

**An Interview at ICE with Jenny Williams, CEO of the UK Gambling Commission,  
by John Hagan**

**How is the implementation of the new point of consumption regime going from a licensing perspective?**

Pretty smoothly really.

Nearly all the 150 plus overseas operators we had identified legally selling into Britain applied for and obtained continuation licences, plus a few more we hadn't spotted – the few that didn't have actively withdrawn and, where necessary, are blocking British players.

We now have over 370 operating licensees including the 176 now trading on continuation licences compared to 200 before Nov 1<sup>st</sup>, but critically covering nearly 100% of the domestic market instead of less than 15%.

Despite nearly 90% of applications being incomplete and the inevitable Xmas interruption, we have already determined over 10% and many more are nearing completion. A handful have been warned they may not get a licence if they don't provide the remaining information very quickly.

450 personal licence applications, including Annex A's, and 90 software licence appliances are also being dealt with.

**“90% of applications incomplete”. Many applicants have been critical of the complex, burdensome and confusing nature of the Commission's new application process. How many applications were unsatisfactory from a substantive perspective, rather than incomplete? Might this go some way to explaining the 90% figure?**

Only to a limited extent.

Some of the problems stem from the complexities of the process intended to allow operators to continue to trade in Britain while transitioning to the Gambling Commission regulatory framework.

Neither we, nor those we consulted in advance, foresaw some of the devil in the detail that needed working out – for example the development of umbrella licences for major software providers; and some stem from the complex corporate structures operators have for tax or other reasons.

Sometimes we thought we had been clear and it turned out we hadn't.

But failure to adapt terms and conditions or policies demonstrate a lack of engagement, not problems with our new application process.

And an incomplete application is substantively unsatisfactory as, broadly speaking, we don't ask for anything that we don't need to satisfy ourselves of suitability

And if people think our application process is burdensome, they haven't applied in the United States!

**To what extent has the Commission been interacting with international regulators, specifically regulators in former white list jurisdictions, over the switch to POC? Is the Gibraltar challenge water under the bridge?**

We worked closely with the other regulators whose licensees were legitimately targeting Britain under the previous point of supply regime to see how we could streamline the application process for those already operating here; for example where fellow regulators were able to supply us with assurance about their probity and regulatory record, we didn't need to obtain the same information/assurance from the operator. You would of course have expected that the main UK white listed regulators, the Isle of Man and Alderney, would work closely with us, but we also got tremendous cooperation from Malta and, even though the Gibraltar regulator was in a tricky position with his government and himself adamantly opposed to the POC change, at the working and personal levels contact and cooperation continued so we were able to put the JR challenge swiftly behind us. We are working well together on the transition and more generally.

**What has the Commission learnt about the online gambling industry it did not know already?**

Obviously during the process of the legislation and in the run-up to go live date we have been heavily engaged in discussions with potential licensees, the trade bodies and other regulators and we have a fair bit of knowledge from the 300 licensees we already had, but I suppose the thing that did surprise us was a lack of readiness on the part of so many would-be licensees. This reflected in part a lack of focus or engagement on the part of many senior managers at what exactly they needed to do and what changes were needed to comply with Commission licence conditions and codes. In some cases no effort had been made to amend terms and conditions; for example, they still referred to the overseas regulator instead of the Gambling Commission. It was clear that neither regulation nor the licensing objectives featured that prominently in those operators' minds. In some cases of course it may have reflected some wishful thinking that the whole thing would be scuppered by the Judicial Review.

**Is there anything the Commission has learnt about how the industry works which it did not know already? Is there anything the Commission might, with hindsight, have done differently?**

We already had a fair bit of knowledge from our 200 existing remote licensees.

In the run-up to the bill being enacted and Nov 1<sup>st</sup> implementation we learned a lot about below the line advertising, the role of affiliates, the length and complexity of the supply chain and about how to explain what we were after. Clearly with the benefit of hindsight some of the material we dealt with in our FAQs could have been dealt with earlier but, as indicated, the devil was in the detail and some of that only emerged as operators engaged fully with us.

