

BIRMINGHAM CITY COUNCIL

REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

10 MARCH 2021
ALL WARDS

REVIEW OF LICENSING SERVICE FEES AND CHARGES 2021/2022

1. Summary

- 1.1 The Corporate Charging Policy and Financial Regulations require that fees and charges levied by the Licensing and Public Protection Committee be reviewed on an annual basis to ensure the continued full recovery of costs.
- 1.2 It should be noted that some of the fees relating to areas which come within your Committee's remit are set nationally through statute, and these cannot be varied by your Committee.
- 1.3 The report covers the following Fees and Charges:
 - a) Hackney Carriage & Private Hire Licences.
 - b) Sex Establishment Licences
 - c) Massage and Special Treatment Licences
 - d) Skin Piercing Registrations.
 - e) Gambling Act 2005 (Statutory Maximum and Prescribed).
 - f) Licensing Act 2003 (Prescribed).

2. Recommendations

- 2.1 That the changes to the Licensing Service fees and charges as detailed in Appendix 1(a-e) be approved to take effect from 5th April 2021.
- 2.2 That the new Private Hire Operator Licence Fees detailed in Paragraph 4.1 and Appendix 1a be agreed and, subject to the statutory advertising process as outlined in Paragraph 6, to take effect from 5th April 2021.
- 2.3 That the Prescribed fees detailed in Appendix 1(e) and (f) be noted.

Contact officer: Emma Rohomon, Licensing Manager
Telephone: 0121 303 9780
Email: emma.rohomon@birmingham.gov.uk

3. Background

- 3.1 The City Council's Corporate Charging Policy and Financial Regulations require that Chief Officers, at least annually, report to and seek approval from Committee on a review of all fees and charges levied for services provided. This report also takes account of the legal framework within which certain licence fees must be set.
- 3.2 The Licensing service receives no corporate budget allocation and as such must meet any and all expenditure from within its own income. The level of income is entirely dependent upon the number of licences applied for, issued or renewed in a particular year.
- 3.3 In order to ensure the fees accurately reflect the true cost of administering and processing the licences the fee calculations are based on the finalised accounts from 2019/20. This is more reliable than trusting in projections and estimates and is accepted as best practice in fee calculations of this kind.
- 3.4 Members will note a blanket percentage change has not been applied, but that each fee has been reviewed to take into account the use of carry forward balances (where applicable), changes in overhead costs, processing times and also the cost of physical items such as badges/plates.
- 3.5 The time taken to process and administer each licence type is verified each year to ensure the calculations are accurate. Costs for peripheral items such as vehicle plates, badges, semi-permanent door signs, meter testing etc. are added in after the time is calculated, as is any restitution of carry forward balances. This accounts for the variance in cost between the different types of vehicle licence. Any carry forward amounts would only be utilized in the calculation of renewals.
- 3.6 Notwithstanding the need to consider the carry forward balances in fee calculations, it is also necessary to ensure the carry forward balance is attributed proportionately to the different types of licence. Historically, carry forward balances, be they surplus or deficit, were amalgamated into one figure. In order to ensure any surplus or deficit is properly recorded, it is necessary to apportion the balance correctly.
- 3.7 The fees proposed in this report are calculated to recover the full cost of carrying out the service. This includes all administrative costs, any recharge of officers' time in appropriate cases when carrying out inspections of premises and other compliance duties (where applicable).
- 3.8 The fees proposed fulfil the main requirement of assuring that full costs are recovered from the income generated wherever possible.

3.9 The legal requirement for a Licensing Service to recover only “reasonable costs” takes precedence over the City Council’s Corporate Charging Policy and the requirement to maximise income. Licence fees prescribed by statute also take precedence over the Corporate Charging Policy.

3.10 In setting the fees we have also taken account of the various precedents set by case law in the various area of licensing. A summary of these cases is provided at Appendix 2

4. The Proposed Fees:

4.1 Hackney Carriage and Private Hire: Drivers, Vehicles and Operators.

4.1.1 The Hackney Carriage and Private Hire Team has had to make significant changes to the method of service delivery in response to the COVID-19 pandemic. These include a total shift from paper applications and face to face visits, to a hybrid email system. Whilst not perfect it does afford significant advantages in flexibility and will lead to greater efficiency going forward once some technical issues can be resolved.

