



Watford Borough Council Licensing
Town Hall
Watford
WD17 3EX

Please ask for: Richard Taylor
Direct Tel: 01482 590216
Email: rjt@gosschalks.co.uk
Our ref: R.JT / LHK / 097505.00004
#GS459401
Your ref:
Date: 05 November 2015

Dear Sir/Madam,

Re: Gambling Act 2005 Policy Statement Consultation

We act for the Association of British Bookmakers (ABB) and have received instructions to respond on behalf of our client to the current consultation on the Council's review of its gambling policy statement.

The ABB represents over 80% of the high street betting market. Its members include large national operators such as William Hill, Ladbrokes, Coral and Paddy Power, as well as almost 100 smaller independent bookmakers.

This response will explain the ABB approach to partnership working with local authorities, it will detail its views on the implementation of the new LCCP requirements, from April 2016, relating to operators' local area risk assessments and their impact on the licensing regime and will then make specific comment with regard to any statement(s) of concern/that are welcomed in your draft policy.

The ABB is concerned to ensure that any changes are not implemented in such a way as to fundamentally change the premises licence regime through undermining the "aim to permit" principle contained within s153 Gambling Act 2005.

The current regime already adequately offers key protections for communities and already provides a clear process (including putting the public on notice) for representations/objections to premises licence applications. The recent planning law changes effective since April 2015 have also already increased the ability of local authorities to consider applications for new premises, as all new betting shops must now apply for planning permission.

It is important that any consideration of the draft policy and its implementation at a local level is put into context. There has recently been press coverage suggesting that there has been a proliferation of betting offices and a rise in problem gambling rates. This is factually incorrect.

Over recent years betting shop numbers have been relatively stable at around 9,000 nationally, but more recently a trend of overall downwards decline can be seen. The latest Gambling Commission industry statistics show that numbers as at 31 Mar 2015 were 8,958 - a decline of 179 from the previous year, when there were 9,137 recorded as at 31 March 2014.

As far as problem gambling is concerned, successive prevalence surveys and health surveys reveal that problem gambling rates in the UK are stable (0.6%) and possibly falling.

Working in partnership with local authorities

The ABB is fully committed to ensuring constructive working relationships exist between betting operators and licensing authorities, and that where problems may arise that they can be dealt with in partnership. The exchange of clear information between councils and betting operators is a key part of this and we welcome the opportunity to respond to this consultation.

There are a number of examples of the ABB working closely and successfully in partnership with local authorities.

LGA – ABB Betting Partnership Framework

In January 2015 the ABB signed a partnership agreement with the Local Government Association (LGA). This was developed over a period of months by a specially formed Betting Commission consisting of councillors and betting shop firms and established a framework designed to encourage more joint working between councils and the industry.

Launching the document Cllr Tony Page, LGA Licensing spokesman, said it demonstrated the *“...desire on both sides to increase joint-working in order to try and use existing powers to tackle local concerns, whatever they might be.”*

The framework built on earlier examples of joint working between councils and the industry, for example the Ealing Southall Betwatch scheme and Medway Responsible Gambling Partnership.

In Ealing, the Southall Betwatch was set up to address concerns about crime and disorder linked to betting shops in the borough. As a result, crime within gambling premises reduced by 50 per cent alongside falls in public order and criminal damage offences.

In December last year, the Medway Responsible Gambling Partnership was launched by Medway Council and the ABB. The first of its kind in Britain, the voluntary agreement allows anyone who is concerned they are developing a problem with their gambling to exclude themselves from all betting shops in the area.

The initiative also saw the industry working together with representatives of Kent Police and with the Medway Community Safety Partnership to develop a Reporting of Crime Protocol that is helpful in informing both the industry, police and other interested parties about levels of crime and the best way to deal with any crime in a way that is proportionate and effective.

Lessons learnt from the initial self-exclusion trial in Medway have been incorporated into a second trial in Glasgow city centre, launched in July this year with the support of Glasgow City Council, which it is hoped will form the basis of a national scheme to be rolled out in time for the LCCP deadline for such a scheme by April 2016.

