



THE
HORSEMEN'S
GROUP



Department for Digital, Culture, Media and Sport

***Consultation on the use of a Legislative Reform Order to reform
administration of the Horserace Betting Levy:***

***Closure of the Horserace Betting Levy Board and the transfer of
functions to other bodies***

British Racing response

February 2018

Introduction

The three member organisations of the new tripartite Racing Authority – the British Horseracing Authority (BHA); The Horsemen's Group (HG); and the Racecourse Association (RCA) – are pleased to respond to this important consultation process on reform to the Horserace Betting Levy.

Our industry has campaigned for many years for reform of the Horserace Betting Levy to create a sustainable, enforceable, legally sound system, which provides a fair return to our grassroots from the estimated £11 billion of annual betting activity on our sport¹ and removes Government from the need for any direct role in the funding of racing from betting activity.

We are grateful to both the Ministers and dedicated Officials at the Department for Digital, Culture, Media and Sport (DCMS) who have already delivered lasting and significant changes for our grassroots and the wider rural economy.

The *Horserace Betting Levy Regulations (2017)* are working extremely well, with the European Commission stating in its clearance that the measures were “clearly justified ... necessary and proportional.”²

The improved receipts from the Levy have already allowed an additional £9.7 million of investment in grassroots prize money, contributing to record prize money in 2018 of £160 million.³ This will flow through to our participants (including trainers, breeders, jockeys and stable staff), ancillary industries (such as farriery), and in turn the wider rural economy while improving some of the key metrics within the industry. We are also looking forward to announcing shortly a number of further spending announcements covering a range of areas to support the welfare of our human and equine participants, grow ownership and the horse population, promote the sport, and develop our critical partnership with the betting industry, in line with our clear common interest.

However, as the Government makes clear in this latest consultation, the process of Levy reform is not yet complete. British racing has outlined on several occasions in consultation responses that, while the extension of the Levy to cover betting activity with offshore remote betting operators was critical, it was only one – if a key – aspect of a wider package of changes that were required:

¹ Gambling Commission, *Industry Statistics April 2014 to March 2017*, <http://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Statistics/Industry-statistics.aspx>

² European Commission, *State Aid SA.46216 (2017/N) – United Kingdom Horserace Betting Levy*, 21 April 2017, p.26 (http://ec.europa.eu/competition/state_aid/cases/267768/267768_1901680_142_2.pdf)

³ British Horseracing Authority Press Release, *Increased prize money set to flow to participants from 1 January 2018*, 29 December 2017 (https://www.britishhorseracing.com/press_releases/increased-prize-money-set-flow-participants-1-january-2018/)

“We still believe that there are a number of structural deficiencies which remain with the Horserace Betting Levy as a “mechanism for transferring funds on the business of betting on horseraces to horseracing in a broad sense” – even if the, admittedly very significant, loophole of bookmakers currently based offshore and not contributing to the Levy is closed by the measure currently under consultation.”⁴

Following the implementation of the *Horserace Betting Levy Regulations (2017)*, a number of wider changes are still required to the Levy, and we welcome the launch of this consultation process on a Legislative Reform Order (LRO) to implement these critical structural reforms.

First and foremost, we agree with Government that an LRO is an appropriate legislative mechanism to implement these reforms as the proposals within the consultation and accompanying Impact Assessment clearly demonstrate proposals for both administrative and financial efficiencies within the Levy system that will benefit both the racing and betting industries.

The Horserace Betting Levy Board (HBLB) is not an inefficient organisation – and has a number of talented and dedicated staff who have carried on their statutory duties with professionalism while the long-term future of the organisation has been debated. However, the HBLB’s existence does create a number of duplicative administrative processes, and additional financial expenditure, which we believe can be removed by the collection and distribution functions being transferred to the Gambling Commission and new Racing Authority respectively. Further, the removal of three public bodies – through the HBLB and the Appeal Tribunals – will support the Government’s wider objectives for Public Bodies Reform.

