



DAVID CLIFTON — LICENSING EXPERT — CRYSTAL BALL GAZING FOR 2019

👤 Joe Streeter 🕒 January 4, 2019 📁 Comment, Featured News, Features, Latest News, Slider Images, UK

After a tumultuous 2018, what does 2019 hold in store for the UK sports betting sector?

I have dusted down my crystal ball. It may be a bit cloudy in areas, with perhaps the odd crack beginning to show in parts, but here is my best bet on what the regulatory future may bring.

On the plus side, I do genuinely believe that:

- Many responsible operators are already heeding the Gambling Commission's recent call for *"a race to the top"* to put customers, their enjoyment and their safety at the top of their agendas, and
- There is greater recognition that operators' primary focus must be on what the consumer needs rather than merely on the minimum that the Commission expects.

With the above in mind, I confidently forecast that the Commission's call for greater collaboration (not only in the sense of operators working in collaboration with their regulator but also in the sense of operators in different gambling sectors working together and sharing learning, insight and best practice with each other) will attract cross-sector support over the next year. This may result, for example, in the sharing by larger operators with smaller operators of the learning they have derived from the last three years' Annual Assurance Statement pilot scheme in order to enable all in the industry to better understand the early indicators of problem gambling.

However, sad to say but good stories related to gambling will never increase newspaper sales or make the

headlines in national media. Public perception and opinions of gambling will always be more directly affected by adverse media reports and I have great sympathy with those who believe that the declining levels of public trust in gambling are very much down to an increasing media emphasis on the bad and the ugly, rather than the good, elements of the industry and certain of its practices. With regret, I forecast that we will not see any meaningful upturn in the proportion of the British public who believe that gambling is fair and can be trusted when the updated Gambling participation and perceptions report for 2018 is published by the Commission at the end of next month or beginning of March. Let us hope for something better in next year's report.

Whether a total compliance culture has spread sufficiently from top to bottom throughout the businesses of all licensed gambling operators will remain an area of concern to the Commission, as too will be how, and by whom within the business, key gambling-related decisions are made. These are issues that will go to the heart of each operator's business model, corporate governance arrangements and risk management, and I foresee greater Commission focus on these areas over the next 12 months.

Unfortunately, I don't think we have yet seen the end of eye-watering financial penalties imposed by the Gambling Commission. Last year's promise of a "*relentless escalation of penalties*" until the Commission "*gets the standards it expects*" was made good by the imposition on UK licensed operators of financial penalties totalling some £28million during 2018. The Commission still has a "to-do" list arising from its ongoing investigations and I expect there to be further fines and, possibly, heads to roll in terms of personal management licence holders.

The above-mentioned promise was made in June last year at the time of publication of the Commission's first ever Enforcement Report, that listed the following compliance failings as constituting the Gambling Commission's top five regulatory concerns:

- anti-money laundering
- customer interaction
- self-exclusion
- unfair terms & practices and
- marketing & advertising.

I confidently predict that whilst all of these same issues will also feature on this year's list, there will be an even greater emphasis on customer interaction. I say this because:

- The Commission has already flagged up on its website that a consultation on LCCP provisions relating to

customer interaction will commence in “early 2019” and

- It seems clear from the references to “*targeted collaboration*” in the Commission’s current New National Responsible Gambling Strategy Consultation (that runs until 15 February 2019) that we will see greater focus on effective data management and best practice in customer interactions in order to enable operators to conduct an informed evaluation of what works to best protect their customers.

I very strongly recommend that members of senior management and compliance teams within UK licensed businesses (particularly those located outside the UK where serious breaches have recently been exposed) take time out to re-read the “good practice” questions set out in that report, as well as the Commission’s “*Customer Interaction – guidance for remote gambling operators*” guidance note.

One of the key principles of good regulation that dates back to the 2005 Hampton Review is that “*the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions*”. This principle is reflected in both the Gambling Commission’s enforcement policy, principles for determining financial penalties and indicative sanctions guidance and its enforcement track record last year.

It is therefore important for operators to bear in mind that, in terms of regulatory enforcement action, there is a fundamental distinction between serious systemic failings that are allowed to continue undetected and/or uncorrected on the one hand and, on the other hand, accidental errors (human or technical) that are quickly detected, promptly self-reported and proactively rectified. I emphasise this because some of the heftiest penalties imposed by the Commission have been for systemic failures that have gone completely undetected and/or uncorrected, with the consequence that vulnerable customers have been left exposed to risk for extremely lengthy periods of time. This has served to underline the need for frequent in-depth checks and audits of all applicable systems and controls – something that we and other specialists such as us assist clients with on a regular basis, so do get in touch if you need some help or advice on this front.

In terms of gambling advertising, I forecast that considerable public and parliamentary debate will arise following:

- Publication in the second quarter of 2019 of GambleAware commissioned research into the effect of gambling marketing and advertising on children, young people and the vulnerable and
- The outcome of the evaluation by Ipsos MORI of both non-remote and online multi-operator self-exclusion schemes (commissioned by GambleAware), the findings of which are expected to be available by the end of July 2019.

A trickier area of prediction is whether 2019 will see greater restrictions being imposed on gambling advertising. For many, last month's announcement of a voluntary pre-9pm "whistle to whistle" betting advertising ban commencing this summer was a step in the right direction. However, bearing in mind that, as recently as May last year, the Department of Digital, Culture, Media & Sport seemingly accepted the Committees of Advertising Practice contention that *"advertising does not play a causal or even significant role in problem gambling or harm in general"*, one can't help but wonder why the Secretary of State so effusively welcomed the ban.

With that thought in mind, if (as the saying goes) a week is a long time in politics, seven months must surely represent a lifetime so, also taking into account the Labour Party's proposals for a radical overhaul of gambling regulation and advertising (announced in September last year), the industry should perhaps be considering what else it could voluntarily do to better promote its own image and/or mitigate the risk of greater legislative and regulatory burdens being introduced during the course of this year.

So, instead of a prediction, here are some ideas. What about:

- An immediate commitment by gambling operators and TV broadcasters not to increase the intensity of post-9pm watershed TV gambling advertising once the whistle to whistle ban comes into effect?
- A further tightening-up of online advertising and marketing restrictions in the IGRG Industry Code for Socially Responsible Gambling including, for example, a requirement for even greater controls by operators over their affiliates?
- The gambling industry more effectively utilising its own advertising and marketing expertise to advance the promotion of safer gambling?
- Online operators actively encouraging other banks to introduce gambling spend blocking tools similar to that recently introduced by Barclays and advocating their use, where appropriate, in customer interactions?

What else is swirling within the clouds of my crystal ball? The possibility of introduction of a mandatory system of funding gambling-harm related research, education and treatment set at a considerably higher rate than the existing voluntary donation system may well depend on whether the present Brexit debacle results in a General Election and a change of government. That will also influence whether greater controls are imposed on numbers and location of betting shops (unless so many closures arise from the removal of FOBTs by April that such controls are no longer required).

However, come what may, I do predict that 2019 will see additional controls and restrictions being imposed on online gambling, including further measures to ensure the fair treatment of customers and a

ban on the use of credit cards.

On that note – Happy New Year!

Clifton Davies Consultancy Limited

cliftondavies^{••••}

JOIN