

Re: The Horserace Betting Levy Board

Consultant's Advice
to the Horserace Betting Levy Board

by:

Rt. Hon. Sir Philip Otton

13 October 2008

Introduction

I have been asked by the Horserace Betting Levy Board to act as an independent consultant, to address the present impasse within the Board and to suggest possible scenarios or finger-posts which may lead to an agreement.

I wish to emphasize that what follows is not legal advice, still less a Judgement or an Arbitral Award. It is an attempt to assist all parties (including the Government-appointed Members) on the Levy Board to reach an Agreement. I do so by indicating on the balance of probabilities the likely outcome of the principal contentious issues between the Bookmakers' Committee ("BC") and the British Horserace Authority ("BHA") if the matter has to be referred to the Secretary of State ("SOS") for a Determination.

Background

1. The Horserace Betting Levy Board ('the Board', 'HBLB') is a statutory body established under the auspices of the Betting Gaming and Lotteries Act 1963 as amended by the Horserace Betting Levy Act 1969. The Board comprises three Government-appointed members, three representatives of the Racing Industry, the Chairman of the BC and of the Tote. One of the Board's functions is to agree the rates, terms and conditions. The Levy is currently calculated as a percentage of the gross profits generated by the British-based bookmakers on British horseracing. The legislation provides for a recommendation to be made to the Board by the BC which the Board considers. If by 31 October, the Board has not accepted a recommendation from the BC as to the basis on which the levy is to be made in the year commencing the following 1 April then the terms and conditions, including the rates to be applied of the next levy falls to be determined by the Secretary of State of the Department of Culture, Media and Sport.

2. The time has now come for the HBLB to agree the rate, terms and conditions of the Levy to be paid for the next year commencing 1 April 2009, referred to as the 48th Levy. There is at present no agreement.
3. It is apt to remind the HBLB that in their last Annual Report they publically stated that it was to pursue the following strategic objectives, within current financial constraints:
 - (a) **support, as cost-effectively as possible**, the provision countrywide, of horseracing in a form which retains high standards of integrity and is attractive to the racehorse owner, the racegoer and the off-course punter, thus protecting and making optimum use of the Board's levy income;
 - (b) **apply funds at an appropriate level** to the improvement of breeds of horses and to veterinary science and education;
 - (c) **encourage a yet more commercial approach** within the Racing Industry, with a continuing emphasis on modernisation and tight control of central costs.
 - (e) **tailor its financial support** for the Racing Industry so as to incentivise recipients to increase their own direct, or indirect, contributions and to strive to improve their performance against the criteria of the Board's other policy objectives.

(...)
 - (g) following the outcome of the Racing Funding Review Group, **seek to reach a Levy agreement, for 2009/10** and possibly for a longer period.

Specifically, the Board will support the Racing Funding Review Group in its objectives to:

- (a) provide scenarios for reforming the Levy, including taking forward the Donoughue Reports;
- (b) **provide scenarios** for the overall quantum and mechanism for:

(i) a deal between Racing and Betting (including all aspects of the relationship, measuring and reflecting the value and contribution of each to the other, revenue sources and overall costs);

(ii) creating clear and certain relationships between the two

(iii) **achieving mutually beneficial arrangements**, including surrounding issues such as Turf TV/SIS, fixtures, off-shore betting, VAT, Competition Law, opportunity costs, European dimension, betting Exchanges, marketing and sponsorship.

(c) **consider joint initiatives** for the promotion and marketing of racing and off-course betting on racing.

4. It is not necessary to set out the statutory framework within which the HBLB operates as it will be well-known to all interested parties save for S.27 of the '69 Act to which I refer later. Suffice it to say that the Board is charged by Statute with the duty of assessing and collecting monetary contributions from bookmakers and Horserace Totalisator Board and with applying them for purposes conducive to any one or more of:

a) The improvement of horseracing;

b) The improvement of breeds of horses; and

c) The advancement or encouragement of veterinary science or veterinary education.

5. The original intention of establishing the levy, and therefore the HBLB was to provide a means of compensating racing for the loss of attendance that was anticipated when off-course betting shops were legalised in 1961. Today, the HBLB applies levy funds to a wide range of schemes in direct support of horseracing.

6. The HBLB raises money by collecting a statutory levy on off-course betting on horseracing, and on the Tote and on-course bookmakers. Off-course betting includes bets placed with License Betting Offices (LBOs), spread betting firms and bet broking operations. The levy on off-course betting represents the greatest proportion of the HBLB's income. It is collected from bookmakers as a percentage of the gross profit on their horseracing betting business. The majority of levy income is expended in direct support of horseracing.

