

	<p>Budget Panel 23 October 2008</p> <p>Report from the Directors of Finance and Corporate Resources and Policy and Regeneration</p>
Wards Affected: None	
<p>Fees and Charges Policy</p>	

1.0 INTRODUCTION

- 1.1 This covering report introduces a proposed new council policy on the setting of fees and charges attached as Annex A to this report. The proposed policy applies to fees and charges where the council has discretion over the level of charges and the services provided. The guidance is in line with the latest advice from the Audit Commission and CIPFA regarding best practice in the setting of fees and charges to maximise the benefits to the service user, the local council tax payer and the wider community.
- 1.2 The purpose of the fees and charges policy is to specify the principles and processes for the setting of charges for services, to provide consistency across the council in the implementation and collection of charges and a policy framework which supports the achievement of our wider corporate objectives within our approach to optimising fee income.

2.0 RECOMMENDATIONS

The Budget Panel is asked to:

- 2.1 Comment on the proposed fees and charges policy attached as Annex A to this report.
- 2.2 Agree what further information they would like to be provided with on the development of the policy during the budget process.
- 2.3 Note that in order for the setting of some fees and charges to be delegated to officers a change would be required to the constitution of the Council.

3.0 DETAILED CONSIDERATIONS

The national policy context for fees and charges

- 3.1 The charging of fees for council services makes a significant contribution to the income of local authorities, with national estimates suggesting an average of 9% of revenue is generated through charges. However there is also considerable variation across local authorities as to the proportion of income generated by fees and the role they play in supporting the achievement of the wider strategic objectives of the Council. Recent research by the Audit Commission has found that many councils do not make the most effective use of their powers to charge for services, do not have a strategic policy framework in place to regulate their

corporate approach to fee setting and are not using the right financial or service user information to inform decisions on the setting of appropriate fee levels. Very few councils have made use of the power within the LGA 2003 to develop new discretionary services for which they can charge.

- 3.2 In many cases fees are set based upon historical precedent, comparison with neighbouring boroughs, inflation related or set by corporate targets for income generation. This approach takes little account of the impact fees have on user behaviour, the willingness of customers to pay for an improved or additional service or the impact charges can have on changing behaviour or moderating demand for a particular service.
- 3.3 There is a growing recognition that a more strategic approach to the setting of fees can have a major role not just in reducing the cost pressures being experienced across the public sector but as an opportunity to deliver the wider local objectives of the council for the wider benefit of the community. A properly considered approach to income generation is capable of supporting the development of new and existing services in response to local need and demand. It can pay for improvements to services which directly benefit service users who are willing to pay for them, subsidise services for specific groups who may otherwise be excluded or encourage the changing of behaviour that may otherwise have a detrimental local impact.

The Brent context for fees and charges

- 3.4 As part of the budget setting process for 2008/09 a review was undertaken by Pricewaterhousecoopers (PWC) looking at the scope to increase the level of income generated across the council. As a result of this review services were identified which had the scope to increase their level of fees charged. This was largely on the basis of achieving comparability with the level of fees being charged by neighbouring boroughs, cases where the fees charged had clearly fallen behind the costs associated with providing the service or where the fee charged was obviously in conflict with the stated policy objectives of the council. The recommendations from this review were presented as part of the Budget Report 2008/09 to Full Council and agreed for implementation.
- 3.5 However the review did not address all fees charged by the council and part of PWC's recommendations included the adoption of a consistent set of principles and procedures which can be applied across all areas of the council raising fees for the provision of a service. Subsequent to the agreement of the PWC recommendations a cross-council officer group has been convened to review the scope for optimising the level of income to the council from fees, ensuring the approach to charging is consistent with the council's wider community objectives and developing an agreed policy framework for the setting and administration of all fees or charges.
- 3.6 The proposed council policy on the setting of fees and charges is attached as Annex A to this report.
- 3.7 A detailed toolkit providing practical guidance for officers on the setting and administration of appropriate fees and charges will be produced to ensure a consistent approach is embedded across the council. This guidance will be made available as part of the standard financial guidelines in place in Brent.
- 3.8 In addition there are a number of sources of information on best practice in the setting of fees and optimising income while supporting the delivery of key strategic objectives which is available from the Audit Commission's website.

