

BRISTOL CITY COUNCIL

CONSULTATION ON STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES AND REVIEW OF STANDARD CONDITIONS FOR SEX SHOPS

THE QUESTIONS CONSULTEES ARE ASKED TO ADDRESS ARE IN CAPITAL LETTERS AND BOLD TEXT. THE CONSULTATION DEADLINE IS 19 NOVEMBER 2010.

Bristol Fawcett's comments on the conditions have been included below in red and underlined text.

INTRODUCTION

The Council is empowered to make regulations prescribing standard conditions applicable to licenses for sex establishments.

Where such regulations have been made, every such licence granted, renewed or transferred by the council shall be presumed to have been so granted, renewed or transferred subject to any applicable standard conditions unless they have been expressly excluded or varied.

In addition the Council is empowered to impose conditions on an application-by-application basis.

We think this is problematic. The imposition of conditions on an application-by-application basis should be additional to standard conditions, and this should be explicit, eg where an operator may discover a loophole and it will be necessary to address that. It should be stated that it is the Council's intention that the standard conditions will not ordinarily be excluded or varied.

The Council has made standard conditions for the control of sex shops. These conditions have been in force for some years and the Council's Licensing Committee is proposing to take this opportunity to review them.

1. CONSULTEES ARE ASKED TO COMMENT ON THE SUITABILITY OF THE CURRENT REGULATIONS FOR THE CONTROL OF ANY SEX SHOPS THAT ARE LICENSED IN BRISTOL OR THAT MAY BE LICENSED IN THE FUTURE AND TO SUGGEST ANY MODIFICATIONS THEY CONSIDER TO BE APPROPRIATE (IE WHETHER ANY EXISTING STANDARD CONDITIONS SHOULD BE VARIED OR OMITTED AND WHETHER ANY NEW CONDITIONS SHOULD BE ADDED)

The Council proposes to make regulations prescribing standard conditions that would generally apply to any licences granted renewed or transferred in respect of sexual entertainment venues. Draft regulations will be made subject of a report to the Licensing Committee in December. Members of the Licensing committee's working party are supportive of the making of standard conditions to apply to any such licences as may be granted renewed or transferred.

2. CONSULTEES ARE ASKED WHETHER THEY SUPPORT THE PRESCRIBING OF STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES AND TO GIVE REASONS FOR THEIR VIEWS.

Yes. We recommend standard conditions are applied to every licence. Inconsistently applied conditions are likely to lead to clubs pushing boundaries in order to compete with those which have less rigorous conditions and could lead to clubs with more rigorous licences challenging the conditions in an appeal. This could prove costly for the Council if it is unable to defend why there may be differences between licences.

Specific aspects of the operation of sexual entertainment venues that the council may make subject of conditions include the following:

3. IN EACH CASE CONSULTEES ARE ASKED TO COMMENT ON WHETHER THEY SUPPORT THE IMPOSITION OF SUCH CONDITIONS AS STANDARD – IE TO APPLY TO ALL SUCH LICENCES UNLESS EXPRESSLY VARIED

Conditions that:

(a) Control what relevant entertainment may be provided by reference to what is specified on the licence (ie ensuring only that which has been subject of scrutiny prior to licence may be carried on under the authorisation – e.g. unless nudity/full nudity has been specifically authorized it would not be permitted)

(b) Control where such entertainment may take place on the premises

Yes, we would recommend that no private booths, or private dance areas (including, for example, shower cubicles) can be allowed in any sex entertainment premises.

(c) Prohibit the entertainment taking place elsewhere unless specifically authorised – e.g. not in external areas; full nudity only on staged area unless specifically authorised elsewhere; there shall be no individual cubicles or rooms designed to accommodate individual persons or groups of persons where exclusive demonstrations, displays, exhibits or similar activities may take place);

Yes. A condition which specifies that there shall be no individual cubicles or rooms would be supported. The presence of private booths or rooms would compromise the safety of the performers and would make the enforcing of other conditions (such as the a minimum distance rule) impossible.

