

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S  
REPORT TO**

**Licensing and Public Protection Committee**  
**02 November 2021**

**Report Title:** FEES TO BE CHARGED FOR THE LICENSING OF SCRAP METAL DEALERS, GAMBLING, SEXUAL ENTERTAINMENT VENUE LICENSING 2022-23

**Submitted by:** Head of Environmental Health & Licensing Administration Team Manager

**Portfolios:** Finance, Town Centres & Growth

**Ward(s) affected:** ALL

**Purpose of the Report**

For Members to consider the fees to be charged in relation to the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues.

**Recommendation**

That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues for 2022-23

**Reasons**

Decisions relating to the setting of non-statutory fees and charges for licensing have been delegated from Council to Licensing Committee.

1. **Background**

1.1 The approval of certain fees and charges relating to the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venues (SEVs) licensing regimes are Council functions.

1.2 Council at their meeting on 22nd February 2017 delegated this function to Licensing Committee.

**Gambling:**

1.3 The Gambling Act 2005 allows Licensing Authorities to set their own fees for premises licenses, subject to maximum levels which have been specified by Central Government.

1.4 The Councils Gambling Policy was implemented in January 2019, following approval from the Licensing Committee and Council.

**Sexual Entertainment Venues:**

1.5 The Local Government (Miscellaneous Provisions) Act 1982 ('the Act') introduced a licensing regime to control sex establishments. The Council adopted schedule 3 of the Act on the 31st March 2010 and the schedule took effect on the 3rd August 2010. This means the Council can control and regulate the operation of certain kinds of sex establishments within its area. No sex establishment can operate unless it has obtained a

licence from the Council. Any licence may contain conditions that will restrict how that sex establishment may trade.

- 1.6 The setting of fees for the licensing of sex establishment remains with the Local Authority. The licence is for a one year period. We do not currently have any Sex Establishment Venues.

#### **Scrap Metal Dealers:**

- 1.7 The Scrap Metal Dealers Act 2013 ('the SMDA13') introduced a licensing regime to control Scrap Metal Dealers, replacing the registration scheme used previously. The SMDA13 allows Licensing Authorities to set their own fees for both Site and Collectors licences.

## 2. Issues

- 2.1 The European Services Directive states (Art 12.2):

*“Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures”*

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

- 2.2 Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):

*“Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.”*

## 3. Proposal

- 3.1 That Committee agree the fees to be charged for the licensing of Scrap Metal Dealers, Gambling and Sexual Entertainment Venue Licensing for 2022-2023. All proposed license fees and charges are detailed in table below:

<u>Licences:</u>	<u>2021-22</u> <u>Fee</u>	<u>2022-23</u> <u>Proposed</u> <u>Fee</u>	<u>Difference</u>
<b>General</b>			
Sex establishments - application fee	3,289.00	3,388.00	3%
Sex establishments - renewal	3,289.00	3,388.00	3%
Sex establishments - variation	1,114.00	1,147.00	3%
Sex establishments – transfer	1,114.00	1,147.00	3%

<b>General</b>			
Scrap metal dealer site licence	281.00	289.00	3%
Scrap metal dealer collectors licence	222.00	229.00	3%
<b>Gambling Act 2005</b>			
Lotteries - application fee	40.00	40.00	All Frozen or Set by Statute unless stated otherwise
Lotteries - annual fee	20.00	20.00	
Bingo - application fee	3,500.00	3,500.00	
Bingo - annual fee	1,000.00	1,000.00	
Bingo - application to vary	1,750.00	1,750.00	
Bingo – application for transfer	1,200.00	1,200.00	
Bingo – application to reinstate	1,200.00	1,200.00	
Track betting - application fee	2,500.00	2,500.00	
Track betting - annual fee	1,000.00	1,000.00	
Track betting - application to vary	1,250.00	1,250.00	
Track betting - application to transfer	950.00	950.00	
Track betting – application to reinstate	950.00	950.00	
Betting premises - application fee	3,000.00	3,000.00	
Betting premises - annual fee	600.00	600.00	
Betting premises - application to vary	1,500.00	1,500.00	
Betting premises - application to transfer	1,200.00	1,200.00	
Betting premises – application to reinstate	1,200.00	1,200.00	
Family entertainment centre - application fee	2,000.00	2,000.00	
Family entertainment centre - annual fee	750.00	750.00	
Family entertainment centre - application to vary	1,000.00	1,000.00	
Family entertainment centre - application to transfer	950.00	950.00	
Family entertainment centre – application to reinstate	950.00	950.00	
Adult gaming centre - application fee	2,000.00	2,000.00	
Adult gaming centre - annual fee	1,000.00	1,000.00	
Adult gaming centre - application to vary	1,000.00	1,000.00	
Adult gaming centre - application to transfer	1,200.00	1,200.00	
Adult gaming centre – application to reinstate	1,200.00	1,200.00	
Copy of any of the above licences (lost, stolen, damaged)	25.00	25.00	
Notice of Intention – 2 or less gaming machines	50.00	50.00	
Licensed Premises Gaming Machine Permits – more than 2 machines	150.00	150.00	
Licensed Premises Gaming Machine Permits – more than 2 machines – Variation	100.00	100.00	
Licensed Premises Gaming Machine Permits – more than 2 machines – Transfer	25.00	25.00	
Licensed Premises Gaming Machine Permits – more than 2 machines – Annual Fee	50.00	50.00	
Licensed Premises Gaming Machine Permits – more than 2 machines – Change of Name	25.00	25.00	
Licensed Premises Gaming Machine Permits – more than 2 machines – Copy (lost, stolen, damaged)	15.00	15.00	
Club Gaming/Club Machine Permits – New/Renew	200.00	200.00	