### **What is the Commission doing to minimise the black market?**

The main tools to keep the black market minimal are already in place in the form of an attractive open legal market allowing a wide range of products with, compared to many other jurisdictions, relatively little hardwired prescription or regulatory burdens such as real-time data submission or heavy licensing and compliance fees. That hasn't changed with the move to point of consumption regulation.

But recognising the greater incentive to trade illegally that the additional costs of POC regulation combined with POC tax brings, we have bolstered our regulatory framework in a number of ways. We have:

- required B2B network and platform providers which need Commission licences and our B2C licensees to use only Commission licensed software suppliers, deterring the latter from also supplying illegal operators competing for the British market;
- strengthened our capacity to deter, disrupt and, if necessary, take regulatory or criminal enforcement action. We have taken on more technical and expert staff including those with industry and Anti-Money Laundering ("AML") experience;
- improved and streamlined the way we work with payment providers and with those who carry marketing and advertising;
- introduced the Commission kitemark to make it easier for third party contractors and consumers to distinguish legal from illegal operators, and are putting more resources into warning consumers of the risks of dealing with illegal suppliers; and
- developing closer working relationships with other law enforcement bodies and with HMRC as well as with fellow gambling regulators.

The significant payment service providers such as Visa, MasterCard and PayPal have agreed arrangements in place for the termination of acquirer/merchant agreements with those operating illegally - and we are in discussion with others, for example Skrill, which have been receptive on an ad hoc basis even in the absence of such agreed arrangements. We have been encouraging merchant acquirers to check licence status before taking on the gambling merchant.

Others such as Google, Facebook and Microsoft for example have also put in place arrangements to check licence status before taking on new customers. All this seems to be working well.

We have seen no evidence of the threatened move underground or emergence on any scale of illegal websites targeting Britain; of the small number we have seen, some responded immediately to cease and desist notices, others have or are being cut off from accessing the British market by the main payment providers and advertising platforms.

**If a UK licensed operator informs the GC that an operator based in (i) an EEA or (ii) some far flung jurisdiction is accepting bets without a licence, can you talk us through what the Commission can/will do about it?**

First point – do they have evidence that the operator is either advertising or transacting with someone in Britain, for example an email exchange or screenshot.

If so, we send a cease and desist notice while considering if we have any other levers, for example, licensees currently contracting with them or overseas regulators who would be interested in their illegal activities. This is more effective where the operator might want to get a licence from someone reputable at some stage.

We tell the payment providers and main advertisers and talk to HMRC as they would also be avoiding tax - if the server is in Britain we may consider approaching the service provider to stop dealing with an illegal operator.

If after all that they are still active we have the option to prosecute individuals.

**The Government and the Commission have always been adamant that the point of consumption licensing regime has nothing to do with tax. Is your early experience that the Commission is now better placed to regulate the industry and protect UK customers? Is your early experience that the industry is in need of regulation by the Commission?**

Indeed, any documentary analysis of the policy shift to point of consumption will confirm that it was the DCMS, urged on by the Gambling Commission, that proposed the move to point of consumption before the last election and did so for consumer and public protection purposes; the tax changes were prompted by the regulatory changes not vice versa.

There is no doubt in my mind that the Commission is significantly better placed to protect British consumers now. We have oversight of 100% of remote operators selling legally into Britain; all are subject to the same licence conditions and codes which we can amend swiftly in the light of experience and emerging risks.

With the greatly simplified test of legality i.e. having a Commission licence and displaying the Commission kitemark, advertisers and payment service providers such as Visa and PayPal can distinguish illegal operators and refuse to deal with them.

Our leverage over overseas B2B and software suppliers who now require Commission licences helps maintain standards and deters irresponsible or illegal undercutting.

We are starting to get far more comprehensive information on the British market and operators active in it (for example scale of operation, trends in complaints and in compliance breaches). With a significantly larger pool of licensees, we can afford to develop our technical and analytical capacities to make full use of that data, for example in the work we do in relation to sports betting integrity and on securing improved player protection.

