

Update on Animal Licensing Activities

Final Decision-Maker	Licensing Committee
Lead Head of Service	John Littlemore, Head of Housing & Communities
Lead Officer and Report Author	Martyn Jeynes, Community Protection Manager
Classification	Public
Wards affected	All

Executive Summary

Since October 2018 the Community Protection Team have been working with businesses across Maidstone to regulate licensable animal activities under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. As this change brought the biggest reform of animal licensing legislation for nearly four decades, the journey for our officers and local businesses has been intense. This report updates Members on the:

- nature and standard of regulated businesses across Maidstone
- lessons learnt and challenges overcome
- fee structure and how it needs to be adjusted to ensure the service remains cost neutral

Purpose of Report

Provide the Licensing Committee with officers' experience of implementing the new legislation over the last 12 months and to propose changes to the current fee structure based on this learning.

This report makes the following recommendations to this Committee:

1. That the update on the implementation of the changes in regulation for animal-related activities that were introduced in October 2018 be noted.
2. That option 2, to introduce a revised fee structure from 1st April 2020, is approved as detailed in Paragraphs 5.1 to 5.3 below.

Timetable

Meeting	Date
Licensing Committee	27 November 2019

Update on Animal Licensing Activities

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	A Thriving Place: Animals provide a great deal of enjoyment and enrich the lives of those who own or use them for leisure purposes. This in itself generates a thriving business sector that must be regulated to ensure those businesses operate at the required standards and protect the welfare of the animals in their care.	John Littlemore Head of Housing & Communities
Cross Cutting Objectives	N/A	John Littlemore Head of Housing & Communities
Risk Management	The guidance provided with the legislation is very prescriptive and will promote transparency with businesses in this sector. Where there are elements of subjectivity the legislation provides routes of appeal that the council will support. Best practice and information sharing across Kent has helped shape the service and the implementation has been monitored closely in the first year to ensure the service was within scope and resourced appropriately. Concerns identified are outlined in this report	John Littlemore Head of Housing & Communities
Financial	It is necessary for the Council to deliver a balanced budget and cover the costs of providing this service.	[Section 151 Officer & Finance Team]
Staffing	We will deliver the recommendations with our current staffing.	John Littlemore Head of Housing & Communities
Legal	Should parts of industry believe the Authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the Authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.	[Legal Team]

Privacy and Data Protection	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs for the service.	Policy and Information Team
Equalities	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs for the service.	[Policy & Information Manager]
Public Health	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs for the service.	[Public Health Officer]
Crime and Disorder	As a growing sector, particularly the desire to have “designer dog breeds”, it is important to ensure that consumers are protected against those who do not have the welfare of their animals and customers in mind when conducting their business. Illegal animal-related businesses put consumers and animals at risk and we will work with partners and customers to drive down illegal businesses in this sector.	John Littlemore Head of Housing & Communities
Procurement	No issues identified. This report is limited to reviewing and setting of fees to contribute towards the recovery of costs for the service.	[Head of Service & Section 151 Officer]

2. INTRODUCTION AND BACKGROUND

Licensing of Animal Activities in Maidstone

- 1.1 Since the changes in regulation for animal-related activities were introduced in October 2018, the Community Protection Team (CPT) has been working with local businesses to ensure they understand and adopt the requirements of the new regime. The CPT's Animal Welfare specialist, working alongside CPT colleagues, officers from the Licensing Partnership and local vets, has sought to regulate businesses in Maidstone in relation to:
- Selling animals as pets
 - Providing or arranging for the provision of boarding for cats or dogs
 - Hiring out horses
 - Breeding dogs
 - Keeping or training animals for exhibition
 - Keeping a Dangerous Wild Animal*
 - Operating a zoo
- 1.2 Appendix 1 provides a breakdown of the licences issued in Maidstone in comparison between the old and new regulations. Prior to October 2018 the CPT issued 33 licences across these areas. Under the new regulations we have seen a 55% increase (51 licences issued) in the number of businesses being regulated. This is set to rise to 82% (60 licences issued) as there are currently nine businesses known to the CPT that have or will be making an application in the next six months.
- 1.3 The new legislation has also meant that some businesses that were previously out of scope, now need to be licensed. It is likely, due to the nature of some businesses, that some businesses remain unknown to the CPT.

