

# WORRYING INFLUENCES ON THE GAMBLING COMMISSION



**Julian Harris**

Partner  
Harris Hagan

**T**he Gambling Commission recently published its annual report and accounts for 2016/17. These, together with a recent speech by Tim Miller, Executive Director, Corporate Affairs and Research at the Commission, provide insight into current and future regulatory policy influences at the Commission. There are some potentially worrying indicators here, which seem to suggest that the Commission is at risk of being led – or leading itself – astray.

It is worth starting with a reminder of the Commission's statutory duties, under the Gambling Act 2005, which are to permit gambling in so far that is consistent with the licensing objectives:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Chairman's message in the Report repeats those statutory objectives, but then refers to "wider contextual aspects that we should not ignore". He then refers to the problem gambling cost to the economy and to individuals and families, the scale of which he claims is poorly understood. He further suggests that public opinion needs to be taken into account. He asks, "what kind of gambling market does Britain want?.....does the country want gambling to be a constantly growing industry operating within a light touch regulatory approach" or, "is the public inclined to be less supportive for growth and increasing its sociability, and more supportive of a tightening of regulations?". He then refers to evidence indicating that "public attitudes to gambling are hardening" with 69% of people believing that gambling is

## << If 39% of the public believe that gambling is associated with crime, what does that actually demonstrate? >>

dangerous to family life, and 55% that gambling should be discouraged. He concludes that public attitudes towards gambling have become less tolerant and therefore that: “this is a trend which we must recognize and will influence our approach to regulation”. In fairness, the Chairman accepts that the scale of gambling related harm is “not at all clear”. On that at least we can agree. However, he then refers to the Commission’s estimate that there are approximately 320,000 problem gamblers and a further 2.5 million at risk of experiencing gambling harm. The Commission intends, he says, in conjunction with the Responsible Gambling Strategy Board, to develop definitions and estimates that “command general confidence”.

Tim Miller spoke at the International Association of Gaming Advisors (“IAGA”) Summit in New York in May, on which David Clifton has commented. In very brief summary, Mr Miller said that the gambling industry needed to perform better both in relation to social responsibility, but also as to its public image, as reflected in the press. He prayed in aid of his comments similarly depressing statistics from the Commission’s survey “Gambling Participation in 2016: Behavior, Awareness and Attitudes”. In particular, these were that 66% of people interviewed thought gambling was unfair and that the industry was untrustworthy, and that 39% believe that gambling is associated with crime. In line with the thinking of his Chairman, Mr Miller said that such surveys would help the Commission determine its regulatory policy

I have grave concern about these figures, the way in which they are being used to influence the way in which the industry is to be regulated and the apparent willingness of the regulator to determine its policy based on the views of the anti-gambling lobby, media tittle tattle and half-baked statistics.

When Tim Miller spoke at IAGA, it was to a room packed not only with lawyers and other advisors, but senior figures representing the global gaming industry, many representing licensees subject to the Commission’s regulation, none were prepared to challenge him or ask a question: understandably so. It falls to those of us who are independent advisors and consultants to voice our concern as to where the Commission and Government may be headed.

Returning for a moment to the Commission’s annual report, it states on page 28 that “our regulatory approach is evidenced led”. I would personally question whether the survey upon which the Commission’s Chairman and Tim Miller place so much weight constitutes reliable evidence. Surveys conducted regularly may be indicative of a trend, but can it really be right that a survey of 4,000 people, or 40,000, or indeed any other number, should dictate the regulation or policy adopted by a regulatory authority set up under statute towards an entire industry? Apart from the now notorious unreliability of opinion polls, highlighted in the referendum and in the last three general elections in the United Kingdom, it seems to me that the unreliability of such evidence can be demonstrated by

the worrying 39% who think that gambling is associated with crime. In reality, that is probably lower than it was 10 or 20 years ago, but, like much else to do with gambling, it is a belief perpetuated by the media, in particular the British press and American film companies, whose portrayal of the industry is generally associated with crime. It seems not to have occurred to Tim Miller and his colleagues at the Gambling Commission that public opinion as expressed by the sample of 4,000 people may have been influenced by media hype, sensationalism and misinformation.

To that point, if 39% of the public believe that gambling is associated with crime, what does that actually demonstrate? The reality is that gambling has been legal in this country since the beginning of the 1960s. Apart from occasional incidents and inevitable regulatory breaches, there has been no serious crime associated with gambling in Great Britain since George Raft, Hollywood film star and mobster, was deported in 1962 and his Club (the original Colony Club) was closed. It took many years for crime to be extinguished from gambling in the United States; it is a tribute to the successful regulation of gambling in Great Britain that it has been generally crime free for more than half a century. If 39% of people still believe that it is associated with crime, it is probably indicative of ignorance on their part, prejudice on the part of the press and lobbying groups and a failure by both Government and regulator to try to set the record straight. And the fact that the public believe something which is untrue does not make it true. If it were true this would be a very serious reflection on the efficacy of the regulator. Frankly, whatever that percentage, how can it predicate any particular regulatory response? It is for the regulator to determine whether there is any crime in the gambling industry and to deal with it irrespective of whether anyone else believes it is there: the erroneous opinion of a section of the general public is irrelevant to the exercise by the Commission of its statutory duty.

