

Power Presentation: Enforcement



Niki Stephens, Partner

Gambling
Commission

Consumer Protection

New ASA Guidance
“strong appeal” test



Gambling Commission

- Continued commitment to reducing gambling related harm
- Tackling clearly unaffordable gambling
- Changes to the LCCP (September)
- Upcoming supplementary consultation (thresholds)
- Andrew Rhodes, CEO (Westminster Media Forum 2022): *“We will escalate the penalties for failings if we don’t see the industry start to consistently live up to our standards”*
- Financial penalties /settlements not considered sufficient deterrent
- Expect to see more suspensions (short and long-term) and revocations
- Use of sanction ‘packages’ including licence conditions

- Repeat ‘offenders’ beware
- Full board oversight and accountability (PMLs)
- Preparation is key – update policies – run internal audits on accounts (top and spot checks)
- Be prepared to hold regulator to account procedurally / evidentially where appropriate
- Be mindful of limitation periods
- Response to consultation on changes to Licensing, Compliance, and Enforcement Policy:
 - Formalisation of special measures (divestment and threat of review)
 - Regulatory settlement (not available after responded to preliminary findings)
- Intending to consult on how to further strengthen enforcement work
- Last but not least...change in approach to delayed change of corporate control applications



Consumer Protection

- 2016 – 2018 CMA investigation and enforcement
- Resulted in the ‘Undertakings’
- Gambling Commission recent guidance update: Fair and transparent terms and practices
- Department for Business, Energy and Industrial Strategy (BEIS) [consultation response](#)
- Strengthening of CMA investigative and enforcement powers
- Penalties for failure to comply with investigative measures of up to 1% of annual worldwide turnover, and up to 5% of annual worldwide turnover for failure to comply with enforcement measures (such as undertakings or commitments) – plus penalties of up to 5% of daily worldwide turnover for the duration of non-compliance
- Direct enforcement of certain consumer laws by the CMA (which laws TBC)
- CMA may issue fines of up to 10% of global turnover if a business breaches such laws



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PREVIOUS RULE

Marketing communications / advertisements for gambling must not be likely to be of **particular appeal** to children or young people



NEW RULE

must not...be likely to be of **strong appeal** to children or young persons

PREVIOUS GUIDANCE

Gambling ads must not appear in media where children or young people make up a significant proportion (more than 25%) of the audience or feature persons with a following made up of more than 25% under 18



NEW GUIDANCE

Irrespective of appeal to adults. Marketers must satisfy themselves to a high degree of confidence that the ad is **unlikely to appeal strongly** to under-18s before it is published

It was already difficult to use footballers: endorsement rules; under 25; passing off issues; and now strong appeal test...



Rules prohibiting inclusion of a child/young person in marketing communications / advertisements or featuring anyone who is or seems to be <25 gambling/playing a significant role **still apply BUT...**

Previous exemption (featuring under-25s when illustrating bets, where bets can be placed through direct transactional facility) - now also: (a) **the <25 person must comply with the criteria in the exemptions;** or (b) **age-verified audience**

- 1 October 2022
- Beware: [appeal can change over time](#) – e.g. new brand endorsement or TV appearance
- Do contracts include appropriate information requirements to enable ongoing assessment?
- Termination rights and limitations on liability if contract must be terminated for regulatory reasons
- Restricting other activities not realistic - notification obligations in event of new deals, TV appearances etc.
- Share guidance with marketing teams and provide training (keep records)
- Share guidance with affiliates, influencers and brand ambassadors
 - Remember: you're responsible for the activities of third parties
 - LCCP SRCP 1.1.2 - conduct; provision of information; termination rights
- Note: rules also apply to responsibility messaging and social media posts

THANK YOU FOR LISTENING

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