4.1.2 These efficiencies will not be reflected in the closed accounts ordinarily used to calculate licence fees, but cannot be ignored. The introduction of the new licensing system in the coming year will lead to further rationalisation of the processes and will only lead to further improvements for the service and service users alike.

4.1.3 Having regard to the near future, as well as having regard to the devastating impacts of the worldwide pandemic on the licensed trades it is proposed that the existing fees remain unchanged for the coming year. Calculations indicated the fees should actually increase slightly based on the previous year’s accounts, but, as explained in 4.1.2, it is important to remain pragmatic and not increase fees if it is reasonably believed they will not reflect the future expenditure.

4.1.4 When reviewing the times spent on each licence type it has become increasingly apparent that the private hire operator licence fee structure requires revision in order to remain equitable. In previous years a ‘small operator’ fee was introduced to reflect those businesses which operate with a minimal fleet. Changes in the trade have led to more ‘large’ operators and even ‘very large’ fleets.

4.1.5 As can be seen from Appendix 1(a) there are two further operator fees included in the proposed fees to reflect this. These new fees will be required to be advertised in the press for 28 days before they can take effect. As detailed in paragraph 6 below, fees which remain unchanged will not have to be advertised.

4.2. Sex Establishments.

Sex Shops, Sex Cinemas and Sexual Entertainment Venues (SEV's)

- 4.2.1 In setting fees for Sexual Entertainment Venues, Sex Shops and Sex Cinemas we have taken note of the relevant case law. Most notably the 'Hemming' case.
- 4.2.2 Members should note that sex establishment fees in Birmingham have been reviewed annually by the Licensing and Public Protection Committee and that as it has not been necessary for officers to take enforcement action against an unlicensed sex establishment our fees have not included the cost of enforcement, other than the cost of achieving compliance amongst licensed businesses.
- 4.2.3 Schedule 3 to the 1982 Local Government (Miscellaneous Provisions) Act states that an applicant for the grant, renewal, variation or transfer of a sex establishment licence shall pay a **reasonable fee** determined by the appropriate authorities but does not expand on what would be considered to be reasonable. Case law relating to fee levels in various licensing cases has agreed a general principle that licensing fees should not be used as a method of creating revenue, nor as a deterrent to particular types of business.
- 4.2.4 The relevant fees are listed at Appendix 1b
- 4.2.5 The proposed fees are lower than previous years thanks to greater efficiencies in the manner in which the service is processing and administering the licences.

4.3. Birmingham City Council Act 1990 Massage and Special Treatment

- 4.3.1 This local legislation requires a licence to be granted in order to carry out certain activities such as provision of massage, or other treatments such as radiant heat or light treatment. The fee relates solely to this Act and does not relate to any other regulation the business may be subject to - such as health and safety or legislation controlling the use of sunbeds etc.
- 4.3.1 The fees are listed at Appendix 1c
- 4.3.2 The proposed fees reflect increases in the average time required to process and administer these licences.

4.4. Local Government (Miscellaneous Provisions) Act 1982
Skin Piercing (tattooists, piercers etc)

4.4.1 This legislation requires those wishing to carry out skin piercing activities to register with the Local Authority. This is a registration, not a licence or a permit. The fee relates solely to this registration and does not relate to any other regulation the business may be subject to - such as health and safety requirements.

4.4.2 The relevant fee is listed at Appendix 1d.

4.4.3 The proposed fee represents a minor increase in the average time required to process and administer these licences.

4.5 The Gambling Act 2005 –
Statutory Maximum Fees.

4.5.1 Some fees for the Gambling Act 2005 are determined by Licensing Authorities subject to Government prescribed *maximum limits*. These fees are listed at Appendix 1e.

4.5.2 The other fees listed in Appendix 1(e) were set by Government in 2007 and we are not aware of any proposals to increase them.

