

KnowNow – Player Protection Forum: 22 May 2019



Opening remarks, review of the player protection landscape and what the Gambling Commission's National Strategy to Reduce Gambling Harms might mean for operators.

Presented by David Clifton and Suzanne Davies

DC

Welcome to the immaculately well-timed *KnowNow* Player Protection Forum. I use that phraseology because in all the years since 1983 that I have been advising the UK gambling industry, I cannot recall a six month period of time within which so much has happened with so much bearing on the theme of this conference.

Back in the 1980s, the concept of responsible gambling hadn't seen the light of day and gambling advertising was essentially prohibited.

The underlying principle of regulation in those days was that the availability of gambling facilities should be no greater than the extent necessary to meet unstimulated demand for them. Compliance with this principle was facilitated by the fact that gambling was largely restricted then to bricks and mortar premises, at a time when the telephone still represented the cutting edge of technology.

The launch of the National Lottery in 1994 changed all of that by introducing gambling to a wider public, leading to calls from other sectors of the gambling industry for deregulation, including the liberalization of gambling advertising.

This was swiftly followed by the technological revolution that resulted in the advent of online gambling, leading the Gambling Commission's predecessor as regulator (the Gaming Board for Great Britain) to express concern in 1996 about "*the potential for the proliferation of*

uncontrolled and unregulated gambling opportunities”, fearing that “large-scale hard gambling activities could become available in people’s homes with no proper control over such matters as gambling on credit or by children and other young persons”.

In 1997, something very major happened insofar as my own gambling law practice was concerned. Suzanne Davies joined the same law firm as me and we have worked together ever since then.

I am delighted that Suzanne is able to be here today and I am going to let her continue the brief history lesson.

SD

What David has just described was the environment in which I had my first experience of gambling law and regulation.

It was certainly a time of change. Most notably, the Gambling Review Body was set up in 2000 under the chairmanship of Sir Alan Budd. Included within its terms of reference was consideration of:

- a) the social impact of gambling and
- b) the extent of regulations appropriate for gambling activities having regard to, amongst other things, protecting the young and vulnerable from exploitation, protecting all gamblers from unfair practices and ensuring the availability and effectiveness of treatment programmes for problem gamblers.

The Gambling Act 2005 followed, coming into force in 2007, with the Gambling Commission’s Licensing Conditions and Codes of Practice prescribing the minimum social responsibility standards required of licensed gambling operators. Those standards have steadily become more robust with the passing years, including notably the *“strengthening social responsibility”* changes introduced in May 2015.

However, it was the appointment of Sarah Harrison as Chief Executive of the Commission in late 2015 that heralded a major new regulatory focus on raising standards, reducing gambling-related harms and empowering consumers. She made it clear that this last ambition required not only putting consumers at the heart of regulation but also putting consumer interests at the heart of operators’ businesses with provision of better access to information and tools to help them manage their gambling, better education about risks and information regarding their choices.

In what was almost her final speech as CEO in February 2018, Sarah Harrison made a pledge that is being continued by her successor, Neil McArthur, that the Commission would provide *“leadership to forge a sustained, world-leading approach to tackling gambling related harms”*. She added that *“operators need to get better at working together to prevent and minimise harms”*, itself the foundation for the Commission’s ongoing call for greater collaboration between operators in all gambling sectors in order *“to rebuild consumer and public trust, to build a future for this industry with strong foundations based upon fairness and safety”*.

DC

We have only to look at the last seven days to see how those words by successive Gambling Commission CEOs have come home to roost.

