



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Gambling**

**Tribunal Reference:** GA/2013/0001  
**Appellant:** Luxury Leisure  
**Respondent:** The Gambling Commission  
**Judge:** NJ Warren

**DECISION NOTICE**

1. On 13 May 2014 I allowed an appeal made by Luxury Leisure Limited against a decision of the Gambling Commission dated 28 June 2013 to the effect that Luxury Leisure was in breach of a condition of its operating licence. The decision of the Gambling Commission was to issue a warning. My decision was that there had been no breach of the condition in dispute, known as condition 16.
2. Luxury Leisure now apply for payment of costs.
3. I have to consider three separate heads under which costs might be payable.
4. The first of these is Rule 10(1A) of the GRC Rules. Unless I consider there is a good reason not to do so I must order the Commission to pay to the Appellant an amount equal to the Tribunal fee which the Appellant has paid.
5. The second head relates to the decision which was under appeal. I may make an order in respect of costs if I consider that the Commission's decision was "unreasonable".
6. The third head relates to the conduct of the appeal. I may make an order in respect of costs if I consider that the Commission has acted unreasonably in defending or conducting the proceedings.

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7. The first head is not in dispute. Accordingly, I order the Commission to pay to Luxury Leisure the sum of £10,000.
8. I turn to consider Rule 10(1)(c). Was the decision of the Commission unreasonable? My short answer to that question is “no”. It is true that I found some confusion and ambiguity in the work which led to the drafting of condition 16 and that I disagreed with submissions from the Commission about its meaning. I must take into account, however, that the Commission were operating in difficult territory. Much concern had been expressed publicly about the increased usage of FOBTs in betting shops. The Commission had to weigh this against the shops’ freedom to trade. Their powers of intervention were substantially restricted by statute; and they had inherited from a previous regulatory regime licensed betting shops, such as the one operated by Luxury Leisure, which had not originally been intended by anyone concerned to operate conventionally.
9. In the application for costs, Luxury Leisure refers to offers they had made in the period leading up to the Commission’s decision to change the name of their premises and to exchange legal advice as to the precise type of operating licence required. In my judgment, whilst these issues were part of the general background, they played only an insignificant role in the decision of both the Commission and the Tribunal.
10. Luxury Leisure also complain that offers they made to negotiate were rebuffed. I can accept and understand their frustration in this respect. The relationship with the Commission was an uneasy one. If, however, I am to consider the manner in which the Commission took the decision under appeal then it seems to me that I must look at the whole process. Any initial shortcomings were, in my judgment, cured by the hearing before the Commission’s review panel. The panel’s decision and the transcript of the hearing demonstrate the obvious care which the panel took. I would add that the impression of scrupulous fairness given by the documents is reinforced by the fact that one of the members of the review panel dissented.

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11. Perhaps a stronger point made by Luxury Leisure is that they had offered to surrender their operating licence and premises licence and had indeed closed the premises before the date of the Commission's decision. In that sense, it could be said that the whole expensive exercise had no worthwhile result.
12. On the other hand, it is not uncommon in my experience for regulators to be criticised for faintheartedness when they drop enforcement action as a result of some change in the circumstances. It seems to me that the Commission were entitled to continue. Luxury Leisure's acceptance that the decision under appeal affected its corporate reputation indicates that the decision was not academic or empty of effect.
13. That leaves Regulation 10(1)(b).
14. It seems to me that there are some general considerations which I should take into account in exercising this jurisdiction.
15. First, although in the courts costs follow the event, Tribunals have a different tradition which is reflected in the present Rule 10. It is in my judgment, part of our public law system that challenges to a state decision before a Tribunal do not generally attract a penalty in costs if they fail. It works both ways. Millions of decisions are taken every year by public authorities. Inevitably, some are wrong. There are many as to which ordinary reasonable people, be they decision makers in the public authority or decision makers in the Tribunal, might reasonably differ. In general both the public authority and appellants gain from a cost-free environment. The decision under appeal is properly scrutinised. No-one pays out more in lawyers' fees than they choose to do so.
16. Although not relevant to this particular case it is an important general consideration that public law Tribunals often deal with complex issues on which it is not easy to obtain legal advice. This is certainly true of many jurisdictions within this chamber. A particular challenge to a public authority's decision may seem to a trained expert lawyer to be futile or wrongheaded; this does not mean that the challenge is inevitably an unreasonable one for a citizen to bring.

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17. These principles have consequences for the way in which the Tribunal behaves. There will always be exceptional cases, of which this may be one, requiring exceptional treatment but it is a principle of the First-tier Tribunal that neither Appellants nor public authorities should feel the need to be routinely legally represented. See the Leggatt Report. The judges in this jurisdiction have a duty to use their expertise effectively to enable public authorities as well as Appellants to conduct cases proportionality, informally and flexibly. They must enable public authorities, as well as citizens and companies, to participate fully in the proceedings. See Rule 2 GRC Procedural Rules.
18. I refer again to the difficult circumstances in which the Commission was operating when it developed condition 16. In my judgment, although in the end I felt unable to accept the submissions made on behalf of the Commission, I do not accept that its decision to defend the proceedings was unreasonable; nor was there anything unreasonable in the manner in which the case was conducted.
19. For these reasons, with the exception of a reimbursement of the cost of the Tribunal fees, I refuse the application for costs.

**NJ Warren****Chamber President****Dated 14 July 2014**