

Appendix C



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## Fwd: The Gambling Act 2005 - London Borough of Sutton Statement of Principles Consultation

1 message

David Kingstone <david.kingstone@kingston.gov.uk>  
 To: David Kingstone <david.kingstone@kingston.gov.uk>

5 September 2018 at 12:13

----- Forwarded message -----

From: elizabeth speed <[REDACTED]>  
 Date: 13 August 2018 at 14:18  
 Subject: The Gambling Act 2005 - London Borough of Sutton Statement of Principles Consultation  
 To: "licensing@sutton.gov.uk" <licensing@sutton.gov.uk>  
 Cc: Tracey Rose <[REDACTED]>

Dear Sirs

### Gambling Act 2005 – Statement of Principles Consultation

Thank you for the opportunity to make comments on the above consultation. On behalf of Talarius Limited, I make the following points in relation to the consultation draft (the "Draft"):-

1. As the Authority will appreciate, in matters of regulation under the Gambling Act 2005 (the "Act") 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 it supports those it regulates to comply and grow. Additionally under the Code, when designing and reviewing policies, the Authority must among other things understand and minimise the negative economic impact of its regulatory activities and regulate and minimise the costs of compliance of those it regulates. Further, the Authority should take an evidence-based approach in determining priority risks and recognise the compliance record of those it regulates. We suggest that reference is made in the Draft to the Code's application to the Authority's activities under the Act.

2. Para 3.8: It is perfectly legitimate for an application to be made for a premises licence even though the premises are not finished. We refer to the 2008 case of R (on the application of Betting Shop Services Limited) –V– Southend on Sea Borough Council, in which it was held that an applicant could apply for a premises licence (without the need for a provisional statement) even though the premises were not fully constructed – the applicant is not restricted to making an application for a provisional statement. It was held by the court that the then current Guidance issued by the Commission was wrong. The Guidance was subsequently amended. As such, we suggest that the wording be amended to make it clear that applications for premises licences can be made regardless of whether the building in question is complete or finished. An applicant may apply for a provisional statement if the building is not complete, but it does not have to do so and can instead apply for licence. We also suggest that this be emphasised in para 92. It is in fact notable that applications for provisional statements are quite rare for the above reasons.

3. Para 63 (a): As the Authority will appreciate, there are limited circumstances when children are legally permitted to gamble (Category d machines). As such we suggest that the wording of this paragraph is amended to take such circumstances into account.

4. Paras 83 – 86 and 87- 88: We note that the list of possible measures noted at paragraphs 74 and 77 for AGCs and FECs respectively, are for some reason not repeated for licensed Bingo or Betting premises, even though the amount that can be staked and won is at least as high in these premises and indeed, in some

cases significantly greater. We submit therefore that the Draft is inconsistent in this regard and suggest it is amended.

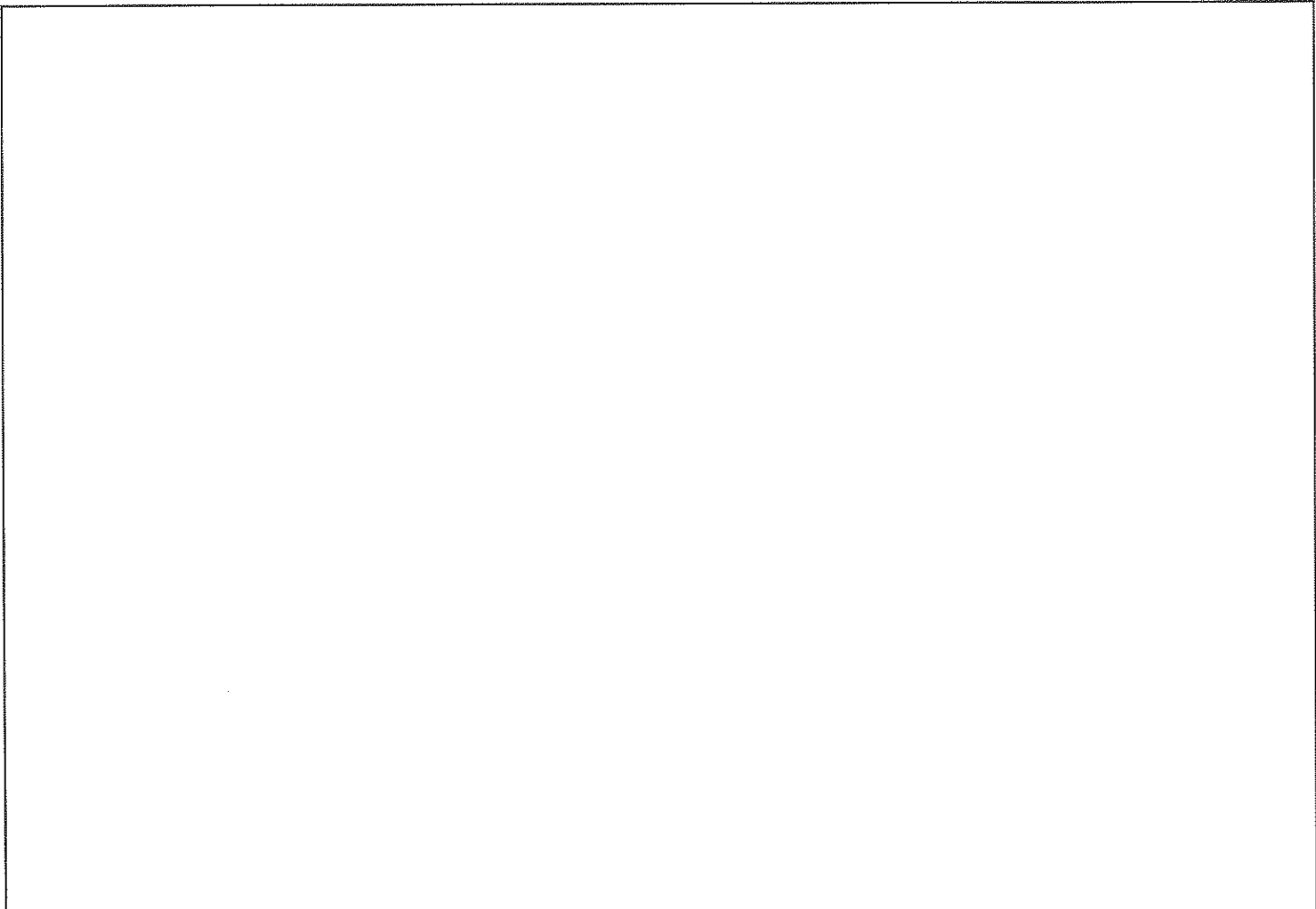
We hope that the above proves useful. If you have any questions, please do not hesitate to contact us.

