

## Evidence of Lord Lipsey

[The Clerk] has kindly invited me to set out my view briefly for the committee, for publication with your report. She also has the joint memorandum Phillip Davies, a Conservative MP and I sent in response to the DCMS consultation setting out our views at greater length.

Our opposition is not rooted in our opposition to the policy. We both happen to think that shifting responsibility for collecting levy from the tried-and-tested Levy Board to the multi-tasked Gambling Commission is likely to be less efficient, especially since the Gambling Commission doesn't want the work but policy is a matter for the government and parliament.

However we oppose it as we believe it to be *ultra vires* on two grounds.

First based on advice from the leading gambling legal firm Olswang's, we doubt if the proposed Order is within the scope of the legislative reform order procedure because we doubt if financial savings will eventuate.

Section 1(2) of the LRA provides that an LRO can be made only for the "purpose {of} removing or reducing any burden ... resulting directly or indirectly for any person from any legislation." Even the government would not claim that saving money was the principal purpose of this order. The principal purpose is to pursue the ministerial commitment to get rid of the Levy Board without primary legislation being required.

It is not clear what burden is being removed by transferring the collection of levy from one body to another. That claim would rest on the supposed financial savings data which cannot be relied on. The savings claimed are exiguous -some £200K to the government with a transitional cost of £1m. Experience shows on merging or abolishing bodies, savings are often not realised while costs are. Even the government would not claim that saving money was the principal purpose of this order. The principal purpose is to pursue the ministerial commitment to get rid of the Levy Board without bothersome primary legislation.

Traditionally the role of tax collectors has been carefully controlled by Parliament. Taxation (and the levy must be characterised as a tax for these purposes) is the state applying itself to private individuals and entities at its most contentious. And the identity of the tax collector is important. For example, Parliament has always required officers of HMRC (and before it the Inland Revenue) to swear an oath of confidentiality and has provided careful controls on them. We can think of no example where the Government has previously moved any tax collecting role from one entity to another either by statutory instrument or executive action. It is something which should always be the subject of primary legislation.

Second, is it legitimate specifically for the *Gambling Commission* to take on the role of levy collector? The powers of the Commission are set out in the Gambling Act 2005 (the 2005 Act). Its principal duties are to stop gambling being a source of crime; ensure that it is fairly conducted; and protect children. It is not clear how these allow it to collect levy. (Under the 2005 Act the Commission can in fact raise *a levy* from operators, but revenue from that levy can be used only for funding projects related to gambling addiction/harm or the licensing objectives, not to fund horseracing.)

It is noteworthy that Mr Davies sought advice from Colin Lee, the Clerk of Bills in the Commons. Mr Lee's email to Mr Davies of 17th January states "I can say with reasonable confidence that changes to the levy itself and its scope would need primary legislation ..."

In these circumstances, I believe the proposed Order to be *ultra vires* and, worse, an abuse of a power given by parliament.

**30 October 2018**