

GAMBLING COMMISSION

28 August 2012

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Dear Derek

Thank you for your letter of 13 August to Philip Graf. Philip has asked me to reply.

In your letter you asked three questions:

1. Whether a local authority could "request denial of licensing for a betting shop on the grounds that betting turnover would be less than gaming turnover so betting would not be the primary activity"
2. Whether a local authority could "request denial of licensing for a betting shop on the grounds that it was in breach of the problem gambling licensing objective"
3. Whether it was correct that "UKGC would not need to be consulted prior to or during such actions".

The short answer is that the licensing authority (in most cases the local authority) in issuing a licence needs to take account of the Gambling Commission code of practice on primary gambling activity. But it would, in our view, be ill advised to deny a licence on the grounds that betting turnover would be less than gaming turnover and therefore would breach the primary activity requirements. A genuine betting business may very well have considerably more gaming turnover than betting turnover.

It could deny a licence to permit the use of premises for gambling if it thought such use inconsistent with the licensing objectives (including the "problem gambling objective", the protection of children and vulnerable people from being harmed or exploited from gambling) or it could impose appropriate conditions.

And the Gambling Commission (which covers Great Britain not the UK), is one of several responsible authorities that must be notified (by the applicant, not the licensing authority) of a premises licence application and that are entitled to make representations. The Commission has indeed made representations where it has had concerns about primary gambling activity. But the decision is for the licensing authority concerned.



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You also drew the Commission's attention to the Campaign for Fairer Gambling's website and to a recent magazine advertisement you had placed which I regret to say contains some misunderstandings including the incorrect reference to Philip Graf saying that "it is not [the Commission's] duty to police the Gambling Act". In fact he said that it was not the Commission's job to police the high street – that was for the local licensing authorities and police, with whom the Commission shares responsibilities for gambling regulation. The Commission licenses operators and the local licensing authorities license premises with the Commission focussing on national and regional higher impact issues and operators and local licensing authorities and the police dealing with more local matters.

Another misunderstanding relates to the British Gambling Prevalence Survey results which cannot be used as evidence of the causation of problem gambling though it does usefully identify characteristics of problem gamblers who typically gamble in a number of ways, not just one.

You asked that if your understanding is incorrect we should publically advise local licensing authorities. Our Guidance to Licensing Authorities is already published (see www.gamblingcommission.gov.uk for details) and we have just consulted on some revisions including the suggestion that licensing authorities consider issues around primary gambling activity when considering applications to extend opening hours. However, it may be helpful to you and others if I briefly explain the background to the answers I have given you and publish our exchange on our website.

Background

When issuing operating licences, as in all its functions, the Commission is required by the Act (section 22) to "aim to permit gambling, in so far as the Commission thinks it reasonably consistent with the licensing objectives". The three licensing objectives (section 1 of the Act) are, in essence, keeping crime out of gambling, ensuring it is fair and open and protecting children and vulnerable people.

When issuing premises licences a licensing authority must aim (section 153) to permit gambling in so far as it thinks it is in accordance with any code of practice (section 24) and guidance (section 25) issued by the Commission, such as the Commission's code of practice on primary gambling activity and, subject to that, reasonably consistent with the licensing objectives and in accordance with its own three-year statement of licensing policy (section 349). In determining whether to grant a premises licence, authorities may not have regard to the expected demand for the facilities it is proposed to provide (section 153).

Premises licences can only be given to those holding or who have applied for their relevant operating licence (section 159). In relation to premises licences, the Act identifies (section 157) a series of "responsible authorities", which includes, among others, the licensing authority itself, the Commission, the police, the local planning authority and bodies responsible for public health and protection of children from harm who can make representations to the licensing authority (section 161).

The Gambling Act (Mandatory and Default Conditions) Regulations 2007 sets out various mandatory and default conditions including default ones for betting shop opening hours; a licensing authority may choose to substitute the default opening hours with alternatives. We have suggested when doing so authorities consider our advice on primary gambling activity which is based on our understanding of the Act.

