

Hampton implementation review: the Commission's response

April 2009

Introduction

1. The Hampton report, *Reducing administrative burdens: effective inspection and enforcement*, published in 2005, is one of the cornerstones of the Government's better regulation agenda. Since our inception, we have been working to embed the Hampton principles in the Gambling Commission's (the Commission) approach to regulation. This is recognised in our corporate plan:

"The Commission is committed to regulating in a manner that is consistent with the Hampton¹ principles and the Macrory² characteristics of better regulation. The Commission will therefore seek to work in a transparent, accountable, proportionate, consistent and targeted way. Its approach to regulation is risk-based, with a focus on required outcomes and avoidance of fine prescriptive detail."
2. In October 2008, the Commission was the subject of one of a series of reviews of regulatory bodies, focussing on the assessment of our regulatory performance against the Hampton Principles and the Macrory characteristics of effective inspection and enforcement. These reviews use a standard assessment framework and are designed to both identify whether a regulator is on the road to full implementation and to look at the issues to be addressed to become Hampton compliant. Our Review was carried out by a team drawn from the Better Regulation Executive, the National Audit Office (NAO), the Security Industry Authority, and EEF – the UK manufacturing employers' organisation.
3. The results of this Review are published by the Department for Business, Enterprise & Regulatory Reform (BERR). We welcome this report and accept the recommendations made by the Review Team. This note sets out our response to the Review Team's findings and outlines the action we propose to take on the recommendations made.

Background

4. The Commission has been fully operational since September 2007 and we have aspired to develop and deliver a regulatory regime that meets the Hampton principles and the Macrory characteristics. In doing so we have recognised that to achieve this takes time, in particular the development of the necessary in-depth knowledge of the gambling industry upon which to base a comprehensive risk-based regulatory model takes longer than one full year's operation to achieve. However, we have always sought to deliver a regime that is transparent, accountable, proportionate, consistent, targeted and risk-based, with a focus on required outcomes and avoidance of fine prescriptive detail.
5. In 2007, BERR and the NAO carried out the first phase of Hampton Reviews on five large national regulators³. In 2008, the methodology was refined and plans were announced to carry out Hampton Implementation Reviews at 31 other national regulators, including the Commission. We asked to be reviewed in October 2008, the first regulator to be reviewed in this cycle. We identified a small group to work with the Review Team and preliminary

¹ Implementing Hampton: from enforcement to compliance, BRE, updated November 2006

² Macrory Review of Regulatory Penalties, Better Regulation Executive, November 2006

³ HSE, Food Standards Authority, Environment Agency, FSA, OFT

documentation for the Review was provided by us. The Review Team visited us during the week commencing 6 October 2008, interviewing our Commissioners and employees from across the organisation as well as meeting our stakeholders, visiting operators and reviewing documentation.

6. The Review report is published by BERR. We have seen the final report and prepared this response.

The Commission's response

7. We welcome this report and accept the recommendations made. We are grateful to the Review Team for the approach taken during last year's review and the constructive and helpful recommendations that it has made. In the five months since the review we have taken action to address these recommendations.
8. The report recognises that we asked to be reviewed at a very early stage in our development and that, inevitably, the findings of the Review reflect the fact that it was carried out after the first year of our full operation. Our response also reflects our concern to identify quickly any issues regarding the achievement of full Hampton compliance early in the development of the Commission's work.
9. We are pleased to note the overall conclusion that, "We believe that if current plans are successfully implemented (particularly proposals in relation to the more effective use of risk assessment as presented to us throughout the Review), it [the Commission] should be in a strong position to demonstrate the Hampton and Macrory principles throughout its work. We acknowledge the scale of the tasks confronting the Commission as a new regulator, and were impressed by the skills and commitment that the Commission's staff brought to bear in tackling these."
10. We also note the considerable progress made and recognised by the Review that the Commission:
 - is publicly committed to implementing the principles of better regulation
 - has developed good and extensive procedures for consultation and engagement with businesses, for the better design of regulations
 - licensing employees showed a strong customer-focussed approach in their day-to-day relationship with businesses
 - is developing a clear intelligence-based view of the most important regulatory risks to the sector
 - is developing convincing plans to put risk assessment at the heart of its work as a regulator.
 - is committed to the proportionate use of sanctions, adopting an advisory and supportive approach to businesses trying to be compliant.
11. We recognise that the delivery of a fully compliant regime poses us a significant and continuing challenge and, as the Review recognises, we have in place the plans necessary to achieve this. The Review conclusions and recommendations support and reinforce our development and we continue build our working and strategic relationships with the industry and other stakeholders. We find the Review's following recommendations (in bold) helpful and constructive:

Improving the use of intelligence and risk analysis

- We continue our work to ensure that activities across the Commission are prioritised according to risk, and on communicating the practical effects of this, particularly what it will mean in practice for individual operators to the regulated community. Our revised approach to the implementation of our risk assessment framework is being rolled out across our work.