4.6. The Licensing Act 2003 – Statutory Fees

4.6.1 The fees for this licensing regime are set nationally by the Government and are detailed at Appendix 1f we are not aware of any proposals to increase them, despite them having been set in 2005.

4.6.2 It is important to note, the majority of the work of the General Licensing Team is Licensing Act 2003 matters. The fees still do not accurately reflect the costs associated with this work.

4.7. Services for which no fee can be levied:
Charitable Street Collections, House to House Collections.

4.7.1 House to House Collections are regulated by the House to House Collections Act 1939 and the House to House Collection Regulations 1947. The object of the Act is to provide for the regulation of house to house collections for charitable purposes. The legislation does not allow the Local Authority to charge a fee for processing these licences.

4.7.2 Likewise, charitable street collections are regulated by The Police, Factories etc. (Miscellaneous Provisions) Act 1916. The Act requires collectors to obtain a permit from the Licensing Authority. The legislation does not allow the Local Authority to charge a fee for processing these permits.

5. Coronavirus /Covid19 and lockdown restrictions

- 5.1 Officers have had many queries from different aspects of the licensed trades asking if they are entitled to a refund or discount on their licence fee as they have not had the opportunity to trade as they normally would.
- 5.2 As explained in paragraph 3 above, the fees are set on a cost recovery basis in order to ensure the cost of administering the applications and licences is met. The fees relate to work which, by the time the licence is issued, will have already been carried out. There is no scope to offer any kind of discount or refund on this work.
- 5.3 Wherever possible, officers have sought to introduce mitigation measures to try and assist licence holders such as those already agreed by your Committee in 2020 concerning late renewal of certain licences.

6. Consultation

- 6.1 Under Section 70(2) of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 76), a Local Authority is required to advertise changes to certain fees and charges in respect of hackney carriage and private hire vehicles by placing an advert in a local newspaper for 28 days before it can apply the new fees and it must consider any objections. Although it must consider them it does not have to vary the proposal as a result of them. There is no requirement upon the Local Authority to advertise an alteration to driver fees. Should any objections be received within that time, they must be considered by your Committee, thereby potentially delaying the date of implementation for the revised fees for the Licensing Service as set out in this report.

7. Implications for Resources

- 7.1 The proposals are consistent with the proposed budget for 2021/22 for the Licensing and Public Protection Committee that will be reported to you in March, subject to prior approval by City Council. This will ensure that the services continue to be managed within the approved cash limits and in line with the financial regulations relating to these services.
- 7.2 The fees and charges proposed within this report are calculated based on historic income and expenditure for 2019/20 (in line with previous practice) and include the direct costs of the delivery of services and a proportion of indirect central business support costs e.g. Human Resources, Legal, IT, Finance, Procurement and Democratic costs.

- 7.3 It should be noted that fees and charges are reviewed annually and that they may increase or decrease depending on the cost of delivering the service in the previous year and any carry forward balances.
- 7.4 Further to the right to object as detailed in 6.1 above, there are three possible ways in which the fees could be challenged:
- Judicial review of the Council decision based on the decision being Ultra Vires or considered to be unreasonable or irrational (known as Wednesbury Principles).
 - Through the District Auditor – if a Birmingham resident objects to the Local Authority accounts on the grounds that an item is contrary to law or
 - If the Council proposes to set an unlawful fee. This must be reported to and considered by the Monitoring Officer.
- 7.5 The proposed fees have been calculated having regard to finalised accounts in accordance with best practice advice and also with regard to significant case law. There is no statutory method in which to calculate the fees.
- 7.6 Any decision to set fees otherwise than in accordance with the proposals within this report without appropriate justification is likely to increase the risk of challenge.

8. Future Financial Plan

- 8.1 In 2020 the Licensing Service relocated to alternative office accommodation, and made more significant progress towards replacing the licensing software systems (SOPRA & MAPSS) and sourcing an online application system for licences. This project has been much slower than anticipated but is still progressing. It is anticipated to be effected before the end of 2021.
- 8.2 Although fees are calculated using historic accounts, it is important to also have regard to the future. The costs of replacing the licensing system have yet to be fully realised, although it is hoped a new system will lead to more opportunities for efficiency and flexibility for the service.

