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Licensing
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Your ref:
Date: 22 October 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

In paragraph 1.2, there is a statement that “licensing authorities are able to exclude default conditions and also attach other conditions where it is believed to be necessary and proportionate”. The Statement of Principles needs to be consistent and should be clear throughout that conditions will only be imposed where there is evidence of a risk to the licensing objectives in the circumstances of a particular case such that the mandatory and default conditions need to be supplemented. Section 5 of the Statement of Principles indicates that the mandatory and default conditions will usually be sufficient to ensure operation that is reasonably consistent with the licensing objectives and that conditions will only be imposed where there are specific risks in a particular circumstance. The Statement of Principles needs to be clear throughout that additional conditions will only be imposed where there is evidence of a need to do so and not simply where it is “believed to be necessary”.

Paragraph 1.9 indicates that it is the council’s policy, upon receipt of any relevant representations, to look at specific location issues including the possible impact of gambling premises where these are situated close to premises such as schools, a vulnerable adult centre in the area or residential areas where there may be a high concentration of families with children. The licensing authority needs to put such statements in to context. Betting offices, in particular, are usually situated in areas of high population or high footfall. In the circumstances, betting premises are almost always situated in areas where there are children but owing to fifty years of regulation, and robust mandatory and default conditions, operators have developed policies and procedures to ensure that those who are not permitted to bet do not do so. The Statement of Principles should acknowledge the expertise of the operators and should be clear that whilst proposed premises in such locations will be investigated by the licensing committee, there is no policy to refuse or impose conditions where premises are in such areas.

It appears that there may be words missing from the first sentence of paragraph 1.10. This sentence should be amended in order that it makes sense.

Paragraph 1.12 lists factors that the council would expect a local risk assessment to consider as a minimum. This list needs to be redrafted as it contains matters that cannot be relevant for the purposes of a local area risk assessment. Social Responsibility Code Provision 10.1.1 requires that licensees must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises. The risk assessment, therefore, must relate to the gambling objectives. Whether or not the area is an area of deprivation has no bearing upon the licensing objectives unless the licensing authority has predetermined that persons living in an area of deprivation are automatically vulnerable or likely to be involved with crime or disorder. This cannot follow. Similarly, the ethnic profile of residents in the area cannot have a bearing on the licensing objectives and the requirement to assess “the demographics of the area in relation to vulnerable groups” needs to be explained as it is not clear what this means.

Paragraph 1.14 contains a further list of matters that the risk assessment may include. This includes a suggestion that “where the application is for a betting premises licence, other than in respect of a track, the location and extent of any part of the premises which will be used to provide facilities for gambling in reliance of the licence”. Where a betting premises licence application is made, the whole of the premises as outlined on the plan accompanying the application will be used for betting. It may be that the word “gambling” is a typographical error and this word should read “gaming”, in which case the policy should be amended to reflect this.

Section 11.2 to 11.4 deals with the issue of betting machines in betting premises. The Statement of Principles would be assisted by a clear explanation of the difference between betting machines and gaming machines. The Statement of Principles should be clear that whilst s181 Gambling Act 2005 contains the power for a licensing authority to restrict the number of betting machines, there is no such power to restrict the number of gaming machines, the holder of a betting premises licence being authorised to make up to four machines of categories B, C or D available for use.

As stated above, the ABB does not believe that it is for the licensing authority to prescribe the form of risk assessment, to do so being against better regulation principles. Against this backdrop, Appendix E is too prescriptive. Operators should be allowed to gear their risk assessments to their own operational procedures.

Furthermore, Appendix E contains a number of factors to be taken into account which are wholly irrelevant for the purposes of Gambling Act 2005. For example, the opening of a new payday loan or pawnbrokers in the area is suggested as a risk assessment trigger. The Statement of Principles recognises (at page 46) that “the risks that operators must identify relate to the potential impact a gambling premises and its operation may have on the licensing objectives”. It is impossible to see how the opening of a new payday loan or pawnbrokers in the local area or indeed a new gambling premises can relate to a risk to the licensing objectives. Furthermore, the ethnicity, age or economic make-up of the local community cannot be relevant from a risk assessment perspective.

Overall, the whole of Appendix E is overly prescriptive especially given the statement at the end that underage gambling is deemed low risk following visits to licensed premises. Furthermore, on

page 56, it is recognised that there is no excessive use of FOBT machines and proper control and monitoring of the machines is in place. On account of the high level of compliance, there is no need for such prescription with regard to local risk assessments.

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

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