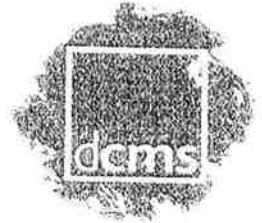


Director Sport and Leisure Tel 0207 211 6344
2-4 Cockspur Street Fax 0207 211 6339
London SW1Y 5DH paul.bolt@
www.culture.gov.uk culture.gsi.gov.uk

ANNEX 'B'
to LB/P(09)03

Douglas Erskine-Crum
Chief Executive
Horserace Betting Levy Board
52 Grosvenor Gardens
London
SW1W 0AU

20 February 2009



Department for
culture, media
and sport

Dear Douglas

Thank you for your letter of 2 October, which covered a number of topics relating to the Levy. Since that time there has been considerable further work involving all parties, including Sir Philip Otton's reports and of course the successful agreement of the 48th Levy scheme. We welcome the progress already made and it is a tribute to all involved that flexibility has been shown, and continues to be applied, in attempting to resolve the issues. We see it as important that, wherever possible, agreements should be reached between the Racing and Bookmaking industries.

I will attempt below to address the points in your letter as well as other related matters.

Modernisation of the Levy

As the Minister has stated before, we welcome the progress that has been made towards a modernised Levy. Your letter set out proposals for the modernisation of the structure and process of the Levy. You will understand that since the Levy is a statutory process it was important that we considered the proposals in detail.

There is no power in the Betting, Gaming and Lotteries Act 1963 which would allow the Secretary of State to amend the Levy process by regulation. In addition, whilst section 15 of the Horserace Betting and Olympic Lottery Act 2004 gives the Secretary of State power to repeal any of sections 24 to 30 of the 1963 Act and the Horserace Betting Levy Act 1969 by order, it does not give an express power to create a new Levy scheme or process in its place.

This means that the legislative amendments proposed by the Levy Board would need to be made through primary legislation. As you have identified, however, a concern could be that changing the Levy process through primary legislation would arguably create a new state aid. As the existing Levy system pre-dates the UK's membership of the European Commission, it is allowed to continue at the Commission's discretion, even though it might otherwise be considered a state aid contrary to Treaty rules. We are advised that any changes to the primary legislation must be sufficiently modest that the Department could reasonably argue that the replacement scheme is close enough to the existing scheme that it should still benefit from the concession offered to pre-accession aids.

A legislative change would inevitably increase the level of risk. However, if a Bill is solely focussed



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on rationalising the process by which the settlement is reached, rather than extending its scope or imposing additional burdens, we do not see this as an insurmountable challenge and we would need to seek further advice on this point from Government colleagues if this proposal is advanced.

Unfortunately, whilst I am optimistic then that the changes proposed may be possible I do not believe these could be achieved in the immediate or near future. As you know, there is considerable pressure on the legislative timetable and as such it is likely to be very difficult to secure a slot to introduce a Bill amending the Levy system. Even if Ministers are minded to do so, legislative change could therefore take a considerable time.

Therefore, we believe that it is important consideration is given to solutions that are more immediately achievable within the framework of the existing legislation, and by agreement between the parties represented on the HBLB.

We are aware that Racing has put forward draft proposals for a non-binding arbitration process, along similar lines to the modernisation proposals. These draft proposals will no doubt be considered by the Levy Board but it may be useful to set some of our initial thoughts.

There may well be value in having a process of non-binding voluntary arbitration although it is important to remember that, as stated above, this must be compatible with the existing statutory requirements. Currently, both the Levy Board and the Bookmakers' Committee have statutory functions which they cannot delegate to an arbitrator. The Levy Board and the Bookmakers' Committee could not fetter their discretion, or abdicate their functions, by agreeing to be bound by the arbitrators' decision.

Racing also considers it important that early decisions are made by Ministers about what criteria are relevant for consideration in agreeing the Levy. A number of issues have been considered in depth during the Levy Review, in particular by Sir Phillip Otton, and the Levy Board is due to produce a full report for Ministers by the end of April. However, concerns have been raised that unless these issues are addressed now they may continue to prevent swift and successful annual Levy scheme agreements.

As the Otton reports illustrated, this is a complex area. Again the fundamental point must be that whilst the legislation exists in its current form, this is what we are bound by. Whilst we recognise the concerns, the process means that the Minister's powers of determination are only engaged when no agreement on an annual Levy scheme is possible by 31 October. To make decisions outside of this statutory process and without considering all the available information, including the Levy Board's report to Ministers, would fall outside of that role.

I know there is a resolve amongst all parties to address these issues and move on to a more constructive approach to the Levy. In relation to this, we note the recent reports that the Bookmakers' Committee may be willing to put forward proposals for a longer term deal. The Levy Board would of course need to consider the details of any such proposal. However, the Minister would undoubtedly welcome any agreement that is to the satisfaction of both parties. A long term deal would have to be conditional on the Levy modernisation process continuing, but it could potentially provide both industries with a degree of certainty and allow proper planning for the future. It could not supplant the statutory process entirely however, and both the Levy Board and the Bookmakers' Committee would have to retain the ability to reopen the deal although in the expectation that this would not occur in the absence of unforeseen circumstances.

Betting Exchanges

Since your letter, both the Levy Board and I have received correspondence on behalf of the Sporting Exchange Ltd (Betfair) about the issues raised in relation to betting exchanges. I know that a detailed response to their concerns has been sent on your behalf.

I should make it clear that we do not consider it appropriate at this stage to revisit the fundamental basis on which betting exchanges pay Levy. This issue was last considered during the Ministerial determination for the 47th Levy Scheme, and in making his determination in February 2008 the Minister stated, "that it would not be appropriate to seek to impose the Levy on the turnover of betting exchanges rather than on the commission charged on betting transactions. In reaching this conclusion, I was mindful of the Treasury's conclusion, when assessing whether to impose Gross Profits Tax on betting exchanges turnover, that it was correct to apply GPT on commission only because the commission is the operator's gross profit and the consumers' net spend."

However, you also raised the question as to whether there are individuals who are effectively bookmakers, as defined in the Betting, Gaming and Lotteries Act 1963, that currently use betting exchanges but who are neither properly licensed as required by the Gambling Act 2005 or consequently paying Levy. We are pursuing this issue, and have had initial discussions involving others in Government and the Gambling Commission.

It is important that in considering this point and determining what steps may be necessary we fully consult with betting exchanges. We welcome Betfair's willingness to engage in discussions and the Department will therefore write to Betfair proposing a meeting to discuss this matter and the concerns they have raised.

Remote Betting – Overseas Operators

As you identify, the Government's powers to compel overseas operators to pay Levy and tax are limited. We do however recognise that there are a number of issues related to the regulation of overseas operators and are currently considering our approach in this area. We will of course keep you updated.

Conclusions

If I may summarise: we welcome the constructive work which the parties have undertaken under your auspices; we caution you that early and definitive recasting of the 'rules of the game' by Government is not going to be possible; we assure you that on certain points, as indicated above, we shall act to promote the modernisation agenda; we continue to see modernisation as fundamental and necessary if we are to move to practical long-term arrangements which reflect business realities; we do not see this as incompatible with a medium term deal on the Levy settlement itself.

I am also sending copies of this letter to those on the copy list for your letter of 2 October.

Yours sincerely
Paul Bolt

Paul Bolt