9. Implications for Policy Priorities

- 9.1 The recommendations are in accordance with Financial Regulations and budget requirements.
- 9.2 The legal requirement for a Licensing Service to recover only “reasonable costs” takes precedence over the City Council’s Corporate Charging Policy and the requirement to maximise income. Licence fees prescribed by statute also take precedence over the Corporate Charging Policy.

10. Public Sector Equality Duty

- 10.1 The fees that are proposed in this report will relate to all licence holders and applicants for licences regardless of their protected characteristics. The fees are calculated on the cost of delivering the service or are prescribed by regulation, and consequently an Equalities Assessment has not been undertaken.

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

Birmingham City Council – Corporate Charging Policy

The Proposed Fees

- 1a HACKNEY CARRIAGE AND PRIVATE HIRE**
- 1b LOCAL GOVERNMENT (MISC. PROVISIONS) ACT 1982 - SEX ESTABLISHMENTS**
- 1c BIRMINGHAM CITY COUNCIL ACT 1990- MASSAGE AND SPECIAL TREATMENTS**
- 1d LOCAL GOVERNMENT (MISC. PROVISIONS) ACT 1982 – Skin Piercers**
- 1e GAMBLING ACT 2005**
- 1f- LICENSING ACT 2003 - PRESCRIBED FEES**

1a – HACKNEY CARRIAGE AND PRIVATE HIRE

Transaction	current	proposed 21-22 Fee	Variation from current
Hackney Carriage Driver grant 1 yr	£183	£183	£0
Hackney Carriage Driver grant 2 yr	£217	£217	£0
Hackney Carriage Driver grant 3 yr	£250	£250	£0
Hackney Carriage Driver renewal 1 year	£133	£133	£0
Hackney Carriage Driver renewal 2 years	£167	£167	£0
Hackney Carriage Driver renewal 3 years	£200	£200	£0
Hackney Carriage Driver Late Renewal 1 yr	£183	£183	£0
Hackney Carriage Driver Late Renewal 2 yr	£217	£217	£0
Hackney Carriage Driver Late Renewal 3 yr	£250	£250	£0
Hackney Carriage Vehicle	£124	£124	£0
Hackney Carriage Vehicle renewal	£107	£107	£0
Hackney Carriage Vehicle late renewal	£124	£124	£0
Private Hire Driver grant 1 year	£161	£161	£0
Private Hire Driver grant 2 year	£195	£195	£0
Private Hire Driver grant 3 year	£228	£228	£0
Private Hire Driver renewal 1 year	£111	£111	£0
Private Hire Driver renewal 2 years	£145	£145	£0
Private Hire Driver renewal 3 years	£178	£178	£0
Private Hire Driver late renewal 1 year	£161	£161	£0
Private Hire Driver late renewal 2 year	£195	£195	£0
Private Hire Driver late renewal 3 year	£228	£228	£0
Private Hire Vehicle	£128	£128	£0
Private Hire Vehicle renewal	£128	£128	£0
Private Hire Vehicle Late Renewal	£128	£128	£0
Private Hire Operator 1-5 Vehicles only	£628	£628	£0
Private Hire Operator 1-5 Vehicles only (5yr)	£2,232	£2,232	£0
Private Hire Operator 1-5 Vehicles only renewal	£578	£578	£0
Private Hire Operator 1-5 Vehicles only renewal (5yr)	£2,182	£2,182	£0
Private Hire Operator (standard)	£895	£895	£0
Private Hire Operator (standard) (5yr)	£3,569	£3,569	£0
Private Hire Operator (standard) renewal	£845	£845	£0
Private Hire Operator(standard) renewal (5yr)	£3,519	£3,519	£0

