

**Broadening gambling participation
and protecting communities
and the vulnerable**

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“Broadening gambling participation and protecting communities and the vulnerable”

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Let me start with a statement of the obvious: the fundamental objective behind the regulation or prohibition of any human activity is the avoidance of a mischief that would be inherent if government was to allow that activity to be carried on without control.

In terms of the historical context of gambling regulation here in Great Britain, in my view, in recent years we have been in a third stage of development. I’m going to summarise those three stages before suggesting that we seem rapidly to be entering a fourth stage.

The “Time of Relative Innocence”

The first stage – I’m going to call it the “Time of Relative Innocence” – lasted for about 400 years or so until the 1960s. Although at various points during that time, gambling was perceived as a threat to matters as diverse as:

- social behaviour,
- economic life and
- national security,

in the early 1950s, a Royal Commission report concluded that *“gambling as a factor in the economic life of the country or as a cause of crime is of little significance and its effects on social behaviour, insofar as they are a suitable object for legislation, are in the great majority of cases less important than has been suggested”*.

But at that time, there were no lawful casinos or bingo clubs or off-course betting, as the law prohibited all commercial gambling of any significance.

The “Time of Regulatory Control”

The second stage – let’s call it the “Time of Regulatory Control” – started in the mid to late 1960s and lasted for about 40 years, driven by the principle that people who wished to take part in gambling should be allowed to do so, as long as the circumstances were such that it could be carefully controlled and commercial exploitation prevented.

One of the clearest possible examples of this control was the demand test – meaning that gambling facilities should be adequate, but no more than adequate, to meet existing unstimulated demand for them.

But that was before the development of the internet. Indeed it was when the telephone was still the cutting edge of information technology.

The “Time of Purported Deregulation”

Fast forward to the start of the third stage – the “Time of Purported Deregulation” – when the Gambling Act 2005 came into force in 2007. It was designed to catch up with technological advances, but it also:

- reflected a perceived relaxation in public attitudes towards gambling generally – it was described for the first time as a “mainstream leisure activity” – and it
- recognised that gambling can be a source of social harm if not properly regulated; hence the three licensing objectives that sit at the heart of the present regulatory controls.

The “Time of the Nanny State”

Less than seven years later, I’m going to suggest that we are in, or at least are in imminent danger of entering, the fourth stage, the “Time of the Nanny State”. That presents a very considerable challenge to the gambling industry (all sectors of which I represent as a legal and management advisor). That challenge is about seeking to achieve a balance between:

- innovations designed to broaden gambling participation on the one hand and
- social responsibility on the other.

To put my following comments on social responsibility into perspective, data published last month by the Gambling Commission shows that:

- in terms of gambling participation, there has been a year on year reduction in the numbers who have gambled at least once in the previous four weeks (56%), a statistic which was also reflected in those who had gambled online (16%) and
- in terms of problem gambling, and I quote: *“overall, problem gambling rates in Britain appear to be relatively stable”*.

Remote gambling

Let’s start with remote gambling.

Like many others, I remain to be convinced that the true motivation for what is now the Gambling (Licensing and Advertising) Act 2014 was greater consumer protection. Taxation seems to me to have been a greater driver for change. Be that as it may, the British gambling industry (including all those who wish to conduct remote gambling business with consumers here) are now going to be faced with considerably more stringent regulatory requirements in the Gambling Commission’s LCCP than have existed up to now. However, where has there been any cogent evidence that the British consumer transacting with operators licensed in white-listed jurisdictions has not already been adequately protected? I’ve not seen it, and neither did the Culture Media & Sport Committee. Perhaps Nanny has seen it, but isn’t telling us.

However, it’s no use crying over spilt milk now, although time will tell:

- whether the cavalry will arrive in the shape of Gibraltar Betting & Gaming Association waving their judicial review flag – possibly less likely now in light of the toughening up of the LCCP – or
- if not, whether the law of unintended consequences will apply, with a possibly insufficiently robust enforcement regime resulting in British customers turning to the black market, with the consequence that both customer protection and UK tax revenues will be compromised.

Another area of activity that looks as if it is going to be compromised by this change in the law is football sponsorship. Each of Saturday’s FA Cup finalists have official Asian betting partners (as do many others) and with British football matches being screened to television audiences around the globe, the attraction for overseas

licensed gambling operators to enter into multi-million pound sponsorship deals is understandable. Nevertheless, the Gambling Commission says that it *“will not normally license operators unless they have a British facing business and either currently transact with British consumers or have a clear business plan for doing so in the future”* as a result of which it will not issue an advertising-only licence. So where will that leave advertisements (by means of such sponsorship) of an overseas gambling operator, without a licence here because it will be successfully blocking British based custom? If it successfully does that, surely it will be posing no consumer protection concerns and will present no real risk to the licensing objectives? The bad news is that Nanny won't tell us what she thinks about that, even though we are listening very hard. Perhaps she's dreaming about winning at bingo (because she likes that now) or becoming a lottery millionaire.

Bingo

I said that Nanny likes bingo now because of the kind birthday present Uncle George gave the land-based industry in March. However, there may yet be tears before bedtime with the threat of an end to online bingo's exemption from the ban on daytime TV gambling advertisements, where it currently enjoys the attention of its core audience, consigning it instead to the post 9pm watershed hour to fight for business alongside the online casinos.

