



**Dr Mirza Ahmad**

**LLD (Hon) Barrister**

**Called to the Bar : 1984**

**Contact details :**  
**St Philips Chambers**  
**mobile: 07429 335 090**  
**[mahmad@st-philips.com](mailto:mahmad@st-philips.com)**

**London:**  
9 Gower Street,  
WC1E 6BY

**Birmingham:**  
55 Temple Row,  
B2 5LS

**Leeds:**  
7 Lisbon Square,  
LS1 4LY

## **“From Soho with love”**



This short article explores the potential ramifications for local government following the Court of Appeal’s ruling on 24<sup>th</sup> May 2013 in a sex shop licensing case of ***R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council*** [2013] EWCA Civ 591. In summary, local authorities will have little choice but to fundamentally review their existing fees and conditions so as to strip out the costs of enforcement against non-licensees from licensing schemes.

The briefest of facts were that the City Council, at the first hearing before Keith J on 16 May 2012, lost its case and was ordered to make restitution, dating back to 2006, of the difference between the licensing fees that it had received and those that it could have lawfully set under paragraph 19 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 - i.e. a reasonable fee for the licence.

The thrust of the judgement was that, pursuant to the implementation by the UK of Services in the Internal Market Directive 2006/123/EC by the Provision of Services Regulations 2009 SI 2009 No 2999, specified competent authorities (which includes local authorities) were required, from 28<sup>th</sup> December 2009, to communicate certain prescribed information to service providers (such as sex shop, public entertainments, liquor licences, taxi, street traders and other licensees and prospective licensees) on the authority’s licensing scheme, including the fees and conditions of licence.

Put simply, the fees and conditions must not only be reasonable, necessary and proportionate to the costs of administration of the scheme, but must not be discriminatory in effect. The case also confirmed that, pursuant to executive arrangements under the Local Government Act 2000, the policy and setting of such fees and conditions had to be by the local authority (invariably a committee or sub-committee) and not by an officer.



**Dr Mirza Ahmad's  
specialist expertise:**

- Public & Administrative Law
- Employment Law
- Commercial Litigation
- Personal Injury Law
- Direct Public Access

**Contact details :**  
**St Philips Chambers**  
**mobile: 07429 335 090**  
**[mahmad@st-philips.com](mailto:mahmad@st-philips.com)**

**Clerks team:**  
Justin Luckman  
Gary Carney  
Sam Collins

Tel : 0121 246 7001

Such fees must not, according to the law, exceed the cost of authorisation procedures and formalities – i.e. no costs of enforcement against non-licensees (investigating or prosecuting) could be included in the initial or renewal fees! In addition, Article 13(2) of the Directive makes it clear that the cost of the authorisation procedure “shall not exceed the cost of the procedure”. In other words, there can be no ‘surpluses’ generated to offset costs against other licensing or non-licensing activities of the local authority.

In the context of Westminster, the judges noted that over 90% of the sex shop licensing fees were spent on enforcing the licensing regime against operators who were not licensed and monitoring compliance against those with licences.

It is not surprising, therefore that this case is sending major shockwaves through local government -and Regulatory departments, in particular - which has been struggling, over the past 2/3 years, trying to meet ever tightening budgetary pressures created by the colossal reduction of public funding from central government due to the downturn in the world economy.

On appeal, The Master of the Rolls Lady Justice Black and Lord Justice Beatson sent a resounding confirmation of the thrust of the judgement of Keith J, save in relation to some elements of detail re the restitution process. It is impossible to see, therefore, how the Supreme Court or the ECJ - if an appeal is ever allowed on public interest grounds and on any construction of the Directive/Regulations - will come to a different decision, based upon the facts as found by the Judge at the first instance. Instead of spending further public funds that it can not afford on appeals, local government might be best **advised** to take the kiss on the cheek and get its house in order.

5<sup>th</sup> August 2013