

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**LICENSING COMMITTEE – 15 FEBRUARY 2017****REPORT BY THE DIRECTOR FOR ENVIRONMENTAL HEALTH****REVIEW OF LICENSING FEES**

This report proposes changes to the fees charged by the Licensing Authority for applications, notifications and annual fees for various licences with effect from 1 April 2017

FOR DECISION

1. BACKGROUND

- 1.1 Under various, relevant, statutory provisions local authorities are entitled to charge fees for granting or renewing licences. Apart from certain licences where the fees are fixed by law, the local authority can charge a reasonable fee which, when totalled, should not exceed the cost of running that particular licensing service. Traditionally this fee includes not only the costs of processing the application, but also the costs of monitoring and enforcing against unlicensed and licensed operators
- 1.2 In December 2009 the Services Directive, Provision of Services Regulations 2009, made under Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be reasonable and proportionate to the cost of the "authorisation procedures".
- 1.3 Gambling Premises Licences are subject to maximum fee levels and when calculating the fees to be charged the licensing authority must "... *aim to ensure that the income from fees of that kind nearly as possible equates to the costs of providing the service to which the fee relates...*" (section 212(2)(d) of the Gambling Act 2005).
- 1.4 Until now application fees have been payable in full at the time of making an application and unsuccessful applicants have been eligible for a refund of a proportion of the fee paid, subject to the Council's costs in dealing with that application being met.
- 1.5 However, following the recent case of Hemming's v Westminster City Council regarding the level of fees for Sex Shop Licences in Westminster and what the Council was legally entitled to include when

setting its fees, the Supreme Court, and subsequently the European Court of Justice, concluded that as the fee was essentially made up of two parts, the first part for the direct costs for processing an application, and the second part for the costs associated with running the licensing regime, including monitoring and enforcement of licensed and unlicensed premises, that this should be reflected in how the fees are charged. The second part of the fee would only be payable if a licence is granted. A summary of the Hemming's case is attached as Appendix A.

2. PROPOSED CHANGES TO FEES

- 2.1 As a result of the Supreme Court and European Court of Justice's decisions, licensing officers have conducted a full review of the costs associated with administering the Council's individual licensing functions. Officers have revised the method for calculating licence fees to identify the separate costs associated with the processing of an application and the ongoing costs of operating and enforcing the regime
- 2.2 In calculating application costs officers have considered what percentage of applications are likely to attract opposition and the level of expected opposition. In most cases these contested applications would require a licensing hearing, thereby increasing the processing costs quite substantially.
- 2.3 Wherever possible the past history of the processes and level of opposition to applications for each type of licence has been used as a guide to inform the likely costs of running a particular licensing service for the coming year.
- 2.4 As the fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities to determine the application, and must accurately reflect the actual costs incurred by the Council, any proposed increases may be more or less than the 1% increase recommended by the Cabinet Member for Finance and Property. In some cases this may result in a reduction of the fee payable.
- 2.5 For some licensing schemes, such as Gambling Premises Licensing, the legislation sets a maximum fee that can be charged. If the Council's costs exceed the maximum permitted fee, then the maximum fee will be charged.
- 2.6 Applicants for a licence would be required to submit the first part of the fee (Part A) at the time of submitting an application, to cover the costs of processing the application. They would only be required to

submit the second part of the fee (Part B) to cover the ongoing costs, for supervising and enforcing the regime, if the licence is granted.

- 2.7 Where a licence is granted for an indeterminate period and the licensing regime provides for the payment of an annual fee, the Part B fee will be the relevant annual fee.
- 2.8 On 07 December 2016, Councillor Mills chaired a sub-committee of 5 members of the Licensing Committee to scrutinise the proposed fees to ensure that the fees were both proportionate and set at a level which would recover the Council's costs in dealing with that formality.
- 2.9 The scrutiny committee concluded that, subject to the legal and committee costs being reviewed to ensure that they accurately reflected the amount of work involved, the proposed fees were set at an appropriate level.
- 2.10 The draft fees have since been revised in consultation with the legal department, and the legal costs associated with Committee hearings have increased slightly.
- 2.11 The tables below set out the current and revised fees for the various licences for the period commencing 1 April 2017, based on the expected costs of running the licensing service.

