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Point of Consumption Social Responsibility:

Developments in Britain's Gambling Regulation

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Introduction

First, I would like to thank Jason for his kind invitation to speak to you this afternoon. The last occasion on which I enjoyed this privilege was at the behest of one of GREF's earlier administrators, Dr Bernard Polders. That was some years ago, when the regulation of commercial gambling in Britain was principally confined to the gaming and bingo markets. Since then the domestic regulatory landscape has fundamentally changed. Under the Gambling Act 2005 all bricks and mortar operators are subject to a sophisticated but essentially permissive regulatory regime in which they may be licensed to provide such facilities for gambling as they consider commercially viable. And in 2014 this regime was extended to operators located abroad who seek to provide facilities for remote gambling for British customers; switching regulation (and taxation, obviously important but not my concern today) from the point of supply to the point of consumption.

The principal focus of my talk is the consequent engagement for remote operators located elsewhere than in the UK of the extensive and demanding social responsibility code that the Gambling Commission has developed, and whose revision is expected to take effect in May 2015. This code – the *Licence Conditions (Part I) and Codes of Practice (Part II*) (LCCP), which for the first time placed operators in the commercial gambling sector in Great Britain under enforceable conditions of integrity and propriety in relation to their customers – assumes additional significance in the light of the European Commission's July 2014 Recommendation on principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online (European Commission 2012, 2014).

My talk today is divided into three sections. First, I will briefly discuss the Gambling Commission's approach to regulation and to securing operators' compliance with the LCCP. Secondly, I outline the background to and the scope of the 2014 Act. I then turn to discuss the structure of the Commission's social responsibility code and to give examples of its terms and operation, with some reference to the European Commission's principles. In this section I shall draw on some research recently published by the Responsible Gambling Trust. This is a GB based industry-funded charity that funds education, prevention and treatment services and commissions research to broaden public understanding of gambling-related harm. Its priorities are guided by the national strategy prepared by the Responsible Gambling Strategy Board (RGSB), an independent body appointed by the Gambling Commission, whose role is to advise the Commission (and, through it, the government (DCMS)) on the research, education and harm prevention and treatment elements of a national responsible gambling strategy. This advice is delivered in the context of an understanding that gambling is a leisure activity enjoyed safely by millions, but that a small proportion of people are nonetheless harmed by their participation, which may also have an impact on their families and those around them. At this point I should say, as some in this room will know, that I am the Deputy Chair of the RGSB and an observer of the Trust's Research Committee. I do not speak today for either.

The Gambling Commission's approach to regulation and compliance

Since it came into operation the Commission has changed the emphasis of its approach to regulation, compliance and enforcement from 'setting policy and licensing the gambling industry … to 'delivering a proportionate, risk-based approach

to regulation'. It seeks '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' (Gambling Commission 2009, pp. 4 and 13; 2014a, paras. 2.11-2.12). These objectives are, by way of reminder '(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (b) ensuring that gambling is conducted in a fair and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.'

A key principle of the *Regulator's Code is* that 'regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks' (Better Regulation Delivery Office 2014, para. 3.1). By comparison with other regulated sectors where physical health is at risk and the nature of the risks is more tangible, for example, the disposal of toxic waste or the production of food and drugs, evidence of gambling transactions that are not 'fair and open' or that may harm or exploit vulnerable players is less easy to detect and to measure. There may be cases where evidence is clear, for example, suspicious betting transactions or permitting a person who has self-excluded himself from a casino to gamble, but the Commission's assessment of the risk posed by an operator focuses primarily on its organisational structure and behaviour. This is in essence a matrix in which the size, scale and nature of the operator's licensed activity are judged in terms, first, of the likelihood of a given risk (or risks) to the licensing objectives occurring and, secondly, of its potential impact on those objectives (Gambling Commission 2014b, para. 2.1). The Commission's starting point is therefore that as they are best placed to identify and to mitigate these risks, it

is for gambling operators to take primary responsibility for embedding them (Gambling Commission 2013a, p. 4; 2014c, p. 6).

The objective of its codes of practice is 'to create a state of good governance based upon clear and workable standards that are capable of being achieved and whose achievement is visible to the regulator (Hooghiemstra & van Ees 2011). One element of many regulatory codes is a reliance on the principle of 'comply-or-explain', a principle that, in recognizing that a 'one-size-fits-all' approach is likely to be suboptimal, enables flexibility in the application of these standards. Being the responsibility of each operator's senior management rather than that of the regulator, the issue for the Commission 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 throughout its organisation (Gambling Commission 2014c, pp. 6 and 13).

