

# Licensing and General Purposes Committee

## AGENDA

**DATE:** Monday 17 March 2014

**TIME:** 7.30 pm

**VENUE:** Committee Rooms 1 & 2,  
Harrow Civic Centre

### **MEMBERSHIP** (Quorum 4)

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**Chairman:** Councillor Mano Dharmarajah

**Councillors:**

Ramji Chauhan	Mrinal Choudhury	William Stoodley	David Gawn
Susan Hall (VC)	Kairul Kareema	Vacancy	
Manji Kara	Marikar		
Amir Moshenson	Ajay Maru		
John Nickolay	Phillip O'Dell		
Anthony Seymour	Varsha Parmar		
	Krishna Suresh		

### **Reserve Members:**

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1. Lynda Seymour	1. Bill Stephenson	1. Nizam Ismail	1. (Vacancy )
2. Mrs Camilla Bath	2. Sachin Shah	2. Krishna James	
3. Stephen Wright	3. Sasi Suresh		
4. Kam Chana	4. Sue Anderson		
5. Yogesh Teli	5. Bill Phillips		
6. Chris Mote	6. Raj Ray		

**Contact:** Manize Talukdar, Democratic & Electoral Services Officer  
Tel: 020 8424 1323 E-mail: [manize.talukdar@harrow.gov.uk](mailto:manize.talukdar@harrow.gov.uk)

# **AGENDA - PART I**

## **1. ATTENDANCE BY RESERVE MEMBERS**

To note the attendance at this meeting of any duly appointed Reserve Members.

Reserve Members may attend meetings:-

- (i) to take the place of an ordinary Member for whom they are a reserve;
- (ii) where the ordinary Member will be absent for the whole of the meeting; and
- (iii) the meeting notes at the start of the meeting at the item 'Reserves' that the Reserve Member is or will be attending as a reserve;
- (iv) if a Reserve Member whose intention to attend has been noted arrives after the commencement of the meeting, then that Reserve Member can only act as a Member from the start of the next item of business on the agenda after his/her arrival.

## **2. DECLARATIONS OF INTEREST**

To receive declarations of disclosable pecuniary or non pecuniary interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Committee;
- (b) all other Members present.

## **3. MINUTES (Pages 1 - 4)**

That the minutes of the Special meeting held on 30 July 2013 be taken as read and signed as a correct record.

## **4. PUBLIC QUESTIONS \***

To receive any public questions received in accordance with Committee Procedure Rule 17 (Part 4B of the Constitution).

Questions will be asked in the order notice of them was received and there be a time limit of 15 minutes.

**[The deadline for receipt of public questions is 3.00 pm, 12 March 2014. Questions should be sent to [publicquestions@harrow.gov.uk](mailto:publicquestions@harrow.gov.uk)**

**No person may submit more than one question].**

## **5. PETITIONS**

To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).

## **6. DEPUTATIONS**

To receive deputations (if any) under the provisions of Committee Procedure Rule 16 (Part 4B) of the Constitution.

## **7. SETTING OF FEES AND CHARGES FOR LICENSING FUNCTIONS\_ (Pages 5 - 20)**

## **AGENDA - PART II - NIL**

### **\* DATA PROTECTION ACT NOTICE**

The Council will audio record item 4 (Public Questions) and will place the audio recording on the Council's website, which will be accessible to all.

[**Note:** The questions and answers will not be reproduced in the minutes.]

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# LICENSING AND GENERAL PURPOSES COMMITTEE (SPECIAL) MINUTES

## 30 JULY 2013

**Chairman:** † Councillor Mano Dharmarajah

**Councillors:**

* Mrs Camilla Bath (2)	* Ajay Maru
* Ramji Chauhan	* Amir Moshenson
* Mrinal Choudhury	* Raj Ray (6)
* David Gawn	* Anthony Seymour
* Susan Hall	* Sachin Shah (2)
* Manji Kara	* Krishna Suresh

Kairul Kareema Marikar

\* Denotes Member present  
(2) and (6) Denote category of Reserve Members

### 102. Attendance by Reserve Members

**RESOLVED:** To note the attendance at this meeting of the following duly appointed Reserve Members:-

Ordinary Member

Councillor Phillip O'Dell  
Councillor Varsha Parmar  
Councillor John Nickolay

Reserve Member

Councillor Sachin Shah  
Councillor Raj Ray  
Councillor Camilla Bath

### 103. Declarations of Interest

**RESOLVED:** To note that there were no declarations of interests made by Members.

#### **104. Deputations**

**RESOLVED:** To note that no deputations were received at this meeting.

### **RECOMMENDED ITEMS**

#### **105. Early Morning Alcohol Restriction Order (EMRO)**

The Committee received a report of the Corporate Director of Environment and Enterprise which set out the reasons for the proposed introduction of an Early Morning Restriction Order (EMRO) in the vicinity of Stanmore Broadway.

