

# Southend-on-Sea Borough Council

Report of Corporate Director of Place

to  
**Cabinet**  
on  
1 July 2014

Agenda  
Item No.

Report prepared by: Dipti Patel (Head of Public Protection)

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## Review of Sex Establishment Licence Fees Executive Councillor: Councillor M. Assenheim

### Part 1 Public Agenda item

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#### 1. Purpose of Report

- 1.1 The purpose of this report is to inform the Council of the implications of the Westminster City Council sex shop licensing ruling and the impact upon the Council's (SBC) fees and charges.

#### 2. Recommendation

- 2.1 **Members agree the revised fees for sex establishments' licences of £1350 for new licence applications and £1000 for a renewal from 2014/15.**

#### 3. Background

- 3.1 In October 1982, the Council resolved to adopt the new powers which had been made available by the Local Government (Miscellaneous Provisions) Act 1982 to control sex establishments, which were then defined as sex shops and sex cinemas. Premises which operated as lap-dancing clubs and similar did not come within the definition of sex establishments and therefore any necessary controls could only be put in place by reference to existing legislation, namely the Licensing Act 2003.
- 3.2 The Government deemed the controls available by virtue of the Licensing Act 2003 insufficient in relation to lap dancing clubs and similar establishments and in 2009 it introduced legislation which amended the Local Government (Miscellaneous Provisions) Act 1982 to extend the definition of sex establishments to include sexual entertainment venues. In general terms these include premises which have lap dancing, pole dancing, table dancing, strip shows and live sex shows.

- 3.3 In April 2012, the Council adopted the new provisions, which came into full effect on 1<sup>st</sup> April 2013. In Southend there are five premises that fall within the definition of sex establishments.
- 3.4 A High Court ruling in 2012 ordered Westminster City Council to repay over £1m in fees collected from sex shops in their Borough, which may have major implications for licensing authorities across the country. The Court considered the Council had breached The Provisions of Services Regulations 2009.
- 3.5 These Regulations implement the European Services Directive 2006/123/EC. Put simply the case brought against Westminster City Council established two things which are applicable to this licensing regime (and indeed other licensing processes):
- i. The Licensing Authority cannot deliberately set out to make a profit. i.e. the licensing process should be cost neutral.
  - ii. The Licensing Authority cannot charge for action taken against illegal operators, but can include reasonable fees for inspection of licensed premises.
- 3.6 Westminster has been given permission to appeal the High Court decision to the Supreme Court. At present there is no further update.

#### **4 Implications for Southend**

- 4.1 There is the strong likelihood that the Council may be formally challenged in respect of its sex establishment licence fees in the near future. It would therefore be prudent for the Council to review its sex establishment fees in light of the High Court Ruling. A number of local authorities across the country have already undertaken a review, including Westminster City Council.
- 4.2 The Council current fees for sex establishments are £6420 per annum and have remained unchanged for the past 3 years. It is proposed to make a revision to the fees as follows; a new application will attract a fee of £1350 and a renewal fee of £1000. An additional fee of £1500 will be payable by an applicant if an application proceeds to a hearing.
- 4.3 Other Licensing Authorities in our region have already reduced fees as follows:-

Chelmsford - £429 plus £2712 if a matter goes to hearing (renewal £970)  
Colchester - £1225 (renewal £320)

#### **5. Other Options**

- 5.1 It is not considered that another option exists.

#### **6 Reasons for Recommendation**

**A revision of the sex establishment fees is necessary to ensure that the Council complies with the European Services Directive 2006/123/EC.**

## **7 Corporate Implications**

### **7.1 Contribution to Council's Vision & Corporate Priorities**

The licensing objective of preventing crime and disorder are central to supporting the Council's priority of creating a safe & prosperous Southend.

### **7.2 Financial Implications**

The annual licence fees form part of the overall budget for the Council.

### **7.3 Legal Implications**

The revision to the sex establishment fees comply with the requirements of The Provisions of Services Regulations 2009 and European Services Directive 2006/123/EC.

### **7.4 People Implications**

No people implications

### **7.5 Property Implications**

No property implications

### **7.6 Consultation**

No further consultation is required

### **7.7 Equalities and Diversity Implications**

None at this stage

### **7.8 Risk Assessment**

The main risk identified is the failure to comply with the Regulations otherwise the Council may be subject to a challenge as highlighted in 4.1.

### **7.9 Value for Money**

In order to deliver value for money it is essential that the Council gets the right balance between charging for services and funding services and these fees contribute to the overall budget for the council.

### **7.10 Community Safety Implications**

The licensing objectives play a key role in reducing crime and disorder associated with licenced premises.

### **7.11 Environmental Impact**

None

## **8 Background Papers**

### **Licensing Act 2003**

### **Local Government (Miscellaneous Provisions) Act 1982 as amended**

## **9. Appendices**

None