



## The Advertising Association

7<sup>th</sup> Floor North, Artillery House, 11-19 Artillery Row,  
London SW1P 1RT

Telephone: +44 (0) 20 7340 1100 Fax: +44 (0) 20 7222 1504  
e-mail: [aa@adassoc.org.uk](mailto:aa@adassoc.org.uk) web: <http://www.adassoc.org.uk>

### **RESPONSE TO THE GAMBLING COMMISSION CONSULTATION ON ITS: STATEMENT OF PRINCIPLES FOR LICENSING AND REGULATION; STATEMENT OF PRINCIPLES FOR DETERMINING FINANCIAL PENALTIES; AND, LICENSING, COMPLIANCE AND ENFORCEMENT POLICY STATEMENT**

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

#### **1. Introduction & Summary**

1.1. The Advertising Association welcomes the opportunity to respond to the consultation by the Gambling Commission (GC) on its *Statement of Principles for Licensing and Regulation (SPLR)*. This response principally addresses Part 4 (“Promoting the licensing objectives”) of the *SPLR*, given its references to the regulatory framework for gambling advertising. The organisation has also proposed a number of clarifications for how the *SPLR* could be rendered clearer still for Commission licensees in various areas. Similar clarifications are proposed to the GC’s *Statement of Principles for Determining Financial Penalties (SPDFP)* and its *Licensing, Compliance and Enforcement Policy Statement (LCEPS)*.

1.2. In summary, the Advertising Association:

- (a) proposes that those provisions relating to advertising within the existing *SPLR*, which dates from December 2006, be updated so as to reflect the successful working relationship the GC has enjoyed with the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) since September 2007;
- (b) argues that the *SPLR* should better reflect the role of CAP and BCAP in ensuring that consumers are not misled by gambling advertisements and that children and other vulnerable persons are protected from being harmed or exploited by advertising that features or promotes gambling;
- (c) recommends that, where feasible, the references in the *SPLR* to advertising and marketing issues be drawn more closely together within the *Statement*;
- (d) submits that, in order to ensure the *SPLR* fully reflects the commitment of the GC to the tools of better regulation, references to the cross-Government *Code of Practice on Consultation* be updated to reflect the existence of the July 2008 edition of that document (rather than the 2004 version as is presently the case); and,
- (e) advocates the making of a small number of drafting improvements to all three *Statements* in order to render them more accessible and easily comprehensible to GC licensees.

1.3. The Advertising Association looks forward to publication by the GC of its summary of responses to the consultation alongside the final versions of the three *Statements* in due course. No part of this submission should be treated as if it were confidential in nature.

## **2. Responses to Questions 1 to 6 of the Consultation Document**

### **Statement of Principles for Licensing and Regulation**

Question 1: Do you have any comments on the *Statement of Principles for Licensing and Regulation*?

2.1. Yes – a number of comments are made in the sections that follow, most notably that the next edition of the *SPLR* should be updated better to reflect the relationship that now exists between the GC and the other bodies that make up the regulatory framework for gambling advertising.

2.2. The original *SPLR* was drawn up by the GC in December 2006 and therefore pre-dates the coming into force of the majority of the provisions contained within the Gambling Act 2005 and the new legislative framework that the statute introduced on 1 September 2007.

2.3. The current version of the *SPLR* also therefore pre-dates the coming into force of the (then new) regulatory regime for gambling advertising on 1 September 2007. The current wording of the *SPLR* anticipates the arrival of that regulatory regime but, clearly, does not reflect the fact that it has now been in place and operating successfully for almost two years. By the time the revised version of the *SPLR* is in force, this advertising regime will have been in existence for well over two years. In order to reflect this in the next edition of the *SPLR*, recommendations are made in sections 2.4 and 2.5 of this response respectively.

2.4. Paragraph 4.16 of the *SPLR* should be amended to reflect the fact that advertising codes are in place to ensure that consumers are not misled by the content of gambling advertisements, thereby achieving the GC's licensing objective that gambling be conducted in a fair and open way<sup>1</sup>. The CAP and BCAP advertising codes, which cover non-broadcast and broadcast advertisements respectively, both contain general provisions aimed at preventing consumers from being misled and these apply as much to advertisements for gambling as they do to those for any other product or service. To reflect this, Paragraph 4.16 should be amended to read: "The Commission will maintain its relationship with the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice, whose Codes ensure that consumers are not misled by gambling advertisements."

2.5. Paragraph 4.24 of the *SPLR* should also be amended the better to reflect the existence of the CAP and BCAP advertising codes and the specific provisions they contain on gambling, as well as the established relationship the GC now enjoys with these two Committees<sup>2</sup>. The gambling sections of these Codes assist the GC in achieving its licensing objective of protecting children and other vulnerable persons from being harmed or exploited by gambling. To reflect this, it is recommended that Paragraph 4.24 be amended to read: "The Commission will maintain its relationship with the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice, whose Codes protect children and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling, whilst ensuring that these are backed by effective enforcement action if they are breached."<sup>3</sup>

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<sup>1</sup> Paragraph 4.16 of the *SPLR* currently states: "The Commission will ensure that advertising codes are put in place to prevent consumers from being misled."

<sup>2</sup> Paragraph 4.24 of the *SPLR* currently states: "The Commission will work with the Committees of Advertising Practice to develop advertising codes on gambling and will ensure that these are backed by effective enforcement action if those codes are breached."