7. Over the last ten years the Levy Scheme has produced an impressive yield. In 1998/1999 the yield was £56m rising to a yield for 2007/2008 of £116.5m. The yield is inclusive of Tote contributions.

Levy Yield 10-year Record

	Levy Yield £'m
2007/08	116.5
2006/07	99.2
2005/06	99.3
2004/05	105.6
2003/04	110.7
2002/03	79.9
2001/02	72.9
2000/01	60.3
1999/00	59.4
1998/99	56.0

It is to be noted that the increase was not progressive through the years. In 2004/2005 the yield was £105.6m which dropped to £99.3m in the following year and in the year 2006/2007 it dropped to £99.2m. This was followed by an unprecedented increase of 16% to £116.5m. For reasons which appear hereafter it is inherently unlikely that the current yield will be increased or sustained at its present level for the 48th period.

8. Each year, the BC formulates proposals for the next Levy Scheme in accordance with the Act of 1963. They recommend the categories, rates, conditions and definitions of the Scheme for the following year and then forward them to the HBLB for consideration. The HBLB takes into account the funding needs of racing and the bookmakers' capacity to pay levy before any agreement is made. The BC prepares a forecast of the amount of on-course and off-course horseracing gross profit, both cash and credit which is likely to be achieved in the levy year concerned. A scheme is then prepared for the forthcoming levy period commencing 1 April. In effect the BC has a 'veto'.
9. The 47th Levy Scheme (1 April 2008 to 31 March 2009) was finalised in February 2008 following the Secretary of State's Determination. In essence, for off-course betting through LBOs/Media Platform (cash, telephone or internet) showing a gross profit on BHBB of £85,700 or more per year, flat percentage charge of 10% applied. Abated charged applied to any LBOs/Media Platform with gross profits of less than £85,700. A minimum levy payment of £2,144 applied. The levy for on-course betting was charged at a flat fee of £188 plus a fixed ring charge for each racecourse attendant (either £4 or £8 depending on the location of the Ring). On-course bookmakers who used and/or operated a betting exchange were also liable to pay a levy at a rate of 10% on their gross profits derived from BHBB. The levy payable by bet-brokers including betting exchanges was charged on a basis equivalent to 10% of their gross profits, defined as gross commission on BHBB deducted from the winnings paid out to bettors and bet-takers. Spread betting business was charged at 2% of gross profits. Bookmakers who conducted BHBB on Point-to-Point and/or harness racing and/or trotting events paid a fixed contribution of £150.
10. The effect of the SOS's Determination was to replicate the terms of the 46th Levy (subject to adjustment for inflation). The result was accordingly known as 'rollover'. For the 48th Levy Scheme the BHA proposes a 'rollover' of the Determination of the 47th Levy. BC refuses to agree.

As I see it there are three options:

- i. A 'Rollover' – for which there is no agreement. In default the matter will have to proceed to Determination.
- ii. A 'Determination' – the outcome of which is unpredictable and may well disappoint one or even both parties. All the members of the Levy Board refer to a 'Determination' as a last resort.
- iii. An 'Agreement' – embracing all contentious matters by 31 October, or the possibility of an agreement in part, with a supplementary Levy, (or a side agreement) to be determined at a later date (say, mid December 2008) to have effect from 1 April 2009.

Capacity to Pay

11. BHA contends that operators have experienced substantial growth in turnover and profit. Their capacity to pay is hugely increased since 2002 during which time bookmakers have enhanced and diversified their business and benefitted from cost-saving opportunities.
12. When determining the bookmakers' capacity to pay there is no basis in law to suggest, in making his assessment, the Secretary of State is restricted to considering only those revenues which bookmakers derived directly from horseracing business. He should make an informed decision, taking into account the prevailing economic conditions and the other 'fiscal, social and economic' circumstances so as to arrive at a fair and reasonable Levy.
13. In doing so, and in practical terms, the Secretary of State should not confine the Levy or his Determination on the proceeds of horseracing but all the income sources of bookmakers including gross profit ("GP") from greyhound racing, boxing, football and other sports.
14. In an impressive submission Mr Fitzgerald submitted that the statutory framework (and in particular section 27 of the '69 Act) gave a wide discretion to the Secretary of State which enabled him to take into account revenue to bookmakers from all sources including other sports.

15. The BC contends that it is fundamental to the statutory scheme that the monetary contributions collected by the Levy Board from bookmakers to be applied for the purposes referred to in section 24 (1) (a) – (c) should be derived only from that part of the bookmakers' GP as relates to betting transactions on horse races.

