

Appendix L (iii) Brent Council Fees and Charges Policy

1 Introduction

- 1.1 By using its powers to charge for goods and services and imposing fines, fixed penalties and other such financial sanctions, Brent Council is able to generate additional income to support investment in services and/or reduce the overall level of expenditure to be met by local tax payers.
- 1.2 The aim of this Fees and Charges Policy is to ensure that the Council makes use of all the powers available to it in order to recover the full cost of providing services. In using these powers however, the Council will wish to take care to ensure that the consequences of charging on individuals, the wider aims of the Council itself and / or organisations do not adversely impact on those who are vulnerable or in difficulties.

2 Background

- 2.1 The overriding aim of the charging policy is to maximise income generation and collection to enhance the social and economic well being of the community the council serves, whilst ensuring a fair price for all services reflecting the ability of the community to pay and the relative demand for the service. Maximisation of income, following a decision to charge, is also dependent on a charge being raised and that amount being collected, both in a timely way.

Legal Position

- 2.2 The majority of the Council's statutory services, Building Control being a key exception, are funded directly from the Council's other main sources of revenue, i.e. government grants and local taxation.
- 2.3 Income received by Brent from fees and charges is generated by both statutory and discretionary services. Where fees and charges apply to statutory services these are often set nationally, for example, some planning and licensing fees.
- 2.4 The remaining income generating services where the Council levies fees and charges are of a discretionary nature. Discretionary services are those that an authority has the power to provide but is not obliged to. They include services provided directly to the public in general such as leisure services as well as charges for the costs incurred by the council (such as legal costs) when entering into planning or highways agreements with specific persons.
- 2.5 The legal powers that the Council has to raise fees and charges are set out in the final section of this policy.

3 Managers' Guidance

Overview

- 3.1 The Managers' Guidance has been written to provide information to managers in Brent Council responsible for applying fees and charges to goods and services delivered. The aim is to encourage a consistent and cost effective approach to the setting of

charges for services provided by:

- a. Specifying the process and frequency for reviewing existing charges for all areas of the council's work for which charges could in principle be set
- b. Providing guidance on the factors that need to be taken into consideration when charges are being reviewed
- c. Requiring more active use of market intelligence when setting charges
- d. Establishing parameters for calculating different levels of charges
- e. Recommending the criteria for applying concessions or discounted charges consistently across the council

Calculation of Fees and Charges

3.2 Fees and charges raised must be based on the full cost of the service. Charges cannot be set at a level to recover more than cost if that is all the Council has the legal power to do, but the definition of cost includes direct costs of service provision together with overhead and central costs. The cost recovery limit applies to the overwhelming majority of services which the Council can set a charge for. If, however, the Council has the legal power to do so careful consideration should be given to charging more than the full cost of the service. For example, charging could be used as a tool to manage excess demand for limited spaces on leisure centre classes. In overview there are 3 ways in which fees and charges may be set:

- a. Fees and charges prescribed by legislation, usually in a regulatory context, and varied from time to time which the person liable has an obligation to pay;
- b. Fees and charges reviewed and set by members (e.g. Individual Cabinet Members, Cabinet or Full Council) from time to time (usually annually); and
- c. Fees and charges reviewed and set by officers from time to time acting under delegated powers.

3.3 As part of the annual budget cycle each department will carry out a recalculation of existing fees and charges together with opportunities to raise additional income from new areas of charging, and present proposals for revised charges.

Approvals

3.4 In broad terms setting fees for regulatory services (i.e. licensing, planning, etc) are non-executive functions. These therefore need to be submitted to Full Council for approval. Full Council can, however, delegate this function to a committee, officer etc.

3.5 Fees and charges for discretionary services are usually executive functions and therefore need to be approved by Cabinet or Cabinet Members. Cabinet and Cabinet

Members can, however delegate this function.

