

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 9th December 2014

Subject: Entertainment Licensing Fees and Charges

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. Licensing Committee sets the fees for sex establishments (sexual entertainment venues, sex shops and sex cinemas), places of marriage and scrap metal dealers. This review brings all three licensing regimes into the same review period and seeks to set revised fees for the three regimes with effect from 1st January 2015.
2. Under the European Services Directive and the Provision of Services Regulations 2009, the council may set a reasonable fee that only includes the costs related to the application process.
3. This report presents the fee review and a proposed scheme of charges.

Recommendations

4. That Licensing Committee considers the contents of this report and approve the scheme of charges for sex establishments, places of marriage and scrap metal dealers.

1 Purpose of this report

- 1.1 To request Licensing Committee considers a proposed fee scheme that reflects the cost of processing and determining applications for sex establishment, places of marriage and scrap metal dealers licences commencing from 1st January 2015.

2 Background information

- 2.1 Entertainment Licensing is responsible for:

- Licensing Act 2003
- Gambling Act 2003
- Sex Establishments
- Scrap Metal Dealers
- Places of Marriage
- Film classification
- Hypnotism
- Charitable Collections (street and house to house)

- 2.2 The fees relating to the Licensing Act 2003 and the Gambling Act 2005 are set by statute. There is no fee for film classification, hypnotism and charitable collections.

- 2.3 The fees for sex establishments, places of marriage and scrap metal dealers are set by the council. Authority for the setting of fees is delegated through the Officer Delegation scheme to Head of Licensing and Registration. However it has been the practice to take the reviewed fees to Licensing Committee for endorsement before putting them in place. This time, as part of a council-wide initiative on fees and charges, a report will be taken to Executive Board in December 2014 for approval.

3 Main issues

- 3.1 The fees for all three regimes are caught under the European Services Directive and Provision of Services Regulations.

European Services Directive

- 3.2 The European Services Directive ensures that the fee is limited to cost recovery. It provides:

“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.”

- 3.3 Regulation 18 of the Provision of Services Regulations effectively replicates the provisions of the Directive. Guidance on the provisions was given in the Department for Business Innovation and Skills' Guidance for Local Authorities on the Provision of Services Regulations. These states:

“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 legal challenge should a service provider feel that the levels of fee 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.”

- 3.4 The Department’s corresponding Guidance for Businesses on the Provision of Service Regulations states:

“Under regulation 18, fees charged in relation to authorisations must be proportionate to the effective cost of the process e.g. to cover the actual cost of the application process. Fees should not be used as an economic deterrent to certain activities or to raise funds. As now, if you believe the fee to be disproportionate you can contest it with the authority concerned.”

Hemmings Case

- 3.5 As Members will be aware in 2012 the operators of a number of sex shops in Westminster were successful in their High Court action against Westminster City Council in challenging the level of fees set by them. The basis of the case was that the authority had not taken into account a European Directive and that the fees were in excess of what they should have been. It was argued that prosecuting persons, businesses and companies who operate sex establishments illegally could not be included in the fee structure of the council.
- 3.6 Westminster Council appealed the decision of the High Court to the Court of Appeal, which dismissed the appeal, supporting the High Court. It is clear that the Court of Appeal have determined that where there is an administrative licensing process, there is a need to be particularly careful with how the fee structure is established. This is critical if the fees are not set centrally as standard fees.

Sex Establishments

- 3.7 Sex establishments are subject to an annual renewal process. There are also processes to vary a licence and transfer it.
- 3.8 Officers have calculated the cost of the processes undertaken in 2014, which are:
- 3 sex establishments (SEV) renewals that went to hearing
 - 4 sex establishments (sex shops) renewals that received no objections
- 3.9 Officers reviewed the administrative process undertaken within the section to ensure that it is as streamlined as possible. There have been significant changes made in the past five years to streamline services, improve IT provision, utilise email and other digital processes, scanning of files and digital archiving. These changes have led to a reduction in the overhead costs of the service and the time that each process takes.
- 3.10 The proposed fee structure recognises that all applications for sexual entertainment venues are heard at a licensing subcommittee and attract the subsequent costs

associated with this process. The fee structure also recognises that applications for the renewal of sex shops have not attracted objections in the past few years.

