



City of Westminster

# Cabinet Report

<b>Meeting</b>	<b>Cabinet</b>
<b>Date:</b>	<b>11 July 2016</b>
<b>Classification:</b>	<b>For General Release (Appendix 2 – Exempt from public disclosure)</b>
<b>Title:</b>	<b>Fees &amp; Charges Review</b>
<b>Wards Affected:</b>	<b>All</b>
<b>Financial Summary:</b>	<b>This report provides an overview of fees and charges and sets out the process to ensure a consistent corporate approach to fees and charges to be completed on an annual basis. MTP savings of £8.9m have been identified for 2016/17 linked to fees and charges. There are further opportunities as highlighted in the report to further contribute to the Council's savings proposals.</b>
<b>Report of:</b>	<b>Steven Mair, City Treasurer Tel: 020 76412904 Email: smair@westminster.gov.uk</b>

## **1. Executive Summary**

- 1.1 During 2015/16, Westminster City Council received c£1.5bn of income of which c£120m was from fees and charges, approximately 8%. The income from fees and charges help to manage demand and cover costs for providing services.
- 1.2 In relation to fees and charges in 2015/16, 93% of fees and charges were reviewed during 2016/17. Of the remaining 7% some are in the process of being reviewed and some are set by statute therefore the Council has no power over the pricing for that service.
- 1.3 Fees and charges contributed to over 25% of the MTP savings target for 2016/17. Currently, for 2017/18 the proposed savings for fees and charges only contribute towards 6% of the MTP savings target and for 2018/19 contribute to less than 1% of the savings target.

- 1.4 The objective of setting fees and charges is not limited to income generation, wider objectives include responding to demand for services by way of example. It is also important to consider changes in the context of a complex set of statutes and regulations which largely confines the Council to cost recovery.
- 1.5 This report also sets out a revised process for the review of fees and charges which will ensure a more standardised and consistent review of fees and charges on an annual basis.

## **2. Recommendations**

- 2.1 That Cabinet is recommended to approve the following:
- (a) Approve the new timeline for 2017/18 the annual review of fees and charges, as set out at section 6.4, which will include a review by cabinet each June;
  - (b) To approve and adopt the charging policy to guide the way the way fees and charges are set in the future, as set out in Appendix 1
  - (c) The charging policy should be reviewed annually as part of the annual review of fees and charges.
  - (d) That all services currently operating at a loss work towards cost recovery – either through increased income, decreased costs or potentially looking at alternative opportunities.
  - (e) Review areas of opportunity in relation to fees and charges for the MTP in line with the timetable, expected to be completed in September.
- 2.2 That Appendix 2 be exempt from public disclosure by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972, as amended – information relating to the financial and business affairs of the authority; and
- 2.3 That the information set out in Appendix 2 be noted.

## **3. Reasons for Decision**

- 3.1 To improve and revise the Council's fees and charges process.

## **4 Background**

- 4.1 Given the continuing financial challenges that Westminster faces, there is a need for a charging policy, continuous review of prices and appropriate generation of income to avoid service reductions as a result of the financial pressure the Council faces. It is particularly important to ensure in the current financial climate that prices are competitive with the market and that services are not being inappropriately subsidized.
- 4.2 The objective of setting fees and charges is not limited to income generation, wider objectives include responding to demand for services, by way of example:
- Ensuring inclusion and fairness in the provision of services; and
  - Strengthening and encouraging access to services.

