

TRADE RESPONSES TO THE CONSULTATION

1A. Elizabeth Speed, Group General Counsel. **Novomatic UK for LUXURY LEISURE**

"On behalf of Luxury Leisure, I make the following comments in response to the above consultation draft (the "Draft"):-

1. *We note the final paragraph in the Introduction and Declaration section which confirms that the Authority has taken note of the 5th draft Guidance to Licensing Authorities issued by the Commission. As the Authority will appreciate, at the time of writing, the Gambling Commission's response to that consultation has not been published, nor has the 5th GLA been published. This may impact on the Draft."*

OFFICER COMMENT

The Gambling Commission published its 5th edition of the Guidance for licensing Authorities (GLA) just prior to the close of the consultation period on the draft Statement of Principles and this guidance has replaced earlier guidance previously referred to in both the current draft and also the Statement of Principles, published in January 2013.

2. *"As the Authority will appreciate, in matters of regulation under the Gambling Act 2005, it is subject to the Regulators' Code. That code imposes a number of obligations on the Authority, including one that it should carry out its activities in a way that supports those they regulate to comply and grow. Additionally, when designing and reviewing policies, the Authority must, among other things, understand and minimise the negative economic impact of their regulatory activities and regulate and minimise the costs of compliance of those they regulate. Further, the Authority should take an evidence-based approach in determining priority risks and recognise the compliance record of those they regulate. We suggest the Draft be amended to include a statement that the Authority recognises that it is subject to and will comply with the Regulators' Code in relation to matters of gambling licensing and enforcement, perhaps at Paragraph 7 under "General Statement of Principles".*

OFFICER COMMENT

A reference to the Regulators Code has now been added to the section dealing with enforcement in the Statement of Principles (section 16)

3. *"Part B, Paragraph 1.2 of the Draft deals with the Gambling Commission's concept of "primary gambling activity". This concept has been the subject of legal challenges, which continue and it is noted that the concept is nowhere to be found in the Gambling Act 2005".*

OFFICER COMMENT

Part B, Paragraph 1.2 simply states:

"By distinguishing between the different types of premises the 2005 Act makes it clear that the primary gambling activity of the premises should be that described , e.g. in a bingo premises, the primary activity should be bingo, with gaming machines as an ancillary offer on the premises. This principle also applies to existing casino licences and betting premises licences."

Officers do not consider that this is a contentious statement and see no need to amend it.

4. *" In dealing with conditions, it is important that the Draft does not repeat conditions imposed by the mandatory and default conditions or by the LCCP. Accordingly, the conditions set out at bullet points in Part B 1.5 of the Draft are, we suggest, inappropriate given that they are already set out in the mandatory conditions. Similarly, the provisions of Sections B3 and B4 duplicate provisions of the mandatory and default conditions and the LCCP. (Strangely, the Authority has not felt it necessary to set out, in the same way, the measures that it says could be dealt with by way of conditions in relation to bingo premises (Section 6) or betting premises (Section 7)). Even if it were appropriate (which it is not) to set out areas in respect of which conditions may be applied, as above, this inconsistent approach between sectors is undesirable. "*

OFFICER COMMENT

The Statement of Principles simply seeks to remind applicants and other parties of the premises licence holder's responsibilities particularly in ensuring that children are not exposed to gambling. The information in respect of children in relation to Category C machines or above has been reproduced in Section 6 relating to Bingo Premises but not in Section 7 relating to Betting Shops as children under the age of 18 years are not permitted onto Betting Shop premises.

5. *"Part B paragraphs 3 and 6 final paragraphs cover the numbers of Category B gaming machines that AGCs and bingo premises can have on site. As the Authority will appreciate, for AGCs and bingo premises in existence before 13th July 2011, the maximum for such machines is 4 (AGC) or 8 (bingo) or 20% of the total number of gaming machines, whichever is the greater."*

OFFICER COMMENT

The Policy has now been amended to clarify this point. For note – AGC refers to an Adult Gaming Centre.

6. *"Part B paragraph 6 repeats (by way of bullet points) the mandatory conditions which apply to bingo premises. Such duplication is unnecessary and undesirable."*

OFFICER COMMENT

This point has been covered in the Officer Comment relating to point 4 above.

1B CORAL RACING LTD

Coral Racing Limited is most grateful to be given the opportunity to respond to this consultation exercise. Coral was one of the first national bookmakers to be licensed under the Betting and Gaming Act of 1960, and so has been operating the length and breadth of the UK for over 50 years. Its premises comprise locations in the inner city, on the high street, in suburbs and in rural areas, and in areas of both high and low deprivation. It now operates 1850 betting offices across Great Britain, which comprise about 20% of all licensed betting offices. It is, therefore, a highly experienced operator.

Coral Racing Limited are supportive of the document. It again notes that the Board when considering applications are still required to 'aim to permit gambling' where this is 'reasonably consistent with the licensing objectives', additionally noting that it should not take into account of any moral objections to gambling.

Coral Racing Limited recognise the requirement to supply risk assessments with future applications & variations following the consultation completion (requirement is from 6th April 2016) and are pleased to see this detail briefly included within the Draft Statement.

We do note however, that whilst it states in paragraph 1.8 in terms of the risk assessment 'This should reflect factors such as the premises' proximity to schools and other sensitive locations, vulnerable persons schemes and other information relevant to the locality.'this should not infer that there is any link between the proximity of such premises and causing harm to the licensing objectives.