In the last week alone:

1. The Gambling Commission has imposed [financial penalties totalling £4.5million](#) on four remote casino operators for customer interaction and AML failings, adding to the approximate £28million imposed on operators last year
2. Receipt of a portion of last year's financial penalties enabled GambleAware to [announce last week](#) that it will invest nearly £4million for up to three years to enable expansion of the National Gambling Treatment Service
3. Last week's fines (and their association with the Gambling Commission's crackdown on online casinos commenced at the beginning of last year) seem to have been the trigger for a [letter written by Tom Watson](#) (Deputy Leader of the Labour Party) to the CEO of the Commission and the Culture Secretary – reported in The Times on Monday – demanding that all UK licensed remote casino operators should have to reapply for their operating licences
4. In what was a coincidence of timing, it was confirmed on the same day that the UK's largest online gambling operators are forming [a new trade association](#) – as yet unnamed – to replace the ABB and the RGA with, no doubt, a mission to regain public trust
5. They will have a mountain to climb if statistics published by YouGov last week are to be believed. YouGov maintains that its [recent poll](#) shows that 70% of UK online gamblers don't believe that the industry is serious about responsible gambling
6. The type of thing that doesn't help the industry's reputation in that respect are adverse gambling advertising rulings by the ASA which last Wednesday (for the second week running) featured William Hill, on this latest occasion in relation to an [ad that was found to have linked gambling to sexual success](#)
7. What will hopefully reduce the risk of adverse ASA rulings in future is the launch on Monday this week of a wholly new (and much needed) trade association, [Responsible Affiliates in Gambling](#) (RAIG), chaired by former RGA CEO Clive Hawkswood and intended to promote social responsibility and a safer gambling environment for consumers
8. The Gambling Commission Chairman, Bill Moyes, was interviewed in an [article for the Public Health Journal](#) (published on Monday) in which he called on the NHS to take the subject of gambling addiction seriously – picking up on one of the main themes of the Commission's newly published [National Strategy to Reduce Gambling Harms](#)
9. That's something that most people would support, but it raises the question who should pay for it, and at the weekend the Scottish newspaper, the [Daily Record reported](#) that a Scottish MP (who happens also to be a vice-chair of the All-Party Parliamentary Group on Gambling-Related Harm) has written to bet365, Ladbrokes, William Hill, Betfred and Paddy Power in an effort to get them to support a mandatory levy to fund gambling addiction charities

All of that has happened within the last week alone, but the matters covered convey themes that are likely to feature, one way or another, in today's Player Protection Forum.

SD

As David has said, that's just a summary of what has happened in the last week.

What is abundantly clear is that the issue of player protection could not be higher on the Gambling Commission's scale of priorities than it is currently. Indeed, protecting the interests of consumers and preventing gambling harm to consumers and the public were the top two priorities listed in the Commission's [Business Plan for 2019/20](#) published last month.

However, we are going to widen that time period and look at relevant developments in the player protection field over the last six months or so.

Statistics contained in February's Gambling Commission [“Gambling participation in 2018: behaviour, awareness and attitudes” Annual Report](#) showed a broadly stable rate of problem gamblers, although its [“Young People and Gambling” Report 2018](#) published in November last year concluded that *“more children are at risk of being harmed by gambling”*. Very controversially, the Commission provided an advance copy of that report to the *Daily Mail*, with predictable headlines following, notwithstanding that the most common gambling activities undertaken by children were found to be:

- bets between friends,
- lottery scratch cards purchased by parents,
- playing cards for money with friends and
- more worryingly, the playing of Category C gaming machines in pubs.

Protection of children has come much more to the fore, with a focus on “normalisation” of gambling activity. Examples of this in the last six months have included:

1. Concerns arising from the 90% failure rate in tests regarding [under-age play on pub gaming machine](#) – the very same issue that I have just mentioned
2. The [Digital, Culture, Media & Sport Select Committee Inquiry](#) into links between gaming & gambling, loot boxes and eSports and The [Gambling Related Harm All Party Parliamentary Group inquiry](#) into the harms caused by online gambling, launched in February
3. New [gambling advertising standards to protect under 18s](#) that came into effect on 1 April and concerns arising from analysis showing that [five times more is spent on gambling marketing online than on television](#)
4. [Use by the ASA of new monitoring technology](#) in the form of child ‘avatars’ – online profiles which simulate children’s browsing activity – to identify gambling ads that children see online.
5. LCCP changes on [age and identity verification for remote gambling](#) that came into effect on 7 May
6. Publication by the Gambling Commission earlier this month of a [new framework](#) to understand and measure the gambling harms experienced by children and young people

However, what will potentially bring about more widespread improvement in player protection generally is the Gambling Commission’s new National Strategy to Reduce Gambling Harms, a three-year strategy intended to *“drive and coordinate work to bring a lasting impact on reducing gambling harms”*.

