

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Full Council

Date: 19/01/2022

Subject: Review of the Statement of Gambling Policy

Report of: Cabinet Member for the Environment - Councillor Wesley Harcourt

Report author: Adrian Overton, Licensing Policy and Enforcement Manager

Responsible Director: Sharon Lea, Strategic Director for Environment

SUMMARY

The Gambling Act 2005 requires every Council to have a 'Statement of Gambling Policy' which will include information stipulated within the Gambling Commission's statutory Guidance to Licensing Authorities in England and Wales. The Council's 'Statement of Gambling Policy' must undergo a thorough review and public consultation every three years.

It is now time for the London Borough of Hammersmith and Fulham to review its Statement of Gambling Policy (SGP) and undergo a public consultation exercise so that the latest version can be agreed and published at the beginning of January 2022. This report outlines the changes made to the revised policy and the timetable for consultation.

RECOMMENDATIONS

1. To note that Appendix 11 is not for publication on the basis that it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings, as set out in paragraph 5 of Schedule 12A of the Local Government Act 1972 (as amended).
 2. That the Council carefully consider and note the responses to the consultation attached at Appendix 5.
 3. That the Council approve the revised Statement of Gambling Policy 2022 – 2025, at Appendix 1.
 4. That the Council agree to retain an existing no casino resolution within the Council's Statement of Gambling Policy.
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Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	<i>A robust Statement of Gambling Policy will help to create a level playing field for operators in the gambling industry and transparency and clarity about guiding principles.</i>
Creating a compassionate council	<i>The Statement of Gambling Policy makes specific reference to those who may be vulnerable such as children or those with a gambling addiction and seeks to reinforce certain safeguards to help protect and prevent them from harm.</i>
Doing things with local residents, not to them	<i>The public statutory consultation will be open to residents to provide their views, which can be taken into account in any revised final policy statement.</i>
Being ruthlessly financially efficient	<i>Fees and charges are reviewed annually and where possible set to recover the costs of application administration and management of licensed gambling premises.</i>
Taking pride in H&F	<i>The Licensing Authority's Statement of Gambling Policy helps to consistently manage gambling premises and to uphold the licensing objective related to preventing gambling being associated, supporting or being a source of crime.</i>
Rising to the challenge of the climate and ecological emergency	<i>The consultation will mainly be carried out electronically to minimise the use of paper, when compared to using a postal process.</i>

Financial Impact

There are no significant financial implications resulting from the recommended changes to the Council's Statement of Gambling Policy. The cost of the consultation was minimal and has been contained within the existing revenue budget for the Licensing Service.

Legal Implications

The requirement for every Council to have a 'Statement of Gambling Policy' is set out in the Gambling Act 2005. The Statement of Gambling Policy 2022-2025 will form the Council's framework policy which will help to ensure that licensing decisions comply with legislation and are made fairly and consistently.

Under S.349 of the Act the Council's 'Statement of Gambling Policy' must undergo a review and public consultation every three years. The Council's current Statement of Gambling Policy was agreed by the Council in January 2019 as produced, following extensive consultation with licensees, businesses, residents, community groups and partner enforcing agencies. It expires in January 2022 therefore a revised policy has been prepared and has undergone a full consultation process.

S.349(3) of the Act requires the Council to consult with the following on their policy statement or any subsequent revision:

- the chief officer of police for the Borough.
- one or more persons who appear to Council to represent the interests of persons carrying on gambling businesses in the Borough.
- one or more persons who appear to the Council to represent the interests of persons who are likely to be affected by the exercise.

The Gambling Commission in the formal Guidance to Licensing Authorities, issued under Section 25 of the Act, (as revised in April 2021) recommends that it is a matter for licensing authorities to develop their own consultation practices, including the methods for consultation and who they consider it necessary to consult with, which might include consultation with relevant local groups, business and responsible authorities.

Under this guidance the Council is required to publish consultation responses usually within 12 weeks of the consultation closing. If a response is not published within 12 weeks, the Council should provide a brief statement on why they have not done so. Consultation documents could be provided on Council's website. The Council has followed and complied with the consultation process.

Under S.166 (3) of the Act a no casino resolution must be reviewed every three years from the date when it took effect. The body of the report confirms that it is the Council's intention to keep this resolution in the Statement of Gambling Policy 2022-2025.

The Statement of Gambling Policy 2022-2025 has been prepared taking into account the revised Guidance issued by the Gambling Commission, the Act and associated regulations.

The Licensing Authority has taken Counsel's advice on the proposed changes and the advice is contained in an exempt appendix.