Improving Animal Welfare for Licenced Activities

- 1.4 The primary purpose of the new regime was to improve standards across the animal activity sector. Extensive guidance was introduced that focussed on all aspects of animal care within these businesses, which has meant some businesses have had to make significant changes to their business practices. Unfortunately, some businesses have chosen not to continue.
- 1.5 The new regime has meant that our Animal Welfare specialist has had to attend an intensive weeklong residential training course on Inspecting Licensable Activities and is required to submit a significant portfolio of work in order to continue to undertake this work after 2021.
- 1.6 The priority, as per our implementation plan outlined to Committee in September 2018, was to assist those businesses already licensed under the previous regime to make their transition and to support new businesses or those previously out of scope to become regulated.

* still regulated under Dangerous Wild Animals Act 1976

- 1.7 During the first year of the new regime significant resources have been invested into supporting 50 businesses to become licenced and providing advice to potential businesses to ensure that 100% of the applications have been successful in obtaining a licence.
- 1.8 The investment by the CPT is reflected in the average time taken to undertake site inspections under the two regimes:

	In 2017-18 (under old regulations, before 1 October 2018)	In 2018-19 (under new regulations, since 1 October 2018)
Average Inspection time	30-60 minutes	4 – 6 hrs

- 1.9 This investment is also reflected in the standards achieved by businesses in the area. The legislation introduced a new risk matrix, which allows licences to be issued for up to three years where the activity is seen to be low risk and a higher standard. A three-year licence can be awarded to 5-star rated activities and a two-year licence can be issued for 3 and 4-star ratings. This creates not only a financial incentive, as fees are payable only at renewal, it also creates competition and status within each sector.
- 1.10 Achieving the higher standards has seen businesses improving their animal husbandry techniques, producing the associated documentation and upgrading their facilities to achieve the higher standards.
- 1.11 Appendix 2 shows the ratings for businesses in Maidstone. 50% of our licensed businesses achieved a 5-star rating with a creditable 86% achieving a star rating of 3 or above. This reflects not only the standard of our businesses, but the support provided by the service.

Lessons Learned in the First Year

- 1.12 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 brought the most significant changes in regulation decades. Whilst many businesses were well equipped to deal with the changes, many have had a difficult journey. Many businesses and local authorities across the country underestimated the implications of the new regime, particularly in the first 6 months.
- 1.13 As was reported to Members in September 2018, the guidance and expectations of the new legislation were not published until August 2018. This gave local authorities and businesses across the country very little time to assess and implement the changes necessary.
- 1.14 Challenges by businesses against the government's guidance has seen changes made, some of which are significant, throughout the year. DEFRA are currently undertaking a full review of the regulations and associated guidance; further changes are expected in the new year. This has been a source of frustration for businesses and officers alike.
- 1.15 This uncertainty and changing standards make the achievements shown in Appendix 2 even more impressive.

- 1.16 As demonstrated in 2.8 the resources required to achieve these results has been significant and some activities have required more officer time than we had anticipated. This has been particularly true of home boarding, where this activity was previously out of scope and unregulated in Maidstone. As the name suggests these are businesses operating in family homes. The guidance introduced in 2018 saw a number of common practices outlawed, placing strict requirements on businesses operating from home. This has led to some difficult conversations and difficult decisions have had to be made in order to meet the standards required.
- 1.17 Whilst the first year has been challenging it is also worth noting that none of the licences issued by the CPT have been challenged. Equally some businesses have sought to make changes within weeks of their inspection to achieve a higher standard.
- 1.18 Alongside home boarding, another significant area of improved regulation has been around breeding dogs. The introduction of tighter regulation of this sector is designed to cut down on the illegal selling of puppies, by ensuring puppy adverts carry a licence number from a local authority. This means that anyone who generates more than £1000 in income from selling puppies is required to be licensed. This ensures that breeding bitches are protected from over breeding and their welfare is maintained to an acceptable standard throughout.
- 1.19 As a result of this improved regulation we have seen a 166% increase in the number of breeding businesses licensed with the Authority. We anticipate that this will increase further in Spring 2020 when we anticipate the introduction of "Lucy's Law" which will outlaw third party selling of puppies, forcing those using "friends" to sell their puppies, to obtain a licence.
- 1.20 We forecast an increase in the number of businesses needing a licence to be roughly 70 businesses. We are anticipating that we will be up to 60 licences within the next 3-6 months. Implementing the service and undertaking the necessary training has meant that the resource available investigate illegal operations has been largely complaint driven. Searches on social media and selling sites would suggest there are businesses operating illegally in the area.
- 1.21 We have recently identified that a few businesses in Maidstone now fall into scope where we had not previously set fees. It has been identified that three businesses in Maidstone are likely to need a zoo licence, due to their activity opening times being more than 7 days a year. A further business initiative offering home boarding through hosted services has also been identified. The fees for these have been calculated and are also detailed in section 3.
- 1.22 In addition, we have seen an increase in requests to revisit activities for variations and rescoring and for duplicate copies of licences which were not anticipated previously.

