licensing Authority sets, should be broadly cost neutral in budgetary terms, so that over the lifespan of the licence, the budget should balance.
- 4.15 It is imperative that the Council accounts for each of the fee regimes separately, and that there is no cross-subsidy. The fees will be reviewed annually and any surplus or deficit will be considered upon review. Surpluses can be reinvested, in some cases reducing the licensing fee for the following year(s) and similarly deficits can be recovered from the licensing fees.
- 4.16 The Council has been waiting for the outcome of the *Wakefield* hearing and the effect of this will be elaborated on here including explaining the impact on the way we account for taxi fees and the necessary separation of the fee into two parts.

### **5.0 Delivery arrangements**

- 5.1 The outcomes from this report will be delivered on a daily basis through the application process by officers and other officers and Members involved in hearings.

### **6.0 Implications and Impact**

#### **6.1 Contribution to Council Strategy Priorities, Outputs and Outcomes**

Financially secure council\_– Legislation provides that licensing services must be charged out to applicants on a cost recovery basis. The council must ensure that it is calculated as accurately as possible the cost involved in assessing the suitability of applicants together with compliance of licences granted. By doing this the council ensures that as well as applicants not being overcharged, the residents of Allerdale are not at risk of subsidising the service with funding coming from other essential

services to finance the licensing service. It is not about generating more income but ensuring accuracy in accordance with the principles of cost recovery.

High quality services – Reviewing the fees and charges also involves examining the processes associated with the application and compliance process. It means challenging the way services are delivered and striving to improve them in accordance with customer needs and expectations through the development of technology and cutting out waste identified in processes.

Thriving towns and villages - Ensuring the correct fees are charged means the correct level of suitability checks and compliance with terms and conditions of licences can continue. This will give confidence to the residents and visitors of Allerdale that public safety, the prevention of crime and/or disorder, prevention of public nuisance and protection of children from harm and suitability of licence holders are at the forefront of the licensing priorities. This together with supporting businesses to succeed in Allerdale.

## **6.2 Finance/Resource implications**

- 6.2.1 The proposed fees have been calculated on a full cost basis which considers both the direct and indirect costs associated with processing, monitoring and enforcing the licences (dependent upon the legislation and associated case law).
- 6.2.2 When setting fees, there is a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The fee level must be set so not to generate income in excess of the cost associated with delivery.
- 6.2.3 A task to capture the detail involved in all licensing procedures where the Council has the discretionary power to set fees, has been undertaken and this continues to evolve through an iterative process to further develop, improve and refine the processes involved. Licensing Officers, Legal Officers, Customer Services Officers, Democratic Services Officers and Finance Officers have collaborated in this work. The licensing procedures are considered from receipt of application to the issue of the final licence or permit, with both variable and fixed costs being considered. These costs include officer, management and member time spent on licensing administration and monitoring compliance of both those already licensed and those who are unlicensed. In addition, a proportion of all indirect costs that can reasonably be attributed to licensing procedures have been included, e.g. office accommodation, ICT, travelling, advertising, postage and printing, subscriptions, telephone costs, training and other corporate recharges.
- 6.2.4 In relation to the consideration of applications, it is reasonable to recover the costs of running the relevant Committees and the Licensing Panel from licensing fees and consequently these costs have been incorporated into the overall figures.
- 6.2.5 The forecasted fees are based on undertaking the administrative procedures and formalities associated with the relevant licensing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences and enforcement for unlicensed activities where it is permitted. Where relevant the fees have been split into two parts to take account of

the CJEU ruling referred to above. As a result of this work, the proposed fees have been calculated and are set out in Appendix 1, Parts B and C.