A principal element of its regulatory ethos has been the pursuit of a direct and proactive approach with the industry (Gambling Commission 2013b). A first step involved a number of initiatives designed to engage the industry on the implementation of the Act, to assist its understanding of the new regulatory regime, and to encourage it to discuss its concerns before entrenched positions were assumed. In respect of many aspects of the regulatory regime, the Act obliges the Commission to consult operators and other stakeholders, but it has additionally assumed this obligation in respect of any changes to its regulatory approach. The corollary is that the Commission expects licence applicants and holders to work with it 'in an open and cooperative way', an expectation that additionally imposes a duty on them 'to disclose anything which the Commission would reasonably expect to know' (Gambling Commission 2014a*, passim*; and 2014d, Part I section 15). The

major companies have their own compliance departments which typically assume a proactive and positive role with the Commission, even if they will on occasion question its proposed approach to a perceived regulatory problem. These operators may in turn benefit from ‘earned autonomy’. ‘Operators which demonstrate good governance and a high level of compliance at all levels are less likely to present a risk to the licensing objectives and will receive less regulatory oversight as a result, although this reduced oversight will be proportionate to their potential impact (Gambling Commission 2014e, para. 2.17).

The Background to and the Scope of the 2014 Act

Policy

Where they wish to provide facilities for remote gambling by British consumers, operators who, for commercial reasons, have chosen to locate any “piece of remote gambling equipment” in Great Britain have by virtue of ss 33 and 36(3) fallen within the scope of the Gambling Act and thus be licensed by the Commission. As is well known to this audience, the Act permitted EEA operators relying on a licence issued in their home country access to the British market, as did regulations made under it in the case of Gibraltar and the “white listed” jurisdictions (Antigua and Barbuda, the Isle of Man, the States of Alderney and Tasmania) who had demonstrated a sufficiently robust regulatory regime.

This concession was of course not uncontroversial. UK based operators complained that it placed them at a competitive disadvantage. The overseas operators benefited from access to the British market but did not bear their share of the costs of its regulation, or be required to contribute to the amelioration of problem gambling. There was, in addition, an asymmetry in the taxation regime, which was a

principal reason behind online operators' move abroad. And as this audience also well knows, the regulation of remote gambling across the EU and EEA states is, as the European Commission recognised in its sequence of papers on online gambling in the internal market, fragmented. This reality, coupled with the emergence of new European jurisdictions where online gambling sites have started to target British consumers, generated for the British government an increasing concern about the level of regulation and consumer protection in these jurisdictions. Announcing in 2010 the details of a consultation on extending the Gambling Commission's licensing system to overseas-based operators offering services in the UK the government identified two main regulatory benefits (DCMS, 2010; para 3.11):

- All operators active in the British market would have to adhere to the Act's provisions, its secondary legislation and the Commission's standards and requirements. That would mean obligations to report suspicious betting activity to the Commission and UK sports bodies, as well as compliance with the Commission's software testing, age verification, self-exclusion, technical standards and social responsibility requirements bringing a more consistent level of protection for British consumers.
- Whereas consumers based in Great Britain have faced different consumer protection arrangements, and have to deal with a myriad of different regulators, depending on where the remote gambling they are taking part in is regulated, all operators would now be subject to the same obligations, for example, as to 'fair and open' gambling, permitting the Commission to investigate consumer complaints more effectively.

In a separate development, HM Treasury had conducted a review of the taxation of remote gambling in autumn 2011, recommending, in line with the approach followed

by an increasing number of other European countries, that remote gambling should be taxed on a place of consumption basis' (HM Treasury and HMRC, 2012; para. 2.2; and see paras 2.5-2.7). Although both the fiscal and the regulatory regimes are now based on the point of consumption, it should be emphasised that the levelling of the fiscal playing field was not an objective of the 2014 Act; taxation being a matter for the Treasury, not, in this case, DCMS.