16. In evaluating these arguments it is necessary to consider in particular section 27 (2) which provides that any Levy Scheme promulgated by the Levy Board shall include provision:

'...for securing that the Levy shall be payable only by a bookmaker who carries on his own account a business which includes the effecting of betting transactions on horse races, **and only on so much of the business as relates to such betting transactions.**'

17. Mr Kevin de Haan QC, a specialist in Betting and Consumer Law, was asked to advise the BC on two questions relating to the exercise of Secretary of State's powers to determine a Levy Scheme pursuant to section 1 (2) (b) of the Horserace Betting Levy Act 1969 namely:

- i. Is the SOS obliged to consider capacity to pay when determining this Scheme
- ii. If so may he only consider the betting industry's capacity to pay in the narrow context of the profits derived exclusively from betting on horseracing, or does his enquiry have a broader context which enables him to consider the profits derived from all commercial activities carried on by bookmakers.

18. Having considered the legislation leading counsel stated at paragraph 18:

'It is clear from a reading of section 27 of 1969 Act together with section 1 (2) of the HBLA 1981 that insofar as the category into which a bookmaker is placed is determined by his turnover, only the proportion of it which relates to betting transactions on horse races may be considered.'

Leading Counsel continued:

'The golden thread running through the whole statutory framework for the assessment, collection and application of the monies payable by way of Levy is that since those monies may only be applied for purposes beneficial to horse racing, bookmakers should only be called upon to pay on the basis of their turnover derived from betting on horse races. Turnover derived from any other betting transactions is treated as irrelevant to this statutory scheme as it now exists. It therefore seems to me that where the Home Secretary is considering capacity to pay, it is incumbent upon him to do so only in the narrow context of that proportion of the industry's turnover which is derived from betting transactions on horseracing. If the overriding consideration is that bookmakers should only be called upon to pay what is reasonable, there is the strongest possible argument that any assessment of what is reasonable should be determined in the narrow context of turnover derived from betting transactions on horseracing rather than in the broader context of turnover derived from betting on other events. On that basis, it is as unreasonable for bookmakers to be called upon to support activities for the benefit of horseracing from resources derived from other types of betting transactions, as it would be for them to have to do so from resources of theirs which are not derived from betting transactions at all. It is hardly reasonable for a bookmaker to have to give up all of his profits derived from his horseracing betting business to the Levy merely because other aspects of his business are doing well.'

19. There are two caveats to this Advice which is undated. First leading counsel refers to the 'Home Secretary' whose responsibility for the Levy Scheme passed to the current Secretary of State. Second, there are references to 'turnover' and not to the later criterion of gross profit. Even so I do not consider that either of these anachronisms undermines the essential point in issue. I attach of a copy of this Advice.
20. I consider that Mr de Haan's analysis, reasoning and conclusions are probably correct. Both sides seek to rely on statements made in Hansard. The only one

which is either relevant or carries the most weight is that of Ms Tessa Jowell, the then Secretary of State in January 2002 when announcing the 41st Levy Scheme:

‘Although all recent Levy Schemes have been based on turnover it appears to me that, in current circumstances, it is not necessary the fairest or most reliable indication of bookmakers’ ability to pay the Levy. In all the circumstances, I am therefore minded to determine the 41st Scheme on the basis of off-course bookmakers paying an average of 9% of **their gross profits on horserace betting.**’

21. Consequently I express the view that on this issue the argument advanced by and on behalf of the BC will prevail in any subsequent Determination by the Secretary of State. The monetary contributions collected for the Levy can only be derived from that part of the bookmakers’ GP which ‘relates to betting transactions on horseracing’ and not from any other sport or other revenue stream.

22. I agree with the BHA that the Secretary of State should take into account the prevailing economic conditions and other economic, fiscal and social circumstances but it does not follow that he must or even can take account of all income sources of bookmakers including GP from other sports. The effect of the language indicates the contrary. The words ‘the effecting of betting transactions on horse races and only on such of the business as relates to such betting transactions’ were intentionally inserted by the draftsman to have purpose. If he had intended that all sports should be taken into account he would have so stated. The words ‘only so much’ are unequivocal and clearly relate to betting transactions relating to horseracing. The phrase ‘so much of the business as **relates to** such betting transactions’ requires further examination. It must be noted that the draftsman did not confine himself to business ‘from’ or even ‘derived from’. ‘As relates to’ is wider in concept and encompasses betting activities which establish a relation or link between them and horseracing. So construed, the Secretary of State is probably able to take account of other activities which do have a connection with horseracing and not merely traditional horseracing alone.