Private Hire Operator (large) large = >500 drivers	n/a	£4,246	n/a
Private Hire Operator (large) (5yr)	n/a	£20,420	n/a
Private Hire Operator (large) renewal	n/a	£4,208	n/a
Private Hire Operator(large) renewal (5yr)	n/a	£20,382	n/a
Private Hire Operator (v large) = >1000 drivers	n/a	£8,289	n/a
Private Hire Operator (v large) (5yr)	n/a	£40,637	n/a
Private Hire Operator (v large) renewal	n/a	£8,251	n/a
Private Hire Operator(v large) renewal (5yr)	n/a	£40,599	n/a
Amendments to Private Hire Operator Trading Name/Address	£84	£84	£0
Replacement/Lost/Stolen Vehicle Identity Plate/Door Plates	£33	£33	£0
Replacement/Lost/Stolen Driver Identity Badge	£33	£33	£0
Replacement/Copy Paper Licence	£33	£33	£0
Replacement/Transfer of Vehicle Licence*	£100	£100	£0
Hackney Carriage Knowledge Test Folder	£33	£33	£0
Hackney Carriage Knowledge Test	£100	£100	£0
Hackney Carriage Written/Verbal Test	£49	£49	£0
photocopying	20p/ sheet	20p/sheet	nil

1b- LOCAL GOVERNMENT (MISC. PROVISIONS) ACT 1982 - SEX ESTABLISHMENTS

Licence Type	application fee	licence fee	total amount payable	current fee	difference
Sex Shop/Sex Cinema GRANT**	£4,433	£125	£4,557	£5,368	-£811
renewal	£2,492	£125	£2,617	3083	-£466
Transfer of ownership	£1,442	£107	£1,549	£1,699	-£150
Variation	£1,887	£107	£1,994	£2,223	-£229
Sexual Entertainment Venues**	£4,611	£178	£4,789	£5,641	-£852
renewal	£2,519	£160	£2,679	£3,156	-£477
Transfer	£1,433	£178	£1,611	£1,688	-£77
Variation	£2,448	£178	£2,626	£2,883	-£257

1c BIRMINGHAM CITY COUNCIL ACT - MASSAGE AND SPECIAL TREATMENTS

Licence Type	application fee	licence fee	total amount payable	current fee	difference
Massage and Special Treatment					
- 1 level of treatment	£137	£53	£190	£161	£29
renewal	£107	£53	£160	£126	£34
- 2+ levels of treatment	£160	£62	£223	£189	£34
renewal	£142	£62	£205	£168	£37
Transfer of Ownership	£62	£27	£89	£30	£59
Application for additional treatments	£62	£18	£80	£73	£7

1d -LOCAL GOVERNMENT (MISC. PROVISIONS) ACT 1982 – Skin Piercers

Licence Type	application fee	licence fee	total amount payable	current fee	difference
Skin Piercers (registration)	£41	£0	£41	£46	-£5

1e- Gambling Act 2005

GAMBLING ACT FEES (Figures in Brackets show maximum fee limit)

