

# chapter thirty three

## Powers and Functions of the Gambling Commission

33.1 In chapter 18, we have set out our proposals that a single regulatory body - the Gambling Commission – should be established. This chapter considers the powers and functions of that body.

33.2 The Gambling Commission will have to deal with the following:

- threshold controls
- ‘fit and proper’ tests on operators and employees
- controls over the conduct of gambling
- monitoring to ensure compliance
- illegal gambling.

33.3 Some of this is new, but much will build on the current functions and procedures of the Gaming Board for Great Britain.

33.4 We have said in earlier chapters that it is important that those who run and work in the gambling industry should be honest and competent. That means that the hurdle should be sufficiently high to weed out those who do not meet the criteria. The Gambling Commission must have the ability properly to test the probity and competence of applicants. This means that the Commission’s staff must between them possess a broad mix of skills including investigation, law, administration, specialist skills, such as finance and information technology, and knowledge of the individual sectors of the industry. In chapter 34, we make some assessment of the likely workload of the Commission.

### Exchanging information

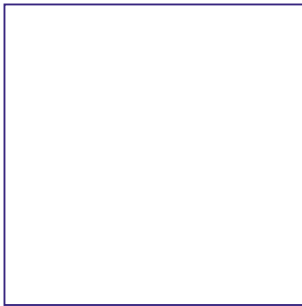
33.5 The exchange of relevant information is central to the ability of the Gambling Commission properly to assess the suitability of applicants for licences and to monitor the conduct of gambling. We have been concerned to learn that, following implementation of the Police Act 1997, there appears to be some doubt as to whether the Gaming Board can be regarded as a “law enforcement agency” within the terms of section 2 of the Act and that is impeding their ability to give and receive information. The status of the Gaming Board is not something on which we can make recommendations, but it is essential that the Gambling Commission should be authorised to exchange information with law enforcement and regulatory bodies, both in the United Kingdom and overseas.

33.6 The organisations with which the Gambling Commission will need to communicate freely include the National Criminal Intelligence Service, individual police forces, Customs and Excise, the Inland Revenue, the Stock Exchange, the Financial Services Authority and local authorities (in relation to their licensing and enforcement duties). It is crucial that the Gambling Commission should have access to intelligence information as well as factual information relating to applicants for licences, and their associates. In our view, it would be absurd if another agency held information to suggest that gambling was not being, or would not, be conducted in a fair manner and free from crime and could not share it with the Gambling Commission. **We recommend that the Gambling Commission should be empowered to share and receive information with all relevant law enforcement and regulatory bodies.**

33.7 In addition to these domestic agencies, the Gambling Commission will be the natural port of call for its equivalents in other jurisdictions. Gambling is an increasingly international business and it is likely that some operators will be licensed in several countries. In those circumstances it is important that relevant information is shared. The need for probity transcends national boundaries. **We recommend that the Gambling Commission should be able to exchange information with, and make enquiries (on a reciprocal basis) on behalf of, gambling regulators in other jurisdictions.**

33.8 We have recommended in chapter 19, that the Gambling Commission should be regarded as a registered body under the Police Act 1997, so that it can receive information arising from enhanced criminal records disclosures. In addition to the checks made at the time a licence is granted, the Gambling Commission must be able to make ad hoc criminal records checks. For example, there could be information to suggest that a worker or associate had subsequently been convicted of a relevant offence; or an individual may stay in the same place for a long time and unless there was a free-standing power to conduct criminal records checks a request for up-to-date information would never be triggered. **We recommend that the Gambling Commission should be able to make criminal records checks on individuals at periodic intervals or when concerns arise.**

33.9 The enquiries that may be made in relation to prospective gambling operators or workers are intrusive. As with the financial services industry, this is



something that applicants must accept as a necessary part of regulation. It goes without saying that every applicant must co-operate fully with the Gambling Commission and that failure to do so would result in the application being rejected. We would not expect such a requirement to cause problems and we understand that no difficulties have been experienced by the Gaming Board. The gambling industry is, we believe, peculiar in that it is an industry that wants to be regulated, because it recognises the commercial benefits of operating in an area that is proven to be well run and free from crime.

### Monitoring to ensure compliance

**33.10** The Gambling Commission will subsume the duties of the Gaming Board in relation to inspections of casinos, bingo clubs, gaming machine suppliers and lotteries; and will take over the regulatory functions of the National Joint Pitch Council. In addition, it will take on responsibility for off-course bookmakers, betting at greyhound tracks, pools competitions and lotteries currently regulated by local authorities, and will be regulating on-line services.

