



52 Grosvenor Gardens London SW1W 0AU
Telephone: 020 7333 0043 Facsimile: 020 7333 0041
e-mail: hblb@hblb.org.uk

2nd October 2008

Paul Bolt Esq
Director of Sports and Leisure
Sports and Leisure Division
Department for Culture Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

Dear Paul,

Future of the Levy

On 17th September 2008, the Levy Board discussed a series of major issues involving the future of the Levy. This was in response to the terms of reference agreed in March 2008 at the meeting hosted by the Minister for the representatives of Government, Racing and Bookmaking industries. This letter concentrates only on these aspects which were relevant to the Levy Board.

I will go through them one by one.

Long Term Deal

The agreed terms of reference for Group 2 were to provide scenarios for the overall quantum and mechanism for:

- (a) 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).
- (b) Creating clear and certain relationships between the two.
- (c) Achieving mutually beneficial arrangements, including surrounding issues such as Turf TV/SIS, fixtures, off-shore betting, VAT, Competition Law, opportunity costs, European dimension, marketing and sponsorship.

The Levy Board has tried hard to move this subject forward but, in the absence of sufficient information being forthcoming from Turf TV and SIS and any agreement yet over the Forty-Eighth Levy Scheme, and against the background of the court case and its fallout, it has not been possible to reach any conclusions within Group 2 on a long term deal, although this remains the aim.

Improved Fixtures and Marketing of Racing into Betting Shops

This is Group 2A and the agreed terms of reference were to consider joint initiatives for the promotion and marketing of racing and off-course betting on racing. This is specifically aimed at race scheduling and marketing betting on racing in betting shops.

Again, the Levy Board has tried hard to move this subject forward but, rightly, this subject has now been moved across to the BHA, which is now leading. Progress is expected over the next few months.

Betting Exchanges

Racing set out its detailed position on betting exchanges in its submission to the Forty-Seventh Levy Scheme. It stands by this. Racing is determined that betting activity through betting exchanges should contribute a full, fair and equitable contribution to the Levy which, it says, is a considerably higher amount than at present levels. The BHA believes that the issue of betting exchanges is also linked to the issue of ensuring that overseas operators contribute to the Levy.

The BHA has proposed that:

- (a) The Levy Board itself acts to collect Levy due from all persons carrying on trade as a bookmaker through betting exchanges.
- (b) DCMS carries out a review of the impact of betting exchange activity so as to ensure a full, fair and equitable contribution to the Levy.

The Bookmakers' Committee agrees with almost all of Racing's view, except the point about the composition of the Committee itself: for example, it argues that a move to levy layers on the betting exchanges would probably be approved 12-1.

The current Levy contribution made by the betting exchanges is derived from a 10% charge against their gross profits which are, in turn, derived from the commission paid by those engaged in winning transactions. Its basis is therefore different from that upon which traditional bookmakers pay Levy, which is directly related to punters' losses. The rate of Levy payable and the definition of gross profits applicable to the betting exchanges were both features of the Secretary of State's determination of the Forty-First Levy Scheme and have remained unchanged ever since.

In its recommendations for the Forty-Second Levy Scheme in October 2002, the Bookmakers' Committee proposed that those who made profits laying on the betting exchange market should be required to pay Levy. The Levy Board accepted this recommendation, but was challenged at Judicial Review by a small betting exchange (since defunct) called Sporting Options Ltd. The Board lost its case. Since then, the mechanism for levying betting exchanges has remained unchanged and The Sporting Exchange Ltd (Betfair) was awarded a seat on the Bookmakers' Committee. That is the position which currently prevails.

Furthermore, the Bookmakers' Committee and the Association of British Bookmakers have engaged DCMS and the Treasury, over several years, on these issues and, despite a prolonged and very detailed investigation by the latter, no changes were considered to be necessary.

However, the objectives of the Gambling Act are now also relevant. In particular, the objectives of the Act are:

- (a) Preventing gambling from being a source of crime or disorder or being used to support crime;
- (b) Ensuring that gambling is conducted in a fair and open way;
- (c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

An investigation linked to "keeping crime out" and "protection of the vulnerable" should gain attraction. The recent Panorama programme re-emphasised the fact that there are those that are taking betting business using the betting exchange mechanism but are not holders of an Operating Licence. What also became evident to the wider public was that some of those people are acting on the fringe of the law and are certainly using inside knowledge to rip off the betting public using the same market.

