n 1st November 2014, the day on which the Gambling (Licensing and Advertising) Act 2014 came into force, all gambling operators with facilities capable of being used in Great Britain were required to hold a licence from the UK Gambling Commission (the Commission). Since that day, many of the operators that wished to continue to operate in the lucrative UK market have succeeded in bearing the additional regulatory burden – some choosing to merge with competitors in order to consolidate operations, and others piggy-backing on third party licences through turnkey white label solutions. However, two years on, the Commission is consulting on its enforcement strategy and spurring further change within the sector. But, why is change still needed, and what else do operators need to do to comply? In this article, Gemma Boore discusses the new enforcement regime, the reasons why it is being introduced, and its implications for the sector.

Why is change needed?
It's undeniable: the UK gaming industry is under serious scrutiny. 2017 sees the sector in the midst of three ongoing investigations. The UK’s Department of Culture Media and Sport (DCMS) is undertaking a review of gaming machines and social responsibility measures, the Competition and Markets Authority (the CMA) is investigating whether operators are treating their customers fairly, and the Information Commissioner’s Office (ICO) is targeting more than 400 companies that it believes to be illegally using people’s personal details to promote gaming sites. To top it all off, businesses operating in the sector also need to consider the implications of the transposition of the 4th Anti-Money Laundering Directive on current operations, work out how best to deal with the changes to the treatment of ‘free plays’ for remote gaming duty purposes later this year, and keep on top of possible changes to the VAT regime. Rather a lot to be considering on top of the usual operational concerns…

The gaming sector is however, not alone in its plight. Ticket reselling (or ‘ticket touting’) businesses are facing investigations from both the CMA and Her Majesty’s Revenue & Customs, the energy market is under scrutiny as ministers condemn suppliers’ price hikes, and the UK’s financial watchdog, the Financial Conduct Authority, is reviewing the £2.7bn peer-to-peer crowdfunding sector for the second time in two years following widespread concerns over whether consumers who lend and invest money on such platforms truly understand the risks.
As many will have noticed, the common theme amongst these ongoing investigations is treatment of the consumer. Since the introduction of the Consumer Rights Act in October 2015, there has been an increased focus on industries that are deemed not to be at the frontline of consumer protection, and the gaming industry is firmly amongst them. The reasons for this are readily apparent. According to the Advertising Standards Authority, remote operators are routinely amongst the top ten worst offenders for spamming and last year, the Commission received over 40,000 emails and nearly 37,000 phone-calls from the public concerning the activities of gambling-related companies, representing "well over 300% [increase] on the last two years".

The influx of complaints has not gone unnoticed, and the Commission is now insisting that the sector does more to put the consumer first. It has been instrumental in working with DCMS, the CMA and the ICO in their respective investigations and, in her recent public addresses, CEO Sarah Harrison has repeatedly told operators that consumer protection should be their priority. In particular, at the Raising Standards conference in November last year, Harrison suggested that, although the sector is moving in the right direction, the pace of change needed to quicken to bring it into line with consumer-facing businesses in, for example, the financial services and retail sectors. Her core message was that organisations need to take steps now to prevent events akin to the banking crisis and the Volkswagen emissions scandal occurring and damaging public trust. As Harrison put it: "Don't wait for a crisis to happen that shakes the very foundation of customers' trust in your industry: act now and demonstrate to consumers that your interest in their needs is genuine".

So, what needs to be done?
The Commission's message is that, ultimately, the industry needs to increase the trust and confidence that consumers have in gaming. Not only should customers be able to get the best prices and the best experience gambling online, but they should also be well informed, treated fairly and kept safe - in particular those who are vulnerable to the risks and realities of gambling-related harm.

In order to achieve this, the Commission has advised licensees to assess, amongst other things: their social responsibility, how fairly they are treating customers and their anti-money laundering practices.