We wholeheartedly support DCMS’ three key policy objectives in this important consultation process of:

- (i) reducing administrative inconveniences for both betting operators and the horseracing industry;
- (ii) reducing the cost of administering the Levy, and thereby increasing the funding available to be spent for the benefit of British racing and betting; and
- (iii) removing the Government from the need for direct ongoing involvement in relation to Levy spending decisions, a policy aim since 2014, and supporting British racing’s ambitions for self-determination over expenditure of our industry’s key income streams

We also agree with the Government’s analysis within paragraph 3.49 of the consultation document that the “beneficiary of the Levy – the British horseracing industry – is best-placed to decide on the

⁴ British Racing response, *Extending the Horserace Betting Levy: A Consultation on Implementation*, (August 2014), p.2

allocation and distribution of Levy funds.” Work is underway on developing an industry-wide strategy to realise the benefits of Levy extension, with enhanced consultation processes embedded within our structure (as codified in the 2015 Members’ Agreement) and ensuring that all of the industry’s diverse stakeholders have a voice and stake in its future.

Significant progress has been made by the tripartite parties within British racing on the creation of the new body – the Racing Authority – which will manage the distribution of these funds, most recently demonstrated by the appointment of Sir Hugh Robertson as the Racing Authority’s Independent Chair.⁵ We look forward to providing the Government with further information on the Racing Authority both within this response, and as the LRO process moves forward towards April 2019 implementation, including finalising the Authority’s Memorandum of Association.

Overall, British racing believes that the LRO and the second phase of Levy reform – by addressing the remaining structural deficiencies within the Levy, reducing administrative and financial burdens on the racing and betting industries, and removing the Government from day-to-day involvement in decisions on the funding of British racing – will allow the benefits of the first phase of Levy reform to be unlocked fully, working closely in partnership with the betting and wider equine and veterinary science sectors.

1. Do you agree that the proposals will remove or reduce burdens?

British racing believes that the LRO proposals will result in reduced administrative and financial burdens for organisations and participants within our industry. As demonstrated in the diagram below, Britain’s racecourses and our many participants – including hundreds of licensed trainers and jockeys, and thousands of stable staff, owners and breeders – will be directly represented by the new Racing Authority, and will have direct channels into the funding distribution process through the tripartite structure of the Racing Authority.

The Racing Authority will remove a significant number of duplicative functions and layers of administration within British racing. These include areas such as:

- **Fixture funding distribution** – This is by some distance the biggest area of Levy distribution. The annual decision on distribution of fixture funding is determined by racing’s tripartite parties (BHA, RCA, HG), but is then executed by staff at the HBLB who have not been involved in

⁵ British Horseracing Authority Press Release, *Sir Hugh Robertson to Chair the Racing Authority*, 8 January 2018 (https://www.britishhorseracing.com/press_releases/sir-hugh-robertson-chair-racing-authority/)

agreeing these distributions. The Racing Authority will be directly representative of these organisations, and will therefore directly implement decisions made by the parties having been involved in the discussions. This will introduce a significant efficiency to this important process

- **Individual decisions during the year** – A similar issue also arises in relation to individual decisions throughout the year, including the scheduling of additional Fixtures or races, with the decision made by racing and implemented by the HBLB. This will be streamlined under the new Racing Authority
- **Systems synergies** – The HBLB runs a number of systems that are not linked to those of the BHA, RCA or HG. Therefore, policy development by the tripartite parties will often rely on data from the HBLB system which needs to be requested, leading to a longer timescale for those decisions to be made. Future data requests will be able to be executed in a more timely manner, thus enhancing efficiency
- **Data analysis** – Analysis to support decision making is currently undertaken by both racing and the HBLB – a clearly duplicative process which could be removed under the new Racing Authority. This will also be improved through the provision of appropriate data from betting operators, which we hope will be implemented through the new Betting Liaison Group (more details on which below). This will allow for better informed and faster decisions
- **Industry recruitment, training and retention provision** – The BHA has established a Stakeholder Programme Board to develop strategy and processes, including the direction of Levy funding, in staff recruitment, training and retention. This Programme Board meets regularly and is fully representative of horsemen, training providers (British Racing School, Northern Racing College and The National Stud) and key charitable organisations (The Racing Foundation, Racing Welfare, Racing to School and the Injured Jockeys Fund). Decisions made on the allocation of Levy funding are executed by HBLB staff who are not involved in this Programme Board, and the Racing Authority will streamline this administrative inefficiency
- **Support services** – Functions such as Human Resources, ICT and Finance could be integrated to third party providers, such as other bodies within British racing, rather than having to be met from the HBLB budget as is the case presently

We also believe that the new system will reduce burdens for the betting industry, for example, by reducing the number of organisations to which they need to provide a return, with the Gambling Commission responsible for collection.

2. Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 and 4 of this consultation document and addressed in the de minimis assessment?

British racing agrees with the Government's analysis in the consultation and De Minimis assessment that there will be a reduction in administration costs on the Levy – through both the collection and distribution bodies.

The BHA, RCA and HG have provided detailed estimates to the Government for the Racing Authority elements of the De Minimis assessment – which will represent an annual estimated running cost of c.£700,000. We therefore endorse the estimates within the De Minimis Assessment. We also agree that the estimates provided by the Gambling Commission for collection and enforcement functions will represent significant efficiencies compared to the current system.

The assessment that there will be annual savings in administration costs in the region of £600,000 is correct in the context of the HBLB's estimates of future administration costing £1.47 million. However, it is appropriate to highlight that this cost estimate is in the context of the HBLB's current situation – which is in the process of being wound down – and that administration costs averaged £2.3 million between 2012 and 2016. In this respect, it could be argued that the annual savings will be in the region of £1.4 million.

Using the £600,000 annual efficiency figure as the basis, we estimate that this will result in an additional £3 million in Levy expenditure that can be invested in the Levy's statutory objectives until the next scheduled rate review in 2024. This expenditure will support our participants and the grassroots of British racing and the communities in which we operate, further improve horse welfare and veterinary science, and enhance the attractiveness of British racing as a socially responsible betting product to the benefit of the betting sector.

The wider economic benefit to the rural economy from this expenditure can, on the basis that £1 of expenditure within the core racing industry generates a further £1.53 of expenditure in the wider economy, be estimated at some £7.6 million over the five year period.⁶ Using the £1.4 million annual efficiency figure, the overall economic benefit could be estimated at up to £18 million.

We now provide some detailed thoughts on the specific proposals within Chapters 3 and 4 of the consultation document concerning both the Gambling Commission and the Racing Authority.

⁶ Deloitte, *Economic Impact of British Racing 2013*, p.10
(<https://www.britishhorseracing.com/wp-content/uploads/2014/03/EconomicImpactStudy2013.pdf>)

Gambling Commission

Information requirements and assessments of Levy due

British racing agrees with the Government that it is appropriate for the Gambling Commission to take on the HBLB's statutory powers to obtain information from betting operators to assess Levy liability. We believe that the powers provided to the Commission under the *Gambling (Licensing and Advertising) Act (2014)*, which British racing strongly campaigned for – and of course provided the Reserve Power for the extension of the Levy to offshore remote operators – gives sufficient powers to the Commission to carry out these responsibilities to all on and off-shore domiciled operators accepting bets on the sport from British customers.

While we do not take any direct role in the operation of a betting business in the UK at present, and it is therefore not for us to make detailed comments on the proposals regarding regulatory returns and other administrative processes in paragraph 4.11, we do believe that there are significant opportunities for streamlining and efficiencies to be realised. Generally, we agree that merging and streamlining the collection and enforcement processes under the remit of the Gambling Commission will create significant economies of scale.

Protection of operators' data

We understand that it is very important that there are sufficient protections in place concerning the processing of potentially highly sensitive commercial data from betting operators within the Gambling Commission. Nonetheless, if the benefits of Levy reform are to be truly realised – and if British racing and betting are truly going to be able to work in partnership moving forward to grow socially responsible betting activity on the sport – then it will be important that there is sufficient ability for aggregated data to be provided to inform key race planning, Fixture list and funding discussions. The provision of this data by the betting industry will be to its clear benefit, with British racing better able to respond to the industry's needs and expectations.

Levy periods and payments

We have carefully considered the current and alternative approaches to Levy periods and payments within the consultation document, and we agree with the Government's conclusion in paragraph 3.20 that the existing definition of levy period based on the current year's trading should be maintained.

Our main reason for supporting the maintenance of the current system over the ‘Levy year -1’ approach is that it better reflects, and encourages, a direct partnership between racing and betting which is a key objective of the new Levy environment. Basing the Levy on the previous year’s trading would serve to reduce the direct link, and also mean that were racing and betting to be successful in growing betting activity on British racing – and thereby the Levy yield – it would need to wait for a year longer for those benefits to make their way to the sport as a whole.

While we also understand that there would be financial savings of c.£158,000 annually on salary related costs at the Gambling Commission using the alternative ‘Levy year -1’ approach, these would be outweighed by a relatively modest £1.6 million rise in Gross Gambling Yield on British racing.

