

<b>LICENSING SUPPLEMENTARY COMMITTEE</b>		
<b>Report Title</b>	Sex Establishment Fees Licence Fees	
<b>Key Decision</b>		Item No. 3
<b>Contributors</b>	Customer Services – Licensing Services Head of Law	
<b>Class</b>	Part 1	Date: 27 August 2019

## 1. Purpose of Report

- 1.1 To inform the Committee of the review of fees for Sex Establishments Licences under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

## 2. Recommendations

To agree that following a further review of fees, a new fee structure be set to enable the authority to take a fee for the transfer and variation of a licence which will be charged on a cost recovery basis.

## 2 Background & Policy Context

- 2.1 The Council adopted legislation on 10 November 1982 under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 relating to the Control of Sex Establishments. This schedule gives powers to local authorities to regulate certain kinds of sex establishments within its borough including sexual entertainment venues. Following the councils adoption of this legislation, no sex establishment venue can operate without a licence obtained from the local authority. Any such licence will contain conditions that will dictate how the licence is operated.
- 2.2 Lewisham currently has one licenced premises under this legislation, the Private Shop, on 318 Lewisham Road SE13. They have been licenced since 2002.
- 2.3 The European Union Services Directive 2006 / 123/EC was given effect in UK law via the Provision of Services Regulations 2009 (SI2009/2999). This directive and the regulations contain provisions about the fees which may be charged under relevant licensing regimes within the scope of the Directive. In particular it states that licensing authorities must not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence.
- 2.4 Further, a case involving Westminster City Council vs Hemmings provided further clarification on the type of costs which may be taken into account when setting fees and when they may be payable. Pending further guidance from the European Supreme Court of Justice, the Judgement of the Supreme Court of Justice established that a licensing regime may operate on the basis that the applicant must pay:
- i) on making the application, the costs of the application process, and
  - ii) on the application being successful, a further fee to cover the costs of the running and enforcement of the licensing regime.

2.5 In January 2019, the Licensing Authority reviewed its sex establishment fee of £15,400 and agreed at licensing committee a new fee structure for the application of a sex establishment licence which is as follows:  
Part A £2527 and Part B £1223, a total of £3750.

3.6 It was also agreed in January 2019 at committee that the licenses issued would continue to be on a 1 year basis and had to be renewed at the end of the 12 month period.

### 3 Fee Setting

4.1 In line with relevant guidance the licensing authority is undertaking a review of its fees and has identified that a fee for the renewal, transfer and variation of a sex establishment is required. Additionally a fee for a duplicate licence is required to enable the authority to charge for work done around this process.

4.2 The table below outlines the proposed fee structure for the sex establishment licensing scheme:

Application Type	Part A Fee	Part B Fee	Total Fee (part A and B)
New	2527	1223	3750
Renewal	2527	1223	3750
Variation	758	122	880
Transfer	400	0	400
Duplicate Licence	24	0	24

4.3 LGA guidance 'Open for Business' states that the following activity costs can be included when calculating the fee on a cost recovery basis:

- **Administration** – this could cover basic office administration to process the licence application, such as resources, photocopying, postage or the cost of handling fees through the accounts department. This could also include the costs of specialist licensing software to maintain an effective database, and printing licences.
- **Initial visit/s** – this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. Councils will need to consider whether the officer time includes travel. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on costs' include travel costs and management time.
- **Third party costs** – some licensing processes will require third party input from experts, such as veterinary attendance during licensing inspections at animal related premises.
- **Liaison with interested parties** – engaging with responsible authorities and other stakeholders will incur a cost in both time and resources.
- **Management costs** – councils may want to consider charging an average management fee where it is a standard process for the application to be reviewed by a management board or licensing committee. However, some councils will include management charges within the 'on-costs' attached to officer time referenced below.
- **Local democracy costs** – councils may want to recover any necessary expenditure in arranging committee meetings or hearings to consider applications.
- **On costs** – including any recharges for payroll, accommodation, including heating and lighting, and supplies and services connected with the licensing functions.

Finance teams should be able to provide a standardised cost for this within each council.

