

IN THE MATTER of the Gambling Act 2003
AND an appeal by **BLUESKY
COMMUNITY TRUST** against
second refusal to amend a class 4
operator's licence

BEFORE THE GAMBLING COMMISSION

Members: S W Hughes KC (Chief Gambling Commissioner)
S C L Pearson
W A Acton
S T Shaw
C M Risk

Date of Appeal: 7 March 2025

Date of Decision: 16 May & 13 June 2025

Date of Notification
of Decision: 27 June 2025

**DECISION ON AN APPEAL BY BLUESKY COMMUNITY TRUST AGAINST SECOND
REFUSAL TO AMEND A CLASS 4 OPERATOR'S LICENCE**

1. On 7 March 2025, BlueSky Community Trust ("**BlueSky**") appealed to the Gambling Commission ("**Commission**") against a decision, made on 5 March 2025 by the Secretary for Internal Affairs ("**Secretary**"), to refuse to amend its Policy for Identifying Problem Gamblers ("**PIPG**") and its Venue Statement on how it is proposed to minimise the risk of problem and underage gambling at its venues.

Background to Appeal

2. The appeal follows an earlier appeal decision by the Commission, decision GC14/24, which involved the same parties and the same subject matter. The issues on both appeals arose from the amendment in late 2023 of the Gambling (Harm Prevention and Minimisation) Regulations 2004 ("**Regulations**", all following regulation references are to these Regulations unless otherwise stated) with particular reference to the application of new Regulations 15 and 16 to BlueSky's PIPG and the Venue Statement for minimising the risk of problem and underage gambling at its venues. BlueSky had proposed amendments to its PIPG and Venue Statement in response to Regulations 15 and 16 and had sought approval of the amendments from the Secretary. The Secretary had refused to do so.

3. In decision GC14/24 the Commission confirmed its jurisdiction to hear an appeal against a refusal to approve amendment of the PIPG and Venue Statement (which together comprise the operator's problem gambling policies), despite BlueSky's class 4 operator's licence containing no reference to the PIPG or Venue Statement, on the basis that section 57(1)(b) of the Gambling Act 2003 ("**Act**", all following section references are to this Act unless otherwise stated) expressly requires an application to the Secretary to amend the licence if the licence holder proposes to "change its problem gambling policies" and that section 61(1)(d) provides a right of appeal against refusal by the Secretary to amend a class 4 operator's licence.¹
4. In decision GC14/24, after discussion of its appeal jurisdiction, the limited immediate effect of a refusal to amend and the text and purpose of the Regulations, the Commission declined to confirm, reverse or vary the decision of the Secretary to refuse to amend BlueSky's licence by approving the proposed changes to its problem gambling policies. Instead, it referred the matter back to the Secretary with directions to reconsider the decision, with the expectation that observations made in decision GC14/24 might assist the Secretary and BlueSky to resolve the differences in their viewpoints.²
5. Following the decision in decision GC14/24, BlueSky and the Secretary engaged in discussions to resolve their areas of disagreement regarding the PIPG and Venue Statement. While agreement was reached on some matters of initial contention, agreement was not reached on the content of clause 21 of BlueSky's Venue Statement. The Secretary refused to approve the later proposed clause 21 of the Venue Statement and BlueSky lodged this appeal under section 61(1)(d).

Applicable statutory scheme

6. Section 316 provides for the making of regulations relating to the exclusion of problem gamblers. Section 316(1)(a) expressly provides for regulations "to enable a venue manager, the holder of a class 4 operator's licence or the holder of a casino operator's licence, or a person acting on behalf of any of those persons, to identify problem gamblers (including the sources of information that must or may be considered or sought to assist in identifying problem gamblers)".
7. The Regulations were made pursuant to section 316. The 2023 amendments to the Regulations, in respect of class 4 gambling, imposed significant changes, including new training obligations for problem gambling awareness, restrictions on the location of ATMs and the visibility of gaming machines, and obligations to undertake periodic "sweeps"

¹ GC14/24 at [27].

² GC14/24 at [69].

