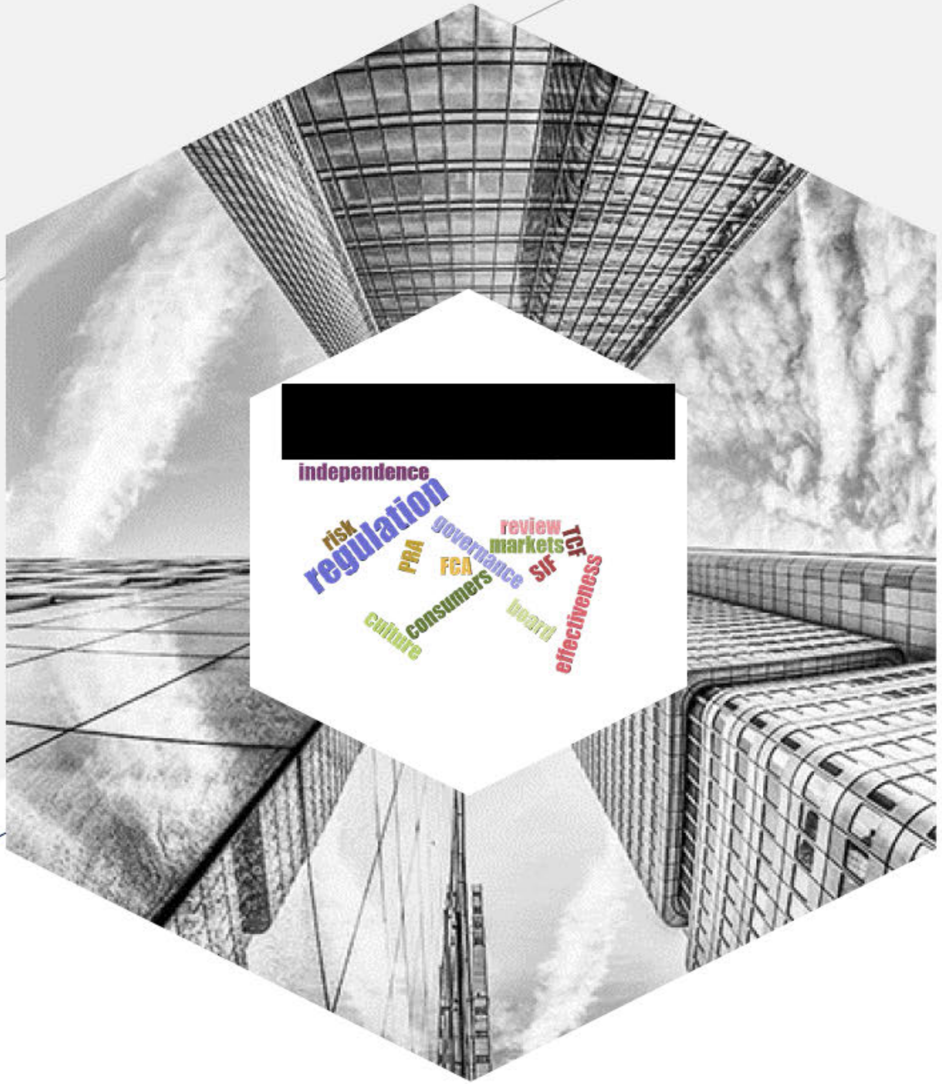

BetIndex Lessons learnt debrief for the Gambling Commission

September 2021

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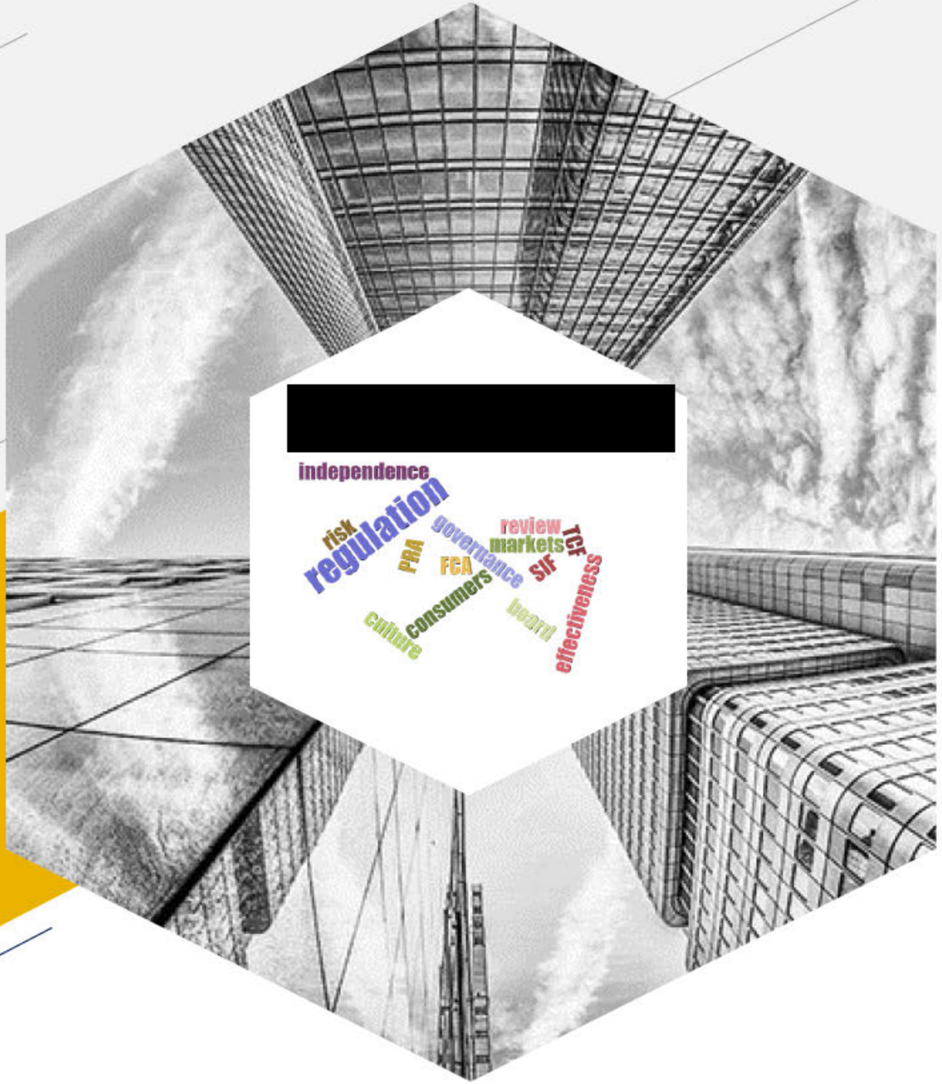


