

PLAY ON

INTER SE approached Julian Harris of Harris Hagan, the first UK law firm dedicated to providing gaming industry legal advice in the UK and internationally, to share his views on gambling law. The gaming and licensing law expert, who has more than 20 years' experience in the industry, tells us about his experiences in practice, developments in UK gaming law, and his thoughts on the future of gambling.





How did you come to specialise in gambling law?

By accident! I would like to be able to say that I had a vocation for gaming law, but when I qualified in 1980, I had no idea that such a specialisation even existed. I joined a firm called Gregory, Rowcliffe and Co as a commercial litigator. The senior litigation partner, Anthony Hobbs, was the then

solicitor to the Gaming Board for Great Britain, at that time the regulatory authority for gaming.

Because of the pressure of work, with a number of high-profile casino licensing cases at that time, I became involved in work for the regulator. I became a partner in 1983, and, following Anthony Hobbs' retirement the following year, took over the Gaming Board work with my colleague Christopher Harper, who, since I left the firm in 1986, has remained solicitor for the Gaming Board and its successor, the Gambling Commission.

What is the most rewarding aspect of the practice of gambling law, and why?

I mentioned that I intended to practice as a commercial litigator, and indeed mixed litigation with gambling law for many years. However, gambling law has most of the advantages of litigation, without the disadvantages. It involves a substantial amount of advocacy, which I enjoy, and usually with much quicker results than in litigation. Given the expense of litigation, few cases come to trial, and I remember speaking to one senior litigation partner from another firm when we were in court together, who told me that the

case was his first to come to trial in 20 years of practice!

Gambling law also has the advantage of being a narrow speciality. Apart from the fact that this inevitably limits the knowledge base required, it enables one to become, in effect, a part of the industry one represents. With the knowledge of the industry gained over many years, we have become business advisors as well as lawyers.

As the first UK law firm specialising in legal services to the gambling and leisure industries, what have been a few of the major challenges that Harris Hagan has faced over the years?

The two principal challenges, in terms of work, which the firm has faced over the five years since our foundation in 2004, have been firstly, the very long process of development of the new gambling legislation. The resulting Gambling Act went through numerous stages of development, during which it changed remarkably from the original proposals. During this time, we worked with clients, representative industry bodies and the government advising on the various developments, and advising, lobbying and seeking to protect the interests of the various sectors of the industry.

Secondly, the limitations on numbers of new casinos proposed in the legislation led to an enormous increase in applications for new casino licences, which resulted in our involvement in often lengthy applications for, and objections to, licences.

Could you give us a broad introduction to the gambling legal industry in the UK? What are

the main pieces of legislation, and which are the regulatory or other bodies, that govern the industry?

Until 2005, gambling legislation was piecemeal and complex. Different sectors of the industry had separate, but often overlapping, legislation and regulatory regimes. In brief, casinos were governed by the Gaming Act 1968 and regulated by the Gaming Board for Great Britain. Betting was governed by the Betting, Gaming and Lotteries Act 1963 and regulated by magistrates' courts and the police. Lotteries were regulated by the Lotteries and Amusements Act 1976, save for the National Lottery which was governed by the National Lottery Act of 1993. Then, as now, the National Lottery was regulated by its own authority, whereas other lotteries fell within the jurisdiction of the Gaming Board.

The Gambling Act 2005 is now the governing legislation for all forms of gambling, with the exception of the National Lottery, and all forms of gambling falling within the Act are now within the jurisdiction of a single regulatory authority, the Gambling Commission. The great difficulty posed by the previous piecemeal legislation, apart from the fact that it was all drafted before the advent of the internet, was that there existed considerable overlap between the different forms of gambling, namely, betting, gaming and lotteries, with the result that there was substantial case law seeking to determine into which category different forms of gambling fell. Whilst these difficulties can still arise, consolidation and definitions have simplified the law considerably.

What have been a few of the significant or unexpected developments or issues, legal or otherwise, since the passing of the UK Gambling Act in 2005, and how have these impacted the practice of gambling law generally?

The most obvious significant issue since the Gambling Act was passed is that for the last three years, for the first time since 1968, it has been impossible to obtain a new casino licence in the UK. Previously, such an application could be made at any time in any one of the 53 permitted areas of the country. Although there were high barriers to entry, most significantly the need to prove demand for the new gaming facilities proposed, at least an application was possible. The new Act permits the grant of an arbitrary new 16 licences in specified locations, many of which already have casinos. It was for this reason that there was a flood of applications under the old legislation before the time limit expired.