Jane Chitty, Medway Council's Portfolio Holder for Planning, Economic Growth & Regulation, said: *"The Council has implemented measures that work at a local level but I am pleased to note that the joint work we are doing here in Medway is going to help the development of a national scheme."*

Describing the project, Glasgow's City Treasurer and Chairman of a cross-party Sounding Board on gambling, Cllr Paul Rooney said:

"This project breaks new ground in terms of the industry sharing information, both between operators and, crucially, with their regulator."

Primary Authority Partnerships in place between the ABB and local authorities

All major operators, and the ABB on behalf of independent members, have also established Primary Authority Partnerships with local authorities.

These Partnerships help provide a consistent approach to regulation by local authorities, within the areas covered by the Partnership; such as age-verification or health and safety. We believe this level of consistency is beneficial both for local authorities and for operators.

For instance, Primary Authority Partnerships between Milton Keynes Council and Reading Council and their respective partners, Ladbrokes and Paddy Power, led to the first Primary Authority inspection plans for gambling coming into effect in January 2015.

By creating largely uniform plans, and requiring enforcing officers to inform the relevant Primary Authority before conducting a proactive test-purchase, and provide feedback afterwards, the plans have been able to bring consistency to proactive test-purchasing whilst allowing the Primary Authorities to help the businesses prevent underage gambling on their premises.

Local area risk assessments

With effect from 6th April 2016, under new Gambling Commission LCCP provisions, operators are required to complete local area risk assessments identifying any risks posed to the licensing objectives and how these would be mitigated.

Licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy and local area profile in their risk assessment, and these must be reviewed where there are significant local changes or changes to the premises, or when applying for a variation to or a new premises licence.

The ABB is concerned that overly onerous requirements on operators to review their local risk assessments with unnecessary frequency could be damaging. As set out in the LCCP a review should only be required in response to significant local or premises change. In the ABB's view this

should be where evidence can be provided to demonstrate that the change could impact the premises' ability to uphold the three licensing objectives.

Although ABB members will be implementing risk assessment at a local premises level, we do not believe that it is for the licensing authority to prescribe the form of that risk assessment. We believe that to do so would be against better regulation principles. Instead operators should be allowed to gear their risk assessments to their own operational processes informed by Statements of Principles and the local area profile.

The ABB supports the requirement as set out in the LCCP, as this will help sustain a transparent and open dialogue between operators and councils. The ABB is also committed to working pro-actively with local authorities to help drive the development of best practice in this area.

Local Area Profiles – Need for an evidence based approach

It is important that any risks identified in the local area profile are supported by substantive evidence. Where risks are unsubstantiated there is a danger that the regulatory burden will be disproportionate. This may be the case where local authorities include perceived rather than evidenced risks in their local area profiles.

This would distort the “aim to permit” principle set out in the Gambling Act 2005 by moving the burden of proof onto operators. Under the Act, it is incumbent on licensing authorities to provide evidence as to any risks to the licensing objectives, and not on the operator to provide evidence as to how they may mitigate any potential risk.

A reversal of this would represent a significant increase in the resource required for operators to be compliant whilst failing to offer a clear route by which improvements in protections against gambling related harm can be made.

We would also request that where a local area profile is produced by the licensing authority that this be made clearly available within the body of the licensing policy statement, where it will be easily accessible by the operator and also available for consultation whenever the policy statement is reviewed.

Concerns around increases in the regulatory burden on operators

Any increase in the regulatory burden would severely impact on our members at a time when overall shop numbers are in decline, and operators are continuing to respond to and absorb significant recent regulatory change. This includes the increase to 25% of MGD, changes to staking over £50 on gaming machines, and planning use class changes which require all new betting shops in England to apply for planning permission.

Moving away from an evidence based approach would lead to substantial variation between licensing authorities and increase regulatory compliance costs for our members. This is of particular concern for smaller operators, who do not have the same resources to be able to put

into monitoring differences across all licensing authorities and whose businesses are less able to absorb increases in costs, putting them at risk of closure.

Such variation would in our opinion also weaken the overall standard of regulation at a local level by preventing the easy development of standard or best practice across different local authorities.

Employing additional licence conditions

The ABB believes that additional conditions should only be imposed in exceptional circumstances where there are clear reasons for doing so - in light of the fact that there are already mandatory and default conditions attached to any premises licence. The ABB is concerned that the imposition of additional licensing conditions could become commonplace if there are no clear requirements in the revised licensing policy statements as to the need for evidence.

