

LICENSING COMMITTEE AGENDA

WEDNESDAY 2 DECEMBER 2015
6.30 PM

COUNCIL CHAMBER CIVIC OFFICES CENTRAL MILTON KEYNES ADDENDUM TO ITEM 6

<http://cmis.milton-keynes.gov.uk/CmisWebPublic>

Councillor Morris (Chair)
Councillor Alexander (Vice-Chair) and Lewis (Vice-Chair)
Councillors Exon, Geaney, Green, R Gifford, McDonald, Miles, Patey-Smith, Wallis,
Webb, C Williams and P Williams.

If you have any enquires about this agenda please contact Simon Heap, Committee Services Manager, Tel: (01908) 252567 or E-mail: simon.heap@milton-keynes.gov.uk

ITEM 6 - ADDENDUM

Additional papers for Item 6 of Licensing Committee on December 2nd

Since the report was drafted the Association of British Bookmakers (ABB) have submitted a response to the draft Statement of Gambling Principles. The response was received after the consultation closing date.

The ABB represent the majority of betting operators and therefore comments from them are important as bookmakers hold the majority of premises licences within Milton Keynes. In effect they could be described a major stakeholder. It is therefore proposed that their response be included as a late addition to the report and the officer comments in respect of this are included as an addendum to the proposed draft statement of principles. These comments will amend the draft policy at Appendix A of the report

The response from the ABB attached is referred to as Annex C1 and the ABB letter includes a statement 'welcoming' the chance to respond.

The response has been reviewed at Officer level and in summary most of its contents are not considered relevant to the proposed statement of policy. This is because they cover issues beyond the control of this Authority, for example reaffirming the law; and promoting various partnerships with other Local Authorities.

However, there are some specific references to the proposed statement of principles of the Council and the points made and the proposed actions are detailed below.

Comment	Location in letter	Consideration	Action
Changes to policy should not undermine the 'aim to permit' legal requirement	Page 1, paragraph 4	The policy changes proposed to do not undermine this issue	No change to draft
Concerns that local implementation will be based on inaccurate concerns about proliferation of betting shops and gambling rates	Page 1, paragraph 6	The policy does not introduce a policy on limiting numbers of betting shops	No change to draft

Concerned that MKC will prescribe the form of risk assessment required at local level	Page 4, paragraph 2	The policy does not introduce this prescription but does require them to be done	No change to draft
Any Local Area Profile produced by the Council needs to be included within the body of the policy statement	Page 4, paragraph 7	The statutory guidance does not require LAP to be part of a policy but the consultation response is accepted in part as this is a good idea. The current statement refers to an LAP as an Appendix item and so it is referred to in the policy but not included within the body of the policy document. Due to the potential size of an LAP plus the potential for it to be revised due to issues arising it is considered having it as an Appendix to the policy is appropriate	No change to draft
The Policy should make clear that imposition of additional licence conditions must be evidence based	Page 5 Paragraph 3 and 4	Section 9 of the draft statement addresses imposition of conditions but does not explicitly refer to evidence based decision	Amend section 9.1 to include the phrase ' <i>the council does not impose standardised additional conditions based on the gambling use of a premise and imposition of non mandatory conditions will be based on promotion of the licensing objectives</i> '
The policy wrongly	Page 5	The proposed	No change to draft

<p>cites areas of deprivation; and proximity to Sunday schools as issues as relevant considerations at Paragraph 15.7</p>	<p>Paragraph 6</p>	<p>statement of principles addresses these concerns as part of an amendment made during the consultation period that the respondent would not be aware of. Consultee response not upheld as revised statement deals with already</p>	
<p>The policy wrongly cites 'nuisance' as a relevant consideration when determining applications whereas this is not part of any licensing objective and can be controlled by other legislation at 16.3</p>	<p>Page 5 Paragraph 7</p>	<p>Consultee response accepted other than where 'nuisance' being caused is a result of disorder or is in some way causing harm to children or other vulnerable persons in which case it can be linked to the licensing objectives</p>	<p>Amend paragraph 16.3 to read '<i>The Licensing Authority recognises that disorder (including low level disorder) can occur at or outside particular premises as a result of the licence in place. Therefore it recommends that an applicant puts in place such control measures considered proportionate to prevent and minimise such issues. Consideration, where relevant, will be given to the placing of appropriate conditions on the licence where the licensing objectives are compromised, e.g. governing opening hours or the use of Door Supervisors.</i></p>

