
Licensing & Regulatory Committee

7 January 2020

Name of Cabinet Member:

Not Applicable

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

Not applicable

Title:

Fee Setting for: -

Sex Establishment Licence (Waiver)

Hypnotism Licence

Is this a key decision?

No

Executive Summary:

This report seeks to:

1. Inform the Committee of legislative powers to enable fee setting for Sex Establishment Licence Waivers and the proposed fee; and
2. Inform the Committee of legislative powers to enable fee setting for an application to hold a performance of Hypnotism and the proposed fee.

Recommendations:

The Licensing & Regulatory Committee is recommended to:

1. Consider and approve the proposed fee for: -
 - I. An application to waive the requirement to hold a Sex Establishment Licence, and
 - II. An application for the Performance of Hypnotism within the Local Authority area
2. Authorise the Head of Planning and Regulation to conduct an annual review of the fees and, where appropriate, amend if necessary.

List of Appendices included:

None

Other useful background papers:

1. Local Government (Miscellaneous Provisions) Act 1982
- 2 Hypnotism Act 1952
3. European Union Services Directive
4. Regulation 18 of the Provision of Services Regulations 2009

Other Useful documents

None

Has it been or will it be considered by Scrutiny?

Not applicable

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

Not applicable

Will this report go to Council?

Not applicable

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Report title:

**Fee Setting for: -
Sex Establishment Licence (Waiver)
Hypnotism Licence**

1. Context (or background)

- 1.1 In February 2019 and April 2019 respectively, two reports were presented to the Licensing and Regulatory Committee; one to approve the grant of an application to waive the requirement for a Sex Establishment Licence, and the other to grant an application for a performance of hypnotism in the Local Authority area. Both applications were approved.
- 1.2 A recommendation was made by the Committee in February to investigate the possibility of charging a fee to cover the administration costs of dealing with an application for a waiver as currently there is no fee payable for this. Officers also noted that there was no fee for an application for a performance of Hypnotism.
- 1.3 Officers have now conducted a thorough investigation into setting fees to grant a waiver from the requirement to hold a Sexual Establishment Licence and a licence under the Hypnotism Act 1952 and this report provides an overview of the legislative requirements which will be considered alongside the proposed fees.
- 1.4 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, makes provision for the Council to grant a waiver from the requirement to hold a Sex Establishment Licence in any case where it considers that, to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit. Such applications must be considered by the Licensing & Regulatory Committee.
- 1.5 Section 2(1) of the Hypnotism Act 1952, states that no person shall give an exhibition, demonstration or performance of hypnotism on any living person, or in connection with an entertainment to which the public are admitted, whether on payment or otherwise at any place, unless the Licensing Authority has authorised that exhibition, demonstration or performance.
- 1.6 The overriding purpose of the licensing regime is to protect the public, and to protect and support business practices. The Council has the power to set fees for certain licensing regimes and the Local Government (Miscellaneous Provisions) Act 1982, and the Hypnotism Act 1952, gives Councils the power to set their own local fees that will enable it to recover its reasonable costs.
- 1.7 Furthermore, the European Services Directive (2016/123/EC) came into force in December 2009 and states that charges incurred by applicants under an authorisation scheme “must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities (effectively the costs to administer the process).

2. Fee Methodology

- 2.1 For both types of applications, the Council may require an accompanied fee. When fixing fees, the Council may consider all costs incurred by the authority in carrying out their licensing function. The proposed fees have been calculated by assessing the time it takes for each step in the process from the receipt to the determination of the application, and any site visits that take place thereafter. The calculation also takes account of any time

taken by consultees, such as the Responsible Authorities to consider an application, and other internal departments such as Governance Services and Legal. The time taken is assigned to different roles and the costs based on hourly rates. There is also a proportion attributed to the fees, which takes account of management time. This time will include the costs of running the department and services involved with delivering a function associated with the relevant licensing regimes.

- 2.2 Based on Officer time and the procedural requirements necessary, the proposed charge for an application to waive the requirement for a Sex Establishment Licence is £800. This fee is irrespective of the time period the waiver is required for. This fee will cover the time it takes for Officers to consider the application, produce reports, attend the Licensing & Regulatory Committee meeting and to cover all other costs involved with delivering this function. This fee is proportionate and is calculated on a cost recovery basis. The fee will be reviewed on an annual basis.
- 2.3 Based on Officer time and the procedural requirements necessary, the proposed fee for an application for a performance of hypnotism is £120. This would cover all administration costs associated with processing and determining the application, plus site visit(s) on the performance date. This fee is proportionate and is calculated on a cost recovery basis. The fee will be reviewed on an annual basis.
- 2.4 It should be noted that a benchmarking exercise has been undertaken of fees set by other local authorities for applications of these types.

3. Options considered and recommended proposal

- 3.1 There are two options available for the Licensing and Regulatory Committee to consider:
 - 3.1.1 Option 1 is to authorise the proposal contained within this report to charge the applicant(s) a fee to recover the reasonable costs of the service(s) provided;
 - 3.1.2 Option 2 is to continue to process these applications free of charge.
- 3.2 Your Officer recommends Option 1 in order to enable the Council to recover its reasonable costs in processing and determining applications of these types.

4. Results of consultation undertaken

- 4.1 No consultation is required to be undertaken however, it is recommended that whenever fees are set, an explanation is provided to potential applicants as to how the fees are calculated in order to promote transparency and reasonableness.

5. Timetable for implementing this decision

- 5.1 If approved, the decision to charge a fee for both applications will take immediate effect.

6. Comments from Executive Director of Finance and Corporate Services

- 6.1 Financial implications

The proposed fees have been calculated on a full cost basis, which considers both the direct and indirect costs associated with processing and determining the applications. When setting fees there is a statutory requirement to consider the income received for a licensing scheme compared to the overall cost of delivering the scheme. The fee level

must be set so that it does not generate income in excess of the cost of associated delivery.

6.2 Legal implications

The Council can set its own fees for licensing functions. The fee must be reasonable and cover the Council's costs in the administration of those types of applications.

Both regimes are covered by the European Union Services Directive. Regulation 18 of the Provision of Services Regulations 2009, which implements the EU Services Directive into UK law requires that fees charged in relation to authorisations must be proportionate to the effective cost of the process. The proposed fees must recover the Council's costs in relation to the licensing process and cannot be used as an economic deterrent or to raise revenue. The proposed fees will enable the Council to recover its reasonable costs. The fees will be reviewed annually, and an appropriate reduction or increase applied for the following financial year should a loss or surplus occur.

7. Other implications

None

7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint or Coventry Sustainable Community Strategy

It is the Regulatory Services team's responsibility to ensure that members of the public in Coventry are not put at risk. This contributes to the Council's core aim of ensuring that citizens live longer healthier lives. Cost recovery of such applications will mean that costs are not taken from existing budgets.

7.2 How is risk being managed?

Decisions of Regulatory Services are open to challenge by way of Judicial Review. The fees and charges are designed to ensure our compliance with legislation minimising the risk of legal challenge.

7.3 What is the impact on the organisation?

None

7.4 Equalities / EIA

This decision will not affect the service provision and therefore details of the Equalities Impact Assessment are not relevant in this case.

7.5 Implications for (or impact on) climate change and the environment

None

7.6 Implications for partner organisations?

None.

7.7 Human Rights Act Implications

None.

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Appendices

None