An officer advised that the main reasons for seeking to implement an EMRO in the area were as follows:

- following changes in licensing legislation in 2012, the maximum number and duration of Temporary Event Notices (TENs) had been increased;
- many of the licensed premises in the proposed EMRO zone in Stanmore had applied for TENs during the Christmas/New Year period in 2012, which had extended opening hours of between 4.30-5.30 am;
- the police, officers in Licensing and the Out of Hours Noise teams and local Ward Councillors had received a large number of complaints during the holiday season in 2012 from residents in the vicinity of the proposed EMRO zone regarding largescale incidences of public nuisance. The public nuisance issues had probably occurred as a result of numerous licensed premises closing around the same time;
- following receipt of the complaints, additional patrols had been deployed in the Stanmore Broadway area to monitor the situation, at an approximate cost of £11,500. Other areas in Harrow did not have the same problems and had not generated the same level of complaints, and therefore the EMRO was only being proposed for the Stanmore Broadway area;
- it was a legal requirement to carry out a consultation lasting 42 days with all relevant stakeholders before an EMRO could be implemented. The consultation would be followed by a hearing if objections were received.

Following questions and comments from Committee Members, an officer advised that:

- New Year's Day was exempt from EMROs;
- there were no financial implications of the proposed EMRO, and all costs, including those associated with the consultation would be covered within the current Licensing budget;

- if agreed, this would be the first time an EMRO would be introduced in Harrow;
- if the consultation was agreed, then the Police, Licensing and Public Realm Enforcement teams would provide more detailed evidence of the public nuisance related complaints received in 2012 from residents in the vicinity of Stanmore Broadway;
- most of the premises in the proposed EMRO zone currently had licenses until 1.00 am, and these would not be curtailed, and it was proposed that they be permitted to open until 2.00 am at the latest. This would ensure that most licensed premises in the area would be vacated by 2.30 am at the latest;
- the area of the proposed EMRO zone had been identified on the basis of evidence gathered during the additional patrols in 2012 and included all the premises in the area of Stanmore Broadway which were likely to have contributed to the public nuisance issues;
- officers had invited all the licensees in the proposed EMRO zone to provide suggestions as to how to better manage the public nuisance issue in the future, however, to date, none of the licensees had contacted the council with any proposals;
- it was unlikely that the introduction of an EMRO in Stanmore would displace the public nuisance issues to neighbouring areas as premises in other parts of Harrow had requested fewer TENS for shorter durations compared to those requested by licensees in the Stanmore Broadway area;
- any future requests for TENS would be closely monitored, and the Police and Environment Services would have an opportunity to object in cases where they had concerns;
- the following two premises named on the list of premises included in the proposed EMRO zone had been included in error: the Social club, Royal National Orthopaedic Hospital and Stanmore Golf club. The officer undertook to amend the list.

A Member stated that Stanmore was a densely populated area with more people living there than in the vicinity of the Town Centre. She added that she had received numerous complaints from residents regarding public nuisance issues in the area of Stanmore Broadway during the 2012 Christmas and New Year period.

The officer added that any issues arising from the consultation would be reported to the Committee and he would keep the Chairman and Vice-Chairman updated regarding the consultation. An update report would be submitted to the Committee after completion of the consultation.

**RESOLVED:** That officers of the Licensing Authority be authorised to take the prescribed steps to seek to introduce an EMRO in part of Stanmore as set out in the officer report.

(Note: The meeting, having commenced at 7.30 pm, closed at 8.07 pm).