Executive summary

Executive summary

- The Gambling Commission commissioned [redacted] to facilitate a structured debrief of the lessons around the Commission's handling of BetIndex. The review took place between July and September 2021.
- During the assignment, we reviewed key documents and interviewed ten individuals who had been closely involved with the case. We thank all who took part for their thoughtful and constructive approach.
- While, unavoidably, there was a focus on the lessons from the case, our discussions also illustrated some positive points:
    - Excellent collaboration across the Commission, and in particular the effective role of the cross team working group set up in early 2020 to support the case and its wider implications;
    - The valuable input of specialist staff;
    - The early recognition of the wider implications of BetIndex;
    - The improved awareness of regulatory boundary issues as a result of the case;
    - The good collaboration with the Jersey regulator; and
    - The positive indicators of leadership and culture in a difficult environment, especially the absence of a blame culture and an openness to learning lessons.

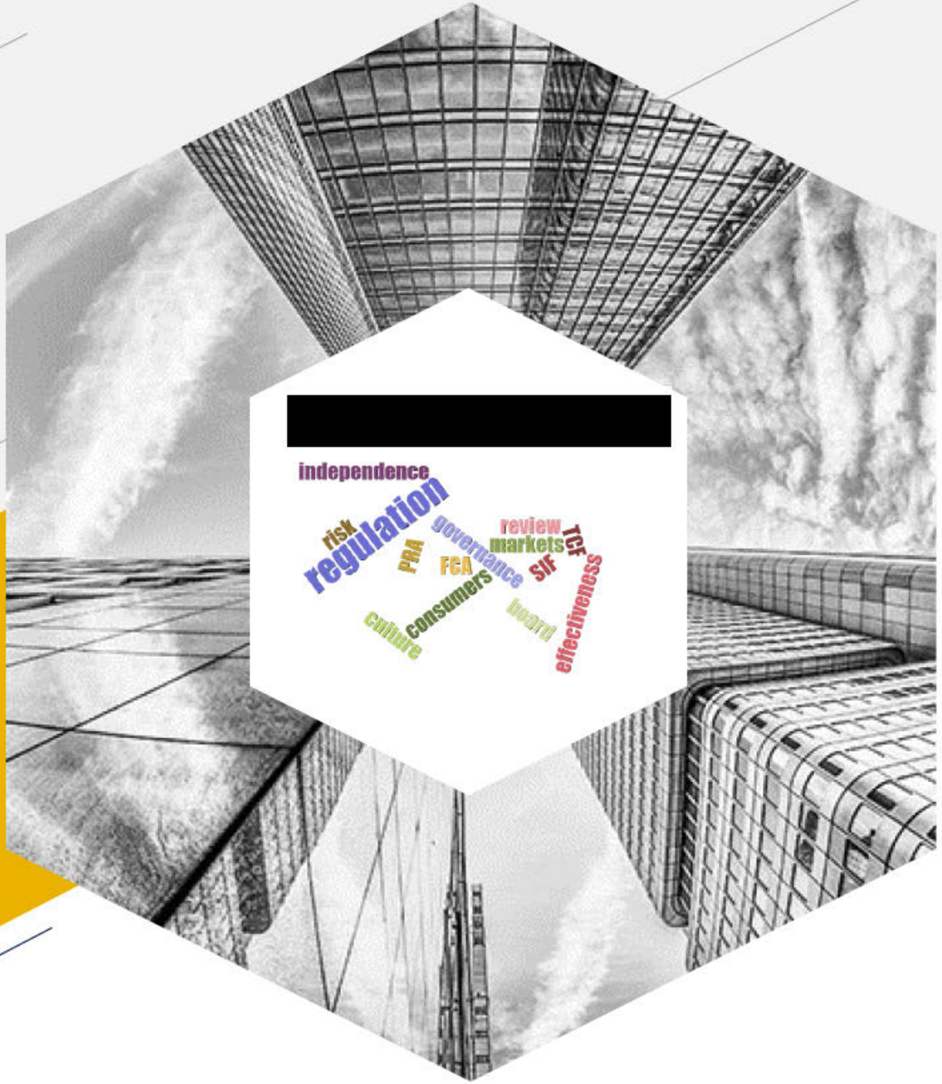
Executive summary

- A number of potential lessons and issues were identified in the course of our discussions of the case. They are listed below.
    - The protracted engagement with the FCA;
    - An undue focus on the regulated status of BetIndex;
    - Confusion about the role of the cross team working group in relation to the enforcement case;
    - Insufficient oversight of the case;
    - The need to further improve information sharing within the Commission;
    - The Commission's lack of resources especially specialist resources;
    - Potential missed opportunities over the course of the case;
    - Weaknesses in the approach to licensing;
    - Gaps in risk identification processes in the Commission;
    - Inadequate coverage of customer funds;
    - The lack of financial monitoring;
    - The absence of detailed contingency planning;
    - Potential gaps in the powers of the Commission; and
    - The need for better communication of the remit of the Gambling Commission.

Executive summary

- Having considered what people told us, we drew up a series of potential recommendations for the Commission to consider. The detail of these are set out in the final section of the report.

Recommendations
1. Review the Commission's target operating model to ensure there is the right number of staff and mix of skills to perform its functions
2. Develop additional protocols with the FCA to minimise the risk of inconsistent approaches
3. Review licensing risk appetite and approach
4. Develop additional conditions for novel products
5. Strengthen the governance around problem cases
6. Reinforce operators' obligation to share information with the regulator
7. Review the Commission's approach to risk identification
8. Review the definition of customer funds and related requirements
9. Undertake a review of financial requirements
10. Consider further changes as part of the Gambling Act Review



Background to the review

Scope of the review

Scope

- The Gambling Commission ('the Commission') contracted an independent third party, [redacted], to facilitate a structured debrief around the Commission's handling of BetIndex. This would capture the views of key staff on what went well, what didn't go well, and actions they might want to see. The review was commissioned by [redacted] who acted as the reviewer's key point of contact. The work and interviews were conducted by [redacted], the [redacted], [redacted]
- The focus of the report is primarily on what Commission staff had to say, but the reviewer has also included some wider observations, most notably in the recommendations section of the report.
- The work on the debrief took place alongside the independent inquiry commissioned by the Department of Culture, Media and Sport, and the Commission's ongoing s116 review of the BetIndex license.
- While doing a lessons learnt review at this point is unusual as the case is still ongoing, it provided an opportunity for staff to feed in lessons and views earlier than might otherwise be the case. It also had the potential to shape immediate and longer-term actions which could support the handling of BetIndex from this point on, similar cases if they arose, and the Gambling Commission's work more generally – including any input to the review of the Gambling Act or the response to the DCMS review.

