

The Gambling (Licensing and Advertising) Act 2014: a squeeze on sports sponsorship

The sponsorship of English Premier League football clubs by remote gambling operators is a multi-million pound business; at least 15 teams in the 2014/15 season are sponsored by Asian gambling companies,¹ with four teams featuring foreign betting companies on their playing shirts.² Many more advertise remote providers in match day programmes and on their perimeter boards and websites.

However, with the advent of the Gambling (Licensing and Advertising) Act 2014 (the “2014 Act”),³ commentators have advised that this may soon be a thing of the past.⁴ Their comments stem primarily from the UK Gambling Commission’s recent guidance on the 2014 Act, which provides that only remote operators that hold full operating licences with the Commission will be allowed to advertise their sponsorship of sports organisations in the UK.⁵

But is this squeeze on sponsorship really the effect of the new law and is the position that has been adopted by the Commission consistent with what the law actually provides? These are not merely academic questions given the amount of money that such sponsors are keen to bring to English football.

A. The new law

The 2014 Act amended the Gambling Act 2005 (the “2005 Act”) on 1 November 2014. The revised legislation can be found at www.legislation.gov.uk and summarised as follows:

Unlawful gambling

Under section 33, a person commits an offence if he provides facilities for gambling, unless: (i) an exception under the 2005 Act applies; or (ii) the person holds an operating licence authorising the provision and the provision is carried out in accordance with the terms of that licence.

The territorial effect of the offence under section 33 is controlled by section 36(3), which provides that section 33 will only apply to remote gambling where: (i) a piece of remote gambling equipment used in the provision of the facilities is situated in Great Britain; or (ii) the facilities are used in Great Britain and the person providing the facilities knows or should know that the facilities are or are likely to be used there.

As such, an unlicensed provider will not commit an offence under section 33 if it does not take business from British citizens (for example, by preventing them from accessing its gambling facilities).

Advertising unlawful gambling

Sections 327(1)(b) and 327(2) provide that a person “advertises” gambling if, with a view to increasing the use of facilities for gambling, he brings the facilities or information about them to the attention of one or more persons. This will be achieved if an arrangement is entered into under which a name related to or associated with gambling is displayed in connection with an event or product (e.g. through sponsorship or brand-sharing).

Under section 330, a person commits an offence if he advertises unlawful gambling. This prohibition applies to both advertising of a:

- (a) non-remote nature, being advertising that is: (i) wholly or partly in Great Britain; and (ii) transmitted by means other than remote communication (e.g. advertising on billboards or through shirt sponsorship) (section 332); and
- (b) remote nature, being advertising that: (i) involves providing information or sending a communication intended to come to the attention of a person in Great Britain (e.g. targeted online advertising); and (ii) relates to gambling facilities provided by equipment in Great Britain or, where no such equipment is in Great Britain, the gambling facilities are or are capable of being used there (section 333).

Note that the offence under section 330 relates only to the advertising of “unlawful” gambling facilities that is capable of being accessed in Great Britain. It therefore follows that no offence will be committed by a person if he advertises an unlicensed remote operator that prevents British citizens from using those gambling facilities.

B. The commission guidance

In October 2014, Nick Tofiluk, Director of Regulatory Operations at the Commission, wrote to sports governing bodies seeking to “draw to [their] attention the risks ... of maintaining [relationships with remote gambling operators] when the [2014 Act came] into force”.⁶

In a logical reading of the new law, Mr Tofiluk stressed that sports clubs and bodies risked committing an offence under Section 330 of the 2005 Act if they advertise through commercial partnership arrangements any unlicensed business that provides remote gambling facilities to British citizens:

“Organisations engaging in sponsorship arrangements ... may be liable under section 330 of the [2014 Act] for the offence of unlawful advertising if they do not ensure the remote gambling activity is actually blocked to consumers in Great Britain ... Equally, a sports club or body will be liable for the section 330 offence if it provides a link to an unlicensed sponsor on its website whose facilities for gambling are not blocked to British consumers.”⁷

However, in a surprising comment on the effectiveness of gambling safeguards, Mr Tofiluk then explained how “carrying out the necessary blocking effectively may offer significant technical challenges in practice”.⁸ This led to a conclusion that:

