

BRIEFING - EXECUTIVE DECISION FOR 2-STAGE PAYMENT PROCESS (HMO LICENSING)



This briefing note sets out the reasons for progressing from a single-stage payment process to a 2-stage payment process for our HMO Licensing Scheme in Plymouth.

1. It is believed that a single stage payment fee, for a licensing scheme, such as HMO licensing, can be considered 'unlawful' in accordance with the European Services Directive 2006.

European Services Directive 2006

<https://www.gov.uk/guidance/eu-services-directive#information-for-competent-authorities>

To be lawful, fees need to be charged in 2 stages, (1) application processing only, and (2) continued administration of licence scheme. This essentially identifies that those applicants who are refused at application stage should not be contributing to continued administration of a scheme that they cannot be a part of.

This is a subject that I have monitored with Helen Morris in legal over the past couple of years. We acknowledged and considered that moving to a 2-stage payment process would minimally raise the costs of a HMO licence for all that apply. We also took into consideration the very low numbers of licences that have been refused since HMO licensing began, as well as minimal movement from other Local Authorities to implement such a scheme. There was also the potential that the legislation may have been impacted by 'Brexit' negotiations.

The review, and subsequent research, has highlighted that unless the EU Services Directive 2006 is 'repealed', or there is a "no deal" Brexit, it will remain in force.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 increase in the number of local authorities implementing, or considering the implementation of, a 2-stage payment scheme shows that this is the right time for Plymouth to do so as well. We are currently working through an updated HMO licensing Policy and as such this seems like the most appropriate time to include potential changes to how we operate.

2. We started this latest process of review in September 2019 with the following actions being taken:

- Posting on RIAMS, a Professional Forum for Local Authorities
- Online analysis of other Local Authorities schemes
- Direct consultation with other Local Authorities (including Leeds, Bristol, Bath & NE Somerset, S. Gloucester, Hull, Exeter and York).
- Ongoing discussions with PCC Finance department.
- Ongoing discussions with PCC Legal department.
- Ongoing discussions with PCC Digital Services department.
- Consultation with both Strategic Manager and Director of Service for Community Connections.

There have been a few bumps in the road and shifting of priorities that have affected the timescale for delivery of both business as usual and strategic service improvements (i.e. development of a new customer relationship management system, and COVID-19). However, we are now in a position to move forward and implement the necessary changes to our licensing scheme once approved.

3. The resourcing impact of the additional stage has been calculated to increase processing time of a HMO licence by 0.51 hours. The resulting increase of resource leads to an increase in costs that need to be recovered through the HMO licence fee. This associated increase in fee has been calculated by taking the time and role requirements of the changes, and then utilising Plymouth City Council's Cost Recovery Model to identify the appropriate level of increase. This process resulted in an indicative licence increase of £25 per licence.

The typical HMO licence lasts 5 years and therefore the cost of this increase equates to no more than £5 per year. For a property to be considered a licensable HMO, it must be occupied by 5 or more unrelated persons. If we were to apply the Local housing Allowance rate of a shared room (£73.50 per week), a 5 bed licensed HMO would generate £95,550 of rental income, if it were let to capacity for the full duration of the licence. The current maximum licence fee stands at £900 and represents just under 1% of the rental income, over the course of the licence, in this scenario. With a proposed increase to £925, this would still represent just under 1% of the rental income in this scenario. Therefore it is unlikely to have any real economic impact on landlords and agents across the city, but would enable the local authority to appropriately recover its costs in accordance with Sections 63(3) and 63(7) of the Housing Act 2004.

<https://www.legislation.gov.uk/ukpga/2004/34/section/63>

4. For a number of years we have offered discretionary discounts to licence holders where they have:

- (1) submitted an early application (i.e. within 6 weeks of becoming licensable)
- (2) increased their knowledge by undertaking a landlord proficiency test
- (3) increased their knowledge by undertaking a landlord accreditation course

It is recognised that this needs to be updated following subsequent changes in legislation and increased enforcement measures brought about by the Housing and Planning Act 2016.

Discretionary discount (1) was to incentivise/encourage compliance of licence holders to not avoid the scheme. It also recognised that there is a significant cost to the local authority for having to retrospectively seek and identify non-compliance. Unfortunately the concern is that it technically permits and rewards offences being committed for up to 6 weeks. Following the introduction of Civil Penalties as an alternative to prosecution, we feel that it is no longer right to reward in this way. Therefore we propose to change from an 'early' discount to an 'application completed first time' discount. This encourages licence holders and agents to have their management and administration organised, which can only benefit the properties and tenants that they are responsible for. It also recognises a reduction in local authority resourcing requirements to chase defects in applications. Discretionary discounts (2) and (3) are being retained as their purpose is not altered.

A significant benefit of adopting a 2-stage payment process is that the application of discretionary discounts moves from automated (under the control of the applicant), to manual selection (by the officers determining the application). This also reduces unnecessary resourcing that results from occasions where licence holders/applicants manually enter discounts in error.

5. Applying a 2-stage payment process, and amending the discretionary discounts, increases fairness and rewards good practice in the private rented sector. Improvements in management and standards of HMOs in the city can contribute to the reduction in health inequalities in our society.