Exclusions

- We had to review a significant amount of documentation to support our understanding and discussions with staff. However, the review's task was to produce a structured debrief of lessons, and not an independent review of the Commission's actions given the parallel work of the DCMS-commissioned review. Therefore, the report doesn't include our timeline of events or views on the Commission's actions and it also assumes that the audience is familiar with the details of the case.
- We did not interview any member of the communications team or the BetIndex enforcement case manager. We also did not interview management board members (apart from [redacted]) or commissioners.

Approach to the review

- There were four phases to the structured debrief:

  - **Phase 1: Familiarisation briefings**

  The Commission gave the reviewer a briefing on the powers and approach of the Gambling Commission and another on the structure of the BetIndex product.

  - **Phase 2 Desk-based document review**

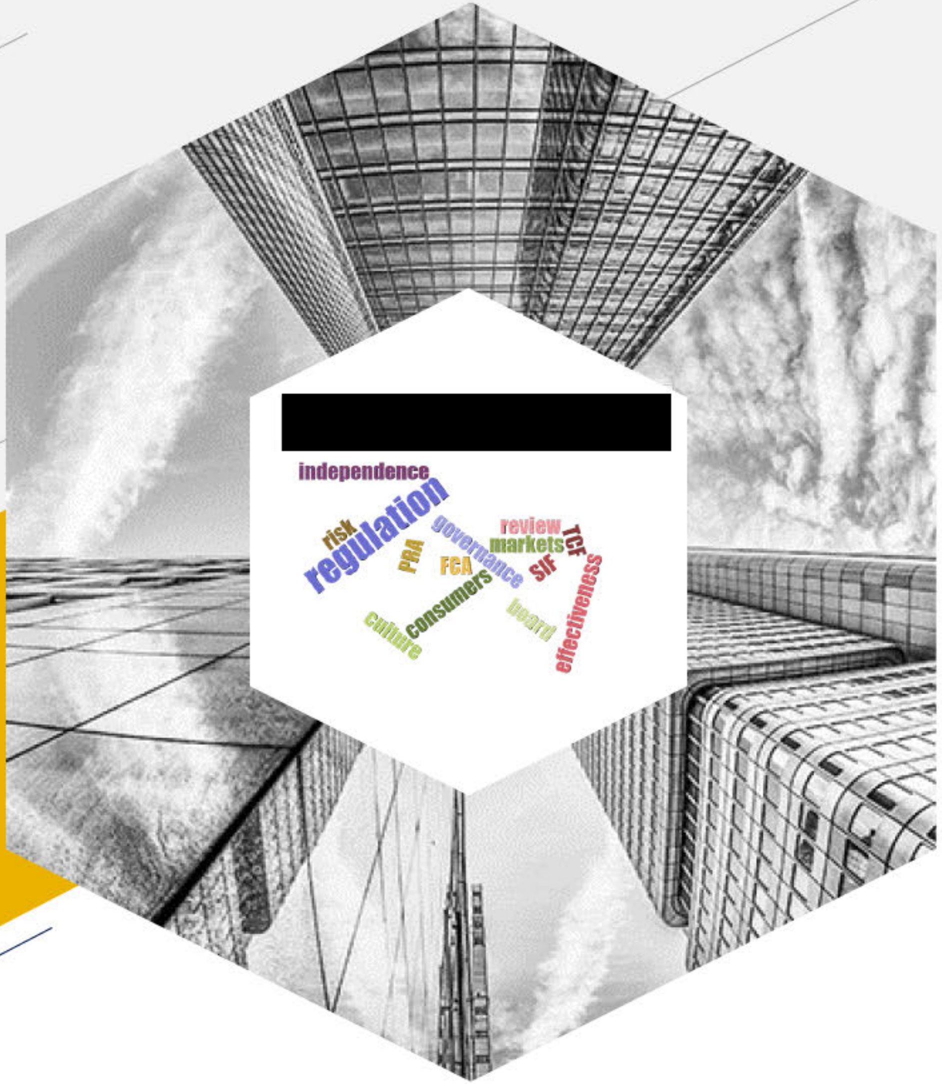
  This included the bundles provided **to** the independent reviewer commissioned by DCMS. The full list of documents is shown in Annex A.

  - **Phase 3: Interviews**

  A series of one-to-one meetings with key individuals at the Gambling Commission who were involved in the case asking them about their roles and their observations about what went well as well as any lessons from BetIndex. What individuals said was largely their own key unprompted observations; however the reviewer also prompted people to reflect in certain areas. The list of individual staff is shown in Annex B. Many thanks to all those who contributed for their thoughtful and constructive approach.

  - **Phase 4 Report drafting**

  This phase consistent of compiling the themes that emerged in the discussion and preparing the report.



What went well

What went well

When asked what went well, individuals highlighted the following key themes:

- Excellent collaboration across the Commission, and in particular the effective role of the cross team working group;
- The valuable input of specialist staff;
- The early recognition of the wider implications of BetIndex;
- The improved awareness of regulatory boundary issues as a result of the case;
- The collaboration with the Jersey regulator; and
- The positive indicators of leadership and culture in a difficult environment, especially the absence of a blame culture and an openness to learning lessons.

The next slides provide more details on each individual topic.

What went well

Excellent collaboration across the Commission, and in particular the effective role of the cross team working group

- Most staff praised the level of collaboration across teams and in particular the setting up of a cross-Commission working group.
- We were told that the different areas of the Commission (Licensing, Compliance and Enforcement) have traditionally operated in silos.
- The handling of BetIndex was seen as a genuinely cross-Commission exercise, consistent with recent efforts to foster collaboration within the Commission. The cross-team working group was set up [redacted] brought up concerns about the viability of BetIndex. It brought together people with a range of experience and specialisms which were essential to the case. This included staff from across Licensing, Compliance and Enforcement, as well as a [redacted] and [redacted]
- People mentioned the creation of the Licensing Oversight Group as another example of cross Commission collaboration. Yet another example was a recent high-risk application where a cross team was also brought together, building on the lessons from BetIndex. The involvement of enforcement in the March 2020 compliance visit was cited as a further example of internal collaboration.
- One individual noted that the working group, combined with the oversight of the Case Management Group (CMG), ensured visibility and awareness of the case for senior management.

