

Sex Establishment (Sex Shops) Fees for 2010/11 to 2013/14 and restitution amounts following Court Order.

Supplemental report

This report sets out a revised calculation for “Excess A”.

The Court of Appeal has ordered the City Council to determine a reasonable fee for the licensing year 1st February 2010 to 31st January 2011, having regard (inter alia) to “the need to bring into account any previous surpluses or deficits”.

The main report before the Committee takes account of surpluses and deficits from the financial year 06/07 onwards. That is because in the High Court Keith J said:

“But in determining the licence fee for 2011/12, how far back has the Council got to go? Only to the previous licensing year? Or all the way back to the year ending 31 January 2007? Or even further back than that? There is no basis for going further back than the year ending 31 January 2007 because it looks as if the fee for the previous year had been calculated taking into account a deficit from the previous year: after all, the report on which the fee for that year had been based had referred to the increase in “the costs of licensing” in the previous year. At the same time, I see no basis for not going back to the year ending 31 January 2007. Any surplus or deficit from the previous year would have had to have been carried forward, and even if the Council had decided to keep the fee at the same level for that year, any surplus or deficit from that year and the previous year would again have had to have been carried forward” (emphasis added).

He then made an Order, the relevant paragraph of which stated:

“the Defendant shall ... determine a reasonable fee for the years ending 31st January 2007, 31st January 2008, 31st January 2009 and 31st January 2010 ... having regard to the need to carry forward from year to year any previous surpluses or deficits from each of the said years.” (emphasis added)

The Order made by the Court of Appeal does not require a fee for any year before 10/11 to be set, but refers to bringing into account “any” previous surpluses or deficits in setting the fee for that year – although the question of how far back one goes was not the subject of appeal or any discussion in court.

In correspondence following the publication of the report, solicitors acting for the claimants have argued that the Council is required to take into account, in setting the fee for 10/11, the surpluses on the account from the years 04/05 and 05/06, given the terms of the Court of Appeal order.

In relation to the 04/05 surplus, the position is that the Licensing Sub-Committee in September 2004 set a fee for the 05/06 year which took into account any deficit or surplus, and that was accepted by Keith J in the High Court in the passage referred to above, in which he expressly stated that there was no basis for going further back than the year ended 31st January 2007.

However, although the combined effect of the High Court and Court of Appeal judgments is that we do not need to re-determine a fee prior to year ending 31 January 2007, the requirement to determine a licence fee in each year was premised on our conducting the exercise we would/should have conducted on a year on year basis, which would have included, in each year, having regard to (and carrying forward) any surplus/deficits. It is therefore considered that it is necessary to take into account the surplus existing on the account in 05/06, which was £86,231

This report therefore recommends a revised calculation for “Excess A” (the amount to be paid to the claimants in respect of amounts overpaid to 10/11), by amending the relevant paragraphs of the main report as follows:

Amendment to paragraphs 6.1 to 6.7

6. 2010/11 Fees (Excess A)

6.1 The Court of Appeal order sets out the requirements for the Council to set a reasonable fee for the licensing year between 1st February 2010 and 31st January 2011. The order also requires the Council to take into account and surplus or deficit from 2005/06 to 2009/10. Following this determination the Council must reimburse any surplus and pay interest as directed within the order. For the purposes of the order the Judge has referred to this as Excess A.

6.2 Officers recommend a fee for new and renewal applications received for the licensing year 2010/11 as set out in the table below.

	New	Renewal
Processing/Administration	£1,516	£849
Compliance	£1,202	£1,202
Fee	£2,718	£2,051
Licences issued for full term	15 Renewals	
Total Recoverable Fee 2010/11	£30,768	

6.3 The following table shows the income and costs per financial year between 2005/06 to 2008/09 financial years and 10 months of 2009/10.

Financial	Applications		Total Actual	Adjustment (£1,250 per	Actual Income	Surplus / Deficit
	New	Renewals				

Years			Cost	licence)	Received	
05/06	1	19	£446,021	-£25,000	£523,257	£111,236
06/07	1	18	£451,137	-£23,750	£525,624	£98,237
07/08	0	16	£500,758	-£20,000	£524,454	£43,696
08/09	1	16	£522,804	-£21,250	£489,054	-£12,500
09/10	0	15	£415,358	-£18,750	£363,808	-£32,800
					Total Surplus	£207,869

- 6.4 An adjustment has been made in favour of licensees prior to 2011/12 in the sum of £1,250 per licence. That adjustment reflects the fact that it was accepted by the Council in the course of the High Court proceedings that the number of visits undertaken to each licensed sex shop per annum was between 1 and 3 as opposed to the 4 visits that had previously been understood to have been undertaken per premises per annum.
- 6.5 The following table shows the deduction of the re-evaluated fee income as set out in paragraph 6.2, the adjustment referred to above, total income actually received by the Council from these 15 applications and the overall surplus amount that is to be repaid to the licensees with interest.

Re-evaluated fee income (15 x £2,051)	£30,768
Adjustment (£1,250 x 15)	-£18,750
Total re-evaluated fee income minus adjustment for 2010/11	£12,018
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Surplus amount from 2005/06 – 2009/10	£207,869
Re-evaluated fee income	-£12,018
Total 2005/06 – 2009/10 surplus minus adjusted re-evaluated fee income	£195,851
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Actual income for licence year 2010/11	£436,530
Total 2005/06 – 2009/19 surplus following deductions for costs	£195,851
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Total amount of surplus to be reimbursed which is made up of the income received and surplus following deductions for costs from previous years (Excess A)	£632,381

- 6.6 The following table sets out the interest to be charged against Excess A as prescribed within the court order.

Period	Rate	Interest
01/02/10 – 18/04/11	1% over base rate per annum	£11,487
19/04/11 – 16/05/12	10% over base rate per annum	£71,676
17/05/12 – 30/06/13	8% over base rate per annum	£60,379
Total Interest		£143,542

- 6.7 The total reimbursement sum for Excess A is £775,923. The Council intends to reimburse those that held licences for the full period with £51,728 by the 30th

June 2013 except for those who have applied to renew their licence this year where the fee level will be deducted from their reimbursement (see paragraphs 10 below). The intended reimbursement date of the 30th June 2013 is reflected in the final interest rate period calculation.

Amendments to paragraphs 10.2 and 10.3

10.2 The total repayment of £1,417,246 has been partly provided for in the 2012/13 financial accounts. A provision of £1.1m was raised.

Period	Surplus	Interest	Restitution Amount
Excess A (2010/11 plus surplus from previous years)	£632,381	£143,542	£775,923
Excess B (2011/12)	£352,185	£74,658	£426,843
Excess C (2012/13)	£186,758	£27,722	£214,481
Total restitution			£1,417,246

10.3 The excess liability £317,246 has been raised as a red risk in the corporate risk register and will be moved to 2013/14 revenue budgets once the total liability is realised.