

LICENSING SUPPLEMENTARY COMMITTEE		
Report Title	Sex Establishment Fees Licence Fees	
Key Decision	No	Item No. 3
Ward		
Contributors	Customer Services Customer Services – Licensing Services Head of Law	
Class	Part 1	Date 15 January 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

- 2.1 That a new fee be set to ensure it is charged on a cost recovery basis.
- 2.2 That the length of licence for Sex Establishments provided by the licence authority continues to be 1 calendar year.

3 Background & Policy Context

- 3.1 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.
- 3.2 Lewisham currently has one licenced premises under this legislation, the Private Shop, on 318 Lewisham Road SE13. They have been licenced since 2002.
- 3.3 Currently Lewisham's fee is £15,400. This fee was last reviewed in 2011.
- 3.4 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.

- 3.5 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.
- 3.6 Therefore, this has been taken into account when reviewing and recalculating the sex establishment fee. The fee has been established by identifying a Part A fee – including costs for processing the application and any other related administrative processes, and a Part B fee – including the costs of running and enforcing the licensing regime.

4 Fee Setting

- 4.1 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 approval¹.

4.2 The following breakdown is proposed for Lewisham’s Sex Establishment licence fee:

Part A – Application fee	Part B – Grant Fee
Policy/Fee Setting	Officer time for Granting licence
Related legal costs	Compliance inspections
Training	Oncosts – building costs
Advice/website updates	Travel
Administration costs	Postage
Inspection costs	Stationary/paper
Reports to managers/committee	
Approval/sign off by manager	

5 Length of Licence

- 5.1 It is proposed that this fee provide a licence for 1 year. Schedule 3 to the 1982 Act provides that sex establishment licences should only be issued for 1 year.
- 5.2 Under Article 11(1) of the EU Services Directive, it states that an authorisation shall not be for a limited period except where (as relevant) a limited authorisation period can be justified by an overriding reason relating to the public interest.
- 5.3 The licensing authority’s position is that it is in the public interests to continue to enforce the provisions of the 1982 act in order to be able to review the licence on an annual basis in order to take in to account the changing nature of the borough and to protect vulnerable groups such as children and minors. The immediate environment of which sex establishments are located is highly sensitive in the public interest. The character of a locality and the uses of

¹ LGA Open for Business, p9

https://www.local.gov.uk/sites/default/files/documents/5%2013%20%20OpenForBusiness_02_web.pdf

buildings within a locality can change relatively quickly and sometimes within a period of a year. For example, where a change of use to a faith school is granted retrospective planning permission or a new development for family dwellings is completed.

- 5.4 The duration of licences for 1 year only is thereby justified by an overriding reason in the public interest in that the character of a locality or uses within it are liable to change at relatively short notice, such that existing licences should be reviewed for their appropriateness on an annual basis.

6 Financial Implications

- 6.1 The proposed fee is: Part A £2527 and Part B £1223, a total of £3750. A full breakdown of how the fee was calculated is provided in Appendix 1.
- 6.2 The sex establishment licence lasts for 12 months, therefore the fee will be charged annually upon renewal of the licence.
- 6.3 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.
- 6.3 A review of this fee 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,
 - 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 fee has 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 structured into 2 parts, a part A fee charged upon application, and part B fee charged when and if the licence is granted.

Background

None Reported

If there are any queries on this report please contact Lisa Hooper 0208 3146324

Appendix 1 Fee Calculator

Adminstration					
Officer Hourly rate (based on 45 week productive year / Officer Minute					
Task	Officer Grade	35 hour week) /£	Rate	time spent (minutes)	Total Cost £
Fee Setting	PO5	39.4	0.656666667	420	275.8
Member Approval / committee	PO5	39.4	0.656666667	60	39.4
					2000
Advice / website updating	PO5	39.4	0.656666667	60	39.4
Letters to exisiting licencees	PO2	31.87	0.531166667	10	5.311666667
Receive application - log on application breakdown; save on sharepoint; allocate to officer	scale 6	24.39	0.4065	15	6.0975
Start Processing - check application is correct; check DBS; Eligible to apply; check plan of premises; Company check on companies house; Contact applicant if anything missing in application;	PO2	31.87	0.531166667	30	15.935
Police Check	PO2	31.87	0.531166667	20	10.62333333
Check correct fee has been paid; if not take fee over the phone	PO2	31.87	0.531166667	10	5.311666667
Gather forms - inspection form; create action sheet; create a file	PO2	31.87	0.531166667	15	7.9675
Acknowledgement letter to applicant	PO2	31.87	0.531166667	10	5.311666667
Upload all docs to m3	PO2	31.87	0.531166667	20	10.62333333
Add to application board; update application breakdown; give reference number; email police, planning	PO2	31.87	0.531166667	10	5.311666667
Organise visit to premises	PO2	31.87	0.531166667	15	7.9675
Inspection	PO2 X 2	31.87	0.531166667	120	63.74
Decision / review any objections	PO2	31.87	0.531166667	25	13.27916667
sign off decision	PO5	39.4	0.656666667	15	9.85
Draft and send invoice letter for F	PO2	31.87	0.531166667	10	5.311666667
				Total Fee	2527.241667

GRANT					
Task / resource	cost 2017/18	cost divided by officer 35 (CEF5% of costs £			
vehicle / transport	4655	798	39.9		
stationary	4276	733.0285714	36.65142857		
Printing	219	37.54285714	1.877142857		
Postage	3099	531.2571429	26.56285714		
PPE	0	0	0		
building costs - per	1864	11184	559.2		
		total	664.1914286		
Task / activity	Officer Grade	Officer Hourly rate (based on 45 week productive year	Officer Minute Rate	time spent (minutes)	Total Cost £
Compliance Inspect	PO2 x 2	31.87	0.531166667	120	63.74
Draft Licence - collate relevant conditions	PO2	31.87	0.531166667	30	15.935
Manager sign check	PO5	39.4	0.656666667	15	9.85
Upload inspection sheets on to m3, draft cover letter, upload all documents on to share point	PO2	31.87	0.531166667	20	10.62333
post out letters/licence	PO2	31.87	0.531166667	5	2.655833
amend/update website	PO2	31.87	0.531166667	15	333
Administration of change of staff details, police checks	PO2	31.87	0.531166667	60	7.9675
				Total	559.2
				Total Fee	1223.391