- 6.2.6 It is accepted that costs can be recovered over a period of time, allowing surpluses to be returned to licensees and deficits to be recouped by the Council. This does not mean that fees have to be adjusted every year to reflect immediately previous deficits or surpluses, although this is the approach that is currently being adopted. In any case, it must be demonstrable over a period of time that only legitimately incurred costs are recovered. The *Hemming* case rulings make it clear that costs associated with enforcing unlicensed operators/businesses are recoverable by the Council.
- 6.2.7 Where licences have a renewal period of greater than one year, the recovery or redistribution calculation is spread across the same period.
- 6.2.8 Once detailed costings have been analysed the detailed proposals for the 2021/22 fees will be set out in the relevant parts of the appendix. The following have been taken into account in terms of amendments to the processes involved in the various licensing regimes:
- 6.2.8.1 Scrap metal site licences (site and collector)
- 6.2.8.2 New and renewal sex establishment licences
- 6.2.8.3 Gambling licences
- 6.2.8.4 Hackney Carriage and Private Hire licences:
- 6.2.8.4.1 The specific licence fees are set out in the relevant appendices, and a summary of the proposed percentage variations is listed below:
- New hackney driver's badge (one year) increased by 121.43%
  - Renewal hackney driver's badge (one year) increased by 54.29%.
  - New hackney driver's badge (three years) introduced
  - Renewal hackney driver's badge (three years) introduced
  - New private hire driver (one year) increased by 97.14%
  - Renewal private hire driver (one year) increased by 27.14%
  - New private hire driver (three years) introduced
  - Renewal private hire driver (three years) introduced
  - New hackney carriage vehicle (one year) increased by 13.08%.
  - Renewal hackney carriage vehicle (one year) reduced by 13.08%
  - New private hire vehicle (one year) remained the same.
  - Renewal private hire vehicle (one year) remained the same.
  - Hackney carriage vehicle transfer reduced by 48.57%.
  - Private hire vehicle licence transfer reduced by 48.57%.
  - Hackney carriage vehicle substitution increased by 530%.
  - Private hire vehicle substitution increased by 260%.
  - New operator (three years) reduced by 5%.
  - Renewal operator (three years) reduced by 20%.
  - New operator (five years) introduced

- Renewal operator (five years) introduced.

6.2.9 Where legislation allows the Council to recover licensing costs, it is important that this is undertaken effectively. Losses that are not funded by other means, including being subsidised by council tax payers, may result in a reduction in the Council's ability to effectively deliver the overall licensing regime in the Allerdale area. However, it is recognised that not all licensing costs are recoverable.

6.2.10 The table below sets out the projected income levels for 2021/22 for the reviewed application types only, based upon the number of each application type in the period 2019/20:

<b>Licence Type</b>	<b>Projected Income 2020/21</b>
Other General Licensing	£293
Gambling Act 2005 Licensing	£2524 (only four licences 2019-20)
Sex Establishment Licensing	£0 (no licences 2019-20)
Hackney Carriage and Private Hire	£50709

Currently, new applications and renewals are the same price, therefore it has not been possible to extract a report which differentiates between new and renewal licences. New licences generally cost more since review, however the above projection has been based upon renewal fees only.

### **Annual Fees**

6.2.11 Annual fees are required for certain types of licences under the Gambling Act 2005 and Licensing Act 2003 where there is no renewal application process. Annual fees are payable each year and cover the costs associated with the ongoing maintenance and development of these licensing regimes and for ensuring compliance with the Act.

### **Gambling Act 2005**

6.2.12 The Gambling Act 2005 requires all new premises licence holders to pay the first annual fee within 30 days from the date the licence is granted. All ongoing annual fees will then be payable to the Council by the anniversary of the original grant date for the premises licence. If the fee is not paid then the Council must revoke the licence.

### **Licensing Act 2003**

6.2.13 Premises Licence and Club Premises Certificate holders must pay an annual fee before the anniversary of the original grant date for that licence. Failure to pay the annual fee prior to this date will result in the Council suspending the relevant licence or certificate.

### **Process of annual fee payments**

- 6.2.14 It is the responsibility of each licence holder to ensure that the annual fee is paid to the Council in time. The Council will assist licensees by writing to them prior to the annual fee payment due deadline to inform them of this payment and how it can be made.
- 6.2.15 The payment for annual fees can be made online by using the barcoded invoice, over the phone by debit/credit card or by BACS.
- 6.2.16 The Licensing Service does issue invoices for annual fee payments but they are not obliged to and as a result, licensees must ensure that they make a payment using one of the payment options above before the required deadline.

### Payment Options

- 6.2.18 The Council provides a number of ways applicants and existing licensees can pay their fees. Methods of payment are included at Appendix 2.

