

Committee(s):	Date(s):
Licensing Committee	15 May 2013
Subject: Gambling Act – Annual Review of Fees	Public
Report of: Director of Markets and Consumer Protection	For Decision
<p><u>Summary</u></p> <p>The City of London Corporation has to set annual fees for those premises requiring a licence under the Gambling Act 2005. The report outlines recent case law which has indicated that the process for setting the fees must be robust and that income received through the licensing process cannot exceed the cost of obtaining that income.</p> <p>The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects, other than enforcement costs which case law currently excludes, within the licensing process.</p> <p>The proposed fees will result in a small loss of income compared with previous years. However, once all licensing activities carried out by the licensing service have been re-calculated, the net result will not affect budget income targets.</p> <p>Recommendations</p> <p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agree the proposed fees for 2013/14 as set out in Appendix two (column five) to this report. 	

Main Report

Background

1. The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (the ‘Regulations’) sets out the statutory provisions and limitations for setting gambling fees.
2. The City of London Licensing Authority must determine the appropriate fees subject to a maximum as set out in the schedule to the regulations. The fee structure allows for various types of applications associated with varying classes of premises licence, many of which do not currently apply within the City of London e.g. Casinos, bingo Halls. A copy of the ‘Table of Maximum Fees’ can be seen as Appendix 1.
3. Licences are valid for life from the date of grant unless surrendered or revoked. An annual fee is due for payment within thirty days of the licence issue (effective date) and then annually thereafter.

4. Section 212 of the Gambling Act 2005 states that the licensing authority, ‘...shall aim to ensure that the income from fees of that kind [*determined by the licensing authority*] as nearly as possible equates to the costs of providing the service to which the fee relates...’.
5. A high court case held on 16 May 2012 (*R (Hemming and Others) v Westminster City Council*) concluded that the amount of the fee is required to be determined every year and further that a local authority was precluded from making a profit from the licensing regime. A full account of the fee income and expenditure would therefore need to be considered to ensure a surplus is not being made.
6. Mr Justice Keith stated in the case ‘... [*in relation to*] the steps which an applicant for a licence has to take if he wishes to be granted a licence or to have his licence renewed. And when you talk about the cost of those procedures, you are talking about the administrative costs involved, and the costs of vetting the applicants (in the case of applications for a licence) and the costs of investigating their compliance with the terms of their licence (in the case of applications for the renewal of a licence). There is simply no room for the costs of the ‘authorisation procedures’ to include costs which are significantly in excess of those costs.’ Therefore enforcement costs cannot be recouped.
7. Two important principles were established in the Hemming case:
 - That where a local authority profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;
 - That in authorisation schemes covered by the Provision of Services Regulations 2009, which the Gambling Act 2005 is, enforcement costs may not be recharged to licensed operators.

Current Position

8. The principles set out above are under appeal; however it is not known when a decision will be made. Therefore, in order to avoid possible complications arising from non-compliance with the Hemming decision, the licensing service has carried out an in-depth examination of the processes that are undertaken in order to administer the licence application/renewal and the costs of investigating compliance with any licence conditions.
9. A comparison between the current fees and the proposed fees can be seen as Appendix 2. The proposed fees have been based on full costs recovery without considering the cost of enforcement.
10. In determining the proposed fee structure for gambling premises licences the following factors have been taken into account:

- Officer time spent on processing applications including site inspections and the issue of any licence
- Officer time spent on the development and maintenance of processes and guidance notes
- Training of staff as necessary
- A percentage of the service costs such as accommodation and equipment
- Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence

11. Costs associated with the enforcement of unlicensed gambling activity have not been taken into account in setting the proposed fee structure.

Proposals/Options

12. Adopting the proposed fees set out in Appendix 2 will avoid any legal challenge similar to that experienced by Westminster City Council. Income received from setting the new fees will meet the requirements of the two principles set out in paragraph five and all other statutory obligations.

Fees set lower than those recommended will result in a budget deficit for 2013/14 as costs of administering the licence will not be fully met from income received.

Fees set higher than those recommended will result in a budget surplus i.e. an income which exceeds the cost of providing the service. This surplus will have to be carried forward into 2014/15 and taken into consideration when fees are set for that year i.e. the fees for that year will have to be reduced. Ignoring the surplus could result in the City Corporation being taken to court.

Corporate & Strategic Implications

16. To be completed.

Implications

17. Setting the recommended fees will result in 'Gambling' income for 2013/14 being £8-9k less than the budgeted income total. However, the above process has been carried out for all licensing activities carried out by the licensing service with some proposed fees producing a higher income than budgeted. Setting the recommended gambling fees will therefore not have a detrimental effect on the licensing budget with overall income targets for 2013/14 still being met.

18. Setting fees above or below those recommended will have the implications as set out in paragraph twelve above.

Appendices

Appendix I – Table of Maximum Fees

Appendix II – Proposed fees

Background Papers:

Transcript of (R (Hemming and Others) v Westminster City Council)

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