

Report to: Licensing Committee
Date of meeting: 22 October 2013
Report of: Head of Community and Customer Services
Title: Sex Establishment Licence Fees

1.0 SUMMARY

1.1 The Council grants, renews and enforces licences for sex establishments within the Borough, and is entitled to charge a fee to recover its costs in doing so. Recent legislation and a court decision has now set out the extent to which those costs may be recovered.

2.0 RECOMMENDATIONS

2.1 That the fees for the grant of a sex establishment licences be set at £615 and that for the renewal or transfer of a licence at £315.

Contact Officer:

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Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 The Council issues licences for sex establishments under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 19 of the schedule states that applicants for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the authority.

3.2 There is currently one licensed sex establishment within the Borough, which pays an annual licence fee of £6312.

3.3 In setting fees councils must have regard to the Provision of Services Regulations 2009 which came into force on 28 December 2009 and which implements the EU Services Directive. A recent decision of the Court of Appeal¹ which particularly concerned sex establishment licence fees has now limited the extent to which a council's costs may be recovered through licence fees. In summary, the court confirmed that the regulations prohibit fees from being set as an economic deterrent;

¹ [Hemming \(/a Simply Pleasure Ltd\) & Ors, R \(on the application of\) v Westminster City Council \(Rev 1\) \[2013\] EWCA Civ 591 \(24 May 2013\)](#)

that they must be properly determined by the council each year; that it is appropriate for surpluses and deficits to be taken into account each year; and – perhaps most crucially – costs of enforcement action against unlicensed operators may not be recovered through the licence fees. Enforcement activity has to be funded through general revenue costs although the costs of compliance by individual licence-holders may be incorporated within the licence fee.

- 3.4 The current licence-holder's licence expires on 15 January 2014 and upon calculating the current administration costs of this licence this year there is a need to revise the fee before an application is made for it's renewal.
- 3.5 Officers recommend that a fee for the renewal or transfer of a sex establishment licence of £315 should be set, and £615 for the grant of a new licence. These fees would accurately reflect the Council's current administrative and compliance costs.
- 3.6 Current council policy restricts the number of sex establishments in various areas of the Borough. Only one sex establishment licence is allowed, and that is the one that is currently granted.
- 3.7 The reduction in fee income is being reported to Budget Panel as unavoidable growth, and given that a favourable variance of over -£20,000 has recently been reported by the Environmental Health & Licensing section there is no overall negative impact on the council's budget. Budgets for 2014 – 2015 will be revised accordingly.

4.0 **IMPLICATIONS**

4.1 **Financial**

- 4.1.1 The Shared Director of Finance comments the reduced income of £6k in 2013/14 will be offset by savings in employee costs through vacancies.
- 4.1.2 For future years the reduction in the licence fee will be included in the annual report on fees and charges as part of the budget setting process.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that the legal basis for making the change is described in the main body of the report. The Committee is advised that a failure to adjust the fee to ensure it meets the requirements of the Services Regulations and the court's decision may lay it open to challenge through the Local Government Ombudsman or the courts.

4.3 **Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Complaint to Local Government Ombudsman if fee not set according to Services Regulations	3	3	9
Legal challenge if fee not set according to Services Regulation	3	3	9

Appendices

None

Background Papers

Provision of Services Regulations 1990 (SI 1990/2999)

Hemming (/a Simply Pleasure Ltd) & Ors, R (on the application of) v Westminster City Council (Rev 1)
[2013] EWCA Civ 591 (24 May 2013)

File Reference

None