

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Independent Review of the Regulation of BetIndex Limited - [REDACTED]  
**Date:** 22 July 2021 15:44:18

---

Thanks [REDACTED],

Not sure, but I think the numbering has gone awry below and your response to Q4 is actually to question 5 on the sheet?

In any event, please see my views below.

Kind regards

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, July 22, 2021 2:18 PM  
**To:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: Independent Review of the Regulation of BetIndex Limited - [REDACTED]  
[REDACTED]  
**Importance:** High

All

Apols if I have missed anyone off this email – please forwards on if I have.

[REDACTED]  
[REDACTED] Note we can supply written responses which I would wish to do so given the detail of some of the queries.

Could you have a look at the qs so we can start thinking about responses with a view to getting response out in the first half of next week.

My quick summary would be:

1ai – this scenario per se would not make it unfair and subject to refusal. In a comparable

scenario operators can change odds. Further fair and open is one of the aspects of the ongoing live case so we will need to ensure we do not pre judge the outcome of our investigation – detailed answer to follow – one for [REDACTED], [REDACTED] and [REDACTED]

1a ii – duty to permit subject to LO's. Our regulatory remit does not extend to continuous, real-time monitoring of the financial health of operators within an open marketplace. When we license an operator we look at suitability, including their financial circumstances and we may review these aspects as part of any subsequent compliance activity we take, but we are not able to oversee their businesses on a day-to-day basis or monitor the financial health of all licensed operators directly. Such an approach would represent a very different form of regulation and would require a significantly different funding model to the one currently set out in legislation. [REDACTED] and [REDACTED]

2a – we consider customer spending as part of assessment – hence customer interaction and affordability as a part of that - [REDACTED] and [REDACTED]

2b – aspect of live case re fair and open but also note actions in this area including banner on website that this was Gambling Commission [REDACTED] and [REDACTED]

2c – we were aware of this mechanism and considered it.... [REDACTED]

2d – aware - [REDACTED] are you able to double check this for me asap???

3 – new app was treated as such - [REDACTED] and [REDACTED] could you confirm we would have gone through all of the usual steps – see also our previous response to q5 in their last q set which would not pear to have satisfied their query

4 (5) – BI only held a GC OL and were not licenced by the FCA but FCA agreed they should have FCA licence and so were starting the application process with them - [REDACTED]

This is correct, although I'm not sure BetIndex ever formally started the application process with the FCA. The timeline is as follow:

We'd previously engaged with the FCA on the legal issues in May 2019. The FCA subsequently confirmed (in an email in September 2019) that they considered the product should be dual authorised and that they would write to BetIndex to let them know they needed to apply for a licence. I do not believe that letter was sent.

We wrote to Betindex about our views on dual regulation on 16 July and 3 August 2020. They responded on 10 August 2020, where they set out their own advice and the fact that, as a result of our letter, they contacted [REDACTED] at the FCA to request some guidance on the matter (I believe they contacted him on 10 August 2020). The FCA responded, via [REDACTED], on 16 September, where they indicated they considered the entire product fell within the FCA's remit. BetIndex pushed back on that in their letter to the FCA on 18 November 2020, and indicated

they sought legal advice from counsel, which itself indicated none of the product fell within Article 85. At that point the position therefore was that:

- a. The Commission's view was that part of the product fell within the FCA's remit
- b. The FCA's view was that the entire product fell within their remit
- c. The operator's view was that none of the product fell within the FCA's remit, and entirely within the GC's.

I understand that advice was subsequently shared with the FCA, but I am not sure if the FCA responded to their enquiries. In any event, following our meeting with the FCA in January 2021, the FCA eventually concluded none of the product fell within their remit and that they agreed with the operator.

Given all the to-ing and fro-ing, apart from the correspondence above of which I am aware, I do not think BetIndex took steps to formally apply for a licence with the FCA.

5 (6) – no comparable fund

6 (7) – customer funds covered money in wallets – the value of shares, or money staked, does not fall within the definition of customer funds saw that as FCA but in absence of FCA licence we 'leaned in' to firstly try and get FCA 'cover' and secondly to continued to press on all areas of concern with the operator. We were aware of the dividend issue and the accruing issue which had been exacerbated by a combination of factors including suspension of live football and increased dividends - [REDACTED]

The question appears to cover three different types of funds, each with their own classification:

- a. Monies in wallets, not yet staked – this is classic customer funds, and within our remit.
- b. Monies used to purchase shares – these are equivalent to monies staked, and put at risk. Not within the definition of customer funds
- c. Unaccrued dividends – classed as potential future winnings, and again not traditionally customer funds. Ordinarily, in cases where an operator goes insolvent, future potential winnings from a bet for which the event has not occurred are not ordinarily considered customer funds. There appears to us to be parallels between those cases, and these cases whereby the 'event', i.e. where the player will rank in the matchday table next week or not month, has not occurred, and therefore the winnings in that respect remain uncertain.

7 – escalated at an earlier point lack of FCA co-op, increased horizon scanning to pick up increased marketing and then clearer focus on expansion, some internal matters ensuring quicker escalation. The issue was always creating a 'run'. Also context of pandemic, reduced FTE small regulator etc.... [REDACTED] – also ref [REDACTED] own internal review

Happy to receive emails whilst on the call if it helps with the qs but if we could get to work on these final (I'm sure they are...) set of qs that would great.