“the best way for sports bodies to protect themselves against [committing a Section 330 offence] is to ensure that they only promote gambling operators that hold operating licenses issued by the Gambling Commission”.⁹

In the weeks that followed, the Commission continued to suggest that this “licensed operators only” recommendation was actually a strict requirement under the 2014 Act.¹⁰ It also stated that, in order to obtain a licence from the Commission, an operator would require a “British facing business”¹¹; remote operators needed to establish a business with British customers in order to advertise their services in the UK. Other industry bodies repeated the Commission’s opinion in categorical terms, including the Advertising Standards Authority and Committee of Advertising Practice, who issued a statement in late October 2014 announcing

that “only gambling operators licensed by the Gambling Commission will be permitted to advertise to consumers in Greater Britain”.¹²

C. The result

It appears as though repeated policy statements and opinions are in danger of being converted into something that they are not – namely a statement of the law. Indeed, the law does not appear to, as these statements and opinions suggest, include an absolute prohibition on unlicensed foreign operators advertising their gambling services in the UK; the old offence of “advertising foreign gambling” under section 331 of the 2005 Act has specifically been repealed and has not been replaced.

The 2014 Act clearly provides that unlicensed operators can advertise their remote gambling facilities in the UK, so long as steps are taken to prevent members of the UK public from using those gambling facilities. Whilst it has been suggested that significant technical challenges may be faced when installing prevention measures, those challenges cannot be a reason for discarding the measures as a means of avoiding an offence under the 2005 Act. Further, it cannot be right to suggest that these measures are ineffective; the combined use of geo-blocking technology (to prevent UK users accessing unlicensed sites) and operators’ KYC procedures (to identify someone who is or appears to have a UK address and prevent them from registering to gamble for money) must be able to create an effective bar on UK players accessing foreign gambling facilities. After all, precisely the same type of technology is used by licensed operators around the world to deal with self-exclusion and under-age gambling, and is presumably regarded by the regulator as being effective for those purposes.

Finally, it is necessary to anticipate and deal with an argument that might be brought against unlicensed foreign operators from advertising in the UK: “What possible interest do you have being the sponsor of an English Premier League Football team if you are not trying to encourage business from members of the UK population?” The answer to that is remarkably simple: most of the Asian operators that take such an approach are not interested in advertising to the UK public at all. Football is an international game, tele-

vised and gambled upon around the world, including, in particular, in Asian countries where the advertising of gambling may be much more heavily restricted or banned. Asian operators are simply trying to appeal to a local public through the medium of an internationally broadcast sport.

Where does this leave operators and sports clubs? Probably in a state of some confusion about whether it is permissible or not to advertise foreign gambling operators within the UK without attracting unwelcome attention from the regulator. It might therefore be prudent for there to be some further clarification from the Commission on this topic.

Oliver Howley is an Associate and Carl Rohsler is a Partner in the Gambling Law Group at Squire Patton Boggs in London.

To discuss any of the issues raised in this article, please contact the authors using the details below.

oliver.howley@squirepb.com

carl.rohsler@squirepb.com

1. <http://www.olswang.com/articles/2014/04/gambling-commissions-approach-will-eliminate-asian-sport-sponsorship-income/>.
2. http://www.e-comlaw.com/world-sports-law-report/article_template.asp?ID=1685.
3. <http://www.legislation.gov.uk/ukpga/2014/17/contents/enacted>.
4. See, e.g., <http://www.ft.com/cms/s/0/21012f78-d535-11e3-9bca-00144feabdc0.html>.
5. <http://www.gamblingcommission.gov.uk/pdf/Sports-body-letter.pdf>.
6. <http://www.gamblingcommission.gov.uk/pdf/Sports-body-letter.pdf>, at para. 3.
7. *Ibid.*, at para. 6.
8. *Ibid.*, at para. 6.
9. *Ibid.*, at para. 8.
10. <http://www.gamblingcommission.gov.uk/pdf/Guide-to-gambling-advertising-codes.pdf>
11. <http://licensingadvertisingact.blogspot.be/2014/07/24-overseas-operators-that-wish-to-only.html>
12. <http://www.cap.org.uk/News-reports/Media-Centre/2014/Complaints-about-Gambling-ads.aspx#.VH3VLmByZ2Y>

This article originally appeared in **Sports Law Administration & Practice** December 2014 (Vol. 21, No. 6), on page 12.