<p>The last sentence of paragraph 16.9 is unclear: <i>Such measures may include siting machines at the back of premises so as to ensure young children do not have sight of such machines; not advertising gambling so as to encourage children; and ensuring there is no accidental access to observe or enter premises used for gambling.</i> This is because it the wording appears to go beyond code of practice requirements</p>	<p>Page 6 Paragraph 1</p>	<p>Consultee response accepted in part but the statutory guidance and primary legislation does allow an authority to impose premises specific conditions where necessary and the proposed paragraph simply suggests possible controls as opposed to making them a default requirement.</p>	<p>Paragraph amended as follows to make situation clearer: <i>It is not possible to predict every scenario but some circumstances might include siting certain machines where they cannot be seen by children; restricting advertising; and ensuring there is no accidental access to enter premises by design.</i></p>
<p>The final sentence of paragraph 30.1 should differentiate between gaming and betting machines and make clear the inability to restrict the former. <i>'In addition, the Licensing Authority recommends that an application for gaming machines in such premises carefully considers the location of betting machines to ensure that they are not in sight of the entrance to the premises</i></p>	<p>Page 6 Paragraph 2</p>	<p>Response accepted.</p>	<p>Revised paragraph to read: <i>In addition, the Licensing Authority recommends that an application for such premises carefully considers the location of gaming and other machines so as to promote the licensing objectives both within and external to the premises'</i></p>



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Date: 19 November 2015

Dear Sir/Madam,

Re: Gambling Act 2005 Policy Statement Consultation

We act for the Association of British Bookmakers (ABB) and have received instructions to respond on behalf of our client to the current consultation on the Council's review of its gambling policy statement.

The ABB represents over 80% of the high street betting market. Its members include large national operators such as William Hill, Ladbrokes, Coral and Paddy Power, as well as almost 100 smaller independent bookmakers.

This response will explain the ABB approach to partnership working with local authorities, it will detail its views on the implementation of the new LCCP requirements, from April 2016, relating to operators' local area risk assessments and their impact on the licensing regime and will then make specific comment with regard to any statement(s) of concern/that are welcomed in your draft policy.

The ABB is concerned to ensure that any changes are not implemented in such a way as to fundamentally change the premises licence regime through undermining the "aim to permit" principle contained within s153 Gambling Act 2005.

The current regime already adequately offers key protections for communities and already provides a clear process (including putting the public on notice) for representations/objections to premises licence applications. The recent planning law changes effective since April 2015 have also already increased the ability of local authorities to consider applications for new premises, as all new betting shops must now apply for planning permission.

It is important that any consideration of the draft policy and its implementation at a local level is put into context. There has recently been press coverage suggesting that there has been a proliferation of betting offices and a rise in problem gambling rates. This is factually incorrect.

Over recent years betting shop numbers have been relatively stable at around 9,000 nationally, but more recently a trend of overall downwards decline can be seen. The latest Gambling Commission industry statistics show that numbers as at 31 Mar 2015 were 8,958 - a decline of 179 from the previous year, when there were 9,137 recorded as at 31 March 2014.

As far as problem gambling is concerned, successive prevalence surveys and health surveys reveal that problem gambling rates in the UK are stable (0.6%) and possibly falling.

Working in partnership with local authorities

The ABB is fully committed to ensuring constructive working relationships exist between betting operators and licensing authorities, and that where problems may arise that they can be dealt with in partnership. The exchange of clear information between councils and betting operators is a key part of this and we welcome the opportunity to respond to this consultation.

There are a number of examples of the ABB working closely and successfully in partnership with local authorities.

LGA – ABB Betting Partnership Framework

In January 2015 the ABB signed a partnership agreement with the Local Government Association (LGA). This was developed over a period of months by a specially formed Betting Commission consisting of councillors and betting shop firms and established a framework designed to encourage more joint working between councils and the industry.

Launching the document Cllr Tony Page, LGA Licensing spokesman, said it demonstrated the *“...desire on both sides to increase joint-working in order to try and use existing powers to tackle local concerns, whatever they might be.”*

The framework built on earlier examples of joint working between councils and the industry, for example the Ealing Southall Betwatch scheme and Medway Responsible Gambling Partnership.

In Ealing, the Southall Betwatch was set up to address concerns about crime and disorder linked to betting shops in the borough. As a result, crime within gambling premises reduced by 50 per cent alongside falls in public order and criminal damage offences.

In December last year, the Medway Responsible Gambling Partnership was launched by Medway Council and the ABB. The first of its kind in Britain, the voluntary agreement allows anyone who is concerned they are developing a problem with their gambling to exclude themselves from all betting shops in the area.

