Regulation and the Management of Risk in Commercial Gambling in Great Britain

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Introduction

- Gambling Act 2005 – competition and consumer choice
- Role of regulation: confined to what is necessary to keep crime out, protect the vulnerable, and ensure that gambling products are fair to the consumer
- Gambling Commission: single regulator to
  - Ensure supplier probity and integrity
  - Guard against inappropriate / dysfunctional gambling
- Has horizontal and vertical oversight of market
A ‘safe risk’ in gambling

• If the state is prepared to permit (commercial gambling) or to promote (gambling for good causes) its citizens to engage in private expenditure on activities that may occasionally be financially rewarding for them but are by definition a risk whose parameters are to various degrees complex and often subject to private information, gambling is of regulatory interest because there is a public interest in the state also ensuring that it is a ‘safe risk’; that is, one in which citizens are properly informed about the probabilities of winning and losing.

• There is a strong analogy with financial products where the state encourages citizens to invest, etc; the state has a clear duty to ensure that these are safe risks, about which citizens are properly informed and the suppliers properly behaved.
Elements of the Commission’s regulatory regime

• ‘an institutional structure ‘made up of rules that prescribe expected behaviors or outcomes, standards that are benchmarks against which compliance can be measured, a mechanism for determining the degree of regulatory compliance, and sanctions for failure to comply with the rules’ (May 2007)
• The licensing objectives: crime / fair and open / children and the vulnerable (2005 Act s. 1)
• Market entry controls: operating (and personal and premises) licences: suitability to carry on the licensed activities
• Behavioural standards: statutory, DCMS and GC conditions, the LCCP (GC 2014a)
The Commission’s risk model foremost is our focus on those issues and operators that potentially present the greatest risk to the licensing objectives

- Risk to intangible values (eg. fair gambling transactions) not as easy to identify as physical harms (eg toxic waste / food)
- Assessment by reference to ‘likelihood of risk’ and to potential impact (use of regulatory returns)
- Likelihood: three ‘regulatory risk groups’:
  - management and control: the suitability of the licence holder
  - Inherent risks: (2) type of product / facilities (3) location and operating environment
- Impact: operator’s size and market scope: customer base, number of premises, turnover or gaming yield and extent of licensed activity.
- Greater the degree of impact = greater the regulatory oversight
Implementation

• The regulated: operators’ culture, attitudes and responses to the Commission’s approach to regulation and compliance.
• The regulatory environment: difficulties that flow from definitional uncertainties about what constitutes ‘gambling’, and those that flow from the legacy of gambling as a something less than a socially wholesome activity
• The regulatory toolkit: fit and responsiveness
• Regulatory performance: the Commission’s own understanding of its regulatory performance and on its need to bring the regulated along with its conception of how regulation can best deliver congruence with the licensing objectives.
The regulated

• GGY (2012/13) £6.4bn; very small and very large operators
• Responses to regulation: Commitment reflects beliefs about the desirability of a regulatory system and feelings of moral obligation to act in the interest of the collective and to obey the law with goodwill. Capitulation reflects acceptance of a regulator as an authority entitled to beg obeyed’ (Braithwaite 2003).
• Role of trade bodies: sector specific issues but a strong commercial interest in ‘a well regulated, socially responsible and economically sustainable [casino] industry’ (NCF)
• Greater regulatory leverage
• Threatened by public and political disquiet re B2s in LBOs.
• Public endorsement of licensing objectives (2014)
The regulated 2

- Acceptance in the 1990s of the inevitability of their adoption of socially responsible practices was, for some operators, unmarked by much enthusiasm, but was the price of the 2005 Act:
- Less corporate resistance / social distance between them and GC
- The RET levy and its use: ‘the writing on the wall’
- In practice has taken time to come to terms with the SR agenda’s requirements: underage access: a clear risk to the third licensing objective (LCCP revisions GC 2014b)
- A risk element in compliance exercises
The regulatory environment 1

• Internal and external features that define, determine, permit or constrain GC’s identification and implementation of its objectives.
• Internal: institutional and operational structures that govern the scope and manner of the Commission’s regulatory work. External: those generated within the political, social and economic context in which GC operates
• 2005 Act defines gambling, but the boundaries between betting, gaming, and lotteries are porous (‘cross-category activities’)
• Uncertainty for GC’s regulatory reach: bingo (social gaming / a ‘betting shop’: control of machines)
• Use of soft law (‘advice’) but not legally dispositive
The regulatory environment 2

• 2005 Act gave GC a regulatory monopoly over commercial gambling, and over any lotteries that did not form part of the NL (maximising proceeds for the good causes)

• Camelot’s unsuccessful challenge re GC’s licensing of ‘the Health Lottery’: ‘preserving the National Lottery’s monopoly is not, however, one of the Commission’s licensing objectives’.

