



DAVID CLIFTON, LICENSING EXPERT: THE WAVES ARE ABOUT TO GET ROUGHER...

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As we await the supposedly soon to be published White Paper arising from the UK Government's current [Review of the Gambling Act 2005](#), we can only guess what will be proposed in terms of its stated aim to achieve *"an appropriate balance between consumer freedoms and choice on the one hand, and prevention of harm to vulnerable groups and wider communities on the other"*.

Twenty years ago, a similar challenge faced the Gambling Review Body, chaired by Professor Alan Budd as it worked on producing a report containing its recommendations for new gambling legislation that eventually emerged in the form of the 2005 Act. Proving that nothing in the gambling debate is new, that report stated: "The most difficult general issue that we have had to solve concerns the familiar dilemma between the desire to permit free choice and the fear that such choice may lead to harm either to the individual or to society more widely". Looked at from today's perspective, it is very much a case of 'plus ça change, plus c'est la même chose'.

The terms of reference for the Gambling Review Body were broad. Indeed, they were very much in line with the desired aim of the current Government Review that was summarised as follows when launched in December last year: "The government wants all those who choose to gamble in Great Britain to be able to do so in a safe way. The sector should have up to date legislation and protections, with a strong regulator with the powers and resources needed to oversee a responsible industry that offers customer choice,

protects players, provides employment, and contributes to the economy”.

The Government wants its current review “to ensure our regulatory framework can protect children and vulnerable people, prevent gambling-related crime, and keep gambling fair and open in the digital age”, in short to promote the very same [three licensing objectives](#) that are set out within the 2005 Act.

Whilst falling short of recommending introduction of a fourth licensing objective along the lines of ‘protecting and improving public health’, last year’s House of Lords Select Committee’s [‘Gambling Harm – Time for Action’ Report](#) nevertheless recommended that “in exercising its functions, the Gambling Commission should specifically aim to identify and prevent potential and actual gambling-related harm”. That is not the same as, but is not too far away from, introducing a new public health licensing objective.

‘Protecting and improving public health’ is a fifth licensing objective under Scotland’s alcohol licensing legislation. Pressure is increasing for such an additional licensing objective to be added to the licensing legislation applicable in England and Wales (the Licensing Act 2003), with the [Local Government Association having called last month](#) for councils in England and Wales to be given power by means of such an additional licensing objective to consider the public health impact of licensing decisions in order to protect communities from harm, reduce NHS costs and save lives.

In support of that argument, the Chair of the LGA’s Safer and Stronger Communities Board has said: “Councils do not want powers to refuse every application. But being able to consider the public health impact of new licensed premises would allow them to take a more balanced view in line with their other priorities such as creating vibrant and safe town centres and protecting people from harm”

This ties in closely with the following more recent comment by [Mubin Haq](#), Chief Executive of Standard Life Foundation on publication of his organisation’s [‘Geography of Gambling Premises’](#) report: “Problem gambling is a public health issue, causing serious harm to people’s finances, livelihoods and relationships. Today’s report highlights that those living in poorer areas are more likely to be living next to gambling premises. Those with the least resources are being targeted more, with twice as many gambling venues on their doorstep as supermarkets. If we are to truly level up, the new gambling reforms currently being considered must take into account the geography of gambling venues and give local authorities more control over licensing.”

That ties in with another of the House of Lords Select Committee’s recommendation, namely that the Gambling Act 2005 “should be amended to give licensing committees deciding on the licensing of premises for gambling the same powers as they already have when deciding on the licensing of premises for the sale of alcohol”. The [Government responded](#) to that suggestion last December, by saying “We will

seek views from licensing and local authorities on what, if any, changes they want to see made to their powers, and consider these alongside any evidence they can provide to demonstrate the necessity for these changes”.

In my view, some of the Standard Life Foundation report’s findings raise more questions than answers. In addition, the force of its argument is arguably weakened by its acknowledgement that there has been a marked decline in the number of British land-based gambling premises from 12,744 in March 2018 to 10,730 in November 2020. In fact, the [Gambling Commission’s recently published Annual Report](#) indicates that the above number has fallen even further to 10,098.

However, with gambling being increasingly described as ‘a public health issue which needs a public health approach’, it will be intriguing to see what the White Paper has to say on this subject.

It is to be hoped that, when doing so, the Government will take due account of the fact that, over the last ten years, the overall [problem gambling rate in the UK](#) has remained ‘statistically stable’ (to quote the Gambling Commission), presently at 0.4% of the adult population whilst, in the year to June 2021, the moderate risk rate has ‘decreased significantly’ to 0.7% compared with 1.4% in the year to June 2020.

In a [speech delivered in February](#) this year, the Commission’s Executive Director Tim Miller acknowledged that “when you look back over the last five years it does appear that there is an emerging trend showing a decline in overall rates of problem gambling”. [Similar comment](#) was made three months later by the Commission’s then Acting Joint Chief Executive Sarah Gardner, although she added that the above statistics “should leave no-one in doubt that gambling related harm is an issue that needs your attention and needs all of us to help tackle”. That being the case, it would considerably assist the industry if the regulator was to articulate (a) what level of reduction it wants to see in the number of people affected by problem gambling, (b) over what period of time this should occur and (c) what would indicate good progress – each of which were [recommendations made by the National Audit Office](#) in February last year.