(being staff observations of player presence and behaviour) at least 3 times per hour (but no less than 10 minutes apart), to look for signs of harm, to have conversations, to maintain records of those activities and to review those records periodically.

8. The following new regulations, which took effect from 1 December 2023, led to the application to amend BlueSky's PIPG and Venue Statement:

15 Venue manager must ensure that venue personnel consider whether player is exhibiting signs of harm

- (1) The venue manager must ensure that venue personnel consider whether any player is exhibiting any of the signs of harm, including those described in the Schedule.
- (2) The venue manager must ensure that venue personnel, after identifying that a player is exhibiting 1 or more of the signs of harm (including any of those described in the Schedule), have a conversation with that player to assist with identifying whether the player is a problem gambler.

16 Records relating to gambling area sweeps and signs of harm

- (1) The venue manager must maintain records for the purposes of recording the information required by subclauses (2) to (6).
- (2) The venue manager must ensure that venue personnel record the following information in relation to a gambling area sweep:
 - (a) identification of the venue personnel who conducted the gambling area sweep:
 - (b) the date and time that the venue personnel conducted the gambling area sweep:
 - (c) how many players were present in the gambling area during the gambling area sweep:
 - (d) evidence of the steps taken by the venue personnel to monitor and identify whether players have been gambling during consecutive gambling area sweeps:
 - (e) if a gambling area sweep is not conducted because venue personnel could verify through other means that the gambling area was unoccupied by players,—
 - (i) the method by which venue personnel verified that the gambling area was unoccupied by players; and
 - (ii) the date and time that the gambling area sweep was not conducted.
- (3) The venue manager must ensure that venue personnel record the following information in relation to each sign of harm identified:
 - (a) the name of the venue personnel who identified the sign of harm:
 - (b) the date and time that the venue personnel identified the sign of harm:

- (c) information that would help venue personnel to identify a player who displayed the sign of harm (for example, their name, if known, or a general description of their appearance):
 - (d) which sign of harm was identified:
 - (e) the name of the venue personnel who talked to the player as required by regulation 15(2):
 - (f) the date and time that the venue personnel talked to the player:
 - (g) a summary of the conversation with the player:
 - (h) any further action taken in respect of the player.
- (4) The venue manager must review, or ensure that a person reviews on their behalf, the records for at least the previous 7 days at least once each week to—
- (a) assess whether venue personnel have taken appropriate action following the identification of 1 or more signs of harm in a player; and
 - (b) assess whether further action is required in respect of a player; and
 - (c) determine whether there are any players who the venue manager, or the person acting on their behalf, has reasonable grounds to believe are problem gamblers.
- (5) The venue manager, or the person acting on their behalf, after reviewing the records in accordance with subclause (4), must record—
- (a) the date of the review; and
 - (b) any further action taken as a result of the review.
- (6) The venue operator must ensure that information recorded is retained for a period of 3 years after the date on which it was recorded.

9. A new Schedule to the Regulations (“**Schedule**”) set out a non-exhaustive list of “signs of harm”, as follows:

- (a) withdrawing, or attempting to withdraw, cash from an automatic teller machine or EFTPOS device on 2 or more occasions in 1 day to use for gambling at the venue:
- (b) gambling during 9 or more consecutive gambling area sweeps:
- (c) attempting to borrow money from venue personnel or other venue customers to use for gambling:
- (d) leaving children in a car or otherwise unattended at the venue:
- (e) waiting to gamble as soon as the venue opens:
- (f) refusing to stop gambling at the venue when the venue is closing, or otherwise appearing unable to stop gambling:
- (g) appearing visibly distressed or angry either during or after gambling (for example, crying, holding their head in their hands, or hitting a machine).

10. By way of background to the new Regulations, applicants for a class 4 operator's licence are required to lodge, with the application form, "a statement ... of how it intends to minimise the risk of problem gambling (including the corporate society's policy for identifying problem gamblers)"³. In addition, sections 308, 309 and 309A, the material parts of which are as follows, require licence holders to have and use a PIPG as follows:

308 Requirement to develop policy for identifying problem gamblers

- (1) The following persons must develop a policy for identifying problem gamblers:
 - (a) every holder of a class 4 venue licence:
 - (b) every holder of a casino operator's licence who is conducting casino gambling.
- (2) The policy must include any procedures prescribed by regulations made under section 316....
- (4) A venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, must take all reasonable steps to ensure that the policy is used to identify actual or potential problem gamblers....
- (6) A venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$5,000.