Table 1 – Gambling Licences

Licence/Application Type	Current Fee	Proposed Fee	Maximum permitted fee	% difference
	£	£	£	
Gambling Premises Applications – Part A				
<u>Existing Casinos</u>				
Variation	1800.00	645.00	2000.00	-64.2%
Transfer/Reinstatement	138.50	163.00	1350.00	17.7%
<u>New Small Casino (++)</u>				
Provisional Statement	2765.00	3560.00	8000.00	28.8%
New Grant	2790.00	3688.00	8000.00	32.2%
New Grant where a provisional statement issued	766.00	576.00	3000.00	-24.8%
Variation	1800.00	942.00	4000.00	-47.7%
Transfer/Reinstatement	138.50	163.00	1800.00	17.7%
<u>New Large Casino (++)</u>				
Provisional Statement	3408.00	4940.00	10000.00	45.0%
New Grant	3435.00	5068.00	10000.00	47.5%

New Grant where a provisional statement issued	766.00	576.00	5000.00	-24.8%
Variation	1800.00	942.00	5000.00	-47.7%
Transfer/Reinstatement	138.50	163.00	2150.00	17.7%
Adult Gaming Centre				
Provisional Statement	2000.00	2000.00	2000.00	0%
New Grant	2000.00	2000.00	2000.00	0%
New Grant where a provisional statement issued	701.00	500.00	1200.00	-28.7%
Variation	846.00	1000.00	1000.00	18.2%
Transfer/Reinstatement	138.50	163.00	1200.00	17.7%
Betting Premises				
Provisional Statement	954.00	1344.00	3000.00	40.9%
New Grant	986.00	1473.00	3000.00	49.4%
New Grant where a provisional statement issued	555.00	488.00	1200.00	-12.1%
Variation	1057.00	513.00	1500.00	-51.5%
Transfer/Reinstatement	138.50	163.00	1200.00	17.7%
Bingo Premises (++)				
Provisional Statement	2215.00	3151.00	3500.00	42.3%
New Grant	2240.00	3279.00	3500.00	46.4%
New Grant where a provisional statement issued	628.00	517.00	1200.00	-17.7%
Variation	1057.00	861.00	1750.00	-18.5%
Transfer/Reinstatement	138.50	163.00	1200.00	17.7%
Family Entertainment Centre (++)				
Provisional Statement	2000.00	2000.00	2000.00	0%
New Grant	2000.00	2000.00	2000.00	0%
New Grant where a provisional statement issued	628.00	517.00	950.00	-17.7%
Variation	846.00	861.00	1000.00	1.8%
Transfer/Reinstatement	138.50	163.00	950.00	17.7%
Copy of a licence	25.00	25.00	25.00	0%
Minor changes	39.50	46.00	50.00	16.5%
Temporary Use Notice	147.00	170.00	500.00	15.6%
Gambling Premises Annual Fees – Part B				
Existing Casinos				
Annual	1679.00	760.00	3000.00	-54.7%
Seasonal – per month*	171.00	152.00		-11.1%
New Small Casino (++)				
Annual	2265.00	1426.00	5000.00	-37.0%

Seasonal – per month*	231.00	285.00		23.4%
<u>New Large Casino (++)</u>				
Annual	2468.00	1426.00	10000.00	-42.2%
Seasonal – per month*	251.00	285.00		13.5%
<u>Adult Gaming Centre</u>				
Annual	1000.00	798.00	1000.00	-20.2%
Seasonal – per month*	160.00	160.00		0%
<u>Betting Premises</u>				
Annual	600.00	547.00	600.00	-8.8%
Seasonal – per month*	84.00	109.00		29.8%
<u>Bingo Premises (++)</u>				
Annual	1000.00	1000.00	1000.00	0%
Seasonal – per month*	167.00	273.00		63.5%
<u>Family Entertainment Centre (++)</u>				
Annual	750.00	750.00	750.00	0%
Seasonal – per month*	164.00	273.00		63.5%

*fee for each calendar month or part thereof, up to the maximum annual fee
 (++) no licences currently issued by the Council

