

Report of: Director of Environment and Regeneration

Meeting of:	Date	Agenda item	Ward(s)
Licensing Committee	27 January 2015		All

Delete as appropriate		Non-exempt
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SUBJECT: Sex Establishment Licensing

1. Synopsis

- 1.1 The Council has the ability to charge application fees for new, renewal, variation and transfer of sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982. The Provision of Services Regulations 2009 requires that any licence application fees set by the council must be set on a cost recovery basis.
- 1.2 In light of recent case law relating to sex establishments, it has been necessary to review the fee structure which can now only recover the administrative costs of the process as opposed to the full costs of the function.
- 1.3 This report recommends the adoption of new licence application fees that will comply with this requirement.

2. Recommendations

- 2.1 To agree the proposed fees in paragraph 3.5 for premises licensed as sex establishments under the Local Government (Miscellaneous Provisions) Act 1982 from 1 April 2014

3. Background

- 3.1 The type of premises that the council can licence as sex establishments are as follows:
 - Sex shops - premises selling sex articles
 - Sex cinemas - premises showing adult films
 - Sexual entertainment venues - premises regularly providing lap dancing and other forms of nude dancing
- 3.2 Over the last years the number of sex establishments has reduced to such an extent that the council now has only 4 premises operating as sexual entertainment venues. The cost of an annual licence is currently £13,847.
- 3.3 In setting the Licence fees the council is required to take into account:
 - The Provision of Services Regulations 2009
 - HMTreasury Guidance on Managing Public Money- in particular Annex 6.2 How to Calculate Fees

- 3.4 The Regulations requires regulatory bodies to set reasonable and proportionate fees and the guidance highlights the need to set fees on a cost recovery basis. The guidance indicates the elements to costs which should be reflected in fee levels.
- 3.5 A review of costs associated with administering the Sex Establishment Licensing Regime over the last 3 years has confirmed that fee income is significantly higher than administration costs as they had included costs associated with regulation of both licensed and unlicensed premises.

The proposed fee structure for Sex Establishments has been set in accordance with the requirements of the Regulations and Guidance to reflect the cost of dealing with applications, monitoring and enforcement , is as follows:

New applications - £7845

Renewal application- £2680

Refund if application refused - £1345

Transfer applications - £200

Variation applications -£4106

It will need to be applied retrospectively from April 2014. The premises to which it applies have been advised of the review and fees will be collected from them for this current financial year once set.

4. Implications

4.1 Financial implications:

The proposed fee levels have been set on a full cost recovery basis. The reduced levels of income have been factored into current year income projections and the budget setting process through the identification of compensatory savings.

4.2 Legal Implications:

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides that an applicant for the grant, variation, renewal or transfer of a sex establishment licence shall pay a reasonable fee determined by the authority.

The Provision of Services Regulations 2009 (“the Regulations”) sets out conditions which must be met by the authority when setting and charging fees, namely that the fees must be non-discriminatory, justified, proportionate and transparent. These principles apply to the formulation of all fees charged as part of the licensing process and each fee set must be proportionate to the effective cost of the process. In view of the likely reduced costs to the authority in processing renewal applications it is anticipated that these fees will be lower than the fees set for granting new licences.

In calculating a reasonable fee the authority must base this on cost recovery and cannot set an artificially high level to deter a specific service sector. In the case of *Hemming v Westminster City Council* (2013) the Court of Appeal has ruled that the Regulations permit the costs of monitoring the compliance of licensed operators to be reflected in the fee but the costs of enforcement against unlicensed operators cannot be included in the calculation.

4.3 Environmental Implications:

No implications have been identified.

4.4 Resident Impact Assessment:

The initial screening for a Resident Impact Assessment was completed on 20 August 2014 and this did

not identify any negative equality impacts for any protected characteristic or any human rights or safeguarding risks.

5. Conclusion and reasons for recommendations

- 5.1 The fee structure proposed will ensure that the Council is compliant with its legal obligations and is not profiting by charging a licence fee that cannot be justified.

Background papers: (available online or on request)

HMTreasury Guidance on Managing Public Money- in particular Annex 6.2 How to Calculate Fees

Final report clearance:

Signed by:



Service Director (Public Protection)

Date 13.1 2015

Received by:

Head of Democratic Services

Date

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