Better focus on outcomes

- There are challenges in developing outcome measures which are measurable and have real meaning for our stakeholders and our employees, but we have found the recommendations particularly helpful in this area and are now working to articulate, measure and assess our outcomes more effectively. This may not, in the first instance, result in easy quantification, but in the absence of data on the long-term trends we will explore the scope for indicative short-term data and proxy measures.

Being clearer about its responsibilities with regard to the economic vitality of its regulated sector

- As we have access to improved data, we will work with the industry to improve the economic modelling of the likely impacts of regulation on the sector and with Commission employees to ensure regulatory policymaking takes proper account of the economic impact of proposals.

Improving the quality of data requests, and communicating why they are required

- When we set up our current data collection arrangements in 2007, we made a commitment to review our requirements in 2010 (once two sets of annual data returns have been made). This will be a systematic review of all the data requirements and any changes will be implemented in good time for the 2010/11 data collection cycle. We are also intensifying our efforts, taking a more targeted approach as suggested, to explain the purpose of the data returns that are required, both to employees and to regulated businesses.

Providing clear, tailored guidance

- The Review recognises we have already done some work to communicate imaginatively, particularly with smaller operators and individuals, for instance, by text message and that our employees understand the need to be focused on the needs of our customers. But we agree that further effort is needed on guidance and approaches that meet the needs of harder to reach businesses.

Working in partnership with local authorities

- We agree that closer working with local licensing authorities is a priority and have been working on this in recent months. We will investigate opportunities for further practical exchanges of ideas through, for instance, secondments to encourage better alignment.

12. We recognise that, while we have embraced the spirit of the Hampton principles and our business plan shows how we intend to improve our delivery and become fully compliant with the Hampton principles, we now need to focus on the full implementation of those plans throughout the Commission and on explaining our approach and working more effectively with our stakeholders. Since the Review, we have been enhancing our existing arrangements to ensure that we continue to deliver on this. We would welcome a further health check in 2012 by which time the planned development work should be fully embedded. To this end, we will invite BERR (or equivalent body at that time) to review progress.

13. The Review Team's overall conclusions and recommendations and our responses are set out in Appendix A. The detailed recommendations which support the Review's overall conclusions and recommendations are in Appendix B. We will address these as a part of our business planning arrangements.

Keeping gambling fair and safe for all

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Appendix A: Commission responses to HIR issues for follow up

Area	Recommendation	Response
Improving the use of intelligence and risk-analysis	<p>The Review Team found that there is a good grasp of the main strategic regulatory risks facing the sector (many of which come from outside the licensed community). In general, decisions as to the allocation of resources for enforcement in cases of failure to comply⁴ with the regulations followed from this assessment.</p> <p>The Review Team were not convinced that resources were always allocated accordingly elsewhere: notably in inspection activity and in the development of risk based evidence in policy making. In particular, stakeholders expressed some confusion as to the extent to which the Commission used risk assessment to set inspection plans.</p> <p>The Commission will shortly be publishing and consulting on details of a revised approach to the implementation of their risk-assessment framework. We strongly support their commitment to reviewing their approach to risk: and believe that this is an opportunity to engage with stakeholders more effectively.</p> <p>The Gambling Commission needs to continue to work to ensure that activities across the Commission are prioritised according to risk, and on communicating the practical effects of this – particularly what it will mean in practice for individual operators – to the regulated community.</p>	<p>Our performance in this area is improving as we get better data both on risk factors and on the impact of regulatory action/provision.</p> <p>We have, as planned, moved from an inevitably broad set up phase, particularly in relation to the development of licence conditions and codes, aimed at identifying risks and the basic parameters of the industry. Our next step is segmentation on the basis of identified potential risk, with focus upon impact.</p> <p>We continue to develop our risk-based, evidenced approach, but have to be realistic about the rate at which we can secure and deliver a more targeted approach given the initial lack of data. Some of the frustration / concern from licensees has been based on unrealistic expectations at this very early stage of our work, which we need to do more to address. We are working with the industry and other stakeholders to improve mutual understanding and expectations.</p>
Better focus on outcomes	<p>The Review was impressed by the extent to which employees within the Gambling Commission at all levels (and indeed the Commission's stakeholders) have a high awareness of the statutory licensing objectives, especially given the timescale.</p> <p>However, the Review felt that there was confusion about the wider outcomes associated with these objectives and found</p>	<p>We are pleased the Review recognises the widespread awareness of the statutory licensing objectives, but we agree that a clearer focus on outcomes needs to be developed.</p> <p>We suggest that our initial focus on output measures in terms of licences issued was</p>

⁴ The Gambling Commission's Compliance Managers inspect and advise business on how to comply with the law; decisions as to formal enforcement action are referred by them to Gambling Commission headquarters.