The valuable input of specialist staff

- The significance of the involvement of [redacted] and [redacted] was widely acknowledged.
- However, most people we spoke to also mentioned the need for more specialist resources in the Commission (see resourcing section of the lessons from BetIndex section of the report).

What went well

The early recognition of the wider implications of BetIndex

- Some people noted how quickly people appreciated the potential business model and policy implications of the case. They largely referred to January 2020, [redacted], and staff from across the Commission were brought together, leading to the cross-team working group.
- In fact, some of these implications were identified as early as May 2019 following questions from the FA and Arjel in February 2019 and a compliance review of BetIndex in May 2019. The compliance assessment (conducted on 9 May 2019) identified a concern about the regulated status of the product; within 3 weeks, the Gambling Commission made the first contact with the FCA querying whether the product fell within s22 of the Financial Services and Markets Act. However, it is not clear how much wider awareness there was of these concerns until January 2020. It was not mentioned in the IRF dated 16 May 2019 following the compliance assessment.

The improved awareness of boundary issues as a result of the case

- While policy considerations and processes unavoidably take time, there were wider exercises to raise awareness of higher risk models and potential dual regulation issues. For example, we were told of a presentation to licensing staff about potential red flags staff should look for in licensing applications. The cross team working group also considered other operators and applications that shared similar features to BetIndex. As a result of this additional scrutiny, several operators withdrew their applications.

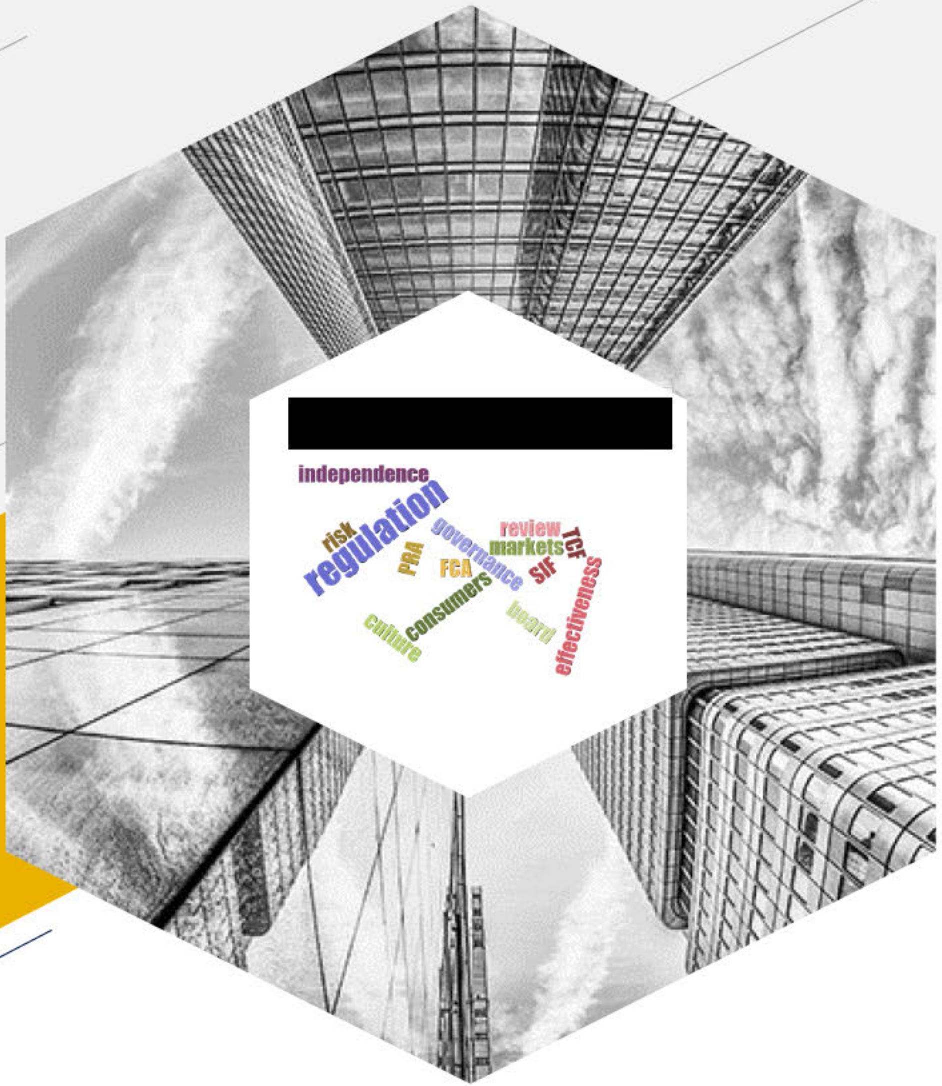
The good collaboration with the Jersey regulator

- One individual praised the relationship with the Jersey regulator, in particular through the period leading up to suspension and afterwards.

What went well

The positive indicators of leadership and culture

- Several members of staff raised, unprompted, the senior leadership around the case. This ranged from praising the steps taken to promote cross-Commission collaboration, specifically around BetIndex, but also more generally; and how senior leaders took ownership of the fallout.
- We were told that the tone from the top had been to encourage open debate and no blame. It was described as 'honest and mature', 'positive' and 'kept staff morale up'. Several staff members expressed deep sorrow at the outcome of this case and it is clear to us that staff morale needed careful management.
- The level of staff dedication was praised, with particular mention of the period around the suspension.
- Another positive culture indicator was the acknowledgement that the handling of the case had been a collective decision, with staff allowed to vocalise their views, even if they did not always win the argument.
- While the impact of COVID-19 on the Commission's operations was mentioned, no one claimed this as an excuse but rather as a contributing factor to how the case may have unfolded – both due to the impact on BetIndex and resourcing within the Commission.
- This culture was reflected in the way people discussed the case with us. Individuals were willing to openly ask themselves thoughtful questions about what had gone wrong and what improvements might have helped. However, they were also able to put this into the context of a regime that was designed to be permissive under the Gambling Act 2005 and realistic views of the Commission's resources.



Lessons from BetIndex

Lessons from BetIndex

Unsurprisingly in cases where things go wrong, the discussions about what didn't go well in relation to the handling of BetIndex were wide-ranging, with a variety of points raised. They included:

- The protracted engagement with the FCA;
- An undue focus on the regulated status of BetIndex;
- Confusion about the role of the cross team working group in relation to the enforcement case;
- Insufficient oversight of the case;
- The need to further improve information sharing within the Commission;
- The Commission's lack of resources especially specialist resources;
- Potential missed opportunities over the course of the case;
- Weaknesses in the approach to licensing;
- Gaps in risk identification processes in the Commission;
- Inadequate coverage of customer funds;
- The lack of financial monitoring;
- The absence of detailed contingency planning;
- Potential gaps in the powers of the Commission; and
- The need for better communication of the remit of the Gambling Commission.