The initiative also saw the industry working together with representatives of Kent Police and with the Medway Community Safety Partnership to develop a Reporting of Crime Protocol that is helpful in informing both the industry, police and other interested parties about levels of crime and the best way to deal with any crime in a way that is proportionate and effective.

Lessons learnt from the initial self-exclusion trial in Medway have been incorporated into a second trial in Glasgow city centre, launched in July this year with the support of Glasgow City Council, which it is hoped will form the basis of a national scheme to be rolled out in time for the LCCP deadline for such a scheme by April 2016.

Jane Chitty, Medway Council's Portfolio Holder for Planning, Economic Growth & Regulation, said: *"The Council has implemented measures that work at a local level but I am pleased to note that the joint work we are doing here in Medway is going to help the development of a national scheme."*

Describing the project, Glasgow's City Treasurer and Chairman of a cross-party Sounding Board on gambling, Cllr Paul Rooney said:

"This project breaks new ground in terms of the industry sharing information, both between operators and, crucially, with their regulator."

Primary Authority Partnerships in place between the ABB and local authorities

All major operators, and the ABB on behalf of independent members, have also established Primary Authority Partnerships with local authorities.

These Partnerships help provide a consistent approach to regulation by local authorities, within the areas covered by the Partnership; such as age-verification or health and safety. We believe this level of consistency is beneficial both for local authorities and for operators.

For instance, Primary Authority Partnerships between Milton Keynes Council and Reading Council and their respective partners, Ladbrokes and Paddy Power, led to the first Primary Authority inspection plans for gambling coming into effect in January 2015.

By creating largely uniform plans, and requiring enforcing officers to inform the relevant Primary Authority before conducting a proactive test-purchase, and provide feedback afterwards, the plans have been able to bring consistency to proactive test-purchasing whilst allowing the Primary Authorities to help the businesses prevent underage gambling on their premises.

Local area risk assessments

With effect from 6th April 2016, under new Gambling Commission LCCP provisions, operators are required to complete local area risk assessments identifying any risks posed to the licensing objectives and how these would be mitigated.

Licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy and local area profile in their risk assessment, and these must be reviewed where there are significant local changes or changes to the premises, or when applying for a variation to or a new premises licence.

The ABB is concerned that overly onerous requirements on operators to review their local risk assessments with unnecessary frequency could be damaging. As set out in the LCCP a review should only be required in response to significant local or premises change. In the ABB's view this

should be where evidence can be provided to demonstrate that the change could impact the premises' ability to uphold the three licensing objectives.

Although ABB members will be implementing risk assessment at a local premises level, we do not believe that it is for the licensing authority to prescribe the form of that risk assessment. We believe that to do so would be against better regulation principles. Instead operators should be allowed to gear their risk assessments to their own operational processes informed by Statements of Principles and the local area profile.

The ABB supports the requirement as set out in the LCCP, as this will help sustain a transparent and open dialogue between operators and councils. The ABB is also committed to working pro-actively with local authorities to help drive the development of best practice in this area.

Local Area Profiles – Need for an evidence based approach

It is important that any risks identified in the local area profile are supported by substantive evidence. Where risks are unsubstantiated there is a danger that the regulatory burden will be disproportionate. This may be the case where local authorities include perceived rather than evidenced risks in their local area profiles.

This would distort the “aim to permit” principle set out in the Gambling Act 2005 by moving the burden of proof onto operators. Under the Act, it is incumbent on licensing authorities to provide evidence as to any risks to the licensing objectives, and not on the operator to provide evidence as to how they may mitigate any potential risk.

A reversal of this would represent a significant increase in the resource required for operators to be compliant whilst failing to offer a clear route by which improvements in protections against gambling related harm can be made.

We would also request that where a local area profile is produced by the licensing authority that this be made clearly available within the body of the licensing policy statement, where it will be easily accessible by the operator and also available for consultation whenever the policy statement is reviewed.

Concerns around increases in the regulatory burden on operators

Any increase in the regulatory burden would severely impact on our members at a time when overall shop numbers are in decline, and operators are continuing to respond to and absorb significant recent regulatory change. This includes the increase to 25% of MGD, changes to staking over £50 on gaming machines, and planning use class changes which require all new betting shops in England to apply for planning permission.

