

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

20 JANUARY 2016
ALL WARDS

COST RECOVERY AT COURT

1. Summary

- 1.1 At the meeting of this Committee on 16 July 2014 members asked for further information on the percentage of costs that are received from defendants in criminal cases. This report addresses this question.
- 1.2 The Council's financial recording systems are such that a precise figure cannot be measured, however, we are able to estimate approximate figures based on annual income received from the courts.

2. Recommendation

- 2.1 That outstanding minute number 387(ii) be discharged.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6920
E-mail: chris.neville@birmingham.gov.uk

3. Background

- 3.1 The Licensing, Environmental Health and Trading Standards services all perform regulatory functions and are authorised to take prosecutions under legislation that is delegated to them from your Committee. Information is provided to the Committee at each meeting on the outcome of prosecution cases in the preceding month(s).
- 3.2 The cost of taking prosecution cases is paid from the budget of the relevant service area responsible for the prosecution. Where a defendant pleads guilty or is found guilty the prosecutor is entitled to ask the court to order that the defendant pays the costs of the case to the prosecutor.
- 3.3 The prosecutor is entitled to ask for all relevant costs, which include the cost of officer time to investigate and report the offence, witness expenses, the cost of processing the prosecution administratively and the legal costs associated to it (namely the costs of employing a solicitor or barrister to oversee the prosecution before court and of presenting the case at court). In determining the cost of officer time, a figure is calculated annually and reviewed and approved by your Committee in the annual Fees and Charges report. That figure is based on the different pay scales of officers, but includes all overheads associated to the employment of the officer and is therefore more than an hourly salary rate.
- 3.4 Most investigations are undertaken by officers at Grade 4 or 5. The last set of hourly rates was approved in March 2015 as follows:

OFFICER SALARY GRADE	CHARGEABLE HOURLY RATE 2014/2015	CHARGEABLE HOURLY RATE 2015/2016
Grade 2	£29	£31
Grade 3	£38	£42
Grade 4	£50	£54
Grade 5	£63	£68
Grade 6	£80	£87
Grade 7	£107	£117

- 3.5 The reports that are presented monthly to your Committee include information on the amount of costs that are awarded by the courts as a percentage of the amount claimed by the prosecution. Members have asked for more information on the how much of the amount awarded is paid by defendants.

4. Cost Recovery

- 4.1 Costs are awarded by virtue of Section 18 of the Prosecution of Offences Act 1985. Guidance is provided to magistrates and prosecutors in a Practice Direction issued by the Lord Chief Justice. The principles of cost recovery flow from the Court of Appeal case of *Neville v Gardner Merchant* in 1983, which concerned an Environmental Health prosecution.
- 4.2 Magistrates and Crown Courts have complete discretion in terms of making costs orders and their decisions have to be made in the light of the circumstances of each particular case. Regardless of the cost to the prosecution the court will always have regard to the ability of the defendant to pay. Costs must be 'just and reasonable' and a court must not order defendants to pay costs which the defendant is unable to pay as a result of their financial circumstances. Courts have the power to order costs to be repaid on an instalment basis where it is appropriate, but they must not do so if the limited means of the defendant are such that it would take an excessively long time to repay.
- 4.3 For the year to date since 1st April 2015 the following costs have been requested and awarded:

Licensing

£38,120 has been requested with £22,457 being awarded (59%).

Environmental Health

£100,039 requested with £88,825 being awarded (88%).

Trading Standards

£58,216 requested with £40,557 being awarded (70%).

- 4.4 The overall average rate of recovery is, therefore, 72.3%. Historically Licensing has tended to be awarded a lower percentage of its costs. There is no definitive reason for this, although it is likely that magistrates are influenced by the knowledge that private hire drivers (who form the majority of Licensing's defendants) will lose their licence and, therefore, their livelihoods following conviction, which affects the defendant's ability to pay.
- 4.5 Trading Standards' cost recovery rate is affected by the prevalence of custodial sentences for its prosecutions. Very often courts are reluctant to make costs orders on top of custodial sentences.
- 4.6 Having made a costs order, the responsibility then rests with the court to recover the costs from the defendant, which as stated above, might be on an instalment basis. The courts have various processes and procedures which they employ to recover costs from defendants, such as:
- Collection Order Notices.
 - Further Steps Notices.
 - Deducting Payments straight from Attachment of Benefit.

- Deducting payments straight from Attachment of Earnings orders.
 - Distress Warrants.
 - Warrants of Arrest.
 - Referring the matter back to court for a committal warrant to be issued.
- 4.7 The courts operate their own banking/recording system for payments received from defendants. They will maintain a record of fines, costs awarded (BCC element) and Court Charges. On a regular basis the courts will transfer the money due to Birmingham City Council electronically or by cheque along with summary information usually referring to the defendant's name in the transactions to assist the Council to allocate the income items to the correct prosecuting department. The Council's systems are such that it does not directly relate the income transactions to the costs of the individual cases. Therefore, it is not possible to say with any accuracy what percentage of costs awarded at court are recovered in income.
- 4.8 Within Birmingham City Council, each service area will be able to state how much income it has received from the courts on an annual basis. However, due to the complexity involved in linking income transactions to specific legal cases, it is not possible to say precisely what percentage of costs awarded are recovered on an individual case by case basis. Partly this is because income on each case may be received in instalments spanning many months and over more than one financial year. Also, income will often be received from the courts where more than one case has been amalgamated without specifying the name of each defendant or to which case the income relates.
5. Implications for Resources
- 5.1 It is important that the highest possible level of cost recovery is achieved to reduce the burden of taking cases on the public purse.
6. Implications for Policy Priorities
- 6.1 The Council's Corporate Charging policy expects that officers will maximise income wherever possible.
7. Implications for Equality and Diversity
- 7.1 No specific implications have been identified.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil