

# EXECUTIVE DECISION

made by a Cabinet Member



## REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL CABINET MEMBER

Executive Decision Reference Number – HCD06 20/21

Decision	
1	<b>Title of decision:</b> Approval of moving to a 2-stage payment Licence Fee Structure for licensable HMOs, and adapting our discretionary discounts available.
2	<b>Decision maker (Cabinet member name and portfolio title):</b> Councillor Chris Penberthy (Cabinet Member for Housing and Co-operative Development)
3	<b>Report author and contact details:</b> Mark Chubb 01752 308989
4	<b>Decision to be taken:</b> Approval of moving to a 2-stage payment process for HMO licensing, to ensure that the scheme is in accordance with legislation (European Services Directive 2006, and Provision of Services Regulations 2009) and case law. To be considered a 'lawful scheme', fees need to be charged in 2 stages, (1) application processing only, and (2) continued administration of licence scheme.  Approval of amendments to discretionary discounts that we offer.
5	<b>Reasons for decision:</b>  <b><u>2-stage payment process</u></b> Legislative changes brought about by the European Services Directive 2006, and the Provision of Services Regulations 2009, along with more recent case law, identified that licences under Parts 2 and 3 of the Housing Act 2004 (i.e. Mandatory HMO Licensing, and Selective HMO Licensing schemes) should be charged in two stages.  <a href="https://www.londonpropertylicensing.co.uk/court-decides-property-licensing-fees-must-be-charged-two-stages-and-names-occupants-cannot-be">https://www.londonpropertylicensing.co.uk/court-decides-property-licensing-fees-must-be-charged-two-stages-and-names-occupants-cannot-be</a>  A three Judge Divisional Court has decided that the HMO licensing scheme under Part 2, Housing Act 2004, is an authorisation scheme for the purposes of the EU Services Directive 2006 (EU Directive 2006/123/EC) and the Provision of Services Regulations 2009/2999 which implemented the Directive in the UK. The Hemming approach (R (Hemming t/a Simply Pleasure v Westminster CC [2017] 3 WLR 317), therefore applies to licensing under Part 2 and, it would seem, Part 3, 2004 Act, meaning that licensing fees must be charged in two stages – an application fee to cover only the costs of obtaining authorisation under the scheme, and a licence fee levied only on successful applicants to cover the remaining costs of administration and enforcement etc.

During this project there were multiple other Local Authority websites reviewed and contacts made. Direct engagement was achieved 5 out of 6 Local Authorities that were contacted directly for more information. Posts about this subject were also placed on RIAMS, a professional forum for Local Authority housing professionals to try and gather feedback.

The review, and subsequent research, has highlighted that unless the EU Services Directive 2006 is 'repealed', or there is a "no deal" Brexit, it will remain in force. Subsequently there has been a visible trend of more Local Authorities adopting a 2-stage payment process (whether in place, or in development). It was also seen that there was significant variation from Authority to Authority on how they were going to adopt the process, and as usual the engagement levels of contact with other authorities was mixed.

This leads us to a position of looking to adopt the changes and applying our own interpretation on how best to split the fee, whilst remaining robust to challenge. I believe this has been achieved, thanks to the data gathered in annual HMO licence fees reviews of recent years.

#### **Amendment to discretionary discounts we offer**

In 2018 we last reviewed the discretionary discounts, and the current offer is:

- a) £100 early application discount (within 6 weeks of property becoming licensable)
- b) Additional £50, if (a) applies and the landlord has undertaken the LLRD proficiency test  
or
- c) Additional £150, if (a) applies and the landlord has undertaken the LLRD accreditation course with a recognised provider

We are proposing the following as an alternative:

If the HMO licence application is received on, or before, the date the property becomes licensable then the following discretionary discounts may apply;

- a) £50 if the application is submitted complete, and without the need for further contact from the team to obtain additional information and/or certification.
- b) £50 if the landlord has undertaken the LLRD proficiency test  
or
- c) £150, if the landlord has undertaken the LLRD accreditation course with a recognised provider

The original intention of applying an 'early application discount' was to encourage people to apply as early as possible, which would then help to negate some of the relative resourcing costs the team would incur by having to identify and chase more cases. The reason we are proposing the changes is that the the original intention was also at a time when the Local Authority had fewer powers in tackling offences of failing to licence.

	<p>Unfortunately this meant that an applicant could be causing an offence for a period of up to 6 weeks and then still obtain a discounted HMO licence. Now that we have more robust enforcement for non-compliance we would like to shift the reward focus to good practice, and licence holders who demonstrate effective management and order of their education, properties, and information.</p>
<p><b>6</b></p>	<p><b>Alternative options considered and rejected:</b></p> <p>In theory we could consider doing nothing in respect of introducing a 2-stage payment process. However, we would remain open to challenge. Although this has been a remote possibility, the likelihood may increase as more local authorities adopt similar schemes as there will be increased knowledge within the sector. In the event of doing nothing and subsequently being in receipt of a challenge, to a single payment scheme, we may lose the challenge and this could cause reputational damage to the Local Authority.</p> <p>Similarly, in respect of discretionary discounts, we could consider doing nothing in respect of making changes. However, doing nothing would;</p> <ol style="list-style-type: none"> <li>1. Create a contradiction in terms that we may be seen to permit non-compliance for a period of 6 Weeks at application stage, whilst at the same time having the Civil Penalties Policy that could be enacted in the case of a licensable HMO operating without a licence.</li> <li>2. We would miss an opportunity to ensure that the discretionary discounts reward good practice.</li> </ol> <p>There are no reasonable other options available for consideration.</p>
<p><b>7</b></p>	<p><b>Financial implications:</b></p> <p><b><u>2-Stage Payment Process</u></b></p> <p>There are no additional financial implications brought about by the change as the HMO licence fee is calculated to match the revenue raised in fees, with the costs incurred by providing the service.</p> <p>The additional stage of the process has been calculated from a resourcing point of view, and has indicated a potential increase of 0.51 hours, per licence (both New and Renewal). This time was calculated across the roles of Business Support, Senior Community Connections Officers, and Technical Lead input (i.e. the only relevant persons involved) and the associated cost values.</p> <p>In response to this an increase in the HMO licensing fees structure, of £25 increase to the maximum fee per licence has been put in to place to take account of the additional costs. Information on how this is broken down is included in Appendix B.</p> <p><b><u>2-Stage Payment Process &amp; Amendment to Discretionary Discount</u></b></p> <p>At this juncture I have taken the opportunity to forecast the revenue expected over the next 5-6 year period of HMO licensing. This is created by understanding the HMO licence lifecycle and</p>

	<p>expected renewals. Appendix C shows the breakdown of financial forecast for FY 20/21 to FY 25/26.</p> <p>The changes to the fee structure should result in additional payments by the end of FY 25/26 to cover the additional costs of the 2<sup>nd</sup> payment stage. Appendix B breaks this figure down as well as giving the most up to date forecasting of baseline income for HMO licensing between now and end of FY 25/26.</p>			
8	<p>Is the decision a <b>Key Decision?</b> (please contact <b>Democratic Support</b> for further advice)</p>	<b>Yes</b>	<b>No</b>	<b>Per the Constitution, a key decision is one which:</b>
			X	in the case of <b>capital</b> projects and contract awards, results in a new commitment to spend and/or save in excess of <b>£3million</b> in total
			X	in the case of <b>revenue</b> projects when the decision involves entering into new commitments and/or making new savings in excess of <b>£1million</b>
		X	is <b>significant</b> in terms of its effect on communities living or working in an area comprising <b>two or more</b> wards in the area of the local authority.	
	<p>If yes, date of publication of the notice in the <b>Forward Plan of Key Decisions</b></p>	N/A		
9	<p>Please specify how this decision is linked to the Council's corporate plan/Plymouth Plan and/or the policy framework and/or the revenue/capital budget:</p>	<p><b>Corporate Plan</b></p> <p>Values – Fairness – Introducing the 2-stage payment process is directly in line with our values on fairness. By aligning our HMO licence payment process to comply with the relevant legislation (i.e. European Services Directive 2006, and Provision of Services Regulations 2009), the scheme changes promote fairness as a refused applicant will not need to contribute to the continued administration of a scheme that they cannot be a part of.</p> <p>Priorities - Caring Council – HMO licensing supports improving, or maintaining, standards of accommodation for residents through increased regulation. Having a robust licensing fees scheme means that we can appropriately resource for service delivery. In addition, the recognition of appropriate 'discretionary discounts' enables us to reward good practice and drive up standards further as other landlords and agents will need to raise their professional organisation/administration, as well as knowledge and expertise to qualify for the discounts. As standards</p>		


		<p>improve across the city, we should see a decrease in health inequalities.</p> <p><b><u>Plymouth Plan for Homes 3</u></b></p> <p>Improving Housing Conditions in PRS – The application of 2-stage payment process and amendments to the ‘discretionary discounts’ enables us to reward good practice and drive up standards as landlords and agents will need to raise their professional organisation/administration, as well as knowledge and expertise to qualify for the discounts. As standards improve across the city, we should see a decrease in health inequalities. Improvements to accommodation can be physical in terms of the building but can also be in the management of the property.</p> <p>Sustainability – The revenue raised through the application of HMO licensing fees is directly used to recover the Local Authorities costs associated with running the HMO licensing scheme.</p>
<b>10</b>	<b>Please specify any direct environmental implications of the decision (carbon impact)</b>	None. The additional process will be digital and therefore it is not expected to generate an increased carbon usage.

### Urgent decisions

<b>11</b>	<b>Is the decision urgent and to be implemented immediately in the interests of the Council or the public?</b>	<b>Yes</b>		(If yes, please contact Democratic Support <a href="mailto:democraticsupport@plymouth.gov.uk">democraticsupport@plymouth.gov.uk</a> for advice)
		<b>No</b>	X	<b>(If no, go to section 13a)</b>
<b>12a</b>	<b>Reason for urgency:</b>			
<b>12b</b>	<b>Scrutiny Chair Signature:</b>		<b>Date</b>	
	<b>Scrutiny Committee name:</b>			
	<b>Print Name:</b>			

Consultation			
I3a	Are any other Cabinet members' portfolios affected by the decision?	Yes	
		No	X (If no go to section I4)
I3b	Which other Cabinet member's portfolio is affected by the decision?	N/A	
I3c	Date Cabinet member consulted	N/A	
I4	Has any Cabinet member declared a conflict of interest in relation to the decision?	Yes	
		No	X If yes, please discuss with the Monitoring Officer
I5	Which Corporate Management Team member has been consulted?	Name	Craig McArdle
		Job title	Strategic Director for People
		Date consulted	13/10/2020
Sign-off			
I6	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)	DS46 20/21
		Finance (mandatory)	djn.20.21.103
		Legal (mandatory)	35409/hm
		Human Resources (if applicable)	N/A
		Corporate property (if applicable)	N/A
		Procurement (if applicable)	N/A
Appendices			
I7	Ref.	Title of appendix	
	A	Briefing report for publication	
	B	Data Analysis & Estimation document	
	C	Financial Considerations & Forecasting document	

	<b>D</b>	EIA							
<b>Confidential/exempt information</b>									
<b>18a</b>	<b>Do you need to include any confidential/exempt information?</b>	<b>Yes</b>		<p>If yes, prepare a second, confidential ('Part II') briefing report and indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box in <b>18b</b> below.</p> <p>(Keep as much information as possible in the briefing report that will be in the public domain)</p>					
		<b>No</b>	X						
			<b>Exemption Paragraph Number</b>						
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>18b</b>	<b>Confidential/exempt briefing report title:</b>								
<b>Background Papers</b>									
<b>19</b>	<p>Please list all unpublished, background papers relevant to the decision in the table below.</p> <p>Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</p>								
<b>Title of background paper(s)</b>			<b>Exemption Paragraph Number</b>						
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<a href="http://www.legislation.gov.uk/ukpga/2004/34/section/55">http://www.legislation.gov.uk/ukpga/2004/34/section/55</a> Mandatory HMO licensing									
<a href="http://www.legislation.gov.uk/ukpga/2004/34/section/63">http://www.legislation.gov.uk/ukpga/2004/34/section/63</a> HMO licensing Applications and Fees									
<a href="https://www.gov.uk/guidance/eu-services-directive#information-for-competent-authorities">https://www.gov.uk/guidance/eu-services-directive#information-for-competent-authorities</a> European Services Directive 2006									

<a href="https://www.londonpropertylicensing.co.uk/court-decides-property-licensing-fees-must-be-charged-two-stages-and-names-occupants-cannot-be">https://www.londonpropertylicensing.co.uk/court-decides-property-licensing-fees-must-be-charged-two-stages-and-names-occupants-cannot-be</a> Case Law - R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996							
<b>Cabinet Member Signature</b>							
<b>20</b>	I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, Corporate Plan or Budget. In taking this decision I have given due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. For further details please see the EIA attached.						
<b>Signature</b>		<b>Date of decision</b>	14/10/2020				
<b>Print Name</b>	Councillor Chris Penberthy (Cabinet Member for Housing and Co-operative Development)						