Scope

The way in which the 2005 Act brings commercial gambling under the Commission's control is in essence very simple. By s. 33 it is a criminal offence to provide facilities for gambling unless the Act authorises their provision or makes a specific exception in respect of them. In the case of remote gambling, s. 33 applied only, as noted earlier, where, as the 2014 Act has now restated s. 36(3), '(a) at least one piece of remote gambling equipment used in the provision of the facilities is situated in Great Britain'. To this the 2014 has added, or '(b) no such equipment is situated in Great Britain but the facilities are used there.' This extension of regulatory jurisdiction applies to all remote operators in the EU, the EEA, Gibraltar, and the 'white-listed' countries. But it will only catch an overseas operator whose website a British consumer happens to access, if, by s. 36(3)(A), that operator 'knows or should know that the facilities are being used, or are likely to be used, in Great Britain.' In short, the Act's purpose is to catch overseas remote operators only if they are aiming to transact with GB consumers. If they want to avoid having to obtain an operating licence, they will need to take action to prevent consumers using their website in Britain.

The Gambling Commission's social responsibility code

As I mentioned earlier, the Gambling Act 2005 commences with three licensing objectives, the third of which is the principal element in the legislation's social responsibility agenda. But it will readily be seen that a necessary condition of responsible gambling is that gamblers are well informed about the terms and conditions under which any bet is placed, and will only be well informed where the gambling 'is conducted in a fair and open way'. In aiming to discharge its statutory duties to pursue and have appropriate regard to the three licensing objectives and to permit gambling where it is reasonably consistent with them, s 24(1) of the Act both obliges and permits the Commission to issue codes of practice about the manner in which gambling facilities are provided. One of these must describe the arrangements that operators are to make for the purpose of (a) ensuring that gambling is conducted in a fair and open way, (b) protecting children and other vulnerable persons from being harmed or exploited by gambling, and (c) making assistance available to persons who are or may be affected by problems related to gambling.

These arrangements are set out in 'ordinary' and 'social responsibility' code of practice provisions; the difference between them being that breach of an 'ordinary' provision attracts only regulatory sanctions, whereas breach of the latter, being licence conditions, also constitutes a criminal offence. SR code provision 3.1.1 provides that 'all licensees 'must have and put into effect policies and procedures intended to promote socially responsible gambling'. Their policies and procedures must include, it continues, but need not be confined to: (a) the specific policies and procedures required by the following provisions of section 2 of this code, (b) a commitment to and how they will contribute to research into the prevention and treatment of problem gambling; (c) a commitment to and how they will contribute to

public education on the risks of gambling and how to gamble safely, and (d) a commitment to and how they will contribute to the identification and treatment of problem gamblers.

Section 2 of the Code covers a broad range of matters, many of which figure under the eight player protection headings in the European Commission's Recommendations. Operators who were not regulated by the Commission but who are members of the Remote Gambling Association (RGA), which includes all of the major companies that also operate terrestrially in Great Britain, have for some time subscribed to a comprehensive set of social responsibility standards that in many respects mirror those applicable to Commission-regulated operators. Based on the CEN Workshop Agreement (European Committee for Standardisation, 2011) they cover such matters as the protection of vulnerable customers, the prevention of underage gambling, prompt and accurate customer payments and fair gaming; they are now subject to the same regime as British based operators. I turn to give some examples of the content and proposed future operation of the LCCP obligations.

Self-exclusion and Time-out

Although the empirical support is not overwhelming, and is sometimes methodologically flawed, a number of studies have suggested that self-exclusion can have positive impacts on levels of problem gambling, well-being and social and familial functioning. LCCP Part II imposes on both remote and non-remote operators an SR obligation to 'have and put into effect procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling (3.5.1 / 3.5.3). Whereas it is technically easier for remote operators to respond to self-exclusion

requests from account holders and to withhold marketing materials when meeting such requests, this obligation is more difficult to implement in bricks and mortar venues. This is not so much because the self-excluded player may play in other venues or on on-line sites, factors that apply equally to online players, but, if an individual wishes to self-exclude entirely from offline gambling they currently need to do so separately with each operator they gamble or might gamble with.

Both RGSB (2014) and the Responsible Gambling Trust (Parke & Rigby, 2014) recently advocated the establishment of multi-operator schemes by which a player can exclude himself from all remote or non-remote sites managed by a single operator, and, building on those arrangements, across all operators. The Commission's 2014 consultation on proposed amendments to the SR in the LCCP contains an extensive discussion of, and major proposals for, self-exclusion. While it recognises that for both remote and non-remote operators, multi-operator self-exclusion schemes (MOSES) present legal, operational and technical issues, the Commission also recognises that it will be comparatively easier to establish such a scheme for account-based play. The 2014 Act is the trigger for the development of a framework for a national remote self-exclusion system, whose detailed arrangements are currently the subject of an RGA and Commission Working Group. Accordingly, the Commission has proposed a new SR provision that all remote licensees must participate in the national multi-operator self-exclusion scheme.