23. The importance of this must be stressed. If, as I anticipate below, the SOS in exercising his discretion decides to take into account increased costs to bookmakers from Turf TV when assessing their capacity to pay, then he will be tempted to apply this wider concept and bring into account other activities which have a connection to horserace betting. Two activities fall for such consideration.

FOBTs

24. First, FOBTs or gaming machines in LBOs must be considered. The BC contends these devices have no connection with horseracing. It is not possible to gamble on the outcome of a horserace by resorting to the machines. There is no 'book'.

25. It is open to the Secretary of State to conclude that there is a connection between horserace betting in LBOs and these machines. They are sited in LBOs. Punters resort to LBOs to watch and bet upon racing and while they are in the shop they play the machines. This is particularly so since the introduction of winter evening fixtures, during the gaps between races and even more so when the screens are blank in shops without Turf TV or SIS. The TNS survey for the BHA in September 2007 revealed that British Racing is the key driver of LBO traffic for 63% of users of FOBTs in betting shops.

26. It follows that I consider on the balance of probabilities that the Secretary of State, if forced to make a Determination in the exercise of discretion is likely to take into account GP from FOBTs.

27. Thus if a Determination is to be avoided it is incumbent upon both industries and the Government-appointed Members to reach an agreement. In order for this to occur the BC should disclose the GPs to the Levy Board as soon as possible. I attach an e-mail from Patrick Nixon which goes some way to establishing the necessary datum point.

Virtual races

28. Second, with regard to 'virtual', computer-generated or simulated races, horseracing continues to be 'the dominant betting shop product' (per Ladbroke's report 2006). Once inside the punter is tempted to bet on such races. This was

apparent during the foot-and-mouth epidemic which stopped horseracing and punters resorted to betting on computer racing.

29. The Secretary of State is likely to determine that the GP from such activity relates to horseracing betting transactions and that its GP falls to be levied.

30. I suggest in order to avoid such a Determination it would be in all parties' interest to try and reach an accommodation.

Turf TV

31. It is well-recognised that the Scheme, the Levy Board and the Secretary of State must strike a balance between the legitimate needs of Racing against the ability of bookmakers to pay in accordance with the prevailing economic situation. As the BC put it:

'Whilst it is probably true that such a judgement is likely to be subjective where the parties themselves are concerned. It may also be true that an objective third party assessment, when such was proved necessary in the past, has always taken the prevailing economic climate into account.'

Turf TV is an initiative taken by certain racecourses intended to raise greater revenue from the betting industry through the commercial mechanism of selling them the same product at a much higher price than had been paid before. Thus from 1 January 2008 a duopoly of supply exists and if a bookmaker wants full coverage of UK Racing from that date he has no choice but to buy content from both suppliers at whatever price each supplier charges.

32. The BC claims that the charge to bookmakers as a whole will result in payments of between £29 million, £44 million and even £77 million for the relevant period. The Committee recommended that, as a consequence of the substantially increased costs, a total 'permitted offset' against the Levy should be made. Because the Committee was aware that the Turf TV offerings were sold to different bookmakers at different prices it recommended that any bookmaker

claiming such an offset could do so against receipted invoices and for the added costs differential only. The recommendation was rejected by the Secretary of State when determining the 47th Levy. The proposal for an offset of the incremental costs proposed was not accepted. It was said that because the extra cost was not known, the impact could not be adequately assessed.

33. The BC states that any bookmaker signing up to Turf TV has incurred substantial extra costs in acquiring a full picture package. In practice this is reduced to £5,729 per shop. The additional annual cost to the betting industry of taking this second service is calculated in the order of £40 million. It is impossible to be definite because of the commercial confidentiality of Turf TV and SIS contracts. BC currently recommends the introduction of a flat-rate rebate of £2,000 per annum per shop to offset the incremental costs.

34. BHA's view was that licence fees paid by bookmakers to Turf TV should not be seen as reducing the bookmakers' capacity to pay, nor reducing the needs of Racing at all, and certainly not in the manner that the BC argued (i.e. a straight-line basis). There is no reason in principle to distinguish Turf TV costs from any other overhead or expensing incurred in manning a bookmakers' business which have not hitherto been deductible, and as such they should not, contrary to the BC's assertions, be deductible from Levy amounts otherwise payable to Racing. There is no equivalence between the revenue generated by Turf TV and the income satisfying the 'needs' of Racing. Unlike the Data Licences proposed as a replacement to the Levy, Turf TV does not amount to a commercial solution the revenues from which are capable of being offset against the Levy, or which can ultimately replace the Levy. In any event, the additional costs incurred by bookmakers as a result of subscribing both to SIS and Turf TV are not as significant as the bookmakers suggest and also benefit the bookmakers by improving their offering.

