

# **West Lancashire Borough Council**

## **Statement of Sex Establishment Licensing Policy**

**February 2013**

## Introduction to this Policy Statement

For the first time, a national licensing scheme exists for the entire range of sex establishments. Legislation has responded to our changing society, where the public representation of sex has become more prevalent through advertising and popular culture. However, this change may also cause concern to many members of the public. Notwithstanding individual morality, many may take the view that the presence of such premises damages the character of an area, prevents further commercial potential or could lead to exploitation and reinforcement of damaging stereotypes.

The role of the Council as Licensing Authority is not to take a moral stance, but to assess these arguments in a local context, while aiming to ensure regulatory balance. Parliament has made it lawful to operate a sex establishment and such businesses are a legitimate part of the retail and leisure industries. However, it is appropriate that the Licensing Authority set out its objectives and the means by which application processes can address potential concerns. In contrast to other licensing legislation, the Council is not under an obligation to publish a policy for sex establishment licensing. However, by publishing such a document, the Council can clearly state the needs of its own area and dictate the requirements for licensed operations.

Without such a document, the Council could not set out the controls to deter or enforce against rogue operators or to impose conditions on licensed operations to ensure they are run by the right people to the right standards.

Before establishing this Policy, the Council undertook a consultation exercise, which aimed to take account of the opinions of all who could be affected by the legislation. The consultation took place from the 22<sup>nd</sup> June 2012 until the 17<sup>th</sup> September 2012 and has helped to shape this final version of the Policy. This Policy Statement will be reviewed at least every five years. It was agreed by the Council's Licensing and Gambling Committee on the 23<sup>rd</sup> October 2012 and by full Council on the 19<sup>th</sup> December 2012. This Policy Statement was published on the 7<sup>th</sup> January 2013 and came into force on the 11<sup>th</sup> February 2013.

Where and to what extent sex establishments may be permitted is addressed in this Policy. Our aim is to provide the means by which the arguments of commercial and individual freedom are balanced against the protection of the character of the Borough and the sensibilities of those who live and work in West Lancashire.



**Councillor James Kay**  
Chairman of the Licensing and Gambling Committee

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## **1.0 Legal Background and Rationale**

- 1.1** This Policy covers the licensing regime for Sex Establishments as contained in the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act), as amended by Section 27 of the Policing and Crime Act 2009 (the 2009 Act).
- 1.2** Whilst the provisions of the legislation are not mandatory, the Council wanted to ensure it was legislatively equipped to address the needs of the community. West Lancashire Borough Council (the Council) has therefore adopted Schedule 3 to the 1982 Act (as amended by Section 27 of the 2009 Act), which allows the Council to licence Sex Shops, Sex Cinemas and Sexual Entertainment Venues in the Borough. In this Policy Statement, such premises will be referred to as Sex Establishments. The Council is designated as the Licensing Authority (the Authority) for the purposes of the 1982 Act and is responsible for administering all of the relevant provisions in respect of Sex Establishments.
- 1.3** In addition to the adoption of Schedule 3 of the 1982 Act, the Council has also passed a resolution to determine and licence Sexual Entertainment Venues. This resolution was passed on the 21<sup>st</sup> July 2010 in accordance with paragraph 2(2) of Schedule 3 of the 2009 Act. The Council published a notice to this effect on the 30<sup>th</sup> September 2010 and the 7<sup>th</sup> October 2010. The amendments made by Section 27 of the 2009 Act to Schedule 3 of the 1982 Act came into effect from the 1<sup>st</sup> November 2010.
- 1.4** The 2009 Act also required that a 12 month transitional period be established so that any existing businesses could make suitable provisions. The transitional period began on the date the resolution was passed (21<sup>st</sup> July 2010 – the ‘1<sup>st</sup> appointed day’). Six months following the 1<sup>st</sup> appointed day was the ‘2<sup>nd</sup> appointed day’ (21<sup>st</sup> January 2011) and the day on which the transitional period ended was the ‘3<sup>rd</sup> appointed day’ (21<sup>st</sup> July 2011).
- 1.5** After the 1<sup>st</sup> appointed day, new applicants would not be able to operate as a Sexual Entertainment Venue until they had been granted a Sexual Entertainment Venue licence. The 2<sup>nd</sup> appointed day was established to ensure applications for new and existing operations could be considered together and that each could be considered on their individual merits and not on a first come first serve basis.
- 1.6** Accordingly, no applications could be determined before the 2<sup>nd</sup> appointed day. After the 2<sup>nd</sup> appointed day, the Authority could decide what if any licences should be granted. If a new applicant were to be granted a licence, it will take effect immediately. If an existing operator were granted a licence, it would not take effect until the 3<sup>rd</sup> appointed day, up to which point they would have been allowed to continue to operate under their existing Premises Licence or Club Premises Certificate.
- 1.7** Notwithstanding the content of paragraphs 1.4 to 1.6, no Sex Establishments existed in the Borough at the time of the 1<sup>st</sup> appointed day and no applications were received during the transitional period.

- 1.8** This Policy Statement sets out the approach the Authority will generally take when considering, and making decisions on, applications for Sex Establishments made under the 1982 Act - as well the enforcement of standards. The Authority may, if it considers appropriate, deviate from this Policy, and if such a deviation is taken, the Authority will provide full substantiated and justified reasons as why that decision was taken.
- 1.9** Nothing in this Policy Statement will undermine the rights of any person to apply for a Sex Establishment licence under the 1982 Act and have the application considered on its individual merits in accordance with the relevant legislation and this Policy Statement.
- 1.10** This Policy Statement shall be effective from the 1<sup>st</sup> February 2013 and shall remain in effect for five years; therefore this Policy Statement will be reviewed by the 31<sup>st</sup> January 2018.
- 1.11** This Policy Statement will also be kept under review during this five year period. The Assistant Director Community Services will maintain an Issues Log in which all issues pertaining to this Policy Statement will be recorded. Therefore the Authority will make revisions to the Policy Statement at such times as it considers appropriate, for example where relevant issues have arisen, or where matters recorded in the Issues Log indicate that that such a review is required.

