

## Appendix 2 - HMO Licensing Fees and Charges

Section 63 of the Housing Act 2004 permits the Council to require any application for a licence under Part 2 is accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its functions.

In developing its fee structure the Council has had regard to the European Court of Justice ruling in *R (Hemming) V Westminster City Council* (Case C-316/15) and the High Court decision in *R (Gaskin) v LB Richmond Upon Thames* (2018) EWHC 1996 (Admin) which held that the EU's Provision of Services Directive, which is enshrined in UK law as the Provision of Services Regulations 2009 should apply to property licensing fees and the processes involved in implementing and delivering such schemes.

The Services Directive, in particular should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process of the scheme. In other words, the Council is not permitted to demand fees in advance for anything other than the costs of administering the application for a licence even if it makes it clear that unsuccessful applicants are provided with a refund of the remaining part of the fee. The Council may legitimately recover its wider costs, over and above those relating to the administration of applications, but this should be at the point at which the Council has determined that a licence is to be granted.

The judgements in *Hemming* and *Gaskin*, which require the overall licence fee to be paid in two stages, has therefore had the effect the fee for an Additional Licence under Part 2 of the 2004 Act must be levied in two separate parts.

The Council is not allowed to demand fees in the Stage 1 process for anything other than the costs of administering and processing the application for a licence. Furthermore this element of the fee is non-refundable should the application be unsuccessful.

In the case of Stage 2 payments these can only be requested if the initial application is successful and will be charged to cover the costs of running and enforcing the scheme.

As such the Council, when setting its fees, has adopted the two stage approach. All fees and charges will be reviewed on an annual basis and the following tables set out those fees for the period commencing 1<sup>st</sup> April 2019. Fees and charges will reviewed on an annual basis.

Table 1- Fees and Charges

Stage	Type of Licence	Fee
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Stage 1 Fee – Payable at the time of making the application	1 year licence (Category A)	£ 450.00
Stage 2 Fee – Payable once the Council has determined to Grant a Licence.	1 year licence – where landlord has been found to be operating an unlicensed HMO.	£ 800.00
<b>Total Fee</b>		<b>£ 1,250</b>
Stage	Type of Licence	Fee
Stage 1 Fee – Payable at the time of making the application	1 year licence (Category B)	£ 450.00
Stage 2 Fee – Payable once the Council has determined to Grant a Licence.	1 year licence – where the landlord is licensing a new HMO without being identified as part of the Council proactive enforcement regime.	£ 605.00
<b>Total Fee</b>		<b>£ 1,055.00</b>
Stage	Type of Licence	Fee
Stage 1 – Payable at the time of making the application	2 year licence – subject to criteria (Category C)	£ 450.00
Stage 2 – Payable once the Council has determined to Grant a Licence.	2 year licence.	£ 255.00
<b>Total Fee</b>		<b>£ 705.00</b>
Stage	Type of Licence	Fee
Stage 1 – Payable at the time of making the application	5 year licence – subject to criteria (Category D)	£ 450.00

Stage 2 – Payable once the Council has determined to Grant a Licence	5 year licence.	£ 190.00
<b>Total Fee</b>		<b>£ 640.00</b>
<b>Stage</b>	<b>Type of Licence</b>	<b>Fee</b>
Stage 1 – Payable at the time of making a Renewal Application.	Renewal of licence – subject to criteria for 2 and 5 year licences (Category E).	£ 450.00
Stage 2 – Payable once the Council has determined to Grant a Renewal of a Licence	Renewal of licence.	£ 95.00
<b>Total Fee</b>		<b>£ 545.00</b>

Under Section 67 (5) of the Housing Act 2004 the Council has the power to impose a restriction/ obligation on a particular person (with their consent). In accordance with this power the Council will require the licence holders consent to pay the Stage 2 fee in advance of the licence being issued, this will be required as part of the application process.

In addition, the Council will attach a condition to all HMO licences requiring this obligation to be met i.e. to pay the Stage 2 fee. This approach is consistent with that set out in the *Hemming* case.

Failure to make the Stage 2 payment will result in the Council taking action through, either the revocation or refusal of the licence or by enforcing the non-compliance of the licence condition associated with the making of the Stage 2 payment.