

Committee(s):	Date(s):
Licensing	6 May 2015
Subject: Sex Establishments – Annual Review of Fees	Public
Report of: Director of Markets and Consumer Protection	For Decision
<p><u>Summary</u></p> <p>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.</p> <p>The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects, other than enforcement costs of unlicensed activity which case law currently excludes, within the licensing process.</p> <p>The proposed fees are in most cases a small reduction from the current fees. This reduction will not affect budget income targets as we currently do not have any premises that have a Sex Establishment Licence.</p> <p>Recommendations</p> <p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agree the proposed fees for 2015/16 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.’ Therefore enforcement costs, particularly against unlicensed operators, cannot be recouped.
7. A number of important principles were established in the Hemming case:
 - That where a local authority profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;
 - That in authorisation schemes covered by the Provision of Services Regulations 2009, which includes Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, enforcement costs relating to unlicensed premises may not be recharged to licensed operators.

The Court of Appeal reiterated the overriding principle:

- Charges which a council imposes on applicants/licensees must be proportionate and reasonable in the circumstances to the fees or costs payable i.e. The fees must not exceed the costs of administering the process

Calculation of Fes for 2015/2016

8. 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 are undertaken in order to administer the application, renewal, transfer and variation of a licence and the costs of investigating compliance with any licence conditions.
9. In determining the proposed fee structure for sex establishment licences the following factors have been taken into account:
 - Officer time spent on processing applications including site inspections, consultations 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 percentage of the service costs such as accommodation and equipment
 - Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence
10. Costs associated with the enforcement of unlicensed 'sex establishments' have not been taken into account in setting the proposed fee structure.
 11. SEV fees for 2015/16 have been calculated on the above basis for each of the different types of licence. The proposed fees, which in most cases are a small decrease from the current fees, reflect changes in salary, running costs, and recharges.
 12. The forecast for 2015/16 is that, as in 2014/15, there will be no SEV licences issued.

Proposals/Options

13. If fees are set lower than those recommended the result will be a deficit for 2015/16 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.
14. Any such under or over recovery of costs from 2015/16 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting fees for 2017/18. 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 2015/16, as no applications were received in 2013/14.

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 thirteen above.

Appendices

Appendix I – Proposed fees

Background Papers:

Transcript of (*R (Hemming and Others) v Westminster City Council*)
City of London SEV Policy

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Proposed Sex Establishment Fees for 2015/16

Application Type	Estimated number	Current Fee	Proposed Fee	Income Forecast
New sex shop / sex cinema application	0	£4,910	£4,660	£0.00
Renewal of sex shop / sex cinema licence	0	£4,560	£4,300	£0.00
Variation of sex shop / sex cinema licence	0	£3,860	£3,590	£0.00
Transfer of sex shop / sex cinema licence	0	£470	£500	£0.00
New sexual entertainment venue application	0	£6,640	£6,320	£0.00
Renewal of sexual entertainment venue licence	0	£6,290	£5,960	£0.00
Variation of sexual entertainment venue licence	0	£3,860	£3,590	£0.00
Transfer of sexual entertainment venue licence	0	£2,700	£2,370	£0.00
Change of details	0	£40	£50	£0.00
Copy of licence	0	£30	£30	£0.00
Total				£0.00