**33.11** The Gaming Board currently carries out inspections of casinos, bingo clubs, some gaming machine suppliers and lotteries. The National Audit Office<sup>1</sup> recommended:

*The Gaming Board should develop more formal, systematic techniques for assessing risk in the different sectors of the industry. In deciding on the frequency of regular inspections, it should take into account, for example, the outcome of previous inspections, the results of the operator's own compliance activities where these are available, any significant changes in turnover, and the quality and experience of the operator's management and staff. Over time, the frequency of regular inspections should also take into account the coverage provided by the Board's introduction of major reviews, thematic inspections and head office inspections.*

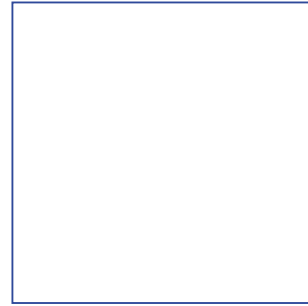
**33.12** Risk assessment will be important in ensuring that the Gambling Commission's resources are properly directed, particularly if the industry expands significantly as the result of our recommendations. It will not be possible to inspect operators purely on a routine basis: the Commission's resources will not be unlimited.

**33.13** We envisage that the Gambling Commission would carry out intelligence based inspections, including head office inspections. This will mean that Commission staff will need to have skills such as accountancy and knowledge of the industry to carry out these duties effectively.

**33.14** As far as on-course betting is concerned, the NJPC currently employs some twenty field staff, including

three intelligence officers. There is at least one (and more usually two) NJPC betting manager at each race meeting. As well as their regulatory functions, they carry out what may be regarded as administrative tasks, such as instructing bookmakers where to stand. The Home Office has already suggested<sup>2</sup> that administrative duties of this kind need not be carried out by a regulator: we agree. In addition, it will not be appropriate, or practical, for the Gambling Commission to be present at every horse and greyhound race meeting. The racecourse or track operator will have an obligation to ensure that the right environment exists for betting to be carried out in a proper manner and, of course, every bookmaker will be licensed by the Gambling Commission. Much the same recommendation as the National Audit Office made in relation to the Gaming Board's inspections could be made in respect of on-course betting. The risk assessment may take a little longer to develop because there is no background of regulation of this kind in racing. **We recommend that the Gambling Commission should develop techniques for assessing risk and target its resources appropriately.**

**33.15** In addition to its proactive role in inspecting operators, the Gambling Commission will also have to be able to respond to public complaints. We do not think that the Gambling Commission should have a formal role in resolving complaints from the public about, for example, disputes on individual bets. The Independent Betting Arbitration Service exists to help resolve betting disputes, and we would hope that other sectors of the industry would be prepared to help develop and to support similar initiatives. However, in some cases the nature of a complaint may go to the heart of the conduct of the gambling and may cast real doubts on the operator's suitability to retain his licence. In those circumstances, it would be wrong for the Commission not to take account of the complaint and to take enforcement action if that is appropriate. In many cases, a complaint of this kind may be the only warning that something is amiss, particularly if the gambling activity is one that is less tightly regulated such as a lottery. There is also a role here for local authorities to pass on details of persistent complaints, for example about the poor management of gambling premises. It is important that the public should be aware that they are dealing with a regulated industry and that there is someone to whom comments can be made about an operator's suitability. **We recommend that the Gambling Commission should take steps to ensure that the public, and in particular punters, are made aware of its role and responsibilities.** It could, for example, require operators to display a notice saying that they are regulated by the Gambling Commission and giving a contact address and telephone number.



33.16 To enable the Gambling Commission to carry out its functions it will need to have more powers than the Gaming Board has currently. The Gaming Act gives the Board only limited powers of investigation and it cannot prosecute offences in the courts. A number of those who have submitted evidence to us have pointed out that the police do not have the resources or the expertise to investigate gambling offences, whether they be technical breaches of the regulations or blatantly illegal activities. The police themselves acknowledge these difficulties.

33.17 The Jockey Club suggested that the solution was a specialised police unit. We do not think that is a realistic option. Police officers are an expensive resource and there are many other demands on them. That is not to say that the police should not have a role to play in investigating gambling offences. We envisage that police officers could be seconded to the Gambling Commission for a term of duty and the Commission could include amongst its staff former police officers, who can bring with them a wealth of investigative experience. Although, we should again emphasise that investigative skills are just one of the many skills that the staff will require between them.

