

R V Hughes CBE
Chairman
Horserace Betting Levy Board
52 Grosvenor Gardens
London
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Monday 22nd September 2008

Dear Sir,

Betting Exchanges

I am writing in response to the letter from the Chairman of the Bookmakers Committee to you dated 4th September 2008.

That letter, for reasons that I will briefly explain below, contains a number of assertions that are based upon reasoning that is fatally flawed. I should say, at the outset, that if the HBLB think it appropriate to take up the suggestion made within the letter, and make contact with the Gambling Commission, I would hope that the HBLB would see fit to first meet with representatives from Betfair and provide those representatives with that evidence that the HBLB has to support the suggestion that the Gambling Commission should look into the issues raised by the letter and, in particular, why the Commission should look at one particular class of operator. In my view, to do so without such evidence or such a meeting would be inappropriate.

I am, of course, aware of the strategic objectives and policy statement of the HBLB as more particularly defined by section 24(1) of the Betting, Gaming and Lotteries act 1963. As I understand, the legislation empowers the Levy Board to:

“assess and collect monetary contributions from bookmakers and from the Horseracing Totalisator Board and to apply them to purposes conducive to any one or more of: a) the improvement of breed of horses; b) the advancement or encouragement of veterinary science or veterinary education; c) the improvement of horseracing.”

It is of course, a matter for the members of your Board as to whether it is appropriate, in light of that statutory definition, to make submissions to the Gambling Commission based upon a letter that contains no real facts or evidence to support assertions that not only, allegedly, assist in the maintenance of the objectives of the Gambling Act 2005 but also support the corporate competitive position of the traditional bookmakers. In particular I am

sure that the Board will be aware that, as of yet, I am unaware of any definitive reports or investigation arising from the Group tasked with looking into, inter alia, betting exchanges, as set up pursuant to the Levy review instigated by Mr Gerry Sutcliffe. As you will know, your Chief Executive has been trusted with chairing that important Group, presumably because of the neutrality one expects of the HBLB.

Quite simply, notwithstanding the assertions in the final paragraph of page one of Mr Bell's letter, both the Bookmakers' Committee and the HBLB can only have locus over those that hold an operator's licence (or a spreadbetting licence) under the relevant statutes. I am sure that spreadbetting companies were the only companies in the mind of your Finance Director in making the statement that he did and as outlined in Mr Bell's letter. It is somewhat surprising that Mr Bell seems to have neglected to indicate that the reference to "conducting a business" within the relevant legislation is not confined to "layers" on betting exchanges, nor, indeed, customers of exchanges, but to those that conduct business as a betting operator as a whole. It would be very odd indeed that anyone conducting a business would do so by using only one of over two thousand available platforms. It is hoped that the Board is not seduced into discriminating against one class of operator by neglecting to request that the Commission look at those that conduct a business across all platforms, if it feels so inclined to make such a request at all.

There are, of course, wider legal and taxation implications for classifying a successful punter as "operating in the course of a business" not least the carrying over of losses, offsetting expenses and so forth, even presuming that government can define the concept with appropriate judicial certainty.

It is noteworthy that I have attended the vast majority of the Bookmakers' Committee meetings over the last four years and have read and approved the minutes of all meetings. The Committee has never, during those four years, had a substantive discussion on the issues raised within Mr Bell's letter. The discussion, to which Mr Bell refers in Paragraph 1, really concerned the locus of the Committee to make recommendations as to those that do not hold a licence and other such general matters as opposed to detailed evidence or analysis in support of the suggestion. It appears that the Committee feels it is entitled to make fairly wide blandishments based upon its "general knowledge" without there being a real assessment or analysis of what constitutes "in the course of business" let alone whether it is possible to lay a book on a betting exchange. Mr Bell's letter airbrushes out from the Committee's business (rather conveniently one might think), my concern that the Committee has to look at the concept as it applies across all operators.

It is, of course, laudable that the Committee would rightly be so concerned with the objectives of the Gambling Act 2005. However, compliance with those objectives is ultimately a matter for individual operators and, of course, Betfair is closely and highly regulated by the Gambling Commission by regulation it embraces. It is simply incorrect of Mr Bell to suggest that those that use exchanges are "unknown". A more cynical mind might conclude that far from the Committee being concerned with the "exploitation" of customers,

they are really concerned that betting exchanges should, in fact, pay a greater contribution to the Levy than they otherwise do (so making the business of the majority members of the Committee more competitive), even though the most traditional representations of the Committee has not succeeded in its many battles attempting to persuade the Government otherwise.

I would respectfully remind the Board that the integrity of the sport of horseracing is a matter for the BHA and not a matter for the Committee, or in fact, the HBLB. The Director of Security of the BHA is on record on numerous occasions as applauding the evidence and audit trail supplied by Betfair in assistance of investigations. It is, you might conclude, a matter of some regret that no such evidence was forthcoming until Betfair entered the market. Integrity and transparency are seen by the traditional bookmakers as *cacti* which are to be reluctantly embraced and for those same bookmakers to now use “integrity” as a stick in this narrow funding debate is as shallow as it is unfortunate.

As I think I have indicated, it is, in my view, not appropriate for the HBLB to write at this stage to the Gambling Commission as invited by Mr Bell’s letter. More importantly, it would be discriminatory to invite the Commission to look at the definition of “in the course of business” by looking at the “exchange market” in isolation.

I am afraid that I take issue with the suggestion that anyone that simply lays an outcome on an exchange is a “bookmaker” full stop. To make that simplistic connection shows a misunderstanding of what a bookmaker actually is and confuses the legal reality with the colloquial definition.

I conclude by making reference to the 18 month review by Her Majesty’s Treasury into the taxation treatment of exchanges:

As you know the Treasury, who must be considered to be as independent as anyone in this process, specifically looked at the points raised in Mr Bell’s letter together with other options available to it. The Treasury had the advantage of using its statutory powers to ask for and receive an incredible amount of data concerning exchange customers. Neither the BHA nor the Bookmakers’ Committee have had the advantage of such data. The Treasury also took into account a large amount of independent economic analysis as well as detailed representations from all stakeholders including traditional bookmakers and the then BHB. Neither the BHA nor the Bookmakers’ Committee have yet to produce one shred of evidence as to why the Treasury conclusion, that exchanges are taxed inappropriately, was wrong. With respect to Mr Bell, the paragraph attributed to Mr Hayward on page one of his letter cannot be said under, any view, to be a material change that justifies reopening the debate.

Given the lack of objective cogent analysis to support the suggestion within Mr Bell’s letter, we, at Betfair, are forced to conclude that the rationale for the letter is not so much a genuine interest in seeking to protect the aims of the Gambling Act but a self serving and somewhat desperate attempt to protect a particular class of business. It is a matter of

regret that those on the Committee that represent the traditional industry should use the imprimatur of the Committee to make, what we say are, misleading assertions in order to seek to use your good offices to help bring about a change in legislation that happens to further their own commercial interests.

I have no doubt that Mr Bell will respond to the issues that I have raised should he so wish, and am copying this letter to him

Please let me know if you would like to discuss any of the issues raised in this letter at any time.

Yours faithfully



Martin Cruddace
Legal Director & Company Secretary

cc. Patrick Nixon & Chris Bell