Premises Type	New Licence	1 st Annual Fee	Annual Fee	Variation	Transfer	Re-instatement	Provisional Statement	Licence Application (Provisional)	Copy Licence	Change Notification
Casinos			(£3,000)	(£2,000)	(£1,350)	(£1,350)	N/A	N/A	(£25)	(£50)
Current fee	£2,498	£382	£500	£2,000	£834	£834	£2,409	£1,469	£25	£50
proposed fee	£2,118	£324	£424	£1,695	£707	£707	£2,042	£1,245	£25	£50
difference	-£380	-£58	-£76	-£305	-£127	-£127	-£367	-£224	£0	£0
Bingo Clubs	(£3,500)		(£1,000)	(£1,750)	(£1,200)	(£1,200)	(£3,500)	(£1,200)	(£25)	(£50)
Current fee	£2,498	£382	£500	£1,750	£834	£834	£2,498	£1,200	£25	£50
proposed fee	£2,118	£324	£424	£1,483	£707	£707	£2,118	£1,017	£21	£42
difference	-£380.47	-£58.18	-£76.15	-£266.54	-£127.03	-£127.03	-£380.47	-£182.77	-£3.81	-£7.62
Adult Gaming Centre	(£2,000)		(£1,000)	(£1,000)	(£1,200)	(£1,200)	(£2,000)	(£1,200)	(£25)	(£50)
Current fee	£2,000	£294	£406	£1,000	£465	£465	£2,000	£795	£25	£50
proposed fee	£2,000	£249	£344	£848	£394	£394	£1,695	£674	£25	£50
difference	£0.00	-£44.78	-£61.84	-£152.31	-£70.82	-£70.82	-£304.62	-£121.09	£0.00	£0.00
Race Tracks	(£2,500)		(£1,000)	(£1,250)	(£950)	(£950)	(£2,500)	(£950)	(£25)	(£50)
Current fee	£2,500	£382	£500	£1,250	£950	£950	£2,500	£950	£25	£50
proposed fee	£2,500	£324	£424	£1,060	£805	£805	£2,119	£805	£25	£50
difference	£0	-£58	-£76	-£190	-£145	-£145	-£381	-£145	£0	£0
Family Entertainment Centres	(£2,000)		(£750)	(£1,000)	(£950)	(£950)	(£2,000)	(£950)	(£25)	(£50)
Current fee	£2,000	£294	£406	£1,000	£465	£465	£2,000	£950	£25	£50
proposed fee	£2,000	£249	£323	£1,000	£370	£370	£2,000	£950	£25	£50
difference	£0.00	-£44.78	-£83.05	£0.00	-£95.11	-£95.11	£0.00	£0.00	£0.00	£0.00
Betting Premises	(£3,000)		(£600)	(£1,500)	(£1,200)	(£1,200)	(£3,000)	(£1,200)	(£25)	(£50)
Current fee	£3,000	£294	£406	£1,500	£465	£465	£3,000	£795	£25	£25
proposed fee	£3,000	£249	£344	£1,272	£394	£394	£2,543	£674	£25	£25
difference	£0.00	-£44.78	-£61.84	-£228.46	-£70.82	-£70.82	-£456.93	-£121.09	£0.00	£0.00
Temporary Use Notice	(£500)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	(£25)	N/A
Current fee	£325								£25	
proposed fee	£275								£25	
difference	-£49.50								£0.00	

GAMBLING ACT 2005 – PRESCRIBED FEES

These fees were set nationally by Government in 2007 and may not be changed. There are no proposals from Government to revise these fees.

Alcohol Licensed Premises

Notification of up to 2 machines	£50
Permit for 3 or more machines (transitional)	£100
New Permit for 3 or more machines	£150
Variation	£100
Transfer of permit	£25
New name to be substituted	£25
Copy permit	£15
1 st Annual fee (3 or more machines)	£50
Annual fee (3 or more machines)	£50

Club Gaming and Machine Permits

Renewal and Transitional	£100
New	£200
Renewal after 10 years	£200
Variation	£100
Copy permit	£15
1 st Annual fee	£50
Annual fee	£50

Unlicensed Family Entertainment Centres

Transitional	£100
New	£300
Renewal after 10 years	£300
New name to be substituted	£25
Copy permit	£15

Lotteries

New	£40
Annual Fee	£20

1f- LICENSING ACT 2003 - PRESCRIBED FEES

These fees were set nationally by Government in 2005 and can only be changed by national legislation.

Application Fee

Rateable Value	Premises Value	Published
		21 January 2005
A	No rateable value up to £4,300	£100
B	£4,301 to £33,000	£190
C	£33,001 to £87,000	£315
D	£87,001 to £125,000	£450
E	£125,001 and above	£635
D primarily alcohol	2 x multiplier	£900
E primarily alcohol	3 x multiplier	£1,905

Annual Charge

Rateable Value	Premises Value	Published
		21 January 2005
A	No rateable value up to £4,300	£70
B	£4,301 to £33,000	£180
C	£33,001 to £87,000	£295
D	£87,001 to £125,000	£320
E	£125,001 and above	£350
D primarily alcohol	2 x multiplier	£640
E primarily alcohol	3 x multiplier	£1,050