## **2.0 Scope and Definitions**

**2.1** This Policy Statement covers all applications, notifications and authorisations provided by the 1982 Act for the licensing and enforcement of Sex Establishments, namely:

- Sex Shops;
- Sex Cinema;
- Sexual Entertainment Venues.

### *Sex Shops*

**2.2** This is defined in the 1982 Act as any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating:

- a) sex articles; or
- b) other things intended for use in connection with, or for the purpose of stimulating or encouraging:
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity.

**2.3** No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

**2.4** “Sex article” is defined in the 1982 Act as:

- a) anything made for use in connection with, or for the purpose of stimulating or encouraging—
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity;and
- b) anything to which paragraph 2.5 below applies.

**2.5** This Paragraph applies:

- a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and
- b) to any recording of vision or sound, which:
  - (i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
  - (ii) is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

### *Sex Cinema*

**2.6** This is defined in the 1982 Act as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which:

- a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage
  - (i) sexual activity; or
  - (ii) acts of force or restraint which are associated with sexual activity;or

- b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions,

but does not include a dwelling-house to which the public is not admitted.

- 2.7** No premises shall be treated as a sex cinema by reason only:
- a) if they are licensed under Section 1 of the Cinemas Act 1985, of their use for a purpose for which a licence under that Section is required; or
  - b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of that Act.

### *Sexual Entertainment Venues*

- 2.8** Section 27 of the 2009 Act reclassified lap dancing clubs and similar venues into a separate category of Sex Establishment called a Sexual Entertainment Venue (SEV) and gave the Council the power to regulate such venues under Schedule 3 of the 1982 Act. Paragraph 2A was added to Schedule 3 of the 1982 Act to widen the definition of a Sex Establishment to include an SEV and Relevant Entertainment.

- 2.9** An SEV is defined as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.”

- 2.10** The definition of ‘Relevant Entertainment’ is given as “any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”

- 2.11** Both definitions aim to provide a pragmatic interpretation and therefore an audience can consist of just one person. Whilst the determination of each case will be judged on its merits, this Policy Statement considers the definition of Relevant Entertainment to apply to the following forms of entertainment as they are commonly understood:

- Lap dancing;
- Pole dancing;
- Table dancing;
- Strip shows;
- Peep shows;
- Live sex shows.

- 2.12** Paragraph 2A of the 1982 Act also defines those premises that would not be classed as a SEV, namely:

- Sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act)
- Premises which provide Relevant Entertainment on an infrequent basis. These are defined as premises where:
  - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;

- b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
- c) no such occasion has lasted longer than 24 hours.
- Other premises or types of performances or displays exempted by an order of the Secretary of State.

**2.13** The matters detailed in paragraph 2.12 do not obviate a person from any other statutory requirements outside the remit of this Policy Statement.

**2.14** The 2009 Act also amended the Licensing Act 2003 (the 2003 Act) to ensure that premises for which an SEV licence is required, or held, do not also require a Premises Licence, Club Premises Certificate or Temporary Event Notice in order to provide Relevant Entertainment. This is because such entertainment is expressly excluded from the definition of 'Regulated Entertainment' found in the 2003 Act. However, if the premises also provides other licensable activities (e.g. the sale/supply of alcohol or the provision of Regulated Entertainment that is not Relevant Entertainment), they will nevertheless require the relevant authorisation under the 2003 Act.



## **3.0 Aims and Purpose**

**3.1** The Authority does not take a moral stance in this Policy Statement. The Authority recognises that Parliament has made it lawful to operate a Sex Establishment, and that such businesses are a legitimate part of the retail and leisure industries. The Authority's role is to administer the licensing regime in accordance with the law. The Council adopted the legislation to licence Sex Establishments to set out the controls to deter or enforce against rogue operators or to impose conditions on licensed operations to ensure they are run by the right people to the right standards.

**3.2** Therefore, the aims of this Policy Statement are to:

- Preserve the character of the Borough;
- Protect the public;
- Protect the staff employed in Sex Establishments;
- Promote good management standards in Sex Establishments;
- Promote gender equality.

**3.3** Each of these aims is considered of equal importance for the purposes of this Policy Statement.

**3.4** The purpose of this Policy Statement is to set out the objectives and the means by which the Authority can balance potential concerns of those who live and work in the Borough against commercial and individual freedoms established under the 1982 Act.

**3.5** The purpose of the Authority's licensing duties is the control of licensed premises and operations defined under the relevant legislation. Where conditions are attached to a licence specific, these will focus on matters that are within the control of the individual Licence Holder and will centre on the operation of the business and employees, the premises and its location.

## **4.0 The Borough of West Lancashire**

**4.1** West Lancashire Borough Council is situated in the County of Lancashire, which contains 12 District Councils and 2 Unitary Councils, and is the most southerly of the Local Authorities within the County. The Borough has a population of 110,700 (National Census 2011) and covers an area of over 34,000 hectares, a large proportion of which is good and versatile agricultural land. The Borough has two market towns: Ormskirk and Burscough, with mainly rural parishes and villages to the north and the former New Town of Skelmersdale to the east.

