

Crawley Borough Council

Report to Licensing Committee

2 March 2021

Proposed Fees and Charges for 2021/22

Report of the Head Community Services – HCS/28

1. Purpose

- 1.1. This report sets out the proposed licence fees and charges for 2021/22 relating to Street Trading, Sex Establishments and Sex Entertainment licences, Gambling premises, Taxi Licensing and Animal Activity licences as well as other licences (piercing/tattooing/acupuncture).

2. Recommendations

- 2.1 The Committee is requested to approve the following licence fees:
- a) Taxi Licence fees, as set out in Appendix C.
 - b) Street Trading and Sex Establishment licence fees, as set out in Appendix D.
 - c) All Gambling Act 2005 fees as set out in Appendix E.
 - d) Animal Activity Licence fees and Acupuncture, Tattooing and Piercing licence fees as set out in Appendix F.

3. Reasons for the Recommendations

- 3.1 In order to ensure that Council Tax payers are not subsidising work concerning Taxi Licensing, Street Trading, Gambling Act 2005 and Animal Activity Licences administration and related activity, income is raised by license fees with the aim of covering the cost of administration of each regime within the constraints of legislation and regulations. Licence fees should not be used to raise surplus revenues. The regulation of setting fees is detailed and changes as a result of legislation and cases outlined below. It is proposed to raise all fees, in the main, by the corporate rate of inflation (2%) for 2021/2022.
- 3.2 Given that the Council fees have been benchmarked and can demonstrate they are set fairly, it is felt that this approach helps provide more certainty for the Trade and ensures that our costs are fully recovered each year (taking account of inflationary uplifts). If there were any significant variations to the costs, then these are communicated to the Trade, advertised where appropriate according to the legislative requirements and feedback taken into account when setting the relevant fee/s.

4. Licence Fee Setting General Principles

- 4.1 There must be a proper determination of the authorisation fee (see R. (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council [2017] UKS50).

- 4.2 A clear understanding of the policy and objects of the regime in question is required. It follows that the relevant considerations for vetting an applicant for a street trading licence will be different to those required for a sex establishment (see *R v Manchester City Council ex parte King* (1991) 89 LGR 696; also *R (on the application of Davis & Atkin) v Crawley Borough Council* [2001] EWHC 854 (Admin)). Particular attention needs to be had to those statutory provisions where a power is given to the local authority for the determination of an authorisation fee and other administrative fees.
- 4.3 Consideration of where the Provision of Services Regulations 2009 applies (see Hemming), and associated Guidance updated in December 2020 applies to street trading and sex licensing; not gambling or taxis.
- 4.4 There are different fee levels for different types of application. Crawley Borough Council as the Licensing Authority is entitled to set either the same or different fee levels for different types of applications: i.e. grant, renewal, variation, alteration or transfer. *R v Greater London Council, ex parte Rank Organisation* [1982] LS Gaz R 643.
- 4.5 There are also provisions for recovery of deficits. In *R v Westminster City Council, ex parte Hutton* (1985) 83 L.G.R. 461 it was held that where the fee income generated in one year fails to meet the costs of administering the licensing system, it is open to the local authority to make a proportionate increase in the licence fee for the following year so as to recoup the cost of the shortfall (Hutton at p 518). This longstanding principle was confirmed in later case law.
- 4.6 Crawley Borough Council must also account for any surplus monies. In Hemming [2012] EWHC 1260 (Admin) and [2013] EWCA Civ 591 the court determined surpluses as well as deficits are to be carried forward. The licensing authority is not entitled to make a profit. (*R v Manchester ex parte King* [1991] 89 LGR 696).
- 4.7 It is recognised in law that general anticipated calculations and costs can provide a helpful picture. The courts have said councils are not required to pin-point precision year on year. The Council does not have to adjust the licence fee every year to reflect any previous deficit or surplus, as long as it 'balances' eventually. The adjustment does not have to be precise: a general calculation which is broadly correct is considered satisfactory.
- 4.8 Anticipated costs are also used to map costs and spending. Cases demonstrate that the fee level may be fixed by reference to anticipated costs of administering the authorisation scheme.
- 4.9 Over-estimation is also kept under review and managed. Case law states that if the fee levied in the event exceeds the cost of operating the scheme, the original decision will remain valid provided it can be said that Council reasonably considered such fees would be required to meet the total cost of operating the scheme. *R v M ex parte King*.

