

Representation 2: On behalf of Luxury Leisure/Novomatic UK

Proposed response:

Dear consultee. Thank you for your comprehensive comments which were discussed at the latest Licensing Committee meeting. It was agreed that the below response should be provided to your email:

(For ease of reference, we have included our response below each point)

Dear Sirs

Gambling Act 2005 – Statement of Principles Consultation

Thank you for the opportunity to make comments on the above consultation. On behalf of Luxury Leisure/Novomatic UK, I make the following comments in relation to the consultation draft (the “Draft”): -

- 1. As the Authority will appreciate, in matters of regulation under the Gambling Act 2005 (the “Act”) it is subject to the Regulators’ Code. That code imposes a number of obligations on the Authority, including one that it should carry out its activities in a way that it supports those it regulates to comply and grow. Additionally, under the Code, when designing and reviewing policies, the Authority must among other things, understand and minimise the negative economic impact of its regulatory activities and regulate and minimise the costs of compliance of those it regulates. Further, the Authority should take an evidence-based approach in determining priority risks and recognise the compliance record of those it regulates. While I note the reference to the Better Regulation Executive at paragraph 8.10, I suggest that the general applicability of the Code is confirmed in the Draft.*

The Licensing Authority supports the decision to include reference to the Regulator’s Code in Section 8 of the Policy.

- 2. Para 1.16: page 5 – We note the first bullet point but do not understand the point that is being made about self-exclusions. We suggest this is clarified.*

Relevant point:

The Council considers that these local risk assessments are a key component of the overall assessment and management of the local risks. The code requires the Council to set out matters they expect the operator to take account of in the risk assessment in its statement of policy and this council expects the Borough’s local risk profile and the following matters to be considered by operators when making their risk assessment:

- Information held by the licensee regarding self-exclusions and incidences of underage gambling*

We expect the operators to consider information regarding self-exclusions as part of their risk assessment process. Information on the number of individuals and instances where for example self-excluded persons were able to gamble, can allow the business to identify areas where their procedures can be improved. However, we are happy to elaborate on this point to provide further clarity as needed.

3. *Para 1.16: page 6. We do not understand why the proximity of "...banks, post offices, refreshment and entertainment type facilities" are automatically relevant. For example, only, why should a café or cinema located locally be relevant?*

As above plus:

Range of facilities in proximity to the licensed premises such as other gambling outlets, banks, post offices, refreshment and entertainment type facilities;

Availability of such venues provides accessibility to cash which is a well-known risk factor for overspending, particularly for people experiencing a gambling disorder. Immediate presence of refreshment and entertaining facilities can impact on the antisocial behaviour aspect of gambling. Accessibility to venues supplying alcohol can also lead to substance abuse and impaired decision making and risk taking. We believe therefore that this is a relevant point, and it should remain within the policy.

4. *Para 2.2 - states that the Responsible authorities are listed at Appendix 3- they are not. We would have liked the opportunity to consider the list, which is clearly very relevant, as part of the consultation*

The consultation was done in accordance with the Gambling Act 2005 and the Gambling Commission's "Guidance to Licensing Authorities. Details of interested parties that were consulted is listed in Section 2.1 of the draft Policy. However, following your comment, we will elaborate on this point and include further detail in the Policy as necessary.

5. *Para 4.3 page 11 - The first bullet point dictates that "conditions will be imposed" in certain circumstances. With respect, that would be to usurp the relevant committee and the necessary case by case approach. Further to expect the venue to provide policing of the locality is beyond the remit of a licence condition. It is not for a licensed operator to police the streets. If problems arise from a particular venue, that is something that would be within the potential responsibility of the operator. The same principle applies to the point on removal of street furniture unless it is the property of the operator in question. That is matter for the local authority/highways agency.*

Whilst we agree with the principles you have stated above, it is up to the licensing committee to decide what action to take which may still include imposing conditions necessary to mitigate any associated crime and disorder risks. The Policy will be amended to read that the conditions may be imposed, rather than will.

6. *Para 5.3 page 14 - penultimate bullet point. There is no reason why visibility of legal gambling should be blocked. No such prohibition operates in relation to pubs where people drink alcohol that is only accessible legally by those aged 18+. Further, such a condition is at odds with the example condition at para 3.2 of Appendix 4 (which also indicates that including draft conditions is not an appropriate approach). Indeed, in many premises we operated authorities (including police) have confirmed that they would prefer an open shopfront.*

This bullet point will be deleted as per your suggestion.

7. *Para 6.9 page 17 - We note the reference to premises needing to be constructed before an applicant can obtain a premises licence. We suggest it be made clear that such requirement does not apply to the application for a premises licence. You will be familiar with the 2008 case of R (on the application of Betting Shop Services Limited) – V– Southend on Sea Borough Council, in which it was held that an applicant could apply*

for a premises licence (without the need for a provisional statement) even though the premises were not fully constructed – the applicant is not restricted to making an application for a provisional statement. It was held by the court that the then current Guidance issued by the Commission was wrong and the Guidance was subsequently amended. We suggest that the position be corrected. The premises do not have to be constructed before an application for a premises licence can be made. In fact, applications for provisional statements have been very rare since the above-mentioned case was heard.

We will follow your recommendation and clarify this point, in line with the amended guidance and relevant case law.

8. *Para 6.11. The words “should not be located” rather pre-judges an application and conflicts with the principle (appreciated later in the paragraph) that each case is decided on its merits. We suggest the paragraph be revisited.*

Relevant point:

Should any specific policy be decided with regard to areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant to show how potential concerns can be overcome

The above sentence is proposed to be amended to: Should any specific policy be adapted with regards to gambling premises, this statement will be updated as necessary to reflect any potential impact. The wording: should not be located will be deleted.

9. *Appendix 4 - the extensive setting out of possible conditions is, with respect, unhelpful and more likely to lead to slavish application on the conditions without looking at each case on its merits. May appear to have been drafted with Betting premises in mind (see the outdated reference to FOBTs) and will only add to confusion.*

The Policy will be redrafted as to include examples of licence conditions under relevant parts of the Policy. Appendix 4 will be deleted.

10. *Para 7.8. It is not clear why the proposed conditions for an AGC are not mirrored for Bingo or betting premises - both of which also have adult only gaming machines. We suggest such unmerited inconsistency be rectified.*

See above. The Policy will be accordingly amended.

I hope that the above proves useful. If you have any questions, please to not hesitate to contact me.