Unlike the offshore jurisdictions we are also able to use our information and understanding of the non-remote gambling activities, provided in volume terms to a very great extent by the same licensees, to regulate more effectively in a world of cross selling, common wallets and complex supply and marketing arrangements.

**What is the Commission's main area of interest in the remote regulatory returns? Does the industry have anything to fear?**

We are interested in both what the data tells us about the operator specifically and what it tells us about trends. The protection of player funds data requirement is slightly different, in that they provide both an early indicator of any cash flow problems but also and probably more importantly a deterrent from dipping into client funds to ease cash flow problems.

**Did the industry need Commission regulation?**

An open, competitive gambling market, developing gambling products and services to meet increasingly technologically sophisticated consumers, needs a regulator with the resources and capacity to ensure the market is developing responsibly and to deter irresponsible or illegal competition; and the industry needs a regulator that can work closely with domestic and international law enforcement and other regulators such as Ofcom and provide advice to Government that is soundly based on direct experience of licensees.

The indications are that, as with the non-remote industry, the industry can benefit from the increased informed challenge the Commission can bring – for example in making better use of data and data analytics to mitigate risks on money laundering and problem gambling. And the industry needs 'monopoly' regulation by a single regulator such as the Commission for the development of an online self exclusion scheme and to facilitate the sharing of experience in the domestic market.

**How hard is the Commission looking at the legality of the jurisdictions from which operators are accepting bets?**

As we set out in our FAQs, we are looking hard at the rationale licensees give us for operating in overseas jurisdictions. We don't think it would be sensible to try to become experts in gambling legislation round the world, still less to try to apply it to individual cases – so much depends on exactly who is doing what to who, where.

What we do expect is that an operator actively selling into another jurisdiction would have done the necessary due diligence to satisfy themselves that they are acting properly. And we will look hard at any suggestion that the operator is relying on the jurisdiction not being able to enforce its laws. But we do recognise that there are cases where the law is uncertain or

disputed – many operators have been in that position in European countries where there has been a conflict between European and member state legislation. And there are cases where it is unclear that the jurisdiction wants to enforce its domestic legislation against overseas suppliers. But we are certainly looking carefully into such cases and the supporting arguments from the operator.

**This is an area of huge sensitivity and importance for clients as revenues worldwide impact directly on their ability to compete in the UK market. Cynics may say that lawyers will say anything clients want to hear if the price is right. Can you envisage any circumstances where the Commission might invest some of its new remote revenues on its own independent advice from contentious jurisdictions?**

I think that is unlikely. We have our own in-house lawyers and considerable practice in looking at legal arguments provided by operators – and indeed by their competitors. We do not set out to be experts on overseas legislation especially when so much depends on the actual details of how gambling facilities are provided. This is why we look to the operator to provide us with the results of their due diligence and the answers to any follow-up questions and consider these on a case-by-case basis.

**The new licensing regime is placing a significant regulatory burden on operators as they adapt existing global businesses to the UK specific requirements. The new regime went live on 1 November and the Commission is already proposing significant amendments to the LCCP, security audits, a new national self exclusion database. Is this fair? Is this the level of change the industry can expect in the future?**

As you know our regulatory requirements are largely principles based and aimed at ensuring operators behave responsibly. So I would dispute the extent to which a well-run operator, putting licensing objectives at the heart of what it did, would have to make significant adaptation to meet our requirements.

But I accept there is some increase in regulatory burden in providing information and assurance to the Commission. However, (with the exception of the introduction of the proposals for a national self exclusion database, something widely called for during the course of the POC legislation), the changes to the LCCP, which we see as both fair and necessary, fall largely into two categories:

- those that help protect consumers and the responsible licensed industry from illegal or irresponsible suppliers, for example the introduction of the requirement for Commission licensees to use Commission licensed software providers and to display the Commission kitemark and the requirement to segregate players funds; and
- those that experience has shown are needed to underpin or reinforce existing conditions or codes – for example, the improvement to conditions and codes on AML, advertising and player protection.