Recognising that improving the existing non-remote arrangements is not as straightforward as in the online environment the Commission proposes a longer timeline for the adoption of non-remote MOSES across Great Britain. The first stage is the proposed new SR provision requiring operators to 'offer customers with whom they enter into a self-exclusion agreement in respect of facilities for any kind of

gambling offered by them the ability to self-exclude from facilities for the same kind of gambling offered in their locality by any other holder of an operating licence to whom this provision applies, by participating in one or more available multi-operator self-exclusion schemes.' This then offers self-exclusion by sector. The next stage is to extend this facility to cross-sector self-exclusion; the SR provision not coming into force until 1st October 2016, giving the non-remote sector time to develop effective systems.

Self-exclusion schemes typically offer a 6 month minimum period of exclusion, as has been the case in an OR provision in the LCCP, and is expressly so stated in Article 33(b) the EC Recommendation. While there is no academic consensus on the optimum length of a self-exclusion agreement, a minimum 6 month 'time out' might, for a player who is only just concerned that he is getting in too deep, be regarded as a barrier to act. The Commission proposes to elevate the self-exclusion minimum to an SR provision, but in recognition of RGSB's advice it proposes shorter periods of exclusion ('time outs') in the case of remote gambling. This would be a new SR provision, requiring remote operators to offer 'time out' periods of 24 hours, one week and one month; here, too Section VII of the EC Recommendation is relevant. I do not have time to say more, but there are also SR proposals for exclusion by product, and proposals to amend the Commission's Remote Technical Standards (RTS) (Gambling Commission 2014f) to require operators to offer customers to set financial limits for periods of 24 hours, 7 days or a month.

Customer interaction

By customer interaction we may think primarily of face to face engagements where floor staff in a traditional casino or betting office have as LCCP SR code

provision 3.4.1 currently provides, concerns that a customer's behaviour may indicate harm (or risk of harm) as a result of their gambling behaviour. I would like to extend this understanding of customer interaction to include automatic engagement where the customer is online or playing a gaming machine.

The Commission's RTS (13) already provides that remote operators' client applications must display the time of day or the elapsed time since the application was started. From the players' perspective, this is a passive message that does not directly engage them. By contrast, there is evidence that the players' active engagement, for example, in setting time and financial limits to their gambling may help them to minimise any gambling-related. For this purpose the Commission has proposed a new SR provision, that for remote casino and bingo, and for interactive instant win games, the gambling system must provide easily accessible facilities that make it possible for customers to set a frequency at which they will receive and see on the screen a reality check within a gaming session. Of particular significance is that the customer must acknowledge the reality check for it to be removed from the screen.

From the outset the LCCP has required operators to make information readily available to their customers on how to gamble responsibly and how to access information about, and help in respect of, problem gambling. In the case of terrestrial venues this information has typically been leaflets and posters, whose impact, for good or ill, is open to question. As recently commissioned work by the RGT shows (Collins et al 2014), this is especially so in the case of the standard Return to Player messages that are displayed on British gaming machines. And as the Trust's review of operator-based approaches to harm minimisation notes (Blaszczynski 2014), problem gambling information only on a reactive basis when players request it, is of

limited value, because a large proportion of problem gamblers do not seek help.. By contrast, the proactive provision of responsible gambling information by licensees might assist in enhancing informed player choice before significant harm is experienced by the player, and there is now considerable interest in messaging that targets individual players, in particular those playing gaming machines.

The potential for targeted messages alerting an identified player to time or money spent is shown in major research work that the RGT commissioned to answer two questions agreed by RGSB and the Gambling Commission:

- is it possible to distinguish between harmful and non-harmful play?, and
- If that is possible, what measures might most effectively be adopted to limit harmful play without disproportionate effects on those gambling without harm?