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DRAFT
LONDON BOROUGH OF BRENT
FEES AND CHARGES POLICY

1. Introduction

- 1.1 It is Brent's policy to use resources efficiently and effectively and to maximise income to the authority whilst ensuring the delivery of high quality services to all sections of the community in keeping with policies in relation to health, community safety and the welfare of children in particular. These objectives could sometimes conflict with each other and this policy is designed to help address potential conflicts and set out a framework for establishing fees and charges for council services
- 1.2 This policy applies to the setting of and review of fees and charges in situations where the council has discretion over the level of charges and the services provided. This policy document takes account of the latest advice from the Audit Commission and CIPFA regarding best practice in the setting of fees and charges to maximise the benefits to the service user, the local council tax payer and the wider community.
- 1.3 The purpose of this fees and charges policy is to specify the principles and processes for the setting of charges for services, to provide consistency across the council in the implementation and collection of charges and to provide a policy framework which supports the achievement of our wider corporate objectives within our approach to optimising fee income.

2. The legal context for raising fees and charges

- 2.1 Local authorities are governed by the ultra vires doctrine – activities undertaken by them must first be authorised by statute and must be undertaken reasonably. Local authorities have a range of powers that allow them to charge for a variety of discretionary services such as arts provision, sports or entertainment. Generally speaking, charging the public and other bodies for services that a local authority is obliged to provide by statute (mandatory services) is forbidden. Funding for the carrying out of duties comes via local and national taxes and should not be further paid for. However for some statutory services such as planning, licensing and environmental health there is a statutory regime for charging, often with the rates being prescribed by the enabling statute itself. In addition, where a local authority provides "enhanced" statutory services, the possibility of charging arises where an appropriate power can be identified. In any case, the general rule is that the fees that can be charged are to be limited to recovery of reasonable expenses for the provision of the service.
- 2.2 Section 2 of the Local Government Act 2000 introduced a general power of first resort (the "well-being power") which enables local authorities to do anything which they consider is likely to promote the economic, social or environmental well-being of their area. In addition to the well-being power, there are a number of specific powers that enable local authorities to undertake certain activities. In the past, local authorities had relied heavily on incidental powers (notably s111 of the Local Government Act 1972) as the legal justification for charging for services.
- 2.3 The position on the ability to charge for discretionary services was considerably simplified by section 93 of the Local Government Act 2003 (LGA 2003), which provides that local authorities may charge for discretionary services where the recipients of the services have agreed to their provision. The power to charge under section 93 is subject to a duty to secure that, "taking one financial year with another, the income from charges does not exceed the costs of provision".
- 2.4 The government explained in its guidance note on the section 93 power ([click here](#)) that "The aim is not to provide a new source of income for authorities, but to allow them to

cover their costs.” The guidance note went on to explain that the practical difficulties faced in estimating the charges was recognised and the guidance allows for the balancing of books over a period of time (which may be a number of years)

2.5 The general power to charge has the following key features.

- Authorities are required to ensure that year on year the income from the charges does not exceed the costs of providing the service;
- Authorities must already have the power to provide the service;
- The recipient of the service must have agreed to its provision and to pay for it;
- It does not apply to services which an authority is mandated, or has a statutory duty to provide.
- Charges may be set differently, so that different people are charged different amounts. Authorities are not required to charge for discretionary services and may choose to provide them free of charge in the pursuit of specific policy objectives.

2.6 As can be seen, therefore, fees and charges are heavily regulated and, prior to setting a charge, questions have to be asked about whether the council has the power (general or specific) to provide a service at all, the power to charge for providing the service, the level at which fees and charges are to be set and the reasonableness of proposals relating to service provision and charges. These can all be complex legal questions and advice should always be taken from Legal Services where a new proposal is under consideration or where changes are proposed to existing arrangements.

