

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2016 - 2017

LICENSING COMMITTEE
13th July 2016

REPORT OF:
Service Director
Public Health & Protection

<u>Part I</u>	<u>Item No. 5</u>
Gambling Act 2005 Review of Fees of Designated Premises Licences	

1. PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to appraise Members of a recent Fees review conducted under the Gambling Act 2005, where the Licensing Authority is charged with such responsibility.

2. RECOMMENDATION

- 2.1 Members are requested to: -

- (i) Consider the findings of the review of discretionary fees under the Gambling Act 2005 undertaken by the Service Director of Public Health and Protection
- (ii) Accept the recommendation that the revised Fees as set out in Appendix 1C be amended and request the Service Director of Public Health and Protection make the necessary arrangements to implement the decision. .

3. BACKGROUND

- 3.1 The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 ("the Regulations") set out the statutory provisions and limitations for setting gambling fees.
- 3.2 Members will be aware that the Licensing Authority under the Gambling Act 2005 has the power to set discretionary fees for various types of Gambling and Gambling premises. The fees were previously approved by Members following a report to Members on the 14th May 2007.

4. SETTING OF FEES

- 4.1 All Licensing Authorities are required to set their fees upon a cost recovery basis only and are required to review their fee levels to ensure this. The Licensing Authority had previously used the toolkit provided by LACORS (Local Authority Coordinators of Regulatory Services) to assist in the calculation of appropriate fees. The Institute of Licensing (IOL) has subsequently developed and promoted the use of the IOL Fees toolkit for use by Licensing Authority's in setting respective fees.
- 4.2 The discretion to set the fees is limited by statutory maximum which must not be exceeded. In addition, the Licensing Authorities are required to demonstrate that -
- fees are proportionate to the service provision.
 - full cost recovery ensures no subsidy by general tax payers.
- 4.3 Details of the Statutory maximum under the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (the Regulations") are reproduced for Members Information as **APPENDIX 2A**.
- 4.4 Details of the current Gambling Act 2005 fees in place for the Authority are reproduced for Members information as **APPENDIX 2B**.

5. PREMISE TYPE

- 5.1 Regulations have set out the category of premises and the type of licence where the Licensing Authority has discretion to set fees. These include -

Premise Type	Numbers Trading in Rhondda Cynon Taf
Casinos	None
Bingo	3
Betting (off course)	39
Tracks (on course betting)	None
Adult Gaming Centres	7
Family Entertainment Centres	2

6. CASE LAW RELEVANT TO FEE CALCULATIONS

- 6.1 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...".

- 6.2 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.

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." The basis of this ruling implied that enforcement costs, particularly against unlicensed operators, could not be recouped however leave to appeal was granted to Westminster City Council.

- 6.3 The Supreme Court heard the 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."

- 6.4 Notwithstanding this ruling, a further matter has been referred to the European Court of Justice for determination and a decision is awaited. This relates to licensing schemes which require 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. This is the type of licensing scheme in Rhondda Cynon Taf. The Court ruling will determine if such schemes can remain or whether the element of cost relating to ongoing enforcement should only be payable after the licence is granted.

7. REVIEW OF FEES FOR RCT

- 7.1 As a result of this recent case law, a full review of Adult Gaming Centre (AGC) Fees and other Gambling Act 2005 fees has been undertaken utilising the up to date IOL Fees toolkit.

7.2 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 issuing of licences
- Staff Training as necessary
- Officer time spent on the maintenance of processes and guidance notes
- Officer time spent on inspections of licensed premises to ensure compliance with the Gambling Act 2005 and conditions of any licence
- A proportion of the service costs such as accommodation, equipment and central recharges

7.3 The Gambling fees have been calculated on the above basis for each of a number of different types of licence. The majority of proposed fees have decreased. The primary reason for the decrease is that in previous years an assumption had been made that a proportion of the gambling applications/licences of these types will go to a hearing/review, and the associated costs of these activities was included in the fee calculation. In addition, there was a cost built into the fee structure to account for work undertaken on Gambling related complaints or concerns reported to the Licensing Authority.

7.4 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. A review of complaints received relating to this sector of the trade has also found a very low level of complaint received therefore the costs of this work element have been reduced significantly.

7.5 The provisions which delegate the responsibility for the setting of fees to Licensing Authorities affords an opportunity for the industry to legally challenge any Licensing Authority which is considered to be charging in excess of a cost recovery basis. The basis for such a challenge is by Judicial Review. To date, the Licensing Authority has received an informal challenge from one local operator in respect of one of its fees namely Adult Gaming Centres (AGC). No formal Judicial Reviews have been initiated.