**4.2** West Lancashire is an attractive area and has a good transport links. The Borough benefits from social, retail and leisure links with the nearby urban areas of Liverpool, Southport, Preston and Wigan. These factors have led to Ormskirk and other parts of the Borough becoming popular areas to live for commuters.

## **5.0 Development Process / Consultation**

- 5.1** This Policy Statement has been developed after proper consultation with the public, businesses and other agencies that may be affected by the operation of Sex Establishments within the Borough. A period of public consultation operated from the 22<sup>nd</sup> June 2012 until the 17<sup>th</sup> September 2012 and the Authority has given due regard to the responses from this consultation process when formulating this Policy Statement. The list of consultees is maintained separately from this Policy Statement and is available from the Licensing Service using the contact details in Appendix 5.
- 5.2** In determining this Policy Statement, the Authority has given proper weight to the views of those it has consulted. This Policy Statement has not been developed in isolation. It has been developed in conjunction with other Lancashire Authorities and regulatory agencies involved, or affected by, the operation of Sex Establishments.

## **6.0 Integration**

- 6.1** The Authority recognises the need to avoid duplication with other regulatory regimes. However, these general duties may not adequately address the unique circumstances that may arise within the Sex Establishment licensing regime. Therefore, the Authority has created a set of standard conditions (detailed in Appendices 2 and 3) that are designed to integrate these requirements into Sex Establishment licences.
- 6.2** Given that each new application will be determined by a Sub-Committee (see Section 7.0), the Sub-Committee will approve the attachment of these standard conditions to a licence. The Sub-Committee may also amend any of these standard conditions and/or add other condition(s) it considers necessary and proportionate to address the issues presented in a given application. The Sub-Committee may use the list of potential conditions detailed in Appendix 4 for this purpose.

### *Equalities*

- 6.3** This Policy Statement also recognises Section 149 of the Equality Act 2010 and the Authority will have due regard to the need to eliminate discrimination, harassment and victimisation within the remit of the Sex Establishment licensing regime. The conditions listed in this Policy Statement are designed to reflect this requirement, whilst acknowledging the individual rights of any person who wishes to knowingly and freely work and/or perform within a Sex Establishment.

### *Crime and Disorder*

- 6.4** The Council has a responsibility under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to reduce crime and disorder in its area by working closely with other key statutory partners.
- 6.5** The Police and Justice Act 2006 amended the Crime and Disorder Act 1998 to widen the statutory responsibilities under Section 17 to include anti-social behaviour and other behaviour adversely affecting the local environment and the misuse of drugs, alcohol and other substances.
- 6.6** Accordingly, it is recognised that prevention of crime and disorder is a vital element of ensuring the quality of life in a community and an important aspect of a successful and vibrant economy. Where there is evidence that premises may be a contributor to crime and/or anti social behaviour, the Authority will use its licensing powers to do all it can to reasonably prevent it. The Authority will use its Multi Agency Licensing Team (MALT) for this purpose (Section 13.0).

### *Planning Control*

- 6.7** Applications for Sex Establishment licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. The Authority will therefore not normally process an application for permanent commercial premises unless it can be demonstrated that the premises either have an appropriate planning consent or an appropriate certificate of lawful use or development.

*The Health Act 2006 – workplace smoking ban*

**6.8** The ban on smoking in all enclosed workplaces and public spaces came into force on 1 July 2007. This ban includes Sex Establishments.

*Multi Agency Licensing Team (MALT)*

**6.9** The Authority will use its Multi Agency Licensing Team (MALT) (Section 13.0) to ensure that appropriate liaison arrangements are in place to ensure proper integration of the strategic and legislative regimes that impact upon Sex Establishment licensing.

## **7.0 Administration, Exercise and Delegation of Functions**

- 7.1** The Authority is involved in a wide range of licensing functions and the Licensing and Gambling Committee will administer the responsibility for Sex Establishments. This Committee consists of 15 elected Members and has 1 chairman and 1 vice chairman. The Committee is further divided into Sub-Committee(s) of 3 elected Members.
- 7.2** A meeting of the full Licensing and Gambling Committee will be held when it is considered necessary to review the contents of this Policy Statement, to comply with legislation or to determine any other matter of relevance to the Authority.
- 7.3** All applications for the grant of a new Sex Establishment licence will be determined by a Sub-Committee, irrespective of whether objections are received.
- 7.4** A Sub-Committee will sit to hear all other renewal, variation and transfer applications for Sex Establishment licences, if they have attracted objections against the grant of the relevant application.
- 7.5** Where no objections have been received in response to renewal, variation and transfer applications for Sex Establishment licences, these will be approved by the Assistant Director Community Services, provided he is satisfied that such approval will not be inconsistent with any aspect of this Policy Statement. If the Assistant Director is not so satisfied, the application will be referred to the Licensing and Gambling Committee (or Sub-Committee) for determination.
- 7.6** All decisions made by the Licensing and Gambling Committee (or Sub-Committee) or the Assistant Director Community Services will be confirmed in writing to the applicant and any person who has made an objection forthwith.
- 7.7** Where no objections are made, the licence will normally be granted subject to the standard conditions set out in Appendix 2 (sex shops / sex cinema) or Appendix 3 (SEVs) as appropriate.

## **8.0 Limitations on licensed premises**

**8.1** The Authority can only refuse to grant or renew a Sex Establishment licence on one or more of the specific grounds set out in Schedule 3 to the 1982 Act. These grounds are detailed in Appendix 1.