5. Council Budget Position

- 5.1 The Council has a statutory responsibility to set Council Tax and its budget in advance of the commencement of the new financial year (1 April to 31 March). The Council Tax has to be set by 11 March each year. During 2020, the Council continued to review its spending plans and considered options to amend spending to

meet new priorities and mitigate where possible the impacts of the COVID-19 pandemic.

- 5.2 To provide adequate funding for the proposed level of services, and to fulfil the statutory requirement to set a Budget and Council Tax and report on the robustness of estimate. This continues to be monitored.
- 5.3 The Council's revenue expenditure is funded from a number of sources. The major sources are Council Tax, rents, Government grants, retained business rates, investment income and fees and charges. The majority of the Council's services are funded from the General Fund. The main exception is the management and maintenance of the Council's housing stock, which is funded through the Housing Revenue Account (HRA). At the time of writing this report, the 2021/22 General Fund and Housing Revenue Account Budgets and the 2023/24 Capital Programme will be recommended for approval by Full Council on 24th February 2021.
- 5.4 There have been a number of major financial pressures on the General Fund since the start of the financial crisis in 2008. In common with all authorities there have been significant reductions in Government funding, which are highly likely to continue in the coming years, this has been compounded by the impacts of the pandemic on Local Government finances. The pandemic has had a significant impact on the Council's finances, there will be long term implications on both Crawley as a town and the Council's long term budgets. The comprehensive spending review was for one year only so gives little assurance for future settlements. There are two consultation papers of which the outcome has been deferred due to the pandemic. These are a ['fair funding review: a review of relative needs and resources'](#) and ['business rates retention reform'](#). The outcome of these consultations will change the way that the Council is funded in the future, however this will not be known until a later date and as a result it will be difficult to project forwards.
- 5.5 The Council's approach in the past has been to maintain or enhance levels of service whilst keeping Council Tax increases to a minimum. This has been achieved in a number of ways, including redesigning services, delivering efficiency savings, a budget challenge process and generating new sources of income. However the pandemic has resulted in the need to make cuts to services for the first time in 7 years. This is because fewer people will be paying Council Tax as they claim Council Tax reduction (formally Council Tax benefits) and income levels from contracts, sales, fees and charges have reduced due to COVID-19. In addition costs have been incurred in the Council's community and business response to the pandemic.
- 5.6 The [Budget Strategy 2021/22 - 2025/26 FIN/508](#) was considered by the Cabinet on 25th November 2020 and recommended for approval. The Strategy was approved by Full Council on 16th December 2020 and details a series of costs, income and savings needed. In short, there is an overall increase in fees and charges across all services managed by Crawley Borough Council of 2%.
- 5.7 On fees and charges, it has been agreed that a revised approach to calculating and setting our fees and charges will apply for services we provide, and that cheques will not be accepted by the Council after 1st April 2021 as this is a costly way of processing payments and alternatives are much cheaper.
- 5.8 There are a number of services where budgets are susceptible to changes outside the direct control of the Council. These tend to be demand-led services such as taxi

licensing, alcohol and entertainment licensing, street trading and other licensing functions. In respect of these services, these are designed to be self-financing.

- 5.9 There is a risk that the economic outlook will continue to be depressed in the public sector as well as nationally which could have a significant effect on demand-led expenditure budgets and some income budgets; there will also be adverse impacts upon budgets due to the impacts of the pandemic, the impact on the economic climate, welfare reforms and the unknown future impacts such as supply now the UK has left the EU. Budgets are monitored by officers on a monthly basis and the Corporate Management Team receives an update on key issues, while a Quarterly Revenue and Capital Budget monitoring report is considered by the Cabinet and included in the Councillors' Information Bulletin. This should ensure that any projected variances are identified at an early stage.