Coinciding with the launch of the new strategy 4 weeks ago, the Commission has also launched a new website – <http://www.reducinggamblingharms.org> – where all information on the priorities identified in the new strategy can be accessed and progress tracked.

The website carries the headline message: *“The sole aim of this three-year National Strategy is to move faster and go further to reduce gambling harms”*. It is proposed that this will be achieved by, for the first time, bringing together in partnership working health bodies, charities, regulators and businesses to effectively tackle the issue in an effort to deliver two strategic priority areas:

- **Prevention and Education** – making significant progress towards a clear public health prevention plan which includes the right mix of interventions.
- **Treatment and Support** – delivering truly national treatment and support options that meet the needs of users.

DC

I have to admit that I had concern whether it was either desirable or a proper exercise of the Gambling Commission's functions for it to take over primary responsibility for the new strategy from the Responsible Gambling Strategy Board (now [re-named the "Advisory Board for Safer Gambling"](#)). I wondered whether this might present a potential conflict with the exercise of its statutory role as regulator of the commercial gambling industry.

However, I now hope my concerns will prove to be unfounded because the bringing together of all stakeholders is the logical and sensible extension of the Commission's now familiar call for greater collaboration in tackling gambling-related harm.

In this respect, the Commission states in the new strategy that: *"working collaboratively in a coordinated manner to focus efforts and share more widely what does and does not work, will achieve greater impact than more isolated efforts"*.

In a rare nod in the direction of the industry, the Commission also acknowledges that: *"the gambling industry is increasingly collaborating on activities to promote safer gambling"*, adding that: *"even more can be achieved through active targeting, direction and support for this collaboration by the Gambling Commission as the industry regulator"*.

However, it has also warned that *"as part of the new strategy, the Commission will continue to take a firm regulatory enforcement approach whilst also further improving gambling harms research and evaluation so that there is widespread adoption of what works"*.

As I said earlier, one of the main questions arising from the new strategy, is who will pay for all that is sought to be achieved.

Mixed messages are being received:

- At the 6th annual [GambleAware Harm Minimisation conference](#) in December, Gambling Minister Mims Davies warned that a mandatory levy on licensed gambling operators to fund research, education and treatment of problem gambling might replace the current voluntary donation system
- When launching the new strategy a month ago, [Bill Moyes, the Chairman of the Commission](#), confirmed the Commission's continuing support for a statutory levy, saying that: *"no-one will be able to plan properly to deliver this strategy if prevention and treatment continues to be funded by voluntary contributions from industry or regulatory settlements following licence breaches"*
- However, on the same day, Mims Davies disagreed, saying that *"the voluntary system does work and continues to have support from government and industry We believe the voluntary system is capable of delivering sustainable funding to meet the increased targets that will be set as evidence of needs emerges"* although she added that *"if it turns out that the voluntary system is not capable of meeting current and future needs, we will look at alternatives. Everything is on the table"*.
- In last weekend's Public Health Journal article (to which I referred earlier), Bill Moyes has said that the Commission's position is that *"the government has the powers to introduce a statutory levy and we think they should now give that some thought – but if they've got better ideas, fine"*.

In a similar vein, we await the outcome of Parliamentary debates on Conservative MP [Richard Graham's Ten-minute Rule Bill](#) calling on the government to institute a mandatory levy on gambling operators to fund a major independent gambling-related harm research initiative and more gambling clinics.

So it's very much a case of watch this space, but don't be surprised if we see quite an upturn in the level of voluntary donations made by the larger gambling operators at least in an attempt to avoid imposition of a mandatory levy at a level of ten times the present 0.1% of GGY suggested by GambleAware.

SD

As has always been the case with a subject as emotive as gambling, the fires of public opinion have been stoked by the newspapers.

