

UNDER THE SPOTLIGHT: VIRTUAL CURRENCIES, ESPORTS AND SOCIAL

The Gaming Commission recently set out its latest thinking and invited respondents' views on emerging issues associated with virtual currencies, eSports and social gaming. **David Clifton**, Director, Clifton Davies Consultancy Limited, maps out the GC's current position for iGaming Business.

On 11 August 2016, the Gambling Commission published a discussion paper which it described as "setting out its latest thinking on virtual currencies, eSports and social gaming and seeking views on emerging issues that can pose a risk to both regulation and player protection".

The paper also explains (by way of three separate "illustrative" flowcharts) the approach that the Commission adopts when distinguishing between activities that need to be licensed and those that do not, although it is emphasised that the flowcharts are not intended to replace the need for legal advice.

An increasing focus on these three areas has been flagged up by the Commission previously, including during July in its Annual Report for 2015/16 and in a recent speech entitled *Gambling: Getting the balance right*, given by Philip Graf at the Royal Society of Arts as he nears the end of his five-year term as Chairman of the Commission.

The Commission states that the discussion paper has been prepared in response to:

- new issues raised by the growth in the market for gambling on eSports;
- technological developments and the expansion of digital or virtual currencies, meaning that some social gaming products may be offering facilities for gambling; and
- the blurring of lines between some social gaming products and gambling.

Gambling on eSports

Whilst speaking at the World Regulatory Briefing at ICE Totally Gaming in February this year, Sarah Harrison, the Commission's Chief Executive, talked about the growing popularity of eSports, i.e. the playing of computer games which can range from play by two individuals (including "match-ups" where eSport

management of the same risks that arise with other forms of betting and gaming, including:

- the betting integrity risks of cheating and match fixing;
- the risk that young people will gamble excessively; and
- the risk that under 18 year olds will try to bet on such events (which is particularly flagged up in the discussion paper by reason of the popularity of eSports with children and young people).

Given that eSports betting products are becoming more diverse and sophisticated (including the availability of in-play bets);

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players can play against each other and win money or prizes) to participation in professional competitions.

She pointed out that, like social gaming (on which I comment below), eSports:

- may attract new entrants to the market who are unfamiliar with principles of gambling legislation and regulation; and
- have the potential to appeal to people (including the young) who have not previously gambled.

She also made the comment, repeated since then by other senior Gambling Commission personnel, that the Commission's "approach to eSports will be similar to that regarding other sports betting market products". This includes

and last year eSports were estimated to have an audience of 160 million and total prize funds exceeding \$71 million (according to the *Global Growth of eSports Report* by Newzoo Games Market Research), it is not surprising that the Commission is now placing a particular focus on this rapidly growing area.

It has adopted a "preliminary view" that the offer by some websites of eSports "match-ups" (that introduce participants who bet against each other about who will win) constitutes a service designed to facilitate the making or accepting of bets between others, which would have the consequence that a betting intermediary

licence would be required. However, it qualifies this to an extent by indicating that in reaching a view whether such a licence is required, it would look at a number of factors, including the number of people involved in a genuine competitive tournament, stating that “the more people participating in the contest tending towards tournament rather than match-up”.

That is not the only potential licensing issue that the discussion paper raises. It also poses the question whether participants

the amended LCCP come into force on 31 October 2016.

I do not necessarily take that view. It seemed to me that the new LCCP Licence Condition 5.1.1 introduces no material change to the Commission's existing policy insofar as digital/virtual/crypto-currencies are concerned, including the following policy principles that are now re-emphasised in the discussion paper:

- such currencies are classifiable as “money or money's worth” under the Gambling Act

- other digital commodities that can be won or purchased within the confines of computer games and can then be used as a form of virtual currency on a growing number of gambling websites.

The Commission's stated position in the discussion paper is that “where skins are traded or are tradeable and can therefore act as a *de facto* virtual currency and facilities for gambling with those items are being offered, we consider that a licence is required”.

It must be borne in mind by licence applicants and licence-holders alike that the long-promised third edition of the Gambling Commission's guidance for remote and non-remote casinos entitled *The prevention of money laundering and combating the financing of terrorism*² was finally published on 28 July 2016, when it came into immediate effect. It incorporates learning from the Commission's anti-money laundering case-work and provides new guidance in critical areas identified in its compliance and investigation activity.

The existing LCCP Ordinary Code Provision 2.1 requires casino operators to act in accordance with such guidance. However, in addition, one of the most significant changes to the LCCP coming into effect at the end of October is the addition of a new Licence Condition 12.1 requirement that all licence-holders (with the exception of gaming machine technical and gambling software licence-holders) must assess and manage the risks of their business being used for money laundering and terrorist financing. This is likely to present a considerable challenge for licence applicants seeking to offer gambling with virtual currencies and “in-game” items.

