



GOSSCHALKS  
SOLICITORS

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Date: 16 April 2018

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 Association of British Bookmakers (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.

Please see below for the ABB's response to the Council's current consultation on the draft gambling policy statement.

This response starts by setting out the ABB's approach in areas relevant to the local authority's regulation of betting shop premises, and its commitment to working with local authorities in partnership. The response finishes by highlighting matters within the policy statement which the ABB feels may need to be addressed.

Betting shops have been part of the British high street for over 50 years and ensuring a dialogue with the communities they serve is vital.

The ABB recognises the importance of the gambling policy statement in focusing on the local environment and welcomes the informed approach this will enable operators to take for example, with regard, to the new requirements for local area risk assessments and ensuring the right structures are in place in shops that are appropriate for that area.

Whilst it is important that the gambling policy statement fully reflects the local area, the ABB is also keen to ensure that the statutory requirements placed on operators and local authorities under the Gambling Act 2005 remain clear; this includes mandatory conditions (for instance, relating to Think 21 policies) and the aim to permit structure. Any duplication or obscuring of these within new processes would be detrimental to the gambling licensing regime. The ABB also

- believes it is important that the key protections already offered for communities, and clear process
- 8 (including putting the public on notice) for objections to premises licence applications, continue to be recognised under the new regime.
- 8 Any consideration of gambling licensing at the local level should also be considered within the wider context.
- the overall number of betting shops is in decline. The latest Gambling Commission industry statistics show that numbers as of March 2017 were 8,788 - a decline of 349 since March 2014, when there were 9,137 recorded.
  - planning law changes introduced in April 2015 have increased the ability of licensing authorities to review applications for new premises, as all new betting shops must now apply for planning permission.
  - successive prevalence surveys and health surveys tells us 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
- 9 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 the opportunity to respond to this consultation is welcomed.

### LGA – ABB Betting Partnership Framework

- In January 2015 the ABB signed a partnership agreement with the Local Government Association
- 10 (LGA), developed over a period of months by a specially formed Betting Commission consisting of councillors and betting shop firms, which 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
- 11 *"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 builds on earlier examples of joint working between councils and the industry, for
- 12 example the Medway Responsible Gambling Partnership which was launched by Medway Council and the ABB in December 2014. The first of its kind in Britain, the voluntary agreement led the way in trialing multi-operator self-exclusion. Lessons learned from this trial paved the way for the national multi-operator self-exclusion scheme now in place across the country. By phoning a free phone number (0800 294 2060) a customer who is concerned they are developing a problem with their gambling can exclude themselves from betting shops close to where they live, work and

socialise. The ABB is working with local authorities to help raise awareness of the scheme, which is widely promoted within betting shops.

- 13 The national scheme was first trialed in Glasgow in partnership with Glasgow City Council. Cllr Paul Rooney, Glasgow's City Treasurer and Chairman of a cross-party Sounding Board on gambling, described the project as *"breaking 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

- 14 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.

- 15 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

- 16 Since April 2016, under new Gambling Commission LCCP provisions, operators have been 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 any local area profile, in their risk assessment. These must be reviewed where there are significant local changes or changes to the premises, or when applying for a variation to or for a new premises licence.

- 17 The ABB fully supports the implementation of risk assessments which will take into account risks presented in the local area, such as exposure to vulnerable groups and crime. The new requirements build on measures the industry has already introduced through the ABB Responsible Gambling Code to better identify problem gamblers and to encourage all customers to gamble responsibly.

- 18 This includes training for shop staff on how to intervene and direct problem gamblers to support services, as well as new rules on advertising including banning gaming machine advertising in shop windows, and the introduction of Player Awareness Systems which use technology to track account

based gaming machine customers' player history data to allow earlier intervention with any customers whose data displays known 'markers of harm'.

### Best practice

19 The ABB is committed to working pro-actively with local authorities to help drive the development of best practice with regard to local area risk assessments, both through responses to consultations such as this and directly with local authorities. Both the ABB and its members are open and willing to engage with any local authority with questions or concerns relating to the risk assessment process, and would encourage them to make contact.

20 Westminster Council is one local authority which entered into early dialogue with the industry, leading to the development of and consultation on draft guidance on the risk assessment process, which the ABB and our members contributed to. Most recently one operator, Coral, has been working closely with the Council ahead of it issuing its final version of the guidance, which we welcome.

21 The final guidance includes a recommended template for the local area risk assessment which we would point to as a good example of what should be expected to be covered in an operator's risk assessment. It is not feasible for national operators to submit bespoke risk assessments to each of the c.350 local authorities they each deal with, and all operators have been working to ensure that their templates can meet the requirements set out by all individual local authorities.

