

Mid Devon District Council – Fee Setting Policy for Licensing

The Council is responsible for administering a range of licences, permits and registrations based on both national and locally adopted legislation. For most of these functions there is an ability to set a fee and it is largely based on the assumption that the Council should be able to recover its costs rather than have businesses subsidised by the Council tax payer.

Fee Setting Principles:

- **Full cost recovery**
- **Legal compliance**
- **Ensure Fairness and Be Simple to Understand and Operate**
- **Meet Council's Corporate Objectives**

1 Full Cost Recovery

This should include:

- Administration to process the licence application ie photocopying, handling fees through accounts department, printing licences, updating registers (including external and internal), scanning, updating computer systems, making national returns etc.
- A share of central support costs
- The cost of the officers involved to include individual on costs such as pension, national insurance and training
- Third party costs – for example the costs of veterinary surgeon input to animal-related licences
- Liaison with interested parties
- Initial visit as part of the application costs if necessary. Additional monitoring, risk based inspection visits and responding to complaints are legitimate costs of ensuring compliance once a licence is granted. These costs would include travel and management time as on costs.
- Incorporate the effects of inflation
- Necessary equipment to carry out the function including maintenance and replacement of computer software
- Development, determination and production of policies, procedures and guidance, including the cost of any consultations
- Website – the EU Services Directive requires that applications (and the associated guidance) can be made online. Advertising premises applications on website.
- Advice and guidance – this includes advice given in person, production of leaflets or promotional tools (which have included workshops for those licensed), and online guidance
- Management costs specific to the function and more generally
- Legal costs where reasonably incurred
- Bad debt provision
- Reviewing and setting fees – to include the costs of producing the review and taking it to Committee for approval.
- Cost of democracy – some of the costs involved in preparing reports for committee for licensing decisions and hearings.

- Any other costs relevant to the Licensing function.

2 Legal Compliance

The Council must ensure that all legal requirements for setting fees are met and this must override all other factors so as to protect the Council from risk of legal challenge. Adoptive legislation must be properly adopted and the Council must be able to demonstrate that it has done so. Where there is a legal requirement to advertise proposed fee changes as with taxi fees then that must be done.

There is also a need to take into account the Provision of Service Regulations and those may be summarised in the following terms:

- Fees should not be used as an economic deterrent to certain activities or to raise funds and enforcement costs should not be contained within the application fee
- Enforcement costs against unauthorised activities will not form part of the fee costs but compliance action against authorised activities will be a legitimate part of the fee. Compliance and enforcement will be defined in this way.
- Ring-fenced accounts and other financial systems will be used to ensure that fees do not cross subsidise different licensing regimes. Surpluses and deficits should be carried forward into subsequent years' calculations and accounts should be managed so that they balance over a 3-5 year cycle where possible. They should carry forward a working balance to accommodate fluctuations in income or expenditure.

3 Fees to be Fair and Simple to Understand and to Operate

Fees that are set should be a fair, reasonable and proportionate representation of the costs relative to the level of resource required. They should also be simple to understand and operate and be published on the website. Different ways of making payment should be easily available including online options.

4 Meet Council's Corporate Objectives

Mid Devon District Council's Corporate Plan 2012 – 2015 has a 'Thriving Economy' as one of its objectives. By making sure fees are set fairly and having transparency about the process businesses will have some certainty about the costs they will incur.

Income Collection, Bad Debt and Unrecoverable Costs

Generally a fee is required with an application to make it complete which means there is not usually a problem with applications. The power to suspend licences under the Licensing Act 2003 has virtually solved the problem that there was prior to the power being granted in respect of annual fees.

The costs of defending appeals in the Magistrates' Court or of a judicial review may be recovered through the Courts. If these costs are included in fee regime there is a danger that they are recovered twice. Conversely, if the Council loses those costs are not recovered. The Council is also unable to recover enforcement costs through

licence fees for licences covered by the Services Directive. The case of Hemming v Westminster means that the costs of enforcement action against unlicensed premises cannot be recovered through the licence fee. There is currently no guidance or case law describing the point at which recoverable compliance costs switch over to unrecoverable enforcement costs – if clarification is received this policy should be reviewed accordingly.

Additionally, some licences and permits may not be charged for and the costs are met through the General Fund. Examples are street collection permits, house to house collection licences and most aspects of caravan site licensing.

Fees to be kept under review

For fees to be fair, reasonable and proportionate they need to be subject to a regular and robust review process. Mid Devon's Licensing Team keeps time records and works with their accountant to ensure that the review process is based on accurate information for each authorisation. Where fees are set for a new regime they will be rigorously reviewed to ensure that the calculations made on a 'best guess' basis were appropriate.

Those benefitting from the activities permitted by the various authorisations should not, as far as the Council has the ability to do so, be subsidised by the General Fund.

Fees will be set by the Council in accordance with the Constitution and the Scheme of Delegation.

Policy adopted by the Licensing and Regulatory Committees on 10 April 2014