

REPORT TO LICENSING COMMITTEE

Date of Meeting: 27th October 2020

Report of: Service Lead - Environmental Health and Community Safety

Title: Licensing Fees and Charges: Update to Animal Licence Fees

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 This report details, and seeks approval for, the changes that are being proposed to the fee structure for animal licensing in Exeter from 1st January 2021.

2. Recommendations:

- 2.1 For the period from 1 January 2021 to 31 March 2021 it is recommended that the Licensing Committee set the fees as contained in Appendix A.

3. Reasons for the recommendation:

- 3.1 The statutory principle in relation to the setting of fees is that they should be reasonable and should relate to the costs of performing the function, including staffing, administration, testing, inspections, hearings, regulation and appeals.
- 3.2 The recommendation is in order to comply with the provisions of the European Services Directive (2006/123/EC) which was incorporated into UK law by the Provision of Services Regulations 2009. The legal requirements were considered by the Supreme Court in the case of R (on the application of Hemming and others) v Westminster City Council [2015] UKSC 25 and [2017] UKSC 50.

4. What are the resource implications including non financial resources.

- 4.1 If there is no increase in fees there is a risk that the Council will not recover all of the costs for services or activities for which it is permitted to charge and increase the burden on the Council's general fund.

5. Section 151 Officer comments:

- 5.1 The contents of the report are noted. Finance will support the service in monitoring the costs and income to ensure that they are closely matched.

6. What are the legal aspects?

- 6.1 The Licensing Committee's responsibilities are set out in the Council's Constitution and include setting and reviewing licensing fees other than those set by statute.
- 6.2 The power to charge a fee is contained in Schedule 3 Paragraph 19 of the Local Government (Miscellaneous Provisions) Act 1982 which provides local authorities with a wide discretion to set a 'reasonable fee'. Paragraph 19 provides that:

'An applicant for the grant, variation, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority.'

The licence fee will consist of two parts, A and B as follows:

Part A is to cover the costs of processing the application, namely the costs of the authorisation procedures and formalities (in the case of animal licensing this would include the cost of rating inspections, and vets visits in order to determine the animal welfare rating).

The Part A fee is payable in full on submission of the application and is non-refundable.

Part B is to cover the costs associated with running and enforcing the licensing scheme.

The Part B fee would only become payable if a licence is granted, and would need to be paid by the operator before the licence becomes operational.

7. Monitoring Officer's comments:

The Monitoring Officer has no additional comments.

8. Report details:

- 8.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, introduced a scoring matrix to determine a licensee's rating for animal welfare, and linked the score awarded to the duration of a licence as follows:

<i>Risk Rating and Star Rating</i>	<i>1 Star Minor Failings Does not meet all required Standards</i>	<i>2 Star High Risk but meets Standards as specified in regulations</i>	<i>3 Star Low risk and meets Standards as specified in regulations</i>	<i>4 Star High risk but meets Higher Standards as specified in regulations</i>	<i>5 Star Low risk and meets Higher Standards as specified in regulations</i>
<i>High Risk</i>	<i>1 year</i>	<i>1 year</i>	<i>N/A</i>	<i>2 year</i>	<i>N/A</i>
<i>Low Risk</i>	<i>1 year</i>	<i>N/A</i>	<i>2 year</i>	<i>N/A</i>	<i>3 year</i>

- 8.2 The fee required for the licence therefore needs to be linked to the duration and risk level of the licence which is determined by the animal welfare rating that the applicant receives following the inspection of their premises/ business.

- 8.3 The previous animal licence fee structure introduced a flat annual fee system for different types of animal licence, but having fully inspected all of the animal licenced premises in Exeter, it has now become apparent that it is necessary to amend our fee structure to bring this fully in-line with the above scoring matrix. In particular, numerous animal businesses in Exeter were awarded 3, 4 and 5 star ratings which led to them being allocated a longer licence duration which is incompatible with our current fee structure.
- 8.4 The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Numerous legal cases over the years have confirmed that licensing fees may not be used to generate a profit for councils, and that fees should be reviewed annually to ensure that neither a significant surplus nor deficit is created. Surpluses or deficits may be carried forward to future years to be redistributed (within the ring-fenced licensing budget), or recouped, as applicable.
- 8.5 In the case of animal licence fees, it has now become apparent as we move into the second full year of the new animal licensing regime, that an adjustment of the fee structure is required both to ensure full cost recovery, and to ensure compatibility with the above scoring matrix.
- 8.6 Many licensing schemes fall within the definition of ‘services’, under the EU Services Directive, as incorporated by the Provision of Services Regulations 2009. For such schemes, fees and charges must “*be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities*”. This principle was affirmed by the courts in *R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*. Fees must reflect administrative, policy and compliance costs, but cannot include the costs of enforcement action against unlicensed operators.
- 8.7 Details of the proposed fee structure is attached at Appendix A.
- 8.8 Guidance documents accompanying the Regulations now state that Dog Day Care Centres should be given a specific licence rather than being licenced as an animal boarding centre as the acceptable number of dogs to be accommodated overnight will often differ from the acceptable number of dogs that can be accommodated for day care. Accordingly, an additional licence fee category has been added to the proposed list of animal licence fees.

9 How does the decision contribute to the Council’s Corporate Plan?

- 9.1 The appropriate setting of Licensing Fees will contribute to a healthy and safe city, and lend support to a robust, business friendly economy.

10 What risks are there and how can they be reduced?

- 10.1 The proposed fees have been calculated on a cost recovery basis, and projections show that if the revised fees are adopted the costs of administering licensing schemes should be recovered.

11 Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12 Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13 Are there any other options?

13.3 The Licensing Committee may reject the proposed changes to the fee structure.

Report of: Simon Lane, Service Lead - Environmental Health and Community Safety

Author: Lee Staples, Principal Licensing Officer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
- European Services Directive (2006/123/EC)
- Local Government (Miscellaneous Provisions) Act 1982

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