Area	Recommendation	Response
	<p>a tendency to focus on output measures in public statements of the Commission’s achievement (for instance, number of licences issued).</p> <p>Greater clarity in defining and measuring the outcomes associated with the objectives would help the Commission to, amongst other things:</p> <ul style="list-style-type: none"> • inform performance targets • identify and understand trends in the gambling sector • assess the impacts of its regulatory activity • clarify those occasions where there might be a need for the Commission to take additional action. <p>There are challenges here, but the Commission should work to articulate the outcomes that it is seeking to effect better. This may not, in the first instance, result in easy quantification, but in the absence of data on the long-term trends the scope for indicative short term data and measures should be explored. Some suggestions for what might be done are set out in the relevant section of the Report.</p>	<p>inevitable. This is because our core objective in our first year was the licensing and relicensing of the regulated industry. Measurement provided a degree of accountability given that the bulk of our fee income and employee effort went into the development of the licensing framework. As recommended, we are now moving to define and measure outcomes wherever possible and this is embedded in the funding agreement with DCMS.</p> <p>We also agree there is merit in exploring some indicative short term data (and indeed are looking into some already, for example, a mini screen for problem gambling). Where direct measures are not available, we are examining the use of proxies to assess our performance against our core objectives.</p>
<p>The Gambling Commission could be clearer about its responsibilities with regard to the economic vitality of its regulated sector</p>	<p>The gambling sector, particularly through employment and tax revenues, makes a significant contribution to the UK economy.</p> <p>The Review found some conflicting views within the Commission as to the extent to which the Commission is responsible for setting a regulatory framework within which (other things being equal) members of the gambling industry can operate effectively as businesses.</p> <p>While some employees accept this, other parts of the Commission appeared to the Review Team to be less comfortable with this role. We believe that this may be partly due to perceived sensitivities regarding the ethical</p>	<p>We agree that we need to do more to improve internal consistency and to make sure that all employees understand the statutory duty: “to permit gambling insofar as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.” We also need to make sure our employees understand our statutory responsibilities under the Regulator’s Compliance Code and the need for the impact of regulatory options to include the full assessment of costs and benefits including economic ones.</p> <p>With the industry’s cooperation on the provision of data, we hope to improve the economic modelling</p>

Area	Recommendation	Response
	<p>issues associated with the gambling sector.</p> <p>The Commission should work to clarify its responsibilities here, and to improve the economic modelling of the likely impacts of regulations on the sector.</p>	<p>underlying impact assessments of proposed changes in regulation.</p>
<p>Providing clear, tailored guidance</p>	<p>We were impressed with the way in which the Commission's employees work with individual businesses, particularly smaller businesses, to help explain the regulations. However, we found that some of the smaller businesses that we spoke to who had not had direct contact with the Commission found some of its requirements daunting.</p> <p>The Commission has done some work to communicate imaginatively in these cases, for instance, by text message but needs to continue working on guidance and approaches that meet the needs of harder-to-reach businesses.</p>	<p>We appreciate the Review Team's recognition of our commitment in this area and that significant progress has already been made. However, we also recognise the particular challenges of developing effective contact with small, harder to reach operators and individuals, and we continue to seek ways in which we can simplify and deliver necessary information in such cases, commensurate with cost and risk.</p> <p>We are considering how we might further improve the transparency of our work for all our stakeholders, for example, by extending the range of open meetings.</p>
<p>Improving the quality of data requests, and communicating why they are required</p>	<p>Many stakeholders questioned the quantity of data requested by the Commission.</p> <p>The reasons for the data required in returns by the Commission are not well understood and this causes, in some cases, resentment and misunderstanding about its work. As such, we believe that the present lack of understanding and consequent ill-feeling is a significant hurdle to an effective relationship with the regulated sector.</p> <p>We understand the case that much of this data is essential for the Commission to build its intelligence picture of the sector; but the rationale for particular items of data is not always clear.</p> <p>We welcome the Commission's commitment to review the data requirements in 2010 (once two sets of annual data returns have been made). We believe that this should be a systematic review of all the data requirements, and that changes should be implemented in good time for the 2010-</p>	<p>We recognise the significant burden that data collection can place on operators. We have already taken considerable steps through extensive consultation to balance the need to obtain the data necessary to allow us to operate effectively with the burden placed on the industry. However we recognise that our data requirements need to be kept under review and we recognise that more effort is needed to explain our approach. We are ensuring that data requirements continue to be subject to robust review in line with our commitments.</p> <p>We are putting in place arrangements to provide a clearer narrative for employees and operators on the purpose and use of data that is collected.</p>

