

PUBLIC PROTECTION COMMITTEE

7 FEBRUARY 2017

Present: County Councillor Parry(Chairperson)
County Councillors Murphy, Boyle, Goddard, Kelloway and
Simmons

30 Apologies for Absence

Apologies for absence were received from Councillor Manzoor Ahmed.

31 Declarations of Interest

None received.

Committee observed a two minute silence in respect of Councillor Derrick Morgan.

32 Minutes

The minutes of the Public Protection Committee and Public Protection Sub-Committee held on 10 January 2017 were agreed as a correct record and signed by the Chairperson.

33 Licence Fees: European Court of Justice Ruling - Hemming v Westminster

The purpose of the report was to advise Members of the recent European Court of Justice ruling in the Hemming v Westminster Case. The ruling has implications for the way in which local authorities can charge for the cost of administering and enforcing certain licensing regimes.

The European Services Directive aims to make it easier for service providers to operate across Europe. One of its key provisions is that licence fees can only be used to cover the costs associated with the administration of licensing regimes covered by the Directive. Local Authorities therefore cannot make a profit from licensing or deter service providers by levying unreasonable fees. The Directive is enacted in the UK by the Provision of Services Regulations 2009, and Regulation 18(4) provides that charges under an authorisation scheme must be reasonable and proportionate to, and not exceed, the cost of the procedures and formalities under the scheme. The Services Directive **does not** currently apply to taxi related fees (drivers, operators and vehicles), or fees and charges under the Gambling Act 2005 and Licensing Act 2003.

In 2012, sex shop owner Timothy Hemming instituted legal proceedings against Westminster City Council contesting that the level of licence fees charged by Westminster City Council were not reasonable. Westminster's sex shop fees were in excess of £26,000; the fees included costs for the management of the regime and enforcement activities against unlicensed operators; it was this latter aspect of the fee that Hemming asserted not to be 'reasonable and proportionate' under the legislation. The case has progressed subsequently through the upper Courts and the findings of each Court are summarised below.

The Administrative Court (and subsequently the Court of Appeal) ruled that licence fees must not exceed the cost of administering the licensing process and that this could not include the costs of enforcement against unlicensed operators. However, the judgement

did make it clear that the costs of compliance and enforcement against licensed operators could be included in the licence fee.

Westminster Council appealed the decision of the Court of Appeal and, in April 2015, the Supreme Court overturned the Court of Appeal's decision and made it clear that local authorities could set their fees at a level that would enable them to recover the full costs of managing and enforcing the licensing regime, including the costs incurred in proceedings taken against unlicensed operators.

The Supreme Court also gave consideration to how such fees should be structured. It identified two different approaches to charging licence fees:

- Type A - An application fee is charged to cover the authorisation procedures involved in the processing of the application, then successful applicants are charged an additional fee that covers the running costs and enforcement of the licensing regime.
- Type B – The applicant is charged one fee upfront that covers all costs of the application process, and running/enforcement costs of the licensing regime. If the applicant is unsuccessful the portion of the fee that covers the running/enforcement costs is refunded to the applicant.

The Supreme Court had concerns about whether the fee structure identified as Type B was compatible with the EU Services Directive and felt that reference to the European Court of Justice was necessary for clarification.

The ECJ ruled that the Type B approach of fee setting (outlined in 2.5 above) was not compatible with the EU Services Directive, arguing that the Directive

'precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of an authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.'

As with many other local authorities, the current position in Cardiff is that fees are charged in a Type B approach with all costs included in the initial application. It is extremely rare for applications under these licensing regimes to be refused a licence, however a refund would be given in those circumstances.

The ECJ ruling presents a number of issues for Local Authorities in discharging duties under certain licensing regimes. Licensing Authorities now need to consider how to structure their fees under the Type A approach as mentioned in 2.5 above. The judgement suggests that there should be 2 separate fees in place; one to cover the authorisation costs e.g. the cost involved in receiving and considering an application, and an additional fee only paid by successful applicants to cover the running and enforcement of the licensing regime.