(Signed) COUNCILLOR MANO DHARMARAJAH  
Chairman



**REPORT FOR: LICENSING & GENERAL  
PURPOSES COMMITTEE**

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<b>Date of Meeting:</b>	17 March 2014
<b>Subject:</b>	Setting of fees and charges for Licensing Functions
<b>Responsible Officer:</b>	Caroline Bruce, Corporate Director for Environment and Enterprise
<b>Exempt:</b>	No
<b>Enclosures:</b>	Appendix 1 – Current and proposed fees and charges Appendix 2 - LGA briefing on the implication of Hemming v Westminster City Council on locally set licence fees

**Section 1 – Summary and Recommendations**

This report sets out the proposed fees and charges for licences/applications for those matters listed in this report, and as set out in appendix 1

**Recommendations:**

It is recommended that the Committee approve and set the new fees and charges for the year 2014/15

## **Section 2 – Report**

### **2.1 Background**

The following matters are covered under this report:

- Fees for applications for Special Treatment Licensing under the London Local Authorities Act 1991
- Fees for licence applications for Houses in Multiple Occupation under the Housing Act 2004
- Charges for notifications for Skip Licenses, Materials on Highway, Hoarding and scaffolding licences under the Highways Act 1980
- Fees for applications for Pet Shops, Animal Boarding/Breeding, Performing Animals and Horse Riding Establishments
- Fees for applications for Hypnotism, Sex Shops, Sexual Entertainment Venues, Poisons and Scrap Metal & Motor Salvage Operators licences.

As these are non-executive functions, which fall to the Licensing & General Purposes Committee to deal with, the proposed fees/charges should be agreed by this Committee too.

### **2.2 Financial Implications**

The fees and charges are set to recover the cost of administering the licensing functions as per legislation and guidance

### **2.3 Risk Management Implications**

Fees/charges need to be set correctly so as to comply with the requirements of the Provision of Services Regulations 2009, based on the EU Services Directive. Failure to do this could result in the Authority levying a fee that is subsequently considered to have been set unlawfully.

Legislation for each of the areas noted in this report allows the Authority to levy a fee or a charge to recover the cost of administering the process involved. Recent case law has provided further guidance as to what an authority can charge for and, as a result, the proposed fees and charges do not include any enforcement costs.

Licences have been calculated by taking in to account the cost of the total service in providing application processing, advice and compliance visits to check applications and conditions

On low volume applications, each process has been calculated via a time and motion process based on the steps taken to deal with such applications.

Special Treatment Licence fees for domestic premises have been recalculated downwards to reflect cost

## **2.4 Equalities implications**

Section 149 of the Equalities Act 2010 created the public sector equality duty.

Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.

An initial Equalities Impact Assessment (screening) has been conducted and has found no adverse impacts.

Full Equality Impact Assessments were carried out for (the introduction of) Special Treatment Licensing in 2008 and for HMO licensing in 2009, and appropriate adjustments made

## **2.5 Corporate Priorities**

The setting of the fees and charges meets the current administration priorities, and contribute to the Council vision of delivering a “Cleaner, Safer, Fairer” Harrow.

### Section 3 - Statutory Officer Clearance

Name: Jessie Man

on behalf of the\*  
Chief Financial Officer

Date: 4.3.14

Name: Paresh Mehta

on behalf of the\*  
Monitoring Officer

Date: 4.3.14

### Section 4 - Contact Details and Background Papers

**Contact:** Richard Le-Brun  
Environmental Service Manager  
[Richard.lebrun@harrow.gov.uk](mailto:Richard.lebrun@harrow.gov.uk) 020 8736 6267

#### Background Papers:

Hemmings v Westminster Case Law (re Fees & Charges not including enforcement costs)

If appropriate, does the report include the following considerations?

1.	Consultation	NO
2.	Corporate Priorities	YES

**APPENDIX 1****79. Occasional Licences (outside scope of VAT)**

Licensing Act 2003	Charges 2013/14			Proposed 2014/15			% Change
	Basic		Total	Basic		Total	
1st Day Charge -estimated Capacity (persons)							
Up to 100	81		81	81		81	0.00%
101 - 200	152		152	152		152	0.00%
201 - 300	243		243	243		243	0.00%
301 - 600	490		490	490		490	0.00%
601 - 1,000	930		930	930		930	0.00%
1,001 - 5,000	1,390		1,390	1,390		1,390	0.00%
Additional Days Charge - estimated capacity (persons)							
Up to 100	20		20	20		20	0.00%
101 - 200	40		40	40		40	0.00%
201 - 300	43		43	43		43	0.00%
301 - 600	105		105	105		105	0.00%
601 - 1,000	210		210	210		210	0.00%
1,001 - 5,000	290		290	290		290	0.00%
Prices for larger premises on application							
For one or more occasions within a period of one month							
Open space in local authority occupation and shopping centres	105		105	105		105	0.00%
Nominal fee for community event by non-profit making organisations	41		41	41		41	0.00%
Reduced fee for registered charities, religious and voluntary organisations and similar bodies	105		105	105		105	0.00%
Nominal fee for events on premises operated by the council where entertainment is given free.	70		70	70		70	0.00%
Nominal fee for occasional variation of an annual licence							
First day	41		41	41		41	0.00%
Additional days	30		30	30		30	0.00%
Additional days in one calendar month or 1/12 of the annual fee for application in that month, whichever is the lower	30		30	30		30	0.00%