(d) require the preparation of code of conduct for performers and rules to be observed by customers

Yes, this condition would be supported but should be strengthened by a zero tolerance clause.

(e) require such to be prominently displayed

Yes, this condition would be supported.

(f) prohibit physical contact between performers and customers;

Yes, this condition would be supported.

(g) regulate the space between them (e.g. minimum one metre at all times);

This condition would be supported and is extremely important in ensuring that the safety of the performers from sexual assault is minimised (see, for example, the Holsopple report, and statement by the chair of Rape Crisis in response to the Vimax Leisure appeal in Durham).

(h) prohibit sexual intercourse or any other sex act on the premises.

Yes, this condition would be supported. We would add the simulation of sexual intercourse or of any other sex act on the premises.

(i) control opening hours.

It is entirely inappropriate for any SEV to be open in daytime hours when children may be walking past the premises.

(j) A sex establishment shall not be open to the public on Sundays or bank holidays or any public holidays.

Minimising the days of opening would minimise impact on the four licensing objectives and on gender equality.

(k) Requiring notification of any significant change of Management structure e.g. Director/Company Secretary or any other person responsible for the management of the premises.

Yes, this condition would be supported and is important to support point (8) of the draft policy – grounds for refusal and condition (n) below.

(l) Requiring a named person to be in charge of and upon the Premises during the whole time they are open to the public.

Yes, this condition would be supported.

(m) Requiring their details to be prominently displayed.

Yes, this condition would be supported.

(n) prohibiting employment of any persons who have been convicted of specified offences, e.g.

- an offence connected to a Sex establishment either licensed or unlicensed
- a sexual offence

Yes, this condition would be supported. We would suggest that the list of offences should be widened to include: “an offence of violence within the last ten years and, without limit of time, anyone convicted of any specified offence within the meaning of the Criminal Justice Act 2003 (“dangerous offender” provisions)”.

(o) Copies of the licence and the conditions attached to the licence shall be clearly displayed so that every person entering the premises can see a copy of both the licence and the conditions.

Yes, this condition would be supported.

(p) The Licensee shall retain control over all portions of the Premises and shall not let, licence or part with possession of any part of the premises.

Yes, this condition would be supported.

(q) Requiring any charge for entering the premises to be displayed outside the premises.

Yes, this condition would be supported.

(r) Prohibiting any further charge for entertainment once inside the premises.

Yes, this condition would be supported and is recommended as a means of ensuring that there is no incentive for performers to perform additional services (anecdotal evidence provided by ex lap dancers to OBJECT suggests that additional charges encourage performers to offer additional services to customers beyond those which the licence may allow).

This condition must be supported by a condition to prohibit dances in private areas as most clubs offer additional dances at additional charges in private areas to generate additional income for the dancers and the clubs.

This condition should also include the prohibition of tipping or gratuities.

(s) Controlling external appearance of the premises.

Yes, this condition would be supported.

(t) Ensuring the interior cannot be viewed from outside.

Yes, this condition would be supported.

(u) Prohibiting the display of any sign, advertising material, goods or display likely to cause an offence to persons passing the window.

This condition is supported but it is recommended that this condition is strengthened, eg by prohibiting any images of any type (including silhouettes). The "likely to cause an offence" statement is extremely subjective and thus presumably unenforceable – anything at all which denotes the nature of the activity may well be likely to cause offence.

(v) Requiring lighting to be in operation continuously throughout the premises during the whole time the premises are open as a Sexual Entertainment Venue.

This condition is supported but is recommended that it is strengthened as there is a possible loophole in this condition. There is the possibility that a venue's licence may permit it to operate as something other than a sex entertainment venue (e.g. a restaurant). To ensure that the venue is lighted and this condition is met, it is recommended that the condition is reworded to:

"Requiring lighting to be in operation continuously throughout the premises during the whole time the premises are open."

(w) Requiring the Premises to be kept in a clean and hygienic condition.

Yes, this condition would be supported.

(x) Requiring separate facilities for staff (washing, wc, smoking areas).