3.11 In 2014 we included a cost for legal services based on the costs incurred during 2013. This was the first year that licences were considered by Members under the new policy which limited licences by location and numbers. As such the legal team required longer to ensure that we were legally compliant, and that the decision notices were comprehensive. This cost did not include any costs for the judicial reviews which we also dealt with last year.

3.12 Officers have reviewed the legal costs for the hearing that took place this year; the second renewal for Silks. The cost for the legal support during this hearing was £2,100. The review shows that the current fee for sex establishments is an accurate reflection of the costs to the council of administering these applications however due to the reduction in objections being processed there is a slight reduction in the cost of processing the applications.

Sexual Entertainment Venue	New	Renewal	Variation	Transfer
Current fee:	£4,314.00	£4,314.00	£3,400.00	£776.00
Revised fee:	£4,159.00	£4,159.00	£3,567.00	£776.00

Cost recovery calculation	New	Renewal	Variation	Transfer
Receipt and admin (£35.77/hr)	£107.31	£107.31	£107.31	£107.31
Enquiries (3 hours)	£107.31	£107.37	£35.77	£35.77
Notice checks (£40.84/hr)	£163.36	£163.36	£00.00	£163.36
Production of notice of hearing (35.77/hr)	£71.54	£71.54	£71.54	£0.00
Production of notice of hearing (30 copies)	£21.00	£21.00	£7.00	£0.00
Production of agenda (£35.77/hr)	£143.08	£143.08	£143.08	£0.00
Production of agenda (actual cost)	£158.00	£158.00	£158.00	£0.00
Production of agenda (print and postage)	£9.66	£9.66	£6.90	£0.00
Room hire (3 hrs)	£90.00	£90.00	£90.00	£0.00
Refreshments (15x)	£37.50	£37.50	£37.50	£0.00
Members allowance	£302.00	£302.00	£302.00	£0.00
Officer attendance (£35.77/hr)	£214.76	£214.76	£214.76	£0.00
Notice of decision/minutes (£35.77/hr)	£143.08	£143.08	£143.08	£0.00
Notice of decision/minutes	£21.00	£21.00	£7.00	£0.00
Compliance visits and assoc paperwork (£40.83/hr)	£326.72	£326.72	£00.00	£326.72
Issue of licence (£35.77/hr)	£143.08	£143.08	£143.08	£143.08

Legal advice, including attendance at hearing, decision notice	£2,100.00	£2100.00	£2100.00	£0.00
Total	£4,159.40	£4159.46	£3567.02	£ 776.24

Sex Shop & Sex Cinema	New	Renewal	Variation	Transfer
Current fee:	£4,314.00	£776.00	£3,400.00	£776.00
Revised fee:	£4,159.00	£776.00	£3,567.00	£776.00

Cost recovery calculation	New	Renewal	Variation	Transfer
Receipt and admin (£35.77/hr)	£107.31	£107.31	£107.31	£107.31
Enquiries (3 hours)	£107.31	£35.77	£35.77	£35.77
Notice checks (£40.84/hr)	£163.36	£163.36	£00.00	£163.36
Production of notice of hearing (£35.77/hr)	£71.54	£00.00	£71.54	£00.00
Production of notice of hearing (30 copies)	£21.00	£00.00	£7.00	£00.00
Production of agenda (£35.77/hr)	£143.08	£00.00	£143.08	£00.00
Production of agenda (actual cost)	£158.00	£00.00	£158.00	£00.00
Production of agenda (print and postage)	£9.66	£00.00	£6.90	£00.00
Room hire (3hrs)	£90.00	£00.00	£90.00	£00.00
Refreshments (15x)	£37.50	£00.00	£37.50	£00.00
Members allowance	£302.00	£00.00	£302.00	£00.00
Officer attendance (£35.77/hr)	£214.76	£00.00	£214.76	£00.00
Notice of decision/minutes (£35.77/hr)	£143.08	£00.00	£143.08	£00.00
Notice of decision/minutes (30 copies)	£21.00	£00.00	£7.00	£00.00
Visits and assoc paperwork (£40.84/hr)	£326.72	£326.72	£00.00	£326.72
Issue of licence (£35.77/hr)	£143.08	£143.08	£143.08	£143.08
Advice, attendance at hearing, decision notice	£2100.00	£00.00	£2100.00	£00.00
Total	£4159.40	£776.24	£3567.02	£ 776.24