### Refunds

- 6.2.19 Any requests for a refund must be made in writing to the Licensing Service, setting out the reasons for the refund requests, which application the request relates to and providing the required information to enable the refund to be processed. To assist, a refund request form will be provided with this refund information to customers. This is reproduced at Appendix 2.
- 6.2.20 If a fee was paid over the phone, it is policy that a refund is made back to the same card that the payment was made from, subject to that card still being within the relevant expiry date.
- 6.2.21 If a licence listed in part 5 above is surrendered during the period in which that licence is in force, a refund of the Part B fee will be provided for every full month of the outstanding period of that licence. The Part A fee amount is non-refundable as this fee covers the initial processing costs for that application. An example of the calculation of a refund of Part B is provided below.
- 6.2.22 If a licence was issued from 1<sup>st</sup> April but then surrendered on 22<sup>nd</sup> October, the pro-rata refund would be calculated as follows:

Part B fee paid	£120
Part B fee divided by 12 months	£10 per month
Period of licence remaining	5 months (November to March)
Refund = £10 x 5 =	£50

- 6.2.23 If an application is made to the Council when it should have been made to another local authority, then the Council will refund the full amount if the fee has already been processed.

### Failure to make payment

- 6.2.24 If the application fee is not paid, is made via a payment method that is not accepted or is not the correct fee amount, then the application will be deemed as invalid. This

means that if that application process has a consultation period, it will not have started and the Council will not be able to determine the application.

- 6.2.25 In the event of an application being made without a fee, with the wrong payment method or with a fee that is not correct, a member of the Licensing Team will attempt to contact the applicant or its agent via email or telephone. If these methods are not available, then a letter will be sent to the applicant or agent. The Licensing Team member will advise the applicant or the agent of the reasons for invalidity and what can be done to rectify the reason for invalidity.
- 6.2.26 The best option to address the issue with the fee is to make a payment over the phone via credit or debit card. Once the payment is authorised, the officer will be able to confirm that the application is valid and any consultation start dates confirmed over the phone.
- 6.2.27 If no payment is made or no contact is made by the applicant or agent within 14 days of the notification of the application being invalid, the Council will close the application. A new application will then be required in full. The applicant or agent will be notified of this in writing if the application is closed.
- 6.2.28 If an annual fee payment has not been made by the specific deadline, the Council will contact the licensee and advise them of the need to make the payment immediately. If the annual fee is not made then the Council will take the required steps which will be to suspend the Licensing Act 2003 Premises Licence or revoke the Gambling Act 2005 Premises Licence or Permit.
- 6.2.29 If the licensable activity continues whilst a licence is suspended or revoked, the Council will start enforcement action for the relevant offence of operating without the correct permission being in place. It should be noted that some of the penalties relating to providing licensable activities without the required permissions can include a substantial fine, imprisonment or both.

### **6.3 Legal and governance implications**

- 6.3.1 The Council can set its own fees for the regimes listed in Appendix 1 Parts B and C of this report. The fees must be reasonable and cover the Council's costs in the administration of those application types and further costs to ensure compliance.
- 6.3.2 All of the regimes (excluding Gambling and taxis) are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009 which implements the EU Services Directive into UK law requires that the fees charged in relating to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the Council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise funds. The fees as proposed should enable the Council to recover its reasonable costs.
- 6.3.3 If the proposed fee structure results in a surplus or a loss for the financial year, there will be an appropriate reduction or increase in fees as the case may be for the following financial year.
- 6.3.4 The Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman and judicial review.

