

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	3923
Author:	Melanie Bird
Department:	Commercial and Operations
Contact:	Melanie Bird (Job Title: Licensing Compliance Manager, Email: melanie.bird@nottinghamcity.gov.uk, Phone: 07903702608)
Subject:	Sex Establishment Licences - Refund of Fees
Total Value:	£30,876.00 (Type: Revenue)
Decision Being Taken:	To authorise payment of refunds on the Sex Establishment Licences to the three establishments detailed in the appendices
Reasons for the Decision(s)	Following operational streamlining and a change in delegations the ability to approve uncontested renewal applications was delegated to officers rather than remaining the responsibility of the Regulatory & Appeals Committee to determine. The costs of those Committee hearings (including Committee preparation, associated legal and administrative support and officer time) are no longer recoverable through the sex establishment licence fee. A full review of the fee structure in this area has now been carried out and approved under delegation 89 as shown in the attached Appendix together with the breakdown of the required refunds to each of the 3 premises which hold this type of licence
Briefing notes documents:	DELTA LOVE - REFUND.pdf, FLIRTZ - REFUND.pdf, PRIVATE SHOP - REFUND.pdf, REPORT DATED 4.6.20.pdf, NEW LICENCE CALCULATION.pdf, RENEWAL LICENCE CALCULATION.pdf, TRANSFER LICENCE CALCULATION.pdf, VARIATION LICENCE CALCULATION.pdf

Other Options Considered:	<p>Not refunding the fees: This was rejected because it would mean the Council had collected and retained costs from the applicant which were not lawful and therefore open to challenge hence the request to refund excess payments made by the applicants</p> <p>Rolling over the surplus fees and charging a lower fee until the surplus has been eradicated: This option was rejected because, given the small number of licences involved and that the same licence holders who paid the higher fee are the only people who currently hold licences it is felt more appropriate to give a refund as well as this being more administratively convenient.</p>
Background Papers:	None
Published Works:	None
Affected Wards:	Citywide
Colleague / Councillor Interests:	None
Consultations:	Those not consulted are not directly affected by the decision.
Crime and Disorder Implications:	None
Equality:	EIA not required. Reasons: The proposal if approved would only affect any applicants for a Sex Establishment Licence
Decision Type:	Officer
Executive Decision?	Yes
Scheme of Delegation Reference Number or Other Source of Delegation:	Delegation 89
Subject to Call In:	<p>No</p> <p>The call-in procedure does not apply to the decision because the value of the decision is below the call in threshold.</p>

Advice Sought:

Legal, Finance

Legal Advice:

Open for Business (the LGA guidance on locally set licence fees) and legal advice indicate:-

- . It is an accepted principle that licensed activities should be funded on a cost recovery basis**
- . Charges for different categories of licence should not subsidise one another and council's should ensure that they have discrete cost calculations for each licensing regime that they operate.**
- . Councils should be able to separate out the cost of processing and initial application from the costs associated with the ongoing administration of the scheme**
- . Licensing authorities need to amend their fee structures to ensure that application fees relate solely to the cost of authorisation procedures and charge successful applicants an additional fee relating to the cost of administering and enforcing the relevant licensing framework. Such fees should comply with the principle of proportionality.**
- . Where fees charged result in a surplus both Hemming v Westminster and Cummings v Cardiff state 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 needs careful consideration about whether contributors may leave the licensing system over that period and lose out on the return**

In Hemming the separate claim for restitution (in effect a refund) was justified because the surpluses were so large post introduction of the EU services Directive that it would take many years of determining the fee at a nominal amount before the surplus would be eliminated. In our case the surplus could potentially result in nil or nominal fees over a small number of years but if the refund route is taken it is arguably fairer in repaying the money to those who have actually paid it. Either route potentially may raise questions about fee calculation with those involved but the Council is always susceptible to such scrutiny. If the refund route were to be followed rather than rolling the surplus over into next year this arguably does not reflect the general principles and advice outlined in the bullet points above above but given the low numbers of licence holders involved the risk of challenge may be low.

Advice provided by Ann Barrett (Team Leader) on 05/06/2020.

Finance Advice:

The refund outlined in this decision ensures that the Council's complies with the latest guidance on the calculation of the fees. The reimbursement will be funded from approved resources. Advice provided by Maria Balchin (Finance Analyst) on 30/04/2020.

Signatures:

Katherine Kerswell (Chief Executive)

SIGNED and Dated: 30/06/2020