

Virtual currencies, eSports and social gaming

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Commercial analysis: The Gambling Commission recently published a discussion paper, considering issues surrounding virtual currencies, eSports and social gaming. Anna Soilleux-Mills, senior associate at Olswang, and Alasdair Lamb, associate at the firm, examine some of the issues raised.

What are the key issues raised in the discussion paper?

The discussion paper sets out the Gambling Commission's understanding of the extent to which gambling with virtual currencies or 'in-game' items, various forms of eSports gambling, and social gaming fall within its remit.

While the Commission has previously made its position on the use of virtual currencies and status of social gaming relatively clear, the paper helpfully provides additional clarity here. The Commission reiterates the view that digital currencies (such as Bitcoin) would be deemed 'money or money's worth' under the Gambling Act 2005 (GA 2005), and that as a result their use still constitutes real money gambling. In respect of social gaming, the Commission has previously advised that winning additional in-game items (that can be acquired by the payment of real money) will not amount to a prize of money or money's worth. As a result, one of the fundamental elements of 'gaming' as defined under GA 2005 is missing—playing a game of chance for a prize—and hence no licence is required. The Commission does, however, caution that if it is discovered that such items are being traded or are tradeable (or being used as a de facto virtual currency), this would be a regulated activity necessitating a licence. It also re-iterates its focus on gambling-style social games (those that look and feel like traditional gambling) in particular, which it sees as blurring the lines between social gaming products and gambling.

The most significant issues raised by the Commission in the discussion paper, however, surround the regulation of eSports (or competitive video gaming), in respect of which the regulator has, until now, provided little solid guidance. The Commission explores four distinct forms of eSports gambling. First, the Commission looks at 'skins betting'. 'Skins' are a form of in-game item that provides aesthetic upgrades to a player's game play and 'skins betting' covers both the wagering of these items on eSports events as well as use of them as a virtual currency in casino-type games. Like other in-game items, the Commission confirms that a licence will be required where an operator offers facilities to gamble skins which have a monetary value, if they are traded or tradeable and therefore constitute a form of virtual currency.

Second, the Commission confirms that the regulation of betting on eSports is the same as betting on any other event. While this is perhaps unsurprising, the Commission distinguishes eSports here from other sports by citing the additional risk that it poses—children and young people may be particularly drawn to it given the popularity of video games among their demographic.

Third, the Commission deals with the regulatory position of eSports match-ups where players go head-to-head against one another and bet on the outcome. The Commission states that its preliminary view is that, by introducing participants who bet against each other in this way, a person facilitating such match-ups is providing a service designed to facilitate the making or accepting of bets between others. As a result, any such person will be acting as a betting intermediary and will need a betting intermediary licence.

Finally, the paper highlights that the Commission is looking at the circumstances in which a player playing a video game for a prize may be using facilities for gambling where the game in question involves an element of chance—this departs from the previous assumption that computer games are always games of skill, and hence not 'gaming' in the gambling sense. The Commission cites games where the outcome is influenced by events determined by a random number generator (RNG), such as card based games where an RNG determines which cards are dealt to a player. Where such games require a stake and offer a prize for winning, they would fall within the definition of 'gaming' under GA 2005.

What key legal issues have technological developments raised in this area?

The use of virtual currencies, gambling in relation to eSports and social gaming have become increasingly widespread, and this is all ultimately down to technological developments. Greater access to the internet, quicker broadband, more

advanced games consoles, the rise of social media and new forms of digital currencies have all been seen in recent years. With this popularity, questions around the regulatory position of each have come to the fore and the Commission has been forced to consider its stance on such issues.