Service Costs

1.23 In September 2018, ahead of the new legislation's commencement, a proposed fee structure was agreed by Members to cover the cost of this service area and to ensure that, where practicable, the service remains cost neutral.

1.24 The fee structure agreed in September 2018 broke the costs down as follows into two parts:

Part A Costs – Application Phase (for all applications)

Administration Process (liaison with customers, checking and enter application on system, Managerial oversight)

Financial Process (collection of fees)

Inspectors Input (review applications, arrange vet visits (as appropriate), initial inspection with vet (inc travel), review licence detail/conditions)

CPT Managerial Oversight (review reports, assist with decisions, strategic overview and appeals)

Miscellaneous Costs (spread across all licences) – Officer training, website maintenance, general advice, equipment inc vehicle costs, fee setting and committee matters

Return of statistics to DEFRA

Part B Costs – Licensed phase (only for successful applications)

Enforcement of unlicensed activities and enforcement/investigation of complaints at licensed establishments

Additional costs for other services e.g. vet required to attend premises for complaint investigation

An unannounced visit required per licence, spread over the period of the licence

1.25 Whilst every reasonable effort was taken to ensure the fees were reflective of the resources required, as outlined in 2.8, our predicted average of three hours for an inspection was significantly short of the reality of an inspection. We do however anticipate that this average will fall as businesses and officers become more familiar with the new regime and therefore expect the average to drop to four hours rather than five. Our fee structure is built around anticipated increases on the average, with larger businesses paying fees that reflect this additional work.

1.26 Some of the costs are distributed over the number of licensed businesses. Whilst we anticipated 70 business, the reality is that we have only licenced 51, therefore the costs associated, such as the cost of enforcement against unlicensed activities, are shared over fewer businesses.

1.27 Whilst fees in this area have been cause for concern, the process by which we have derived the fees is fully auditable. Should a business feel the fees are disproportionate they may seek to challenge this by way of a judicial review. We are confident that we could demonstrate that the fees have been calculated on a cost of recovery basis only, in accordance with the leading case law.

1.28 Members should note that this is a thriving business sector, many offering services to mainly affluent clients. Research of the businesses licenced in Maidstone show the incomes for these businesses are significantly higher than the £1000 minimum set in the regulations. The charges for services offered by these less traditional businesses in Maidstone are outlined below:

Cat Boarding	£10 - £18 per cat per day
Dog Boarding	£15 - £30 per dog per day/night
Dog Home Boarding	£25- £30 per dog per day/night
Dog Breeding (selling puppies)	£1000 - £2500 per Puppy
Dog Day Care	£30 per dog per day
Horse Hiring (riding lessons):	Adults £30-£53 per hour Children £29- £42 per hour

1.29 Whilst consideration has been given to introducing pre-applications fees, it is felt that the new regulations still require time to settle. Over the next year we would look to standardise the application process further, so as to be able to offer a pre-application process and to then reduce officer fees accordingly from the application process. At this time, we feel it is better to work with businesses to support their applications and avoid businesses being put off from applying and operating illegally as a result, particularly whilst continued uncertainty and confusion about the legislation is being investigated/resolved by DEFRA.

1.30 Our fee structure also allows for the opportunity for businesses to be refunded a proportion of their fee if their application is unsuccessful. New applications and renewals will receive a rebate of on average 35% and 40% of their fees respectively. To date no business has been unsuccessful in achieving at least a 1-star licence after working with the officers to ensure they meet the minimum standards.