Marriage Act – Places of Marriage

- 3.13 Places of Marriage are subjected to a three yearly licensing regime.
- 3.14 This fee has not been reviewed for a number of years. A review of this fee would fall under the EU Services Directive/Provision of Services Regulations and so should only be charged on a cost recovery basis. There would be no justification to follow a fee regime based on occupancy, as the application process is now the same regardless of size of premises. Based on history, it has never been known for an application to come before a licensing subcommittee and therefore the cost of a hearing has not been factored in to the application or renewal fee.
- 3.15 There is provision for an applicant to call for a review of a decision which would be referred to a hearing. It is therefore proposed to include the costs associated with a hearing for this aspect of the procedure to bring it in line with other processes that require a licensing subcommittee, although again the likelihood of a review request is remote.

Marriage Act	Occupancy under 600	Occupancy over 600	Review
Current fee:	£868.91	£1,102.31	£385.12
Revised fee based on cost recovery only:	£516.00	£516.00	£3,599.00

Cost recovery calculation	Occupancy under 600	Occupancy over 600	Review
Receipt of application incl fee (0.5hr @ £29.95/hr)	£89.85	£89.85	£89.85
Update records (0.5 hr @ £35.77/hr)	£17.89	£17.89	£17.89
Consultation (0.25 hr @ £35.77/hr)	£8.94	£8.94	£8.94
Registrar admin cost (2 hrs @ £44.82/hr)	£89.64	£89.64	£89.94
Registrar site visit (4 hrs @ £44.82/hr)	£179.28	£179.28	£0.00
Registrar mileage (20 miles @ £0.45/hr)	£9.00	£9.00	£0.00
Building Control review (2 hrs @ £44.82/hr)	£89.64	£89.64	£89.64
Building Control mileage (20 miles @ £0.45/hr)	£9.00	£9.00	£0.00
Hearing cost	£0.00	£0.00	£1,180.00
Legal cost	£0.00	£0.00	£2,100.00
Issue of licence (0.5 hr @ £44.82/hr)	£22.41	£22.41	£22.41
Total	£515.65	£515.65	£3,598.67

Scrap Metal

- 3.16 The Scrap Metal Dealers Act 2013 was a replacement regime for the Scrap Metal Dealers Act 1964 and the Motor Salvage Operators Act 2009. Scrap Metal Dealers licences last for three years.
- 3.17 On average the section receives 6 applications a month although this fluctuates depending on the Police's enforcement activity.
- 3.18 This regime is also subject to the Provision of Services Regulations 2009 and therefore should be based on cost recovery of the application process only. The fee was set in September 2013 and the regime commenced with the first applications being received in November 2013.
- 3.19 The current fee is based on cost recovery, but since the regime has been in place Entertainment Licensing has undertaken more enforcement action with Scrap Metal collectors than was first anticipated. We originally budgeted for a site visit to check compliance but officers are undergoing roadside checks with the Police to check on compliance with the collectors as well. The subsequent office based investigations average at 4 hours for both sites and collectors.
- 3.20 We also think there is scope to charge for a replacement licence which we had not factored in to the fee structure.