In theory, all persons who fall within the definition of a bookmaker under the Betting, Gaming and Lotteries Act 1963 and who are carrying on a business of effecting betting transactions (which could include laying bets on a betting exchange) are subject to the Levy whether or not they in fact hold a licence. The Levy would be based on 10% of the gross profit of the person carrying on a business of laying bets through the betting exchange. However, in practice the Levy Board does not have the power nor the resources to investigate each person laying on betting exchanges to determine whether or not he is, according to legal definition, an unlicensed bookmaker making a profit by way of business. Licensed bookmakers laying on betting exchanges already pay Levy, although minimal amounts because losses and gains tend to cancel themselves out. (A person "using" (as opposed to operating) a betting exchange pays Levy by reference to normal gross profit, rather than commission – the betting exchange itself is charged Levy based on its commission). An individual punter laying bets would not be regarded as a bookmaker. Clearly the difference between an unlicensed bookmaker and an individual punter could be blurred.

If the Levy Board were to ask them for information on layers, betting exchanges would probably agree to comply if the Levy Board would provide them with a list of unlicensed bookmakers (rather than individual punters). Failing that, betting exchanges would probably resort to refusal or the courts. The betting exchanges themselves would probably face problems identifying unlicensed bookmakers.

However, the Gambling Commission does have the power.' It is the licensing authority (albeit that the licensing regime under the Gambling Act 2005 is of course different from

the 1963 Act). If the Commission were able to identify unlicensed bookmakers, then presumably those bookmakers would then fall within the licensing net and the Levy Board could feasibly promulgate the Levy Scheme to them.

The longer term and wider question is whether or not the basis on which betting exchange business generally contributes to the Levy should be changed. For example, should the proposals discussed in 2002 (requiring betting exchanges to pay Levy based on a 10% charge on the profits made by all persons laying bets over the betting exchanges) be taken up again? We consider that further analysis and discussion with DCMS would be needed.

Under the 2002 proposal, the Levy would still be charged on the betting exchange (which would of course be carrying on a business) in the normal way, ie at 10% of their gross profits as defined above. In addition, a charge would be levied on its customers, but based on profits made by them on "lay" transactions, many of whom clearly would not be carrying on a business, but collected and accounted for by the exchange concerned. Therefore, arguably this would be a significant change in the policy of the Levy, which to date has always been charged only in respect of profits made by businesses.

There would also be other matters of detail to be addressed, such as whether profits on successful lays should be offset against losing backs, whether profit would be calculated before deduction of commission, and how to ensure no double counting of Levy charged on bookmakers using a betting exchange. Clearly, these issues would need a wide discussion and consultation, not least with the betting exchanges themselves.

At their September meeting, the Levy Board approved a motion to invite DCMS to set up a meeting with the Gambling Commission specifically to ascertain the prospects of the Gambling Commission taking forward the issues of "keeping crime out" and "protection of the vulnerable" as they relate to betting exchanges and to encourage the Commission to undertake investigation into business users of the betting exchanges. Further, the Board approved another motion to ask DCMS to review the whole mechanism by which betting exchanges pay levy.

Remote Betting – Overseas Operators

Racing has also set out its case concerning overseas operators, and proposes that DCMS carries out a review of the legislative and regulatory framework to establish the means by which overseas operators offering a bet on British horseracing to customers in Britain are or could be leviable.

We have also sought advice in respect of overseas operators and preliminary discussions have been held with the Gambling Commission and HM Treasury. There are broadly two ways to approach this issue:

- (a) Try to use existing legislation to charge Levy on some overseas operators.
- (b) Change legislation so that overseas operators pay Levy on gross profits from British people betting on British horseracing and for a change in the criteria by reference to which operators in "white listed" countries outside the EEA are permitted to advertise in Britain.

The Levy Board considers that changing legislation is more likely to produce a favourable long term outcome than more immediate action against offshore operators using existing legislation. It seems justifiable, within European Law, to change UK law to ensure that offshore operators pay Levy (and tax) on gross profits from people in the United Kingdom betting on British horseracing. In addition, a prohibition on advertising by them in the UK unless they pay the levy could also potentially be introduced in a way that is lawful under European Law.

At their September meeting, the Levy Board approved the motion to invite DCMS to host a round table meeting with attendance from the Treasury, Inland Revenue, the Gambling Commission and legal advisors to explore whether there are routes that can be taken to force overseas operators to be brought into line with UK betting operators. Another motion was also approved to ask DCMS to seek to provide legislation so that all overseas operators pay Levy (and tax) on gross profits from people in the UK betting on British horseracing and also prohibiting advertising by them in UK unless they do so.

