

Committee(s)	Dated:
Licensing	1 February 2017
Subject: Sex Establishments – Annual Review of Fees 2017/18	Public
Report of: Director of Markets and Consumer Protection	For Decision
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Summary

The City of London Corporation has to set annual fees for those premises requiring a licence under the Local Government (Miscellaneous Provisions) Act 1982 as a sex establishment. The report outlines recent case law which has indicated that the process for setting the fees must be robust and that income received through the licensing process cannot exceed the cost of administering that process.

The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects within the licensing process.

The proposed fees suggested are a slight increase from the current fees. This is due primarily to a small increase in staffing costs and minor changes in procedure. This will not affect budget income targets as we currently do not have any premises that have a Sex Establishment Licence.

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Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2017/18 as set out in Appendix 1

Main Report

Background

1. The Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, as amended by s.27 of The Policing and Crime Act 2009 sets out the statutory provisions for setting Sex Establishment fees.
2. A Sex Establishment is defined as a Sex Shop, Sex Cinema or Sexual Entertainment Venue (primarily lap dancing clubs). A premises is not a Sexual Entertainment Venue if any relevant entertainment is only provided on eleven or

less occasions during a twelve month period and, each of the occasions are at least one month apart.

3. The City of London Licensing Authority must determine the appropriate fees for the granting, renewal, transfer and variation of a licence. Any fee set must be 'reasonable'.
4. Licences are valid for 12 months from the date of grant unless surrendered or revoked. A process similar to the granting of a new licence is to be followed for each renewal including consultation.
5. A High Court case held on 16 May 2012 (*R (Hemming and Others) v Westminster City Council*) concluded that the amount of the fee is required to be determined every year and further that a local authority was precluded from making a profit from the licensing regime. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made. The decision was subsequently upheld by the Court of Appeal.
6. Mr Justice Keith stated in the case '... [*in relation to*] the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed. And when you talk about the cost of those procedures, you are talking about the administrative costs involved, and the costs of vetting the applicants (in the case of applications for a licence) and the costs of investigating their compliance with the terms of their licence (in the case of applications for the renewal of a licence). There is simply no room for the costs of the 'authorisation procedures' to include costs which are significantly in excess of those costs.'
7. The Supreme Court heard an appeal on 29 April 2015 and decided that licensing schemes which required the applicant to pay a fee covering the administrative costs of the application at the time the application is made and, in the event that the application is granted, a further fee to cover the costs of enforcing the licensing scheme did not fall foul of the Provision of Services Regulations 2009. Furthermore, the Supreme Court rejected Mr Justice Keith's view that enforcement costs cannot be recouped. In delivering the judgement of the Supreme Court, Lord Mance stated ... "there is no reason why it (*the fee*) should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences."
8. The decision of the Supreme Court was upheld by the European Court of Justice in November 2016

Calculation of Fees for 2017/18

9. In order to avoid possible complications arising from non-compliance with the Hemming decision, the licensing service has carried out an in-depth

examination of the processes that would be undertaken in order to administer a licence application/renewal and the costs of investigating compliance with any licence conditions.

10. In determining the proposed fee structure for a Sexual Entertainment Venue the following factors have been taken into account (an example of the factors taken into account if we received a new application for a Sexual Entertainment Venue can be seen as Appendix 2):
 - Officer time spent on processing applications including site inspections and the issue of any licence
 - Officer time spent on the development and maintenance of processes and guidance notes
 - Training of staff as necessary
 - A proportion of the service costs such as accommodation, equipment and central recharges
 - Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence
11. The proposed fees for 2017/18 show a slight increase due primarily to minor changes in procedure and a small increase in staff costs and general overheads.

Proposals/Options

12. If fees are set lower than those recommended the result will be a deficit for 2017/18 if an application is received, as costs of administering the licence will not be fully met from income received. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
13. Any such under or over recovery of costs from 2017/18 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting fees for 2019/20. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge. There was no under or over recovery to take into account in calculating the proposed fees for 2017/18, as no applications were received in 2015/16.

Corporate & Strategic Implications

14. The proposals within this report meet the statutory requirement to set fees for the licensing of Sex Establishments.

Implications

15. Setting the recommended sex establishment fees will not have a detrimental effect on the licensing budget as there are currently no sex establishments and thus no income.
16. Setting fees above or below those recommended will have the implications as set out in paragraph 13 above.

Conclusion

17. Setting the proposed fees will permit the Corporation to meet its statutory obligations and recover all costs if an application for a Sex Establishment is received during 2017/18.

Appendices

- Appendix 1 – Proposed Fees for 2017/18
- Appendix 2 – Example of factors taken into account when calculating a proposed fee

Background Papers

None

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