## 5 Legal Implications

- 5.1 For local authorities, charging decisions are fettered by a complex series of statutes and regulations. Some services are statutory and governed by specific legislation whilst other services are discretionary.
- 5.2 The Council has general power under section 93 of the Local Government Act 2003 (“LGA 2003”) to charge a person for discretionary services, that is, the provision of a service where the Council is authorised, but not required, to provide the service and the person has agreed to its provision. However, the income from discretionary services must not exceed the cost of provision.
- 5.3 Powers to charge were augmented following the Localism Act 2011 and the introduction of a new general power of competence. The general power of competence is very wide such that ‘local authorities should be free to do anything – provided they do not break other laws’. Unfortunately, a side-effect of the change is that the legal position on charging is further complicated. The overall position on charging may be summarised as follows:
- Authorities must not charge for a service if legislation so provides.
  - Similarly, authorities must charge for a service if legislation so provides.
  - There is a further range of services where specific legislative provisions allow authorities to decide whether to charge and how much.
  - Then there is a further range of discretionary services supported by empowering legislation where there are no legislative provisions on charging. The local authority may then use its charging powers for discretionary services under the Local Government Act 2003.
  - The general power of competence may be exercised for other services where they do not fall into the categories above. Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do so through a company. All services provided in the Council should be for a non-commercial purpose and therefore the authority *may not recover more than the cost of providing that kind of service*. Recovery is assessed taking one year with another.

5.4 Examples are demonstrated in the table below:

Type of charging	Examples	Statutory/Discretionary service
No charge permitted	<ul style="list-style-type: none"> <li>• Service assessment for community care.</li> <li>• Housing advice</li> <li>• Planning application relating to a listed building</li> </ul>	Generally statutory
Charges or charging scheme set by government or in legislation with little or no local input.	<ul style="list-style-type: none"> <li>• Planning application fees.</li> </ul>	Generally statutory
Charging scheme set locally but must be in accordance with government-prescribed principles	<ul style="list-style-type: none"> <li>• Community infrastructure levy.</li> </ul>	Either
Charge set locally, but essentially income cannot exceed the cost of providing the service.	<ul style="list-style-type: none"> <li>• Charge for a discretionary service with no other charging rules.</li> <li>• Charge for a service provided using the general power of competence.</li> </ul>	Either
No limit on charges	<ul style="list-style-type: none"> <li>• Commercial property rents.</li> </ul>	Generally discretionary

5.5 There is some flexibility over the interpretation of ‘the authority may not recover more than the cost of providing that kind of service’:

- ‘May not recover more than the cost’ – Local Government Act 2003 states that a modified form of total cost can be used that includes overheads
- ‘of providing that kind of service’ – The legislation does not mandate the definition of a service. Authorities have flexibility over defining the service. The possible interpretations could range from a specialised individual service to a much broader definition at service. The ability to interpret the legislation does not override other legislation that covers that particular area.

## 6. Financial Implications

6.1 In addition to legislation there may be other factors which also limit the Council’s ability to change fees and charges, for example the impact of competition, wider economic circumstances and customer responses

6.2 Fees and charges are generally reviewed annually; this can be at any point during the financial year and these are approved by either a Cabinet member in charge of the portfolio area or the relevant committee, or can be delegated to the relevant Executive Management Team (EMT) members. However, the timing of reviews, the level at which these are authorised and the detailed work that is undertaken to inform the changes varies across services.

- 6.3 This process results in a disjointed and ad hoc approach to fees and charges. It is proposed that an annual report is brought to Cabinet with a full schedule of fees and charges and to either note or provide approval for all proposed changes. The changes within this report will have informal approval by the relevant Cabinet member prior to the Cabinet meeting. Any proposed changes to fees and charges to non-executive functions will be approved, prior to the Cabinet, by the relevant committee.
- 6.4 Proposed timetable as part of 2017/18 budget setting process is set out below:

Action	Date
Fees and charges reviewed in detail with support from finance and consultation with portfolio Cabinet members	Throughout the year
Fees and charges report presented to Commercial and Transformation Review Board (CTRB) for review	May 2017
Fees and charges report presented to relevant Committee for approval (amended for comments from CTRB).	May / June 2017
Fees and charges report presented to Cabinet for approval (amended for comments from CTRB).	June 2017
Implement new fees and charges	July 2017
Update budgets to reflect fees and charges changes	July 2017
Progress report presented to CTRB against the Action Plan	October 2017

N.B. Approval to fees and charges relating to non-executive functions will be attained from the relevant Committee.

