



# CHELTENHAM BOROUGH COUNCIL

Nigel Huddleston MP  
Minister for Sport, Tourism and Heritage

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By email to:  
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our ref: GA2005 review 2021  
your ref:  
date: 23 February 2021

Dear Mr Huddleston,

## **Re: Review of the Gambling Act 2005 - Call for Evidence**

In my capacity as Chairman of Cheltenham Borough Council's Licensing Committee, and on behalf of the Licensing Committee & Cabinet Member for Cyber & Safety, I write to submit a response on behalf of the authority.

My response will be limited to the questions of relevance as outlined below.

**Q29: What evidence is there on the effectiveness of current measures to prevent illegal underage gambling in land based venues and online?**

And

**Q43: Is there evidence on whether licensing and local authorities have enough powers to fulfil their responsibilities in respect of premises licenses?**

Cheltenham Racecourse is located within the borough of Cheltenham. In March every year it hosts one the UK's biggest horse racing events, attracting in excess of 250,000 people to the town. Throughout the year, other horse racing events are held at the racecourse also attracting, at times, tens of thousands of spectators.

For a number of years, officers of this authority's licensing department in partnership with Compliance Managers from the Gambling Commission and officers from Gloucestershire Constabulary undertook test purchase operations on on-course bookmakers.

The failure rates were significant as indicated below:

Year	Pass rate	Failure rate
January 2015	58%	42%
November 2015	33%	67%
November 2017	23%	77%

From a local authority perspective, the powers available to local authorities under the Gambling Act 2005 are insufficient to promote the Act's objectives.

1. On-course bookmakers are licensed by the Gambling Commission. Local authorities therefore have no direct access to on-course bookmakers that persistently fail to meet their statutory obligations under the Act to protect children and other vulnerable persons from being harmed or exploited by gambling. To this extent, local authorities are "at the mercy of" the Commission and whatever appropriate action it takes. Whilst it may not be for this authority to comment on the Commission's approach, it is appropriate to say that this authority has been disappointed by the outcome of a

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number of cases particularly relating to operators found to be persistently failing to meet their obligations.

2. Local authority powers under the Gambling Act 2005 are not sufficiently robust to allow it to act to protect children and other vulnerable persons from being harmed or exploited by gambling. The Act, as explained below, creates an unnecessarily complex threshold for action and largely places the duty in the hands of the licence holder.

Track Licences are subject to, amongst others, a number of mandatory conditions as set out by the Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007.

Part 1(1)(5) of schedule 6 of the above mentioned regulations places a duty on the racecourse to "...make arrangements to ensure that reasonable steps are taken to remove from the premises any person who is found to be accepting bets on the premises otherwise than in accordance with the 2005 Act."

This mandatory condition creates a number of issues:

1. The principle responsibility rests with the licence holder to take "reasonable steps" which, as explained, creates an unnecessarily complex threshold for action.
2. It is impractical for a licence holder to have to "remove from the premises" an on-course bookmaker. The reality is that on-course bookmakers cannot, for practical reasons, be removed and they therefore remain on site until the end of the particular meeting. This means that they can continue to trade, potentially accepting bets otherwise than in accordance with the 2005 Act for the duration of the meeting.

We would call on the Government, through this review, to review the legislation and mandatory conditions to strengthen the powers available to licensing authorities to enable it to act robustly and decisively to protect local communities from being harmed or exploited by gambling.

#### **Q45: Is there any additional evidence in this area the government should consider?**

It is unfortunate that this call for evidence is somewhat limited to the specific issues raised in the document. We would, in response to the question above, like to raise an additional point not explicitly raised in the call for evidence.

Section 153 of the Gambling Act currently creates a presumption in favour of granting a licence unless one or more of the conditions under sub-section 1 is not met. The requirement to "aim to permit the use of premises for gambling" places a licensing authority "on the back foot" because the starting position favours the applicant, not the licensing authority.

This, in effect, places the obligation on the authority to justify its approach rather than placing that duty on the applicant. This authority is of the view that this is the wrong approach and this review of the Gambling Act should seek to address this imbalance.

#### **Protection of Children and Young People – Prosecution Powers**

The prosecuting authority for offences of inviting, causing or permitting a child or young person to gamble under Section 46 of the Gambling Act 2005 is the Gambling Commission.