- 6.3.5 A case of significant importance to the Council and to all licensing authorities is that of *R (on the application of Hemming and Others) v Westminster City Council*.
- 6.3.6 Effectively, the *Hemming* ruling means that where the Council intends to recover regulatory and enforcement costs, it cannot include these costs in the fee that is payable at the time any application is submitted. Such costs are only payable after the decision has been taken to grant or renew a licence. This means that for those licences that incur post-application regulatory and enforcement costs, these fees will now be charged in two parts:
- 6.3.6.1 The first part will be payable at the time the application is submitted and will aim to recover the costs associated with the administrative procedures and formalities of the application process (this includes the costs of undertaking all the required checks relevant to each licence type); and
- 6.3.6.2 The second part will be payable by the applicant only once the licence is granted or renewed and will aim to recover the costs associated with the ongoing regulation and enforcement of the licensing regimes.
- 6.3.7 There are a number of licences that currently do not incur post-application regulatory and enforcement costs. This is because the work undertaken as part of the application process is deemed to be proportionate to the level of risk associated with the activity that is controlled by these particular licence types. For these licences there will only be one fee payable and this will be at the point of application.
- 6.3.8 The Services Directive does not directly apply to hackney carriage, private hire and gambling related licences. Nevertheless, consideration was given to voluntarily adopting the two part fee system across these particular licence types to aid uniformity of practice across all licence types. It has however been concluded that the administrative burden and associated increase in cost (which would have to be passed on to licensees) outweighs the aspiration for uniformity. Consequently, for all hackney carriage, private hire and gambling related licences, a single fee will continue to be payable at the point of application and a refund of the second part given if an application is withdrawn or refused.
- 6.3.9 To reduce the risk of challenge to the Council, a financial modelling tool has been introduced to calculate licensing fees from 2021/22 onwards. Fees are now to be compared on an ongoing rolling basis and this will continue into the future.
- 6.3.10 The modelling tool draws together detailed information regarding the costs associated with undertaking the administrative procedures and formalities associated with all licensing procedures, including the costs of investigating the background and suitability of applicants for licences together with the cost of monitoring the compliance of those who are licensed against the conditions of their licences. It also aims to demonstrate that the cost of enforcing the licensing regime against unlicensed operators has been considered and is included in licence fees in line with the judgement from the *Hemming* case.
- 6.3.11 An Equality Impact Assessment has not been undertaken as the report does not concern the implementation of a new policy; the focus of the report is the review of

licensing costs to ensure that the Council is in a position to recoup its costs on a cost recovery basis in line with current legislative requirements.

6.3.12 There is no anticipated environmental impact associated with the recommendations in this report.

6.3.13 The recommendations are not at variance with the Human Rights Act 1998 and are unlikely to result in any adverse Human Rights Act implications. The recommendations are in line with current legal procedures laid down in relevant licensing legislation and take into consideration the provisions of the Services Directive and the implications of the *Hemming* case rulings.

6.3.14 There is no statutory duty on the Council to consult when setting or revising licensing fees, with the exception of those fees relating to hackney carriage, private hire vehicles and operators' licences under section 70 of the Local Government (Miscellaneous Provisions) Act 1976. This duty is reflected in the recommendation for this report.

6.3.15 The Council's legal authority to agree the recommendations is based within a range of specific licensing legislation, together with the delegated functions set out in the Council's constitution. However, due consideration must also be given to the provisions of the Services Directive and the rulings in the *Hemming* and *Wakefield* cases.

#### **6.4 Risk analysis**

N/A.

#### **6.5 Increasing satisfaction and service**

6.5.1 Reviewing the fees and charges has involved examining the processes attached to every type of application within each licence function and the indirect costs from other departments. This has naturally led to questioning and challenging procedures, time management and performance to ensure staffing and technology are utilised as efficiently as possible. By continually monitoring this, processes can be streamlined giving better value for money to customers whilst maintaining robust application and ongoing suitability checks giving the necessary confidence to residents and visitors of Allerdale.

#### **6.6 Equality impacts**

##### **Equality impacts**

6.6.1 An Equality Impact Analysis has not been completed for this item as it is not the introduction or revision of a policy and would not adversely impact any individuals or groups. It would be applied equally across the borough.

#### **6.7 Health and Safety impacts**

6.7.1 As per 6.8.1 below.

## **6.8 Health, wellbeing and community safety impacts**

6.8.1 To ensure the correct resource is recovered to enable the Licensing Authority to uphold the public safety objective when granting licences and checking compliance with terms of those licences.

## **6.9 Environmental/sustainability impacts**

6.9.1 No impact anticipated

## **6.10 Other significant implications**

6.10.1 None anticipated

## **Appendices attached to this report**

<b>Appendix number</b>	<b>Title of appendix</b>
1	Final Fees: Part A fees (statutory), Part B fees (maximum cap set by legislation) and Part C fees (discretionary)
2	Fee Payments and Refunds (including refund form)

## **Background documents available**

<b>Name of background document</b>	<b>Where it is available</b>
Processes and costing calculations	Licensing Department

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