2.7 In addition to charging, the LGA 2003 enables councils to trade. It is important to distinguish between charging and trading. There are four main differences:

- (i) charging relates only to discretionary services, whereas the power to trade is for all services
- (ii) all best value authorities can use the power to charge whereas the power to trade is available only to councils rated ‘fair’, ‘good’ or ‘excellent’ under the CPA
- (iii) charging is limited to the recovery of the cost of providing the service whereas trading can be at a profit
- (iv) the power to trade is only exercisable through a company.

2.8 Local authorities can trade commercially through a company and enter into commercial contracts where there would be an overall benefit to the council in terms of additional income generated and hence to the wider community. Using this provision, local authorities can trade with any person, including non-local authorities and non-public bodies for profit. Councils are empowered to do for a commercial purpose anything that they are authorised to carry as part of their ordinary functions, provided that they prepare a business case which includes a risk analysis. The primary purpose of any company (or participation in any company) must be to promote or improve the well-being of the borough, specifically through the generation of additional income. This policy **does not cover** the setting of fees and charges for traded services provided by the authority.

3. The national policy context for fees and charges

3.1 The charging of fees for council services makes a significant contribution to the income of local authorities, with national estimates suggesting an average of 9% of revenue is generated through charges. However there is also considerable variation across local authorities as to the proportion of income generated by fees and the role they play in supporting the achievement of the wider strategic objectives of the council. Recent research by the Audit Commission¹ has found that many councils do not make the most

¹ Positively Charged – January 2008

effective use of their powers to charge for services, do not have a strategic policy framework in place to regulate their corporate approach to fee setting and are not using the right financial or service user information to inform decisions on the setting of appropriate fee levels. Very few councils have made use of the power within the LGA 2003 to develop new discretionary services for which they can charge.

3.2 In many cases fees are set based upon historical precedent, comparison with neighbouring boroughs, general inflation or corporate targets for income generation. This approach takes little account of the impact fees have on user behaviour, the willingness of customers to pay for an improved or additional service or the impact charges can have on changing behaviour or moderating demand for a particular service.

3.3 There is a growing recognition that a more strategic approach to the setting of fees can have a major role not just in reducing the cost pressures being experienced across the public sector but as an opportunity to deliver the wider local objectives of the council for the wider benefit of the community. A properly considered approach to income generation is capable of supporting the development of new and existing services in response to local need and demand. It can pay for improvements to services which directly benefit service users who are willing to pay for them, subsidise services for specific groups who may otherwise be excluded or encourage the changing of behaviour that may otherwise have a detrimental local impact.

4. **Principles for charging in Brent**

4.1 The fees and charges policy is based upon a number of fundamental principles that will inform the approach to setting and administering fees and charges across the Council. These principles are:-

- All fees should be set within the context of seeking to optimise the level of income to the council.
- There is a presumption that all fees will increase annually by at least the level of inflation unless there is a strong policy case to vary the charge or where the costs of providing the service have significantly altered in the past year.
- All fees will seek to recover the costs of providing the service and should be informed by a detailed understanding of the total cost associated with its provision.
- The level of fees charged should be informed by a clear understanding of the local market, the views of service users, comparisons with neighbouring boroughs and the impact of fee changes on service user behaviour both positive and negative.
- Where it is considered that optimising the level of income raised would have a detrimental impact on the wider policy objectives of the council, there should be a clear articulation of the justification for the income foregone and considerations of the alternative options to demonstrate value for money.
- Subsidy for a particular service or individual concessions should be consistent with the policy priorities of the council and should represent value for money for the council tax payer in terms of other local benefits delivered by the subsidy.
- There should be consistent application of the criteria for concessionary rates for specific individuals which is inline with the council policy objectives around social inclusion and promoting fair access to services.
- Officers should be clear of the policy rational underpinning each charge; for example is the main aim to recover costs, promote positive behaviour, a penalty or maximising income.
- If possible fees and charges should be set within the three-year time frame of the Medium Term Financial Strategy. This could enable fees to be set at a level that provided investment in the service to improve quality and efficiency as long as the

fees charged did not exceed the total cost of providing the service over the three year period. Indeed such an approach could represent better value for money where greater initial investment enabled efficiencies to be delivered that contained or even reduced the total costs of provision over time.