309 Exclusion order may be issued to problem gambler identified under section 308

- (1) The venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, must, after identifying a person under section 308(4) who he, she, or it has reasonable grounds to believe is a problem gambler, approach the person and offer information or advice to the person about problem gambling.
- (2) The information or advice offered under subsection (1) must include a description of—
 - (a) the self-exclusion procedure available under section 310; and
 - (b) any procedures prescribed by regulations made under section 316.
- (3) A venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, may, after offering advice or information to a person under subsection (1), issue an exclusion order to the person that prohibits the person from entering the gambling area of the class 4 venue or casino venue (as the case may be) for a period of up to 2 years.
- (4) If an exclusion order is issued under this section, the venue manager or holder of the casino operator's licence, or a person acting on behalf of either of those persons, may require the person to whom it is issued, as a condition of re-entry, to participate, during the period of exclusion, in a procedure prescribed by regulations made under section 316(1)(e).

³ Section 50(2)(c).

309A Duty to assist problem gambler if ongoing concern exists

A venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, must take all reasonable steps to assist a person including, if appropriate, issuing the person with an exclusion order under section 309(3) if-

- (a) the venue manager or the holder of the casino operator's licence, or a person acting on behalf of either of those persons, has already approached the person and provided information or advice to the person about problem gambling under section 309(1); and
- (b) the person has not requested that he or she be issued with an exclusion order under section 310(1) (which relates to the exclusion of a self-identified problem gambler); and
- (c) the person's ongoing gambling or other behaviour at the venue means that the venue manager or the holder of the casino operator's licence, or a person acting on behalf of either of those persons, still has reasonable grounds to believe that the person is a problem gambler.

11. The Commission has routinely set out, in detail, the correct approach to the application of the foregoing sections (including the meaning of the terms “problem gambler”, and “actual or potential problem gambler”) in its decisions on casino Host Responsibility Programme (“HRP”) reviews, a recent example of which is decision GC04/24.⁴ Put shortly, a problem gambler is a person whose gambling conduct has characteristics which cause harm or may cause harm (so suffering actual harm is not essential).
12. Section 57(1) requires a corporate society to apply to amend to its operator's licence if it proposes, among other things, to change its “problem gambling policies”, a term not defined in the Act but understood by the Commission to refer to the PIPG and Venue Statement required by section 50(2)(c). Section 57 provides relevantly:

57 Amending class 4 operator's licence

- (1) A corporate society must apply to the Secretary to amend its class 4 operator's licence if the corporate society proposes to—
 - ...
 - (b) change its problem gambling policies; or
 - ...
 - (e) make any other change that impacts on its ability to comply with this Act or the licence.
 -
- (4) Sections 51 and 52 apply to an application for amendment as if it were an application for a class 4 operator's licence.
- (5) The Secretary must refuse to amend a class 4 operator's licence if—

⁴ See Decision GC04/24, paragraphs 17 to 19

- (a) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 52; or
 - (b) the Secretary is not satisfied that the applicant complies with section 53A; or
 - (c) the Secretary is not satisfied that the applicant will comply with all relevant requirements of this Act, including the obligations set out in section 53A, minimum standards, game rules, Gazette notices, and licence conditions.
13. Section 52(1)(f) of the Act states “The Secretary must refuse to grant a class 4 operator’s licence unless the Secretary is satisfied that, ... the applicant is able to comply with applicable regulatory requirements...”.
14. Section 59 sets out the procedure required if the Secretary refuses to amend a class 4 operator’s licence. It includes notification of the proposal to refuse to amend, the reason for the proposal, and the society’s rights and the procedure to be followed, as a result of the refusal. Provision is made for written submissions by the society and their consideration before the decision is notified. Notification of the decision must include notice of the right to appeal and the process to be followed under section 61. The foregoing steps had been taken prior to the commencement of the appeal.
15. Section 61(1)(d) provides jurisdiction for an appeal against a decision of the Secretary to refuse to amend a class 4 operator’s licence held by the corporate society, including in the form of proposed amendments to its PIPG and Venue Statement.