The most significant development legally was the ability, for the first time, to obtain licences to operate online betting and gaming whilst, ironically, there was nothing in the old legislation to prevent foreign online operators taking play from people located in Great Britain, or even advertising here, as licences were not available in the UK. As the UK was the first major European state to offer licences for online gambling, it was anticipated that there would be a flood of applications. However, the government set the tax rate at 15%, making the UK seriously uncompetitive against jurisdictions such as Malta and Gibraltar in the European Economic Area and Alderney

and the Isle of Man, which are offshore British jurisdictions, all of which have the ability to advertise and market within the UK. This has resulted in a much smaller online industry in the UK than was anticipated.

The other unexpected development has been the very long delay on the part of local authorities in beginning the licensing and competition process for the grant of the 16 new licences, which have not started yet in any one of those areas. This is primarily due to two factors: firstly, the difficulties of setting up the process, coupled with the lack of experience from local authorities in addressing such issues and nervousness on their part about the possibility of extensive judicial review proceedings, if they make any mistakes. Furthermore, preparation for the process has coincided with the recession, and, almost certainly, a lack of enthusiasm on the part of operators for seeking to speed up the process.

All of these factors caused enormous fluctuations in the amount of licensing work, with the result that a greater percentage of current work relates to betting, commercial work for the industry and online gaming, particularly in offshore jurisdictions.

What has been the effect of the economic downturn on the UK gambling industry, and what changes in your practice have you seen as a result?

The economic downturn, technically now a full recession, has had a significant effect on the UK gambling industry. However, this has been coupled with other factors, such as the smoking ban in all public places, raised taxes



and low limitations on machine numbers and machine stakes and prizes than originally hoped for, all of which have together had a devastating effect, particularly on the casino and bingo industries. Given our closeness to and reliance on the industry, this has inevitably affected our practice.

Across countries, the social ills related to gambling are a common cause for concern. Could you comment on the “social responsibility” provisions in the Gambling Commission’s Licence Conditions and Codes of Practice (October 2008)? Have they created any problems, or been considered too burdensome by licensees? What is the general approach taken towards balancing the interests of gambling operators and customers?

We are not aware that the “social responsibility” provisions in the Gambling Commission’s Licence Conditions and Codes of Practice have caused any particular

problems. Nor do we believe that they have been found to be too burdensome by licensees. However, the requirement to contribute substantial sums of money to the treatment of problem gambling does add a substantial financial burden to an industry which is already suffering economically, and which is already taxed more heavily than any other industry.

In general, the Gambling Commission, in interpreting the law and in their own codes of practice, adopt a realistic approach in balancing the interests of gambling operators and customers, whilst, as they are required to do, seeking to protect children and other vulnerable persons from gambling.

The gambling legal industry is in a nascent state in Singapore. Given your experience, what do you think legal advisers here can expect when the casinos open, in terms of how this legal practice

area will develop and whether any specific issues will arise? What do you think the immediate challenges facing legal advisers in Singapore will be, and how can they equip themselves to prepare for them?

No legislation, regulations or codes of practice, however well thought out and carefully drafted can foresee and address every eventuality that may occur once the casino is open. For that reason, it was felt important, in drafting our new legislation, to give the Secretary of State and the regulator the ability to create regulations and codes of practice where the need arose. It is in the interests both of regulators and reputable operators to ensure that such flexibility exists to ensure that the objectives of the legislation are met. It is important at all times, but particularly during the early stages, that both regulator and operator have a good working relationship and are able to co-operate to iron out uncertainties and difficulties that will inevitably arise with new legislation.

Whilst the industry is new to Singapore, you have two experienced operators, with global interests. They have valuable experience to offer, and it is in both their interests that operations are conducted in such a way as not to prejudice the licences held in other strictly regulated jurisdictions.

It follows that legal advisors should always have in mind the objectives of the legislation and seek to achieve a balance between acting in the interests of their client on the one hand whilst, on the other, representing those interests in a way which is consistent with their professional standing,

in order to maintain the trust and respect of the regulator.

What do you feel is the potential of the gambling and related legal industries both in the UK and internationally, and how much is this likely to grow? Macau has overtaken Las Vegas in terms of gaming revenue, casinos are opening in Singapore, and other Asian countries are considering permitting legalised gambling – how will the developments in this part of the world impact on trends and tendencies internationally?

In recent years we have seen enormous growth in the gambling industry around the globe. This has reflected a change in attitudes to gambling; for example, in the UK in the 1960s, it was regarded as a vice which could not be stamped out, and would therefore be allowed, but strictly controlled and regulated. Now it is regarded as a legitimate form of adult entertainment, although one which should be regulated in order to protect the interests of children and other vulnerable people, and to ensure fairness.

The growth of gaming in South East Asia may be seen as having the potential to cause a downturn in business in traditional gambling venues, such as Las Vegas, London and Macau, but may in fact have the reverse effect: the increasing popularity of gambling, its legalisation in other Asian jurisdictions and the greater ability of people to travel long distances for holidays may in fact cause a growth in traditional markets as well as in new jurisdictions.

One thing is certain: gambling, and therefore gambling law, is here to stay! ¹⁵