



DAVID CLIFTON: LICENSING EXPERT – A POTENTIALLY LETHAL PARTING SHOT

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Sarah Harrison departs from her position as Chief Executive of the Gambling Commission at the end of February 2018. Before she goes, she is leaving a potentially lethal parting shot for a substantial number of operators within the gambling industry..

I am referring to the Commission's letter [sent](#) to all of its licensed online casino operators on 4 January, in which it raised serious concerns about the remote casino sector's approach to anti-money laundering ("AML") and social responsibility ("SR") and set out actions that the sector is required to take with immediate effect.

That demand for action has come too late for the seventeen online casino operators that are already the subject of formal investigation by the Commission, five of which may become the subject of licence reviews.

The online betting sector should not regard itself as immune from similar enforcement action, merely by reason of it falling outside the ambit of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 Regulations").

I say that because all B2C operators licensed by the Commission are required to:

1. conduct an assessment of the risks of their business being used for money laundering and terrorist financing,

2. review that assessment as necessary (and in any event at least annually) in the light of any changes of circumstances, including the introduction of new products or technology, new methods of payment by customers, changes in the customer demographic, or any other material changes,
3. put in place and effectively implement appropriate policies, procedures and controls to address the risks identified in that assessment,
4. keep those policies, procedures and controls under review and revise them appropriately to ensure they remain effective,
5. comply with the requirements of the Proceeds of Crime Act 2002 (“POCA”), including in relation to submission of suspicious activity reports and prevention of “tipping off”,
6. monitor customer activity and transactions (using a risk-based KYC approach), to obtain an understanding of the source of funds and wealth of higher-risk customers (which category includes problem gamblers),
7. put into effect policies and procedures for customer interaction where they have concerns that a customer’s behaviour may indicate problem gambling,
8. ensure that, within those policies and procedures, specific provision exists for making use of all relevant sources of information to ensure effective decision-making and to guide and deliver effective customer interactions including, in particular, provision to identify at-risk customers who may not be displaying overt signs of, or overt behaviour associated with, problem gambling,
9. keep a record of all customer interactions and, where an interaction has been ruled out, the reasons for this decision, and
10. provide (and maintain records of) both induction and refresher training to employees in relation to all of the above.

None of what I say above should come as any surprise to either casino or betting operators. If it does, I recommend very strongly that they immediately re-read the licensing objectives set out in section 1 of the Gambling Act 2005, the Gambling Commission’s Licence Conditions and Codes of Practice (“LCCP”) and:

- in the case of casino operators, the Commission’s *“Prevention of Money Laundering and Combating the Financing of Terrorism”* guidance, and
- in the case of betting (and other non-casino) operators, the Commission’s *“Duties and responsibilities under POCA 2002”*

In addition, they might want to consider urgent recruitment of suitably qualified and experienced personnel to join their AML and regulatory compliance teams.

Online casino recipients of the Commission's letter are being told they need to review their AML and SR policies and procedures immediately to ensure that they meet or exceed the specific requirements contained in the LCCP and the 2017 Regulations.

I would very strongly recommend that online betting operators conduct a similar exercise insofar as the LCCP and the ten numbered points above are concerned. If they fail to do so, they will be running the risk of receiving a similar letter from the Commission before too much longer or, even worse, facing a formal investigation and enforcement action of the type recently suffered by Gala Interactive, who were made subject to an overall penalty package of £2.3 million in November last year.

Picking up on recommendations within the Commission's letter to remote casino operators, this exercise can be accomplished by:

- conducting appropriate assessments of the risks of money laundering and terrorist financing for your business, and implementing policies, procedures and controls that manage the identified risks effectively,
- ensuring that both your KYC measures (in the case of casinos, specifically for customer due diligence and enhanced customer due diligence pursuant to the requirements of the 2017 Regulations) and the ongoing monitoring of customers are sufficiently risk-focused, including better risk profiling of customers,
- ensuring that you are able to adequately evidence customer interactions,
- providing your staff with appropriate training to ensure that they are aware of the law relating to money laundering and terrorist financing and how to recognise and deal with transactions, activities or situations that may be related to money laundering or terrorist financing, and
- ensuring that your policies and procedures contain provision for (a) making use of all relevant sources of information where you have concerns that a customer's behaviour may indicate problem gambling and (b) putting those policies and procedures into effect.

I had hoped that my first 2018 article for SBC News might have carried a more positive message for the New Year, but I regret to say that I now think it more likely than ever that this year will see the first operating licence and PML revocations for AML and associated SR failings.

That would be consistent with statements by the Commission in its 2018-2021 strategy document *"Making gambling fairer and safer"*, unveiled in November 2017, that it will *"take firm action against businesses which do not uphold the standard we expect and persistently or systematically fail their customers"* and, in so doing, will use its regulatory powers *"to the full, reflecting Parliament's intention"*.

I am afraid that this latest development comes as little surprise to me, having advised a number of clients who have been the subject of the Commission's recent thematic review of the remote casino sector. It was that review that has resulted in the letter being sent to all online casino operators and has prompted Sarah Harrison to say:

- *"It is vital that the gambling industry takes its duty to protect consumers and keep crime out of gambling seriously. The Gambling Commission's new strategy sets out our vision for a fairer and safer gambling market. The action we are taking to examine online casino operators' compliance with money laundering and customer interaction requirements is just one example of how we will be relentless in turning that vision into reality"* and
- *"As the online sector continues to grow, and now accounts for a third of the British gambling market, it is right that we maintain a sharp focus on online gambling. That is why in addition to our work on compliance among online casino operators, we have also been conducting a wider-ranging review of online gambling looking at how the market has evolved and to identify where further action can be taken to make gambling fairer and safer for consumers."*

To anyone worried about their situation, whether they are a recipient of the Gambling Commission's letter or otherwise, I would add that this area of work has become a central focus of our expertise in the last three years, during which time we have (a) successfully represented clients who have been the subject of Gambling Commission investigations, (b) conducted independent reviews of operators' AML and associated SR controls, (c) worked with one of the industry's trade bodies in drafting AML Best Practice Guidelines for the sector in question and (d) spoken on these subjects at SBC events and numerous other gambling industry conferences. We will be pleased to assist any operators seeking to raise their standards in any of the respects mentioned in this article, who can contact me at dc@cliftondavies.com

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