- 6.5 Advantages of the above approach include:
- Transparency for fees and charges increases;
  - Encourage a consistent approach for review and a clear audit trail;
  - Provides a convenient reference point for staff, members, as well as the public for the Council's fees and charges; and
  - The review of fees and charges can be based on up to date year end data.
- 6.6 However, there is a risk to this approach. The Council generally implements changes to fees and charges at the beginning of the financial year. The proposed approach will result in an increase in July, thus potentially forgoing 4 months' worth of the increase. There will be an impact in 2017/18 when the process is first implemented, with only a marginal annual impact following this. This process cannot be implemented in 2016/17 as some of the services have agreed increases from the beginning of the financial year through separate Cabinet Member reports.

## 7 Policy

- 7.1 The policy for fees and charges setting can be seen at Appendix 1. This should be reviewed every year in line with the annual review of fees and charges, to ensure it remains reflective of the council priorities and the principles of the charging culture and to help the council maximize income in specific areas to allow the continued provision of services that matter to the council and the communities.

- 7.2 As highlighted within the policy, the Council needs to set fees and charges with full consideration of the following:
- Legislation, in particular some fees and charges are set centrally by government;
  - Stakeholder influence and the potential for challenge;
  - Demand implications for service as a result of reviewing prices; and
  - Where the Council has discretion over the fees and charges set it should consider whether the aim is to:
    - Recover the total cost of providing a service including an overhead allocation
    - Provide a free or subsidized service to encourage use
    - Set charges in such a way as to manage demand for services
    - Be set flexibly in order to be comparable with those of competitors
- 7.3 There can be significant implications of not fully considering these areas when setting fees and charges. The Hemmings Case is a recent example of a challenge on the level of fees and charges set.
- 7.4 Detailed financial analysis is required in relation to cost recovery (including an allocation of corporate overheads) to ensure that the specific provisions in the Local Government Act 2003 are adhered to. Corporate recharges are an important area of consideration in relation to cost recovery and will be reviewed during 2016/17. To note each cost centre is charged an allocation of support services; the charging mechanism varies dependent on the service but can include number of FTEs, number of days spent or can be activity based.
- 7.5 It is worth noting that as the Council continues to make efficiencies in line with financial pressures, this could have the adverse impact of decreasing the income that the Council can obtain from fees and charges under cost recovery principles. If the Council is able to recover a cost through fees and charges it should consider whether cost reductions in these areas are appropriate.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Steven Mair, City Treasurer**

Background Documents - None

## Appendix 1 – Charging Policy

- 1.1. The overall principal aim will be to ensure that the Council's fees and charges are set within a framework of value for public money, whereby financial, performance, access and equality are considered fully and appropriately, and decisions taken represent a transparent and balanced approach.
- 1.2. Fees and charges will be reviewed annually as part of the budget setting process and in line with the agreed corporate timeline for each relevant year to be submitted as part of the budget proposals, or other such timeline as Council may agree
- 1.3. The legal basis for charging is based on the specific provisions contained in the Local Government Act 2003. In addition to existing statutory provisions which expressly authorise charging section 93 of the 2003 Act allows a local authority to charge for any services which it has discretion to provide. Charges cannot be made for any services for which there is a duty to provide or where legislation expressly prohibits the charging for discretionary services.
- 1.4. In exercising its charging powers a local authority is under a duty to ensure that taking one financial year with another the income from any charges for a service does not exceed the cost of providing the relevant service. This means that over a realistic period of time any surpluses or under recovery of income should be addressed through a review of the charging policy. However the reinvestment of any income generated in excess of the cost of providing the service would not represent a surplus. The underlying principle behind the legislation is that one service should not be cross subsidising another as each service must be viewed as distinct for charging purposes. Statutory Guidance has been issued by the Secretary of State which needs to be taken into account in considering the exercise of the charging powers and which addresses the above principles in greater detail.
- 1.5. The key features included in the framework are outlined below:
  - Fees and Charges will be structured to support the Authority's priorities.
  - The income generated from Fees and Charges will be used to support the work of the Authority.
  - Fees and Charges will normally be calculated on a full cost recovery basis, depending on the state of the market and any other relevant factors. Any concessions will be specified and separately agreed.
  - Market research, comparative data, management knowledge and any other relevant information will be used where appropriate to ensure that charges are properly prepared.
  - Fees and Charges will not be used in such a way that would restrict access to information or services.
  - The impact on income from fees and charges will be taken into consideration when a decision is taken to change any services provided by the Authority.
  - The cost of collection will be considered to ensure that fees and charges are economical to collect.
  - Highlighting the impacts of not increasing charges should be an essential part of the budget setting process.
- 1.6. The general principle for all charging areas should be full cost recovery and the service will have to justify any deviation from this approach and highlight implicit subsidies arising from any decision not to pursue full cost recovery. In the longer term the Council should aspire to identify and highlight, within internal financial

