

Committee(s):	Date(s):
Licensing	21 January 2014
Subject: Gambling Act – Annual Review of Fees 2015/16	Public
Report of: Director of Markets and Consumer Protection	For Decision
<p style="text-align: center;"><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 current 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 similar income compared with previous years.</p> <p>Recommendations</p> <p>It is recommended that your Committee:-</p> <ul style="list-style-type: none"> • Agree the proposed fees for 2015/16 as set out in Appendix 2 (column four) 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 (whose findings were subsequently endorsed by the Court of Appeal) 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 includes the Gambling Act 2005, enforcement costs may not be recharged to licensed operators.

Calculation of Fees for 2015/16

8. 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. 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
10. Gambling fees for 2015/16 have been calculated on the above basis for each of a number of different types of licence. The proposed fees, which in most cases

are a small increase from the current fees reflecting increases in cost since the current charges were set, can be seen as Appendix 2.

11. The fee is made up of an administration and an inspection part. This has been apportioned taking into account the criteria listed in paragraph 9. The total cost of both parts has then been rounded up to the nearest £10 to produce the final proposed fee. For those fees where income was received by the City of London in 2013/14, the costs comprising each part can be seen in the tables below:

	Inspection Costs £	Administration Costs £	Total Costs £
New Betting Shop	241.60	617.73	859.33
Annual Fee (Renewal)	138.76	380.62	519.38
Gaming Machine Permit	0	50.00	50.00

12. Costs associated with the enforcement of unlicensed activity have not been taken into account in setting the proposed fee structure
13. The forecast number of applications for each type can be seen in the table below along with the number of licences/registrations that were actually granted. (Figures for 2014/15 are estimated)

	2013/14		2014/15
	Forecast	Actual	Forecast
New Betting Shop	2	2	1
Annual fee (renewal)	40	43	39
Gaming machine permit	25	19	20

14. The forecast for 2015/16 is that a similar number of licenses will be issued as in 2013/14 and 2014/15.

Proposals/Options

15. If fees are set lower than those recommended the result will be a deficit for 2015/16 as costs of administering the licence will not be fully met from income received.
16. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
17. Any such under or over recovery of costs from 2014/15 will be calculated after the end of that financial year and be carried forward to be taken into consideration in setting the fees for 2016/17. The deficit for 2013/14 has been taken into account when setting the fees for 2015/16. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge

Implications

18. Setting the recommended fees will result in Gambling licence estimated income for 2015/16 of £22,000, against a budgeted income of £22,000.
19. Setting fees above or below those recommended will have the implications as set out in paragraph 17 above.

Appendices

Appendix 1 – Table of Maximum Fees

Appendix 2 – Proposed fees

Background Papers:

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

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