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## Fixing fixed licensing fees

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### Jurisdiction

England

### Abstract

**Local Government analysis: The Local Government Association (LGA) has called on the government to review fixed licensing fees, claiming that local authorities' costs aren't being met and that money is being diverted from vital services. Richard Arnot, partner in the licensing team at Ward Hadaway, considers the current climate for local authorities and licensees and questions whether locally-set fees are the way forward.**

### Analysis

#### Original news

Councils should not be subsidising drinks industry, says LGA LNB News 15/01/2015 44

*Authorities are diverting around £1.5m a month in order to deal with licensing applications from pubs, nightclubs and off-licences, according to the LGA. The LGA argues councils should not have to pay millions each year to subsidise the drinks industry, and says authorities should be able to set their own licensing fees in order to free up extra funds.*

#### What is the rationale behind fixed licensing fees?

One of the criticisms of the previous Licensing Act--the Licensing Act 1964--was that it exposed applicants to geographical variations in its implementation. The Licensing Act 2003 (LA 2003) sought to rectify this perceived problem. In terms of nationally fixed fees, the rationale was that there was no logic in an applicant paying, say, one fee in Berwick and a different fee in Penzance when the job done by the local authority was exactly the same. The local authority's role is entirely administrative in terms of receiving and processing an application and there should not, therefore, be any variation across the country.

#### What are local authorities' obligations as regards the licensing process? How much does this cost local authorities above the fee they are allowed to charge?

Prior to LA 2003, responsibility for administering the liquor licensing regime had sat with magistrates courts since the Middle Ages. When devising the new Act, the government at the time felt that, because the licensing role was largely administrative rather than judicial, it was more appropriate that local authorities took the reins. I do not recall at the time there being an overwhelming enthusiasm from anyone, local authorities included, for this proposal.

LA 2003 obliges applicants, either for new licences or those that wish to vary existing licences or make relevant changes, to make a formal application to the local authority. The authority will process the application, ensure it has been made correctly and therefore is capable of being progressed, will receive any objections if relevant, and ultimately, and if necessary, convene a hearing of the Licensing Committee. Hearings are only generally relevant to new applications and full variations of existing licences. The day-to-day administration of the system largely involves very straightforward applications that are not contentious.

It is not clear how local authorities calculate their actual costs but one would assume that when the fees were fixed originally these costs were reflected. How local authorities apply their budgets in terms of administration of the system is entirely up to them. It is obvious that over the past few years licensing departments have been cut to the bone reflecting a general need throughout local government to save costs. However, it is also apparent that licensing departments probably have less to do. Fewer substantive applications are being made, as a reflection of the economy generally, and more applications are being made online. In terms of total number of applications, licensing departments are certainly not busier but individual licensing officers undoubtedly will be. Any increase in costs to licensees would have to be reflected in improved efficiency and it isn't clear whether local authorities would be in a position to deliver this.

**Are there specific types of local authorities that are more affected by this than others? Is there anything they can do to streamline/make the process more cost-effective?**

I am not aware of any particular issues but it is obvious that metropolitan councils will be busier than those in rural areas. While I have sympathy with local authorities, there is probably little that can be done to streamline the process because they are doing as LA 2003 requires them to do. More is being done online which is helpful, but local authorities do have their hands tied in this respect by LA 2003. This, however, is no general criticism of the Act. It attempts to accommodate the views of often competing interests and aspires to apply the regime fairly to all.

In terms of what practical changes have been made, the aforementioned use of technology has helped but this can only probably bring marginal cost savings.

**Is the law in need of reform?**

My view is that LA 2003 is perfectly serviceable and fit for purpose so long as it is applied fairly and properly.

**Do you have any predictions for future developments in the law in this area?**

My prediction for licensing generally is that it is becoming politicised and that the influence of the health lobby will become increasingly relevant. This will result in greater enforcement and a generally tougher time for licensees. There will be pressure to increase fees on the basis of 'the polluter pays' principle which to a large part ignores the reality of the contribution licensed premises make to both our economy and our culture.

I noted with some frustration the comment made by the LGA that it was not fair that local authorities continue to subsidise licensed premises. This is outrageous. As an example, a client of mine who runs a reasonably successful bar in a northern city centre pays his local authority £130,000 per year business rates and does not even get his bins collected for that. Licensing premises contribute enormously, not only in the creation of jobs but also directly into the coffers of local authorities. Licensees are facing increased costs, for example from the late night levy, and it is often difficult to identify where those increased burdens result in improvements.

*Richard Arnot is a Partner in the Licensing department at Ward Hadaway. He has a national reputation as a licensing specialist, representing pub companies, nightclub operators, convenience stores and supermarkets, hoteliers and restaurateurs, as well as local authorities and police forces on all aspects of the law relating to the sale of alcohol and the provision of regulated entertainment. He is a former Regional Director of the British Institute of Innkeepers and a member of the Association of Multiple Licensed Retailers. He has contributed to the Licensing Review and the legal section of The Morning Advertiser.*

*Interviewed by Helen Redding.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*