Lessons from BetIndex

The protracted engagement with the FCA

- Most of the people we spoke to thought that the engagement with the FCA did not go well. Several thought the failure to gain traction and reach agreement should have been escalated earlier.
- As pointed out earlier in the report, the Gambling Commission was proactive and started engaging with the FCA as early as May 2019, a couple of weeks after they became aware of the true nature of BetIndex product. In hindsight, people felt that the Commission was perhaps naïve in their dealings with the FCA, even if they proactively chased them repeatedly. The idea of escalating at CEO to CEO level or getting Commissioners involved was floated in the autumn of 2020 but ultimately it was decided to escalate at the level of General Counsels.
- One positive impact of the poor engagement with the FCA is that there is now an MoU in place to assist the cooperation between the two institutions. However, it was recognised that, as drafted, it didn’t provide a guarantee that issues would get resolved in case of disagreement (whether disagreement on approach or timescales).
- We note that the independent reviewer commissioned by DCMS has made recommendations about this.

An undue focus on the regulated status of BetIndex

- Several individuals felt that there had been a disproportionate focus on resolving the question of the product’s regulated status, and whether it might fall under the remit of the FCA. While people recognised that there were good reasons for that (getting clarity on the Gambling Commission’s remit, potential access to FSCS, and the fear that the Commission’s actions might precipitate a customer run), on reflection, they felt that more proactive options should have been pursued, especially as more time elapsed. It should be noted that various options were initially considered at CMG – for example, requiring the operator to offer insurance or writing to customers.
- It is not obvious that elements of the licensing review could not have been progressed independently from the question of the regulated boundary (although it might have been complex). In any event, the impression we gained from the review of documents and our discussions is that other options may not have been sufficiently explored and the strategy should have been revisited as more time passed.

Lessons from BetIndex

Confusion about the role of the cross-team working group in relation to the enforcement case

- In the course of our discussions, it became clear that there were different understandings of the role of the working group in relation to the enforcement case. Not all working group members agreed that the working group was responsible for the overall management of the enforcement case. Others described that enforcement was dealing with the case separately. One member described the working group operating as two teams, one specific to BetIndex, and another the wider licensing/policy team with the member of enforcement providing a short 10 minute update at each meeting. This lack of consensus may well reflect individuals' roles and the evolution of the working group over time.
- This was not the way the Gambling Commission normally operates. Enforcement cases are led by Enforcement who have a number of procedures around case management. This includes the specific timelines a case follows and regular enforcement case management conferences providing what was described as 'friendly challenge'. This did not happen in this case.
- There seemed to have been an explicit decision that the [redacted] would take the lead for the suspension - again, this was not consistent with normal processes. Post-suspension, Enforcement has had a much clearer role.
- In effect, it meant that the cross team working group had a dual remit:
  - managing the enforcement case; and
  - leading on the policy aspects, including the legal analysis, engagement with the FCA, consideration of operators with similar business models, and consideration of potential changes to the Commission's procedures and Licensing Conditions and Codes of Practice (LCCPs).
- This dual role may have contributed to the enforcement case not progressing in the normal way, together with the Commission's focus on resolving the question of the product's regulated status.
- We noted that the case management plan that went to CMG in March 2020 listed members of the working group as the case team but listed the Director as 'to be confirmed'.
- When asked, individuals confirmed that there were no terms of reference for the working group. Given the complexity of the case and the various strands of the working group, formalising the group's remit and reporting arrangements might have been helpful. It would potentially have clarified more clearly the ownership of the enforcement case and introduced more review points.

Lessons from BetIndex

Insufficient oversight of the case

- Several individuals noted that, in hindsight, the timescales were allowed to drift. While a key reason for this was the length of time it took to gain traction with the FCA, there was a feeling that there should have been more proactive management of timescales at the operational level, and more escalation around the lack of progress.
- As noted above, the normal enforcement timelines were not followed in this case. However, even if they had, we were told that enforcement's normal approach is to look at the totality of a case and make one set of findings. In a case like this, we question whether more consideration should have been given to considering certain elements of the case separately.
- We probed around two areas of oversight:
    1. the 3-month compliance follow up assessment agreed in May 2019 at the Issue Management Group (IMG) did not happen;
    2. the oversight of the case by CMG after the working group was put in place.
- In terms of point 1, it was noted that there were discussions behind the scenes as to why the follow up assessment was not conducted, but it would have been better to record the reason formally. We understand that IMG introduced action tracking in 2020.
- In terms of point 2, in hindsight, some felt that there wasn't sufficient awareness of the progress of the case at CMG. There should have been a clearer process for reporting with more review/escalation points. One person noted that the IRF format may not have helped in this regard. At the moment, we understand that there isn't a clear way for CMG to track case progress (or lack thereof).
- Keeping oversight of the progress of cases may be something IMG/CMG need to think about further, although it was also noted that there may be other fora that could fulfil this role (e.g. Licensing Oversight Group).

Lessons from BetIndex

The need to further improve information sharing across the Commission

- While the working group was widely praised as a way of ensuring that there was appropriate collaboration across the organisation, the traditionally siloed approach within the commission was highlighted as a potential problem where there are issues of wider interest. For example, until the cross team working group was put in place, there wasn't widespread awareness of prior engagement with the FCA on the case.
- SIEBEL, the database used by Licensing and Compliance, was mentioned as a barrier as it is not used by all areas of the Commission. It was also seen as not fit-for-purpose, with difficulties springing from it being a CRM tool and difficulties in extracting reports or not being connected to email.
- While staff pointed to several improvements in terms of cross Commission collaboration, there was still a concern about the need for a continuing focus to embed new ways of working.

The Commission's lack of resources

- Resourcing was raised repeatedly, particularly the lack of specialist resource, such as forensic accountants and sector specialists. One person also mentioned the potential need for financial services expertise.
- Both the [redacted] and the [redacted] understood more than most the mechanics of the product and how events might unfold, but scarce resources exacerbated by COVID-19, meant that there were limits to their availability in the case. There was only [redacted] at the Commission at the time.
- In hindsight, one person wondered if there should have been more enforcement resources on the case. BetIndex was rated as red in the enforcement prioritisation system throughout (the highest priority). This was not an issue of inadequate prioritisation but scarce resources as there was a large number of ongoing enforcement cases.
- Ultimately, it is clear that the actions of the Gambling Commission were constrained by their limited resources across the board and COVID-19 made this worse. This undoubtedly impacted how proactive the Commission could be.
- We noted that the Commission is recruiting someone in compliance with product/innovation experience. People raised the need to upskill in other areas such as Licensing – to bring in financial / online / product expertise. There have been recent efforts too to recruit forensic accountants, which has proved difficult due to salary constraints.