I had hoped – in vain as it transpired – that issue might be addressed in a keynote speech given by Tim Miller at the [4th Annual KnowNow Conference](#) that I had the pleasure of chairing on 7th and 8th September. However, he did enlighten his audience in other ways.

On the subject of affordability, he confirmed that the Commission will be publishing revised LCCP customer interaction requirements “*in the coming weeks*” and that it will be conducting a yet further consultation on “*thresholds for identifying key financial risks: when it comes to significant losses in a very short time, significant losses over time and financial vulnerability*”. In answer to a specific question that I posed to him arising from those comments, he confirmed that the Commission will be adopting a ‘more

risk-based approach' to the issue of affordability than has been the case up to now.

Notably, he added: "We are mindful of the fact that there is an ongoing Review of the Gambling Act and do not plan to consult on issues that are rightly for that Review", implying that the Commission has no plan to consult on issues that are more appropriate for the Government Review process and that it will instead be a matter for Parliament, rather than the regulator, to determine whether – as a matter of policy – mandatory defined affordability assessments are to be conducted by UK licensed online gambling operators.

From his comments, it appears that the Commission may be rowing back from the position adopted in its November 2020 [Compliance and Enforcement Report](#), when it said that *"customers wishing to spend more than the national average should be asked to provide information to support a higher affordability trigger such as three months' payslips, P60s, tax returns or bank statements which will both inform the affordability level the customer may believe appropriate with objective evidence whilst enabling the licensee to have better insight into the source of those funds and whether they are legitimate or not"*. However, it remains to be seen whether this apparent change of approach will be reflected in the stance taken by Gambling Commission officers when conducting future Compliance Assessments.

Also particularly worthy of note were:

- Tim Miller's following comment in relation to the illegal online black market threat: "The Gambling Commission is alive to this danger and regularly takes action to cut off or shut down these sites. With rapid changes in technology, we know we need to be increasingly fleet of foot and may need a broader range of tools to tackle emerging risks Industry and others are right to flag the risks that can come from the black market. But the solution to tackling that black market is not to cease taking action to make regulated gambling safer".
- His acknowledgement of other criticisms made by the National Audit Office last year regarding the Gambling Commission's use of data as a regulatory tool, but he nevertheless warned that UK licensed operators should *"use the remainder of this business year to ensure [their] data quality processes are robust and fit for purpose"*, adding that in order for the Commission to be evidence-based in its approach, it *"will increasingly need access to robust, comprehensive data"* but *"the quality and timeliness of data from industry is the single biggest limiting factor"*. As a result, the Commission will set a 'programme of target compliance' next year and, if necessary, take enforcement action to ensure the quality and timeliness of operators' regulatory returns.

Other important regulatory developments over the last month or so include the following.

The Gambling Commission has [appointed Marcus Boyle](#) as its new Chair, providing him with a clear mandate, alongside Andrew Rhodes (the recently appointed Interim Chief Executive), to 'transform' the regulatory body.

The Commission has imposed sanctions for AML and social responsibility failings on land-based casino operator [Corinthian Clubs](#) and Rank Group subsidiary [Daub Alderney](#). In the latter case, a 'good proportion' of the failings occurred before Rank acquired the Stride Gaming business (including Daub Alderney) in October 2019, as a result of which the £5.85 million fine imposed by the Commission is being appealed to the First-Tier Tribunal on 'equity and public policy' grounds. This will serve to raise [very interesting questions of law](#), determination of which are likely to have considerable bearing on the UK gambling industry as a whole.

UK licensed operators should take note of updates published by the Commission's AML team on the subjects of [virtual assets](#) and [suspicious activity reports](#).

Flutter UK & Ireland has introduced a [£500 per month net deposit limit](#) for all customers under the age of 25 years, although in a Times '*Red Box*' article (entitled '[People's lives matter more than gambling sector bottom lines](#)') written by leading figures in the Gambling-Related Harm APPG, this has been dismissed as being "far in excess of what the vast majority of young people, or in fact people at any age, can afford" adding that "the threshold should be no more than £100 a month with clear affordability checks for those who want to bet more, should they wish to do so".

Finally, back to the 2001 Gambling Review Body Report. Its authors summed up its recommendations to the Government as follows: "Our proposals generally move in the direction of allowing greater freedom for the individual to gamble in ways, at times and in places than is permitted under current legislation. This move to greater freedom is balanced by rather tighter controls on the freedom of young people to gamble and by some tighter controls over those who provide gambling services".

Only a supreme and uninformed optimist might forecast greater freedoms and less tight controls to arise from the current Government Review process. My previous 'Licensing Expert' article for SBC News was entitled '[The Calm Before the Storm](#)'. I sense the waves are about to get a bit rougher

P.S. I will be at the [SBC Summit in Barcelona](#), moderating the "*Practical safer gambling solutions*" panel session at 4.20pm (CEST)/3.00pm (BST) on Thursday 23 September, so hope to meet up in person with as many clients and industry friends as possible, so do get in touch if you'll be there too!

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