Moving away from an evidence based approach would lead to substantial variation between licensing authorities and increase regulatory compliance costs for our members. This is of particular concern for smaller operators, who do not have the same resources to be able to put

into monitoring differences across all licensing authorities and whose businesses are less able to absorb increases in costs, putting them at risk of closure.

Such variation would in our opinion also weaken the overall standard of regulation at a local level by preventing the easy development of standard or best practice across different local authorities.

Employing additional licence conditions

The ABB believes that additional conditions should only be imposed in exceptional circumstances where there are clear reasons for doing so - in light of the fact that there are already mandatory and default conditions attached to any premises licence. The ABB is concerned that the imposition of additional licensing conditions could become commonplace if there are no clear requirements in the revised licensing policy statements as to the need for evidence.

This would further increase variation across licensing authorities and create uncertainty amongst operators as to licensing requirements, over complicating the licensing process both for operators and local authorities.

Specific Policy Comments

Paragraphs 9.1 to 9.7 explain the Licensing Authority's approach to the imposition of conditions. The statement of principles would be assisted by an indication that the starting point for consideration of any application is that it will be granted subject only to the mandatory and default conditions as these are usually sufficient to ensure operation that is reasonably consistent with the licensing objectives. The statement of principles should make it clear that additional conditions will only be imposed where there is evidence of risk to the licensing objectives that requires that the mandatory and default conditions be supplemented. Paragraph 9.2 indicates that decisions upon individual conditions will be made on a case-by-case basis. This should be amended to state that conditions will only be imposed where there is evidence of a risk to the licensing objectives that warrant the imposition of additional conditions.

Paragraph 15.7 contains a list of factors that the Licensing Authority will consider when determining an application. One of the factors outlined refers to levels of deprivation. The Licensing Authority is reminded that applications must be "reasonably consistent" with the licensing objectives. It is difficult to see how the relative affluence of an area can have any bearing on the three licensing objectives unless the Licensing Authority has predetermined that persons in deprived areas are automatically vulnerable or more likely to commit crime or disorder. We are certain that this is not the case. We respectfully submit that this paragraph be redrafted to remove the reference to deprivation and also the reference to Sunday Schools. The proximity of places frequented by children will always be taken into account and mitigation measures will be laid out in local area risk assessments produced from 6th April 2016.

Paragraph 16.3 needs to be amended to delete references to nuisance. The statement of principles should be clear that issues of nuisance are not issues for consideration under Gambling Act 2005 unlike under Licensing Act 2003. Issues of nuisance are to be dealt with under separate legislation. Paragraph 16.3 imports matters of nuisance as relevant considerations.

The meaning of the final sentence of paragraph 16.9 is unclear. Issues such as the advertising of gambling are dealt with under Ordinary Code Provision 5.1.6 which requires that licensees shall comply with advertising Codes of Practice issued by the Committee of Advertising Practice and the Gambling Industry Code for Socially Responsible Advertising. It is not clear whether or not paragraph 16.9 is suggesting that the Licensing Committee should propose conditions relating to conditions. If so, then this needs to be amended. These are issues dealt with elsewhere. Finally, the meaning of “ensuring there is no accidental access to observe” is unclear. There is no prohibition on watching gambling indeed some Licensing Authorities and Police Authorities require open frontage of betting offices in order to improve supervision.

Paragraph 30.1 refers to both gaming machines and betting machines in the final sentence. The statement of principles would benefit from a clear distinction being made between betting machines and gaming machines and a statement that whilst the Licensing Authority may impose restrictions on the number of betting machines to be operated, there is no power to restrict the number of gaming machines, the holder of a betting premises licence being able to make up to four gaming machines of categories B, C or D available for use.

Conclusion

The industry fully supports the development of proportionate and evidenced based regulation, and is committed to minimising the harmful effects of gambling. The ABB is continuing to work closely with the Gambling Commission and the government to further evaluate and build on the measures put in place under the ABB Code for Responsible Gambling, which is mandatory for all our members.

ABB and its members are committed to working closely with both the Gambling Commission and local authorities to continually drive up standards in regulatory compliance in support of the three licensing objectives: to keep crime out of gambling, ensure that gambling is conducted in a fair and open way, and to protect the vulnerable.

Indeed, as set out, we already do this successfully in partnership with local authorities now. This includes through the ABB Code for Responsible Gambling, which is mandatory for all our members, and the Safe Bet Alliance (SBA), which sets voluntary standards across the industry to make shops safer for customers and staff. We would encourage local authorities to engage with us as we continue to develop both these codes of practice which are in direct support of the licensing objectives.

Yours faithfully,



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