With unprecedented industry access, the researchers (Excell et al 2014) analysed very large accumulations of data (178 million machine gaming sessions) which made it possible to derive supportable propositions about correlations between problem gambling and particular patterns of play. The researchers stress that there is more work to be done here; their findings do not yield clear prediction models. But they do show that it may be possible to identify problematic patterns of play across sessions; the key to the utility of this work is linking the play to a particular player. This can of course be done remotely with account-based play; in bricks and mortar premises absent accounts, it is currently possible only where the player is using a loyalty card (Wardle et al, 2014a). In April 2014, in response to the political and public concern that surrounds the use of a particular category of gaming machine that carries the potential for over-consumption to be found in licensed betting offices in Britain, the government announced that it wanted all larger betting shop operators to offer account based play. This, it said, ‘will allow account holders to track and monitor

their own play via statements, and enable targeted interventions in accordance with operators' licence conditions' (DCMS, 2014). This is a significant development. The question then is whether the government has the appetite to move from the mandatory availability of account-based play in terrestrial venues to making account-based play a condition of using any gaming machine. There is a strong argument that account-based play is likely to be an essential part of generating effective screens to identify harmful play so that appropriate interventions can be made, but as I shall later note, there are substantial hurdles here.

. Much of the RGT's research was initially prompted by this concern about B2 machines, which offer a maximum stake size of £100 (in tranches of £10) and prize of £500. The research sought to document who plays on these machines and on the other category of machine commonly found in LBOs, and to what levels of stake and loss (Wardle et al 2014b). Of interest to the theme of customer interaction is a second government requirement, that those accessing higher stakes (over £50) should use account-based play or load cash over the counter. This second option could encourage better interaction between customer and operator for those engaged in high stake play, improving opportunities for more effective provision of information and interventions. Like the conditions in the RTS for remote gambling, the action of leaving the machine to transact across the counter may be regarded as a reality check.

Conclusions

Although I understand that the European Commission is of the view that no one Member State has implemented all of the player protection principles in its 2014 Recommendation, I think it fair to say that viewed across all of its substantive titles

(information requirements, minors, player registration and account, player activity and support, time out and self-exclusion, and commercial communication) – with only a few of which I could deal today –the SR regime in Great Britain, as primarily contained in the current and proposed LCC, is well on course. The same can be said for the RGA. Being subject to the LCCP etc, all remote operators licensed by GC are now subject to a universal and uniform set of consumer protection and social responsibility standards which is (a) good for British consumers, who know where they stand whatever site they are using, and (b) permits the Gambling Commission more effectively to deal with consumer complaints.

Absent the 'holy grail' (that is, harmonisation) "the answer" observed the Chief Executive of the Commission, "is for us all to agree on common standards and a common way of compliance and enforcement" (Williams, 201. Harmonisation-lite, the EC Recommendation is a useful check list of good practice against which the Gambling Commission can map the LCCP and RTS, together with the provisions of the codes that apply to advertising gambling facilities; as of course can regulators elsewhere in the EU and EEA. But in common with any hard or soft law that aims to change people's behaviour in a given direction, rules such as those I have discussed will, absent incentive or sanction, only go so far. So far as operators are concerned, sanctioning for non-compliance with SR and OR obligations can, in the worst cases, result in revocation of their operating licence. None of larger betting shop operators, whom DCMS now require to make account based play available to players of B2 machines, is, I think, likely to risk even the slightest threat to their commercial and regulated well-being, still less to flirt with the Act's more severe penalties. The same consideration will apply to their SR obligations on establishing effective national MOSES schemes. Their incentive is that compliant behaviour is more likely to

conduce to a regulatory environment in which they can pursue their commercial well-being.

In common with such other aspects of public health as diet and alcohol consumption, many of the LCCP current and proposed provisions aim to encourage players to make better informed decisions. ‘Fair and open’ gambling is a necessary, if not sufficient condition of responsible gambling. More difficult is how to incentivise players, when presented with an opportunity to set financial and temporal limits on their play or to respond to a pop up message inviting them to consider a ‘time out’ or, in a serious case, self-exclusion, to act. The research evidence shows that the take-up of voluntary gambling management tools such as these is minimal. The introduction of new opportunities engages some interest, albeit from a very low base, and then tails off. One answer, which I mentioned earlier and has been adopted in other countries, is to make all machine gambling – and possibly all gambling – account based. In Britain at least such a move raises some very difficult commercial, organisational, personal privacy, and regulatory policy issues. The political issue centres on the question, where should the trade-off lie between the many recreational gamblers’ present ability to place a bet as and when they wish and the decision to constrain that liberty in order to minimise harm to the small numbers for whom gambling presents a risk of harm. If I knew the answer, then like the man who broke the bank at Monte Carlo, I wouldn’t be standing here.

Thank you for your attention.

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