This would further increase variation across licensing authorities and create uncertainty amongst operators as to licensing requirements, over complicating the licensing process both for operators and local authorities.

Specific Policy Comments

Paragraph 4.8 indicates that the licensing authority has published relevant matters to be taken into account by licensees when undertaking their risk assessments. The paragraph indicates that this information has been published separately. It would assist operators and applicants if this information was to be included within the statement of policy and subject to consultation.

Paragraph 4.9 causes the ABB significant concern. This paragraph indicates that *“there are areas within the Borough which are considered to be unsuitable for the provision of gaming facilities, or where there are groups of vulnerable people who will be at risk from harm from gambling.”* It appears, therefore, that the licensing authority has pre-determined that there are areas in which gambling facilities should not be located. Such a policy is directly contrary to the overriding principle outlined in paragraph 3.7 that all applications will be considered on their own individual merits. The draft statement of principles does not identify these unsuitable locations or why they are considered to be unsuitable. The mere proximity of schools cannot be a reason for a policy that a particular area is unsuitable for the provision of gaming facilities. The proximity of a school is a relevant consideration when undertaking a local area risk assessment. From 6th April 2016, operators will identify these risks and detail the policies and procedures in place to mitigate those risks.

Paragraph 9.12 appears to contradict paragraph 4.9. The latter indicates that there are areas in the Borough which are considered to be unsuitable for the provision of gaming facilities whilst paragraph 9.12 suggests that no specific policy has been determined as regards areas where gambling premises should not be located. This paragraph also indicates that if such a policy is adopted (as is suggested by paragraph 4.9) then the statement of principles will be updated.

The statement of principles should be clear with regard to whether or not the licensing authority has determined that there are areas where gambling facilities should not be located. If there is

such a policy, then details of this policy should be outlined and the area identified. Any policy, however, may be unlawful as it is directly contrary to the overriding principle of “aim to permit” contained within s153 Gambling Act 2005.

Paragraph 9.16 explains the licensing authority’s approach to conditions. The statement of principles would be assisted by an indication that the starting point for consideration of any application is that it will be granted subject only to the mandatory and default conditions as these are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives. The draft statement of principles should make it clear that additional conditions will only be imposed where there is evidence of a risk to the licensing objectives that requires that the mandatory and default conditions be supplemented and are not where there is a simple “perceived need” (paragraph 9.17) or “mere concerns”.

The ABB welcomes the acknowledgement in paragraph 9.21 and 14.3 that there is no evidence that the operation of betting offices has required door supervisors and that conditions requiring door supervision will only be attached where there is clear evidence of a need to do so.

Paragraphs 14.8 to 14.11 explain the licensing authority’s view of primary gambling activity. It is respectfully submitted that these paragraphs need to be redrafted to take into account the decision in *Luxury Leisure v Gambling Commission* – May 2014. In that case it was held that condition 16 (Primary Gambling Activity) does not require a contest between over the counter betting and the use of machines. There must be sufficient facilities for betting if gaming machines are to be utilised. The requirement, however, is that sufficient facilities are available. The actual use of those facilities is not an issue. There is no requirement, therefore, for an applicant to demonstrate upon variation that the purpose of the variation is not designed solely to benefit from machine activity. If the applicant can demonstrate that sufficient facilities for over the counter betting will be available then it is not for the licensing authority to investigate the actual use of the facilities made available.

Conclusion

The industry fully supports the development of proportionate and evidenced based regulation, and is committed to minimising the harmful effects of gambling. The ABB is continuing to work closely with the Gambling Commission and the government to further evaluate and build on the measures put in place under the ABB Code for Responsible Gambling, which is mandatory for all our members.

ABB and its members are committed to working closely with both the Gambling Commission and local authorities to continually drive up standards in regulatory compliance in support of the three licensing objectives: to keep crime out of gambling, ensure that gambling is conducted in a fair and open way, and to protect the vulnerable.

Indeed, as set out, we already do this successfully in partnership with local authorities now. This includes through the ABB Code for Responsible Gambling, which is mandatory for all our members, and the Safe Bet Alliance (SBA), which sets voluntary standards across the industry to make shops safer for customers and staff. We would encourage local authorities to engage with us as we

continue to develop both these codes of practice which are in direct support of the licensing objectives.

Yours faithfully,



GOSSCHALKS