

# Licensing Committee

5 June 2018

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

## Sexual Entertainment Establishment - Licence Fees 2018/2019

<b>Final Decision-Maker</b>	Licensing Committee
<b>Portfolio Holder(s)</b>	Councillor Dr Ronen Basu
<b>Lead Director</b>	Paul Taylor Director of Change and Communities
<b>Head of Service</b>	Gary Stevenson
<b>Lead Officer/Report Author</b>	Sharon Degiorgio, Senior Licensing Officer
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

### This report makes the following recommendations to the final decision-maker:

1. That the Licensing Committee approve the fee levels as set out in paragraphs 2.7 and 2.8 of the report for implementation on 5 June 2018.

### This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough.

It is proposed to set fees which enable the authority to be self-financing with respect to this service.

### Timetable

<i>Meeting</i>	<i>Date</i>
Licensing Committee	5 June 2018

# Sexual Entertainment Establishment - Licence Fees 2018/2019

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The authority is required to review the fees set for the administration of the Local Government (Miscellaneous Provisions) Act 1982. This ensures the Council complies with its statutory duty and that the licensing of Sexual Entertainment Establishment premises is self financing, in accordance with the Council's Medium Term Financial Plan.
  - 1.2 A fees model, has been determined in conjunction with the finance department
  - 1.3 To consider reducing the fees for sex establishment licences to reflect the findings of a recent legal ruling that only actual costs can be incorporated into the application fee, and in consideration of the level of enforcement needed.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 Tunbridge Wells Borough Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and consents and permits. Many of these schemes allow the Council to charge a fee payable by an applicant for a licence, in order to cover the costs (or a proportion thereof) of the administration of those licence types. In some cases, costs are also permitted to cover other aspects of providing the regulatory scheme.
- 2.2 The basis in setting such fees is generally to ensure full cost recovery, or as close to it as possible. Licensing fees may not be used to generate a profit for Councils.
- 2.3 The European services Directive, as incorporated by the Provision of Services Regulations 2009 provides that fees and charges 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". This principle was affirmed by the courts *in the 2015 case of R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*, the Supreme Court ruled that licensing authorities could include the costs of regulatory and enforcement activities in determining the licence fees to be paid by licensed operators. The costs charged for the clerical and administrative aspects must be reasonable and proportionate to the actual cost of those procedures.
- 2.4 The fees have been calculated by examining the time it takes to carry out the various tasks in processing the application and who in the authority is likely to carry them out. The hourly rates of staff are fed in to a spreadsheet produced in conjunction with the finance team to calculate costs for each type of activity.

- 2.5 The type of work involved in Sexual Entertainment Establishment premises applications include: assistance to applicant, checking of an application upon receipt, processing the application, assessing representations for relevance, undertaking informal mediation, and undertaking site visits where necessary. Once processed, tasks then involve: determining the licence or arranging a hearing and holding a hearing, notification of the decision, preparation and issuing of the licence, updating the records/register, appeal preparation and holding an appeal hearing.
- 2.6 The costs associated with an appeal and hearings have been estimated and an estimation has been made as to the likelihood of these events occurring, which has been factored the calculations. The risk of appeals and hearings occurring has been based on the experience of our partners within the Licensing Partnership.

### **Proposed Fees**

- 2.7 It is proposed to adjust the sex establishment licence fees, which have been found to be exceeding costs, so that they accurately reflect the actual costs to the council following a legal ruling in the case of *R (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*.

Licence	Current Fee	Proposed Fee
Grant/New	£3,100	£2,200
Renewal	£3,100	£2,200
Transfer	£1, 625	£600

- 2.8 The result of the calculations is that a fee of £2,200 is set for a new application or a renewal application. The existing fee is £3,100. The experience of our partners is that as many representations are received for a new and a renewal application. However, there is less likely to be representations and a need for a hearing for a transfer of a licence. Therefore the fee for an application to transfer a licence is proposed as £600 a reduction from the existing £1,625 fee.
- 2.9 There are currently no Sex Establishments operating in the Borough.

### **3. AVAILABLE OPTIONS**

- 3.1 Members may decide to leave the fee levels as they are providing they relate to actual costs. The current fees do not reflect actual costs.
- 3.2 Members may approve the fees as set at in paragraph 2.7 and 2.8 in light of case law, as above

#### 4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Members are asked to approve the proposed fees as set out in paragraph 2.7 and 2.8 of the report.
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#### 5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 5.1 The fees will be charged with respect to new applications and existing premises. The revised fees will be published on the Council's website.
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#### 6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off (name of officer and date)
Legal including Human Rights Act	Should parts of industry believe the authority's fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake judicial review proceedings. Should this arise, the authority would need to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.	Robin Harris, Senior Lawyer (Contentious) 11.05.18
Finance and other resources	The fees are set to just cover the costs of administering the Licensing of Sexual Establishments, in line with the Councils user pays principle. This is an academic exercise at present as there are no establishments in the Borough.	Jane Fineman, Head of Finance and Procurement 15.05.18
Staffing establishment	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Risk management	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Environment and sustainability	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18

Community safety	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Health and Safety	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Health and wellbeing	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Equalities	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18
Data Protection	No issues identified.	Sharon Degiorgio, Senior Licensing Officer 10.05.18

**7. REPORT APPENDICES**

The following documents are to be published with this report and form part of the report:

None

**8. BACKGROUND PAPERS**

None