Player protection issues have kept making the headlines, not necessarily for all the right reasons. Recent examples include reports on:

- the outcry that resulted from [the launch of so-called "high-stake betting games"](#) by Paddy Power and Betfred on the same day that the FOBT maximum stake reduction from £100 to £2 took place, leading the Secretary of State to say in Parliament that *"the actions of those who tried to find a way around the procedures banning the things that we across this House have decided should be banned were disgraceful"*
- the Guardian's ongoing anti-gambling related harm campaign that has resulted, for example, in its recent headlines ["Online casino goaded addict to gamble away £20,000 on sister site"](#) and ["Online casinos ignored my obvious signs of addiction, says gambler"](#)
- the [teething problems encountered by GamStop](#) during what remains its ongoing initial set-up stage
- concerns raised in Parliament about [gambling online with credit cards](#), itself already the subject of a Gambling Commission call for evidence, and
- highly critical comments about the industry made by MPs during a House of Commons non-legislative [debate on the subject of gambling-related harms](#).

Sadly, good news relating to gambling tends not to grab the same media attention. In my view, for example, more positive press attention should have greeted:

- the [establishment in January of a Gambling Health Alliance](#) intended to *act as a signposting organisation to other resources relevant to preventing gambling related harm*
- the launch by GVC of a [global responsible gambling campaign](#) called "Changing for the Better"
- the development by Barclays and other banks of [gambling spend blocking tools](#) and
- the announcement that [five of the UK's largest casino and gaming companies have joined Senet Group](#), aiming to improve cross-sector collaboration on the development, testing and sharing of customer interventions that work.

However, those are not the sort of headlines that sell newspaper. Neither was publication in February of a qualitative independent research report entitled ["In control: How to support safer gambling using a behaviour change approach"](#). Following research findings showing that people who enjoy gambling do so as long as they feel that they are in control, this report examines gambling behaviours in the context of personal control.

DC

To develop just a bit further one of the positive developments that Suzanne has just mentioned, on 25 April, the same day that the Gambling Commission published its new [National Strategy to Reduce Gambling Harms](#), GVC Holdings PLC – the global sports-betting and gaming group and owner of Ladbrokes and Coral – [called](#) for an end to all UK sports-

betting broadcast advertising, at any time of the day, on live and repeated sporting events (with the exception of horseracing).

Under GVC's proposals, advertising specifically promoting responsible gambling and safer gambling campaigns would be permitted, but they would be strictly limited to one advertisement per commercial break. This goes considerably further than the forthcoming pre-watershed, [whistle-to-whistle advertising ban](#) (contained within the updated [5th edition of the Gambling Industry Code for Socially Responsible Advertising](#)) that will come into force on 1 August 2019.

Other of its proposals include:

1. A shirt sponsorship and football ground perimeter advert ban, stating: *"to allow sporting fans to watch their favourite teams without seeing any incentives to bet"*. It adds that it *"calls on its industry peers and UK football governing bodies to support this move and take action in this area"*.
2. Increased investment in RET, stating: *"Having been the first and only operator to commit to doubling spending on RET (Research, Education and Treatment) to 0.2% of UK gross gambling revenue in 2019, GVC has today committed to raising this to 1% by 2022 – ten times the current minimum requirement"*.
3. Treatment centres, stating: *"GVC is establishing a new independent trust with the aim of making charitable contributions to fund treatment of problem gambling. The Leon House centre in Manchester has been identified as the first preferred recipient"*.
4. Safer gambling software, stating: *"To help those customers that are struggling with their gambling, we will offer the GamBan software, free to any individual who is showing signs of problematic play"*.

I should add that, in a similar vein, Lyndsay Wright (Director of Strategy and Sustainability at William Hill) is speaking here this afternoon and may well mention her company's new ['enjoy the moment'](#) advertising campaign featuring the unified world heavyweight boxing champion Anthony Joshua, that contains the following 'safer gambling' messages:

- *Know where you stand*
- *Keep it fun*
- *Control is everything*
- *Take a Break*

This follows on from last year's announcement by William Hill of a new corporate objective ["Nobody harmed by Gambling"](#) that seeks to *"eradicate problem gambling within the UK"* and the [open letter](#) written by its Group Chief Executive Phillip Bowcock.