The Act creates, through the system of operating licences and premises licences, different types of gambling environments – for example bingo, betting, casinos, arcades. Those gambling environments differ in the numbers and categories of gaming machine that they are entitled to make available; only betting shops, that is premises run by operators with a general betting operating licence and a betting premises licence, are entitled to make available category B2 gaming machines (the so-called "FOBT").

The Commission's view is that Parliament intended that only genuine betting businesses are entitled to make B2 machines available on the high street, and that this is reflected in the Act. To put the matter beyond doubt, however, the Commission has put in place a licence condition (licence condition 16) and codes of practice on the subject of "primary gambling activity" (see Licence Conditions and Codes of Practice at www.gamblingcommission.gov.uk). These require that gaming machines are only made available at times when there are "sufficient" facilities for betting offered. The codes of practice provide some assistance in interpreting "sufficient" and this is supplemented by advice we published in November 2011 "Indicators of betting as primary gambling activity" (which we are currently revising to make clearer but remain valid).

The Commission's advice suggests that in making judgements about whether individual premises are being run as genuine betting businesses, we and others (for example licensing authorities) need to take into account both expected and actual use of the betting facilities being provided. What matters is whether there is or is intended to be sufficient betting to constitute a genuine betting business not whether there is more betting than gaming revenue. Matthew Hill's recent article in Coinslot (attached) discusses our approach in more detail.

Yours sincerely



Jenny Williams
Commissioner & Chief Executive

GAMBLING COMMISSION

Coinslot article, 20 August 2012

INFO 12/30

Primary Gambling Activity: common misunderstandings

As readers will know from previous articles, the Gambling Act 2005 has the effect of restricting B2 machines (FOBTs) to betting shops (and casinos). The question of what constitutes a genuine betting shop continues to be a subject of some debate and confusion, with a view gaining traction - erroneously says the Gambling Commission - that if gaming machine turnover exceeds betting turnover in a particular shop, it must fail the test of primary gambling activity.

"In reality, readers will not be surprised to learn that it is not as simple as that," says Matthew Hill, the Commission's Director of Regulatory Risk and Analysis. "There is a fundamental misconception at large - the 50/50 myth - that there must be more profit or turnover from betting than machines to satisfy primary gambling activity.

"In making judgements about whether individual premises are being run as genuine betting businesses, we and others (for example local authorities) need to take into account both expected and actual use of the betting facilities being provided. What matters is whether there is, or is intended to be, sufficient betting to constitute a genuine betting business. In assessing this we take account of the actual use of premises in terms of, for example, gross gambling yield (GGY) or the number of bets taken as one of a wide range of factors in our consideration.

"Other relevant factors include the facilities that are actually in place - like the provision of information that enables the customer to access details of the events on which bets can be made and to be able to place those bets. Customers should be able to obtain details of the outcome of the events, calculate the outcome of their bets and be paid or credited with any winnings. The range and frequency of events on which bets can be made, the relative space allocated to each product and the extent to which betting is promoted are also considered.

"Although there is plenty of room for development of niche or novel betting businesses, we do expect all business models to be based on a core genuine betting business. Where actual GGY from betting is low, we are likely to wish to look at the facilities in place and the business projections and marketing plans of the operator. Some of the cases we have been dealing with in recent months involve extremely low numbers of bets, and the operators concerned have had difficulty making a convincing case that what they are running is a genuine betting business.

"It is of course also misleading to compare the turnover of over-the-counter betting with that from machines which, on average, pay out around 97% of the amount staked but which rely on players repeatedly re-staking their winnings. A successful (and genuine) betting business may well have a machine turnover greatly in excess of its over-the-counter business. What matters is whether there is, or is likely to be, sufficient betting business, and not whether the return from machines is larger.

"We appreciate that the situation can be complex but the simple message is that only genuine betting businesses are entitled to make B2 gaming machines available for use, so the focus is primarily on the facilities for betting and the use made of them. Over the coming months we will continue to work with stakeholders to help improve understanding and to explain the position, as well as refining our published advice to improve accessibility and clarity."

Ends