Other Fees

Personal Licence (grant)	£37
Temporary Event Notice (TEN)	£21
Theft/loss of premises licence/club certificate, summary, personal licence or TEN	£10.50
Provisional Statement	£315
Change of name, address, club rules	£10.50
Personal Licence Change of details.	£10.50
Variation of DPS	£23

Transfer of premises licence	£23
Interim Authority Notice	£23
Right of Freeholder notification	£21
Minor Variation	£89
Variation to include alternative condition (no DPS)	£23

Summary of Relevant Case Law

R (on the application of Carl Cummings and others) v The County Council of the City of Cardiff [2014] EWHC 2544 (Admin)

The Claimants challenged successfully the lawfulness of the taxi and private hire fees set by Cardiff City Council, resulting in the refund of some £1.2 million to the taxi trade in respect of overpaid fees. This case was a Judicial Review of a Cardiff City Council decision. The court found that the Council had not been properly accounting and keeping record of any surplus or deficit dating back to 01 May 2009, and that the fees that had been set over the subsequent years had therefore been set without taking into account any such surplus or deficit. These surpluses and deficits can only be accounted for and taken into account within the specific regime that they cover (either hackney carriage or private hire), and surpluses from one regime cannot be used to offset deficits in the other regime. In other words, Councils are required to keep separate accounts for both the hackney carriage regime and the private hire regime, and must ensure that one is not supporting the other financially. Councils ought to separate out the five streams of taxi licensing (comprising vehicles, drivers and operators) when collecting their licence fees, to ensure no cross-subsidy within these streams. Moreover, Councils must not use the licensing fees as an income generating scheme.

R (on the application of Abdul Rehman on behalf of the Wakefield District Hackney Carriage and Private Hire Association) v Wakefield District Council and the Local Government Association (intervener) [2019] EWCA Civ 2166

This case, known as Rehman v Wakefield Council, was a Court of Appeal matter which clarified the law on taxi and private hire enforcement costs. Wakefield Council had imposed the cost of enforcement activity in relation to drivers onto the vehicle licence fees. Wakefield's Taxi and Private Hire Association challenged this, on the basis that Wakefield's calculations were unlawful because it was a form of cross-subsidising fees. The case clarified the correct procedure that councils must apply when setting taxi and private hire fees – namely that costs associated with monitoring and enforcing driver conduct must be factored into to driver licensing fees under s53 LG(MP)A 1976, and not vehicle licence fees under s70 (as had been the practice in Wakefield). The case therefore reaffirmed the principle that cross-subsidisation of taxi and private hire fees is not permitted in law.

R v Manchester City Council ex parte King (89 LGR 696 [1991]; The Times, 3 April 1991)

This was a street trading case that established that local authorities may only charge reasonable fees for licences and cover the Council's costs in the administration of

those application types and issue costs - but not use them to raise revenue. The Council had set licence fees at a commercial rate, considering that the calculation of a 'reasonable fee' was a matter for their own discretion. But the court held that the fees must be related to the street trading scheme, and the costs of operating that scheme. The Council could therefore charge such fees as it reasonably considered would cover the total cost of operating the street trading scheme (or such lesser part of the cost of operating the street trading scheme as they considered reasonable). NB – this does not mean that any surplus revenue makes the fee structure invalid. The original position will remain valid provided that it can be said that the Council reasonably considered such fees would be required to meet the total cost of operating the scheme, even if the fees levied turn out to exceed the cost of operating the scheme.

