


<p>Non-Executive Report of the:</p> <p>Overview and Scrutiny</p> <p>28th September 2016</p>	
Report of: Communities, Localities and Culture	Classification: Unrestricted
Gambling Policy 2016 -2019	

Originating Officer(s)	David Tolley, Head of Environmental Health and Trading Standards
Wards affected	All

Summary

As a Licensing Authority the Council must review the existing Gambling Policy and adopt a new policy by November 2016, as one of the responsibilities it has to administer 'high street' licences under the Gambling Act 2005. The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered. This is highly prescribed and limited by statute. The Council is not able, for example, to ban gambling or specific forms of gambling.

Subject to agreement the Policy will be presented Cabinet and then to Full Council for adoption under the provisions set out by the Council's Constitution

The policy is now before Overview and Scrutiny, as requested, after consultation, for comment.

The report also considers some of the wider aspects of gambling, which were discussed at the previous Overview and Scrutiny meeting during the consultation process. These wider aspects cannot be considered in terms of the statutory Gambling policy though

Recommendations:

The Overview and Scrutiny Committee is recommended to:

1. Review the Gambling Policy 2016 – 2019 and provide any comments on the policy.

1. REASONS FOR THE DECISIONS

- 1.1 All relevant local authorities are required under the Gambling Act to review their gambling policy.
- 1.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 1.3 A statutory consultation process must take place prior to the adoption of the revised Gambling Policy by full Council.

2. ALTERNATIVE OPTIONS

- 2.1 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling. If the Council did not have a policy it would be acting ultra vires with regards to any decisions it makes determining gambling premises licences.
- 2.2 The Gambling Commission has laid down guidance which the Council must have regards to in carrying out their functions under the Act, including setting their Gambling policy. Departure from the guidance without good reason could leave the council at risk of judicial challenge. The Gambling Commission guidance has been followed in drafting the revised Gambling Policy. The policy focuses on the elements covered by the licensing objectives.

3. DETAILS OF REPORT

- 3.1 All relevant local authorities have to review their gambling policy, as one of the responsibilities they have, under the Gambling Act 2005.
- 3.2 The purpose of the policy is to define how the responsibilities under the Act are going to be exercised and administered.
- 3.3 A statutory consultation process must take place prior to the adoption of the revised Gambling Policy by full Council.
- 3.4 Pursuant to the Gambling Act 2005, the Council is a responsible authority for the licensing of premises used for gambling. If the Council did not have a policy it would be acting ultra vires with regards to any decisions it makes determining gambling premises licences.
- 3.5 The Gambling Commission has laid down requirements which the Council must follow with regards to the Gambling Policy. If these requirements are not followed, the Council could be at risk of judicial challenge. The Gambling Commission guidance has been followed in drafting the revised Gambling Policy. The policy is limited to considering the elements covered by the licensing objectives. The Council must follow the guidance laid down by the Gambling Commission.

- 3.6 The Gambling Act 2005 gives local authorities a range of responsibilities relating to gambling. The Gambling Policy states how the Licensing Authority will exercise this responsibility and authority.
- 3.7 This policy covers the following:
- How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
 - The main licensing objective for the authority is protecting the vulnerable.
 - The Licensing Authority approach to regulation
 - The scheme of delegation
- 3.8 The Gambling Policy is prescribed by Central Government and the Gambling Commission. The policy produced has to comply with guidance issued by both of these bodies. The current policy is compatible with this advice and guidance.
- 3.9 Members should note that some of the major issues and concerns about gambling are not addressed in the policy or by the approach of the consultation. For example, gambling addiction is outside the remit of the consultation, as are arguments about the public benefits, or otherwise, of a more liberal gambling regime.
- 3.10 The responsibilities the Council have under the Gambling Act 2005 have not been controversial. 80 licences have been issued primarily to betting shops and adult amusement arcades. These businesses are nearly all national companies that have conducted their business within the legal requirements. The number of premises in a particular area is not grounds for objection.
- 3.11 The Local Authority does not have the powers within its Gambling Policy to regulate on-line gambling sites. All gambling websites trading with, or advertising to, consumers in Britain must have a Gambling Commission licence issued by the Gambling Commission.
- 3.12 In April 2015 the government changed the use class order so that betting shops were removed from their previous A2 use class and made a 'sui generis' use. As such planning permission is now required to change the use from any other use to a betting shop. This has meant that there is slightly more control under planning legislation to control the growth of Betting Shops.
- 3.13 Planning powers cannot control existing betting shops if they have already opened up under a permitted change of use (i.e. before the recent changes to the use class order moving betting shops from A2 to 'sui generis'), however any further change of use applications for a betting shop would be subject to a planning application. As part of the determination of the application, issues such as the number of betting shops in the surrounding area could be a consideration if the area was becoming saturated with betting shops.

