

## Sex Establishment Licence – Fee Setting 2020

### Purpose

1. To confirm the licence fees for new applications, renewals, variations and transfer.

### Background

In November 1982, the Environmental Health Committee of Nottingham City Council resolved to adopt the provisions of the Local Government (Miscellaneous Provisions) Act 1982 to enable regulation of sex establishments. This came into effect on the 1 January 1983 and related to sex shops and sex cinemas.

Following the implementation of the Licensing Act 2003, concerns were raised that there were insufficient powers to control lap dancing establishments and similar venues. S.27 of the Policing and Crime Act 2009 introduced an amendment to the '82 Act and also introduced a new category of establishment to be known as a 'sexual entertainment venue' (SEV). The ability to vary the terms and conditions of a licence was also introduced.

The change was not automatic and the City Council adopted the provisions on 19 July 2010 with an effective date of 1 September 2010 for transition to begin. At that time, it was the requirement of the Committee that all applications be referred to them for consideration, which in the case of uncontested matters was time consuming and costly.

On 16 August 2016, selected responsibilities were delegated to officers, namely the approval of uncontested application for renewal of a Sex Establishment Licence. This did however have an impact on fees which could be charged by the Council to maintain this regime.

As with most of the businesses licensed by the Local Authority, reasonable costs can be sought to facilitate the service and this area of legislation is no exception.

Such fees are open to scrutiny and therefore challenge, and in fact Nottingham City Council was challenged in relation to the fees set for the renewal of licences. That challenge was subsequently withdrawn, however whilst the challenge was in process, no changes were made to any of the existing fee framework, a decision supported by the LGA.

A subsequent review has now been completed and the costs associated with the Committee hearing was consolidated with the related administrative legal costs of supporting that meeting and removed from the fee for renewal of a Sex Establishment Licence.

The proposed fees attached to this brief have been prepared having given regard to the Regulators' Code and LGA Guidance on local fee setting ensuring the proposals are fair and reasonable.

The fees have been separated into a 2 tier fee, following both National and European Court judgements in the Hemmings' case and the EU Services Directive.



Only the costs of the authorisation process may be charged on application with any costs relating to the administration and enforcement of the licensing framework being charged as a second fee on the grant of a licence.

Delegation 89(I) of Part 2 of the Constitution of Nottingham City Council – Responsibility for Functions allows for the Director of Community Protection to review fees relating to regulatory business.

The proposed fees are:

Application Type	Application Fee (part 1)	Grant fee (part 2)	+/-
New	£8673	£3590	- £1577
Renewal	£3995	£3590	- £3515
Variation	£3152	N/A	+£786
Transfer	£1215	N/A	- £179

If approved the new table of fees will take immediate effect and refunds be allocated to the relevant businesses.

Due to the above changes in delegation and reduction of costings in fees from 2016, a fee surplus has accrued and it is proposed that refunds be given in respect of the relevant premises. As the monies have already been paid in by the relevant parties it has been advised that the refunds will be payable from specifically accrued budget from the 2019/20 year. A Corporate Director DDM is being prepared due to the cumulative amount of the refunds,

#### LGA and 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 Councils 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 their return.

- In Hemming the separate claim for restitution (In effect a refund for unjust enrichment) 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. Here there 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 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 above but given the low number of licence holders involved the risk of challenge may be low.

Change of fees approved under Delegation 89(1) of Part 2 of the Constitution of Nottingham City Council – Responsibility of Functions

Signed: 

Andrew Errington, Director of Community Protection

Dated: 04/06/2020