It is also the Gambling Commission's stance that, where an offender holds a Gambling operating licence, the Commission will deal with the matter using its regulatory powers, rather than any powers of prosecution.

Local Authorities were previously reminded by the Commission that the LAs had the option to use powers under Section 222 of the Local Government Act 1972 to prosecute for any offence should certain criteria be met.

The judgement in R v AB and others (2017) EWHC Crim 534 the Court of Appeal (Criminal Division), however, calls into question the circumstances under which a Local Authority might do so. Specifically with regard to racecourses, where the responsibility for gambling being conducted lawfully sits with the Track Premises licence holder (normally to course owners), more robust mandatory licence conditions might be considered. These may include a requirement, on demand, for the licensee to supply to the LA information regarding gambling operators trading in reliance upon the Track Premises Licence.

If Local Authorities are given responsibility for regulating Track Premises Licences, they should be given the appropriate tools to enforce that regulation and enhance the Authorities' capability to protect the young and vulnerable from Gambling harm. The power to prosecute under the Gambling Act would certainly be a useful such tool.

### **Occasional Use Notices – Section 39 Gambling Act 2005**

The provisions of Section 39 of the Act are aimed at events such as point-to point meetings where unlicensed venues can, on a limited number of occasions in a calendar year, host sporting events at which facilities for betting can be lawfully provided. The notice must be served on the local licensing authority and on the Chief Officer(s) of Police for the area in which the 'track' is situated. Although Section 39 makes reference to 'tracks' in this context, the term is defined in Section 353 (1) thus:

*"track" means a horse-race course, dog track or other premises on any part of which a race or other sporting event takes place or is intended to take place.*

There are a number of issues with this interpretation:

1. This definition is taken to mean sporting venues such as rugby, football or cricket clubs, which by their very nature are venues *where a sporting event takes place or is intended to take place.*

Such premises hold events unrelated to the sport normally played at the venue. Frequent examples include events such as virtual 'ladies day' where the Ascot race meeting is screened at a local rugby club, and a licensed bookmaker is operating on site after an Occasional Use Notice has been served. Such events are frequently encountered in Local Authority areas across the country.

2. 'Contrived' sporting events are also used in such a way as to make the venue fit the definition of a track.

In Cheltenham Borough one example included an indoor golf putting surface in the corner of a marquee where the local race meeting was shown on big screens to an audience which had paid for food and entertainment. A licensed bookmaker was providing betting facilities.

One of the more extreme examples concerned a local alcohol licensed premises, situated in the town centre, which housed pool tables and darts facilities over three floors. The owner persuaded a major bookmaker to supply professional pool players to play exhibition matches over the four days of the Cheltenham festival, in exchange for which the bookmaker was allowed to operate a 'pop-up' betting office under the authority of an Occasional Use Notice served in accordance with Section 39.

The betting activity carried on into the evening, when football matches were being shown on TV, and the potential for disorder among a large group of people who had been drinking for most of the day was evident. In this case, following a discussion with the Gambling Commission, the operator withdrew from the arrangement citing concerns about the safety of its staff.

The Section 39 exemption is in the form of a notice, rather than a licence or a permission.

There is no fee, no consultation period and no provision for the LA to seek the views of the Police or public, nor is there provision for any form of counter notice. An Occasional Use Notice can be served immediately prior to an event and LAs have neither the time nor the resources to inspect such events to safeguard the objectives of the Gambling Act or indeed (where applicable) the Licensing Act.

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While it is accepted that the Gambling Operators themselves are required by their own licensing conditions and codes of practice to safeguard the young and vulnerable, the lack of clarity around what constitutes valid grounds for an Occasional Use Notice makes its regulation extremely difficult.

Regulation of the activity and protection of the vulnerable would be well served by clarity in the legislation as well as:

- Changing the status of the activity to make it subject of a permission, rather than a notice.
- The requirement to provide a risk assessment detailing measures taken to ensure that the objectives of the Gambling Act are met.
- A minimum time period between application and the event.
- Consultation with relevant bodies prior to grant / refusal decision.
- Provision for the imposition of conditions.
- Powers of entry and inspection.
- A fee payable upon application, in keeping with the costs incurred by the Licensing Authority for the administration of the process and regulation of the activity.

Yours sincerely,

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