- **Development, determination and production of licensing policies** – the cost of consultation and publishing policies can be fully recovered.
- **Web material** – the EU Services Directive requires that applications, and the associated guidance, can be made online and councils should effectively budget for this work.
- **Advice and guidance** – this includes advice in person, production of leaflets or promotional tools, and online advice.
- **Setting and reviewing fees** – this includes the cost of time associated with the review, as well as the cost of taking it to a committee for approval<sup>1</sup>.

4.4 The proposed fee structure was calculated taking in to account the above list of activities and officer time to deliver these activities.

## 5 Financial Implications

5.1 The sex establishment licence lasts for 12 months, therefore the renewal fee will be charged annually at the end of the 12 month period should the premises wish to renew.

5.2 The fees collected are for cost recovery of processing the application and enforcing the licensing regime only, there will be no income generation from this charge.

5.3 In setting additional fees for variation and transfer the council can charge the premises licence holder with an appropriate fee for the work done around these processes. If no fee is in place then no income can be generated to cover the work the council would by law still be required to undertake.

5.4 A review of these fees will take place on an annual basis to ensure that where possible the fee is reflective of all the costs undertaken by the council to run the licensing regime around sex establishment licensing.

## 7. Equalities Impact

7.1 When making decisions public bodies are required to have ‘due regard’ (i.e. consideration) to the need to:

- i. eliminate unlawful discrimination, harassment, victimisation;
- ii. advance equality of opportunity; and
- iii. foster good relations.

7.2 Additionally, the potential equality impact on the following protected characteristics should be considered:

- age,
- disability,
- gender reassignment,
- pregnancy and maternity,
- race,
- religion or belief,
- sex,

---

<sup>1</sup> LGA Open for Business, p9

[https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness\\_02\\_web.pdf](https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf)

- sexual orientation,
- marriage and civil partnership (only in respect of eliminating unlawful discrimination).

7.3 Following an assessment it is suggested that there is little or no potential for discrimination or adverse impact on the protected characteristics.

## **8. Crime and Disorder Implications**

8.1 Crime and disorder and nuisance issues may arise around licensed premises or can be caused by unlicensed activity. The fees have been calculated to include necessary enforcement visits to ensure compliance by the licensee in line with licence granted and related conditions.

8.2 Where there are complaints of crime, disorder or nuisance issues related to either licenced or unlicensed premises, the licensing authority will investigate working with the Police Licensing officer. Where problems can be evidenced, this can result in objections to any further licence application at point of renewal, or prosecution for unlicensed activity. Other powers could also be used to address unlicensed activity, such as closure orders under the Anti-Social Behaviour, Crime and Policing Act 2014.

## **9. Legal Implications**

9.1 Sex establishments must be licensed under the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009.

The definition of sex establishment includes:

- sex cinemas, at which R18-certificate films can be shown
- sex shops, which are premises, vehicles or stalls used for selling, displaying or demonstrating sex articles (which may include R18-certificate videos and DVDs) or other things used in connection with sexual activity or acts of force or restraint associated therewith
- sexual entertainment venues, which are premises at which entertainment comprising live sexually stimulating performances or displays of nudity is provided in front of an audience, for the financial gain of the organiser or performers. Provision of such entertainment on no more than 11 occasions per year, with at least a calendar month between each occasion, will not require a sex establishment licence.

9.2 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

- 9.4 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 9.5 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.6 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 9.7 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
  - [Meeting the equality duty in policy and decision-making](#)
  - [Engagement and the equality duty: A guide for public authorities](#)
  - [Objectives and the equality duty. A guide for public authorities](#)
  - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)
- 9.8 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

## 10. Summary

- 10.1 The Licensing arrangements for sex establishments is governed by Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which the council adopted in November 1982. The recent legislative changes and case law around how licensing authorities can set fees has required a review and restructuring of locally set fees.
- 10.2 As a result, Lewisham's Licensing Authority is proposing a new fee arrangement structured into 2 parts, a part A fee charged upon application, and part B fee charged when and if the licence is granted. Under this fee structure there will be fees charged for a new application, renewal of licence, variation of licence, transfer of licence and a duplicate licence.

### **Background**

None Reported

If there are any queries on this report please contact Lisa Hooper 0208 314 6324