Yours faithfully,

Elizabeth Speed  
Group General Counsel  
**Novomatic UK**

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**GOSCHALKS**  
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Date: 22<sup>nd</sup> August 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 (including putting the public on notice) for objections to premises licence applications, continue to be recognised under the new regime.

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 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 (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 *"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 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.

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**

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**

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.

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.

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**

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.

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.

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.

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.

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**

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.

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**

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.

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.

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**

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 Policy & Principles 2019-2022**

There appears to be a typographical error in paragraph 30. This refers to S158 Gambling Act 2005 and should refer to S153 Gambling Act 2005.

Paragraph 45 should be redrafted. This indicates that the authority is particularly concerned with regard to the clustering of gambling premises in any one area of the Borough. The use of premises is a planning issue and recent planning changes require that planning permission specific to betting office use be made if a premises is to be used as a betting office. The licensing authority is required to aim to permit the use of premises for gambling in accordance with Section 153 and not consider

whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning (S210 Gambling Act 2005). Accordingly, this paragraph should be redrafted.

Similarly, paragraph 51 should be redrafted. This paragraph contains a list of bullet points detailing locations where the licensing authority would pay “particular care” if an application was made. Two of these bullet points need to be deleted as they are not relevant to an assessment with regard to whether or not the location of the premises would be reasonably consistent with the licensing objectives. The bullet point relating to areas of deprivation needs to be deleted. The relative affluence of an area has no bearing on whether or not the operation of a premises would be reasonably consistent with the licensing objectives unless the licensing authority has predetermined that persons of a particular income group or in an area of deprivation are more likely to commit crime as a result of gambling or are automatically vulnerable. We are certain that this predetermination has not taken place and therefore this bullet point should be deleted.

Similarly, the proximity of a proposed premises to premises offering pawn broking, instant/pay day loans or similar services is an irrelevant consideration unless the licensing authority has predetermined that the people using those premises are more likely to commit crime as a result of gambling or are automatically vulnerable. Once again, we are certain that this predetermination has not taken place and this bullet point should, therefore, be deleted.

Paragraphs 64 – 70 explain the licensing authority’s approach to the imposition of conditions. This section would be assisted by a clear explanation that all Gambling Act 2005 premises licences are subject to mandatory and default conditions which are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives.

The draft Statement of Policy and Principles should be clear that additional conditions will only be imposed where there is evidence of a risk to the licensing objectives in the circumstances of a particular case that requires that the mandatory and default conditions be supplemented.

This evidential basis for the imposition of additional conditions is important and the draft Statement of Policy and Principles should be clear that additional conditions will not be imposed to simply where there is a “perceived need” (paragraph 65) or where it is “believed to be appropriate” (paragraph 26).

Paragraphs 87 & 88 explain the licensing authority’s approach to machines within betting premises. These paragraphs should be redrafted as they appear to confuse betting machines (where the authority has the discretion to limit numbers) and gaming machines (where there is no such ability to limit numbers). The holder of a betting premises licence may make available for use up to 4 gaming machines of categories B, C or D in accordance with Section 172(8) Gambling Act 2005. These paragraphs should be redrafted so that the distinction is clear.

## Conclusion

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.

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.

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**