Area	Recommendation	Response
	<p>11 data collection cycle (i.e. the fourth year of data collection).</p> <p>The Commission should also take a targeted approach to explain the data returns that <u>are</u> required, both to Commission employees and to regulated businesses.</p>	
<p>Working in partnership with local authorities</p>	<p>The Commission and local authorities are, in effect, co-regulators of gambling. The distinction between their respective licensing roles is not as clear as it might be: for instance, there is no ‘natural’ lead role in cases where a compliance issue is relevant both to a premises licence (issued by a local authority) and an operational licence (issued by the Gambling Commission). A concordat with local authorities was agreed in 2007, but this area of work needs further attention.</p> <p>Ideally, the Commission and local authorities should be able to work together as partners, with clarity as to their respective roles. There are challenges for the Gambling Commission here, however, given overlaps in the legislation, and the many other priorities that local authorities have to address in practice.</p> <p>The Review Team believes that the Commission should seek to work closely with local authorities with practical exchanges of ideas through, for instance secondments to ensure a better alignment between both parties’ strategic interests.</p>	<p>This is a priority area for the coming year.</p> <p>We note that the balance between central and local regulation is a challenge for most regulators. We are reviewing our concordat with local authorities and will continue to develop the way we work with authorities and other local partners to ensure the most effective approach to local regulation.</p>

Appendix B: Detailed findings

Hampton area	Review findings
Risk	<ul style="list-style-type: none"> • A strong commitment to develop a clear sense of the strategic risks posed by the sector. • That contradictory communications about the way in which risk assessment will operate in practice have damaged the credibility of the Commission's work in some cases. • Enforcement resources (investigation) were allocated according to strategic risks, but the link between risk assessment and the use of other resources (notably the activities of compliance managers and policy-makers) are at this stage less clear.
Transparency	<ul style="list-style-type: none"> • The Commission's procedures and policy in relation to consultation are, in general, strong. • Nevertheless, perceived failures in communication between the Commission and its stakeholders could become a significant obstacle to an effective working partnership that is founded on mutual understanding.
Economic progress	<ul style="list-style-type: none"> • Attitudes within the Commission regarding its responsibilities in relation to economic progress were not consistently understood. • That the policy imperatives behind the prevention of problem gambling in some cases seemed to obscure an understanding of the economic benefits resulting from the sector's work (for instance, in providing employment).
Design of Regulations	<ul style="list-style-type: none"> • While the Commission generally conducts impact assessment, the quantification of costs and benefits (working with the industry) could be significantly improved. • The Commission seeks to take a principles-based approach to regulations; but this means that the regulations can, in practice, be over interpreted by compliance managers.
Advice and guidance	<ul style="list-style-type: none"> • The Gambling Commission has given good tailored advices to prospective licensees through its advice line; the sense of customer service to licensees across the organisation is strong. • There have however been occasions where the Commission has not been able to give as timely guidance on key regulatory issues as stakeholders would have liked. • More could be done to tailor communications of advice to individual sectors, and in particular to smaller operators without dedicated compliance employees. • The nature of the Commission's relationship with local authorities is not clear.
Data requests	<ul style="list-style-type: none"> • The scale of the Commission's data requirements is a significant source of complaint for its stakeholders. • The forms required for data returns are, in general, well constructed; but the rationale for some of the

	<p>requirements is not clearly enough explained.</p> <ul style="list-style-type: none"> • The reasons for the collection of data in some cases is not clear; with better information and intelligence on the sector, the need for these returns may be able to be reviewed and reduced. • The Review Team believes that the need for quarterly data returns for local authorities could be reviewed.
Inspections	<ul style="list-style-type: none"> • The Commission's inspection strategy is not yet mature; its initial focus has been on building relationships with new licensees, and with bringing harder-to-reach operators into compliance. • The Commission intends to implement a fully risk-based approach to inspection, and the Review Team support this. • Some regulated businesses are confused as to the Commission's inspection policy and its current relation to risk.
Sanctions	<ul style="list-style-type: none"> • There is a commitment throughout the organisation to balancing the effective use of sanctions in serious cases with a presumption that persuasion and advice are the most effective means of creating compliance. • The Commission's internal controls on the use of enforcement action have been cumbersome, but a more streamlined decision-making process is being introduced. • The Commission is restricted to prosecution when taking action against those who do not hold licences; and there is a case for reviewing whether sanctioning powers under Part 3 of the Regulatory Enforcement and Sanctions Act might be explored in more detail by the Commission for adopting in these cases. • Stakeholders want to see the Commission act vigorously where operators deliberately work outside the law.