**8.2** Two of these grounds (against which there is no statutory right of appeal) are that:

(1) The number of Sex Establishments in the locality where they are situated at the time the application is made is equal to or exceeds the number which the Authority consider is appropriate for that locality;

and

(2) The grant or renewal of the licence would be inappropriate, having regard to:

- (i) The character of the locality where they are situated, or
- (ii) The use to which any premises in the vicinity are put, or
- (iii) The layout, character or condition of the premises in respect of which the application is made.

### *Number of premises*

**8.3** The first of the above grounds means that a licence application may be refused if, when a licence is considered, the number of Sex Establishments (or Sex Establishments of a particular kind) in the locality is equal to or exceeds the number that the Authority would consider appropriate for that locality. For this purpose, the Authority has set the following limits:

- The number of Sex Shops throughout the Borough is currently limited to 0 (zero);
- The number of Sex Cinemas throughout the Borough is currently limited to 0 (zero);
- The number of SEVs throughout the Borough is currently limited to 0 (zero).

### *Location of premises*

**8.4** With regard to the second of the above grounds, the Authority has decided, without prejudice to the generality of the statutory ground, that it would be inappropriate to grant or renew a Sex Establishment licence in any case where:

- The character of the locality is residential, or predominantly residential, in nature;
- The character of the locality is historically important;
- Premises in the vicinity are used for places of religious worship;
- Premises in the vicinity are used for schools, children's nurseries, youth clubs, children's centres or similar establishments which children under 18 years of age may reasonably be expected to attend;

- Premises in the vicinity are used for community facilities including, but not limited to, swimming pools, leisure centres, public parks, sheltered housing and accommodation for vulnerable people;
- The application premises are of a permanent character and do not have the necessary planning permission in place to enable the licensed activities sought to occur lawfully (paragraph 6.7).

**8.5** The term “vicinity” is not defined in this Policy Statement. Whether or not other premises / activities can be regarded as being “in the vicinity” of a proposed licensed premises is ultimately a matter of fact to be decided by the Courts in cases of dispute. The Authority will, however, primarily focus on the direct impact of the activities taking place at the proposed licensed premises on the public living, working and engaged in normal activity in the area concerned.

**8.6** The Authority cannot reject any application without first considering it – even if it breaches the limits detailed in paragraphs 8.3 and 8.4. As stated in paragraph 1.4, the Authority may, if it considers appropriate, deviate from this Policy Statement. Therefore, if an application breaches the aforementioned limits, a Sub-Committee will initially consider whether there is justification to deviate from these limits. Only where sufficient evidence exists and the Authority is able to provide full substantiated and justified reasons why a deviation away from these limits is warranted, will the application be further determined. If the Authority considers there to be insufficient evidence to justify such a deviation, the application will be refused.

#### *Waivers*

**8.7** The Authority does not consider it appropriate to permit waivers from the requirements to hold a Sex Establishment licence, except in very exceptional circumstances considered by the Licensing and Gambling Committee (or Sub-Committee).



## **9.0 Duration, cancellation and revocation of Licences**

### *Duration*

**9.1** Unless cancelled or revoked, a licence shall remain in force for one year or for such shorter period as the Authority may think fit when granting it.

### *Cancellation*

**9.2** The licence holder may submit a written request to the Authority to cancel the licence at any time.

**9.3** In the event of the death of a licence holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.

**9.4** Where the Authority is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence holder, it may extend or further extend the period in which the licence remains in force.

### *Revocation*

**9.5** The Authority may revoke a licence:

- On any of the grounds specified in paragraph 1 of Appendix 1 to this Policy Statement;
- On either of the grounds specified in paragraph 3 (a) and (b) of Appendix 1 to this Policy Statement.

**9.6** The Authority will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing and Gambling Sub-Committee. Where a licence is revoked, its holder shall be disqualified from holding or obtaining a licence in the Borough of West Lancashire for 12 months beginning with the date of revocation.

## **10.0 Applications and fees**

### *Applications*

- 10.1** The Authority has specified the form of application for the grant of a Sex Establishment licence. Applications will only be accepted using the specified application form. The application form requires detailed information about the proposed premises, its operation, management and staff. Applicants are advised to seek legal advice if they intend to submit an application to the Council. All relevant forms and guidance can be obtained from the Licensing Service (Appendix 5 – useful contacts).
- 10.2** Applications in respect of premises must state the full address of the premises. Applications in respect of a vehicle, vessel or stall must state where it is to be used as a Sex Establishment.
- 10.3** The premises may be subject to inspection by the Council's Licensing Officers (and/or any other authorised Officer) before, during and after the application process.

### *Public notices*

- 10.4** A notice must be displayed (where it can be conveniently read from the exterior of the premises) at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the application was given to the Authority.
- 10.5** Where the premises cover an area of more than 50 square metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 10.6** The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 10.7** The notice must state:
- Details of the application and activities that it is proposed will be carried on or from the premises;
  - The full name of the applicant;
  - The postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified;
  - The date, being 28 days after that on which the application is given to the Council, by which representations may be made to the Council and that objections should be made in writing;
  - That it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 10.8** A notice containing the above information must be published in a local newspaper(s) circulating in the Borough within 7 days of giving the application to the Council.

- 10.9** The applicant must give a copy of the full application to Lancashire Constabulary Licensing Unit (Appendix 5 – useful contacts) within 7 days from the date the application was submitted to the Authority.

*Variation applications*

- 10.10** The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
- 10.11** The process of applying for a variation is the same as that for applying for an initial grant, using the same application form and public Notice, except that a plan of the premises is not required unless the application involves structural alterations to the premises.

*Renewal applications*

- 10.12** The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.
- 10.13** The process of applying for renewal of a licence is the same as that for applying for an initial grant, using the same application form, except that a plan of the premises is not required.

