



## DAVID CLIFTON: LICENSING EXPERT – UK GAMBLING’S SETTLEMENT IS REQUIRED SOONER RATHER THAN LATER

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*Parliament returns from its summer recess with a new Prime Minister and senior cabinet, but gambling remains in the dark with regards to its regulatory future, in which an urgent settlement is required on dragged-out affairs for all industry stakeholders.*

It is two months since publication of my last ‘Licensing Expert’ article, *‘Change will come – eventually’*, focusing on the circumstances leading up to the yet further delay in publication of the UK Government’s Gambling Act Review White Paper. You can read more details about that on [the Clifton Davies Consultancy website](#).

The House of Commons adjourned for its Summer Recess on 21 July and did not return until 5 September. As fully expected, the announcement on that date of Liz Truss as the new Leader of the Conservative Party, and hence her appointment as Prime Minister in succession to Boris Johnson, resulted in a major Cabinet reshuffle.

Just three days later, as a consequence of the sad death of Her Majesty The Queen, parliamentary business was suspended. On 23 September, the ‘Conference Recess’ commences, ending on 16 October. Taking account also of the November Recess, I calculate there to be only 43 working days during which MPs will be undertaking normal business activity until the Christmas Recess starts on 22 December.

Any chance of a White Paper emerging during the remainder of this year? I doubt it very strongly.

Another relevant factor has been the appointment of Michelle Donelan as the new Secretary of State for Digital, Culture, Media and Sport. [In May 2018](#), she made clear her opinion that FOBTs had 'destroyed far too many lives' and she described online and TV advertising of gambling as 'preying on the vulnerable'. Will she not want to look completely afresh at the draft White Paper presented to Boris Johnson by the then Gambling Minister, Chris Philip, very shortly before their respective resignations in July? I imagine she might.

Assuming she does, those within the gambling industry will doubtless hope that she takes account of views expressed by the Betting and Gaming Council's CEO, Michael Dugher, in his 1 September article for [politicshome.com](#) entitled '[Our new Prime Minister must get gambling reform right](#)'.



David Clifton

### **UKGC awards itself top marks**

The Gambling Commission's [Annual Report](#) was published on 2 September. The foreword to the regulator's report maintains that the Commission "has maintained significant progress against [its] objectives and the high-level plans set out in [its] three-year Corporate Strategy which [it] launched in April 2021".

When that Corporate Strategy was launched in April 2021, the accompanying press release referred to the Commission "building on work it is already undertaking following recommendations from three key reports in 2020 into gambling regulation", i.e. those published by the [National Audit Office](#), the House of Commons [Public Accounts Committee](#) and the House of Lords Select Committee on the [Social and Economic Impact of the Gambling Industry](#).

There are therefore just over six months for the Commission to show what progress it has made in relation to its Corporate Strategy ambition to:

- fulfil the recommendation by the National Audit Office that the regulator should 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 what would indicate good progress and (c) how it interprets which consumers may be vulnerable and when, and
- address the criticism by the Public Accounts Committee that the Commission lacks "either detailed measurable targets for reducing levels of harm or an understanding of the impact of any regulatory action".

I have previously suggested that, in the absence of the Commission prescribing realistic targets for

reducing levels of harm against which to evaluate its own performance, it is surely not unfair to suggest that its licence-holders will be 'shooting in the dark' when seeking to evaluate their own performance in that same respect. At the very least, it might have been expected that, in its recently published Annual Report, the Commission might have complimented the industry for the part it has played in ensuring continued reductions in problem gambling rates and significant increases in more positive public perceptions of gambling, as evidenced by [the Commission's own statistics](#).

With its [most recent statistics](#) showing the overall headline problem gambling rate (as measured by the short form PGSI) at just 0.2%, the lowest ever recorded, it's a shame that some such compliment was not provided.

As an aside, cynics within the industry have already suggested that the Gambling Commission was well-placed to publish [recommendations to its licensees for good complaints handling](#), as it did on 21 July.

### **Enforcement action by the UKGC**

The foreword to the Commission's [Annual Report](#) also contains comment that it has "issued over £100 million in fines over the past few years", adding that "more importantly, we are ramping up our work and engagement to ensure that operators and their boards are under no illusion that non-compliance won't be accepted and will be met with an ever-increasing and harsher programme of sanctions as part of our work to ensure we regulate effectively".