The Council is satisfied that by virtue of Section 153(1) Part 8 of the Gambling Act 2005 it is lawful for the Council to introduce a recommendation into its revised SGP that the terminal hour for Adult Gaming Centres (AGC's) should ordinarily be limited to 23:00 and that the Council would require a robust risk assessment from the licence holder should they wish to operate after that time. Furthermore, that any licence holder wishing to operate beyond that time would be expected to agree to employ more than one member of staff after 23:00. The Council have suggested this recommendation to address the problems with crime linked to lone working in such venues, it is noted that it has been supported by the Metropolitan Police in their

consultation response. Therefore, the recommendation satisfies the promotion of the Licensing Objectives, specifically preventing gambling from being a source of crime and disorder. It was also pointed out that the latest Guidance to Licensing Authorities issued by the Gambling Commission (last updated 13 May 2021) states clearly that there are no default conditions specific to AGCs.

Pursuant to the power contained in section 166 of the Gambling Act 2006 a Licensing Authority may resolve not to issue casino premises licenses. Section 166(2) of the Gambling Act 2005 states that in passing a resolution under subsection (1) the Licensing Authority may have regard to any principle or matter. It is noted that six of the seven consultees supported the retention of the no-casino resolution and the Metropolitan Police stated that they would be supportive of the resolution if the Council saw fit.

Should the Council adopt the 'no casino' resolution for a further three year period pursuant to the power contained in section 166 of the Act, this decision is one that ultimately calls for a political rather than a strictly legal judgment. The decision must be rational and reasoned, but there must be a balancing exercise applying weight to the different interests which have been identified at paragraph 12 of Key information about re-adopting a 'No Casino' resolution" and this decision is the one that must be undertaken by the Full Council.

The Council received a number of technical challenges to the draft policy during the consultation process and the summary of changes made to the current 2019 Statement of Gambling Policy are contained in Appendix 2. The Council have carefully considered the representations made in respect of the proposed amendments to paragraphs 5.8, 5.12 and 24.2 but recommend the proposed amendments are incorporated into the Statement of Gambling Policy 2022-2025 for the following reasons.

The requirement at 5.8 of the policy to provide relevant information and mitigation measures in the local risk assessment is intended to assist applicants in the drafting of their local area risk assessments and supports a lawful decision making process.

The intention of paragraph 5.12 of the policy is to provide an indication of the types of matters that the authority will expect to see addressed in a local risk assessment such matters being relevant to the licensing objectives.

Public health considerations have been included at paragraph 24.2 of the Statement of Gambling Policy because such considerations are consistent with one of the existing licensing objectives, Gambling Act 2005, 1(c) protecting children and other vulnerable persons from being harmed or exploited by gambling. It is therefore appropriate and lawful for this to be included in the policy.

Contact Officers

Name: Adrian Overton
Position: Licensing Policy and Enforcement Manager
Telephone: 020 8753 3081

Email: adrian.overton@lbhf.gov.uk

Name: Kellie Gooch

Position: Head of finance – the environment

Telephone: 0208 753 2203

Email: kellie.gooch@lbhf.gov.uk

Verified by: Emily Hill, Director of Finance

Name: Gerta Kodhelaj

Position: Senior Solicitor (Planning and Property)

Telephone: 07884 267835

Email: Gerta.Kodhelaj@lbhf.gov.uk

Verified by: Jane Astbury, Chief Solicitor (Planning and Property)

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Proposals and Analysis of Options

Background and Introduction

1. The Council's Statement of Gambling Policy provides advice and guidance to local authorities when exercising their functions under the Gambling Act 2005. It also provides guidance to applicants and objectors.
2. The draft revised Statement of Gambling Policy 2022 - 2025 at Appendix 1 is the Council's sixth SGP and must be adopted by Full Council. It must then be published at least 28 days before it comes into effect at the end of January 2022.
3. The draft revised SGP 2022 - 2025 has been prepared and has been the subject of a 10-week public consultation.

The Review Process

4. In reviewing the statement of gambling policy, we have considered the following:
 - Changes to the gambling regime;
 - The promotion of the three licensing objectives;
 - The guidance issued under Section 25 of the Gambling Act 2005;
 - The current 2019 Statement of Gambling Policy;
 - The views of the Gambling Commission;
 - Local crime prevention measures; and
 - The Equality Act 2010
5. The main changes reflect the latest version of the Gambling Commission's Guidance document and the Commission's Codes of Practice. We have simplified some of the wording to make it clearer, removed some specific references to extracts from the Guidance, updated dates and links to various websites and updated contact details. The more significant changes are summarised in Appendix 2 - Summary of changes made to the current 2019 Statement of Gambling Policy.