As we have outlined to Government in autumn 2016 consultations on the Levy rate, it will be important through to the scheduled rate review by 2024 – with Levy currently charged at 10% of betting operators’ Gross Gambling Yield (GGY) on British racing – to continuously monitor the implications of channel shift to online betting and overall margin compression on reducing Levy yield, even in an environment where betting activity levels are growing. British racing also feels that shorter settlement periods for betting operators – so that Levy liability can’t be offset over an entire 12 month period – should still be considered as part of these or future reforms.

Overall, we are of the view that the proposed ‘Levy year -1’ proposal would not sufficiently reduce administrative burdens, or result in a significant uplift in Levy generated, to justify a change in approach that could damage the incentive for British racing and betting to work together. We understand the current system of payment on account works well.

Enforcement

We agree with the Government that the Gambling Commission should be provided with appropriate powers to pursue the civil enforcement route to recover funds from operators who have surrendered or revoked their licence and still have Levy due. We also believe, as represented on several occasions in previous consultations, that the Levy collection body should have appropriate powers of audit for fair and transparent verification of betting operators’ Levy returns, with appropriate safeguards in place to protect operators’ commercially sensitive data.

We also strongly agree that the Gambling Commission should have a power to revoke an operator’s licence should they not pay the Levy. The Commission is best placed to take action based on the facts of each case and, as it has the necessary powers under the 2014 Act to licence

all retail and remote operators accepting bets on British racing, we agree that the 2007 Order can be repealed.

Generally, however, we would emphasise that proportionate action should be taken by the Gambling Commission to recover sums in the likely limited occasions when a betting operator either refuses to pay, or avoids paying, Levy after the appropriate appeals processes have been exhausted. The Racing Authority would be happy to co-operate with the Gambling Commission in these circumstances.

Appeals

The 2017 Regulations (by implementing the £500,000 GGY allowance, and the 10% GGY rate for up to seven years) have significantly reduced the scope for dispute between betting operators and the Gambling Commission concerning future payment of Levy.

Given the reduced likelihood that there will be disputes, the processes in place within the Gambling Commission to resolve these if they arise, and the ability for operators to appeal to the First Tier Tribunal or undertake a Judicial Review if required, we believe that there is a clear case for the abolition of the Levy Tribunal for England and Wales, and the Levy Tribunal for Scotland. This also sits in line with Government's approach to Public Bodies Reform, by removing three statutory bodies across the HBLB and its two tribunals.

Racing Authority

Transfer responsibility for distribution of Levy from the HBLB to the racing industry

British racing wholeheartedly agrees with Government's assessment that our sport is best placed to determine the allocation of Levy funds – through well informed, data driven, decisions on Levy expenditure to maximise the benefits of Levy receipts for the Racing and Betting industries, and the wider rural economy. We also agree that there is no longer a case for the Government to be involved in annual decisions on Levy expenditure through Government-appointed Members. Nonetheless, as demonstrated by the recent appointment of Sir Hugh Robertson as Chair of the Racing Authority, we do believe that it is important for effective and evidence-based decision making that there are still independent inputs to the allocation process from outwith the industry.

As outlined in our responses above, and our estimated annual costs provided to the De Minimis assessment, we believe that the Racing Authority will deliver significant financial and administrative efficiency savings for participants in British racing.

The Racing Authority will be fully representative of the British racing industry's tripartite governance structure – reflective of the 2015 Members' Agreement⁷ – and ensure that appropriate opportunities for representation on expenditure decisions are provided to all elements of the racing, betting, equine and veterinary science sectors. This will reflect the Levy's three statutory objectives which remain in place, namely, the improvement of horseracing, the advancement of veterinary science and education and the improvement of breeds of horses (including rare breed societies).