- 3.14 There have been several concerns raised though London Councils concerning the fixed odds betting terminals (FOBT's) that have been installed within betting shops. These B2 gambling machines play games of chance such as roulette. With a betting shop licence, the operator can install up to four machines, which have a maximum stake of £100 and a maximum prize of £500. London Councils are promoting that the maximum £100 stake on B2 machines should be changed to £2 to prevent the clustering of betting shops due to the profitability of such gambling machines. Tower Hamlets is a signatory to this campaign.
- 3.15 We have not experienced the same volume of applications in gambling as we have in other areas of licensing. There has been one application since 2014, this was for a Paddy Power Shop in Roman Road. This application was objected to by the community, but after consideration by the Licensing Sub Committee and legal advice the licence was issued.
- 3.16 The issues of betting shop clustering and concern over fixed odd betting terminals (FOBT) have shown that gambling generates extremely strong feelings. Whilst licensing authorities do not have the powers to refuse new applications or limit FOBT machines, the requirement for operators to prepare local risk assessments in relation to their premises from April 2016 means that licensing authorities need to set out their expectations within their statements of Gambling Policy.
- 3.17 The additional requirements to include in the Gambling Policy are noted below:
- to set out a local profile, the Policy links to the Borough profile held on the website, therefore the profile can be updated without the need to re-consult on amending the full Policy.
 - details of the inspection format to be used
 - risk assessment advice from operators
 - sample licence conditions
- 3.18 During the consultation process a number of representations were made by national Betting shop companies. We have reviewed the comments made therein and have made slight changes to the requirements that are required of operators in relation to their local risk assessments. We have also reflected on the content of our local profile and have added this information onto the website. No further suggestions or changes have been made. The proposed policy is at Appendix One.
- 3.19 The comments by the Campaign for Fairer Gambling were noted in relation to the use of FOBT's, but this can only be considered on an individual application basis.
- 3.20 The only controversial applications have been where betting shops have applied to open in close proximity to schools or places of worship. The powers the Council have are limited and it is not possible to make either policy or decisions regarding this issue under the Gambling Policy.

- 3.21 It is proposed that the current 'no casino' resolution that is currently in the existing policy remains.
- 3.22 An Equalities checklist has been undertaken as is at Appendix Two.

Wider Considerations of Gambling

- 3.23 It is important to recognise that peoples gambling behaviour covers a continuum with most people deriving pleasure from gambling and it not having a detrimental impact. However for about 8% of gamblers there is an increased risk with the proportion of those with a problem gambling habit increasing. The impact can be described as follows;
- a) The individual: who will experience health and personal problems such as stress, depression and anxiety, job loss, social isolation, financial hardship, and family and relationship issues. Gambling often co-exists alongside mental illness and abuse of alcohol and drugs.
- b) The immediate family and wider network of friends and family, possible negative outcomes including family and relationship breakdown, domestic violence and a fall into poverty. The negative impact falls disproportionately on women and children and may exacerbate low income due to zero hour contracts and changes to the benefits systems. Local experience suggests that any money won on gambling was rarely spent on anything but more gambling.
- c) The wider community/ society: Problem gambling may be linked to such issues such as unemployment, increased burden on health and welfare services, and an increased take up of benefits. At a local level the impact is often felt by the look of local neighbourhoods/High Streets due to the clustering of outlets and a perception that there is a link to anti-social behaviour such as litter, street drinking and gathering of adults. Staff working alone on premises may feel vulnerable and at risk and reluctant to suggest that customers should take a break from using FOBT for example. Concerns are also raised about proximity to schools or faith venues.
- 3.24 For health and social care professionals, and even the family and friends of at risk or problem gamblers, the challenge of problem gambling is that it is not easily detectable. It is often described as the 'hidden addiction'. Problem gamblers are far more likely to present with financial, health and relationship issues before an addiction to problem gambling is recognised.
- 3.25 There are a number of screening tools and questions that can be used by concerned families, GPs and other front line staff in order to identify problem gamblers. These however are not widely used, nor is gambling routinely recorded in GP notes.
- 3.26 In terms of where individuals can get specialist help nationally there is a range both of organisations and interventions. Examples include:

