

Committee	Date:
Licensing Committee	3 February 2016
Subject: Sex Establishments – Annual Review of Fees	Public
Report of: Director of Markets and Consumer Protection	For Decision
Report author: Peter Davenport - Licensing	

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 decrease from the current fees. This is due solely to a small decrease in staffing costs. This will not affect budget income targets as we currently do not have any premises that have a Sex Establishment Licence.

Recommendation

Members are asked to agree the proposed fees for 2016/17 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. 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. However, a decision regarding licensing schemes which required a fee that covered both the administrative costs and the costs of enforcing the scheme to be paid at the time the application was made, with the enforcement element being refunded should the application be rejected, was referred to the European Court of Justice for determination.

Current Position

9. This decision, if upheld, may affect the fees proposed as although they do not currently contain an element of enforcement costs they do contain an element of compliance costs i.e. routine inspections. The overall fee will not have to be increased/decreased but may have to be split into administrative costs and other costs, with other costs only being charged once the licence has been granted.
10. SEV fees for 2016/17 have been calculated on the above basis, but without being split into component parts, 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.

11. The forecast for 2016/17 is that, as in 2015/16, there will be no SEV licences issued.

Proposals/Options

12. If fees are set lower than those recommended the result will be a deficit for 2016/17 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 2016/17 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting fees for 2018/19. 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 2016/17, as no applications were received in 2014/15.

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 twelve 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 2016/17.

Appendices

- Appendix 1 – Proposed Fees for 2016/17

Background Papers

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

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