1.31 As outlined in section 3, we propose that the fees are adjusted to better reflect the service challenges outlined above.

3. AMENDMENTS TO FEE STRUCTURE

3.1 As outlined in the previous section, the last year has seen an increase in the number of licensed animal activities in the borough. Many of the businesses have been able to achieve more than 3-stars which means their licences have been issued for two or three years. With fees only payable at application and renewal, 27 businesses are now paying less per year than they were under the previous fee structure shown below:

Licensable Activity	2018 Fee Range	2019/20 Eqv annual cost (2 to 3yr licence)
Boarding Kennels	£360-£450	£153-£262
Boarding Cattery	£185-£305	£143-£262
Pet shops	£420	£165-£250
Riding establishments	£320-£435	£165-£277
Breeding establishments	£295-£550	£131-£230

3.2 These businesses are being rewarded for being low risk and having a higher standard of animal welfare and the proposed changes to fees will not affect 25 businesses until they renew their licence in 2022.

3.3 As also outlined in section 2, in order for the Authority's service to remain on a cost recovery basis, reasonable adjustments have been made to ensure officers are able to maintain demand and to ensure businesses are inspected thoroughly and helped to obtain the star rating they deserve. The adjustments will also ensure resources are available to pursue those businesses still operating without a licence, putting consumers and animal welfare at risk.

3.4 The proposed fees for each activity (Part A and B Combined) have been calculated and are provided in Appendix 3. The average increase for a new application is £72 and £57 for a renewal application. Also proposed are new fees in relation to hosted home boarding, zoos and miscellaneous charges in relation to variation and duplication of licences. When reviewing Appendix 3, Members are reminded that businesses with a 5-star licence will save considerably over the length of their licence period.

3.5 Whilst we have not been able to consult on our fees, the proposed fee structure has been generated in accordance with the guidance provided, which itself was based on the responses made to the initial consultation and work undertaken by DEFRA in drafting the legislation. Similar structures have been adopted by other Kent authorities but will vary based on each LA's officer costs.

4. AVAILABLE OPTIONS

- 4.1 Option 1: Do nothing – Continue to use the existing fee structure. Whilst it would be feasible to continue using the existing fees, the new fees have been formulated to reflect the work actually required to issue a licence. Reg 13 (2) of the Act makes statutory requirement for fees not to exceed reasonable costs of various matters set out. We would still need to undertake the work to regulate businesses and any shortfall would need to come from the public purse. We also need to introduce new fees for zoos and hosted home boarding as these activities are in scope and cannot be regulated without an agreed fee.
- 4.2 Option 2: Introduce the new fee structure to support the new Animal Licensing Regime. The new fees reflect the resource actually required to continue to deliver the improved levels of Animal Welfare in licensed activities. The new fee structure will not only allow for continued high levels of support for businesses but will also allow officers to pursue those operating without a licence.
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5. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 5.1 Option 2 is recommended in order that we are able to meet the legal requirements of the Act and to bring in revenue to cover the costs on the service.
- 5.2 The scoring matrix has allowed a large number of businesses to achieve an overall reduction in their costs by allowing them to demonstrate their competency and their higher standards of animal care and we anticipate this will continue to rise in coming years.
- 5.3 The new legislation also provides a framework and powers to tackle those that choose to operate outside the scope of the legislation, putting animals and consumers at risk. This will have a detrimental effect on both the welfare of the animals involved but impact on the economy within this growing sector if we do not seek to regulate against those who operate outside the requirements of the legislation.
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6. RISK

- 6.1 Detailed in section 1.
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7. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.4 The fees set out in Appendix 3 are not subject to consultation as they are calculated based on the resources required to provide the service on a cost recovery basis.
- 5.5 Committee previously expressed concerns that the fees would not support businesses. This report demonstrates that we are now licensing 18 more businesses and that 27 of those businesses are paying the equivalent of less per year than under the previous licensing regime.
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8. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 8.1 The fees will be charged with respect to new, existing and renewal applications from 1st April 2020.
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9. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Animal Activity Licences Issued in Maidstone
- Appendix 2: Animal Activity Star Ratings
- Appendix 3: Proposed fees for Animal Licensing Activities 2020/2021