Lessons from BetIndex

Potential missed opportunities over the course of the case

- People reflected on what might have been missed opportunities to mitigate the risk of BetIndex.
- One person thought that the key missed opportunity was at the licensing stage. Even though the company didn't disclose the key 'go to market' feature of the product during its license application, there were concerns about the financial terminology used. Having granted the license for [redacted] it was felt that there was little scope to deny the license shortly afterwards. However, we were told the company was given general advice to make clear that it was a betting and not a financial product (but this was not a condition of the license). We note this is a key point in the independent report commissioned by DCMS.
- Other potential missed opportunities were raised, such as the reference to the stockmarket in the security audit. However, given the very specific focus of such audits, it did not seem realistic that this would have been picked up as part of the audit review unless there were other concerns.
- Someone questioned whether the Commission was sufficiently proactive once the business model was understood; or whether independent input should have been sought for example from someone with a financial services background. The prevailing Commission view was that the product was high risk and little value, but that was the nature of betting products, a leisure activity, and the focus should be on information provision. There were dissenting views, but they did not prevail. As a result, the Commission's main action was to require the operator to make changes to its website to emphasise the betting nature of the product.
- Another point was whether the Commission reacted sufficiently to the potential impact of COVID-19 on BetIndex. The question of whether someone was tracking this issue was raised internally, but it is not clear that anyone followed up. This likely reflected resource constraints and the impact of COVID-19 on the Commission itself. But a more significant factor is that BetIndex failed to notify the Commission of the financial difficulties they were facing and changes they were making to dividends, which would have prompted escalation to specialist staff. Given the Commission's reliance on such notifications, the importance of transparency with the regulator is perhaps something they should emphasise more in the context of the BetIndex case (indeed the enforcement case provides an opportunity to reiterate that notification of key events is a license condition).
- Overall, it was not clear that there were obvious missed opportunities to identify the way the product had evolved after the initial licensing review, especially given that there were few complaints or key events in the early years post licensing. However, it seems to us that there may be a more philosophical question for the Commission about where it sees its role in terms of what is fair to customers and customer protection.

Lessons from BetIndex

Weaknesses in the approach to licensing

- Some of the people we spoke to felt that the case might illustrate issues with the approach to licensing, in particular for novel and high risk/high growth products. There was a mention of the narrow focus on meeting the LCCPs and the high threshold for rejecting an application. We were told that the legal is that the Commission cannot refuse an application unless there is a clear breach of LCCPs.
- Someone mentioned that the risk rating for applications can be quite constraining, and it would be better if licensing could add a red flag to applications that pose specific issues – which would mean that it would get on the compliance radar.
- While there had been examples of good collaboration at the licensing stage, based on the lessons from BetIndex, there was a feeling that bringing more specialist and wider input at this stage would be beneficial. There is greater awareness of potential risks and the need to get specialist resource now, but the availability of specialist resources could be a problem and it is not clear that all staff would recognise an issue if the 'novel' aspect was not something akin to BetIndex.
- There was also a question about whether the Commission could be bolder in banning certain business models. The approach was described as 'if the Gambling Act doesn't prohibit something, it is ok'.
- Someone suggested that it might be better to move to a tiered approach to licensing where, post licensing, an operator could only move to the next tier if it met certain conditions around social responsibility, AML and financials. The tier boundaries could be based on number of customers or GGY. There is a precedent for lotteries and bingos who must apply for a variation as they grow. A parallel was drawn too to the FCA's sandbox for innovative models.
- Following BetIndex, the Commission is developing additional license conditions and will consult on dual regulated products. We understand this will include additional conditions around: the language associated with financial markets; clarity that T&Cs must be explicit on the limitations to cash out; and whether rules can be changed for open bets.
- Several people mentioned that the approach to licensing has changed since 2015, leading to speculation that there might have been more investigation of something that appeared misleading if the application had been considered by the Commission in later years.

Lessons from BetIndex

Gaps in risk identification processes in the Commission

- Several people raised issues in relation to risk identification.
- Someone raised the lack of a live risk rating for operators, and whether having all information in one place might have helped (although in this case, there were only two key events and few complaints).
- Another question was whether there could be mechanisms to identify operators that were growing their number of customers or GGY quickly.
- There was a further question about the risks of business models where the bet is longer term as in the case of BetIndex (3 years). Or whether there might be ways to identify operators in financial difficulties.
- Someone suggested that more horizon scanning may have identified the issue earlier. This would mean looking at markets, operators and products and identifying emerging issues, such as chatter about specific operators.
- We note the recent Licensing Oversight Group (LOG) is meant to pick up emerging issues, for example from complaints. The LOG provides monthly updates on complaints, both about operators and themes.
- Another suggestion was whether there should be better tools such as website scraping that would help identify if operators are not doing what they are meant to.
- It seems to us that there is value in collating more of the Commission's collective wisdom and thoughts about improving risk identification processes.

Lessons from BetIndex

Inadequate coverage of customer funds

- The LCCPs define customer funds as cleared funds for future gambling, winnings that are kept in wallets, and any crystallised loyalty or other bonuses. They can be subject to different levels of protection. Stakes for open bets are not protected. The general expectation is that operators manage their cash flows to have sufficient cash to pay out winning bets. But the longer the term of the bet as in the case of BetIndex, the more significant the risk.
- One person noted that historically casinos had to keep protected funds of 3.25 times of what was on the table. In the case of BetIndex, whereas they generated significant revenue during the period they operated, they were always going to face a problem if there were no cash flows coming in. It was suggested that perhaps the Commission should only allow bets within a certain period of time, and require protection for future dividends.
- There was a concern that legal and financial investigator resources are necessary to review trust deeds. There was also a general concern about the transparency of the protection afforded by protected customer funds, in particular the clarity of the definition.