35. In his Determination of the 47th Levy Scheme the Secretary of State commented that:

'I accept that an argument can be put forward that the bookmakers subscriptions to the new service constitutes a commercially based flow of money to Racing, albeit from certain bookmakers to certain racecourses. I therefore accept that it may have a material effect both on the bookmakers' ability to pay and on the needs of Racing.'

He then recorded the divergence of views between the two parties and continued:

'In time its full economic impact on bookmakers, racecourses and on horseracing generally may become clearer. However at this stage I consider that it would not be appropriate to take Turf TV into account in setting the level of the 47th Levy.'

The door is therefore not closed. The BC asserts that:

'The picture is now clear. Bookmakers' costs have increased. Costs generally are not going to go down and there will be little or no growth against which to offset such costs. With the economic downturn and the increased pressure on costs, the industry's capacity to pay the Levy is inevitably reduced. They make a case for reducing the Levy by an estimated £21,750,000.' I attach two BC graphs which assist on this point.

36. On the balance of probabilities, it is likely that the Secretary of State, when making a Determination, would be less equivocal than he was last year and take account of any concrete evidence that the BC can advance. There are two aspects:

- i. The Levy Board cannot reduce the amount of GP from horseracing by setting off the costs of TV in whole or in part. This cost is no different from any other overhead. It cannot promote an item which would be reflected in the net profits. It is to be noted that the BC have never sought to set-off the cost of the SIS services in this manner. Similarly the BC cannot get round this situation by seeking to set-off only a percentage (i.e. the 36% proposed).

- ii. However, the additional costs undoubtedly affects the 'capacity to pay'. I would expect this year the Secretary of State to accept in principle consideration of the additional costs but confined to the capacity to pay.

37. It follows that the Levy Board must take into account the Bookmakers' capacity to pay when assessing what is reasonable for the amount of Levy. The Government-appointed Members, who must be objective, must also pay particular attention to this aspect and attempt to balance the needs of Racing against the capacity to pay and thus determine the Levy at a level not unreasonable to both interests. The Levy Board might be assisted in this regard by the latest proposals of the BC in their letter of 29 September 2008.

Needs

38. The word 'need' has a variety of meanings from 'demand', 'necessity', to 'want' and 'wish'. BHA gives the impression that they are postulating a wish-list for the improvement of Racing. Integrity and regulatory costs were £15 million in 2002 but they project the costs to £25 million in 2008 (which encompasses new categories of costs). They also seek at the very minimum a £3.3 million increase for promotional costs. It will be incumbent upon the Levy Board to determine whether such costs (and to what extent) are justifiable or necessary.

39. More compelling is the case they put forward for an increased of prize money. The percentage of prize money as a proportion of training costs returned to owners to 2006 was (for example) 56% for France and only 24% for Britain. Britain's current relatively poor prize money performance in relation to its international competitors is illustrated by identifying the countries staging the worlds' 40 most valuable races in 2006 in which Britain could only claim one, the Derby. Therefore, they claim, Racing requires additional prize money costs to be met from an increased return through the Levy. In support they point out that in real terms betting operator gross win has increased by 66% from 2001 to 2006 whereas the Levy payments have only increased by 35% over the same period. They suggested that the starting point for consideration of the 47th Scheme

should have been £111 to £130 million, simply to reflect indexed link inflation. They seek a Levy of between 14% and 16%.

40. I respectfully suggest that it should be the task of the Government-appointed Members to scrutinise this part of the Racing industry's case with considerable care. They may think it appropriate to call for a rigorous (or if necessary an in depth) cost/benefit analysis of the costs (past and future) of extending race meetings (numbers of days and races) and the benefit accruing to both Racing and bookmakers. If there is significant advantage (one way or the other) then it would be seen appropriate to take this into account. I also suggest that it would be advisable to establish the precise and reasonable 'need' of the Racing as the starting point of the exercise before considering capacity to pay.

Betting Exchanges

41. I have not yet had the opportunity to meet the representative of the Betting Exchanges. I hope to do so shortly. I shall deliver a supplementary.

Threshold

42. The BC again seeks an increase in the threshold figure at which the headline rate of Levy is payable by the LBO sector. The recommendation is that reduced charges should apply for all shops showing a relevant gross profit of less than £90,000 (or £115,000 if a different percentage threshold were applied).