4.2 These principles have been used to shape the proposed policy for fees and charges which is set out under the following headings:-

- Charge setting
- Subsidies
- Concessions
- Administration of charges
- The approval process.

5. Charge Setting

5.1 The starting point for the appropriate setting of any fee or charge levied by the council is the presumption that subject to any policy considerations to the contrary, the full costs of providing the service will be recovered. This requires a detailed understanding of the total costs including overheads associated with the provision of any individual service. The accounting framework used to identify the total cost of the service should be that used in the Best Value accounting procedure. This applies to both discretionary services and statutory where the council is legally empowered to recover its costs. Charges should be set so that in total they cover the actual costs taking into account evidence of previous income, activity levels and patterns of usage.

5.2 Reviews of fees and charges will be carried out annually in time to inform the budget setting process. In setting the charge there should be the presumption that there will be an annual increase of at least the level of inflation using the RXI-X measure for inflation². This should be the norm unless there have been significant changes to the cost base of the service from the previous year which would be reflected in the assessment of the total cost of provision undertaken. Reviews of fees should take into account the following factors:-

- Council-wide and service budget targets.
- Costs of administering the charge.
- Scope for charging for new services
- The actual or potential impact of any competition in term of price or quality.
- Trends in user demand and the forecast effect of price changes
- Alternative charging structures that could be more effective.
- Where it is not appropriate or cost effective to calculate the cost of provision at an individual level, charges may be set so that overall costs are recovered from a range of services which are delivered within a service area.

5.3 Each fee or charge should be clearly identified in terms of the policy rational underpinning its collection to one of 10 charging bases as follows:-

1. Full commercial
2. Full commercial with discounts
3. Fair charging
4. Cost recovery

² RPI-X is the index for inflation excluding mortgage interest payments.

5. Cost recovery with discounts
6. Subsidised
7. Nominal
8. Free
9. Statutory
10. Penalty

Full definitions of the charging bases are provided at Appendix 1.

5.4 This will enable easier assessment of the policy objectives informing particular charges and the link to delivering the Corporate Strategy objectives. The level of fees charged should be informed by evidence of customer consultation, comparisons with neighbouring boroughs, understanding of the local market where there are direct commercial alternatives and an assessment of the likely impact on service usage from a change in the fees charged. When setting and amending charging levels due consideration should be given to:-

- Justification in the setting of the charges to withstand any legal challenges.
- Obstacles to maximising full cost recovery when providing the service.
- Access to and impact on users.
- Future investment required to improve or maintain the service.
- Corporate objectives, values and priorities.

5.5 In the event that an increase in the fees charged is above the level of inflation, consideration might need to be given to implementing a staged increase to the new charge. Users should be given a reasonable period of notice before the introduction of a new or increased charge. Where possible the objectives of charging should be communicated to the public and service users and people should be informed how the charge levied relates to the costs of providing the service.

6. Subsidies

6.1 Where charges are made for a service users pay directly for some or all of the services they use. Where no charges are made or where charges do not recover the full costs of providing a service, council tax payers subsidise the users. A subsidy is where the standard charge is set at a lower level than full cost recovery for all service users in order to support the achievement of corporate strategy objectives.

6.2 Fees and charges should be set at a level that optimises income to the council and recovers costs, whilst encouraging potential users to take up the services offered and ensuring that value for money is secured on behalf of the council tax payer.

