

Committee(s)	Dated:
Licensing	27 04 2016
Subject: Gambling Act – Annual Review of Fees 2016/17	Public
Report of: Director of Markets and Consumer Protection	For Decision
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Summary

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.

The matters considered by the licensing service in setting the proposed fees are discussed and include all aspects within the licensing process.

The proposed fees will result in a similar income compared with previous years. Some particular fees have been reduced where in previous years an assumption has been made that at least one application of the type in question will go to a hearing/review. This has not happened in the past five years and so the assumption has been removed.

Recommendation(s)

Members are asked to:

- Agree the proposed fees for 2016/17 as set out in Appendix 2 (column four).

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. The decision was subsequently upheld by the Court of Appeal.
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, particularly against unlicensed operators, cannot be recouped.
7. The Supreme Court heard an appeal on 29 April 2015 and decided that licensing schemes which required the applicant to pay a fee covering the administrative costs of the application at the time the application is made and, in the event that the application is granted, a further fee to cover the costs of enforcing the licensing scheme did not fall foul of the Provision of Services Regulations 2009. Furthermore, the Supreme Court rejected Mr Justice Keith's view that enforcement costs cannot be recouped. In delivering the judgement of the Supreme Court, Lord Mance stated ... " there is no reason why it (*the fee*) should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating ... establishments without licences."
8. However, a decision regarding licensing schemes which required a fee that covered both the administrative costs and the costs of enforcing the scheme to be paid at the time the application was made, with the enforcement element being refunded should the application be rejected, was referred to the European Court of Justice for determination.

Calculation of Fees for 2016/17

9. 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.
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 proportion of the service costs such as accommodation, equipment and central recharges
 - Officer time spent on inspections of licensed premises to ensure compliance with terms and conditions of any licence

A further breakdown of those factors taken into account in the calculation of fees can be seen as Appendix 3.

11. Gambling fees for 2016/17 have been calculated on the above basis for each of a number of different types of licence. The majority of proposed fees have decreased or stayed the same. The primary reason for the decrease is that in previous years an assumption has been made that one, or more, of the gambling applications/licences of these types will go to a hearing/review, and the associated costs included in the fee calculation. As there have been no hearings/reviews for at least the previous six years this assumption has been revised to zero hearings/reviews in a typical year reducing the cost to be recovered through fees. Where there are increases in proposed fees these relate primarily to revised assumptions for costs of policy development, training and committee support. Proposed fees can be seen as Appendix 2.
12. 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.

	2014/15		2015/16		2016/17
	Forecast	Actual	Forecast	Actual	Forecast
New Betting Shop	1	0	1	0	1
Annual fee (renewal)	39	38	39	39	39

Variation	0	2	0	1	1
Gaming machine	20	19	20	19	19

Proposals/Options

13. If fees are set lower than those recommended the result will be a deficit for 2016/17 as costs of administering the licence will not be fully met from income received.
14. Fees set higher than those recommended will result in a surplus i.e. an income which exceeds the cost of providing the service.
15. Any such under or over recovery of costs from 2016/17 will be calculated after the end of that financial year and will be carried forward to be taken into consideration in setting fees for 2018/19. The surplus or deficit on each fee type from 2014/15 has been taken into account when setting the fees for 2016/17. Ignoring a surplus or deficit could result in the City Corporation being subject to legal challenge.

Corporate & Strategic Implications

16. The proposals within this report meet the statutory requirement to set fees for the licensing of activities within the Gambling Act 2005, as they apply to the City of London Corporation.

Implications

17. Setting the recommended fees will result in Gambling licence estimated income for 2016/17 of £24,550, against a budgeted income of £22,000.
18. Setting fees above or below those recommended will have the implications as set out in paragraph 16 above.

Appendices

- Appendix 1 – Statutory Maximum Fees
- Appendix 2 – Proposed Fees for 2016/17
- Appendix 3 – (Non-Public) Factors taken into account when calculating Fees.

Background Papers

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

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