43. The BHA maintains its stance that threshold levels have no proper place in any Levy Scheme calculated by reference to gross profit. There is no longer any justification for smaller bookmakers to pay discounted or abated Levy charges and that all should be subject to the same percentage of gross profit assessment. To remove the abatement and threshold provisions would do no material harm to bookmakers but would provide Racing with a significant and important benefit – an increase to the Levy of some £3.7 million per annum.

44. I would not expect the BHA argument to be accepted on a Determination. On the last occasion the SOS recognised that for off-course betting through LBOs showing a gross profit on British horserace betting business (BHBB) of £85,000 or more per year, a flat percentage rate of 10% would apply. Abated charges would apply to any LBO or media platform with gross annual profits with less than £85,700. A minimum payment of £2,144 would apply.

45. Accordingly, on the balance of probabilities any Determination would preserve the threshold but would probably adjust it upwards by the RPI which at the current rate of 4.8% (due for change on 14 October) produces £89,813.60.

Competition Issues

46. I do not address competition issues as they are beyond my remit but I attach an opinion from S. J. Berwin which casts doubts as to whether there are any.

48hr Declarations

47. As members will be fully aware this is a result of 'internationalisation' of Racing to make allowance for the time zones changes.

48. I would expect the Secretary of State to be sympathetic to the argument advanced by the BC that the 24hr Declaration time should be restored for British turf racing for the season of 2009. This will require some calculation on both sides.

49. If there was general agreement by all interested parties I see no reason why this should not be put into effect by the Levy Board. It would be necessary to agree an appropriate figure.

Overseas Operators

50. The importance of this issue was highlighted in BHA's letter of 23 July 2008. This showed a forecast reduction in the Levy yield of £1.5 million simply due to moves

offshore of internet business that have previously been onshore and paying Levy. The letter continues:

'There is something unique about this topic. All sides agree. The All Party racing Group, Racing, Bookmakers, Betting Exchanges and the Levy Board are all in agreement that bets offered by betting operators based outside of Great Britain on British horseracing to customers in Britain should have to contribute to the Levy.'

51. In a paper prepared by the BHA following our meeting on 8 October it is stated:

'In our view that activity on overseas races is likely to be higher now due to the increase in television coverage in LBOs.

(...)

In April 2002 as part of the new commercial arrangements to be underpinned by database rights, the (BHB) introduced a worldwide commercial licensing policy to charge for the use of pre-race data, in effect, the lists of runners and riders. In Britain, Northern Ireland and the Republic of Ireland the charge was set at a rate of 10% of gross win on bets on those races (equivalent to the then new Levy rate). It was agreed that Levy payments would be offsetable against licensing fees due from British betting operations. At that time the BHB agreed to ... to waive Levy on overseas racing.

This lost income was more than made up by new licensing income from overseas bookmakers under the database rights. For example, income from Irish bookmakers alone for the data exceeded £16 million per annum. (...) Following the 2004 ECJ judgement the overseas income for data has entirely evaporated. (...) We would argue that the Levy on overseas horseracing should be reintroduced for the 48th Scheme, which could yield an amount perhaps in the region of £10 million for British horseracing and restore the similar treatment enjoyed by overseas racing authorities. It is within the power of the Scheme and the Secretary of State to address this.'

52. I am not persuaded that it is within the power of the Scheme to address this issue. There seems to be two parts to the issue. First, British bets on foreign races

(e.g. the Arc de Triomphe) and second, bets placed by British customers outside Great Britain on British Racing.

53. I respectfully suggest that these matters should be investigated within the Scheme but agree that all parties should, in the absence of any agreement, make common cause to the Secretary of State for an investigation as part of the overall Modernisation Review already initiated by the SOS.

Racing Promotion

54. I have formed the impression that both sides are aware of the present inadequacy of the consolidation of Turf TV and SIS presentations in LBOs. It is in the interest of both parties that they should get together to try and remedy this situation.

The Future

55. I do not propose to make any comment on the future. How matters are to be taken forward will to some extent be determined by the outcome of the attempts to reach an agreement.

Conclusion

56. I express the hope that the above will be of assistance to the Levy Board and facilitate an agreement, at least in part, of the assessment of the 48th Levy Scheme and so avoid a Determination.
57. I shall be happy to attend the Levy Board at its meetings if it is thought that it might be helpful and if all parties agree.
58. Finally I wish to express my appreciation and gratitude to all those involved for their cooperation and assistance before, during and following our meetings. I could not otherwise have produced this Report so quickly within the very narrow time table.