This condition is supported and should include changing facilities as well to ensure that the safety and dignity of the performers is maximised.

(y) Prohibiting admission by customers to any such areas.

Yes, this condition would be supported.

(z) Requiring external doors to the Sexual Entertainment Venue shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

Yes, this condition would be supported.

(aa) Ensuring means of access both to and within the Sexual Entertainment Venue for customers who are disabled.

Yes, this condition would be supported.

(bb) Ensuring admission to the premises or services provided are not withheld by virtue of a customers membership of a protected group under equalities law.

This condition should include the words "and entertainments" after "services" and before "provided".

(cc) Ensuring no breach of equalities law takes place in connection with the provision of relevant entertainment.

This condition is very problematic. It is highly likely that the very nature of the entertainment breaches those equalities provisions in that, (i) the nature of the role is inherently discriminatory and (ii) the activity is demeaning of women (almost always women) by promoting them as objects for sexual entertainment.

We believe that sex entertainment venues breach gender equality law. It is difficult to see how this condition can be applied to a licence.

We recommend that for clarification the policy adds, "As an example, recruitment policy must ensure equality in the recruitment and selection process. Managers and those involved in recruitment and staff support will be expected to have appropriate training and qualifications to enable them to meet these obligations."

(dd) Requiring consent for any change of use of any portion of the Premises.

Yes, this condition would be supported.

(ee) Requiring the Licensee to take all reasonable precautions for the safety of the public and employees.

This condition is supported and should be strengthened to include safety measures such as CCTV. Other conditions should be enforced on every licence, particularly (c), (f), (g), (r) and several other conditions relating to the facilities of the performers.

However, the only way of ensuring that safety of performers and the wider impact on women living and working in the area is to not grant a licence at all.

CCTV does not prevent crime, it simply assists in evidence gathering after a crime has been committed.

See further comments re CCTV below.

(ff) Requiring the Licensee to maintain good order on the premises at all times.

This condition is supported in order to maximise the safety of the performers and to promote the four licensing objectives.

(gg) Requiring the Licensee to ensure that the premises are not used by customers or performers for soliciting or any immoral purpose.

The use of the word "immoral" is problematic. The word "immoral" is meaningless in this context. Many people would reasonably say that the core activity within the premises is immoral, partly in view of its status in sexual entertainment per se and partly by reason of the demeaning content as mentioned above. Further, the places presumably encourage (or do not seek to discriminate against) the attendance of men who are otherwise in relationships/marriages and who would not tell their partners – which seems to be in itself a likely immoral outcome of the operation in the first place.

(hh) Prohibiting obtaining of custom for the Sexual Entertainment Venue by means of personal solicitation in the locality.

Yes, this condition would be supported.

(ii) Prohibiting leafleting promoting the establishment in the locality.

This condition is supported and should be expanded to include other forms of promotion e.g. billboards, public advertising, newspaper advertising in "family" or "community" or student newspapers.

(jj) Requiring the licensee to make available without charge literature and contact names and telephone numbers of organisations and associations that give advice and counselling on matters relating to sexual problems, family planning and sexually transmitted diseases.

If these are to be provided then we recommend that information relating to support services for rape and sexual assault are also provided

(kk) Persons appearing on stage should have direct access to the dressing room without passing through or in close proximity to the audience.

Yes, this condition would be supported.

(ll) Where performance of lap dancing/table side dancing is permitted performers must immediately dress at the conclusion of each performance.

Yes, this condition would be supported.

(mm) The licensee, performer and any person concerned in the organisation or management of the entertainment shall not encourage, or permit encouragement of the audience to throw money at or otherwise give gratuities to the performers.

This condition is supported and should be strengthened. If gratuities are paid, this can encourage performers to offer extras. It is recommended that this condition includes the clause that any customer seen passing money to a performer is ejected from the club immediately. If money changes hands the Licensing Team should be notified. See also our comments on private areas and why they make conditions effectively unenforceable.

(nn) There shall be a minimum distance of one metre between the performer and customers when relevant entertainment is being provided.

