

To: General Purposes Licensing Committee

Date: 14 June 2010 Item No:

Report of: Head of Environmental Development

Title of Report: Review of Sex Shop Licence Fee

Summary and Recommendations

Purpose of report: To review the fee charged for the grant / renewal / transfer of sex shop licence.

Report Approved by:

Finance: Gillian Chandler

Legal: Daniel Smith

Policy Framework: Improving local environment, economy and quality of life and public safety.

Recommendation:

Committee is recommended to request that the Head of Environmental Development submits a further report at the next General Purposes Licensing Committee providing details of the costs to administer and enforce such establishments, in order to determine an appropriate fee.

1. INTRODUCTION

- 1.1 Following consultation by the Adult Industry Trade Association with its members regarding the fees charged by Licensing Authorities for a sex shop licence (Appendix), a challenge to the fee currently charged by this Authority has been received from one of our licensed premises.
- 1.2 Many other Licensing Authorities have also received the same challenge to the level of fee they charge to licence such establishments, and have therefore sought advice from their own respective Committees in order to provide clarity in the costing of their fees.

2. FEES

- 2.1 The requirement under statute is that license fees should be sufficient to cover the costs of the Council in administering the licensing function.
- 2.2 The principal which governs the fixing of fees is contained within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 19 which states that:

“An applicant for the grant, renewal or transfer of licence under this Schedule shall pay a reasonable fee determined by the appropriate authority”.

- 2.3 At present, Oxford City Council has set the level for an annual fee for the grant / renewal / transfer of a sex shop licence at £8,000.

3. CONSIDERATIONS

- 3.1 In considering the costs involved in administering a licence, it is necessary to take into account all necessary compliance visits as guided by the mandatory Regulator's Compliance Code which was approved by Parliament under Section 23 of the Legislative and Regulatory Reform Act 2006.
- 3.2 The Code was produced in response to the Hampton Review of the UK's regulatory system, which proposed the principles of better regulation based on a risk-based approach and proportionality to regulatory enforcement.
- 3.3 Amongst other issues, the Code requires regulators (such as the Council as the licensing authority) to consider:
- **Supporting economic progress:** Performing regulatory duties should not impede business productivity.
 - **Risk assessment:** Undertaking a risk assessment of all their activities.
 - **Information and advice:** Providing information and advice in a way that enables businesses to clearly understand what is required by law.
 - **Inspections:** Only performing inspections following a risk assessment, so resources are focused on those least likely to comply.
- 3.4 The Licensing service operates within the Regulator's Compliance Code and acts proportionally in applying the law and securing compliance. This involves being consistent in approach, targeting enforcement action, being transparent about how the regulator operates and what those who are regulated may expect.

- 3.5 These principles will apply both to enforcement in particular cases and to the management and direction of enforcement activities as a whole.
- 3.6 All visits must be made on a risk assessed basis and inspections and compliant premises must not be targeted any more than necessary. Unnecessary visits to compliant premises could easily risk judicial review as the Authority could be considered to have acted outside the Regulator's Compliance Code.
- 3.7 If there was a requirement that, in the event of a licence being issued, the establishment should be inspected on a quarterly basis, this would have to be made clear at the time the licence was issued and the reasons why this requirement was being imposed.

4. Recommendations

- 4.1 The Committee is recommended to request that the Head of Environmental Health investigates the costs applicable in administering and enforcing a Sex Establishment Licensing, and provides a report to the next General Purposes Licensing Committee with details of the findings.

Name and contact details of author: Julian Alison
(01865) 252381
jalison@oxford.gov.uk

Background papers:
Version: 1.0

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Dear Sir / Madam

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
SCHEDULE 3 Section 2 CONTROL OF SEX ESTABLISHMENTS 19 Fees

The Adult Industry Trade Association (AITA) is contacting you in regards to the pending demise of UK Licensed Sex Shops, fundamentally seeking your support for lower Sex Establishment Licence Fees.

AITA has been established since 2002 and represents numerous adult trades including many of the UK's biggest retailers, wholesalers, publishers, manufacturers, distributors, mail order and internet companies as well as many smaller businesses.

By far the biggest source of complaints received by the Association has come from our Licensed Sex Shop Members who are now facing tremendously difficult trading conditions.

There are approximately 350 Licensed Sex Shops across the UK many now parts of national chains with many cities having multiple outlets. Regulation and enterprise has seen a vast improvement in terms of appearance and standards. They employ about 2,000 workers and support an estimated 5,000 supplier jobs; they trade successfully alongside many other retail outlets, and stock a wide range of goods which appeal to a broad cross section of the adult shopping population.

Licensed Sex Shops have now had many years of trouble free trading and they should not be confused with illegal sex shops that still blight some parts of the country.

Over the last three years the World Wide Web has totally changed the way that consumers purchase adult products and has had a dramatic declining affect on all our Licensed Sex shops. Not encumbered with regulation the internet offers lower prices and more choice, particularly from overseas sites offering un-censored adult material (DVD's) into this country.

Our Members now face a multitude of problems including the following:

- The unfairness of the excessively high fees charged by Local Authorities for a Sex Shop Licence.
- The additional and high cost of BBFC R18 certification.
- The inability to sell R18 DVD online or via mail order.
- Enormous competition from the new IT and broadcast routes to market such as the internet, downloads, streaming, mobile phones, hotel TV and IP TV etc.
- Over regulation – too many out of date and unnecessary Licence conditions restricting trade.
- The sheer volume of availability of adult products, their providers, none of whom pay UK licence or certification fees, has forced prices down to an almost unviable low. Astute consumers are finding they can actually source an endless supply of adult material absolutely free.
- The huge influx of foreign street sellers and counterfeiters.
- Illegal and unlicensed shops continue to trade.
- Added to this UK consumer spending is noticeably down.