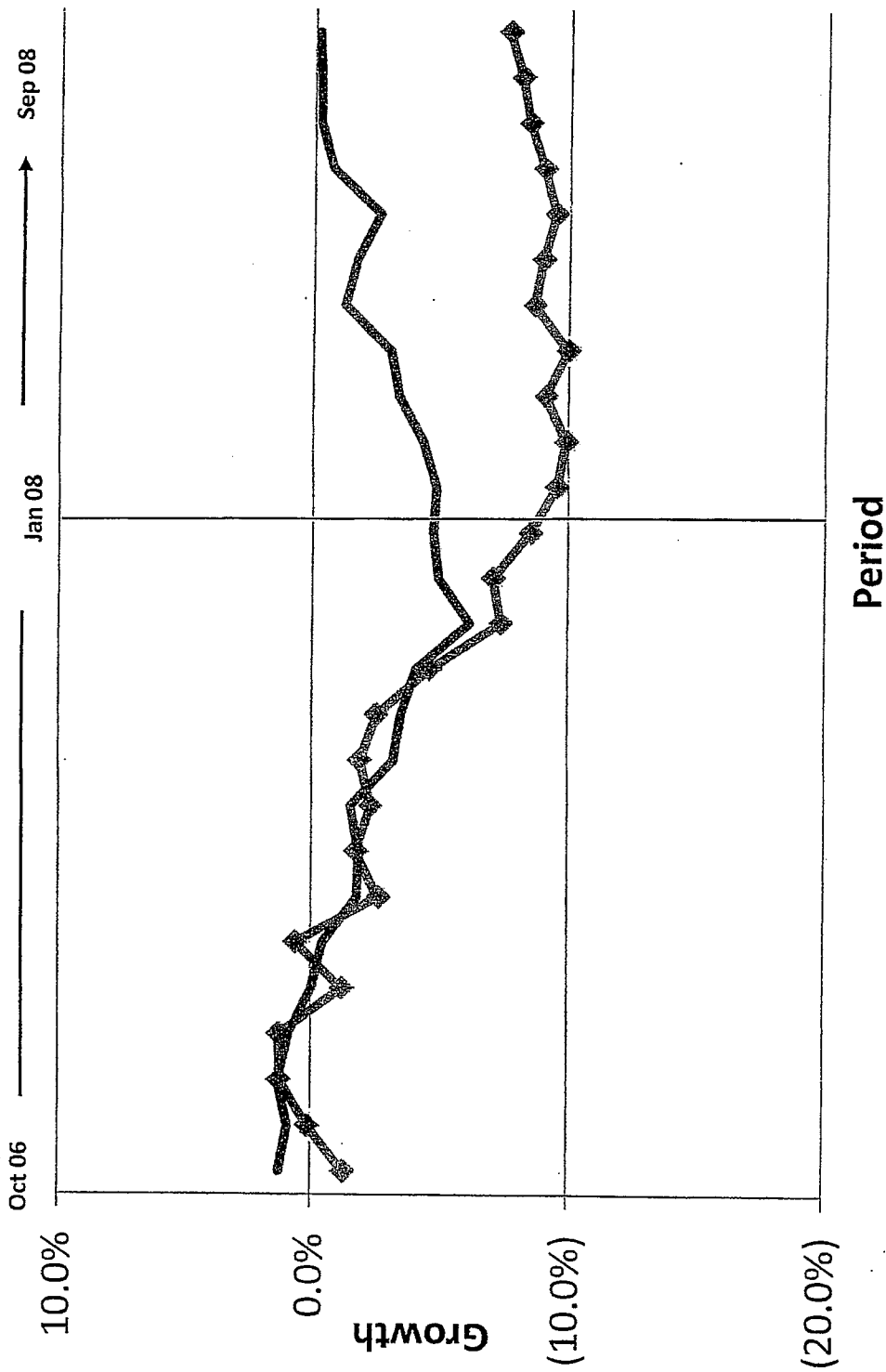
Sir Philip Otton

A handwritten signature in black ink, appearing to read 'Philip Otton', written over a horizontal line.