The recent boom in competitive video-gaming, and with it eSports gambling, has perhaps been the most recent and marked development, and subsequently posed more substantial questions. We have seen a whole new avenue of gambling appear very rapidly. More and more websites have sprung up offering new products, such as match-ups and skins betting, which are untested from a regulatory point of view and have hereto seemingly been operating in a grey area. Unlike betting in the traditional sense on eSports events—of which we have seen an increasing uptake by well-established licensed operators—these newer products have subsisted more in the eSports space, rather than the gambling industry. They have been out of the direct line of sight of regulators until now and are only just starting to list high on the regulatory agenda.

Is the existing legal framework in this area fit for purpose? What do the points raised by the discussion paper mean for lawyers and their clients?

The discussion paper certainly helps to clarify the Commission's position in respect of these areas. However, while the views of the regulator are welcome, whether or not something will constitute 'gambling' under GA 2005 will always ultimately be a matter for the courts—irrespective of the guidance that the Commission provides. This can often be a complicated question to answer, and it is always advisable to seek legal advice in this respect, especially in relation to anything that doesn't fall neatly into an established form of gambling.

That being said, additional guidance from the Commission is rarely a bad thing as it is often the first port of call for operators and will give them greater confidence that what they are doing is within the rules. In the same vein, when interpreting the law, the Commission's guidance will form an important source of authority—albeit not binding—for lawyers.

The Commission's position on virtual currencies and social gaming has been apparent for some time, so there shouldn't be any great surprises here for either lawyers or clients. No such transparency, however, has been apparent in relation to eSports gambling until now, and the paper provides much needed certainty to operators looking to offer eSports related gambling products. Practically speaking, what the Commission's conclusions mean for clients will completely depend on what they are offering and who they are. If they are providing facilities for skins betting without a licence, for example, they should cease doing so until they obtain the necessary authorisation. If, however, they already have a betting licence, and are providing betting on eSports, nothing should change. It is likely that we will see many websites either shut down altogether (if they can't afford the costs and resource-drain that comes with being regulated), or geo-block customers in Great Britain in order to circumvent the Commission's remit.

How does this fit in with other developments in this area? Do you have any predictions for future developments?

All three areas have been on the Commission's radar for some time now, and it is perhaps unsurprising that such guidance has been released as it is in keeping with the regulator's rhetoric. In its 2015–16 annual report and accounts, Sarah Harrison (chief executive of the Gambling Commission), expressed the Commission's future focus on these areas. Philip Graf (chair of the Commission), meanwhile, also commented in a speech at the Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA) in July 2016 that eSports was an area the Commission was starting to turn to due to the link between competitive video-gaming, social gaming and children.

Internationally, eSports gambling in particular has also started to draw attention and the Commission's publication can be seen as a reaction to this. Skins betting has received particular focus in the wake of the *Valve* case in the US. In June and July 2016, two class actions were filed against Valve, the developer of distribution platform and online marketplace, Steam and the popular game, Counter Strike: Global Offensive (or CS:GO). Both alleged that Valve was complicit in the operation and promotion of illegal gambling through enabling millions of Americans to link their individual Steam accounts to third-party websites where they could participate in skins betting in respect of CS:GO. Valve subsequently issued cease and desist orders to all skins betting sites found to be using the Steam trading system. In the wake of this, it is perhaps unsurprising that the Commission has published its views on gambling in this space. The Commission is, however, ahead

of the curve in doing so—in the case of Valve, for instance, it was the game’s publisher rather than regulator which initiated the crackdown—and this could have an impact globally with other regulators following suit.

In the discussion paper, the Commission states that if it suspects unlicensed gambling is taking place, it will ‘tell the operator to stop providing facilities for gambling until and unless they are properly licensed’, as well as warning them, and any third parties involved, such as payment providers or those carrying on marketing, of the risk of further action. This suggests that the Commission may well take a relatively lenient approach, and let those in breach of GA 2005 apply for a licence before penalising them. Nevertheless, it does show that the Commission is zeroing in on individual cases in respect of virtual currencies, eSports gambling and social gaming, and now that it has made its stance clear, it is perhaps inevitable that action will follow.

Interviewed by Alex Heshmaty.

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