1. Social responsibility
The Commission wants the sector to review its social responsibilities and take measures to achieve them. At last year's Responsible Gambling Trust conference, Harrison set out five initiatives that the Commission would look for from the sector:
   • Clarity of purpose – is the work operators are doing on social responsibility aimed at preventing harm – or just dealing with it where it is already occurring?
   • Evaluation – how will sector assess the impact of measures and share findings?
   • Added value – are operators doing the minimum, or taking their responsibilities further?
   • Customer focus – are businesses considering every aspect of the customer journey?
   • Transparency – will operators take stakeholders with them, and be open about the inputs to their work, as well as the conclusions and actions?

2. Treating customers fairly
The Commission wants licensees to move focus away from the bottom line and take a more customer-focussed approach. The influx in customer complaints over the past 12 months demonstrates that there are serious issues to be addressed and, although some of these issues will be considered during the DCMS, CMA and ICO investigations, the Commission wants to see the sector step up and drive standards now. A further review of current practices and requirements with regard to complaint processes is also planned, so operators would be well advised to take a proactive stance and ensure adequate policies and procedures are in place before the review commences later this year.

3. Money laundering
Money laundering has been an area of concern in the sector for years. However, Harrison revealed that the Commission's recent casework into AML standards showed "a lack of curiosity, and at worst, a leadership culture which puts commercial gain over compliance". The Commission therefore wants licensees to adopt a more risk-based approach and stop waiting until a source of funds is proven to be illegal before taking action.

Sharpening the regulatory toolkit
In order to regulate existing licensees more effectively and reprimand entities that knowingly flaunt the licensing objectives, the Commission is consulting on proposed changes to its enforcement strategy. The consultation paper
(released in January 2017) sets out proposals for how the Commission will ‘sharpen’ its regulatory toolkit to encourage a faster pace of improvement within the sector. As well as emphasising the Commission’s expectations in terms of operators putting consumers first, the proposed changes will affect four of the Commission’s guidance documents.

1. **Statement of Principles for Licensing and Regulation**

   The statement of principles for licensing and regulation sets out the principles that the Commission applies when exercising its regulatory functions. Of note, the Commission has revised paragraph 2.7 so, in future, it will only ensure not to impose “unnecessary regulatory burdens” in upholding the licensing objectives: a lesser requirement than the current statement, which requires the Commission to impose the minimum burden necessary. Wording in paragraphs 4.5 and 4.6 that previously suggested that, although the Commission would commence investigations in connection with complaints, it would not necessarily conduct licence reviews, has also been removed. Indeed, all references to “voluntary settlement” have been replaced with “regulatory settlement” (as the Commission considers that these words more accurately reflect the process and outcome of negotiations in enforcement proceedings) and the revised statement is clear that, going forward, methods that stop short of formal licence reviews (such as the newly named regulatory settlements) will only be considered in “certain, limited, circumstances”.

2. **Licensing, Compliance and Enforcement under the Gambling Act 2005: Policy Statement**

   The policy statement is intended to be read in conjunction with the above statement of principles and sets out the Commission’s regulatory policies in relation to assessing risk, licensing operators and key personnel, carrying out compliance activities and regulatory and criminal enforcement. The key changes are concentrated on chapter five (which has indeed been renamed “Regulatory enforcement” instead of “Dealing with non-compliance”) and, in essence, communicate the Commission’s revised approach - in that it will move away from entering into settlements with non-compliant licensees as a matter of course and move back to a position where it has discretion on how to approach instances of non-compliance, including by way of licence review. There is new guidance on revocation of approval for test houses where there are repeated failings by an approved test house to prevent non-compliant products entering the market and the revised statement also clarifies that, even where a licensee surrenders its licence whilst a licence review is under way, the Commission may nonetheless continue its investigation and publicise the results.