The Consultation Process

6. To ensure that these statutory timescales were met, the consultation began on the 12 July 2021 and closed on the 19 September 2021. This timetable meant it could be prepared and finalised for the final Full Council meeting of 2021 in October.
7. The process for revising the policy is to circulate the draft amended policy for public consultation over a 10-week period, review and amend post consultation and then take the policy to a meeting of the Full Council for formal adoption. See Appendix 3 - Consultation questions for the draft revised Statement of Gambling Policy 2022 – 2025.
8. All responses received have been collated and analysed and the SGP has been revised where it is considered appropriate to do so.

9. The timetable for adoption is detailed in the table below:

Activity	Date(s)
Public 10-week consultation	12 July 2021 – 19 September 2021
Community Safety and Environment Policy and Accountability Committee	19 July 2021
Public 10-week consultation ends	19 September 2021
Full Council	19 January 2022

Planned timetable for the review and adoption of the SGP

10. All gambling premises and residents' groups have been sent details of the online consultation. They have been advised that paper copies of the consultation are available, if required. The online consultation address was also emailed to all responsible authorities, Councillors and Stakeholders. A copy of the draft Statement of Gambling Policy will be on the Council's website for consultees to refer to as they make their response.
11. The Act requires the licensing authority to consult on its Statement of Gambling Policy with the Police; those who represent the interests of gambling businesses in their area; and those which represent interested persons likely to be affected (Section 349 (3)).
12. In addition to the statutory consultees, e.g. the Local Safeguarding Children Partnership (LSCP) and the Director of Public Health, the following have also been consulted:
- The Police
 - Trade Associations
 - Residents' Associations
 - Businesses via Council and Town Centre contacts
 - Fire Authority
 - Ward councillors
 - Neighbouring authorities
 - Trading Standards
 - Environmental Health
 - Chamber of Commerce
 - Director of Public Health
 - Planning Authority
 - Safeguarding Adults Board
 - Community Safety Partnership
 - GamCare – Gambling charity
 - Other relevant people who could be affected by this policy

Summary of Consultation Responses

13. 12 questions formed part of the public consultation which ran from the 12th July 2021 to the 19th September 2021. 6 responses were received in total from residents, businesses and other interested parties during this period. A statistical analysis of the consultation responses is included at Appendix 8. Where additional comments

were made these have been captured at Appendix 5. Due to a technical problem a late consultation response was also accepted from Councillor Brocklebank- Fowler which can be found separately at Appendix 10.

14. In summary all six of the consultees thought that the Council should retain its no casino resolution. There was also strong support for limiting the times during which Adult Gaming Centres (AGCs) could operate.
15. Separate responses were also received from Poppleston Allen solicitors on behalf of Merkur Slots UK Limited and The Betting and Gaming Council. These responses have been attached to this report as Appendices 6 and 7 respectively.
16. The Police also made comments on the gambling consultation which are included at Appendix 9 of this report. In summary they had no objection to the removal of the Council's no casino resolution and thought that an 11pm terminal hour for AGC premises would be beneficial.

Issues for Consideration

17. The licensing authority can only consider matters within the scope of the Gambling Act, Guidance and associated Codes of Practice and cannot become involved in the moral issues relating to gambling.
18. The local area profile has been updated as part of this review and included as part of this policy, at Annex 3. Whilst there is no mandatory requirement to have a local area profile, there are a number of benefits:
 - a) it enables licensing authorities to better serve their local community, by better reflecting the community and the risks within it;
 - b) greater clarity for operators as to the relevant factors in licensing authority decision making, will lead to improved premises licence applications, with the operator already incorporating controls and measures to mitigate risk in their application;
 - c) it enables licensing authorities to make robust but fair decisions, based on a clear, published set of factors and risks, which are therefore less susceptible to challenge; and
 - d) it encourages a proactive approach to risk that is likely to result in reduced compliance and enforcement action.
19. The proposals and considerations below (Paragraphs 20 to 25) have been included as specific consultation questions. (See Appendix 3 - Consultation questions for the draft revised Statement of Gambling Policy 2022 – 2025).
20. Consideration has also been given to the introduction of a policy recommendation that the terminal hour for Adult Gaming Centres should be limited to 11pm. Any premises wishing to operate after this time would be asked to provide a robust risk assessment and also commit to employing more than one member of staff *after* 11pm. This proposal has been suggested to try and combat an issue with crime linked to lone working in these types of venues.