Note: Nominal fee for occasional variation of an annual licence in circumstances where the Council requires public advertisement of the application. A separate fee element for veterinary inspection or other specialist inspection has been introduced for all.

80. Special Treatments	Charges 2013/14			Proposed 2014/15			% Change
	Basic		Total	Basic		Total	
London Local Authorities Act 1991							
<b>Grant of a new licence</b>							
Band A : Ear piercing only	180		180	180		180	0.00%
Band B - Aromatherapy, body massage, Champissage (Indian Head massage), Fairbane therapy/Tangent therapy, facials (basic only), Thermo auricular therapy (Hopi ear candles), holistic/remedial/therapeutic massage, Infra red, manicure (NOT NAIL EXTENSION), Marma therapy, Metamorphic Technique, pedicure, Polarity therapy, Qi Gong, Reiki, Reflexology, Shiatsu, Sports massage, Thai massage and all treatments in Band A.	360		360	360		360	0.00%
Band B (Domestic)- Aromatherapy, body massage, Champissage (Indian Head massage), Fairbane therapy/Tangent therapy, facials (basic only), Thermo auricular therapy (Hopi ear candles), holistic/remedial/therapeutic massage, Infra red, manicure (NOT NAIL EXTENSION), Marma therapy, Metamorphic Technique, pedicure, Polarity therapy, Qi Gong, Reiki, Reflexology, Shiatsu, Sports massage, Thai massage and all treatments in Band A.	290		290	145		145	-50.00%
Band C - Acupressure, Acupuncture, Bowen Technique, Colour therapy, Electrolysis, Advance electrolysis, Endermologie, Faradism, Foot Detox, Galvanism, Gyrotory Massage – G5, High Frequency, Korean Hand Therapy, Manual lymphatic drainage, Micro current therapy (non surgical face lifts), Micropigmentation (Semi Permanent Makeup), Moxabustion, Nail extensions, NAET, Rolfing, Sclerotherapy, Stone therapy, Trichology, Tui – na, Ultra sonic and all treatments in Band A and B.	550		550	550		550	0.00%

Band C (Domestic) - Acupressure, Acupuncture, Bowen Technique, Colour therapy, Electrolysis, Advance electrolysis, Endermologie, Faradism, Foot Detox, Galvanism, Gyrotory Massage – G5, High Frequency, Korean Hand Therapy, Manual lymphatic drainage, Micro current therapy (non surgical face lifts), Micropigmentation (Semi Permanent Makeup), Moxabustion, Nail extensions, NAET, Roling, Sclerotherapy, Stone therapy, Trichology, Tui – na, Ultra sonic and all treatments in Band A and B.	340	340	221	221	-35.00%
Band D - Body piercing, beading, Bio Skin Jetting, Tattoeing, Tattoo removal, Steam & Sauna Baths, Spa, Jacuzzi, Floatation tank, Hydrotherapy, Thalassatherapy & Ultra violet Tanning (Sun beds) and all treatments in Band A, B & C	730	730	730	730	0.00%
Band D (Domestic) - Body piercing, beading, Bio Skin Jetting, Tattoeing, Tattoo removal, Steam & Sauna Baths, Spa, Jacuzzi, Floatation tank, Hydrotherapy, Thalassatherapy & Ultra violet Tanning (Sun beds) and all treatments in Band A, B & C	440	440	286	286	-35.00%
Band E - Laser and intense pulse light treatments	650	650	650	650	0.00%
Band E (Domestic) - Laser and intense pulse light treatments	650	650	650	650	0.00%
<b>Variation of licence</b>	80	80	80	80	0.00%
<b>81. Pet Shops</b>					
(Pet Animals Act 1951)					
Initial registration	234	234	234	234	0.00%
Renewal	160	160	160	160	0.00%
Note: Plus fee for approved veterinary or other specialist inspection, fee structure aligned to Department of Business Innovation & Skills Guidance					