We recognise that changes, however much needed and fair, impose some transitional costs so we try to group them and phase in changes so far as possible. But our ability to develop and improve the regulatory framework, through amending LCCP and the associated technical standards in response to experience and changing risks, is something the industry should welcome and expect if we are to keep regulation fit for purpose and maintain public confidence in licensed gambling in a fast moving world.

**The Commission is introducing a new licence condition at the end of March requiring Commission licensed operators to source their gambling software exclusively from Commission licensed gambling software businesses. Is this really proportionate given that operators are themselves subject to UK licensing and directly responsible for the fairness of their gambling products?**

We think so. At the moment overseas software suppliers can supply both legal and illegal operators providing facilities for gambling to those in Britain. Software suppliers based in Britain already have to be licensed. Requiring all Commission operating licensees to use only Commission licensed software suppliers provides:

- a level playing field for those supplying software used in the British market;
- makes software suppliers choose whether to trade with legal or illegal operators; and
- gives the Commission direct leverage to ensure the continued suitability of software suppliers.

Relying only on Commission operational licensees to ensure the probity and compliance of its software suppliers is unrealistic; in many cases the software supplier has far more expertise and/or commercial clout than its client.

**There is widespread public concern in relation to the advertising on television of gambling around sporting events before the watershed. Numerous reviews are in progress. Is there anything you can share with us in relation to the likely outcomes?**

The purpose of the government's advertising review was to ensure that existing controls keep pace with developments in the market, provide adequate protection – especially to children and vulnerable people – and remain consistent with public expectations about gambling advertising.

The four strands in the review went beyond looking again at the industry code on advertising before the watershed and included:

- evaluating the latest evidence in relation to gambling advertising and problem gambling to consider the regulatory implications (CAP & BCAP);

- ASA looking at the proportionality, robustness and consistency of its enforcement action on the gambling rules; and
- the Commission review of LCCP (which includes a focus on free bets and bonuses) to ensure that all gambling advertising continues to comply with the licensing objectives of the Gambling Act 2005.

The ASA and CAP/ BCAP strands have already reported with some proposals for further work particularly in relation to the digital media and the protection of children and a more proactive approach to enforcement and excessive “toughness” in advertisements. We are about to publish our element as part of our LCCP review, which again strengthens the existing requirements on fairness and openness and proposes some further work to strengthen and publicise the marketing codes.

DCMS is still in discussion with the industry over watershed issues but hopes to complete and publish its overall conclusions shortly.

**AML appears an important priority for the Commission and has been the subject of public statements relating to some of the biggest operators in the UK. Can you please outline the Commission’s interest in this area, together with your assessment as to whether the industry is learning from those statements. Is there any greater urgency on the part of the Commission to have the fourth European AML Directive implemented in the UK faster than the two-year deadline for the implementation of such European legislation.**

In brief we have a duty to ensure that crime is kept out of gambling; licensees similarly have obligations under both the Gambling Act and proceeds of crime legislation (POCA) to prevent money laundering, by which the legislation means both cleaning dirty money and spending the proceeds of crime; the latter is probably the more prevalent an issue. Licensees are required to have effective AML policies and procedures.

Various cases we have investigated following criminal convictions for embezzlement suggest that those policies and procedures are sometimes inadequate and/or ineffectively implemented. In addition they tend not to be integrated with social responsibility controls to minimise harm related to problem gambling.

We do not need therefore implementation of the fourth AML directive to drive AML improvements, though implementation will reinforce our current efforts.

**Can you outline the Commission’s thinking underlying enhanced compliance through public statements, rather than licence reviews?**

Although we have had a run of public statements rather than formal licence reviews, they are not in fact alternatives; a formal licence review might well result in a public statement as part of any formal sanction.

Our aim is to improve compliance and encourage the pursuit of the licensing objectives across the industry. We have no interest in wielding a big stick if that is not needed.