The Issue

16. Clause 21 of BlueSky’s proposed Venue Statement reads as follows:
- A second or subsequent conversation is not required every single time a subsequent sign of harm is identified. However, it is also not permissible to only have one conversation per day if other signs appear during the course of the day. The requirement is between these two extremes. If there are circumstances in which more than one conversation a day may assist with identifying a problem gambler, then a further conversation should take place. However, if it is clear to venue staff that a further repeated conversation will not be of any such assistance, a further conversation is not required.
17. The Secretary refused to approve clause 21 as submitted and proposed the following clause in its place:
- A conversation is required every time a sign of harm is identified. This includes if the player is gambling during the 9th or more consecutive gambling area sweep. However, if staff undertakes a full assessment of player harm after observing this sign of harm, which involves:
- The player stopping gambling,
 - The player leaving the gambling areas, and
 - Staff conducting a detailed discussion with the player about the observed signs of harm;
- then this can be treated as a break in play for the purposes of this sign of harm.

The outcome of this conversation could be either:

- a) The staff member considers there is no harm or distress of any kind arising from, or caused or exacerbated by, a person's gambling – to the person, or their partner or whānau
- b) Alternatively, the staff member considers here is, or may be, such harm occurring.

If (b) then the staff member should refer to section 17 of this harm minimisation policy. If (a) is the outcome, this would mean that the player would not need another conversation for the continuous presence sign of harm until they were observed to be gambling during another nine or more consecutive gambling area sweeps. Further, if the formal assessment does not take place after the 9th consecutive presence, then the obligation to have a conversation at that sweep, and each subsequent sweep the player is present, remains.

Refusal to engage in conversation may be a further sign of harm, and the venue manager should consider whether more steps are needed to prevent problem gambling at the venue

18. As is apparent from a comparison between the text proposed by each party, the issue at the heart of the appeal concerns the number of conversations that are required under Regulation 15(2) following sequential observations of a player exhibiting 1 or more of the signs of harm (including any of those described in the Schedule):
- (a) BlueSky's proposed text would not require "a conversation ... to assist with identifying whether the player is a problem gambler" every time that a "sign of harm" is observed, if it is clear to venue staff that a further conversation would not provide further assistance in identifying whether the player is a problem gambler.
 - (b) The Secretary proposed text which would require a Regulation 15(2) conversation every time a "sign of harm" is identified, even if the same signs were repeated. The sole partial and conditional exception provided for would arise in respect of the sign of harm set out in sub-paragraph (b) of the Schedule ("gambling during 9 or more consecutive gambling area sweeps").
19. The issue is accordingly the nature and extent of the obligation to have conversations set out in the Venue Statement, consistent with the Commission's interpretation of Regulation 15(2) and its view on how it is to be applied.

BlueSky's submissions

20. BlueSky's submissions focused initially on whether the proposed clause 21 is contrary to Regulation 15(2) when construed from its text and in light of its purpose and context.⁵ Regulation 15(2) requires that, after identifying that a player is exhibiting 1 or more of the signs of harm (including any of those described in the Schedule), venue personnel have

⁵ BlueSky submissions at [5].

a conversation with that player to assist with identifying whether the player is a problem gambler.