21. Some employees are exposed to high-risk situations daily e.g. crime, violence and mental health issues. Environmental Health Officers have investigated incidents which have occurred *before* 11pm where only one member of staff was on duty. In most cases, affected employees have suffered physical injuries and/or post-traumatic stress disorder, which has the potential to have knock on effects.
22. It has been proposed that pro-active measures to address lone working, staffing issues and people within gambling premises could be strengthened in the policy, for all operational hours rather than just being restricted to after 11pm.
23. During the public consultation a proposal was made to remove the Council's long standing 'no casino' resolution from the policy. This proposal was made in an effort to better reflect the Council's commitment to a vibrant night-time economy. However, it is also appreciated that there are potential wider public health implications by inviting further gambling premises to the borough. Key information about re-adopting a 'No Casino' resolution can be found at Appendix 4.
24. Given that all of the comments received from local residents suggested that we should keep the resolution, it is suggested that the resolution is renewed. It is also noted that there could be adverse climate implications if a new casino were attracted to the borough – this has been outlined in sections 44 – 46 of the report.
25. It has been proposed that we strengthen the underage aspects of the policy by including a section about the Council's expectations. This would include: that premises will adopt Challenge 25 when allowing customers to enter / gamble; that all staff will be trained in 'ASSESS-CHALLENGE-CHECK' and instructed to challenge young people as they enter the premises; and that door supervision may be required if the operator is found to breach this.
26. It has been proposed that a condition is added to the local pool of licence conditions about the use of technology to allow remote activation of gaming machines. Once a player reaches a machine, they can often play undetected as they have their backs to staff. If there was a requirement to activate the machine on demand, this would help to facilitate age-verification.

Licensing objectives

27. Consideration must be given to the three licensing objectives below as well as the needs of businesses within the borough.
 - a) Preventing gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime;
 - b) Ensuring that gambling is conducted in a fair and open way; and
 - c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

Reasons for Decision

28. The Council must approve and adopt a statement of gambling policy every 3 years. It is suggested that the changes outlined in Appendix 2 are incorporated into a newly revised policy.

Equality Implications

29. The Council, when taking decisions in relation to any of its functions, must comply with its public sector equality duty as set out in s149 of the Equality Act 2010. The policy has low relevance in relation to its impact on the protected characteristics as it applies to all licensed businesses. A new section has been included in the draft revised Statement of Gambling Policy to reflect the Authority's commitment to equality and diversity.

Risk Management Implications

The failure to meet new and existing statutory requirements is specifically addressed in the Environmental Health and Regulatory Services' risk register. Controls in place to mitigate this risk include training, internal auditing, review of local area profiles and local risk assessments, periodic updates of the website and the business planning process.

*Implications verified by: David Hughes, Director of Audit, Fraud, Risk and Insurance
0207 361 2389*

Climate and Ecological Emergency Implications

30. The majority of changes to the current gambling policy are technical in nature and there are no significant foreseen climate implications. There are potential positive climate implications for an earlier 11pm closure of AGC premises, which could mean more gambling premises closing earlier in the evening rather than operating 24 hours, which would reduce operational emissions from energy use on the premises.
31. The impact of removing the Council's no casino resolution is that a new Casino could be attracted to the borough. The impact of this on operational emissions from heating, cooling and powering the building depends on the business it replaces: the impact will be lower if the casino is replacing an existing business on the site that would have been consuming energy anyway; but emissions could increase if this leads to longer operating hours, and if the energy demand of the casino is higher than the existing business.
32. If a new build casino or substantial renovation is proposed this would contribute to significant additional embodied emissions from construction. Planning policy requires the reduction of operational emissions to the extent required by the London Plan, but does not regulate embodied emissions from construction.

Verified by Jim Cunningham, Climate Policy & Strategy Lead, 07468 365829

LIST OF APPENDICES:

Appendix 1 – Draft revised Statement of Gambling Policy 2022 – 2025

Appendix 2 – Summary of changes made to the current 2019 Statement of Gambling Policy

Appendix 3 – Consultation questions for the draft revised Statement of Gambling Policy 2022 – 2025

Appendix 4 – Key information about re-adopting a 'No Casino' resolution

Appendix 5 – Public consultation responses - comments

Appendix 6 – Response from Poppleston Allen solicitors on behalf of Merkur Slots UK Limited

Appendix 7 – Response from Gosschalks solicitors on behalf of Betting and Gaming Council

Appendix 8 – Public consultation responses - statistics

Appendix 9 – Police consultation response

Appendix 10 – Consultation response from Councillor Brocklebank-Fowler

Exempt Appendix 11 – External legal advice from David Matthias Q.C.