Gamblers Anonymous
The Gordon Moody Association
Gamcare
Chinese Mental Health Association (CMHA)
CNWL National Gambling Clinic

- 3.27 For individuals, family and friends to manage the problems of gambling particularly the financial implications support may be from the following

Advice UK
StepChange
Citizens Advice Bureau
National Debtline
Money Advice Trust

- 3.28 Some problem gamblers will require referral to the national specialist treatment centre at Central and North West London NHS Foundation Trust (though this is hugely oversubscribed). However there is very little local provision or understanding of where those with a problem may get help. In addition those who are gambling with increasing risk routine care will not identify them.
- 3.29 We know that residents are worried about the impact of gambling and in particular the potential impact on children, but also the make-up and feel of their high street. If they feel strongly then they need to speak up and influence national and local policy.
- 3.30 This is included as part of PHSE cyber safety and use of social media as well as part of the Healthy Schools. Concern from schools is usually about parents being concerned regarding their spouses behaviour
- 3.31 Gambling profile in the borough: In terms of the adult population 'the prevalence of problem gambling is significantly higher in the 16-24 years (2.1%) and 25- 34 years (1.5%) than in older adults (0.3% in those aged 55-64 years), which reflects similar findings in international research highlighting the particular risks of problem gambling for young people.
- 3.32 When attempting to estimate the local prevalence we used statistical techniques to recognise the population profile of the borough (e.g. age, sex and ethnicity) and our current estimate in our population is 1.3% i.e. twice the national average for problem gambling with 3% at moderate risk. It is likely that this is an underestimate. The borough has higher rates than most of London. This would equate to in the region of 3,000 problematic gamblers with 6,000 at moderate risk.
- 3.33 As previously stated the impact of gambling has an impact beyond the individual. An assumption can be made that for every problem gambler there will, as a minimum, be between two to three other individuals affected by gambling which significantly increases the scope of work needed to address these problems. Therefore as described in the table below the number affected will be significantly higher and many of these will be children

Problem Gambling	Estimate	Minimum	Maximum
Gamblers	3600	2200	5000
Affected x 2	7200	4400	10000
Affected x 3	10800	6600	15000

- 3.34 Domestic violence (DV) is a significant problem in Tower Hamlets. Over 5,000 incidents are reported to the police each year, and DV constitutes about 30% of reported violent crime in the borough. It is a complex problem, requiring a partnership response to respond to it effectively. DV and gambling is not measured officially, however nationally it is known that domestic violence has links with gambling whereby families affected by domestic violence also have drug, alcohol, mental health and gambling issues. Having a gambling problem can be very all-consuming, and as well as the effect on the gamblers themselves, it can have a devastating impact on their relationships with other people, their friends and family. This can take various forms, especially arguing more with your partner or family, especially about money, budgeting and debt, often resulting in financial abuse and coercive control. This can be picked up in the training offer through the Violence Against Women and Girls (VAWG) programme and also highlighted in the training to VAWG Champions going forward.
- 3.35 A range of support is available both victims of DV or those concerned and wishing to report or seek advice in regards to referral pathways and services. This ranges from the councils Duty Line to the **Multi Agency Risk Assessment Conference (MARAC)**. This is a local, multi agency victim-focused meeting where information is shared on the highest risk cases of domestic violence and abuse between different statutory and voluntary sector agencies
- 3.36 Problem gambling in a family can also have an effect on children - the impact of stress within the family unit and potential loss of relationship with a parent can have lasting consequences. Locally we do not have any official statistics of domestic violence cases whereby gambling features. However if it were, the following services are available for anyone in the field of DV.
- 3.37 There are a number of ways in which community safety have engagement with community groups and leaders and this has included through community surgeries, Residents Question Time's through formal partnerships and sub groups across DV, VAWG and Community Safety Partnerships that would raise any issues and also draw out any support in regards to training and awareness needs. The discussion in regards to gambling and older persons was taken to the Older Persons reference group on the 2nd November which included service providers and community leads. They were encouraged to respond to the consultation and the broader discussion in regards to linking in with the work that was in progress in regards to loneliness was being made as a preventative measure to support individuals.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There are no specific financial implications emanating from this report which notes the Council's responsibilities as the Licensing Authority. Following a review of the policy it will then be presented to Full Council for adoption for the next three years under the provisions set out by the Council's Constitution
- 4.2 The costs of each Gambling licence under the Act are reviewed annually as part of the discretionary fees and charges report to Cabinet. The fees cover the cost of administration and compliance contained within the budget for the service.