Unlike other retail trades who have set up web-sites to provide an online service for their customers, our Members who are reluctant to complain to the Authorities about high Licence Fees have found themselves trapped in the ramification of legislation, **paying a high price to trade, when they no longer have an exclusive situation with adult DVD and can not compete on the internet due to rules in the Video Recording Act.** Local Authorities appear to be oblivious to these conditions and have continued to increase License fees.

AITA is duty bound to advise all Local Authorities that market conditions have changed considerably and high Licence Fees can not be sustained without having an adverse effect on the whole of the UK adult industry. There is a serious danger that many of these small but important and legitimate businesses could reduce dramatically leaving the majority of demand to be fulfilled on an unregulated basis.

The number of Licensed Sex Establishments that peaked at just over 400 shops in 2005/6 has decreased to be between 340 and 350 outlets, should this number fall any lower then the whole production, certification and distribution of R18 films, already uneconomic, will cease. Before now three popular UK film companies have either gone into liquidation or have ceased to produce any new R18 films and many others are under extreme pressure to survive.

Local Authorities have considerable discretion when it comes to fixing fees for Licence applications. That discretion comes from both established case law and from guidance given by Central Government.

The principal which governs the fixing of fees is contained within schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 19 which states; **Fees; "An applicant for the grant, renewal or transfer of licence under this Schedule shall pay a reasonable fee determined by the appropriate authority"**. This rule has obviously been abused in its interpretation over the years and the fees are now unrealistic and irrelevant to the purpose that was originally intended.

Unfortunately the Act does not contain any statutory definition of the word "reasonable". To find the definition we have to rely upon case law. The case which helps us is R v Greater London Council Ex-Parte Rank Organisation (1982). **In summary the case defines "reasonable" by examining the costs of administration of the licensing scheme. The case concludes by saying that the Local Authority has considerable discretion to fix fee levels, so long as the revenue does not exceed the cost of administration and provided that appropriate allowances are granted to charities.**

This case raises the issue of transparency. It is very difficult to know how a Local Authority calculates the precise cost of administering a licensing scheme. However it is quite clear that other businesses such as Betting Shops, Pubs and Taxis requiring similar administration are considerably cheaper.

The subject has been considered by Central Government and the Home Office have issued a circular (ref no: 13/2000) which deals with this topic.

Paragraph 1 of the circular makes it clear that the guidance contained within the document applies to the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 6 confirms the principals which are set out within Crown v London Council Ex-Parte Rank Organisation. The circular continues to indicate at paragraph 7 that there is potential for Local Authorities, if they establish a rigid fee structure for this, then this could be unfair in individual cases.

The crucial part of the circular is paragraph 9 where the following guidance is issued;

"Local Authorities should be prepared to charge lower fees than those proposed in their fee structure where this is justified. This is particularly relevant to repeat events where knowledge of the organisers and venue is good and little work is required of the Local Authority. In those cases especially, they should keep in mind the potential impact on venues and performers of high fee levels."

The declining change in the market place and potential disappearance of the only legal route to market for UK consumers caused by the unregulated internet based supply should be considered as a justifiable reason for departing from the rigid fee structure imposed by many Local Authorities.

What is also of concern to AITA is that if businesses cease to trade because of the prevailing economic climate, assuming that the costs of the licence scheme are divided equally between the number of licences issued by a particular Local Authority, the burden in terms of fees could be raised for the remaining licence holders.

In the last year one chain of ten shops has gone into liquidation and many other shops are up for sale or closing down. Councils worried about the loss of revenue caused by reduced license fees should note that in one town both of its licensed shops closed leaving then with no revenue and no regulated consumer outlet for adults. Although some cynics may be pleased about this, we at AITA believe there has never been a more important time since the emergence of the www to have a sufficient number of legitimate outlets for the safe sale of adult material to the public.

AITA like Central Government is concerned over the explosion of un-licensed and un-censored adult material and the extremes of such available via the internet which inadvertently harbours the new underground for extremes of sex and violent media.

The Government and Local Authorities and Licensee's must come together to provide a walled garden around the UK in which British consumers can safely buy approved adult products away from exposure to these extremes and risks of offshore web sites.

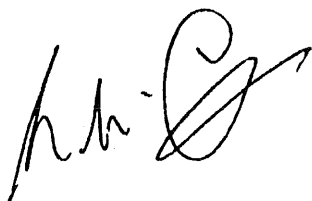
Licensed Sex Shops are the platform for this and should be maintained and protected with new regulations and with reasonable fees. Trials for online R18 via download and streaming are already taking place with the BBFC but all routes to market need satisfactory regulation.

AITA are seeking your support and lobbying of the Government to provide the necessary legislation for the safe sale of R18 DVD online and we welcome any further dialogue you may have on the subject.

In the current market it is totally unfair for our Members to have to challenge Licence Fees. Chain store operators would have to challenge numerous Authorities and small operators just cannot afford the time out and the Legal costs. In light of this AITA urge all Authorities to take urgent action to drastically reduce Licence Fees to genuinely reasonable and legitimate level without our Members having to take legal action.

Licence Fees should be no more than those set by the Government for the Licensing of Pubs. There being no good reason to justify a higher amount being a "reasonable fee".

It is absolutely essential that Local Authorities adopt a sympathetic approach to these fees to save the UK Licensed Sex Shops from demise and maintain a regulated market place.



Mike McCann
Chairman

Correspondence;
The Secretary, Adult Industry Trade Association
The General Managers Office, New Connaught Rooms, 61-65 Great Queen Street, London, WC2B 5DA

Tel 0191 527 3133 www.aita.co.uk info@aita.co.uk