Lotteries

I said that Nanny might be dreaming of her lottery millions because lotteries are the forgotten, but arguably the most laudable, player in the whole gambling spectrum. For example, the Peoples Postcode Lottery has contributed more than £35 million to good causes since it first launched in 2008 and, in conjunction with five such lotteries operating in three countries, has become the world's second largest private charity donor. You'd think Nanny would like them, wouldn't you?

Well, two years ago, the Culture Media & Sport Committee liked them and recommended in its *“A Bet Worth Taking”* report on the 2005 Act that the Government should establish whether there is evidence that the National Lottery would be adversely affected by society lotteries having the right to offer increased or unlimited prizes. It said: *“if it cannot be demonstrated that the current limits on small lotteries are necessary to protect the National Lottery from competition, then they should be reduced or removed”*.

Not much has happened since then. Perhaps Nanny just hasn't had time to think about it, with all those other naughty boys and girls she has to look after.

She certainly hasn't had time to look into the whole issue of lottery derivative products that, for example, enable betting on the outcome of lotteries, without the operator being bound by either:

- the same maximum prize, draw or turnover limits that are imposed on society lotteries or
- a statutory obligation to give any percentage of ticket sale proceeds to good causes.

Betting shops and FOBTs

Talking of betting, betting shops are under fire from all quarters and have been firmly sent to the naughty step:

- duty on FOBTs to be raised from 20% to 25%

- local authorities to be given new planning powers designed to restrict the number of new betting shop openings and
 - new player protection measures on FOBTs to be introduced, notwithstanding the voluntary ABB Code that came into force on 1 March,
- a triple whammy that led the ABB to say that *“disproportionate and unjustified measures are putting extreme pressure on the industry, making it harder for us to keep our shops open,”* leaving *“more than 10,000 jobs and 2,300 shops at immediate risk.”*

I recognize that FOBTs have provoked massive controversy, but one can't help but think that there has been something of a political knee-jerk reaction in the last few weeks, bearing in mind that, as recently as 8 January, the House of Commons:

- defeated an Opposition motion designed to stop the proliferation of FOBT machines and betting shops, but
- comfortably passed a motion to the effect that any development in the Government's policy on FOBTs should be “evidence-led”, based on Government-backed research into the effect of FOBTs on problem gambling, that is not due to report until the autumn.

Casinos

The land-based casino industry of course argues that such high-staking machines should be located in the more highly supervised environment of a casino, which – very curiously – can only make available the highest prize value gaming machines with a £5 maximum stake, compared with the £100 maximum permitted stake on FOBTs, despite the Culture Media & Sport Committee report recommendation in July 2012 that casinos should be permitted to operate up to twenty B2-type machines with a maximum stake of £100.

In fact, Nanny seems to be intent leaving casinos on the naughty step where they've been for simply ages – an unjustifiably harsh attitude in my view, bearing in mind that the same Committee said that casinos have *“some of the most comprehensive measures for tackling problem gambling”* and are *“already doing enough to enable the industry to grow safely”* and recommended that existing 1968 Act casinos:

- should have the same freedoms as new 2005 Act casinos, overcoming their present *“inability to modernize”*, and
- should also be made portable, allowing operators to relocate to any local authority provided that they have the consent of that local authority.

Still on the subject of casinos, an amendment to the Gambling (Licensing and Advertising) Bill proposed by the National Casino Forum, that would have enabled the holder of both a non-remote and remote Casino Operating licence to advertise and offer its own remote product in its own licensed casino premises, received very short shrift in Parliament, despite NCF saying in its written submission: *“if through this legislation, the government is prepared to endorse high stakes gaming on-line, except when it is supplied by licensed casino operators in a regulated environment, [this] brings into question not the fundamental nature of British casinos but the fundamental coherence of British gambling policy”*.

It's not in the slightest bit surprising that's what it has said, given that there is currently nothing to stop a casino customer from bringing his or her own mobile device into a casino and playing unsupervised on any remote gambling site anywhere in the world (including on that casino's own online website).

Social gaming

On the subject of mobile devices and social gaming, I read a headline in Forbes Magazine last Wednesday saying: “*One in five mobile gamers would rather play games than have sex*”. That is apparently the research finding of social gaming platform PlayPhone. Isn't that just the proof of the addictive nature of social gaming that the Gambling Commission has been looking for since the beginning of last year?

However, notwithstanding much publicized fears that some social games:

- inappropriately target young children and
- have simulated payout ratios that differ significantly from actual gambling services and
- can mislead players about their prospects for success with real gambling services,

Nanny seems to be looking the other way. Actually, that's not entirely fair. She's saying that if you can look after yourself and don't cause me any problems, I'm going to leave you alone, or at least leave you in the tender care of nice old Uncle OFT (or CMA as he's now called) as he's not likely to put you on the naughty step with those wicked casino and betting shop boys. Well I suppose that at least has the effect of promoting innovation and broadening participation. It's just a shame that it's being stifled in other areas.

Conclusion

My conclusion? Perhaps it's time for Nanny to retire, because – from my perspective at least – her thinking seems to be getting very muddled.

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