Concessionary Charging

- 3.6 The purpose of offering concessions must be to support council priorities. Generally the reasons for operating concessionary charges will fall into one of two categories: to influence the level of demand for a service or to reflect the circumstances of service users. Concessions must also be reviewed at least on an annual basis, to confirm both the level of subsidy and also their ongoing relevance.
- 3.7 The Finance Department will maintain a list of concessions in operation and keep under review requests for concessions to be offered. For customer / clients who cannot pay, action must be taken to ensure that there are sufficient safeguards in place to allow access to service, and that appropriate steps are taken to recognise the realistic payment capacity of vulnerable individuals.
- 3.8 Concessionary charges should not normally apply at times when it would result in a loss of income from customers paying the full charge, unless prior approval has been given by a senior Council officer.
- 3.9 No concessions will be provided to non-Brent residents.

Education related services

- 3.10 With regards to education related services, services and packages will be based around the academic year and not on the municipal financial year.

VAT

- 3.11 Managers must ensure that the correct treatment of VAT is applied to the fees and charges they are responsible for. The correct treatment should be agreed with Finance in advance of application.

Other statutory requirements

- 3.12 Managers must also ensure that when setting fees and charges or reporting to members they are aware of any special statutory requirements that need to be complied with. For example, before changes to some fees and charges can be implemented, there may be a statutory requirement to consult and/or publish a notice in a local newspaper.

4 Payment Methods

- 4.1 All collection methods and payment terms must be effective, efficient and appropriate for the service. The preferred methods of payment are those direct to the bank such as direct debits and standing orders.
- 4.2 Wherever practical do to so payment for services provided should be sought in advance to minimise debt recovery issues.
- 4.3 The full cost recovery analysis will need to factor in the cost of processing payments and that some payment methods are preferred.

5. Equality impact Assessments

- 5.1 Under Section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have 'due regard' to the need to eliminate discrimination and other conduct prohibited under the Act and advance equality of opportunity and foster good relations between those who share a "protected characteristic" and those who do not. This is the public sector equality duty. The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision. Due regard is the regard that is appropriate in all the circumstances.
- 5.2 Before the Council exercises its fees and charging powers, the impact on individuals or groups of individuals who share a protected characteristic must be carefully considered and properly factored into the decision making process using the Council's EA screening template.

6 Review of Policy

- 6.1 This Policy is to be reviewed a minimum of every two years to ensure consistency with wider council and departmental objectives and priorities.

Fees and Charges - Legal Powers

Under the Localism Act 2011 there is a general power of competence which explicitly gives councils the power to do anything that an individual can do which is not prohibited by other legislation. This activity can include **charging** (i.e. to recover the costs of providing a discretionary service which the person has agreed to) or can be undertaken for a commercial purpose (i.e. to generate efficiencies, surpluses and profits) through a special purpose trading company. This is what is more commonly known as **trading**. Charging and trading activities can be aimed at benefiting the Council, the borough or its local communities.

These powers are in addition to similar powers set out in the Local Government Act 2003. The 2003 Act empowers councils to charge for any discretionary services (i.e. services councils have the *power* to provide but do not have a *duty* to provide by law) on a cost recovery basis. For example, the Council could decide to provide a new discretionary service, that is an addition to or enhancement of a statutory service, and then charge for it.

The 2011 Act power and the 2003 Act power cannot be used where charging is prohibited or where another specific charging regime applies. Statutory guidance published in 2003 outlines how costs and charges should be established and that guidance remains in force (see: '*General Power for Best Value Authorities to Charge for Discretionary Services*', ODPM, 2003). The Council must have regard to the guidance when charging for discretionary services under the 2003 Act.

In particular, the guidance contains useful advice on setting charges. It explains that for each discretionary service for which a charge is made, councils need to secure that, taking one year with another, the income from charges for that service does not exceed the costs of provision. The requirement to take one year with another recognises the practical difficulties council will face in estimating the charges. It establishes the idea of balancing the books over a period of time (not less than 1 year and no more than 3 years). Any over or under recovery that results in a surplus or deficit of income in relation to costs in one period should be addressed by the council when setting its charges for future periods so that over time income equates to costs.

The 2003 Act also enables councils to trade in activities related to their functions on a commercial basis with a view to profit through a company.

Under the Local Authorities (Goods and Services) Act 1970 councils also have powers to enter into agreements with each other and a long list of designated bodies. These activities are not limited to cost recovery and a profit can be generated from these activities.

In terms of leisure and recreational facilities, section 19 of the Local Government (Miscellaneous Provisions) Act 1976 permits councils to charge for these beyond cost recovery limitations.