21. BlueSky argued that the plain meaning of the text requires only a single conversation because of the use of the singular rather than the plural. BlueSky referred to paragraph 58 of decision GC14/24 in which the Commission observed that “on its face the obligation is singular and triggered by staff identification, not occurrences.”⁶
22. It submitted that the singular interpretation recognises that multiple signs of harm can occur simultaneously and that one conversation which refers to all gambling harm signs observed that day is more beneficial for assisting with identifying whether the player is a problem gambler than having a separate conversation each time a sign of harm is observed.⁷ BlueSky addressed the “signs of harm” listed in the Schedule and how each may be exhibited by a player, noting that some individual signs can occur frequently and for reasons that are unrelated to gambling harm.⁸
23. BlueSky contended that having a further conversation after the tenth sweep, which may only be 10-20 minutes after the ninth sweep, is unlikely to assist with identifying whether the player is a problem gambler which, it observed, is the express purpose of the conversation required by Regulation 15(2).⁹
24. BlueSky indicated that it had received confirmation from the Secretary that there were no documents that clarified or confirmed that there was a policy intention to require conversations following the 9th sweep and again after every subsequent sweep or following every ATM withdrawal after the second.¹⁰
25. BlueSky submitted that the more restrictive interpretation of Regulation 15(2) was appropriate because a requirement to have multiple conversations, each following observation of any “sign”, would create a risk of committing a criminal offence. Reference was made to failure to have a conversation being punishable by a \$1,000 fine,¹¹ to breaches of regulations providing grounds for suspension or cancellation of the class 4

⁶ BlueSky submissions at [7] – [8].

⁷ BlueSky submissions at [9] – [11].

⁸ BlueSky submissions at [12] – [14].

⁹ BlueSky submissions at [15].

¹⁰ BlueSky submissions at [17].

¹¹ The submission does not identify the provision relied upon. It appears to be a reference to the Gambling (Infringement Offences) Regulations 2023, which provides that persons who contravene one of the listed provisions commit an offence punishable by an infringement fee as listed in the Schedule or a court-imposed fine not exceeding \$2,000. The Schedule specifies an infringement fee of \$1,000 for contravention of Regulation 15(2).

venue licence under section 74(1)(b) and the possibility of commission of a criminal offence under section 308.¹²

26. While BlueSky advanced the opening position that the Regulation requires a minimum of one conversation per day, it accepted that, in some cases, more conversations may be required. As a consequence, it proposed to require further conversations if they “may assist” in identifying whether the player is a problem gambler. It argued that its proposal created a low threshold for requiring staff to have more than one conversation with a player exhibiting signs of harm and compared its proposal to the use of the word “clear”, which would set a comparatively high threshold for the requirement of an additional conversation.¹³
27. BlueSky contended that its proposed clause 21 would prevent recurrence of the situation in the *Barrett* case, which involved someone making 27 withdrawals in one day without ever being approached. Those circumstances would clearly require more than one conversation in a day under the proposed clause.¹⁴ However, it would not necessarily require 26 individual conversations in the same day and doing so would not be helpful in the *Barrett* situation.¹⁵
28. BlueSky also referred to the expert evidence of Dr Sally Gainsbury, filed in the course of the earlier appeal, and submitted that it supported the proposition that having a further assessment conversation shortly after a previous one is unlikely to assist with identifying whether a player is a problem gambler but spaced interactions over time would allow players to consider and respond to the matters raised by venue staff.¹⁶

Secretary’s submissions

29. The Secretary proposed amendments to clause 21 of BlueSky’s proposed PIPG which would require a conversation every time a sign of harm was observed, with a limited conditional exception.
30. The Secretary’s central concern with BlueSky’s proposed wording was that it would give too much discretion to venue staff to decide when and if a second or subsequent conversation was required. In the Secretary’s view, requiring a conversation every time a sign of harm is identified would align with the purpose of the Act and Regulations,¹⁷

¹² BlueSky submissions at [18] – [19].

¹³ BlueSky submissions at [20] – [21].

¹⁴ BlueSky submissions at [24].

¹⁵ BlueSky submissions at [25].

¹⁶ BlueSky submissions at [27] – [29].