Interestingly, only 0.7% of those surveyed identified as problem gamblers, from which the Commission calculate that 1.3% of gamblers have a problem. This very low percentage has been relatively consistent over many years, though if anything it has fallen since 2004, before the passing of the 2005 Act. This fact is at best generally glossed over by the Commission. Instead the Commission now claim that 10% of gamblers – some 2.5 million people – are “at risk” of becoming problem gamblers. It may be that the Commission is clear as to what constitutes “at risk”, and how this number is calculated, but I for one am not aware of it and have seen no explanation. But whatever that may be, without a definition, this estimate is meaningless and serves only to act as a red top or Daily Mail headline: i.e to scare and to cause an over-reaction. One wonders where this will end; after this category, of those “at risk”, will the next on which the industry has to be regulated be those “at risk of becoming at risk” of becoming problem gamblers? Is there not an argument that the moment a

person buys the first lottery ticket, has the first drink or swallows the first pill is the moment they become to some degree at risk of addiction?

Coming back to the Chairman's message and his search for regulatory guidance in statistics, he takes from the percentage of people who believe that gambling is dangerous and should be discouraged, that this must be reflected in the Commission's approach to regulation. How can this be achieved? The Commission's statutory duty is to permit gambling subject to the licensing objectives. Whilst it is true that the Commission also has a duty to advise Government on the provision of gambling, this is a very different matter from its regulatory function. Even in this regard, I question whether its advice should be dictated by a survey of 4,000 people. But the approach to regulation is not a matter that has anything to do with how much people like or dislike gambling. Government by public opinion, otherwise known as the tyranny of the majority, is a dangerous concept; regulation by public opinion is a terrifying one.

Sir Winston Churchill referred to statistics being "like a drunk with a lamppost: used more for support than illumination". No one would expect the Gambling Commission to be a flag bearer for the industry which it regulates. By the same token, no one would claim that the industry is in all respects perfect: far from it. The Commission is fulfilling its statutory duty in seeking to ensure that gambling is conducted fairly and openly. Its recent campaign challenging the fairness of some operators' terms and conditions of business and identifying AML failings is perfectly proper. So too is the Commission's campaign to persuade the industry, or parts of it, to improve its approach to social responsibility measures, and to design tools for players that help them manage their gambling in the new ways that technology makes possible. Raising standards is a laudable aim, but let us not ignore the fact that compliance with existing standards, as reflected in the LCCP, is not a breach of any regulatory requirement. There are times when it seems that every utterance, every publication, every statistic produced by the Commission continues the necessarily one way stream of criticism of the industry.

In particular the press, or sections of it, have for many years waged a campaign against the gambling industry, as have certain religious organisations. Stories designed to scare rather than inform are of course reflected in the figures quoted by the Commission, and now are being used by the Commission to develop policy. We therefore have a vicious circle of misinformation. In pursuing this route the Commission are heading into dangerous territory. Aside from giving the impression that they are perhaps seeking out and using statistics in the way described by Churchill, their policy is dictated by statute; not by surveys, not by the press, not by statistics and not by research into what some group thinks it wants.

It isn't just the use or misuse of statistics that is worrying. In Tim Miller's speech he spoke of how the 2005 Act was actually a "social contract" between the gambling industry and the British public. He stated his belief that: "there is still public support for the existence of gambling as a leisure activity but growing concern about the way it is being offered." And asked: "Society wants to change the terms of its contract with the gambling industry. The question is 'Are you ready?'" Interesting though Tim's foray into questions of jurisprudence and sociology were, they are not the stuff of which regulators should speak; it goes beyond their remit as regulators. In any event, the argument is obviously flawed. The

suggestion was being made that the industry needs to change. However, if it were the case that the 2005 Act is a social contract, which I do not accept, and if that contract requires change, then that can only properly be achieved by changing the Act.

Tessa Jowell, then Secretary of State, in her introduction to "A Safe Bet for Success", the Government white paper setting out its intentions prior to the 2005 Act, referred to wanting to see a successful gambling industry: "...building on its existing reputation for quality and integrity...". Clearly much has changed since then, as the Commission would have us believe. But I ask whether this is the reality, or a chimera. Most of the industry is compliant with the law, regulations and the LCCP. If and when licensees are not compliant, it is for the Commission to address that by appropriate means in pursuit of the licensing objectives. If it decides to pursue other objectives based on its perceived interpretation of public opinion, and half-baked sociological and jurisprudential theories, it is in danger of stretching those licensing objectives to breaking point.

So what should the Commission be doing? In my view, there is plenty to do regulating the largest gambling industry in the world, without seeking new and additional issues with which to grapple, or perceived new faults to criticize, especially when garnered from the pages of the press or research. The industry is constantly being urged to talk to its customers, a mantra repeated by Tim Miller. Of course it does so, all the time, as any successful industry would. Can the Commission say the same about its informal discussions with the industry? I would recommend that the Commission spend more time developing an understanding of the industry and how it operates.

I might also add that perhaps, just occasionally, and in terms that are not too gushing, the Commission might just draw attention to the fact that it does such a good job that this industry is better regulated, better conducted and more trustworthy than many others that have appeared in the news recently. Oh, and it also pays its taxes! :: **CGi**



## JULIAN HARRIS

Recognised as a leading expert in national and international gambling and licensing law, Julian Harris is highly regarded by both operators and regulators throughout the world. Harris Hagan is the first and only UK law firm specialising exclusively in legal services to the gambling and leisure industries.

With over 30 years experience of gambling law Julian has advised some of the world's largest gaming industry corporations. He and his team have also advised governments, trade associations and private equity houses in both online and land based gaming.

Julian is an experienced advocate, a respected and sought after conference speaker and author. He is recommended in all guides to the legal profession, and has been described by Chambers Guide as "the best gaming lawyer in London". Harris Hagan was awarded "Gaming Law Firm of the Year" in 2013. Julian is past President of the International Association of Gaming Advisors.