*Transfer applications*

- 10.14** A person may apply for transfer of a licence at any time. The process of applying for transfer of a licence is the same as that for applying for an initial grant, using the same application form, except that a plan of the premises and a public Notice is not required.

*Fees*

- 10.15** The application process involves paying a non-returnable application fee which includes the cost of inspecting premises, processing the application and Committee hearing.
- 10.16** A current list of all fees relating to the licensing of Sex Establishments can be obtained from the Licensing Service (Appendix 5 – useful contacts).

## **11.0 Contested applications**

### *General*

- 11.1** The Authority will determine all applications in accordance with Section 7.0. If an application is to be determined by a Sub-Committee, a report to will be prepared which will contain all relevant information to the case. Copies of this report will be provided to all parties to the Committee hearing.
- 11.2** Each case will be determined on its individual merits and the Authority will give appropriate weight to:
- The relevant legislation;
  - The information provided by all parties to the Committee hearing;
  - This Policy Statement.
- 11.3** A legal advisor, advocate or a friend may represent any party to the Committee hearing, where such individuals choose not to represent themselves. Accordingly, in an effort to assist all parties when preparing for and participating in the Committee hearing, the Authority has prepared a hearing procedure. This procedure will be adhered to in all hearings and a copy will be provided to all parties in advance of the Committee hearing. The hearing procedure is maintained separately from this Policy Statement and is available from the Licensing Service using the contact details in Appendix 5.
- 11.4** The applicant, licence holder or person to whom a licence is intended to be transferred will be given the opportunity to attend and be heard by a Sub-Committee. In accordance with the 1982 Act, objectors do not have the right to be afforded an oral hearing, but may do so at the discretion of a Sub-Committee.
- 11.5** Whilst a Sub-Committee will usually meet in public, Members do have the power to hear certain applications in private. Where this is required all parties to the Committee hearing shall be informed.
- 11.6** A public announcement of the decision will be made at the end of the relevant Committee hearing and a written copy of the decision will be provided to all parties to the hearing. The decision determined by Sub-Committee will be accompanied with clear reasons for the decision, having regard to relevant legislation.

### *Site visits*

- 11.7** Prior to hearing an application, Members of a Sub-Committee may choose to conduct a site visit to the premises concerned and any other relevant locations. The visit is conducted to ensure Members have a full understanding of the application, the premises and the locality. To preserve the integrity of the Committee process, such visits will be carried out in accordance with a strict protocol. This protocol is maintained separately from this Policy Statement and is available from the Licensing Service using the contact details in Appendix 5.

## *Objections*

- 11.8** Objections may be made by any person to an application for the grant, renewal or transfer of a Sex Establishment licence. Objections may only be made within the period of 28 days following the date on which the application was submitted to the Authority.
- 11.9** Objections must be received in writing (including email) at the Licensing Service office (Appendix 5 – useful contacts). Objections must provide the following information as a minimum:
- The name and address of the person (or body) making the objection;
  - The grounds of the objection, including supporting evidence;
  - The signature of the person (or representative of the body) making the objection;
  - The date the objection was made.
- 11.10** The Authority will not consider any objection that does not contain the information contained in paragraph 11.9. The Authority will also not consider any objection that is of an abusive and/or defamatory nature.
- 11.11** The content of each objection will form part of a report to the Sub-Committee. All potential objectors must note that such reports are public documents and therefore subject to public scrutiny. Any matters of a confidential nature should be considered carefully. The Authority will remove any personal information (i.e. objector name and signature) from its reports; however, the Authority will provide copies of the objections to the applicant.

## **12.0 Appeals**

- 12.1** Applicants, licence holders or objectors that are aggrieved by the decision of a Sub-Committee may (depending on the precise reasons of the decision) have a right of appeal to the Magistrates' Court. An appeal would normally be lodged with the Justices' Chief Executive of the South West Lancashire Magistrates' Court within a period of 21 days, beginning from the day on which the Authority notified the applicant of the decision (i.e. the day of the Committee hearing).
- 12.2** As soon as the decision of the Magistrates' Court has been made, the Authority will not delay its implementation and necessary action will be taken forthwith unless ordered by a higher court to suspend such action (for example as a result of a judicial review).

## **13.0 Enforcement**

### *General*

- 13.1** Once licensed, it is essential that premises are maintained and operated to ensure continued compliance with the conditions of licence and relevant legislation. It is also important that illegal operations are prevented.
- 13.2** Where the Authority considers enforcement necessary, any such action will be taken in accordance with the Community Services Enforcement Policy (which is available from the Assistant Director Community Services, at the address given in Appendix 5). To this end, the key principles of consistency, transparency and proportionality will be maintained.
- 13.3** The Authority will make arrangements to monitor premises and take appropriate enforcement action. Enforcement visits will therefore be carried out as a response to a complaint(s) or as part of a proactive risk based inspection regime and/or targeted initiative.

### *Multi Agency Licensing Team (MALT)*

- 13.4** The coordination of its enforcement duties requires the Authority to maintain close, and regular, liaison with other enforcement agencies as well other bodies involved in the licensing process. The MALT has been established for this purpose and is coordinated by the Authority. All Responsible Authorities (defined under the 2003 Act) are represented at the MALT, which meets approximately every 8 weeks (or more frequently if required).
- 13.5** The MALT ensures that a coordinated and proactive approach to the issues arising from licensed operations can be formulated and delivered. However, the role of the MALT is not solely focused upon enforcement activity. It also sees the promotion and encouragement of best practice within the industry as being fundamental in the development of responsibly managed licensed operations.