I've not done the maths so can't confirm whether the Commission has included within its calculations the following financial penalties for AML and social responsibility failings incurred by operators over the last couple of months:

- Entain Group companies [LC International Limited](#) and [Ladbrokes Betting & Gaming Limited](#): a record-breaking total of £17 million, leading the Commission CEO Andrew Rhodes to say: *"this is the second time this operator has fallen foul of rules in place to make gambling safer and crime-free .... further serious breaches will make the removal of their licence to operate a very real possibility"*
- [Spreadex Limited](#): £1.36 million
- [LeoVegas](#): £1.32 million
- [Smarmets \(Malta\) Limited](#): £630,000

Operators should take note not only of the increasingly eye-watering payments required from 'second offenders' in particular, but also the increasing tendency on the part of the regulator to impose additional operating licence conditions requiring operators to undertake follow-up independent audits *to examine*

*whether they are effectively implementing their AML and social responsibility policies, procedures and controls in accordance with all applicable regulatory requirements. Such independent audit reports must be provided to the Commission and any recommendations contained within such a report implemented in a timely manner. Such an exercise can itself turn out to be very costly indeed, especially if such a licence condition has continuous annual effect.*

*It has often been debated when, if at all, a UK licensed operator facing robust enforcement action of the type encountered by the operators listed above, may choose – if good grounds exist – to challenge the Gambling Commission's findings instead of (a) accepting the penalty imposed upon it or (b) offering to resolve the matter by way of a regulatory settlement.*

*In that respect, it is worth noting that Entain published on its website a ['Statement regarding regulatory settlement'](#) in which it comments that it "entered into the regulatory settlement with the Commission in order to bring the matter to a close and avoid further costly and protracted legal proceedings". I will not be alone in assuming from the wording of that statement that a fairly major difference of opinions had arisen between (a) the regulator and (b) the regulated in relation to this particular enforcement action.*

What strikes me in relation to the Entain public statement is that this will have represented a very disappointing outcome from their perspective too, given the lead that they have taken in seeking to set the highest safer gambling standards not only in the UK but also elsewhere globally, notably including in the U.S.

In my experience, most gambling operators licensed by the Gambling Commission are genuinely seeking to achieve the highest regulatory standards expected by the UK regulator. That will not stop human errors being made from time to time in relation to implementation of SG or AML/CTF controls. That is a very different situation from operators failing to identify and/or to urgently correct systemic errors.

With that in mind, I hope that the Commission continues to (a) bear in mind the following words which still appear on its ['Regulatory Action'](#) webpage and (b) in appropriate cases, apply them in a proportionate manner when conducting compliance assessments in relation to operators in all gambling sectors, both online and land-based: "We recognise that a risk-based approach is not a zero-failure regime.

Therefore, failures in anti-money laundering and counter terrorist financing controls will not automatically result in regulatory sanctions. We will take robust action, in collaboration with law enforcement, against casino operators who demonstrate persistent or material breaches of the Regulations."

The public statements in all of the four cases listed above merit careful study. All operators licensed by the Gambling Commission should certainly focus attention on each of the following 'good practice' questions

posed in the Entain statement:

1. Do you have formal processes in place to measure the effectiveness of your AML and safer gambling policies and procedures, and are findings adequately recorded?
2. Do you efficiently record all compliance decisions and are you able to demonstrate to the Commission, on request, evidence of ongoing assessment, evaluation and improvement?
3. Do lessons learned from public statements flow into your policy and processes?
4. Do you have a formalised process for analysing the effectiveness of customer interactions to ensure that reviews were adequately documented and consistent in their approach?
5. Do you log the types of behaviour which have triggered a customer interaction and keep sufficient records of interactions, along with decisions not to interact, especially the level of detail provided?
6. Have your staff received sufficient AML and SR training?

#### Confusion created by the UKGC's Remote Customer Interaction requirements & guidance update

On 2 September, the Gambling Commission published on its website a ['New remote Customer Interaction requirements and guidance update'](#).

