



## DAVID CLIFTON, LICENSING EXPERT: GAMBLING COMMISSION DOMINATES EARLY 2021 HEADLINES

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As I write this, the last week has seen a huge amount of information emanating from the Gambling Commission.

We have seen it publish a [short online survey](#), seemingly aimed at the general public, urging them to have their say on how gambling companies interact with their customers, with a particular focus on affordability.

It runs until 9 February, the same [expiry date for responses](#) from all interested parties (gambling operators included) to the Commission's [Remote Customer Interaction Consultation and Call for Evidence](#). The Commission says it wants to "gather views" from survey respondents on "what is the right balance between consumer protections and consumer freedom and privacy".

In the interests of balance, it is to be hoped that the Commission will receive responses not just from those calling for the imposition of greater restrictions and prohibitions on the UK licensed online gambling sector, but also from representatives of the great majority of consumers who are able to enjoy their gambling activity without suffering or being at risk of suffering, gambling-related harm.

That they are able to do so is in no small part due to the robust player protection measures already adopted – both compulsorily and voluntarily – by the UK-licensed industry, as described in a presentation I gave at the KnowNow Player Protection Forum Digital Conference on 26 January, that you can access

[here](#).

What we do know from another announcement within the last few days is that, in determining the outcome of the above consultation process, the Commission will be taking into account the advice it receives from its newly established [Lived Experience Advisory Group](#) that is continuing the work previously undertaken by the interim Experts by Experience group.

It is clear from this new group's [terms of reference](#) that its advice will most certainly influence both safer gambling policy requirements placed on operators by the regulator and further progress of the National Strategy to Reduce Gambling Harms, [an update](#) on which has just been published by the Commission.

Again in the interests of balance, one wonders whether the Commission will place equal weight on advice from industry bodies such as the Betting and Gaming Council. After all, less than three months ago, [the Commission's CEO did express to an audience of industry leaders](#) keenness on the part of the regulator to engage more directly in future with those of its licence-holders and their trade bodies that are willing to work in collaboration with the regulator to raise standards further.

On that front, it was already clear in mid-January that a sizeable [difference of opinion](#) existed between the UKGC on the one hand and the BGC on the other with regard to the level of threat to the UK-licensed online gambling sector from the illegal online gambling black market if, as many fear, over-regulation of the industry occurs as a result of the [Government Review of the Gambling Act 2005](#).

I say that because the Commission's CEO wrote [a letter on the nature, scale, and disruption of illegal gambling in the UK](#) to the Chair of the Gambling-Related Harm APPG (Carolyn Harris MP) on 15 January, in which he said: *"We know that licensed operators and their trade bodies are concerned about the impact of the illegal market, but our own evidence suggests that the impact may be being exaggerated"*.

*It remains to be seen whether the Commission adjusts its opinion now it has had sight of a [PwC report entitled "Review of unlicensed online gambling in the UK"](#), published by the BGC on 4 February.*

*In fact, one almost wonders whether the Commission had advance sight of the PwC report, bearing in mind that, in a [DCMS Consultation on proposals for increased Gambling Commission fees](#) (published on 29 January), one of the justifications given for the very substantial fee increases sought was the need for more Commission staff and resources to reflect *"increasing risks associated with unlicensed operators and the need to protect consumers and the industry from 'black market' encroachment"*. Indeed, the DCMS has quoted the Commission as having acknowledged that *"its understanding of the exact scale of this issue needs to be improved"*. *It's all a bit perplexing.**

Another of the justifications for increased Gambling Commission fees is the need for more specialist technical staff to tackle "*increased technological developments including product innovation*". Such a need has not held the Commission back from announcing on 2 February [new rules for online slots and a permanent ban on reverse withdrawals](#) that will come into effect on 31 October 2021.

It is also evident from two very recent public statements published by the Commission within a week of each other that its enforcement team has continued to be fully occupied with operating licence reviews.

The most recent has been an imposition on [Aspers Stratford City](#) of a £652,500 financial penalty (and other sanctions) for player protection and AML failings. Worthy of note is that the Commission originally intended to impose a penalty of £1.8million but agreed to reduce it due to the casino company's present financial circumstances brought about, in particular, by reason of Covid-19 related restrictions and enforced business closure.

However, for the remainder of this article I will focus rather more on the Commission's regulatory settlement concluded with [White Hat Gaming](#), announced on 28 January, that has resulted in the online casino and betting operator having to pay more than £1.3million in lieu of a financial penalty, as well as committing to an ongoing programme of improvements to its AML and safer gambling controls.

There are important lessons to be learned here by all other UK-licensed operators, each of whom will at some stage be faced with a compliance assessment by the Gambling Commission. The Commission's CEO has [warned within the last month](#) that assessments will continue during the current Covid-19 lockdown just as they continued during last year's lockdowns.

It was one such assessment back in March 2019 that identified weaknesses in relation to White Hat Gaming's (a) implementation of policies and procedures, (b) adequacy of EDD and SoF checks, (c) customer interactions and (d) record-keeping. All of those failings set in train the course of events that resulted in the commencement of a licence review and, nearly two years later, an expensive regulatory settlement.