<sup>3</sup> In proposing this amendment, the Advertising Association has also replaced the existing reference to "the Committees of Advertising Practice" with CAP and BCAP separately and explicitly, as the organisation considers this reduces the potential to confuse licensees when compared with the

2.6. To assist licensees, it is recommended that Paragraph 4.27<sup>4</sup> of the *SPLR* on marketing practices be relocated immediately below Paragraph 4.24, given the latter is the only other entry referring to advertising in that segment of the *SPLR* concerned with the protection of children and other vulnerable persons from being harmed or exploited by gambling. For the purposes of clarity, it is also recommended that Paragraph 4.27 be reformulated to read: "The Commission will ensure that marketing practices (including advertising and inducements) do not exaggerate the chances of winning or encourage players to gamble more than they want to or can afford."

2.7. To render Paragraph 1.3 of the *SPLR* more consistent with the rest of the *Statement*, it is recommended that the sentence should conclude as follows: "licensing objectives."

2.8. References to the Cabinet Office's *Code of Practice on Consultation* are made in Paragraphs 1.4 and 3.4 of the *SPLR*, together with the two footnotes that accompany them (7 and 13). This is understandable, given that that 2004 Code was the one in force when the *SPLR* was published in December 2006. The 2004 Code was, however, superseded by the *HM Government Code of Practice on Consultation* in July 2008. The *SPLR* should be updated to reflect this fact and that overall responsibility for it no longer resides with the Cabinet Office, but with the Better Regulation Executive (BRE) of the Department for Business, Innovation & Skills<sup>5</sup>. The Advertising Association trusts that the GC is already adhering to the 2008 edition of the Code when conducting consultations and that it is only the references within the current *SPLR* to the earlier version which are out-of-date.

2.9. To render Paragraph 2.5 of the *SPLR* clearer, its ninth bullet-point<sup>6</sup> should be amended to read "...disclose to the Commission anything which it would reasonably want to know."

2.10. To render Footnote 18 consistent with the rest of the *SPLR*, its second sentence should be amended to read: "The Commission has not identified a class of gaming machine or other equipment in relation to which it will or may assume suitability under section 70(8) of the Act, and therefore makes no specification in that regard."

2.11. To render Footnote 19 of the *SPLR* clearer, its first sentence should be amended (once the latest edition of the *LCEPS* has been finalised) to read: "The Commission's practice in relation to evidence required or accepted in connection with licence applications is specified in its *Licensing, Compliance and Enforcement Policy Statement*."

### **Statement of Principles for Determining Financial Penalties**

Question 2: Do you have any comments on the *Statement of Principles for Determining Financial Penalties*?

2.12. Yes - one comment. To render Paragraph 2.6 of the *SPDFP* clearer, the emboldened title<sup>7</sup> above that entry should be amended to read: "Criteria for determining the quantum of a financial penalty".

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current version of Paragraph 4.24, as the Committee of Advertising Practice (in the singular) covers non-broadcast advertising only.

<sup>4</sup> Paragraph 4.27 of the *SPLR* currently states: "The Commission will ensure that marketing practices (including advertising and inducements) do not exaggerate the chances of winning or encourage players to gamble more than they can afford or want to."

<sup>5</sup> Note that the document is referred to as being the *HM Government Code of Practice on Consultation* rather than a BRE one.

<sup>6</sup> The ninth bullet-point of Paragraph 2.5 of the *SPLR* currently reads: "disclose to the Commission anything which it would reasonably to know."

**Licensing, Compliance and Enforcement Policy Statement**

Question 3: Do you have any comments on the chapter on risk?

2.13. No.

Question 4: Do you have any comments on the chapter on licensing?

2.14. Yes – two comments, set out in the sections immediately below.

2.15. To render Paragraph 3.10 of the *LCEPS* clearer, its fourth bullet-point<sup>8</sup> should be amended to read: “Competence – The experience, expertise, qualifications and history of the applicant and / or persons relevant to the application.”

2.16. To render Paragraph 3.14 more consistent with the rest of the *LCEPS*, the final clause of the categorisation of a ‘Good’ prospective licensee appearing beneath it should be amended to read: “...the applicant has a proven track record of being able to meet the requirements of the Act and the Commission’s LCCP.” It is also recommended that, in the categorisation of “Inadequate” within Paragraph 3.14 (to render it consistent with the rest of the *LCEPS*), both references to a prospective licensee - or “applicant” – appear in lower case.

Question 5: Do you have any comments on the chapter on compliance?

2.17. Yes – two comments, set out in the sections immediately below.

2.18. Where in Paragraph 4.18 of the *LCEPS* the GC describes the criteria for assessing whether an existing licence-holder is “Adequate” or “Good” from a compliance perspective the object of the assessment should be the licensee and not a new applicant. All references to “applicant” in this context should be substituted with “licensee”, consistent with the terminology that the GC has adopted in assessing whether an existing licence-holder is “Inadequate” or “Just adequate” elsewhere in Paragraph 4.18.

2.19. To render Paragraph 4.18 consistent with the rest of the *LCEPS*, the final clause of the categorisation of a ‘Good’ licensee appearing beneath it should be amended to read: “...the licensee is able to demonstrate clearly that the licensed activities in question are being conducted in accordance with the requirements of the Act and the Commission’s LCCP”<sup>9</sup>.

Question 6: Do you have any comments on the chapter on enforcement?

2.20. Yes – one comment. To render Paragraph 5.38 more consistent with the rest of the *LCEPS*, its third bullet-point should be amended to read: “decide that a licence has lapsed if a licensee becomes incapable of carrying on the licensed activities by reason of mental or physical incapacity”.

22 July 2009

<sup>7</sup> The emboldened title above Paragraph 2.6 of the *SPDFP* currently reads: “Criteria for the determining the quantum of a financial penalty”

<sup>8</sup> The fourth bullet-point of Paragraph 3.10 of the *LCEPS* currently reads: “Competence – The experience, expertise, qualifications and history of the applicant and or persons relevant to the application.”

<sup>9</sup> The revised wording takes account of the proposal made in section 2.18.