Coral knows of no evidence that children coming from schools are gaining access to betting offices. Coral's general experience, in common with other bookmakers, is that children are not interested in betting, and in any case the Think 21 policy operated by Coral is adequate to ensure that under-age gambling does not occur in their premises. There are very many examples of betting offices sited immediately next to schools and colleges and no evidence whatsoever that they cause problems. Coral's experience is that through all it does, it achieves an exemplary degree of compliance already, and attracts negligible evidence of regulatory harm. Through the additional local risk assessment to be introduced, Coral believe that these should be a) to assess specific risks to the licensing objectives in the local area, and b) to assess whether control measures going beyond standard control measures are needed.

OFFICER COMMENT

The 5th edition of the Gambling Commission Guidance makes frequent reference to the issues of location near schools etc. For example 6.50 of the Guidance states that "an area might be identified as high risk on the basis that it is located within close proximity to a youth centre, rehabilitation centre, or school" and section 8.13 states, in respect of people living close to premises "relevant factors will depend on the particular application. For example, it is reasonable for a licensing authority to consider that living sufficiently close to premises likely to be affected could have

different meaning for (a) a private resident, (b) a residential school for children with truanting problems and (c) a residential hostel for vulnerable adults". The Guidance also recognises that among the people representing other persons these might include "a school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to proposed premises"

The local risk assessment will provide an avenue for applicants to identify any risks and mitigate them accordingly.

1C Gosschalks Solicitors on behalf of the **ASSOCIATION of BRITISH BOOKMAKERS (ABB)**

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

In the final paragraph of the introduction and declaration, there is a typographical error as this refers to "the 45h draft..." We believe that this should be amended to the "5th draft".

OFFICER COMMENT

This was indeed a typographical error and it has now been corrected.

Within paragraph 10, there is statement that "this council will consider very carefully whether applications for gambling premises located very close to a school or centre for gambling addicts should be granted." For the authority to even consider this then

there would need to be representations made by responsible authorities or interested parties and thereafter evidence adduced at a hearing that the proximity of the proposed gambling establishment would not be reasonably consistent with the licensing objectives. As far as schools are concerned, the authority is reminded that betting offices have existed for over 50 years in areas of high population (and therefore always in areas where there are children and in many circumstances very close to schools) without any problem whatsoever. This is because gambling operators have strict policies and procedures to ensure that those who are not permitted to enter premises or gamble are not able to do so.

OFFICER COMMENT

the wording of paragraph 10 has been amended following this representation so that the policy no longer states that the Council will consider whether the licence should be granted but now states that the local risk assessment needs to address and mitigate any associated risks. the policy also reiterates that every case will be decided on its own merits.

Within paragraph 11, there is a list of irrelevant criteria for the purposes of a Gambling Act 2005 application. It is respectfully suggested that issues of nuisance, the likelihood of being granted planning permission or building regulation approval and moral objections should be added to this list.

OFFICER COMMENT

The wording of paragraph 11 already makes it clear that public nuisance is not a licensing objective and that nuisance must be dealt with under its own relevant legislation. The paragraph has been amended however following this representation, to include planning and building issues and moral concerns in the list of irrelevant issues.

Within paragraph 12, there is a statement that trade representations must be specific to the three licensing objectives. The policy should be amended to reflect the fact that a representation may be relevant from a trade representor if it relates to the LCCP, Gambling Commission Guidance or the local authority's statement of licensing policy as well as the licensing objectives.

OFFICER COMMENT

The wording of paragraph 12 has been amended following this representation, to include the LCCP, Guidance and Statement of Principles

The final two sentences of paragraph 1.4 of Part B cause the ABB concern. Any policy that a specific area is an area where gambling premises should not be located may be unlawful. This paragraph appears to implement a cumulative impact type policy as exists within the licensing regime under Licensing Act 2003. Such a policy is contrary to the overriding principles of "aim to permit" contained within s153 Gambling Act 2005. Similarly, the reversal of the burden of proof in the final sentence that requires the applicant to demonstrate why an application should be granted is contrary to that principle. These two sentences should be removed and replaced with the reiteration of the principle earlier in the policy that each case will be determined on its own merits.

OFFICER COMMENT

The final 2 sentences of paragraph 1.4 of Part B state:

Under Section 210 of the 2005 Act a Licensing Authority is not entitled to have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building. This Licensing Authority will, however, consider relevant representations from the Local Planning Authority about the effect of the grant of a Premises Licence on an existing planning permission where this relates to the licensing objectives, a Commission Code of Practice, or this Statement of Principles.

Officers cannot see how this can cause concern as it simply states that we will consider **relevant** representations from the Local Planning Authority. If we were not to do it would raise the question of the role of Planning as a Responsible Authority. In addition the Statement of Principles repeatedly advises that each case will be considered on its own merits .

Paragraph 1.5 deals with conditions. The policy would be assisted by indicating that gambling premises are already subject to robust mandatory and default conditions and the starting point for the consideration of any application is that it will be granted without the need for additional conditions. It is only when there is evidence in a particular case that the mandatory conditions need to be supplemented that additional conditions should be added.

OFFICER COMMENT

Paragraph 1.5 has been slightly amended in response to this representation to reflect the mandatory and default conditions and the word "necessary" has also been added to the reasons for attaching conditions.

Paragraph 2 to Part B is misleading. This suggests that a licence will only be issued in relation to premises that are ready to be used for gambling. We anticipate that there is a difference between issuing a licence and granting a licence. If so this should be clear from the policy. Operators will not complete a full shop fit of premises before they have the certainty of being granted a licence. Therefore, the premises may be complete but further works would be required to make those premises ready for gambling. If it is the policy that the licence would not be issued until the shop fit works are correct then the policy should be amended to reflect that the application may be granted by the licence will not be issued until the licensing authority is satisfied that the premises are ready to be used for gambling.

OFFICER COMMENT

Paragraph 2 has been amended in response to this representation to clarify the position in respect of provisional statements & subsequent licences.

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.