22 The ABB would be concerned should any local authority seek to prescribe the form of an operator's risk assessment. This would not be in line with better regulation principles. Operators must remain free to shape their risk assessment in whichever way best meets their operational processes.

23 The ABB has also shared recommendations of best practice with its smaller independent members, who although they deal with fewer different local authorities, have less resource to devote to developing their approach to the new assessments. In this way we hope to encourage a consistent application of the new rules by operators which will benefit both them and local authorities.

### Concerns around increases in the regulatory burden on operators

24 The ABB is concerned to ensure that any changes in the licensing regime at a local level are implemented in a proportionate manner. This would include if any local authority were to set out overly onerous requirements on operators to review their local risk assessments with unnecessary frequency, as this 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 operate consistently with the three licensing objectives.

- 25 Any increase in the regulatory burden would severely impact ABB members at a time when overall shop numbers are in decline, and operators are continuing to absorb the impacts of significant recent regulatory change. This includes the increase to 25% of Machine Games Duty, limits 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.

### Employing additional licence conditions

- 26 It should continue to be the case that additional conditions are only imposed in exceptional circumstances where there are clear reasons for doing so. There are already mandatory and default conditions attached to any premises licence which will ensure operation that is consistent with the licensing objectives. In the vast majority of cases, these will not need to be supplemented by additional conditions.

- 27 The LCCP require that premises operate an age verification policy. The industry operates a policy called "Think 21". This policy is successful in preventing under-age gambling. Independent test purchasing carried out by operators and the ABB, and submitted to the Gambling Commission, shows that ID challenge rates are consistently around 85%. The ABB has seen statements of principles requiring the operation of Challenge 25. Unless there is clear evidence of a need to deviate from the industry standard then conditions requiring an alternative age verification policy should not be imposed.

- 28 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 statement as to the need for evidence. If additional licence conditions are more commonly applied this would 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

### Other concerns

- 29 Where a local area profile is produced by the licensing authority, 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.

### Considerations specific to the Draft Gambling Act 2005 Statement of Principles

- 30 On behalf of the ABB, we welcome the repeated references through the policy statement of the council's duty to aim to permit the use of premises for gambling. We also welcome the repeated references to decisions being reached on the basis of evidence.

- 31 The policy, however, is long, overly prescriptive, repetitive and could benefit from being simplified. In addition, the policy makes repeated references to promoting the licensing objectives which, of

course, is pertinent to policies of the Licensing Act 2003 but not under Gambling Act 2005. The only body upon whom Gambling Act 2005 confers a duty to promote the licensing objectives is the Gambling Commission.

#### Part 1 – Paragraph 7.3

- 32 This paragraph outlines the definition that the council will use when determining vulnerable people. It contains a list of bullet points of persons that the council may consider vulnerable.

The list of bullet points should be deleted. There appears to be no point to this list as the early part of the paragraph simply defines vulnerable people as people who gamble more than they want to, 33 people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling. There is no evidence within the policy to suggest that persons of specific ethnic minority groups, ex-service personnel or offenders are automatically vulnerable. Such people would only be automatically vulnerable if the council had pre-determined that they were. We are certain that this is not the case. Any person may be vulnerable dependent upon their circumstances. The list of bullet points appears to offer nothing to the draft policy and therefore should be removed.

#### Part 1 - Paragraphs 10.3 to 10.13

- 34 These paragraphs outline the council's approach to the imposition of conditions. The draft policy statement would be assisted by a clear statement at the beginning of this section that the mandatory and default conditions are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives.

- 35 We welcome, however, the statement in paragraph 10.7 that conditions on premises licences will only be applied where there is evidence of a risk to the licensing objectives that requires that the mandatory and default conditions be supplemented.

#### Part 1 - Paragraphs 10.14 to 10.17 – Code of Practice Requirements

- 36 These paragraphs should be redrafted. Paragraph 10.15 appears to make adherence to the Ordinary Code provisions mandatory unless the council have determined otherwise.

Social Responsibility and Ordinary Code provisions are the domain of the Gambling Commission. The LCCP are clear that as far as Ordinary Code provisions are concerned, operators may adopt 37 alternative approaches to those set out in the Ordinary Code provisions if they have actively taken account of the Ordinary Code provision and can demonstrate that an alternative approach is reasonable in the operators particular circumstances. There is no veto as far as the council is concerned on alternative measures to Ordinary Code provisions and these references should be deleted.

#### Part 2 - Paragraph 15.2

- 38 This paragraph should be redrafted to make it clear that there are only very limited instances (UFEC permits, prize permits and small society lottery registrations) where the council is to assess the suitability of applicants. Once again, the draft policy, here appears to be trespassing on the

domain of the Gambling Commission and importing a fit and proper test to all applicants. The suitability of an operator is the responsibility of the Gambling Commission and the policy should be clear that in the majority of cases where applications for premises licence are made under the Gambling Act 2005, the suitability of an applicant is determined by the Gambling Commission.