Site	New Application	Renewal	Vary licence	Change of name or address	Replacement licence
Current fee:	£494.00	£494.00	£327.00	£46.00	£0.00
Revised fee:	£502.00	£502.00	£167.00	£46.00	£10.50
Cost recovery calculation	New Application	Renewal	Vary Licence	Change of name or address	Replacement licence
Receipt application (1hr)	£43.00	£43.00	£43.00	£21.00	£0.00
Enquiries (1hr)	£43.00	£43.00	£43.00	£0.00	£0.00
Site visits (7 hrs over 2 visits)	£335.00	£335.00	£0.00	£0.00	£0.00
Issue of licence (1hr)	£43.00	£43.00	£43.00	£21.00	£10.50
Correspondence (4 documents)	£4.00	£4.00	£4.00	£3.00	£0.00
Oral reps (share of £403 x 10 / 120)	£34.00	£34.00	£34.00	£0.00	£0.00
Total	£502.00	£502.00	£167.00	£46.00	£10.50

Collector	New Application	Renewal	Vary Licence	Change of name or address	Replacement licence
Current fee:	£159.00	£159.00	£0.00	£46.00	£0.00
Revised fee:	£359.00	£359.00	£167.00	£46.00	£10.50
Cost recovery calculation	New application	Renewal	Vary Licence	Change of name or address	Replacement Licence
Receipt application (1hr)	£43.00	£43.00	£43.00	£21.00	£0.00
Enquiries (1hr)	£43.00	£43.00	£43.00	£0.00	£0.00
Roadside compliance checks (4hrs)	£192.00	£192.00	£0.00	£0.00	£0.00
Issue of licence (1hr)	£43.00	£43.00	£43.00	£21.00	£10.50
Correspondence (4 documents)	£4.00	£4.00	£4.00	£3.00	£0.00
Oral reps (share of £403x10/120)	£34.00	£34.00	£34.00	£0.00	£0.00
Total	£359.00	£359.00	£167.00	£46.00	£10.50

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 In the past the practice has been for the sex establishment fee regime to be distributed to all licence holders. Although this consultation has taken place, the council has received only one response which did not lead to an amendment of the fee structure.
- 4.1.2 This pre-consultation with licence holders has been possible in the past as the council has reviewed the sex establishment licence fee separately and there are only a small number of licensees affected.
- 4.1.3 There is no statutory requirement to consult with licence holders before reviewing the fee for these three regimes. Taking into consideration the three yearly licence renewal period for Scrap Metal and Marriage, and the number of licensees affected it is recommended that a formal consultation process would not be good value for money in this instance.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no implications for equality and diversity/cohesion and integration in setting a fee structure.

4.3 Council policies and City Priorities

4.3.1 The licensing regime contributes to the following Best Council Plan 2013-17 outcomes:

- Improve the quality of life for our residents, particularly for those who are vulnerable or in poverty;
- Make it easier for people to do business with us.

4.3.2 The licensing regime contributes to our best council objective:

- Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city.

4.4 Resources and value for money

4.4.1 The licensing of sex establishments, places of marriage and scrap metal dealers attracts a fee which can only be used to pay for the costs associated with the licence application and cannot be used to cover the cost of the investigation of unlicensed activity.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The recent case has highlighted the need for councils to ensure that fees only include the costs of processing applications.

4.6 Risk Management

4.6.1 Following the result of the Hemmings case there is a risk of the licensees challenging the fees set by the authority, if they consider that the fee is not reasonable or that the council is making a charge for matters that are not relevant to the applications process.

5 Conclusions

5.1 Taking into consideration the European Services Directive, the Provision of Services Regulations and the Hemmings case, officers recommend that the fee structure is adjusted to reflect full cost recovery of the application process. However the costs should be kept under review and regularly updated to ensure that the fee is only based on cost recovery.

6 Recommendations

6.1 That Licensing Committee considers the contents of this report and approve the scheme of charges for sex establishments, places of marriage and scrap metal dealers.

7 Background documents¹

7.1 There are no unpublished background documents that relate to this matter.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.