

Animal Welfare Licence Fees - A Practical Guide to Fee Setting

**(A local authority guide to setting fees for
licenses issued under the Animal Welfare
(Licensing of Activities Involving Animals)
Regulations 2018**

DRAFT

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1. Introduction

The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 (AW Regulations) are an important step forward in modernising and streamlining a number of previous Acts and Regulations. As well as updating the powers of local authorities to ensure high standards of animal welfare, the AW regulations also provide robust charging mechanisms that allow local authorities to more effectively recover their costs for this work.

Locally set fees are a vital means of ensuring that costs can be recovered by local authorities, rather than relying on subsidy from local tax payers. Businesses that benefit from an Animal Welfare License should be asked to pay any reasonable costs incurred by the local authority in providing that licence. However, they must also be able to depend on local authority licence fees being fair and reasonable.

When setting fees, local authorities should have regard to [Open for business: LGA guidance on locally set licence fees](#), which sets out the steps that must be taken to set fair and reasonable fees, and explains the [EU Services Directive](#) upon which the LGA guidance is based. Local authorities should also have regard to the BIS [Guidance for Business on the Provision of Services Regulations](#). As with other areas of licensing, regard should also be had to the principles in the [Regulators' Code](#)

Much of this guidance was put to the test in the Westminster V Hemmings case, which has been considered by a number of Courts and concluded in the [Supreme Court in July 2017](#). This case confirmed a number of points, including that local authorities could charge for enforcement in respect of a licence, but not as part of the initial application fee.

This practical guide explains how fee setting could work in practice, and gives examples of what should and should not be included in the licence fee. It is not exhaustive, and those setting fees should always be aware of the underpinning legislation and guidance.

2. General Principles

The important underlying principles when looking at fee setting are that

Local Authorities should

- 1 Recover any reasonable costs of administering and enforcing each licence,
- 2 Charge separately for application processing and enforcement
- 3 Continually seek service improvements to help reduce costs for businesses
- 4 Use evidence based data wherever possible as the basis of their fee charges, and retain this information for the purposes of transparency.

Local Authorities should not

- 5 Charge for matters that do not relate directly to that licence
- 6 Seek to make a profit

As a general principle, the two most important questions for those setting fees are “is it fair”, and “do I have the evidence needed to explain the fee”.

2.1 Types of licence fee

Local authorities will need to calculate fees for, as a minimum

- 1 New Licences
- 2 Renewal licences
- 3 Licence and other replacement costs
- 4 Variation and transfer fees

3. Activities covered by the licensing fees

Section 13 of the AW Regulations makes it clear that license fees can be charged to cover all activities directly relating to the administration and issuing of a licence, and any subsequent direct costs such as enforcement.

There are three types of activity to be considered when considering costs

- 1 Underpinning activities that support the licensing process
- 2 Administration of the licence application, and
- 3 Compliance and enforcement costs

The tables below list activities that can be included, although this is not exhaustive.

3.1 Underpinning activities

There are a number of activities that underpin any licensing activity and without which the licensing functions cannot operate effectively. These will need to be in place as part of any application process, and may be charged as part of the administration fee, although some costs will also relate to enforcement and could be charged accordingly.

Activity	Examples of what may be included
Policy setting	<ul style="list-style-type: none">• Consultation processes• Development of policy documents• Member approval processes
Fee setting	<ul style="list-style-type: none">• Time management/information gathering processes• Process charts• Liaison with finance• Calculation of fees• Member approval processes
Staff	<ul style="list-style-type: none">• Specialist staff training• Authorisation processes• General PPE
Equipment	<ul style="list-style-type: none">• Specialist databases used to record information• Specialist software packages used to produce licences etc.

Some of these costs will be shared with other licensing regimes. Specialised software packages, for example, may be used for a range of different licences whilst fee setting

may share the same consultation and Member approval processes as other licence fees. A fair pro-rata share therefore needs to be assessed for each licence type.

Some costs will also relate to non-licensable activities – for example unlicensed premises, those seeking advice who do not then apply for a licence, Freedom of Information requests etc. Service request and investigation records should be used to assess a fair pro-rata figure so that licensed businesses pay a share but not all of the underpinning costs.