#### Part 2 - Paragraphs 15.4 and 17.5

39 These paragraphs both refer to the possibility that the council may designate areas where gambling premises may not be located but then indicates that this is not a bar to an application which would then be determined on its own merits. Any such policy is likely to be unlawful and is certainly contrary to the overriding duty in section 153 that the council must aim to permit the use of premises for gambling. The references to the potential for this policy should therefore be removed.

#### Part 2 - Paragraph 24.5

40 This section contains a list of bullet points with issues that might prompt a licensing review. One of these bullet points relates to "*complaints from residents, responsible authorities of other interested parties about the operation of the premises.*" Apart from the typographical error in this sentence which should be amended, this bullet point should be clear that any complaint from a resident, responsible authority or other interested party should be relevant to the licensing objectives, the LCCP and not frivolous or vexatious as outlined in paragraph 24.9. As paragraph 24.5 stands, it appears to indicate that the council will consider a review upon the complaint of a local resident.

#### Part 3 - Paragraph 31

41 This paragraph is headed "General principles relevant to all licence types" and contains a list of bullet points which include an expectation that operators will cooperate with the council and provide relevant information where requested. Whilst we agree the need for working in partnership, this section is overly prescriptive and is importing irrelevant considerations as far as decisions are concerned. For example, one of the bullet points indicates that the council will attach significant weight to an applicants failure to work in an open and cooperative way and further that applicants who fail to declare relevant information (which isn't defined) are likely to have their applications refused. There is no definition of what the council determines "relevant information" and a refusal of an application on the basis of an applicant's failure to work in an open and cooperative way (which is subjective in the extreme) would certainly be subject to an appeal. Section 153 is very clear with regard to what is and what is not relevant as far as the determination of premises licence applications are concerned. The opinion of a council officer that an applicant is not open and cooperative is not one of them. These two bullet points should therefore be deleted.

#### Part 3a – Paragraph 37.16

42 This paragraph details the council's requirements as far as Gambling Act 2005 applications are concerned. There is a list of bullet points which is too prescriptive and is a further example of the draft policy statement requiring more than is required by the regulations. Paragraph 37.15 refers to the Gambling Act 2005 (Premises Licence and Provisional Statements) Regulations 2007 which

outline the form and content of applications for premises licences. Paragraph 37.16, however, prescribes far more information than is prescribed by statute. For example, paragraph 37.16 requires that applicants *"provide evidence that they hold an operating licence"*. The form prescribed in schedule 1 to Gambling Act 2005 (Premises Licences and Provisional Statements) Regulations 2007 simply requires that an applicant provides the number of his/her/its operating licence or if the applicant does not hold an operating licence but is in the process of applying for one, the date upon which the application for an operating licence was made. On the basis that it is a criminal offence (section 342 Gambling Act 2005) to give false/misleading information in respect of Gambling Act 2005 applications, it is unnecessary to require applicants to produce documentary evidence of either the fact that an applicant holds an operating licence or indeed the right to occupy the premises.

43 The bullet points also require that an applicant provides evidence that building is completely constructed. It is not clear what evidence is sought here but no such evidence is required by the regulations.

44 Similarly, there is a bullet point that indicates that an applicant must show how it is intended to satisfy the mandatory and default conditions and to *"set out the specific steps that will be taken to promote the licensing objectives"*. This paragraph is a good example of the draft policy requiring far more than is required and thereby increasing the burden upon operators. The bullet points that do not describe that which is prescribed in the regulations should be deleted.

#### Appendix B – Local Area Profile

45 There are a number of typographical errors within this profile for example the word "licence" is repeatedly misspelt. The local area profile recommends that in the Quarry and Coton Hill area *"with regard to future license applications in relation to gambling premises located in the wards identified above, ensure that the required measures are in place to minimise the impact on increased crime and disorder levels..."* This recommendation pre-supposes that the addition of a premise which permits gambling would impact on increased crime and disorder levels but fails to point to any evidence to support this. Overall, the local area profile, like much of the policy statement is repetitive, overly long and the relevant parts could be distilled into a much more concise report.

#### **Conclusion**

46 The 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.

47 Indeed, as set out, the ABB and its members already do this successfully in partnership with local authorities now. This includes through the ABB Responsible Gambling Code, which is mandatory



for all members, and the Safe Bet Alliance (SBA), which sets voluntary standards across the industry to make shops safer for customers and staff.

48 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, as well as our processes around local area risk assessments.

Yours faithfully,



**GOSSCHALKS**