The Membership of the Racing Authority is as follows:

- British Horseracing Authority (BHA) – Established in 2007 as the governing and regulatory body for British thoroughbred horseracing
- Racecourse Association (RCA) – Established in 1907 as the trade body for British racecourses
- Horsemen's Group (HG) – Founded in 2009 as the collective representative body for British thoroughbred horsemen and women

Each Member of the Racing Authority has already appointed two Directors to the Shadow Racing Authority Board, with the full composition of the Board being:

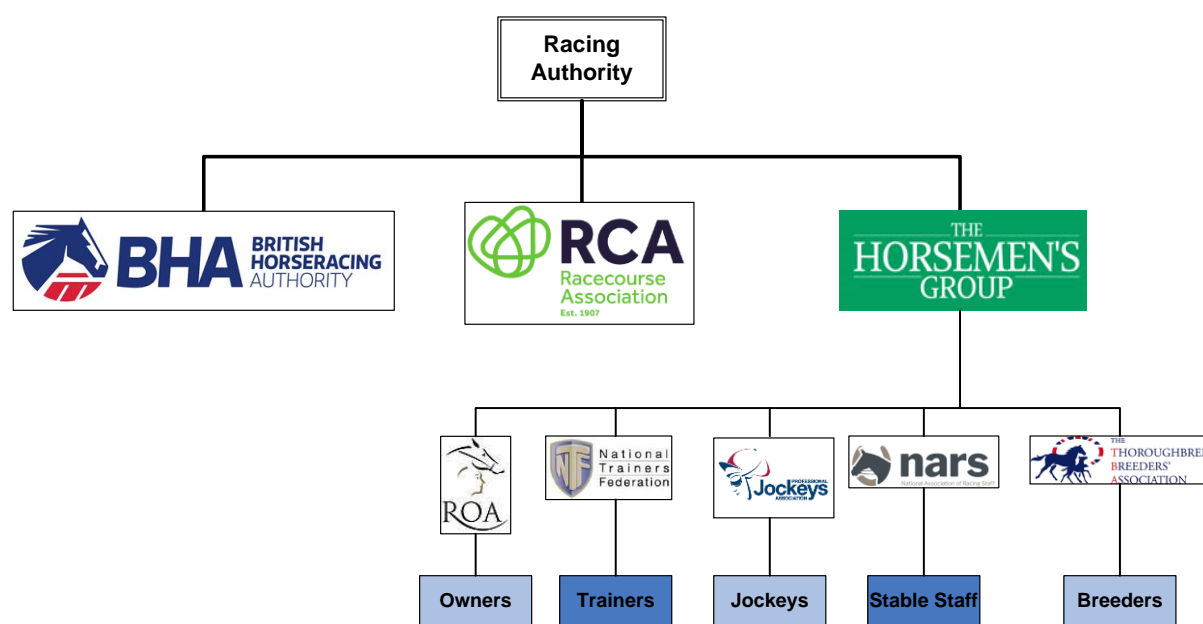
- Independent Chairman – Sir Hugh Robertson
- BHA – Nick Rust (Chief Executive), Richard Wayman (Chief Operating Officer)
- RCA – Maggie Carver (Chairman), Stephen Atkin (Chief Executive)
- HG – Julian Richmond-Watson (Chairman, Thoroughbred Breeders' Association), Charlie Liverton (Chief Executive, Racehorse Owners' Association)

There is also scope within the proposed Memorandum of Association of the Shadow Racing Authority to allow for the appointment of a further Independent Member to further support the decision making process. This will be kept under review by the members of the Racing Authority, in discussion with the Chairman.

Figure 1 overleaf demonstrates how the structure of the Racing Authority ensures that all of the diverse elements of the British racing industry (and beyond) are represented and have appropriate input into expenditure decisions.

⁷ British Horseracing Authority Press Release, *Historic moment for British Horseracing as Members' Agreement is signed*, 5 November 2015 (https://www.britishhorseracing.com/press_releases/historic-moment-for-british-horseracing-as-members-agreement-is-signed/)

Figure 1 – Racing Authority: Representation and consultation routes



Levy expenditure

British racing agrees with Government that it is important that the betting industry, and other key stakeholders including the veterinary science and equine sectors, are appropriately consulted on relevant Levy expenditure decisions.

In line with the European Commission decision that “the racing and horse racing betting industries have a mutual interest in the organisation of races on which bets are placed”⁸, we are at an advanced stage in developing proposals for a Betting Liaison Group which it is envisaged will sit as a sub-committee of the new Racing Authority.

The group will use anonymised data collected from betting operators, racecourses, media rights holders and other sources to influence and inform race planning and Fixture List initiatives which encourage increased betting activity on British racing. Data provision from both retail and remote betting operators, given the different market dynamics between these two channels, will be required in order for this to succeed.

We firmly believe that the Group will ensure meaningful, and fruitful, consultation with the betting industry and provide the platform for an enhanced and mutually beneficial relationship between our interdependent industries moving forward.