6. COVID-19

- 6.1 Both businesses and self-employed individuals have had the opportunity to apply for various levels of financial support and grants throughout the COVID-19 pandemic. This includes monies provided via HMRC for self-employed people, loss of earnings grants and business grants. The amount of money available depends upon a range of factors.
- 6.2 It is important to note that Hackney Carriage and Private Hire Drivers, along with Private Hire Operators, have been permitted to trade since the start of the COVID-19 pandemic in March 2020, and have been permitted to operate throughout every stage of lockdown, forming part of the services termed as "essential public transport." However, it is recognised that the availability of work available to the Trade has reduced as a result of the pandemic.
- 6.3 A range of other measures have been undertaken by Environmental Health and Licensing to support businesses and individuals throughout the pandemic including:
- Business advice and signposting to sources of financial support.
 - Food safety and licensing advice.
 - Health and safety advice.
 - Signposting to the Department for Transport and Government advice regarding COVID-19 safe practice.
 - Resources diverted to focus on enforcement and compliance matters within the context of licensing.
 - At the time of writing this report, in respect of this latest lockdown, £120,750 has been paid in the form of grants to businesses, and 484 taxi drivers have applied for and granted £250. 303 licensed drivers have applied for a £400 loss of earnings grant. A range of grants have been available to drivers and Operators throughout the various lockdowns. The latest details can be found here: <https://crawley.gov.uk/emergency/coronavirus-information/businesses-and-employers/business-support-grants>
 - Installation of driver screens (between driver and passenger)
 - Stickers for use within licensed vehicles to remind passengers to wear face coverings.
 - Virtual meetings to advise and guide businesses to enable revised business operations to operate in a COVID-19 secure way.
 - Temporary extension of the maximum age of licensed vehicles beyond 11 years

in specific circumstances.

- Review of administrative and related practices to enable licensed drivers to continue to work.

7. Hackney Carriage & Private Hire Regime

- 7.1 The primary purpose of the hackney carriage and private hire licensing regime is a safe, accessible service whereby public safety is paramount. The service is self-financing and 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. (LGMP Act 1976). This requires that such fees have to be reasonable to recover the cost of issue and administration of licences. Fees cannot be used to raise revenue or fund activities such as taxi marshals. This has been confirmed in the court case *Cummings and Others v Cardiff City Council* [2014] EWHC 2544 (Admin), which reiterated that fees set must have regard to any surplus or deficit in previous years for each regime (hackney carriage or private hire).
- 7.2 The recent Court of Appeal case: *R (on the application of Rehman) v Wakefield City Council* [2019] EWCA Civ 2166 established that costs of administration under Section 53(2) of the LGMP Act 1976 could include the costs of enforcement against drivers of hackney carriages and private hire vehicles. The Act allows for a range of costs to be recovered in the fees, including:
- 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.
- 7.3 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 legal and management time to oversee the activity, a legitimate expense in administering the licensing function). The results are set out in Table 1 below and show expenditure, income and loss as well as financial projections for 2020/2021.

Table 1

	2017/18 (£)	2018/19 (£)	2019/20 (£)	2020/21 Forecast (£)
Employees	154,929.57	158,387.14	161,863.37	146,657.28
Operating Costs	23,108.96	51,344.16	24,235.19	10,600.00
Contracted Services	0	470.58	3,195.55	1,320.00
Central Support Costs	190,637.60	193,948.08	210,182.72	126,260.00
Hackney Carriage Fees	- 62,714.39	- 79,399.94	- 70,461.79	- 40,000.00
Private Hire Fees	-300,817.24	-310,803.07	-305,137.65	-190,000.00
Loss	5,144.50	13,946.95	23,877.39	54,837.28

