

Commercial Regulation

Cost Recovery Policy - Draft

2023-2024



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1.0 Background

As part of the Council's services to the public, Commercial Regulation Services are responsible for protecting people's health, safety and wellbeing, as well as the environment and amenities. They are responsible for promoting economic growth and employment opportunities. In doing so, a cost is incurred by the Council. Where the service the Council provides is discretionary, a charge can be levied so that the authority can recover the costs of providing services. Court costs can also be recovered where the defendant has been found to be in breach of the law.

The fees for licences, permits, registrations and consents are set by the Council, unless the fee is set in statute. The calculation of the fees varies by legislation for licences, permits, registrations and consents, but essentially contains an element of administrative cost, compliance cost and where permitted, an enforcement cost. The Provision of Services Regulations 2009 requires that any charges set by the Council must be set on a cost-recovery basis.

Regulators' Code

The Regulators' Code 2014¹ was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006 ("the Act"). Regulators whose functions are specified by order under section 24(2) of the Act must have regard to the code when developing policies and operational procedures that guide their regulatory activities.

The Regulators' Code provides a flexible, principles-based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities. The principles are:

- a) understand and minimise negative economic impacts of their regulatory activities;
- b) minimising the costs of compliance for those they regulate;
- c) improve confidence in compliance for those they regulate, by providing greater certainty;
- d) encourage and promote compliance.

2.0 Legal Justification for Recovery of Costs

For costs incurred by legal proceedings, The Civil Procedure Rules 1998 establish that the loser pays the winner's costs in civil matters.² For criminal matters, Section 64 of the Magistrates Court Act 1980³ allows a party to ask the court to award costs against another at the conclusion of a trial.

For general charging of costs, Section 93 of the Local Government Act 2003 (LGA 2003) gives relevant authorities the power to charge for discretionary services.⁴ These are defined as those services authorised by statute that a local authority is not required to provide but may do so voluntarily (Section 93(1)(a), LGA 2003).

Legal authority for general charging of costs (giving the local authority capacity to act) can come from Section 111 of the Local Government Act 1972 authorising the provision of a service to facilitate the discharge of a specific function (using Section 93 to do so).⁵ Otherwise, the Localism Act 2011 confers a power on local authorities to charge the individual for providing a service under the general power of competence if:

- a) the service is not one that is required to be provided under an existing statute (Section 3(2)(a));
- b) the individual has agreed to the service being provided (Section 3(2)(b));
- c) there is no conflict between charging powers provided in Section 93 of the LGA 2003 and the general power to charge provided in the Localism Act 2011.⁶

3.0 Proposed Cost Recovery

The Council's charging power is intended to allow it to recover the cost of providing services or improvements to services that it may otherwise not have been able to provide. The Council's recovery of costs are designed to facilitate:

- a) ensuring the amelioration of the safety of the public;
- b) minimise negative economic impacts of regulatory activities, minimising the costs of compliance;
- c) improving confidence in compliance, by providing greater certainty; and
- d) ensuring that Council services provide value for money to the public purse.

Fees

For the various licences, permits, registrations and consents that are administered within Commercial Regulation, once the policy is agreed, the fees will be updated annually in accordance with the constitution and the costs for the services to provide them.

Discretionary Service Charges

Services within Commercial Regulation shall continue to provide advice and services free of charge where legislation and statutory guidance dictates. Only enhanced services that are offered above and beyond that already provided, shall attract the discretionary charge.

Cost Recovery

Court costs cover aspects of the preparation for, and participation in legal action. As the need to incur costs will have come about because of the defendant's breach, it is therefore "just and reasonable" that such costs are borne by the defendant rather than the public purse. The award of costs, however, is ultimately within the discretion of the Court.

The hourly charge basis for all cost recovery and fee setting shall include the additional costs outlined in figure 1:

Direct Costs	Indirect Costs
Salary	Premises and Office Costs
On-costs (Superannuation and National Insurance)	Central Function Costs (i.e., HR and Finance)
	Governance and Management Costs

Figure 1

4.0 Cost Breakdown

Including the additional indirect costs identified in figure 1, 73% of the hourly cost for an Officer comes from direct costs for pay, including National Insurance and pension costs. Additional indirect costs comprise 27% of the hourly rate and make up the rest of the hourly cost.

The indirect costs are made up of premises and office costs, central functions, and governance and management.

The final element of the hourly cost for an Officer comes from direct costs. This is made up of salary, National Insurance (NI) and superannuation. This is calculated on a cost recovery practice based on actual hours worked by the Officer taking into account annual leave, bank holidays and administrative time.

Indicatively, in a case where an Officer has spent 37 hours on the case, the costs would be worked out as follows:

Pay, superannuation, and NI per hour	£
Service recharge costs per hour	£
Total cost per hour	£
Cost per hour multiplied by hours worked (37 hours)	£
	= £ total cost

The types of roles the cost recovery scheme shall be applicable to are set out in figure 2:

Grade	Example Roles
4	Licensing Officer, Business Support Officer (Admin)
5	Compliance Officer, Senior Licensing Officer
6	District Officer, Legal Executive
7	Senior Environmental Health, Trading Standards Officer, Section Leader, Senior Legal Executive
8	Service Lead, Solicitor
9	Licensing Manager, Lead Lawyer

Figure 2

5.0 Operational

Through assessing and including indirect costs in an Officer's hourly rate, the rate charged will more accurately reflect the cost of the Officer's time. This would allow the Council to meet the guidance as given by HM Treasury⁷ and would be legally justifiable under the statutes outlined in Section 2 of this report.

The applicable costs will be assessed annually in arrears, revising indirect costs and taking agreed pay increases and inflation into account.

6.0 References

1 The Regulator's Code 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf

2 The Civil Procedure Rules 1998

<http://www.legislation.gov.uk/uksi/1998/3132/contents/made>

3 Magistrates' Courts Act 1980

<https://www.legislation.gov.uk/ukpga/1980/43/contents>

4 The Local Government Act 2003

<https://www.legislation.gov.uk/ukpga/2003/26/contents>

5 Local Government Act 1972

<https://www.legislation.gov.uk/ukpga/1972/70/contents>

6 Localism Act 2011

<https://www.legislation.gov.uk/ukpga/2011/20/contents>

7 HM Treasury, Managing public money, A6.1A

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089622/MPM_Spring_21_with_annexes_040322__1_.pdf

7.0 Further References

The Black Country Regulators Operating Framework 2021

<https://www.wolverhampton.gov.uk/sites/default/files/2021-11/Black%20Country%20Regulators%20Operating%20Framework.pdf>

The Statement of Licensing Policy 2020

<https://www.wolverhampton.gov.uk/sites/default/files/2020-04/Statement%20of%20Licensing%20Policy%20final.pdf>

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