



LICENSING COMMITTEE REPORT

Report Title	Review of Sex Establishment Licence Fees
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AGENDA STATUS: PUBLIC

Committee Meeting Date:	5 November 2013
Policy Document:	Sex Establishment Policy
Directorate:	Customers and Communities

1. Purpose

1.1 The purpose of this report is to inform the Committee with regard to the Implications of the Westminster City Council Sex Shop Licensing Ruling.

2. Recommendations

2.1 That the report be considered and its contents noted.

3.1 Report Background

3.1.1 A recent High Court ruling ordering Westminster City Council to repay over £1m in fees collected from sex shops in their borough may have major implications for licensing authorities across the country.

3.1.2 This is due to the Court's decision that the Council breached 'The Provision of Services Regulations', which were brought into UK law by the European Services Directive 206/123/EC on 28 December 2009.

3.1.3 Regulation 18(4) of the 2009 Regulations states that *'any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities'*.

3.1.4 In reality, this means that licensing authorities are now unable to charge fees which go above the actual costs of granting the licences. The cost of enforcing the licensing system (i.e. the compliance of licensed operators and the prosecution of unlicensed operators) can no longer be reflected in this fee.

4.1. Implications (including financial implications)

4.1.1. Licensing authorities will most likely have to reduce the cost of their application/annual licence fees for sex establishments.

4.1.2. In Westminster this reduction will be around 90%.

4.1.3. They may also have to reduce fees in other fields of regulation.

4.1.4. If challenged, like Westminster, councils may have to repay any fees charged since the beginning of 2010, which fall outside the 'reasonable and proportionate' costs allowed under European Law.

4.1.5. The interpretation of EU law in this judgement may force councils to limit the price of application/annual fees for licences across all fields of regulation and is likely to limit the amount they can charge when the new law allows them to determine their own fees.

4.1.6. Enforcement costs (such as monitoring whether premises have valid licences or are complying with their licence conditions), will no longer be able to be recovered and as a result (if councils cannot afford to fund this themselves), it may be more likely that premises licences will go unchecked.

4.1.7. Where the cost of enforcement is included in the fee structure, as with Hackney Vehicle, Private Hire Vehicle and Operator fees they can be set accordingly.

4.1.8. In addition, councils may be liable for any overcharging on licensing fees since the EU directive was brought into UK Law.

4.1.9. The licensing department currently charge a fee of £3000.00 per annum for a Sex Establishment Licence this fee has remained unchanged since 1998 when the original policy and licensing regime was introduced.

4.1.10. This compares with other authorities as follows:

• Oxford	• £8360.00
• Cambridge	• £4916.00
• Leicester	• £4387.00 on application £1864.00 to renew.
• Bristol	• £8162.00 on application £5000.00 to renew.
• Portsmouth	• £12000.00 on application £4000.00 to renew.
• Hull	• £2000.00 on application £2000.00 to renew
• Peterborough	• £2500.00
• Cardiff	• £2691.00 on application £962.00 on renewal.

Not all authorities issue licences for Sex Establishments.

5.1 Resources and Risk

5.1.1 Resources will not be affected the licensing team will continue to issue licences and monitor these premises.

5.1.2. The possible risk of challenge as to whether the fee charged can be justified to cover the cost of administration, the issue of the licence and any enquiries to be made in connection with the application.

5.1.3. A process has now been introduced whereby the cost to the service of issuing Sex Shop Licences will be accurately assessed to ensure that there is no risk of challenge to the authority.

5.1.4. This process will be completed before the licences next become due for renewal.

5.1.5. This will not affect charges for a Sex Entertainment Venue Licence.

5.3 Legal

5.3.3 The cost of a licence has to be related to the cost of the licensing scheme itself, and can be set to be subsidised by the Council but cannot be set to make a surplus.

5.4 Equality

5.4.1. An equality impact assessment has been undertaken and no equalities issues were identified as being likely to have a negative impact on the trade.

5.6 Consultees (Internal and External)

5.6.1. Legal

5.7. Background Papers

5.7.1. Local Government (Miscellaneous Provisions) Act 1976 as amended.

5.7.2. The Westminster Decision.

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