- 7.4 The fee structure has been reviewed and simplified to help improve the application process over previous years and allow payments to be made remotely. The Taxi Licensing Service also purchased the basic version of IDOX On Line Application System in 2018, and ongoing work is being carried out to make it a bespoke system to meet the needs of Crawley Borough Council as the Licensing Authority, and to improve the customer journey, enabling applicants and current licence holders to apply on-line.
- 7.5 Investment is also being made into the current form, content and method of delivery in relation to the Council's Knowledge Test and Disability Awareness Tests, the passing of which is a prerequisite in completing the licensing process. This review is in response to feedback from the Hackney Carriage and Private Hire Trade that the Tests are "too easy," "anyone can get a licence," and "technology and the environment in which tests are undertaken is outdated and environment unpleasant".
- 7.6 Due to the COVID-19 pandemic, it has not been possible to carry out the tests for some time. Work is ongoing to identify a COVID-19 secure environment, as well upgrade systems to a cloud based alternative and reviewing the content of tests. Ongoing investment has been planned to upgrade current technology and make it "fit for purpose".
- 7.7 It is noted that in relation to the COVID-19 pandemic, the number of individuals choosing to renew licences and to remain a member of the licensed trade has reduced, as well as the number of individuals wishing to enter the Trade.
- 7.8 Despite this, the Taxi Service has received some 50 enquiries from individuals wishing to become a licensed driver or Private Hire Operator since January 2020 as individuals seek alternative employment and/or a new venture. On average, the Taxi Team approves 160 new applicants per annum but currently, cases cannot be determined as key elements of the licensing process cannot not be completed due to the COVID-19 pandemic.
- 7.9 At the time of writing this report, the total number of licences issued by the Council as Licensing Authority stands at 1050 drivers, of which 146 hold a dual Hackney Carriage and Private Hire Driver's Licence.
- 7.10 In April 2020, there were 686 Private Hire Vehicles licensed by the Council. At the time of writing this report, there are 601, a drop of 85. The number of Hackney Carriage Vehicles, in line with the current Policy to limit numbers remains at 123.
- 7.11 Since March 2020, 51 licensed drivers have allowed their hackney carriage or private hire licence to expire, and 15 have surrendered licences.
- 7.12 As previously mentioned, primarily as a result of the COVID-19 pandemic, Crawley Borough Council as the Licensing Authority has been unable to provide a COVID-19 secure space or environment where the Driver Assessments, Knowledge Test and/or Disability Awareness Test could be undertaken. This has had the following impact:
- New applicants wishing to become a licensed drive are unable to progress or complete the licensing process to become a licensed driver.
 - Whilst the Council cannot prevent new applications being made, the number

being received has reduced significantly as applicants cannot complete the licensing process due to being unable to provide a COVID-19 secure environment either for staff or applicants.

- Many of the established Private Hire Operators are streamlining the workforce as opposed to taking on new drivers.
- The lack of new applicants, set in conjunction with numbers of individuals deciding to leave the Trade has helped to protect existing licensed drivers during the COVID-19 pandemic. As a result, a smaller number of drivers are competing for the same pool of work, which it is noted, has reduced due to the COVID-19 pandemic.
- There has been an increase in the number of individuals applying to become a Private Hire Operator.

- 7.13 The Taxi Licensing Service is also reviewing and scoping its approach to the Department for Transport “Statutory Taxi and Private Hire Vehicle Standard Report” and the recommendation therein, as published on 21st July 2020. Significant officer time and investment is required to update Council Policy, review driver training and other recommendations included in this document. This was considered by the Licensing Committee at its last meeting.
- 7.14 Some charges associated with the licensing process have remained the same, for example, where this is set by another body (for example Disclosure and Barring Service (DBS).) No further charge has been listed for the next financial year in relation to costs associated with carrying out an Unmet Demand Survey. The cost of this has met by the hackney carriage trade over the preceding 3 years and there are now sufficient funds in place to cover this. As a result, the renewal fee for hackney carriage driver licences has been reduced by £40.
- 7.15 At this juncture, an Unmet Demand Survey has not been undertaken due to the COVID-19 Pandemic as it is considered that any findings would not be representative of the market position. This will be kept under review as a survey is necessary to keep up to date with the demand for hackney carriages.
- 7.16 As detailed in Section 5, a corporate rate increase of not less than 2% is recommended across the Authority where fees and charges are levied, except for where they are set by statute (such as the Licensing Act 2003 fees).
- 7.17 At this juncture, an increase of 2% as opposed to anything higher is suggested, given the financial challenges faced by the Trade as a result of the COVID-19 pandemic.
- 7.18 Overall the level of income will be largely unaffected by these changes and the proposed fees, but there is likely to be a further budget deficit in relation to the Hackney Carriage and Private Hire budget. It is anticipated that there will be a further loss of revenue as individuals do not renew licences, and opt to come out of the Trade.
- 7.19 Reintroduction of key elements of the licensing process should enable new applicants to become licensed as hackney carriage or private hire drivers, but the level of demand is hard to predict, as is the number of drivers being recruited by Private Hire Operators or becoming journeymen in the case of hackney carriages.
- 7.20 Fees should however, be set at a level to ensure that there is full cost recovery. As previously detailed, the Taxi Licensing Service has operated at a deficit for the past 3

years and this will need to be addressed.