This followed:

- publication in April 2022 of the Commission's long-awaited consultation response [document](#) setting out its conclusion and actions in relation to its 2020-21 [consultation concerning remote customer interaction](#); in that response document, it announced that new customer interaction requirements for UK licensed remote gambling operators pursuant to LCCP Social Responsibility Code 3.4.3 (and guidance applicable to those requirements) would take effect on 12 September 2022 and
- two months later, publication of that [new Remote Customer Interaction Guidance](#).

The Commission's 2 September update, published just ten days before all aspects of the new LCCP provision and associated guidance were due to come into effect, has caused a large degree of confusion on the part of both licence holders and their advisors.

The update states that the following LCCP Social Responsibility Code provision 3.4.3 requirements (numbered 2, 3 and 10) would **not** be brought into effect on 12 September:

- *'2. Licensees must take into account the Commission's guidance on customer interaction for remote licensees as published and revised from time to time ("the Guidance")*;
- *'3. Licensees must consider the factors that might make a customer more vulnerable to experiencing*

*gambling harm and implement systems and processes to take appropriate and timely action where indicators of vulnerability are identified. Licensees must take account of the Commission's approach to vulnerability as set out in the Commission's Guidance', and*

- *'10. Licensees must prevent marketing and the take up of new bonus offers where strong indicators of harm, as defined within the licensee's processes, have been identified'.*

In addition, the Commission has stated that the reference to the guidance in paragraph 1 of the new LCCP SR Code provision 3.4.3 would also **not** be brought into effect on 12 September, as a consequence of which it would appear that requirement 1 will, for the time being at least, omit the words I have shown crossed out below.

- *'1. Licensees must implement effective customer interaction systems and processes in a way which minimises the risk of customers experiencing harms associated with gambling. These systems and processes must embed the three elements of customer interaction – identify, act and evaluate – and which reflect that customer interaction is an ongoing process ~~as explained in the Commission's guidance (see paragraph 2).~~'*

As a consequence of the above, it appears that, with effect from 12 September, requirements 1 (as amended), 4-9 and 11-14 within LCCP SR Code provision 3.4.3 have applied, even though the obligation to take the guidance into account has been removed pending the outcome of a fresh consultation on the guidance document that the Commission says: *"is likely to be launched during late September and will last six weeks"*, following which it will *"publish the guidance on the requirements in December 2022, with it taking effect approximately 2 months after publication"*.

*Confusing or what?*

I can't help but wonder how affected licence holders will ensure compliance with the new SR Code provision requirements unless they do take the guidance into account. I strongly suspect that UKGC enforcement officers will take the same view.

In light of deletion of requirement 3 (set out above), I also wonder whether the forthcoming Gambling Commission consultation will encompass the subject of *"ways to tackle three key financial risks for consumers: binge gambling, significant unaffordable losses over time, and risks for those who are financially vulnerable"* that was first announced by the Commission's Executive Director [Tim Miller](#) at the 4th Annual *KnowNow* Conference (chaired by me) a year ago and which his boss, Andrew Rhodes, said as late as June this year would be launched *"shortly"*. Both an update from the Commission on that issue and some clarification in relation to the matters of concern I mention above would be very welcome.

While they are at it, in light of what seems an inevitable further delay in publication of the White Paper (for the reasons I have set out at the beginning of this article), perhaps the Commission could also provide greater clarity in relation to its current expectations in relation to affordability checks, for all of the reasons I described in my [last 'Licensing Expert' article](#). Collaboration between the regulator and its licence holders in this respect would also be very welcome.

### **SBC Summit Barcelona**

At 3.30pm on 21 September 2021, I will have the pleasure of moderating a panel session entitled '*UK Rewired – UK Gambling Act 2005 under the Spotlight*' at this year's *SBC Summit Barcelona* – the '*Global Betting and iBetting Show*' – being held between 20 and 22 September at Fira Barcelona Montjuïc.

My esteemed panellists will be sharing pearls of wisdom on much of what I have written about here. They are:

- Guy Harding, Commercial Strategy & Safer Gambling Director, oddschecker,
- Sophie Platts, Head of Safer Gambling and External Affairs, Entain Group,
- Adam Doyle, Head of Gaming, TruNarrative, and
- Tom Banks, Head of Corporate Affairs UK/ Global, Kindred

I very much look forward to meeting many readers of SBC News in Barcelona on 21 September. Hasta la vista!

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