### *Complaints*

- 13.6** Where possible and appropriate the Authority will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

## **Appendix 1: Reasons for refusal and revocation of licences**

1. The Council must refuse to grant or transfer a licence to:
  - (a) A person under the age of 18;
  - (b) A person who is for the time being disqualified from holding a licence;
  - (c) A person, other than a body corporate, who is not resident in the European Economic Area or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
  - (d) A body corporate which is not incorporated in the European Economic Area;
  - (e) A person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
  
2. The Council may refuse:
  - (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below;
  - (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 3 (a) and (b) below.
  
3. The grounds mentioned in paragraph 2 above are:
  - (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
  - (b) That if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
  - (c) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the council considers is appropriate for that locality (which may be nil);
  - (d) That the grant or renewal of the licence would be inappropriate having regard to:
    - i. The character of the relevant locality (which means, in relation to a premises, the locality where they are situated, and, in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment);
    - ii. The use to which any premises in the vicinity are put; or
    - iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.



## **Appendix 2: Standard conditions - sex shops / sex cinema**

### Management of the Premises

- The Licence Holder or responsible person over the age of 18 nominated by him and notified in writing to the Council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public.
- Where the Licence Holder is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change. The Council may require further written details in respect of the change of personnel to be provided within 14 days of any written request from the Council.
- A copy of the licence shall at all times be displayed in a conspicuous position in a public area inside the Premises.
- The Licence Holder shall retain control over all parts of the Premises and shall not let, licence or part with possession of any part. The Council must be notified immediately in the event that any part of the Premises is affected by the termination of a lease or other event affecting the Licence Holder’s control of the Premises.
- The Licence Holder shall ensure that the public is not admitted to any part of the Premises that has not been licensed.
- No person under the age of 18 shall be admitted to the Premises and a notice to this effect shall be displayed on the outside of the Premises. No person under the age of 18 shall be employed to work at the licensed premises.
- Neither the Licence Holder nor any employee or agent shall seek to obtain custom for the licensed premises outside or in the vicinity of the Premises, by means of personal solicitation, flyers, handouts or similar.
- Access must be afforded at all reasonable times to authorised Officers of the Council, Police and Fire Service.
- The Licence Holder shall ensure that no part of the licensed premises shall be used by prostitutes (male or female) for soliciting or for any immoral purposes.
- The Premises shall not, without the written consent of the Council, be opened and used for the purposes for which the licence is granted on Christmas Day or Good Friday.

### Conduct of the Premises

- No change from a sex cinema to a sex shop or a sex shop to a sex cinema shall be made without the written consent of the Council.
- A sex shop shall be conducted primarily for the purpose of the sale of goods by retail.
- No film or video recording (or computer game) shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to the effect.

### External Appearance

- The holder of a sex establishment licence shall exhibit on the outside of the Premises a notice containing the words ‘No person under the age of 18 allowed. People appearing to be under the age of 21 will be required to show proof of their age.’
- No external loudspeakers may be installed.

- Unless approved in writing by the Council's Assistant Director Community Services, there shall be no advertisements, notices, photographs, illustrations, statements of any kind or similar items displayed so as to be visible from the exterior of the premises.
- The design of the front elevation of the shop shall be approved by the Council which may include reference to the name of the shop, its postal address, opening hours, website address and any security grilles/shutters. The Council shall approve the final exterior signage, including the shop name which shall be of an inoffensive nature.
- The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the premises.
- There shall be a solid outer and inner door fitted with automatic closures with such devices being maintained in good working order. Both doors shall be kept closed at all times except when being used for access or egress.
- On the external facing of the inner door, there shall be displayed a notice in accordance with the requirements of the Indecent Displays (Control) Act 1981 namely:  
"WARNING Persons passing beyond this notice will find material or activities on display which they may consider indecent. No admittance to persons under 18 years of age"

#### State, Condition and Layout of the Premises

- The Licence Holder shall maintain the licensed premises in good order, repair and state of cleanliness at all times, which will include the need to maintain the front and rear of the premises in a clean and tidy condition.
- The Licence Holder shall take appropriate measures to ensure that refuse and discarded sex articles or waste stock from the premises are kept secure from public accessibility pending removal from site.
- No access shall be permitted through the Premises to any other Premises adjoining or adjacent except in the case of emergency.
- Suitable lighting shall be in operation continuously during the time that the licensed premises are open to the public. Such lighting to be sufficient to enable persons therein to see clearly all parts of the premises and to easily read any literature or notices displayed to customers.
- Alterations or additions, either internal or external, shall be not be made to the licensed premises (including any facilities, lighting, construction, decoration, building services or furnishings) without prior written consent from the Council's Assistant Director Community Services. Without prejudice to the foregoing, the areas provided for ingress, egress and circulation of the public within the premises shall not be reduced, obstructed or altered without prior written consent from the Council's Assistant Director Community Services.
- Any facilities for previewing films, video recordings or other similar material shall be physically separated from the display area of the shop in such a manner that no material being displayed by way of preview shall be visible or audible outside the preview area.
- No fastenings of any description shall be fitted upon any booth or cubicle within the sex establishment nor shall more than one person (including any employee) be present in any such booth or cubicle at any time.

### Safety and Security

- The Licence Holder take the necessary action to check the age of customers entering the shop who appear to be between the ages of 18 and 21 in order to ensure that they are not younger than 18.
- Whilst the licensed premises are in use, no door or other barrier which exists within the areas provided for ingress, egress and circulation of the public shall be locked or bolted in any manner which prevents it being opened immediately and easily.

### Goods Available in Sex Shops

- The Licence Holder shall without charge display make available free literature regarding counselling on matters related to sexual problems as may be published by the Family Planning Association, and by such other similar organisations from time to time and in particular any such material related to sexually transmitted diseases. Such literature is to be displayed in a prominent position adjacent to all payment points in the premises.