Table 2 – Special Treatment and other licences

Licence/Application Type	Current Fee £	Proposed Fees £		% difference
Special Treatment (* fee includes first treatment room only, a supplement is payable for each additional treatment room)				
Special Treatment Grant*	852.00	<i>Part A</i>	<i>611.00</i>	3.17%
		<i>Part B</i>	<i>268.00</i>	
		Total	879.00	
Renewal*	684.00	<i>Part A</i>	<i>387.00</i>	-4.24%
		<i>Part B</i>	<i>268.00</i>	
		Total	655.00	
Variation*	153.00	<i>Part A</i>	155.00	1.31%
Transfer	144.00	<i>Part A</i>	146.00	1.39%
Occasional	203.00	<i>Part A</i>	223.00	9.85%
Additional Treatment Room	95.00	<i>Part A</i>	96.00	1.05%
Ear Piercing only				
Manicure only	152.00	<i>Part A</i>	155.00	1.97%

(ancillary)	386.00	<i>Part A</i>	390.00	1.04%
Animal Licensing (**licensees should also be required to pay the direct costs for any inspections by the Corporation of London Animal Welfare/Veterinary Services on behalf of the Council)				
Pet Shops**	192.00	<i>Part A</i> <i>Part B</i> Total	<i>123.00</i> <i>110.00</i> 233.00	21.35%
Animal Boarding/Dog Breeding** (++)	189.00	<i>Part A</i> <i>Part B</i> Total	<i>288.00</i> <i>110.00</i> 398.00	110.58%
Dangerous Wild Animals**	189.00	<i>Part A</i> <i>Part B</i> Total	<i>235.00</i> <i>110.00</i> 345.00	82.54%
Riding Establishment**	339.00	<i>Part A</i> <i>Part B</i> Total	<i>266.00</i> <i>110.00</i> 376.00	10.91%
Zoo Licence**(++)	238.00	<i>Part A</i> <i>Part B</i> Total	<i>851.00</i> <i>110.00</i> 961.00	303.78%
Performing Animal Registration	95.00	<i>Part A</i>	138.00	45.26%
Copy of certificate	33.00		33.50	1.52%
Scrap Metal Dealers				
Premises (++) Grant	529.00	<i>Part A</i> <i>Part B</i> Total	<i>282.00</i> <i>287.00</i> 569.00	7.56%
Renewal	409.00	<i>Part A</i> <i>Part B</i> Total	<i>134.00</i> <i>287.00</i> 421.00	2.93%
Variation	135.00	<i>Part A</i>	175.00	29.63%
Change of Name or Address	29.00	<i>Part A</i>	33.00	13.79%
Replacement licence	11.00	<i>Part A</i>	18.00	63.64%
Personal Grant	197.00	<i>Part A</i> <i>Part B</i>	<i>197.00</i> <i>25.00</i>	

Renewal	138.00	Total <i>Part A</i> <i>Part B</i>	222.00 <i>126.00</i> <i>25.00</i>	12.69%
Change of Name or Address	29.00	Total <i>Part A</i>	151.00 33.00	9.42% 13.79%
Replacement licence	11.00	<i>Part A</i>	18.00	63.64%
Occasional Sale (car boot sale) (++)	113.00	<i>Part A</i>	285.00	152.21%
Sunday Loading Consent	542.00	<i>Part A</i> <i>Part B</i> Total	<i>215.00</i> <i>74.00</i> 289.00	-46.68%
Near Beer (++) (current fees vary depending on capacity)	1151.00 - 5496.00	<i>Part A</i> <i>Part B</i> Total	<i>4609.00</i> <i>717.00</i> 5326.00	362.73%
Booking Office (++)	1019.00	<i>Part A</i>	193.00	-81.06%

(++) no licences currently issued by the Council

Table 3 – Sex Establishment Licences

Licence/Application Type	Current Fee £	Proposed Fees £		% difference
Sex Shop/Sex Cinema				
Grant	5884.00	<i>Part A</i> <i>Part B</i> Total	<i>4204.00</i> <i>1235.00</i> 5439.00	-7.56%
Renewal	1789.00	<i>Part A</i> <i>Part B</i> Total	<i>320.00</i> <i>1235.00</i> 1555.00	-13.08%
Variation mid term	1846.00	<i>Part A</i>	1644.00	-10.94%
Variation at renewal	480.00	<i>Part A</i>	1454.00	202.92%
Transfer	785.00	<i>Part A</i>	813.00	3.57%
Sexual Entertainment Venue (SEV) (++)				
Grant	8021.00	<i>Part A</i> <i>Part B</i> Total	<i>6015.00</i> <i>1449.00</i> 7464.00	-6.94%
Renewal	4572.00	<i>Part A</i> <i>Part B</i> Total	<i>2796.00</i> <i>1449.00</i> 4245.00	-7.15%
Variation mid term	5241.00	<i>Part A</i>	4158.00	-20.66%

Variation at renewal	1142.00	<i>Part A</i>	1454.00	27.32%
Transfer	1155.00	<i>Part A</i>	820.00	-29.00%

(++) no licences currently issued by the Council

2.12 Officers will continue to monitor ongoing administration and compliance costs for licensed premises and costs involved in processing licensing applications to ensure that the annual and application fees are set at a level which recoups the Council's costs in full.