Modernisation Of The Levy – Taking Forward Donoughue Report Part 3

In the terms of reference for the Racing Funding Review Group dated 18th March 2008, the Minister explained that the key priority for the Group would be to find a mechanism for funding horseracing that would not involve the Government in any further Levy determinations. Subsequently, Group 1 was set up with the terms of reference to provide scenarios for reforming the Levy, taking forward the Donoughue Report.

The current environment that exists between Racing, Betting and the Levy Board is not conducive to modernisation primarily because it is too easy to protect a position by deciding to go for a determination by the Secretary of State. Unless this deadlock can be broken, the cycle will go on indefinitely. Therefore, an alternative based on the most efficient structure which removes the Secretary of State from the determination process should be the foundation.

At their September meeting, the Levy Board approved the following structure and process:

- (a) In the absence of a long term deal, an annual dialogue between Racing and the Bookmakers' Committee on the next Scheme is completed through a formally mediated process run by the Levy Board. This implies greater control by the Levy Board than Donoughue 3 and, therefore, might be more acceptable. The process would start with a proposal by Racing to the Levy Board by the end of May, which would be staffed and forwarded to the Bookmakers' Committee. The Bookmakers' Committee would make its recommendations to the Levy Board for its July meeting. Discussions would then take place as usual.
- (b) If there is no agreement by the September Board meeting, then a new arbitration process takes over. An Arbitration Panel or Tribunal, maybe consisting of a lawyer, an economist and business person, would make their determination against pre-agreed terms of reference brokered well before the structure and process were even agreed. This arbitration must be binding and, therefore, would need to be enshrined in law through the Act. Otherwise,

parties could not be bound by it under the existing legislation, which is highly prescriptive, on the process to be followed.

- (c) The Bookmakers' Committee's voting rights could be changed in order to reflect, more fairly and equitably, the representation around the Committee table. Although the Levy Board is not directly involved in the composition of this Committee, this proposal could be regarded as being in the best interests of modernising the Levy, although would clearly be resisted by those who stood to lose influence as a result.
- (d) The Levy Board's membership is changed and the Jockey Club removed formally as follows:
 - Chairman Independent Member
 - Independent Member
 - Independent Member
 - Chairman, Bookmakers' Committee
 - Member from Bookmakers' Committee (or Tote while it remains a public body)
 - Member from Bookmakers' Committee (new)
 - Chairman, British Horseracing Authority
 - Chairman, Racecourse Association
 - President, Racehorse Owners' Association

Further, the Levy Board approved the future roles of the Levy Board:

- (a) To facilitate the formal mediation process in an informed manner.
- (b) If no agreement, to hand the process over, following a genuine attempt to obtain agreement, to the Arbitration Panel/Tribunal and then to provide necessary support to it.
- (c) To inform that Arbitration Panel of the views of the independent members of the Levy Board, assuming Racing and the Bookmakers' Committee would put forward their own submissions.
- (d) To collect and distribute the Levy, in line with Racing's requirements, with Levy Board Executive involvement, keeping x% for centralised costs and a reserve in line with the Board's requirements, and statutory obligations.
- (e) To distribute the Capital Fund and HFL Sale Proceeds, in line with the Board's requirements.
- (f) To monitor the achievements of its objectives and seek to ensure that it is securing value for money and cost effectiveness in line with statutory obligations.

However, the issue of State Aid usually appears when considering changes to legislation. Indeed, VAT might also be a relevant concern. We believe that you might agree that none of the proposals currently under consideration would so

obviously cause a State Aid problem that they should be excluded from consideration just for that reason.

The Levy Board invites DCMS urgently to take forward these plans for the modernisation of the Levy.

That covers a great deal, but we have been busy this summer. We are ready and willing to take forward all these issues as soon as you are.

Yours sincerely,

Douglas.

Douglas Erskine-Crum
Chief Executive

Copies to:

Andrew Cunningham, DCMS

Warwick Hawkins, DCMS

HBLB Board Members

Patrick Nixon, Secretary – Bookmakers' Committee

Nic Coward, Chief Executive – BHA

Stephen Atkin, Chief Executive - RCA

Michael Harris, Chief Executive - ROA

DEC
SH
DB