- 7.21 The current and proposed fees are set out in **Appendix C**.

8. Legal Requirement to Advertise

- 8.1 In accordance with Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, Crawley Borough Council as Licensing Authority advertised its intention to increase the fees and charges associated with vehicle (both hackney carriage and private hire) and private hire operator licences, with the deadline for representations being 10th February 2021. A copy of the advertisement is included at **Appendix A**. In addition to being advertised in the Crawley Observer, information was also posted on the Council's website, and also included information about proposed increases in hackney carriage and private hire driver's licence fees.

9. Representations

- 9.1 As a result of the advertisement, 40 representations were received from licensed drivers, and the Crawley Hackney Carriage Association. Copies of the full, redacted representations are included at **Appendix B**. In summary, the representations object to the proposed increase in fees and charges. A summary of the reasons is included below.

- *The Trade have had a reduced income due to COVID-19 and cannot afford an increase.*
- *The Council should offer a 80 – 50 percent reduction in fees, not an increase*
- *There is a lack of work and a lack of income, fees should be waived.*
- *Refund the fees as the taxi trade haven't had much work*
- *The Trade do not foresee the work situation improving in 2021 and it will be a grim prospect for taxi drivers. The Trade are still paying for hire and reward insurance, compliance test fees, road tax, and licensing fees to keep our cars licensed for the taxi trade.*
- *Most drivers have had a decrease in their income, an increase is not necessary.*
- *No fees should be implemented this year or dare I say it a refund be given for this last year as most of us haven't been able to work normally now for the best part of a year.*

- 9.2 It is a statutory requirement for the Committee to consider these representations in taking the decision whether to vary the fees and charges as detailed in Appendix C (as it relate to vehicle and operator licences), and it is recommended that they are also taken into account when making a decision to vary driver licence fees.

10. Sex Establishments and Street Trading

- 10.1 The administration of Sex Establishments and Sex Entertainment venues (SEV) falls to the Council as Licensing Authority. Currently, there are no SEVs in Crawley, but applications can be made, and the case determined on its merits. A SEV Policy is in place, and applications determined with reference to this Policy. Initial and annual inspections are carried out to ensure compliance with their licence.
- 10.2 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. The proposed fees are set to rise in line with the corporate rate of inflation at

2%.

- 10.3 Following the same principles as stated previously, a trading position has been established for Street Trading. Once again, the proposed fees are set to rise in line with the corporate rate of inflation.

- 10.4 A copy of the current and proposed fees in relation to these functions is included at **Appendix D**.

11. Gambling Act 2005

- 11.1 The fees are set to rise in line with the corporate rate of inflation at 2% and are yet to reach the maximum set as part of the Gambling Act 2005.

- 11.2 A copy of the current and proposed fees in relation to these functions is included at **Appendix E**.

12. Animal Activity Licensing, Acupuncture and Tattooing

- 12.1 It is proposed to raise all animal activity licensing fees in line with the corporate rate of inflation (2%).

- 12.2 Following the same principles as stated previously, a trading position has been established for close personal services (tattooing/piercing). Once again, the proposed fees are set to rise in line with the corporate rate of inflation.

- 12.3 A table with the current and proposed fees is included at **Appendix F**.

13. Financial and Other Implications

- 13.1 Licence 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.

14. Legal constraints on setting fees

- 14.1 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 regarding fees and charges as they are set centrally by the relevant Government department.

- 14.2 Other legislation such as the Local Government (Miscellaneous Provisions) Act 1982 which covers a raft of activities and includes street trading and sex establishments simply states that the Council may charge such fees as we consider reasonable.

- 14.3 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. Fees must be proportionate. This principle is key and applies to other licensing regimes such as sex establishments.

- 14.4 This principle was contained in the Provision of Services Regulations 2009 and emphasised in the by guidance in December 2020 includes requirements that processes must be non-discriminatory, justified, proportionate, clear, objective, made in advance, transparent and accessible. 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 applicability of the Provision of Service Regulations has been discussed in the case of Hemming [2017].. It is permissible for enforcement costs to be included in a licence fee but this element of the fee must be levied once the application has been granted. Crawley Borough Council as the Licensing Authority schedules regular fee reviews.
- 14.5 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.

15. Background Papers/Information

[UK Guidance on the Provision of Services Regulations 2020](#)

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