¹⁷ Secretary submissions at [17].

conversely, any dilution of the responsibility to conduct conversations triggered by a sign of harm would be inconsistent with the scheme of the Regulations.¹⁸

31. While the Secretary accepted that the meaning of the Regulations must be interpreted from its text and in light of its purpose and context, he argued that the discretion allowed in BlueSky's proposed wording of clause 21 was inconsistent with the purpose of the Regulations. The Secretary referred to the Regulatory Impact Statement ("**RIS**") which noted that the previous regulations were not strong enough and claimed that adoption of BlueSky's proposed wording would effect little change from the previous regulations.¹⁹
32. The Secretary opposed the submission that use of the words "a conversation" indicated an intention to require only a single conversation in a day. Reference was made to section 19 of the Legislation Act 2019 which provides that "words in the singular include the plural and words in the plural include the singular" to argue that a singular interpretation would be inconsistent the purpose of the Act and Regulations. It was submitted that the inclusion of the "1 or more" in the Regulation 15(2) (albeit that that reference is to the "signs of harm") indicated an obligation to have more than a single conversation and a contrary construction would render those words redundant.²⁰ It was suggested that the only other interpretation of the words "or more" would be to treat the obligation to have a conversation as being triggered every two ATM withdrawals or every nine sweeps in which a player remained gambling.
33. In response to BlueSky's submissions on the *Barrett* case, while the Secretary agreed that 26 conversations in a single day would not be necessary, BlueSky's approach to Regulation 15 would mean that the player would have gone unchecked beyond one conversation following the second withdrawal.²¹
34. The Secretary agreed that multiple signs of harm could be observed in a short period of time, and that, in such circumstances, venue staff would only need to have one conversation but that did not mean that venue staff were supposed to observe numerous signs of harm before deciding to have a conversation. It was said that the purpose of the conversation is to assess "if the player is experiencing harm", not to trigger an intervention as required by section 309.²²
35. With reference to the evidence of Dr Gainsbury, it was suggested that the reference to a conversation was a reference to a formal assessment conversation, which is not required

¹⁸ Secretary submissions at [20].

¹⁹ Secretary submissions at [21] – [23].

²⁰ Secretary submissions at [24] – [27].

²¹ Secretary submissions at [32] – [33].

²² Secretary submissions at [34] – [35].

on every engagement. Reference was also made to Dr Gainsbury's comments about interactions with players being beneficial for establishing a rapport with them and gathering information to assess if they may be a problem gambler. The submissions also referred to her UK research suggesting that more than one conversation would be required to have an impact on a potential problem gambler.²³

36. The Secretary argued that BlueSky has taken some of the examples of problem gambling out of context. While some signs of harm can occur frequently and this may place a burden on BlueSky, the burden is outweighed by the negative consequences of not identifying gambling harm early.²⁴

BlueSky's reply submissions

37. BlueSky submitted that its proposed clause 21 does not give its staff too much discretion; it would only be in circumstances where it is *clear* that a further conversation would not be of assistance that a further conversation is not required.²⁵
38. It argued that the words "or more" are not redundant because they make it clear that, if staff miss the opportunity to interact with a player after one sign of harm, an interaction is still required when another sign occurs. Venue staff cannot say that no conversation is required because there has been more than one sign of harm.²⁶
39. It argued that inclusion of "or more" indicates that each of the signs of harm is a single sign of harm - for example, as gambling after nine sweeps is one sign of harm, an additional sign of harm is not created when the gambler remains gambling during the 10th sweep. Similarly, withdrawing or attempting to withdraw cash on two or more occasions in one day is one sign of harm; an additional sign of harm is not created when a third withdrawal is made.²⁷
40. BlueSky submitted that, as the Secretary's accepts that if multiple signs of harm occur within a short period of time, only one conversation is required, that position is consistent with Regulation 15 being construed as requiring only one conversation per day.²⁸
41. BlueSky observed that the RIS also refers to a conversation in the singular but used the word "talk" when one or more signs of harm were observed. If the requirement were to

²³ Secretary submissions at [36] – [38].

²⁴ Secretary submissions at [39] – [40].

²⁵ BlueSky reply submissions at [2].

²⁶ BlueSky reply submissions at [4] – [6].

²⁷ BlueSky reply submissions at [8] – [13].

²⁸ BlueSky reply submissions at [16].

have multiple talks, it would have referred to having a “talk” each time a sign of harm is observed.