3. **Statement of Principles for determining Financial Penalties**

   The statement of principles for determining financial penalties sets out the principles that the Commission applies when it uses its powers to require licence holders to pay fines. The amendments proposed in the consultation clarify that (a) financial penalties can apply to both holders of operating licences and holders of personal licences, and (b) the statement of principles will apply both where the Commission exercises its powers to impose a financial penalty and when the Commission accepts a payment in lieu of a financial penalty as part of a regulatory settlement.

   The list of matters that the Commission will consider when determining whether to exercise its powers has also been expanded, to include (i) whether the breach is an example of repeat behaviour, (ii) whether the Commission has previously publicised its investigations in connection with similar cases with the intention that lessons should be learned by the industry, and (iii) the timeliness of any admissions being made by the licensee and actions taken to remedy the breach - with the intention being to encourage earlier disclosure of relevant facts, and admissions, during the investigation process by giving more credit (and reduced fines) to licensees making such disclosures. Further amendments also seek to ensure that, conversely, heavier penalties will be imposed on repeat offenders who show failures to report breaches, take remedial actions, or learn from their mistakes going forward, and there is new guidance on how monies obtained from regulatory settlements (which do not need to be paid into the Consolidated Fund – essentially the UK Government’s general bank account) will be deployed.

4. **Indicative Sanctions Guidelines**

   The indicative sanctions guidance is a new document introduced by the consultation, which sets out a framework for decision-making about regulatory enforcement and
the possible financial and other sanctions that could apply. Of note for potentially uncompliant licensees, it sets out clear criteria for determining the amounts of financial penalties and settlements – including by applying discounts to the financial penalty element of a fine where licensees have made early disclosures, made admissions, and cooperated with the Commission’s investigations.

The consultation paper contains more detail on the Commission’s proposals and interested parties are invited to respond in writing by 21st April 2016 using an online form. If you or your clients intend to submit a response to the Commission in connection with this or any other matter, you should consider taking proper advice on the implications of the proposed amendments on your business and/or liaising with other representatives in your sector to submit a joint response.

The FutGalaxy saga

The amendments proposed in the consultation paper have yet to take effect, but as the following case clearly demonstrates, the Commission is not going to hold back from pursuing the prosecution of unlicensed offenders, particularly where their activities are presented as real gambling products, involve a stake or are aimed at children.

The Commission’s recent action against Craig Douglas, aka NepentheZ, and co-defendant Dylan Rigby (which is covered in more detail elsewhere in this journal) has been cited as the most serious case investigated by the Commission to date and is likely to be a sign of things to come. The prosecution centred on the offenders’ operation of www.FutGalaxy.com, a website which allowed its customers to buy virtual currency called FUT coins and use them to gamble on a variety of products including sports betting, a jackpot style lottery game, and a ‘higher or lower’ style game. FUT coins could also be converted into FIFA coins, which could in turn be sold for real money. Evidence presented during the trial included a video of Douglas on his YouTube channel saying to the camera: “You don’t have to be 18 for this, because this is a virtual currency.”

In other words, the defendants encouraged children to use the site in order to gamble. The Commission was successful in its prosecution and Judge Jack McGarva ordered Rigby to pay £174,000 in fines and costs, whilst Douglas was ordered to pay £91,000.

Conclusion

Since the introduction of point of consumption regulation, the Commission has faced an astronomical increase in the number of licensees subject to its remit. It has therefore pooled its resources by bringing potential issues to the attention of watchdog organisations and government departments, such as DCMS, the CMA and the ICO, resulting in a plethora of investigations into all different types of activity in the sector, along with a consultation on how best to take action against operators that don’t conform to the new norms. In summary, the increased scrutiny into market practice is not a passing phase and, in this author’s opinion, the scope for future reviews seems likely only to expand. Businesses operating in the sector will do well to take a step back now and consider how their current practices appear to ‘Joe Public’, what effect their operations might have on children and other vulnerable people, and what steps they can take to prevent harm before it happens. If the industry keeps looking through a prism of self-interest and doesn’t take steps now to put the consumer first – it will face the consequences.