<b>82. Sex Entertainment Venue</b>						
Local Government Miscellaneous Provisions Act 1982 (as amended)						
Annual Licence New Grant	7,817	7,817	7,817	7,817	0.00%	
Renewal	4,456	4,456	4,456	4,456	0.00%	
Variation (in combination with renewal)	1,113	1,113	1,113	1,113	0.00%	
Variation (mid term)	5,107	5,107	5,107	5,107	0.00%	
Transfer	1,126	1,126	1,126	1,126	0.00%	
<b>83. Sex Shops</b>						
Local Government Miscellaneous Provisions Act 1982 (as amended)						
Initial application	6,240	6,240	6,240	6,240	0.00%	
Renewal	5,720	5,720	5,720	5,720	0.00%	
<b>84. Breeding Establishments for Dogs</b>						
Breeding of Dogs Act 1973						
(Breeding of Dogs Act 1973)						
(a) Initial Registration	260	260	260	260	0.00%	
(b) Renewal	160	160	160	160	0.00%	
Note: Plus fee for approved veterinary or other specialist inspection						
<b>85. Poisons (outside scope of VAT)</b>						
(Poisons Act 1972)						
(a) Inclusion of person on list of those entitled to sell poison	80	80	80	80	0.00%	
(b) Alteration of list	30	30	30	30	0.00%	
(c) Retention of name on list in any year subsequent to post entry	80	80	80	80	0.00%	
d) Entry of name in respect of more than one set of premises for each additional set.	80	80	80	80	0.00%	
(e) Retention of name in respect of each additional set.	80	80	80	80	0.00%	



<b>86. Immigration Inspections (outside scope of VAT)</b>							
Linked to inspection under the Housing Act 2004							
** Note: The Council responding to requests, provides a letter to the British High Commission in respect of accommodation being fit for purpose.							
Inspection of property and provision of report for immigration purposes.	130		130	135		135	4.00%
<b>87. Scrap Metal and Salvage (outside scope of VAT)</b>							
The Scrap Metal Dealers Act 2013							
** Note: The Vehicle (Crime) Act 2001 and associated Motor Salvage Operators Regulations 2002 introduced controls essentially similar to the Scrap Metal legislation. A fee is payable.							
Motor Salvage Operators Regulations 2002	234		234	234		234	0.00%
Scrap Metal dealers site licence/renewal	458		458	458		458	0.00%
Scrap Metal dealers collectors licence/renewal	255		255	255		255	0.00%
Variation of site licence	395		395	395		395	0.00%
Variation of site licence (minor variation)	79		79	79		79	0.00%
Variation of collectors licence	205		205	205		205	0.00%
Variation of collectors licence (minor variation)	79		79	79		79	0.00%
<b>88. Highways Enforcement (outside scope of VAT)</b>							
Highways Act 1980							
** Note: Skip (per month) Where a skip is identified that does not have a permit the council may issue a permit whether or not prosecution is deemed appropriate. The fee for such a 'retrospective' application is twice the initial fee. The fee for a 'retrospective' renewal application is twice the renewal fee. Officers will exercise discretion to make the standard charge where there is evidence that the company genuinely endeavoured to apply for the permit in advance.							
Skip (per month)	42		42	45		45	4.00%
Skip Renewal (per month)	36.5		36.5	40		40	4.00%
** Note: The deposit required from builders, developers, etc for the positioning of materials on the highway is £200. This deposit is fully or partially refunded, depending on any necessary repairs or reinstatement works. The change reflects increases in costs of works by contractors and protects the council if costs exceed the current amount of the deposit.							
<b>89. Building Materials on the Highway (outside scope of VAT)</b>							
Highways Act 1980							
Deposit (subject to highway damage)	210		210	218		218	4.00%
First month	80		80	83		83	4.00%
Renewal (per month)	73		73	76		76	4.00%

