

LICENSING COMMITTEE	AGENDA ITEM No. 4
14 FEBRUARY 2013	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Peter Hiller, Cabinet Member for Housing, Neighbourhoods and Planning		
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SEX ESTABLISHMENT APPLICATION FEES

R E C O M M E N D A T I O N S
The Committee is requested to determine and set the fees in relation to applications for sex establishments made during the 2013-2014 financial year.

1. PURPOSE AND REASON FOR REPORT

- 1.1 The purpose of this report is to provide the Licensing Committee with sufficient information to enable them to determine and set the fees in relation to applications for sex establishments made under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.
- 1.2 This report is for the Licensing Committee to consider under its Terms of Reference No. 2.4.1.3 (k) "To exercise the functions of the authority as listed in Schedule 2.2.4, where these are not delegated to Officers as listed as section 2.4.3, namely", " to issue, grant, refuse, revoke, transfer, renew, vary, add conditions and set fees in relation to the licensing of sex establishments".

2. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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3. BACKGROUND

- 3.1 It is a requirement of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 for the fees to be determined and set by the Licensing Committee.
- 3.2 Since the commencement of the EU Provision of Services Regulations 2009 (which took effect from 28/12/09) fees for applications can only cover the cost of administering the system without profit and cannot include the costs of enforcement against unlicensed operators. These regulations also stipulated that fees for applications must be in two part, one fee for the application cost and the second part to be paid after grant to cover the cost of investigating compliance of the licence once issued.
- 3.3 Currently the fees set for 2012 to 2013 are £2,260 for renewal and initial grant applications, there is no fee currently set for variations and transfers. In the interest of fairness and transparency, is proposed that separate fees for each different type of application are set.

4. REASONS FOR RECOMMENDATIONS

- 4.1 In light of recent case law, (R (Hemming and Others) v Westminster City Council) a reassessment of the current fees was undertaken. The reassessment included a detailed investigation into the processes and provisions required to comply with all aspects of the legislation and case law judgement.
- 4.2 The result of the investigation highlighted that some provisions required under the Act (variations and transfers) were being provided free of charge, new applications were being undercharged and renewal application fees were in excess of the costs of the work undertaken on a majority of applications.
- 4.3 The reassessment of fees and proposed new fees applicable for 2013 to 2014 are shown below and include a breakdown of how the proposed new fees have been ascertained.

4.4

Type of Application	Officer cost pre grant	Ancillary cost	Hearing costs	Total pre grant fee	Officer cost post grant fee	Total payable
Initial new grant	£570.00	£150	£1,500	£2,220	£280	£2,500
Renewal	£270	£150	N/A	£420	£280	£700
Transfer	£270	£150	N/A	£420	£280	£700
Variation	£170	£150	N/A	£320	£160	£480

- 4.5 The proposed fees (above) for 2013-2014 are based on a cost recovery basis to administer the system. If however hearings are required where not included in the costings above (such as contested renewal applications) the costs of these hearings can be added to revised fees for 2014-2015 to ensure that no losses are made.
- 4.6 In relation to other licensing applications, the above proposed fees are comparable to some of those under the Gambling Act 2005. See table below:

2012-2013	New Applications	Annual fee / renewal	Transfer	Variations
Bingo premises licence	£2,809.00	£835.00	£956.00	£1,393.00
Betting Shop	£1,988.00	£502.00	£956.00	£1,194.00
Proposed fee for Sex Establishments 2013-2014	£2,500.00	£700.00	£700.00	£480.00

5. LEGAL IMPLICATIONS

- 5.1 If the fees are not determined and set by the Committee at an appropriate level to cover the costs to administer the system it could leave the council subject to a judicial review.

6. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

Local Government (Miscellaneous Provisions) Act 1982

Section 27 of the Policing and Crime Act 2009

R (Hemming and Others) v Westminster City Council (2012) High Court Judgement