Discussion

42. Following decision GC14/24, BlueSky modified its proposed clause 21 to provide conditionally for more than a single conversation each day. The proposed obligation to have further conversations would be conditional on further conversations possibly assisting with the express purpose set out in Regulation 15. The Secretary maintained the earlier position that a conversation is required every time that a “sign of harm” is identified. In submissions, the Secretary accepted that only a single conversation would be required if more than 1 sign were observed within a short period, although that would not be the strict effect of the Secretary’s proposed wording.
43. The Secretary was correct to point to section 19 Legislation Act 2019 in relation to the use and meaning of the singular (“a conversation”) and the plural (“exhibiting 1 or more of the signs of harm”) as each including the opposite. All parties agreed, however, that the meaning of legislation must also be ascertained from its text and in the light of its purpose and its context.²⁹ In the Commission’s view, the principal limitation which applies to the obligation in Regulation 15(2) is not the mixed use of the singular and the plural in its text but the express statement of its purpose.
44. Submissions for the Secretary referred to “the purpose of the Act and the Regulations”, without specifying them, and contextually to “the scheme of the Regulations” without further elucidation. The Act’s express purpose combines 8 components into a single purpose; the components include both authorisation of some gambling and prevention and minimisation of harm. The express purpose of the conversation required by Regulation 15(2) is “to assist with identifying whether the player is a problem gambler”.
45. The Commission makes the following observations concerning the Secretary’s submissions:
 - (a) It does not agree that accepting BlueSky’s submissions regarding the number of conversations required over the course of a day would effect little change from the previous regulations. The 2023 amendments to the Regulations effected numerous changes, extending to training, location of ATMs, the conduct of gaming room sweeps, the observation of signs of harm (set out non-exhaustively in the Schedule), their recording and the review of the record of observations, as well as the addition of an obligation to have any conversation at all (for the

²⁹ Section 10(1), Legislation Act 2019

purpose of assisting with identifying whether the player is a problem gambler). None of those obligations appeared in the prior version of the Regulations. In addition, the obligations under Regulation 15 to undertake observations for signs of harm and to have conversations to assist with identifying problem gamblers appear in the context of the surrounding Regulations 14 and 16.

- (b) Having regard to the entirety of the regulatory changes, the Commission regards the obligations to record signs of harm (and their specification) and to review the records weekly to be as at least as important as having conversations to assist with identifying problem gamblers. The weekly review obligation includes a determination whether there are reasonable grounds to believe that a player is a problem gambler. Such a determination triggers obligations under sections 309 (to offer information and advice on self-exclusion) and 309A (to take all reasonable steps to assist the player, including venue exclusion).
 - (c) The obligations to record signs of harm and review records weekly provide a powerful incentive to comply with (and a valuable audit trail for policing) the obligations under Regulation 16(4) and sections 309 and 309A. The express purpose of conversations under Regulation 15(2) is information gathering to assist with identifying problem gamblers. The purpose of the conversations is not to assess whether the player is then experiencing harm nor to replace the intervention obligations under sections 309 and 309A.
 - (d) The inclusion of the words “1 or more signs of harm” has an effect on the construction of the number of conversations which might be required because it expressly provides that a conversation may be about more than one sign of harm (in which case the signs of harm would exceed the number of conversations). However, they do not otherwise limit the number of conversations which may be required. The words are not redundant.
46. In the Commission’s view, it is important not to confuse the limited purpose of observing signs of harm and having a conversation under Regulation 15 (and the related obligation under section 308(4) to take all reasonable steps to ensure that the PIPG is used to identify actual or potential problem gamblers), with the subsequent statutory intervention obligations under sections 309(1) and 309A which follow an assessment that there are reasonable grounds to believe that a player is a problem gambler. The Secretary’s proposed text extends beyond the intended scope of clause 21 in the context of the entirety of the Venue Statement. In that regard, section 308(2) refers to procedures specified in regulations made under section 316 (which is the case with the Regulations). Regulation 15 requires observation for signs of harm, followed by a conversation “to assist with identifying whether the player is a problem gambler”. Regulation 16 requires records

of all observed signs of harm (whether or not followed by a Regulation 15(2) conversation) to be kept and reviewed periodically, specifically “to assess whether further action is required” (implicitly a reference to section 309A) and to determine whether there are reasonable grounds to believe that a player is a problem gambler (the trigger for the obligation in section 309(1)).