3.2 Application costs

The actual application costs will perhaps be the easiest to identify and cost, and will include all of the costs of actually processing an application from receipt of any initial query through to issue. These costs will include

Activity	Examples of what may be included
Advice and guidance	<ul style="list-style-type: none"> • General advice (pro rata costs for the production of leaflets or promotional tools, online advice etc.) • Specific advice to applicants (but not those who do not apply)
Administration	<ul style="list-style-type: none"> • Office administration to receive/ process licence applications, • The cost of handling fees through the accounts department. • Specialist equipment/materials needed to process the licence • Printing and posting licences and other materials.
Initial advice/ visits	<ul style="list-style-type: none"> • The average cost of officer time if an inspection/premises visit is requested or is required as part of the authorisation process
Third party costs	<ul style="list-style-type: none"> • veterinary attendance during licensing inspections where required as part of the authorisation process
Overview costs	<ul style="list-style-type: none"> • reports to managers/committee for specific applications • approval by senior managers
Appeal costs	<ul style="list-style-type: none"> • expenditure not covered through court costs

3.2 Compliance/enforcement costs,

These will include the reasonable costs of ensuring compliance with licensing legislation and conditions – which will include risk based inspections, investigating complaints etc.

Activity	Examples of what may be included
Routine visits	Planned risk based monitoring and inspection visits during the licence period, including any resulting enforcement action
Reactive matters	Dealing with service requests and complaints from or about licensed premises, including any resulting enforcement action
Local democracy costs	Training for Councillors sitting on committees considering licence reviews Committee meetings or hearings to review existing licences or respond to problems.
Registers	Inclusion on any national data-base

Licences should not be issued until the enforcement fee is paid, and a separate fee for taking the second payment can be charged. For renewals that remain in force until the

new licence is determined, a licensing condition making the licence inoperable on the non-payment of the enforcement fee is suggested.

Enforcement costs can be difficult to assess, particularly for a new licensing regime. The inclusion of known/expected costs can be readily justified, but costs should not be included where they haven't happened and/or cannot reasonably be expected to happen. Instead, costs such as unexpected licence reviews can be included as a loss in future fees (up to three years is suggested) so that the costs are recouped over time.

3.3 Vets fees

It is recommended that vets fees are charged by the authority as part of the fee, although it could be shown separately. There are a number of advantages to this, including that:

- (i) Visits can sometimes be grouped, reducing the costs to businesses,
- (ii) Vet costs can be recovered as part of the licence fee prior to the issue of the licence, and
- (iii) The vet remains a contractor for the authority, with clear lines of accountability.

4. Activities not covered by licence fees

Costs that are not directly related to licence applications cannot be financed through the license fees, but are instead borne by the authority. This means that there are a number of activities that cannot be charged as part of a licence fee, including

- 1 Advice and enforcement relating to unlicensed premises (but see below), to premises that do not become licenced or to members of the public making general queries about AW licensing, for example.
- 2 Freedom of Information and Data protection requests to which we are obliged to respond under other legislation
- 3 Non-licensing activities – for example departmental/corporate activities over and above normal expectations, general professional meetings etc.
- 4 Prosecution costs that have been covered by costs awarded to the authority

In *Hemmings V Westminster*, the Supreme Court found that the Services Directive didn't prevent LAs from charging fees to licence holders that are proportionate to the cost of administering and enforcing the licensing framework, including against unlicensed operators, and indeed the AW Regulations make specific provision for local authorities to charge licensed premises in respect of unlicensed premises investigations. However, this must be balanced against the requirement to ensure that this is fair to businesses seeking a licence. It could be reasonable, for example, to add a small contributory cost to licenses that clearly benefit from the work to remove unlicensed competitors.

