

FRIDAY 24TH MAY 2013

**IN THE COURT OF APPEAL**

ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

CO39282011

**BEFORE** THE MASTER OF THE ROLLS  
LADY JUSTICE BLACK  
**AND** LORD JUSTICE BEATSON

IN THE MATTER OF a claim for judicial review

**B E T W E E N**

THE QUEEN ON THE APPLICATION OF  
1. TIMOTHY MARTIN HEMMING (T/A SIMPLY PLEASURE LTD)  
2. JAMES ALAN POULTON  
3. HARMONY LTD  
4. GATISLE LTD T/A JANUS  
5. WINART PUBLICATIONS LTD  
6. DARKER ENTERPRISES LTD  
7. SWISH PUBLICATIONS LTD

RESPONDENTS

- and -

WESTMINSTER CITY COUNCIL

APPELLANT

1. Save as set out in paragraph 2 hereof, the appeal is dismissed.
2. Paragraphs 2, 3, 4, 5 and 7 of the Consolidated Order of Keith J shall be varied as follows:

**Licensing year 2010-2011**

The Defendant shall, by 1<sup>st</sup> July 2013 determine a reasonable fee for the licensing year 1<sup>st</sup> February 2010 to 31<sup>st</sup> January 2011 for the grant or renewal of a licence to operate a sex establishment, having regard to:

- a) the need to bring into account any previous surpluses or deficits;
- b) the Defendant's reasonable outgoings for the said licensing year, in so far as the same may lawfully be charged as part of the licence fee;
- c) the sums demanded by way of licence fees and paid by the Claimants for the said licensing year;
- d) the declaration in paragraph 1 of the Consolidated Order of Keith J.

Following such determination, the Defendant shall pay to the Claimants the surplus on the account by 1<sup>st</sup> August 2013 so as to achieve full restitution of such surplus ("Excess A").

**Licensing year 2011-2012**

The Defendant shall, by 1<sup>st</sup> July 2013 determine a reasonable fee for the licensing year 1<sup>st</sup> February 2011 to 31<sup>st</sup> January



24 MAY 2013

COURT 68  
Appeal No.

C1/2012/1666



2012 for the grant or renewal of a licence to operate a sex establishment, having regard to:

- a) the Defendant's reasonable outgoings for the said licensing year, in so far as the same may lawfully be charged as part of the licence fee;
- b) the declaration in paragraph 1 of the Consolidated Order of Keith J.

Following such determination, the Defendant shall by 1<sup>st</sup> August 2013 pay the Claimants the difference between the said fees and the sums demanded by way of licence fees and paid by the Claimants for the said licensing year so as to achieve full restitution of the surplus ("Excess B").

### **Licensing year 2012-2013**

The Defendant shall, by 1<sup>st</sup> July 2013 determine afresh a reasonable fee for the licensing year 1<sup>st</sup> February 2012 - 31<sup>st</sup> January 2013 for the grant or renewal of a licence to operate a sex establishment, having regard to:

- a) the Defendant's reasonable outgoings for the said licensing year in so far as the same may lawfully be charged as part of the licence fee;
- b) the declaration in paragraph 1 of the Consolidated Order of Keith J.

Following such determination, the Defendant shall by 1<sup>st</sup> August 2013 pay the Claimants the difference between the said fees and the sums demanded by way of licence fees and paid by the Claimants for the said licensing year so as to achieve full restitution of the surplus ("Excess C").

### **Interest**

The Defendant shall pay interest to the Claimants on Excess A from 1<sup>st</sup> February 2010 until the date of repayment of such excess at the following rates:

- a. 1% over base rate per annum until 18<sup>th</sup> April 2011;
- b. 10% over base rate per annum from 18<sup>th</sup> April 2011 to 16 May 2012
- c. 8% over base rate per annum from 16 May 2012 until payment

The Defendant shall pay interest to the Claimants on Excess B from 1<sup>st</sup> February 2011 until the date of repayment of such excess at the following rates:

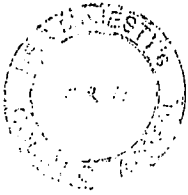
- a. 1% over base rate per annum until 18<sup>th</sup> April 2011;
- b. 10% over base rate per annum from 18 April 2011 until 16 May 2012
- c. 8 % over base rate per annum from 16 May 2012 until payment



The Defendant shall pay interest to the Claimants on Excess C from 1<sup>st</sup> February 2012 until the date of repayment of such excess at 10% over base rate per annum.

3. The Appellant shall pay 90 % of the Respondent's costs of this appeal to be assessed if not agreed.
4. The Respondent shall pay 10% of the Appellant's costs of this appeal to be assessed if not agreed.
5. Permission to appeal to the Supreme Court is refused.

*By the Court*



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IN THE MATTER OF a claim for judicial review

ORDER

Copies to:

Queen's Bench Division - Administrative Court  
Room C317  
Royal Courts of Justice  
The Strand  
London WC2A 2LL

Gosschalks  
Dx 11902  
Hull  
Ref: SLD/REK 111582.1.1

Westminster City Council  
Legal & Democratic Services  
Dx 2310  
Victoria  
Ref: LS/L/HD/87963

This order was drawn by Mr J Hebden (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr J Hebden, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7947 7896