• GC always had some shared interests with the NLC (children / lottery fraud): following merger (2013) GC is now required to do so, behind the Chinese Wall of its NLCommitee

• B2 machines: another legacy of definitional uncertainty. GC would like to regulate these more closely, but rational pursuit of evidence compromised by public and political disquiet.
The regulatory toolkit 1

• Earlier regulatory weaknesses remedied by 2005 Act.
• Extensive mix of hard and soft law: to enable operators to discharge the onus on them ‘to satisfy themselves of their compliance with the Act and with licence conditions and codes’
• Reliance on codes of conduct: a state of good governance based upon clear and workable standards capable of being achieved and whose achievement is visible to the regulator
• ‘Comply or explain’: enables flexibility: the issue for GC is not whether all operators in a particular sector adopt the same approach to good governance, but what steps this operator has taken to embed the LCCP’s objectives
• The problems of universal criteria: machine stakes and prizes
The regulatory toolkit 2

• Responsive regulation emphasises the importance of flexibility in the development and implementation of regulatory policy.
• The occupation of the ‘regulatory space’, some of which may be occupied by self-regulation: strongly preferred by HMG.
• Unilateral sector codes of practice published by ABB and NCF are ‘potentially helpful developments’.
• More or less compliant operators.
• Even if they question its approach, those who engage with GC may benefit from ‘earned autonomy’.
• The very inadequate may be subject to one or more of a range of escalated regulatory sanctions: warnings, unlimited fines and suspension or revocation of an operator’s licence.
Regulatory performance 1

- Research shows that in addition to economic calculations or fear of punishment, regulated businesses’ attitudes towards regulatory agencies are important in explaining compliance behaviour, and thus regulators need to consider how best to manage and enforce their legislative and other standards so as to encourage compliance.

- Observers of regulatory style have for some time remarked on the limits of ‘command and control’ regulation, preferring approaches that seek an accommodative view of regulatory compliance, whose purpose is not to punish an evil, but to repair the harm done from non-compliance, to secure future compliance, and to identify risks and minimise or neutralise their impact before they cause harm.
Regulatory performance 2

• ‘To keep the regulatory overhead as low as is consistent with public protection and work with the industry to provide the public with assurance and confidence that is currently lacking – assurance that licensed operators can be relied upon to minimise the risks of gambling related harm’ (AR GC 2014c)

• Hampton principles: regulation should be transparent, accountable, proportionate, consistent and targeted.

• Compliance is primarily the responsibility of each operator’s senior management rather than of the regulator

• Consultation and openness: corollary: GC expects applicants and licence holders to work with it ‘in an open and cooperative way’ and a duty to disclose anything which the Commission would reasonably expect to know.
Regulatory performance 3

• ‘The Commission tries to strike the right balance between over-prescription (which can result in a ‘tick-box’ response) and the need to discourage the less responsible from undercutting the responsible by cutting corners or ignoring good practice’ (LCCP revisions 2014)

• Enhanced compliance and voluntary settlement.

• Enforcement action remains an option. If not satisfied with the speed or quality of the operator’s proposed remedial action; any regulatory practice will aim to achieve – in light of the potential restriction and the social goals sought to be achieved – an appropriate balance between the Type I errors of over-regulation of the innocent and the compliant and the Type II errors of under-regulation of the guilty and the non-compliant.

Managing risk in gambling regulation
Conclusions 1

• GC’s statutory duty is to promote the licensing objectives, and in exercising its functions under the Act it is to pursue and where appropriate have regard to them, and to permit gambling so far as it thinks it reasonably consistent with the pursuit of them.

• Unlike economic regulators, it has no functions with regard to the conduct or the outcome of any competition between operators; it is not required to review whether, for example, consumers in more remote parts of the country have equal or reasonable access to gambling facilities, or the merger of two publicly-quoted operators will be anti-competitive.

• But it does have an economic interest in how the market develops and delivers its products.
Conclusions 2

- May have no statutory interest in promoting any increase in gambling facilities, but does not wish to see the exercise of its regulatory functions as unduly hindering economic progress.
- GC 2014d: in deciding what, if any, action to take, GC will ‘have regard to the desirability of promoting economic growth’, and ‘will seek to provide a fair regulatory framework within which existing operators and new entrants can compete and grow with the minimum of regulatory burden compatible with public protection and the licensing objectives’.
- Potential for conflict between equally balanced claims for economic growth and consistency with the objectives.
- And possibly also with its newly acquired NL duties.
Conclusions 3

- GC’s’ compliance work concentrates its limited resources on high impact operators and working with Las to secure compliance from operators with more local impact. Executives and managers of a gambling business should consider whether their risk culture and management approach are appropriate for the scale and complexity of their business.’ (GC 2014c)

- Its dealings with operators are predicated on a mutual recognition of notice of regulatory or operational change and of co-operation in the implementation of the regime’s requirements. Are challenged by variations in the operators’ willingness to engage in compliant behaviour, uncertainty in the definition of particular games, some inflexibility in statutory regulation, political sensitivity in particular to problem gambling, and the Commission’s own tolerance or appetite for risk.
References

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