R v Westminster City Council ex parte Hutton (1985) 83 LGR 516

This case was tried and reported with R v Birmingham City Council, Ex p Quietlynn Ltd (1985) 83 LGR 461, 517 and confirmed the principle that licensing fees may lawfully include amounts calculated to cover the cost to the licensing authority of regulation and enforcement. Hutton challenged the fee set for applying for a licence to operate a sex shop, on the basis that the administrative costs on which the fee was based included a sum representing the supposed shortfall in fee income against administrative costs in the previous year. The court held that the fee could reflect not only the processing of applications, but also 'inspecting premises after the grant of licences and for what might be called vigilant policing ... in order to detect and prosecute those who operated sex establishments without licences'. The Council was free to fix fees reflecting those necessary elements on a rolling basis, without adjusting surpluses and deficits in each year. This was on the basis that the statutory accounts of local authorities are structured such that shortfalls in one year must be carried into the next year's accounts. The court accepted Westminster's contention that when a charge is based on an annual budget, which must be concerned with situations which themselves will not be verifiable until after the end of the year in question, the only sensible way to fix the level of the charge is to take one year with another.

R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] - 29th April 2015; [2015] UKSC 25, [2015] BLGR 753, [2015] PTSR 643, [2015] WLR(D) 193, [2015] AC 1600, [2015] 3 CMLR 9, [2015] LLR 564, [2015] 2 WLR 1271, UKSC 2013/0146

The Hemming case was a Supreme Court decision which overturned a Court of Appeal decision which had in turn upheld the decision of the lower court. Many commentators feel that the Supreme Court decision "restored common sense to the question of what licensing and other regulatory fees can lawfully include". The Supreme Court affirmed the principle in ex p. Hutton – namely that licensing fees

may lawfully include amounts calculated to cover the cost to the licensing authority of regulation and enforcement.

Hemming's argument was that the approach approved 30 years before in *ex p. Hutton* was no longer lawful due to the effect of an EU Directive which had been implemented into domestic law under Regulations. Hemmings asserted that the Directive and Regulations precluded Westminster from including costs of enforcement activities against unlicensed operators in determining the licence fees payable by licensed operators; he felt that these costs should be covered by revenue from Council Tax and business rates. The huge importance of the case, not only to all other Council licensing departments but also to other (entirely unrelated) regulatory bodies, was such that when the case came before the Supreme Court there were nine Interveners before the Court - including the Architects Regulation Board, the Solicitors Regulation Authority, the Bar Standards Board, the Local Government Association and HM Treasury.

The decision was that the Directive and Regulations were solely concerned with ensuring that the costs charged for authorisation procedures (ie the clerical and administrative aspects of authorisation) were reasonable and proportionate to the actual costs of those procedures; they in no sense precluded licensing authorities from also including the costs of regulatory and enforcement activities in the total licence fees payable by licensed operators. The court saw no reason why the fee should not be set at a level enabling the authority to recover from licensed operators "the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences." Likewise, with regard to other areas of licensable activity (where licensing authorities are empowered by domestic legislation to recover the costs of enforcement activity through licence fees) and regulated activity (e.g. practising as an architect, barrister or solicitor) - the decision of the Supreme Court has made clear that the Directive and Regulations do not preclude licensing authorities, or other regulatory bodies, from continuing to recoup their enforcement costs through fees charged to licensed operators or certified practitioners.

There is a related point - the Supreme Court said that one aspect should be referred to the European Court of Justice, namely Westminster's chosen method of exercising its right to recover the costs of enforcement. Westminster charged all applicants for sex establishment licences a fee that included both a sum to cover the cost of administering the application and a sum representing a contribution towards Westminster's costs of enforcement. The latter sum was refunded to unsuccessful applicants, whilst the former sum was not.

The Supreme Court asked the ECJ to determine whether that particular method of charging, which effectively deprives unsuccessful applicants of the use of the latter sum whilst their application is being considered, fell foul of the Directive (as opposed to an alternative method of charging only the successful applicants with the contribution towards the costs of enforcement).

In its judgment the ECJ concluded that the Directive must be interpreted as precluding a requirement for the payment of a fee, at the time of submitting an

application for the grant or renewal of authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused. The citation of this ECJ decision is: Hemming (Judgment) [2016] EUECJ C-316/15 (16 November 2016): [2017] 3 WLR 317, [2017] LLR 189, [2016] WLR(D) 608, [2017] PTSR 325, ECLI:EU:C:2016:879, [2018] AC 650, [2017] CEC 920, EU:C:2016:879, [2016] EUECJ C-316/15