Club Gaming/Club Machine Permits for holders of Club Premises Certificates (under LA03) – New/Renew	100.00	100.00	
Club Gaming/Club Machine Permit – Annual Fee	50.00	50.00	
Club Gaming/Club Machine Permit – Variation	100.00	100.00	
Club Gaming/Club Machine Permit – Copy (lost, stolen, damaged)	15.00	15.00	
UFEC (Unlicensed family entertainment Centre – 10 year permit)	300.00	300.00	
Prize Gaming Permit – New/Renewal	300.00	300.00	
Prize Gaming Permit – Change of Name	25.00	25.00	
Prize Gaming Permit – Copy (lost, stolen, damaged)	15.00	15.00	
NEW - Temporary Use Notice (TUN)	N/A	200.00	
Occasional Use Notice (OUN)	0.00	0.00	
Casino Small – New application	7,138.00	7,352.00	3%
Casino Small – Annual Fee	3,569.00	3,676.00	3%
Casino Small - Variation	2,379.00	2,450.00	3%
Casino Small – Application for Transfer	1,530.00	1,576.00	3%
Casino Small – application to reinstate	1,530.00	1,576.00	3%

3.2 There is one new fee that has been added, which is for Temporary Use Notices (TUN). The Council have never received a TUN previously but a fee has been proposed to ensure we are able to recover the costs should we receive one. A TUN allows a person or organisation, which holds an operating licence issued by the Gambling Commission, to temporarily provide facilities for gambling in a premises that is not licensed. The can only be used to permit the provision of facilities for equal chance gaming, and where the gaming in each tournament is intended to produce a single overall winner. For example a hotel or conference centre being used to hold a poker tournament.

#### 4. **Reasons for Proposed Solution**

4.1 The locally set fees can be used to cover the cost of the following:

**Administration** – This could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.

**Initial visit/s** – This could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include ‘on-costs’ in this calculation. Councils will need to consider whether ‘on-costs’ include travel costs and management time.

**Third party costs** – Some licensing processes will require third party input from experts.

**Liaison with interested parties** – Engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.

**Management costs** – Councils may want to consider charging an average management fee

where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.

**Local democracy costs** – Councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.

**On costs** – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions. Finance teams should be able to provide a standardised cost for this within each council.

**Development, determination and production of licensing policies** – The cost of consultation and publishing policies can be fully recovered.

**Web material** – The EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.

**Advice and guidance** – This includes advice in person, production of leaflets or promotional tools, and online advice.

**Setting and reviewing fees** – This includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval.

## 5. Options Considered

5.1 The Council has a duty to set fees for certain regimes where the amount is not set by statute. The SEV and Scrap Metal licensing regimes, alongside part of the Gambling Act, have such fees that can be set locally. All fees set must be proportionate and seek only to recover those areas set out in statute that we may recover. If the Council chose not to set fees then the applications made under these regimes would be subsidised by tax payer funds. This option has not been considered as it is felt that applicants for licences should be able to meet the costs of any application once they have been issued with the appropriate permission.

## 6. Legal and Statutory Implications

### 6.1 **Hemming v Westminster**

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In *Hemming v Westminster*, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, *Hemming v Westminster* stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of *R v Tower Hamlets LBC (1994)* is also relevant, as the High Court indicated that “*a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers*”.

## 7. **Equality Impact Assessment**

7.1 Not applicable

## 8. **Financial and Resource Implications**

8.1 Should a challenge be made in relation to the fee level as detailed in the *Hemming v Westminster* there could be detrimental financial implications for the Council

## 9. **Major Risks**

9.1 As detailed under Legal and Statutory Implications

## 10. **UN Sustainable Development Goals (UNSDG)**

10.1



## 11. **Key Decision Information**

11.1 Not applicable

## 12. **Earlier Cabinet/Committee Resolutions**

12.1 The Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31<sup>st</sup> March 2010 which came into effect on 3<sup>rd</sup> August 2011.

12.2 Council delegated the function of setting fees and charges to Licensing Committee on 22<sup>nd</sup> February 2017.

## 13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 LGA Guidance on Local Fee Setting