⁸ European Commission, *State Aid SA.46216 (2017/N) – United Kingdom Horserace Betting Levy*, p.2

British racing is extremely proud of the leadership role that it plays in the wider equine sector, particularly through the over £50 million in veterinary research and education that has been funded by the HBLB, and we want to see this important work continue and thrive under the Racing Authority environment. We are engaging with the equine and veterinary sector on proposals for how these funds can be distributed, including potentially through the creation of Research Council reflecting best practice in medical, biotechnology and biological science research. The Racing Authority would determine key research priorities, aimed at supporting research of relevance to thoroughbred horseracing and breeding.

Transparency requirements

We agree that it is absolutely appropriate, not only in the context of the stipulations of the European Commission State Aid approval but also best practice, that the Racing Authority is suitably transparent and accountable for all of the important expenditure decisions that it will make.

The Racing Authority therefore will:

- Publish an Annual Report that will include the identity of beneficiaries of Levy expenditure, and the amounts they received, alongside details on administrative costs
- Have its accounts independently audited with the report published either as part of the Annual Report or independently
- Outline clear and transparent criteria for applicants for Levy expenditure so that they, and wider stakeholders, can understand how expenditure will be allocated
- Establish processes to ensure that recipients of Levy expenditure are not overcompensated, while also ensuring mechanisms are in place for the recovery of unspent funds from successful applicants

Assets and liabilities

We agree that the assets, liabilities and any outstanding obligations of the HBLB, after its ongoing operational requirements and provision for any reorganisation costs, should move in full to the Racing Authority at the point of transfer, including reserves. The Racing Authority Board will work with the HBLB to help effect the smooth transfer of assets, liabilities and obligations, in order to ensure that the flow of funds to Levy recipients is not impaired by the transfer of responsibilities. We have already been in discussions with affected parties.

We also agree that the Gambling Commission should receive appropriate funds to have sufficient working capital to carry out its important roles in collection and enforcement of collection from 1

April 2019. Nonetheless, we would be interested to hear further information from the Gambling Commission on the amount of funds it feels it requires for this float.

3. Are there any non-legislative means that would satisfactorily remedy the issues which the proposals intend to address?

Given the role of the HBLB as a Non-Departmental Public Body, and its definition within the *Betting, Gaming and Lotteries Act (1963)*, we believe that the proposals outlined within the consultation do require use of an LRO to implement changes. There have been many attempts at non-legislative solutions in the past concerning Levy reform which have had mixed success, and defining the roles of the Gambling Commission and Racing Authority within the ambit of the 1963 legislation is important to ensure that these changes have sufficient permanence, and provide sufficient clarity for betting operators, existing and potential beneficiaries and wider stakeholders.

4. Are the proposals proportionate to the policy objectives?

We believe that the proposals within the consultation document are suitably proportionate to the Government's key policy objectives of reducing administrative inconveniences relating to the operation of the Levy, reducing the costs of administering the Levy, and removing the Government from direct involvement in Levy expenditure decisions. These have been longstanding policy objectives of successive Governments, and have been consulted on through several interlinked consultation processes dating back to 2011.

5. Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

We do not believe that any individual organisation within the racing, betting or wider equine/veterinary sector will be adversely affected by the proposals within this consultation. The Racing Authority will work to ensure, as far as possible, that this does not occur.

Overall, we believe that there is a clear public interest in a thriving British racing industry, generating significant employment and economic activity in rural communities the length and breadth of Britain. This second phase of Levy reform will add significant benefits to these communities, by unlocking the full potential of British racing to target additional Levy expenditure

at growing its grassroots, in partnership with the betting and equine sectors. This is clearly in the public interest.

6. Do the proposals remove any necessary protection?

We believe the proposals within the consultation still ensure there are necessary protections and appeal processes in place for both betting operators and racing organisations.

7. Do the proposals prevent any person from continuing to exercise any right or freedom which he/she might reasonably expect to continue to exercise? If so, please provide details.

No. Betting operators will still be able to have appropriate – and in many cases enhanced – input into expenditure decisions through the new Racing and Betting Liaison Group if they make contributions to the Levy.

For racing bodies, transparent criteria for expenditure will be published by the Racing Authority, while the Members of the Racing Authority drawn from across the sport's tripartite Governance structure ensure that the diverse organisations within British racing are represented in discussions.

February 2018