

# Local Government Association

## Good Principles in Fee Setting

**Speaking: James Button**

# Good Principles in Fee Setting

Legality

Transparency

Certainty

# Legality

# Power to Set Fees

With the exception of fees under the Scrap metal Dealers Act 2013, all licence fee setting is a Council (not and Executive) function.

Can consult the Executive, but the final decision must rest with the Council – can be delegated under the Scheme of Delegations

# What does the legislation allow? / 1

Check the legislation – what does it allow and/or require?

Is there a fixed fee?

- If so, levy it!

Is there discretion over setting a fee?

- If so, how much?

What can you take into account?

# What does the legislation allow? /2

Is the Licensing Regime within the scope of the EU Services Directive (all licensing except taxis, gambling and cinemas)?

If so:

- Fees charged for authorisations must be proportionate to the cost of the application and grant process.
- Fees cannot be used as either a deterrent or to raise funds.
- Enforcement costs should not be assimilated with the application fee.
- Cannot recover enforcement costs against unlicensed traders via the Licence Fee

# The Political Dimension

What does your Council want to achieve?

- Full cost recovery?
- Subsidy to licensees?

This must be made clear.

# What can be recovered?

- “A reasonable fee” allows full cost recovery of the costs of the licensing regime-
- Enforcement costs against unlicensed traders (for all Service Directive regimes) must be borne by the general Council fund BUT
- If the legislation allows it (by permitting a “reasonable fee to be levied) , a “possession or retention” fee (effectively a maintenance fee) could be charged – **Hemming** in both Supreme Court judgments.



# What can be recovered?

- Vital to make a distinction between enforcement and compliance?
- Compliance includes monitoring visits to licensees, and action against those licences - reviews, suspensions, revocations and probably prosecution.
- Enforcement is any action (usually criminal) against unlicensed operators

# What can be recovered?

Appeals against refusal to renew, suspension or revocation – must be compliance as licensed traders

Prosecutions for breach of licence or condition – probably compliance as licensed traders

Prosecutions for no licence – must be enforcement as unlicensed traders

# Wakefield

In the **Wakefield** case, the Court of Appeal determined that “administration” in s53 Local Government (Miscellaneous Provisions) Act 1976 included enforcement **against licensed drivers** – “compliance” in **Hemming** terms

# Transparency

# Transparency

What are the fees payable?

When are the fees payable – application, grant or both?

What do the fees cover?

# Transparency

How have the costs been calculated?

What has been included, and why?

What has been excluded, and why?

# Certainty

# Fees Generally - Surplus

## **Must carry forward surplus**

R v Manchester City Council *ex parte* King 89

LGR 696

R (app Hemming t/a Simply Pleasure and Ors)

v Westminster City Council [2012] LLR 616

Admin Crt upheld in Court of Appeal [2013]

PTSR 1377 CA



# Fees Generally - Deficit

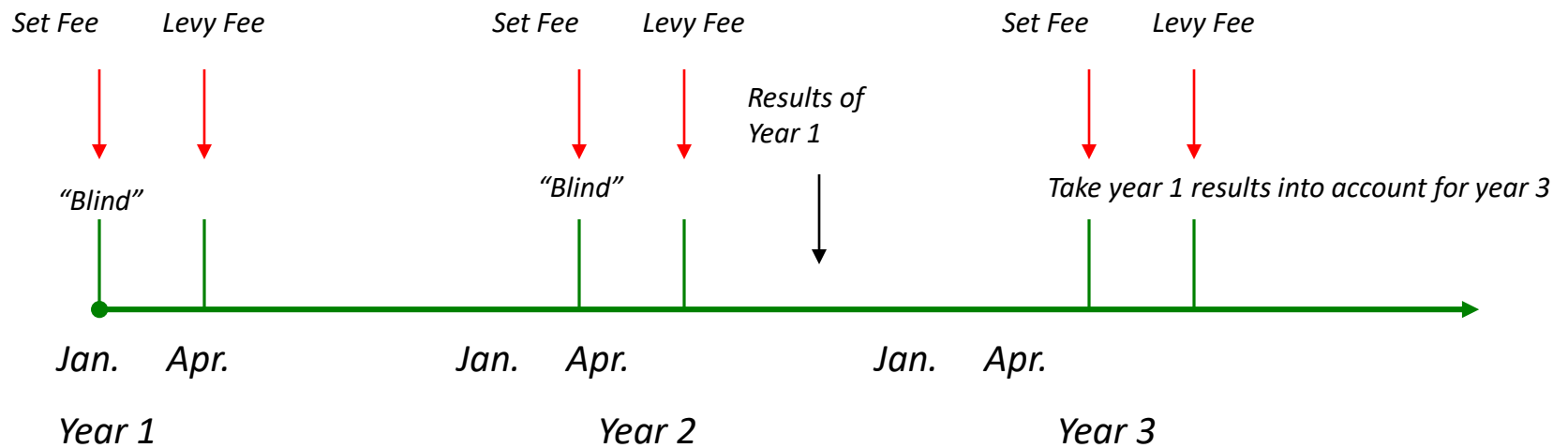
## Can recoup deficit

R v Tower Hamlets London Borough Council  
ex parte Tower Hamlets Combined Traders  
Association [1994] COD 325

R (app Hemming t/a Simply Pleasure and Ors)  
v Westminster City Council [2012] LLR 616  
Admin Crt upheld in Court of Appeal [2013]  
PTSR 1377 CA

# Fees Generally/2

3 year cycle



# Different Fees

Cannot “lump” all licence fees together.

Each charging regime must be separately accounted – now clear 5 accounts for taxi licensing (see [Wakefield](#))

Must be able to justify any fee levied

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