The lack of financial monitoring

- The starting point is that the Commission is not concerned with the financial viability of the overall business. At licensing, financials are assessed from the point of view of suitability and whether the operator has sufficient financial resources to carry out licensed activities, in the context of the likelihood of compliance failures. The Commission does not seek to assess ongoing solvency, although operators are meant to submit key event notifications such as changes in ownership. One person we spoke to wondered how much awareness there is that this is the Commission's approach.
- When prompted, most people did not see a role in the Commission conducting financial monitoring although it was recognised as a contributing factor in this case. It was noted that this would imply a different remit and require additional expertise/ resources. One person questioned whether this might necessitate new powers. From a practical perspective, it was noted that many betting licensees technically will never make money and operators can be loss making for the first few years.
- A couple of individuals thought there might be risk indicators worth pursuing but again resource was seen as a big issue. A number of options were floated: asking operators to report differences between their e-wallets and bank accounts; requiring operators to maintain a financial position to cover their liabilities, e.g. monthly checks comparing the maximum operators could pay out versus cash held and surplus cash to maintain their operations for say 3 or 6 months; or asking operators to report breaches of bank covenants. Another suggestion was to get intelligence another way – e.g. capture intelligence of customers complaining about access to their funds.

Lessons from BetIndex

The absence of detailed contingency planning

- We asked several people about the extent of contingency planning around what might happen to BetIndex. Mostly people thought that it was limited or there was none; a few thought there should have been more. It was considered at a high level by CMG.
- It was noted that, from the point where the business model became clear to the Commission, it was also clear that there was little value in the share element of the product, and any Commission action was likely to precipitate a run and crystallise customer losses as the prices would converge to zero.
- While some options were mooted (e.g. getting insurance), the Commission decided to focus on agreeing with the FCA that the share element was FSMA regulated and might benefit from FSCS protection. As a result the focus was on pursuing the dual regulation option with the FCA, together with asking the operator to make changes to its website to clarify that it was a betting product.
- It was also noted that, while this was a high risk business model, the operator appeared to keep enough funds to cover 20% of future dividends.
- Contingency planning does not appear to be a common practice in the Commission although there is an orderly close down process. Developing and stress testing the potential scenarios in more detail (or asking the operator to conduct that exercise) might have supported the Commission's decision-making and led to a different approach to this case.

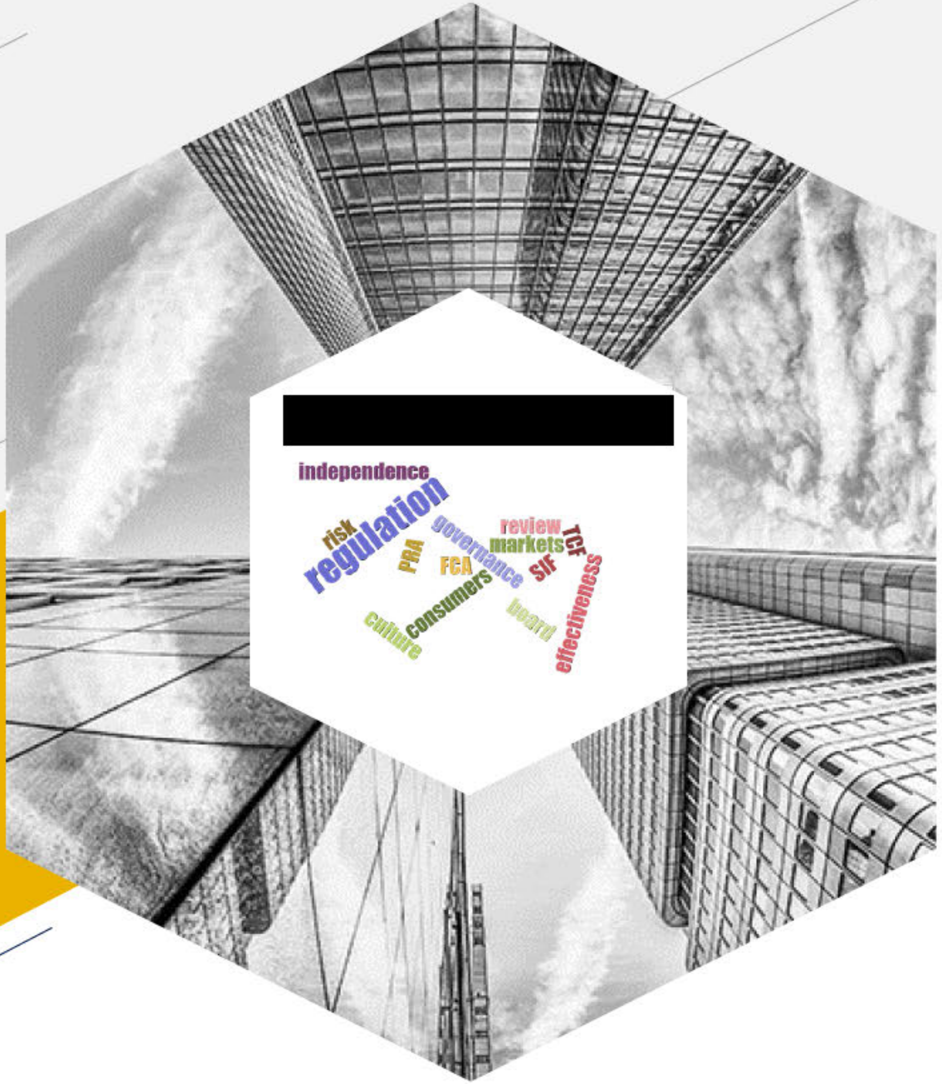
Lessons from BetIndex

Potential gaps in the powers of the Commission

- Few people thought that the issues with BetIndex were linked to a lack of appropriate powers.
- Most thought the powers were aligned to the general remit in the Gambling Act 2005, which says that in exercising its functions, the Commission shall aim to permit gambling (in so far as it thinks that it is reasonably consistent with pursuit of the licensing objectives). People we spoke to tended to emphasise that this is a leisure activity. No doubt this explains the approach to the case and the Commission's approach more broadly.
- Some people felt that current powers are sufficient and that the Commission could impose licensing conditions, or change the LCCPs.
- One person thought financial penalties were not much of a deterrent.
- A couple of people wondered whether the Commission would benefit from having an interim power, such as an easier route to an injunction, prior to the nuclear option of suspension. At the moment, the main powers are to impose conditions on license reviews but this is a lengthy process.
- The key issue that individuals were concerned about in terms of the Gambling Act Review was the absence of powers if an operator surrenders their license as this scuppers any power the Commission has. This was not of direct relevance to the BetIndex case.

Communicating the remit of the Gambling Commission

- One person thought that the Gambling Commission would benefit more widely from being clearer about what it can and cannot do. For example, making clear that adverts are regulated by ASA or that local authorities are responsible for providing licensing to shops in the high street. They also mentioned the need to clarify that betting is a leisure activity and the meaning of customer funds, both of which are relevant to the BetIndex case.