5. LEGAL COMMENTS

- 5.1 Section 349 of the Gambling Act 2005 ('**the 2005 Act**') requires the Council to prepare a statement of the principles that it proposes to apply in exercising its functions under the Act and to determine and then publish this statement. This statement is more commonly known as a Gambling Policy or Statement of Gambling Policy. The legal requirement is for the preparation of the statement of principles to be undertaken every 3 years.
- 5.2 The current statement of policy was published on 1st November 2013, and therefore the fresh statement must be published before 1st November 2016.
- 5.3 Pursuant to section 25 of 2005 Act, the Gambling Commission shall from time to time issue guidance as to the manner in which local authorities are to exercise their functions under this Act, and in particular, the principles to be applied by local authorities in exercising functions under the Act. The 5th Guidance was issued in September 2015 and Part 6 of the same provides Guidance to local authorities on the preparation and publication of the statement of licensing policy. The Council should not depart from this guidance without good reason but as stated in paragraph 3.5 of this Report, the guidance has been followed in drafting the revised Gambling Policy.
- 5.4 Prior to publishing the statement, the Council must undertake statutory consultation as provided by section 349(3) of the Act. Further, in consulting, the Council must comply with the common law principles set out in *R v Brent London Borough Council, ex p Gunning*, (1985) and recently approved by the Supreme Court in *R(Mosely) v LB Haringey 2014*. Those are '*Firstly, the consultation must be at a time when proposals are still at a formative stage. Secondly, the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly, adequate time must be given for consideration and response. Fourthly, the product of consultation must be conscientiously taken into account in finalising any statutory proposals.*'
- 5.5 Consultation has been carried out as referred to in paragraph 3.18 of the report. The consultation responses have been taken into account to make

relevant adjustments to the proposed Policy and Annex 3 of the proposed Policy at Appendix 1 gives a summary of the issues raised in the responses.

- 5.6 Pursuant to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the Gambling Policy is required to be part of the Council's policy framework. Article 4 of the Constitution confirms this to be the case and a review of the Gambling Policy requires the procedure set out in the Budget and Policy Framework Procedure Rules. This requires pre-decision scrutiny by the Overview & Scrutiny Committee and this report is consistent with that requirement that this report is being considered by the Committee.
- 5.7 Also pursuant to the Council's Budget and Policy Framework Procedure Rules, the Mayor as the Executive is responsible for preparing the draft Policy for submission to the full Council. It will therefore be for the Mayor in Cabinet to recommend the draft Policy to Full Council. The Mayor as the Executive must also carefully consider the consultation responses before making a decision to recommend to Full Council.
- 5.9 In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). An equality analysis will be required which is proportionate to the function in question and its potential impacts. An Equality Analysis Quality Assurance Checklist has been undertaken and which is at Appendix 2. The result of performing such is that "the policy does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Equalities Impact Assessment has been reviewed in respect of this policy and no adverse issues have been identified.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Gambling policy details the regulatory approach to gambling establishments with the Borough. The fees imposed for the licence are set by government and have been adopted by the Licensing Committee. The fees cover the cost of regulating and administering the Gambling Policy.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no environmental impacts with regards to this policy.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are no risk management issues with the revised policy.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 One of the key licensing objectives is to prevent gambling from being a source of crime and disorder. The policy supports and assists with crime and disorder reduction by controlling those who are able to offer gambling to members of the public and imposing conditions on relevant premises licences.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

Appendix One: Gambling Policy 2016-2019

Appendix Two: Equalities Checklist

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

NONE

Officer contact details for documents:

N/A