### **Appendix 3: Standard conditions - SEVs**

- The Licence Holder or responsible person over the age of 18 nominated by him and notified in writing to the Council for the purpose of managing the sex establishment (“the manager”), shall have personal responsibility for and be present on the Premises at all times when the Premises are open to the public.
- A copy of the licence shall at all times be displayed in a conspicuous position in a public area inside the Premises.
- A minimum of 2 security staff, of which at least 1 must be female, shall be employed by the Licence Holder and located in the immediate vicinity of the entrance door to the premises to assist the Licence Holder in ensuring that good order is maintained in the premises.
- Any individual employed on the Premises to conduct a security activity (within the meaning of section paragraph 2(1) (a) of schedule 2 to the Private Security Industry Act 2001) must be licensed by the Security Industry Authority.
- The Licence Holder must ensure that staff are employed to supervise the interior of the Premises including toilets whilst the premises are open for business.
- No person under the age of 18 shall be admitted to the Premises. Customers who appear to be under the age of 21 must be asked to provide photographic proof of their age. The Licence Holder must provide prominent notices at each entrance to the Premises to this effect.
- Performers and staff shall be aged not less than 18 years. The Licence Holder must maintain adequate records of the names, addresses and dates of birth of performers including adequate identity checks. Proof of age checks shall be conducted at first employment of all employees and performers. A suitable record shall be maintained of all such checks.
- The employment records and eligibility to work in the UK of all employees and performers and staff shall be checked on first employment. A suitable record shall be maintained of all such checks.
- An appropriate room shall be set aside to provide a private changing and rest area for performers to which customers are not admitted.
- The Licence Holder shall not permit the display outside of the Premises of photographs or other images which indicate or suggest that striptease or similar entertainment takes place on the Premises.
- The Licence Holder shall ensure to the satisfaction of the Assistant Director Community Services that the exterior of the premises is maintained to a satisfactory standard. At no point may performers be visible from outside of the Premises. Performers (or those implied to be performers) must not exhibit in the entrance way or in the vicinity of the premises.
- Performers shall only perform on the stage area, or to seated customers or in such other areas of the licensed premises as may be agreed in writing by the Council’s Assistant Director Community Services.
- Performers may not accept any telephone number, email address, address or contact information from any customer.
- Performers must never be alone in the company of a Customer except in an area open to the public within the Premises.
- The Licence Holder is to ensure a sufficient number of security staff are employed inside the Premises whilst sexual entertainment is provided to supervise the Performers and Customers.
- The Licence Holder must ensure that during performances of any kind to which this Licence relates:

- (1) Customers do not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment
  - (2) Customers must remain appropriately clothed at all times.
- The Licence Holder shall prepare, implement, maintain and enforce the following:
    - (1) A written code of practice for performers
    - (2) A written code of practice for all other staff
    - (3) A written policy to protect the welfare of performers
    - (4) Written rules for customers
  - Rules for customers shall be prominently displayed within the premises and displayed at each customer table and in the bar area.
  - All staff and performers shall receive training on all codes of conduct, policies and rules prior to commencing their employment or first performance. A record shall be maintained of such training.
  - The Licence Holder shall provide upon request copies of any documents reasonably required by an authorised Officer of the Council in relation to compliance with this Licence.

## **Appendix 4: List of potential conditions**

### Protection of customers:

- Entry prices and any prices for compulsory purchases (such as beverages) to be clearly displayed on the exterior of the premises.
- All charges for products and services to be prominently displayed within the premises.
- No charge shall be applied unless the customer has had the opportunity to read and understand the tariff of charge.
- Rules for customers shall be prominently displayed within the premises. In Sexual Entertainment Venues, rules must be displayed at each customer table and in the bar area.
- DVDs shall not be sold or supplied unless the DVD (a) has been passed by the British Board of Film Classification, (b) is a reproduction authorised by the owner of the copyright and (c) bears certificates to those effects.
- No films may be shown at the premises unless they have been passed by the British Board of Film Classification.

### Children / non customers:

- No customers or staff to be under 18 years old.
- The Licence Holder shall at all times keep and maintain at the licensed premises a written record of the names, addresses and dates of birth of all persons employed at the premises whether upon full or part time basis and be made available to an Authorised Officer of the Council, or Police, upon request.
- No display or advertisement shall be permitted on the exterior of the premises other than the name and / or address of the premises, the times of opening and suitable warning describing the nature of the activities of the business and that no one under 18 years of age is allowed to enter the premises.
- A 'Challenge 21' Policy shall be operated at the premises.
- A record of all public refusals shall be operated and maintained. The record shall be made available to an Authorised Officer of the Council, or Police, upon request.
- Controls on exterior advertising and signage.
- The Interior of the premises shall not be visible to passers by - i.e. the prevention of exterior visibility into the premises.
- Controls on leafleting.
- Controls on use of cruising cars to solicit customers.
- Controls on solicitation outside premises.
- Controls on other advertising.
- Staff trained in codes for conduct for performers and customers.

### Protection for performers / prevention of crime and disorder:

- A performer on any stage area must at all times wear at least a G-string during the performance.
- Performers must remain clothed in public areas and all other areas except while performing in areas specified by the Council as where sexual entertainment may be provided.
- Performers must dress fully at the end of each performance.

- The Licence Holder must ensure that during a performance:
  - (1) Customers must remain seated during the entire performance
  - (2) At least one metre separation shall be provided and enforced between performers and audience, so that staff can police a 'no contact rule'.
  - (3) Performers must not part their legs, sit or straddle the customer
  - (4) Performers must not place their feet on the seats.
  