8. PROPOSAL

8.1 Having undertaken a Review of Gambling Act Fees, using the IOL Toolkit, it is evident that they comply with the legal requirements of the Gambling Act 2005, the fees charged by the Authority should be reduced. The revised proposed Gambling Act fees are reproduced for Members information as **APPENDIX 2C**.

- 8.2 The Review undertaken will result in a reduction of fees and ultimately income for the local authority, however the number of premises affected is small therefore the budget implications are low. Primary consideration must be given to the legal requirements of the Gambling Act 2005 in order to avoid a legal challenge of the fees charged. Such a challenge could have significant financial implications for the authority.

9. CONCLUSION

It is therefore advocated that Members note the review undertaken by Officers and support the recommendation of the Service Director of Public Health and Protection to implement the revised Gambling Fees as detailed within **APPENDIX 2C**.

Paul J Mee
Service Director Public Health & Protection

SCHEDULE

Table of maximum fees

Column (1)	Column (2)	Column (3)	Column (4)	Column (5)	Column (6)	Column (7)	Column (8)	Column (9)
Classes of premises licence	Maximum conversion application fee for non-fast track application	Maximum non-conversion application fee in respect of other premises	Maximum non-conversion application fee in respect of other premises	Maximum annual fee	Maximum fee for application to vary licence	Maximum fee for application to transfer a licence	Maximum fee for application for reinstatement of a licence	Maximum fee for application for provisional statement
Regional casino premises licence		£8,000	£15,000	£15,000	£7,500	£6,500	£6,500	£15,000
Large casino premises licence		£5,000	£10,000	£10,000	£5,000	£2,150	£2,150	£10,000
Small casino premises licence		£3,000	£8,000	£5,000	£4,000	£1,800	£1,800	£8,000
Converted casino premises licence	£2,000			£3,000	£2,000	£1,350	£1,350	
Bingo premises licence	£1,750	£1,200	£3,500	£1,000	£1,750	£1,200	£1,200	£3,500
Adult gaming centre premises licence	£1,000	£1,200	£2,000	£1,000	£1,000	£1,200	£1,200	£2,000

Column (1)	Column (2)	Column (3)	Column (4)	Column (5)	Column (6)	Column (7)	Column (8)	Column (9)
Classes of premises licence	Maximum conversion application fee for non-fast track application	Maximum non-conversion application fee in respect of provisional statement premises	Maximum non-conversion application fee in respect of other premises	Maximum annual fee	Maximum fee for application to vary licence	Maximum fee for application to transfer a licence	Maximum fee for application for reinstatement of a licence	Maximum fee for application for provisional statement
Betting premises (track) licence	£1,250	£950	£2,500	£1,000	£1,250	£950	£950	£2,500
Family entertainment centre premises licence	£1,000	£950	£2,000	£750	£1,000	£950	£950	£2,000
Betting premises (other) licence	£1,500	£1,200	£3,000	£600	£1,500	£1,200	£1,200	£3,000

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GAMBLING ACT 2005**RHONDDA CYNON TAF TABLE OF FEES existing 2016/2017**

	Annual Fee	Fee in respect of Premises Licence	Application Fee to Vary Licence	Application Fee to Transfer a Licence	Application Fee for the Reinstatement of a Licence	Application Fee for a Provisional Statement	Copy of Licence	Change of Circumstances	Temporary Use Notice	Copy of Temporary Use Notice
Bingo Premises	797	2789	1394	956	956	2789	22	43	228	17
Adult Gaming Centre	910	1822	910	1093	1093	1822	22	43		
Family Entertainment Centre(Licensed)	683	1822	910	865	865	1822	22	43		
Betting Premises (other) Licence	560	2801	1401	1120	1120	2801	22	43		

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GAMBLING ACT 2005										
RHONDDA CYNON TAF TABLE OF FEES 2016/2017 Revised										
	Annual Fee	Fee in respect of Premises Licence	Application Fee to Vary Licence	Application Fee to Transfer a Licence	Application Fee for the Reinstatement of a Licence	Application Fee for a Provisional Statement	Copy of Licence	Change of Circumstances	Temporary Use Notice	Copy of Temporary Use Notice
Bingo Premises	466	552	552	552	552	552	22	46	228	17
Adult Gaming Centre	345	409	409	409	409	409	22	46		
Family Entertainment Centre (Licensed)	495	565	565	565	565	565	22	46		
Betting Premises (other) Licence	350	456	456	456	456	456	22	46		

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