47. As far as context is concerned, the extensive obligations in Regulation 16 to record and review signs of harm appear to be aimed at improving compliance with sections 309(1) and 309A. In that regard, Regulation 15 conversations are apparently intended to supplement visual observations in identifying problem gamblers, not to have a similar function to s 309(1) interventions, which are intended to apply to, and have an impact on, those who are believed on reasonable grounds to be problem gamblers.
48. Against that background, the Commission rejects the Secretary’s submission that, unless Regulation 15(2) were interpreted to require as many conversations as observations of harm, the result would be little change in the regulatory obligations since the *Barrett* case.
49. The Commission also does not accept the submission for BlueSky that signs of harm can only occur once a day (as summarised in paragraph 39 above and, incidentally, contrary to the submission summarised in paragraph 26). The signs of harm listed in the Schedule are various and differ in important ways in their nature. Signs (e) and (f) are logically limited to occurrence only once a day. Signs (c), (d) and (g) are inherently capable of repetition, with such repetition potentially being significant. The submissions tended to focus on signs (a) and (b) which are inherently forms of recurrence or persistence and which are accordingly the most challenging for the application of Regulations 15 as it relates to the need for conversations, particularly in circumstances where a prior explanation may have been given for multiple withdrawals and the likelihood that, unless followed by absence in the next sweep (in which case the recurrent presence during sweeps score would restart), presence on the 10th sweep may well follow only 10 minutes after a conversation following the 9th sweep.
50. Having regard to the full context of the Regulations, especially Regulation 16, the Commission considers that all observed instances of signs of harm specified in the Schedule count as signs and must all be recorded as required by Regulation 16. The apparent purpose of Regulation 16 would otherwise be frustrated as repetition or recurrence of signs of harm, including multiple withdrawals and continued presence after 9 sweeps, are material to the assessments required by Regulation 16(4).
51. The Commission considers that the version of clause 21 proposed by BlueSky is closer to reflecting the true requirements of Regulation 15(2), than the version advanced by the

Secretary. The obligation in Regulation 15(2) is not limited to only a single conversation each day, irrespective of the observation of many signs of harm over time, but neither does it require as many conversations as observations of signs of harm. The number and frequency of conversations is expected to reflect their express purpose.

52. In the Commission's view, an obligation interpreted on that basis is not correctly described as a discretion; rather it is an obligation to undertake an assessment, in common with the other related statutory obligations. Whether such an assessment has been made in good faith should be apparent from the contents of the records now required by Regulation 16(3).
53. On appeal, the Commission may confirm, vary, or reverse the Secretary's decision to refuse to amend BlueSky's class 4 operator's Licence.
- (a) Confirmation of the Secretary's decision might be appropriate if Commissioners accepted the Secretary's view that the proposed clause 21 was deficient in ensuring compliance with Regulation 15. As discussed in decision GC14/24, the result would be BlueSky failing to secure approval for its proposed documents but still being required to comply with Regulation 15, having received an indication from the Commission that its proposed text would not be sufficient and with the anticipation of future difficulty on renewal of the licence.
 - (b) Reversal might be appropriate if Commissioners considered that the amended documents advanced by BlueSky were adequate and suitable for approval without modification.
 - (c) If the views of neither party were accepted in their entirety, the decision of the Secretary could be varied by amending the Venue Statement to the point that the Commission considered it to be suitable for approval.
54. The Commission decided to vary the decision of the Secretary by approving the following text of clause 21 which represents a simplified revision of the text proposed by BlueSky as follows:

A second or subsequent conversation is not required every time a subsequent sign of harm is observed but, if other signs are observed during the course of the day, subsequent conversations may be required. A single conversation may address several observed signs of harm. A subsequent conversation is required whenever it is reasonable for venue staff to believe that the conversation may assist with identifying a problem gambler.

Decision

55. On appeal, and pursuant to section 61(4)(a), the Commission varies the decision of the Secretary by approving, under section 57, the text of clause 21 of the Venue Statement which appears in paragraph 54 above.



Susan Hughes KC
Gambling Commissioner

for and on behalf of the
Gambling Commission

27 June 2025