5. The licence setting/review process

Fees should be reviewed annually, using the following steps

- 1 The fees setting process itself should be reviewed to ensure that it remains valid – any changes in law, guidance or case law will need to be taken into account
- 2 The underlying data determining the fees must be reviewed, and in particular
 - a. Each licence process step must be reviewed to ensure that the time calculated remains accurate (this need not be a complex process each and every year, but should be recorded to show that it has been done. Time recording should be used where available. Alternatively, a time and motion study could be undertaken on an occasional basis.
 - b. The authority's Finance department should be asked to update the staff hourly costs, including on-costs
 - c. Other costs such as IT, specialist equipment etc. should be reviewed to ensure they remain relevant.
 - d. If there was a significant profit or loss in the previous licence period, the fee for the next period will need to be reduced/increased by the same amount
- 3 The actual licence costs should then be calculated. The cost calculator developed by the [Wales Licensing Expert Panel](#) (the LGA provide a link to spreadsheet) is a useful template for this, but the data used will vary from authority to authority.
- 4 The fee structure must then be approved in accordance with the authority's constitution, and it is important that there is an overview mechanism beyond the person/team initially calculating the fee

6. Licensing Process steps

Understanding what is required for each licence is key to understanding what should be included in the fee. It can be helpful to work this out separately and to retain this as evidence in case of later queries. An example is given in Appendix 1, although this list is not exhaustive and is for consideration only - councils might be doing fewer or additional activities.

Each process step should be based on time monitoring, where used. Alternatively, staff involved in each process should be asked to time each process step regularly and to review this annually (although this can be a brief check).

The time measured should be a reasonable “real time” calculation rather than a “best case” time, taking into account that staff must have refreshment breaks etc., and the realities of office life such as photo-copier queues and breakdowns, fire alarms etc.

The steps calculated and included should only be those that take place, or are planned and need to be included to recover costs.

Authorities should continually examine ways in which to promote service improvements and correspondingly reduce costs. The use of text messaging and emails to issue licences and reminders to renew licences for example can reduce administration costs and increase efficiency.

7. Staffing costs

The main cost in respect of licence applications will generally be staffing costs. For each officer, this will include both direct and indirect costs

7.1 Direct Staffing Costs

Wages, pension contributions and National Insurance should all be included. General travel costs and personal protective equipment (PPE) etc. should be included unless specific to a particular activity against which that cost will be charged (safety boots for Riding Establishment inspections, for example). Where members of other teams, senior managers etc. are directly involved, their time should also be costed and included unless already covered by the on-costs.

In calculating an hourly rate, the Finance department will advise on the average hours worked per annum taking annual and sick leave into account. Team meetings, performance monitoring and other “back-room” activities (which are not directly related but are nonetheless integral to service delivery) can also be taken into account when working out the effective working hours of each officer.

7.2 On-costs

This will include the reasonable costs of providing and heating and lighting the office, general IT, photocopying and other admin services etc. It also includes business support, such as reception services, and HR and other corporate support. Indirect management functions, above direct team leader level, and general democracy costs should be included in the on-cost calculation, but not specific identifiable costs relating to specific licences. Again, this should be determined by the Finance team

Adding on-costs to the hourly staff rate will usually be the fairest way to recoup these costs. Licence applications that take very little time will then pay less, whilst more complex applications will pay more. It also means that there will be a fair divide of these costs between chargeable activities, activities covered by statutory fees and non-chargeable activities – each will be costed based on the time taken.

8. Equipment and other costs

Most equipment and specialist materials will be directly attributable to a type of licence, and can be apportioned between those licences. In doing so, the following assumptions should be made

- Equipment – specialist equipment costs such as card printers will be allocated to the specific licence types the equipment is used for, divided by the number of years that each piece of equipment is expected to last
- Specialist databases – allocated across all functions that use that software, pro-rata with non-chargeable functions such as recording unlicensed premises

Non-specialist equipment is generally covered in the on-costs calculated by the finance department, and will include photocopiers and printers, paper etc.

9. Advice and Enforcement

Local Authorities are entitled to charge for advice and enforcement relating to licences they have issued, and this can include, for example

Administrative costs

- 1 Initial advice where it relates to licence applications or licensed premises (but not for applications that don't proceed)
- 2 Inclusion on any register(s) as required and maintenance of this data

Enforcement costs

- 3 Checks through the lifetime of the licence, such as annual or ad-hoc checks on insurance and other matters that expire during the licence period
- 4 Planned inspections and compliance checks
- 5 Dealing with service requests and complaints following licence determination
- 6 A fair proportion of any area based or focussed inspection programme.