- The Licence Holder must ensure that during performances of any kind to which this Licence relates:
  - (1) Performers may not perform any act that simulates any sexual act;
  - (2) Performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
  - (3) Performers may not use inappropriate, suggestive or sexually graphic language at any time;
  - (4) Performers must never perform with another performer;
  - (5) Performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the Performer has no intention of carrying out the act;
  - (6) There is no audience participation.
  
- A written code of conduct for performers shall be prepared, implemented, maintained and enforced at the premises.
- Performers shall receive training in the written code of conduct. A record shall be maintained of such training.
- Written rules of conduct for customers shall be prepared, maintained and enforced at the premises. Staff shall direct customers' attention specifically to the rules of conduct prior to entry to the premises.
- All staff, performer and customer codes of conduct and rules shall be prominently displayed within the premises.
- All staff and performers shall receive training on all codes of conduct and rules prior to commencing their employment or first performance. Suitable refresher training shall be provided on a [*insert frequency*] basis. A suitable record of all such training shall be maintained.
- No contact is allowed between performers and audience, before, during and after performance.
- At least one metre separation shall be provided and enforced between performers and audience, so that staff can police a 'no contact rule'.
- Controls on levels of nudity.
- Prohibition on use of sex articles.
- Prohibition of performers touching their own sexual organs.
- Performers confined to stage area.
- Segregation of audience and performers.
- No performance to standing customers.
- Exit routes for performers to be kept clear.
- No audience participation.
- All alcohol service to seated customers only.
- Control of gratuities.
- Secure dressing rooms.
- Separate sanitary facilities for performers.
- Secure exterior smoking areas for performers.
- Availability of free refreshments for performers.

- Prevention of fining of performers.
- Drug monitoring.
- Secure transport from premises.
- Qualified 'house mother' to be employed to ensure the welfare of performers.
- No photography.

#### The premises:

- The Licence Holder shall ensure that CCTV is installed and maintained to the satisfaction of Lancashire Constabulary Licensing Unit and that any images are (a) retained for a period of at least 31 days and (b) made available on request to a police officer or authorised officer of the Council.
- Suitable access and egress for disabled persons shall be provided.
- The provision and use of private booths within the premises is prohibited.
- Suitable means shall be employed to prevent of access by customers to non-public areas.
- No aspect of the premises or the licence may be altered without the consent of the Council.
- Suitable means of escape shall be provided and maintained to the satisfaction of Lancashire Fire and Rescue Service.

#### Potential Nuisance:

- The hours the premises shall be open to the public are: [*insert opening hours*]
- A notice shall be displayed prominently at each exit to the premises requesting customers to respect others and to leave the premises quietly.
- A documented dispersal policy shall be provided and maintained for the premises.
- A dedicated taxi service shall be provided for customers.
- Suitable door supervision shall be provided at all times the premises is open to the public. All door supervisors must be registered with the Security Industry Authority.

#### Legal compliance:

- Proof of age checks shall be conducted at first employment of all employees and performers. A suitable record shall be maintained of all such checks.
- The employment records and eligibility to work in the UK of all employees and performers shall be checked on a [*insert frequency*] basis. A suitable record shall be maintained of all such checks.
- Retention of payment / remuneration records shall be maintained.
- All performers shall be subject to a suitable job interview at first employment and written confirmation shall be maintained to ensure that performers are participating voluntarily. A suitable record shall be maintained.

#### Management standards:

- Training of Licence Holder and management.
- Presence of Licence Holder / written delegate at all times.
- Secure retention of CCTV recorded material and disclosure to authorised persons.
- Specific levels of door/floor supervision including performance areas.
- Training of door staff in club rules.
- Display of notices informing customers of presence of CCTV.
- Performers to sign for receipt of code of conduct.



- Prevention of solicitation.
- Maintenance of incident books, refusals books and list of any persons banned from the premises.
- The Licence Holder, or any person acting or purporting to act on his behalf, shall be responsible for ensuring that the conditions of the Licence are complied with and will be held responsible for any breach thereof.
- Admission shall be given at all reasonable times to the Police and to Authorised Officers of the Council.
- The Licence and attached conditions shall be displayed on the premises in such a position as to be readily visible for inspection.

## Appendix 5: Useful contacts

Further information on this Policy Statement or the licensing of Sex Establishments can be obtained from the Council's Licensing Service. The Assistant Director Community Services, David Tilleray, has overall responsibility for the Licensing Service.

Licensing Service:

Paul Charlson – Commercial, Safety and Licensing Manager

West Lancashire Borough Council, Robert Hodge Centre, Stanley Way,  
Skelmersdale WN8 8EE

Telephone: 01695 585015

Fax: 01695 585126

Email: [licensing.enquiries@westlancls.gov.uk](mailto:licensing.enquiries@westlancls.gov.uk)

Internet: [www.westlancls.gov.uk/licensing](http://www.westlancls.gov.uk/licensing)

Other contacts:

### **Lancashire Constabulary:**

Licensing Unit: C Division

County Police Office, St Thomas's Road  
Chorley, Lancashire PR7 1DR

Telephone: 01257 246215

Fax: 01257 246217

Email:

[anthony.bushell@lancashire.pnn.police.uk](mailto:anthony.bushell@lancashire.pnn.police.uk)

### **Planning:**

West Lancashire Borough Council  
Development Control Service  
52 Derby Street, Ormskirk  
Lancashire L39 2DF

Telephone: 01695 577177

Email: [plan.apps@westlancls.gov.uk](mailto:plan.apps@westlancls.gov.uk)