Social gaming

The Commission's interest in social games, particularly those that look and feel like traditional gambling, is of course far from new. It published a *Social Gaming* paper in January 2015³, in which it concluded that there was no compelling reason at that time to impose additional regulation on the social gaming sector, given that it

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who are playing a game or eSports for a prize may be using facilities for gambling or gaming (within the respective definitions set out in the Gambling Act 2005). In this respect the following points are made:

- many eSports contain elements of chance, even if the eventual outcome is determined by skill;
- the outcome of a number of eSport contests will be influenced by events that are determined by a Random Number Generator (“RNG”); and
- in the Commission's view, card-based games (with similar game mechanics to poker, such as an RNG, to determine which cards are dealt to a player) where players can win prizes and do not require a stake, fall within the definition of gaming that would be illegal without a licence.

Gambling with virtual currencies and “in-game” items

Some commentators have taken the view that the recent addition in the Gambling Commission's updated Licence Conditions and Codes of Practice (“LCCP”)¹ of digital currencies to the list of accepted payment methods for gambling could open the door to an influx of gambling licence applications to the Commission by bitcoin operators once

2005 and therefore their use in gambling constitutes real money gambling for which a licence is required; and

- any operator wishing to accept digital currency as a means of payment (either directly or through a payment processor which accepts digital currencies) must satisfy themselves and the Commission that they can meet their anti-money laundering and social responsibility obligations, including by adopting and implementing appropriate and effective policies, procedures and controls that are kept under review (at least annually), and revised appropriately to ensure they remain effective.

Indeed the discussion paper goes further than digital currencies, making it clear that the Commission is also paying close attention to the growing popularity of other forms of virtual currencies or “in-game” items such as:

- “skins” (i.e. in-game items that provide aesthetic upgrades to a player's game play where those in-game items can also be traded as commodities on a marketplace within a platform operated by the game's developer or distributor); and

1 <http://www.gamblingcommission.gov.uk/pdf/Latest-LCCP-and-Extracts/Licence-conditions-and-codes-of-practice-July-2016.pdf>

2 <http://www.gamblingcommission.gov.uk/pdf/Prevention-of-money-laundering-and-combating-the-financing-of-terrorism.pdf>

3 <http://www.gamblingcommission.gov.uk/pdf/Social-gaming-January-2015.pdf>

was “already subject to extensive consumer protection legislation”.

Nevertheless, the Commission made it clear that it would (a) continue to monitor the issue of social gaming and emerging evidence from a variety of sources and (b) work with the Responsible Gambling Strategy Board on longer-term transitional-type risks to see whether, and in what circumstances, social gaming leads on to or causes harmful behaviours.

It has continued to conduct such monitoring since then, working in partnership with the industry and other regulators and, in general terms, continues to hold the view that “winning additional spins or credits or tokens (even if they can be acquired by the payment of real money) will not in and of itself make an activity licensable”.

However, the Commission is now warning that if it discovers that items (including “loyalty points”) are being traded or are tradeable or are being used as a *de facto* virtual currency, its view will be different

because in such circumstances an operating licence will be required.

It is also expressing a “preliminary view” that a person who is offering facilities for “match-ups” (by introducing participants who bet against each other about who will win) is providing a licensable service designed to facilitate the making or accepting of bets between others. This follows on from concerns expressed by Sarah Harrison in her February speech about the challenge of establishing where, in the absence of a centralised operator, overall accountability lies and who assumes responsibility for key areas such as customer verification, anti-money laundering controls and gambling integrity.

Responding to the discussion paper

The Gambling Commission’s discussion paper – accessible at [http://www.gamblingcommission.gov.uk/pdf/Discussion-papers/Virtual-currencies-eSports-and-social-gaming-discussion-](http://www.gamblingcommission.gov.uk/pdf/Discussion-papers/Virtual-currencies-eSports-and-social-gaming-discussion-paper-August-2016.pdf)

[paper-August-2016.pdf](http://www.gamblingcommission.gov.uk/pdf/Discussion-papers/Virtual-currencies-eSports-and-social-gaming-discussion-paper-August-2016.pdf) – sets out a number of specific questions but invites respondents to add any relevant comments in relation to their “views and reasoning” on the topics covered in the paper.

Responses in writing are requested by 30 September 2016 by email to GCdiscussionpaper@gamblingcommission.gov.uk.



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