

HORSERACE BETTING LEVY BOARD
WHETHER CUSTOMERS OF BETTING EXCHANGES ARE LEVIABLE
BOOKMAKERS

SUMMARY OF CONCLUSIONS
COMMENDED TO THE LEVY BOARD

1. The Horserace Betting Levy Board ("the Levy Board") conducted a consultation on whether certain customers of betting exchanges should be regarded as leviable bookmakers which ran from 2 July to 23 November 2010. A large number of responses were received from across all sides of the debate.
2. In the light of the consultation paper and responses to it, the Levy Board instructed Michael Fordham QC to prepare a Legal Opinion, which was received on 5 December 2010. In light of the importance of the issues involved, the Levy Board decided to take up a possibility raised by Mr Fordham, to obtain a second opinion before reaching any final conclusions. The Levy Board instructed Lord Pannick QC to provide a Legal Opinion, which was received on 18 February 2011. The two Legal Opinions reach materially identical conclusions.
3. This document seeks to provide a brief summary of those conclusions. The Legal Opinions are detailed documents which speak for themselves and attention is invited to them.
4. The key conclusions reached by Leading Counsel were as follows:

- (1) On the proper construction of the 1963 Act, the levy provisions do not apply to customers of betting exchanges.
 - (2) It is possible that some users of betting exchanges are carrying on a business.
 - (3) However, a user of a betting exchanges does not carry out the sort of business specified by the relevant provisions of the 1963 Act - namely, carrying on a business of receiving or negotiating bets and effecting betting transactions.
 - (4) That applies also to traditional bookmakers using betting exchanges (e.g. to hedge).
5. The key statutory provisions include sections 27(2)(a) and 55 of the 1963 Act. Section 27(2)(a) provides that the levy scheme shall include provision:
- "for securing that the levy shall be payable only by a bookmaker who carries on on his own account a business which includes the effecting of betting transactions on horse races, and only in so much of the business of the bookmaker as relates to such betting transactions"*
- Section 55 provides that the term "*bookmaker*" means (so far as relevant for present purposes) a person who "*carries on, whether occasionally or regularly, the business of receiving or negotiating bets*".
6. The issue under consideration is one of statutory construction, ascertaining the meaning of the Act from its wording, construed as a whole and in the light of its purpose.

7. It is at least possible that certain customers of betting exchanges could be held to be carrying on a business, given the frequency with which, and the manner in which, they place bets on the exchange.
8. However, the business must be of a specified nature - namely, receiving or negotiating or receiving bets (section 55); and effecting betting transactions (section 27(2)(a)). It is appropriate to make sense of sections 27(2)(a) and 55, reading them together.
9. In particular, the term 'effecting betting transactions' is to be understood as meaning making arrangements for betting transactions to happen, facilitating such transactions, bringing them about or causing them to happen.
10. Traditional bookmakers meet this test since they facilitate or arrange betting transactions. Likewise, betting exchanges meet this test since they arrange the bet by matching backers and layers together. However, customers of betting exchanges do not meet this test since they do not facilitate, arrange or bring about the bet or betting transaction; instead they rely on the betting exchange to provide that service.
11. The usage by traditional bookmakers of betting exchanges is not a leviable activity. Whilst they may be using the exchanges by way of business, and whilst their traditional bookmaking activities are leviable, their use of an exchange, for example to hedge, is not materially different from any other customer of an exchange so that, likewise, they do not meet the test for a leviable bookmaker in respect of that activity.

3 March 2011

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