Licence reviews can be time-consuming and expensive for both the Commission and licensees. Better if the operator can work with the Commission to establish whether there were shortcomings, whether these could have been and should have been avoided by a well-run responsible operator or whether, for example, some unforeseen risk had emerged or prevention would have required disproportionate controls.

Public statements explaining what went wrong and the lessons to be learned are a way to help the industry understand what they need to do and to remove any excuse of ignorance. Some of the concerns have been expressed by those unfamiliar with the process of public statements but such statements are a very useful tool to share best practice and – importantly – to demonstrate publicly what remedial action has been taken as a result of identified failings

Where the shortcomings are serious, there may also need to be a voluntary settlement removing any financial benefit from the shortcomings and possibly additional payments to the Commission to cover costs and deter others from allowing such shortcomings in their own business. We will only enter into voluntary settlements with operators who are very open with the Commission and have identified and are implementing the action needed to remedy the situation.

It may still be necessary in some cases, particularly if the operator proves resistant, to proceed to the formal licence review of personal and or operational licences which allows the imposition of conditions; for example, third party audit, additional training or experienced staff, more intensive reporting to Commission, remedial action plan and other sanctions, for example, formal warning; revocation of personal licences.

### **Is the approach working?**

Certainly some of the major operators have taken the lessons very much to heart and are now actively looking to improve the way they do things and share their thinking with others. More needs to be done to spread the word to other operators and leave them in no doubt of what needs to be done and the risks to them of not upping their game; we're thinking how best to do this.

We are concerned that while some operators seem to be improving their systems, some appear to be complacent and very reluctant to believe that what has happened to others could happen to them. Unfortunately for some, their complacency is proving to be ill-founded. Our strong advice and encouragement to the industry is to take this seriously and make sure they get to the problem before the Commission does. We are likely to take a pretty dim view of operators who have not made the most of the opportunity to learn from our published casework.

## **What is the interaction between regulatory action against operator and action against individual PMLs?**

One key feature of our approach is that we hold the key personal licensees to account not just the business licensee. It is the people in critical positions that make or fail to make the provision of gambling facilities socially responsible – not corporate entities. So their licences and reputations, as well as that of the licensed entity, are at risk. We think, with some evidence, this helps focus boards' and key executives' minds on the licensing objectives and not to just treat compliance as an add-on.

We are reinforcing this by proposing the largest operators produce annual assurance statements to us explaining how they are ensuring that their policies and procedures are effective in keeping gambling fair and safe for all; we will hold the licensees and key executives to account against those statements as well as using the material to distil and spread good practice

## **What are the present enforcement priorities for the Commission in relation to the remote gaming sector?**

At this very early stage we are concentrating on:

- nipping in the bud illegal advertising of unlicensed sites (to date we've only become aware of eight, some desisted immediately on request, the remainder are being dealt with);
- checking new and continuation licensees for basic compliance with LCCP; for example, display of kitemark, player protection information and controls; security audits and games testing;
- AML casework, partly to inform national risk assessment and implementation of the fourth directive; and
- continuation of efforts in relation to match fixing and sports betting corruption.

## **This is your last ICE as CEO of the UK Gambling Commission. How important is the CEO to the direction and future policy of the Commission and what is your advice to your successor?**

Direction and future policy should come from the Commission acting corporately; its board, informed by the executive, drawing on the growing evidence base and expertise in the Commission and available from external stakeholders – including, but not just, players and the industry, and of course by reacting properly to the changing environment, be that technical or social. So I see the CEO's contribution more in leading the senior team in questioning and challenging to keep the Commission focussed on its objectives and its core values; its policies based on proper dispassionate judgments about the trade-offs involved and in developing and motivating staff to strive for pace and professionalism in everything the Commission does, rather than in pushing any personal policy agenda.

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I'm not going to presume to volunteer advice to my successor. If they are the right sort of person which I am sure they will be, they will be able to build on the Commission's strengths, learn from our mistakes and, in partnership with stakeholders wherever possible, relentlessly continue to improve player and public protection in a changing environment without needing any platitudes from me.

**John Hagan**

**Harris Hagan**

**12 February 2015**