<b>90. Housing of Multiple Occupation</b>						
Housing Act 2004						
HMO Application	1200		1200	1200	1200	0.00%
HMO Renewal	850		850	850	850	0.00%
HMO Renewal with material change	1200		1200	1200	1200	0.00%
New Application (self contained) (per unit)	240		240	240	240	0.00%
Renewal Application (self contained)	170		170	170	170	0.00%
Renewal Application (self contained) with material change (per unit)	240		240	240	240	0.00%
<b>91. Hypnotism events</b>						
Hypnotism Act 1952						
Capacity (maximum permitted) number of persons						
up to 100	810.00		810.00	810.00	810.00	0.00%
101 - 200	1,620.00		1,620.00	1,620.00	1,620.00	0.00%
201 – 300	2,430.00		2,430.00	2,430.00	2,430.00	0.00%
301 – 400	3,240.00		3,240.00	3,240.00	3,240.00	0.00%
401 – 500	4,050.00		4,050.00	4,050.00	4,050.00	0.00%
501 – 600	4,860.00		4,860.00	4,860.00	4,860.00	0.00%
601 – 700	5,670.00		5,670.00	5,670.00	5,670.00	0.00%
701 – 800	6,480.00		6,480.00	6,480.00	6,480.00	0.00%
801 – 900	7,290.00		7,290.00	7,290.00	7,290.00	0.00%
901 – 1,000	8,100.00		8,100.00	8,100.00	8,100.00	0.00%
1,001 – 1,500	12,152.00		12,152.00	12,152.00	12,152.00	0.00%
1,501 – 2,000	16,202.00		16,202.00	16,202.00	16,202.00	0.00%
Note: Additional charges for extension of hours beyond 11pm, 10% of scale fee plus 1% for each day of extension. Prices for larger capacities on application						
<b>92. Animal Boarding Establishment</b>						
Animal Boarding Establishments Act 1963						
(Animal Boarding Establishments Act 1963)						
Initial registration	210		210	210	210	0.00%
Renewal	130		130	130	130	0.00%
Note: Plus fee for approved veterinary or other specialist inspection, fee structure aligned to Department of Business Innovation & Skills Guidance						

<b>93. Dangerous wild animals</b>						
Dangerous Wild Animals Act 1976 (Dangerous Wild Animals Act 1976)						
Initial registration	260		260	260		0.00%
Renewal	210		210	210		0.00%
Note: Plus fee for approved veterinary or other specialist inspection, fee structure aligned to Department of Business Innovation & Skills Guidance						
<b>94. Performing Animals</b>						
(Performing Animals (Regulations) Act 1925)						
Initial registration	104		104	104		0.00%
Renewal	50		50	50		0.00%
Certificate	21		21	21		0.00%
Note: Plus fee for approved veterinary or other specialist inspection, fee structure aligned to Department of Business Innovation & Skills Guidance						
<b>95. Riding Establishments</b>						
(Riding Establishments Act 1964)						
Application	80		80	80		0.00%
Note: Plus fee for approved veterinary or other specialist inspection, fee structure aligned to Department of Business Innovation & Skills Guidance						
<b>96. Scaffolding Licence</b>						
Highways Act 1980						
Deposit (subject to highway damage)	104		104	104		0.00%
Initial 3 Months	104		104	104		0.00%
Renewal (per 3 months)	104		104	104		0.00%
<b>97. Hoarding Licence</b>						
Highways Act 1980						
Deposit (subject to highway damage)	104		104	104		0.00%
Initial 3 Months	104		104	104		0.00%
Renewal (per 3 months)	104		104	104		0.00%
Inspection of Hoarding (One time charge only)	52		52	52		0.00%

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## **LGA briefing on the implication of Hemming v Westminster City Council on locally set licence fees**

10<sup>th</sup> July 2013

This briefing aims to provide councils with a summary of the recent Hemming v Westminster City Council case and the implications for councils more widely.

The case impacts on the type of costs that councils can recover through locally set licence fees and the processes councils have in place to ensure fee setting is transparent and open to scrutiny. We recommend that legal services and licensing departments use this brief to discuss the impact of the case for their council.

The LGA is interested in hearing directly from members that have concerns about the implications of the Hemming v Westminster case for their council, particularly in relation to cost recovery or where any outstanding legal issues have not been resolved by this paper. Please do contact [gwyneth.rogers@local.gov.uk](mailto:gwyneth.rogers@local.gov.uk) or [ian.leete@local.gov.uk](mailto:ian.leete@local.gov.uk) to ensure we can act effectively on your behalf.

### **Summary of Hemming v Westminster City Council**

Timothy Hemming, owner of Simply Pleasures Ltd, led a case on behalf of various sex shops contesting the level of licence fees for sex shops charged by Westminster City Council on the basis they could not be considered reasonable.