They are the very same type of failings that are all too often found by the Gambling Commission when it conducts a compliance assessment. Our experience in assisting clients both before and after such assessments has shown us how easily subsequent licence reviews can be avoided.

However, it will be a mistake to await receipt of a letter from the Commission (that gives just three weeks' or so notice of a compliance assessment) before commencing preparation for such an assessment.

Such a letter will typically ask the operating licence-holder to provide within two weeks or thereabouts (a)

its Money Laundering & Terrorist Financing risk assessment, (b) its AML/CTF policy and procedures, (c) its Safer Gambling/Social Responsibility policy and procedures and (d) details of its top 100 or so customers showing, in each case, the customer's ID, date of registration, total lifetime deposits, total deposits over the last 6 months and the current status of the customer's account.

It will also ask the licence-holder to be prepared during the compliance assessment to explain and provide evidence of its corporate governance processes, its AML and Safer Gambling processes and the activities of its MLRO. The licence-holder must also be prepared to present customer records to show not only that the appropriate policies and procedures are in place, but also that they are being followed.

After all the publicity given to previous failures to achieve the regulatory standards expected by the Gambling Commission, little leeway will be given by the regulator for any failings discovered during such an assessment that are similar to those found, for example, in the case of White Hat Gaming.

Other common failings include an inadequate ML/TF risk assessment, something that can so easily be remedied by carefully absorbing what is set out in the Gambling Commission's most recent [Annual assessment of ML & TF risks within the British gambling industry](#) (as well as regular updates on new risks published on the Commission's website) and applying that information to a review of your own business's risk assessment. All such risk assessments must be bespoke to each individual operator's gambling business, so please don't think you can get an ML/TF risk assessment 'off the shelf'.

Other essential reading material – to help ensure that risk assessments and their consequential policies and procedures are up to date – is contained within the Commission's current [Compliance and Enforcement Report](#), with its copious 'good practice' recommendations from both an AML and safer gambling perspective and (in older editions) '*compliance health check*' questions. Take note also of the Commission's first-ever [National Strategic Assessment](#) published last November. Both of these documents contain invaluable information, including on the Commission's current 'customer affordability' expectations.

Operators will almost inevitably encounter some surprises during the course of a compliance assessment. This can include, for example, the Commission's insistence on the inclusion of detailed version controls on all risk assessments and policies and procedures (not merely those related to AML), including express sign-off by senior management with back-up minutes to prove 'ownership' of all such documents by that same level of management.

Crucially, operators should ensure that they conduct regular spot checks of customer's accounts. These should not just be confined to the top 100 (by loss and drop over the last six months), although that's not

a bad place to start. Record-keeping, particularly in relation to customer-interactions and adequacy of affordability, source of funds and source of wealth evidence should be key areas of focus when conducting these checks. That's exactly where the Commission will be looking first.

In my experience, having assisted various clients in all of the above ways, room will very often exist to improve, sometimes very considerably, an operator's corporate governance framework. I strongly recommend that any operators nervous about their own such framework consider conducting or commissioning a framework review exercise as soon as possible.

In the case of a casino business, the internal controls and 'independent audit function' requirements under regulation 21 of the Money Laundering Regulations 2017 constitute an obvious starting point. More information on this can be found in one of my older (but still relevant) conference presentations entitled "*The corporate challenges of compliance under the AML regime*". Many of the principles set out there constitute good practice recommendations for betting businesses too.

That is certainly the case when it comes to consideration of an operator's internal controls in relation to Safer Gambling/Social Responsibility standards, bearing in mind the often closely linked criticisms levelled against operators by the Gambling Commission in relation to closely associated AML and customer interaction weaknesses.

Common areas where room for improvement of corporate governance arrangements exists are in relation to such issues as (a) the responsibilities delegated to an operator's Board of Directors, members of its senior management team and, in the case of larger companies, its committees, (b) overall organisational structure and internal reporting lines, which often serve to identify whether PMLs are held by the appropriate persons, (c) arrangements in place for identification, assessment and management of all applicable risks affecting the business, (d) use of appropriate KPIs and KRIs to monitor changes in risk profile performance against defined tolerances, (e) decision-making processes (including adequacy of information supplied to senior management for that purpose) and how decisions are recorded, (e) internal audit arrangements and, where necessary, independent external audit arrangements, and (f) the extent to which a top-down 'culture of compliance' exists throughout the entire business to which all employees subscribe.

These are all areas where the focus of my business has moved in recent years. More than ever, this is an area where it is vitally important to take advice from a specialist with relevant experience and expertise. No more sales-talk, I promise!

Finally, just to scoop up other relevant news from the last month or so, it's worth checking out:

1. the most recent [data published by the Gambling Commission](#), that continues to show that, across the population as a whole, there is no evidence of a significant or sustained increase in gambling activity during the time of the Covid-19 pandemic,
2. [recent research](#), involving more than 1,700 online gambling customers, that found that by removing industry-set options for deposit limits, online gamblers reduce by up to 46% the limit they set for themselves, and
3. updated CAP '[Age-restricted Ads Online](#)' Guidance and an [interesting ASA ruling](#) that a Ladbrokes ad depicted socially irresponsible gambling behaviour.

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