33.18 As far as prosecutions are concerned, the NAO report describes how the Gaming Board had consulted ACPO and the Superintendent's Association about seeking authority to investigate and prosecute offences under the Gaming Act 1968. Neither offered any objections in principle. The NAO suggested that the CPS would need specific statutory authority to prosecute cases investigated by the Gaming Board. **We recommend that the Gambling Commission should have powers to commence a prosecution – that is, to apply for a summons at the magistrates court or charge, if the police had arrested the offender, and to prepare a prosecution file – before passing the case on to the CPS to conduct the prosecution.**

33.19 To enable the Gambling Commission to come to the point where a prosecution can be commenced, it will need to have powers to investigate offences under gambling legislation. Specifically, Gambling Commission "inspectors" should have powers of entry, search and seizure. **We recommend that (a specified category of) Gambling Commission staff should have powers of entry, seizure and search.**

### Illegal gambling

33.20 The powers of entry, seizure and search are relevant not just to those operators who have chosen to work within the regulatory framework, but also to combat illegal gambling. We have set out in chapter 15, our understanding that the enforcement of the law is

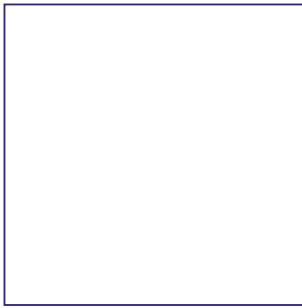
patchy or, more often, non-existent. The powers we have recommended in the previous paragraph would, for example, allow the Gambling Commission to take action against illegal bookmakers who operate on or off-course, or to confiscate illegal or unlicensed gaming machines.

33.21 As far as illegal gaming is concerned, we note that the Rothschild Commission paid particular attention to the fact that the games played illegally were not usual casino games. It encouraged the Gaming Board to accommodate such gaming within its approval for casino games. **We endorse the Rothschild Commission's eagerness to accommodate particular types of illegal gambling in order to bring the activity within the law.** Our recommendations in chapter 24 relating to the authorisation of casino games would enable a much broader range to be approved and this may help to reduce the allure of illegal gaming.

33.22 The Rothschild Commission also paid particular attention to the nature of Chinese gaming. Indeed the report includes an interesting explanation of Chinese gaming. We acknowledge that it is much easier to accommodate a particular game than it is to accommodate the type of gambling that is organised within a community, often in the back room of a café or club. We think it is unlikely that prosecuting this kind of illegal gambling will become a police priority. Indeed we acknowledge that taking enforcement action against such activity may make other community policing efforts more difficult. But we think some adjustment must be made to the present arrangements to ensure that the law does not fall into disrepute.

33.23 Elsewhere in this report we have advocated that the Gambling Commission should have the necessary powers to investigate and prosecute those who operate illegal gaming machines, including the power of entry and seizure. We believe that the Gambling Commission should have similar powers in relation to other illegal gambling. **We recommend that the Gambling Commission should have the responsibility to detect and prosecute illegal gambling together with the necessary powers of entry and seizure.**

33.24 We acknowledge that the practical investigation of such offences and in particular the identification of the organisers is often difficult and sometimes requires the arrest of those involved in order to ensure true identification and facilitate prosecution. We have considered whether a power of arrest should be given to the staff of the Gambling Commission but have decided that it is not appropriate to do so.



33.25 We are also aware that in some circumstances it is necessary for force to be used in entering premises and in order to keep the peace during such activities. We believe that the Gambling Commission should have the opportunity to call on police support where arrest powers or the use of force to gain entry are necessary. The Gambling Commission should have a duty to consult the police in those circumstances. Such consultation will be necessary to ensure that the overall interests of a local community are taken into account.

### Penalties

33.26 The Gambling Commission must have available to it a range of penalties in addition to the two extremes currently available. The options open to the Gaming Board are that it can take no action, other than a warning letter, or can object to a licence or revoke a certificate. In contrast, the Gambling Commission will need to have available a range of administrative penalties to deal with regulated operators. In addition, prosecution will be the usual sanction for illegal operators and for other breaches of such magnitude that criminal prosecution is the only appropriate course of action.

### Penalties following convictions under gambling legislation

33.27 As far as illegal gambling is concerned, we understand that under the present arrangements the courts are often loath to impose more than small penalties, particularly if they believe that the ultimate beneficiary of the illegal activity has evaded prosecution. We also recognise the inalienable right of the courts to impose penalties according to their own discretion. Nevertheless we can see that in some cases derisory penalties do not assist the enforcement of the law and may play an important role in bringing the law into disrepute. **We recommend that the Gambling Commission and the courts should engage in a dialogue to ensure the proper and effective use of prosecution.**

33.28 We are aware that there is no current power to “close down” premises where illegal gambling takes place. As a result the powers of the authorities are less than effective. It is often the case that after a sometimes lengthy and costly investigation and prosecution, the premises continue to operate requiring a repeat of the expensive process. We believe that after conviction it would be appropriate to declare that the premises must not be used for gambling of any type. This would be similar to the power that has been introduced in the Criminal Justice and Police Act 2001 which enables the court to close down premises used for illegal drinking.