3.0 FINANCIAL IMPLICATIONS

3.1 The changes to licence fees proposed in this report would result in an overall reduction in income of £14,736, assuming that the number of applications received is similar to the year 2015/16. This equates to 2.42 % of the total licensing budget of £609,050.

3.2 The reduction in income is made up of: Annual Fees for Gambling Licences of £6844; Special Treatment Licences of £6899; Sunday Loading Consents of £759; and Sex Shop Licences of £234.

4.0 LEGAL IMPLICATIONS

4.1 The legal implications are contained within the body of this report.

5.0 EQUALITIES IMPLICATIONS

5.1 The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010 (the Act). The contents of this report will have no adverse or negative effect/impact on any of the protected characteristics.

6.0 RECOMMENDATIONS

6.1 The Committee is asked to approve the proposed fees set out in Tables 1 - 3 for the period commencing 1 April 2017.

FOR APPROVAL

NICHOLAS AUSTIN

DIRECTOR FOR ENVIRONMENTAL HEALTH

Background papers:

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	The Local Government (Miscellaneous Provisions) Act 1982	N/A	N/A
2.	Provision of Services Regulations 2009 and EU Directive	N/A	N/A
3.	Gambling (Premises Licence Fees) (England and Wales) Regulations 2007	N/A	N/A
4.	Gambling Act (Temporary Use Notices) Regulations 2007	N/A	N/A

Officer contact:

Any person wishing to inspect the above documents should contact Miss S Dyball, Licensing Team, Council Offices, 37 Pembroke Road, London W8 6PW. Telephone 020 7341 5711.

Summary Hemming's v Westminster City Council

In 2012 Timothy Hemming and six other sex shop owners in Westminster challenged the level of licence fees set by Westminster City Council for sex shop licences by way of Judicial Review. At the time of the challenge, Westminster charged just under £30,000 per year, roughly £27,000 of which related to the running of the licensing regime. Mr Hemming argued that the term "authorisation procedures" in the Service Regulations meant that the Local Authority could only charge the costs incurred in processing the application and not any enforcement costs. In May 2012 this claim was upheld in the High Court and the Court of Appeal. However, Westminster City Council appealed to the Supreme Court, and contended that the fees charged included two elements, firstly the costs associated with processing the application, and a second element to cover the cost of running the licensing regime. The latter charge comprises both a fee for monitoring and enforcing the regime. Both elements were paid up front when the application was made.

Westminster argued that their fees were compliant with the Directive because if the application were unsuccessful, the second part would be refunded to the applicant. If the application were successful Westminster would keep all the fees charged.

As part of its judgement, the Supreme Court considered two ways in which the fees could be charged. The first, where an initial fee was charged to cover the processing of the application and, if the application was successful, a second fee would be payable for the running of the licensing regime, which could include the costs of enforcing against licensed and unlicensed persons. This was called a Type A scheme.

The second was where the applicant paid both the costs of processing the application and the costs of running the licensing regime when the application was submitted. If the application was unsuccessful the costs of running the regime would be refunded to the applicant. This was a Type B method and one which Westminster initially adopted.

The Supreme Court decided that the Type A method was compliant with both UK law and the EU Directive. A copy of the Supreme Court Judgement is embedded at the end of this report as Appendix A. However, the Court was not sure if the Type B method was compliant with the EU Directive so they referred the matter to the European Court of Justice (ECJ) for a determination.

The ECJ decided on 16 November 2016 that the Type B method of charging fees was not compliant with the EU Directive. A copy of the ECJ Judgement is embedded at the end of this report as Appendix B. The Supreme Court will need to reflect this finding in its judgment.

However, local authorities should adopt a two tier system when charging licensing fees, in line with Type A mentioned above.

Appendix A

Judgement of the Supreme Court



Appendix B

Judgement of the European Court of Justice