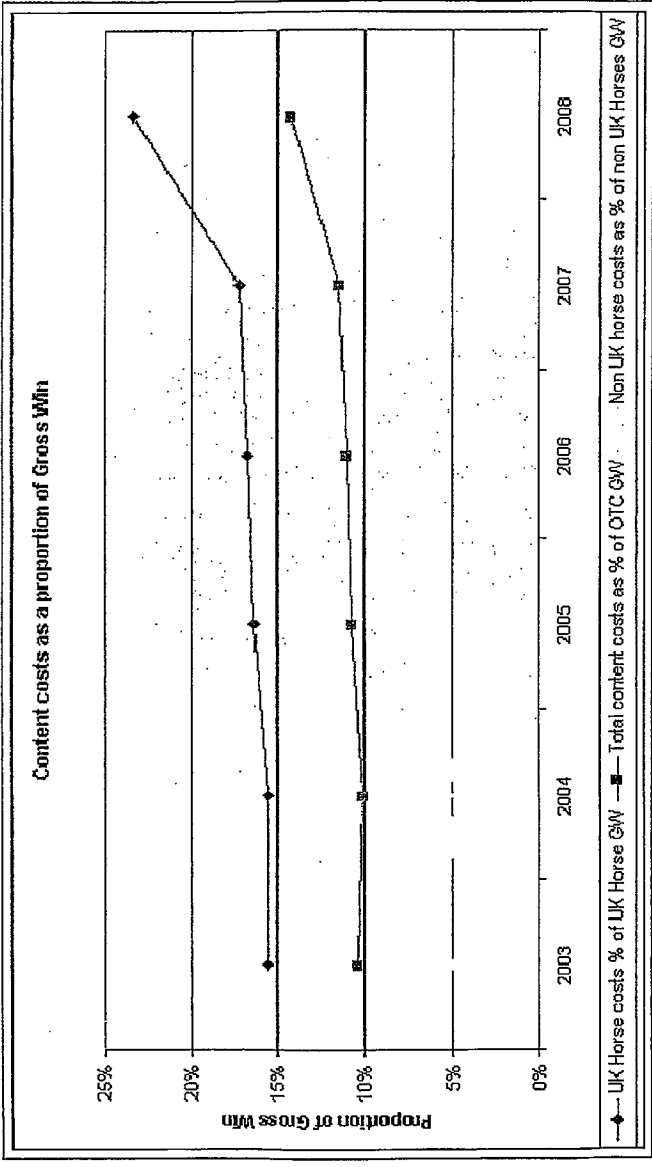
13 October 2008

20 Essex Street
London WC2R 3AL

OTC & UK Racing Turnover MAT Growth



◆ UK Racing MAT T/o Growth ■ OTC MAT T/o Growth



Sir Philip Otton

From: "Patrick Nixon" <patrick.nixon@hblb-bmc.org.uk>
To: <philip.otton@20essexst.com>
Sent: 08 October 2008 14:15
Subject: Enquiry into the 48th Levy Scheme

Dear Sir Philip

At yesterday's meeting, you asked how the gross profit on horseracing this year compared to last.

We have run some industry figures which show that it is projected to be about level this year compared to last. The top line shows the gross win through the betting shops. The second line shows the Levy contribution made by the shops, which is less than 10% of the top line because of the threshold system which allows those shops generating less than £85,700 to pay at a reduced rate, so the marginal rate across the piece is actually 9.2% from the shops.

This moves up again to about 9.6% when the 10% flat rate contributions from exchanges and telephone/internet business is counted back in but we have discounted that because no relief is sought against that payment because those platforms do not take TV pictures. Their costs have not therefore been impacted in the same way and their capacity to pay is unaffected by the incremental costs being borne by the shops.

The right hand column shows how our current proposal of saving £17M (£2000 x 8,500 betting shops) of the incremental £40M works through to a bottom line figure where the ratio showing the "profit share" indicates that from a position in 2007 where, on the old pricing before Turf TV, it was 60:40 in favour of bookmakers; that moved with the introduction of Turf TV this year to a projected 42:58 in favour of racing; and the Committee's proposal, if accepted, would move that ratio back to 49:51 next year, still marginally in favour of racing.

	2002	2007	2008
BC proposal			
Gross win (British horseracing)	643m	782m	
782m	782m		
Levy	59.2	72	
72	72		
Tax	96	117	
117	117		
LBO Expenses (Calc. at 58% of GWs)	373	3%	
RPI	432	445	445
Add. Pictures			
40	23		
Total Costs	528	621	
674	657		
Net Profit for bookmaker	115	161	
108	125		

14/10/2008

Racing Return			
72	Levy	59	72
75	Pictures	26	35
147	Total	85	107
		130	
255	Profit available for bookmaker and racing	200	268
42:58	Percentage share bookmaker v racing	56:44	60:40
		49:51	

I hope this is helpful but please contact me if you require further explanation.

Yours sincerely

Patrick Nixon

020 7333 0043

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