**We recommend that the courts should have the power to close down premises used for illegal gambling.**

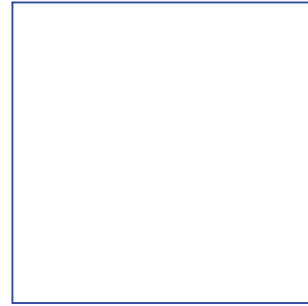
### Administrative penalties

33.29 To operate successfully the Gambling Commission must be able to impose effective sanctions. Losing a gambling licence is a very heavy penalty. It may amount to a loss of livelihood. Ultimately the regulator must be able to resort to this sanction, but that should be reserved for the worst kinds of breaches; no penalty should be imposed lightly. One of the regulator's functions must be to offer advice on compliance to help operators understand their responsibilities and, where necessary, to work with them to resolve problems. That is not to say that it should be the Gambling Commission's role to carry out the industry's compliance work for them: but rather that enforcement action should not be the first time that an operator is aware there is a problem.

33.30 We were interested to learn that in relation to its functions under the Data Protection Act, the Office of the Information Commissioner operates a system of formal cautions. In such cases, the individual must agree to accept the caution and accept that they have breached the regulations. If a further breach is committed, the formal caution is admissible in court. We suggest that the Gambling Commission could introduce a similar system. This would be more effective than a simple warning letter, because in addition the operator or licence holder would be required explicitly to accept that there had been a breach. If that understanding and acceptance were not forthcoming, that would itself suggest that more serious enforcement action was justified.

**We recommend that the Gambling Commission should, as the lowest sanction, adopt a system of formal cautions. The caution (allowing time for it to be “spent”) could be cited subsequently if higher sanctions are employed, up to and including prosecution.**

33.31 As the next step up in enforcement action, we have considered whether the Gambling Commission should be able to impose fines on those it regulates. We asked the British Casino Association for their views on this when they came to give oral evidence. Having considered the issue, the BCA told us that they would not support fines, because the factors involving quantum would be complex and the regulator would be in constant dispute in relation to the fairness of the fine. They instead suggested that there should be a formal endorsement procedure, similar to traffic offences, with time expiring sanctions and a right of appeal. The BCA objections to a fine system have some force, but we do not think they are insurmountable.



We are, however, attracted by the suggestion that there should be a system of endorsements. Such a system need not be incompatible with fines and formal cautions. It would also be similar to the “three strikes and you are out” system proposed for liquor licences. **We recommend that the Gambling Commission should develop a system of endorsements, which if breaches persisted could lead up to removal of a licence.**

**33.32** Gambling regulators in some other jurisdictions may levy fines. For example, in Nevada the State Gaming Commission may impose fines. In doing so they must take into account a number of factors including: the nature of the breach; previous disciplinary action; any mitigating factors; the size of penalties imposed on other operators for similar violations; and the extent to which the amount of any fine imposed would punish the respondent for the conduct and deter future violations<sup>3</sup>.

**33.33** In the United Kingdom, the Financial Services Authority has the power to impose financial penalties on regulated persons whom the Authority considers to have contravened a requirement imposed on them under the Financial Services and Markets Act 2000<sup>4</sup>. In determining the amount of the penalty the Authority must have regard to:

- the seriousness of the contravention in relation to the requirement contravened
- the extent to which that contravention was deliberate or reckless and
- whether the person on whom the penalty is to be imposed is an individual<sup>5</sup>.

**33.34** We consider that financial penalties would be a valuable addition to the range of sanctions available to the Gambling Commission. We accept that establishing such a system would not be straightforward and we would not expect the Gambling Commission to have to levy a fine on anything other than an exceptional basis. The fact that there is a high hurdle to entry to the industry; that thereafter advice on compliance will be issued; and that other less drastic measures may first be employed will mean that fines would be rarely used, but nonetheless valuable. **We recommend that the Gambling Commission should be empowered to impose financial penalties on regulated persons who fail to comply with the requirements of gambling legislation.**

**33.35** Clearly any penalty (of whichever kind) that is imposed by the Gambling Commission should be just, transparent and subject to appeal. We have discussed in chapter 19, the appeal procedures that might be introduced in relation to decisions on the grant of personal licences and we have proposed that a Gambling Appeals Tribunal should be established to hear those appeals. **We recommend that the same body (the Gambling Appeals Tribunal) should determine appeals against penalties imposed by the Gambling Commission for disciplinary matters.**

<sup>3</sup>-Regulations of the Nevada Gaming Commission and State Gaming Control Board, Regulation 7.240. <sup>4</sup>-Financial Services and Markets Act 2000, section 206.  
<sup>5</sup>-Financial Services and Markets Act 2000, section 210.