Proactive work is relatively straightforward to cost, as the costs of each planned inspection can be calculated.

In terms of reactive work, this can be difficult to quantify. Some premises cause more problems than others, but this tends to even out over time for most premises. Furthermore, this may not always be the fault or under the control of the licence holder – for example where malicious complaints are received. For each licence type, it will be necessary to work out how many are received over a period of time and what the average time to resolve is, and then allocate pro-rata.

The enforcement element of any fee will be worked out separately, and applicants will be able to pay this after the approval of their licence but before the issue of that licence. However, the authority is entitled to recover costs, and a fee can therefore be charged to include correspondence with the applicant to inform them that the enforcement payment is required, and the costs of processing and recording any payments.

The European Court of Justice ruling in the *Hemmings V Westminster* case was clear that the legal position is that two fees should be charged; on application (to cover the cost of processing the application), and when the application has been approved (to cover the cost of administering and enforcing the framework).

10. Profits and losses

An important element of the fee setting process is the calculation of any profit or loss over the past year, and local authorities must assess these annually. This could include, for example

Profits

- 1 An increase in licensed premises that means pro-rata costs are lower
- 2 Work that was planned but not carried out
- 3 Service efficiencies/cost savings that need to be passed on

Losses

- 1 Unexpected levels of enforcement
- 2 Appeals/prosecutions not recovered through court costs awarded.
- 3 Unexpected increases in equipment or vet fees, for example.

This process does not have to be exact. In *Hemmings V Westminster*, the High Court stated that a local authority “*does not have to adjust the licence fee every year to reflect any previous deficit or surplus, so long as it "all comes out in the wash" eventually. And the adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do*”. Local Authorities would not therefore be expected to worry about whether something averaged 4 minutes rather than 5 this year, but could be expected to take into account that they hadn't done any of their planned interim inspection visits.

Local authorities should ideally budget for AW licensing work separately from other functions, so that income and expenditure can be more readily recorded and demonstrated. Where a profit or loss is made, this should be repaid/recovered over up to three years, with refunds considered where a business ceases trading in that time and any refund due is significant

11. Proportionality

Licence fees will generally be a more significant cost to a small business than a large business, and this could inhibit small businesses from setting up. It could also dissuade these businesses applying for a licence, thereby placing the public at risk and increasing the enforcement burden for the authority (for which there is no income). Officers may therefore wish to consider (or be asked to consider) how these issues can be resolved through the fee setting process.

There are three significant points to consider, namely that

1. Fees are about recovering cost of administering the licensing framework as a whole and, as long as the way fees are calculated are transparent and regularly reviewed, local authorities are not expected to stratify types of premises,
2. The costs of issuing and enforcing a licence are similar, regardless of the size of a business. Indeed, the costs of licensing a small business can be higher – for example where they depend heavily on the local authority for advice, or a warrant is needed to affect an entry for enforcement purposes.
3. Domestic premises are often regarded as small, but may in fact be bigger than commercial businesses (particularly taking internet sales into account) and/or could have a higher level of animal welfare activity that falls within the licensing regime.

There are some options that local authorities could consider, which include

- 1 Fees could be calculated for different types/sizes of premises, so that businesses pay a rate that more accurately reflects the work of the local authority in licensing those premises, or
- 2 The calculated fee cost could be reduced for certain types of business, although these costs cannot then be recovered from other licensed businesses

Calculating the costs for different types of business can be time consuming, and most local authorities would therefore only wish to consider this step where there is likely to be a considerable cost saving for smaller businesses, or where there is some other clearly perceived benefit.

A simpler solution is to not charge the full cost recovery fee for specified businesses. However, this needs to comply with the EU Services Directive – local authorities cannot, for example, choose to charge local businesses less than regional/national businesses. Local Authorities could, however, consider the number of customers or the size of the business when determining whether a fee reduction is appropriate.