6.3 However there will be some services where fully cost recovery will have a detrimental effect upon take up of the service, resulting in a negative impact on the individual, disadvantage for the whole community and undermining of corporate priorities. Specific examples of this effect would be:-

- High charges for sports facilities discouraging wider participation in exercise and reducing the associated health benefits.
- Charges for meals on wheels services prohibiting take up and leading to long term health problems in older vulnerable people.
- Introduction of fees for rat control.

6.4 Where the implementation of full cost recovery would undermine the achievement of a corporate objective, consideration should be given to the appropriate level of subsidy that will mitigate any negative impact. A business case should be created for all services that

require a subsidy from the council when charges are reviewed. The business case should outline how the subsidy will be applied to the service and incorporate the following:-

- A demonstration of how value for money is being secured for the council tax payer by foregoing potential income in order to achieve a greater benefit either to individual service users or to the wider community.
- Evidence that consideration has been given to alternative ways of achieving the same policy objectives without loss of income to the council.

6.5 There may be some exceptional circumstances where it is appropriate not to charge service users for the use of a service (a free service). This would only be the case where:-

- The administrative costs associated with making a charge would outweigh the potential income generated.
- Where charging could be demonstrated to have an overwhelmingly negative impact that would be counter productive.

7. Concessions

7.1 Concessions may be used to provide a discount from the standard charge for specific target individuals who would be disproportionately excluded or disadvantaged by the levying of the standard charge. Concessionary charges may also be made to organisations whose purpose is to assist the council in the achievement of its corporate objectives, or which contribute to the aims of key local partnerships in which the council has a leading role.

7.2 The LGA 2003 and its accompanying guidance states that charges may be set differentially, so that different people are charged different amounts for the same service. However it is not intended that this leads to some other users cross-subsidising others. The costs of offering the service at a reduced charge should be borne by the authority rather than other recipients of the service. This should be borne in mind when setting concessions or promoting use of the service by specific target groups.

7.3 In order to avoid inconsistency in the way concessions are applied, this policy proposes that concessions applying to each charge should be publicly available (including who the concession applies to and the level of the concession) and that a standard definition of the groups to whom concessions may be available is applied across all council services. These concessionary groups are as follows:-

Group 1.

People who are outside the normal working age.

- a. Residents over 60
- b. Young people 16 and under.

Group 2.

People with a disability and in receipt of either:

- a. Incapacity benefit; or
- b. Disability living allowance.

Group 3.

People whose income is at or below the minimum and are in receipt of either:

- a. Housing or council tax benefit; or
- b. Working families' tax credit; or
- c. Job seekers allowance.

Guidance will be available to managers on the proof an individual may be required to provide for concessions to apply. Details will be maintained on the Client Index so that evidence will not be required every time a service is applied for.

8. Administration of charging

- 8.1 Fees and charges should be simple to understand and clearly publicised in a variety of accessible formats such as leaflets, on the internet and in relevant community languages. Service users should understand the charges, and concessions available and methods of payment before they become liable to pay. Reasonable notice should be given to service users before any new or revised charges are made.
- 8.2 Methods of payment should be flexible and convenient, and take into account the needs of those on low income. The easier it is to pay, the more likely it is that payment will be made. Consideration should be given to:
- Frequency of payment: having regard to the budgetary patterns of those reliant on benefits or low incomes;
 - Format of payment: including alternatives to cash;
 - Venue of payment: the aim should be to offer payment points within easy reach of service users, where payment is not made at the point of service.
- 8.3 The costs of collection should be evaluated. Potentially, they may make the charging proposal uneconomic or require charges to be raised further. Costs of collection must be identified and budgeted for.
- 8.4 Where a service user fails to pay for goods or services the relevant senior officer should consider withholding the provision of goods or services until the debt is settled in full, where legislation permits. Non payment of charges should be appropriately pursued within the guidelines set out in the council's standard credit policy..

