

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
LICENSING COMMITTEE

23rd October 2014

1. FEE TO BE CHARGED FOR THE LICENSING OF SEXUAL ENTERTAINMENT VENUES

Submitted by: Democratic Services Manager

Portfolio: Finance and Resources

Ward(s) affected: ALL

Purpose of the Report

For Members to consider the fee to be charged in relation to the licensing of Sexual Entertainment Venues.

Recommendations

That the Committee agree a fee to be charged for the licensing of sexual entertainment venues.

1. Background

Newcastle Borough Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2011 which came into effect on 3rd August 2011.

The adoption of the schedule means that the Council can control and regulate the operation of certain kinds of sex establishment within its area through the use of a policy for the licensing of sex establishments. The revised policy was agreed at the meeting of the Full Council held on 17th September 2014.

The fees that are currently charged for the licensing of Sexual entertainment venues are:

Sex establishments - Application fee	3,000.00	
Sex establishments - Renewal fee	2,000.00	
Sex establishments - Variation	0.00	No Fee Set
Sex establishments - Transfer	0.00	No Fee Set

A licence is only valid for one year.

2. Issues

The European Services Directive states (Art 12.2):

Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures

The Directive includes specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme.

Councils must not use fees covered by the Directive to make a profit or act as an economic deterrent to deter certain business types from operating within an area.

Guidance for Local Authorities on the Provision of Service Regulations States (2nd Edition June 2009 Para 12d):

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should the service provider feel that the level of fees are being used as an economic deterrent or to raise funds for local authorities Enforcement costs should not be assimilated with the application fee. This is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors.

3. **Options Considered**

That the below fees be considered:

	Current	Proposed
Sex establishments - Application fee	3,000.00	3,000
Sex establishments - Renewal fee	2,000.00	2,000
Sex establishments - Variation	0.00	1,000
Sex establishments - Transfer	0.00	1,000

4. **Proposal**

That the Committee discuss the options and agree upon a reasonable fee.

4. **Reasons for Preferred Solution**

The fee can be used to cover the cost of the following:

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,

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 approval.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- crime and disorder
- regeneration
- quality of life
- environment
- health improvement implications

7. Legal and Statutory Implications

Hemming v Westminster

The degree to which fees and processes are proportionate has been tested in a legal challenge brought against the fee charged by Westminster City Council for licensing sex establishments. The case established a number of key points about setting fees under the Services Directive.

In Hemming v Westminster, the Court of Appeal ruled that the fees set must not exceed the costs of administering the licensing regime. This means the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee, although the cost of visits to licensed premises to monitor compliance could be recovered through fees.

The judgement found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the council. The judge rejected the council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next. Westminster City Council was consequently ordered to repay fees charged over that period.

Annual reviews allow for the fine tuning of fees and allow councils to take steps to avoid either a surplus or deficit in future years. This will not immediately benefit licence holders where the licence has been granted for a number of years and paid for in a lump sum, but will ensure new entrants to the licensing scheme are charged appropriately.

Where fees charged result in a surplus, Hemming v Westminster stated that this surplus must be used to reduce the fees charged in the following year. It is possible to extend the reinvestment of the surplus over more than one year, but this will need careful consideration about whether contributors may leave the licensing system over that period and therefore lose out on the return. Deficits can similarly be recovered, although where there is a significant deficit, councils may want to consider how recovery can be undertaken over more than one year so as not to financially harm otherwise viable businesses.

The case of R v Tower Hamlets LBC (1994)7 may also be of relevance, as the High Court indicated that “a council has a duty to administer its funds so as to protect the interests of what is now the body of council tax payers”.

8. **Equality Impact Assessment**

An equality impact assessment will be completed before the end of March in relation to the policy.

9. **Financial and Resource Implications**

Should a challenge be made in relation to the fee level as detailed in the Hemming v Westminster there could be detrimental financial implications for the Council

10. **Major Risks**

As detailed under Legal and Statutory Implications

11. **Key Decision Information**

Not applicable

12. **Earlier Cabinet/Committee Resolutions**

Newcastle Borough Council adopted schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 on 31st March 2010 which came into effect on 3rd August 2011.

13. **Recommendations**

That the Committee agree the fees to be charged for the licensing of sexual entertainment venues.

14. **List of Appendices**

None

15. **Background Papers**

LGA Guidance on Local Fee Setting