12. Member approval and Publication

One of the issues raised in *Westminster v Hemmings* was that the fees had not been approved in accordance with the process laid out within the authority, and particularly that fees had not been referred for Member approval where they had been reviewed by an officer and remained unchanged.

The outcome of that case is that the approval of fees by Members is vital, even where fees remain unchanged. Approval will depend on the constitution of each authority, based on the [Local Authorities \(Functions and Responsibilities\) \(England\) Regulations 2000](#), but will often be via or at least scrutinised by the Licensing Committee.

Once approved, it is good practice to make the fees public, for example via the web-site. Local authorities might also wish to consider providing a bit of background information on how those fees were calculated, in the interests of transparency. Information on how the fees were calculated and approved should be retained in case of judicial review or, more likely, any FOI requests.

Appendix 1 – example workflow for Pet Shop Premises

Headline Activity	Detail	Estimated time - minutes	Usual Officer	Minutes per application	Notes/Comments – assuming 20 licences
Pro rata Process set-up costs	Fee setting, inc annual review over 3 years	300	Officer	5	5 hours / 20 / 3
	Policy setting/updating, 3 years policy life	600	Officer	7.5	75% allocated to licences 10 hours / 20 / 3 x 0.75%
	General co-ordination & benchmarking	2400	Officer	12	Assume 10% AEL related 40 hours / 20 x 0.1
	Standard form and letter development – 2 yearly	240	Officer	6	2 hours / 20 x 0.5
	Web page maintenance - annual	60 60	Officer IT	3 3	1 hour / 20
Specialist Equipment	None				Standard equipment inc in on-cost
Staff set-up costs	Staff appointment costs				Nominal – none new
	Staff authorisation costs				Nominal – joint process with all other work
	General PPE and equipment costs				Nominal – No specialist PPE
	Staff training costs	600	Officer	15	training every other year 10 hours / 20 x 0.5
Pre app advice	Advice re application process, inc. call-backs, recording on database	15	Officer	15	New applications only - not renewals (usually)
App forms sent out	Pro-rata printing & storage of app forms per annum	60	Admin	3	1 hour / 20 licences
	Finding forms, placing in envelope, taking to post	5	Officer	5	All new applications (see renewal reminder stage)
App form receipt	Reception costs & receipt of application				Inc in staff overhead costs
	App form check	5	Officer	5	All apps
App processing & issue	Creation of database file record	10	IT	10	New applications only
	Entry on database	5	Officer	5	All apps
	Phone calls, e-mails etc. re application	30		15 1.5	50% of new apps, 5% renewal apps

Payment fees	Payment fee where admin & enforcement paid separately	15	Officer Admin	1 14	All applications per payment made
Inspection	Organisation of vet inspection	10 5	Officer	10 5	New premises Renewal inspections
	Inspection time inc travel	90 45	Officer	90 45	New premises Renewal inspections carried out together
	Printing & completion of inspection form	15	Officer	15	All licences
	Processing of vet invoice	10 5	Officer	10 5	New premises Renewal inspections
	Follow-up outstanding matters identified during inspection	60	Officer Vet	20	Assume 1/3 applications
Licence completion	Preparation of licence & covering letter	15	Officer	15	All applications – licences produced via Word & signed by service manager
	Licence approval	10	Officer	10	New applications Renewal applications
		10	SM	10	
		5	Officer	5	
5	SM	5			
Printing licence & letter, enveloping and posting	10	Officer	10	All applications	
Enforcement	Proactive in-year inspections on risk basis - every 2 years on average	90	Officer	45	90 / 2
	Service requests	120	Officer	6	6 SRs pa - 20 minutes, 2 hours / 20
	Premises complaints inc enforcement	240	Officer	12	assuming 2 per year taking 2 hours each 4 hours / 20 licences
Renewal – where reminder letters sent	Reminder letter and app forms sent out	10	Officer	10	All issued licences
	Second reminder letter	10	Officer	5	50% of all applications
Licence review	Calculated based on actual timings				charged on cost recovery basis if/when they occur
File closure	File closure process – inc. correspondence, database update, filing and archiving	20	Officer	1	Assume 1 closure per annum, shared pro rata.