Recommendations

Recommendations

- There is a significant overlap between the recommendations of the independent review commissioned by DCMS and the issues that the individuals we interviewed identified. In certain areas there are differences, for example around the scrutiny of fairness of terms. Some of the additional points raised in this exercise undoubtedly were prompted by our questioning, especially around financial monitoring or contingency planning.
- Our recommendations reflect both our discussions with Commission staff and our professional judgement.

Recommendation	Details
1. Review the Commission's target operating model to ensure there is the right number of staff and mix of skills to perform its functions	A key point of feedback from staff at the Commission was how stretched resources were over the course of the case. Many also flagged the need for additional specialist resource. This is relevant to how proactive the Commission can be. We recommend that the Commission undertakes a formal review of its target operating model.
2. Develop additional protocols with the FCA to minimise the risk of inconsistent approaches	The independent reviewer has made recommendations in respect of the MoU with the FCA, questioning its ability to resolve disagreements around timelines and escalation. But we recognise that it is difficult to anticipate situations that may arise and that neither institution will want to unduly fetter their discretion. In our view, the priority should be for the two institutions to develop more detailed protocols in the event of disagreement, in particular to jointly instruct Counsel where the regulators' interpretation of the law differs.

Recommendations

Recommendation	Details

3. Review licensing risk appetite and approach	We understand that the licensing risk rating approach has evolved since BetIndex was first licensed. However, there were still questions about the adequacy of the current model and whether it differentiates sufficiently for higher-risk models.
	We recommend that:
	- There is a review of the Commission's risk appetite for rejecting licenses. This may require the Commission to accept greater legal risk;
	- The Commission should consider whether new/higher risk business models should be subject to a differentiated licensing approach. This might include:
	    - adding flags to higher risk models to drive closer compliance scrutiny;
	    - closer supervision of newly authorised operators;
	    - introducing tiered licensing to mitigate the risks of quick growth without commensurate scrutiny.

4. Developing additional conditions for novel products	We understand that the Commission is planning to issue a new consultation on the transparency around similar products. We haven't had sight of detailed proposals but strongly recommend that any additional conditions are designed at a sufficiently high level of generality. This is because the next problem product is unlikely to raise the exact same issues as BetIndex. We also recommend that the Commission thinks proactively about its strategy for enforcing the new conditions, and publicising subsequent actions to act as a wider deterrent.

Recommendations

Recommendation	Details
5. Strengthen the governance around problem cases	CMG provides governance around problem cases. Where CMG delegates management of a complex case to a team, we recommend that consideration is given to the clarity of the team's remit, responsibilities and reporting expectations. In BetIndex case, given the multiple strands attached, formal terms of reference might have been helpful. More generally, we recommend bolstering the oversight of the progress of cases. This would require, clear ownership and review points at the outset; and monitoring of the progress of the portfolio. We also recommend that the CMG consider requesting detailed contingency planning where an operator's sustainability is in question. This could include detailed scenarios/playbooks to inform decisions and actions in the event of an operator deteriorating.
6. Reinforce operators' obligation to share information with the regulator	Without prejudging the outcome of the s116 review, BetIndex appears to have failed repeatedly to be transparent with the regulator. We recommend that the Commission reinforces the importance of this as a condition of licensing through: - taking and publicising enforcement actions for failures to share information to serve as a wider deterrent; - communicating to industry on the importance of this requirement as a condition of licensing.

Recommendations

Recommendation	Details
7. Review the Commission's approach to risk	We recommend that the Commission reviews what improvements could be made to its risk identification and management processes, building on the lessons from BetIndex. This should consider: - Horizon scanning; - Identifying and monitoring key operator risk indicators; - Putting in place efficient mechanisms to review the risk of the portfolio and individual operators. There should be a realistic assessment of the Commission's ability to respond to better risk identification given its limited resources. Priority could be given to solutions based on automated data reporting and analysis. The design itself could be largely outsourced, following consultation with staff on possible options.
8. Review the definition of customer funds and related requirements	We recommend that the Commission undertakes a review of customer funds requirements: - to ensure that the definition is clear and properly articulated in customer communications; - to explore the role of third parties, such as auditors, in providing assurance around the level of protection; - to review the adequacy of current requirements, with a specific review of requirements for long-term bets.

Recommendations

Recommendation	Details
9. Undertake a review of financial requirements	Despite the recognition that there may be a mismatch between public expectations and the Commission's lack of financial monitoring of operators, few people thought it was realistic for the Commission to have a role in financial monitoring. Resourcing was the key concern. We recommend that the Commission explores less onerous ways to identify operators that pose a high level of financial risk, for example: - horizon scanning for customers experiencing difficulties getting their funds / winnings; - asking operators to report on key financial indicators, that can be automatically analysed to identify outliers or bubbling risks. This could be part of a wider review of the Commission's approach to risk identification.
10. Consider further changes as part of the Gambling Act Review	The Gambling Act Review provides a unique opportunity for the Commission to address issues in its current remit and powers. We note in particular that the wording of the Act around the licensing objectives and the duty to 'permit gambling' presents a high hurdle even where there are concerns about consumer protection. Minor changes would enable the Commission to rethink its approach to consumer protection, including of what is reasonably fair. In addition, we would suggest that the Commission explores the benefits of interim powers short of suspension.

Annex A - Documents reviewed

- The documents we reviewed included:
  - The document bundles sent to the DCMS independent reviewer including:
    - The initial bundle
    - The four additional bundles sent on 12/7/2021
    - Additional material sent on 26/7/2021
  - A bundle of information including
    - Current approved Operational Guidance Notes: Regulatory reviews
    - Redacted minutes of IMG/CMG minutes relevant to BetIndex and models with FCA aspects
    - Issue Referral Forms (IRFs) and Case Management Plan (CMP)
    - Management Board paper on License models with FCA regulatory aspects
    - Enforcement process maps
    - Enforcement timeline up to suspension
  - The DCMS draft report for Maxwellisation (except chapter 4) and the draft Gambling Commission response
  - The preliminary findings letter to BetIndex

Annex B - List of staff who contributed to the review

- The list of staff who contributed to the review was drawn up in consultation with [redacted], who commissioned the review.
- One-to-one meetings were held with the following individuals:

[redacted]

[redacted]

[redacted]

[redacted]

- DISCLAIMER: This report has been prepared by [redacted] for the Gambling Commission. Any use of the report is at the recipient's own risk; [redacted]ot provide legal or investment advice.