It is worth noting that the Supreme Court view – which still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received:

In light of the ECJ judgement, the Shared Regulatory Service will, in consultation with legal services, begin a review of the process of issuing licenses and the associated fees to ensure compliance with the Services Directive. Local authorities are awaiting further

guidance from the Local Government Association and Government on this matter. It is envisaged that any changes to fee structures will be in place by June 2017.

RESOLVED: That the report be noted and Committee receive a further report on this matter to ensure the Councils licensing processes reflect those advocated by the European Court of Judgement.

34 Control of Street Trading - Consent Streets

Members were advised that Street Trading is controlled by Schedule 4 of the Local Government (Miscellaneous Provisions) Act, 1982.

The Act provides that a local authority may by resolution designate any street in their area as:

- i) a “prohibited street” where street trading is prohibited;
- ii) a “consent street” where street trading is prohibited without the consent of the local authority; and
- iii) a “licence street” where street trading is prohibited without a licence granted by the local authority.

The following Cardiff streets are designated as ‘prohibited’ in terms of street trading:

- Churchill Way
- Lloyd George Avenue, City Centre (excluding the section between Hemming Way Road and Roald Dahl Plas which already has consent status)
- Station Terrace, City Centre
- Windsor Place, City Centre
- Herbert Street
- Tyndall Street
- Bute Street
- Kingsway

The following streets are ‘undesigned’ in terms of street trading:

- Callaghan Square
- Bute Terrace
- Bute Crescent

It is proposed that the prohibited and undesigned streets listed in 1.3 above are changed to “consent” streets to allow trading during events/activities organised by or in partnership with the City of Cardiff Council. However only part of Bute Street is to be designated a consent street between its junction with Callaghan Square to its junction with Bute Terrace/Custom House Street, the remainder of the street would remain a prohibited street.

City Centre Consents

Consent streets allow trading to take place on a flexible basis. Trading on a consent street can only take place when the authority has issued a “consent” to a trader on a particular date to cover a short period of time; normally around 8 hours. Examples of street trading consents are to allow trading for the home matches in the 6 Nations rugby

tournament.

Cardiff Council's Event's Team have identified that the streets listed in paragraph 1.3 may be used as event sites in the future, and changing the street designations to consent street would give the flexibility to allow trading to take place in those areas. Creating consent streets still retains restrictions over unauthorised street trading as it is an offence to trade in a "consent" street without a street trading consent issued by the Council.

It is therefore recommended that the street designations of those streets listed in paragraph 1.3 above are changed "consent" streets, so that street trading consents can be issued as part of events/activities organised by or in partnership with the City of Cardiff Council.

In order to avoid causing obstruction, nuisance or interference with other persons living, working or using the street, any trading on these streets will be on a temporary basis during organised events. As with the current position with St Mary Street/High Street and City Centre events it envisaged that the Licensing Section will only accept applications from traders that have received permission to trade at the events from the Council's Event's Team or City Centre Management.

RESOLVED:

- i. That the Committee indicated its intent to designate the following street as Consent Streets for the purpose of street trading:
 - Churchill Way
 - Lloyd George Avenue, in its entirety
 - Station Terrace, City Centre
 - Windsor Place, City Centre
 - Herbert Street
 - Tyndall Street
 - Part of Bute Street between its junction with Callaghan Square to its junction with Bute Terrace/Custom House Street
 - Bute Terrace
 - Bute Crescent
 - Kingsway
 - Callaghan Square

- ii. That the Director of Legal, Governance & Monitoring Officer, be authorised to publish a legal notice of the Committee's intention and report to the Committee in due course so that it may consider passing the necessary resolution.

35 Date of Next Meeting

The next meeting of the Public Protection Committee is scheduled to take place on 7 March 2017.