9. The approval process

- 9.1 At present all charges and amendments to charges are presented to Members as part of the annual budget setting process for their approval. While this process has benefits in terms of comprehensiveness and it is right that Members make these decisions it can lead to a loss of detailed information and focus on those charges that are most strategically important to the authority. There are some charges that raise relatively small amounts of income compared to either the service they are part of or in absolute terms. The setting of the charges will in future be delegated to officers.
- 9.2 In order to facilitate this process, there will be two levels of approval process which are as follows:

Level 1- subject to Executive approval

This is required where the introduction of a new charge or changes to an existing charge would have a significant impact on policies of the council, service users and/or council tax payers. Executive approval would normally be expected where:

- It is a new charge for a service which was not previously charged for;
- There is a change in the charge – increase or reduction – which significantly differs from the prevailing rate of inflation;
- The basis for charging for a particular service is changed (that is, it moves from one basis to another listed in paragraph 5.3 above);
- Changes are made to the arrangements for applying discounts (see paragraph 7.3), by either applying discounts to new groups or removing discounts from existing groups.

In all Level 1 cases the materiality and overall impact of the change will be considered in determining whether or not Executive approval is required.

Level 2 – delegated to officers

Responsibility for setting charges where the change to charge or introduction of a new

charge does not have a significant impact on policies of the council, service users and/or council tax payers will be delegated to officers as part of the scheme of delegation.

9.3 Reports to members seeking Level 1 approval for new charges or changes to charges should cover:-

- How the charging policy adopted supports the achievement of wider corporate objectives.
- The extent to which the income by way of cost recovery is being optimised.
- Where income is being foregone it will need to be justified in terms of the wider policy objectives that are being achieved.
- Comparisons with neighbouring boroughs or if appropriate other private sector providers where there may be issues of competition.
- User consultation and an assessment of the likely impact on users or take-up of the service as a result of changes to the fee level.
- Details of any service development or investment that would lead to long-term improvement in the services as a result of a change to the fees being charged.

9.4 Details of fees and charges which apply to council services will be published annually as an appendix to the council's annual budget report.³

10. **Background Information**

10.1 A toolkit providing practical guidance for officers on the setting and administration of appropriate fees and charges will be produced to ensure a consistent approach is embedded across the council. This guidance will be made available as part of the standard financial guidelines in place in Brent.

10.2 In addition there are a number of sources of information on best practice in the setting of fees and optimising income while supporting the delivery of key strategic objectives. These are available from the Audit Commission's website.

³ The council has previously included in corporate reports all fees and charges it makes including for example charges for photo-copying in One Stop Shops and charges made under each section of the Weights and Measures Act. In future, these charges will need to be published locally and be available for users of the service but will not be included in the annual budget report. The budget report will include links to where the details can be found on the internet.

Definition of charging basis

	Charging basis	Policy objective
1.	Full commercial	The council seeks to maximise revenue within an overall objective of generating as large a surplus (or a minimum loss) from this service
2.	Full commercial with discounts	As above, but with discounted concessions being given to enable disadvantaged groups to access the service
3.	Fair charging	The council seeks to maximise income but subject to a defined policy constraint. This could include a commitment made to potential customers on an appropriate fee structure. Alternatively, a full commercial rate may not be determinable or the council may be a monopoly supplier of services.
4.	Cost recovery	The council wishes to make the service generally available, but does not wish to allocate its own resources to the service
5.	Cost recovery with discounts	As above, but with discounted concessions being given to enable disadvantaged groups to access the service
6.	Subsidised	Council policy is to make the service widely accessible, subject to users of the service making some contribution from their own resources. This could also be due to the adverse impact a cost recovery or commercial charging policy would have on other council services.
7.	Nominal	The council wishes the service to be fully available, but sets a charge to discourage frivolous usage.
8.	Free	Council policy is to make the service fully available
9.	Statutory	Charges are set in line with legal obligations
10.	Penalty	Set at an appropriate level to discourage or promote specific compliance.