This condition would be supported and is extremely important in ensuring that the safety of the performers from sexual assault is minimised. See our comments under condition g).

The word "relevant" should be deleted from this condition. If the purpose of the establishment is to provide entertainment which involves sexualised content then all activities should be covered and this will avoid any arguments about what is and what is not "relevant".

(oo) Unless full nudity is expressly permitted under the licence performers shall at all times wear clothing that fully covers the anus and genitalia.

We can see no circumstances under which full nudity should be permitted, and therefore this condition should begin with the clause: "Performers shall at all times..." The suggestion of any opportunity to permit full nudity will be exploited by operators. We foresee a situation arising in which one or more premises have been "expressly permitted" full nudity, leading to other operators of broadly similar establishments asserting the claim that there would be no logical reason to deny them the same permission.

(pp) No telephone number, address or information leading to any further meeting may be passed from customer to dancer or vice versa.

This condition is supported. The expression "any further meeting" should be tightened to read "any further contact of any description".

(qq) Prohibiting performance by intoxicated performer.

This condition is supported, but the definition of "intoxicated" requires clarification, e.g. "any performer who has consumed any controlled drug; or alcohol above the drink drive limit of the criminal law".

(rr) Prohibiting any member of the public being admitted or allowed to remain if they appear to be intoxicated.

This condition is supported. It is suggested that the definition of "intoxicated" in the case of a customer should be further clarified. Any customer reasonably suspected of having consumed a controlled drug should not be admitted or allowed to remain. Whilst a customer may reasonably exceed the drink drive limit, the test of intoxication requires an objective element and cannot be wholly subjectively defined by the licensee. If a reasonable person would view the customer as intoxicated then they should not be admitted or allowed to remain.

(ss) Requiring all customers to remain seated during performances other than when they arrive, depart, visit the toilet or go to the bar.

This condition is supported. It may need to be added that a customer may not remain seated if they are visiting a designated smoking area, if such exists at the premises. It should be made clear that no performance should take place in, or be capable of being viewed from, a designated smoking area.

(tt) Prohibiting customers congregating in the bar area.

Yes, this condition would be supported.

- a) Requiring the display of signs such as “Any customer attempting to make physical contact with a performer will be required to leave”.

Yes, this condition would be supported.

- b) Prohibiting the performance of any sexually explicit or lewd act.

A condition of this nature requires further definition, as the purpose of sex entertainment venues is to sexually stimulate the customers through erotic dancing and stripping. Such performance in itself may well be viewed by a reasonable person as sexually explicit or lewd.

- c) Requiring SIA accredited supervision at the door and within the premises.

Yes, this condition would be supported.

- d) Requiring CCTV to be in operation throughout the premises.

This condition is supported but the CCTV should be monitored at all times. It is not sufficient to include a clause that CCTV is in operation. It is also necessary that CCTV should cover an area immediately outside the premises to a reasonable distance (to be stipulated) of any public entrance or exit. A requirement should be added that the CCTV system must be capable of retaining footage for a period of 30 days and that all footage must be retained for that period.

- e) Requiring the premises to be monitored for drug use.

This needs to be strengthened to include conditions similar to (qq) and (rr).

- f) Requiring the keeping of incident registers.

Yes, this condition would be supported.

4. ARE THERE ANY OTHER MATTERS YOU THINK SHOULD BE SUBJECT OF CONDITION?

In addition to the conditions above, we recommend that conditions are included that cover the following:

- No customers, staff or performers to be under the age of 18. A Challenge 21 policy should be mandatory.
- No stag parties to be admitted.
- A refusal book must be maintained.
- Performers to be protected while arriving at and leaving the premises, e.g. by provision of taxi services (the drivers may be specified to be female).

5. DO YOU HAVE ANY OTHER COMMENTS YOU WISH TO MAKE ABOUT STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES?

In terms of the process to be adopted by the Licensing Sub-Committee, it is submitted that any panel convened to hear SEV applications should be comprised of at least an equal number of female Councillors as male Councillors.