SD

The Commission is certainly busy at the moment:

1. It started the year with its so-called "co-creation workshops" on [communicating safer gambling messages](#) and [sharing best practice in use of data in identification of gambling related harm](#), with more such workshops promised in the future
2. In so doing, it has been trying to move the focus of debate from responsible gambling to safer gambling. In an effort to explain this, the Commission's CEO, [Neil McArthur](#), [has said](#): *"Responsible gambling suggests that the individual customer is principally in charge of keeping themselves safe. By focusing on safer gambling, we want to emphasise that there is a clear onus on gambling operators to protect their customers."*
3. The Commission is currently examining responses received by Thursday of last week to its calls for evidence on [gambling online with credit cards](#) and [Category B gaming](#)

[machines](#). Change in this latter respect is certainly likely because the Commission has said that “*data indicates that the risks associated with Category B1 and B3 machines are broadly similar to the risks with [FOBT] B2 machines at a £100 maximum stake*”

4. It will also be assessing the responses received by the closing date of 9 May to its [consultation on customer interaction & ADR and its call for evidence on gambling website blocking software](#)

DC

Just to focus on customer interactions for a moment, the Commission defines this as “*how you identify people who may be experiencing, or at risk of developing, problems with their gambling, and how you interact with them to offer help or support.*”

What seems inevitable is that Social Responsibility code provision 3.4.1 in the Commission’s LCCP will be amended in order to focus more on the outcomes that it wants operators to achieve. I say this because the Commission has expressly confirmed that its “*experience through compliance activity and case work suggests that a prescribed set of requirements [of the type that presently exists in the LCCP] can lead to assumptions amongst operators that simply following a ‘checklist’ will mean that harm cannot occur, or that the operator is in any case compliant*”.

The Commission has clearly stated that it does “*not think this is an appropriate approach to customer interaction, as operators may focus on compliance with technical details rather than on achieving the key outcome that the code provision intends*”.

As a result, emphasis will shift to licensed operators being required to follow the Commission’s guidance on customer interaction in order to meet the following three key outcomes:

1. **identify**, meaning use a range of different indicators that are appropriate to the gambling product, the environment and what is known about the customer, or can be inferred, in order to identify at risk of or experiencing harms associated with gambling (supported with robust, proportionate and effective systems for monitoring and recording)
2. **interact** (itself a three-part process involving:
 - a. observation – that triggers the interaction,
 - b. action – to make contact with the customer,
 - c. outcome – i.e. what happened as a result)
3. **evaluate**, meaning understand the impact of the interaction on the customer and the effectiveness of the licensee’s approach to interaction.

There will inevitably be a need for considerably greater focus on the development, testing and evaluation of [customer interactions](#). We are advising our clients to get ahead of the game and ensure that these principles are firmly incorporated in their social responsibility policies and procedures now, rather than just await the inevitable LCCP change that will happen soon.

SD

Looking ahead, what is clear is that the UK gambling industry is likely to remain under regulatory, public, parliamentary and media siege for some considerable time to come yet, for example:

- compulsory [affordability checks](#) may be on the cards if a cross-sector collaborative approach does not succeed in developing effective approaches to assess the levels of gambling that customers can afford,

- the online gambling sector faces particular threats from the [Gambling Related Harm All Party Parliamentary Group](#) and the Labour Party, following its Deputy Leader's [call for mandatory limits](#) on online gambling spending, staking and speed of play and, now, his call for all UK licensed remote casino operators to reapply for their operating licences, as mentioned by David at the outset
- the newly named Advisory Board for Safer Gambling (formerly the Responsible Gambling Strategy Board) has itself [urged](#) consideration of bans on products with features that encourage players to stake more or to take greater risks, and
- with greater gambling advertising restrictions being called for across Europe, the forthcoming ["whistle to whistle" ban](#) alone – also mentioned earlier – is unlikely to assuage public concerns and support might gather for the imposition of tobacco type advertising controls, as recommended in a [recent academic study](#).

Anyone requiring further information on the above or on the licensing and regulatory services that we provide to all sectors of the gambling industry should not hesitate to contact us:

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