processes and to Government, implicit subsidies provided in service areas such as adult social care where regulations prevent recovery of the full costs of providing a service.

- 1.7 The income generated from fees and charges will be monitored on a monthly basis as part of the overall budget monitoring process.
- 1.8 It is proposed that, to ensure all areas regularly review and update charges, fees and charges are reviewed at the beginning of each financial year based on prior year information and current year budgets. All fees and charges will then either be approved by Cabinet or noted (having been approved by the relevant Committee) in June of each financial year with fees and charges changes implemented thereafter. This will be undertaken by service areas with support from finance and in conjunction with the relevant Cabinet Member. The relevant Committee will be asked to approve changes to the fees and charges for non-executive functions.
- 1.9 This will allow a schedule of fees and charges to be agreed and published each year following as part of the budget preparation, which will be updated during the year to reflect any decisions made at other agreed times. As part of this policy therefore, the opportunity will be taken on an annual basis to review the rationale behind and potential for charging for services.
- 1.10 Where full cost recovery is not the basis for the level of the fee, the default position should be an inflationary increase in line with the Retail Price Index (RPI). Decisions not to increase a charge by inflation and / or not to recover full costs will need to be justified. It should be noted that the process of fee setting may not suggest a change in fees, but should demonstrate that fees have been reviewed and an informed decision made not to change the fee.

## **2. What level of fee to set:**

- 2.1 It is important to fully consider statute/legislation that governs each service before setting a charging structure.
- 2.2 When charging for discretionary services, authorities can recover up to the cost of provision for each 'kind of service'.
- 2.3 Different users may be charged differentially or not at all, e.g. free or reduced fees to children.
- 2.4 Considerations that need to be taken into account are:
  - The impact of increased charges on residents and service users;
  - What level of charge the market will bear; and
  - Whether full cost recovery will create unintended consequences
- 2.5 These considerations may mean that fees are set below full cost recovery.
- 2.6 It is noted that different considerations apply in the case of parking charges, which are set on the basis of transport policy considerations alone.

## **3. How to decide what the scope of the service is for full cost recovery:**

- 3.1 When charging for discretionary services, authorities can recover up to the cost of provision for each 'kind of service'. A 'kind of service' referring to a group of services



that can realistically be classed together rather than each discrete service being classified on its own.

3.2. The level at which services are grouped at should be decided upon through professional judgment.

#### **4. How to calculate fees for full cost recovery:**

4.1. Authorities enjoy a degree of discretion in defining what the cost of provision is.

4.2. Prior year surpluses or deficits should be taken into consideration when calculating the new charge as services should not over-recover 'taking one year with another'. Any over- or under-recovery that resulted in a surplus or deficit of income in one period should be addressed by an authority when setting its charges for future periods so that, over time, revenue equates to cost.

4.3 Standard methodology for calculating the cost of a service includes:

- Employee costs;
- Premises and transport;
- Supplies and services;
- Third party payments (Services supplied and charged by external parties such as other local authorities or private contractors);
- Transfer payments (payments transferring through the council such as Housing benefits monies and adults social services clients);
- Support services and overheads ( including any allocation of management or commissioning costs) and
- Depreciation.

4.4 Some costs such as overheads may need to be apportioned. Where these are included in the calculation, an appropriate allowance should be made for management and overheads where this is not produced automatically by accounting systems.

4.5. To ensure charges stand up to audit it is imperative that all apportionment and allocation of costs to various charges are carried out on the council's financial system and have backing documents to support your method of allocation/apportionment.

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