The original court ruling was given in May 2012, but this was subject to appeal and it is the Court of Appeal judgment made on 24<sup>th</sup> May 2013 that has now been established as the leading law on what costs can be taken into account when setting local licence fees.

The key issue addressed was whether the fees set by Westminster City Council complied with the requirements of the European Services Directive 2009 and the interpretation of Article 13(2) of the Directive. The Services Directive aims to make it easier for service providers to set up or offer their services anywhere within Europe and introduced a range of requirements on those issuing licences to the service and retail sector, including the provision of online applications and payments. The Services Directive also makes it clear that licence fees covered by the Directive can only be used to recover costs and should not be used to make a profit or deter service providers from entering a market.

In essence, the Hemming case questioned the lawfulness of Westminster's licence fees for sex establishments as 'charges' under the Directive and whether these were 'reasonable and proportionate to the cost of the authorisation procedures...' and did 'not exceed the cost of the procedure'.

### **The court ruling**

While the Services Directive may be clear that any charges for licences covered by the Directive must be reasonable and not exceed the costs associated with the authorisation procedures, there is no more detail on what costs can or not be included when calculating a fee.

The original hearing also considered whether Westminster City Council had made a valid determination of the licence fee for any year after the year ending on 31 January 2006, which was the last occasion that the fees were considered by the Licensing sub-committee. The judgement, accepted by the Court of Appeal, found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the Council. The judge rejected the Council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next.

In the Hemming V Westminster case, the Court of Appeal specifically considered whether the cost of investigating and prosecuting those who operate without a licence can be recovered through the licence fee paid by those operating within the system. Ultimately, was it lawful to set licence fees which reflected the council's costs of enforcing the system against *unlicensed* operators, as well as those which were licensed?

Unfortunately for Westminster, the Court of Appeal upheld the earlier decision of the Administrative Court from May 2012. It ruled that the fees set must be not exceed the costs of administering the process. As such, the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee.

This confirmed the change of approach from what was the accepted position prior to the Regulations coming into force in 2010. Then, the setting of a fee for sex establishment licences was regulated by the Local Government (Misc. Provisions) Act 1982. A 'reasonable' fee under that Act was accepted as including enforcement costs so that the system was, in effect, self- financing.

Whilst the council had sought to argue that there should be no distinction between the enforcement of licensed and unlicensed operators, particularly as licensed businesses ultimately benefit from action to tackle rogue traders and ensuring there is a level playing field in place for responsible businesses, the Judge did not agree.

He commented at paragraph 70 as follows:

"It is difficult to see how even a strained interpretation enables the cost of authorisation procedures and formalities to include the cost of prosecuting unlicensed operatives who have not applied for authorisation".

However, the Judgment makes it clear that the costs of compliance monitoring and enforcement against an applicant who has been given a license can fall within the costs of the council's authorisation procedures. Further, costs associated with monitoring the continued suitability of operators during license renewals (and, potentially, reviews) may also be included as part of the compliance process given that they relate to the terms of their licenses previously granted.

It should be noted that it is not yet clear whether this will be tested in further litigation, possibly with a reference to Europe for a definitive ruling on the meaning of the Directive.

### **What does this mean for councils?**

The LGA recommends that all councils review the costs covered by locally set licence fees in light of this judgment and ensure that they no longer reflect costs of addressing unlicensed business activity. It is clear that not being able to recover costs associated with addressing unlicensed sex establishments will have significant long term financial repercussions for Westminster City Council, however, we do recognise that the financial impact for councils more widely will vary depending on the local economy, the licensed activity and the approach taken to local fee setting in the past.

The LGA also recommends that councils take the opportunity to ensure that all locally set licence fees are based on an up to date cost recovery approach, which is established and regularly reviewed in a transparent manner that can be understood by both businesses and residents. The LGA will be publishing guidance on what can be included in locally set licence fees during the Summer 2013.

### **Further information**

Original court ruling for Hemming V Westminster  
<http://www.bailii.org/ew/cases/EWHC/Admin/2012/1260.html>

Court of Appeal ruling for Hemming V Westminster – 24<sup>th</sup> May 2013  
<http://cornerstonebarristers.com/wp-content/uploads/2013/05/Hemming-APPROVED-Judgement.pdf>

EU Services Directive  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:en:pdf>

BIS guidance on the EU Services Directive  
<https://www.gov.uk/eu-services-directive>

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