



<b>Subject:</b>	<b>Review of Licence Fees for Sex Establishments</b>
<b>Date:</b>	15th June, 2016
<b>Reporting Officer:</b>	Stephen Hewitt, Building Control Manager, Ext 2435
<b>Contact Officer:</b>	Patrick Cunningham, Assistant Building Control Manager, Ext 6446

<b>Is this report restricted?</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>Is the decision eligible for Call-in?</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
<b>1.1</b>	Under Article 4 and Schedule 2 of The Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order), the Council has powers relating to the Licensing of Sex Establishments. Paragraph 19, Schedule 2 provides that an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the council.
<b>1.2</b>	Unlike the Street Trading Act (NI) 2001 and the Licensing of Pavement Cafés Act (NI) 2014, there is no procedure prescribed in the Order that the Council must follow in determining the licence fee.  <b><u>Hemming v Westminster Case</u></b>
<b>1.3</b>	Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April 2015 in the UK Supreme Court which delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes. The introduction of the EU Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities which are, in the main, local authorities.
<b>1.4</b>	The Supreme Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. The Supreme Court, therefore, ruled that the <i>type</i> of costs which Westminster included within its licences fee were legitimate. It referred the issue of <i>how</i> the charges were levied to the European Court of Justice. The Court identified two different approaches to charging fees:

	<ol style="list-style-type: none"> <li>1. Whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or</li> <li>2. Where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.</li> </ol> <p><b>1.5</b> The Court found the type A approach of charging two fees is permissible under the Services Directive but felt that the type B approach of charging a single fee was more problematic. The Court felt that it remained unclear whether including all costs upfront involved in law a charge incurred from the application, which is contrary to the Services Directive. The Court suggested that a charge could possibly include borrowing or loss of interest during the period in which the application was considered, but noted that the Hemming legal team had not provided any evidence of such costs.</p> <p><b>1.6</b> The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case have provided clarity about the 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 and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.</p>
<b>2.0</b>	<b>Recommendations</b>
<b>2.1</b>	<p>The Committee is requested to:</p> <ul style="list-style-type: none"> <li>• agree that the Council's current fee arrangements should be amended to include a non-refundable application fee and subsequent licence fee charge if an application is granted;</li> <li>• consider the proposed fees and determine the appropriate fees for the grant, renewal and transfer of a licence to operate a sex establishment; and</li> <li>• recommend that a review is conducted each year so that appropriate fees for sex establishments can be determined by the Council annually.</li> </ul>
<b>2.2</b>	<p>Members are asked to note that, if full cost recovery is not achieved, then this will have a direct impact on the district rate and would need to be referred to the Strategic Policy and Resources Committee.</p>
<b>2.3</b>	<p>Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and as such your recommendation as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.</p>
<b>3.0</b>	<b>Main report</b>
<b>3.1</b>	<p><b><u>Key Issues</u></b></p> <p>The current Sex Establishment Licence fees were set in 2002 and have not been determined by Council since then. It is therefore necessary to review the current level of fees to ensure they remain reasonable and proportionate and to establish a regular review process.</p>

- 3.2** Since 2002, the Council has processed a number of licence applications and most recently two applications were considered for Gresham Street at a meeting of the Licensing Committee on 22nd October 2014.
- 3.3** Information gained from dealing with these and previous applications has been used to develop an up to date understanding of the costs associated with Sex Establishment Licensing.
- 3.4** An analysis of the time allocated to each task in the licensing process was undertaken and costing estimates developed based on revised administration and compliance costs arising from increased salaries, employer's National Insurance contributions, superannuation contributions, office rental costs and other on-costs.
- 3.5** This analysis has demonstrated that the current fees are not proportionate to the cost of the processes associated with administering a Sex Establishment Licence. Details of these costs are attached.
- 3.6** As mentioned the Supreme Court had some concerns about the legality of whether the total fee, including the cost of the compliance element of administering the licence, could be charged upfront on the basis that this is refunded to unsuccessful applicants.
- 3.7** Presently, if an application for a Sex Establishment Licence is refused the applicant is entitled to a refund of £500.00. The majority of the application fee is associated with the administrative aspect of the application and the refunded amount relates to the cost of the compliance element of the fee.
- 3.8** To avoid any potential challenge it is proposed that our current fee arrangement should be amended to include a non-refundable application fee and subsequent licence fee charge if an application is granted.
- 3.9** The proposed fees, arising from the analysis, and the associated increase are shown below.

	<i>Current</i>	<b>Proposed</b>	Increase
<b>Application Fee</b>	£3,000	<b>£3,200</b>	£200
<b>Renewal Fee</b>	£1,000	<b>£1,430</b>	£430
<b>Transfer Fee</b>	£375	<b>£1,125</b>	£750
<b>Licence Fee</b>	£500	<b>£500</b>	0

- 3.10** The transfer fee was determined in 2002 as £375 and may well have been based on the level of transfer fees of those Councils consulted on sex shop fees at that time; these were significantly lower than the grant or renewal fees set by those Councils. Having undertaken an assessment of the work associated with processing a transfer application it has increased significantly and is more aligned to the proposed revised renewal fee.

<p><b>3.11</b></p>	<p><b><u>Financial and Resource Implications</u></b></p> <p>The proposed increase in Sex Establishment Licence fees will ensure that the cost of the operational and administration processes are proportionate to the licensing scheme.</p>
<p><b>3.12</b></p>	<p><b><u>Equality and Good Relations Implications</u></b></p> <p>Equality and good relations implications have been reviewed and a completed screening form has been forwarded to the Equality and Diversity Officer.</p>
<p><b>4.0</b></p>	<p><b>Document Attached</b></p>
	<p>Costs associated with Sex Establishment Licence Fees</p>